



GREEN ACRES

LOCAL AND NONPROFIT ASSISTANCE PROGRAM

Easement Acquisition Procedures and Standards

Revised 5/10/2024

Overview

In most cases, the goals of the Green Acres Program are best met through the purchase of property in fee simple, through which an applicant acquires all rights to a property. Full ownership ensures that the public can enjoy all the recreation and conservation benefits of a property in exchange for its investment. Fee ownership also avoids the challenges associated with managing properties in which one has a less-than-fee simple interest. If full fee simple acquisition is not an option, a modified fee purchase may be pursued; an example of this is a partial taking in fee (e.g., of a trail area) with an easement on the remainder.

In those instances when even a modified fee simple purchase is not possible, but preservation of a site's natural or historic resources fulfills a compelling public need or purpose, Green Acres will consider funding the purchase of a permanent conservation or historic preservation restriction ("easement"). Examples of a compelling public need or purpose that would justify easement purchase include preservation of a unique natural resource, such as habitat for endangered or threatened species; preservation of an important viewshed, such as from an historic battlefield or the Appalachian Trail; or extension of an existing, in-use public access trail. For historic preservation restrictions, the site must be listed or eligible for listing in the New Jersey or National Register of Historic Places to be eligible for Green Acres funding.

If a portion of the proposed easement does not provide meaningful public access, as outlined in the terms below, Green Acres will only provide funding assistance if the easement provides substantial benefits to contiguous parkland that does provide meaningful public access, e.g., by preserving a significant viewshed or buffering the contiguous open space parcel from incompatible uses. In these cases, Green Acres will limit its funding participation in the area without meaningful public access to half of what the local government unit or nonprofit would otherwise be eligible to receive for the purchase of the easement (e.g., 25% instead of 50% grant funding for Planning Incentive and nonprofit projects). This will allow Green Acres to support the project while reserving its limited funding for other projects that more fully meet the public's recreation and conservation needs. Justification for limits to, or the absence of, public access must be submitted as part of the pre-appraisal documents (see below).

The Local and Nonprofit Bureau Chief must approve all easement projects, and in some cases, these acquisitions will be deemed ineligible for Green Acres funding. For approved easement acquisitions, your Green Acres project manager will answer any questions and serve as a resource throughout the process. Due to the complexity of easement acquisition projects, it is critical that applicants work closely and coordinate each step with their Green Acres project manager.

Procedures

Listed below are highlights of how the acquisition process for an easement acquisition differs from that of a fee simple acquisition.

1. Pre-Appraisal Documents

Applicants must complete the *Proposed Easement Acquisition Information Form* and submit it either prior to or along with the standard required pre-appraisal documents (*Pre-Appraisal Fact Sheet*, *Property Eligibility and Future Use Questionnaire*, and Project Reference Map). Please review these *Procedures and Standards* completely before completing the form.

The Project Reference Map must include depictions of any mappable proposed easement terms - e.g., delineation of the public access area or the boundary of a non-severable exception around existing improvements on site.

The Green Acres Project Manager will review the pre-appraisal package with the Local and Nonprofit Bureau Chief to confirm Green Acres participation in the acquisition. Once approved, the information provided in the pre-appraisal documents will form the basis of the final Deed of Easement document.

2. Negotiation of Terms

Green Acres has developed easement acquisition standards to establish consistent policies and maximize public benefit from, and protect public investment in, the conservation easement purchases we fund. The following describes acceptable parameters for easement terms pertaining to public access and structures. The particular terms for each easement will depend in part on the importance of the site, with the “Minimum” options below reserved for priority acquisitions.

a. Public Access Area

- Goal: Public access to 100% of the site with a parking area for visitors, if applicable.
- Minimum examples:
 - Public access to the areas of interest on the site, such as physical or boating access to a waterbody, a notable scenic viewshed, or significant birding opportunities; a parking area for visitors provided or a nearby parking area identified.
 - A substantial public access corridor, a minimum of twenty-five feet wide, that connects to an existing trail and provides or identifies nearby parking. The corridor cannot run parallel to an existing sidewalk.
- Note: The size of the public access area must be significant in relation to the overall size of the property being eased.

b. Public Access Activities

- Goal: All recreational rights.
 - Compromise: Restricting specific activities (e.g., horseback riding, hunting).
 - Minimum: Specifying the allowable recreational activities in the easement.
- Any clauses restricting or specifying allowable activities must be approved by Green Acres.

c. Public Access Timing

- Goal/Minimum: Year-round access with time-of-day restrictions, if necessary (i.e., dawn to dusk).

d. Existing Improvements

- Goal/Minimum: Existing improvements that are not historic should be excepted out from the easement through the establishment of a non-severable exception, unless the easement will be placed on an operating camp.
- Note: The exception area must be the minimum area necessary to accommodate reasonable upgrade of existing structures and associated wells, septic systems, stormwater management improvements, etc.

e. Building Opportunities

- Allowance for additional building/housing opportunities should be avoided.
- If a landowner is adamant about having a building opportunity, they should be encouraged to subdivide off the lot(s) prior to the preservation of the remaining property. In this situation, the applicant should provide guidance to the landowner regarding the location of the subdivision in order to preserve the continuity of the property. For example, access to a newly created lot should not bisect the eased property.

f. Right of First Refusal

- Depending on the nature of the property and the area to be eased, the applicant may wish to negotiate a right of first refusal to purchase the remainder fee simple rights in the future. If so, this should be agreed upon before the pre-appraisal documents are prepared so that this right is considered in the appraisals.

When the landowner of a key piece is unwilling to sell an easement based on any of the conditions described in the following guidelines, the applicant may submit a request to Green Acres to deviate from these standards. Requests will be reviewed to ensure that the interest to be acquired allows for meaningful public access and preservation of the site's recreation and conservation resources to a degree that warrants the investment of Green Acres funding.

3. Easement Document

Easements should address the conservation values of the property, describe the anticipated public access, and include the standard language regarding Green Acres restrictions. A draft version of the easement must be reviewed and signed off on by the Public Land Compliance section (PLC) of the Office of Transactions and Public Land Administration (OTPLA).

4. Joint Site Visit

Prior to the initiation of appraisals, the Green Acres project manager, applicant representative, and landowner should walk any public access area or trail corridor to ensure that it is suitable and navigable. Based on wetlands mapping and the site walk, possible constraints should be identified, and the public access area location adjusted as necessary prior to the start of the appraisals.

5. Appraisals

The draft easement document, reflecting the easement terms outlined in the pre-appraisal submission, must be provided to the appraiser(s) before they begin appraising the easement. Applicants should ensure that the appraiser(s) use the most recent *Green Acres Appraisal Service Scope of Work* and the *Green Acres Program Appraisal Report Review Checklist*.

If there is a change in easement terms after the appraisals are complete, the applicant must submit a new pre-appraisal package, and Green Acres will evaluate the impact of the change to determine whether the property is still eligible for funding and, if so, whether an appraisal update is necessary.

6. Title

Since a conservation easement imposed after the recording of a mortgage may not survive if the mortgagee defaults and the mortgagor forecloses, mortgages must either be subordinated to the easement or discharged before the easement is recorded.

Areas of clouded title (e.g., gores, overlaps) cannot be included in the easement area.

7. Environmental Review

The procedures for PAR preparation and review for easement acquisitions, and any subsequent required remediation, parallel those for fee simple purchases.

8. Purchase Contract

The draft easement should be attached to the purchase contract as an exhibit.

9. Survey

The land survey plan and corresponding metes and bounds description must clearly reflect the terms of the easement, in part because the thorough and complete survey will serve as a field tool for future monitoring of the easement. The following survey procedures should be followed for all easement acquisitions:

- Building envelope exceptions and public access corridors, if any, should be temporarily flagged or marked in the field with the property owner prior to the survey.
- For more complex surveys, the on-site meeting may need to include both the contract surveyor and a Green Acres staff surveyor.
- Applicants should ensure that the contract surveyor uses the most recent *Green Acres Scope of Survey Services*, which includes standards for the monumenting of easement building envelopes, public access areas, and property boundaries.

10. Baseline Documentation Report (BDR)

The BDR is created after the survey is approved and finalized before closing. A checklist for the BDR is attached. The applicant is responsible for creating the BDR, which will be field verified by Green Acres staff.

11. Secondary Right of Enforcement

A nonprofit applicant purchasing an easement with Green Acres funding must execute a Secondary Right of Enforcement, which extinguishes the development rights transferred to the applicant at closing and grants NJDEP certain monitoring and enforcement rights. This document, which your Project Manager will provide, must be signed at closing.

12. Post-Closing

Public access to the eased property must be established immediately after closing. At a minimum, the applicant must immediately post signs notifying the public that the land is accessible; an entry point must be identified; and information about how to locate and access the property and where to park must be posted on the applicant's website. If public access on the property is limited to a trail, the trail must be developed and accessible to the public immediately or, with prior written Green Acres consent, within one year of receipt of Green Acres funding.

Baseline Documentation Report Checklist

A local government unit or nonprofit that intends to acquire a conservation or historic preservation restriction with Green Acres funding must prepare a report that clearly documents the conditions of the project site at the time the restriction is to be acquired. This Baseline Documentation Report shall be prepared after Green Acres approves the survey and shall be submitted to Green Acres for approval prior to acquisition of the project site and prior to the final drafting of the conservation or historic preservation restriction document.

The Baseline Documentation Report must be specific and quantify the conservation values of the property with maps, photographs, and written descriptions documenting the condition of the property at the time of closing. The report will provide the local government unit/nonprofit and Green Acres with the reference documentation needed to conduct effective stewardship inspections in the future to ensure that the project site is being managed in conformance with the applicable conservation and/or historic preservation restriction.

The following items shall be included as part of the Baseline Documentation Report:

- ___ 1) Cover Sheet, signed and dated by the landowner and the easement holder/land steward, certifying that the information contained in the report is a clear and truthful representation of the conditions of the property. Insert a signature and date line where Green Acres can sign, as approved. The property name and location should also be identified on the Cover sheet.
- ___ 2) A Narrative that memorializes the original intent of the conservation or historic preservation restriction; current and historic land use(s); the significance of the area/building to be preserved; the specific restrictions and reserved rights in the restriction/easement document; and any areas of disturbances and their known causes.
- ___ 3) Inventory of the recreational, ecological, agricultural, scenic, and historic features occurring on the property and an assessment of their present condition, integrity, and value. Documentation will include field studies, research reports, plant and animal inventories, and/or forestry plans.
- ___ 4) Survey clearly marking the boundary of the entire property, the easement to be acquired on the property, public access areas (if less than full access will be provided), structures, areas of potential future building, areas of reserved rights, and areas excepted from the easement.
- ___ 5) Legal Description, including a reduced 8½" by 11" survey and approved Green Acres Surveyor's Certification Form.
- ___ 6) Title issues and legal encumbrances identified that may continue after the conveyance of the restriction document.
- ___ 7) Other Maps including a road map, tax map, USGS Topographic Map, aerial photograph, site plan of inventoried natural and historic features, and floor plan (for historic properties). The maps must clearly indicate the property; directions to the property from major roads must be provided with the maps.
- ___ 8) Photographs representing the existing site conditions, including all improvements, areas of particular recreation/conservation interest, property corners, boundary lines, access points,

pre-existing easements, and areas of current and possible future encroachment(s) and restriction violation(s) including areas of reserved rights and potential future building. Photographs must be labeled accordingly on the survey, with vantage points well documented so that the same photographs are easily duplicated in future monitoring reports and during Green Acres site inspections.