

QUESTIONS & ANSWERS

Sale of Development Easements

The following questions and answers help to explain the Morris County Farmland Preservation program.

1. What is a development easement?

An easement is a bundle of rights that a landowner possesses. A “development easement” is a legal document that limits the type and amount of development that may occur on a property. Currently, you own a particular farm property in “fee simple,” or, with all the rights associated with the parcel. One right that you have is to develop that property for commercial or residential housing units. To “purchase an easement” means that we would like to purchase only the development rights associated with your farm so that it is preserved as farmland for the future.

2. If I sell the County a preservation easement, do I still own the land?

Yes. You are simply ensuring that your farmland will be preserved for future generations. You still own the farm and may continue to enjoy its use as you have always done.

3. If I sell the development rights to my land, the value of the land will be diminished, right?

Yes. If and when you sell your preserved farm, you will likely be selling to someone with a farm interest, because the only permitted use of the property will be agricultural use and production. That is why Morris County pays you the fair market value of your development potential.

4. Is there a market for deed restricted farmland?

Yes. One of the seldom discussed benefits of this program has been the unexpectedly high values landowners have received for development-restricted property. There has been a very real and strong market for preserved farmland (please see our website, <http://www.morrispreservation.org/ResaleInfo.pdf>, for details). The sale of your development rights simply allows you to access the development value of your land as liquid capital today. The value remaining in your preserved farm is still an asset to you.

5. How do you know the value of my development rights?

Your property would be appraised by two certified appraisers for (a) the fee simple or “before easement” value of the land, and (b) the restricted or “after easement” value. The difference between the two values is the appraised worth of your “development rights,” or what the County will pay you for your development easement.

FOR EXAMPLE.....

Before	=	\$12,000/acre	=	Value of land unrestricted
After	=	\$4,000/acre	=	Value of land if restricted

Cash Payment	=	\$8,000/acre	=	Value of development rights. This is the price the County would pay to preserve the land.

Please note: These figures are used for example purposes only.

6. If the value of my development rights plus the remaining value of my land is equal to the original value of the property, why would I want to sell my development rights?

- to take advantage of the easement purchase program while the funding for it is still available
- you need to raise cash for capital projects, equipment, expansion, estate planning or retirement savings
- you don't plan to develop the property anyway
- you reside in the Highlands Preservation Area and this is your only opportunity to realize the "Pre-Highlands" value of your property
- you believe the sale of development rights makes long term financial sense

7. I've heard that you can't match the value that developers are offering me. Why should I be interested in your program?

We are buying the development rights *only*; a developer wants to purchase your land outright. Since we are purchasing only the development value of your farmland, you retain the value of the land as a farm and residence. Based on the resale of restricted farmland throughout the state, that value can be quite substantial. A developer is likely offering to buy full ownership of your land at a future date on a contingency basis.

More importantly, we are offering a cash sale. Options offered by developers are almost always based on numerous contingencies, such as approval of their development plan and receipt of necessary state, regional or local permits. The municipal review and approval process can take two to three years and the development plan may ultimately be rejected. You may see very little, if any, money up front and carry a substantial portion of the investment risk while your option runs. Our offer to you will be for cash and you will know within a few months' time how much we intend to pay for your development rights.

8. Would I convey any right for the public use of my property when I sell an easement?

No. The public is not granted any rights to the use of your land. In fact, preserving your farm protects it from eminent domain and strengthens your protection from public violations of your rights as a landowner.

9. Is this program open to every single property owner?

No. The Morris County Agriculture Development Board (Morris CADB) and the State Agriculture Development Committee (SADC) have specific criteria for inclusion in the program. Our funding, though substantial, is clearly delineated. This year, Morris County will have \$11 million available for farmland preservation and the SADC will match the County's funding up to \$5 million. While preservation funding tightens throughout the state, Morris County remains strongly committed to farmland preservation; annually, 25% of the Morris County Open Space Tax is dedicated to this purpose.

10. I'd like to be able to build a house for my son or daughter. If I sell my development rights will that mean I can't build them a house?

Not necessarily. Provisions can be made for the opportunity to construct a house on the farm. A portion of the farm can be excluded from the deed restrictions thereby permitting the construction of a house. Housing for non-relative agricultural labor may also be permitted.

11. When would you be buying the development rights?

County review of the applications would begin immediately. If approval is given, the process will take between 9 to 18 months thereafter.

12. Is there a deadline for submitting an application to the County for participation in the program?

No. The County has an OPEN ENROLLMENT process. If you are interested in applying, you are encouraged to contact the office of the Morris CADB.

13. Is this program completely voluntary?

Completely.

14. How does the application process work?

All applications are reviewed by the Morris CADB to ensure that they meet the State's and County's minimum criteria. Our current criteria are based on soil quality, tillable acres, land stewardship, farm size, proximity to other preserved lands, and municipal support. Based on the results of that assessment, the County will decide which applications merit further consideration. If your application is approved, a \$1,000 application fee is required. The application fee is designed to be a good-faith measure, ensuring that the landowner is serious about preserving their farm given the County's expenditure of funds for appraisals, surveys and title work on prospective properties. Please see the enclosed "Application Process" document for further detail.

15. Is it necessary to submit a binding offer for the value of the development right on my property?

No. However, the County does require that a *non-binding* offer be submitted with the application. The offer amount is considered when reviewing the application. The offer price helps the County understand the landowner's expectations regarding the land's value.

16. Do I have to accept the County's offer?

No. After you are informed of the appraised values, you can either accept the value, offer to accept less than the value, or reject the value and "walk away" from the offer if you feel it is unacceptable. If you decide to reject the offer, you will forfeit your application fee. If you decide to go through the process, your application fee will be refunded.

17. What is the next step if I'm interested?

Complete the enclosed "Application to Sell a Development Easement" and return it along with the information required to the Morris CADB. The Morris CADB can assist you in completing the application, if necessary.

- 18. This sounds like a great opportunity. I'm very interested in finding out more.
Who do I contact for a complete discussion of all my options under the program?**

Write: Frank Pinto, Jr., Director
Katherine Coyle, Assistant Director
Jennifer McCulloch, Program Specialist
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Website: <http://www.morrispreservation.org>

Offices located in the "Schuyler Annex" at 30 Schuyler Place, 4th Floor, Morristown NJ. One block off the Green. A map and directions are available on the Morris County website at www.morrispreservation.com.