

Stewardship Of Preserved Farmland in Your Municipality

State Agriculture Development Committee



Phone: 609-984-2504

Website: www.nj.gov/agriculture/sadc/

Workshop Goals

1. Gain a better understanding of the State Agriculture Development Committee (SADC) & New Jersey's Farmland Preservation Program
2. Become more familiar with the Deed of Easement (DOE)
3. Learn what is or isn't permitted on a preserved farm and what activities require approval
4. Learn what occurs during annual monitoring
5. Know where to find help when you have questions about assisting a preserved farmland owner
6. Foster partnerships between municipal officials and the SADC to support preserved farmland owners

Agriculture Retention & Development Act - 1983

Statutes

- **1983 Right to Farm Act** - created the SADC (4:1C-1)
- **1983 Agriculture Retention & Development Act**
“ARDA” (4:1C-11) - created the Farmland Preservation Program

Rules (NJAC 2:76)

Policies

Encourages both farmland preservation and the development and strengthening of the Ag industry.



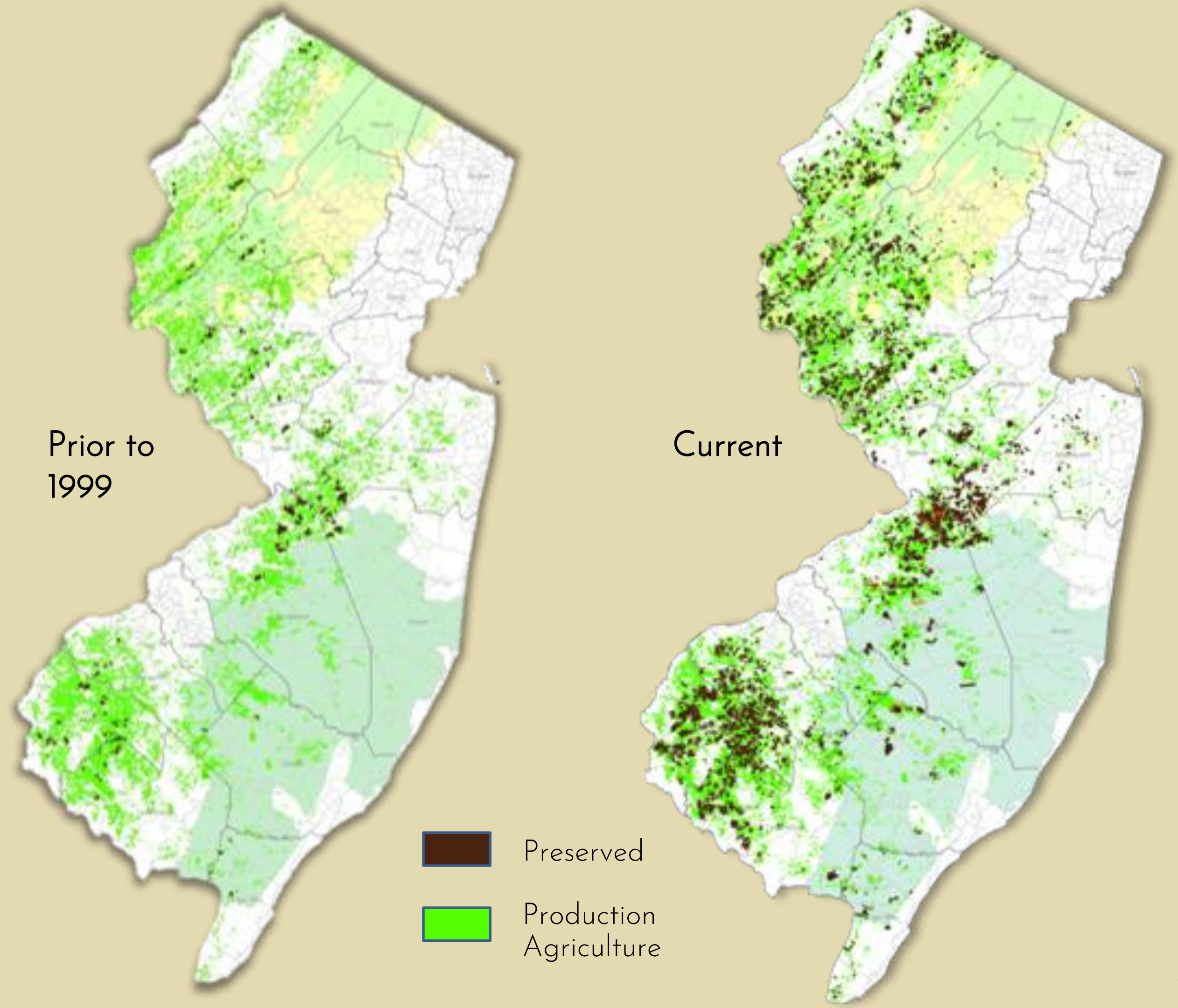


What is the State Agriculture Development Committee (SADC)?

A Committee of 11 members:

- Representatives from 4 State Agencies:
 - NJ Department of Environmental Protection
 - NJ Department of Community Affairs
 - NJ State Treasurer
 - The Dean of Cook College - Rutgers University
- Two public members
- Four farmer members
- Chairperson - NJ Secretary of Agriculture
- Monthly Public Meetings

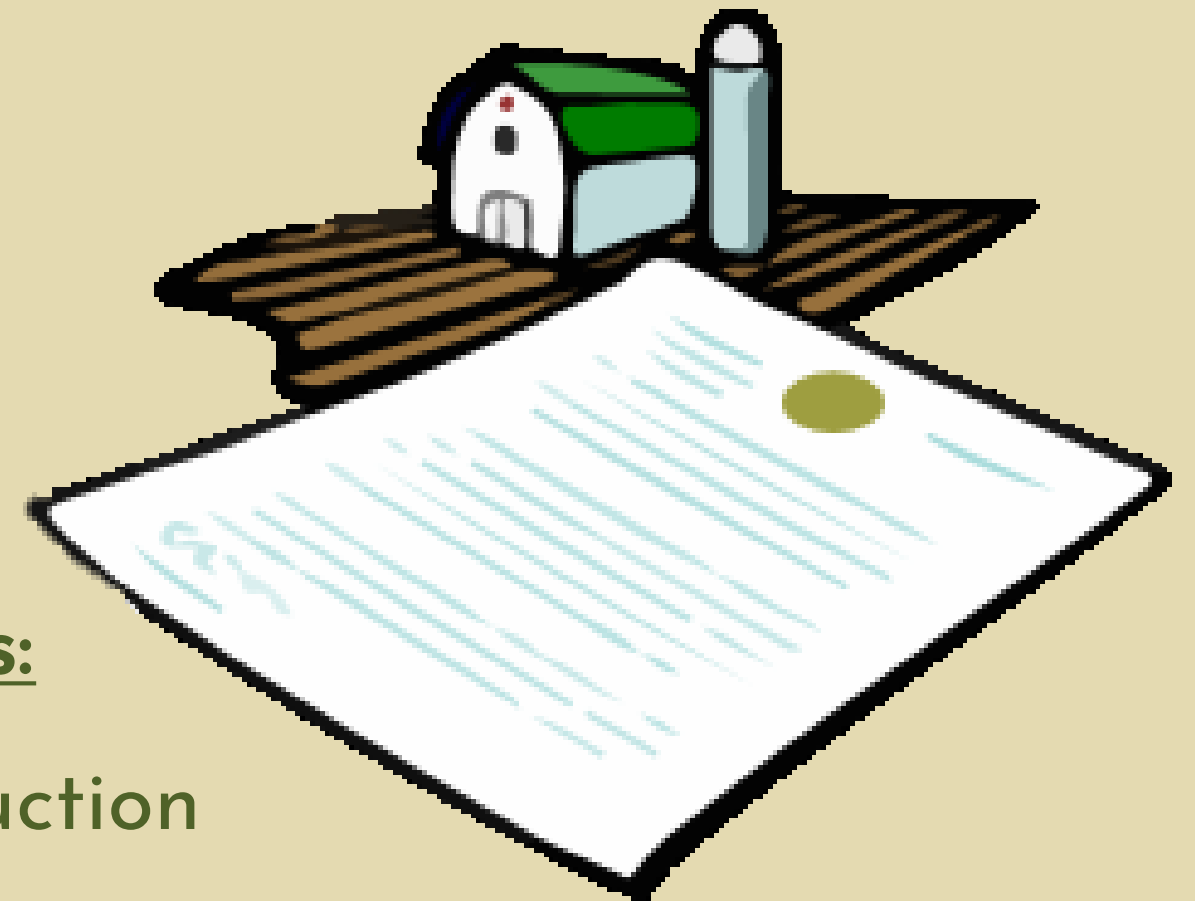
Where We
Started &
Where We
Are Today



Farmland Preservation Deed of Easement

Establishes who holds the easement:

- County
- State
- Non-Profit
- Federal



All Deeds of Easements have the same general provisions:

1. Limits on most or all residential & commercial construction
2. Limits on most non-agricultural uses of the property
3. Promoting productive agricultural uses and natural resource conservation

Deed of Easement (cont.)

Key Deed of Easement Paragraphs:

- Paragraph #1: No Nonagricultural Development
- Paragraph #2: Retained for Agricultural Use
- Paragraphs #3&4: Nonagricultural Uses
- Paragraph #5: Soil Removal and Deposition
- Paragraph #6: No Dumping
- Paragraph #7: Conservation of Ag Resources
- Paragraph #13(a): Existing Residences
- Paragraph #13(b): Exception Areas
- Paragraph #14: New Buildings
- Paragraph #15: Divisions





Retained Rights

- Agriculture

- All forms of production agriculture
- Farm markets & sales spaces
- Common agricultural infrastructure*

- Recreational Uses

- Personal or for profit
- Using farm in the existing condition
- Examples - Hunting, Fishing, Cross Country Skiing, etc.

- Personal Use/Enjoyment of Property

**State of NJ v. Quaker Valley Farms, LLC (August 14, 2018). Agricultural infrastructure that requires a detrimental disturbance*

NJ Supreme Court Decision (2018)

- Landowner had the right to construct hoop houses, but not to destroy so much prime soil
- *“Soil disturbance also damaged future agricultural use” and “constituted a gross violation of the ARDA”* and the deed
- Agricultural uses are required to be carried out in balance with soil conservation
- Easement provisions must be read in their entirety
- Limit on total disturbance that can occur on any preserved farm
- Anything in question, please contact us first to avoid future issues

The SADC is currently drafting soil protection rules as a result of this case.

96% of farms not impacted by the proposed regulation





Retained Rights- Agriculture

- All types of production agriculture permitted
- Infrastructure needed to operate the farm is permitted*
- Preservation does not supersede local requirements, even if permitted by the preservation office.



New Trends

Agri-tourism

- Seasonal activities (pumpkin patches, corn mazes, light shows)
- “Farm Experience”
- U-pick
- On-Farm Markets
- Value Added

Wineries/Breweries/Distilleries

New Special Occasion Events Law

- Weddings
- Parties
- Business events

Special Occasion Events

- P.L. 2023, c.9 became law February 3, 2023
- Recognizes the positive effects that holding special occasion events (SOEs) can have, under certain conditions.
 - Helping sustain the ag industry
 - Enhancing agritourism opportunities
 - Improving viability of farm operations
- SOEs do not:
 - Displace agricultural use of the land
 - Disrupt surrounding neighborhoods

What is an SOE?

A wedding, lifetime milestone event, or other cultural or social event conducted on preserved farmland that is a commercial farm.

do **NOT** include:

- Activities eligible for Right to Farm Act protection;
- Recreational uses already permitted under the DOE
- Weddings held for the owner, operator, or employee of the commercial farm or weddings held for certain family members of the commercial farm owner



Application and Review Process

Who Can Apply to Hold SOEs

- Owner **OR** operator of a preserved farm
- Preserved farm must also be a “commercial farm”
- Preserved farmland must produce ag/hort products worth \$10,000 or more annually
 - Farm may hold up to 26 SOEs per calendar year.
 - 6 SOEs may have 250 guests or more.





Approval Needed to Hold SOEs

- Approval required from the farmland preservation deed of easement holder – the “grantee”
- Holding SOEs without having obtained approval from the grantee is a violation of the deed of easement and the SOE law.
- A farm **must** be in compliance with its farmland preservation deed of easement in order to be eligible to hold SOEs.



What part of a preserved farm can be used for SOEs?

The “occupied area” (as defined in the SOE law):

- The area used to hold SOEs – may not be more than 10 acres or 10% of the preserved farmland, whichever is less
- Includes any area that supports the SOE activities, including, but not limited to, parking, vendors, tables, equipment, infrastructure, sanitary facilities, existing buildings, and temporary or portable structures

SOE Details – Structures

Permanent Structures – SOEs can be held outside, or inside a building that is at least 5 years old at the time of application for the SOE.

- No new permanent structures may be constructed or used to host SOEs
- Improvements to existing structures are limited to the minimum required for the protection of health and safety

Temporary structures – Tents, canopies, etc. may be used for holding SOEs, provided they comply with all applicable provisions of the State Uniform Construction Code and Uniform Fire Code.

- Temporary structures can only be used between April 1 to November 30





SOE Details – Utilities, Parking, Food Service, and Alcohol

Utilities – Electric and water service may be extended to the preserved farmland in support of holding SOEs. Other utilities, such as gas and sewer lines, may not be extended for the purpose of holding SOEs.

Parking for SOEs must be provided through existing parking areas and the area around existing buildings to the extent possible. Any additional temporary, on-site parking areas must follow the SADC's standards for on-farm direct-marking facilities, activities, and events (N.J.A.C. 2:76-2A.13).

Food service – If a retail food establishment is already based at the farm, the farm can use the establishment as part of an SOE. Otherwise, the farm can only operate a temporary retail food establishment, as defined in the State Sanitary Code (N.J.A.C. 8:24) as part of the SOE.

Alcohol – SOEs that involve the service of alcoholic beverages must comply with all applicable State and local laws and regulations.

Difference Between SOEs and On-Farm Direct Marketing (OFDM) Activities and Events

- By definition, SOEs are social and cultural events that are not eligible for the benefits and protections of the Right to Farm Act (RTFA).
- If a farm is conducting marketing-related events that fit within the RTFA On-Farm Direct Marketing Agricultural Management Practice (AMP) rules, [N.J.A.C. 2:76-2A.13](#), such events would not count as SOEs.
- If a farm plans to hold both types of events – SOEs as well as events that could be eligible for RTFA protection – the farm must request a Site-Specific Agricultural Management Practice (SSAMP) determination from the CADB to identify which events are protected under the RTFA. The remaining events would count as SOEs.



Administration of the SOE Law – Municipality Role

- All applicable State and local laws and regulations apply to holding SOEs, including but not limited to those concerning food safety, litter, noise, solid waste, traffic, and the protection of public health and safety.
- A municipality may require the submission of an application if the proposed SOEs would:
 - Generate parking or traffic flow that could unreasonably interfere with the movement of normal traffic or emergency vehicles or other organized group sharing similar common purposes or goals (on any street, park, or other public place within the municipality);
 - Require the expenditure of municipal resources or require municipal inspections

Administration of the SOE Law – Municipality Role

- Municipalities may not charge more than a \$50 application fee, and the application may not require more information than the following:
 - The locations of tents and other temporary structures, sanitary facilities, parking, and access and egress for each event;
 - Where music will be played;
 - The number of expected guests; and
 - Other information that may be of public concern and would be required of a similar event when conducted at a public park or another public venue.
- In order for the municipality to play its appropriate role under the SOE law, the SADC recommends grantees submit a copy of SOE applications to the municipality in which the farm is located, so that the municipality is aware of the request to hold SOEs.

Administration of the SOE Law – Inspections & Enforcement

- Inspections
 - The grantee and SADC have the right, without advance notice, to inspect preserved farms on which SOEs are held in order to determine compliance with the SOE law. Such an inspection may occur during an SOE event.
- Enforcement
 - The SADC is responsible for enforcement of the SOE law. This includes providing notification of alleged violations and, if requested by the farm, holding a hearing. If the SADC finds that a violation has occurred, the SADC may issue a final order imposing a civil administrative penalty and, if applicable, a suspension from holding SOEs.





For more information

- Please visit the SADC website, www.nj.gov/agriculture/sadc/, for a copy of the SOE law and resource documents:
 - SOE Guidance Document – Overview
 - SOE Guidance Document – Q&A
 - Sample Application
 - Production Estimator Tool
- Farm owners and operators, as well as preservation partners, also can contact the SADC at 609-984-2504 and ask for David Kimmel.



Actions that require CADB & SADC approval



- Divisions of Premises
- Residential opportunities
 - House replacements
 - RDSOs
 - Agricultural labor housing
- Energy Generation (Solar/Wind/Biomass)
- Cell Towers
- Rural microenterprise
- New access to non-severable exception areas
- Construction of stormwater facilities and septic if servicing use in non-severable exception areas.

DOE Actions That Require Approval:

Dividing the Premises



Single block/lot with division through the middle



Multiple lots divided by road

Division of Premises

- “Premises” is defined as all the blocks and lots or parts thereof that make up the property as enrolled in the preservation program
- Paragraph 15: no division of the land shall be permitted without the joint approval in writing of the Grantee and the Committee
- Must meet ag purpose and ag viability tests
- Once approved and all requirements met, the SADC records resolution with the county clerk



Residential Opportunities on Preserved Farms

House Replacement - an existing structure may be replaced with a new residence

- Must receive approval from CADB and the SADC
- Location does not need to be on the existing house footprint
- Location must have minimal impact on ag use of land
- House size and access are considered during the approval process
- Typically, old residence must be demolished within 60 days after a CO is issued for the new residence



Residential Opportunities on Preserved Farms

- Residual Dwelling Site Opportunity (RDSO) - provide for the limited future construction of residential unit(s) for agricultural purposes.
 - Must receive approval from CADB and the SADC
 - At least one resident of the unit must be engaged in the day-to-day agricultural production aspects of the farm
 - The unit may not be utilized as a rental unit
 - Location must have minimal impact on ag use of land
 - Location, size and access are part of the application/approval process



Agricultural Labor Housing

- Ag Labor Housing - a residential unit utilized by workers participating in the agricultural production activities of the preserved farm
 - Must be approved by CADB and SADC
 - Laborer(s) living in the unit must be employed exclusively on the farm management unit
 - There must be enough agricultural production on the farm to justify the ag labor unit
 - Location, size and access are part of the application/approval process

Exception Areas

What Are They?

- An Area of the property not subject to the Deed of Easement
- Allows for future flexibility
- Area is surveyed and described at the time of preservation
- **CAN'T BE MOVED AFTER CLOSING**
- **Still subject to local zoning & State/Federal regulations**



Severable and Non-Severable Exceptions

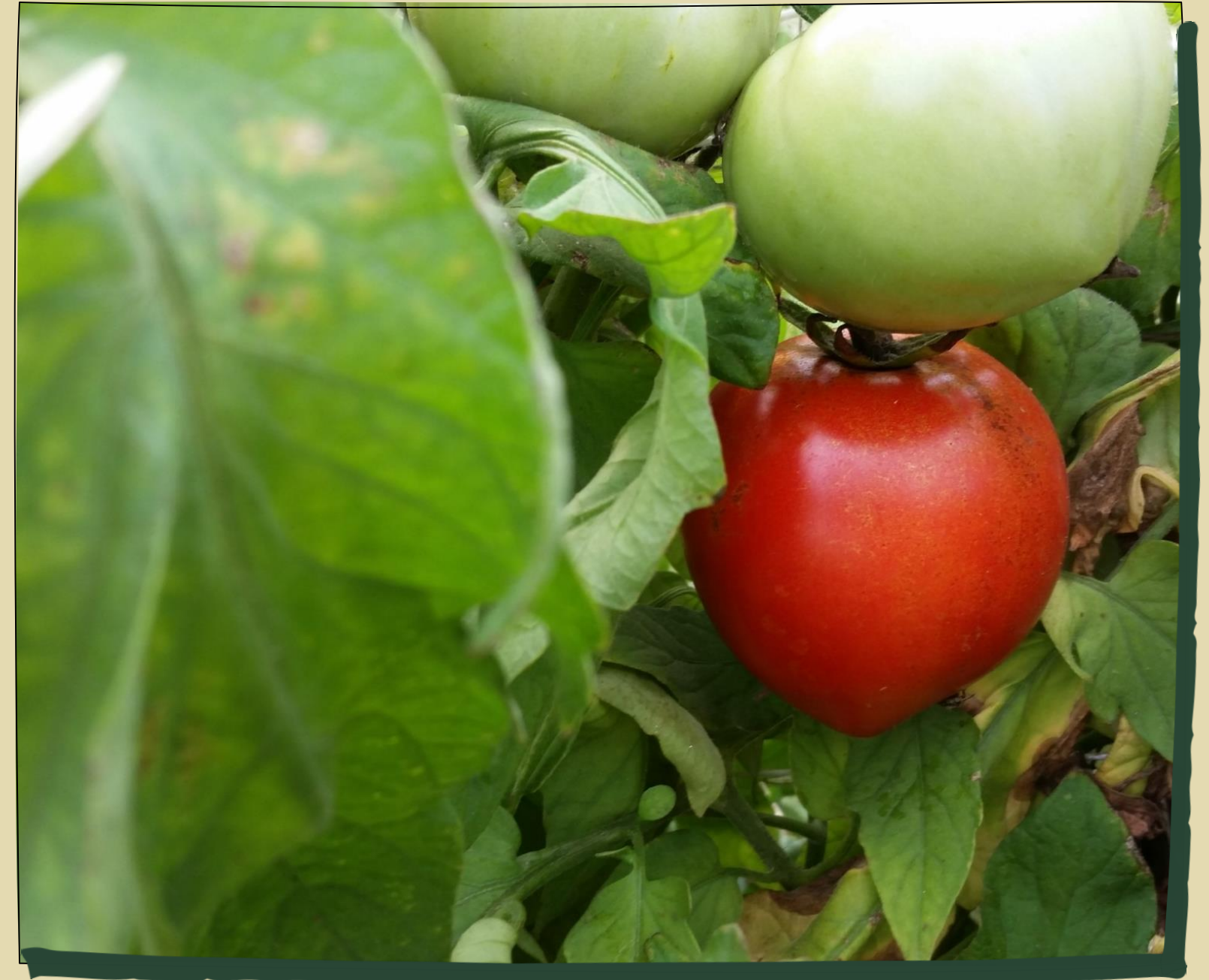
Two types of exception areas:

Severable

Can be subdivided from the preserved part of the Premises (ex: house lot to be sold off from the farm)

Nonseverable

Cannot be subdivided from the preserved part of the Premises (ex: homestead in middle of Premises)



Solar Generation on Preserved Farmland

- P.L. 2009, c. 213 was signed into law in January 2010, which allows for roof or ground-mounted solar energy generation facilities to be installed on preserved farmland
- Requires approval from SADC, even if the solar array is in an exception area
- Limitations
 - Limited to 110% of the farm's previous year's energy demand
 - Or 1% of preserved farm acreage
 - Array must be owned by the landowner in less than 20 years
 - No easements



Solar Generation on Preserved Farmland

- Prior to installations landowners must obtain approval from the SADC
- There is a 90-day review period from receipt of a complete application
- The application can be found on the SADC website:
<http://www.nj.gov/agriculture/sadc/applic/>





DOE Actions that Require Approval: Cell Towers

N.J.A.C. 2:76-23.1 et seq: Allows for cell towers to be constructed on preserved farms under certain conditions.

- On an existing structure
- **No more than 500 sq/ft of** new or expanded infrastructure. Has limited most new towers on preserved farms.
- **Not exempt from local permitting process** ³⁴

Rural Microenterprise (RME)

- A small-scale business or activity that is fully compatible with agricultural use and production on the preserved premises
- It does not detract from, diminish, or interfere with the agricultural use of the premises
- Is incidental to the agricultural use of the premises
- Allows flexibility to re-purpose existing building on farm to generate income



Rural Microenterprise

Permitted Categories of Activities



Customary Rural Activities

- Rely on the equipment and skills historically possessed by the agricultural community
- Example: snow plowing, bed and breakfasts, bakeries, woodworking, and craft-based businesses

Agricultural Support Services

- Have a direct and positive impact on agriculture
- Example: supplying needed equipment, supplies, and services to the surrounding agricultural community, such as veterinary practices, seed suppliers, and tractor or equipment repair shops

Rural Microenterprise

- Special Permit that requires CADB and SADC approval
- Farm must meet eligibility criteria
- Limitations on an area of preserved farm utilized for RME
 - Up to one-acre envelope
 - Can alter up to 2500 sq ft of an existing structure
 - Can add 500 sq ft to an existing structure for expansion
 - 5,000 sq ft of outside storage
 - 2,000 sq ft/10 parking spaces for parking
- [Rural Microenterprise Fact Sheet.pdf \(nj.gov\)](#)



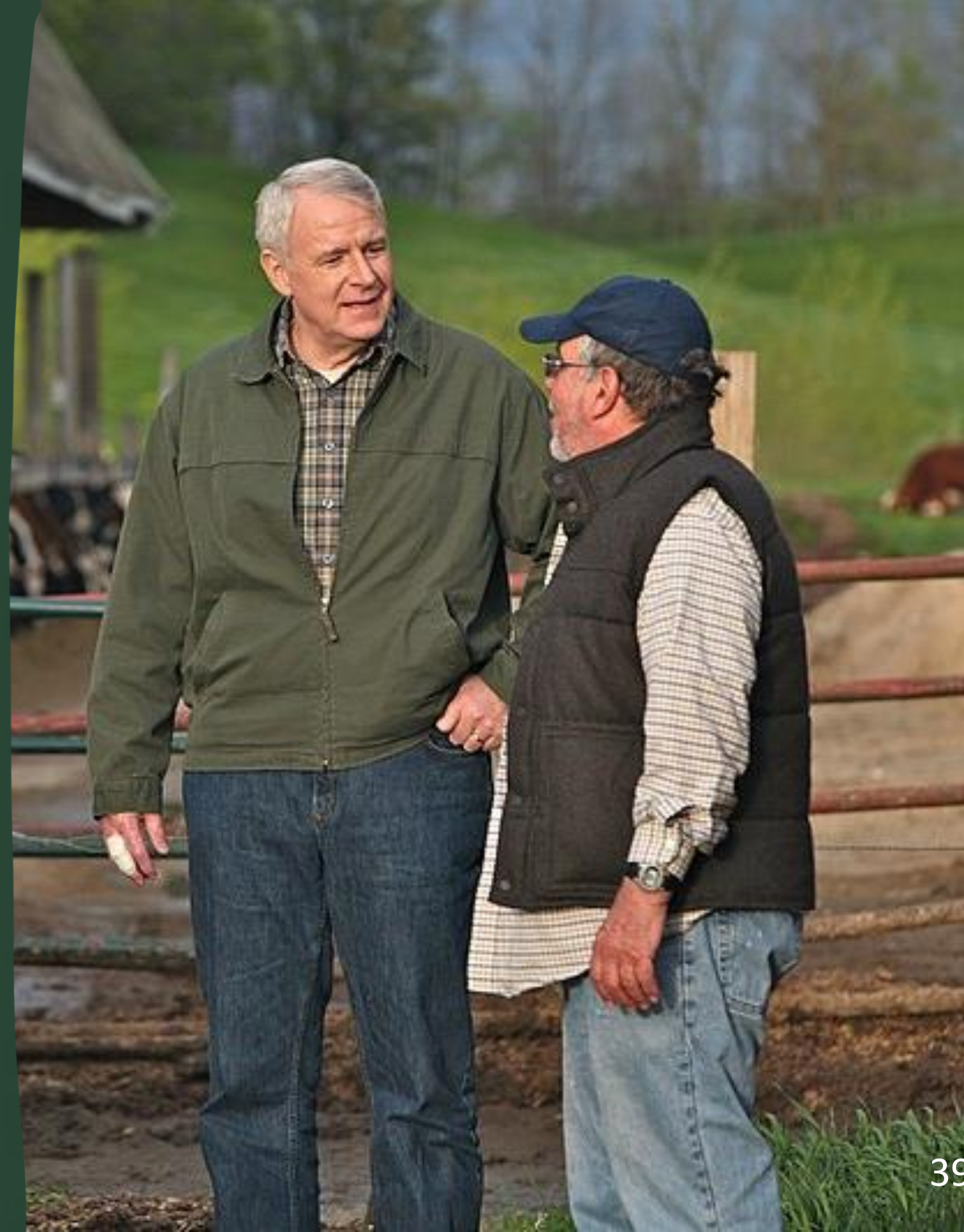


Agricultural Structures

- Ag structures do not require SADC approval
- Must follow municipal code/permitting
 - Some ag structures may not fit within normal building codes and may not be commonly constructed in our area (i.e. spacing of grain bins)
- Steps should be taken to ensure no detrimental impacts to the farm during construction
- Anything in question, please contact us first to avoid future issues

Monitoring: Enforcement & Outreach

- Requirement to monitor easements annually
- Enforce easement terms
- Inform landowners of concerns or violations
- Opportunity for building on landowner relationships (or making new ones)
- Educate landowners on new programs
- Connection to conservation assistance
- Preventing conflicts





Common DOE Violations

- Erosion
- Dumping of trash/fill material/leaves
- Overgrown Fields
- Unapproved Solar
- Commercial non-agricultural business
- Converting land for a non-ag use
- Parking of commercial non-agricultural vehicles
- Unapproved agricultural labor housing
- Unapproved Division of Premises

Soil Removal and Deposition

Paragraph #5

No soil or other minerals shall be deposited on or removed from the Premises

- Exceptions for materials required for the agricultural purpose on which the land is used



Case Examples: Problematic Local Approvals

Request for a building permit for a single-family residential unit

Township tells owner no problem - you have a 100-acre farm, and you can build one house, build it wherever you want.



Problem: The Property has an exception area and that's the only spot owner can build a house.



Case Examples: Problematic Local Approvals

Request for new residential unit in an existing structure

Township approves apartment in barn (ag labor).



Problem: The SADC has not approved anything yet.



Case Examples: Problematic Local Approvals

Request for permit for a non-agricultural use

The township gives permit for a building that is allowed per local zoning.



Problem: The building is non-agricultural in nature, i.e. a mechanics shop/garage/catering business/banquet hall, etc., which is not allowed by the DOE.



Case Examples: Problematic Local Approvals

Request to build a large agricultural building

Landowner wants to construct a large agricultural building - Township gives permit for extremely large ag building (multi-acre greenhouse)



Problem: It may be violation of SADC's new soil protection rules or of impervious cover limit if federal funds were used to preserve the farm.



Case Examples: Problematic Local Approvals

Township makes an agreement with the landowner to dump municipal leaves on the farm



Problem: Activity is not contemplated in the farm's conservation plan and the farmer is not dealing with them in a way that complies with DOE



SADC Website

Many Resources Available

www.nj.gov/agriculture/sadc



Featuring

- FY2019 SADC Annual Report
- American Farmland Trust (AFT) Report: "Farms Under Threat: The State of the States"
- SADC Interactive Web Map
- Farmland Preservation Totals, Maps, Listing of Farms
- County and Municipal FIG Status Reports

Popular Topics

- August 27, 2020 Meeting Agenda
- SADC Meeting PowerPoint presentation-August 27, 2020 (PDF)
- Special Occasion Events (SOE) Final Report to the Governor and Legislature
- Soil Protection Standards - Best Management Practices February 27, 2020 DRAFT (PDF)
- Soil Protection BMPs - Temporary Parking & Storage, Temporary Structure and Semi-Permanent Parking & Storage

Resources

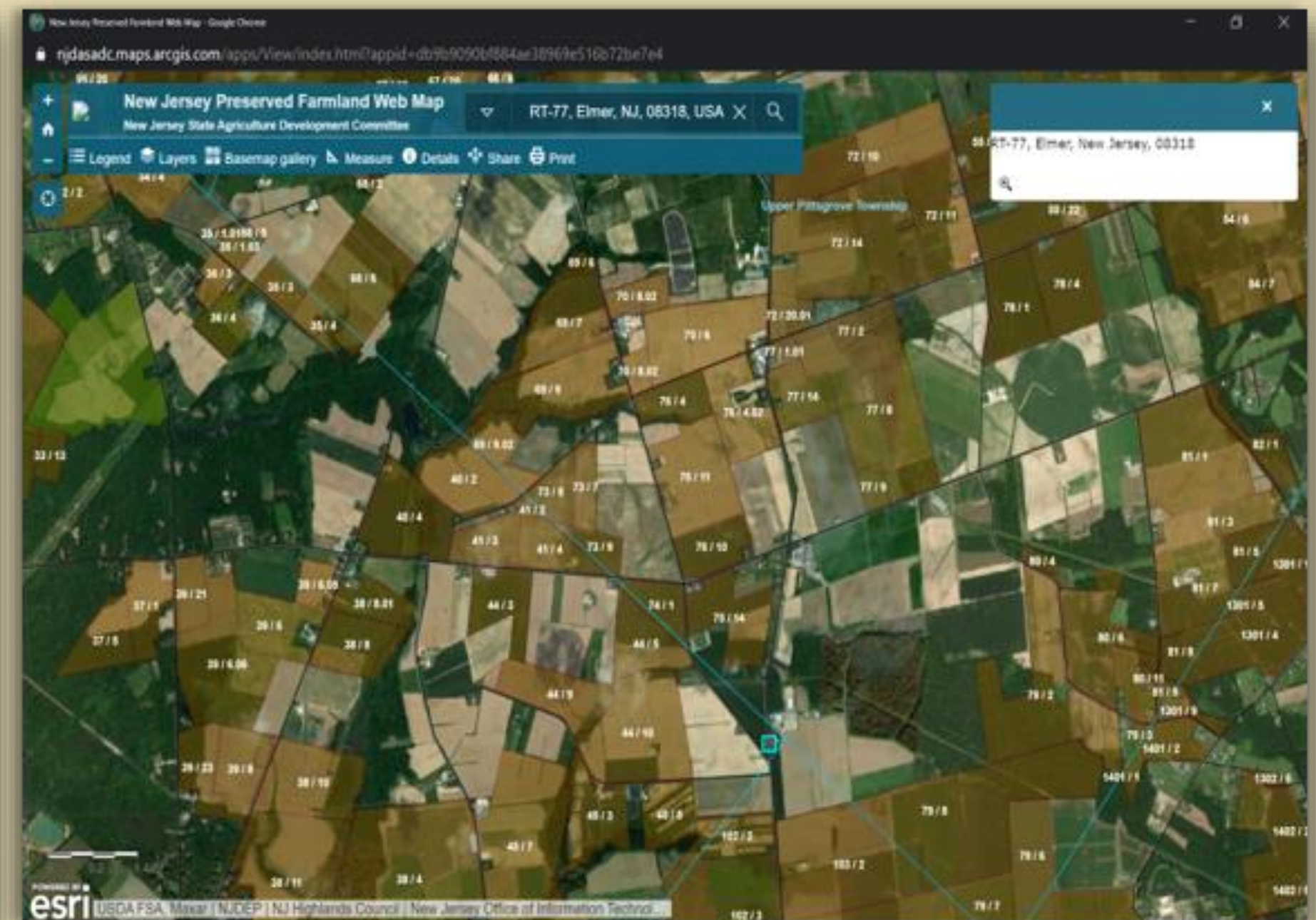
- Contact SADC Staff - Staff Phone and Email List
- Appraisal Resources
- Guidance Library
- Open Public Records Act (OPRA)
- Monitoring Report E-form (Internet Explorer Only)

▪ **Contact the SADC**

SADC's Interactive Web Map

Web Map (link listed on www.nj.gov/agriculture/sadc/)

Preserved Farmland

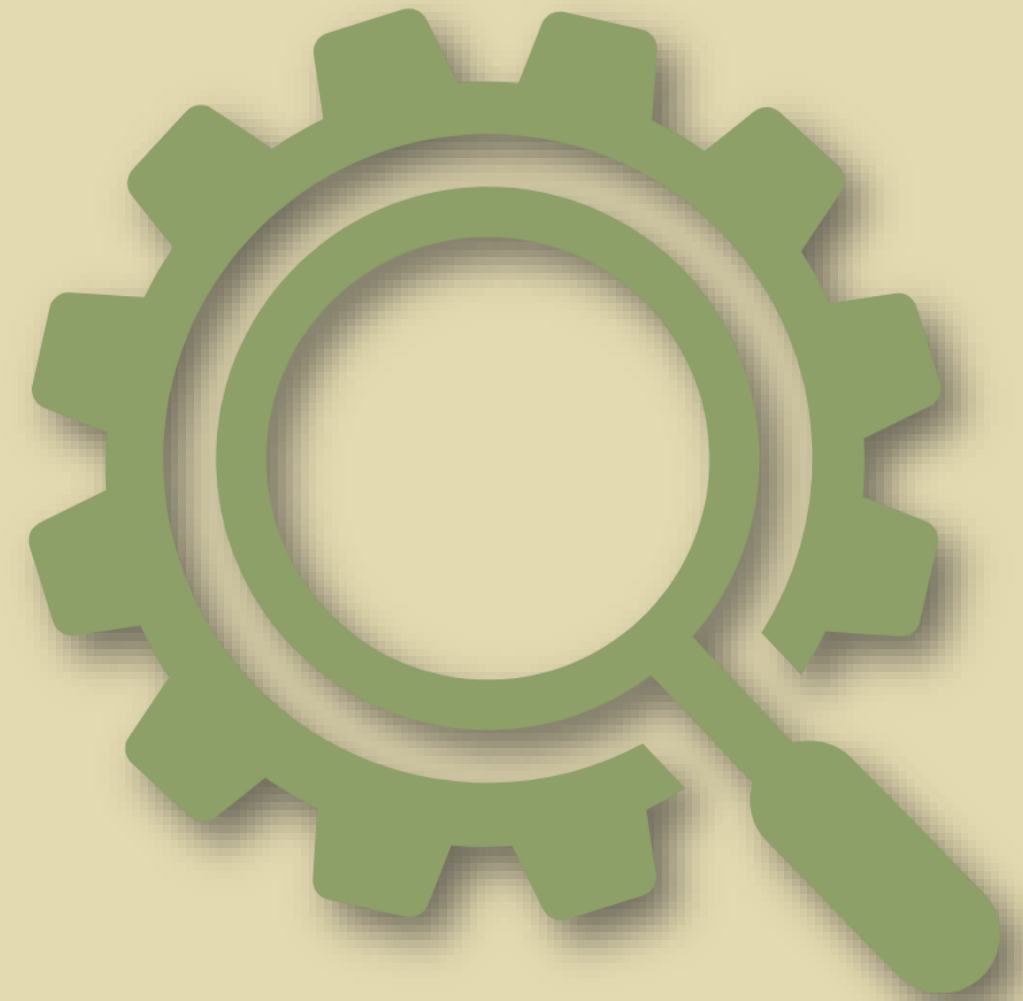


N.J. Agricultural Mediation Program

- Administered by the State Agriculture Development Committee (SADC).
- Helps farmers and others resolve agriculture-related disputes quickly, amicably, and in a cost-effective manner.
- Who can use the program?
 - Farmers, Neighbors, Municipalities – Farmer-Neighbor issues
 - Farmers and USDA agencies – USDA Program issues
 - Farmers, Lenders, Creditors – Agricultural Credit issues
 - Farmers and Others – Other issues (as appropriate for better serving the agricultural community)

Resources

- ✓ Website: <https://www.nj.gov/agriculture/sadc/>
- ✓ SADC Web Map
- ✓ Post-preservation Approval Applications.
- ✓ Policies & Regulations
- ✓ County Clerk's Office or Website
- ✓ County Agriculture Development Board
- ✓ Call or email the SADC -provide the landowner's name, block/lot, and Township/County.



Contact

- Charles Roohr - *SADC Deputy Executive Director*
609-954-2504 or Charles.Roohr@ag.nj.gov
- Timothy Willmott - *SADC Stewardship Manager*
609-913-6577 or Timothy.Willmott@ag.nj.gov
- Sean Pizzio - *SADC Stewardship Specialist*
609-913-6561 or Sean.Pizzio@ag.nj.gov

