

AGRICULTURE

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Rural Microenterprise Activity on Preserved Farms

Proposed Amendments: N.J.A.C. 2:76-22.1 through 22.12 and 22.14

Proposed New Rules: N.J.A.C. 2:76-22.12 and 22A

Proposed Repeal: N.J.A.C. 2:76-22.13

Authorized By: State Agriculture Development Committee, Susan E. Payne, Executive Director.

Authority: N.J.S.A. 4:1C-32.3.e.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-259.

Submit written comments by January 5, 2018, electronically to Committee@ag.state.nj.us

or by regular mail to:

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State Agriculture Development Committee

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The agency proposal follows:

Summary

The New Jersey Rural Microenterprise Act (Act), P.L. 2015, c. 275, amended N.J.S.A. 4:1C-32.1 and 32.3 of the Agriculture Retention and Development Act (ARDA), N.J.S.A. 4:1C-11 et seq., which permits owners of farms preserved prior to January 12, 2006, and which were preserved without an exception area, to conduct a rural microenterprise (RME) activity within certain parameters. The Act revised prior legislation (P.L. 2005, c. 314) allowing nonagricultural uses on preserved farms but contained stringent

permit requirements. The primary goals of the Act are to: 1) spur economic activity on preserved farms that is of an appropriate use and scale in support of the viability of family farm operations; and 2) effectuate preservation of historic agricultural structures that are symbolic of the Garden State’s rich agrarian heritage by allowing greater square footage of a designated heritage farm structure to be altered for RME activity in exchange for the recording of a “heritage preservation easement” on the structure.

On May 5, 2017, the State Agriculture Development Committee (Committee) circulated the draft RME rules to New Jersey’s agricultural community and State historic agencies, requesting pre-proposal comments by May 22, 2017.

The Committee received written comments from the New Jersey Farm Bureau; the Somerset, Burlington, and Warren County Agriculture Development Boards (CADBs); the New Jersey Department of Agriculture Assistant Secretary, Monique Purcell; and an architectural historian for the State Historic Preservation Office (SHPO) within the Department of Environmental Protection. The Monmouth and Hunterdon CADBs responded that they were unable to submit comments by May 22, 2017.

Statutory Background

N.J.S.A. 4:1C-32.1.a provides that any person who owns “qualifying land” may apply to the Committee to allow for an RME activity to occur on the land. “Qualifying land” means farm property on which a development easement was conveyed to or retained by the Committee, a CADB, or a qualified tax exempt nonprofit organization prior to January 12, 2006 (the date of enactment of P.L. 2005, c. 314), and upon which no portion of the farm was excluded from preservation, commonly known as an “exception

area.” An RME may be applied for on farmland on which a development easement was conveyed to or retained by a CADB pursuant to N.J.S.A. 4:1C-31, conveyed to the Committee pursuant to N.J.S.A. 4:1C-31.1, retained by the Committee as part of the agency’s fee simple acquisition of the land pursuant to N.J.S.A. 4:1C-38, conveyed to a CADB or to the Committee in accordance with N.J.S.A. 4:1C-43.1, or conveyed to a CADB, the Committee, or a qualified tax exempt nonprofit organization pursuant to N.J.S.A. 13:8C-37 through 40.

The Committee has sole discretion to approve, approve with conditions, or disapprove an application for an RME permit, as set forth in N.J.S.A. 4:1C-32.1.b, when the development easement is held by a CADB, the Committee, or a qualified tax exempt nonprofit organization. A copy of the permit application is to be provided to the easement holder, who has 30 days after receipt to provide comments to the Committee. The Committee decision on the application must be rendered within 90 days of receipt of a complete application. Additionally, when the development easement is held by a qualified tax exempt nonprofit organization, the statute requires the Committee to consult with the organization prior to deciding on the issuance of an RME permit.

The Act establishes two classes of RME activities as described in N.J.S.A. 4:1C-32.1.c. “Class 1” includes customary rural activities relying on equipment and aptitudes that the agricultural community has historically possessed, such as snowplowing, bed and breakfast inns, bakeries, and woodworking, and craft shops. “Class 2” includes agricultural support services having a direct and positive impact on agriculture by furnishing needed supplies, equipment, and services to the surrounding agricultural community, such as veterinary practices, seed suppliers, and tractor or equipment repair shops.

N.J.S.A. 4:1C-32.1.d establishes 10 criteria that must be satisfied in connection with the

Committee's consideration of an RME permit application. The owner of the premises must establish that the land upon which the RME activity will be conducted is a "commercial farm" as defined in N.J.S.A. 4:1C-3 and that the owner of the premises is a "farmer" as defined in the Act. N.J.S.A. 4:1C-32.1.k defines "farmer" as "the owner and operator of the premises" who: (1) realized gross income, excluding rental income from the land, "of at least \$2,500 for agricultural or horticultural products produced on the premises during the calendar year immediately preceding" the filing of the RME permit application; and (2) "continues to own and operate the premises" and meets or exceeds the \$2,500 income criterion, every year during the term of the RME permit.

The other criteria are: the RME permit is for one RME activity only; no more than one permit is valid at any one time for use on the qualifying land; the permit's maximum duration is 20 years; the permit does not run with the land and cannot be assigned; the RME activity cannot interfere with the use of the qualifying land for agricultural or horticultural production; the RME activity utilizes the land and structures thereon in their existing condition, except as allowed in N.J.S.A. 4:1C-32.1.g; the total area of land and structures devoted to the RME activity cannot exceed a one-acre envelope on the qualifying land; the RME activity cannot have an adverse impact on soils, water resources, air quality, or other natural resources of the qualifying land or of the surrounding area; and the RME activity cannot be a high traffic volume business and is undertaken consistent with the parking and employment conditions set forth in N.J.S.A. 4:1C-32.1.h.

The Act addresses renewal of the RME permit in N.J.S.A. 4:1C-32.1.e by providing for a renewal application by the owner of the premises within 10 years before the date the permit expires, with the Committee reviewing the renewal application in the same manner and procedures as those for an initial

application. The Committee must also provide, as set forth in N.J.S.A. 4:1C-32.1.f, a reasonable opportunity for the continuance of a permitted RME activity when: the owner of the premises dies, becomes incapacitated, or retires; ownership of the farm is transferred; or income from gross sales of the farm's agricultural or horticultural production is disrupted due to circumstances beyond the farmer's control, such as a crop failure.

Twelve conditions and restrictions apply to a permitted RME activity pursuant to N.J.S.A. 4:1C-32.1.g: (1) the RME activity cannot be housed in a structure designated in the deed of easement as agricultural labor housing or in "a structure constructed or designated as agricultural labor housing since the date" the deed of easement was conveyed; (2) no new structure can be constructed on the premises for an RME activity, and any structure built on the premises consistent with deed of easement restrictions since the date the deed was conveyed is ineligible for an RME permit for five years following completion of construction; (3) there can be no improvements to the interior of a non-residential structure in order to adapt it for residential use; (4) where a residential or agricultural building has not been substantially altered or finished to support the RME, the entire floor area of the building's space may be used to support the microenterprise; (5) no more than 2,500 square feet of the interior of existing residential or agricultural building space may be substantially altered or finished to support the RME but, at the owner's request and with Committee approval, up to 100 percent of an existing heritage farm structure may be altered or finished to support the RME so long as the owner agrees to place a heritage preservation easement on the structure, with the easement being approved and held by the Committee, recorded against the premises, and running with the land; (6) existing building space may be expanded for the RME activity, provided that the expansion occupies no more than 500 square feet, the expansion is necessary for the RME's operation or functioning, the area of the expansion's proposed footprint is reasonably calculated and based solely on the

demands of accommodating the RME, and the expansion does not incorporate excess space; (7) improvements to a structure's exterior must be compatible with agricultural character of the premises and not diminish the historic or cultural character of the structure; (8) interior or exterior repairs to the structure may be made so long as they do not diminish the historic or cultural character of the structure; (9) the location, design, height, and aesthetic attributes of the RME shall reflect the public's interest in preserving the natural and unadulterated appearance of the landscape and structures; (10) water, gas, sewer, and other public utilities, except for those already existing and available on the qualifying land, cannot be extended on the land to support the RME, but new electric service required for the RME is permitted; (11) on-site septic and well facilities can be established, expanded, or improved to support the RME provided the facilities are contained within the one-acre envelope set forth in N.J.S.A. 4:1C-32.1.d; and (12) the outside storage of equipment, vehicles, supplies, products, or byproducts associated with the RME is limited to a combined total of 5,000 square feet on the premises, and any improvements to the land undertaken for storage purposes or for the purposes described in subsection (11) above are limited to those that are necessary either to protect public health and safety or to minimize disturbance of the premises and its soil and water resources.

The Act establishes conditions regarding parking and employment associated with an RME activity. N.J.S.A. 4:1C-32.1.h limits the customer parking area to a maximum of 2,000 square feet and to no more than 10 parking spaces; requires that parking area improvements be limited to those required to protect public health and safety or to minimize the disturbance of soil and water resources on the premises; provides that the number of parking spaces be sufficient to accommodate the RME under normal conditions; and establishes a maximum of four full-time employees or the equivalent, not counting the owner or operator of the microenterprise, associated with the RME and working on the premises during peak operational periods.

N.J.S.A. 4:1C-32.1.i states that the issuance of a special permit by the Committee does not relieve the applicant from obtaining all other permits, approvals, or authorizations that may be required by Federal, State, or local laws, rules, regulations, or ordinance. N.J.S.A. 4:1C-32.1.j provides that an RME is not an agricultural use as defined in N.J.S.A. 4:1C-13, nor does N.J.S.A. 4:1C-9 of the Right to Farm Act (RTFA) provide the RME activity with protection unless the microenterprise is RTFA-eligible for other reasons.

Definitions not previously referred to above and set forth in N.J.S.A. 4:1C-32.1.k are: “heritage farm structure,” meaning a building or structure that significantly represents the State’s “agrarian history or culture and that has been designated as such” by the Committee pursuant to the Act; “heritage preservation easement,” defined as an “interest in land less than fee simple absolute” and set forth in a deed signed by or on behalf of the property owner, which preserves a building or structure significant for its value or importance to New Jersey’s agrarian history or culture and used in accordance with the Act to limit alteration in the exterior form or features of the building or structure; “owner of the premises,” meaning the “person or entity owning qualifying land”; “qualifying tax exempt nonprofit organization,” which incorporates the definition set forth in the Garden State Preservation Trust Act, N.J.S.A. 13:8C-3; and “rural microenterprise,” defined as a “small-scale business or activity” fully compatible with, but incidental to, the premises’ agricultural use and production, and which does not, at any time, detract from, diminish or interfere with the agricultural use of the premises. An RME does not include a “personal wireless service facility” on qualifying land, defined in and regulated by N.J.S.A. 4:1C-32.2.

The Act revised N.J.S.A. 4:1C-32.3 for the RME program with respect to the application fee and the process by which an application is reviewed and a permit suspended or revoked by the Committee.

These revisions also applied, except for the fee, to an application for a permit for a personal wireless service facility. An explanation of the Act's statutory background in this rule proposal, however, is directed at applications and permits for RME activities.

N.J.S.A. 4:1C-32.3.a provides that the application fee for an RME permit is \$250.00 payable to the Committee regardless whether a permit is issued, and the fees are to be used by the Committee for farmland preservation purposes. The Committee can, pursuant to N.J.S.A. 4:1C-32.3.b, suspend or revoke an RME permit if the permittee violates the terms of the permit or any of the Act's provisions.

Expedited review and approval of routine applications for an RME permit is allowed through delegation by the Committee of that authority to the agency's executive director in accordance with N.J.S.A. 4:1C-32.3.c. Such delegation may be made only in cases where the Committee has not received comments from a CADB or a qualified tax exempt nonprofit organization expressing potential negative impacts if the RME permit application is approved, and the application complies in all respects with the Act and attendant regulations. The executive director's decision may be appealed to the Committee and, even if delegation has been authorized, the executive director can still bring an application to the Committee for its review and approval.

N.J.S.A. 4:1C-32.3.d grants the Committee authority to deny an application for, or suspend or revoke, an RME permit, but the applicant or permittee is afforded the right to a hearing prior to the Committee's action.

The rules set forth below are proposed under the authority of, and in accordance with, N.J.S.A. 4:1C-32.3.e, which requires that rules effectuating the Act include procedures and standards for the

Committee’s review of and decisions on RME permit applications that balance the public’s interest in protecting farmland from further development, “protecting heritage farm structures and enhancing the beauty and character of the State and communities where farmland has been preserved,” and supporting the sustainability and strength of New Jersey’s agricultural industry.

Finally, the Act requires that the Committee provide to the Governor, the President of the Senate, the Speaker of the General Assembly, and key Senate and Assembly Committees, a report detailing: RME activities on preserved farmland; the extent to which existing structures such as barns, sheds, and silos have been used or modified to accommodate an RME; the extent to which heritage farm structures have been protected by the recording of heritage preservation easements; and any other information the Committee deems helpful. Copies of the report are to be provided to the public free of charge and posted on the Committee’s website.

The proposed rules are divided into two subchapters -- one governing the general RME permit process and amending the former nonagricultural use rules at N.J.A.C. 2:76-22 and one addressing historic preservation in proposed new N.J.A.C. 2:76-22A.

Subchapter 22

N.J.A.C. 2:76-22.1 is proposed for amendment to delete references to “commercial nonagricultural” and insert, where applicable, “rural microenterprise” in order to make the rule consistent with the Act. References to various farmland preservation statutes are also proposed for deletion because the Act’s

definition of “qualifying land,” set forth in N.J.A.C. 2:76-22.3 proposed for amendment incorporates those statutory references.

The Act grants sole authority to the Committee to review and make decisions on RME permit applications. Accordingly, N.J.A.C. 2:76-22.2 is proposed for amendment to delete “board or qualifying tax exempt non-profit organization” and replace “commercial nonagricultural” with “rural microenterprise.”

Definitions in existing N.J.A.C. 2:76-22.3 have been retained, where appropriate, or modified, supplemented, or deleted in the proposed rulemaking to reflect the Act’s definitions, to accommodate the Act’s programmatic changes to the RME permit application process, and to address other statutory changes.

No changes are proposed to the definitions of “board,” “Committee,” “deed of easement,” “development easement,” “farm management unit,” “person,” and “premises” because they are based on statutory definitions. However, all references to “commercial nonagricultural” have been replaced with “rural microenterprise,” where applicable, and the definition of “commercial nonagricultural activity” has been deleted for consistency with the Act.

New definitions of “farmer,” “heritage farm structure,” “heritage preservation easement,” “owner of the premises,” and “rural microenterprise” are proposed, taken directly from the Act at N.J.S.A. 4:1C-32.1.k, and described in more detail in the Statutory Background above. The proposed new definition of “rural microenterprise” also incorporates the Act’s description of Class 1 and Class 2 RME activities set forth in N.J.S.A. 4:1C-32.1.c.

The definitions of “qualifying land” and “qualifying tax exempt nonprofit organization” are proposed for amendment to mirror the language in the Act.

The “commercial farm” definition proposed for amendment includes, in addition to farm management units containing acreage, production values, and farmland assessment criteria set forth in N.J.S.A. 4:1C-3, farm management units that are beekeeping operations as a result of the change to that statutory definition in P.L. 2015, c. 75.

The definition of “exception” is proposed for amendment to clarify and better effectuate the Act. The definition of “exception” now includes a further explanation that exception areas, that is, those parts of a farm not otherwise encumbered by a deed of easement, can be “severable” (capable of being separated from the remainder of the farm but not yet subdivided) or “nonseverable” (incapable of being severed from the remainder of the farm). The definition of “personal wireless service facility” in existing N.J.A.C. 2:76-22.3 is proposed for deletion, as it is already defined in N.J.S.A. 4:1C-32.2 and N.J.A.C. 2:76-23.3.

Several new definitions are proposed in N.J.A.C. 2:76-22.3 to foster administration of the Act. Since an RME activity may be conducted in a building or structure, but those important terms were not defined in the Act, the rule defines “building” and “structure” and explains that the terms are interchangeable unless the context of an RME rule indicates otherwise. The definitions of those terms were taken from the State Uniform Construction Code, N.J.S.A. 52:27D-121. Similarly, one of the conditions the Act places on a permitted RME activity is that it not be a “high traffic volume business,” but does not define that phrase. Accordingly, N.J.A.C. 2:76-22.3 is proposed for amendment to include such a definition, relating “high traffic volume business” to the Act’s parking restrictions and associated traffic impacts. A new definition, “Determination of Compatibility,” is needed in Subchapter 22 in order to properly cross-reference the definition in both that subchapter and proposed new Subchapter 22A. A detailed explanation of and rationale for “Determination of Compatibility” is in the Subchapter 22A summary below with respect to the

Act's provisions requiring the Committee to consider the character of a building and its surrounding area in connection with agency review and approval of a historic preservation easement on certain RME buildings. The Act recognizes that the operation of RME activities may be conducted by individuals other than the preserved farm landowner through lease arrangements, so a definition of "rural microenterprise lessee" is proposed at N.J.A.C. 2:76-22.3

The proposed amendments to the eligibility requirements for an RME permit in N.J.A.C. 2:76-22.4 achieve consistency with the Act by deleting, in subsection (a), "commercial nonagricultural" and replacing those references with "rural microenterprise"; modifying the word "land" with "qualifying"; adding that the owner of the premises is a farmer as defined in the rules; and requiring that the premises upon which the RME activity is to be conducted must be in compliance with the farmland preservation deed of easement.

N.J.A.C. 2:76-22.4(b) is proposed for amendment to accommodate both the Act's limit of one RME permit on qualifying land and, under the deed of easement, of a division of premises under certain conditions set forth in the deed. The Committee proposes that, in situations where the premises were lawfully divided subsequent to the conveyance of the farmland preservation deed of easement, and an application is made for an RME permit, only one permit is available on the premises as configured on the date the proposed rules were adopted and regardless whether further lawful divisions of the premises are made after adoption of the rules. The proposed amendments also establish that if an RME permit was issued on a parcel of land divided in accordance with the deed after the rules are adopted, no permits can be issued on any of the other divided parcels. N.J.A.C. 2:76-22.4(b) is proposed for amendment to delete "commercial nonagricultural" and replace those references with "rural microenterprise," but retains the provision set forth in both P.L. 2005, c. 314 and the Act that an RME permit is not available on premises

containing an exception area at the time the farmland preservation deed of easement was conveyed even if the premises were later divided and any remaining parcels have no exception area.

A correction to the legal citation in N.J.A.C. 2:76-22.4(c) is proposed.

N.J.A.C. 2:76-22.5 specifies the contents of an application for an RME permit. The requirements contained in this section align with the Act's standards and are intended to provide the Committee with all relevant data upon which a proper decision can be made on an RME permit application. Initially, and as with N.J.A.C. 2:76-22.4, references throughout N.J.A.C. 2:76-22.5 to "commercial nonagricultural" are proposed for deletion and replaced with "rural microenterprise," and "qualifying" modifies all references to "land" for consistency with the Act. No changes are proposed to the basic property information in the RME application set forth in existing paragraphs (a)1, 2, and 3.

Several proposed amendments incorporate specific language from the Act: the written proofs of commercial farm status that may be presented by the applicant are set forth in proposed N.J.A.C. 2:76-22.5(a)4; proof that the structure containing the RME activity has been in existence at least five years prior to submission of the permit application is set forth in paragraph (a)8; the 20-year maximum term of an RME permit is set forth in recodified paragraph (a)11; whether the RME activity interferes with the use of the qualifying land for agricultural or horticultural production as set forth in recodified paragraph (a)14; and operational periods with regard to traffic, business days, and number of employees as set forth in recodified paragraphs (a)17 and 18.

The Committee proposes to amend N.J.A.C. 2:76-22.5(a)5 by deleting the requirement of a survey plat in order to save the applicant a substantial cost and, instead, to require submission of an aerial

photograph, which can more easily and inexpensively be produced by the applicant from available resources. The aerial photograph shall contain various data set forth in subparagraphs (a)5i through v as proposed for amendment and proposed new subparagraphs (a)5vi, enabling the agency to effectively review the details of the proposed RME activity. N.J.A.C. 2:76-22.5(a)6 is proposed for amendment to include photographs that will now include the entire interior and exterior of the proposed RME structure, the entire interior and exterior of structures on the premises within one-half mile of the proposed RME structure, and a 360-degree viewshed, at a visual distance of about one-half mile, of the landscape surrounding the structure.

Proposed amendments to N.J.A.C. 2:76-22.5(a)7 and 8ii are intended to elicit additional information on preexisting commercial nonagricultural or rural microenterprises uses on the premises at the time of the RME permit application. The information will help the Committee more fully understand the extent of nonagricultural activity taking place on the farm at the time of application review, and whether, and to what extent, the applicant is replacing an existing structure with a new agricultural structure within which the RME activity will be housed. N.J.A.C. 2:76-22.5(a)8iii is proposed for deletion.

N.J.A.C. 2:76-22.5(a)9iv and recodified sub-subparagraph (a)9vii(2) are proposed for amendment to comport with the Act's requirement that expansion of an existing structure to accommodate an RME activity must be justified by the applicant including, in proposed new sub-subparagraph (a)9vii(3) and new paragraph (a)10, the applicant providing written details about the footprint of the expansion and how the expansion promotes preservation of the natural and unadulterated appearance of the landscape and structures. Sub-subparagraphs (a)9vii(2), (3), and (6) are proposed for deletion. Existing sub-subparagraph (a)9vii(5) is proposed for recodification as paragraph (a)10.

Recodified N.J.A.C. 2:76-22.5(a)13 requires that an applicant provide copies of all needed Federal, State, and local approvals and evidence that local zoning ordinances allow, or that a variance has been obtained for, the proposed rural microenterprise activity. The rule also provides the Committee with the authority to waive the requirement under circumstances described in N.J.A.C. 2:76-22.6(a)15i as proposed for amendment. In addition to replacing “commercial nonagricultural” with “rural microenterprise,” proposed amendments to recodified paragraph (a)13 remove the Committee’s waiver authority and allow the agency to issue an RME permit conditioned on the applicant receiving any of the other approvals, if needed.

Existing N.J.A.C. 2:76-22.5(a)14 is proposed for deletion as unnecessary for the purposes of an RME permit application.

The Committee proposes to amend recodified N.J.A.C. 2:76-22.5(a)15 by clarifying that the RME activity’s use of the qualifying land in its existing condition is tied to criteria set forth in N.J.A.C. 2:76-22.6(a)7 and 13 as proposed for amendment.

The Act established an RME permit application fee of \$250.00, which is reflected in the proposed amendment to recodified N.J.A.C. 2:76-22.5(a)19.

N.J.A.C. 2:76-22.5(b) is proposed for amendment to more clearly describe the handling of an RME permit application. The Act provides that RME permit applications are to be filed solely with the Committee, so “easement holder” and “reviewing entity” in section (b) are proposed for deletion. The proposed amendments also state that, in cases where the application is deemed by the Committee to be incomplete, the applicant must provide the needed information within 120 days of receipt of written notice

from the Committee or the application will be rejected; the proposed amendment allows the Committee to extend the 120-day response period. Proposed new subsection (c) provides for written notice to the applicant when the Committee determines that the application is complete.

The Committee proposes to revise the criteria it will use to evaluate an RME permit application in N.J.A.C. 2:76-22.6. For consistency with the Act, references throughout N.J.A.C. 2:76-22.6 to “commercial nonagricultural” have been replaced with “rural microenterprise”; “qualifying” modifies all references to “land”; “horticultural” has been inserted in addition to “agricultural” production; and since the Committee is now the sole entity tasked with approving or denying an RME permit application, any references to another decision-making entity have been removed. Minor grammatical changes have also been made, and subsections have been recodified, where appropriate.

Proposed new N.J.A.C. 2:76-22.6(a)2 requires, pursuant to the Act, that the RME permit applicant be a “farmer.” Recodified N.J.A.C. 2:76-22.6(a)5 is proposed for amendment to provide, in accordance with the Act, that no other Committee-issued RME permit exists on the premises. N.J.A.C. 2:76-22.6(a)6 is proposed for amendment to align with the Act’s limitations that the structure housing the proposed RME activity existed when the development easement on the premises was conveyed or, if the structure was built after conveyance of the deed of easement, that that structure must be in compliance with the deed restrictions and must have been completed five years prior to the RME permit application.

N.J.A.C. 2:76-22.6(a)7 is proposed for amendment to reflect the Act’s criteria that apply to alterations, finishing, and improvements to the interior of an existing building within which an RME activity is proposed. The rule retains the existing limit, established in P.L. 2005, c. 314, that no more than 2,500 square feet of interior space can be substantially altered if the alteration requires, for example, the

installation of new walls, insulation, flooring, lighting, HVAC systems, plumbing, and electrical wiring. Consistent with the Act, N.J.A.C. 2:76-22.6(a)7i is proposed for amendment to add that agricultural buildings, not just residential buildings, may be improved to accommodate an RME activity and, in proposed new N.J.A.C. 2:76-22.6(a)7i(1), that the entire floor area of a residential or agricultural building may be used to support the RME if the building is not being substantially altered.

The Act allows up to 100 percent of the interior of a heritage farm structure to be altered in order to house an RME activity so long as the owner agrees to the recording of a heritage farm easement. Accordingly, proposed new N.J.A.C. 2:76-22.6(a)7ii incorporates that provision of the Act, and further provides that the heritage farm easement will be in a form approved and held by the Committee and shall run with the land. The heritage farm structure designation and the recording of a heritage farm easement are set forth in proposed new Subchapter 22A.

Recodified N.J.A.C. 2:76-22.6(a)7iii and iv and v as proposed for amendment mirror the Act's allowance of on-site septic and well facilities under certain circumstances. Subsection (a)7iii provides that such facilities can be established, expanded, or improved to support the RME activity so long as the facilities are located within the one-acre area envelope set forth below in proposed new N.J.A.C. 2:76-22.6(a)14; any improvements on the farmland to accommodate the facilities must be limited to protecting public health and safety or to minimize disturbance to the land's soil and water resources; and changes to wastewater facilities supporting the RME activity that are located outside the one-acre envelope cannot render otherwise-suitable lands for agricultural production incapable of such production. Subparagraph (a)7iv allows for the establishment of new electric service for the RME activity, and allows for the

continued use of existing public water, gas, or sewer service to the RME structure, but precludes new public water, gas, or sewer hook-ups to the structure.

Improvements to the exterior of a structure are, consistent with the Act and set forth in subparagraph (a)7v and sub-subparagraph 7v(1), now subject to Committee review in accordance with the historic preservation provisions in proposed new Subchapter 22A, and interior repairs to an RME structure are permitted provided the historic or cultural character of the structure is not diminished. The storage of equipment and other items outside the structure housing the RME activity is, in N.J.A.C. 2:76-22.6(a)7vi proposed for amendment, not permitted except under the circumstances set forth in subparagraph (a)13iv.

The proposed amendments to N.J.A.C. 2:76-22.6(a)7viii(1), (2), and (3) delete “commercial nonagricultural” and replace that phrase with “rural microenterprise”; “structure and other” was deleted in existing sub-subparagraph (a)7viii(1) for grammatical reasons. Existing N.J.A.C. 2:76-22.6(a)7viii(4) is proposed for deletion because it is duplicative of the language set forth in proposed new N.J.A.C. 2:76-22A.3(b). The Act’s prohibition on the construction of new structures to support an RME activity is set forth in N.J.A.C. 2:76-22.6(a)8 proposed for amendment, which also repeats the N.J.A.C. 2:76-22.5(a)8 application criteria that a structure constructed on the premises after conveyance of the deed of easement cannot house an RME activity for five years after construction was completed.

Consistent with the Act’s alignment of RME activities with the agricultural character of the premises and its surroundings, N.J.A.C. 2:76-22.6(a)12 proposed for amendment incorporates the Committee’s issuance of a certificate of compatibility for the RME activity, the criteria of which are set forth in proposed new Subchapter 22A. N.J.A.C. 2:76-22.6(a)12i proposed for amendment retains the examples of

characteristics that must be analyzed in determining compatibility set forth in the prior iteration of that subsection.

The Act states that the RME activity must use the qualifying land in its existing condition; accordingly, N.J.A.C. 2:76-22.6(a)13 proposed for amendment expands upon the existing rule by incorporating relevant provisions from the legislation in subparagraph (a)13i through proposed new subparagraph (a)13iv. Specifically, new improvements to farm lanes, including new ingress and egress, curbing, or changes to traffic patterns are prohibited unless they are needed to access the RME activity or to protect public health and safety, and all such improvements must minimize disturbance to the premises and to its soil and water resources. Customer parking cannot exceed 2,000 square feet in area and shall provide no more than 10 spaces. The number of parking spaces must be sufficient to accommodate the number of visitors to the RME under normal conditions, and the Committee can condition the issuance of an RME permit by requiring that parking areas be screened from public rights-of-way. The existing regulation's provision of 10 feet by 20 feet parking stalls is retained. Existing subparagraph (a)13ii is proposed for deletion. Proposed new subparagraph (a)13iv incorporates the Act's maximum limit of 5,000 combined square feet for outside storage of equipment and other items that support the RME activity, and any improvements associated with outside storage are limited to those protecting public health and safety and minimizing disturbance of the premises and its soil and water resources.

Existing N.J.A.C. 2:76-22.6(a)15 and 15i are proposed for deletion and incorporated in proposed new N.J.A.C. 2:76-22.6(a)16, which further states that if a Federal, State, or local approval obtained by the applicant for the RME activity is inconsistent with the deed of easement or proposed new Subchapter 22A, then the Committee shall deny the RME permit application.

The Act provides that only one RME permit can be valid on the premises at any one time. Recodified N.J.A.C. 2:76-22.6(a)17 is proposed for amendment to clarify the statutory limitation by stating that the RME activity shall consist of and accommodate only one business entity or use, but proposed new subparagraph (a)17i recognizes that an RME structure or portions thereof can still accommodate uses permitted under the deed of easement.

Proposed new N.J.A.C. 2:76-22.6(a)18 adds a cross-reference to the lighting requirements for RME activities set forth in proposed Subchapter 22A and incorporates the requirements currently set forth in existing paragraph (a)17 proposed for deletion.

P.L. 2005, c. 314 and recodified N.J.A.C. 2:76-22.6(a)19 prohibit the RME activity from being a “high traffic volume business.” Recodified subparagraph (a)19 is proposed for amendment to include the Act’s cap of four full time RME employees at peak operational periods “or the equivalent,” and not counting the owner “or operator.” Proposed new subparagraph (a)19ii provides that the proposed RME activity will not cause traffic volume interfering with pre-existing traffic patterns on surrounding public roads and that regularly causes congestion when RME traffic enters and leaves the premises.

Proposed new N.J.A.C. 2:76-22.6(a)21 and recodified paragraph (a)22 retain the existing evaluation criteria that the premises upon which the RME activity shall be located must be in compliance with the deed of easement and that the RME otherwise complies with the Act. Proposed new N.J.A.C. 2:76-22.6(a)20 achieves consistency with proposed Subchapter 22A by requiring that the location, design, height, and aesthetics of the RME activity reflects the public interest in preserving the natural and unadulterated appearance of the landscape and nearby structures.

N.J.A.C. 2:76-22.7(a) and (b) proposed for amendment coordinate the Committee’s review process for RME permit applications with a CADB or a tax exempt nonprofit organization holding the farmland preservation deed of easement on the property upon which the proposed RME will be located. Where appropriate, and consistent with the Act, “rural microenterprise” has been inserted and “nonagricultural use” has been deleted and reference is now made to “qualifying” land. Pursuant to the Act and the proposed amendments, the Committee will provide copies of the RME permit application to the CADB or nonprofit organization, which has 30 days from receipt of the application to provide comments to the Committee, including: notice of any other RME activities existing on the premises; a recommended time period for, and conditions of, the permit; and confirmation that, according to the CADB or nonprofit organization, the owner of the premises is not in violation of the deed of easement. Existing paragraphs (c)3 and 5 are proposed for deletion.

The Committee’s review of an RME permit application and issuance of a permit is governed by N.J.A.C. 2:76-22.8 as proposed for amendment, which maintains the use of “rural microenterprise” and “qualifying land” whenever the context requires. Consistent with the Act, subsection (a) provides that the Committee, in its sole discretion, may issue an RME permit when the development easement upon which the RME activity is proposed is held by the Committee or a CADB; if the development easement is held by a tax exempt nonprofit organization, then the Committee decides whether to issue a permit in consultation with that organization after its receipt of a copy of a complete application as set forth in N.J.A.C. 2:76-22.8(b) as proposed for amendment. Paragraphs (b)1, 2, and 3 are proposed for deletion. Subsection (c) is proposed for amendment to clarify existing language.

Proposed new N.J.A.C. 2:76-22.8(f) contains the Act's requirement that the Committee has 90 days to approve, approve with conditions, or disapprove the RME permit application. The proposed rule also allows the 90-day review period to be extended by the Committee for good cause or with the applicant's consent. In addition, the time within which an RME permit must be exercised by a permittee can be extended upon a showing of special circumstances or special need, as set forth in proposed recodified N.J.A.C. 2:76-22.8(g)2i. Subparagraph (g)2ii is proposed for amendment to update a cross-reference.

Clarifications of the existing rules have been made to better address situations in which an RME permittee wants to sell the property, or upon the death of the owner of the premises, upon which the RME activity is located. The proposed amendments are needed to more fully effectuate the statutory restrictions that the RME permit does not run with the land and cannot be assigned. Recodified N.J.A.C. 2:76-22.8(h) and paragraph (h)i are proposed for amendment to provide that the contract purchaser or prospective purchaser of the property where the permitted RME activity is located can apply for a new RME permit at least 90 days before the date of the closing on the sale of the property, and a contract purchaser or prospective purchaser must provide the Committee with the owner's written consent to the application. If a contract purchaser or prospective purchaser fails to obtain a new RME permit prior to the conveyance of the premises, then, as set forth in N.J.A.C. 2:76-22.8(h)2 proposed for amendment, then the RME permit held by the owner expires as of the date of the conveyance.

Recodified N.J.A.C. 2:76-22.8(i) is proposed for amendment to allow for continuation of an RME permit when the owner of the premises dies, provided an heir or estate representative applies for the continuation within 18 months of the owner's death. If no application to continue the permit is filed within the 18-month period, or no application is made within that time to extend the 18-month period, then the

RME permit expires in accordance with N.J.A.C. 2:76-22.8(i)1 and 2 as proposed for amendment. The permit also expires upon settlement of the estate but, as set forth in N.J.A.C. 2:76-22.8(i)3 proposed for amendment, a new property owner may apply for a new RME permit in accordance with Subchapter 22.

Proposed new N.J.A.C. 2:76-22.8(j) is proposed for amendment to provide that if the owner of the premises who has obtained an RME permit subsequently becomes incapacitated, the owner's attorney-in-fact may continue the RME activity in accordance with the terms of the permit. If an owner of the premises retires from operating the RME activity but still owns the premises, then an RME lessee may continue to operate the RME in accordance with the permit, as set forth in proposed new N.J.A.C. 2:76-22.8(k); a lease between the owner and RME lessee must be consistent with the permit, and a copy of the fully-executed lease must be furnished to the Committee, pursuant to proposed new N.J.A.C. 2:76-22.8(l). Proposed new N.J.A.C. 2:76-22.8(m) provides that the lease must be subordinate to the RME permit pursuant to a written subordination agreement, with a copy of the permit attached to the agreement.

Proposed new N.J.A.C. 2:76-22.8(n) accounts for situations in which a farmer who owns and operates an RME activity experiences a disruption in income beyond the farmer's control, such as crop failure. The farmer whose income has been disrupted can continue operating the RME for up to two years after the date of the event of disruption. However, after the two-year period, the RME permit will be subject to revocation by the Committee, after a hearing as set forth in recodified N.J.A.C. 2:76-22.13(b), if the farmer cannot demonstrate realized gross sales of \$2,500 for agricultural or horticultural production from the premises, exclusive of rental income.

Proposed new N.J.A.C. 2:76-22.8(o) permits the property owner, heir, estate representative, or attorney-in-fact to request termination of the RME permit upon 30-day written notice to the Committee, which shall take action on the request. Subsection (p) is recodified consistent with proposed amendments.

Proposed amendments to existing N.J.A.C. 2:76-22.9, which includes the terms and conditions of an RME permit, have been made for consistency with the Act. Recodified N.J.A.C. 2:76-22.9(b)1 is proposed for amendment to provide that renewal of an RME permit may be sought within 10 years of the date the permit is scheduled to expire and, as set forth in recodified N.J.A.C. 2:76-22.9(b)2 proposed for amendment, no fee is required for such a permit renewal so long as there has been no change in the originally permitted activity. Recodified N.J.A.C. 2:76-22.9(c)1 is proposed for amendment to reflect that the RME activity shall cease upon a change in the record ownership of the premises except when, in accordance with recodified N.J.A.C. 2:76-22.9(c)1i and ii, a purchaser or prospective purchaser, or the heir or estate representative of a deceased owner, obtains approval for an RME permit in accordance with N.J.A.C. 2:76-22.8(i). Upon a change in the record ownership of the premises after an RME permit is issued, N.J.A.C. 2:76-22.9(c)2 proposed for amendment requires the owner/seller and purchaser of the premises to provide written notice to the Committee, to the holder of the development easement, and to the clerk of the municipality in which the qualifying land is located. N.J.A.C. 2:76-22.9(c)3i proposed for amendment provides the new property owner with the opportunity to apply for continuation of the previously-permitted, or to apply for a new, RME activity. Subsections (d), (e), and (f) are proposed for recodification consistent with the proposed amendments. Proposed amendments to paragraph (e)1 provide clarifying language.

Proposed new N.J.A.C. 2:76-22.9(g) clarifies that an applicant who receives approval from the Committee for an RME permit must still obtain all other permits, approvals, or authorizations required by Federal, State, and local laws, rules, regulations, or ordinances.

The RME activity shall be deemed abandoned, in accordance with proposed N.J.A.C. 2:76-22.9(h), if it has not been operated for 18 consecutive months unless the permittee provides documentation satisfactory to the Committee that a hardship prevented the operation. Proposed new section (h) requires the Committee to provide the permittee with written notice of abandonment and that the permit is subject to revocation after a hearing in accordance with N.J.A.C. 2:76-22.13(b).

Consistent with the Act, proposed new N.J.A.C. 2:76-22.9(i) states that an RME activity is not considered an agricultural use as defined in N.J.S.A. 4:1C-13, and proposed new N.J.A.C. 2:76-22.9(j) states that Subchapter 22 cannot be interpreted as providing the RME activity with protection under N.J.S.A. 4:1C-9 of the Right to Farm Act if the activity is not otherwise eligible for such protection.

Proposed revisions to existing N.J.A.C. 2:76-22.10 regarding signs for RME activities entail deleting “nonagricultural” and “commercial nonagricultural” and inserting “rural microenterprise” in their place and, in proposed new N.J.A.C. 2:76-22.10(a)3, requiring Committee review of the placement of signs in accordance with the historic preservation provisions in Subchapter 22A. Subparagraphs (a)3i and ii are corrected to paragraphs (a)1 and 2, respectively.

N.J.A.C. 2:76-22.11(a) is proposed for amendment by inserting “periodically” so as to clarify the Committee’s monitoring responsibilities over RME activities and deleting reference to the owner of the development easement monitoring the premises, as the Act vests sole monitoring authority with the

Committee. Subsection (a) also incorporates, with minor amendments, existing N.J.A.C. 2:76-22.11(b) with regard to the Committee's entry onto the premises to ensure that the RME permit and the regulations are being complied with.

Proposed new N.J.A.C. 2:76-22.12 incorporates the provisions of N.J.S.A. 4:1C-32.3(c), which authorizes the Committee to delegate to the Committee's executive director the review and approval of RME permit applications under circumstances set forth in that section of the Act. The circumstances under which such delegation can occur are that the Committee has not received comments from a CADB or nonprofit organization that there would be potential negative impacts associated with approval of the application, and that application complies with the Act and attendant regulations. Proposed new subsection (b) provides the applicant with the right of appeal to the Committee if the executive director denies the RME permit application, and proposed new subsection (c) allows the executive director to bring any permit application before the Committee when the executive director deems it appropriate.

Recodified N.J.A.C. 2:76-22.13 is proposed for amendment to consolidate and amend existing N.J.A.C. 2:76-22.12 and 22.13 with regard to revocation, suspension, and denial of RME permits by, and the rights of an applicant or permittee to a hearing before, the Committee. Suspension, revocation, or denial of the permit by the Committee can occur, as set forth in recodified N.J.A.C. 2:76-22.13(a) as proposed for amendment, for violations of the Act, Subchapters 22 or 22A, any term or condition of the permit, or any term or condition of the deed of easement. Recodified N.J.A.C. 2:76-22.13(b) is proposed for amendment to give RME applicants and permittees the opportunity for a hearing before the Committee or, if the Committee delegates that authority, before Committee staff, prior to suspension, revocation, or denial of an RME permit. If the Committee delegates the hearing to agency staff, then a report shall be prepared by staff

at the conclusion of the hearing, and the Committee can adopt, modify, or reject the report. Recodified subsection (c) provides the decision shall be a final agency decision.

N.J.A.C. 2:76-22.14 provides for the Committee's submission of a report on RME activities to various State officials, as required by the Act. Minor grammatical amendments are proposed to the section to properly identify the Senate Environment and Energy Committee and with regard to the agency website.

Subchapter 22A

Proposed new Subchapter 22A contains definitions and provisions not contemplated in the former nonagricultural use rules in existing Subchapter 22. The purpose of Subchapter 22A as set forth in proposed new N.J.A.C. 2:76-22A.1 is to effectuate the statutory intent of the Act by setting forth: 1) the procedures to determine if repairs and improvements to existing residential or agricultural building space used to support a rural microenterprise (RME) are compatible with the agricultural character of the premises and do not diminish the historic or cultural character of the structure; 2) the procedures to determine if the location, design, height, and aesthetic attributes of the RME reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures; 3) the procedures for designating a "heritage farm structure"; and 4) "heritage preservation easement" deed restrictions.

Definitions are proposed in new N.J.A.C. 2:76-22A.2. "Building" and "structure" are taken directly from the State Uniform Construction Code, N.J.S.A. 52:27D-121; "heritage farm structure," "heritage preservation easement," and "rural microenterprise" are taken directly from the Act. "Associative historical value" and "character-defining features" are derived from criteria set forth in N.J.A.C. 7:4-2.3 and 8.8, respectively, the rules implementing the New Jersey Register of Historic Places Act, N.J.S.A.

13:1B-15.128 et seq. “Committee,” “owner of the premises,” and “special permit” are defined identically with the definitions in N.J.A.C. 2:76-22.3.

The Act contains critical terms that need to be clarified by appropriate definitions. N.J.S.A. 4:1C-32.1.g requires that the use of the land and structures supporting an RME are subject to 12 conditions, including that improvements to the exterior of structures “shall be compatible with the agricultural character of the premises” (N.J.S.A. 4:1C-32.1.g(7)) and that the RME’s “location, design, height, and aesthetic attributes . . . shall reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures[.]” N.J.S.A. 4:1C- 32.1.g(9).

“Premises” and “landscape,” both of which are undefined in the context of the above-noted statutory sections, require reasonable spatial descriptions to effectuate the Act’s intent and in order for an applicant to understand the extent to which the RME property will be subject to historic preservation requirements. Accordingly, proposed new Subchapter 22A includes the commonly-accepted legal definition of “curtilage” as “the immediate land area surrounding a structure.” Black’s Law Dictionary, available at <http://thelawdictionary.org/curtilage/>.

For “surrounding agricultural landscape,” defined as “the continuous view of the premises and adjacent properties not to exceed a one-half mile radius of the premises,” authority was based on 47 CFR Appendix C to Part 1 Section VI.C.4 of the nationwide programmatic agreement between the Federal government and state historic preservation offices that, in part, identifies the potential area of visual effects on historic properties resulting from new cell tower construction. https://www.law.cornell.edu/cfr/text/47/appendix-C_to_part_1.

“Demolition” is defined using its ordinary meaning and is also derived from the New Jersey Pinelands Model Historic Preservation Ordinance, available at <http://www.nj.gov/pinelands/infor/online/pdf%20reports/43%20Pinelands%20Model%20Historic%20Preservation%20Ordinance%201988.pdf>. “Determination of Compatibility” is adapted from the definition of “Certificate of Appropriateness” in the Pinelands Model Historic Preservation Ordinance, but the proposed phrase is employed to more appropriately address a specific Act goal that exterior improvements to an RME structure must be “compatible with the agricultural character of the premises and shall not diminish the historic or cultural character of the structure[.]” N.J.S.A. 4:1C-32.1.g(7). “Demolition by neglect” is a commonly-understood phrase in the field of historic preservation. See, for example, “Demolition by Neglect: Repairing Buildings by Repairing Legislation,” available at http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps_papers. A New Jersey Municipal Ordinance No. 07-46 example of the definition set forth in proposed Subchapter 22A can be found at <http://www.neptunetownship.org/sites/default/files/archive/documents/ORD07-46.pdf>.

“Protected features” is a basic concept employed in the field of historic preservation designed to identify important elements of the resource deserving of protection and set forth in a baseline report created prior to and as a condition of recording an easement on property. The “protected features” are typically enumerated as conservation values. See 26 CFR 1.170A-14(g)(5)(i) available at <https://www.law.cornell.edu/cfr/text/26/1.170A-14>; pages 23 and 65 of the United States Internal Revenue Service Conservation Easement Audit Techniques Guide available at https://www.irs.gov/pub/irs-utl/conservation_easement.pdf; and Memorandum of Understanding between the Department of Environmental Protection, New Jersey Historic Preservation Office and the

New Jersey Historic Trust, Attachment A, “Easements on Properties in Receipt of Preservation Funds,” paragraph 1, available at http://nj.gov/comptroller/sandytransparency/contracts/pdf/njht_other.pdf.

Proposed new N.J.A.C. 2:76-22A.3 sets forth the general review process for any improvements and repairs to structures supporting an RME. This process applies to improvements and repairs both under and over 2,500 square feet, which is the threshold established in the Act, and in which RME projects substantially alter or finish an existing residential or agricultural building space. The Act allows up to 100 percent of interior building space to be altered or finished to support an RME activity, but only if the building is designated as a heritage farm structure and if the owner agrees to place on the structure, in a form approved by the Committee, a heritage preservation easement held by the Committee.

A Determination of Compatibility (DOC) is to be issued by the Committee in conjunction with the issuance of a special permit for an RME. The DOC ensures that all proposed improvements and repairs comport with the Act’s concern about the compatibility of the agricultural character of the premises, the cultural and historic character of the RME structure, and the public’s interest in preserving the natural and unadulterated appearance of the premises, surrounding agricultural landscape, and the structures within that landscape, whether or not a heritage preservation easement is placed on the structure. Specifically, the Committee will review the location, design, height, and aesthetic attributes of a structure as prescribed in the Act before a special permit is issued. Given the technical nature of such a review, the proposed rules require that the Committee consult with a qualified historic preservation professional and may consult with the New Jersey State Historic Preservation Office.

Proposed new N.J.A.C. 2:76-22A.4 sets forth the review process for improvements and repairs up to 2,500 square feet of interior space to structures supporting a rural microenterprise. Eleven project

components are detailed, any or all of which the Committee will evaluate in connection with the issuance pursuant to proposed new N.J.A.C. 2:76-22A.3. The included project components, which are typically included in historic preservation ordinances promulgated by New Jersey municipalities under the Municipal Land Use Law, N.J.S.A. 40:55D-65.i, are: 1) the height, width, scale, and massing of structures; 2) design of doors and windows; 3) design of porches and balconies; 4) roof shape; 5) architectural ornamentation; 6) siting and directional orientation; 7) materials, textures, and colors; 8) signs and lighting; 9) fences and gates; 10) landscaping; and 11) parking areas. However, the intent of proposed N.J.A.C. 2:76-22A.4 is on landscape-scale impacts rather than on an analysis of individual architectural features, thus facilitating compliance by farm operators with the Act's statutory scheme.

Proposed new N.J.A.C. 2:76-22A.5 provides for exemptions from the review of improvements and repairs up to 2,500 square feet of interior space to structures supporting an RME in order. Repairs or maintenance that do not alter the exterior appearance of structures, that is, change their design or dimensions, replace existing materials with those that are identical, and/or change the interiors of farm buildings that are used exclusively for agricultural purposes, do not require a DOC from the Committee.

Proposed new N.J.A.C. 2:76-22A.6 establishes the review process for improvements and repairs over 2,500 square feet of interior space to heritage farm structures. The Act permits improvements and repairs over 2,500 square feet of interior building space, effectively allowing up to 100 percent of interior building space to be altered or finished to support an RME, but only if the building is designated as a heritage farm structure and provided the owner agrees to place on the structure, in a form approved by the Committee, a heritage preservation easement held by the Committee. In addition to requiring projects to follow the general review process set forth in proposed new N.J.A.C. 2:76-22A.3, as well as complying with project

components enumerated at proposed new N.J.A.C. 2:76-22A.4, proposed new N.J.A.C. 2:76-22A.6 requires the review of more expansive improvements and repairs that are planned to a building or structure significantly representative of New Jersey's agrarian history or culture and designated as a "heritage farm structure" by the Committee in accordance with proposed new N.J.A.C. 2:76-22A.7.

Alterations to "protected features" should be limited, and any architectural or engineering changes including, but not limited to, alteration, removal, construction, remodeling, or other physical or structural change, including any change in color or surfacing of the protected features, require the Committee's prior approval. "Demolition by neglect" is prohibited, and "demolition" is permitted only when non-historic, non-character-defining features are proposed for removal, or, with respect to the removal of historic, character-defining features, removal is permitted only to remedy a condition that is dangerous to life, health, or safety as determined by the appropriate construction code official.

In keeping with the statutory intent, no changes to protected features that would be inconsistent with the historical or cultural character of the heritage farm structure are permitted. Protected features that are deteriorated should be repaired rather than replaced whenever possible and, if replacement is necessitated, the new material should mimic the material it is replacing, but does not have to be an exact replica.

New additions or alterations to heritage farm structures are permitted, but only if the essential form and integrity of the original structure would be unimpaired should the new addition or alteration be removed in the future.

For landowners who voluntarily seek Federal historic preservation rehabilitation tax credits in accordance with 26 U.S.C. § 47, approval of the project by the U.S. Department of the Interior, National Park Service can be substituted for a DOC issued by the Committee.

If an RME project proposes to alter or finish a structure listed on the New Jersey Register of Historic Places pursuant to N.J.S.A. 13:1B-15.128, review and approval of the project is required by the New Jersey Historic Preservation Office pursuant to N.J.S.A. 13:1B-15.131 in advance of Committee approval.

Proposed new N.J.A.C. 2:76-22A.7 establishes the procedures for designating a “heritage farm structure” that is a pre-requisite to altering or finishing more than 2,500 square feet of interior space. While the vast majority of historic preservation programs throughout the country rely on the National Register of Historic Places nomination process to designate those structures worthy of preservation, that process has traditionally been oriented towards residential, commercial, and industrial structures that employ high-style architecture -- that of trained architects -- versus rural, vernacular architecture -- that of laypersons. As to be inclusionary rather than exclusionary, the proposed new rule allows the Committee to designate a “heritage farm structure” according to a more simplified process fashioned from the National Register of Historic Places Criteria for Evaluation pursuant to 36 CFR 60.4, <https://www.law.cornell.edu/cfr/text/36/60.4>, which, in New Jersey, is synonymous with the New Jersey Register of Historic Places Program pursuant to N.J.A.C. 7:4-2. The national and State programs use the same nomination criteria, nomination forms, and administering agencies (New Jersey State Historic Preservation Office and State Review Board), and both require that the Commissioner of the Department of Environmental Protection sign the nomination as the State Historic Preservation Officer. This approach attempts to ensure that more structures will be

designated as heritage farm structures and, accordingly, more of these structures will be preserved, thus furthering the Act's intent.

A major distinction between the heritage farm structure and Historic Register designation process is the eligibility date for structures. The 1960 date for heritage farm structures was chosen as a cutoff since, after this time, dimensioned lumber and prefabricated buildings began to supplant, to a large degree, traditional construction techniques that most people associate with "historic" structures. It is also the date that was utilized by the U.S. Department of Agriculture in the 2007 Census of Agriculture to define historic barns. See

https://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_US/usappxb.pdf.

Conversely, the New Jersey and National Register of Historic Places programs generally adhere to a standard that buildings or structures must be 50 years or older to become eligible for listing pursuant to the National Register of Historic Places Criteria for Evaluation and the New Jersey Register of Historic Places rules at N.J.A.C. 7:4-2.3(a)2.

As with proposed new N.J.A.C. 2:76-22A.3, the review involved in the designation of heritage farm structures requires consultation with a qualified historic preservation professional and/or the New Jersey State Historic Preservation Office. A building or structure determined eligible for listing in the New Jersey Register of Historic Places pursuant to N.J.A.C. 7:4-2.2 meets the criteria for designation as a heritage farm structure and any such building or structure does not require designation by the Committee.

A landowner may seek reconsideration of a heritage farm structure determination by submitting documentation consistent with the New Jersey Register of Historic Places regulations at N.J.A.C. 7:4-2.3

and which has been prepared by a consultant meeting the professional qualifications set forth in proposed N.J.A.C. 2:76-22A.3.

Proposed new N.J.A.C. 2:76-22A.8 establishes the duration, recording, and termination of a “heritage preservation easement” as well as specifies the form and substance of the easement. Many of the deed restrictions are contained within the standard easement deed template developed by the New Jersey Historic Trust and previously cited in the discussion of the “protected features” definition above.

Should a landowner voluntarily seek a Federal income tax deduction for donating an easement for the preservation of a historically important land area or a certified historic structure pursuant to 26 U.S.C. § 170, the owner can utilize a preservation easement template approved in advance by the Committee and the New Jersey Historic Trust and held by both the Committee and the New Jersey Historic Trust in lieu of the heritage preservation easement deed restrictions contemplated in the proposed rules.

Proposed new N.J.A.C. 2:76-22A.9 establishes procedures in the event of casualty loss of protected features associated with heritage farm structures. The proposed language is derived from the New Jersey Historic Trust’s standard preservation easement template and allows for the demolition, removal, or razing of all or a portion of the protected features, under certain conditions, if damaged by natural forces such as fire, flood, windstorm, hurricane, earth movement or similar casualties.

As the SADC has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rules will have a positive social impact by implementing legislation that enables qualifying preserved farms to apply for a special permit to undertake certain types of rural microenterprises – appropriately scaled businesses or activities that are compatible with the agricultural use of the farm – on preserved farms within certain parameters. The Committee expects that owners of qualifying farms that were preserved without exception areas that otherwise would have enabled them to pursue these types of activities, will be supportive of the opportunity to realize additional revenues from RMEs in order to supplement farm income and improve farm viability.

The proposed amendments, repeal, and new rules also provide economic incentives to encourage preserved farm owners to conserve historic and culturally significant agricultural structures that are symbolic of the Garden State’s agrarian heritage and contribute to New Jersey’s scenic agricultural vistas. The retention of these barns and other structures maintain the rural landscape for the appreciation and benefit of the public.

Social benefits also accrue to the public as a result of the proposed amendments, repeal, and new rules because the establishment of RMEs on preserved farms will expand the number and variety of available rural businesses and services that the public can utilize.

Economic Impact

The proposed amendments, repeal, and new rules will provide economic benefits to owners of qualifying preserved farms by enabling them to establish RMEs that generate revenue to supplement farm income.

Because agriculture support services are one of the two classes of permitted RMEs pursuant to the legislation, the Committee expects that the proposed amendments, repeal, and new rules will have a positive economic effect on other farms and agricultural businesses that will be able to access the services, equipment, and supplies provided by the RMEs.

Federal Standards Statement

The proposed amendments, repeal, and new rules are governed by the New Jersey Rural Microenterprise Act, P.L. 2015, c. 275, which does not require compliance with any applicable Federal laws or regulations. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments, repeal, and new rules permit an RME to employ up to four full-time workers, or the equivalent, in addition to the owner or operator. Therefore, the Committee anticipates that the proposed amendments, repeal, and new rules may increase the number of jobs available in the State as the result of new rural microenterprises on preserved farms.

Additionally, by helping to maintain the economic viability of preserved farms and keeping New Jersey’s agricultural industry strong, the proposed amendments, repeal, and new rules also could help provide better opportunities for other on-farm employment.

Agriculture Industry Impact

The proposed amendments, repeal, and new rules will have a positive impact on the agricultural industry. The proposed amendments, repeal, and new rules will afford eligible preserved

farm owners the opportunity to establish RMEs to generate revenue to supplement farm income, helping to strengthen the viability of their individual farming operations and New Jersey's agricultural industry. Other farms and the State's agricultural industry as a whole also will benefit from access to the agricultural support services and supplies that one of the two permitted classes of RMEs will offer.

Regulatory Flexibility Analysis

The Committee estimates that the proposed amendments, repeal, and new rules potentially could apply to up to approximately 750 farms that were preserved prior to January 12, 2006, without an exception area. The majority of farms potentially subject to the proposed amendments, repeal, and new rules are small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they employ fewer than 100 employees full-time.

There are no new costs imposed by the Committee as the result of the proposed amendments and new rules, and no additional reporting, recordkeeping, or other burdens on owners of preserved farms, beyond those typically required for the establishment of a small business.

The proposed amendments, repeal, and new rules require an owner of a preserved farm seeking an RME on the farm to submit an application and a \$250.00 special permit application fee in accordance with the legislation and application requirements as discussed in the Summary above. The legislation decreased the special permit application fee from the \$1,000 fee required under the prior legislation.

An owner of a preserved farm where a special permit was obtained to improve greater than 2,500 square feet of the interior of a structure, in exchange for the placement of a heritage preservation

easement on the structure, must comply with the requirements of that preservation easement. These include, in the event of damage or destruction of protected features of the structure from fire, flood, or similar casualties, providing to the Committee a written report prepared by a qualified architect or historic architect, including an assessment of the nature and extent of damage and recommendations for restoration/reconstruction work. The proposed amendments, repeal, and new rules include a process under which the owner of the preserved farm will either undertake the recommended restoration/reconstruction work or, with the Committee's prior written approval, demolish, remove, or raze all or portions of the protected features and/or construct improvements.

Several initiatives in the proposed amendments, repeals, and new rules attempt to minimize adverse economic impacts on small businesses, including the following.

Since the intent of proposed new N.J.A.C. 2:76-22A.4 with regard to Committee review of improvements to RME structures is on landscape-scale impacts rather than on a granular analysis of individual historic architectural features of particular buildings, the Committee expects this more holistic approach to facilitate compliance by small businesses with the Act's statutory scheme.

Proposed N.J.A.C. 2:76-22A.5 exempts from Committee review several described improvements and repairs, up to 2,500 square feet of interior space, to structures supporting an RME.

Protected features of heritage farm structures that are deteriorated, as set forth in proposed new N.J.A.C. 2:76-22A.6(b)4ii, should be repaired rather than replaced whenever possible and, if replacement is necessitated, the new material should mimic, not be an exact replica of, the material it is replacing, thus easing a construction hardship on small business owners seeking to engage in an RME.

Small businesses that voluntarily seek Federal historic preservation rehabilitation tax credits in accordance with 26 U.S.C. § 47 can, in accordance with proposed new N.J.A.C. 2:76-22A.6(c), obtain approval of the project by the U.S. Department of the Interior, National Park Service in lieu of the DOC issued by the Committee, an alternate procedure that will likely reduce the amount of paperwork needed to be filed with the Committee.

Paperwork reduction and an ease in regulatory burdens are also in proposed new N.J.A.C. 2:76-22A.7(c), as a building or structure determined eligible for listing in the New Jersey Register of Historic Places pursuant to N.J.A.C. 7:4-2.2 meets the criteria for designation as a heritage farm structure and would not require an additional designation by the Committee.

Finally, reconsideration of a heritage farm structure determination by the Committee is built into the rules at proposed new N.J.A.C. 2:76-22A.7(d).

Housing Affordability Impact Analysis

The proposed amendments, repeal, and new rules would have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the proposed amendments, repeal, and new rules would evoke a change in the average costs associated with housing because the proposed amendments, repeal, and new rules pertain only to the establishment of RMEs – appropriately scaled businesses or activities that are compatible with agricultural use – on preserved farms.

Smart Growth Development Impact Analysis

The proposed amendments, repeal, and new rules would have an insignificant impact on smart growth, and there is an extreme unlikelihood that the proposed amendments, repeal, and new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the establishment of RMEs on preserved farms is unrelated to, and will not substantially impair, smart growth development within participating municipalities.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 22. SPECIAL PERMIT FOR [COMMERCIAL NONAGRICULTURAL] **A RURAL MICROENTERPRISE** ACTIVITY ON PRESERVED FARMLAND

2:76-22.1 Applicability

This subchapter applies to the issuance of any special permit pursuant to N.J.S.A. 4:1C-32.1 to allow a [commercial nonagricultural] **rural microenterprise** activity to occur on qualifying land [on which a development easement was conveyed to, or retained by, the Committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40)].

2:76-22.2 Purpose

The purpose of this subchapter is to establish the process for any person who owns qualifying land from which a development easement was conveyed to, or retained by, the Committee, a board, or a qualifying tax exempt nonprofit organization to apply for a special permit, pursuant to N.J.S.A 4:1C-32.1, to allow a [commercial nonagricultural] **rural microenterprise** activity to occur on the premises and to identify the standards for review of such an application by the Committee[, board or qualifying tax exempt non-profit organization].

2:76-22.3 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

“Application” means a request for a special permit to allow for a [commercial nonagricultural] **rural microenterprise** activity as detailed in a standard form adopted by the Committee.

...

“**Building**” means a structure enclosed with exterior walls or fire walls, built, erected, and framed of component structural parts, designed for the housing, shelter, enclosure, or support of individuals, animals, or property of any kind. “**Building**” and “**structure**” shall be interchangeable except where the context clearly indicates otherwise.

“**Character-defining features**” means the overall shape of a heritage farm structure, its materials, craftsmanship, decorative details, features, and the significant aspects of its site and

surrounding environment.

“Commercial farm” means:

1. – 2. (No change.)

3. A farm management unit that is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth \$10,000 or more annually.

[“Commercial nonagricultural activity” means a small enterprise or low impact use that is not permitted under the terms of the deed of easement, but which may be permitted pursuant to N.J.S.A. 4:1C-32.1 and this subchapter. It does not include franchises, chain stores, big box stores, high volume businesses, or a personal wireless service facility as defined in this section and regulated pursuant to N.J.S.A. 4:1C-32.2.]

...

“Determination of Compatibility” means a written approval issued by the Committee permitting the finishing, alteration, new construction, relocation, or demolition of structures supporting a rural microenterprise, provided the changes are compatible with the agricultural character of the premises and surrounding agricultural landscape and do not diminish the historic or cultural character of a heritage farm structure.

...

“Exception” means a portion of an applicant’s landholdings excluded from the premises and [although identified in the deed of easement, is] unencumbered by the farmland preservation restrictions mandated by N.J.A.C. 2:76-6.15(a) and set forth in the deed of easement. **This includes portions of the farm that cannot be severed from the premises, known as nonseverable exceptions, portions of the farm excluded from the premises that can be severed but have not yet been subdivided from the farm, known as severable exceptions, and other portions of the farm excluded from or not encumbered by the deed of easement.**

...

“Farmer” means a person who owns and operates the premises subject to the following:

1. **Exclusive of any income received from the rental of lands, realized gross sales of at least \$2,500 for agricultural or horticultural products produced on the premises during the calendar year immediately preceding submission of an application for a special permit;**
2. **Continues to own and operate the premises and meet the income threshold every year during the term of the special permit; and**
3. **The definition of “farmer” is satisfied when the owner and operator of the premises are comprised of one or more of the same individuals, whether singly or as manager(s)/owner(s) of a business entity.**

“Heritage farm structure” means a building or structure that is significantly representative of New Jersey’s agrarian history or culture and that has been designated as such by the Committee.

“Heritage preservation easement” means an interest in land less than fee simple absolute, stated in the form of a deed restriction executed by or on behalf of the owner of the land, appropriate to preserving a building or structure and its curtilage that is significant for its value or importance to New Jersey’s agrarian history or culture, and to be used exclusively for the purposes of implementing sections 1 and 3 of P.L. 2005, c. 314 (N.J.S.A. 4:1C-32.1 and 32.3) in order to limit alterations in the exterior form or features of such building or structure. The heritage preservation easement shall be in a form approved by the Committee, be recorded against the premises, be held by the Committee, and run with the land.

“High traffic volume business” means a business for which the volume and frequency of visitors, deliveries, truck, and other vehicle traffic exceeds the number of designated parking spaces under normal conditions or creates a nuisance for neighboring properties or the municipality.

“Owner of the premises” means the person who owns qualifying land.

“Person” means natural persons, public or private corporations, companies, associations, societies, firms, partnerships, and joint stock companies.

[“Personal wireless service facility” means a personal wireless service tower and any associated equipment and structures necessary to operate and maintain that tower, as regulated pursuant to

Federal law.]

...

“Qualifying land” means a farm [that] **on which a development easement** was [preserved for farmland preservation purposes] **conveyed to, or retained by, the Committee, a board, or a qualifying tax exempt nonprofit organization** prior to **January 12, 2006**, the date of enactment of N.J.S.A. 4:1C-32.1 et seq., [under any] **and in accordance with the provisions** of [the laws cited in] **section 24 of P.L. 1983, c. 32** (N.J.S.A. 4:1C-[32.1a]31), **section 5 of P.L. 1988, c. 4** (N.J.S.A. 4:1C-31.1), **section 1 of P.L. 1989, c. 28** (N.J.S.A. 4:1C-38), **section 1 of P.L. 1999, c. 180** (N.J.S.A. 4:1C-43.1), **or section 37 through 40 of P.L. 1999, c. 152** (N.J.S.A. 13:8C-37 through 13:8C-40), and for which no portion of the farm was excluded from the area preserved under the deed of easement [by means of an exception]. Lands preserved by a county, local government unit, or qualifying tax exempt nonprofit organization for farmland preservation purposes by the acquisition of a deed of easement prior to [the date of enactment of N.J.S.A. 4:1C-32.1 et seq.] **January 12, 2006**, shall be deemed “qualifying land” even if the instrument memorializing the Committee’s interests in the deed of easement [is not] **was** recorded [until] after [the] **that** date [of enactment of N.J.S.A. 4:1C-32.1 et seq].

“Qualifying tax exempt nonprofit organization” [shall have] **means** the same [meaning] as [set forth in] **that term is defined pursuant to** section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3).

“Rural microenterprise” or “RME” means a small-scale business or activity that is fully compatible with agricultural use and production on the premises, does not, at any time, detract from, diminish, or interfere with the agricultural use of the premises, and is incidental to the agricultural use of the premises. “Rural microenterprise” shall not include a personal

wireless service facility as defined and regulated pursuant to N.J.S.A. 4:1C-32.2. There shall be two categories of rural microenterprise activities as follows:

- 1. Class 1 shall include customary rural activities, which rely on the equipment and aptitude historically possessed by the agricultural community, such as snow plowing, bed and breakfasts, bakeries, woodworking, and craft-based businesses; and**

- 2. Class 2 shall include agricultural support services, which have a direct and positive impact on agriculture by supplying needed equipment, supplies, and services to the surrounding agricultural community, such as veterinary practices, seed suppliers, and tractor equipment repair shops.**

“Rural microenterprise lessee” means an operator of a rural microenterprise who does not own the qualifying land and who operates the rural microenterprise in accordance with a lease with the owner of the qualifying land.

“Special permit” means a permit to allow one [commercial nonagricultural] rural microenterprise activity to occur on qualifying land issued by the Committee [(in its sole discretion if the Committee owns the development easement or in the joint discretion of the Committee and a board or qualifying tax exempt nonprofit organization holding the deed of easement),] pursuant to N.J.S.A. 4:1C-32.1 and the procedures and criteria set forth in this subchapter.

“Structure” means a combination of materials to form a construction or occupancy, use, or ornamentation, whether installed on, above, or below the surface of a parcel of land.

“Building” and “structure” shall be interchangeable, except where the context clearly indicates otherwise.

2:76-22.4 Eligibility to apply for a [commercial nonagricultural] **special permit for a rural microenterprise** activity

(a) Any person who owns qualifying land may apply for a special permit to allow a [commercial nonagricultural] **rural microenterprise** activity to occur on the **qualifying** land, provided that:

1. (No change.)
2. No other special permit for a [commercial nonagricultural] **rural microenterprise** activity exists on the premises;

[3. There is no commercial nonagricultural activity in existence on the premises at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the Committee may waive the requirements of this paragraph entirely or subject to any appropriate conditions:

- i. If such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to N.J.S.A. 4:10-1, derived from the farm; or
- ii. For other good cause shown by the applicant; and]

[4.] **3.** The development easement was acquired without the participation of Federal Farm and Ranch Lands Protection Program funds[.];

4. The owner of the premises is a farmer; and

5. The premises is in compliance with the deed of easement, as determined by the Committee.

(b) In the event the premises [were] **was** divided after conveyance of the development easement in accordance with N.J.A.C. 2:76-6.15(a)15, only one special permit for a [commercial nonagricultural] **rural microenterprise** activity may be issued by the Committee for the [originally] preserved premises **as it was configured on (the effective date of this amendment)**, regardless of the number of [resulting] parcels of land **resulting from approval(s) of any division(s) of premises occurring after (the effective date of this amendment)**.

1. If a special permit for a [commercial nonagricultural] **rural microenterprise** activity has been previously issued on a parcel of land created as a result of a division of premises **occurring after (the effective date of this amendment)**, no other special permit[s] for a [commercial nonagricultural] **rural microenterprise** activity may be issued on any of the remaining parcel(s) of land created by the division.

2. (No change.)

(c) (No change.)

2:76-22.5 Application for [commercial nonagricultural] a **rural microenterprise** activity

(a) Any person who meets the qualifications contained in N.J.A.C. 2:76-22.4 may apply for a special permit for a [commercial nonagricultural] **rural microenterprise** activity by [simultaneously] submitting an application to the [owner of the development easement and to the] Committee. The application shall include the following information:

1. A copy of the recorded deed showing the current [record] owner of the [restricted] premises;
2. – 3. (No change.)
4. Proof that the premises is a commercial farm, **such as tax forms, sales receipts, or other appropriate documentation as required by the Committee;**
5. [A survey plat] **An aerial photograph of the portion of the premises on which the proposed rural microenterprise activity will be located,** that identifies and labels:
 - i. The structure(s) in which the [commercial nonagricultural] **rural microenterprise** activity will be located, **including identification of the size and total footprint of the structure(s) and the area(s) intended to be used for the rural microenterprise activity;**
 - ii. The proposed expansion of any existing structures to accommodate the [commercial nonagricultural] **rural microenterprise** activity;

- iii. All existing structures[, streams, and other features of the premises] **and proposed site improvements;**
 - iv. The location of proposed **vehicular** access to the [commercial nonagricultural] **rural microenterprise** activity; [and]
 - v. Identification **of the location and dimensions** of the area that will be used to accommodate parking, including the number of existing parking spaces, the number of parking spaces that will be needed and delineation of the proposed parking spaces; **and**
 - vi. **Existing and proposed landscaping, signs, lighting, and screening devices;**
6. Photographs (preferably[,] digital, with one printed copy and one electronic copy) of:
- i. The **entire** interior and exterior of the structure(s) in which the [commercial nonagricultural] **rural microenterprise** activity is proposed; [and]
 - ii. The **entire** exterior of all structures **located on the premises that are** within [200 feet] **one-half mile** of the structure(s) in which the [commercial nonagricultural] **rural microenterprise** activity is proposed; **and**

- iii. **The 360 degree viewshed of the surrounding landscape demonstrated by taking photographs from multiple angles from the location of the proposed rural microenterprise activity outward for a visual distance of approximately one-half mile;**

7. A description of **the type, nature, location, and frequency of any preexisting commercial nonagricultural use or activity, or preexisting rural microenterprise activity**, already in existence on the premises at the time of application for the special permit [or on any portion of the farm that is not subject to the development easement];

8. Proof that the structure(s) to be used for the [commercial nonagricultural activity existed on] **rural microenterprise was or were in existence at least five years before** the date of [enactment of N.J.S.A. 4:1C-32.1 (January 12, 2006)] **the special permit application**. The applicant shall also:

- i. Identify and describe all improvements made to the structure since the enactment of N.J.S.A. 4:1C-32.1 (January 12, 2006); **and**
- ii. State whether [he or she] **the applicant** intends to construct a new agricultural building to take the place of the structure to be used for the [nonagricultural use; and] **rural microenterprise activity and, if so, the type, size, and location of the replacement structure(s);**

[iii. Identify any new agricultural structure(s) constructed on the premises within three years prior to the date of application and indicate whether these new

structures will serve a function previously served by the structure(s) proposed to accommodate the non-agricultural use;]

9. A description of the proposed [commercial nonagricultural] **rural microenterprise** activity[,] including, **but not limited to**:

- i. All improvements and [new] utilities that will be needed to accommodate the activity;
- ii. An estimate of the [cost and] time needed for completion of any improvements;
- iii. Whether the activity is associated with the agricultural operation and, if so, how;
- iv. Whether the activity [is] **will be** operated by the owner or family member or if it [is being] **will be** leased and, if so, to whom;
- v.-vi. (No change.)
- vii. Whether the applicant will need to expand an existing structure to accommodate the activity, including:
 - (1) (No change.)
 - [(2) An explanation as to why the expansion is necessary for the commercial nonagricultural activity;
 - (3) The size of the total footprint of the proposed expanded structure and all other structures that will be used for the nonagricultural activity;]

[(4)] **(2)** A justification for the proposed size of the structure, including an explanation as to **why the expansion is necessary for the rural microenterprise activity and** whether the proposed size is based solely on the need to accommodate the [commercial nonagricultural] **rural microenterprise** activity;

(3) The size of the total footprint of the proposed expanded structure and a sketch of the proposed expansion on the aerial photograph required in (a)5 above;

[(5)] **10.** An explanation of how the location, design, height, and aesthetics of the expansion preserve the natural and unadulterated appearance of the landscape and structures; [and]

[(6)] A sketch of the proposed expansion on the survey plat required in (a)5 above;]

[viii.] **11.** The time period for which the applicant would like the special permit to be effective, [provided that any request for an effective period of over five] **up to a maximum of 20** years [shall include a justification for the longer time period]; [and]

[ix.] **12.** A copy of any proposed lease agreements that will be necessary for the proposed [nonagricultural] **rural microenterprise** activity;

[10.] **13.** Copies of all necessary local, State, and Federal approvals, including evidence that the proposed [commercial nonagricultural] **rural microenterprise** activity is a permitted use under municipal zoning or that a use variance has been granted.

[i. This requirement may be waived by the Committee pursuant to N.J.A.C. 2:76-22.6(a)15i;]

i. If the applicant does not have the approvals at the time of application for the rural microenterprise activity, the Committee may issue a special permit for the rural microenterprise activity conditioned on the receipt of such approvals in accordance with N.J.A.C. 2:76-22.6(a)16;

[11.] **14.** An explanation as to whether the [commercial nonagricultural] **rural microenterprise** activity interferes with the use of the **qualifying** land for agricultural or horticultural production;

[12.] **15.** An explanation as to whether the [commercial nonagricultural] **rural microenterprise** activity utilizes the **qualifying** land and structures in their existing condition, **in accordance with N.J.A.C. 2:76-22.6(a)7 and 13;**

[13.] **16.** An explanation as to whether the [commercial nonagricultural] **rural microenterprise** activity will have an adverse impact upon the soils, water resources, air quality, or other natural resources of the **qualifying** land or the surrounding area;

[14. Using a scale, established in the application, identification of the location of the proposed commercial nonagricultural activity on:

- i. A United States Department of Agriculture, Natural Resource Conservation Service (NRCS) soils map that uses the most current NRCS Soil Survey Geographic (SSURGO) Database, with a summary of the soil mapping units and designation of important soils (prime soils, soils of Statewide importance, unique or local importance);
- ii. A United States Geological Service (USGS) topographic quadrangle map;
 - iii. A current tax map; and
- iv. A New Jersey Department of Environmental Protection wetlands map;]

[15.] **17.** A description of the amount of traffic or business that the applicant expects to be generated on a daily, weekly, and annual basis and [on] **at** anticipated peak [times of the year] **operational periods;**

[16.] **18.** The maximum number of employees needed on a daily, weekly, and annual basis and for anticipated peak [times of the year] **operational periods;** and

[17.] **19.** An application fee in the amount of [\$1,000] **\$250.00** made payable to the State of New Jersey, State Agriculture Development Committee, in the form of a money order or bank check.

- i. (No change.)

- (b) If the Committee [or easement holder] deems the application incomplete, the applicant shall, [have] **within** 120 days of receipt of written notice, [to] provide the necessary information, unless otherwise extended by the [reviewing entity] **Committee**. **If the applicant does not provide the Committee with the necessary information within the 120-day period, unless extended by the Committee, the application shall be deemed rejected.**
- (c) **If the application is deemed complete, the applicant shall be notified in writing.**

2:76-22.6 Evaluation criteria for a [commercial nonagricultural] **rural microenterprise** use

(a) When reviewing **a** special permit application[s], the Committee [(or Committee and easement holder jointly)] shall determine whether the application meets the following criteria:

1. (No change.)

2. The applicant is a farmer;

Recodify existing 2. – 3. as **3. – 4.** (No change in text.)

[4.] **5.** [There is no commercial nonagricultural activity in existence on the premises at the time of application for the] **No other current** special permit [or on any portion of the farm that is not subject to the development easement, except that the Committee may waive the requirements of this paragraph entirely or subject to any appropriate conditions:] **for a rural microenterprise activity has been issued by the Committee;**

- [i. If such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to N.J.S.A. 4:10-1, derived from the farm; or
 - ii. For other good cause shown by the applicant;
5. No other special permits for a commercial nonagricultural activity have been issued by the Committee;]

6. The proposed rural microenterprise activity is located within a structure(s):

i. That existed on the date of the conveyance of the easement; or

[6.] **ii. [The proposed commercial nonagricultural] If the proposed rural microenterprise activity is located within a structure(s) that was [existing at the time] constructed after the date of conveyance of the easement, construction of [the enactment of N.J.S.A. 4:1C-32.1 (January 12, 2006);] such structure(s) must have been in compliance with the farmland preservation deed restrictions and must have been completed at least five years prior to the date of the rural microenterprise use application;**

7. The proposed [commercial nonagricultural] **rural microenterprise** activity utilizes a structure(s) in its existing condition[, except that] **in accordance with the following criteria:**

[i. Existing residential units can be improved for a commercial nonagricultural use permitted pursuant to this subchapter, subject to the following limitation:]

[(1)] **i.** No more than 2,500 square feet of the interior of an existing residential **or agricultural** structure may be [converted] **substantially altered** or [“]finished[”] for a [commercial nonagricultural use] **rural microenterprise activity** if such [conversion] **alteration** or finishing requires improvements to the structure, such as installation of new walls, insulation, flooring, lighting, HVAC systems, sanitary plumbing, and associated wiring;

(1) If the building is not being substantially altered or finished to support the rural microenterprise activity, the entire floor area of the existing residential or agricultural building space may be used to support the rural microenterprise.

[ii.] **(2)** (No change in text.)

ii. The Committee may allow the alteration or finishing of up to 100 percent of the interior of an existing heritage farm structure, provided that the owner agrees to record a heritage preservation easement, in a form approved by the Committee, which shall be held by the Committee and shall run with the land. The procedures for designating a heritage farm structure are set forth in N.J.A.C. 2:76-22A.7.

- iii. [Improvements that require the expansion of wastewater facilities, including, but not limited to, connection to public wastewater facilities or expansion of sewage or septic capacity generally, shall not be permitted.] **On-site septic and well facilities may be established, expanded, or improved for the purpose of supporting the rural microenterprise activity provided such facilities are contained within the one-acre envelope provided for in (a)14 below. Any improvements to the land that are undertaken for these purposes shall be limited to those that are necessary either to protect public health and safety or to minimize disturbance of the premises and its soil and water resources.** At no time shall a change in wastewater facilities required for the [commercial nonagricultural] **rural microenterprise** activity render land [subject to the deed of easement] **located outside of the one-acre envelope**, which otherwise would have been suitable for agricultural production, incapable of supporting agricultural production activities;
- iv. No public utilities, **including water, gas, or sewer**, other than those already **existing and** available on the premises[,] shall be [permitted, including but not limited to water, gas,] **extended to the qualifying land for purposes of the rural microenterprise, except that the establishment of new electric [or sewage] service required for the rural microenterprise shall be permitted;**
- v. Improvements to the exterior of the structure shall be compatible with the agricultural character of the premises and shall not diminish the historic character

of the structure[;]. **The Committee shall evaluate such improvements in accordance with N.J.A.C. 2:76-22A.3 and 22A.4;**

(1) Repairs may be made to the interior of a building provided they do not diminish the historic or cultural character of the structure.

vi. There shall be no storage of equipment, vehicles, supplies, products, or by-products associated with the [commercial nonagricultural] **rural microenterprise** activity outside of the structure except as provided in (a)13iv below;

vii. (No change.)

viii. Expansion of a structure shall be permitted provided that:

(1) The total footprint of the expanded [structure and other] structures that will be used for the [commercial nonagricultural] **rural microenterprise** activity does not exceed 500 square feet;

(2) The purpose or use of the expansion is necessary to the operation or functioning of the [commercial nonagricultural] **rural microenterprise** activity; **and**

(3) The area of the proposed footprint **of the expanded structure** is reasonably calculated based solely upon the demands of accommodating the [commercial nonagricultural] **rural microenterprise** activity and does not incorporate excess space; [and]

[(4) The location, design, height and aesthetics of the expansion reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures;]

8. [Any] **No** new [agricultural structure(s)] **structures shall be** constructed [or relocated anywhere] on the premises [within the three years preceding] **to support a rural microenterprise. Any structure constructed on the premises since** the date of [application] **the conveyance of the easement, and in accordance with the farmland preservation deed restrictions, shall not be eligible** for [the] a special permit [does not (and will not) serve a function previously served by the structure(s) proposed to accommodate the nonagricultural use] **for a rural microenterprise activity for a period of five years following completion of its construction;**

9. The application does not propose to use agricultural labor housing (constructed before or after the conveyance of the development easement) for the [commercial nonagricultural] **rural microenterprise** activity;

10. The proposed [commercial nonagricultural] **rural microenterprise** activity does not interfere with the use of the **qualifying** land for agricultural **or horticultural** purposes;

11. The [commercial nonagricultural] **rural microenterprise** activity is incidental to the use of the premises as a farm or subordinate to the agricultural use of the premises;

12. The [commercial nonagricultural] **rural microenterprise** activity is compatible with the agricultural use of the premises and surrounding land use of adjacent properties[.], **as**

evidenced by a **Determination of Compatibility** issued in accordance with N.J.A.C. 2:76-22A.3.

i. [Characteristics] **In addition to those characteristics considered for issuance of a Determination of Compatibility, characteristics** to be considered in determining whether the [commercial nonagricultural] **rural microenterprise** activity is compatible shall include, but not be limited to, whether the activity uses equipment or processes that create noise, vibration, glare, fumes, odors, or electrical or electronic interference (including interference with radio or television reception), which interfere with the quiet enjoyment of neighboring properties;

13. The [commercial nonagricultural] **rural microenterprise** activity uses the **qualifying** land in its existing condition. Use of the **qualifying** land in its existing condition shall mean the following:

i. No new [road] improvements **to farm lanes**, including new ingress and egress improvements, curbing, or changes needed to accommodate a new traffic pattern, shall be created **unless such improvements are necessary to provide access to the rural microenterprise or to protect public health and safety. Any such necessary improvements shall minimize the disturbance of the premises and its soil and water resources as determined by the Committee;**

[ii. No new parking areas, paved or unpaved shall be created;]

[iii.] **ii.** The area dedicated to **customer** parking shall not exceed [1,000] **2,000** square feet and **shall** provide [for greater] **no more** than [five] **10** parking spaces, with each parking space not to exceed 10 feet by 20 feet; [and]

iii. **The number of parking spaces shall be sufficient to accommodate visitors to rural microenterprise under normal conditions. The Committee may require that any parking areas be screened from public rights-of-way; and**

[iv. Vehicles or equipment too large to store within the structure, such as vehicles, trailers, etc., may be stored outside the structure, but within the permissible 1,000 square foot parking area. Products, supplies or by-products of the non-agricultural use shall not be stored outside the structure;]

iv. **No more than a combined total of 5,000 square feet of the land may be utilized for the outside storage of equipment, vehicles, supplies, products, or by-products, in association with the microenterprise. Any improvements to the land that are undertaken for these purposes shall be limited to those that are necessary to protect public health and safety and minimize disturbance of the premises and its soil and water resources;**

14. The total area of land and structures devoted to supporting the rural microenterprise does not exceed a one-acre envelope on the qualifying land;

[14.] **15.** The [commercial nonagricultural] **rural microenterprise** activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the **qualifying** land or the surrounding area [and does not require the creation of additional parking spaces, paved or unpaved] and is consistent with the deed of easement and land use approvals and any other applicable approvals that may be required by Federal, State, or local law, rules, regulations, or ordinances, provided that if such approvals contain any requirements for implementation of the [nonagricultural use] **rural microenterprise activity** that are inconsistent with N.J.S.A. 4:1C-32.1, this subchapter, **N.J.A.C. 2:76-22A**, [or] the special permit itself, **or the deed of easement**, the special permit will be denied;

[15. The owner has obtained local zoning and land use approvals and any other applicable approvals that may be required by Federal, State, or local law, rule, regulation, or ordinance, provided that if such approvals contain any requirements for implementation of the nonagricultural use that are inconsistent with N.J.S.A. 4:1C-32.1, this subchapter or the special permit itself, the special permit will be denied.]

[i.] **16.** [If this requirement has not been met at the time of application, the] **The** Committee may issue a special permit that will be conditioned on, and which will become effective only upon, the applicant's receipt of all necessary local, State, and Federal approvals, provided that if such approvals contain any requirements for implementation of the [nonagricultural use] **rural microenterprise activity** that are inconsistent with N.J.S.A.

4:1C-32.1, this subchapter, **N.J.A.C. 2:76-22A**, [or] the special permit itself, **or the deed of easement**, the special permit will be denied;

[16.] **17.** The [commercial nonagricultural] **proposed rural microenterprise** activity [does not contain multiple businesses/uses, including but not limited to, commercial, industrial or office use, within the same structure or structures;] **consists of, and accommodates, only a single business or use. Multiple businesses or nonagricultural uses shall not be permitted.**

i. **Nothing in (a)17 above shall limit the use of any structures, or portions thereof, for uses permitted under the deed of easement;**

[17.] **18.** [Lighting] **In addition to the lighting requirements pursuant to N.J.A.C. 2:76-22A.4, lighting** to support the [nonagricultural] **rural microenterprise** use shall meet the following criteria:

- i. Adequate lighting shall be provided to [insure] **ensure** safe movement of pedestrians and vehicles during working hours;
- ii. The height, intensity, and number of lighting facilities shall not be in excess of what is customary for agricultural use, **except as required pursuant to (a)18i above**, and shall be consistent with the agricultural setting;

iii. – iv. (No change.)

[18.] **19.** The [commercial nonagricultural] **rural microenterprise** activity [is] **shall not be a “high traffic volume business.”**

- i. The volume and frequency of visitors, deliveries, truck and other vehicle traffic shall not exceed the number of designated parking spaces at any given time and shall not create a nuisance for neighboring properties or the municipality; and
- ii. The number of employees needed to operate the commercial nonagricultural activity is not indicative of a high traffic volume business.]

[(1)] **i.** The proposed use shall not require more than four full-time employees, **or the equivalent**, at peak operational periods **in addition to the owner or operator**;

ii. **The proposed use shall not create traffic volume that interferes with pre-existing traffic patterns on surrounding public roads or that regularly causes traffic congestion when entering or leaving the premises.**

[19. The owner of the premises is not in violation of any provision of the deed of easement; and]

20. The location, design, height, and aesthetic attributes of the rural microenterprise activity shall reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structure(s). Such aspects shall be reviewed in accordance with N.J.A.C. 2:76-22A.1 et seq.;

21. The premises shall be in compliance with the deed of easement as determined by the Committee; and

[20.] **22.** The [commercial nonagricultural] **rural microenterprise** activity otherwise complies with N.J.S.A. 4:1C-32.1.

2:76-22.7 Review by board or nonprofit easement owner

(a) If a board or a qualifying tax exempt nonprofit organization [owns] **is the grantee of the** development easement, [it] **the Committee** shall [review an] **provide the grantee with a copy of the complete** application for a special permit [using the criteria set forth in N.J.A.C. 2:76-22.6, prior to the Committee's review].

(b) [The] **Within 30 days after receipt of a copy of the complete application for a special permit, the** board or qualifying tax exempt nonprofit organization shall [confirm that it has the following documents related to the development easement:] **provide comments to the Committee on the application**

- [1. A copy of the recorded deed of easement;
2. A copy of the title policy issued at the time the deed of easement was recorded;
3. A copy of the original survey of the premises; and
4. A complete application for a commercial nonagricultural activity special permit.

(c) The board or qualifying tax exempt nonprofit organization shall inform the Committee of its decision to approve or disapprove the issuance of the special permit, state the reasons for its decision,] and submit the following to the Committee for review:

1. Notification of any [commercial nonagricultural] **rural microenterprise** activities already in existence on the **qualifying** land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement;

2. The recommended time period for which the special permit shall be effective, and [any] **recommended** conditions of approval; **and**

[3. A resolution of the board or qualifying tax exempt nonprofit organization setting forth the approval or denial of the application and the reasons therefore;]

[4.] **3.** Confirmation that the owner of the premises is not in violation of any provision of the deed of easement **as determined by the board or nonprofit grantee**[; and].

[5. A checklist of documents provided by the applicant to the board/ qualifying tax exempt nonprofit organization.]

2:76-22.8 Committee review and issuance of **special** permit

(a) The Committee, [as] **if** the [owner of a] development easement **is held by the Committee or a board**, shall review an application and, in its sole discretion, may issue a special permit pursuant to N.J.S.A. 4:1C-32.1 and this subchapter.

(b) If a development easement is [owned] **held** by a [board or] qualifying tax exempt nonprofit organization, the Committee, [upon receipt of a complete application and notice of approval by] **in consultation with** the [board or] qualifying tax exempt nonprofit organization[,], **after its receipt of a copy of a complete application**, shall decide whether to issue a permit based on its review of the application using the criteria set forth in this subchapter.

[1. Approval of an application by a board or qualifying tax exempt nonprofit organization shall not be binding on the Committee if the Committee makes an independent determination that the application does not meet the criteria set forth in this subchapter.

2. If an application has been denied by a board or qualifying tax exempt nonprofit organization, no further action by the Committee is required.

3. If the Committee is missing any of the following documents related to the preservation of the premises, the board or qualifying tax exempt nonprofit organization shall provide the Committee with the documents upon request:

- i. A copy of the recorded deed of easement;
- ii. A copy of the title policy; and
- iii. A copy of the original survey of the premises.]

(c) The Committee shall inform the applicant of its decision to approve or deny the application and shall also inform the board or qualifying tax exempt nonprofit organization that [owns] **holds** the development easement.

(d) The Committee may issue a special permit that will be conditioned on, and which will become effective only upon, the applicant's receipt of all necessary local, State, and Federal approvals, provided that if such approvals contain any requirements for implementation of the [nonagricultural use] **rural microenterprise activity** that are inconsistent with N.J.S.A. 4:1C-32.1, this subchapter, or the special permit itself, the special permit will be deemed denied.

(e) The Committee may include other reasonable requirements to limit, to the maximum extent possible, the intensity of the permitted activity and its impact on the **qualifying** land and surrounding area.

(f) The Committee shall approve, approve with conditions, or disapprove the application within 90 days of receipt of a complete application. Such time period may be extended by the Committee for good cause or with the consent of the applicant.

[(f)] (g) When issuing a special permit, the Committee shall:

1. (No change.)
2. Stipulate a time period during which the landowner must exercise the special permit and initiate the [commercial nonagricultural] **rural microenterprise** activity.
 - i. The Committee may provide for an extension **of** up to six months upon a showing of special circumstances or **special** need presented by the applicant.
 - ii. If the owner fails to exercise the special permit and initiate the [commercial nonagricultural] **rural microenterprise activity** use within the period designated by the Committee, the special permit shall automatically expire, unless an extension is approved by the Committee pursuant to [(f)2i] (g)2i above.

[(g)] **(h)** In the event that the [record] owner **of the premises** obtains a special permit from the Committee, and subsequently **enters into a contract or contemplates entering into a** contract[s] for the sale of the premises, the contract purchaser [of] **or** the [premises] **prospective purchaser** may seek approval to continue the [commercial nonagricultural activity] special permit [after] **upon** conveyance of the property by applying for a new special permit [pursuant to N.J.A.C. 2:76-22.5,] **in accordance with this subchapter at least 90 days** prior to the [actual sale] **date of closing on the property. In order to apply for a new special permit, the contract purchaser or prospective purchaser must provide the Committee with the owner's written consent to the application.**

1. [The] **If the applicant is a contract purchaser, the** contract purchaser shall provide a copy of the executed contract for the purchase of the premises as part of [his or her] **the** application.

2. The contract purchaser **or prospective purchaser** must obtain a special permit issued by the Committee pursuant to [N.J.A.C. 2:76-22.8] **this section** prior to the conveyance of the premises. **If the contract purchaser or prospective purchaser fails to obtain the special permit prior to the conveyance of the premises, the existing special permit shall expire as of the date of conveyance.**

[(h)] **(i)** Upon the death of the [record] owner of the premises, the heir(s) or estate representative(s) may apply for a **continuation of the** special permit pursuant to N.J.A.C. 2:76-22.5 to avoid termination of the special permit.

1. The heir(s) or estate representative(s) may apply for and obtain Committee approval for **continuation of** a special permit within [six] **18** months of the [record] owner's death.

2. The special permit shall automatically expire [six] **18** months from the date of death of the [record] owner of the property holding that permit unless, **within that time period**, the heir(s) or estate representative(s) applies for and obtains **approval for continuation of** a special permit, or applies for and obtains **approval for** an extension of the [six-month] **18-month** month period[, within that time].

3. Upon request by the **heir(s) or** estate representative(s)[or heir(s)], the Committee may extend the period to apply for and obtain approval of the special permit for up to one year where required for settlement of estate issues provided that the period of any such extension shall not exceed the [period] **term** of the initial special permit. **Upon settlement of the estate, the special permit shall expire and, if desired, the new owner may apply for a new special permit pursuant to this subchapter.**

(j) **In the event that the owner of the premises obtains a special permit from the Committee and subsequently becomes incapacitated, the owner's attorney-in-fact may continue operation of the rural microenterprise activity in accordance with the terms and conditions of the special permit.**

(k) **In the event the owner of the premises retires from operation of the rural microenterprise and remains the property owner, the rural microenterprise lessee may continue**

the operation of the rural microenterprise activity in accordance with the terms and conditions of the special permit.

(l) A lease between the owner of the premises and the rural microenterprise lessee for the operation of the rural microenterprise activity shall be in writing and must be consistent with the special permit. The Committee shall be provided with a copy of the fully executed lease to ensure compliance with this section.

(m) The lease between the owner of the premises and the rural microenterprise lessee for the operation of the rural microenterprise shall be subordinated to the special permit for the rural microenterprise pursuant to a written subordination agreement. A copy of the special permit shall be attached to the subordination agreement.

(n) In the event there is disruption of income from gross sales of agricultural or horticultural products caused by circumstances beyond the farmer's control, such as crop failure, the farmer may continue operation of the rural microenterprise for up to two years after the date of the event of disruption. If after such two-year period the farmer is unable to demonstrate realized gross sales of at least \$2,500 for agricultural or horticultural products produced on the premises, exclusive of any income received from the rental of lands, the special permit shall be subject to revocation by the Committee after a hearing set forth in N.J.A.C. 2:76-22.13(b).

(o) The owner, heir, estate representative, or attorney-in-fact, as the case may be, may request termination of the special permit upon 30-day written notice to the Committee, which shall act upon the request.

[(i)] (p) (No change in text.)

2:76-22.9 Special permit

(a) No more than one special permit for a [commercial nonagricultural] **rural microenterprise** activity shall be valid at any one time for use on the premises.

[(b)] The standard duration of a special permit approved by the Committee shall not exceed five years.

1. A special permit may be approved for a duration greater than five years, but not more than 20 years, if the applicant provides sufficient justification pursuant to N.J.A.C. 2:76-22.5(a)9viii.]

[(c)] (b) No special permit shall be valid for more than 20 years unless an application for renewal is approved by the Committee [and a board or qualifying tax exempt nonprofit organization, if appropriate].

1. Renewal of a special permit may be sought within [two] **10** years of the date of scheduled permit expiration.

2. There shall be no fee for permit renewal, **as long as the rural microenterprise activity will not change from what was originally permitted.**

[(d)] (c) The special permit shall not run with the land, and each special permit shall explicitly **so** state [this], in addition to the following:

1. The permit shall automatically terminate **and the rural microenterprise activity shall cease** if there is a change in the record ownership of the premises [subject to], **except for** the following:

i. The contract purchaser **or prospective purchaser** of the premises obtains approval for a special permit prior to the conveyance of the premises pursuant to N.J.A.C. 2:76-22.8[(g)](**h**); or

ii. Upon the death of the record owner of the premise, the heir(s) **or estate representative** obtain(s) approval for a special permit pursuant to N.J.A.C. 2:76-22.8[(h)](**i**);

2. [The owner/seller of the restricted premises and the purchaser of the restricted premises shall notify the Committee, the owner of the development easement, and the municipality in] **In** the event there is a change in record ownership of the premises after a special permit has been issued, **the owner/seller and purchaser of the premises shall provide written notice of the change to the Committee, the owner of the development easement, and the clerk of the municipality in which the qualifying land is located;** and

3. The commercial nonagricultural activity shall cease immediately upon a change in record ownership of the premises, except as provided for in [(d)1] (**c**)**1** above.

i. An application may be submitted pursuant to N.J.A.C. 2:76-22.5, if the new owner of the premises wishes to continue the [commercial nonagricultural activity] **previously permitted rural microenterprise activity, or if the new owner wishes to establish a new rural microenterprise activity.** The application shall be treated as a new application, and the new owner shall be required to comply with all procedures set forth in N.J.A.C. 2:76-22.5, including payment of an application fee.

[(e)] **(d)** (No change in text.)

[(f)] **(e)** The special permit shall be recorded by the owner of the premises with the County Clerk's Office in the same manner as a deed.

1. A copy of the recorded special permit shall be provided to the Committee, the **clerk of the municipality in which the qualifying land is located**, the owner of the development easement, and to any owner of land that was subdivided from the initial preserved farm, if applicable.

[(g)] **(f)** The special permit shall be displayed in clear view on **or in** the structure(s) for which it was issued.

(g) Committee approval of a special permit shall not relieve the applicant from obtaining all other permits, approvals, or authorizations that may be required by Federal, State, or local law, rule, regulation, or ordinance.

(h) The rural microenterprise activity shall be deemed abandoned when it has not been in operation for a period of 18 consecutive months, unless the permittee, to the satisfaction of the Committee, provides documentation evidencing a hardship that

prevented the operation of the rural microenterprise activity. The Committee shall provide written notice to the permittee that the rural microenterprise activity has been deemed abandoned and that the special permit shall be subject to revocation by the Committee after a hearing as set forth in N.J.A.C. 2:76-22.13(b).

(i) A rural microenterprise activity shall not be considered an agricultural use as defined in N.J.S.A. 4:1C-13.b.

(j) Nothing in this section shall be interpreted as providing a rural microenterprise activity with protection under section 9 of the “Right to Farm Act,” P.L. 1983, c. 31 (N.J.S.A. 4:1C-9) if the rural microenterprise activity is not otherwise eligible for such protection.

2:76-22.10 Signs

(a) The placement of signs on the premises for purposes related to the [commercial nonagricultural] **rural microenterprise** activity is prohibited except for the following:

1. Directional signs indicating where persons visiting the [nonagricultural use] **rural microenterprise activity** should drive and/or park; [and]

2. One flush-mounted sign, not to exceed 20 square feet to be placed on the structure, which shall not be illuminated internally[.]; **and**

3. **The placement of signs shall be reviewed in accordance with N.J.A.C. 2:76-22A.**

(b) (No change.)

2:76-22.11 Monitoring

[(a)] The [owner of the development easement on the premises on which a special permit was issued by the] Committee shall **periodically** monitor [the commercial nonagricultural activity annually to ensure compliance with the special permit] **rural microenterprise activities** and [this subchapter.

1. A written report with photographs confirming the on-site inspection and determination of compliance or violation shall be provided to the Committee.

(b) The owner of the development easement] shall be permitted **to** access [to,] and [to] enter upon, the premises at all reasonable times for the purpose of inspection [to enforce] and [assure] **to ensure** compliance with [the] **a special permit and this subchapter**. [The owner of the development easement agrees to give the landowner at least 24 hours advance notice of its intention to enter the premises.]

2:76-22.12 Delegation to the Executive Director

(a) **The Committee may delegate to its Executive Director, by resolution, the authority to review and approve an application for a special permit, but only in cases where:**

1. **The Committee has not received comments from the board or qualifying nonprofit organization concerning any potential negative impacts of an application's approval; and**

2. The application complies with all provisions of P.L. 2005, c. 314 (N.J.S.A. 4:1C-23.1 et seq.), this subchapter, and N.J.A.C. 2:76-22A.

(b) An applicant whose application is denied by the Executive Director may appeal the decision to the Committee.

(c) Nothing in this section shall preclude the Executive Director from bringing any application before the Committee for review and approval, when such action is deemed appropriate by the Executive Director.

2:76-[22.12]22.13 Suspension, [or] revocation, **or denial** of a special permit

(a) The Committee may suspend, [or] revoke, **or deny** [the] a special permit **on qualifying land** for a violation of N.J.S.A. 4:1C-32.1, this subchapter, [or] **N.J.A.C. 2:76-22A**, any term or condition of the special permit, [if it owns the development easement on the farm] **or any term or condition of the deed of easement encumbering the qualifying land as determined by the Committee.**

[(b) The Committee may suspend or revoke the special permit on a farm in which the development easement is owned by a board or qualifying tax exempt nonprofit organization, if the Committee and board/nonprofit organization jointly determine that the applicant is in violation of any term or condition of the special permit, N.J.S.A. 4:1C- 32.1 or this subchapter.]

(b) The applicant or permittee shall be afforded the opportunity for a hearing prior to the Committee taking any action set forth in (a) above. The Committee may delegate authority to Committee staff to hold a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. If the hearing is held by Committee staff, Committee staff shall prepare a hearing report at the close of such hearing setting forth its findings. The Committee may adopt, modify, or reject the findings set forth in the hearing report.

(c) The decision of the Committee shall be considered a final administrative agency decision, subject to the right of appeal to the Appellate Division of the Superior Court.

[2:76-22.13 Request for hearing

(a) Any applicant or permit holder who is aggrieved by an action of the Committee regarding a permit or renewal application or the suspension or revocation of a permit may submit a written request to the Committee for a hearing.

1. A request for a hearing shall be sent to the Committee within 20 days of receipt of notice of the Committee's action.

2. Requests shall be sent to the Executive Director, State Agriculture Development Committee, New Jersey Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330.

3. Applicants or permit holders shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

4. The decision of the Committee shall be considered a final administrative agency decision, subject to the right of appeal to the Appellate Division of the Superior Court.]

2:76-22.14 Report of activities

(a) The Committee shall submit a report every two years to the Governor, President of the Senate, the Speaker of the General Assembly, the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment **and Energy** Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee or their designated successors, in accordance with N.J.S.A. 4:1C-32.3.

(b) Copies of the report shall also be made available to the public upon request and free of charge, and shall be posted on the [website of the] Committee **website**.

SUBCHAPTER 22A. SPECIAL PERMIT FOR RURAL MICROENTERPRISES ON PRESERVED FARMLAND - HISTORIC AND CULTURAL CHARACTER AND HERITAGE PRESERVATION PROVISIONS

2:76-22A.1 Purpose

The purpose of this subchapter is to determine if improvements and repairs to structures substantially altered or finished to support a rural microenterprise activity allowed on preserved premises pursuant to N.J.A.C. 2:76-22 are compatible with the agricultural character of the premises and do not diminish the historic or cultural character of the structure. Further, this subchapter sets forth the procedures for designating a heritage farm structure and sets forth the

terms and procedures for recordation of a heritage preservation easement on a heritage farm structure.

2:76-22A.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

“Associative historical value” means a building, structure, or real property associated with events that have made a significant contribution to the broad patterns of history or associated with the lives of persons significant in the State’s past.

“Building” means a structure enclosed with exterior walls or fire walls, built, erected, and framed of component structural parts, designed for the housing, shelter, enclosure, or support of individuals, animals, or property of any kind. “Building” and “structure” shall be interchangeable, except where the context clearly indicates otherwise.

“Character-defining features” means those visual aspects and physical features that comprise the appearance of a building or structure and include, but are not limited to, the overall shape of a structure, its materials, craftsmanship, decorative details, and features, as well as the various aspects of its site and environment.

“Committee” means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

“Curtilage” means the immediate land area surrounding a structure.

“Demolition” means the dismantling or tearing down of all or part of any building or structure and all operations incidental thereto.

“Demolition by neglect” means the absence of routine maintenance and repair that can lead to a building’s or structure’s structural weakness, decay, and deterioration resulting in its destruction.

“Determination of Compatibility” means a written approval issued by the Committee permitting the finishing, alteration, new construction, relocation, or demolition of structures supporting a rural microenterprise, provided the changes are compatible with the agricultural character of the premises and surrounding agricultural landscape and do not diminish the historic or cultural character of a heritage farm structure.

“Heritage farm structure” means a building or structure that is significantly representative of New Jersey’s agrarian history or culture and that has been designated as such by the Committee.

“Heritage preservation easement” means an interest in land less than fee simple absolute, stated in the form of a deed restriction executed by or on behalf of the owner of the land, appropriate to preserving a building or structure and its curtilage that is significant for its value or importance to New Jersey’s agrarian history or culture, and to be used exclusively for the

purposes of implementing sections 1 and 3 of P.L. 2005, c. 314 (N.J.S.A. 4:1C-32.1 and 32.3), to limit alteration in exterior form or features of such building or structure. The heritage preservation easement shall be in a form approved by the Committee, be recorded against the premises, be held by the Committee, and shall run with the land as set forth in N.J.A.C. 2:76-22.

“Owner of the premises” means the person who owns qualifying land.

“Protected features” means the historic form and character-defining features of the heritage farm structure consisting of its entire exterior, including the roof, front, sides, and rear of the structure and its curtilage, that have been documented in a baseline inspection report that the grantor and Committee agree provides an accurate representation of the premises at the time of the conveyance of a heritage preservation easement.

“Rural microenterprise” means a small-scale business or activity that is fully compatible with agricultural use and production on the premises, does not, at any time, detract from, diminish, or interfere with the agricultural use of the premises, and is incidental to the agricultural use of the premises. “Rural microenterprise” shall not include a personal wireless service facility as defined and regulated pursuant to N.J.S.A. 4:1C-32.2. There shall be two categories of rural microenterprise activities as follows:

1. Class 1 shall include customary rural activities, which rely on the equipment and aptitude historically possessed by the agricultural community, such as snow plowing, bed and breakfasts, bakeries, woodworking, and craft-based businesses; and

2. Class 2 shall include agricultural support services, which have a direct and positive impact on agriculture by supplying needed equipment, supplies, and services to the surrounding

agricultural community, such as veterinary practices, seed suppliers, and tractor equipment repair shops.

“Special permit” means a permit to allow one rural microenterprise activity to occur on qualifying land issued by the Committee pursuant to N.J.S.A. 4:1C-32.1 and the procedures and criteria set forth in N.J.A.C. 2:76-22 and this subchapter.

“Structure” means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land. “Building” and “structure” shall be interchangeable, except where the context clearly indicates otherwise.

“Surrounding agricultural landscape” means the continuous view of the premises and adjacent properties not to exceed a one-half mile radius of the premises.

2:76-22A.3 Review of improvements and repairs to structures supporting a rural microenterprise

(a) All exterior improvements and repairs to residential and agricultural structures and their curtilage supporting the rural microenterprise shall be compatible with the agricultural character of the premises and surrounding agricultural landscape and shall not diminish the historic or cultural character of the structures.

(b) In conjunction with the issuance of a special permit, a Determination of Compatibility shall be issued for projects that reflect the public interest of preserving the natural and unadulterated appearance of the premises, surrounding agricultural landscape, and structures within that landscape.

(c) The Committee shall review the location, design, height, and aesthetic attributes of a structure altered or finished to support the rural microenterprise before a special permit is issued.

(d) A Determination of Compatibility shall be necessary for each project where improvements and/or repairs to structures are proposed and shall be issued by the Committee in consultation with staff and/or a consultant who meets the professional qualifications set forth in 36 CFR Part 61. The Committee may also consult with the New Jersey Historic Preservation Office as necessary.

2:76-22A.4 Review of improvements and repairs up to 2,500 square feet of interior space to structures supporting a rural microenterprise

(a) For any project where improvements and/or repairs up to 2,500 square feet of interior space are proposed to alter or finish a structure to support the rural microenterprise, any or all of the following project components shall be evaluated pursuant to N.J.A.C. 2:76-22A.3:

1. Height, width, scale, and massing;

2. Design of doors and windows;
3. Design of porches and balconies;
4. Roof shape;
5. Architectural ornamentation;
6. Siting and directional orientation;
7. Materials, textures, and colors;
8. Signs and lighting;
9. Fences and gates;
10. Landscaping; and
11. Parking areas.

2:76-22A.5 Exemptions from review of improvements and repairs up to 2,500 square feet of interior space to structures supporting a rural microenterprise

(a) The following activities do not require a Determination of Compatibility from the Committee whether they are proposed at the time of application for the special permit or occur after the special permit has been issued:

1. Changes to interiors exclusively for agricultural purposes; and

2. Repair or exact replacement of any existing improvement, provided that the work does not alter the exterior appearance. The following activities are permitted as repairs:

i. Repairs of existing windows and doors and the installation of storm doors and windows that do not change their design, dimensions, or appearance;

ii. Maintenance and repair of existing roofing materials involving no change in the design, dimensions, or appearance of the structure;

iii. Structural repairs that do not alter the exterior appearance;

iv. Replacement of existing clapboards, shingles, or other siding with identical material; and

v. Maintenance and repair of existing clapboards, shingles, or other siding (including masonry) involving no change in the design, dimensions, or appearance.

2:76-22A.6 Review of improvements and repairs over 2,500 square feet of interior space to heritage farm structures

(a) For any project where improvements or repairs over 2,500 square feet of interior space are proposed to alter or finish a structure to support the rural microenterprise, the structure must be designated a heritage farm structure in accordance with N.J.A.C. 2:76-22A.7. No improvements or repairs over 2,500 square feet of interior space are permitted for a structure not designated as a heritage farm structure.

(b) All project reviews shall be conducted in accordance with N.J.A.C. 2:76-22A.2.

(c) All project components enumerated at N.J.A.C. 2:76-22A.4 shall be evaluated.

(d) All projects are subject to the following additional provisions:

1. Every reasonable effort shall be made to limit alterations to a heritage farm structure and its curtilage. Any architectural or engineering changes to the protected features including, but not limited to, alteration, removal, construction, remodeling, or other physical or structural change, including any change in color or surfacing of the protected features, require the Committee's prior approval. Demolition of a heritage farm structure is not permitted unless said demolition involves the removal of non-historic features that are not character-defining or the demolition of character-defining features solely to remedy a condition that is dangerous to life, health, or safety as determined by the appropriate construction code official;

2. Demolition by neglect is not permitted;

3. No changes to the protected features shall be made that would be inconsistent with the historical or cultural character of the heritage farm structure in accordance with the following provisions:

i. The protected features of a heritage farm structure shall not be removed or destroyed, including, but not limited to, windows and window trim, doors, door trim and lintels, cornices and brackets, porch posts, porch flooring, balustrades, spindles, foundation, siding, and roofing;

ii. Deteriorated protected features shall be repaired rather than replaced whenever possible. In the event that replacement is necessary, the new material should mimic the material being replaced in appearance, design, color, texture, and other visual qualities. Repair or replacement of missing character-defining features should be based on accurate duplications of features substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures;

iii. All heritage farm structures shall be recognized as products of their own time. Proposed alterations that have no historical basis and that seek to create an alternative historical appearance shall not be permitted. Pre-1960 alterations to the appearance of a heritage farm structure made after the structure was originally constructed but have acquired

historical significance in their own right should be retained;
and

iv. New additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the original structure would be unimpaired.

(e) Approval by the U.S. Department of Interior, National Park Service can be substituted for the Determination of Compatibility issued by the Committee for any project where improvements or repairs are proposed to alter or finish a building or structure listed on the New Jersey Register of Historic Places pursuant to N.J.S.A. 13:1B-15.128, for which Federal historic preservation rehabilitation tax credits are being sought pursuant to 26 U.S.C. § 47. Signs, lighting, fences, gates, landscaping, and parking will continue to be reviewed by the Committee pursuant to N.J.A.C. 2:76-22A.3.

(f) For any project where improvements or repairs are proposed to alter or finish a structure listed on the New Jersey Register of Historic Places pursuant to N.J.S.A. 13:1B-15.128, review and approval of the project is required by the New Jersey Historic Preservation Office pursuant to N.J.S.A. 13:1B-15.131 in advance of Committee approval.

2:76-22A.7 Procedures for designating a heritage farm structure

(a) Upon receipt of an application for a special permit for a rural microenterprise where improvements or repairs over 2,500 square feet of interior space are proposed to alter or finish a building or structure to support the rural microenterprise, the Committee shall utilize the following criteria to determine if the building or structure constitutes a heritage farm structure.

1. A building or structure must possess both of the following historic or cultural characteristics to be designated a heritage farm structure:

i. The building or structure was constructed prior to 1960; and

ii. The building or structure is substantially in its original form with its character-defining features largely intact and has not been subject to modern additions or alterations that obscure its original form or character-defining features.

2. In addition to meeting the criteria pursuant to (a)1 above, a building or structure must also possess at least one of the following historic or cultural characteristics to be designated a heritage farm structure:

i. The building or structure represents a rare or unusual type, or possesses a distinctive method, of construction;

ii. The building or structure is associated with important persons or trends in New Jersey agriculture; or

iii. The building or structure is part of an intact farmstead complex that collectively has associative historical value.

(b) The designation of a heritage farm structure will be determined by the Committee in consultation with staff and/or a consultant who meets the professional qualifications set forth in N.J.A.C. 2:76-22A.3(d). The Committee may also consult with the New Jersey Historic Preservation Office, as necessary.

(c) A building or structure determined eligible for listing in the New Jersey Register of Historic Places pursuant to N.J.A.C. 7:4-2.2 meets the criteria for designation as a heritage farm structure and any such building or structure does not require designation by the Committee.

(d) An owner may seek a reconsideration of a heritage farm structure determination by the Committee pursuant to (a)2 above by submitting documentation consistent with N.J.A.C. 7:4-2.3 prepared by a consultant who meets the professional qualifications set forth in N.J.A.C. 2:76-22A.3(d).

2:76-22A.8 Heritage preservation easement deed restrictions

(a) Upon receipt of an application for a special permit for a rural microenterprise in which more than 2,500 square feet of interior space of a heritage farm structure is proposed to be altered or finished, up to 100 percent of interior space of a heritage farm structure may be altered or finished provided the owner agrees to place on the structure, in a form approved by the Committee, a deed of heritage preservation easement as a condition of the issuance of the special permit.

(b) The heritage preservation easement shall be effective for 20 years from date of recording.

(c) The deed of heritage preservation easement shall be recorded in the county clerk's office within 30 days after the effective date of the Committee's approval of the rural microenterprise.

(d) If the Committee approves a renewal of a special permit prior to the expiration of that permit, the Committee shall record a renewal of the heritage preservation easement for a 20-year term in the county clerk's office within 30 days after the effective date of the Committee's approval of the renewal.

(e) If the Committee issues a new special permit for a rural microenterprise within a heritage farm structure after a previously-issued special permit has expired, a new 20-year heritage preservation easement shall be recorded in accordance with (c) above.

(f) The Committee shall record a termination of a heritage preservation easement in the county clerk's office within 30 days after the date of expiration or extinguishment pursuant to N.J.A.C. 2:76-22A.9(c).

(g) The heritage preservation easement deed restrictions shall be liberally construed to effectuate the purpose and intent of the New Jersey Rural Microenterprise Act, N.J.S.A. 4:1C-32.1 et seq., and shall include the project components enumerated at N.J.A.C. 2:76-22A.3, 22A.4, and 22A.6.

(h) For any project where an owner is seeking a Federal income tax deduction for donating a conservation easement for the conservation purpose of the preservation of a historically important land area or a certified historic structure pursuant to 26 U.S.C. § 170, the owner can utilize a preservation easement template approved in advance and held by both the Committee and the New Jersey Historic Trust in lieu of the heritage preservation easement deed restrictions as set forth in this section.

2:76-22A.9 Procedures in case of casualty loss of heritage farm structure's protected features

(a) If the protected features are damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other like casualty, the owner shall notify the Committee in writing within 10 days of the damage or destruction, with such notice describing what, if any, emergency work already has been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the protected features and to protect public safety, shall be undertaken by the owner without the Committee's prior written approval.

(b) Within 60 days of the date of damage or destruction, and if required by the Committee, the owner, at the owner's sole expense, shall provide the Committee with a written report prepared by a qualified architect or historic architect who meets the professional qualifications set forth in N.J.A.C. 2:76-22A.3(d), which report shall include the following:

- 1. An assessment of the nature and extent of the damage to the protected**

features;

2. A determination of the feasibility of the restoration and/or reconstruction of the damaged or destroyed portions of the protected features; and

3. A report recommending restoration/reconstruction work necessary to return the protected features to the condition they were in as of the date of execution of the deed of easement for heritage preservation.

(c) The Committee shall have 60 days from receipt of a complete report as set forth in (b) above within which to review the report and notify the owner, in writing, of its recommendations concerning restoration and reconstruction. Prior to making its recommendations, the Committee shall make a reasonable effort to consult with the owner and discuss the various options. If, after reviewing such report, the Committee and the owner agree that the purpose of the deed of heritage preservation easement would be served by the recommended restoration/reconstruction, the Committee and the owner shall establish a schedule pursuant to which the owner shall complete the restoration/reconstruction, in accordance with plans and specifications agreed to by the parties.

(d) If the Committee determines, after reviewing the report, that restoration/reconstruction would not serve the purpose and intent of the deed of heritage preservation easement, or is not practicable, then the owner may, with the Committee's prior written approval, demolish, remove, or raze all or a portion of the protected features and/or construct improvements. In this event, the owner and the Committee may agree to extinguish the

deed of heritage preservation easement in whole or in part, said extinguishment to be recorded by the Committee in the county clerk's office.