

# Preserving Farmland In Gloucester County



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# PRESERVING FARMLAND IN GLOUCESTER COUNTY

Prepared by

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Provided By

**The Gloucester County Board of Chosen Freeholders**

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*The following information, based on the most commonly asked questions, will help you decide whether to pursue preservation of your farmland.*

## **WHO ADMINISTERS THE FARMLAND PRESERVATION PROGRAM?**

*The Gloucester County Office of Land Preservation.* The office operates under the authority of the Gloucester County Board of Chosen Freeholders, whose Director is Robert M. Damminger. Freeholder Jim Lavender is the office's liaison to the Freeholder Board.

The Office of Land Preservation also acts as staff to the Gloucester County Agriculture Development Board (GCADB), who has regulatory oversight for the County Farmland Preservation Program and also hears County Right-to-Farm cases and disputes. The State Agriculture Development Committee (SADC) oversees the program at the State level.

## **START FROM THE BEGINNING. WHAT DOES PERMANENT PRESERVATION MEAN?**

*Permanent preservation is forever.* Your farmland will be permanently restricted to agricultural uses. The land can never be converted to residential, commercial, or industrial development. The "Development Rights" are retired through an agricultural deed restriction that is recorded in the Gloucester County Clerk's Office. These restrictions run with the land, not the owner, and remain in effect even if the property is sold.

## **WHAT IS A "DEVELOPMENT RIGHT?"**

*Think of a bundle of twigs.* Each twig represents a "right" that you have as a property owner and each contributes to the value of your property. Your property rights include oil rights, mineral rights, water rights, etc., including the

right to develop your land. You can take this “twig” – your development rights from your “bundle” of property rights – and sell it. By selling your development rights to the Gloucester County Farmland Preservation Program you are deed restricting your land to agricultural uses for perpetuity.

## **WHAT ARE THE REQUIREMENTS FOR PROPERTIES INTERSETED IN FARMLAND PRESERVATION?**

*The SADC has established criteria for properties interested in applying to the Farmland Preservation Program as indicated in N.J.A.C. 2:76-6.20. For properties **less than 10-acres in size**, the land must meet the following:*

1. Produce agricultural or horticultural products of at least \$2,500 annually (as identified on Schedule “F” of your annual tax return).
2. At least 75% of the land, or a minimum of 5-acres, whichever is less, must be tillable.
3. At least 75% of the land, or a minimum of 5-acres, whichever is less, must consist of soils capable of supporting agricultural production.
4. The land must exhibit development potential based on municipal zoning and wetlands standards.
5. Properties must have a minimum ranking of “43” or more (this ranking is calculated by the SADC and the County and is based on criteria such as the size of the property, wetlands on-site, soil characteristics, contiguous preserved properties, and other factors).
6. Properties must be included in a designated Project Area as identified in the County’s “Comprehensive Farmland Preservation Plan”.

For properties **greater than 10-acres in size**, the land must meet the following:

1. At least 50% of the land, or a minimum of 25-acres, whichever is less, must be tillable.
2. At least 50% of the land, or a minimum of 25-acres, whichever is less, must consist of soils capable of supporting agricultural production.
3. The land must exhibit development potential based on municipal zoning and wetlands standards.
4. Properties must have a minimum ranking of “47” or more (this ranking is calculated by the SADC and the County and is based on criteria such as the size of the property, wetlands on-site, soil characteristics, contiguous preserved properties, and other factors).
5. Properties must be included in a designated Project Area as identified in the County’s “Comprehensive Farmland Preservation Plan”.

All properties proposed for the Farmland Preservation Program *must* have a current farmland assessment status at the time of application.

## **WHAT IF MY PROPERTY DOES NOT MEET THESE REQUIREMENTS?**

*If your property does not meet these requirements it is not eligible to apply for the Farmland Preservation Program as per N.J.A.C. 2:76-6.20. Under certain circumstances the County may elect to preserve a property that does not meet one or more of these criteria without State participation. However the property must demonstrate a unique importance for preservation for consideration as a “County-buy”, such as being contiguous with a large concentration of other preserved lands. This is determined on a case-by-case basis.*

### **WHY HAS THE SADC IMPLEMENTED THESE RULES?**

*Due to reduced funding the SADC is attempting to ensure that its limited funds are directed towards the properties that are most desirable for preservation. Simply stated, the State and County do not have the funds to accommodate every property that applies for the program. Based on this the SADC is applying its limited funding to properties that meet these eligibility criteria.*

### **DOES FARMLAND PRESERVATION GUARENTEE ME CONTINUED FARMLAND ASSESSMENT STATUS IN THE FUTURE?**

*No! Landowners who preserve their farms still must meet all qualifications to maintain their farmland assessment status on a year-to-year basis. The Gloucester County Office of Taxation oversees the farmland assessment process, and our office has no role over its jurisdiction. Please be advised that even if a preserved farm does not maintain its farmland assessment status the restrictions and conditions identified in the Deed of Easement still remain in place.*

### **HOW ARE FARMS SELECTED FOR PRESERVATION?**

*The State and County rank eligible farms based on a variety of criteria. This includes the size of the property, quality of soils, boundaries, municipal commitment to farmland preservation, buffers that inhibit development, tillable acreage, proximity to other preserved farmland, and other special considerations. Based on this information each respective property generates a “ranking” score, which is used to determine its preservation value in comparison to other properties under consideration.*

### **IS THE COMPETITION TOUGHER NOW THAN IT WAS IN THE PAST FOR FARMS THAT APPLY FOR THE PROGRAM?**

*Yes, the competition for farms applying for the program is much tougher than it was in the past. Since competition for funding is so strong, it is the ranking of each property that is used to determine if it can be preserved based on the State’s and/or County’s available funding. Years ago we have had the financial capabilities to work with almost every eligible farm that applied for the program. With the current financial situation at both the State and County levels this is now not the case; and the reality is that there are some properties that fall*

below our funding capabilities and have to wait for future rounds for their settlement.

### **WHAT IS A GENERAL OVERVIEW OF THE FARMLAND PRESERVATION PROCESS?**

*The Farmland Preservation process is consistent for all applicants. Once an initial application has been compiled and appropriate mapping and other supplemental information has been secured by our office, all documentation is forwarded to the SADC to ensure administrative completeness. Once the SADC issues a “Green Light” approval for an application the appraisal process can begin. After the appraisals are completed and are sent to the SADC for review they will issue a certified value for the property. If the landowner accepts that value and signs the required Option Agreement, the County will then commission the required survey and title work for the property. Once these tasks are complete and any outstanding items are addressed settlement can proceed.*

### **IF I APPLY, CAN I WITHDRAW?**

*Yes. Quite frankly, the process is not a quick one. **The average time from application submittal to actual settlement usually averages 16-20 months and can often take longer depending on the amount of pending applications and/or available funding.** However this time frame gives you the opportunity at several junctures along the way to withdraw your application if so desired.*

### **IF I WITHDRAW, IS THERE A PENALTY?**

*There is no penalty to withdraw **UNLESS** you do it **AFTER** the County has started the **survey work and title work** in preparation for settlement. If you withdraw after then the Option Agreement requires you to reimburse the County the costs for all survey and title work completed up to that point. (You do not reimburse for the appraisal costs.)*

### **AFTER PRESERVATION WHO OWNS THE DEVELOPMENT RIGHTS?**

*The County of Gloucester.*

### **HOW ARE DEVELOPMENT RIGHTS VALUED?**

*Through an appraisal process. Two independent appraisals are conducted for each prospective farm. First, the appraisers determine the market value of your land. This is done by examining other market sales of comparable quality. Then the appraisers establish a “deed restricted value” for the farmland (the value of your land after it would be preserved). The deed restricted value is*

subtracted from the market value, and the difference is the value assigned to your development rights.

(EXAMPLE) Market Value: \$10,000.00 per acre  
Deed Restricted Value: \$3,000.00 per acre  
*Development Rights Value: \$7,000.00 per acre*

**IF THE TWO APPRAISERS HAVE DIFFERENT VALUES WHAT HAPPENS?**

*In most cases the two appraisals never match each other dollar for dollar. Once complete the two appraisals are forwarded to the SADC, who reviews both reports and issues a “certified value” for the development rights of the property. This value cannot be higher than the amount indicated in high appraisal report, nor lower than the amount indicated in the low report.*

**DO I HAVE TO PAY FOR THE APPRAISAL REPORTS?**

*No.* The County of Gloucester pays these costs.

**IS THE VALUE OF MY HOME AND OUTBUILDINGS INCLUDED IN THE APPRAISAL?**

*No.* The per-acre price reflects the value of the land **only**. When selling property most landowners are used to thinking in terms of a per-acre price that reflects land as well as improvements. Through Farmland Preservation the values of all improvements are “backed out” of the reports.

**I HAVE WOODLANDS AND WETLANDS. DO THEY HAVE A VALUE?**

*Yes.* Wetlands, for example, can be assigned as an “aesthetic” value. The per-acre value for your development rights is a blended price of the various types of land you own. However, all properties must still meet their tillable acreage requirements as previously described.

**ONCE MY FARM IS PRESERVED, CAN I BUILD NEW STRUCTURES OR CAN I CHANGE AGRICULTURAL OPERATIONS?**

*Yes.* You can build new structures and replace old ones so long as they are used to help sustain the agricultural operations of the property (any municipal requirements must still be met). You can also replace or relocate an existing residence with County and SADC approval. Also, there are no restrictions on your agricultural practices. You can change from vegetables to vineyards, from livestock to grain, so long as the operation is a recognized agricultural practice.

## **CAN I BUILD ANOTHER HOUSE ON MY FARM ONCE IT IS PRESERVED?**

*It depends.* One way would be to identify the area where you want to build the home and then exclude it from your application; this is called an “*Exception*”. “Exceptions” can also be used to exclude existing residences and/or other structures from the preserved area. If your application is successful the survey will identify the “exception” area. The deed restrictions will “wash up” to the imaginary boundary line of the “exception” area. It should be noted that deleting too much acreage for future housing may negatively impact your application; remember that the key purpose of farmland preservation is to ensure that as much land as possible is dedicated to agricultural operations.

“Exceptions” can also be identified as *severable* or *non-severable*. *Severable* exceptions can at some point be severed from the rest of the preserved area as a separate block and lot. However once an exception area is established it can **never** be moved, nor can it be increased or reduced in size. For this reason it is strongly recommended that landowners who wish to execute a *severable* exception consider these restrictions, and adhere to municipal zoning requirements to ensure the area has the potential for future subdivision. *Non-severable* exceptions must always remain with the preserved property, but the deed restrictions do not apply to their defined area. They too can **never** be moved, nor increased or reduced in size after the property is preserved.

The second way to reserve a site for a future home is to take what is called a “RDSO – Residual Dwelling Site Opportunity.” This process can only be utilized if the proposed preserved area is greater than 100 acres. With the RDSO you do not have to identify where you want to place the future home until you want to build it; however at the time you will need to get approval from the County and State.

Another important factor to consider if you request an RDSO is that the land where the house will be built *was* included in the preserved area, not excluded. Therefore there are serious restrictions on who may occupy a house that was designated through the RDSO process.

Due to the restrictions involved with the RDSO process virtually all property owners use the “exception” method if they chose to delete a portion of their property from the preserved area.

## **HOW IS THE FARMLAND PRESERVATION PROGRAM FUNDED?**

*Our efforts are funded via State cost-share grants and also the Gloucester County Farmland and Open Space Preservation Tax.* Gloucester County utilizes a voter approved 4-cent tax to provide funding for farmland preservation acquisitions. State cost-share funds are also made available to the County by the

SADC for the majority of our Farmland Preservation, though this amount has been reduced from previous years. Based on this our office will be happy to meet with every landowner interested in participating in the program, however due to funding restrictions our ability to preserve as many properties as we have in the past may be impacted.

### **DO I PAY CAPITAL GAINS WHEN I SELL DEVELOPMENT RIGHTS?**

*Yes.* The IRS treats development rights as real estate. The money you receive is taxable as capital gains. However, there are ways to minimize your tax liability. If you plan to purchase additional land or another investment property with the money you receive from selling your development rights you could explore what is called a “like kind exchange”. This can defer part or all of your capital gains. You are strongly urged to talk with your tax attorney and/or accountant regarding this and other possible methods to reduce your tax liability, especially considering the recent changes to the Federal tax laws.

### **CAN PRESERVING MY FARM REDUCE ESTATE TAXES?**

*Dramatically.* Consult your accountant for further information.

### **A DEVELOPER WANTS AN OPTION ON MY FARM. CAN PRESERVATION BE COMPETITIVE?**

*Yes.* Look at the developer’s option carefully as there are often a number of contingencies that must be met before you receive the full offered amount. Through the Farmland Preservation Program once you agree to the certified value you have the assurance that you will receive that full amount at settlement. Plus, through the Farmland Preservation Program you are not selling your land; only its development rights. You still own and can remain on your farm.

### **I HAVE DEVELOPMENT APPROVALS ON MY FARM. CAN IT STILL BE PRESERVED?**

*Yes, but the SADC requires a great deal of information regarding approvals and reviews each property in a very thorough fashion.* If your property has received preliminary and/or final approvals the SADC can request copies of one or more of the following documents: agreements of sale; survey plats; soil/boring logs; site approval review letters, DEP permits including LOI’s, general permits, and stream setbacks; remediation plans and No Further Action declarations; applicable municipal resolutions; etc. *It is the responsibility of the landowner to provide any requested documents pertaining to approvals.*

### **DO PRESERVED FARMS RECEIVE ANY SPECIAL BENEFITS OR PROTECTIONS?**



*Yes.* You are protected from eminent domain takings except in extraordinary circumstances that require an executive order from the Governor. You are also protected from water restrictions during draught emergencies. In addition, you are eligible to receive State grants that fund up to 50% of the costs for approved water and soil conservation projects (provided funding is available).

**I APPLIED BEFORE AND LATER WITHDREW MY APPLICATION. DO I HAVE TO APPLY AGAIN?**

*Yes.* The State also requires that each property that withdraws from the program must sit out two calendar years before they can re-apply.

**DO I GET PREFERENTIAL TREATMENT BECAUSE I APPLIED BEFORE?**

*No.* It's a fresh start with each new submission. All applications go into the pool without prejudice. Your ranking may change each time you submit an application depending on the caliber of farmland you are competing against or other factors.

**IS THERE A SIZE RESTRICTION ON FARMS SEEKING PRESERVATION?**

*No, there is no size restriction on potential farms.* Small farms are important, especially to "fill-in" the holes in project areas made up of larger parcels. However ALL potential properties must meet their respective minimum eligibility requirements as previously described.

**DOES THE PUBLIC HAVE A RIGHT TO ACCESS MY LAND IF I PRESERVE IT?**

*Absolutely not.* Any type of public access requires your consent.

**I LEASE MY LAND TO HUNTERS. CAN I STILL DO THIS IF MY LAND IS PRESERVED?**

*Yes.* Landowners who place their farms in preservation still have the ability to lease their land for hunting and other non-invasive recreational purposes. Please be advised however that the SADC is very strict in regards to permitted recreational uses, and under no circumstance can the recreational use negatively impact the agricultural operations on the farm or change its condition in anyway.

**MUST I PAY OFF FARM DEBT AT SETTLEMENT?**

*Not necessarily.* We must have a clear title at the time of settlement. This can be accomplished by paying off any outstanding loan balances with settlement

proceeds or by obtaining documented subordination from any mortgage and/or lien holder(s). Please consult with our office, your attorney and/or lending institution on this item.

**DO I HAVE TO OWN THE LAND TO APPLY FOR PRESERVATION?**

*Yes.* However if you do not own the land and have an option to buy it, that will give you the legal status to submit an application to sell the development rights. Our office can assist you with this type of application.

**I LEASE MY LAND TO ANOTHER FARMER. CAN I APPLY?**

*Yes.* Although some counties require the applicant be the one who actively farms the ground, Gloucester County does not.

**IF I PRESERVE MY FARM, CAN I SELL THE PROPERTY?**

*Yes.* Remember that the deed restriction follows the land, not the owner. The new owners must abide by all the deed restrictions.

**I HAVE AN EXISTING ELECTRICAL EASEMENT(S) ON MY PROPERTY. DOES THIS IMPACT THE PRESERVATION PROCESS?**

*It depends.* Most electric utility easements (including those that run along roadways) are blanket easements and do not specifically identify the metes and bounds of the easement itself. The SADC has recently indicated these blanket easements *must* be defined before a property can be preserved. Our office and the SADC have been working with our local electric utility companies to simplify this procedure and ensure it does not significantly delay the preservation process. While our office will coordinate the majority of the work concerning the necessary revisions to these easements, affected landowners will need to execute any new easement documents prior to settlement (in addition to any other requirements deemed necessary to complete this process).

**CAN I SUBDIVIDE PRESERVED FARMLAND?**

*It depends.* The parcel to be subdivided and the remaining preserved ground must each be considered “viable farms” that can remain economically independent on their own and sustain a variety of farming operations in the future. Subdivisions cannot occur solely for estate planning purposes. Each agricultural subdivision must be approved on a case-by-case basis by both the County and the State. It should be noted that the State is very strict when considering the subdivision of preserved farmland.

**IS MY FARMLAND MONITORED OR INSPECTED ONCE IT IS PRESERVED?**

Yes. The recorded Deed of Easement gives the County the authority to inspect each preserved farm on an annual basis to ensure that all the conditions and restrictions as indicated in the Deed are being met.

### **ARE THERE ANY OTHER FARMLAND PRESERVATION PROGRAMS AVAILABLE?**

Yes. While the majority of the County's preserved farms are processed through the County's Farmland Preservation Program there are other preservation programs that may be available. They include:

*State Direct Easement Program:* This program operates in the same manner as the County Farmland Preservation Program; however the landowner works directly with the SADC, who coordinates all aspects of the preservation process. Farms must be greater than 54-acres in size for consideration in this program and meet all the same eligibility conditions as the County's program. Due to limited State funding competition through this program is usually very strong.

*Municipal Planning Incentive Grant (PIG) Program:* This program is only available for landowners in municipalities that have developed their own Farmland Preservation Plans and have active PIG Programs, which currently include only **Woolwich Township, Franklin Township, and Elk Township**. This program operates in the same manner as the County Farmland Preservation Program; however the landowner initially works directly with their municipality. Farms must be included in a municipal target area for consideration in this program and meet all the same eligibility conditions as the County's program.

*Woolwich Township Transfer of Development Rights (TDR) Program:* This program was developed by Woolwich Township in an effort to protect its agricultural resources while still accommodate the need for controlled development. The Woolwich Township TDR Program is a realty transfer mechanism that permits owners of land in identified "sending" areas to separate the development rights of their property and sell them for use in areas deemed appropriate for growth. Developers who purchase these TDR credits may then develop land in these identified "receiving" areas at densities higher than otherwise permitted. Once the TDR credits of a property are sold the land is permanently restricted from further development. This program is administered by Woolwich Township and inquiries regarding it should be made directly to the municipality.

### **ARE THERE ANY SHORT TERM FARMLAND PRESERVATION PROGRAMS AVAILABLE?**

Yes. There are two types of 8-Year Farmland Preservation Programs, the State 8-year Program and the Municipal 8-year program.

In both programs the landowner voluntarily agrees to restrict their property to agriculture for a period of eight years. No direct compensation is provided, however the landowner is eligible to receive grants that fund up to 50% of the costs for approved water and soil conservation projects (provided State funding is available). Additionally, those in the Municipal 8-year program enjoy greater protection from nuisance complaints, emergency fuel and water rationing, zoning changes and eminent domain actions.

At the end of the eight years the landowner may terminate the agreement or roll the program over for another eight years, and is again eligible to apply for cost-share grants. Early withdraw from either 8-Year Program can only be done in the case of death or incapacitating illness of the landowner, bankruptcy, or other serious hardship, and must be approved at both the County and State level.

### **HOW SUCCESSFUL HAS THE PROGRAM BEEN IN MEETING ITS GOALS?**

*Since its inception the Gloucester County Office of Land Preservation has made great strides in preserving our County's farmland. Tracts of pristine County farmland that stretch as far as the eye can see are now permanently preserved, and as of this writing total close to **18,000 acres**. Even though development pressures continue to intensify and funding sources are strained, the Office of Land Preservation in cooperation with the Board of Chosen Freeholders will endeavor to ensure that Gloucester County safeguards its pastoral legacy both now and in the years to come.*

### **I'VE REVIEWED THIS BOOKLET AND HAVE ADDITIONAL QUESTIONS. WHO SHOULD I CONTACT?**

Individuals seeking more information on the programs and services we offer should contact us at:

**Gloucester County Office of Land Preservation**  
Building "E"  
1200 North Delsea Dr.  
Clayton, NJ, 08312  
Phone: (856) 307-6451 / Fax: (856) 307-6479  
Email: [landpreservation@co.gloucester.nj.us](mailto:landpreservation@co.gloucester.nj.us)

**. The County of Gloucester complies with all state and federal rules and regulations against discrimination in admission to, access to, or operations of its programs, services, and activities. In addition, County encourages participation of people with disabilities in its programs and activities and offers special services to all residents 60 years of age and older. Inquiries regarding compliance may be directed to the County's ADA Coordinator at (856) 384-6842/ New Jersey Relay Service 711.**