

**Policy P-31**  
**Effective Date: March 24, 1994**

**STATE AGRICULTURE DEVELOPMENT COMMITTEE**

**POLICY**

**EXERCISING A RESIDUAL DWELLING SITE OPPORTUNITY**

I. PURPOSE

To provide the State Agriculture Development Committee, SADC with the basis for reviewing a request to exercise a residual dwelling site opportunity, RDSO to ensure that the construction and use of the residential unit is for agricultural purposes.

II. AUTHORITY

N.J.S.A. 4:1C-32  
N.J.S.C. 2:76-6.17

III. POLICY

Background:

The intent of a residual dwelling site opportunity is to provide for the limited future construction of a residential unit(s) for agricultural purposes on permanently preserved farms in order to accommodate agricultural flexibility in the future.

Two separate procedures for exercising a residual dwelling site opportunity, RDSO have been developed to comply with the rules in effect at the time the development easement was acquired. The requirements for exercising an RDSO are also detailed in the landowner's Deed of Easement pursuant to Section 12iii or 14iii. This should be verified before proceeding with PROCEDURE #1 OR #2.

**PROCEDURE #1** Should be utilized for RDSOs allocated on lands permanently preserved prior to the 1994 Easement Purchase Funding Round, (January 15, 1994). The rules which were in effect at that time were contained at N.J.A.C. 2:76-6.17, effective January 17, 1989 and later amended on November 5, 1990.

**PROCEDURE #2** Should be utilized for RDSOs allocated on lands permanently preserved under the 1994 Easement Purchase Funding Round or subsequent to that funding round. The rules in effect are contained at N.J.A.C. 2:76-6.17, effective August 2, 1993.

## **LEGAL CONSIDERATIONS:**

The Office of the Attorney General has issued the following advice:

If the farm is enrolled in an eight year farmland preservation program or municipally approved farmland preservation program, the landowner cannot exercise a residual dwelling site opportunity. (Refer to SADC/AG No. 92-0036)

Furthermore, an RDSO cannot be transferred outside the boundary of the original farm. (Refer to SADC/AG No. 00034)

## **PROCEDURE #1**

Definitions:

A Residual dwelling site opportunity (A RDSO), means the right to construct a residential unit and other appurtenant structures on the premises in accordance with N.J.A.C. 2:76-6.17.

A Residual dwelling site means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.

A Residential unit means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses. The construction and use of the unit shall be for agricultural purposes.

## **APPLICATION PROCESS:**

The deed owner(s) of the premises or a valid contract purchaser of the premises must apply directly to the County Agriculture Development Board (CADB), to exercise an RDSO.

The applicant is responsible for completing the SADC/CADB A REQUEST FOR EXERCISING A RESIDUAL DWELLING SITE OPPORTUNITY APPLICATION:

1. DOCUMENTS TO BE SUBMITTED:
  - A. Completed application.
  - B. Current municipal tax map of the premises identifying the proposed location of and access to the residential unit.
  - C. A sketch (drawn to a reasonable scale) describing the following:
    1. Location of the residential unit within the two acre residual dwelling site; and
    2. Road or driveway access to the residential unit.

**Notes:**

The applicant may submit a site plan if available.

The location of a residential unit within a residual dwelling site shall provide for a minimum of 100 foot setback from lands currently under agricultural production. (For clarification purposes, the 100 foot setback pertains to the boundary established by the two acre residual dwelling site.)

2. QUESTIONS TO BE COMPLETED BY THE APPLICANT

Applicant s name (if not the Deed owner):

Deed owner(s) name:

Farm name (if any):

Address of farm:

Block(s) and Lot(s):

Township:

County:

Telephone number:

**Notes:**

- A. The applicant must sign the application.
  - B. If the applicant is a contract purchaser of the premises, a copy of the contract must be attached.
  - C. An application completed by a contract purchaser, must also be signed by the deed owner(s).
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- A. Describe the present agricultural use of the premises (farm)?
  - B. Will the current agricultural use of the premises change if the RDSO is exercised? If so, how?
  - C. Who will live in the residential unit?
  - D. Fully explain how the occupant(s) of the residential unit will be regularly engaged in common farmsite activities on the premises.
  - E. How many single family residential buildings currently exist on the premises? Explain if the occupants are associated with the agricultural operation. How many residential buildings are used to house agricultural labor? Explain if the occupants are associated with the agricultural operation. Are there any existing residential buildings located on the same tax Block and Lot as the proposed residential unit? If so, please locate on the tax map.

- F. Will the exercising of the RDSO require a division of the premises? If the answer is “yes”, the appropriate application form must be completed and forwarded to the CADB for review. (Note: Contact your CADB for the application form.)
- G. Any other information that either the applicant or CADB deems appropriate.

**CADB REVIEW:**

- A. Upon receipt of the completed application, the CADB is responsible for the following:
  - 1. The CADB may review the proposed location of the residential dwelling site and submit comments to the landowner and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the continued viability of the agricultural operation.  
  
Note: For purposes of this policy, municipal planning review body means the appropriate municipal body that is responsible for ensuring that the location of the residual dwelling site and the construction of the residential unit are in compliance with all municipal ordinances.
  - 2. To grant approval to exercise a residual dwelling site opportunity, the CADB must certify that the use and construction of the residential unit is for agricultural purposes.
  - 3. The CADB s approval to exercise an RDSO shall be valid for a period of three years from the date of approval. Extensions may be granted by the CADB for additional periods for at least one year but not to exceed a total extension for two years.
- B. A copy of the completed SADC/CADB application and the CADB s reasons for granting approval of the request must be forwarded to the SADC.

**SADC REVIEW:**

Each request considered by the SADC will be evaluated on its own merits. Therefore, it is incumbent upon the applicant to substantiate how the construction and use of the residential unit is for agricultural purposes.

The SADC will only consider requests which have been approved by the CADB. It is the responsibility of the CADB to fully justify its action granting approval to exercise the residual dwelling site opportunity.

- A. To grant approval, the SADC must certify that the use and construction of the residential unit shall be for agricultural purposes.

- B. The SADC will evaluate the SADC/CADB applications and the CADB's reasons for granting approval to determine whether or not to certify that the construction and use of the residential unit shall be for agricultural purposes. The basis for determining the agricultural purposes is subject to the following:

When the residential unit is occupied, at least one person residing in the unit shall be regularly engaged in common farmsite activities on the premises including but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

- C. The SADC reserves the right to request any other information it deems necessary to arrive at a decision.

**OTHER RELEVANT INFORMATION:**

The SADC has established the following guidelines:

1. An approved constructed residential unit is not in violation of the statute, rules or policy if it is vacant.
2. There are no restrictions on the relationship of the occupant(s) of the unit and the owner of the premises.
3. An applicant may submit a request to exercise an RDSO concurrent with an application requesting division of the premises.
4. The SADC's approval to exercise an RDSO will be valid for a period of three years from the date of approval. Extensions may be granted by the SADC for additional periods for at least one year but not to exceed a total extension of two years.
5. Once the SADC has granted approval to exercise an RDSO, the approval is not transferable to another individual or for a different agricultural purpose without the approval of the CADB and SADC.
6. Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner must prepare a legal metes and bounds description of the location of the residual dwelling site.

## **PROCEDURE #2**

### Definitions:

A Residual dwelling site opportunity (RDSO), means the potential to construct a residential unit and other appurtenant structures on the Premises in accordance with N.J.A.C. 2:76-6.17.

A Residual dwelling site means the location of the residential unit and other appurtenant structures.

A Residential unit means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the unit shall be for agricultural purposes.

### **APPLICATION PROCESS:**

1. If a landowner or contract purchaser intends to exercise an RDSO subsequent to the purchase of a development easement, an application shall be submitted to the CADB. If a contract purchaser submits the request, the record owner shall also endorse the application.
2. Each CADB shall develop its own application form to review requests to exercise an RDSO.
3. Upon receipt of the application the CADB shall forward a copy of the application to the SADC.
4. The SADC may submit comments, if any, concerning the application to the CADB within 35 days of its receipt.
5. The SADC's failure to submit comments shall not be construed as recommending approval or denial of the application.
6. Upon the expiration of the 35-day SADC comment period, the CADB may review the application to exercise an RDSO.
7. The RDSO may only be exercised if the CADB determines that the construction and use of the residential unit is for agricultural purposes and that the location of the residual dwelling site minimizes any adverse impact on the agricultural operation.
8. Upon the CADB's finding that the construction and use of the proposed

residential unit is for agricultural purposes and that the residual dwelling site minimizes any adverse impact on the agricultural operation, the CADB shall condition its approval of the exercising of the RDSO on the landowner or contract purchaser securing a building permit, to ensure that the construction of the residential unit is in compliance with all municipal ordinances.

9. The CADB s approval to exercise an RDSO shall be valid for a period of three years from the date of approval. Extensions may be granted by the CADB for additional periods for at least one year but not to exceed a total extension of two years.
10. In the event a subdivision of the premises occurs in compliance with N.J.A.C. 2:76-6.15(a)13, the landowner shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the RDSOs to the respective subdivided lots. The Corrective Deed shall be recorded with the county clerk. A copy of the recorded Corrective Deed shall be provided to the CADB and SADC; and
11. In the event an RDSO has been approved by the CADB, the landowner shall prepare or cause to be prepared a Corrective Deed of Easement at the time of the CADB s approval. The Corrective Deed shall reflect the reduction of RDSOs allocated to the premises. The Corrective Deed shall be recorded with the county clerk and a copy of the recorded deed forwarded to the CADB and SADC.