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RULE PROPOSALS

**AGRICULTURE
STATE AGRICULTURE DEVELOPMENT COMMITTEE**

39 N.J.R. 2568(a)

Proposed New Rules: N.J.A.C. 2:76-22 and 23

[Click here to view Interested Persons Statement](#)

Commercial Nonagricultural Activities; Personal Wireless Service Facilities

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

Authority: *N.J.S.A. 4:1C-32.1* et seq.

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

Proposal Number: PRN 2007-230.

Submit comments by September 14, 2007 to:

Susan E. Craft, Executive Director
State Agriculture Development Committee
P.O. Box 330
Trenton, NJ 08625-0330

The agency proposal follows:

Summary

The State Agriculture Development Committee (SADC) proposes these new rules pursuant to legislation enacted to allow commercial nonagricultural activities to occur, and personal wireless service facilities to be erected, on preserved farmland. See *N.J.S.A. 4:1C-32.1* et seq. Prior to the enactment of this legislation, landowners who preserved their land under the State's farmland preservation program were prohibited from conducting commercial nonagricultural activities on their farms, including erecting cellular telephone towers, as they had conveyed the development rights on their land. When a farmer conveys the development rights on his land, deed restrictions are placed on the farm that prohibit commercial nonagricultural uses.

If a farmer excluded a portion of the farm from the preserved area, however, he retained the ability to conduct such activities on that portion unencumbered by the deed restrictions. Such portions of excluded land are referred to as "exceptions" or "exception areas."

As set forth in the legislation and reiterated in the proposed rules, only farms that did not retain exception areas are eligible for a special permit to conduct commercial nonagricultural activities. All preserved farms, however, are eligible for special permits to erect personal wireless service facilities, regardless of whether they have exception areas.

The legislation included qualifying criteria and conditions for owners of preserved farmland to be able to apply and obtain a permit to conduct commercial nonagricultural activities and enter into agreements for the construction of personal wireless service facilities. In addition to the parameters set forth in the law, the legislation authorized the SADC to develop guidelines for the implementation of the law. The proposed new rules set forth guidelines and criteria for special permit applications, evaluation of applications, monitoring the permitted uses, and the procedure and criteria for suspension and revocation of permits.

Subchapter 22 applies to special permits for commercial nonagricultural uses and Subchapter 23 applies to special permits for personal wireless service facilities.

Proposed N.J.A.C. 2:76-22.1 and 23.1 set forth the scope of farms that are eligible to apply for special permits under the respective subchapters.

Proposed N.J.A.C. 2:76-22.2 and 23.2 explain the purpose of the subchapters, which is to establish guidelines and standards for applying and granting special permits.

Proposed N.J.A.C. 2:76-22.3 and 23.3 set forth the definitions of terms used in the subchapters.

Proposed N.J.A.C. 2:76-22.4 and 23.4 set forth the eligibility criteria for special permits under the respective subchapters. To be eligible for a special permit under both subchapters, the farm must meet the definition of commercial farm in N.J.A.C. 2:76-22.3 and 23.3, respectively. To be eligible for a permit to conduct a commercial nonagricultural activity, proposed N.J.A.C. 2:76-22.4 states that the farm has to meet the definition of "qualifying land," meaning it had to have been preserved for farmland preservation purposes prior to the date of enactment of *N.J.S.A. 4:1C-32.1* et seq., with no exception areas excluded from the preserved farm. All preserved farms, however are eligible to apply for permits to erect personal wireless facilities. These sections also address situations where Federal funding has been used to preserve the farm and where the farm has been divided after it was preserved pursuant to *N.J.A.C. 2:76-6.15(a)15*. Landowners who meet the criteria for commercial nonagricultural activities and personal wireless service facilities are eligible to apply and receive special permits for both uses. Proposed N.J.A.C. 2:76-22.4 and 23.4 also prohibit special permits to be issued to farms that have a commercial nonagricultural activity 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. The proposed new rules allow the Committee to waive this requirement if the preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products derived from the farm or for other good cause shown by the applicant.

Proposed N.J.A.C. 2:76-22.5 and 23.5 set forth the procedure for applying for special permits under the respective subchapters. The applicant must provide detailed information regarding existing structures on the property, proposed expansions of structures, proposed new structures (in N.J.A.C. 2:76-23.5 only), in addition to other information. Proposed N.J.A.C. 2:76-22.5 requires applicants to identify new structures built on the farm within three years prior to the date of application and to indicate whether they intend to use those new structures for a function previously served by the structure that will accommodate the nonagricultural use.

Proposed N.J.A.C. 2:76-22.6 and 23.6 set forth the criteria to be used by the Committee, county agriculture development boards, and nonprofit agencies when evaluating applications.

Proposed N.J.A.C. 2:76-22.7, 23.7, 22.8 and 23.8 address the procedures for reviewing applications by the Committee, county agriculture development boards, and nonprofit organizations, depending upon who owns the development easement. If the Committee owns the development easement, the Committee is the sole agency reviewing applications and deciding whether to grant permits. If the easement is owned by a county agriculture development board or a nonprofit agency, the board or agency is to review the application prior to the Committee's review. The Committee can issue a permit only if both it and the entity that owns the easement find that the application meets the criteria set forth in the respective subchapter.

Proposed N.J.A.C. 2:76-22.9 and 23.9 address general rules for special permits, including the number of permits that may be issued, the duration of the permit, renewals of permits and recording of permits. These provisions also state that the permits cannot be transferred to subsequent owners of the land, but set forth a procedure for the new owner to apply for a new permit.

Proposed N.J.A.C. 2:76-22.10 prohibits the placement of signs on the premises related to the commercial nonagricultural activity, except that directional signs for driving and parking can be erected, and one flush-mounted, un-illuminated sign, not to exceed 20 square feet, can be placed on the structure.

Proposed N.J.A.C. 2:76-22.11 and 23.10 require the owner of the development easement (that is, the county agriculture development board, nonprofit agency, or Committee) to be the entity responsible for monitoring compliance with the special permit.

Proposed N.J.A.C. 2:76-22.12 and 23.11 set forth the criteria and procedure for suspending or revoking special permits.

Proposed N.J.A.C. 2:76-22.13 and 23.12 give applicants and permit holders the right to appeal decisions made by the Committee with respect to permit applications, suspensions and revocations and set forth the appeal procedure.

Proposed N.J.A.C. 2:76-22.14 and 23.13 reiterate a requirement in *N.J.S.A. 4:1C-32.3* that the Committee submit a report every two years to the Governor and various members of the Legislature on the implementation of the legislation.

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

Social Impact

The new rules will have a positive social impact in that they will implement legislation that was designed to correct a perceived inequity in the farmland preservation program. Landowners who preserved their farms earlier in the history of the program and did not exclude a portion of their land from the deed restrictions, which could later be used for commercial nonagricultural activities cannot engage in new commercial nonagricultural activities. Later in the program, farmers realized the possibility or potential benefit of excluding a portion of the farm from preservation and chose to have exception areas. Giving farmers the opportunity to engage in commercial nonagricultural uses or to lease or license their land for personal wireless service facilities will allow them to earn additional income, which many struggling farmers need. This will help ensure the continued viability of the farmers' agricultural operation, which, in turn, will benefit the agricultural industry in New Jersey.

As the Legislature also noted, allowing cell towers to be erected on preserved farmland "serves the public good by potentially improving cellular communications, especially when they are used for emergency purposes . . ."

The proposed new rules for commercial nonagricultural activities will affect only those farmers who preserved their farms under the State's farmland preservation program prior to the enactment of *N.J.S.A. 4:1C-32.1* et seq., and who did not exclude a portion of the farm from the deed restrictions. The proposed new rules for personal wireless service facilities will affect all landowners who have preserved their farms under the State's farmland preservation program.

The SADC anticipates a mixed reaction from farmers and the general public. Farmers are expected to view the rules favorably because the rules will enable those farmers who do not have exception areas on their preserved farms to generate additional non-farm income.

Members of the general public may object to the proposed new rules on the basis that farmers have conveyed their development rights for compensation and therefore should not be permitted to conduct commercial nonagricultural businesses on their property. The rules, however, are merely implementing the legislative decision to permit nonagricultural uses and personal wireless service facilities on preserved farms. In addition, the SADC believes that the Legislature has balanced this public concern against the interests of farmers by including a number of qualifying criteria and conditions in the legislation, and requiring the SADC to adopt additional criteria to ensure that permits are issued only in "certain limited instances." Assembly State Government Committee Statement to S.206.

Economic Impact

The proposed new rules will economically affect farmers who have preserved their land through the State's farmland preservation program in that the new rules will implement legislation that gives farmers the ability to generate additional income on their farms. The proposed new rules will not affect public funding sources for the farmland preservation program, nor will they have any effect on the public.

The SADC expects the proposed new rules to have an economic effect on county agriculture development boards and the SADC, who will have to process special permit applications and monitor the activities after a permit has been issued. In addition, landowners will have to pay minor recording fees to record the special use permits.

Federal Standards Statement

A Federal standards analysis is not required because the subject matter of the proposed new rules is not subject to any Federal requirements or standards.

Jobs Impact

It is possible that the proposed new rules will generate some new jobs, as farmers will have the ability to operate new businesses on their farms. The new rules contain limitations on the size and extent of the commercial activities, however, as a result of the Legislature's intent that the law allow only "small enterprises." As a result, the SADC does not anticipate a significant number of jobs being generated by the proposed new rules.

Agriculture Industry Impact

The proposed new rules will assist in the preservation and enhancement of the agriculture industry in the State, whose future is dependent upon a stable land base. Giving farmers the opportunity to engage in commercial nonagricultural uses or to lease or license their land for personal wireless service facilities will allow them to earn additional income, which many struggling farmers need. This will help ensure the continued viability of their agricultural operation, which, in turn, will benefit the agricultural industry in New Jersey.

Because the rules limit nonagricultural commercial uses to small enterprises and low-impact uses, and contain safeguards to ensure that the agricultural operation is not compromised, the proposed rules are not anticipated to negatively affect agriculture.

Regulatory Flexibility Analysis

The majority of farms that are enrolled in the SADC's farmland preservation programs are owned by small businesses, as defined under the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. A regulatory flexibility analysis

is not required, however, because the proposed new rules do not impose reporting or recordkeeping requirements on small businesses, and impose only a minimal compliance requirement. Those landowners who receive a special permit will be required to record the permit with the County Clerk's Office in the same manner as a deed and to provide a copy of the recorded permit to various entities. There will be minor recording fees associated with this requirement.

The proposed new rules, in general, support small businesses, and the creation of small enterprises on preserved farmland.

Smart Growth Impact

The proposed new rules would achieve smart growth and implement the State Development and Redevelopment Plan (State Plan). The State Development and Redevelopment Plan designates a Rural Planning Area (Planning Area 4), which comprises much of the countryside of New Jersey where large masses of cultivated or open land surround rural regional, town, village and hamlet centers. The State Plan's intentions in the Rural Planning Area include maintaining large contiguous areas of farmland and promoting a viable agricultural industry. The Farmland Preservation Program has been highly successful in implementing the State Plan with nearly 94 percent of its purchases occurring in the Rural Planning Area, thus furthering the Plan's goals in this Area.

Giving farmers the opportunity to engage in commercial nonagricultural uses or to lease or license their land for cell towers will allow them to earn additional income, which many struggling farmers need. This will help ensure the continued viability of their agricultural operation which, in turn, will benefit the agricultural industry in New Jersey.

Full text of the proposed new rules follows:

SUBCHAPTER 22. SPECIAL PERMIT FOR COMMERCIAL NONAGRICULTURAL 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 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 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 activity as detailed in a standard form adopted by the Committee.

"Board" means a county agriculture development board established pursuant to *N.J.S.A. 4:1C-17* or a sub-regional agricultural retention board established pursuant to *N.J.S.A. 4:1C-20*.

"Building envelope" means the outside edge of the area enclosed by all existing buildings that directly support the on-going farm operation, such as barns, tool sheds, silos, grain bins, designated equipment storage areas, animal concentration areas, feed bunks, waste facilities, crop sorting and storage facilities that are not obviously separated from each other by a distance that would allow any other non-farmstead use to occur as approved by the United States Department of Agriculture, Natural Resources Conservation Service.

"Commercial farm" means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth \$ 2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, *N.J.S.A. 54:4-23.1* et seq.; or
2. A farm management unit less than five acres, producing agricultural or horticultural products worth \$ 50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, *N.J.S.A. 54:4-23.1* et seq.

"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*.

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

"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. and any relevant rules or regulations promulgated pursuant thereto.

"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.

"Farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

"Farmstead complex" means a type of building envelope.

"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.

"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.

"Qualifying land" means a farm that was preserved for farmland preservation purposes prior to the date of enactment of *N.J.S.A. 4:1C-32.1* et seq., under any of the laws cited in *N.J.S.A. 4:1C-32.1a* 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. shall be deemed "qualifying land" even if the instrument memorializing the Committee's interests in the deed of easement is not recorded until after the date of enactment of *N.J.S.A. 4:1C-32.1* et seq.

"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*).

"Special permit" means a permit to allow one commercial nonagricultural 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.

2:76-22.4 Eligibility to apply for a commercial nonagricultural activity

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

1. The qualifying land is a commercial farm;
2. No other special permit for a commercial nonagricultural 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. The State Conservationist of the United States Department of Agriculture, Natural Resources Conservation Service, has reviewed and approved the application, if the development easement was acquired using Federal funds.
 - i. Where Federal funds have been used to acquire the development easement, the expansion of a commercial nonagricultural activity outside the building envelope or farmstead complex is prohibited.

(b) In the event the premises were 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 activity may be issued by the Committee for the originally preserved premises, regardless of the number of resulting parcels of land.

1. If a special permit for a commercial nonagricultural activity has been previously issued on a parcel of land created as a result of a division of premises, no other special permits for a commercial nonagricultural activity may be issued on any of the remaining parcel(s) of land created by the division.

2. If there was an exception on the original premises, no special permit shall be issued to any of the parcels resulting from a division of the premises, even if one or more of the resulting parcels have no exceptions following the division.

(c) Any person who has been granted a special permit for the erection of a personal wireless service facility pursuant to N.J.A.C. 2:76-23 is eligible for a special permit on the same premises pursuant to this subchapter.

2:76-22.5 Application for commercial nonagricultural 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 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. A copy of the recorded deed of easement;
3. The block(s) and lot(s) designations of the premises;
4. Proof that the premises is a commercial farm;
5. A survey plat of the premises that identifies and labels:
 - i. The structure(s) in which the commercial nonagricultural activity will be located;
 - ii. The proposed expansion of any existing structures to accommodate the commercial nonagricultural activity;
 - iii. All existing structures, streams, and other features of the premises;
 - iv. The location of proposed access to the commercial nonagricultural activity; and
 - v. Identification 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;
6. Photographs (preferably, digital, with one printed copy and one electronic copy) of:
 - i. The interior and exterior of the structure(s) in which the commercial nonagricultural activity is proposed; and
 - ii. The exterior of all structures within 200 feet of the structure(s) in which the commercial nonagricultural activity is proposed;
7. A description of any commercial nonagricultural 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 the date of enactment of *N.J.S.A. 4:1C-32.1* (January 12, 2006). 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);

ii. State whether he or she intends to construct a new agricultural building to take the place of the structure to be used for the nonagricultural use; and

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 activity, including:

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 operated by the owner or family member or if it is being leased and if so, to whom;

v. Whether the activity is seasonal or year round;

vi. The proposed hours of operation;

vii. Whether the applicant will need to expand an existing structure to accommodate the activity, including:

(1) The purpose and proposed use of the expansion;

(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) A justification for the proposed size of the structure, including an explanation as to whether the proposed size is based solely on the need to accommodate the commercial nonagricultural activity;

(5) 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. 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 years shall include a justification for the longer time period; and

ix. A copy of any proposed lease agreements that will be necessary for the proposed nonagricultural activity;

10. Copies of all necessary local, State and Federal approvals, including evidence that the proposed commercial nonagricultural 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;

11. An explanation as to whether the commercial nonagricultural activity interferes with the use of the land for agricultural production;

12. An explanation as to whether the commercial nonagricultural activity utilizes the land and structures in their existing condition;

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

14. Using an X to Y scale, 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. 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 anticipated peak times of the year;

16. The maximum number of employees needed on a daily, weekly and annual basis and for anticipated peak times of the year; and

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

i. The application fee is nonrefundable, regardless of whether a special permit is issued.

(b) If the Committee or easement holder deems the application incomplete, the applicant shall have 120 days of receipt of written notice to provide the necessary information, unless otherwise extended by the reviewing entity.

2:76-22.6 Evaluation criteria for a commercial nonagricultural use

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

1. The premises meets the definition of "commercial farm" set forth in this subchapter;

2. The premises meets the definition of "qualifying land" set forth in this subchapter;

3. The premises was preserved prior to the enactment of *N.J.S.A. 4:1C-32.1* (January 12, 2006);

4. 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;
5. No other special permits for a commercial nonagricultural activity have been issued by the Committee;
6. The proposed commercial nonagricultural activity is located within a structure(s) that was existing at the time of the enactment of *N.J.S.A. 4:1C-32.1* (January 12, 2006);
7. The proposed commercial nonagricultural activity utilizes a structure(s) in its existing condition, except that:
- i. Existing residential units can be improved for a commercial nonagricultural use permitted pursuant to this subchapter, subject to the following limitation:
 - (1) No more than 2,500 square feet of the interior of an existing residential structure may be converted or "finished" for a commercial nonagricultural use if such conversion or finishing requires improvements to the structure, such as installation of new walls, insulation, flooring, lighting, HVAC systems, sanitary plumbing, and associated wiring;
 - ii. Improvements to a non-residential structure shall not substantially interfere with the ability of the structure as a whole to be used to support agricultural activities in the future.
 - 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. At no time shall a change in wastewater facilities required for the commercial nonagricultural activity render land subject to the deed of easement, which otherwise would have been suitable for agricultural production, incapable of supporting agricultural production activities;
 - iv. No public utilities, other than those already available on the premises, shall be permitted, including, but not limited to, water, gas, electric or sewage;
 - 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;
 - vi. There shall be no storage of equipment, vehicles, supplies, products, or by-products associated with the commercial nonagricultural activity outside of the structure except as provided in (a)13iv below;
 - vii. Improvements cannot be made to the interior of a non-residential structure(s) to adapt it for residential use; and
 - 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 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 activity;
 - (3) The area of the proposed footprint is reasonably calculated based solely upon the demands of accommodating the

commercial nonagricultural 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 new agricultural structure(s) constructed or relocated anywhere on the premises within the three years preceding the date of application for the special permit does not (and will not) serve a function previously served by the structure(s) proposed to accommodate the nonagricultural use;

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 activity;

10. The proposed commercial nonagricultural activity does not interfere with the use of the land for agricultural purposes;

11. The commercial nonagricultural 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 activity is compatible with the agricultural use of the premises and surrounding land use of adjacent properties.

i. Characteristics to be considered in determining whether the commercial nonagricultural 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 activity uses the land in its existing condition. Use of the land in its existing condition shall mean the following:

i. No new road improvements including new ingress and egress improvements, curbing, or changes needed to accommodate a new traffic pattern shall be created;

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

iii. The area dedicated to parking shall not exceed 1,000 square feet and provide for greater than five parking spaces, with each parking space not to exceed 10 feet by 20 feet; 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;

14. The commercial nonagricultural activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area and does not require the creation of additional parking spaces, paved or unpaved;

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, and such approvals do not impose conditions that are inconsistent with the criteria and standards set forth in this subchapter.

i. If this requirement has not been met at the time of application, the Committee may condition its approval upon receipt

of permits or approvals from Federal, State or local government entities, as long as such approvals do not impose conditions that conflict with the standards set forth in this subchapter;

16. The commercial nonagricultural activity does not contain multiple businesses/uses, including, but not limited to, commercial, industrial or office use, within the same structure or structures;

17. Lighting to support the nonagricultural use shall meet the following criteria:

i. Adequate lighting shall be provided to insure 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 and shall be consistent with the agricultural setting;

iii. Any new lighting shall be compatible with the agricultural use of the property and surrounding land use of adjacent properties; and

iv. The lighting shall not cause glare or intrusion of light onto neighboring properties;

18. The commercial nonagricultural activity is not 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) The proposed use shall not require more than four full-time employees at peak operational periods;

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

20. The commercial nonagricultural 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 the development easement, it shall review an 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 board or qualifying tax exempt nonprofit organization shall confirm that it has the following documents related to the development easement:

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 activities already in existence on the 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 conditions of approval;
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. Confirmation that the owner of the premises is not in violation of any provision of the deed of easement; 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 permit

(a) The Committee, as the owner of a development easement, 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 by a board or qualifying tax exempt nonprofit organization, the Committee, upon receipt of a complete application and notice of approval by the board or qualifying tax exempt nonprofit organization, 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 the development easement.

(d) If Federal funds were used to acquire the development easement, the Committee's permit approval shall be contingent upon approval of the State Conservationist of the United States Department of Agriculture, Natural Resources Conservation Service.

(e) The Committee may condition the special permit on the applicant's receipt of all necessary local, State and Federal approvals, provided that such approvals do not contain any requirements that are inconsistent with *N.J.S.A. 4:1C-32.1*,

this subchapter, or the special permit.

(f) 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 land and surrounding area.

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

1. Identify the time period for which the special permit shall be effective; and
2. Stipulate a time period during which the landowner must exercise the special permit and initiate the commercial nonagricultural activity.
 - i. The Committee may provide for an extension up to six months upon a showing of special circumstances or need presented by the applicant.
 - ii. If the owner fails to exercise the special permit and initiate the commercial nonagricultural use within the period designated by the Committee, the special permit shall automatically expire, unless an extension is approved by the Committee pursuant to (g)2i above.

(h) All application fees submitted to the Committee pursuant to this subchapter are nonrefundable, regardless of whether a special permit is issued, and shall be used for farmland preservation purposes.

2:76-22.9 Special permit

(a) No more than one special permit for a commercial nonagricultural 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) 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 years of the date of scheduled permit expiration.
2. There shall be no fee for permit renewal.

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

1. The permit shall automatically terminate if there is a change in the record ownership of the premises;
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 the event there is a change in record ownership of the premises after a special permit has been issued; and
3. The commercial nonagricultural activity shall cease immediately upon a change in record ownership of the premises.

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. 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) The special permit shall not be assigned or conveyed in any manner.

(f) 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 municipality, the owner of the development easement, the United States Department of Agriculture, Natural Resources Conservation Service (USDA, NCRS) State Conservationist (if USDA, NRCS rendered a decision regarding the permit) and to any owner of land that was subdivided from the initial preserved farm, if applicable.

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

2:76-22.10 Signs

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

i. Directional signs indicating where persons visiting the nonagricultural use should drive and/or park; and

ii. One flush-mounted sign, not to exceed 20 square feet to be placed on the structure, which shall not be illuminated internally.

(b) Nothing in this section shall be construed to permit the use of signs in a manner inconsistent with municipal, county, or Department of Transportation requirements or standards.

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 monitor the commercial nonagricultural activity annually to ensure compliance with the special permit 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 access to, and to enter upon, the premises at all reasonable times for the purpose of inspection to enforce and assure compliance with the special permit. 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 Suspension or revocation of a special permit

(a) The Committee may suspend or revoke the special permit for a violation of N.J.S.A. 4:1C- 32.1, this subchapter, or any term or condition of the special permit, if it owns the development easement on the farm.

(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.

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 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.

SUBCHAPTER 23. SPECIAL PERMIT FOR INSTALLATION OF PERSONAL WIRELESS SERVICE FACILITY ON PRESERVED FARMLAND

2:76-23.1 Applicability

This subchapter applies to the issuance of any special permit pursuant to *N.J.S.A. 4:1C-32.2*, to allow a personal wireless service facility to be erected on 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*), sections 37 through 40 of P.L. 1999, c. 152 (*N.J.S.A. 13:8C-37* through *13:8C-40*), or any other State law enacted for farmland preservation purposes.

2:76-23.2 Purpose

The purpose of this subchapter is to establish the process for any person who owns 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 *N.J.S.A. 4:1C-32.2*, to apply for a special permit to allow for a personal wireless service facility to be erected on the premises, and to identify the standards for review of an application for a special permit by the Committee, board or qualifying tax exempt nonprofit organization.

2:76-23.3 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 erection of a personal wireless service facility as detailed in a standard form adopted by the Committee.

"Board" means a county agriculture development board established pursuant to *N.J.S.A. 4:1C-17* or a sub-regional agricultural retention board established pursuant to *N.J.S.A. 4:1C-20*.

"Building envelope" means the outside edge of the area enclosed by all existing buildings that directly support the on-going farm operation, such as barns, tool sheds, silos, grain bins, designated equipment storage areas, animal concentration areas, feed bunks, waste facilities, crop sorting and storage facilities that are not obviously separated from each other by a distance that would allow any other non-farmstead use to occur as approved by the United States Department of Agriculture, Natural Resources Conservation Service.

"Commercial farm" means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth \$ 2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, *N.J.S.A. 54:4-23.1* et seq.; or
2. A farm management unit less than five acres, producing agricultural or horticultural products worth \$ 50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, *N.J.S.A. 54:4-23.1* et seq.

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

"Deed of easement" means the deed 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-32.1* and any relevant rules or regulations promulgated pursuant thereto.

"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.

"Farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

"Farmstead complex" means a type of building envelope.

"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.

"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.

"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*).

"Special permit" means a permit to allow one personal wireless communication facility on a preserved farm, 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-32.2* and the procedures and criteria set forth in this subchapter.

2:76-23.4 Eligibility to apply for a personal wireless service facility

(a) Any person who owns 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*), sections 37 through 40 of P.L. 1999, c. 152 (*N.J.S.A. 13:8C-37* through *13:8C-40*), or any other State law enacted for farmland preservation purposes may apply for a special permit to allow a personal wireless service facility to be erected on the land, provided that:

1. The land is a commercial farm;
2. No other special permit for a personal wireless service facility on the premises has been granted;
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;
4. Notwithstanding (a)3 above, a person who has been granted a special permit for a commercial nonagricultural activity pursuant to *N.J.A.C. 2:76-22* is eligible for a special permit on the same premises pursuant to this subchapter; and
5. The State Conservationist of the United States Department of Agriculture, Natural Resources Conservation Service, has reviewed and approved the application, if the development easement was acquired using Federal funds.
 - i. Where Federal funds have been used to acquire the development easement, the expansion of a commercial nonagricultural activity outside the building envelope or farmstead complex is prohibited.

(b) In the event the premises were 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 personal wireless facility may be issued by the Committee for the originally preserved premises, regardless of the number of resulting parcels of land.

1. If a special permit for a personal wireless facility has been previously issued on a parcel of land created as a result of a division of premises, no other special permits for a personal wireless facility may be issued on any of the remaining parcel(s) of land created by the division.

2:76-23.5 Application for personal wireless service facility

(a) Any person who meets the qualifications contained in N.J.A.C. 2:76-23.4 may apply for a special permit for the erection of a personal wireless service facility by simultaneously submitting an application to the owner of the development easement and to the Committee. The application shall include the following information and documents:

1. A copy of the recorded deed showing the current record owner of the restricted premises;
2. A copy of the recorded deed of easement;
3. The block(s) and lot(s) designations of the premises;
4. Proof that the premises is a commercial farm;
5. A survey plat of the premises that identifies and labels:
 - i. The existing structure(s) on which the personal wireless facility will be placed;
 - ii. The location and size of proposed structure(s) to accommodate the personal wireless facility (not to exceed 500 square feet);
 - iii. The proposed expansion of any existing structure(s) to accommodate the personal wireless facility (not to exceed 500 square feet in footprint area in total for all structures necessary to accommodate personal wireless facility);
 - iv. All existing structures, streams, and other features of the premises;
6. A description of how the location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures, including a description of any camouflage of the personal wireless service facility to minimize visual impact.
 - i. The applicant shall provide photographs (preferably digital, with one printed copy and one electronic copy) of the location of the proposed personal wireless facility, taken from an adequate distance and from all directions to assist in visualizing the impact of the proposed facility on the existing landscape;
7. A description of any commercial nonagricultural 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 personal wireless facility existed on the date of application for the special permit.
 - i. The applicant shall provide photographs (preferably digital, with one printed copy and one electronic copy) of the interior and exterior of the structure(s) in which the personal wireless facility is proposed;

9. Justification that any proposed construction of a new structure or expansion of an existing structure is necessary to the operation or functioning of the personal wireless facility.

i. If a new structure is being proposed, the applicant shall certify that there are no existing structures on the premises that could be utilized or occupied to adequately support the personal wireless service facility, and describe the deficiencies associated with each existing structure to support that certification.

ii. If the application is proposing to expand an existing structure, he shall justify that the area of the proposed footprint of the expanded structure is reasonably calculated based solely on the demands of accommodating the personal wireless service facility and does not include excess space;

10. An explanation as to whether the personal wireless service facility interferes with the use of the land for agricultural production;

11. An explanation as to whether the personal wireless service facility utilizes the land and structures in their existing condition;

12. An explanation as to whether the personal wireless service facility will have an adverse impact upon the soils, water resources, air quality or other natural resources of the land or the surrounding area and whether the applicant will need to create parking spaces, paved or unpaved.

i. The applicant shall identify the number of existing parking spaces and the number of parking spaces that will be needed to accommodate the personal wireless service facility;

13. Using an X to Y scale, identification of the location of the proposed personal wireless service facility on:

i. A United States Department of Agriculture, Natural Resources 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;

14. A description of the amount of traffic the applicant expects to be generated, and the number of employees required, as a result of the personal wireless facility.

15. Copies of all local zoning and land use approvals obtained by the applicant and/or the personal wireless service company, and any other approvals required by State, federal, or local law, rule, regulation, or ordinance, even if the proposed facility includes a compatible wireless communication use, such as law enforcement or emergency response communication equipment, which may otherwise exempt the proposed facility from obtaining such approvals.

16. A commitment in writing from the personal wireless service facility company that it will allow, at no charge to the requesting State or local governmental entity, the sharing of the facility for any State or local owned or sponsored compatible wireless communications use for public purposes, such as law enforcement or emergency response communication equipment approved by the Committee;

17. Documentation from the wireless service company showing that the personal wireless service facility is necessary

and serves a public benefit by potentially improving cellular communications, in particular for emergency purposes;

18. 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 years shall include a justification for the longer time period.

i. The applicant shall provide a copy of the proposed contract or lease agreement with the wireless service company;

19. Whether the wireless service company is requiring the conveyance of an easement or another interest in the premises to construct or access the personal wireless service facility;

20. An estimate of the cost and time needed for completion of a functional wireless service facility; and

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

i. The application fee is nonrefundable, regardless of whether a special permit is issued.

(b) If the Committee or easement holder deems the application incomplete, the applicant shall have 120 days of receipt of written notice to provide the necessary information, unless otherwise extended by the reviewing entity.

2:76-23.6 Evaluation criteria for personal wireless service facilities

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

1. The premises meets the definition of "commercial farm" set forth in this subchapter;

2. No other special permits for a personal wireless service facility have been granted on the premises.

3. The personal wireless service facility is necessary and serves a public benefit by potentially improving cellular communications, in particular, for emergency purposes.

4. There are no commercial nonagricultural activities in existence on the premises or on any portion of the farm that is not subject to the development easement.

i. The Committee and easement holder may waive this requirement if they find the preexisting commercial nonagricultural activity is of a minor or insignificant nature or relies principally on farm products, as defined in *N.J.S.A. 4:10-1*, derived from the premises or for other good cause shown by the applicant.

ii. The issuance of a special permit for a commercial nonagricultural activity pursuant to N.J.A.C. 2:76-22 shall not preclude the issuance of a special permit for a personal wireless service facility under this subchapter;

5. The personal wireless service facility utilizes, or is supported by, a structure(s) existing on the premises as of the date of application, except for the conditions set forth in (a)6 and 7 below;

6. If an expansion of an existing structure(s) is requested:

i. The expansion cannot exceed 500 square feet in footprint area in total for all of the structures needed to accommodate the personal wireless service facility;

- ii. The expansion is necessary to the operation or functioning of the personal wireless service facility; and
 - iii. The area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;
7. If a new structure is being proposed to support or accommodate the personal wireless service facility:
- i. The new structure cannot exceed 500 square feet in footprint area,
 - ii. The new structure is necessary to the operation or functioning of the personal wireless service facility;
 - iii. The area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space; and
 - iv. There are no existing structures on the land, which could be utilized or occupied to adequately support the personal wireless service facility and the relevant deficiencies associated with each existing structure, as provided by the applicant pursuant to N.J.A.C. 2:76-23.5(a)9i, support that conclusion;
8. The personal wireless service facility does not interfere with the use of the land for agricultural purposes;
9. The personal wireless service facility uses the land in its existing condition, except as otherwise allowed pursuant to (a)7 above;
10. There are no other apparent feasible alternatives to place the facility in the designated coverage area located off the premises;
11. The personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area and does not require the creation of additional parking spaces, paved or unpaved.
- i. To the maximum extent possible, the facility shall avoid being placed on soils classified as prime farmland and Statewide importance;
12. The location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;
13. All necessary local zoning and land use approvals, and any other approvals required by Federal, State, or local law, rule, regulation or ordinance have been obtained, and such approvals do not impose conditions that conflict with the criteria and standards set forth in this subchapter;
14. Additional factors, such as traffic generated and the number of employees are limited to the maximum extent possible to limit the intensity of the activity and its impact on the land and surrounding area;
15. The personal wireless service facility provider has agreed in writing to allow, at no charge to the requesting State or local governmental entity, the sharing of the facility or any State or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, as permitted by the Committee;

16. The personal wireless service company is not requiring conveyance of an easement or another interest in the premises to construct or access the personal wireless service facility;

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

18. The personal wireless service facility otherwise complies with *N.J.S.A. 4:1C-32.2*.

2:76-23.7 Review by board or nonprofit easement owner

(a) A board or a qualifying tax exempt nonprofit organization as the owner of a development easement shall review an application for a special permit pursuant to N.J.A.C. 2:76-23.6 and *N.J.S.A. 4:1C-32.2*.

(b) The board or qualifying tax exempt nonprofit organization shall confirm that it is in possession of the following documents related to the purchase of development easement on the subject premises:

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; and
3. A copy of the original survey of the premises.

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

1. Notification of any commercial nonagricultural activities already in existence on the 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 appropriate conditions of approval;
3. A resolution of the board or qualifying tax exempt nonprofit organization setting forth the approval, or disapproval, of the application and the reasons therefore;
4. A determination as to whether the applicant is in violation of any provision of the deed of easement; and
5. A checklist of documents provided by the applicant to the board/qualifying tax exempt nonprofit organization.

2:76-23.8 Committee review and issuance of permit

(a) The Committee, as the owner of a development easement, shall review an application and in its sole discretion may issue a special permit pursuant to *N.J.S.A. 4:1C-32.2* and this subchapter.

(b) If a development easement is owned by a board or qualifying tax exempt nonprofit organization, the Committee, upon receipt of a complete application and notice of approval by the board or qualifying tax exempt nonprofit organization, shall review 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;
- iii. A copy of the original survey of the premises; and
- iv. The special permit application.

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

(d) If Federal funds were used to acquire the development easement, the Committee's permit approval shall be contingent upon approval of the State Conservationist of the United States Department of Agriculture, Natural Resources Conservation Service.

(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 land and surrounding area.

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

- 1. Identify the time period for which the special permit shall be effective; and
- 2. Stipulate a time period during which the landowner must exercise the special permit and initiate the commercial nonagricultural activity.
 - i. The Committee may provide for an extension up to six months upon a showing of special circumstances or need presented by the applicant.
 - ii. If the owner fails to exercise the special permit and initiate the commercial nonagricultural use within the period designated by the Committee, the special permit shall automatically expire, unless an extension is approved by the Committee pursuant to (h)2i above.

(g) All application fees submitted to the Committee pursuant to this subchapter are nonrefundable, regardless of whether a special permit is issued, and shall be used for farmland preservation purposes.

2:76-23.9 Special permit

(a) No more than one special permit for a personal wireless service facility 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. 2:76-23.5(a)18.

(c) No special permit shall be valid for more than 20 years, unless renewed by the Committee.

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

2. There shall be no fee for permit renewal.

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

1. The permit shall automatically terminate if there is a change in the record ownership of the premises;

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 the event there is a change in record ownership of the premises after a special permit has been issued; and

3. The personal service wireless facility shall cease operation immediately upon a change in record ownership of the premises.

i. An application may be submitted pursuant to N.J.A.C. 2:76-23.5 if the new owner of the premises wishes to continue the commercial nonagricultural 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. 2:76-23.5, including payment of an application fee.

(e) The special permit shall not be assigned or conveyed in any manner.

(f) 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 municipality, the owner of the development easement, the United States Department of Agriculture, Natural Resources Conservation Service (USDA, NRCS) State Conservationist (if USDA, NRCS rendered a decision regarding the permit) and to any owner of land that was subdivided from the initial preserved farm, if applicable.

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

(h) Upon the expiration or termination of a special permit, the personal wireless facility, including any new structures built to accommodate the facility, and any associated footings, shall be removed and the underlying land shall be restored to its preexisting condition.

2:76-23.10 Monitoring

(a) The owner of the development easement on the premises on which a special permit was issued by the Committee shall monitor the personal wireless facility annually to ensure compliance with the special permit.

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

(b) The owner of the development easement shall be permitted access to, and to enter upon, the premises at all reasonable times for the purpose of inspection to enforce and assure compliance with the special permit. The owner of

the development easement agrees to give the landowner at least 24 hours advance notice of its intention to enter the Premises.

2:76-23.11 Suspension or revocation of a special permit

(a) The Committee may suspend or revoke the special permit for a violation of N.J.S.A. 4:1C- 32.1, this subchapter, or any term or condition of the special permit, if it owns the development easement on the farm.

(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.

2:76-23.12 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.

2:76-23.13 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 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.