



**GREEN ACRES
LOCAL AND NONPROFIT ASSISTANCE PROGRAM**

**Land Acquisition Projects -
Policy and Procedure Updates**

July 2024

With the goals of accelerating the pace of open space acquisitions and the drawdown of funding, more efficiently employing staff and applicant resources, and providing additional clarity, consistency, and transparency to our applicants, Green Acres recently undertook a comprehensive review of our acquisition policies and processes. Through this process, we identified areas for improvement, drafted clarifications, and proposed modifications to the Local and Nonprofit Assistance Program, which were presented at three stakeholder meetings in May 2024. Comments submitted by stakeholders were reviewed, and the substantive clarifications and adopted changes are highlighted below:

1. Open Space and Recreation Plan (OSRP) Guideline Updates

Green Acres is in the process of updating the *Open Space and Recreation Plan Guidelines* to add clarity and reflect emerging priorities. Specifically, we will request that applicants provide the following additional information in their OSRPs:

- Public engagement and participation in the planning process;
- The location and condition of open space and recreation resources in Overburdened Communities (OBCs) within their service area, particularly OBCs that are subject to Adverse Cumulative Stressors;
- Climate resiliency considerations;
- Trail, greenway, and habitat corridor connections;
- Current and future need for recreation lands; and
- Public access to existing open space and water bodies.

The updated *Guidelines* will also reflect the shift over the years from requiring a block and lot listing of proposed acquisitions to a criteria-based acquisition targeting process.

2. Nonprofit Planning Incentive Projects

Over the years, many Green Acres nonprofit projects have evolved to resemble our local government unit Planning Incentive projects, with the nonprofit purchasing multiple

properties under one Green Acres project. These multi-site projects have allowed our nonprofit partners to act quickly when preservation opportunities arise and to pivot to a different property if acquisition of a targeted property falls through.

The Garden State Preservation Trust (GSPT) Act allows some appropriation and property flexibility for a nonprofit that “in cooperation and with the approval of a local government unit is implementing or assisting in the implementation of an open space acquisition and development plan adopted by the local government unit and approved by the department.” Green Acres recognizes, however, that a nonprofit often has its own acquisition goals that may differ from those of the local government(s), or that they may work in an area without an engaged local government partner. With this in mind, Green Acres has moved toward broad-scope acquisition projects for our nonprofit partners.

To qualify for a Planning Incentive project, local governments are required to enact an open space tax and submit an Open Space and Recreation Plan (OSRP). While nonprofits cannot enact a tax, we have not, until now, implemented the OSRP requirement for nonprofit multi-site projects. Without an OSRP, Green Acres has no basis by which to evaluate whether an individual property is consistent with a nonprofit applicant’s overall acquisition strategy, or whether their overall acquisition strategy is consistent with DEP priorities, Green Acres rules, and the stated goals of the GSPT Act, which enables our funding.

To address this discrepancy and ensure consistency with the intent of the GSPT Act, Green Acres will require nonprofit applicants that wish to apply for a new Planning Incentive project or supplemental Planning Incentive funding, and who are not implementing a local government partner’s OSRP, to submit their own OSRP, prepared according to guidelines Green Acres will provide. The OSRP will include, among other things, a description of the nonprofit’s overall acquisition strategy and goals, as well as its prioritization or ranking system, and any other project selection criteria.

Nonprofits with existing multi-site projects will not be required to submit a new application. We will, however, require those nonprofits to submit their OSRP within an established period after our guidelines are provided. Green Acres will not release funding for any acquisition initiated after the date the OSRP is due for submission if the nonprofit has not met the OSRP requirement.

3. Planning Incentive Project Awards

In recent funding rounds, Green Acres has closely reviewed supplemental funding requests for local government and nonprofit Planning Incentive projects to ensure that funding is only awarded when it is needed and likely to be used in the near term. In the interest of transparency, we are sharing the factors we use to evaluate supplemental funding requests. They include:

- Demonstrated need – Is the applicant’s funding balance insufficient to cover the cost of properties they have identified for purchase in the next 12 to 18 months?

- Likelihood of closing – What is the likelihood of the applicant drawing down funding in the next 12 to 18 months for all identified properties? For this assessment, underfunded preserved properties are given greatest consideration, while properties that have not started the appraisal process are ranked lowest.
- Track record of drawing down funds – How many properties has the applicant acquired and/or drawn down funding for in recent years? How much funding has been drawn down – a small or large percentage of their prior funding award(s)? Is the anticipated future rate of acquisition consistent with past performance?

4. Cancellation of Unspent Funding Awards

When awards are not spent in a timely fashion, the total balance of unexpended Green Acres funding increases. Large funding balances raise questions about our Program performance, which in turn could impact the availability of additional preservation funds. Moreover, funding that is sitting unused in a project account is not available to other applicants whose projects are ready to move forward.

While Green Acres has always canceled stalled funding, in 2023, we initiated a concerted effort to cancel awards that had exceeded their project period and were not going to be spent in the very short term. Funds cancelled through this effort were awarded to other projects and applicants in the 2024 funding round. We will continue to regularly conduct the same review, identifying stalled funding, and canceling any older funding awards. We will always give the project sponsor ample notice and opportunity to spend the funding by an established deadline.

The other change we are making to address this problem is that Project Agreement amendments will not extend older funding awards by the full project period of two years being given to new awards. The agreements will list each funding award individually and identify its expiration date. Cancellations of individual expired awards will be conducted.

5. Appraisal Procedures

We are documenting and improving our local and nonprofit appraisal process with the aim of speeding up acquisitions, both by reducing the time it takes to receive appraisal instructions and by providing hired appraisers with all the information they need to prepare accurate reports and avoid time-consuming subsequent revisions. Below are highlighted changes to our process and forms.

Process Clarifications and Changes

- To document the steps necessary to obtain the Eligible Land Cost for a property (i.e., either the Certified Market Value (CMV) or Average of Appraised Value (AAV)), we prepared the *Acquisition Property Appraisal Procedures* document.
- The *Procedures* document clarifies that pre-appraisal forms will not be forwarded to the Green Acres Appraisal Review Section (ARS) until they are complete. Incomplete forms will be returned to the applicant for completion.

- To reduce the time it takes to initiate property appraisals, Green Acres is committed to providing appraisal instructions within 2-3 weeks of receipt of complete pre-appraisal forms.
- Appraisers who have not submitted an appraisal report to Green Acres within the last 3 years are asked to contact the Green Acres Appraisal Review Section before starting the project.
- Each appraiser must submit a completed *Reviewer Checklist* with their report. Reports that are not submitted with a completed *Reviewer Checklist* will be held by the Green Acres Project Manager and forwarded for ARS review once the checklist is received.
- To improve communication and transparency, the local government or nonprofit applicant will be informed of any correspondence between the ARS reviewer and the property appraisers.
- There is often a significant delay in receiving amended appraisal reports when they are requested by ARS, which can slow the review process by weeks or months. To speed resolution of appraisal issues, we are instituting a deadline of 45 days for the submission of amended appraisal reports after the ARS requests amendments. If amended reports are not submitted within 45 days, Green Acres may deem the reports ineligible.
- Often, we are notified of significant changes to the terms/scope of an acquisition after we have issued the appraisal instructions or received appraisal reports. In these cases, the applicant must submit a revised pre-appraisal package with the changes highlighted. The Green Acres Project Manager will consult with the ARS to determine whether new appraisal instructions (and, if the appraisals have already been prepared, or amended reports) are required.

Changes to the Pre-Appraisal Forms

- As noted above, our *Open Space and Recreation Plan Guidelines* have shifted to a criteria-based acquisition targeting process, and both local governments and nonprofits will need to include in their plan the criteria they use to evaluate potential acquisitions. To reflect these changes, the *Property Eligibility and Future Use Questionnaire* will include a question regarding how the proposed acquisition is consistent with the applicant's stated criteria and goals.
- Additional questions will be added to the pre-appraisal forms regarding post-acquisition plans for the property, so any potential conflicts with Green Acres restrictions can be identified early in the acquisition process. This step is intended to provide confirmation to the applicant that their intended uses are eligible, avoiding future concerns.

6. Operating Outside the Standard Green Acres Acquisition Process

Our new policy toward urgent acquisitions is also meant to shorten the overall acquisition timeframe, while at the same time providing flexibility for our applicants. Highlights of the new policy include:

- Applicants that have submitted all required pre-appraisal documents, received a Green Acres written confirmation of eligibility, and received Green Acres appraisal instructions

for a property are authorized to pursue an urgent acquisition outside the normal process, as long as they have notified Green Acres in writing.

- At-Risk Authorization letters will only be issued to an applicant that has submitted a new project application and that demonstrates an urgent need to move forward before Green Acres funding for the project is approved.
- Green Acres will provide applicants who need to move forward a document describing the risks inherent with proceeding outside the normal Green Acres acquisition process, along with suggestions for minimizing these risks.
- Closing on a property prior to submitting pre-appraisal documents and receiving written confirmation of eligibility will render the acquisition ineligible for Green Acres funding.
- If appraisals have been conducted without Green Acres appraisal instructions, the reports should not be submitted with the pre-appraisal documents. In this situation, applicants must submit a complete pre-appraisal package and wait until the Green Acres appraisal instructions are issued. The applicant then must provide the instructions to their appraisers and have them review their completed reports and make any revisions necessary to comply with the ARS appraisal instructions and the *Reviewer Checklist*. Green Acres will no longer accept appraisal reports that have been prepared without ARS instructions unless they have been revised appropriately.
- Recognizing the time required for Green Acres review of technical and closing documents, applicants should not delay submitting all deliverables if Green Acres funding is needed for closing.
- The *Operating Outside the Standard Green Acres Acquisition Process* document also clarifies actions that render an acquisition ineligible for Green Acres funding.

7. Deadlines for Deliverables

Another measure that will help ensure timely progress of local and nonprofit projects is interim deadlines. When appraisal instructions have been issued for a property by the Green Acres Appraisal Review Section, the Project Manager will forward the Appraisal Authorization Letter to the applicant, which will include deadlines for submission of each acquisition deliverable. Failure to meet the identified deadlines without a Green Acres-approved justification and alternate submission date will result in a warning letter. Failure to respond as directed in the warning letter may result in cancellation of funding awarded for the acquisition.

8. Contracts for Technical Documents

The acquisition process can become stalled if a professional who prepared a technical report – an appraisal, preliminary assessment, survey – does not consider Green Acres-requested amendments to be part of their original contract with the applicant. In these situations, the consultant may request additional payment to revise the report, particularly if it has been some time since the original was completed. Authorizing additional payment may cause significant delays, particularly if a local government or nonprofit resolution is required to amend the professional contract or if the increased costs present a fiscal challenge.

To ensure that applicants can meet Green Acres' deadlines for the report revision (e.g., the 45-day limit for appraisal revisions mentioned above), Green Acres strongly advises applicants to include appropriate language in their professional services contract to address any revisions required to bring the reports into compliance. For example, asking consultants to provide a "lump sum fee for a Green Acres-approved _____[e.g., appraisal]" would prevent applicants from having to modify their professional services contract if Green Acres requires report revisions. Also, professional services contracts should include a clause requiring timely response to Green Acres requests for information and/or revisions. Technical consultants are unlikely agree to an indefinite responsibility to revise the deliverable to meet Green Acres requirements, however, so applicants would benefit from following the standard Green Acres acquisition process so that revisions are requested and performed shortly after the original reports are prepared.

9. Structures

The *Acquisition of Properties with Structures* document clarifies Green Acres' policy regarding structures in acquisition projects, including the process for inspection of potentially historic properties. Considerations regarding demolition of structures are also presented.

Questions regarding existing structures are included in the pre-appraisal documents so they can be addressed in the appraisal instructions. The Garden State Preservation Trust Act directed all applicants to determine if acquisition sites may contain potential historic structures; Green Acres will now require that any potentially historic structures be reviewed for historic significance prior to appraisals being conducted, rather than after acquisition. This early review will allow the applicant time to consider possible future uses of any historic structures early enough in the process that a plan may be devised as to how or whether to move forward.

We have established a deadline for post-acquisition non-historic demolition reimbursement. If the applicant will be submitting demolition costs for Green Acres reimbursement, the demolition must take place and the payment request must be submitted within twelve months of closing. The demolition of potentially historic structures is not permitted without Green Acres' prior written approval.

10.Future Road Widening

There has been some confusion over how to address future road rights-of-way adjacent to acquisition project sites. To clarify, Green Acres strongly encourages applicants to reach out early in the acquisition process to the entities that own and manage any roads adjacent to the property being acquired to ascertain if the master plan includes any plans to widen the road in the future. If there are road widening plans, the area of Green Acres participation should be pulled back so that our restrictions do not encumber that area, thus avoiding a future diversion. As a reminder, municipal and county open space funds also should not be used to purchase an area of future road widening due to the restrictions associated with these funding sources. Any short-term inconvenience of having to identify alternative funding

to acquire these non-park areas is outweighed by the onerous process involved in releasing them from Green Acres or open space tax funding restrictions in the future.

11.Changes in Acreage Policy

Discrepancies between surveyed acreage and appraised acreage figures may impact the funds Green Acres can provide, which may delay closing. To reduce the impact of small acreage discrepancies, the Local and Nonprofit Program has adopted a 5% acreage difference rule: If the change in acreage is less than 5%, the Green Acres Eligible Land Cost (CMV/AAV) does not change. If the acreage change is greater than 5%, the surveyed acreage will be used to calculate Green Acres participation. This is explained in the *Changes in Acreage* document, which lays out the process for determining if a change in acreage will trigger an amendment of the Eligible Land Cost or a change in the amount of Green Acres funding.

We encourage applicants to incorporate this clause into landowner purchase contracts, thus ensuring that if the amount of Green Acres funding is reduced, the purchase price will be correspondingly reduced.

12.Closing Dates

There has been a growing number of instances in recent years of an applicant committing to a closing date before all the Green Acres submissions required for closing have been approved or, in some cases, even submitted. In these situations, when Green Acres funds are needed for closing, applicants push Green Acres to rush our review and approve the submissions, which delays reviews for other projects that have followed Green Acres procedures. When issues are identified and the established closing date must be pushed back, this can upset the landowner and even jeopardize the acquisition.

Moving forward, if Green Acres funds are required for closing, the anticipated closing date must be discussed in advance with the Green Acres Project Manager to determine feasibility. If the closing date is established without Green Acres input, submissions will not be pushed forward in the review queue to accommodate the applicant's timeframe.

If Green Acres funds are not required for closing, applicants still should keep in mind the risks, described in the *Operating Outside the Standard Green Acres Acquisition Process* guidance document, that are inherent in not receiving Green Acres approval – prior to closing - of all submissions.

13.Cooperative Projects

There has been a marked increase in the number and complexity of cooperative acquisition projects in recent years. While cooperative projects can play an important role in purchasing expensive properties, increasingly, even lower cost properties are being acquired by two, three, or more partners. Adding acquisition partners adds complexity to the acquisition process, which in turn increases the time it takes to get to closing. It also increases applicant and Green Acres staff resources that must be devoted to managing the project. Cooperative

projects complicate post-acquisition terms as well, since partners must either transfer their ownership interest or negotiate joint management of the property.

To provide clarity, reduce complications, and limit cooperative projects to only those that are truly necessary, Green Acres thus will implement the following changes:

- To reduce the number of cooperative acquisitions that arise due to financial necessity, Green Acres is increasing its funding awards to nonprofits and continuing to base both nonprofit and local government awards on demonstrated need.
- A new *Proposed Cooperative Project Information Form* will help applicants and Green Acres understand all the cooperative project terms up front, which will lead to fewer changes and subsequent delays later.
- The *Information Form* will also include a justification section where the applicants can explain the need for multiple partners to receive Green Acres funding for the project and/or take title to the property. Green Acres will review this information and reach out to the applicants to discuss any issues, including a simplified path forward if multiple funding recipients do not appear necessary to accomplish the acquisition.
- Finally, we created the *Cooperative Acquisition Project Guidelines* to help applicants understand the added procedural steps required for cooperative projects. This document lists the required elements of a partnership agreement, explains how due diligence documents differ for cooperative projects, and provides important information for ownership interest transfers.

14.Easement Policy Update and Procedures

Green Acres' goals are best met through fee simple acquisitions. If fee simple purchase is not possible, we will fund easement acquisitions that fulfill a compelling, public need or purpose and that provide meaningful public access. Our easement policy update, *Easement Acquisition Procedures and Standards*, provides clear standards for the different aspects of public access on eased properties, as well as how to handle improvements on the site, reflecting our goals of maximizing public benefits and minimizing future easement violations.

We have also documented procedures for easement acquisitions, noting how these projects differ from traditional fee simple acquisitions. The *Procedures and Standards* reviews requirements for the easement document, additional steps for due diligence deliverables, and the elements required for the easement Baseline Documentation Report.

Applicants will be asked to complete a new *Proposed Easement Project Information Form*, which is to be submitted with the pre-appraisal documents. This form will help applicants and Green Acres to understand the easement terms up front, which will lead to fewer changes and subsequent delays later in the process.

15.Environmental Review and Areas of Concern

Our review of Green Acres' acquisition policies and procedures identified the environmental review and the resolution of Areas of Concern (AOCs) as a significant cause of delay in the

acquisition process. In many cases, this delay is necessary to ensure public safety, but we recognize that this is not always the case. We are in the process of identifying the aspects of our environmental review process that cause unnecessary delays, and we will follow up with additional information.