

# **Permitting Commercial Nonagricultural Activities to Occur, and Cell Towers to Be Erected on Preserved Farmland**

This Act allows farms preserved under various farmland preservation to get a permit of limited duration (up to 20 years) to allow a commercial nonagricultural activity or a personal wireless service facility (i.e., a cellular telephone tower) to occur or to be placed on the land. The issuance of these permits would be either at the sole discretion of the State Agriculture Development Committee (SADC), or in those cases when the development easement is owned by a county agriculture development board or a nonprofit organization, at the joint discretion of the SADC and the county agriculture development board or nonprofit organization, as appropriate.

By allowing a commercial nonagricultural activity to occur in certain limited instances on preserved farmland, the Act corrects an inequity, detailed further below, encountered by some farmers who have chosen to preserve their farms. The accommodation to allow cell towers on preserved farmland in certain limited instances and where appropriate and necessary serves the public good by potentially improving cellular communications, especially when they are used for emergency purposes, while also providing needed income to often struggling farmers.

Under the Act, the only type of preserved farm that could apply for a commercial nonagricultural activity permit would be a commercial farm that was preserved for farmland preservation purposes prior to the date of enactment of the bill and for which no portion of the farm was excluded in the deed of easement from preservation. This provision rectifies an inequity for those farmers who chose to participate earlier in the history of the state's farm preservation program but who did not realize the possibility or potential benefit of excluding a portion of the farm from preservation so that it could be later used for a commercial nonagricultural activity which could provide supplemental income to, among other things, help offset increasingly costly farming operations. Farmers entering preservation programs later in the process have learned since to omit portions of the property from preservation for just such a reason.

The bill imposes a number of qualifying criteria and conditions on these farms and on the type of commercial nonagricultural activity which may be permitted. These criteria and conditions ensure that only small enterprises, such as bed and breakfasts, tractor repair shops, antique shops, the leasing of space to store equipment, etc., which meet local zoning requirements and which require only a few parking spaces could ever qualify.

It is the intent of the bill sponsors and of the committee that franchises, chain stores, and big box stores and businesses should not and cannot be permitted under this bill for a number of important public policy reasons, including obvious incompatibility with the rural character of the land and the adverse impacts that parking and traffic generated by those types of businesses would have on the land.

The bill also addresses the issue of when and how the installation of cellular telephone towers may be allowed on any preserved farm in the State, regardless of when and how it was preserved. Again, the purpose of this provision is to allow a farmer to receive supplemental income for the de minimis use of a very small portion of the farm for this important and compatible public purpose, but only in accordance with strict qualifying criteria and conditions as set forth in the bill.

In addition, the bill requires the SADC to prepare a report every two years on the implementation of this bill. The report must include a survey and inventory of all commercial nonagricultural activities occurring on, and of all personal wireless service facilities placed on, preserved farmland in accordance with the bill; the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified

therefor; the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos; and such other information as the SADC deems useful.

It is also the intent of the bill sponsors and of the committee that, in implementing this bill, the SADC shall ensure that: (1) existing structures, such as barns, sheds, and silos, are used in all cases for the allowed commercial nonagricultural activities and as much as possible for cell towers; (2) new structures would be allowed to be erected to accommodate cell towers only as a last resort; (3) any allowed modification of existing structures for either purpose is sensitive to the historic and aesthetic values and character of agricultural structures; (4) erection of new structures to accommodate cell towers would be equally sensitive to such values and character; (5) cell towers are disguised as much as possible in the form of agricultural or natural looking structures or features; and (6) viewsheds are preserved to the greatest extent possible.

Submitted as:

New Jersey

Chapter 314, P.L. 2005

Status: Enacted into law in 2005.

### **Suggested State Legislation**

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act is entitled “An Act to Permit Commercial  
2 Nonagricultural Activities on Preserved Farmland and to Permit Cell Towers on Preserved  
3 Farmland.”

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5           Section 2. [*Qualifying Land and Development Easements.*]

6           a. Any person who owns qualifying land on which a development easement was conveyed  
7 to, or retained by, a [committee, a board, or a qualifying tax exempt nonprofit organization]  
8 pursuant to [insert citation], may apply for a special permit pursuant to this section to allow a  
9 commercial nonagricultural activity to occur on the land.

10

11           b. The [committee], in its sole discretion, may issue a special permit pursuant to this  
12 section to the landowner if the development easement is owned by the [committee]. The  
13 [committee and the board], in their joint discretion, may authorize the [committee] to issue a  
14 special permit pursuant to this section to the landowner if the development easement is owned by  
15 a [board]. The [committee] and the [qualifying tax exempt nonprofit organization], in their joint  
16 discretion, may authorize the [committee] to issue a special permit pursuant to this section to the  
17 landowner if the development easement is owned by a [qualifying tax exempt nonprofit  
organization].

18

19           c. A special permit may be issued pursuant to this section provided that:

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(1) the land is a commercial farm as defined pursuant to [insert citation];

21

(2) there is no commercial nonagricultural activity already in existence on the land  
22 at the time of application for the special permit or on any portion of the farm that is not subject to  
23 the development easement, except that the committee may waive the requirements of this  
paragraph, either entirely or subject to any appropriate conditions,

24

(a) if such existing commercial nonagricultural activity is deemed to be of  
25 a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to  
26 [insert citation], derived from the farm, or

27

(b) for other good cause shown by the applicant;

28 (3) the permit is for [one] commercial nonagricultural activity only;  
29 (4) no more than [one] permit may be valid at any [one] time for use on the land;  
30 (5) the permit is for a maximum of [20 years] duration;  
31 (6) the permit does not run with the land and may not be assigned;  
32 (7) the commercial nonagricultural activity utilizes, or is supported through the  
33 occupation of, a structure or structures existing on the date of enactment of this Act, except that  
34 the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an  
35 expansion of an existing structure or structures which expansion does not exceed [500 square  
36 feet] in footprint area in total for all of the structures, provided that, for any such expansion, the  
37 applicant demonstrates to the satisfaction of the [committee] that:  
38 (a) the purpose or use of the expansion is necessary to the operation or  
39 functioning of the commercial nonagricultural activity;  
40 (b) the area of the proposed footprint of the expansion is reasonably  
41 calculated based solely upon the demands of accommodating the commercial nonagricultural  
42 activity and does not incorporate excess space; and  
43 (c) the location, design, height, and aesthetic attributes of the expansion  
44 reflect the public interest of preserving the natural and unadulterated appearance of the landscape  
45 and structures;  
46 (8) the commercial nonagricultural activity does not interfere with the use of the  
47 land for agricultural production;  
48 (9) the commercial nonagricultural activity utilizes the land and structures in their  
49 existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;  
50 (10) the commercial nonagricultural activity does not have an adverse impact upon  
51 the soils, water resources, air quality, or other natural resources of the land or the surrounding  
52 area, and does not involve the creation of additional parking spaces whether paved or unpaved;  
53 (11) the commercial nonagricultural activity is not a high traffic volume business;  
54 and  
55 (12) any necessary local zoning and land use approvals and any other applicable  
56 approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are  
57 obtained for the commercial nonagricultural activity.  
58 d. In addition to those factors enumerated under subsection c. of this section, the  
59 [committee], in evaluating an application for a special permit, shall also consider such additional  
60 factors as traffic generated and the number of employees required by the proposed commercial  
61 nonagricultural activity so as to limit to the maximum extent possible the intensity of the activity  
62 and its impact on the land and the surrounding area.  
63 e. For the purposes of this section:  
64 “Commercial nonagricultural activity” shall not include a personal wireless service  
65 facility as defined and regulated pursuant to section 2 of this Act;  
66 “Qualifying land” means a farm that was preserved for farmland preservation purposes  
67 prior to the date of enactment of this act under any of the laws cited in subsection a. of this  
68 section and for which no portion of the farm was excluded in the deed of easement from  
69 preservation; and  
70 “Qualifying tax exempt nonprofit organization” shall have the same meaning as set forth  
71 in [insert citation].  
72

73 Section 3. [*Special Permit to Allow a Personal Wireless Service Facility on Certain Land;*  
74 *Conditions.*]

75 a. Any person who owns land on which a development easement was conveyed to, or  
76 retained by, the [committee, a board, or a qualifying tax exempt nonprofit organization] pursuant  
77 to the provisions of [insert citation], or any other state law enacted for farmland preservation

78 purposes may apply for a special permit pursuant to this section to allow a personal wireless  
79 service facility to be erected on the land.

80 b. The [committee], in its sole discretion, may issue a special permit pursuant to this  
81 section to the landowner if the development easement is owned by the [committee]. The  
82 [committee and the board], in their joint discretion, may authorize the [committee] to issue a  
83 special permit pursuant to this section to the landowner if the development easement is owned by  
84 a [board]. The [committee and the qualifying tax exempt nonprofit organization], in their joint  
85 discretion, may authorize the [committee] to issue a special permit pursuant to this section to the  
86 landowner if the development easement is owned by a [qualifying tax exempt nonprofit  
87 organization].

88 c. A special permit may be issued pursuant to this section provided that:

89 (1) the land is a commercial farm as defined pursuant to [insert citation];  
90 (2) there is no commercial nonagricultural activity already in existence on the land  
91 at the time of application for the special permit or on any portion of the farm that is not subject to  
92 the development easement, except that the [committee] may waive the requirements of this  
93 paragraph, either entirely or subject to any appropriate conditions,

94 (a) if such preexisting commercial nonagricultural activity is deemed to be  
95 of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to  
96 [insert citation], derived from the farm, or

97 (b) for other good cause shown by the applicant;

98 (3) the permit is for [one] personal wireless service facility only, although this  
99 paragraph shall not prohibit the [committee, board, or qualifying tax exempt nonprofit  
100 organization], as the case may be, from approving the sharing of the single permitted facility by  
101 more than [one] personal wireless service company, or the use of the facility for other compatible  
102 wireless communication uses deemed by the [committee, board, or qualifying tax exempt  
103 nonprofit organization], as the case may be, to not be violative of the intent or the goals, purposes,  
104 or requirements of this section;

105 (4) no more than [one] permit may be valid at any [one] time for use on the land;

106 (5) the permit is for a maximum of [20 years] duration;

107 (6) the permit does not run with the land and may not be assigned;

108 (7) the personal wireless service facility utilizes, or is supported through the  
109 occupation of, existing structures, except that the permit may authorize, subject to the  
110 requirements of paragraph (12) of this subsection, an expansion of an existing structure or  
111 structures which expansion does not exceed [500 square feet] in footprint area in total for all of  
112 the structures, or the construction of a new structure not to exceed [500 square feet] in footprint  
113 area which is independent of any existing structure, provided that in either case the applicant  
114 demonstrates to the satisfaction of the [committee] that:

115 (a) the expansion or the new structure is necessary to the operation or  
116 functioning of the personal wireless service facility;

117 (b) for a new structure,

118 (i) there are no existing structures on the land which could be  
119 utilized or occupied to adequately support the personal wireless service facility, and

120 (ii) the relevant deficiencies associated with each such existing  
121 structure, as indicated in a written description provided by the applicant, support that conclusion;  
122 and

123 (c) the area of the proposed footprint of the expansion or the new structure  
124 is reasonably calculated based solely upon the demands of accommodating the personal wireless  
125 service facility and does not incorporate excess space;

126 (8) the location, design, height, and aesthetic attributes of the personal wireless  
127 service facility reflect, to the greatest degree possible without creating an undue hardship on the

128 applicant or an unreasonable impediment to the erection of the personal wireless service facility,  
129 the public interest of preserving the natural and unadulterated appearance of the landscape and  
130 structures;

131 (9) the personal wireless service facility does not interfere with the use of the land  
132 for agricultural production;

133 (10) the personal wireless service facility utilizes the land and structures in their  
134 existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

135 (11) the personal wireless service facility does not have an adverse impact upon  
136 the soils, water resources, air quality, or other natural resources of the land or the surrounding  
137 area, and does not involve the creation of additional parking spaces whether paved or unpaved;  
138 and

139 (12) any necessary local zoning and land use approvals and any other applicable  
140 approvals that may be required by federal, state, or local law, rule, regulation, or ordinance are  
141 obtained for the personal wireless service facility.

142 d. In addition to those factors enumerated under subsection c. of this section, the  
143 [committee], in evaluating an application for a special permit for a personal wireless service  
144 facility, shall also consider such additional factors as traffic generated and the number of  
145 employees required by the proposed personal wireless service facility so as to limit to the  
146 maximum extent possible the intensity of the activity and its impact on the land and the  
147 surrounding area.

148 e. Notwithstanding any law, rule, or regulation to the contrary, a personal wireless service  
149 company whose proposed facility is the subject of a permit application pursuant to this section  
150 shall be required to obtain all applicable local zoning and land use approvals and any other  
151 applicable approvals that may be required by state or local law, rule, regulation, or ordinance  
152 even if the proposed facility includes a compatible wireless communication use, such as law  
153 enforcement or emergency response communication equipment, which may otherwise allow the  
154 proposed facility to be exempt from obtaining any such approvals.

155 f. As a condition of the issuance of a permit pursuant to this section, a personal wireless  
156 service facility shall agree to allow, at no charge to the requesting state or local governmental  
157 entity, the sharing of the facility for any state or local government owned or sponsored  
158 compatible wireless communication use for public purposes, such as law enforcement or  
159 emergency response communication equipment, approved by the [committee].

160 g. For the purposes of this section:

161 “Qualifying tax exempt nonprofit organization” shall have the same meaning as set forth  
162 in [insert citation]; and

163 “Personal wireless service facility” means a personal wireless service tower and any  
164 associated equipment and structures necessary to operate and maintain that tower, as regulated  
165 pursuant to federal law.

166

167 Section 4. [*Special Permit, Application Fee, Grounds for Suspension, Revocation.*]

168 a. The application fee for a special permit authorized pursuant to either section 1 or  
169 section 2 of this Act shall be [\$1,000], payable to the [committee] regardless of whether or not a  
170 permit is issued. All proceeds from the collection of application fees by the [committee] pursuant  
171 to this Act shall be utilized by the [committee] for farmland preservation purposes.

172 b. The [committee] may suspend or revoke a special permit issued pursuant to either  
173 section 1 or section 2 of this Act for a violation of any term or condition of the permit or any  
174 provision of the respective section.

175 c. The [committee] shall, within [60 days] after the date of enactment of this Act, develop  
176 guidelines for the implementation and administration of this Act, including, but not limited to,  
177 procedures and standards for the filing, evaluation, and approval of permit applications, which

178 seek to balance, as equally important concepts, the public interest in protecting farmland from  
179 further development as a means of preserving agriculture and agricultural structures and  
180 enhancing the beauty and character of the state and the local communities where farmland has  
181 been preserved with the public interest in providing support to sustain and strengthen the  
182 agricultural industry in the state.

183 d. Every [two years], the [committee] shall prepare a report on the implementation of this  
184 Act. The report shall include a survey and inventory of all commercial nonagricultural activities  
185 occurring on, and of all personal wireless service facilities placed on, preserved farmland in  
186 accordance with this Act; the extent to which existing structures, such as barns, sheds, and silos,  
187 are used for those purposes, and how those structures have been modified therefor; the extent to  
188 which new structures, instead of existing structures, have been erected to host personal wireless  
189 service facilities and the number and type of new structures used to disguise those facilities, such  
190 as artificial trees and faux barns, sheds, and silos; and such other information as the [committee]  
191 deems useful. The report prepared pursuant to this subsection shall be transmitted to the  
192 [Governor, the President of the Senate, the Speaker of the General Assembly, the respective  
193 chairpersons of the Senate Economic Growth Committee, the Senate Environment Committee,  
194 the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and  
195 Solid Waste Committee or their designated successors]. Copies of the report shall also be made  
196 available to the public upon request and free of charge, and shall be posted on the website of the  
197 [Agriculture Development Committee].

198 e. The [committee] shall adopt, pursuant to [insert citation], any rules and regulations  
199 necessary to carry out the purposes of this Act.

200

201 Section 5. [*Severability*.] [Insert severability clause.]

202

203 Section 6. [*Repealer*.] [Insert repealer clause.]

204

205 Section 7. [*Effective Date*.] [Insert effective date.]