

CHAPTER IV: MORRIS COUNTY'S FARMLAND PRESERVATION PROGRAM

Agricultural Development Areas

The Morris County Agriculture Development Board (CADB) developed the Morris County Agriculture Development Area (ADA) based upon both statutory and County criteria. The ADA designates land that has the potential for long-term agricultural viability. This agricultural use would be the preferred, but not exclusive, use within the ADA boundary.

The statutory criteria for determining the ADA are as follows:

- Encompasses productive agricultural lands which are currently in production or have a strong potential for future production in agriculture and *in which agriculture is a permitted use under the current municipal zoning ordinance* or in which agriculture is permitted as a nonconforming use.
- Is reasonably free of suburban and conflicting commercial development.
- Comprises not greater than 90% of the agricultural land mass of Morris County.
- Incorporates any other characteristics deemed appropriate by the Board.

Morris County initially established their ADA in 1984. The original ADA was not specific to parcels, which left the map open to interpretation on its specific boundaries. As part of the 2007 update of the Comprehensive Farmland Preservation Plan, the Morris CADB decided it would be in the best interest of the program to have a parcel-specific delineation of its ADA.

Consequently, the ADA was updated and Morris CADB policy was amended to reflect this approach in the 2007 Comprehensive Farmland Preservation Plan, which was subsequently approved by the SADC. As part of this current update to the County's Farmland Preservation Plan, the parcel-based ADA is updated to incorporate additional farmland that would be eligible for preservation through the County Planning Incentive Grant based upon the existing CADB policies. The current ADA is parcel based and consists of the targeted farms and preserved farms, as illustrated on the Farmland Inventory Map.

The criteria for lands to be included in the Morris County Agricultural Development Area are the following:

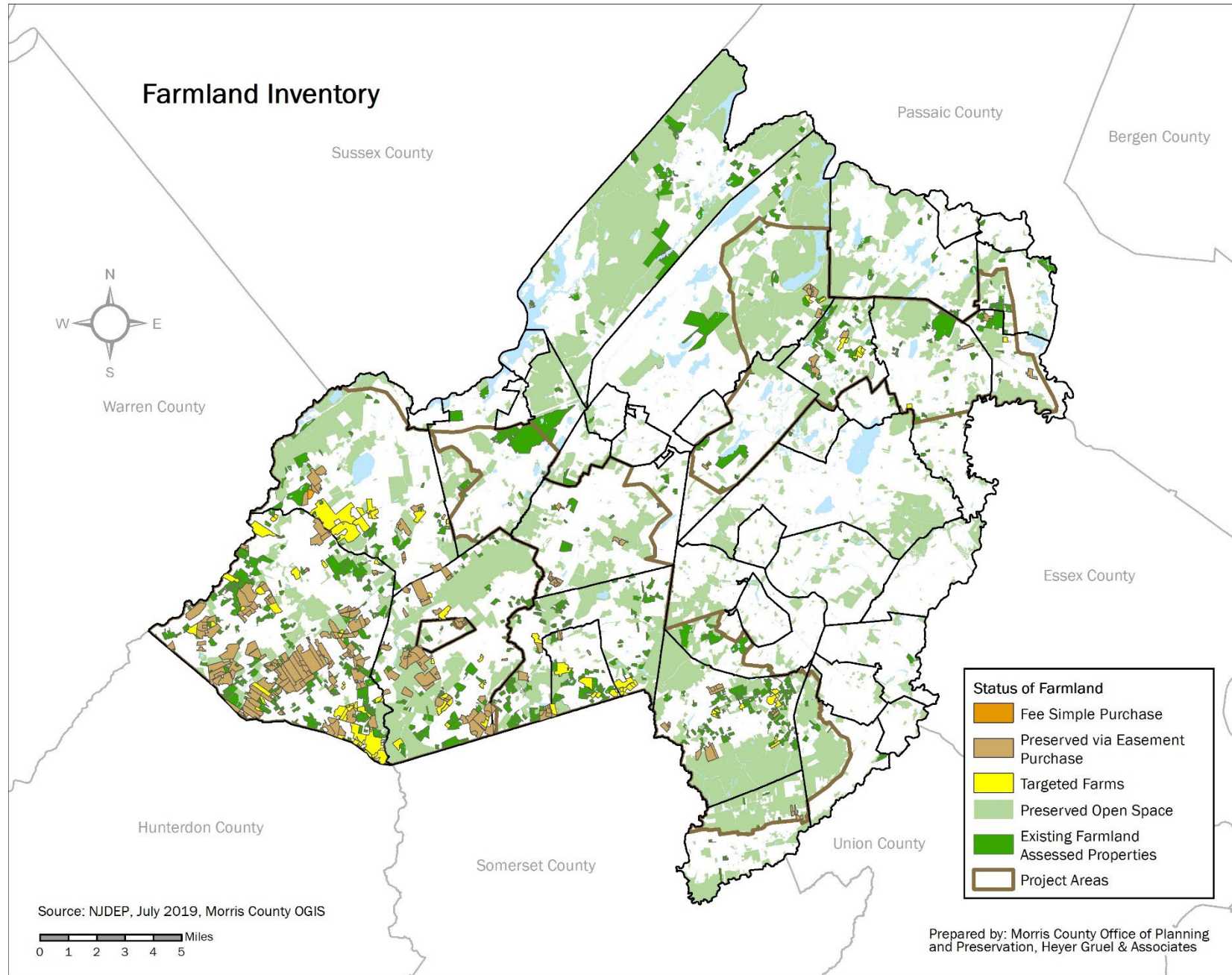
Permanently Preserved Farmlands.

- Lands in Eight Year Farmland Preservation Programs (Term Preservation Program)
- Lands pending permanent farmland preservation by a non-profit, Morris County or the State Agriculture Development Committee.

If none of the above has been fulfilled, then the following criteria must be met:

- Land that is at least 10 acres.
- Land that receives farmland assessment.
- Lands comprising the premises are adjoining and have common ownership.
- The land must be at least 50% tillable, or have at least 25 tillable acres.
- Lands less than 25 acres in size shall not contain more than 80 percent soils with slopes in excess of 15 percent as identified on a USDA, Natural Resource Conservation Service SSURGO version 2.2 or newer soils map.
- The land is located in a municipality that has adopted a Right-to-Farm Ordinance.

The ADA encompasses approximately 14,000 acres of the County's total area and is home to the majority of the County's agricultural landscape.



Farmland Preserved to Date by Program and Municipality

Over the past decade, the County has deviated from the State criteria as well as the County’s criteria, which allows the state/county cost-share for farmland preservation projects. As interested landowners seek to preserve their farm, the land is not always eligible for the Planning Incentive Grant. However, Morris County has a well-funded farmland preservation program, and in several instances, has preserved farms that do not meet the eligibility criteria. It is important to acknowledge existing farms to target, even those that do not meet the SADC minimum criteria. The list of targeted farms list is checked annually to determine any changes in ownership.

The Morris County Farmland Preservation program began with the permanent preservation of the Cupo Farm, a 14-acre farm in Washington Township, on December 28, 1987. Since 1987, an additional 136 farms have been permanently preserved. As of December 2020, 137 farms totaling 8,065 acres have been permanently preserved. Another five farms (totaling 199 acres) are currently in various stages of the easement purchase program, which, when completed, will raise the total permanently preserved acreage to over 8,264 acres in 14 municipalities.

Towns with permanently preserved farms include Boonton Township, Chester Borough, Chester Township, Denville Township, Harding Township, Lincoln Park Borough, Long Hill Township, Mendham Borough, Mendham Township, Montville Township, Mt. Olive Township, Randolph Township, and Washington Township. Washington Township leads in the number of preserved acres in the County. This is not surprising since Washington Township ranks first-place in the County in terms of total farmland acreage with 10,687 acres and has over 4,900 acres preserved, as illustrated in the following table. Chester Township is second in the county for the number of preserved acres (1,569 acres preserved) and ranks second in terms of farmland acreage with 3,309 acres.

Preserved Farmland in Morris County – by Municipality⁸⁵

Preserved Farmland by Municipality in Morris County					
Municipality	Town Size	Acres Farmland	Preserved Farmland Acres	Percent of Town in Farmland	Percent of Farmland Preserved
Boonton Twp.	5,437	1,085	141	20.0%	13.0%
Chester Boro	1,020	113	59	11.1%	52.4%
Chester Twp.	18,695	3,309	1,569	17.7%	47.4%
Denville Twp.	8,152	440	20	5.4%	4.5%
Harding Twp.	13,162	2,014	276	15.3%	13.7%
Lincoln Park Boro	4,427	412	77	9.3%	18.6%
Long Hill Twp.	7,714	187	54	2.4%	28.7%
Mendham Boro	3,826	1,153	41	30.1%	3.6%
Mendham Twp.	11,527	1,922	229	16.7%	11.9%
Montville Twp.	12,232	694	27	5.7%	3.9%
Mount Olive Twp.	19,992	2,741	356	13.7%	13.0%
Randolph Twp.	13,542	468	147	3.5%	31.3%
Rockaway Twp.	29,367	1,192	123	4.1%	10.3%
Washington Twp.	28,727	10,687	4,947	37.2%	46.3%
Total Preserved Farmland Acres: 8,066					

A complete inventory of all preserved farms is included in *Appendix C*.

The Farmland Preservation Program is administered on a statewide basis by the State Agriculture Development Committee (SADC). The SADC provides grants for local government units and counties to pay up to 80 percent of costs of acquisition of development easements or fee simple titles. The SADC also directly acquires farms and development easements.

⁸⁵ Preserved Farms and Farmland as of December 2020. Farmland includes all 3A and 3B assessed. Municipal acreage as per GIS

In 2007, the SADC adopted rules that streamlined the farmland preservation process which establish a new County Planning Incentive Grant (PIG) Program that will enable participating counties to accept and approve applications from landowners year-round rather than once a year as is the case under the County Easement Purchase Program.

Since the writing of the previous plan, the County Easement Purchase Program has been phased out, and the County PIG Program is the most common program due to its advantages to counties and landowners. Among those advantages are shortening the timeframe from landowner application to closing, eliminating direct competition for funding among varied types of farms from different regions of New Jersey, encouraging a comprehensive farmland preservation planning approach at the county level, and eliminating duplication of work between the SADC and the counties.

In addition to the County Planning Incentive Grant Program, landowners interested in preserving their farmland can take advantage of other programs, namely, the SADC Direct Easement Program, SADC Fee Simple Program, the Term Preservation Program, and Non-Profit Programs.

County Easement Purchase Program

Using the County Easement Purchase Program, the landowner voluntarily agrees to sell the development rights of their farmland to the County 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 landowner retains the right to the preserved land with the new deed restriction ensuring that the land will not undergo non-farm development. The county and state share easement purchase costs, which represent the difference between a property's farm (or deed-restricted) value.

The County Easement Purchase Program was extremely popular between 1987 and 2010, having preserved 73 farms totaling 5,269.2 acres. However, since the inception of the County Planning Incentive Grant (CPIG), this program has been phased out.

County Planning Incentive Grant (PIG) Program

The County PIG Program (CPIG) encourages a comprehensive planning process for farmland preservation at the county level that offers several advantages over the traditional easement program. The advantages include accepting and processing farmland preservation applications year-round, reducing the timeframe from landowner application to closing, and rewarding counties that complete transactions in a timely manner with the potential for additional funding.

Landowners apply to the County Agricultural Development Board (CADB) who reviews applications and forwards approved ones to the SADC. Eligible farms must meet the minimum requirements as specified by the CADB and the SADC. The SADC prioritizes applications for preservation funding through a ranking system that assigns points. These quality scores establish the SADC's preliminary priority list for preservation. The CPIG funding is roughly split between the County and the SADC using a sliding scale based upon the SADC criteria. The cost share tends to be 45% for the County and 55% for the state. However, there have been several instances where the County exceeds the 40% cost share due to SADC's sliding scale mechanism and/or to meet the asking price of the landowner. As part of the program, the County is required to submit an Annual CPIG Report, which provides an update on the grant eligibility, project areas, targeted farms, and preserved farms.

As of January 2021, Morris County has preserved 44 farms totaling 1,983.6 acres between 2003 and 2020 using the CPIG program.

Other County Preserved Farms

Since 2010, the County has preserved seven farms totaling 172.8 acres on a case-by-case basis and without assistance from the State, municipal, or nonprofit partners. Many of these farms do not meet the required minimum eligibility criteria by the CPIG or the SADC programs, and the County therefor purchases the development easements of the land on its own. The land is deed restricted in perpetuity as preserved farmland. However, the CADB makes its decision on a case-by-case basis based upon the merits of each application.

Often times, these farms do not meet the minimum acreage requirement and/or the tillable land requirement. However, the CADB determines that the farm should be preserved as it provides an invaluable service and serves as an important landmark in its community.

Municipal Planning Incentive Grant (PIG) Programs

The Municipal Planning Incentive Grant Program is similar to the County-wide PIG Program. The SADC provides Municipal Planning Incentive Grants to municipalities for the purchase of development easements to permanently protect large blocks of reasonable contiguous farmland in project areas they have identified. The municipality must have an agricultural advisory committee, an approved application that contains a farmland preservation plan element of the master plan, a Right to Farm Ordinance, and must establish and maintain a dedicated source of funding.

The SADC established the municipal-level Planning Incentive Grant (PIG) Program in 1999. This program works in much the same fashion as the county-wide PIG program, but with a smaller area of concentration. There are no current municipal PIG programs in Morris County. Unlike other counties where municipal governments oversee the administration and acquisition of farms in their municipal-level PIG, Morris County serves in this capacity. Keeping applications at the county-level enables better communication with the SADC and concentrates the expertise within one office per county.

Only one farm was purchased through the Municipal PIG program in Washington Township, which consisted of 14.5 acres.

SADC Direct Easement Program

Under the Direct Easement Program, landowners sell the development rights of their farmland directly to the SADC. To participate in this program, farms must be priority farms that are strategically located. Priority farms are those that meet or exceed the county average in size and in score. In evaluating farms, the SADC considers factors such as soil quality, percentage of tillable acres, proximity to other preserved farms, and local support for agriculture. The SADC accepts applications year-round. The SADC negotiates a purchase price with the landowner based on two independent appraisals.

Through this program, two farms covering 117.7 acres have been preserved in Morris County.

SADC Fee Simple Program

Under the Fee Simple Purchase Program, interested landowners sell their land in fee simple title, relinquishing all rights to the land. Land value is determined by appraisal. The county and state share purchase costs. The farm, with agricultural deed restrictions in place that ensure its permanent preservation, is sold at a public auction. The Fee Simple Program provides other farmers with opportunities to purchase land at reasonable prices that reflect only farmland values, not development potential. This program is administered by the SADC.

There have not been any SADC Fee Simple applications preserved in Morris County.

Non-Profit Programs

The SADC provides grants to nonprofit organizations to fund up to 50 percent of the fee simple or development easement values on farms to ensure their permanent preservation. Non-profit organizations may apply to the SADC. Notice of available funds is published in the *New Jersey Register*. Applications must be submitted within 90 days of that notice. As part of the application process, non-profit groups must publish a notice that an application has been filed and notify the municipality and CADB.

One farm in Morris County has been preserved through this program. The Morris Land Conservancy, in partnership with the County and the SADC preserved 124.3 acres.

Transfer of Development Rights

As previously discussed, Transfer of Development Rights (TDR) is a realty transfer mechanism that enables property owners within a designated preservation area (i.e. sending area) to sell the development rights of their land.

Developers purchase the "development credits" and transfer that development potential to an area that is designated for growth at densities higher than otherwise would be permitted (receiving area). Once the development rights of a property are sold, the land is permanently restricted from further development. No farms in Morris County have been preserved using this method.

Term Preservation Programs

Under the Term Preservation Program, landowners voluntarily restrict development on their land for a period of eight or sixteen years. There are two types of eight-year programs: municipally approved programs, which require a formal agreement between the landowner, county and municipality, and non-municipally approved programs, which require an agreement between only the landowner and county. Landowners apply to the CADB. Although they receive no direct compensation, landowners enrolled in both programs are eligible to receive grants for up to 50 percent of the cost of conservation projects such as irrigation systems, erosion control measures, underground or permanent open drainage systems, windbreak restoration, contour farming, terrace systems and more. The Morris CADB provides points for easement purchase applicants who are enrolled in eight-year programs as a means to incentivize the program. Unfortunately, the benefits of the Term Preservation Program have not attracted many farmland owners in Morris County.

The following is a summary of benefits for enrolling in the programs:

Non-Municipally Approved

- 50 percent cost-share on a soil and water conservation project.
- Use of farm structure designs approved by the State Agriculture Development Committee without requiring approval from an architect or engineer.
- Additional points towards an easement purchase application (See *Appendix D*).

Municipally Approved

- 50 percent cost-share on a soil and water conservation project.
- Use of farm structure designs approved by the State Agriculture Development Committee without requiring approval from an architect or engineer.
- Protection for 11 years from any municipal zoning changes.
- Protection from a public body acquiring lands through eminent domain, unless the acquisition is for public safety reasons.
- Protection from nuisance complaints regarding farm operations.
- Exemption from emergency water or energy restrictions.
- Additional points towards an easement purchase application (See *Appendix D*).

Currently, there are four farms enrolled in the Term Preservation Program with the County. There are two current municipally-approved term-preservation projects in the County. Morris County and its municipalities with qualifying farmland should coordinate to determine whether municipally-approved term-preservation programs would be appropriate. There are also two current non-municipally-approved term-preservation projects in the County.

Consistency with SADC Strategic Targeting Project

The SADC's Strategic Targeting Project, from 2003, establishes a methodology to prioritize farmland preservation investments based on specific criteria. The project has the following three primary goals:

- Coordinate farmland preservation/agricultural retention efforts with proactive planning initiatives;
- Update and create maps to target preservation efforts; and
- Coordinate with open space, recreation and historic preservation efforts.

The preparation of Morris County's Farmland Preservation Plan is the guiding document for implementing the SADC's strategic targeting goals. The farms and areas targeted for preservation, focus on prime agricultural soils and limited public growth-oriented infrastructure. Additionally, the mapping contained in this report will be utilized to illustrate the locations of future farmland preservation efforts. Coordination efforts with other preservation programs, such as open space and historic preservation are discussed in the *Coordination with Open Space Preservation Initiatives* section of this chapter.

Coordination with Open Space Preservation Initiatives

The Morris County Farmland Preservation Program actively coordinates its acquisition efforts with open space efforts. Structurally, the open space, historic and farmland preservation programs are coordinated within one office of county government. The Preservation Trust Division is within the Office of Planning and Preservation.

The Preservation Trust Division has administrative functions over the Morris County open space trust fund programs, which has the following main components:

- Farmland Preservation Program
- Historic Preservation Program
- Open Space - Grants to Municipalities and Non-Profits
- Trails Program
- Flood Mitigation Program
- Open Space - Acquisitions by County agencies

This consolidated division enables seamless information sharing among five of the six acquisition components of the open space trust fund. The sixth program, acquisitions by County agencies is also coordinated through the Preservation Trust Division. The funding for county open space acquisitions, by either the Morris County Municipal Utilities Authority or the Morris County Park Commission, is through the county open space trust fund. The project tracking and release of funds for any purchase are administered by the Preservation Trust Division.

In addition, Preservation Trust staff regularly attends the Morris County Park Commission's Land Acquisition Committee in order to share information and provide coordination of efforts. Similar communication is held with the MCMUA in a less formal manner.

The Preservation Trust Division director also serves as the Director of the Morris County Agriculture Development Board. This organization works extremely well to coordinate land acquisition efforts in Morris County.

Whenever a county agency or municipality is seeking to acquire open space lands that are currently farmed, communication is encouraged between the agencies involved and the Morris County Agriculture Development Board. Since most non-profit and municipal open space acquisitions utilize funds from the Morris County Open Space grant program, there is an open dialogue to evaluate the purchase and determine if the project would be better suited for farmland preservation. The Morris CADB has a representative serve on the County Open Space Trust Fund Committee to further ensure that projects are evaluated in the best interest of agriculture in Morris County.

Additionally, the Morris CADB continues to work with other agencies to incorporate open space and trail network connections. This coordination is strictly on a voluntary basis with the landowner's consent. As some public access projects can hinder agricultural pursuits, a landowner must agree to participate. There are several instances of this collaborative preservation effort occurring in Morris County:

- In 1997, a 165-acre farm in Washington Township, owned by the Maier Brothers was preserved. The farm adjoins the Musconetcong River. The Maier Brothers preserved 135 acres of the farm under a farmland preservation deed of easement. The landowners also agreed to sell in fee simple, 25 acres along the river to the State of New Jersey's Green Acres program. The Green Acres program was interested in adding fishing access to the trout production river. A fence separates the public fishing access from the fields that are in vegetable production.
- Morris County is currently working with Mount Olive Township on a project called "Charters Farm." This 66-acre farm, currently owned by Mount Olive Township, will incorporate a public access trail along one

border of the farm. This piece is an important connector for a county-wide trail called "Patriot's Path." The Morris County Park Commission will be the manager of the public trail. Once preserved through the New Jersey Farmland Preservation Program, the farm will be sold at auction.

- A similar arrangement to Charters Farm was concluded in Washington Township in 2002. In this case, the "Kramer" Farm was preserved by placing farmland agricultural deed restrictions on 64 acres of a 92-acre tract. The remaining acreage was set aside in a conservation easement held by Washington Township, which permits agricultural production. In addition, there was a public access/equestrian trail easement that was created along the perimeter of the property.

These are a few examples of how the Morris County farmland preservation program has coordinated with open space initiatives.

Farmland Preservation Program Funding Expended to Date by Source

The Morris County Open Space and Preservation Trust Fund was established in 1992. Since this time, the Trust Fund has since been renamed the Morris County Open Space, Farmland, Floodplain Protection and Historic Preservation Trust Fund.

Collection of funds for the Trust Fund commenced on July 1, 1993 with a tax equal to one-half cent per \$100 of total county equalized real property valuation. The Morris County Commissioners review the tax rate annually and may set the tax anywhere from \$0.00 to \$0.05. The levy for 2021 has been set at 5/8 cent per \$100 valuation.

For 2021, the Trust Fund is divided into the following categories:

- 1/4 cent for the County Park Improvement Program
- 1/4 cent for the Historic Preservation Program
- 1/8 cent to municipal and/or qualified charitable conservancy projects

Previously, 25% of the total Trust Fund was allocated for farmland preservation projects. However, since the Farmland Preservation Program has a notable balance in its account, a dedicated funding source is no longer needed for the County's Farmland Preservation Program. However, should the Program require additional funds, it would be likely the program would receive it.

As of May 2021, the County's Farmland Preservation Program had a balance of \$17,755,383. There is also an Ancillary Account within the Trust Fund that had a balance of approximately \$12 million as of May 2021 that can be used at the discretion of the County Commissioners for overall Preservation Trust Fund projects.

As of May 2021, 8,071.9 acres of farmland have been preserved in Morris County through the County's preservation programs at a total cost of \$162,682,812. Based upon County records, Morris County's share of this total is \$77,147,254 and the SADC's share of this total is \$83,959,801. No funds have been provided by non-profit organizations or by municipalities. Prior to the passage and implementation of the open space trust fund, Morris County funded farmland preservation through capital accounts (bonding). As the funding available through the Trust Fund increased, bonding for farmland preservation purposes lessened. The Board of Commissioners' support for the program has been resolute. No request for funds for farmland preservation purposes has ever been denied.

Within the County Planning Incentive Grant rules of the SADC, there is a limitation placed on funds that any one county may receive each year. For State Fiscal Year 2021 (July 2020 thru June 2021), the SADC has placed a \$2 million limit for funds to any one county. This funding limit is established annually by the SADC, based on funding availability. This funding limit may hinder preservation efforts in Morris County given the extremely high per acre cost of acquisition as compared to other counties. However, pending the number of applications the CADB receives in any given year, the State's limit on funds may not be an issue.

A complete inventory of all farms preserved through the County's Farmland Preservation Program is included in *Appendix C*.

Monitoring and Stewardship of Preserved Farmland

Annually, Morris CADB staff conducts its monitoring of all preserved farms (138 farms as of May 2021.) The SADC's Regulation N.J.A.C. 2:76-6.18A(d) requires the Morris CADB to perform annual onsite inspections of all permanently preserved farms. The purpose of the inspection is to ensure that each farm is in compliance with the terms of the Deed of Easement. Due to the growing number of preserved farms, the monitoring program entails more than sixteen weeks of staff's time to coordinate and conduct the onsite inspections. Further, there is a time commitment made by staff to remedy any issues or potential deed of easement violations as a result of the site inspections. The Morris CADB recognizes the importance of the "partnership" between the landowner and the County with the farmland preservation program and strives to maintain a positive working relationship. To that end, the Morris CADB developed a policy for addressing possible easement violations. See Policy P-10 in *Appendix E* for the approach taken to remedy possible violation issues.

As more farms become preserved, more staff time will be needed to complete the task each year.

Another commitment made by the Morris CADB is towards the review of proposed new uses on preserved farms and the interpretation of the deed restrictions. This is a very important role that has proven to be an important time investment. As more preserved farms are sold, new ideas and uses for preserved farms are being sought. In order to assist the public who may be seeking to purchase a preserved farm as well as providing a means for the Morris CADB to review proposals objectively, Policies P-11 and P-12 have been implemented (See *Appendix E*). These two policies enable the public to understand how the Morris CADB renders decisions as well as if a particular use is acceptable under the terms of the deed of easement.

With the maturity of the farmland preservation program, annual monitoring and stewardship issues have become the predominant activity for the Morris CADB. The conscientiousness of the Board and staff for this purpose is very important to ensure the protection of an investment of public funds in excess of \$162 million.

Coordination with TDR Programs

A discussion of the TDR Program can be found in Chapter III of this Plan, "Land Use Planning Context." As discussed in the referenced section, TDR Programs are currently not a viable option for preserving farmland in Morris County. If a TDR program does prove viable, the Morris CADB is willing to explore this as an option for the program, and the County will further coordinate efforts with the Highlands Council.