

CHAPTER V: FUTURE FARMLAND PRESERVATION PROGRAM

At a public meeting of the Morris CADB held on July 1, 2021, Heyer Gruel & Associates attended a meeting to discuss the issues facing the farming community in Morris County with the CADB. During the meeting, conversations were had over a variety of topics, including agritourism, products sold, development pressures, the role of the CADB, the farmland preservation program, conflicts between residential and farming operations, road safety, Right-to-Farm, anticipated trends, support services, pests and invasive species, water supplies, and targeting farms.

As mentioned previously in this Plan, public outreach was also solicited from the general public. An online survey consisting of fifteen multiple choice and open ended questions was announced by the County and posted on the County's website on June 18, 2021 and was advertised in the County's weekly e-mail newsletter. The County's Farmland Preservation Director, Katherine Coyle, also participated in several interviews to promote the survey and to notify the public of the update to the County's Farmland Preservation Plan. Members of the public were invited to respond to the questions of the survey by July 9th. A total of 208 responses were received.

Generally speaking, the majority of the respondents are in favor of preserving the County's remaining farmland, and feel it is important to continue to preserve farmland. Many also purchase agricultural products from local farms at least twice a month during the season. Many comments were also received from members from the public. A summary of the online survey is available in *Appendix A*.

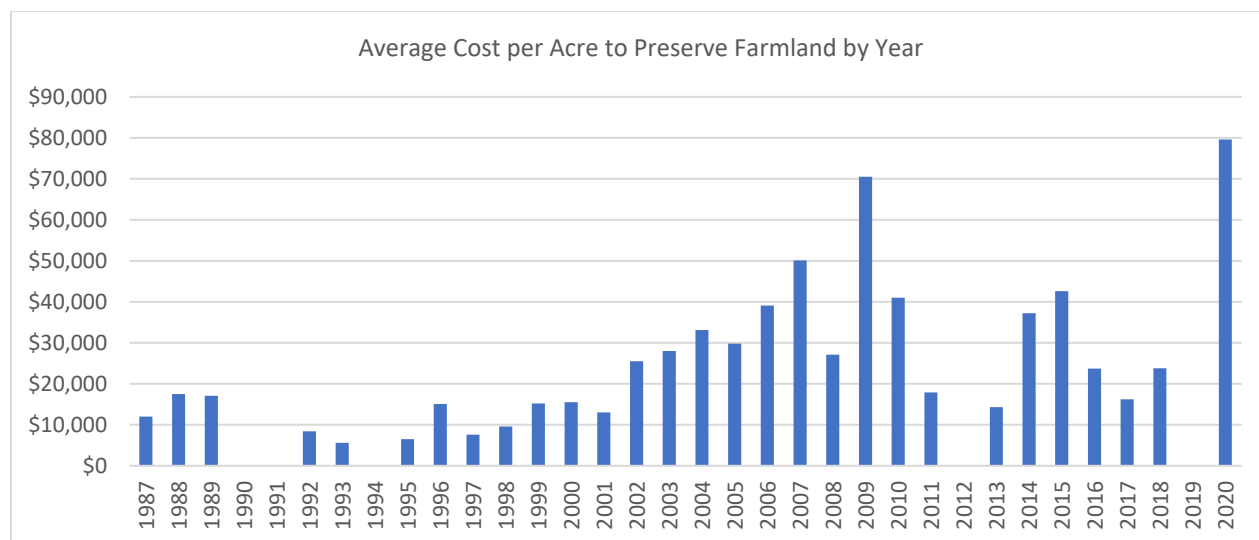
Each of the municipalities in the County were also notified of the Plan's update. An 11-question survey was sent to each municipality. Fourteen municipalities answered the survey, two meetings were held with two of the municipalities, thirteen municipalities indicated that farmland preservation is not applicable to their communities, and ten municipalities did not respond. A summary of the responses is provided in *Appendix A*.

Preservation Goals

The average per acre easement cost over the past five years (from 2015 to 2020) in Morris County is \$34,100. The State Agriculture Development Committee (SADC) provides cost share grants to counties for purchase of development easements. Pursuant to N.J.A.C. 2:76-6.11, the SADC provides grants of up to 80% of the easement cost. Based on past preservation statistics, Morris County, on average, receives a 55% cost share grant from the SADC.

Morris County recently amended the rules for the County's Open Space, Farmland, Floodplain Protection and Historic Preservation Trust Fund. As indicated in Chapter 4, the Trust Fund previously allotted a specific percentage of the fund to farmland preservation projects. However, due to a surplus in the Farmland Preservation Program's account, the County Farmland Preservation Program is not currently receiving additional funds from the overall Trust Fund. However, should funding be needed for the program, the County Commissioners are likely to designate funds from the Trust Fund. It is important to note that the County's Farmland Preservation Program is well-funded.

There are other trends that will affect the preservation goals. First, the value of land in Morris County has been fluctuating over the past 10-15 years. As shown in the following chart, the average cost per acre increased to \$70,500 per acre in 2009, before decreasing to \$14,300 per acre in 2013. Since 2013, the easement price per acre has fluctuated significantly, increasing to \$42,600 per acre in 2015, before decreasing to \$16,200 in 2017. In 2020, the average cost per acre increased to \$79,600, the highest it has ever been in the history of the program.



Source: Morris County Office of Planning and Preservation

It is important to note that multiple applications are not necessarily always received and approved by the County within a given year. For example, between 2000 and 2009, the County preserved 72 farms totaling 4,100 acres, whereas between 2010 and 2019, only 28 farms were preserved totaling 1,024 acres.

Over the past decade, farmland preservation has occurred primarily within Chester Township and Washington Township. As detailed in the chart below, Washington Township preserved eleven farms totaling 419 acres and Chester Township preserved eight farms totaling 357 acres between 2010 and 2020. Within this time period the average easement cost per acre in Washington Township was \$23,500, and in Chester Township, the average easement cost per acre was \$32,500, representing a difference of approximately \$9,000 per acre. In addition, two farms were preserved in Mendham Borough, totaling 70 acres, with an average easement cost per acre of \$73,500, the highest amount paid over the past 10 years. Although the County only targets farms within Morris County, the easement purchase price can vary significantly depending on location.

Summary of County Preserved Farms by Municipality between 2010 and 2020			
	# of Farms Preserved	Acres of Preserved Farms	Average Easement Cost per Acre
Chester Township	8	357	\$32,500
Mendham Borough	2	70	\$73,500
Mendham Township	2	59	\$31,600
Mount Olive Township	4	130	\$31,000
Rockaway Township	1	35	\$19,800
Washington Township	11	419	\$23,500
Total	28	1,070	\$31,200

Source: Morris County Office of Preservation

As land value continues to rise and development pressures continue to increase, the per acre easement values will likely follow a similar trajectory. Both trends will adversely affect Morris County's acreage goals over the next ten years. Based on the following factors, the Morris CADB can annually purchase development easements on approximately 100 acres annually:

- Average per acre easement cost in Morris County between 2015 and 2020 (\$34,100)
- Average Morris County share for easement purchase (45%)
- A limit of \$2 million of SADC funds per year

As a result, the Morris County Comprehensive Farmland Preservation Plan establishes the following one, five, and ten-year acreage goals for permanent farmland preservation:

One Year Goal: 100 acres

Five Year Goal: 520 acres

Ten Year Goal: 1,080 acres

Project Area Summaries

The County currently has three Project Areas. As part of this Plan's update, an extensive GIS analysis was undertaken utilizing the most up-to-date data available. Parcels of land assessed as qualified farmland were reviewed for the entirety of Morris County. Parcels that were contiguous and under common ownership were grouped into "farms." Each farm in Morris County was then analyzed based upon its tillable acreage and size. The tillable acreage was generally defined by the "Agriculture" classification of NJDEP's 2015 Land Use Land Cover. Farms that were a minimum area of nine acres and had a minimum tillable acreage of 40% were included in the analysis. In addition, an inspection of the 2020 aerial imagery was also undertaken to determine whether there were additional farms that were likely to meet the criteria. The County's existing targeted farms were also included in the revised inventory.

The Morris CADB does not give priority to one project area over another. An application for preservation from any part of Morris County will be given equal consideration. The following tables summarize the agricultural land characteristics of each of the County's three project areas: the Northeast Project Area, West Project Area, and the Central Project Area.

The Northeast Project Area consists of all or a portion of Boonton Township, Denville Township, Lincoln Park Borough, Montville Township, Pequannock Township, and Rockaway Township.

The West Project Area consists of all or portion of Chester Borough, Chester Township, Mount Olive Township, Roxbury Township and Washington Township.

The Central Project Area consists of all or portion of Chatham Township, Harding Township, Long Hill Township, Mendham Borough, Mendham Township, Morris Township, Randolph Township and Roxbury Township.

The following charts detail the characteristics of each of the project areas, including total preserved farms, targeted farms, farms pending preservation, term preservation, and preserved open space.

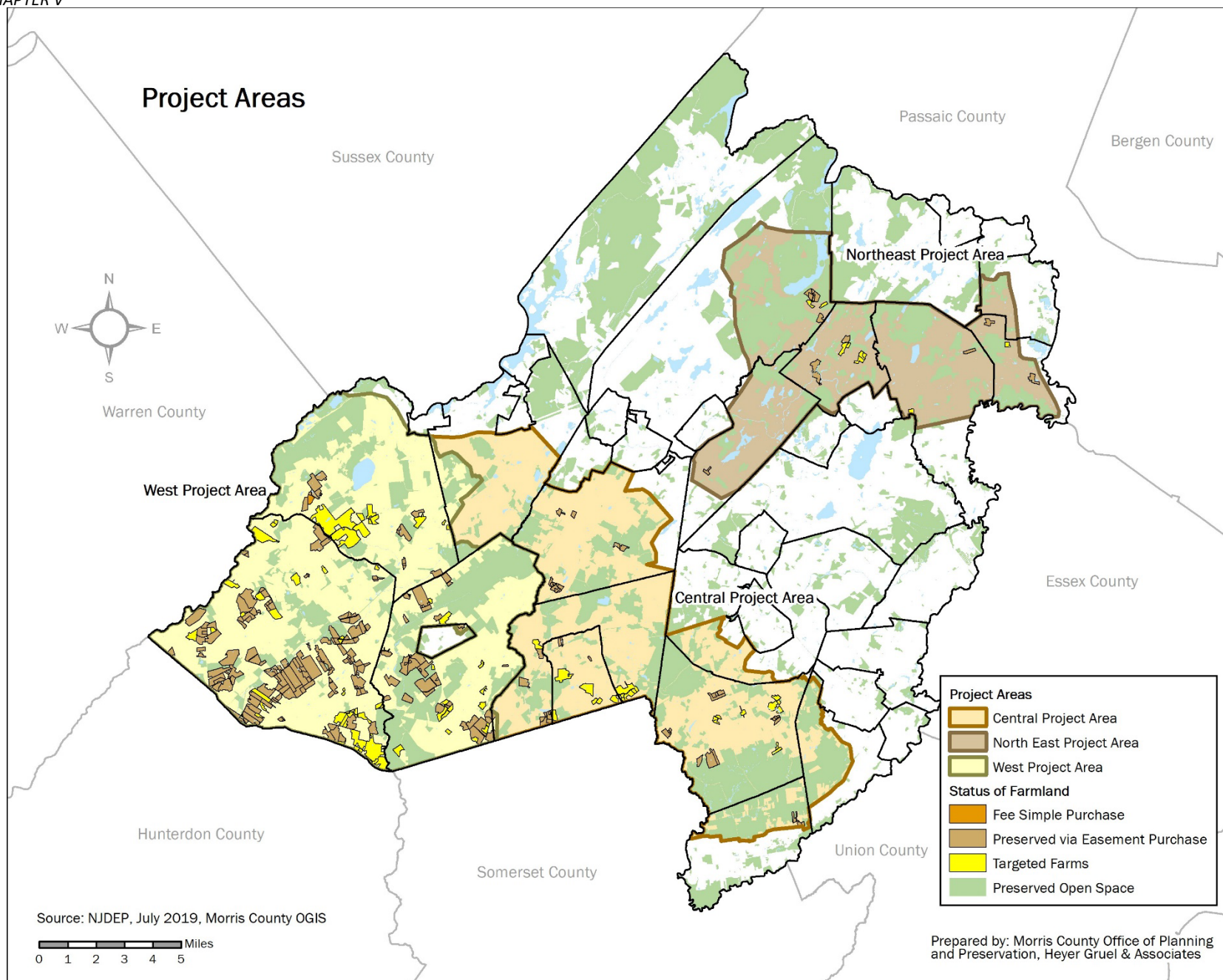
Northeast Project Area		
	Acres	Percent of Project Area
Total Preserved Farmland	390.7	1.1%
Compatible Open Space	13,057.2	37.7%
Term Preservation	0.0	0.0%
Pending	0.0	0.0%
Targeted Farms	182.0	0.5%
Total	13,629.9	39.3%
Northeast Project Area	34,638.0	100.0%

Central Project Area		
	Acres	Percent of Project Area
Total Preserved Farmland	780.0	1.4%
Compatible Open Space	19,448.0	35.3%
Term Preservation	0.0	0.0%
Pending	0.0	0.0%
Targeted Farms	712.6	1.3%
Total	20,940.6	38.1%
Central Project Area	55,018.7	100.0%

West Project Area		
	Acres	Percent of Project Area
Total Preserved Farmland	7,510.3	11.0%
Compatible Open Space	16,968.1	24.8%
Term Preservation	0.0	0.0%
Pending	0.0	0.0%
Targeted Farms	2,880.2	4.2%
Total	27,358.6	40.0%
West Project Area	68,356.0	100.0%

Note: All acreages calculated in GIS

The following map shows the Project Areas in relation to the existing farmland assessed land, targeted farms, and preserved farms.



Minimum Eligibility Criteria

As outlined in Morris CADB Policy P-8, for a farm to be eligible for preservation through the “Easement Purchase Program Eligibility and Ranking System,” any application to the program must meet the following Morris CADB criteria:

- a. The land must be at least 10 acres.
- b. The land must be receiving farmland tax assessment.
- c. The land must be at least 50% tillable, or have at least 25 tillable acres.
- d. The application receives a minimum score of 25 based on the Morris CADB Ranking System, Policy: P-8.
- e. The land must exhibit development potential based on the following standards:
 - (1) The municipal zoning ordinance for the land as it is being appraised must allow additional development, and in the case of residential zoning, at least one additional residential site beyond that which will potentially exist on the premises.
 - (2) Where the purported development value of the land depends on the potential to provide access for additional development, the municipal zoning ordinances allowing further subdivision of the land must be verified. If access is only available pursuant to an easement, the easement must specify that further subdivision of the land is possible. To the extent that this potential access is subject to ordinances such as those governing allowable subdivisions, common driveways and shared access, these facts must be confirmed in writing by the municipal zoning officer or planner.
 - (3) If the land is 25 acres or less, the land shall not contain more than 80 percent soils classified as freshwater or modified agricultural wetlands according to the NJDEP wetlands maps. If the DEP wetlands maps are in dispute, further investigation and onsite analysis may be conducted by a certified licensed engineer or qualified wetlands consultant and/or a letter of interpretation issued by the NJDEP may be secured.
 - (4) If the land is 25 acres or less, the land shall not contain more than 80% soils with slopes in excess of 15% as identified on a USDA NRCS SSURGO version 2.2 or newer soils map.

Policy P-8 includes the Morris CADB Ranking System, which is utilized to rank easement purchase applications. The CADB has the discretion to approve or deny any eligible application. If an application fails to meet the criteria listed in Paragraph 1, the Morris CADB reserves the right to waive the minimum criteria and to accept and consider the application on a case-by case basis.

County Ranking Criteria

The Morris CADB’s policy P-8 “Easement Purchase Program Eligibility and Ranking System” includes various ranking criteria employed to determine if a farm is eligible for preservation. The ranking criteria address farmland quality, stewardship, local commitment, special considerations and exceptions. However, meeting the minimum eligibility score does not guarantee a farm will be selected for preservation. The Morris CADB must assess the farm and determine if there is a high likelihood of future agricultural viability. This analysis is difficult to determine quantitatively. The Morris CADB conducts a site visit to each application received with the landowner or farm operator questioned about the operation and future plans for the farm. Policy P-8 ranking criteria are included as *Appendix B*.

County Policies Related to Farmland Preservation Applications

The Morris CADB has taken the approach of adopting formal policies for a number of subjects related to the farmland preservation program and Board administration. This enables the public to understand Board decision-making and administrative processes. All Board policies are found on the website at:

<https://www.morriscountynj.gov/Departments/County-Agriculture-Development-Board/Farmland-Preservation-Program>

Several of the fifteen adopted policies relate directly to easement purchase applications. They include:

- P-1: Agricultural Labor Housing
- P-2: Residual Dwelling Site Opportunity
- P-3: Application Fee

P-4: Imminence of Change

P-5: Exceptions

P-8: Easement Purchase Program Eligibility and Ranking System

All Morris CADB policies are contained in *Appendix B*.

The SADC's and Morris CADB's policies regarding housing are necessary to ensure compliance with the provisions of the Deed of Easement.

Agricultural Labor Housing

With regard to agricultural labor housing, pursuant to paragraph 14 of the Deed of Easement, "Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants, adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural."

Morris CADB Policy: P-1: "Agricultural Labor Housing," was originally adopted on July 20, 2000, and revised on August 10, 2006. The policy mirrors the language of the Deed of Easement; it states who may live in an agricultural labor housing unit. The policy also states that agricultural labor housing units may be constructed only if approved by both the CADB and the SADC. During the decision-making process, the CADB and the SADC must review who will occupy the agricultural labor unit, how the occupants will be involved in the farming operation, and whether the agricultural operation justifies the construction and use of an agricultural labor unit.

House Replacement

With regard to house replacement, pursuant to paragraph 14 of the Deed of Easement, "Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

To construct a single-family residential building anywhere on the Premises in order to replace any single-family residential building in existence at the time of conveyance of this Deed of Easement but only with the approval of the Grantee and Committee.

Morris CADB Policy: P-11: "Replacement of Residence on Preserved Farmland," was originally adopted on December 12, 2002. The Morris CADB policy outlines the procedure for requesting the replacement of a residence on preserved farmland and establishes guidelines for reviewing such requests. This policy does not apply to residences constructed on exception areas. The policy also states that any residence replacement must also be approved by the SADC.

Residual Dwelling Site Opportunities (RDSO)

The Morris CADB does not permit residual dwelling site opportunities. However, at the onset of the program, RDSOs were permitted. Accordingly, the Morris CADB adopted Policy: P-2, "Residual Dwelling Site Opportunity," on July 20, 2000. The policy was amended on January 10, 2008. The policy states that RDSO shall not be permitted and that all requests for RDSOs shall be denied. However, farms, which were preserved with an RDSO, shall comply with State Agriculture Development Committee's Policy P-31, "Exercising a Residual Dwelling Site Opportunity." A copy of SADC's Policy P-31 is attached to Morris CADB's Policy: P-2 and may be found in *Appendix E*. The SADC's policy outlines the procedures for exercising RDSOs. The SADC considers several factors during its decision-making process, including, but not limited to: the present agricultural use of the farm, the impact of the RDSO on the agricultural use, who will reside in the residential unit, how will the occupants be involved in farm site activities, and how many residential buildings currently exist on the premises.

Division of Preserved Farmland

With regard to the division of preserved farmland, the Deed of Easement states in paragraph 15 that “no division of the land shall be permitted without the joint approval in writing of the Grantee and the Committee.” In order for the Grantor to receive approval, the Grantee and Committee must find that the division shall be for an agricultural purpose and result in agriculturally viable parcels. Division means any division of the Premises, for any purpose, subsequent to the effective date of this Deed of Easement.

For purposes of this Deed of Easement, "Agriculturally viable parcel" means that each parcel is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural output.

Morris CADB Policy: P-7: “Division of Permanently Preserved Farmland,” was adopted on May 11, 2000 and revised on August 10, 2006 and may be found in *Appendix E*. The policy states that it is the intent of the Morris CADB to discourage divisions of preserved farmland. The CADB’s objective is to preserve large masses of viable agricultural land. The CADB recognizes that agricultural parcels may become less viable if reduced in size. However, the CADB finds it necessary to have a policy, which outlines the procedure for requesting a division of a preserved farm and provides guidelines for reviewing requests.

Although the SADC has such a policy, Policy P-30-A, which applies to farmland preserved with state funds, the CADB finds it necessary to have its own policy, which applies to farmland preserved with state funds, as well as farmland preserved exclusively with county funds. The policy states that the CADB will carefully consider the criteria contained in its policy to evaluate whether a preserved farm should be divided. The CADB criteria will determine whether the division is for an agricultural purpose and whether the resulting parcels are agriculturally viable.

The Morris CADB policy reiterates the Deed of Easement’s definition of “*agriculturally viable parcel*,” which means a parcel that is capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from the parcel’s agricultural output. In order to permit a division of a preserved farm, the CADB must find that that division is for an “agricultural purpose” and that it will result in “agriculturally viable” parcels. The policy also contains an application form, which must be submitted with a landowner’s request for a division.

The SADC policy outlines the application process for a division of a preserved farm and lists the criteria used by the SADC to make its determinations. In order to permit a division of a preserved farm, the SADC must find that that: 1) the division has been approved by the CADB, 2) the division is for an “agricultural purpose” and that 3) it will result in “agriculturally viable” parcels. The SADC considers several factors during its decision-making process, including, but not limited to: current and proposed uses of the premises, purpose of the proposed division, the effect of the division on the existing agricultural operation, who resides on the premises, quality and types of soils, farm boundaries, farm size, etc.

Approval of Exception Areas

As stated above, the Morris CADB does not permit RDSOs. Instead, if a landowner wishes to retain an option to construct a residence at some point following the preservation of the farm, the Morris CADB encourages a non-severable exception. Non-severable exceptions may also be encouraged if the landowner operates a non-agricultural commercial business on the farm premises and does not wish to encumber the use by the Deed of Easement. The Morris CADB’s Ranking System (Policy: P-8), allows one non-severable exception on an application to sell a development easement. A landowner requesting one non-severable exception is not penalized. However, if the landowner’s application requests more than one non-severable exception, five points are deducted from the final score for each non-severable exception. The Morris CADB strongly discourages severable exceptions. For each severable exception, ten points are deducted from the final score.

Funding Plan

As discussed previously, the Morris CADB's preservation goals for preserved acres of farmland are:

One Year Goal: 100

Five Year Goal: 520

Ten Year Goal: 1,080

The cost projections associated with one-, five-, and ten-year goals are as follows:

Year	Acquisition Goal (Acres)	Total Projected Cost	Estimated Local Cost Share	Estimated County Cost Share	Estimated State Cost Share	Other Contributors
1	100	\$3,700,000	\$0	\$1,600,000	\$2,000,000	\$0
5	520	\$17,732,000	\$0	\$7,979,400	\$9,752,600	\$0
10	1,080	\$36,828,000	\$0	\$16,572,6000	\$20,255,400	\$0

As discussed in the *Farmland Preservation Program Funding Expended to Date by Source* section of Chapter IV, the funding for the farmland preservation program since the late 1990s has exclusively been the Morris County Open Space Trust Fund (COSTF). Originally established by the Morris County Board of Commissioners in 1993, the Trust Fund's annual collection has increased the funds available for farmland preservation purposes. The regulations governing the Trust Fund are determined annually by the County Commissioners. For the year 2021, no funding is designated for the County's Farmland Preservation Plan, as the program is currently well-funded, having a balance of approximately \$17 million as of May 2021. No funds from the Trust Fund are used for salaries or employee benefits. To date, these funds have been adequate to keep up with application demand. This satisfaction of the demand is anticipated in the future. However, the SADC's maximum grant funds under the County Planning Incentive Grant Program, which is currently \$2 million per year, is the limiting factor with respect to the funding plan.

Morris County does not require municipal cost-share. Because of the substantial County Open Space Trust Fund, municipal cost-share is not required. It is the County's position that contributions to the COSTF serve as local cost-share. The County also does not use installment purchase agreements because they would require the County to establish a separate program to manage the installment purchases.

Further, as discussed above, over the past decade, 28 farms totaling 1,070 acres were preserved. The funding plan goals are consistent with the trends experienced by the CADB, in terms of acres preserved.

Another important factor related to funding and landowner participation in the program relates to the Highlands Act. With a majority of Morris County's farms that are eligible for preservation located in the Highlands Preservation Area, the "dual appraisal process" is of paramount concern. With the adoption of the Highlands Act in 2004, the legislature provided for a temporary dual appraisal process wherein land values are appraised 1) assuming the Highlands restrictions are not in place, and 2) assuming current restrictions under the Highlands Act. The higher of these two values has been the certified value by the SADC. The dual appraisal protection has been extended several times since it was first due to expire in 2009. Renewal or extension of this provision is necessary to continue voluntary landowner interest in the farmland preservation program for much of Morris County's remaining unpreserved farms.

Farmland Preservation Program / CADB Administrative Resources

The Morris CADB is well positioned to address current and future needs for the farmland preservation and Right-to-Farm programs. Staff for the Morris CADB is within the Preservation Trust Division of the Office of Planning and Preservation. The County currently has a full-time Director for the Morris County Office of Planning and Preservation, who oversees the management of the preservation programs. The Morris CADB has a full-time Director who

oversees the Farmland Preservation Program and the Right to Farm Program. The funding for CADB staff is through the county budget process and is not funded by nor tied to the Trust Fund.

Since the early 1990's, legal support for the program has been provided by in-house County Counsel. All legal matters and closing document preparation are coordinated by the Morris County Counsel's office. Keeping this work in-house is very efficient and enables Morris County to respond quickly on all legal matters. The County also has an Office of Information Technology with full-time staff that manages the County's open space and farmland preservation database, along with the County's other GIS data, including parcels, structures, contours, centerlines, and municipal zoning, to name a few.

Factors Limiting Farmland Preservation Implementation

Several factors are likely to affect the continued success of Morris County's farmland preservation program. The single largest variable is landowner interest. Landowner interest is heavily impacted by the Highlands Water Protection and Planning Act. The dual appraisal process is of paramount importance for landowner interest, however, assuming that the dual appraisal process continues, several other factors could still limit the program's growth.

Again, landowner interest could wane and participation in the program is voluntary. As such, it is impossible to predict who will apply for preservation and when they will apply. To minimize this possible limitation, Morris County has continued to promote the program and its available funding. The County has a website for the Morris County Agriculture Development Board that includes information pertaining to the preservation programs, Right-to-Farm, Preserved Farms, and resources.

The per acre cost for the purchase of the development easements could be another limiting factor. As economic conditions vary over time, and with the current Covid-19 housing "bubble", it is unknown whether the cost of land will continue to increase or decline. However, with the rising costs of land within Morris County, the cost per acre to preserve farmland is likely to continue to increase. Furthermore, it is difficult to determine if easement values will change in the future, and it is even more difficult to determine what the easement purchase price will be per municipality within Morris County.

The issue of long-term state funding availability for farmland preservation, once in question, has been addressed since the passage of the last Morris County Farmland Preservation Plan. In November of 2014, New Jersey voters approved Public Ballot Question #2 to establish a stable source of funding for the preservation and stewardship of open space, parks, farms, historic and flood prone areas by dedicating four percent of existing corporation business tax (CBT) revenues to preservation and environmental programs through fiscal year 2019, and then raising that dedication to six percent from fiscal year 2020 moving forward.⁸⁶

In 2016, the "Preserve New Jersey Act" (P.L.2016, c.12) was passed implementing the constitutional dedication of CBT revenues as approved by the voters in 2014 and the Preserve New Jersey Act Preservation fund was established. In 2019, the Governor signed P.L. 2019, c.132. This bill supplemented and amended the Preserve New Jersey Act, establishing funding allocations for the constitutional dedication of CBT revenues for the State's open space, farmland, and historic preservation programs for fiscal year 2020 and thereafter.

⁸⁶ Introduced into the N.J. Legislature as Senate Concurrent Resolution 84 and Assembly Concurrent Resolution 130.