

AGRICULTURE

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Rural Microenterprise Activity on Preserved Farms

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

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

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

Proposed: November 6, 2017, at 49 N.J.R. 3463(a).

Adopted: January 25, 2018, by the State Agriculture Development
Committee, Susan E. Payne, Executive Director.

Filed: May 9, 2018, as R.2018 d.123, **with a non-**

substantial change not requiring additional public notice and
comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: June 4, 2018.

Expiration Date: December 2, 2023.

Summary of Public Comments and Agency Responses:

Comments were received from Jean Public and from Lori

Savron, PP, AICP, Planning Director, Montgomery Township,
Somerset County.

COMMENT: Jean Public expressed concern that the proposed regulations are the result of the State's agricultural sector obtaining undue advantage over the interests of the general citizenry, particularly those individuals who live next to farms, and that such advantage is unwarranted given the harm to plants and animals caused by farming operations.

RESPONSE: The State Agriculture Development Committee (SADC) respectfully disagrees with Ms. Public's comment that the proposed rules reflect the priority of agricultural interests over those of the general public. The proposed rules effectuate State laws enacted to spur economic activity on preserved farms that is of an appropriate use and scale to support the viability of family farms, and to effectuate preservation of historic farm structures that are emblematic of New Jersey's rich agrarian history. The achievement of those dual goals will benefit both the agricultural community and the general public. The public's interests are protected by various statutory conditions and restrictions on the eligibility for and operation of a rural microenterprise activity (RME) on a preserved farm, including

the requirement that, as a condition of an rural microenterprise (RME) permit, all other appropriate Federal, State, and local permits, approvals, and authorizations must be obtained. The SADC cannot respond to Ms. Public's unsubstantiated claim about harm to plants and animals.

COMMENT: Lori Savron, PP, AICP, Planning Director, on behalf of Montgomery Township, Somerset County, requested that the proposed rules be revised to require that copies of the application for a rural microenterprise activity be provided to the municipality in which the RME will be located. The commenter observed that sending a copy of the application to the relevant municipality will allow the latter to provide input to the SADC and/or to the holder of the development easement recorded on the RME property. Ms. Savron also requested that proposed N.J.A.C. 2:76-22.7(c) be modified to add the affected municipality as a recipient of SADC's notice of RME permit decisions.

The commenter asked the SADC to incorporate in the proposed rules, a process by which property owners adjacent to a preserved farm upon which an RME is located can alert the SADC

to issues about the RME activities for further agency investigation.

Ms. Savron expressed support for the recognition in the regulations that, as a condition of an RME permit, all other appropriate Federal, State, and local permits, approvals, and authorizations must be obtained and that the RME is not protected under the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

RESPONSE: The SADC thanks Montgomery Township for its comments. The SADC disagrees that a municipality in which the RME may be located should receive a copy of the RME permit application in order to provide input to the SADC's application review process. N.J.S.A. 4:1C-32.1.i and proposed N.J.A.C. 2:76-22.9(g) condition issuance of an RME permit on all appropriate Federal, State, and local permits, approvals, and authorizations, so affected municipalities will have ample opportunity to review and make decisions on proposed RMEs within their jurisdiction. Further, in light of the requirement that RME permits are to be issued subject to relevant local approvals, the SADC believes that municipal review at the application stage could prejudice subsequent proceedings before municipal zoning officials and land use boards. In addition, municipalities are not holders of deeds of easement under the Agriculture Retention and

Development Act, N.J.S.A. 4:1C-11 et seq. On the other hand, counties and nonprofit organizations receive copies of the application because they hold property interests in the preserved farm as deed of easement grantees and, therefore, have a particularized stake in the activities occurring on the property.

The SADC agrees with the comment that the municipality in which the RME may be located should receive notice of the SADC's decision to approve or deny the application at N.J.A.C. 2:76-22.8(c). The rule already requires the SADC to inform the applicant and easement holder of the agency's decision to grant or deny the application, so the additional requirement to inform the municipality in which the development easement on the property was conveyed is ministerial in nature and does not significantly enlarge the scope and burden of the rule.

There are existing and sufficient reporting mechanisms in which adjacent property owners can engage with relation to permitted RME activity, so the SADC does not agree with the commenter that an additional notification process should be incorporated in the proposed rules. For example, any members of the public who believe that an RME activity exceeds permit conditions or restrictions can notify relevant local government

officials who can, in turn, provide that information to the SADC for further appropriate action. The public can also reach the SADC directly by phone, mail, and e-mail, with the contact information easily accessible on the agency website at <http://nj.gov/agriculture/sadc/about/contact/index.html>.

Federal Standards Statement

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

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisk ***[thus]***):

2:76-22.4 Eligibility to apply for a special permit for a rural microenterprise activity

(a) (No change from proposal.)

(b) In the event the premises 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 rural microenterprise activity may be issued by the Committee for the preserved premises as it was configured on *[(the effective date of this amendment)]* ***June 4, 2018***, regardless of the number of parcels of land resulting from approval(s) of any division(s) of premises occurring after *[(the effective date of this amendment)]* ***June 4, 2018***.

1. If a special permit for a 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)]* ***June 4, 2018***, no other special permit for a 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.)

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

(a)-(b) (No change from proposal.)

(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 holds the development easement ***and the municipality in which the subject property is located***.

(d)-(p) (No change from proposal.)