

SUBCHAPTER 24: SOLAR ENERGY GENERATION ON PRESERVED FARMS

2:76-24.1 Applicability

This subchapter applies to the construction, installation, operation, and maintenance of solar energy facilities on a preserved farm for purposes of generating solar energy to provide power or heat to the farm, reduce the farm's energy costs, or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm as authorized pursuant to N.J.S.A. 4:1C-32.4.

2:76-24.2 Purpose

The purpose of this subchapter is to establish the process for the Committee to review an application submitted by any person intending to construct, install, and operate solar energy facilities on a preserved farm for the purpose of generating solar energy to provide power or heat to the farm, reduce the farm's energy costs, or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm, as well as to make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose, provided that the solar energy facilities satisfy the provisions of N.J.S.A. 4:1C-32.4 and this subchapter.

2:76-24.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Agreement” means a legally binding written document between the landowner(s) and the board in the case of a farmland preservation program or between the landowner(s), the board, and the municipal governing body, in the case of a municipally approved farmland preservation program, which must be signed by all parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a farmland preservation program or municipally approved farmland preservation program and recorded with the county clerk’s office.

“Application” means a request to construct solar energy facilities, structures, and equipment on a preserved farm as detailed in a standard form adopted by the Committee.

“Biomass” means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm and which can be used to generate energy in a sustainable manner.

“Board” means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a sub-regional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

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

“Conservation plan” means a site-specific plan that prescribes land treatment and related conservation and natural resources management measures that are deemed to be necessary, practical, and reasonable for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution.

“Deed of easement” means the instrument restricting the premises for agricultural purposes that is recorded with the county clerk’s office 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). For land acquired in fee simple title for farmland preservation purposes, the deed transferring the restricted fee ownership of the land by the Committee or other entity is considered the deed of easement.

“Development easement” means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11.1 et seq. or 13:8C-1 et seq. and any relevant rules promulgated pursuant thereto.

“Electric distribution company” or “EDC” means an electric public utility, as the term is defined in N.J.S.A. 48:2-13, that transmits or distributes electricity to end users within New Jersey. An EDC cannot be an electric power supplier, but may provide basic generation service.

“Electric distribution system” means that portion of an electric system, which delivers electricity from transformation points on the transmission system to points of connection at a customer's property.

“Energy costs” means the farm’s expenses to provide power or heat to fixed structures on the farm during the previous calendar year. Fixed structures include buildings and permanent equipment but shall not include vehicles or vehicular equipment.

“Energy demand” means the total amount of power or heat consumed by fixed structures on the farm, expressed in kilowatt hours or kilowatt-hour equivalent, in a given period of time.

“Exception” means a portion of the applicant’s landholdings that is 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.

“Farm” means lands from which a development easement was acquired and a deed of easement recorded with the county clerk’s office or lands that are enrolled in an eight-year farmland preservation program or municipally approved farmland preservation program pursuant to N.J.S.A. 4:1C-11 et seq. and an agreement is recorded with the county clerk’s office. Also included is any portion of the farm excluded from the premises that cannot be severed, known as a nonseverable exception, or any portion of the farm excluded from the premises that can be severed but has not been subdivided from the farm, known as a severable exception.

“Farmland preservation program” means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c. 276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land.

“Geotextile fabrics” means permeable, woven and non-woven fabrics that allow for water infiltration into the underlying soil.

“Impervious cover” means any structure or surface that prevents the infiltration of precipitation into the land. This includes, but is not limited to, the inverter, pilings, poles, concrete, asphalt, machine-compacted soil, compacted stone areas, plastic or other impermeable ground cover, and foundations. Impervious cover shall not include the area of the solar panels or conservation practices listed in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, and prescribes practices and standards for the conservation and management of soil, water, and related natural resources, which is available at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg>, when implemented according to the practice standard.

“Municipally approved farmland preservation program” or “municipally approved program” means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c. 276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C-21.

“Net metering” means a system of metering electricity in which the electric power supplier/provider and/or the EDC:

1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator’s side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period; and

2. Compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the supplier/provider’s avoided cost of wholesale power.

“Occupied area” means the total contiguous or noncontiguous area(s) supporting the solar energy facilities and related infrastructure. The total area calculation shall include all areas of land that are devoted to or support the solar energy facilities; any areas of land no longer available for agricultural or horticultural production due to the presence of the solar energy facilities; nonfarm roadways including access roads; any areas of the farm used for underground piping or wiring to transmit solar energy or heat where the piping or wiring is less than three feet from the surface; the square footage of solar energy facilities mounted on buildings; and areas consisting of other related facilities, structures, and equipment, including any other buildings or site amenities, deemed necessary for the production of solar energy on the farm. It shall also include the total contiguous or noncontiguous area(s) supporting any wind or biomass energy generation facilities and related infrastructure on the farm.

“Operator” means the person or entity that installs, owns, or controls the solar energy facilities, structures and equipment.

“Owner” means the owner of record of the farm.

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

“Premises” means the property subject to the deed of easement, as defined by the legal metes and bounds description contained in the deed of easement.

“Prime farmlands” means lands so defined by the USDA Natural Resources Conservation Service, as found in the National Soil Survey Handbook at NSSH Part 622.04, which is incorporated herein by reference, as amended and supplemented and is available at <http://soils.usda.gov/technical/handbook/contents/part622.html>.

“Qualifying tax-exempt nonprofit organization” shall have the same meaning as set forth in section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3).

“Site plan” means a plot plan that includes the following:

1. Property lines and physical dimensions of the farm, including block(s) and lot(s) designations as set forth in the property survey created at the time of preservation of the farm or an updated version thereof;
2. Location, configuration, and size of the occupied area measured in square feet and acres;
3. Facility specifications, including manufacturer and model; industry technical bulletin describing the solar energy equipment; method of mounting; system height; rated capacity and expected annual generation/production in alternating current in kilowatt hours, if power will be generated, or BTUs and kilowatt-hour equivalent, if heat will be produced;

4. Location of above- and below-ground pipes, wires, and any other improvements or infrastructure to accommodate the solar energy facilities, with depths indicated for below-ground improvements and infrastructure;

5. For facilities that will be net metered, the location of electric meters and sources of energy demand that will be serviced by the facilities;

6. Proposed new roadways and existing roadways used to install, maintain, or otherwise access the solar energy facilities;

7. Computed distances for setbacks from property lines and roads;

8. Location and computed areas where concrete, asphalt, gravel, geotextile fabrics, or other such land treatments are proposed and the nature and extent of any site disturbances within the occupied area;

9. Location, rated capacity, installation date, and annual generation/production of any existing solar, wind, or biomass energy equipment or structures on the farm in alternating current kilowatt hours, if power is generated, or kilowatt-hour equivalent, if heat is produced;

10. Location of all existing structures and improvements on the farm;

11. For a farm with an occupied area of greater than one acre on the premises, a copy of the conservation plan that was approved by the soil conservation district, which is set forth at N.J.A.C. 2:76-24.6(a)1i(4); and

12. A copy of the farmland assessment form for the most recent tax year approved by the local tax assessor for the farm.

“Solar energy” means electricity or heat that is generated through a system that employs solar radiation.

“Solar energy facilities” means distinct solar energy systems that require their own dedicated inverter, electrical distribution, and transmission wiring system, and all other associated components, including, but not limited to, solar panels and films, arrays, collectors, piping, footings, supports, mounting and stabilization devices, pumps, transformers, utility poles, and other on-farm equipment, structures, and infrastructure necessary to operate and maintain the system for the generation of power or heat.

“Topsoil” means the upper part of the soil, generally the plow layer within the “A” horizon(s), ordinarily rich in organic matter, which is the most favorable material for plant growth.

“Wind energy” means electrical or mechanical power that is generated through a system that employs the kinetic energy in the wind.

2:76-24.4 Eligibility to install, operate, and maintain solar energy facilities on a farm

(a) Any person who owns a farm may submit an application to the Committee for the construction, installation, operation, and maintenance of solar energy facilities (facilities) on the farm provided that:

1. The facilities will not interfere significantly, as set forth in N.J.A.C. 2:76-24.6, with the use of the land for agricultural or horticultural production;

2. The facilities are owned by the landowner, or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the solar energy generation facilities, structures, or equipment by which the landowner uses the income or

credits realized from the solar energy generation to purchase the facilities, structures, or equipment;

3. The facilities will be used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm;

4. Solar energy facilities on the farm are limited in total annual energy generation to:

i. The farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated from facilities, structures, or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010; or

ii. Alternatively at the option of the landowner, to an occupied area consisting of no more than one percent of the area of the farm;

5. If wind or biomass energy generation systems are located on the farm, the limits in (a)4i and ii above shall apply to the cumulative total energy generated or area occupied by all the solar, wind, and biomass energy facilities;

6. The owner(s) of the farm and the solar energy facilities will sell energy only through net metering, or as otherwise permitted under an agreement pursuant to (a)2 above, and/or directly to the electric distribution system provided that the solar energy facilities occupy no greater than one percent of the farm;

7. The land occupied by the solar energy facilities is eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and will continue to be eligible for such valuation after construction of the solar energy facilities;

8. The solar energy facilities do not exceed the one acre of impervious cover on the premises; and

9. A solar energy facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

2:76-24.5 Application for the construction, installation, operation, and maintenance of a solar energy facility

(a) Any person who owns a farm may apply for approval to construct, install, operate, and maintain a solar energy facility by submitting an application to the Committee. The application shall include the following information and documents:

1. A copy of the recorded deed showing the current owner of record of the restricted premises;
2. A site plan;
3. Digital photographs showing the proposed installation site taken from various angles and distances to show the installation site and immediate surroundings;
4. A proposed or fully executed purchase or lease agreement for the solar energy facilities, structures, and equipment that clearly identifies that the owner of the qualified farm owns or will own the facilities, structures, and equipment by the end of the term of a lease agreement and the end date for that agreement;

5. For solar energy facilities that will provide power, documentation from the electric distribution company that the solar energy facilities are designed in accordance with net metering requirements pursuant to N.J.A.C. 14:8-4; documentation showing that the solar energy facilities will provide power directly to the farm outside of a meter; or documentation from PJM Interconnection, LLC or the EDC showing that the solar energy facilities will provide power directly to the electric distribution system;

6. A copy of the farm's electric utility bills, and/or copies of other bills, receipts, or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand for the previous calendar year; and

7. If the farm is located in the Pinelands Area, evidence that written confirmation has been requested from the Pinelands Commission that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

(b) Any person who owns a farm and intends to expand a previously installed solar energy facility shall submit a new application to the SADC.

2:76-24.6 Evaluation criteria

(a) When reviewing an application, the Committee shall determine whether the application meets the following criteria:

1. Factors for determining if the solar energy facilities, structures, and equipment interfere significantly with the use of the land for agricultural or horticultural production are as follows:

i. The facilities do not conflict with the deed of easement, including, but not limited to, the following:

(1) There is no detrimental impact to drainage, flood control, water conservation, erosion control, or soil conservation on the premises;

(2) During construction and installation of the solar energy facilities, appropriate measures are taken to control soil erosion from wind and water on the premises, including, but not limited to, the following:

(A) The temporary stabilization of exposed areas using vegetative cover or mulch; and

(B) The application of nonpotable water to exposed areas and the utilization of barriers to control air current and minimize soil blowing;

(3) During operation and maintenance of solar energy facilities, appropriate measures are taken to address soil and water conservation resource concerns on the premises;

(4) Solar energy facilities with an occupied area of more than one acre on the premises shall be constructed, installed, operated, and maintained in accordance with a farm conservation plan that addresses soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, prescribing practices and standards for the conservation and management of soil, water, and related

natural resources, which is available at

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg>. The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet;

(5) The types of agricultural use or production that can occur on the premises shall not be restricted.

(A) The presence of the solar energy facilities shall not negatively impact the ability to utilize any portion of the premises outside the occupied area for a variety of agricultural or horticultural purposes;

(6) The solar energy facilities shall not interfere with the ability to access the premises for agricultural or horticultural purposes or uses, and to ensure compliance with the deed of easement and the provisions of this subchapter;

(7) Solar energy facilities shall not supply power or heat to an off-farm source of energy demand.

(A) Solar energy facilities shall not be interconnected to any off-farm energy consumer or off-farm source of energy demand.

(B) Solar energy facilities shall not be interconnected in a series to other energy generation facilities located off the farm.

(C) Solar energy facilities may be directly connected to the electric distribution system for the primary purpose of producing wholesale power, provided the facilities do not occupy more than one percent of the farm and are otherwise consistent with N.J.S.A. 4:1C-32.4 and the provisions of this subchapter;

(8) Easements shall not be provided through the farm for the purpose of transmitting power generated by an off-farm source, or to provide for roadways to service solar energy facilities not located on the farm.

(A) The prohibition on easements through the farm in this sub-subparagraph shall not apply to severable exception areas;

(9) Facilities servicing a use in a severable exception area shall be located entirely within the severable exception area;

(10) Facilities primarily servicing nonagricultural and/or nonresidential uses in a nonseverable exception area shall be located entirely in the nonseverable exception area to the maximum extent practicable or financially feasible.

(A) Where it is not possible to locate such facilities entirely in the nonseverable exception area, priority shall be given to mounting facilities on existing buildings and structures, and the portion of the occupied area outside the nonseverable exception area shall not exceed one acre or one percent of the farm, whichever is less, and the SADC may require from the facilities installer an itemization of all energy consuming devices connected to the electric revenue meter(s) to be serviced by the facilities, by energy demand and type of use, to determine whether the facilities will primarily service nonagricultural and/or nonresidential uses in the nonseverable exception area.

(B) Facilities located outside nonseverable exception areas to service energy demand within the nonseverable exception areas, may not be permitted or may be subject to more stringent Federal limitations than described in this sub-subparagraph, if the

farm was preserved with funding from the U.S. Department of Agriculture Natural Resources Conservation Service's Farm and Ranch Lands Protection Program; and

(11) The facilities shall be located and configured in a manner that maximizes the use of the premises for agricultural or horticultural purposes.

(A) Facilities shall not be constructed or installed on prime farmland to the maximum extent practicable and financially feasible.

(B) Facilities shall be located along field edges and in nonproduction areas to the maximum extent practicable and financially feasible.

(C) Facilities shall be sited and configured to avoid dividing larger fields into smaller fields and isolating areas of the farm such that they are no longer viable or efficient for agricultural production, including, but not limited to, restricting the movement of agricultural vehicles/equipment for planting, cultivation, and harvesting of crops, and creating negative impacts on support infrastructure such as irrigation systems;

ii. The mounting of solar panels, collectors, or films constructed, installed, and operated on the premises shall be done in the following manner:

(1) The preferred installation shall be on buildings or facilities to minimize adverse impacts on the productivity of the soil.

(2) In the event that the method in paragraph (a)1ii(1) above is not practicable or financially feasible, the method of installation shall be as follows:

(A) On the ground by a screw, piling, or similar system that does not require a footing, concrete, or other permanent mounting; or

(B) Where the occupied area does not exceed one acre, using gravel within contained structures, concrete block, or similar materials for the purpose of providing ballast for mounting the solar energy facilities.

(3) In the event that the methods in (a)1ii(2) above, for mounting the solar panels, collectors, or films, are not practicable or financially feasible, then written justification shall be provided by a licensed professional engineer responsible for designing the installation of the solar panels, collectors, or films that a permanent ground mounting is necessary to conform with Federal or State laws, rules, or regulations, and that the permanent mounting requires footings, concrete, or other permanent methods;

iii. The treatment of the premises for purposes of constructing, installing, operating, or maintaining the solar energy facilities within the occupied area shall be in accordance with the following standards to ensure the land can readily be returned to active agricultural or horticultural production after the removal of the solar energy facilities.

(1) Site disturbance associated with the solar energy facilities, including, but not limited to, grading, topsoil, and subsoil removal, excavation and soil compaction, shall not exceed one acre on the premises.

(A) If wind or biomass energy generation facilities are located on the premises, the one-acre limit in (a)1iii(1) above shall apply to the cumulative total site disturbance resulting from all of the solar, wind, or biomass energy systems on the premises.

(B) Land smoothing in accordance with Practice Standards (Code 466) of the Natural Resources Conservation Service New Jersey-Field Office Technical Guide (NRCS NJFOTG) shall not be considered site disturbance.

(2) Excess topsoil shall not be removed from the premises, but shall be distributed or stockpiled elsewhere on the premises.

(A) For farms with an occupied area of more than one acre, topsoil shall be distributed or stockpiled on the premises in accordance with the farm conservation plan.

(3) The use of geotextile fabrics on the premises is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section.

(4) The use of concrete or asphalt on the premises is prohibited within the occupied area, except as follows:

(A) The mounting of inverters, transformers, power conditioning units, control boxes, pumps, and other such system components;

(B) The mounting of solar panels, films, and arrays when used as ballast, as described in (a)1ii(2)(B) above; and

(C) The mounting of the solar panels, films, and arrays, if determined necessary by a licensed professional engineer as described in (a)1ii(3) above.

(5) The placement of gravel or stone on the premises is prohibited for the purpose of preventing vegetative growth unless recommended as part of an approved NRCS soil and water conservation practice.

(6) New roadways within the occupied area shall be designed as grassed roadways to minimize the extent of soil disturbance, water runoff, and soil compaction on the premises.

(A) The use of geotextile fabrics and gravel placed on the surface of the existing soil for the construction of temporary roadways during the construction of the solar energy facilities is permitted provided that the geotextile fabrics and gravel are removed once the solar energy facilities are in operation.

(7) Where it is not practicable to utilize the occupied area on the premises for agricultural or horticultural production in accordance with N.J.S.A. 54:4-23.1 et seq.:

(A) The occupied area for ground-mounted facilities shall be maintained in vegetative cover to prevent soil erosion, mowed on a regular basis, and managed to prevent weeds or other invasive species from growing or spreading to other areas of the farm; or

(B) The occupied area beneath facilities mounted on buildings or other structures permitted pursuant to the deed of easement, including, but not limited to, carports or equipment shelters, shall be maintained in a manner consistent with the use of the buildings or structures; and

iv. The solar energy facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are no longer being utilized to produce solar energy for a period of 18 consecutive months.

(1) The decommissioning of facilities, structures, and equipment on the premises shall ensure that the agricultural productivity of the soil is restored to the greatest extent practicable, including, but not limited to, the following:

(A) All solar energy facilities shall be removed from the farm and the land shall be restored in order to achieve as much agricultural productivity of the soil as practicable and financially feasible; and

(B) The decommissioning of solar energy facilities with an occupied area of greater than one acre on the premises shall be performed in accordance with a farm conservation plan prepared pursuant to NJ-FOTG that addresses soil and water resource concerns, as set forth at (a)1i(4) above.

2. Factors for determining if the facilities, structures, and equipment are owned by the landowner or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the solar generation facilities, structures, or equipment by which the landowner uses the income or credits realized from the solar energy to purchase the facilities, structures, or equipment are as follows:

i. A copy of a fully executed purchase or lease agreement for the facilities, structures, and equipment, shall be provided to the Committee that clearly identifies that the owner(s) of the farm will be the sole owner(s) of the facilities, structures, and equipment on installation, or will be the sole owner(s) by the end of the term of the agreement.

(1) The term of an agreement whereby a farm owner leases the facilities and will purchase them at the end of the agreement shall not exceed 20 years.

(2) The agreement shall include an unconditional assignment to any subsequent owner taking title to the farm prior to the conclusion of an agreement.

ii. No portion of the land on the premises may be leased for the purpose of solar energy generation or production.

(1) Solar energy facilities may be leased only pursuant to an agreement in (a)2i above.

(2) A farm owner shall not lease solar energy facilities to another individual or party.

3. Factors for determining if the power or heat to the farm is provided directly or indirectly, or reduces through net metering or similar programs and systems, energy costs on the farm, are as follows:

i. For facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, which is available from the EDC and includes a Part 1 (Terms and Conditions) and Part 2 (Certificate of Completion) shall be provided to the Committee, and the project shall meet the definition of net metering as set forth in this subchapter; or

ii. For facilities that will not be net metered, the landowner shall provide to the Committee:

(1) Documentation that the energy will be used to provide power or heat directly to the farm outside of the meter; or

(2) Where the facilities will provide energy directly to the electric distribution system, copies of electric utility bills and/or other bills, receipts, or documentation demonstrating the cost to provide power or heat to meet the farm's energy demand and a copy of either:

(A) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at

<http://www.pjm.com/documents/~media/documents/agreements/tariff.ashx>, completed and signed by the EDC; or

(B) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, completed and signed by the EDC.

4. Factors for determining that the annual energy generation of solar energy facilities on the farm is limited to the farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated or collected from facilities, structures, or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010, are as follows:

i. The annual energy generation is based on the monthly sum of the farm's previous calendar year's energy demand and does not exceed that amount plus 10 percent.

ii. The landowner shall provide copies of the farm's electric utility bills and/or other bills, receipts, or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand.

iii. The farm owner shall provide documentation of installation date(s) for energy generation facilities, structures, or equipment already existing on roofs of buildings or other structures on the farm.

iv. If wind or biomass energy generation facilities are located on the farm, the limit in (a)4i above applies to the cumulative energy generated by solar, wind, and biomass facilities on the farm.

5. Factors for determining that the solar energy facilities on the farm are limited to an occupied area consisting of no more than one percent of the area of the farm are as follows:

i. A copy of the site plan depicting the occupied area shall be provided to the Committee;

ii. Solar energy facilities installed on the farm prior to the enactment of P.L. 2009, c. 213 on January 16, 2010, shall not be considered part of the occupied area in applications for new solar energy facilities unless the applications involve the expansion of pre-existing facilities; and

iii. If wind or biomass energy generation facilities are located on the farm, the limit in this paragraph shall apply to the total cumulative area occupied by all the solar, wind, and biomass energy generation facilities on the farm.

6. Factors for determining that the person who owns the farm and the solar energy facilities may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to (a)2 above, and/or directly to the electric distribution system provided that the occupied area of the solar energy facilities does not exceed one percent of the farm.

i. For facilities that will be net metered, an approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, which is available from the EDC and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering;

ii. For facilities that will be connected directly to the electric distribution system, the following shall be provided:

(1) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at <http://www.pjm.com/documents/~media/documents/agreements/tariff.ashx>, completed and signed by the EDC; or

(2) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, completed and signed by the EDC;

iii. A copy of a fully executed purchase or lease agreement for the solar energy facilities, that clearly identifies that the owner of the farm owns or will purchase and own the solar energy facilities, structures, and equipment at the end of the term of the agreement and the end date of the agreement shall be provided to the Committee.

iv. For solar energy facilities that will connect directly to the electric distribution system, the Committee shall determine from a review of the site plan that the occupied area of the proposed facilities does not exceed one percent of the farm.

(1) If wind or biomass energy generation facilities are located on the farm, the limit in this subparagraph shall apply to the total cumulative area occupied by all of the solar, wind and biomass energy facilities on the farm.

7. Factors for determining that the land occupied by the solar energy facilities is eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and continues to be eligible for such valuation pursuant to N.J.S.A. 54:4-23 are as follows:

i. A copy of the farmland assessment form approved by the local tax assessor shall be provided for the most recent tax year.

ii. The SADC shall confirm, in consultation with the New Jersey Department of the Treasury, Division of Taxation, that the solar energy facilities as proposed will not disqualify any portion of the farm from farmland assessment eligibility.

8. The impervious cover associated with the solar energy facilities shall not exceed one acre on the premises.

i. If wind or biomass energy generation facilities are located on the premises, the one-acre limit in (a)8 above shall apply to the cumulative total of impervious cover resulting from all of the solar, wind, and biomass energy facilities on the premises.

9. Factors for determining that a solar energy facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111, are as follows:

i. A copy of written correspondence from the Pinelands Commission shall be provided confirming that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

10. The construction of solar energy facilities on farms preserved with any funding provided by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) through the Farm and Ranch Lands Protection Program (FRPP), or any successor NRCS grant program protecting land for agricultural uses, shall require the advanced, written approval of the NRCS.

11. Compliance with the criteria in this section shall be in addition to any other applicable State or Federal laws or regulations, including, but not limited to:

- i. N.J.S.A. 13:19-1 et seq., Coastal Area Facility Review Act;
- ii. N.J.A.C. 7:38, Highlands Water Protection and Planning Act Rules; and
- iii. N.J.A.C. 7:8, Stormwater Management.

2:76-24.7 Committee review of an application

(a) The Committee shall determine whether an application is complete pursuant to N.J.A.C.

2:76-24.5.

1. Once the Committee determines an application is complete:

i. If the development easement is owned by a board or qualifying tax-exempt nonprofit organization, the Committee shall forward the application to the board or qualifying tax exempt nonprofit organization; or

ii. If the farm was preserved with any USDA-NRCS Farm and Ranch Land Protection Program funding, the Committee shall forward the application to the USDA-NRCS;

2. If the Committee determines the application is incomplete, the Committee shall notify the applicant in writing and identify all information required for completion.

2:76-24.8 Board or nonprofit review of an application

The board or qualifying tax exempt nonprofit organization shall provide any comments on the application to the SADC within 30 days from the date of the Committee's notice.

2:76-24.9 Final Committee review

(a) Within 90 days from determination of a complete application, the SADC shall approve, approve with conditions, or disapprove the application.

1. The Committee's decision shall consider the factors in N.J.A.C. 2:76-24.6 and any substantive, objective issues raised in comments by the board or nonprofit organization that otherwise have not been considered.

2. The Committee's approval or denial of an application is subject to the Governor's review period following submission of the Committee's meeting minutes.

3. For a farm in the Pinelands Area, receipt of written confirmation from the Pinelands Commission that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 shall be required.

(b) The Committee may delegate review and approval authority to the Executive Director pursuant to N.J.S.A. 4:1C-5.e and 5.f for applications for solar energy facilities where the board or nonprofit organization has not submitted comments concerning negative impacts from the application, the solar energy facilities will not result in any new impervious cover, and the application is in conformance with all provisions of N.J.S.A. 4:1C-32.4 and this subchapter. This shall not preclude the Executive Director from bringing any application before the Committee for review and approval, if deemed appropriate. The Committee, at the request of the applicant, shall review an application that has been denied by the Executive Director and approve, approve with conditions or disapprove the application.

2:76-24.10 Suspension or revocation of an approval

The Committee may suspend or revoke an approval for solar energy facilities for a violation of N.J.S.A. 4:1C-32.4, this subchapter, or any term or condition of the approval.

2:76-24.11 Request for hearing

(a) Any farm owner who is aggrieved by an action of the Committee regarding an application or suspension or revocation of an approval 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. Farm owners shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedures 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.

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.

