

The Farmland Preservation Program in Sussex County



Photo by Tanya Nolte

Preserved Tranquillity Farm

The Importance of Saving Farmland and Farmers

Farmland, an irreplaceable natural resource, and the farmers who are stewards of this land, are important to the County for significant economic and quality of life reasons. Agricultural use of land contributes food and fiber, clean air, stormwater management, groundwater recharge, wildlife habitat, and valued open vistas. Agriculture also contributes to the economy through the sale of produce, the purchase of equipment and other materials, and by providing employment. Agritourism brings visitors to the County, benefiting both the farmers and other ancillary businesses. Additionally, cost of community services studies by the American Farmland Trust indicate that agriculture, which does not require the same level of municipal services as residential uses, makes a positive contribution to municipal budgets.⁶ Farmers, who tend to remain at one location, provide these economic benefits along with neighborhood stability. They care for the barns and older farm dwellings that are treasured landmarks throughout the county and represent much of its historic heritage.

A Description of the Program

To preserve this valuable resource, the Sussex County Board of Chosen Freeholders created the Sussex County Agriculture Development Board (SCADB) in 1983. This was the same year that the New Jersey State Legislature adopted the State Agriculture Retention and Development Act and created the State Agriculture Development Committee (SADC), which provides funding for farmland preservation programs, establishes farmland preservation policy statewide, and oversees program administration.

The SCADB is comprised of seven voting members and three ex-officio members, including the County Agriculture Agent, a representative of the County Planning Department, and Sussex County Soil Conservation District. By law, a simple majority of the voting members must be

⁶ American Farmland Trust, *The Cost of Community Services in Monmouth County, New Jersey*, pp. ii.

farmers. In Sussex County there are four members who are farmers and three members who are non-farmers. The members are appointed by the Board of Chosen Freeholders.

The SCADB made their first purchase of development rights on a 47-acre farm in Andover Township in 1990. Although funding for preservation was in short supply during the early years of the program, landowner participation and the number of farms approved for preservation has grown steadily. As of May 2003, 6610 acres and 42 farms in 11 municipalities have been preserved in Sussex County through the County program with many additional farms scheduled for preservation in 2003. An additional 3,105 acres and 24 farms have final approvals and are working towards closings.

The Purchase of Development Rights (PDR) is the major component of the current Sussex County program. The SCADB utilizes the criteria and program guidelines adopted by the SADC in making its recommendations. These criteria include the requirements that a farm qualify for farmland assessment and that the farm is located in an Agricultural Development Area, which is a designation citing land that has potential for long-term agricultural viability. Farms are then ranked on the basis of soil quality, percent of tillable acres, a boundaries and buffers criterion to protect the integrity of the individual application and/or project area, a local commitment criterion examining zoning, the absence of growth leading infrastructure, consistency with municipal plans, active participation in the Agricultural Retention and Development Program, and /or the adoption of a Right-To-Farm ordinance and other ordinances that support agriculture. With the sale of the development rights, the land is deed restricted and non-agricultural uses are prohibited. The deed of easement makes provision, however, for pre-existing non-agricultural uses which are specified in the deed and grand-fathered. The deed restriction runs in perpetuity with the land.

In Sussex County, the farmland preservation program has evolved around the central theme of voluntary Agricultural Development Areas (ADAs). This is unique to Sussex County since no overall ADA is delineated from the onset. Farmers who are interested in participating in the program first apply to be included in an ADA, and an ADA is created in response to an approved application. Two criteria are used to determine whether a farm is eligible to be included in an ADA. The farm must be under farmland assessment or have the potential for farmland assessment status, and the farm must be greater than 40 acres in size. This second criteria may be waived for smaller, highly productive farms or for farms that are within a project area, i.e., adjacent to other preserved farms. Once in an ADA, the farm is eligible for application to either the permanent Easement Purchase Program or an 8-Year Farmland Preservation Program.

The experience in Sussex County has been that farmers around a preserved farm very often become interested in farmland preservation and make inquiries about the program and that participants who have preserved areas tend to promote the program. The SCADB seeks to expand these project areas to the extent reasonable (based on soils and other potentially limiting factors) but has not, to date, conducted any outreach that would target specific properties. The SCADB believes that such outreach may be utilized in the future. The SCADB recognizes that there are benefits to preserving farms that are contiguous because groups of farms help keep the ancillary services in the area and minimize Right-To-Farm issues. A map of **Preserved Farmland in Sussex County** illustrates the farmland that is preserved in Sussex County. In addition to farms preserved through the county program, this map includes a farm preserved through a direct easement purchase by the SADC and two farms preserved by a landowner

working with non-profit organizations. Adjacent farms or farms that are proximate to these farms are where project areas are developing.

Farmland Preservation Staff

Staff resources are limited in Sussex County. Currently, there is one person within the Department of Planning, Development and Human Services, Division of Planning working in the program. An additional part time employee was approved by the Freeholders in the Spring of 2003. One full-time Agriculture Resource Specialist is responsible for farmland preservation program administration, outreach, assistance to farmers in making applications, monitoring easements on an annual basis and promoting the county's agritourism initiative. This individual is also responsible for administering the right-to-farm program and receives assistance from the County Extension Office on right-to-farm issues.

Farmland Preservation Strategies

The Farmland Preservation Act created several farmland preservation programs. In Sussex County the purchase of development rights or Easement Purchase Program, is used predominantly. It is possible that the scope of the program will be expanded to include other strategies in the future. A description of farmland preservation programs and techniques follow:

The 8-Year Farmland Preservation Programs

There are two eight-year farmland preservation programs, the 8-Year Farmland Preservation Program and the Municipally Approved 8-Year Farmland Preservation Program. In entering either of these programs a farmer signs a contract that restricts the use of the land to agriculture and, in return, receives 50% cost sharing for soil and water conservation projects based on the total acres restricted. With the Municipally Approved Farmland Preservation Program, the municipality participates in the agreement. There are other benefits, in addition to the cost sharing benefits, which include protection against emergency energy or water restrictions, and eminent domain. The former program has been successful in Sussex County as the benefit of cost sharing for soil and water conservation projects has been an attractive incentive. Seven farmers have enrolled and interest is increasing. No one is currently enrolled in the 8-Year Municipally Approved Farmland Preservation Program. For entrance into these programs and to qualify for the benefits, a farm must be in an ADA. Once enrolled, the farm is restricted to agricultural use for a period of eight years. Technical assistance for the soil and water practices comes through the Natural Resource Conservation Service.

Purchase of Development Rights

In this program, the landowner sells the right to develop the land for non-agricultural purposes and the land is deed restricted for agriculture in perpetuity. The landowner receives a payment equal in value to the right to develop which is determined by calculating the difference between the market value of the land and the agricultural value of the land. The Purchase of Development Rights program, which has been accepted by the farming community and municipalities where preservation has occurred, is currently the largest component of the SCADB's program. A total of 42 landowners have sold development rights through the Sussex County Preservation Program as of May 2003. This program insures a permanent land base for agriculture in the future. The State and the County share in the costs of the easement in this program.

Direct Easement Purchase

This program allows a landowner to apply directly to the SADC for the sale of development rights. Landowners applying to the State do not have to be within an ADA to make an application. These applications compete for funds with other direct easement purchase applications from the entire state in a direct easement funding round. The State will pay up to 100% of the certified appraised value. However, landowners accepting a lesser amount will impact their ranking favorably. The end result of preserving agricultural land in perpetuity is the same as the traditional County Purchase of Development Rights program. The County does not contribute monetarily in the Direct Easement Program.

Fee Simple Acquisition

In a fee simple acquisition, the entire property is purchased for certified market value, and the landowner retains no rights. After making such a purchase, the SCADB or SADC will deed restrict the property so that it is permanently preserved for agriculture and sell the restricted farm at auction to the highest bidder or through the State's Farm Link program. The SCADB has not purchased a farm in fee simple as interest in selling outright has not surfaced. This kind of purchase could be very effective in an emergency situation where a farm might otherwise be lost and, consequently, might be a useful tool in the future.

Cooperative projects

A cooperative project involves a partnership and/or funding from more than one agency. This kind of project leverages county farmland preservation dollars and makes use of municipal open space trust funds or grants to non-profit organizations. Nine municipalities in Sussex County now have open space trust funds thus increasing the potential for a project in which the costs are shared among partners.

Donation and Bargain Sale

This mechanism for preserving a farm involves a donation by the landowner. If the landowner donates a portion of the value of the development rights when an easement is sold, this is called a bargain sale. A bargain sale can result in substantial tax savings for the landowner and can stretch County farmland preservation funds. The landowner donation is a reduction in the amount of gain that is subject to the capital gains tax, and the landowner can take a tax deduction for the amount donated against his or her federal and state income taxes.

Installment purchase

Through an installment purchase agreement, development rights may be acquired by the SCADB through a payment plan that provides payments to the landowner over time. Receiving the income from the sale in installments may provide the landowner with financial management and/or tax advantages. One farm in Sussex had been preserved using the installment purchase method.

Planning Incentive Grants (PIG)

This program allows counties and/or municipalities to identify farmland for preservation that is reasonably contiguous and to apply for State funding for the group in a single application. These farms and the program to be implemented are described in a Farmland Preservation Plan Element that must be adopted pursuant to the Municipal Land Use Law, (N.J.S.A. 40:55D-28b(13)) or the

County Planning Act, (N.J.A.C. 2:76-17.6.) The SCADB has a “wait and see attitude” about establishing a county PIG. The acceptance of the existing program by the farm community is the reason for some hesitancy about change. Additionally, the SADC’s PIG process is new and is still working through issues. It will also require additional staff time for implementation.

Transfer of Development Rights

The transfer of development rights is a growth management tool that transfers development rights from one location, a preservation area, to another, an identified growth area. Because developers purchase these rights, the private market provides landowner compensation, making the use of public funds unnecessary. This technique is only legally available in Burlington County.

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