

**N.J.A.C. 7:36**

**GREEN ACRES PROGRAM**

**Statutory Authority:** N.J.S.A. 13:8A-1 et seq., 13:8A-19 et seq., 13:8A-35 et seq., 13:8c-1 et seq., and P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; P.L. 1978, c.118; P.L. 1983, c.354; P.L. 1987, c.265; P.L. 1989, c.183; P.L. 1992, c.88; P.L. 1995, c.204; and P.L. 1999, c. 152.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**7:36-1.1 Purposes and objectives**

(a) This chapter is promulgated for the following purposes:

- 1. To implement the purposes and objectives of the Green Acres laws in order to help ensure that there is access to and an adequate supply of lands for either public outdoor

recreation or conservation of natural resources, or both. Green Acres shall assist local government units and nonprofits in their efforts to increase and preserve permanent outdoor recreation areas for public use and enjoyment, and conservation areas for the protection of natural resources such as waterways, wildlife habitat, wetlands, forests, and viewsheds;

2. To establish the procedures by which the Department will provide Green Acres funding in the form of loans or matching grants, or both, to local government units, and matching grants to nonprofits, to acquire lands that have significant recreation and conservation attributes and to preserve natural resources for the current population and future citizens of the State;

3. To establish the procedures by which the Department will provide Green Acres funding in the form of loans or matching grants, or both, to local government units, and matching grants to nonprofits, for the development of land to provide outdoor recreation opportunities for the current population and future citizens of the State;

4. To establish the procedures by which the Department will ensure that lands acquired or developed with Green Acres funding, and all other lands held by a local government unit for recreation and conservation purposes at the time the local government unit received Green Acres funding, permanently remain in use for recreation and conservation purposes; and

5. To establish the procedures and standards for the limited circumstances under which a local government unit or a nonprofit may obtain the prior approval of the Commissioner and the State House Commission to use, for other than outdoor recreation and conservation purposes, those lands it holds that are subject to Green Acres restrictions, and the compensation requirements for such approvals.

#### **7:36-1.2 Scope**

This chapter constitutes the Department's rules, under the Green Acres laws, governing the award of loans or matching grants, or both, to local government units for the acquisition or development of land, and 50 percent matching grants to nonprofits for the acquisition or development of land, for outdoor recreation and conservation purposes. These rules establish project eligibility requirements, application requirements, funding award categories and criteria, matching grant and loan terms, and program administrative

requirements. The rules also contain procedures for the disposal, or diversion to a use other than recreation and conservation, of those lands acquired or developed with Green Acres funding or otherwise encumbered with Green Acres restrictions.

#### **7:36-1.3 Construction**

These rules shall be construed liberally to effectuate the purposes and objectives of the Green Acres laws.

#### **7:36-1.4 Severability**

If any provision of this chapter is declared ineffective or invalid by any court of competent jurisdiction, that provision shall be severed and all remaining provisions shall continue in full force and effect.

#### **7:36-1.5 Program information; address for submissions**

Unless otherwise specified, any questions arising from, and all submissions required under this chapter should be directed to the Green Acres Program, New Jersey Department of Environmental Protection, PO Box 412, 501 East State Street, Trenton, New Jersey 08625-0412; 609-984-0500. Additional information about Green Acres, and certain forms and guidance documents, are also available on the Department's website at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres).

#### **7:36-1.6 Relaxation of procedural requirements**

The Department may, in its discretion and if consistent with Green Acres laws, relax the strict application of any of the administrative or procedural requirements of this chapter when necessary and in the public interest, for good cause shown. Such authority does not extend to statutory requirements, legislative mandates, or substantive requirements of the chapter.

#### **7:36-1.7 Tax covenant provision**

All or a portion of the funding from the Garden State Preservation Trust (GSPT) may be derived from the proceeds of tax-exempt bonds issued from time to time by the State for acquisition and development projects for recreation and conservation purposes. Therefore, a local government unit or nonprofit that has been awarded GSPT funding shall not take or permit any action, or fail to take any action, that would cause the interest on such bonds to be treated as taxable for Federal income tax purposes pursuant to Section 103 of the United States Internal Revenue Code (the Code) or subject to the Alternative Minimum Tax under Section 57 of the Code. Additionally,

a local government unit or nonprofit cannot use or permit the use of the proceeds of the bonds in such a way that would cause the bonds to be arbitrage bonds within the meaning of Section 148(a) of the Code.

## **SUBCHAPTER 2. DEFINITIONS**

### **7:36-2.1 Definitions**

The following terms as used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“Additional insured” means a person or entity, other than the listed insured, who is protected by an insurance policy, most often in regard to a specific interest.

“Applicant” means, with respect to N.J.A.C. 7:36-3 through 24, the local government unit or nonprofit that is seeking to obtain Green Acres funding. With respect to N.J.A.C. 7:36-25 and 26, “applicant” means a local government unit or nonprofit that is the legal owner of parkland proposed for disposal or diversion.

“Average of the appraisal values” means the average of the land values stated in two appraisals obtained in accordance with N.J.A.C. 7:36-8.3 or 19.3, as applicable.

“Bureau of Tidelands Management” means the Bureau within the Department that administers licenses, leases, and grants for the use of all those lands now or formerly flowed by the mean high tide of a natural waterway.

“Caliper” means the diameter of a tree measured at a point six inches above the ground line if the resulting measurement is no more than four inches. If the resulting measurement is more than four inches, the measurement is made at a point twelve inches above the ground line.

“Certified market value” means, with respect to a given parcel of land, the dollar amount that the Department has certified as the land's market value under N.J.A.C. 7:36-8.4 or 19.4, as applicable.

“Clear cutting” means the removal of all standing trees on a parcel or portion of a parcel.

“Commissioner” means the Commissioner of the Department of Environmental Protection or his or her designated representative.

“Concession agreement” means an agreement, license or permit with a term of one year or less, executed

between a local government unit or nonprofit and another party for the purpose of operating a recreational facility on behalf of the local government unit or nonprofit or providing a service (including, but not limited to food service, equipment rental or maintenance) in support of a recreational facility operated by the local government unit or nonprofit. Any agreement for the use or operation of parkland or a recreation facility on parkland with a term of more than one year shall constitute a “lease” or “use agreement” for the purposes of N.J.A.C. 7:36-25.13 and 25.14.

“Conservation restriction” means an interest in land less than fee simple, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will, or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural, scenic, open, or wooded condition; appropriate for conservation of soil or wildlife; appropriate for outdoor recreation or park use; or appropriate as suitable habitat for flora or fauna.

“Convey” means to sell, donate, exchange, transfer, or lease for a term of 25 years or more.

“Cost” means, in addition to the term's usual connotations, the expense of all things deemed necessary or useful and convenient in connection with the acquisition or development of land for recreation and conservation purposes with Green Acres funding, including the cost of appraisal, archaeological, architectural, conservation, design, engineering, financial, geological, historic research, hydrological, inspection, land surveying, legal, planning, preliminary assessment, or other professional advice, estimates, reports, services, or studies; demolition of structures; acquiring title; obtaining title insurance; undertaking of feasibility studies; and, for local government units, relocation services.

“Cost of acquisition” means, with respect to a given parcel of land, the eligible land cost plus the sum of the allowable project costs, as established at N.J.A.C. 7:36-4.10 for local government units and N.J.A.C. 7:36-15.9 for nonprofits. If the purchase price paid for the parcel by a local government unit or nonprofit is based on the hypothetical land value rather than the eligible land cost, the cost of acquisition means the purchase price, up to the hypothetical land value, plus the sum of the allowable project costs.

“Declaration” means the recordable, written instrument executed by a local government unit that declares that all of the local government unit's funded and unfunded parklands

are subject to the Green Acres restrictions. Such written instrument shall include the local government unit's Recreation and Open Space Inventory and is a component of the project agreement.

“Densely populated county” means a county with a population density of at least 5,000 persons per square mile, according to the most recent Federal decennial census. (See Appendix 1, incorporated herein by reference, for list.)

“Densely populated municipality” means a municipality with a population density of at least 5,000 persons per square mile, according to the most recent Federal decennial census. (See Appendix 1 for list.)

“Department” means the New Jersey Department of Environmental Protection.

“Development” means any improvement to a land or water area of a parkland that is designed to expand or enhance its utilization for outdoor recreation and conservation purposes, and shall include the construction, renovation, or repair of any such improvement, but shall not mean shore protection or beach renourishment or replenishment activities, except as provided at N.J.A.C. 7:36-10.3(a)5 and 21.3(a)5. This term may include any of the following types of ancillary improvements to a parkland: roadways, parking, landscaping, fencing, lighting, utilities, structures, and any other improvement that expands or enhances the use of parkland for outdoor recreation and conservation purposes.

“Diameter at breast height” or “DBH” means the diameter of a tree measured 4 1/2 feet above the ground.

“Dispose of” means to sell, donate, exchange, grant, convey or transfer permanent possession of any legal interest in parkland, in fee simple or by easement or other legal mechanism, to another person or entity for purpose(s) contrary to the Green Acres restrictions.

“Divert” or “diversion” means to use or allow the use or control of parkland for other than recreation and conservation purposes, contrary to the Green Acres restrictions. For example, granting a non-exclusive easement, or leasing or using parkland for other than recreation and conservation purposes, is to divert it.

“Documented occurrence” means the presence of an endangered, threatened, or rare species verified by the Department.

“Eligible land cost” means the certified market value or average of the appraisal values for a parcel, whichever is determined by Green Acres to be the appropriate land valuation method under N.J.A.C. 7:36-8.4 or 19.4, as applicable.

“Endangered species” means species included on the list of endangered species that the Department promulgates pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., and the Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq., and any species or subspecies of wildlife appearing on any Federal endangered species list or any species or subspecies of plant designated as listed, proposed, or under review by the Federal government pursuant to the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.

“Estimated land value” means the estimated value of a project site based on any reasonable method that the Department determines to be reliable, such as discussions with real estate or appraisal professionals.

“Facility” or “facilities” means an improvement for recreation and conservation purposes.

“Fee simple” means absolute ownership in land, unencumbered by any other interest or estate.

“Funded parkland” means parkland that a local government unit or nonprofit has acquired or developed with Green Acres funding.

“Garden State Preservation Trust Act” or “GSPT Act” means P.L. 1999, c.152, codified at N.J.S.A. 13:8C-1 et seq.

“Garden State Preservation Trust” or “GSPT” means a public body corporate and politic, established by the Garden State Preservation Trust Act to provide funding to the Department for all or a portion of the cost of projects undertaken by grant or loan recipients in accordance with the purposes and procedures established by the GSPT Act.

“GSPT Fund” means the Garden State Green Acres Preservation Trust Fund established pursuant to N.J.S.A. 13:8C-19.

“Grant incentive project” means an acquisition project that qualified for partial grant funding from Green Acres prior to June 30, 1999, the effective date of the Garden State Preservation Trust Act, due to the land's

environmental sensitivity; historic, cultural, or archaeological significance; waterfront location; inclusion in an Open Space and Recreation Plan; or by virtue of a donation of all or a portion of the project site's land value. A grant incentive project is subject to certain special conditions and limitations as to future use and development, as described in the project agreement for each acquisition and at N.J.A.C. 7:36-25.4.

“Green Acres” or “Green Acres Program” mean the Office of Green Acres in the Department, established by N.J.S.A. 13:8C-24.

“Green Acres Bond Act” or “Green Acres Bond Acts” mean, as applicable, one or more of the following: P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; P.L. 1978, c.118; P.L. 1983, c.354; P.L. 1987, c.265; P.L. 1989, c.183; or P.L. 1992, c.88; P.L. 1995, c.204; or any bond act appropriated for the purpose of funding the acquisition or development of land for public recreation and conservation purposes enacted after the effective date of this chapter.

“Green Acres funding” means a loan or matching grant, or both, to a local government unit, or a matching grant to a nonprofit, for the acquisition of land or the development of outdoor recreation and conservation facility(ies) under the Green Acres laws.

“Green Acres laws” means all Green Acres Bond Acts, the Green Acres statutes, the Garden State Preservation Trust Act, the Green Acres Program rules codified in this chapter and any court cases interpreting the Green Acres bond acts, the Green Acres statutes, the Garden State Preservation Trust Act and the Green Acres Program rules.

“Green Acres restrictions” means all limitations regarding the use, maintenance, disposal, diversion, or development or redevelopment of any parkland imposed under the project agreement, this chapter, the Green Acres laws, and any applicable conservation or historic preservation restriction.

“Green Acres statutes” means N.J.S.A. 13:8A-1 et seq., 13:8A-19 et seq., and 13:8A-35 et seq., as amended or supplemented.

“Held,” when used in this chapter with reference to land, means owned, leased, or otherwise controlled.

“Highlands” means the Highlands Region so designated by the Highlands Water Protection and

Planning Act, N.J.S.A. 13:20-7.

“Highlands Council” means the Highlands Water Protection and Planning Council established pursuant to the Highlands Water Protection and Planning Act, N.J.S.A.13:20-1 et seq.

“Highlands Regional Master Plan” means the regional master plan, or any revision thereof, adopted by the Highlands Water Protection and Planning Council, established pursuant P.L. 2004, c.120, N.J.S.A. 13:20-1 et seq.

“Highly Populated County” means a county with a population density of at least 1,000 persons per square mile, according to the most recent Federal decennial census. (See chapter Appendix I for list.)

“Highly Populated Municipality” means a municipality with a population of at least 35,000 persons, according to the most recent Federal decennial census. (See chapter Appendix I for list.)

“Historic property” means any area, building, facility, property, site, or structure approved for inclusion, or that meets the criteria for inclusion, in the New Jersey Register of Historic Places pursuant N.J.S.A. 13:1B-15.128 et seq.

“Historic preservation restriction” means an interest in land less than fee simple, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to preserving a structure or site that is historically significant for its architecture, archaeology or associations.

“Hypothetical land value” means, for a given parcel of land, the value determined by Green Acres based on an appraisal performed in accordance with N.J.A.C. 7:36-8.3 or 19.3, as applicable, which assumes conditions contrary to known facts about existing land use zoning, New Jersey environmental law, and Department regulation. In accordance with the Garden State Preservation Trust Act, the requirement to obtain a hypothetical land value will expire on June 30, 2009.

“Improvement” means any physical change to land made with the intention of expanding or enhancing its use for some specific purpose or purposes.

“Indoor recreation” means active recreation that otherwise is or may be pursued outdoors but, for reasons of extending the season or avoiding inclement weather, is or

may be pursued indoors within a fully or partially enclosed structure, and includes basketball, ice skating, racquet sports, roller skating, swimming, and similar recreational activities and sports as determined by the Department.

“Land” or “lands” means real property, including any improvement, right-of-way, water, riparian and other rights, easements, privileges, and any other rights or interests in, relating to, or connected with real property.

“Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife” or “Landscape Maps” means the Department's maps delineating areas used by or necessary for endangered and threatened species and other priority wildlife to sustain themselves successfully. The maps depict areas of contiguous habitat types (forest, grassland, forested wetland, emergent wetland and beach/dune) that are ranked based upon intersection with documented occurrences of endangered and threatened and priority wildlife species. Mapped habitat areas are classified based upon the status of the wildlife species whose presence is documented. Rank 5 is assigned to areas containing one or more documented occurrences of at least one wildlife species listed as endangered or threatened on the Federal list of endangered and threatened species. Rank 4 is assigned to areas with one or more documented occurrences of at least one State endangered species. Rank 3 is assigned to areas containing one or more documented occurrences of at least one State threatened species. Rank 2 is assigned to areas containing one or more documented occurrences of at least one non-listed State priority wildlife species. The maps also delineate, as Rank 1, habitat areas that meet habitat-specific suitability requirements, such as minimum area criteria for endangered, threatened and priority wildlife species, but that do not intersect with any documented occurrences of such species. The report entitled New Jersey's Landscape Project provides additional information on mapping methodology and is available at the website [www.nj.gov/dep/fgw/ensphome.htm](http://www.nj.gov/dep/fgw/ensphome.htm) or by contacting the address given below. The Department's Landscape Maps may be updated periodically and may be obtained via file download from [www.nj.gov/dep/fgw/ensphome.htm](http://www.nj.gov/dep/fgw/ensphome.htm) or through the Interactive ImapNJ website: [www.state.nj.us/dep/gis/imapnj/imapnj.htm](http://www.state.nj.us/dep/gis/imapnj/imapnj.htm) or by writing to the Division of Fish and Wildlife, Endangered and Nongame Species Program at: The Landscape Project, NJ Division of Fish and Wildlife, Endangered and Nongame Species Program, PO Box 400, Trenton, NJ 08625-0400

“Local government unit” means a county, municipality, or other political subdivision of the State, or any agency, authority, or other entity thereof the primary purpose of which is to administer, protect, acquire, develop, or maintain lands for recreation and conservation purposes;

“Market value” means the most probable price for which land will sell in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by any unusual benefit to the purchaser.

“Meadowlands” means the Hackensack Meadowlands District as defined in the Hackensack Meadowlands Reclamation and Development Act (N.J.S.A. 13:17-1 et seq.)

“Meadowlands Commission” means the New Jersey Meadowlands Commission created by the Hackensack Meadowlands Reclamation and Development Act (N.J.S.A. 13:17- 1 et seq.)

“New Jersey Forestry and Wetlands Best Management Practices Manual” means the manual prepared by the New Jersey State Forest Service, Division of Parks and Forestry, Department of Environmental Protection, October 1995, as amended. It is available from the Department's Division of Parks and Forestry, State Forest Service, PO Box 404, Trenton, New Jersey, 08625.

“New Jersey Meadowlands Master Plan” means the New Jersey Meadowlands Commission Master Plan as defined in the Meadowlands District Zoning Regulations, which are the rules of the Hackensack Meadowlands District found in N.J.A.C. 19:3 et seq., as authorized under the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-1 et seq.

“Nonprofit” means a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and that has received Federal income tax exemption status under section 501(c) of the 1954 Internal Revenue Code, as amended.

“Open Space and Recreation Plan” means the plan developed by a local government unit that identifies existing and potential open space preservation and recreation opportunities in a municipality, county, or region and that is reviewed and approved by Green Acres for



purposes of qualifying a project under the Planning Incentive Acquisition funding award category described at N.J.A.C. 7:36-5.1.

“Parcel” means a piece of land with designated boundaries. A parcel may include multiple tax lots.

“Parkland” means land acquired, developed, and/or used for recreation and conservation purposes, and includes funded and unfunded parkland.

“Person” means any individual, local government unit, nonprofit, corporation, partnership, organization, association, or other entity.

“Pinelands” means the Pinelands Area as designated by section 10 of P.L. 1979, c. 111 (N.J.S.A. 13:18A-11).

“Pinelands Commission” means the commission created by section 4 of P.L. 1979, c. 111 (N.J.S.A. 13:18A-4).

“Pinelands Comprehensive Management Plan” means the plan as defined in N.J.A.C. 7:50, adopted under the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.

“Plan Endorsement” means approval of a municipality's planning documents, including all elements required by the Department of Environmental Protection, by the State Planning Commission pursuant to the State Planning rules at N.J.A.C. 5:85-1 et seq. A local government unit can petition for initial plan endorsement or advanced plan endorsement under the Plan Endorsement Guidelines available from the State Planning Commission's Office of Smart Growth at PO Box 204, Trenton, New Jersey 08625-0204 or on the Commission's web page at [www.nj.gov/dca/osg/plan/endorsement.shtml](http://www.nj.gov/dca/osg/plan/endorsement.shtml).

“Preliminary assessment” means a process defined under the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E, by which a person evaluates a property for the presence of any contaminated area of concern.

“Project” means, for the purposes of N.J.A.C. 7:36-3 through 24, all things deemed necessary or useful and convenient in connection with the acquisition or development of lands for recreation and conservation purposes. For the purposes of N.J.A.C. 7:36-25 and 26, “project” means a plan or proposal for which the disposal or diversion of parkland is requested.

“Project agreement” means the written agreement between the Department and a local government unit or nonprofit, governing the local government unit's or nonprofit's performance of a project and the Department's provision of Green Acres funding for the project. For a local government unit, the project agreement includes the declaration required pursuant to N.J.A.C. 7:36-9.1 or 14.1. For a nonprofit, the project agreement includes the conservation or historic preservation restriction required pursuant to N.J.A.C. 7:36-15.1(d) or 21.1(d).

“Project period” means the period from the earliest of the dates listed at 1 through 3 below until the date that is two years subsequent to the execution of the project agreement or until the last date of any extension approved by the Department under N.J.A.C. 7:36-9.1, 14.1, 20.1, or 24.1.

1. The date of the letter from the Department notifying the local government unit or nonprofit of the amount of the Green Acres funding award;
2. The date of the at-risk authorization provided by Green Acres under N.J.A.C. 7:36-6.3, 12.3, 17.3, or 22.3; or
3. The date on which the local government unit or nonprofit first incurred allowable project costs under N.J.A.C. 7:36-4.10, 10.6, 15.9, or 21.6.

“Project site” means the land as described in the project agreement, in which a local government unit or nonprofit intends to acquire a real property interest, regardless of how acquired, to be held for recreation and conservation purposes, or on which the local government unit or nonprofit intends to develop facilities for recreation and conservation purposes.

“Public entity” means the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State.

“Public Trust Doctrine” means the body of common law that provides that public lands, waters, and living resources are held in trust by the government for the benefit of its citizens.

“Qualifying open space referendum county” or “qualifying open space referendum municipality” means any county or municipality, respectively, that has:

1. Approved and implemented, and is collecting and expending the revenue from, an annual levy authorized pursuant to N.J.S.A. 40:12-15.1 et seq. for an amount or

at a rate equivalent to at least one half of one cent per \$100.00 of assessed value of real property, or for an amount or at a rate established by the county or municipality, respectively, and in effect as of April 1, 1999, whichever is greater; or

2. Adopted an alternative means of funding for the same or similar purposes as an annual levy, which the Department approves to be stable and reasonably equivalent in effect to an annual levy for an amount or at a rate determined by the Department.

“Rare species” means wildlife species that are not endangered or threatened wildlife species and considered by the Department to be species of special concern as determined by a panel of experts or that are ranked S1 (critically imperiled in New Jersey because of extreme rarity), S2 (imperiled in New Jersey because of rarity), S3 (rare in New Jersey), G1(critically imperiled globally), G2 (imperiled globally because of rarity) or G3 (globally very rare and local throughout its range or found locally in a restricted range) in the Natural Heritage Database, and Plant Species of Concern listed pursuant to N.J.A.C. 7:5C-3.1. “Species of special concern” means wildlife species that warrant special attention because of evidence of population decline or inherent vulnerability to environmental deterioration or habitat modification that would result in the species becoming threatened if conditions surrounding the species begin or continue to deteriorate. The term includes species for which there is little knowledge of current population status in the State. “Natural Heritage Database” means the manual and computerized file maintained by the Department at [www.nj.gov/dep/parksandforests/natural/heritage/index.html](http://www.nj.gov/dep/parksandforests/natural/heritage/index.html) that includes continuously updated information on the location and status of rare plant and animal species and ecological communities in New Jersey.

“Recreation and conservation purposes” means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both, pursuant to the Green Acres laws. This term includes the use of historic areas pursuant to P.L. 1974, c.102; P.L. 1978, c.118; P.L. 1983, c.354; P.L. 1987, c.265; P.L. 1989, c.183; P.L. 1992, c.88; and P.L. 1995, c.204; and the use of historic buildings and structures pursuant to P.L. 1992, c.88, and P.L. 1995, c.204.

“Recreation and Open Space Inventory” or “ROSI” means the listing of all of a local government unit's funded and unfunded parkland, including a description sufficient to identify each such parcel.

“Replacement tree” means a nursery-grown tree, properly balled, marked with a durable label indicating genus, species and variety, and satisfying the standards established for nursery stock established in 2004 by the American Nursery & Landscape Association's American Standard for Nursery Stock, (ANSI Z60.1-2004), incorporated herein by reference, available from the American Nursery & Landscape Association, 1000 Vermont Avenue, NW, Suite 300, Washington, DC 20005, phone (202) 789-2900, fax (202) 789-1893 and at [www.anla.org/applications/Documents/Docs/ANLAStandard2004.pdf](http://www.anla.org/applications/Documents/Docs/ANLAStandard2004.pdf). *[Note: This web address is incorrect. Contact American Nursery & Landscape Association at [www.anla.org](http://www.anla.org) for the referenced publication. Green Acres regrets the error.]*

“State” means the State of New Jersey or the State of New Jersey acting by and through the Commissioner of the Department, as applicable.

“State House Commission” means that Commission of the State government established under N.J.S.A. 52:20-1, whose approval is required under the Green Acres statutes before a local government unit or nonprofit can dispose of or divert funded or unfunded parkland.

“State Plan” means the New Jersey State Development and Redevelopment Plan, adopted under the State Planning Act, N.J.S.A. 52:18A-196 et seq.

“Structure” means a building or construction for occupancy, use or ornamentation that is installed on, above or below the surface of the ground.

“Support” means to be necessary or useful and convenient to expand or enhance the use of parkland for recreation and conservation purposes.

“Threatened species” means an indigenous nongame wildlife species of New Jersey designated pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-13 et. seq., and its implementing rules, N.J.A.C. 7:25- 4.17, as most recently amended.

“Tidelands” or “riparian lands” means lands now or formerly flowed by the mean high tide of a natural waterway. The State claims fee simple title to such lands unless it has conveyed its interest through a grant.

“Time of receipt of Green Acres funding” means, for a development project, the period from the earlier of the dates listed at 1 and 2 below until the date of the first transmittal of Green Acres funding. For an acquisition project, this term shall mean the period from the earlier of the dates listed at 1 and 2 below until the date of the first transmittal of Green Acres funding for each parcel acquired as part of the project:

1. The date of the letter from the Department notifying the local government unit of the amount of the Green Acres funding award; or

2. The date of the at-risk authorization provided by Green Acres under N.J.A.C. 7:36-6.3 or 12.3.

“Tree” means any deciduous or coniferous species which reaches a typical mature height of twelve feet or more, and has a typical DBH of four inches or more at maturity.

“Unfunded parkland” means parkland, other than funded parkland, that is held by a local government unit for recreation and conservation purposes at the time of receipt of Green Acres funding.

“Urban Aid municipality” means a municipality that qualifies for the Municipal (Urban) Aid Program under N.J.S.A. 52:27D-178.

### **SUBCHAPTER 3. LOCAL GOVERNMENT UNIT PROJECTS: ELIGIBILITY OF LOCAL GOVERNMENT UNIT APPLICANTS**

#### **7:36-3.1 Eligible applicants**

Any local government unit that has the authority to enter into a project agreement with the Department and to fulfill the financial obligations imposed under the project agreement, this chapter and the Green Acres laws is eligible to apply for Green Acres funding, unless the local government unit is ineligible under N.J.A.C. 7:36-3.2.

#### **7:36-3.2 Ineligible applicants**

(a) The following are ineligible to apply for Green Acres funding:

1. Any school board, educational institution, detention and/or rehabilitation institution, parking authority, housing authority, or similar public agency

without primary recreation and conservation responsibilities;

2. Any local government unit that is in default on any prior obligation to the State;

3. Any local government unit that has not demonstrated reasonable progress in completing a previously approved Green Acres project or is not in compliance with the requirements of this chapter, such as by not maintaining its funded parkland in accordance with the terms of a project agreement; and

4. Any local government unit that does not currently provide, or have active plans to provide, public access to the waterfront and to tidally-flowed and dry sand areas subject to the Public Trust Doctrine, consistent with the requirements of the Coastal Zone Management Rules at N.J.A.C. 7:7E-8.11 and governing law.

### **SUBCHAPTER 4. LOCAL GOVERNMENT UNIT ACQUISITION PROJECTS: PROJECT ELIGIBILITY, CONDITIONS, AND LIMITATIONS**

#### **7:36-4.1 General provisions and funding policies**

(a) Local government units may apply to the Department for Green Acres funding for the acquisition of land for recreation and conservation purposes. There is no minimum or maximum loan or matching grant amount that a local government unit may request as a loan or matching grant in such an application.

(b) Each year, the Department shall establish a maximum funding limit per project or per applicant based on total funding requests, available funds, project priorities established under N.J.A.C. 7:36-7.1, the legislative findings of the Garden State Preservation Trust Act (N.J.S.A. 13:8C-2), and such considerations as the local government unit's progress in expending any approved Green Acres funding; geographic distribution of applications; achievement of an approved petition for plan endorsement or, for a local government unit in the Pinelands, certification from the Pinelands Commission that its master plan and land use ordinances or regulations are consistent with the minimum standards of the Pinelands Comprehensive Management Plan, pursuant to N.J.A.C. 7:50-3 Part II or IV, as applicable; and total population or population density of the county and/or municipality(ies) in which the proposed project site is located.

(c) Any Green Acres funding award is subject to

legislative appropriation.

(d) A local government unit that receives Green Acres funding shall not convey, dispose of, or divert to a use for other than recreation and conservation purposes any lands held by the local government unit for those purposes at the time of receipt of Green Acres funding. The local government unit shall list such lands on the Recreation and Open Space Inventory (ROSI) described at N.J.A.C. 7:36-6.5. The ROSI is required as part of the application for Green Acres funding and, if such application is approved, shall become part of the project agreement described at N.J.A.C. 7:36-9.1. The local government unit shall execute a declaration, described at proposed N.J.A.C. 7:36-9.1(a), which it shall record with the county clerk after it receives a disbursement of Green Acres funding pursuant to N.J.A.C. 7:36-9.4(f).

(e) A local government unit that is awarded Green Acres funding is responsible for obtaining all permits and meeting all requirements of all Federal statutes, Green Acres laws, and any other State, county, and local statutes, regulations, and ordinances, as applicable, related to the project.

(f) The disbursement of Green Acres funding to a local government unit shall not exceed the actual amount the local government unit expended for all allowable project costs listed under N.J.A.C. 7:36-4.10.

(g) The Department encourages each local government unit to review and consider the applicable Landscape Maps, developed by the Department's Division of Fish and Wildlife, during the formulation of its open space preservation and planning goals, and as part of its preparation of a Green Acres application. Information about the Landscape Project can be found at [www.nj.gov/dep/fgw/ensp/landscape](http://www.nj.gov/dep/fgw/ensp/landscape) or by writing to the Division of Fish & Wildlife, PO Box 400, Trenton, New Jersey 08625-0400.

(h) It is the responsibility of the local government unit to obtain and utilize the most current applicable forms required as part of the acquisition project. All forms can be obtained from Green Acres at PO Box 412, Trenton, New Jersey 08625.

#### **7:36-4.2 Eligible projects**

(a) Land for recreation and conservation purposes, as defined at N.J.A.C. 7:36-2.1, is eligible for acquisition with Green Acres funding. An acquisition project may include the purchase of, for example:

1. Ocean, bay and/or river waterfront, or a lake, pond, beach or stream that provides opportunity for physical and visual public access, swimming, water sports, fishing and/or boating;
2. A natural area such as a wildlife preserve, forest and/or wetland that provides opportunity for conservation, nature observation, water quality and water supply protection, camping and/or hiking;
3. An historic property; or
4. Land suitable for playgrounds, athletic fields, and other types of active and passive outdoor recreation facilities or opportunities.

#### **7:36-4.3 Ineligible projects**

(a) The following types of acquisition projects are not eligible for Green Acres funding:

1. Any site to be purchased in fee simple to which public access is not provided, unless the Commissioner determines that public accessibility would pose an unacceptable risk to the land or to any natural resources associated with the land;
2. Any permanent conservation restriction or historic preservation restriction not consistent with N.J.A.C. 7:36-4.7;
3. Any structure that will not be used in support of outdoor recreation and conservation purposes or demolished to create open space, in accordance with N.J.A.C. 7:36-4.4;
4. Any site that is, or is intended to be, used as a public road right-of-way;
5. Any site with uninsurable or unmarketable title; or
6. Any site that is already permanently preserved for recreation and conservation purposes, as determined by the Department.

#### **7:36-4.4 Acquisition of structures**

(a) A local government unit may use Green Acres funding to acquire an improved property and structure(s) that the local government unit shall maintain and operate for recreation and conservation purposes to support the use of an outdoor recreation or conservation facility or area.

(b) Within six months of acquiring land as part of a Green Acres project, the local government shall inspect the project site for the presence of any structures thereon that are or may be historic properties. Within 60 days after completion of the inspection, the local government unit shall provide to Green Acres and the Department's Historic Preservation Office (at PO Box 404, Trenton, New Jersey 08625-0404):

1. A written notice of its findings; and

2. For any structure discovered on the project site that is or may be an historic property, a request for determination of potential eligibility for inclusion of the historic structure in the New Jersey Register of Historic Places. Whenever such a structure is discovered, a copy of the written notice provided to the Historic Preservation Office shall also be sent to Green Acres, the New Jersey Historic Trust, and to the county historical commission or advisory committee, the county historical society, the local historic preservation commission or advisory committee, and the local historical society if any of those entities exist in the county or municipality wherein the project site is located.

(c) A local government unit may demolish or remove a structure acquired with Green Acres funding to create open space only after the local government unit has obtained written approval from Green Acres. Such demolition may be subject to N.J.A.C. 7:36-25.6.

#### **7:36-4.5 Acquisition of waterfront land**

(a) For an acquisition potentially involving a riparian interest, a local government unit shall contact the Department's Bureau of Tidelands Management to determine the State's interest or claim in the proposed project site before a local government unit submits an application for Green Acres funding.

(b) An interest in State-owned tidelands may be acquired from the Tidelands Resource Council, established under N.J.S.A. 13:1B-10, with Green Acres funding or, where the State previously conveyed its ownership of certain tidelands, those tidelands may be acquired from private owners.

#### **7:36-4.6 Acquisition of agricultural lands**

(a) A local government unit may apply for Green Acres funding to acquire farmland for recreation and

conservation purposes when there is a willing seller, the property is on the market, the property is the subject of a pending or approved subdivision or site plan application for non-farm purposes, the property is under contract of sale for non-farm purposes, or the property is integral to the project.

(b) If farmland is located within an Agricultural Development Area established under the 1983 Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., at the time of application for Green Acres funding, the local government unit shall demonstrate that the owner of the farmland has not applied to sell the farmland or a development easement to the State or county in accordance with that Act, or that the owner has applied to sell the farmland or a development easement and the application was not approved.

#### **7:36-4.7 Acquisition of conservation restrictions or historic preservation restrictions**

(a) A local government unit may acquire a permanent conservation restriction with Green Acres funding, provided the restriction fulfills a public need or serves a compelling public purpose, as determined by Green Acres, by:

1. Providing for meaningful public access;

2. Providing significant benefits to other contiguous public parkland that provides public access; or

3. Providing for the acquisition of those rights necessary to serve as a necessary buffer or protective area to existing permanent open space or to a unique natural area or wildlife habitat.

(b) A local government unit may acquire a permanent historic preservation restriction with Green Acres funding if the restriction is on a landscape or structure that is listed or eligible for listing on the New Jersey or National Register of Historic Places and if the restriction fulfills the public need or serves a compelling public purpose, as determined by Green Acres, by:

1. Providing for meaningful public access; or

2. Providing significant benefits to other contiguous public parkland that provides public access.

(c) If a local government unit acquires a conservation or historic preservation restriction with Green Acres funding,

it shall also seek to obtain the right of first refusal for the purchase of the remaining interest in the property.

(d) If a local government unit acquires a conservation restriction under (a)2 or 3 above or an historic preservation restriction under (b)2 above, Green Acres will provide to the local government unit for land acquisition half of what the local government unit would otherwise be eligible to receive for the purchase of the restriction.

(e) If a local government unit seeks to acquire a conservation or historic preservation restriction with Green Acres funding, it shall prepare a report that clearly documents the conditions of the project site at the time the restriction is to be acquired. This Present Condition Report shall include maps, photographs, and written descriptions of the property that document the condition of the property just prior to the time of closing. It shall be prepared after Green Acres approves the survey required under N.J.A.C. 7:36- 9.4(c) and shall be submitted to Green Acres for approval prior to the local government unit acquiring the project site.

#### **7:36-4.8 Matching share; donations toward the cost of acquisition**

(a) If the Garden State Preservation Trust approves a matching grant to a local government unit, the local government unit may use as its matching share of the cost of acquisition, its own funds or any grant, contribution, donation of funds, or reimbursement from State or Federal programs or from any other public or private source, except as described at (c) below.

(b) A local government unit may use as its matching share of the cost of acquisition, the value of land donated to the local government unit, in whole or in part, within the project site, except as provided in (c) below. For the purposes of this subsection, the value of a donation of land is the difference between the eligible land cost and the purchase price of a parcel of land.

1. The land donated to the local government unit must be eligible for funding under N.J.A.C. 7:36-4.2 and its acquisition by the local government unit must comply with all of the requirements of this chapter; and

2. The local government unit must use the donated land value as its matching share of the cost of acquisition of another parcel within the project site within two years after either it acquires the donated land or the Garden State Preservation Trust approves the project, whichever

is later.

(c) A local government unit shall not use as its matching share of the cost of acquisition:

1. The value of land that the local government unit owns prior to approval of an application for Green Acres funding under N.J.A.C. 7:36-8.1, unless the local government unit had previously obtained an at-risk authorization under N.J.A.C. 7:36-6.3;

2. Any funding provided under the Green Acres laws, except a Green Acres loan awarded to the local government unit for the project under N.J.A.C. 7:36- 8.1;

3. Any funding provided under the Garden State Preservation Trust Act administered by any State agency; or

4. The value of the purchase price in excess of the hypothetical land value, if the hypothetical land value exceeds the eligible land cost.

#### **7:36-4.9 Acquisition by condemnation**

(a) A local government unit may use Green Acres funding to acquire land by condemnation in accordance with the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.

(b) A local government unit should not institute condemnation proceedings for any parcel within the proposed project site unless it has received approval of its application under N.J.A.C. 7:36-8.1 and the notification of eligible land cost under N.J.A.C. 7:36-8.4, or an at-risk authorization under N.J.A.C. 7:36-6.3.

(c) If an appraisal submitted to Green Acres under N.J.A.C. 7:36-8.3 must be updated for a condemnation proceeding, the local government unit shall comply with the appraisal procedures contained in N.J.A.C. 7:36-8.3 in the performance of the updated appraisal.

(d) When a local government unit condemns a project site, Green Acres will consider the condemnation award to be the updated eligible land cost. For purposes of this section, a condemnation award is the value established by the court through the Condemnation Commissioners or a jury; it does not include a Consent Judgment or other negotiated settlement.

(e) The local government unit may request supplemental

funding under N.J.A.C. 7:36-9.3 if a condemnation award exceeds the eligible land cost established pursuant to N.J.A.C. 7:36-8.4.

(f) The local government unit must submit a copy of the final judgment of condemnation as part of the request for disbursement of funds under N.J.A.C. 7:36-9.4.

#### **7:36-4.10 Allowable project costs**

(a) For an acquisition project, the following costs are allowable, provided the local government unit incurs such costs in conformance with all applicable laws, including the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.:

1. Costs that a local government unit incurs to acquire title or permanent interest in the project site, up to the greater of either:

- i. The eligible land cost; or
- ii. The purchase price, up to the hypothetical land value;

2. Relocation payments made by a local government unit in accordance with the Relocation Assistance Act, N.J.S.A. 20:4-1 et seq. or the Relocation Assistance Law at 1967, N.J.S.A. 52:31B-1 et seq. The local government unit shall provide to Green Acres a Workable Relocation Assistance Plan (WRAP) approved by the New Jersey Department of Community Affairs;

3. Costs that the local government unit incurs for any appraisal obtained in accordance with N.J.A.C. 7:36-8.3;

4. Land survey costs that the local government unit incurs for the field determination of acreage to be subject to Green Acres restrictions, done in compliance with the Local and Nonprofit Land Survey Overview, incorporated herein by reference as chapter Appendix 2. The Overview is available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres). Technical assistance regarding the preparation of the land survey is available from Green Acres.

5. Costs of the preliminary assessment, when completed in accordance with N.J.A.C. 7:26E, as required under N.J.A.C. 7:36-8.2, and further testing as determined by the Department, based on findings

and recommendations of the preliminary assessment;

6. Subject to N.J.A.C. 7:36-4.4, costs of demolition and removal of any structure:

i. For a project located in an Urban Aid municipality, all allowable costs associated with demolition and removal of structures are eligible, subject to available funding;

ii. For a project not located in an Urban Aid municipality, allowable costs associated with demolition and removal of structures are limited to a maximum of 10 percent of the eligible land cost or \$100,000, whichever is less; and

iii. The local government unit's attorney must submit a certification that each contract related to the demolition and removal was let in conformance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. This certification is required for each executed contract for professional services or construction, and must be on a form provided by Green Acres;

7. Costs of well testing done in compliance with the Private Well Testing Act, P.L. 2001, c.40; N.J.S.A. 58:12A-26 et seq., and implementing rules at N.J.A.C. 7:9E; and

8. Incidental costs, individually itemized, associated with the implementation of the acquisition project, including the cost of advertising, archaeological, architectural, conservation, engineering, feasibility studies, financial, geological, historic research, hydrological, inspection, legal, planning, or other professional advice, estimates, reports, services, or studies; and title insurance obtained in accordance with N.J.A.C. 7:36-9.4(c)1iv and 2iv. Incidental costs are limited to a maximum of two percent of the eligible land cost or \$20,000, whichever is less.

(b) The following types of costs are not allowable:

1. Administrative and operating costs and salary and/or wages of any employee of the local government unit incurred as part of the acquisition project;

2. Real property taxes;

3. Costs associated with an application for Green Acres funding that the Garden State Preservation Trust does not approve under N.J.A.C. 7:36-8.1;

4. Remediation work done to address any areas of concern, as defined under the Technical Requirements for Site Remediation, N.J.A.C. 7:25E, that are identified in the preliminary assessment required under N.J.A.C. 7:36-8.2 or by other means; and

5. Costs in excess of the sum of the approved Green Acres funding plus the local government unit's matching share, if required, unless Green Acres has approved a request for supplemental funding under N.J.A.C. 7:36-9.3.

(c) Costs of a condemnation award in excess of the eligible land cost of the project site may be funded by a supplemental Green Acres loan or matching grant under N.J.A.C. 7:36-9.3.

#### **SUBCHAPTER 5. LOCAL GOVERNMENT UNIT ACQUISITION PROJECTS: FUNDING AWARD CATEGORIES**

##### **7:36-5.1 Funding award categories**

(a) The Garden State Preservation Trust awards Green Acres funding to local government units for acquisition projects in the four funding award categories set forth in (b) through (e) below.

(b) A Planning Incentive acquisition project is the purchase of a project site by a Qualifying Open Space Referendum County or Qualifying Open Space Referendum Municipality that has an Open Space and Recreation Plan. A Planning Incentive acquisition project is funded by a matching grant of up to 50 percent of the cost of acquisition. If funds are available, a Planning Incentive acquisition project also shall be eligible for a low-interest (not more than two percent) loan to supplement the matching grant.

1. The Garden State Preservation Trust may authorize an increase in the State's share of the cost to a maximum of a matching grant of up to 75 percent of the cost of acquisition, upon a demonstration of special need or exceptional circumstances.

(c) A Site Specific Incentive acquisition project is the purchase of a project site by a Qualifying Open Space Referendum County or Qualifying Open Space Referendum Municipality that does not have an Open Space and Recreation Plan. A Site Specific Incentive acquisition project is funded by a matching grant of up to 50 percent of the cost of acquisition. If funds are available, a Site Specific Incentive acquisition project

also shall be eligible for a low-interest (not more than two percent) loan to supplement the matching grant.

1. The Garden State Preservation Trust may authorize an increase in the State's share of the cost to a maximum of a matching grant of up to 75 percent of the cost of acquisition, upon a demonstration of special need or exceptional circumstances.

(d) An Urban Aid acquisition project is the purchase of a project site located in an Urban Aid municipality. An Urban Aid acquisition project is funded by a matching grant of up to 50 percent of the cost of acquisition. If funds are available, an Urban Aid acquisition project also shall be eligible for a low-interest (not more than two percent) loan to supplement the matching grant.

1. The Garden State Preservation Trust may authorize an increase in the State's share of the cost to a maximum of a matching grant of up to 75 percent of the cost of acquisition, upon a demonstration of special need or exceptional circumstances.

(e) A Standard acquisition project is the purchase of a project site that is not located in an Urban Aid municipality or sponsored by a Qualifying Open Space Referendum County or a Qualifying Open Space Referendum Municipality. A Standard acquisition project is the purchase of a project site that generally consists of one parcel or a unified group of parcels. A Standard acquisition project is funded by a matching grant of up to 25 percent of the cost of acquisition. If funds are available, a Standard acquisition project also shall be eligible for a low-interest (not more than two percent) loan to supplement the matching grant.

1. The Garden State Preservation Trust may authorize an increase in the State's share of the cost to a maximum of a matching grant of up to 50 percent of the cost of acquisition, upon a demonstration of special need or exceptional circumstances.

(f) An acquisition project will compete in each funding round against other projects within the same funding award category, as described at N.J.A.C. 7:36-7.2.

#### **SUBCHAPTER 6. LOCAL GOVERNMENT UNIT ACQUISITION PROJECTS: APPLICATION PROCESS**

##### **7:36-6.1 Timing**



(a) A local government unit may submit an application for Green Acres funding at any time.

(b) At least two times each State fiscal year, the Department shall rank and evaluate all applications deemed complete in accordance with N.J.A.C. 7:36- 7.2 and shall submit to the Garden State Preservation Trust a list of projects that the Department recommends to receive funding in accordance with N.J.A.C. 7:36-8.1.

(c) At least two times each State fiscal year, the Garden State Preservation Trust shall approve projects from the list described at (b) above and shall prepare and submit for introduction in the Legislature proposed legislation appropriating moneys to fund the approved projects.

#### **7:36-6.2 Preapplication procedure**

(a) The Department encourages local government units to attend a Green Acres sponsored informational workshop, when offered, and to request a preapplication conference with Green Acres as early as possible, prior to application submission, to discuss project eligibility, award criteria and application and project administration requirements.

(b) The local government unit shall hold a public hearing on the proposed acquisition project before it submits its application for Green Acres funding.

1. The local government unit shall publish a notice of the public hearing in the official newspaper of the municipality in which the proposed project site is located, and, if the local government unit is a county, also in a newspaper of general circulation. The hearing must be advertised as a display ad at least 15 days before the hearing. The hearing notice must specifically reference the proposed Green Acres acquisition application.

2. The public hearing must be held in the evening, and may be held as part of a public meeting, as long as the hearing is properly advertised. Only the proposed acquisition project, and other proposed Green Acres projects, if any, shall be the subject matter of the public hearing.

3. The elected governing body of the local government unit shall conduct the public hearing on the proposed acquisition application.

#### **7:36-6.3 At-risk authorization to proceed with acquisition**

(a) For the acquisition to remain eligible for Green Acres funding assistance, a local government unit shall not enter into a purchase contract or institute condemnation proceedings for any parcel within the proposed project site unless it has first received notification of the Green Acres funding award under N.J.A.C. 7:36-8.1 and notification of eligible land cost under N.J.A.C. 7:36-8.4, or an at-risk authorization.

(b) Within 14 days of a local government unit's request of an at-risk authorization, Green Acres shall authorize, in writing, the local government unit to proceed with the acquisition of a proposed project site at its own risk.

(c) Within 14 days of receiving the at-risk authorization from Green Acres, the local government unit shall do the following, if it has not already done so:

1. Submit to Green Acres the Recreation and Open Space Inventory (ROSI) described at N.J.A.C. 7:36-6.5. If the project is approved under N.J.A.C. 7:36-8.1(b), the ROSI will become part of the project agreement required under N.J.A.C. 7:36-9.1 and the time of receipt of Green Acres funding shall begin on the date of the at-risk letter; and

2. Advertise and hold the public hearing consistent with N.J.A.C. 7:36- 6.2(b). The advertisement must indicate that the local government unit may apply or has applied for Green Acres funding for the project.

(d) The Garden State Preservation Trust is not obligated to award funding for the acquisition of any project site for which Green Acres issues an at-risk authorization under (b) above and for which the local government unit submits an application.

(e) A local government unit is not obligated to submit an application under this subchapter or to acquire any project site for which it receives an at-risk authorization under (a) above.

(f) The acquisition of the proposed project site completed under an at-risk authorization must comply with the requirements of this chapter to remain eligible for Green Acres reimbursement.

#### **7:36-6.4 Application requirements**

(a) For a project in the Standard Acquisition, Site

Specific Incentive Acquisition, or Urban Aid Acquisition funding award category, a local government unit shall submit all of the following:

1. A completed application on a form obtained from Green Acres. The application shall identify the local government unit, give the project type, indicate the municipality(ies) and county(ies) in which the proposed project site is located, provide a brief description of the project, specify the estimated cost of acquisition and the estimated funding request amount, identify the local government unit's contact person for the project, and include the certification of the person authorized by the enabling resolution required under (b)2 below to submit the application.

i. The local government unit shall base its funding request amount on the estimated land value or anticipated purchase price of the proposed project site and not solely on the tax assessed value of the proposed project site. The local government unit shall include estimated costs of professional land surveying, appraisal, and preliminary assessment services; estimated costs of relocation services and demolition of structures (if applicable); and an estimate of any other allowable project costs in accordance with N.J.A.C. 7:36-4.10;

2. A certified copy of the enabling resolution, drafted in accordance with an example obtained from Green Acres and approved by the governing body of the local government unit, authorizing the submission of a Green Acres application and the execution of the project agreement and declaration described in N.J.A.C. 7:36-9.1(a) and identifying the person authorized to act in these matters on behalf of the local government unit;

3. The Recreation and Open Space Inventory (ROSI) submissions that are prepared by the local government unit in accordance with N.J.A.C. 7:36-6.5 and that are complete and accurate as of the date of the application;

4. A narrative description of how and the extent to which the project meets the award criteria under N.J.A.C. 7:36-7.1;

5. A project reference map with dimensions of at least 11 inches by 17 inches which contains the following information:

i. The project name and location;

ii. The lot and block numbers, and the municipality(ies) and county(ies) in which the proposed project site is located;

iii. The owner(s) of record as of the date of application submission, as well as any adjacent property under the same ownership;

iv. The area of the project site, in acreage or square feet;

v. The dimensions of each lot marked on each perimeter boundary;

vi. Any improvement or structure shown in approximate location on the lots;

vii. If the acquisition of part of a lot is proposed, both the area of the part to be acquired and the area of the remainder shall be denoted;

viii. An appropriate scale relative to the size of the proposed project site so as to allow an appraiser to prepare an accurate appraisal;

ix. An arrow indicating north;

x. The location and area of all known existing easements, road rights-of-way, encroachments, dune and beach areas, and similar features, with the source of such information identified, and any proposed area(s) to be excepted from the project site;

xi. The location and area of all streams, rivers, waterbodies, and associated buffers. Any waterbody classified as Category One pursuant to N.J.A.C. 7:9B, and the associated special water resource protection area established pursuant to N.J.A.C. 7:8, must be shown and labeled;

xii. The location and area of tidelands, available from the Department at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis), as determined from New Jersey Tidelands claims maps, conveyance overlays, and atlas sheets;

xiii. The location and area of floodplain, as shown on the New Jersey State Flood Hazard Area maps prepared under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. and available from the Department at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis), or as determined from other State or Federal mapping or from a site delineation;

xiv. The location and area of coastal wetlands, as shown on maps prepared by the Department under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. and available from the Department at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis); and

xv. The location and area of freshwater wetlands, available from the Department at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis) or as determined from:

(1) A wetlands delineation, if one exists, verified by the Department's Land Use Regulation Program or its successor;

(2) Freshwater wetlands maps prepared by the Department under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., if they exist; or

(3) If the documents listed under (1) and (2) above do not exist, U.S. Fish and Wildlife Service National Wetlands Inventory (NWI) maps, in conjunction with County Soil Surveys published by the U.S. Department of Agriculture;

6. A street map that clearly indicates the location of the proposed project site;

7. Proof of publication of the notice of public hearing held under N.J.A.C. 7:36-6.2(b), and copy of the minutes of the hearing;

8. Digital images and prints that clearly show the existing conditions at the proposed project site;

9. A local tax map that indicates the lot(s) and block(s) proposed to be acquired;

10. If applicable, letters in support of the project from the general public; civic groups and agencies; municipal and county planning boards, park commissions, recreation departments, or environmental commissions; user groups; or other organizations; and

11. The most recent existing survey of project site, if available.

(b) For a project in the Planning Incentive Acquisition funding award category, a local government unit shall submit all of the following:

1. A completed application on a form obtained from

Green Acres. The application shall identify the local government unit, provide a brief description of the project, specify the estimated cost of acquisition and the estimated funding request amount, identify the local government unit's contact person for the project, and include the certification of the person authorized by the enabling resolution required under (b)2 below to submit the application.

i. The local government unit shall base its funding request amount on the estimated land value or anticipated purchase price of the proposed project site and not solely on the tax assessed value of the proposed project site. The local government unit shall include estimated costs of professional land surveying, appraisal, and preliminary assessment services; estimated costs of relocation services and demolition of structures (if applicable); and an estimate of any other allowable project costs in accordance with N.J.A.C. 7:36-4.10;

2. A certified copy of the enabling resolution, drafted in accordance with an example obtained from Green Acres and approved by the governing body of the local government unit, authorizing the submission of a Green Acres application and the execution of the project agreement and declaration described in N.J.A.C. 7:36-9.1(a) and identifying the person authorized to act in these matters on behalf of the local government unit;

3. An Open Space and Recreation Plan, if one was not previously submitted and approved by Green Acres or if the Plan has changed and/or been amended since last approved by Green Acres;

4. The Recreation and Open Space Inventory (ROSI) submissions that are prepared by the local government unit in accordance with N.J.A.C. 7:36-6.5 and that are complete and accurate as of the date of the application;

5. Proof of publication of the notice of public hearing held under N.J.A.C. 7:36-6.2(b), and copy of the minutes of the hearing. The purpose of the hearing is to inform the public that the local government unit is requesting Green Acres funding to accomplish the acquisition goals established in the local government unit's Open Space and Recreation Plan; and

6. If applicable, letters in support of the project from the general public, civic groups and agencies, municipal and county planning boards, park commissions, recreation departments, environmental commissions,

user groups, or other organizations.

(c) Green Acres shall send a letter to the local government unit acknowledging receipt of the application; providing the identification number assigned to the application; and requesting any corrections or clarifications to, or submission of any items missing from, the application, if applicable.

(d) All materials submitted under (a) or (b) above shall become the property of the Department.

(e) Green Acres staff shall conduct one or more project site inspections to verify the statements in the application. A project site inspection may also include an examination of the maintenance of other parkland held by the local government unit and an evaluation of the areas to be served by the acquisition project.

(f) A local government unit that has submitted an application shall monitor and immediately notify Green Acres of any pending or proposed actions or events affecting the proposed project site such as, but not limited to, any applications made for Coastal Area Facility Review Act (CAFRA) permits or for other Department permits, including, but not limited to, permits for stream encroachment, waterfront development, and sanitary landfill construction or operation; any application made to the Pinelands Commission under the Pinelands Comprehensive Management Plan for projects in the Pinelands; any application made to the New Jersey Meadowlands Commission under the New Jersey Meadowlands Master Plan for projects in the Meadowlands District; any application for a local building permit or subdivision approval; or any application made to the County Agricultural Development Board or the State Agricultural Development Committee related to the proposed project site. The local government unit shall also immediately notify Green Acres of any fires, demolitions, floods, natural disasters, donations, easements, leases, or survey discrepancies relevant to or affecting the proposed project site, or changes in ownership of the proposed project site.

#### **7:36-6.5 Recreation and Open Space Inventory submissions**

(a) As part of an application for Green Acres funding, a local government unit must prepare and submit a Recreation and Open Space Inventory (ROSI). The ROSI must be prepared by the local government unit on forms obtained from Green Acres, and shall list each parcel of land held by the local government unit for recreation and

conservation purposes as of the date of the application. All interests in land held by the local government unit for recreation and conservation purposes shall be listed, including any conservation restriction or historic preservation restriction, regardless of how they were acquired (for example, whether as a condition of a planning or zoning approval issued by a local government unit, as a donation, through negotiation, or in any other manner).

1. The listing shall identify each parcel, specify whether each parcel is funded or unfunded parkland, give its area in acreage or square feet, and provide its lot and block designation as shown on the tax maps submitted under (b) below. If the tax lot or block designations have changed since the submission of a prior ROSI, the local government unit must provide the new lot and block numbers and the corresponding old lot and block numbers on the ROSI.

2. The chief executive officer and the planning board chairperson, if the local government unit is a municipality, or the chief executive officer and the planning board chairperson or either the parks director or director of the open space program, if the local government unit is a county, shall sign and date the ROSI, affirming that it is complete and accurate.

(b) The local government unit shall submit a map of the local government unit and current tax maps, showing each parcel of parkland listed on the ROSI, with the approximate boundaries of each such parcel clearly marked in colored ink. The tax maps required under this subsection need not be submitted if:

1. Green Acres has the tax maps on file because they were previously submitted by the local government unit; and

2. The local government unit certifies that the previously submitted tax maps are complete and accurate as of the date of application submission.

### **SUBCHAPTER 7. LOCAL GOVERNMENT UNIT ACQUISITION PROJECTS: AWARD CRITERIA; APPLICATION RANKING AND EVALUATION**

#### **7:36-7.1 Project award criteria**

(a) For a project in the Standard Acquisition, Urban Aid Acquisition, or Site Specific Incentive Acquisition funding award categories, the Department shall assign priority points in accordance with (b) below to each acquisition

project after it has received a complete application under N.J.A.C. 7:36-6.4. The assignment of priority points reflects the degree to which a proposed project is consistent with the most recent New Jersey Statewide Comprehensive Outdoor Recreation Plan (available from Green Acres at PO Box 412, Trenton, New Jersey 08625-0412); the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; and the findings and declarations and, as applicable, special considerations for funding awards set forth in the Green Acres laws, State open space and recreation priorities, and this chapter.

(b) The Department shall assign priority points according to the following protocol:

1. The Department may assign a maximum of 30 points based on the extent to which a project satisfies the need for open space for recreation in a particular county, as follows:

i. The extent to which there is a deficit in open space for recreation and conservation purposes within the jurisdiction of the local government unit, under the balanced land use guidelines for municipalities and counties, one to five points. For purposes of this section, the balanced land use guidelines recognize competing uses for developable land (for example, housing versus ballfields) and are expressed as goals. For a municipality, the balanced land use goal is that a minimum of three percent of the developed and developable area of the municipality should be held as open space for recreation. For a county, the balanced land use goal is that a minimum of seven percent of the developed and developable area of the county should be held as open space for recreation. The Statewide Comprehensive Outdoor Recreation Plan (available from Green Acres) contains a complete discussion of the balanced land use guidelines; and

ii. The population density and the extent to which there is a shortage of availability of other open space which satisfies similar recreational needs within the area from which the majority of users of the proposed project are expected to come, one to 25 points.

2. The Department may assign a maximum of 30 points based on the extent to which a project meets environmental protection goals, as follows:

i. The extent to which the project contains open space and/or conservation areas of sufficient size and located so as to:

(1) Protect wildlife habitat, zero to three points;

(2) Enhance or preserve a critical environmental site identified in the State Plan, the New Jersey Meadowlands Master Plan, the Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable, and/or another unique natural area or land type (for example, steep slope, dune, beach, wetland, forest land), zero to three points;

(3) Provide an addition to or link between existing public recreation and/or open space areas, zero to three points;

(4) Support a regional open space and/or conservation initiative (for example, shore protection or preservation of landscape ecology, biodiversity, wildlife corridors, and/or greenways), zero to three points; and

(5) Protect documented threatened and/or endangered species habitat, zero to three points.

ii. The extent to which a project creates or extends a greenway or protects a water resource area, including forests, shorelines, and stream corridors of sufficient size and located so as to:

(1) Establish an integral link in an existing or planned local, regional, or statewide conservation initiative, or a component of a Wild and Scenic Rivers system under the National Wild and Scenic Rivers Act, 16 U.S.C. § § 1271-1287 and/or the New Jersey Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq., zero to three points;

(2) Facilitate water resource protection efforts, zero to three points;

(3) Provide significant natural flood protection, zero to three points;

(4) Act as a physical or visual buffer between a significant natural resource or feature and development, or provide visual or physical access to a waterbody, zero to three points; or

(5) Protect headwaters, tributaries, or corridors of

any waterbodies classified as “Category One Waters,” pursuant to N.J.A.C. 7:9B, and associated special water resource protection areas established pursuant to N.J.A.C. 7:8, as well as other streams or rivers, zero to three points.

3. The Department may assign a maximum of 15 points based on the extent to which a project meets historic resource preservation goals, as follows:

i. If the project is on, contained within, or adjacent to a site included on or eligible for inclusion in the New Jersey Register of Historic Places under N.J.S.A. 13:1B-15.128 et seq. and/or the National Register of Historic Places under 16 U.S.C. § § 470 et seq., or is a Critical Historic Site identified in the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable, zero to three points;

ii. If the project is an historic project that provides an extension to or linkage between existing public recreation and/or open space areas, zero to three points;

iii. The degree to which the project is a significant and/or contributing component of an historic district designated as such under N.J.S.A. 13:1B-15.128 et seq., zero to three points;

iv. If the project is part of an ongoing historic preservation or restoration project or historic study or investigation, zero to three points; and

v. The extent to which the project is one with historic integrity of location, design, setting, materials, workmanship, feeling, and association, zero to three points.

4. The Department may assign a maximum of 15 points based on the extent to which public involvement and support in the planning process for a project, beyond the minimum requirement of a public hearing under N.J.A.C. 7:36-6.2, has been sought and obtained. Green Acres shall evaluate the degree to which:

i. There is public support, as demonstrated through letters from the municipal and county planning boards, park agencies, recreation departments, environmental commissions, user groups, and the general public, zero to five points;

and

ii. The project is consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; the New Jersey Statewide Comprehensive Outdoor Recreation Plan; and local and county land use plans, especially open space and recreation elements thereof, as demonstrated in excerpts from or specific references to such plans in the project application; and whether proof of an approved petition for plan endorsement by the State Planning Commission or, for a local government unit in the Pinelands, certification from the Pinelands Commission that its master plan and land use ordinances or regulations are consistent with the minimum standards of the Pinelands Comprehensive Management Plan, pursuant to N.J.A.C. 7:50-3 Part II or IV, as applicable, has been provided, zero to 10 points;

5. The Department may assign a maximum of 28 points based on the overall quality of a project by evaluating the extent to which:

i. The project is accessible to population centers; is accessible by public transportation, walking or bicycling; and will create public access where none exists or where existing access is undeveloped or restricted, zero to four points;

ii. The project has recreation development potential, because it is suitable for major outdoor recreation facility development, is suitable for the use and/or development of appropriate water dependent recreation activities or facilities, represents part of a planned or existing waterfront development plan, provides environmental and/or historic interpretive opportunities, or improves management or expansion of recreation facilities or services, zero to 10 points;

iii. The project improves needed public access (visual and/or physical) to water, zero to six points; and

iv. The project is cost-effective as determined by weighing the quality of conservation or recreation opportunities provided by the project against the anticipated cost. Considerations include: the cost of alternative locations and facilities; whether the land is available at lower cost due to bargain sale, donation, easement, or partnerships; the cost of future operation and maintenance; and whether the project has

development approvals from the local planning board; negative eight to eight points.

6. The Department may assign a maximum of 14 points to a project that incorporates the following items:

i. Private investment and/or ecotourism potential, public/private sector venture, and/or supports municipal and county (urban complex) strategic revitalization plans and programs consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable, one point;

ii. Waterfront development or redevelopment, one point;

iii. Trails, bike paths, or greenways, one point;

iv. Historic or archaeologic resource enhancement or preservation, one point;

v. Wildlife habitat protection, one point;

vi. Protection of any waterbodies classified as "Category One Waters," pursuant to N.J.A.C. 7:9B, and associated special water resource protection areas established pursuant to N.J.A.C. 7:8; or protection of other water resources, one point;

vii. Multiple use project (active and passive recreation opportunities), one point;

viii. Addition to a prior Green Acres-funded acquisition or development, one point;

ix. Private donation of land, labor, or cash, one point;

x. Likelihood or threat of private development for other than recreation and conservation purposes, one point. Examples of actions that may indicate a possible impending developing may include whether the property is on the market or is the subject of local planning board action, or if any of the permits or approvals listed at N.J.A.C. 7:36-6.4(f), or other development permits or approvals have been sought for the property;

xi. Supports a school construction initiative in an Abbott District established pursuant to N.J.A.C.

6A:10A, one point;

xii. Reclamation of a former brownfields site, one point;

xiii. Acquisition undertaken by a municipality in the Highlands that has amended its development regulations in accordance N.J.S.A. 13:20-13 to establish one or more receiving zones for the transfer of development potential from a sending zone in the Highlands, one point; and

xiv. The Department shall assign one point to a project undertaken by a municipality that has amended its development regulations in accordance with the State Transfer of Development Rights Act (P.L. 2004, c.2 (N.J.S.A. 40:55D-137 t seq.) to establish one or more receiving zones for the transfer of development potential.

7. The Department shall assign five points to a project undertaken by a county or municipality that has not previously received Green Acres funding.

#### **7:36-7.2 Ranking and evaluation**

(a) Upon receipt of an application containing all the information required under N.J.A.C. 7:36-6.4, Green Acres shall determine if the project is eligible for funding in accordance with N.J.A.C. 7:36-4.2.

(b) For an eligible project in the Standard Acquisition, Site Specific Incentive Acquisition, or Urban Aid Acquisition funding award category, the Department shall:

1. Determine the total number of priority points assigned to the project under N.J.A.C. 7:36-7.1(b); and

2. Rank the projects, within the same funding award category, on a priority list according to the total number of priority points assigned each project, with the project assigned the greatest total number of priority points ranking first.

(c) For an eligible project in the Planning Incentive acquisition funding award category, Green Acres shall evaluate the project, as follows:

1. For a local government unit that is requesting funding for a Planning Incentive project for the first time, Green Acres shall evaluate the adequacy of the local government unit's Open Space and Recreation Plan (OSRP) to ensure that the provisions of the OSRP are

included in or conform with the required elements of the municipal or county master plan, that is, for conservation, recreation, and land use. Green Acres shall also evaluate the extent to which the OSRP contains the elements required by the Department under this chapter; and the local government unit's overall commitment to environmental protection as evidenced by the extent to which its Open Space and Recreation Plan relates to the State's open space and recreation goals established in the State Plan, the New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; and the New Jersey Comprehensive Outdoor Recreation Plan (available from Green Acres).

2. For a local government unit that is requesting additional funding for a previously approved Planning Incentive acquisition project, and that remains eligible as a Qualifying Open Space Referendum County or Qualifying Open Space Referendum Municipality, Green Acres shall evaluate the need for additional funding based on a review of such considerations as the local government unit's progress in acquiring land using previously approved funding and the timing and status of future land acquisitions; and the local government unit's overall commitment to environmental protection as evidenced by the extent to which its Open Space and Recreation Plan relates to the State's open space and recreation goals established in the State Plan, the New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; and the New Jersey Comprehensive Outdoor Recreation Plan.

## **SUBCHAPTER 8. LOCAL GOVERNMENT UNIT ACQUISITION PROJECTS: APPROVAL AND APPRAISAL PROCEDURES, DETERMINATION OF ELIGIBLE LAND COST**

### **7:36-8.1 Approval or denial of application; award of funding; procedural letter**

(a) Based on available funding, the number of local government unit acquisition applications received in its funding award category, and the ranking and evaluation methods described at N.J.A.C. 7:36-7.1, the Department shall make a recommendation for approval or denial of a local government unit application for an acquisition project to the Garden State Preservation Trust.

(b) If the application is approved by the Garden State

Preservation Trust, the Department shall notify the local government unit in writing of the amount of the Green Acres funding award, which is subject to legislative appropriation.

(c) If the application is denied by the Garden State Preservation Trust, the Department shall notify the local government unit in writing of the reason for the denial.

(d) After notification of a funding award under (b) above, and after the funding award has received legislative appropriation, Green Acres shall send the local government unit a procedural letter that contains instructions for preparing the items required for disbursement of funding under N.J.A.C. 7:36-9.4, including the deed, title insurance policy, and survey. The procedural letter shall additionally direct the local government unit to:

1. Obtain and submit to Green Acres a preliminary assessment of the project site in accordance with N.J.A.C. 7:36-8.2; and
2. Obtain and submit to Green Acres the appraisals required under N.J.A.C. 7:36-8.3.

### **7:36-8.2 Preliminary assessment report**

(a) The local government unit must obtain a preliminary assessment report of the project site prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. Upon receipt of the preliminary assessment report, Green Acres shall determine if the report contains the required information and shall notify the local government unit as follows:

1. If the preliminary assessment report does not contain the required information, Green Acres shall send the local government unit a deficiency letter identifying the additional information that must be submitted. The local government unit shall submit the information by the date specified in the letter.
2. If the preliminary assessment report contains the required information and does not identify any areas of concern, as defined under the Technical Requirements for Site Remediation:
  - i. Green Acres shall send the local government unit a letter acknowledging the sufficiency of the preliminary assessment report;
  - ii. The chief executive officer of the local government unit shall certify, on a form provided by



Green Acres with the sufficiency letter, that the local government unit has reviewed the preliminary assessment report and has determined to proceed with the acquisition of the project site; and

iii. The local government unit shall return the certification to Green Acres within 30 days of the date of the sufficiency letter. Green Acres shall not disburse any funding under N.J.A.C. 7:36-9.4 until it is in receipt of this certification.

3. If the preliminary assessment report contains the required information and identifies one or more areas of concern, as defined under the Technical Requirements for Site Remediation:

i. Green Acres shall send a letter notifying the local government unit that the areas of concern must be addressed to the Department's satisfaction before Green Acres will disburse any funding for the project site;

ii. Once the areas of concern have been addressed to the Department's satisfaction, the local government unit shall submit evidence of such to Green Acres;

iii. Once Green Acres has reviewed and approved the local government unit's submission, Green Acres shall send the local government unit a letter of sufficiency;

iv. The chief executive officer of the local government unit shall certify, on a form provided by Green Acres with the sufficiency letter, that the local government unit has reviewed the preliminary assessment report and the manner in which the areas of concern have been addressed, and has determined to proceed with the acquisition of the project site; and

v. The local government unit shall return the certification to Green Acres within 30 days of the date of the letter of sufficiency. Green Acres shall not disburse any funding under N.J.A.C. 7:36-9.4 until it is in receipt of this certification.

### **7:36-8.3 Appraisal procedures**

(a) For a parcel with an estimated land value of less than \$250,000, a local government unit shall obtain at least one professionally and independently prepared appraisal. For a parcel with an estimated land value of

\$250,000 or more, the local government unit shall obtain two professionally and independently prepared appraisals.

(b) The local government unit shall obtain each appraisal required under (a) above in accordance with the following procedures:

1. The local government unit shall prepare and submit to Green Acres a project reference map described at N.J.A.C. 7:36-6.4(a)5 for each parcel to be appraised under this section. The local government unit also shall provide the Project Reference Map to the appraiser(s) hired under (b)3 below;

2. Prior to hiring the appraiser(s), the local government unit shall discuss with Green Acres staff the procedures and criteria for the selection and hiring of the appraiser(s) and the scope of work;

3. The local government unit shall hire State-Certified General appraisers who Green Acres has approved based on such appraisers' sample work product. The sample work product must be a Self Contained Appraisal Report as established in the Uniform Standards of Professional Appraisal Practice (USPAP) (Standards Rule 2-2), available from the Appraisal Foundation at 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517 or on the web at <http://commerce.appraisalfoundation.org/html/USPAP2005/toc.htm>. Green Acres shall approve an appraiser based on the thoroughness of the sample appraisal report, the quality of the information used to reach a conclusion, and the soundness of the conclusion reached.

4. Prior to starting the appraisal(s), the local government unit shall request a joint meeting with Green Acres staff and the appraiser(s) to discuss the scope of work and to visit the project site;

5. All appraisals shall be Self Contained Appraisal Reports as established in the Uniform Standards of Professional Appraisal Practice (Standards Rule 2-2), available from the Appraisal Foundation at 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517 or on the web at <http://commerce.appraisalfoundation.org/html/USPAP2005/toc.htm>; and

6. The local government unit shall submit to Green Acres one copy of each completed appraisal.

(c) Green Acres shall require a local government unit to obtain a report by an engineer, architect, or other specialist

to supplement the appraisal of the project site if Green Acres determines that the unique nature of the project site necessitates it.

(d) The local government unit shall immediately submit to Green Acres, in writing, any information it has that could affect the appraised value of the project site.

(e) If an appraisal submitted to Green Acres under (b) above must be updated for a condemnation proceeding, the local government unit shall comply with the appraisal procedures of this section in the performance of the updated appraisal.

#### **7:36-8.4 Determination and notification of eligible land cost**

(a) Green Acres shall determine the sufficiency of any appraisal submitted under N.J.A.C. 7:36-8.3 and shall notify the local government unit in writing of any deficiencies that prevent the use of the appraisal submitted to determine the eligible land cost or the hypothetical land value.

(b) Green Acres shall determine the eligible land cost for each parcel within a project site as follows:

1. If only one appraisal has been obtained under N.J.A.C. 7:36-8.3 on a parcel, the eligible land cost shall be the parcel's certified market value, as determined pursuant to (c) below;

2. If two appraisals have been obtained under N.J.A.C. 7:36-8.3 on a parcel, and the difference between the two appraisal values is greater than 10 percent of the higher appraisal value, the eligible land cost shall be the parcel's certified market value, as determined pursuant to (c) below;

3. Except as provided under (b)3i and ii below, if two appraisals have been obtained under N.J.A.C. 7:36-8.3 on a parcel, and the difference between the two appraisal values is 10 percent of the higher appraisal value or less, the eligible land cost shall be the average of the appraisal values:

i. If either of the two appraisal values exceeds \$3 million, the eligible land cost shall be the certified market value, as determined pursuant to (c) below; and

ii. The local government unit may request that Green Acres provide a certified market value to be

used as the eligible land cost rather than an average of the appraisal values, in which case the eligible land cost shall be the certified market value, as determined pursuant to (c) below.

4. Green Acres shall periodically audit its appraisal review process by providing a certified market value determined pursuant to (c) below for projects that qualify for an average of the appraisal values. In such instances, the certified market value shall be the eligible land cost for the parcel of land.

5. In addition to the eligible land cost, Green Acres also shall issue a hypothetical land value for the parcel of land, based on information provided with the appraisal(s) prepared in accordance with N.J.A.C. 7:36-8.3. This requirement shall be in effect until June 30, 2009, pursuant to the Garden State Preservation Trust Act (N.J.S.A. 13:8C-26).

(c) In order to certify the market value of a parcel, Green Acres shall review the appraisal(s) obtained under N.J.A.C. 7:36-8.3, inspect the project site, examine the comparable sales used by the appraiser(s), and review all other data pertinent to the market value as estimated by the appraiser(s) and, based on this information, reach a determination as to the market value of the parcel. Green Acres shall certify this value which shall then be considered the parcel's certified market value.

(d) Green Acres shall send to the local government unit a notification of the eligible land cost, a hypothetical land value, and an Acquisition Payment Request Form that the local government unit shall use to request a disbursement of funds under N.J.A.C. 7:36-9.4.

(e) If the final land survey plan of a parcel submitted with an advance payment or reimbursement request under N.J.A.C. 7:36-9.4(c) shows a total area of Green Acres restrictions on the parcel that is different from the acreage total shown in the notification of the eligible land cost, Green Acres shall notify the local government unit or appraiser(s), request an adjusted market value determination, if needed, and revise accordingly the eligible land cost and hypothetical land value to reflect the actual acreage of the area of Green Acres restrictions on the parcel.

#### **SUBCHAPTER 9. LOCAL GOVERNMENT UNIT ACQUISITION PROJECT: PROJECT AGREEMENT, NEGOTIATIONS FOR PURCHASE OF PROJECT SITE, SUPPLEMENTAL FUNDING,**

## **DISBURSEMENTS, LOAN REPAYMENT, AND ACCOUNTING AND RECORDKEEPING REQUIREMENTS**

### **7:36-9.1 Project agreement**

(a) Each Green Acres acquisition project shall have a project agreement, which shall be executed by the local government unit and the Department. The project agreement shall set out the rights and responsibilities of the local government unit and the Department in regards to the acquisition project and shall contain all information identified in (c) below. A declaration shall be attached to the project agreement that includes the local government unit's ROSI and declares that all of the local government unit's funded and unfunded parkland are subject to the Green Acres restrictions.

(b) Green Acres shall send the project agreement to the local government unit for approval and signature after the funding award made under N.J.A.C. 7:36- 8.1(b) has received legislative appropriation. The local government unit shall ensure that the project agreement and declaration are approved and signed by the local government unit's attorney, and executed by the person authorized under the resolution described at N.J.A.C. 7:36-6.4(a)2 or (b)2, unless the local government unit submits an updated resolution.

(c) The project agreement shall contain:

1. An identification of the project site;
2. The declaration that contains the Recreation and Open Space Inventory (ROSI) described at N.J.A.C. 7:36-6.5 as adjusted to correct inaccuracies, if any, discovered by the local government unit or Green Acres;
3. The estimated cost of acquisition of the project;
4. The amount of the Green Acres funding award pursuant to N.J.A.C. 7:36- 8.1(b) and, if applicable, the local government unit's matching share of the cost of acquisition;
5. Special conditions, if any;
6. The project period during which the acquisition project must be completed, generally two years from the effective date of the project agreement;
7. The requirements for recordkeeping, project

administration, and, if the Green Acres funding includes a loan, loan repayment;

8. The requirement that the deed for any parcel acquired as part of the project site contain the following clause:

“The lands being conveyed herein are being purchased with Green Acres funding and are subject to Green Acres restrictions as provided at N.J.S.A. 13:8C-1 et seq. and N.J.A.C. 7:36, as may be amended and supplemented, and the grantee herein agrees to accept these lands with the Green Acres restrictions, including restrictions against disposal or diversion to a use for other than recreation and conservation purposes”; and

9. Other terms and conditions, including a statement of the remedies described at (j) through (m) below and a statement of the requirements for maintenance, use, development, and disposal or diversion of parkland as described at N.J.A.C. 7:36-25 and 26.

(d) The local government unit shall return the signed project agreement and declaration to Green Acres. If the Green Acres funding includes a loan, the local government unit shall also submit verification that a bond ordinance, supplemental debt statement, and revised capital budget have been approved by the Department of Community Affairs.

(e) Upon receipt of the project agreement executed in accordance with (b) above, and, if applicable, the verification described at (d) above, the Department shall establish an account from which Green Acres shall disburse the loan or matching grant.

(f) After the project agreement has been fully executed by the State, Green Acres shall send to the local government unit a copy of the fully executed project agreement and declaration.

(g) The local government unit shall record and return to Green Acres the declaration contained in the project agreement after a disbursement of funding as required under N.J.A.C. 7:36-9.4(g).

(h) Green Acres may extend the project period established in the project agreement upon request, if the local government unit demonstrates that it is making a good faith effort to complete the project in an expeditious manner;

(i) The Department and the local government unit shall execute an amendment to the project agreement to reflect any supplemental funding provided under N.J.A.C. 7:36-9.3.

(j) In addition to any other rights or remedies available to the Department under law, if the local government unit does not comply with any of the requirements of the project agreement, this chapter, or the Green Acres laws, or if the local government unit makes any material misrepresentation in the project application and/or the documentation submitted in support of the application, the Department may take any of the following actions:

1. Issue a written notice of noncompliance directing the local government unit to take and complete corrective action within 30 days of receipt of the notice. If the local government unit does not take corrective action, or if the corrective action taken is not adequate in the judgment of the Department, then the Department may take any of the actions described at (j)2 through 4 and (k) below;

2. Withhold a matching grant or loan disbursement or portion thereof;

3. Terminate the project agreement; and/or

4. Demand immediate repayment of all Green Acres funding that the local government unit has received.

(k) If the local government unit fails to comply with any of the terms of the project agreement, this chapter, or the Green Acres laws, the Department may initiate suit for injunctive relief or to seek specific enforcement, without posting bond, it being acknowledged by the parties that any actual or threatened failure to comply will cause irreparable harm to the State and that money damages will not provide an adequate remedy.

(l) If the Department incurs legal or other expenses, including its own personnel expenses, for the collection of payments due or in the enforcement or performance of any of the local government unit's obligations under the project agreement, this chapter, or the Green Acres laws, the local government unit shall pay these expenses on demand by the Department.

(m) The Department is not required to mitigate any damages to the local government unit resulting from the local government unit's noncompliance with the terms of the project agreement, this chapter, or the Green Acres laws.

#### **7:36-9.2 Negotiations for purchase of project site**

(a) For any parcel that is to be acquired in whole or in part with Green Acres funding, the local government unit may enter into a purchase or option contract with the property owner or institute condemnation proceedings only after the local government unit has received the notification of the Green Acres funding award under N.J.A.C. 7:36-8.1 and the notification of eligible land cost under N.J.A.C. 7:36-8.4, or an at-risk authorization under N.J.A.C. 7:36-6.3.

(b) Any person who performed an appraisal under N.J.A.C. 7:36-8.3 of any parcel in the project site shall not conduct negotiations for the acquisition of such parcel.

(c) The local government unit shall conduct all negotiations in conformance with the Garden State Preservation Trust Act, particularly N.J.S.A. 13:8C-26.

(d) The local government unit shall share both the eligible land cost and the hypothetical land value with the property owner and shall base its negotiation on the higher of the two values. This requirement shall be in effect until June 30, 2009, pursuant to the Garden State Preservation Trust Act (N.J.S.A. 13:8C-26).

#### **7:36-9.3 Supplemental funding**

(a) A local government unit may request, in writing, supplemental funding for a project after it has received the notification of the eligible land cost under N.J.A.C. 7:36-8.4 if:

1. The cost of acquisition exceeds the funding amount awarded under N.J.A.C. 7:36-8.1, plus, if applicable, the local government unit's matching share of the cost of acquisition;

2. A condemnation award exceeds the eligible land cost or hypothetical land cost established under N.J.A.C. 7:36-8.4. For purposes of this section, a condemnation award is the value established by the court through the Condemnation Commissioners or a jury; it does not include a Consent Judgment or other negotiated settlement; or

3. The local government unit has been unable to reach agreement on the purchase price after bona fide negotiations with the seller, as certified by the local government unit's attorney.

(b) Provided sufficient funds are available, Green Acres shall recommend an increase in the amount of funding for a project in response to a request submitted under (a) above as follows:

1. If the cost of acquisition exceeds the loan or matching grant amount awarded under N.J.A.C. 7:36-8.1, plus, if applicable, the local government unit's matching share of the cost of acquisition, Green Acres shall recommend an increase in the amount of funding based on the cost of acquisition; or

2. If the local government unit provides a certification from its attorney that the local government unit has been unable to reach agreement on the purchase price after bona fide negotiations with the seller, Green Acres shall recommend an increase in the amount of funding by an amount that is up to 10 percent more than the eligible land cost.

(c) Any supplemental funding provided under this section is subject to legislative appropriation.

(d) The Department and the local government unit shall execute an amendment to the project agreement in accordance with N.J.A.C. 7:36-9.1 to reflect any supplemental funding provided under this section.

#### **7:36-9.4 Disbursement of loan or matching grant**

(a) Green Acres shall disburse the loan or matching grant in advance of closing, or as reimbursement after closing or after the filing of a declaration of taking.

(b) If a local government unit seeks payment in advance of closing, it shall submit its request at least 60 days before the scheduled date of closing.

(c) For each parcel of land in the project site for which payment is requested, the local government unit shall submit:

1. For payment in advance of closing, the following:

i. Until the deed is executed, a copy of the contract of sale or, for condemnation cases, the Declaration of Taking. Immediately upon acquiring the land, the local government unit shall record the deed and, within 30 days of its recording, shall submit to Green Acres a copy of the recorded deed or Declaration of Taking, containing the metes and bounds description required under (c)1ii below, including the clause stating that the parcel is subject

to the Green Acres restrictions as required by the project agreement under N.J.A.C. 7:36-9.1(a);

ii. The survey package including:

(1) Two copies of a land survey plan prepared in accordance with the Local and Nonprofit Land Survey Overview, attached as Appendix 2, incorporated herein by reference, and supplied to the local government unit by Green Acres with the procedural letter at N.J.A.C. 7:36-8.1. The survey shall be prepared in accordance with the rules of the State Board of Professional Engineers and Land Surveyors at N.J.A.C. 13:40-5 and be compatible with the Mapping and Digital Data Standards at N.J.A.C. 7:1, Appendix A. The survey shall show areas to be subject to or excluded from Green Acres restrictions;

(2) One 3 1/2 inch floppy diskette or CD-ROM of the parcel survey lines in a . dxf format;

(3) Two copies of the metes and bounds description, stating acreage of each included lot, corresponding to the survey required under (c)1ii(1) above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor, each with an 8 1/2 inch by 11 inch reduced survey plan described at (c)1ii(1) above attached for recording; and

(4) A Surveyor's Certification and Summary form provided by Green Acres, completed and signed by the surveyor, that identifies the project, provides information about the parcel's survey and title, and certifies that the survey was completed in accordance with the Local and Nonprofit Land Survey Overview, set forth herein as chapter Appendix 2, available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres);

iii. Until the title insurance policy described at (c)2iii below is issued, a copy of the title insurance binder, with copies of the deeds of record and of all easements, restrictions, and other instruments of record as attachments. The binder shall insure the land survey plan and shall name the State as an additional insured. Within 60 days of the recording of the deed, the local government unit shall submit to Green Acres the title insurance policy;

iv. A copy of each cancelled check (both sides) or evidence of each electronic transfer of funds for

allowable project costs under N.J.A.C. 7:36-4.10 associated with the parcel;

v. An Acquisition Payment Request Form, provided by Green Acres with the notification of the eligible land cost under N.J.A.C. 7:36-8.4, with the following items completed:

(1) The project name, lot and block numbers, name of local government unit, and county;

(2) An itemized statement of the cost of acquisition of the parcel;

(3) A certification by the local government unit's chief executive officer, chief financial officer, or municipal clerk that the information contained in the form is accurate and that no bonus has been given or received in connection with any bill for which the local government unit seeks payment;

(4) A justification of any difference between the purchase price and the eligible land cost of the parcel; and

(5) A justification of any difference between the parcel acreage as described in the appraisal and the parcel acreage to be purchased;

vi. The certification from the local government unit's chief executive office regarding the Preliminary Assessment, required under N.J.A.C. 7:36-8.2, if not previously submitted; and

vii. For a purchase of a conservation or historic preservation restriction, the Present Condition Report described at N.J.A.C. 7:36-4.7(e).

2. For reimbursement after closing or after the filing of a Declaration of Taking, the following:

i. A copy of the recorded deed or Declaration of Taking, containing the metes and bounds description required under ii below, including the clause stating that the parcel is subject to the Green Acres restrictions as required by the project agreement under N.J.A.C. 7:36-9.1(a);

ii. The survey package including:

(1) Two copies of a land survey plan prepared in accordance with the Local and Nonprofit Land Survey Overview, attached as Appendix 2,

incorporated herein by reference, and supplied to the local government unit by Green Acres with the procedural letter at N.J.A.C. 7:36-8.1. The survey shall be prepared in accordance with the rules of the State Board of Professional Engineers and Land Surveyors at N.J.A.C. 13:40-5 and be compatible with the Mapping and Digital Data Standards at N.J.A.C. 7:1, Appendix A. The survey shall show areas to be subject to or excluded from Green Acres restrictions;

(2) One 3 1/2 inch floppy diskette or CD-ROM of the parcel survey lines in a . dxf format;

(3) Two copies of the metes and bounds description, stating acreage of each included lot, corresponding to the survey required under (c)2ii(1) above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor, each with an 8 1/2 inch by 11 inch reduced survey plan described at (c)2ii(1) above attached for recording; and

(4) A Surveyor's Certification and Summary form provided by Green Acres, completed and signed by the surveyor, that identifies the project, provides information about the parcel's survey and title, and certifies that the survey was completed in accordance with the Local and Nonprofit Land Survey Overview, set forth herein as chapter Appendix 2 and available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres).

iii. A copy of the title insurance policy, with copies of the deeds of record and of all easements, restrictions, and other instruments of record as attachments, and conforming to the following:

(1) The policy must show that the local government unit has clear title to the project site;

(2) The policy must contain a survey endorsement that insures title to the area within the metes and bounds description;

(3) The policy amount must be at least equal to the purchase price; and

(4) The policy must name the State as an additional insured;

iv. A copy of each cancelled check (both sides) or evidence of each electronic transfer of funds for the

purchase of the parcel and all allowable project costs under N.J.A.C. 7:36-4.10 associated with the parcel and, for condemnation cases, a copy of the final judgment;

v. An Acquisition Payment Request Form, provided by Green Acres with the notification of the eligible land cost under N.J.A.C. 7:36-8.4, with the following items completed:

(1) The project name, lot and block number(s), name of local government unit, and county;

(2) An itemized statement of the cost of acquisition of the parcel;

(3) A certification by the local government unit's chief executive officer, chief financial officer, or municipal clerk that the information contained in the form is accurate and that no bonus has been given or received in connection with any bill for which the local government unit seeks payment;

(4) A justification of any difference between the purchase price and the eligible land cost of the parcel; and

(5) A justification of any difference between the parcel acreage as described in the appraisal and the parcel acreage purchased;

vi. The certification from the local government unit's chief executive officer regarding the Preliminary Assessment, required under N.J.A.C. 7:36-8.2, if not previously submitted; and

vii. For a purchase of a conservation or historic preservation restriction, the Present Condition Report described at N.J.A.C. 7:36-4.7(e).

(d) Upon receipt of a request for payment under (c) above and approval of all required documentation, Green Acres shall send to the local government unit a payment invoice for Green Acres' share of the allowable project costs, up to the funding award. The local government unit's chief financial officer or the local government unit's authorized designee shall verify, sign, and return the invoice to Green Acres for processing, along with information related to the bank account required under (f) below.

(e) If the local government unit acquires a conservation

restriction pursuant to N.J.A.C. 7:36-4.7(a)2 or 3, or a historic preservation restriction pursuant to N.J.A.C. 7:36-4.7(b)2, Green Acres will provide to the local government unit for land acquisition half of what the local government unit would otherwise be eligible to receive for the purchase of the restriction.

(f) The local government unit shall establish a separate, non-interest-bearing bank account for the purpose of receiving Green Acres disbursements for the project. If a local government unit has undertaken more than one Green Acres funded project, it may establish a single bank account to receive all Green Acres disbursements for all of the projects. If the local government unit will be receiving a Green Acres disbursement only as a reimbursement, it may designate an existing account into which the disbursement will be received, provided proper accounting procedures are in place to allow for easy and accurate financial tracking of Green Acres disbursements. Any account into which Green Acres disbursements are deposited will be subject to audit by the State. Upon receipt of the signed invoice and bank account information, the State shall:

1. Transmit each loan disbursement directly into such account; and

2. Mail each matching grant disbursement to the local government unit in the form of a check. The local government unit shall not sign over the check to the property owner or any other person, but shall deposit the check into such account.

(g) Immediately upon receipt of the funding disbursement under this section, the local government unit shall have the declaration provided by Green Acres at N.J.A.C. 7:36-9.1(g) recorded by the county clerk or registrar and returned to Green Acres. Prior to a subsequent disbursement of Green Acres funding, a local government unit may be required to submit to Green Acres an updated Recreation and Open Space Inventory and to execute and record an updated declaration.

(h) The local government unit shall immediately inform Green Acres if the closing date established in the contract of sale for the project site is postponed for any reason. A local government unit that has received a disbursement in advance of a scheduled closing that is postponed is subject to the following conditions:

1. As of the 30th day after the disbursement is made, the local government unit shall pay to the State interest accrued on the amount of the disbursement from that day

up to the 90th day after the disbursement. The interest rate shall be the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at R. 4:42-11(a)(ii) in effect on the 30th day; and

2. As of the 90th day after the disbursement is made, the local government unit shall repay to the State the amount of the disbursement plus accrued interest from 30 days after disbursement to the date of repayment. The interest rate shall be the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at R. 4:42-11(a)(ii) in effect on the 90th day.

(i) A local government unit that has repaid the disbursement plus accrued interest under (h)2 above may, upon acquisition of the project site, submit a request for reimbursement after closing in accordance with (c)2 above.

(j) The local government unit may unilaterally withdraw the project at any time before it receives Green Acres funding. The local government unit shall not terminate the project agreement after it receives any Green Acres funding without the written consent of Green Acres.

(k) If the local government unit terminates the project agreement under (j) above, the local government unit is responsible for any costs of acquisition incurred as of the time of termination. The local government unit shall also repay, with interest at the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at R. 4:42-11(a)(ii) in effect at the time of termination, any disbursements that Green Acres made to the local government unit for the project.

(l) Green Acres shall provide to the local government unit a sign (or signs, as applicable) that identifies the parkland as a Green Acres funded site that is permanently dedicated to recreation and conservation purposes. The local government unit shall post the sign(s) in a prominent place on the funded parkland and maintain it.

#### **7:36-9.5 Terms of loan repayment**

(a) A local government unit shall repay the loan amount in semi-annual installments over a period of not more than 30 years. The loan term shall begin on the date of the first disbursement of funds made under N.J.A.C. 7:36-9.4. The local government unit may

prepay the loan in whole or in part at any time without penalty. An accelerated repayment schedule may be established under the project agreement executed under N.J.A.C. 7:36-9.1.

(b) The Department shall forward the final repayment schedule to the local government unit upon disbursement of the entire loan.

(c) Interest shall accrue on the outstanding loan principal at a rate not to exceed two percent per year, beginning on the date of the first disbursement of funds made under N.J.A.C. 7:36-9.4. Interest accrued against each disbursement shall be paid to the Treasurer of the State, in a lump sum, three months after the date of the final disbursement.

(d) The first semi-annual repayment of principal shall be paid to the Treasurer of the State nine months after the final disbursement or two years after the date of the first disbursement, whichever is earlier.

(e) The local government unit shall allocate a portion of its budget to meet the annual debt service on the loan.

(f) The Department shall assess a late fee whenever the local government unit fails to make any repayment within 30 days of the scheduled payment due date, as follows:

1. When a payment is 30 to 59 days past due, five percent of the payment amount due;
2. When a payment is 60 to 89 days past due, 10 percent of the payment amount due; and
3. When a payment is 90 or more days past due, 15 percent of the payment amount due.

(g) A local government unit that fails to make payment within 90 days of the repayment due date shall be in default of the project agreement. Upon default:

1. All outstanding principal, interest, and late fees are payable immediately; and
2. Interest accrues at a rate of not more than two percent per year on the outstanding principal, interest, and late fee, calculated from the repayment due date.

(h) Repayment of the loan in full does not terminate the Green Acres restrictions on the local government unit's funded and unfunded parkland.



### **7:36-9.6 Accounting and recordkeeping**

(a) The local government unit shall maintain and make available to the Department for inspection upon request all financial documents and records related to the project that are required to be maintained in accordance with (e) below.

(b) The local government unit, its contractors, and subcontractors shall employ generally accepted accounting procedures that adequately identify the costs associated with the Green Acres loan or matching grant.

(c) The local government unit shall maintain separate records for each project including the amount, receipt, and disposition of all funding received for the project, including Green Acres loans and matching grants, and contributions, gifts, or donations from any other sources.

(d) The local government unit shall conduct annual audits and submit audit reports in conformance with the Single Audit Act of 1984, P.L. 98-502 and the Single Audit Act Amendments of 1996, P.L. 104-156 (31 U.S.C. § § 7501 et seq.); Federal Office of Management and Budget (OMB) Circular A-133: "Audits of States, Local Governments, and Non-Profit Organizations," incorporated herein by reference (available from the Federal Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 or at [www.whitehouse.gov/omb/circulars/a133/a133.html](http://www.whitehouse.gov/omb/circulars/a133/a133.html)); and State OMB Circular 04-04: "Single Audit Policy for Recipients of Federal Grants, State Grants, and State Aid," incorporated herein by reference (available from the New Jersey Department of the Treasury, Office of Management and Budget, PO Box 002, Trenton, NJ 08625-0002 or at [www.nj.gov/infobank/circular/circindx.htm](http://www.nj.gov/infobank/circular/circindx.htm)).

1. Audit reports shall address the local government unit's compliance and all specific instances of noncompliance with the material terms and conditions of the project agreement and applicable laws and regulations.

2. Audit reports shall contain an itemized schedule of all project-related financial assistance received by the local government unit identifying: grantor agency, program title, State account number, and total disbursement.

(e) The local government unit shall provide a duly authorized representative of the Department access to all

records, books, documents, and papers pertaining to the project agreement and/or the project for audit, examination, excerpt, and transcript purposes. Such records shall be maintained and access shall be provided during performance of the project and for three years after the latter date of either final repayment or audit resolution. The local government unit shall include this requirement in all project-related contracts.

(f) The Department shall adjust the local government unit's final payment, if necessary, based on the results of the annual audit.

## **SUBCHAPTER 10. LOCAL GOVERNMENT UNIT DEVELOPMENT PROJECTS: PROJECT ELIGIBILITY, CONDITIONS, AND LIMITATIONS**

### **7:36-10.1 General provisions and funding policies**

(a) Local government units may apply to the Department for Green Acres funding for the development of land for outdoor recreation and conservation purposes. There is no minimum or maximum amount that a local government unit may request as a loan or matching grant in such an application.

(b) Each year, the Department shall establish a maximum funding limit per project or per applicant based on total funding requests, available funds, project priorities established under N.J.A.C. 7:36-13.1, the legislative findings of the Garden State Preservation Trust Act (N.J.S.A. 13:8C-2), and such considerations as the local government unit's progress in expending any approved Green Acres funding, geographic distribution of applications, and total population or population density of the county and/or municipality(ies) in which the proposed project site is located.

(c) Any Green Acres funding award is subject to legislative appropriation.

(d) A local government unit that receives Green Acres funding shall not convey, dispose of, or divert to a use for other than recreation and conservation purposes any lands held by the local government unit for those purposes at the time of receipt of Green Acres funding. The local government unit shall list such lands on the Recreation and Open Space Inventory (ROSI) described at N.J.A.C. 7:36-12.5. The ROSI is required as part of the application for Green Acres funding and, if such application is approved, shall become part of the project agreement described at N.J.A.C. 7:36-14.1. The local government unit shall execute a declaration, described at N.J.A.C. 7:36-14.1(a),

which shall encumber all lands listed on the ROSI, and record with the county clerk the declaration with the attached ROSI after it receives a disbursement of Green Acres funding pursuant to N.J.A.C. 7:36-14.5(c).

(e) All land and facilities developed with Green Acres funding must be accessible to the public.

(f) A development project shall be located on land that is owned in fee simple by the local government unit, or on land for which the local government unit has obtained an irrevocable lease approved by Green Acres for at least 25 years, except as described in (f)1 and 2 below. The 25-year term of the lease shall begin from the date of the proceed to bid letter described at N.J.A.C. 7:36-14.2(a).

1. If the land is not owned by the local government unit but is listed on the recorded ROSI of another local government unit, a use agreement may be used in place of a lease. The use agreement must be approved by Green Acres and must have a 25-year term that begins from the date of the proceed to bid letter described at N.J.A.C. 7:36-14.2(a).

2. If the land is held by the Department, the Department shall determine the appropriate term and provisions of the lease or use agreement.

(g) The local government unit that is awarded Green Acres funding is responsible for obtaining all permits and meeting all requirements of all Federal statutes, Green Acres laws, and other State, county, and local statutes, regulations, and ordinances, as applicable, related to the project.

(h) A local government unit shall comply with Executive Order No. 91(1993) regarding the procurement and use of recycled products when developing land with Green Acres funding. The executive order is available at [www.nj.gov/infobank/circular/eof91.htm](http://www.nj.gov/infobank/circular/eof91.htm) or by writing to the Division of Solid and Hazardous Waste, PO Box 414, Trenton, New Jersey 08625-0414. Additional information about the procurement and use of recycled products is available at [www.recyclenj.org](http://www.recyclenj.org) or by writing to the Bureau of Recycling and Planning in the Division of Solid and Hazardous Waste.

(i) The Department encourages the local government unit to design and construct the development project using clean energy, renewable energy, and energy efficient technologies.

(j) The disbursement of Green Acres funding to a local

government unit shall not exceed the actual amount the local government unit expended for all allowable project costs listed under N.J.A.C. 7:36-10.6.

(k) It is the responsibility of the local government unit to obtain and utilize the most current applicable forms required as part of a Green Acres development project. All forms can be obtained from Green Acres at PO Box 412, Trenton, New Jersey 08625.

#### **7:36-10.2 Eligible projects**

(a) Developments for recreation and conservation purposes, as defined at N.J.A.C. 7:36-2.1, are eligible for Green Acres funding. A development project may include, for example:

1. Construction of a facility that will support the increased public use or enjoyment of outdoor recreation and conservation land, such as a facility for outdoor games and sports, winter sports, boating, picnicking, fishing, biking, hiking, swimming, camping, nature and historic interpretation, or similar activities;

2. Lighting for an existing recreational or conservation facility;

3. A parking area that supports an outdoor recreation or conservation project;

4. A restroom or comfort facility, park administrative office, maintenance and storage area, or other similar structure that supports outdoor recreation or conservation;

5. A structure that partially encloses an outdoor recreation facility;

6. Restoration or rehabilitation of a facility that was developed 20 or more years before the date of the local government unit's application with funding from Green Acres or under the Land and Water Conservation Fund Act of 1965, 16 U.S.C. § 4601, the Urban Park and Recreation Recovery Program, 16 U.S.C. § 2501, or any other Federal or State funding program administered through Green Acres. A facility that was developed with such funding fewer than 20 years before the date of the application may be eligible under this paragraph if the local government unit demonstrates that the restoration or rehabilitation is necessary due to normal wear and tear on the facility and not to abuse, neglect, or vandalism;

7. Other development that supports the use of an

existing recreation or conservation facility held by the local government unit, provided that the existing recreation or conservation facility shall be subject to the Green Acres restrictions applicable to funded parkland upon completion of the supporting facility developed with Green Acres funding; and

8. Dredging of a pond, lake, or segment of a stream or river consistent with N.J.A.C. 7:36-10.4.

### **7:36-10.3 Ineligible projects**

(a) The following types of development projects are not eligible for Green Acres funding:

1. Any facility or structure that does not support outdoor recreation or conservation;

2. Any facility to which public access is not provided;

3. A professional sports facility;

4. Any development that will significantly impair the land's natural resources, as determined by Green Acres;

5. Shore protection or beach renourishment or replenishment activities that are eligible for funding under the Department's Shore Protection Program, administered by the Bureau of Coastal Engineering in the Office of Engineering and Construction. Information about the Shore Protection Program is available at [www.nj.gov/dep/shoreprotection](http://www.nj.gov/dep/shoreprotection) or by contacting the Bureau of Coastal Engineering at 1510 Hooper Avenue, Toms River, New Jersey 08753;

6. Any development project that will use tropical hardwood; and

7. A structure that entirely encloses an outdoor recreation facility on a temporary or permanent basis.

### **7:36-10.4 Dredging of a pond, lake, or segment of a stream or river**

(a) The dredging of a pond, lake, or segment of a stream or river is eligible for Green Acres funding as a development project if:

1. The dredging would enhance public recreational use of the water body and surrounding parkland or support natural resource protection;

2. The pond, lake, or segment of a stream or river is held by the local government unit;

3. The local government unit provides public access to the water area;

4. Green Acres has not previously funded the dredging of the pond, lake, or segment of stream or river;

5. The local government unit incorporates into the dredging project long-term corrective features such as on-site sedimentation basins or other methods of maintaining the depth of the dredged area; and

6. The local government unit plans its project in consultation with the appropriate Soil Conservation District and obtains all necessary permits.

(b) The local government unit shall carry out all dredging and disposal of dredging spoils in conformance with all applicable State and Federal laws. As set forth in N.J.A.C. 7:36-25.2, in some cases, the disposal of dredging spoils on parkland requires approval as a diversion of parkland under N.J.A.C. 7:36-26.

### **7:36-10.5 Development on landfills**

(a) A local government unit seeking Green Acres funding for the development of a facility for recreation and conservation purposes on a closed landfill shall submit the following with its application under N.J.A.C. 7:36-12.4:

1. The preliminary assessment required under N.J.A.C. 7:36-13.4;

2. Verification that the landfill is properly closed, in compliance with the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and its implementing rules; for landfills in the Pinelands, in compliance with the Pinelands Comprehensive Management Plan; or, for landfills in the Meadowlands District, in compliance with the New Jersey Meadowlands Master Plan and District Solid Waste Management Plan. Such verification shall include a copy of the closure approval letter from the Department's Division of Solid and Hazardous Waste or the equivalent written approval from the Pinelands Commission or Meadowlands Commission, if applicable;

3. A site map and narrative, including:

i. The general types, locations, and depth of waste on the site;

ii. The thickness and type of cover materials; and

iii. The dates the landfill was in use;

4. Detailed results of testing of soil borings, surface water, and ground water, if any; and

5. A copy of the application for a Landfill Disruption Approval for the project, pursuant to the Department's Division of Solid and Hazardous Waste rules at N.J.A.C. 7:26-2A.8(j), or equivalent document from the Pinelands Commission or Meadowlands Commission.

#### **7:36-10.6 Allowable project costs**

(a) For development projects, the following costs are allowable, provided the local government unit incurs such costs in conformance with all applicable laws, including the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.:

1. Construction costs;

2. Engineering costs associated with facility design and preparation of plans and specifications, supervision, and inspection, not to exceed 13 percent of the construction costs submitted by the local government unit and approved for Green Acres funding;

3. Incidental costs, individually itemized, associated with the implementation of the development project, including the cost of advertising, archaeological, architectural, conservation, financial, geological, historic research, hydrological, legal, or other professional advice, estimates, reports, services, or studies and the cost of preliminary planning and engineering necessary for the preparation of the application, provided such costs are not also included in the costs listed at (a)1 or 2 above. Incidental costs are limited to a maximum of two percent of the construction costs submitted by the local government unit and approved for Green Acres funding, or \$20,000, whichever is less;

4. Permit fees associated with the development project;

5. Costs of equipment required to make the facility operational; and

6. Costs of the preliminary assessment, when completed in accordance with N.J.A.C. 7:26E, as required under N.J.A.C. 7:36-13.4, and further testing as determined by the Department, based on findings and recommendations of the preliminary assessment.

(b) The following types of costs are not allowable:

1. Administrative and operating costs and salaries and/or wages of any employee of the local government unit incurred as part of the development project;

2. Costs associated with an application for Green Acres funding that the Garden State Preservation Trust does not approve under N.J.A.C. 7:36-13.3;

3. Remediation work done to address any areas of concern, as defined under the Technical Requirements for Site Remediation, N.J.A.C. 7:25E, that are identified in the preliminary assessment required under N.J.A.C. 7:36-13.4 or by other means; and

4. Costs in excess of the sum of the approved Green Acres funding plus the local government unit's matching share, if required, unless Green Acres has approved a request for supplemental funding under N.J.A.C. 7:36-14.3.

#### **7:36-10.7 Matching share; Donations toward the cost of development**

(a) If the Garden State Preservation Trust approves a matching grant to a local government unit, the local government unit may use as its matching share of the allowable costs of the development project its own funds or grants, contributions, donations, or reimbursements from State or Federal programs or from other public or private sources, except as described at (b) below.

(b) A local government unit shall not use as its matching share of the cost of development:

1. Any funding provided under the Green Acres laws, except a Green Acres loan awarded to the local government unit for the project under N.J.A.C. 7:36-13.3;

2. Any funding provided under the Garden State Preservation Trust Act administered by any State agency; or

3. The value of any donated goods and services that have not been obtained in conformance with the Local

Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

## **SUBCHAPTER 11. LOCAL GOVERNMENT UNIT DEVELOPMENT PROJECTS: FUNDING AWARD CATEGORIES**

### **7:36-11.1 Funding award categories**

(a) The Garden State Preservation Trust awards Green Acres funding to local government units for development projects in the three funding award categories set forth in (b) through (d) below.

(b) A Densely or Highly Populated Development project is the development of a project site located in a Densely Populated Municipality or Highly Populated Municipality, or a development project sponsored by a Densely Populated County or Highly Populated County within that county.

1. Projects located in Highly or Densely Populated Municipalities or sponsored by Highly Populated Counties are funded by a matching grant of 25 percent of the allowable costs of the development project. If funds are available, these projects also will be eligible for a low-interest (not more than two percent per year) loan for a term of not more than 20 years to supplement the matching grant.

2. Projects sponsored by Densely Populated Counties are funded by a matching grant of 50 percent of the allowable costs of the development project. If funds are available, these projects also will be eligible for a low-interest (not more than two percent per year) loan for a term of not more than 20 years to supplement the matching grant.

(c) An Urban Aid Development project is the development of a project site located in an Urban Aid municipality. An Urban Aid Development project is funded by a matching grant of 50 percent of the cost of development. If funds are available, an Urban Aid Development project also will be eligible for a low-interest (not more than two percent per year) loan for a term of not more than 20 years to supplement the matching grant.

1. The Garden State Preservation Trust may authorize an increase in the State's share of the cost of development to a maximum matching grant of 75 percent of the cost of development, upon a demonstration of special need or exceptional circumstances.

(d) A Standard Development project is the development of a project site that is not located in a Densely Populated County, Densely Populated Municipality, Highly Populated Municipality, or Urban Aid municipality, or sponsored by a Highly Populated County. A Standard Development project is funded by a low-interest (not more than two percent per year) loan for a term of not more than 20 years.

(e) A development project will compete in each funding round against other projects within the same funding award category, as described at N.J.A.C. 7:36-13.2.

## **SUBCHAPTER 12. LOCAL GOVERNMENT UNIT DEVELOPMENT PROJECTS: APPLICATION PROCESS**

### **7:36-12.1 Timing**

(a) A local government unit may submit an application for Green Acres funding at any time.

(b) At least two times each State fiscal year, the Department shall rank all complete applications in accordance with N.J.A.C. 7:36-13.2 and shall submit to the Garden State Preservation Trust a list of projects that the Department recommends to receive funding awards in accordance with N.J.A.C. 7:36-13.3.

(c) At least two times each State fiscal year, the Garden State Preservation Trust shall approve projects from the list described at (b) above and shall prepare and submit for introduction in the Legislature proposed legislation appropriating moneys to fund the approved projects.

### **7:36-12.2 Preapplication procedures**

(a) The Department encourages local government units to attend a Green Acres sponsored informational workshop, when offered, and to request a preapplication conference with Green Acres as early as possible, prior to application submission, to discuss project eligibility, award criteria, and application and project administration requirements.

(b) The local government unit shall hold a public hearing on a proposed development project before it submits its application for Green Acres funding.

1. The local government unit shall publish a notice of the public hearing in the official newspaper of the municipality in which the proposed project site is located, and, if the local government unit is a county, also in a newspaper of general circulation in that county.

The hearing must be advertised as a display ad at least 15 days before the hearing. The hearing notice must specifically reference the proposed Green Acres development application.

2. The public hearing must be held in the evening, and may be held as part of a public meeting, as long as the hearing is properly advertised. Only the proposed development project, and other proposed Green Acres projects, if any, shall be the subject matter of the public hearing.

3. The elected governing body of the local government unit shall conduct the public hearing on the proposed development application.

(c) For a development project potentially involving a riparian interest, a local government unit shall contact the Bureau of Tidelands Management within the Department to determine the State's interest or claim in the proposed project site and forward the results of the inquiry with their application for Green Acres funding. Information about riparian lands can be found at [www.nj.gov/dep/landuse/tideland.html](http://www.nj.gov/dep/landuse/tideland.html) or by writing to Bureau of Tidelands Management, Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625.

(d) For a development project that impacts an undisturbed portion of the project site, the local government unit shall submit a Natural Heritage Data Request Form (available from the Department's Office of Natural Lands Management at [www.nj.gov/dep/parksandforests/natural/heritage/datareq.html](http://www.nj.gov/dep/parksandforests/natural/heritage/datareq.html) or by writing to Natural Heritage Program, PO Box 404, Trenton, New Jersey 08625-0404). The results of the search must be attached to and discussed in the environmental assessment submitted as part of the local government unit's application for Green Acres funding at N.J.A.C. 7:36-12.4. The Department encourages each local government unit also to review and consider the applicable Landscape Maps, developed by the Department's Division of Fish and Wildlife, during the formulation of its recreation and planning goals, and as part of its preparation of a Green Acres application. Information about the Landscape Maps can be found at [www.nj.gov/dep/fgw/ensp/landscape](http://www.nj.gov/dep/fgw/ensp/landscape) or by writing to the Division of Fish & Wildlife, PO Box 400, Trenton, New Jersey 08625-0400.

#### **7:36-12.3 At-risk authorization to proceed with development**

(a) After submission of an application for development

funding, the local government unit may request approval from Green Acres to proceed with a development project at its own risk.

(b) Green Acres shall issue an at-risk authorization when the proposed development complies with the eligibility requirements under N.J.A.C. 7:36-10.2, and for good cause shown.

(c) If the Garden State Preservation Trust approves a project for which Green Acres issued an at-risk authorization, the time of receipt of Green Acres funding shall begin on the date of the at-risk letter.

(d) The Garden State Preservation Trust is not obligated to award funding for any development project for which Green Acres issues an at-risk authorization under (b) above.

(e) A local government unit is not obligated to develop any project for which it receives an at-risk authorization under (b) above.

(f) The development of a project site completed under an at-risk authorization must comply with the requirements of this chapter to remain eligible for Green Acres reimbursement.

#### **7:36-12.4 Application requirements**

(a) For a development project, a local government unit shall submit an application containing all of the following:

1. A completed Green Acres application form. The application form shall identify the local government unit, give the project type, indicate the municipality(ies) and county(ies) in which the proposed project site is located, provide a brief description of the project, specify the estimated cost of the development and the estimated funding request amount, identify the local government unit's contact person for the project, and include the certification of the person authorized by the enabling resolution required under (a)2 below to submit the application;

2. A certified copy of the enabling resolution, drafted in accordance with an example obtained from Green Acres and approved by the governing body of the local government unit, authorizing the submission of a Green Acres application and the execution of the project agreement and declaration described in N.J.A.C. 7:36-14.1 and identifying the person authorized to act in these matters on behalf of the local government unit;

3. A detailed estimate of the cost to develop the proposed project that indicates units and quantities of materials to be utilized and that is prepared by a New Jersey licensed landscape architect, architect, or engineer;

4. The Recreation and Open Space Inventory (ROSI) submissions that are prepared by the local government unit in accordance with N.J.A.C. 7:36-12.5 and that are complete and accurate as of the date of the application;

5. A narrative description of how and the extent to which the project meets the award criteria under N.J.A.C. 7:36-13.1;

6. An environmental assessment that describes the proposed development project, the existing environmental features of the proposed project site, and the anticipated direct and indirect environmental impacts of the project on the project site and its surrounding area; identifies and compares the environmental impacts of developing alternative sites; and describes measures that will be taken to mitigate any adverse environmental impacts of the project. If the project impacts an undisturbed portion of the project site, the results of the Natural Heritage Data Request required at N.J.A.C. 7:36-12.2(d) must be attached and discussed in the environmental assessment;

7. A local tax map that indicates the lot(s) and block(s) to be developed;

8. A conceptual site plan, drawn to scale, that indicates the proposed development; existing topography, facilities, improvements, and natural features of the proposed project site; and any areas of proposed tree clearing;

9. A conceptual floor plan that indicates the proposed use of all structures to be developed;

10. A copy of a lease or use agreement for a project located on property not owned in fee simple by the local government unit that meets the requirements of N.J.A.C. 7:36-10.1(f), or a letter from the property owner stating their intent to enter into a lease or use agreement with the local government unit should the project be approved;

11. Information on the State's interest or claim in

any riparian area in the proposed project site, as required by N.J.A.C. 7:36-12.2(c);

12. A street map that clearly indicates the location of the proposed development;

13. An estimate of annual operating expenses required to maintain the proposed project site, including wages, salaries, equipment, and materials;

14. Proof of publication of the notice of public hearing and copy of the minutes of the hearing held under N.J.A.C. 7:36-12.2(b);

15. Digital images and prints that clearly show the existing conditions at the proposed project site;

16. If applicable, letters in support of the project from the general public; civic groups and agencies; municipal and county planning boards, park commissions, recreation departments, or environmental commissions; user groups; or other organizations;

17. If the project is located in either the Meadowlands District, the Pinelands, or the Highlands, a letter from the New Jersey Meadowlands Commission, Pinelands Commission, or the Highlands Council, as applicable, stating that a pre-application conference was held with the local government unit, with the applicable Commission's or Council's comments on the proposed project attached; and

18. A list of all permits that may be required for the proposed development project.

(b) Green Acres shall send a letter to the local government unit acknowledging receipt of the application; providing the identification number assigned to the application; and requesting any corrections or clarifications to, or submission of any items missing from, the application, if applicable.

(c) All materials submitted as required under (a) above shall become the property of the Department.

(d) Green Acres staff shall conduct one or more site inspections to verify the statements in the application. A project site inspection also may include an examination of the maintenance of other parkland held by the local government unit and an evaluation of the areas to be served by the development project.

#### **7:36-12.5 Recreation and Open Space Inventory**

### **submissions**

(a) As part of an application for Green Acres funding for development, a local government unit must prepare and submit a Recreation and Open Space Inventory (ROSI). The ROSI must be prepared by the local government unit on forms obtained from Green Acres, and shall list each parcel of land held by the local government unit for recreation and conservation purposes as of the date of the application. All interests in land held by the local government unit for recreation and conservation purposes shall be listed, including any conservation restriction or historic preservation restriction, regardless of how they were acquired (for example, whether as a condition of a planning or zoning approval issued by a local government unit, as a donation, through negotiation, or in any other manner).

1. The listing shall identify each parcel, specify whether each parcel is funded or unfunded parkland, give its area in acreage or square feet, and provide its lot and block designation as shown on the tax maps submitted under (b) below. If the tax lot or block designations have changed since the submission of a prior ROSI, the local government unit must provide the new lot and block numbers and the corresponding old lot and block numbers on the ROSI.

2. The chief executive officer and the planning board chairperson, if the local government unit is a municipality, or the chief executive officer and the planning board chairperson or either the parks director or director of the open space program, if the local government unit is a county, shall sign and date the ROSI, affirming that it is complete and accurate.

(b) The local government unit shall submit a map of the local government unit and current tax maps showing each parcel of parkland listed on the ROSI, with the approximate boundaries of each such parcel clearly marked in colored ink. The tax maps required under this subsection need not be submitted if:

1. Green Acres has the tax maps on file because they were previously submitted by the local government unit; and

2. The local government unit certifies that the previously submitted tax maps are complete and accurate as of the date of application submission.

### **SUBCHAPTER 13. LOCAL GOVERNMENT UNIT DEVELOPMENT PROJECTS: AWARD**

### **CRITERIA, APPLICATION RANKING, APPROVAL PROCEDURES**

#### **7:36-13.1 Project award criteria**

(a) The Department shall assign priority points in accordance with (b) below to each development project after it has received a complete application under N.J.A.C. 7:36-12.4. The assignment of priority points reflects the degree to which a proposed project is consistent with the most recent New Jersey Statewide Comprehensive Outdoor Recreation Plan (available from Green Acres), as supplemented and/or amended; the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; and the findings, declarations, and, as applicable, special considerations for funding awards set forth in the Green Acres laws and State open space and recreation priorities, and this chapter.

(b) The Department shall assign priority points according to the following protocol:

1. The Department may assign a maximum of 20 points based on the population density and the extent to which there is a shortage of other similar recreational facilities within the area from which the majority of users of the proposed project are expected to come.

2. The Department may assign a maximum of 15 points based on the extent to which public involvement and support in the planning process for a project, beyond the minimum requirement of a public hearing under N.J.A.C. 7:36-12.2, has been sought and obtained and based on the extent to which the project is consistent with applicable planning documents. Green Acres shall evaluate the degree to which:

- i. There is public support, as demonstrated through letters from the municipal and county planning boards, park agencies, recreation departments, environmental commissions, civic groups and agencies, user groups, and the general public, zero to five points; and

- ii. The project is consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; the New Jersey Statewide Comprehensive Outdoor Recreation Plan; and local and county land use plans, especially open space and recreation elements thereof, as demonstrated in excerpts from or specific references to such plans in the project application; and whether proof of approved



petition for advanced plan endorsement by the State Planning Commission or, for municipalities in the Pinelands, certification from the Pinelands Commission that their master plan and land use ordinances are consistent with the minimum standards of the Pinelands Comprehensive Management Plan, has been provided, zero to 10 points.

3. The Department may assign a maximum of 24 points based on the overall quality of a project by evaluating the extent to which:

i. The project is accessible to population centers; is accessible by public transportation, walking or bicycling; and will create public access where none exists or where existing access is undeveloped or restricted, zero to four points;

ii. The project improves needed public access (visual and/or physical) to water, zero to six points;

iii. The project is designed to include multiple recreation and conservation purposes, use effective landscaping, provide opportunities for various active and passive recreational uses by diverse user groups, and include significant tree plantings, zero to eight points; and

iv. The project is cost-effective as determined by weighing the quality of conservation or recreation opportunities provided by the project against the anticipated cost. Considerations include: cost of alternative locations and facilities; whether the project can be completed at a lower cost due to donations or partnerships; and cost of future operation and maintenance, negative six to six points.

4. The Department may assign a maximum of 16 points to a project that incorporates the following items:

i. Private investment or ecotourism potential, one point;

ii. Municipal and county (urban complex) strategic revitalization plans and programs consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable, one point;

iii. Waterfront development or redevelopment, one point;

iv. Trails, bike paths, or greenways, one point;

v. Historic or archaeologic resource enhancement or preservation, one point;

vi. Wildlife habitat protection, one point;

vii. Protection of "Category One Waters," as defined at N.J.A.C. 7:9B, and associated special water resource protection areas established pursuant to N.J.A.C. 7:8; or protection of other water resources, one point;

viii. Multiple uses and provides active and passive recreation opportunities, one point;

ix. Development of a prior Green Acres-funded acquisition or development, one point;

x. Private donation of land, equipment, labor, or cash, one point;

xi. Design and construction that utilizes clean and renewable energy and maximizes energy efficiency, one point;

xii. Rehabilitation or redevelopment of an existing facility, one point;

xiii. Supports a school construction initiative in an Abbott District established pursuant to N.J.A.C. 6A:10A, one point; and

xiv. Reclamation of a former brownfields site, one point.

xv. The Department shall assign one point to a project undertaken by a municipality in the Highlands, that has amended its development regulations in accordance with Section 13 of P.L. 2004, c.120 (N.J.S.A. 13:20-13) to establish one or more receiving zones for the transfer of development potential from a sending zone in the Highlands.

xvi. The Department shall assign one point to a project undertaken by a municipality that has amended its development regulations in accordance with the State Transfer of Development Rights Act (P.L. 2004, c.2 (N.J.S.A. 40:55D-137 et seq.)) to establish one or more receiving zones for the transfer of development potential.

5. The Department shall assign five points to a project undertaken by a county or municipality that has not previously received Green Acres funding.

6. The Department may assign a maximum of 12 points to a project whose design minimizes adverse impacts on the environmentally sensitive features of the site, by evaluating the degree to which:

i. The facilities are proposed to be located in already cleared areas, to minimize additional clearing of trees and vegetation, zero to four points;

ii. The facilities are proposed to be located where topography and soil conditions are suitable, to minimize grading, excavation, fill, and drainage of a site, zero to four points; and

iii. The project retains, enhances, or establishes vegetative buffers, or incorporates other site-sensitive techniques, to minimize impacts on sensitive areas such as shellfish beds, beach/dune systems, forests, wetlands, steep slopes, endangered or threatened species habitat, and aquifer recharge areas, zero to four points.

7. The Department may assign a maximum of one point to a project that involves structures whose design and construction meet the most recent version of the U.S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEEDTM) Green Building Rating System for New Construction and Major Renovations Version. Information on the USGBC LEEDTM System is available at [www.usgbc.org](http://www.usgbc.org) or by writing to the U.S. Green Building Council, 1015 18th Street NW, Suite 508, Washington, DC 20036.

### **7:36-13.2 Ranking**

(a) Upon receipt of an application containing all the information required under N.J.A.C. 7:36-12.4, Green Acres shall determine if the project is eligible for funding in accordance with the requirements of N.J.A.C. 7:36-10.2.

(b) If the development project is eligible for Green Acres funding, the Department shall determine the total number of priority points assigned to the project based on the project award criteria described in N.J.A.C. 7:36-13.1.

(c) The Department shall rank all the projects within each funding award category on a priority list according to the total number of priority points assigned each project, with the project assigned the greatest total number of priority points ranking first.

### **7:36-13.3 Approval or denial of an application; award of funding; procedural letter**

(a) Based on available funding, the number of local government unit development applications received in its funding award category, and the total priority points assigned to the project under N.J.A.C. 7:36-13.2, the Department shall make a recommendation for approval or denial of the application to the Garden State Preservation Trust.

(b) If the application is approved by the Garden State Preservation Trust, the Department shall notify the local government unit in writing of the amount of the Green Acres funding award, which is subject to legislative appropriation.

(c) If the application is denied by the Garden State Preservation Trust, the Department shall notify the local government unit in writing of the reason for the denial.

(d) After the notification of the funding award under (b) above, and after the funding award has received legislative appropriation, Green Acres shall send the local government unit a procedural letter, a Development Compliance Checklist, and a Pre-Construction Engineering Certification. The procedural letter directs the local government unit to:

1. Submit, by the deadline specified in the procedural letter, a construction schedule; one copy of construction plans for the project, signed and sealed by a New Jersey licensed landscape architect, architect, or engineer; and the Pre-Construction Engineering Certification, signed by a New Jersey licensed engineer or architect, certifying that all construction plans and specifications meet all applicable State and local codes and current engineering requirements;

2. Return to Green Acres a certification by the local government unit's attorney that each contract was let in conformance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. This certification is required for each executed contract for professional services or construction. The certification must be on the form provided by Green Acres, and should be submitted to Green Acres immediately upon execution of each

contract for the development project;

3. Secure and submit to Green Acres permits or letters of waiver provided by all agencies claiming jurisdiction;

4. Obtain and submit to Green Acres, by the deadline specified in the procedural letter, a preliminary assessment of the project site in accordance with N.J.A.C. 7:36-13.4;

5. Erect and maintain a sign, according to the detail sheet provided by Green Acres, that identifies the development as a Green Acres funded project;

6. Return to Green Acres the Development Compliance Checklist, executed by the local government unit's chief executive officer and attorney, verifying that the local government unit has complied or will comply with the Green Acres development requirements described in (d)1 through 5 above and the bid procedures outlined in N.J.A.C. 7:36-14.2, and that confirms that:

i. The State Affirmative Action requirement (P.L. 1975, c.127, N.J.S.A. 10:5-31 through 38) has been incorporated into the specifications; and

ii. The design of the facility conforms to all applicable State and Federal Barrier Free Codes and the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) requirements;

7. Submit, for a project located on property not owned in fee simple by the local government unit, a copy of a lease or use agreement for the property that meets the requirements of N.J.A.C. 7:36-10.1(f), if not previously submitted and

8. If applicable, satisfy the procedural requirements for a change in purpose or use at N.J.A.C. 7:36-25.6, including, but not limited to, the requirement for a public hearing.

#### **7:36-13.4 Preliminary assessment report**

(a) The local government unit must obtain a preliminary assessment report of the project site prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. Upon receipt of the preliminary assessment report, Green Acres shall determine if the report contains the required information and shall notify the local government unit as follows:

1. If the preliminary assessment report does not contain the required information, Green Acres shall send the local government unit a deficiency letter identifying the additional information that must be submitted. The local government unit shall submit the information by the date specified in the letter.

2. If the preliminary assessment report contains the required information and does not identify any areas of concern, as defined under the Technical Requirements for Site Remediation:

i. Green Acres shall send the local government unit a letter acknowledging the sufficiency of the preliminary assessment report;

ii. The chief executive officer of the local government unit shall certify, on a form provided by Green Acres with the sufficiency letter, that the local government unit has reviewed the preliminary assessment report and has determined to proceed with the development of the project site; and

iii. The local government unit shall return the certification to Green Acres within 30 days of the date of the sufficiency letter. Green Acres shall not disburse any funding under N.J.A.C. 7:36-14.5 until it is in receipt of this certification.

3. If the preliminary assessment report contains the required information and identifies one or more areas of concern, as defined under the Technical Requirements for Site Remediation:

i. Green Acres shall send a letter notifying the local government unit that the areas of concern must be addressed to the Department's satisfaction before the local government unit starts construction of the development project;

ii. Once the areas of concern have been addressed to the Department's satisfaction, the local government unit shall submit evidence of such to Green Acres;

iii. Once Green Acres has reviewed and approved the local government unit's submission, Green Acres shall send the local government unit a letter of sufficiency;

iv. The chief executive officer of the local government unit shall certify, on a form provided by Green Acres with the sufficiency letter, that the local

government unit has reviewed the preliminary assessment report and the manner in which the areas of concern have been addressed, and has determined to proceed with the development of the project site; and

v. The local government unit shall return the certification to Green Acres within 30 days of the date of the letter of sufficiency. Green Acres shall not disburse any funding under N.J.A.C. 7:36-14.5 until it is in receipt of this certification.

**SUBCHAPTER 14. LOCAL GOVERNMENT UNIT DEVELOPMENT PROJECT: PROJECT AGREEMENT, BID PROCEDURES, SUPPLEMENTAL FUNDING, CONSTRUCTION RESPONSIBILITY, DISBURSEMENTS, PROJECT CLOSEOUT, LOAN REPAYMENT, ACCOUNTING AND RECORDKEEPING REQUIREMENTS**

**7:36-14.1 Project agreement**

(a) Each Green Acres development project shall have a project agreement, which shall be executed by the local government unit and the Department. The project agreement shall set out the rights and responsibilities of the local government unit and the Department in regards to the development project and shall contain all information identified in (c) below. A declaration shall be attached to the project agreement that includes the local government unit's ROSI and declares that all of the local government unit's funded and unfunded parkland are subject to the Green Acres restrictions.

(b) Green Acres shall send the project agreement and declaration to the local government unit for approval and signature after the funding award made under N.J.A.C. 7:36-13.3(b) has received legislative appropriation. The local government unit shall ensure that the project agreement and declaration are approved and signed by the local government unit's attorney, and executed by the person authorized under the resolution described at N.J.A.C. 7:36-12.4(a)2 or an updated resolution submitted by the local government unit.

(c) The project agreement shall contain:

1. A description of the project facility(ies) to be developed;
2. The declaration, that contains the Recreation and Open Space Inventory (ROSI) described at N.J.A.C. 7:36-12.5 as adjusted to correct any inaccuracies, if

any, discovered by the local government unit or Green Acres;

3. The estimated cost of the development project;

4. The amount of the Green Acres funding award pursuant to N.J.A.C. 7:36-13.3(b) and, if applicable, the local government unit's matching share of the cost of the development project;

5. Special conditions, if any;

6. The project period during which the development project must be completed, generally two years from the effective date of the project agreement;

7. The requirements for recordkeeping, project administration, and, if the Green Acres funding includes a loan, loan repayment; and

8. Other terms and conditions, including a statement of the remedies described at (j) through (m) below and a statement of the requirements for maintenance, use, development, and disposal or diversion of parkland as described at N.J.A.C. 7:36-25 and 26.

(d) The local government unit shall return the signed project agreement and declaration to Green Acres. If the Green Acres funding includes a loan, the local government unit shall also submit verification that a bond ordinance, supplemental debt statement, and revised capital budget have been approved by the Department of Community Affairs.

(e) Upon receipt of the project agreement executed in accordance with (b) above, and, if applicable, the verification described at (d) above, the Department shall establish an account from which Green Acres shall disburse the loan or matching grant.

(f) After the project agreement has been fully executed by the State, Green Acres shall send to the local government unit a copy of the fully executed project agreement and declaration and a Development Payment Request form that the local government unit shall use to request a disbursement of funds under N.J.A.C. 7:36-14.5.

(g) The local government unit shall record and return to Green Acres the declaration contained in the project agreement after a disbursement of funding as required under N.J.A.C. 7:36-14.5(e).

(h) Green Acres may extend the project period

established in the project agreement upon request, if the local government unit demonstrates that it is making a good faith effort to complete the project in an expeditious manner.

(i) The Department and the local government unit shall execute an amendment to the project agreement to reflect any supplemental funding provided under N.J.A.C. 7:36-14.3.

(j) In addition to any other rights or remedies available to the Department under law, if the local government unit does not comply with any of the requirements of the project agreement, this chapter, or the Green Acres laws, or if the local government unit makes any material misrepresentation in the project application and/or the documentation submitted in support of the application, the Department may take any of the following actions:

1. Issue a written notice of noncompliance directing the local government unit to take and complete corrective action within 30 days of receipt of the notice. If the local government unit does not take corrective action, or if the corrective action taken is not adequate in the judgment of the Department, then the Department may take any of the actions described at (j)2 through 5 and (k) below;

2. Withhold a matching grant or loan disbursement or portion thereof;

3. Order suspension of work on the project for a period of not more than 45 days after the date of the stop work order, unless the Department and the local government unit agree to an extension of that period;

i. A stop work order shall contain the reasons for the issuance of the stop work order, a clear description of the work to be suspended, instructions as to the issuance of further orders by the local government unit for materials or services, and suggestions for minimizing costs;

ii. Upon receipt of the stop work order, the local government unit shall immediately comply with the terms of the order and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order;

iii. The Department shall, within the period of the stop work order or any extension of it, either rescind the stop work order, terminate the work covered by the order, or authorize the resumption of work; and

iv. If the Department rescinds a stop work order or if the period of a stop work order or an extension of it expires, the local government unit shall promptly resume the suspended work. The Department shall, as necessary, make an equitable adjustment to the project period;

4. Terminate the project agreement; and/or

5. Demand immediate repayment of all Green Acres funding that the local government unit has received.

(k) If the local government unit fails to comply with any of the terms of the project agreement, this chapter, or the Green Acres laws, the Department may initiate suit for injunctive relief or to seek specific enforcement, without posting bond, it being acknowledged that any actual or threatened failure to comply will cause irreparable harm to the State and that money damages will not provide an adequate remedy.

(l) If the Department incurs legal or other expenses, including its own personnel expenses, for the collection of payments due or in the enforcement or performance of any of the local government unit's obligations under the project agreement, this chapter, or the Green Acres laws, the local government unit shall pay these expenses on demand by the Department.

(m) The Department is not required to mitigate any damages to the local government unit resulting from the local government unit's noncompliance with the terms of the project agreement, this chapter or the Green Acres laws.

#### **7:36-14.2 Bid procedures**

(a) Upon receipt of the construction plans, the Pre-Construction Engineering Certification, and the Development Compliance Checklist required under N.J.A.C. 7:36-13.3(d), the certification from the local government unit's chief executive officer regarding the preliminary assessment required under N.J.A.C. 7:36-13.4, and proof that all necessary permits, approvals, or waivers have been obtained, Green Acres shall conduct a review. If any changes to the plans or documents are required, Green Acres will send the local government unit a letter requesting the necessary changes. Once Green Acres approves the submitted documents and verifies that the construction plans are consistent with the approved project scope, Green Acres will send the local government unit a

proceed to bid letter.

(b) After receipt from Green Acres of the proceed to bid letter, the local government unit shall solicit bids on the project contracts, as required under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

(c) The local government unit shall include the following statement in each advertisement and invitation to bid:

“Please be advised that State funds through the Green Acres Program are being utilized in this project. Under N.J.A.C. 7:1-5, vendors currently suspended, debarred, or disqualified are excluded from participation on this project.”

(d) All bid specifications and contracts shall require that all facilities must be constructed in accordance with all applicable State and local construction codes.

(e) The local government unit shall submit the Local Public Contracts Law certification required under N.J.A.C. 7:36-13.3(d) immediately upon execution of each contract for professional services or construction.

#### **7:36-14.3 Supplemental funding**

(a) A local government unit may request, in writing, supplemental funding if:

1. The local government unit has solicited bids on the project at least two times, and the bid selected or the negotiated contract amount for the project's construction, plus the other allowable project costs listed at N.J.A.C. 7:36-10.6, exceed the funding amount awarded under N.J.A.C. 7:36-13.3(b) plus, if applicable, the local government unit's matching share of the allowable project costs;

2. The local government unit incurs contract cost overruns and has submitted to Green Acres a copy of the change order(s) for the cost overruns under N.J.A.C. 7:36-14.4(c); or

3. The amount of the Green Acres funding award approved by the Garden State Preservation Trust in N.J.A.C. 7:36-13.3 plus, if applicable, the local government unit's matching share of the development project is less than the estimated cost of the development project submitted with the application in N.J.A.C. 7:36-12.4.

(b) Provided sufficient funds are available, Green Acres shall increase the amount of funding for a project in response to a request submitted under (a) above.

(c) Any supplemental funding provided under this section is subject to legislative appropriation.

(d) The Department and the local government unit shall execute an amendment to the project agreement in accordance with N.J.A.C. 7:36-14.1 to reflect any supplemental funding provided under this section.

#### **7:36-14.4 Construction requirements; site inspections**

(a) Green Acres shall periodically inspect the project to ensure compliance with the project agreement established under N.J.A.C. 7:36-14.1.

(b) The local government unit is responsible for supervising the construction of the project and for ensuring that all construction contract specifications are met.

(c) The local government unit shall submit to Green Acres a copy of each change order processed in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. Green Acres encourages the local government unit to submit all change orders before the local government unit undertakes the work covered by the change order to ensure that the proposed costs are allowable under the project agreement.

(d) The local government unit shall erect and maintain for the duration of the project a construction sign that identifies the project as Green Acres funded and meets Green Acres' specifications for size, content and design provided with the procedural letter at N.J.A.C. 7:36-13.3(d).

#### **7:36-14.5 Disbursement of loan or matching grant**

(a) Green Acres shall disburse the loan or matching grant in advance of the local government unit incurring allowable project costs, or as reimbursement of accrued allowable project costs.

(b) For each request for payment, the local government unit shall submit:

1. A Development Payment Request form that Green Acres provides with the fully executed project agreement under N.J.A.C. 7:36-14.1(f), with the following items completed:

i. The project name, name of local government unit, and county;

ii. An itemized statement of the costs incurred or to be incurred; and

iii. A certification by the local government unit's chief financial officer that the information entered on the payment request form is accurate and that the local government unit is maintaining an accurate record of accounts for the project, including cancelled checks and vouchers which must be submitted to Green Acres upon request.

2. For requests for payment in advance of the local government unit incurring allowable construction costs, the local government unit also shall:

i. Certify that construction of the project has commenced;

ii. Erect a construction sign as required under N.J.A.C. 7:36-14.4(d); and

iii. Submit a copy of the construction contract that provides a breakdown of the costs for which advanced payment is requested.

(c) Upon receipt of a request for payment under (b) above and approval of all required documentation, Green Acres shall send to the local government unit a payment invoice for the Green Acres share of the allowable project costs, up to the loan or matching grant amount approved under N.J.A.C. 7:36-13.3(b), except as provided under (c)1 and 2 below. The local government unit's chief financial officer or the local government unit's authorized designee shall verify, sign, and return the invoice to Green Acres for processing along with information related to the bank account required under (d) below.

1. For payments in advance of the local government unit incurring costs, Green Acres shall disburse the loan, if the funding includes a loan, and up to 90 percent of the matching grant.

2. Before final payment shall be disbursed, the local government unit shall submit and Green Acres shall approve the items required for project closeout under N.J.A.C. 7:36-14.6(b).

(d) The local government unit shall establish a separate, non-interest-bearing bank account for the purpose of receiving Green Acres disbursements for the

project. If a local government unit has undertaken more than one Green Acres funded project, it may establish a single bank account to receive all Green Acres disbursements for all of the projects. If the local government unit will be receiving a Green Acres disbursement only as a reimbursement, it may designate an existing account into which the disbursement will be received, provided proper accounting procedures are in place to allow for easy and accurate financial tracking of Green Acres disbursements. Any account into which Green Acres disbursements are deposited will be subject to audit by the State. Upon receipt of the signed invoice and bank account information, the State shall:

1. Transmit each loan disbursement directly into such account; and

2. Mail each matching grant disbursement to the local government unit in the form of a check. The local government unit shall not sign over the check to a contractor or any other person but shall deposit the check into such account.

(e) Immediately upon receipt of the funding disbursement under this section, the local government unit shall have the declaration provided by Green Acres at N.J.A.C. 7:36-14.1(f) recorded by the county clerk or registrar and returned to Green Acres.

(f) The local government unit may unilaterally withdraw the project at any time before it receives Green Acres funding. The local government unit shall not terminate the project agreement after it receives any Green Acres funding without the written consent of Green Acres.

(g) If the local government unit terminates the project agreement under (f) above, the local government unit is responsible for any costs of the development incurred as of the time of termination. The local government unit shall also repay, with interest at the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at R. 4:42-11(a)(ii) in effect at the time of termination, any disbursements that Green Acres made to the local government unit for the project.

#### **7:36-14.6 Project closeout**

(a) The local government unit shall notify Green Acres when the development project is complete.

(b) Upon receipt of the notification under (a) above,

Green Acres shall send to the local government unit a project closeout letter that directs the local government unit to submit to Green Acres a copy of each of the following:

1. A post-construction certification, on a form provided by Green Acres with the closeout letter, by a New Jersey licensed landscape architect, architect, or engineer certifying that the project has been completed substantially in accordance with the construction plans submitted under N.J.A.C. 7:36-13.3(d) and describing any variation between the completed project and the construction plans;
  2. A record drawing showing the project as built; and
  3. Digital images and prints that clearly show the development project, as completed.
- (c) Green Acres shall conduct a final site inspection within 45 days of its receipt of the items listed under (b) above.
- (d) Green Acres shall provide to the local government unit a sign (or signs, as applicable) that identifies the parkland as a Green Acres funded site that is permanently dedicated to recreation and conservation purposes. The local government unit shall post the sign(s) in a prominent place on the funded parkland and maintain it.

#### **7:36-14.7 Terms of loan repayment**

- (a) A local government unit shall repay the loan amount in semi-annual installments over a period of not more than 20 years. The loan term shall begin on the date of the first disbursement of funds made under N.J.A.C. 7:36- 14.5. The local government unit may prepay the loan in whole or in part at any time without penalty. An accelerated repayment schedule may be established under the project agreement executed under N.J.A.C. 7:36-14.1.
- (b) The Department shall forward the final repayment schedule to the local government unit upon disbursement of the entire loan.
- (c) Interest shall accrue on the outstanding loan principal at a rate of not more than two percent per year, beginning on the date of the first disbursement of funds made under N.J.A.C. 7:36-14.5. Interest accrued against each disbursement shall be paid to the Treasurer of the

State, in a lump sum, three months after the date of the final disbursement.

(d) The first semi-annual repayment of principal shall be paid to the Treasurer of the State nine months after the final disbursement or two years after the date of the first disbursement, whichever is earlier.

(e) The local government unit shall allocate a portion of its budget to meet the annual debt service on the loan.

(f) The Department shall assess a late fee whenever the local government unit fails to make any repayment within 30 days of the scheduled payment due date, as follows:

1. When a payment is 30 to 59 days past due, five percent of the payment amount due;
2. When a payment is 60 to 89 days past due, 10 percent of the payment amount due; and
3. When a payment is 90 or more days past due, 15 percent of the payment amount due.

(g) A local government unit that fails to make payment within 90 days of the repayment due date shall be in default of the project agreement. Upon default:

1. All outstanding principal, interest, and late fees are payable immediately; and
2. Interest accrues at a rate of not more than two percent per year on the outstanding principal, interest, and late fee, calculated from the repayment due date.

(h) Repayment of the loan in full does not terminate the Green Acres restrictions on the local government unit's funded and unfunded parkland.

#### **7:36-14.8 Accounting and recordkeeping**

- (a) The local government unit shall maintain and make available to the Department for inspection upon request all financial documents and records related to the project that are required to be maintained in accordance with (e) below.
- (b) The local government unit, its contractors, and subcontractors shall employ generally accepted accounting procedures that adequately identify the costs associated with the Green Acres loan or matching grant.
- (c) The local government unit shall maintain separate records for each project including the amount, receipt, and



disposition of all funding received for the project, including Green Acres loans and matching grants, and contributions, gifts, or donations from any other sources.

(d) The local government unit shall conduct annual audits and submit audit reports in conformance with the Single Audit Act of 1984, P.L. 98-502 and the Single Audit Act Amendments of 1996, P.L. 104-156 (31 U.S.C. § § 7501 et seq.), Federal Office of Management and Budget (OMB) Circular A-133: "Audits of States, Local Governments, and Non-Profit Organizations," incorporated herein by reference, and State OMB Circular 04-04: "Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid," incorporated herein by reference.

1. Audit reports shall address the local government unit's compliance and all specific instances of noncompliance with the material terms and conditions of the project agreement and applicable laws and regulations.

2. Audit reports shall contain an itemized schedule of all project-related financial assistance received by the local government unit identifying: grantor agency, program title, State account number, and total disbursement.

(e) The local government unit shall provide a duly authorized representative of the Department access to all records, books, documents, and papers pertaining to the project agreement and/or the project for audit, examination, excerpt, and transcript purposes. Such records shall be maintained and access shall be provided during performance of the project and for three years after the latter date of either final repayment or audit resolution. The local government unit shall include this requirement in all project-related contracts.

(f) The Department shall adjust the local government unit's final payment, if necessary, based on the results of the annual audit.

## **SUBCHAPTER 15. NONPROFIT ACQUISITION PROJECTS: PROJECT ELIGIBILITY, CONDITIONS, AND LIMITATIONS**

### **7:36-15.1 General provisions and funding policies**

(a) Nonprofits may apply to the Department for Green Acres matching grant funding for the acquisition of land for public recreation and conservation purposes, to a maximum of 50 percent of the allowable project costs at

N.J.A.C. 7:36-15.9. There is no minimum or maximum amount that a nonprofit may request as a matching grant in such an application.

(b) Each year, the Department shall establish a maximum funding limit per project or per applicant based on total funding requests, available funds, project priorities established under N.J.A.C. 7:36-18.1, the legislative findings of the Garden State Preservation Trust Act (N.J.S.A. 13:8C-2), and such considerations as the nonprofit's progress in expending any approved Green Acres funding, geographic distribution of applications, and total population or population density of the county and/or municipality(ies) in which the proposed project site is located.

(c) Any Green Acres funding award is subject to legislative appropriation.

(d) A nonprofit that is awarded Green Acres funding shall execute and donate to the State, at no charge, a permanent conservation restriction, historic preservation restriction, or both, as applicable, on the project site. The restriction shall be prepared or approved by the State.

(e) All land acquired with Green Acres funding must be accessible to the public, unless the Commissioner determines that public accessibility would pose an unacceptable risk to the land or its natural resources.

(f) A nonprofit that is awarded Green Acres funding is responsible for obtaining all permits and meeting all requirements of all Federal statutes, Green Acres laws, and other State, County, and local statutes, regulations, and ordinances, as applicable, related to the project.

(g) The disbursement of Green Acres funding to a nonprofit shall not exceed the actual amount the nonprofit expended for all allowable project costs listed under N.J.A.C. 7:36-15.9.

(h) The Department encourages each nonprofit to review and consider the applicable Landscape Maps, developed by the Department's Division of Fish and Wildlife, during the formulation of its recreation and planning goals, and as part of its preparation of a Green Acres application. Information about the Landscape Maps can be found at [www.nj.gov/dep/fgw/ensp/landscapeor](http://www.nj.gov/dep/fgw/ensp/landscapeor) by writing to the Division of Fish and Wildlife, PO Box 400, Trenton, New Jersey 08625- 0400.

(i) It is the responsibility of the nonprofit to obtain and utilize the most current applicable forms required as part of

a Green Acres acquisition project. All forms can be obtained from Green Acres at PO Box 412, Trenton, New Jersey 08625.

(j) A nonprofit that has not demonstrated reasonable progress in completing a previously approved Green Acres project or is not in compliance with the requirements of this chapter, such as by not maintaining its funded parkland in accordance with the terms of the project agreement or conservation or historic preservation restriction required under (c) above, may be ineligible for funding.

#### **7:36-15.2 Eligible projects**

(a) Lands for recreation and conservation purposes, as defined at N.J.A.C. 7:36-2.1, are eligible for acquisition with Green Acres funding. Acquisition projects may include the purchase of, for example:

1. Ocean, bay and/or river waterfront, or a lake, pond, beach or stream that provides opportunity for physical and visual public access, swimming, water sports, fishing and/or boating;
2. A natural area such as a wildlife preserve, forest and/or wetland that provides opportunity for conservation, nature observation, water quality and water supply protection, camping and/or hiking;
3. An historic property; or
4. Land suitable for playgrounds, athletic fields, and other types of active and passive outdoor recreation facilities or opportunities.

#### **7:36-15.3 Ineligible projects**

(a) The following types of acquisition projects are not eligible for Green Acres funding:

1. Any site to be purchased in fee simple to which public access is not provided, unless the Commissioner determines that public accessibility would pose an unacceptable risk to the land or to any natural resources associated with the land;
2. Any permanent conservation restriction or historic preservation restriction not consistent with N.J.A.C. 7:36-15.7;
3. Any structure that will not be used in support of outdoor recreation and conservation purposes or

demolished to create open space, in accordance with N.J.A.C. 7:36-15.4;

4. Any site that is, or is intended to be, used as a public road right-of-way;

5. Any site with uninsurable or unmarketable title; or

6. Any site that is already permanently preserved for recreation and conservation purposes, as determined by the Department.

#### **7:36-15.4 Acquisition of structures**

(a) A nonprofit may use Green Acres funding to acquire an improved property and structure(s) that the nonprofit shall maintain and operate for recreation and conservation purposes to support the use of an outdoor recreation facility or conservation facility or area.

(b) Within six months of acquiring land as part of a Green Acres project, the nonprofit shall inspect the project site for the presence of any structures thereon that are or may be historic properties. Within 60 days after completion of the inspection, the nonprofit shall provide to Green Acres and the Department's Historic Preservation Office (at PO Box 404, Trenton, New Jersey 08625-0404):

1. A written notice of its findings, and

2. For any structure discovered on the project site that is or may be an historic property, a request for determination of potential eligibility for inclusion of the historic structure in the New Jersey Register of Historic Places. Whenever such a structure is discovered, a copy of the written notice provided to the Historic Preservation Office shall also be sent to Green Acres, the New Jersey Historic Trust, and to the county historical commission or advisory committee, the county historical society, the local historic preservation commission or advisory committee, and the local historical society if any of those entities exist in the county or municipality wherein the project site is located.

(c) A nonprofit may demolish or remove a structure acquired with Green Acres funding to create open space after the nonprofit has obtained written approval from Green Acres. Such demolition may be subject to N.J.A.C. 7:36-25.6.

#### **7:36-15.5 Acquisition of waterfront land**

(a) For an acquisition potentially involving a riparian

interest, a nonprofit shall contact the Department's Bureau of Tidelands Management to determine the State's interest or claim in the proposed project site before the nonprofit submits an application for Green Acres funding.

(b) An interest in State-owned tidelands may be acquired from the Tidelands Resource Council, established under N.J.S.A. 13:1B-10, with Green Acres funding or, where the State previously conveyed its ownership of certain tidelands, those tidelands may be acquired from private owners.

#### **7:36-15.6 Acquisition of agricultural lands**

(a) A nonprofit may apply for Green Acres funding to acquire farmland for recreation and conservation purposes when there is a willing seller.

(b) If farmland is located within an Agricultural Development Area established under the 1983 Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., at the time of application for Green Acres funding, the nonprofit shall demonstrate that the owner of the farmland has not applied to sell the farmland or a development easement to the State or county in accordance with that Act, or that the owner has applied to sell the farmland or a development easement and the application was not approved.

#### **7:36-15.7 Acquisition of conservation restrictions or historic preservation restrictions**

(a) A nonprofit may acquire a permanent conservation restriction with Green Acres funding, provided the restriction fulfills a public need or serves a compelling public purpose, as determined by Green Acres, by:

1. Providing for meaningful public access; or

2. Providing significant benefits to other contiguous parkland in the nonprofit's project site that provides public access.

(b) A nonprofit may acquire a permanent historic preservation restriction with Green Acres funding if the restriction is on a landscape or structure that is listed or eligible for listing on the New Jersey or National Register of Historic Places and if the restriction fulfills the public need or serves a compelling public purpose, as determined by Green Acres, by:

1. Providing for meaningful public access; or

2. Providing significant benefits to other contiguous parkland in the nonprofit's project site that provides public access.

(c) If a nonprofit acquires a conservation or historic preservation restriction with Green Acres funding, it shall also seek to obtain the right of first refusal for the purchase of the remaining interest in the property.

(d) If a nonprofit acquires a conservation restriction under (a)2 above or an historic preservation restriction under (b)2 above, Green Acres will provide to the nonprofit for land acquisition half of what the nonprofit would otherwise be eligible to receive for the purchase of the restriction.

(e) If a nonprofit seeks to acquire a conservation or historic preservation restriction with Green Acres funding, it must give to the State a Secondary Right of Enforcement of such restriction, on a form provided by Green Acres, in lieu of the restriction required under N.J.A.C. 7:36-15.1(c)

(f) If a nonprofit acquires a conservation or historic preservation restriction with Green Acres funding, it shall prepare a report that clearly documents the conditions of the project site at the time it is to be acquired. This Present Condition Report shall include maps, photographs, and written descriptions of the property that document the condition of the property just prior to the time of closing. It shall be prepared after Green Acres approves the survey required under N.J.A.C. 7:36-20.4(c) and shall be submitted to Green Acres for approval prior to the nonprofit acquiring the project site.

#### **7:36-15.8 Matching share; donations toward the cost of acquisition**

(a) The nonprofit may use as its matching share of the cost of acquisition, its own funds or any grant, contribution, donation, or reimbursement from State or Federal programs or from any other public or private source, except as described at (c) below.

(b) The nonprofit may use as its matching share of the cost of acquisition, the value of land donated to the nonprofit, in whole or in part, within the project site, except as provided in (c) below. For the purposes of this subsection, the value of a donation of land is the difference between the eligible land cost and the purchase price of a parcel of land.

1. The land donated to the nonprofit must be eligible

for funding under N.J.A.C. 7:36-15.2 and its acquisition by the nonprofit must comply with all of the requirements of this chapter; and

2. The nonprofit must use the donated land value as its matching share of the cost of acquisition of another parcel within the project site within two years after either it acquires the donated land or the Garden State Preservation Trust approves the project, whichever is later.

(c) A nonprofit shall not use as its matching share of the cost of acquisition:

1. The value of land that the nonprofit owns prior to approval of an application for Green Acres funding under N.J.A.C. 7:36-17.4, unless the nonprofit had previously obtained an at-risk authorization under N.J.A.C. 7:36-17.3;

2. Any funding provided under the Green Acres laws;

3. Any funding provided under the Garden State Preservation Trust Act administered by any State agency; or

4. The value of the purchase price in excess of the hypothetical land value, if the hypothetical land value exceeds the eligible land cost.

#### **7:36-15.9 Allowable project costs**

(a) For an acquisition project, the following costs are allowable, provided the nonprofit incurs such costs in conformance with all applicable laws, as well as the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.:

1. Costs that the nonprofit incurs to acquire title or permanent interest in the project site, up to the greater of either:

i. The eligible land cost; or

ii. The purchase price, up to the hypothetical land value;

2. Costs that the nonprofit incurs for any appraisal obtained in accordance with N.J.A.C. 7:36-19.3;

3. Land survey costs that the nonprofit incurs for the field determination of acreage to be subject to Green Acres restrictions, done in compliance with the Local

and Nonprofit Land Survey Overview, set forth herein as chapter Appendix 2. The Overview is available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres). Technical assistance regarding the preparation of the land survey is available from Green Acres;

4. Costs of the preliminary assessment, when completed in accordance with N.J.A.C. 7:26E, as required under N.J.A.C. 7:36-19.2, and further testing as determined by the Department, based on findings and recommendations of the preliminary assessment;

5. Subject to N.J.A.C. 7:36-15.5, costs of demolition and removal of structures;

i. For a project located in an Urban Aid municipality, all allowable costs associated with demolition and removal of structures are eligible, subject to available funding;

ii. For a project not located in an Urban Aid municipality, allowable costs associated with demolition and removal of structures are limited to a maximum of 10 percent of the eligible land cost or \$100,000, whichever is less; and

iii. The nonprofit's attorney must submit a certification that each contract related to the demolition and removal was let in conformance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. This certification is required for each executed contract for professional services or construction, and must be on a form provided by Green Acres;

6. Costs of well testing done in compliance with the Private Well Testing Act, P.L. 2001, c.40; N.J.S.A. 58:12A-26 et seq., and implementing rules at N.J.A.C. 7:9E; and

7. Incidental costs, individually itemized, associated with the implementation of the acquisition project, including the cost of advertising, archaeological, architectural, conservation, engineering, feasibility studies, financial, geological, historic research, hydrological, inspection, legal, planning, or other professional advice, estimates, reports, services, or studies; and title insurance obtained in accordance with N.J.A.C. 7:36-20.4.3(c)1iv and 2iv. Incidental costs are limited to a maximum of two percent of the eligible land cost or \$20,000, whichever is less.

(b) The following types of costs are not allowable:

1. Administrative and operating costs and salaries and/or wages of any employee of the nonprofit incurred as part of the acquisition project;

2. Real property taxes;

3. Costs associated with an application for Green Acres funding that the Garden State Preservation Trust does not approve under N.J.A.C. 7:36-19.1.

4. Remediation work done to address any areas of concern, as defined under the Technical Requirements for Site Remediation, N.J.A.C. 7:25E, that are identified in the preliminary assessment required under N.J.A.C. 7:36-19.2 or by other means; and

5. Costs in excess of the sum of Green Acres funding plus the nonprofit's matching share, unless Green Acres has approved a request for supplemental funding under N.J.A.C. 7:36-20.3.

#### **SUBCHAPTER 16. NONPROFIT ACQUISITION PROJECTS: FUNDING AWARD CATEGORIES**

##### **7:36-16.1 Funding award categories**

(a) The Garden State Preservation Trust awards Green Acres funding to nonprofits for acquisition projects in the two award categories set forth in (b) and (c) below.

(b) A Standard acquisition project is the purchase of a project site that generally consists of one parcel or a unified group of parcels.

(c) A Planning Incentive acquisition project is the purchase of land that is identified for preservation in the Open Space and Recreation Plan(s) of one or more local government units or in another public or private local, regional, or statewide recreation and conservation plan or initiative approved by the Department.

(d) An acquisition project will compete in each funding round against other projects within the same funding award category, as described at N.J.A.C. 7:36-18.2.

#### **SUBCHAPTER 17. NONPROFIT ACQUISITION PROJECTS: APPLICATION PROCESS**

##### **7:36-17.1 Timing**

(a) A nonprofit may submit an application for Green Acres funding at any time.

(b) At least two times each State fiscal year, the Department shall rank and evaluate all applications deemed complete in accordance with N.J.A.C. 7:36-18.2 and shall submit to the Garden State Preservation Trust a list of projects that the Department recommends to receive funding in accordance with N.J.A.C. 7:36-19.1(a).

(c) At least two times each State fiscal year, the Garden State Preservation Trust shall approve projects from the list described at (b) above and shall prepare and submit for introduction in the Legislature proposed legislation appropriating moneys to fund the approved projects.

##### **7:36-17.2 Preapplication procedures**

(a) The Department encourages nonprofits to attend a Green Acres sponsored informational workshop, when offered, and to request a preapplication conference with Green Acres as early as possible, prior to application submission, to discuss project eligibility, award criteria, and project administration requirements.

(b) At least 15 days prior to submitting an application to Green Acres, the nonprofit shall publish a display ad in the official newspaper of each municipality in which the proposed project site is located, stating that the nonprofit intends to submit an application for Green Acres funding and notifying the public that the application will be available for review at the Green Acres offices. The nonprofit shall also send the notice to the clerk(s) of the municipality(ies) in which the proposed project site is located.

##### **7:36-17.3 At-risk authorization to proceed with acquisition**

(a) For the acquisition to remain eligible for Green Acres funding assistance, a nonprofit shall not enter into a purchase contract for any parcel within the proposed project site unless it has first received notification of the Green Acres funding award under N.J.A.C. 7:36-19.1 and notification of eligible land cost under N.J.A.C. 7:36-19.4, or an at-risk authorization.

(b) Within 14 days of a nonprofit's request for an at-risk authorization, Green Acres shall authorize, in writing, the nonprofit to proceed with the acquisition of a proposed project site at its own risk.

(c) Within 14 days of receiving the at-risk authorization from Green Acres, the nonprofit shall comply with the notification requirements described at N.J.A.C. 7:36-17.2(b), if it has not already done so. If the nonprofit has not submitted an application for Green Acres funding, the notice required under N.J.A.C. 7:36-17.2(b) shall indicate that the nonprofit may apply for Green Acres funding for the project.

(d) The Garden State Preservation Trust is not obligated to award funding for the acquisition of any project site for which Green Acres issues an at-risk authorization under (b) above and for which the nonprofit submits an application.

(e) A nonprofit is not obligated to submit an application under this subchapter or to acquire any project site for which it receives an at-risk authorization under (a) above.

(f) The acquisition of the proposed project site completed under an at-risk authorization must comply with the requirements of this chapter to remain eligible for Green Acres reimbursement.

#### **7:36-17.4 Application requirements**

(a) For a project in the Standard Acquisition funding award category, a nonprofit shall submit all of the following:

1. A completed application on a form obtained from Green Acres. The application shall identify the nonprofit, give the project type, indicate the municipality(ies) and county(ies) in which the proposed project site is located, provide a brief description of the project, specify the estimated cost of acquisition and the estimated funding request amount, identify the nonprofit's contact person for the project, and include the certification of the person authorized by the enabling resolution required under (a)2 below to submit the application.

i. The nonprofit shall base the funding request amount on the estimated land value or anticipated purchase price of the proposed project site and not solely on the tax assessed value of the proposed project site. The nonprofit shall include estimated costs of professional land surveying, appraisal, and preliminary assessment services; estimated cost to demolish structures, if applicable; and an estimate of any other allowable project costs in accordance with

N.J.A.C. 7:36-15.9;

2. A certified copy of the enabling resolution, drafted in accordance with an example obtained from Green Acres and approved by the governing body of the nonprofit, authorizing the submission of a Green Acres application and the execution of the project agreement described in N.J.A.C. 7:36-20.1(a) and identifying the person authorized to act in these matters on behalf of the nonprofit;

3. A narrative description of how and the extent to which the project meets the award criteria under N.J.A.C. 7:36-18.1;

4. A project reference map with dimensions of at least 11 inches by 17 inches which contains the following information:

i. The project name and location;

ii. The lot and block number(s), and the municipality(ies) and county(ies) in which the proposed project site is located;

iii. The owner(s) of record as of the date of application submission, as well as any adjacent property under the same ownership;

iv. The area of the project site, in acreage or square feet;

v. The dimensions of each lot marked on each perimeter boundary;

vi. Any improvement or structure shown in approximate location on the lots;

vii. If the acquisition of part of a lot is proposed, both the area of the part to be acquired and the area of the remainder shall be denoted;

viii. An appropriate scale relative to the size of the proposed project site so as to allow an appraiser to prepare an accurate appraisal;

ix. An arrow indicating north;

x. The location and area of all known existing easements, road rights-of-way, encroachments, dune and beach areas, and similar features, with the source of such information identified, and any proposed area(s) to be excepted from the project site;

xi. The location and area of all streams, rivers, waterbodies, and associated buffers. Any waterbody classified as Category One pursuant to N.J.A.C. 7:9B, and the associated special water resource protection area established pursuant to N.J.A.C. 7:8, must be shown and labeled;

xii. The location and area of tidelands, available from the Department at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis), as determined from New Jersey Tidelands claims maps, conveyance overlays, and atlas sheets;

xiii. The location and area of floodplain, as shown on the New Jersey State Flood Hazard Area maps prepared under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. and available from the Department at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis), or as determined from other State or Federal mapping or from a site delineation;

xiv. The location and area of coastal wetlands, as shown on maps prepared by the Department under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. and available from the Department at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis); and

xv. The location and area of freshwater wetlands, available from the Department at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis) or as determined from:

(1) A wetlands delineation, if one exists, verified by the Department's Land Use Regulation Program or its successor;

(2) Freshwater wetlands maps prepared by the Department under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., if they exist; or

(3) If the documents listed under (a)4xv(1) and (2) above do not exist, U.S. Fish and Wildlife Service National Wetlands Inventory (NWI) maps, in conjunction with County Soil Surveys published by the U.S. Department of Agriculture;

5. A street map that clearly indicates the location of the proposed project site;

6. Proof of publication of the newspaper notice, and proof that such notice was sent to the clerk of each municipality in which the proposed project site is located, as required at N.J.A.C. 7:36-17.2(b);

7. Digital images and prints that clearly show the existing conditions at the proposed project site;

8. A local tax map that indicates the lot(s) and block(s) proposed to be acquired;

9. If applicable, letters in support of the project from the general public; civic groups and agencies; local government units; municipal and county planning boards, park commissions, recreation departments, and environmental commissions; user groups; or other organizations;

10. The most recent existing survey of project site, if available;

11. A letter from the nonprofit's attorney certifying that the applicant organization qualifies as a nonprofit under this chapter; and

12. A copy of the nonprofit's by-laws.

(b) For a project in the Planning Incentive funding award category, a nonprofit shall submit all of the following:

1. A completed application on a form obtained from Green Acres. The application shall identify the nonprofit, give the project type, indicate the municipality(ies) and county(ies) in which the proposed project site is located, provide a brief description of the project, specify the estimated cost of acquisition and the estimated funding request amount, identify the nonprofit's contact person for the project, and include the certification of the person authorized by the enabling resolution required under (a)2 below to submit the application.

i. The nonprofit shall base its funding request amount on the estimated land value or anticipated purchase price of the proposed project site and not solely on the tax assessed value of the proposed project site. The nonprofit shall include estimated costs of professional land surveying, appraisal, and preliminary assessment services; estimated costs to demolish structures, if applicable; and an estimate of any other allowable project costs in accordance with N.J.A.C. 7:36-15.9;

2. A certified copy of the enabling resolution, drafted in accordance with an example obtained from Green Acres and approved by the governing body of the nonprofit, authorizing the submission of a Green Acres application and the execution of the project agreement

described in N.J.A.C. 7:36-20.1(a) and identifying the person authorized to act in these matters on behalf of the nonprofit;

3. Proof of publication of the newspaper notice, and proof that such notice was sent to the clerk of each municipality in which the proposed project site is located, as required at N.J.A.C. 7:36-17.2(b);

4. The Open Space and Recreation Plan(s) or other public or private local, regional, or statewide recreation and conservation plan or initiative approved by the Department, on which the nonprofit shall base its acquisition efforts;

5. If applicable, letters in support of the project from the general public; civic groups and agencies; local government units; municipal and county planning boards, park commissions, recreation departments, or environmental commissions; user groups; or other organizations;

6. A letter from the nonprofit's attorney certifying that the applicant organization qualifies as a nonprofit; and

7. A copy of the nonprofit's by-laws.

(c) Green Acres shall send a letter to the nonprofit acknowledging receipt of the application; providing the identification number assigned to the application; and requesting any corrections or clarifications to, or submission of any items missing from, the application, if applicable.

(d) All materials submitted under (a) or (b) above shall become the property of the Department.

(e) Green Acres staff shall conduct one or more project site inspections to verify the statements in the application.

(f) A nonprofit that has submitted an application shall monitor and immediately notify Green Acres of any pending or proposed actions or events affecting the proposed project site such as, but not limited to, any applications made for Coastal Area Facility Review Act (CAFRA) permits or for other Department permits, including, but not limited to, permits for stream encroachment, waterfront development, and sanitary landfill construction or operation; any application made to the Pinelands Commission under the Pinelands Comprehensive Management Plan for projects in the

Pinelands; any application made to the New Jersey Meadowlands Commission under the New Jersey Meadowlands Master Plan for projects in the Meadowlands District; any application for a local building permit or subdivision approval; or any application made to the County Agricultural Development Board or the State Agricultural Development Committee related to the proposed project site. The nonprofit shall also immediately notify Green Acres of any fires, demolitions, floods, natural disasters, donations, easements, leases, or survey discrepancies relevant to or affecting the proposed project site, or changes in ownership of the proposed project site.

## **SUBCHAPTER 18. NONPROFIT ACQUISITION PROJECTS: AWARD CRITERIA, RANKING AND EVALUATION**

### **7:36-18.1 Project award criteria**

(a) For a project in the Standard Acquisition funding award category, the Department shall assign priority points in accordance with (b) below to each acquisition project after it has received the complete application under N.J.A.C. 7:36-17.4. The assignment of priority points reflects the degree to which a proposed project is consistent with the most recent New Jersey Statewide Comprehensive Outdoor Recreation Plan (available from Green Acres); the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; and the findings and declarations and, as applicable, special considerations for funding awards set forth in the Green Acres laws, State open space and recreation priorities, and this chapter.

(b) The Department shall assign priority points according to the following protocol:

1. The Department may assign a maximum of 30 points based on the extent to which a project satisfies the need for open space for recreation in a particular county, as follows:

i. The extent to which there is a deficit in open space for recreation or conservation purposes within the jurisdiction of the local government unit, under the balanced land use guidelines for municipalities and counties, one to five points. For purposes of this section, the balanced land use guidelines recognize competing uses for developable land (for example, housing versus ballfields) and are expressed as goals. For a municipality, the balanced land use goal is that a minimum of three percent of the developed and developable area of the municipality should be held as



open space for recreation. For a county, the balanced land use goal is that a minimum of seven percent of the developed and developable area of the county should be held as open space for recreation. The Statewide Comprehensive Outdoor Recreation Plan (available from Green Acres) contains a complete discussion of the balanced land use guidelines; and

ii. The population density and the extent to which there is a shortage of availability of other open space which satisfies similar recreational needs within the area from which the majority of users of the proposed project are expected to come, one to 25 points.

2. The Department may assign a maximum of 30 points based on the extent to which a project meets environmental protection goals, as follows:

i. The extent to which the project contains open space and/or conservation areas of sufficient size and located so as to:

(1) Protect wildlife habitat, zero to three points;

(2) Enhance or preserve a critical environmental site identified in the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable, and/or another unique natural area or land type (for example, steep slope, dune, beach, wetland, forest land), zero to three points;

(3) Provide an addition to or link between existing public recreation and/or open space areas, zero to three points;

(4) Support a regional open space and/or conservation initiative (for example, shore protection or preservation of landscape ecology, biodiversity, wildlife corridors, and/or greenways), zero to three points; and

(5) Protect documented threatened and/or endangered species habitat, zero to three points.

ii. The extent to which a project creates or extends a greenway or protects a water resource area, including forests, shorelines, and stream corridors of sufficient size and located so as to:

(1) Establish an integral link in an existing or

planned local, regional or statewide conservation initiative, or a component of a Wild and Scenic Rivers system under the National Wild and Scenic Rivers Act, 16 U.S.C. § § 1271-1287 and/or the New Jersey Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq., zero to three points;

(2) Facilitate water resource protection efforts, zero to three points;

(3) Provide significant natural flood protection, zero to three points;

(4) Act as a physical or visual buffer between a significant natural resource or feature and development, or provide visual or physical access to a waterbody, zero to three points; or

(5) Protect headwaters, tributaries, or corridors of any water body classified as "Category One Waters," pursuant to N.J.A.C. 7:9B, and associated special water resource protection areas established pursuant to N.J.A.C. 7:8, as well as other streams or rivers, zero to three points.

3. The Department may assign a maximum of 15 points based on the extent to which a project meets historic resource preservation goals, as follows:

i. If the project is on, contained within, or adjacent to a site included on or eligible for inclusion on the New Jersey Register of Historic Places under P.L. 1970, c.268 (N.J.S.A. 13:1B-15.128 et seq.) and/or the National Register of Historic Places under 16 U.S.C. § § 470 et seq., or is a critical historic site identified in the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable, zero to three points;

ii. If the project is an historic project that provides extension to or linkage between existing public recreation and/or open space areas, zero to three points;

iii. The degree to which the project is a significant and/or contributing component of an historic district designated as such under N.J.S.A. 13:1B-15.128 et seq., zero to three points;

iv. If the project is part of an ongoing historic preservation or restoration project or historic study or investigation, zero to three points; and

v. The extent to which the project is one with historic integrity of location, design, setting, materials, workmanship, feeling, and association, zero to three points.

4. The Department may assign a maximum of 15 points based on the extent to which public involvement and support in the planning process for a project, beyond the minimum requirement of the newspaper notice required under N.J.A.C. 7:36-17.2, has been sought and obtained. Green Acres shall evaluate the degree to which:

i. There is public support, as demonstrated through letters from the municipal and county planning boards, park agencies, recreation departments, environmental commissions, user groups, and the general public, zero to five points; and

ii. The project is consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; the New Jersey Statewide Comprehensive Outdoor Recreation Plan; and local and county land use plans, especially open space and recreation elements thereof, as demonstrated in excerpts from or specific references to such plans in the project application, zero to 10 points.

5. The Department may assign a maximum of 28 points based on the overall quality of a project by evaluating the extent to which:

i. The project is accessible to population centers; is accessible by public transportation, walking or bicycling; and will create public access where none exists or where existing access is undeveloped or restricted, zero to four points;

ii. The project has recreation development potential, because it is suitable for major outdoor recreation facility development, is suitable for the use and/or development of appropriate water dependent recreation activities or facilities, represents part of a planned or existing waterfront development plan, provides environmental and/or historic interpretive opportunities, or improves management or expansion of recreation facilities or services, zero to 10 points;

iii. The project improves needed public access (visual and/or physical) to water, zero to six points; and

iv. The project is cost-effective as determined by weighing the quality of conservation or recreation opportunities provided by the project against the anticipated cost. Considerations include: the cost of alternative locations and facilities; whether the land is available at lower cost due to bargain sale, donation, easement, or partnerships; the cost of future operation and maintenance; and whether the project has development approvals from the local planning board; negative eight to eight points.

6. The Department may assign a maximum of 12 points to a project that incorporates the following items:

i. Private investment and/or ecotourism potential, public/private sector venture, and/or supports municipal and county (urban complex) strategic revitalization plans and programs consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable, one point;

ii. Waterfront development or redevelopment, one point;

iii. Trails, bike paths, or greenways, one point;

iv. Historic or archaeologic resource enhancement or preservation, one point;

v. Wildlife habitat protection, one point;

vi. Protection of any waterbodies classified as "Category One Waters," pursuant to N.J.A.C. 7:9B, and associated special water resource protection areas established pursuant to N.J.A.C. 7:8; or protection of other water resources, one point;

vii. A multiple use project (active and passive recreation opportunities), one point;

viii. Addition to a prior Green Acres-funded acquisition or development, one point;

ix. Private donation of land, labor, or cash, one point;

x. Likelihood or threat of private development for other than recreation and conservation purposes, one point. Examples of actions that may indicate a possible impending development may include whether the property is on the market or is the subject of local planning board action, or if any of the permits or approvals listed at N.J.A.C. 7:36-17.4(f), or other development permits or approvals, have been sought for the property;

xi. Supports a school construction initiative in an Abbott District established pursuant to N.J.A.C. 6A:10A, one point; and

xii. Reclamation of a former brownfields site, one point.

#### **7:36-18.2 Ranking and evaluation**

(a) Upon receipt of an application containing all the information required under N.J.A.C. 7:36-17.4, Green Acres shall determine if the project is eligible for funding in accordance with N.J.A.C. 7:36-15.2.

(b) For an eligible project in the Standard Acquisition funding award category, the Department shall:

1. Determine the total number of priority points assigned to the project under N.J.A.C. 7:36-18.1(b) above; and

2. Rank the projects on a priority list according to the total number of priority points assigned each project, with the project assigned the greatest total number of priority points ranking first.

(c) For an eligible project in the Planning Incentive acquisition funding award category, Green Acres shall evaluate the project, as follows:

1. For a nonprofit that is requesting funding for a Planning Incentive project for the first time, Green Acres shall review the Open Space and Recreation Plan(s) or other public or private local, regional, or statewide recreation and conservation plan or initiative approved by the Department, on which the nonprofit shall base its acquisition efforts. Green Acres also shall evaluate the nonprofit's missions/goals in the project area(s), how the targeted acquisitions will help meet those goals, and how the nonprofit's goals relate to the open space and recreation goals of the municipality(ies) and county(ies) in which the proposed project site is located, as well as to the State's

open space and recreation goals established in the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; the New Jersey Statewide Comprehensive Outdoor Recreation Plan; and other Department programs.

2. For a nonprofit that is requesting additional funding for a previously approved Planning Incentive acquisition project, Green Acres shall evaluate the need for additional funding based on a review of such considerations as the nonprofit's progress in acquiring land using previously approved funding and the timing and status of future land acquisitions.

#### **SUBCHAPTER 19. NONPROFIT ACQUISITION PROJECTS: APPROVAL AND APPRAISAL PROCEDURES, DETERMINATION OF ELIGIBLE LAND COST**

##### **7:36-19.1 Approval or denial of application; award of funding; procedural letter**

(a) Based on available funding, the number of nonprofit acquisition applications received in its funding award category, and the ranking and evaluation methods described at N.J.A.C. 7:36-18.2, the Department shall make a recommendation for approval or denial of a nonprofit application for an acquisition project to the Garden State Preservation Trust.

(b) If the application is approved by the Garden State Preservation Trust, the Department shall notify the nonprofit in writing of the amount of the Green Acres funding award, which is subject to legislative appropriation.

(c) If the application is denied by the Garden State Preservation Trust, the Department shall notify the nonprofit in writing of the reason for the denial.

(d) After the notification of a funding award under (b) above, and after the funding award has received legislative appropriation, Green Acres shall send the nonprofit a procedural letter that contains instructions for preparing the items required for disbursement of funding under N.J.A.C. 7:36-20.4, including the deed, title insurance policy, and survey. The procedural letter shall additionally direct the nonprofit to:

1. Obtain and submit to Green Acres a preliminary assessment of the project site in accordance with N.J.A.C. 7:36-19.2; and

2. Obtain and submit to Green Acres the appraisals required under N.J.A.C. 7:36-19.3.

#### **7:36-19.2 Preliminary assessment report**

(a) The nonprofit must obtain a preliminary assessment report of the project site prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. Upon receipt of the preliminary assessment report, Green Acres shall determine if the report contains the required information and shall notify the nonprofit as follows:

1. If the preliminary assessment report does not contain the required information, Green Acres shall send the nonprofit a deficiency letter identifying the additional information that must be submitted. The nonprofit shall submit the information by the date specified in the letter.

2. If the preliminary assessment report contains the required information and does not identify any areas of concern, as defined under the Technical Requirements for Site Remediation:

i. Green Acres shall send the nonprofit a letter acknowledging the sufficiency of the preliminary assessment report;

ii. The chief executive officer of the nonprofit shall certify, on a form provided by Green Acres with the sufficiency letter, that the nonprofit has reviewed the preliminary assessment report and has determined to proceed with the acquisition of the project site; and

iii. The nonprofit shall return the certification to Green Acres within 30 days of the date of the sufficiency letter. Green Acres shall not disburse any funding under N.J.A.C. 7:36-20.4 until it is in receipt of this certification.

3. If the preliminary assessment report contains the required information and identifies one or more areas of concern, as defined under the Technical Requirements for Site Remediation:

i. Green Acres shall send a letter notifying the nonprofit that the areas of concern must be addressed to the Department's satisfaction before Green Acres will disburse any funding for the project site;

ii. Once the areas of concern have been addressed

to the Department's satisfaction, the nonprofit shall submit evidence of such to Green Acres;

iii. Once Green Acres has reviewed and approved the nonprofit's submission, Green Acres shall send the nonprofit a letter of sufficiency;

iv. The chief executive officer of the nonprofit shall certify, on a form provided by Green Acres with the sufficiency letter, that the nonprofit has reviewed the preliminary assessment report and the manner in which the areas of concern have been addressed, and has determined to proceed with the acquisition of the project site; and

v. The nonprofit shall return the certification to Green Acres within 30 days of the date of the letter of sufficiency. Green Acres shall not disburse any funding under N.J.A.C. 7:36-20.4 until it is in receipt of this certification.

#### **7:36-19.3 Appraisal procedures**

(a) For a parcel with an estimated land value of less than \$250,000, a nonprofit shall obtain at least one professionally and independently prepared appraisal. For a parcel with an estimated land value of \$250,000 or more, the nonprofit shall obtain two professionally and independently prepared appraisals.

(b) The nonprofit shall obtain each appraisal required under (a) above in accordance with the following procedures:

1. The nonprofit shall prepare and submit to Green Acres a project reference map described at N.J.A.C. 17.4(a)4 for each parcel to be appraised under this section. The nonprofit also shall provide the project reference map to the appraiser(s) hired under (b)3 below;

2. Prior to hiring the appraiser(s), the nonprofit shall discuss with Green Acres staff the procedures and criteria for the selection and hiring of the appraiser(s) and the scope of work;

3. The nonprofit shall hire State-Certified General appraisers who Green Acres has approved based on a review of such appraisers' sample work product. The sample work product must be a Self Contained Appraisal Report as established in the Uniform Standards of Professional Appraisal Practice (USPAP) (Standards Rule 2-2), available from the Appraisal Foundation at 1029 Vermont Avenue, N.W., Suite 900, Washington,

D.C. 20005-3517 or on the web at <http://commerce.appraisalfoundation.org/html/USPAP2005/toc.htm>. Green Acres shall approve an appraiser based on the thoroughness of the sample appraisal report, the quality of the information used to reach a conclusion, and the soundness of the conclusion reached;

4. Prior to starting the appraisal(s), the nonprofit shall request a joint meeting with Green Acres staff and the appraiser(s) to discuss the scope of work and to visit the project site;

5. All appraisals shall be Self-Contained Appraisal Reports as established in the Uniform Standards of Professional Appraisal Practice (Standards Rule 2-2) available from the Appraisal Foundation at 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517 or on the web at <http://commerce.appraisalfoundation.org/html/USPAP2005/toc.htm>; and

6. The nonprofit shall submit to Green Acres one copy of each completed appraisal.

(c) Green Acres shall require a nonprofit to obtain a report by an engineer, architect, or other specialist to supplement the appraisal of the project site if Green Acres determines that the unique nature of the project site necessitates it.

(d) The nonprofit shall immediately submit to Green Acres, in writing, any information it has that could affect the appraised value of the project site.

#### **7:36-19.4 Determination and notification of eligible land cost**

(a) Green Acres shall determine the sufficiency of any appraisal submitted under N.J.A.C. 7:36-19.3 and shall notify the nonprofit in writing of any deficiencies that prevent the use of the appraisal submitted to determine the eligible land cost or the hypothetical land value.

(b) Green Acres shall determine the eligible land cost for each parcel within a project site as follows:

1. If only one appraisal has been obtained under N.J.A.C. 7:36-19.3 on a parcel, the eligible land cost shall be the parcel's certified market value, as determined pursuant to (c) below;

2. If two appraisals have been obtained under

N.J.A.C. 7:36-19.3 on a parcel, and the difference between the two appraisal values is greater than 10 percent of the higher appraisal value, the eligible land cost shall be the parcel's certified market value, as determined pursuant to (c) below; and

3. Except as provided under (b)2i and ii below, if two appraisals have been obtained under N.J.A.C. 7:36-19.3 on a parcel, and the difference between the two appraisal values is 10 percent of the higher appraisal value or less, the eligible land cost shall be the average of the appraisal values:

i. If either of the two appraisal values exceeds \$3 million, the eligible land cost shall be the certified market value, as determined pursuant to (c) below; and

ii. The nonprofit may request that Green Acres provide a certified market value rather than an average of the appraisal values, in which case the eligible land cost shall be that certified market value, as determined pursuant to (c) below.

4. Green Acres shall periodically audit its appraisal review process by providing a certified market value determined pursuant to (c) below for projects that qualify for an average of the appraisal values. In such instances, the certified market value shall be the eligible land cost for the parcel of land.

5. In addition to the eligible land cost, Green Acres also shall issue a hypothetical land value for the parcel of land, based on information provided with the appraisal(s) prepared in accordance with N.J.A.C. 7:36-19.3. This requirement shall be in effect until June 30, 2009, pursuant to the Garden State Preservation Trust Act (N.J.S.A. 13:8C-26).

(c) In order to certify the market value of a parcel, Green Acres shall review the appraisal(s) obtained under N.J.A.C. 7:36-19.3, inspect the project site, examine the comparable sales used by the appraiser(s), and review all other data pertinent to the market value as estimated by the appraiser(s) and, based on this information, reach a determination as to the market value of the parcel. Green Acres shall certify this value which shall then be considered the parcel's certified market value.

(d) Green Acres shall send to the nonprofit a notification of the eligible land cost, a hypothetical land value, and an Acquisition Payment Request Form that the nonprofit shall use to request a disbursement of funds under N.J.A.C. 7:36-20.4.

(e) If the final land survey plan of a parcel submitted with an advance payment or reimbursement request under N.J.A.C. 7:36-20.4(c) shows a total area of Green Acres restrictions on the parcel that is different from the acreage total shown in the notification of the eligible land cost, Green Acres shall notify the nonprofit or appraiser(s), request an adjusted market value determination, if needed, and revise accordingly the eligible land cost and hypothetical land value to reflect the actual acreage of the area of Green Acres restrictions on the parcel.

**SUBCHAPTER 20. NONPROFIT  
ACQUISITION PROJECTS: PROJECT  
AGREEMENT, NEGOTIATIONS FOR PURCHASE  
OF PROJECT SITE, SUPPLEMENTAL FUNDING,  
DISBURSEMENTS, ACCOUNTING AND  
RECORDKEEPING REQUIREMENTS**

**7:36-20.1 Project agreement**

(a) Each Green Acres acquisition project shall have a project agreement, which shall be executed by the nonprofit and the Department. The project agreement shall set out the rights and responsibilities of the nonprofit and the Department in regards to the acquisition project and shall contain all information identified in (c) below.

(b) Green Acres shall send the project agreement to the nonprofit for approval and signature after the funding award made under N.J.A.C. 7:36-19.1(b) has received legislative appropriation. The nonprofit shall ensure that the project agreement is approved and signed by the nonprofit's attorney, and executed by the person authorized under the resolution described at N.J.A.C. 7:36- 17.4(a)2 or (b)2, unless the nonprofit submits an updated resolution.

(c) The project agreement shall contain:

1. An identification of the project site;
2. The estimated cost of acquisition of the project;
3. The amount of the Green Acres funding award pursuant to N.J.A.C. 7:36- 19.1(b) and the nonprofit's matching share of the cost of acquisition;
4. The following conditions:
  - i. That the nonprofit shall make and keep the

lands accessible to the public;

ii. That the nonprofit shall agree not to convey the lands unless:

(1) The transferee is the State, a local government unit, another nonprofit, or the Federal government, if permitted by the applicable Green Acres law;

(2) The lands will continue to be held for public recreation and conservation purposes; and

(3) The Commissioner approves the transfer in writing prior to the nonprofit's offering, for sale or conveyance, of any of its interest in the project site. This requirement for written approval is met if an intended transferee is named in the project agreement executed under this section; and

iii. That the nonprofit shall agree to execute and donate to the State, at no charge, a permanent conservation restriction, historic preservation restriction, or both, or a Secondary Right of Enforcement, as applicable, prepared and approved by the State. The conservation or historic preservation restriction shall include:

(1) The conditions governing the use, future development, and maintenance of the project site; the public access to the project site; and the conveyance of any interest in the project site;

(2) The State's right to enforce the conditions of the restriction; and

(3) The remedies available to the State in the event the nonprofit does not comply with the conditions of the restriction;

5. Any other special conditions;

6. The project period during which the acquisition project must be completed, generally two years from the effective date of the project agreement;

7. The requirements for recordkeeping and project administration;

8. The requirement that the deed for any parcel acquired as part of the project site contain the following clause:

“The lands being conveyed herein are being purchased

with Green Acres funding and are subject to Green Acres restrictions as provided at N.J.S.A. 13:8C-1 et seq. and N.J.A.C. 7:36, as may be amended and supplemented, and the grantee herein agrees to accept these lands with the Green Acres restrictions, including restrictions against disposal or diversion to a use for other than recreation and conservation purposes"; and

9. Other terms and conditions, including a statement of the remedies described at (j) through (m) below and a statement of the requirements for maintenance, use, development, and disposal or diversion of parkland as described at N.J.A.C. 7:36-25 and 26.

(d) The nonprofit shall return the signed project agreement to Green Acres.

(e) Upon receipt of the project agreement executed in accordance with (b) above, the Department shall establish an account from which Green Acres shall disburse the matching grant.

(f) After the project agreement has been fully executed by the State, Green Acres shall send to the nonprofit a copy of the fully executed project agreement.

(g) The nonprofit shall record and return to Green Acres the conservation restriction or historic preservation restriction, as applicable, contained in the project agreement as a first encumbrance immediately upon closing or upon disbursement of matching grant funding under N.J.A.C. 7:36-20.4.

(h) Green Acres may extend the project period established in the project agreement upon request, if the nonprofit demonstrates that it is making a good faith effort to complete the project in an expeditious manner.

(i) The Department and the nonprofit shall execute an amendment to the project agreement to reflect any supplemental funding provided under N.J.A.C. 7:36-20.3.

(j) In addition to any other rights or remedies available to the Department under law, if the nonprofit does not comply with any of the requirements of the project agreement; the conservation restriction and/or historic preservation restriction, as applicable, required under (c)4iii above; this chapter; or the Green Acres laws, or if the nonprofit makes any material misrepresentation in the project application and/or the documentation submitted in support of the application, the Department

may take any of the following actions:

1. Issue a written notice of noncompliance directing the nonprofit to take and complete corrective action within 30 days of receipt of the notice. If the nonprofit does not take corrective action, or if the corrective action taken is not adequate in the judgment of the Department, then the Department may take any of the actions described at (j)2 through 4 and (k) below;

2. Withhold a matching grant disbursement or portion thereof;

3. Terminate the project agreement; and/or

4. Demand immediate repayment of all Green Acres funding that the nonprofit has received.

(k) If the nonprofit fails to comply with any of the terms of the project agreement; the conservation restriction and/or historic preservation restriction, as applicable, required under (c)4iii above; this chapter; or the Green Acres laws, the Department may initiate suit for injunctive relief or to seek specific enforcement, without posting bond, it being acknowledged that any actual or threatened failure to comply will cause irreparable harm to the State and that money damages will not provide an adequate remedy.

(l) If the Department incurs legal or other expenses, including its own personnel expenses, for the collection of payments due or in the enforcement or performance of any of the nonprofit's obligations under the project agreement; the conservation restriction and/or historic preservation restriction, as applicable, as required under (c)4iii above; this chapter; or the Green Acres laws, the nonprofit shall pay these expenses on demand by the Department.

(m) The Department is not required to mitigate any damages to the nonprofit resulting from the nonprofit's noncompliance with the terms of the project agreement; the conservation restriction and/or historic preservation restriction, as applicable, required under (c)4iii above; this chapter; or the Green Acres laws.

#### **7:36-20.2 Negotiations for purchase of project site**

(a) For any parcel that is to be acquired in whole or in part with Green Acres funding, the nonprofit may enter into a purchase contract with the property owner only after the nonprofit has received the notification of the Green Acres funding award under N.J.A.C. 7:36-19.1 and the notification of the eligible land cost under N.J.A.C. 7:36-19.4, or an at-risk authorization under N.J.A.C. 7:36-17.3.

(b) Any person who performed an appraisal under N.J.A.C. 7:36-19.3 of any parcel in the project site shall not conduct negotiations for the acquisition of such parcel.

(c) The nonprofit shall conduct all negotiations in conformance with the Garden State Preservation Trust Act, particularly N.J.S.A. 13:8C-26.

(d) The nonprofit shall share both the eligible land cost and the hypothetical land value with the property owner and shall base its negotiation on the higher of the two values. This requirement shall be in effect until June 30, 2009, pursuant to the Garden State Preservation Trust Act (N.J.S.A. 13:8C-26).

### **7:36-20.3 Supplemental funding**

(a) A nonprofit may request, in writing, supplemental funding for a project after it has received the notification of the eligible land cost under N.J.A.C. 7:36-19.4 and if the cost of acquisition exceeds the matching grant amount awarded under N.J.A.C. 7:36-19.1 plus the nonprofit's matching share of the cost of acquisition.

(b) Provided sufficient funds are available, Green Acres shall recommend an increase in the amount of funding for a project in response to a request submitted under (a) above to 50 percent of the cost of acquisition.

(c) Any supplemental funding provided under this section is subject to legislative appropriation.

(d) The Department and the nonprofit shall execute an amendment to the project agreement in accordance with N.J.A.C. 7:36-20.1 to reflect any supplemental funding provided under this section.

### **7:36-20.4 Disbursement of matching grant**

(a) Green Acres shall disburse the matching grant in advance of closing or as reimbursement after closing.

(b) If the nonprofit seeks payment in advance of closing, it shall submit its request at least 60 days before the scheduled date of closing.

(c) For each parcel of land in the project site for which payment is requested, the nonprofit shall submit:

1. For payment in advance of closing, the following:

i. Until the deed is executed, a copy of the contract of sale. Immediately upon acquiring the land, the nonprofit shall record the deed and, within 30 days of its recording, shall submit to Green Acres a copy of the recorded deed containing the metes and bounds description required under (c)1ii below, including the clause stating that the parcel is subject to the Green Acres restrictions as required by the project agreement under N.J.A.C. 7:36- 20.1(a);

ii. The survey package including:

(1) Two copies of a land survey plan prepared in accordance with the Local and Nonprofit Land Survey Overview, attached as Appendix 2, incorporated herein by reference, and supplied to the non-profit by Green Acres with the procedural letter at N.J.A.C. 7:36-19.1. The survey shall be prepared in accordance with the rules of the State Board of Professional Engineers and Land Surveyors at N.J.A.C. 13:40-5 and be compatible with the Mapping and Digital Data Standards at N.J.A.C. 7:1, Appendix A. The survey shall show areas to be subject to or excluded from Green Acres restrictions;

(2) One 3 1/2 inch floppy diskette or CD-ROM of the parcel survey lines in a . dxf format;

(3) Two copies of the metes and bounds description, stating acreage of each included lot, corresponding to the survey required under (c)1ii(1) above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor, each with an 8 1/2 inch by 11 inch reduced survey plan described at (c)1ii(1) above attached for recording; and

(4) A Surveyor's Certification and Summary form provided by Green Acres, completed and signed by the surveyor, that identifies the project, provides information about the parcel's survey and title, and certifies that the survey was completed in accordance with the Local and Nonprofit Land Survey Overview, set forth herein as chapter Appendix 2 and available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres).

iii. Until the title insurance policy described at (c)2iii below is issued, a copy of the title insurance binder, with copies of the deeds of record and of all easements, restrictions, and other instruments of record as attachments. The binder shall insure the land survey plan and shall name the State as an additional insured.



Within 60 days of the recording of the deed, the nonprofit shall submit to Green Acres the title insurance policy;

iv. A copy of each cancelled check (both sides) or evidence of each electronic transfer of funds for allowable project costs under N.J.A.C. 7:36-15.9 associated with the parcel;

v. An Acquisition Payment Request Form, provided by Green Acres with the notification of the eligible land cost under N.J.A.C. 7:36-19.4, with the following items completed:

(1) The project name, lot and block number(s), name of nonprofit, and the municipality and county in which the parcel is located;

(2) An itemized statement of the cost of acquisition of the parcel;

(3) A certification by the nonprofit's chief executive officer or chief financial officer that the information contained in the form is accurate and that no bonus has been given or received in connection with any bill for which the nonprofit seeks payment;

(4) A justification of any difference between the purchase price and the eligible land cost of the parcel; and

(5) A justification of any difference between the parcel acreage as described in the appraisal and the parcel acreage to be purchased;

vi. The certification from the nonprofit's chief executive officer regarding the Preliminary Assessment, required under N.J.A.C. 7:36-19.2, if not previously submitted; and

vii. For a purchase of a conservation or historic preservation restriction, the Present Condition Report described at N.J.A.C. 7:36-15.7(e).

2. For reimbursement after closing, the following:

i. A copy of the recorded deed, containing the metes and bounds description required under ii. below, including the clause stating that the parcel is subject to the Green Acres restrictions as required by the project agreement under N.J.A.C. 7:36-20.1;

ii. The survey package including:

(1) Two copies of a land survey plan prepared in accordance with the Local and Nonprofit Land Survey Overview, attached as Appendix 2, incorporated herein by reference, and supplied to the non-profit by Green Acres with the procedural letter at N.J.A.C. 7:36-19.1. The survey shall be prepared in accordance with the rules of the State Board of Professional Engineers and Land Surveyors at N.J.A.C. 13:40-5 and be compatible with the Mapping and Digital Data Standards at N.J.A.C. 7:1, Appendix A. The survey shall show areas to be subject to or excluded from Green Acres restrictions;

(2) One 3 1/2 inch floppy diskette or CD-ROM of the parcel survey lines in a . dxf format;

(3) Two copies of the metes and bounds description, stating acreage of each included lot, corresponding to the survey required under (c)2ii(1) above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor, each with an 8 1/2 inch by 11 inch reduced survey plan described at (c)2ii(1) above attached for recording; and

(4) A Surveyor's Certification and Summary form provided by Green Acres, completed and signed by the surveyor, that identifies the project, provides information about the parcel's survey and title, and certifies that the survey was completed in accordance with the Local and Nonprofit Land Survey Overview, set forth herein as chapter Appendix 2 and available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres).

iii. A copy of the title insurance policy, with copies of the deeds of record and of all easements, restrictions, and other instruments of record as attachments, and conforming to the following:

(1) The policy must show that the nonprofit has clear title to the project site;

(2) The policy must contain a survey endorsement that insures title to the area within the metes and bounds description;

(3) The policy amount must be at least equal to the purchase price; and

(4) The policy must name the State as an

additional insured;

iv. A copy of the cancelled check (both sides) or evidence of each electronic transfer of funds for the purchase of the parcel and for allowable project costs under N.J.A.C. 7:36-15.9 associated with the parcel;

v. An Acquisition Payment Request Form, provided by Green Acres with the notification of the eligible land cost under N.J.A.C. 7:36-19.4, with the following items completed:

(1) The project name, lot and block number(s), name of nonprofit, municipality, and county;

(2) An itemized statement of the cost of acquisition of the parcel;

(3) A certification by the nonprofit's chief executive officer or chief financial officer that the information contained in the form is accurate and that no bonus has been given or received in connection with any bill for which the nonprofit seeks payment;

(4) A justification of any difference between the purchase price and the eligible land cost of the parcel; and

(5) A justification of any difference between the parcel acreage as described in the appraisal and the parcel acreage purchased;

vi. The certification from the nonprofit's chief executive officer regarding the Preliminary Assessment, required under N.J.A.C. 7:36-19.2, if not previously submitted; and

vii. For a purchase of a conservation or historic preservation restriction, the Present Condition Report described at N.J.A.C. 7:36-15.7(e).

(d) Upon receipt of a request for payment and all of the items listed under (c) above and approval of all required documentation, Green Acres shall send to the nonprofit a payment invoice for Green Acres' share of the allowable project costs, up to the funding award. The nonprofit's chief financial officer or the nonprofit's authorized designee shall verify, sign, and return the invoice to Green Acres for processing, along with information related to the bank account required under (f) below.

(e) If a nonprofit acquires a conservation restriction

under N.J.A.C. 7:36- 15.7(a)2 or an historic preservation restriction under N.J.A.C. 7:36- 15.7(b)2, Green Acres will provide to the nonprofit for land acquisition half of what the nonprofit would otherwise be eligible to receive for the purchase of the restriction.

(f) The nonprofit shall establish a separate, non-interest-bearing bank account for the purpose of receiving Green Acres disbursement(s) for the project. If a nonprofit has undertaken more than one Green Acres funded project, it may establish a single bank account to receive all Green Acres disbursements for all of the projects. If the nonprofit will be receiving Green Acres a disbursement only as reimbursements, it may designate an existing account into which the disbursement will be received, provided proper accounting procedures are in place to allow for easy and accurate financial tracking of Green Acres disbursements. Any account into which Green Acres disbursements are deposited will be subject to audit by the State. The State shall mail each matching grant disbursement to the nonprofit in the form of a check. The nonprofit shall not sign over the check to the property owner or any other person but shall deposit the check into such account.

(g) Immediately upon closing or upon receipt of the matching grant disbursement under this section, the nonprofit shall have the conservation or historic preservation restriction provided by Green Acres at N.J.A.C. 7:36-20.1(c), recorded by the county clerk or registrar as a first encumbrance on the project site. The recorded restriction shall be returned to Green Acres.

(h) The nonprofit shall immediately inform Green Acres if the closing date established in the contract of sale for the project site is postponed for any reason. A nonprofit that has received a disbursement in advance of a scheduled closing that is postponed is subject to the following conditions:

1. As of the 30th day after the disbursement is made, the nonprofit shall pay to the State interest accrued on the amount of the disbursement from that day up to the 90th day after the disbursement. The interest rate shall be the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at R. 4:42-11(a)(ii) in effect on the 30th day.

2. As of the 90th day after the disbursement is made, the nonprofit shall repay to the State the amount of the disbursement plus accrued interest from 30 days after disbursement to the date of repayment. The interest rate shall be the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at R.

4:42-11(a)(ii) in effect on the 90th day.

(i) A nonprofit that has repaid the disbursement plus accrued interest under (h)2 above may, upon acquisition of the project site, submit a request for reimbursement after closing in accordance with (c)2 above.

(j) The nonprofit may unilaterally withdraw the project at any time before it receives Green Acres funding. The nonprofit shall not terminate the project agreement after it receives any Green Acres funding without the written consent of Green Acres.

(k) If the nonprofit terminates the project agreement under (j) above, the nonprofit is responsible for any costs of acquisition incurred as of the time of termination. The nonprofit shall also repay, with interest at the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at R. 4:42-11(a)(ii) in effect at the time of termination, any disbursements that Green Acres made to the nonprofit for the project.

(l) Green Acres shall provide to the nonprofit a sign (or signs, as applicable) that identifies the parkland as a Green Acres funded site that is permanently dedicated to recreation and conservation purposes. The nonprofit shall post the sign(s) in a prominent place on the funded parkland and maintain it.

#### **7:36-20.5 Accounting and recordkeeping**

(a) The nonprofit shall maintain and make available to the Department for inspection upon request all financial documents and records related to the project that are required to be maintained in accordance with (e) below.

(b) The nonprofit, its contractors, and subcontractors shall employ generally accepted accounting procedures that adequately identify the costs associated with the Green Acres matching grant.

(c) The nonprofit shall maintain separate records for each project including the amount, receipt, and disposition of all funding received for the project, including Green Acres grants, contributions, gifts, or donations from any other sources.

(d) The nonprofit shall conduct annual audits and submit audit reports in conformance with the Single Audit Act of 1984, P.L. 98-502 and the Single Audit Act Amendments of 1996, P.L. 104-156 (31 U.S.C. § 7501 et seq.), Federal Office of Management and Budget (OMB) Circular A-133: "Audits of State, Local

Governments, and Non-Profit Organizations," incorporated herein by reference, and State OMB Circular 04-04: "Single Audit Policy for Recipients of Federal Grants, State Grants, and State Aid," incorporated herein by reference.

1. Audit reports shall address the nonprofit's compliance and all specific instances of noncompliance with the material terms and conditions of the project agreement and applicable laws and regulations.

2. Audit reports shall contain an itemized schedule of all project-related financial assistance received by the nonprofit identifying: grantor agency, program title, State account number, and total disbursement.

(e) The nonprofit shall provide a duly authorized representative of the Department access to all records, books, documents, and papers pertaining to the project agreement and/or the approved project for audit, examination, excerpt, and transcript purposes. Such records shall be maintained and access shall be provided during performance of the project and for three years after the latter date of either final payment or audit resolution. The nonprofit shall include this requirement in all project-related contracts.

(f) The Department shall adjust the nonprofit's final payment, if necessary, based on the results of the annual audit.

### **SUBCHAPTER 21. NONPROFIT DEVELOPMENT PROJECTS: PROJECT ELIGIBILITY, CONDITIONS, AND LIMITATIONS**

#### **7:36-21.1 General provisions and funding policies**

(a) Nonprofits may apply to the Department for Green Acres matching grant funding for the development of land for public outdoor recreation and conservation purposes, to a maximum of 50 percent of the allowable project costs at N.J.A.C. 7:36-21.6. To be eligible for funding, a nonprofit development project either must be located within an Urban Aid municipality, a Densely or Highly Populated municipality, or a Densely Populated County, or the supermajority (more than two-thirds) of the users of the facility to be developed must be from those areas. There is no minimum or maximum amount that a nonprofit may request as a matching grant in such an application.

(b) Each year, the Department shall establish a maximum funding limit per project or per applicant based on total funding requests, available funds, project priorities established under N.J.A.C. 7:36-23.1, the legislative

findings of the Garden State Preservation Trust Act (N.J.S.A. 13:8C-2), and such considerations as the nonprofit's progress in expending any approved Green Acres funding, geographic distribution of applications, and total population or population density of the county and/or municipality(ies) in which the proposed project site is located.

(c) Any Green Acres funding award is subject to legislative appropriation.

(d) A nonprofit that receives Green Acres funding shall execute and donate to the State, at no charge, a permanent conservation restriction, historic preservation restriction, or both, as applicable, on the project site. The restriction shall be prepared or approved by the State. If the project is located on land owned in fee simple by a local government unit and listed on the local government unit's recorded ROSI, the nonprofit is not required to execute a restriction on the project site.

(e) All land and facilities developed with Green Acres funding must be accessible to the public.

(f) No grant shall be made to a nonprofit for a development project for recreation and conservation purposes on lands owned by a local government unit unless the local government unit is a co-applicant with the nonprofit or has otherwise indicated its approval in writing of the proposed development project.

(g) A development project shall be located on land that is owned in fee simple by the nonprofit, or on land for which the nonprofit has obtained an irrevocable lease approved by Green Acres for at least 25 years, except as described in (g)1 and 2 below. The 25-year term of the lease shall begin from the date of the proceed to bid letter described at N.J.A.C. 7:36-24.2(a).

1. If the land is not owned by the nonprofit but is listed on a local government unit's recorded ROSI, a use agreement may be used in place of a lease. The use agreement must be approved by Green Acres and must have a 25- year term that begins from the date of the proceed to bid letter described at N.J.A.C. 7:36-24.2(a).

2. If the land is held by the Department, the Department shall determine the appropriate term and provisions of the lease or use agreement.

(h) A nonprofit that is awarded Green Acres funding is responsible for obtaining all permits and meeting all

requirements of all Federal statutes, Green Acres laws, and other State, county and local statutes, regulations, and ordinances, as applicable, related to the project.

(i) A nonprofit shall comply with Executive Order No. 91(1993) regarding the procurement and use of recycled products when developing land with Green Acres funding. The executive order is available at [www.nj.gov/infobank/circular/eot91.htm](http://www.nj.gov/infobank/circular/eot91.htm) or by writing to the Division of Solid and Hazardous Waste, PO Box 414, Trenton, New Jersey 08625-0414. Additional information about the procurement and use of recycled products is available at [www.recyclenj.org](http://www.recyclenj.org) or by writing to the Bureau of Recycling and Planning in the Division of Solid and Hazardous Waste.

(j) The Department encourages the nonprofit to design and construct the development project using clean energy, renewable energy, and energy efficient technologies.

(k) The disbursement of Green Acres funding to a nonprofit shall not exceed the actual amount the nonprofit expended for all allowable project costs listed under N.J.A.C. 7:36-21.6.

(l) It is the responsibility of the nonprofit to obtain and utilize the most current applicable forms required as part of a Green Acres development project. All forms can be obtained from Green Acres at PO Box 412, Trenton, New Jersey 08625.

(m) A nonprofit that has not demonstrated reasonable progress in completing a previously approved Green Acres project or is not in compliance with the requirements of this chapter, such as by not maintaining its funded parkland in accordance with the terms of the project agreement or conservation or historic preservation restriction required under (d) above, may be ineligible for funding.

#### **7:36-21.2 Eligible projects**

(a) Developments for recreation and conservation purposes, as defined at N.J.A.C. 7:36-2.1, are eligible for Green Acres funding. A development project may include, for example:

1. Construction of a facility that will support the increased public use or enjoyment of outdoor recreation and conservation land, such as a facility for outdoor games and sports, winter sports, boating, picnicking, fishing, biking, hiking, swimming, camping, nature and historic interpretation, or similar activities;

2. Lighting for an existing recreational or conservation facility;

3. A parking area that supports an outdoor recreation or conservation project;

4. A restroom or comfort facility, park administrative office, maintenance and storage area, or other similar structure that supports outdoor recreation or conservation;

5. A structure that partially encloses an outdoor recreation facility;

6. Restoration or rehabilitation of a facility that was developed 20 or more years before the date of the nonprofit's application with funding from Green Acres or under the Land and Water Conservation Fund Act of 1965, 16 U.S.C. § 4601, the Urban Park and Recreation Recovery Program, 16 U.S.C. § 2501, or any other Federal or State funding program administered through Green Acres. A facility that was developed with such funding fewer than 20 years before the date of the application may be eligible under this paragraph if the nonprofit demonstrates that the restoration or rehabilitation is necessary due to normal wear and tear on the facility and not to abuse, neglect, or vandalism;

7. Other development that supports the use of an existing recreation or conservation facility held by the nonprofit, provided that the existing recreation or conservation facility shall be subject to the Green Acres restrictions applicable to funded parkland upon completion of the supporting facility developed with Green Acres funding; and

8. Dredging of a pond, lake, or segment of a stream or river consistent with N.J.A.C. 7:36-21.4.

#### **7:36-21.3 Ineligible projects**

(a) The following types of development projects are not eligible for Green Acres funding:

1. Any facility or structure that does not support outdoor recreation or conservation;

2. Any facility to which public access is not provided;

3. A professional sports facility;

4. Any development that will significantly impair the land's natural resources, as determined by Green Acres;

5. Shore protection or beach renourishment or replenishment activities that are eligible for funding under the Department's Shore Protection Program, administered by the Bureau of Coastal Engineering in the Office of Engineering and Construction. Information about the Shore Protection Program is available at [www.nj.gov/dep/shoreprotection](http://www.nj.gov/dep/shoreprotection) or by contacting the Bureau of Coastal Engineering at 1510 Hooper Avenue, Toms River, New Jersey 08753;

6. Any development project that will use tropical hardwood; and

7. A structure that entirely encloses an outdoor recreation facility on a temporary or permanent basis.

#### **7:36-21.4 Dredging of a pond, lake, or segment of a stream or river**

(a) The dredging of a pond, lake, or segment of a stream or river is eligible for Green Acres funding as a development project if:

1. The dredging would enhance public recreational use of the water body and surrounding parkland or support natural resource protection;

2. The pond, lake, or segment of a stream or river is held by the nonprofit;

3. The nonprofit provides public access to the water area;

4. Green Acres has not previously funded the dredging of the pond, lake, or segment of stream or river;

5. The nonprofit incorporates into the dredging project long-term corrective features such as on-site sedimentation basins and other methods of maintaining the depth of the dredged area; and

6. The nonprofit plans its project in consultation with the appropriate Soil Conservation District and obtains all necessary permits.

(b) The nonprofit shall carry out all dredging and disposal of dredging spoils in conformance with all applicable State and Federal laws. As set forth in N.J.A.C. 7:36-25.2, in some cases, the disposal of dredging spoils on parkland requires approval as a diversion of parkland under

N.J.A.C. 7:36- 26.

### **7:36-21.5 Development on landfills**

(a) A nonprofit seeking Green Acres funding for the development of a facility for recreation and conservation purposes on a closed landfill shall submit the following with its application under N.J.A.C. 7:36-22.4:

1. The preliminary assessment required under N.J.A.C. 7:36-23.4;

2. Verification that the landfill is properly closed, in compliance with the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and its implementing rules; for landfills in the Pinelands, in compliance with the Pinelands Comprehensive Management Plan; or, for landfills in the Meadowlands District, in compliance with the New Jersey Meadowlands Master Plan and District Solid Waste Management Plan. Such verification shall include a copy of the closure approval letter from the Department's Division of Solid and Hazardous Waste or the equivalent written approval from the Pinelands Commission or Meadowlands Commission, if applicable;

3. A site map and narrative, including:

i. The general types, locations, and depth of waste on the site;

ii. The thickness and type of cover materials; and

iii. The dates the landfill was in use;

4. Detailed results of testing of soil borings, surface water, and ground water, if any; and

5. A copy of the application for a Landfill Disruption Approval for the project, pursuant to the Department's Division of Solid and Hazardous Waste rules at N.J.A.C. 7:26-2A.8(j), or equivalent document from the Pinelands Commission or Meadowlands Commission.

### **7:36-21.6 Allowable project costs**

(a) For development projects, the following types of costs are allowable, provided the nonprofit incurs such costs in conformance with all applicable laws, as well as the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.:

1. Construction costs;

2. Engineering costs associated with facility design and preparation of plans and specifications, supervision, and inspection, not to exceed 13 percent of the construction costs submitted by the local government unit and approved for Green Acres funding;

3. Incidental costs, individually itemized, associated with the implementation of the development project, including the cost of advertising, archaeological, architectural, conservation, financial, geological, historic research, hydrological, legal, or other professional advice, estimates, reports, services, or studies and the cost of preliminary planning and engineering necessary for the preparation of the application, provided such costs are not also included in the costs listed at (a)1 or 2 above. Incidental costs are limited to a maximum of two percent of the construction costs submitted by the nonprofit and approved for Green Acres funding, or \$20,000, whichever is less;

4. Permit fees associated with the development project;

5. Costs of equipment required to make the facility operational; and

6. Costs of the preliminary assessment, when completed in accordance with N.J.A.C. 7:26E, as required under N.J.A.C. 7:36-23.4, and further testing as determined by the Department, based on findings and recommendations of the preliminary assessment.

(b) The following types of costs are not allowable:

1. Administrative and operating costs and salaries and/or wages of any employee of the nonprofit incurred as part of the development project;

2. Costs associated with an application for Green Acres funding that the Garden State Preservation Trust does not approve under N.J.A.C. 7:36-23.3;

3. Remediation work done to address any areas of concern, as defined under the Technical Requirements for Site Remediation, N.J.A.C. 7:25E, that are identified in the preliminary assessment required under N.J.A.C. 7:36-23.4 or by other means; and

4. Costs in excess of the sum of the approved Green Acres funding plus the nonprofit's matching share, unless Green Acres has approved a request for supplemental funding under N.J.A.C. 7:36-24.3.

### **7:36-21.7 Matching share; Donations toward the cost of development**

(a) The nonprofit may use as its matching share of the allowable costs of the development project its own funds or grants, contributions, donations, or reimbursements from State or Federal programs or from other public or private sources, except as described at (b) below.

(b) A nonprofit shall not use as its matching share of the cost of development:

1. Any funding provided under the Green Acres laws;
2. Any funding provided under the Garden State Preservation Trust Act administered by any State agency; or
3. The value of any donated goods and services that have not been obtained in conformance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

## **SUBCHAPTER 22. NONPROFIT DEVELOPMENT PROJECTS: APPLICATION PROCESS**

### **7:36-22.1 Timing**

(a) A nonprofit may submit an application for Green Acres funding at any time.

(b) At least two times each State fiscal year, the Department shall rank all complete applications in accordance with N.J.A.C. 7:36-23.2 and shall submit to the Garden State Preservation Trust a list of projects that the Department recommends to receive funding awards in accordance with N.J.A.C. 7:36-23.3.

(c) At least two times each State fiscal year, the Garden State Preservation Trust shall approve projects from the list described at (b) above and shall prepare and submit for introduction in the Legislature proposed legislation appropriating moneys to fund the approved projects.

### **7:36-22.2 Preapplication procedures**

(a) The Department encourages nonprofits to attend a Green Acres sponsored informational workshop, when offered, and to request a preapplication conference with Green Acres as early as possible, prior to application submission, to discuss project eligibility, award criteria

and application and project administration requirements.

(b) At least 15 days prior to submitting an application to Green Acres, the nonprofit shall publish a display ad in the official newspaper of each municipality in which the proposed project site is located, stating that the nonprofit intends to submit an application for Green Acres funding and notifying the public that the application will be available for review at the Green Acres offices. The nonprofit shall also send the notice to the clerk(s) of the municipality(ies) in which the proposed project site is located.

(c) For a development project potentially involving a riparian interest, a nonprofit shall contact the Bureau of Tidelands Management within the Department to determine the State's interest or claim in the proposed project site and forward the results of the inquiry with their application for Green Acres funding. Information about riparian lands can be found at [www.nj.gov/dep/landuse/tideland.html](http://www.nj.gov/dep/landuse/tideland.html) or by writing to Bureau of Tidelands Management, Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625.

(d) For a development project that impacts an undisturbed portion of the project site, the nonprofit shall submit a Natural Heritage Data Request Form (available from the Department's Office of Natural Lands Management at [www.nj.gov/dep/parksandforests/natural/heritage/datareq.html](http://www.nj.gov/dep/parksandforests/natural/heritage/datareq.html) or by writing to Natural Heritage Program, PO Box 404, Trenton, New Jersey 08625-0404). The results of the search must be attached to and discussed in the environmental assessment submitted as part of the nonprofit's application for Green Acres funding at N.J.A.C. 7:36-12.4. The Department encourages each nonprofit also to review and consider the applicable Landscape Maps, developed by the Department's Division of Fish and Wildlife, during the formulation of its recreation and planning goals, and as part of its preparation of a Green Acres application. Information about the Landscape Maps can be found at [www.nj.gov/dep/fgw/ensp/landscape](http://www.nj.gov/dep/fgw/ensp/landscape) or by writing to the Division of Fish & Wildlife, PO Box 400, Trenton, New Jersey 08625-0400.

### **7:36-22.3 At-risk authorization to proceed with development**

(a) After submission of an application for development funding, the nonprofit may request approval from Green Acres to proceed with a development project at its own risk.

(b) Green Acres shall issue an at-risk authorization when

the proposed development complies with the eligibility requirements under N.J.A.C. 20.2, and for good cause shown.

(c) The Garden State Preservation Trust is not obligated to award funding for any development project for which Green Acres issues an at-risk authorization under (b) above.

(d) A nonprofit is not obligated to develop any project for which it receives an at-risk authorization under (b) above.

(e) The development of a project site completed under an at-risk authorization must comply with the requirements of this chapter to remain eligible for Green Acres reimbursement.

#### **7:36-22.4 Application requirements and acknowledgment**

(a) For a development project, a nonprofit shall submit an application containing all of the following:

1. A completed Green Acres application form. The application form shall identify the nonprofit, give the project type, indicate the municipality(ies) and county(ies) in which the proposed project site is located, provide a brief description of the project, specify the estimated cost of the development and the estimated funding request amount, identify the nonprofit's contact person for the project, and include the certification of the person authorized by the enabling resolution required under (a)2 below to submit the application;

2. A certified copy of the enabling resolution, drafted in accordance with an example obtained from Green Acres and approved by the governing body of the nonprofit, authorizing the submission of a Green Acres application and the execution of the project agreement described in N.J.A.C. 7:36-24.1 and identifying the person authorized to act in these matters on behalf of the nonprofit;

3. A detailed estimate of the cost to develop the proposed project that indicates units and quantities of materials to be utilized and that is prepared by a New Jersey licensed landscape architect, architect, or engineer;

4. A narrative description of how and the extent to which the project meets the award criteria under

N.J.A.C. 7:36-23.1;

5. An environmental assessment that describes the proposed development project, the existing environmental features of the proposed project site, and the anticipated direct and indirect environmental impacts of the project on the project site and its surrounding area; identifies and compares the environmental impacts of developing alternative sites; and describes measures that will be taken to mitigate any adverse environmental impacts of the project. If the project impacts an undisturbed portion of the project site, the results of the Natural Heritage Data Request required at N.J.A.C. 7:36-22.2(d) must be attached and discussed in the environmental assessment;

6. A local tax map that indicates the lot(s) and block(s) to be developed;

7. A conceptual site plan, drawn to scale, that indicates the proposed development; existing topography, facilities, improvements, and natural features of the proposed project site; and any areas of proposed tree clearing;

8. A conceptual floor plan that indicates the proposed use of all structures to be developed;

9. A copy of a lease or use agreement for a project located on property not owned in fee simple by the nonprofit that meets the requirements of N.J.A.C. 7:36-21.1(g), or a letter from the property owner stating their intent to enter into a lease or use agreement with the nonprofit should the project be approved;

10. Information on the State's interest or claim in any riparian area in the proposed project site, as required by N.J.A.C. 7:36-22.2(c);

11. A street map that clearly indicates the location of the proposed development;

12. An estimate of annual operating expenses required to maintain the proposed project site, including wages, salaries, equipment, and materials;

13. Proof of publication of the newspaper notice, and proof that such notice was sent to the clerk of each municipality in which the proposed project site is located, as required under N.J.A.C. 7:36-22.2(b);

14. Digital images and prints that clearly show the existing conditions at the proposed project site;



15. If applicable, letters in support of the project from the general public; civic groups and agencies; local government units; municipal and county planning boards, park commissions, recreation departments, or environmental commissions; user groups; or other organizations;

16. If the project is located in either the Meadowlands District, the Pinelands, or the Highlands, a letter from the New Jersey Meadowlands Commission, Pinelands Commission, or the Highlands Council, as applicable, stating that a pre-application conference was held with the nonprofit, with the applicable Commission's or Council's comments on the proposed project attached;

17. A list of all permits that may be required for the proposed development project;

18. A letter from the nonprofit's attorney certifying that the applicant organization qualifies as a nonprofit under this chapter; and

19. A copy of the nonprofit's by-laws.

(b) Green Acres shall send a letter to the nonprofit acknowledging receipt of the application; providing the identification number assigned to the application; and requesting any corrections or clarifications to, or submission of any items missing from, the application, if applicable.

(c) All materials submitted as required under (a) above shall become the property of the Department.

(d) Green Acres staff shall conduct one or more site inspections to verify the statements in the application.

## **SUBCHAPTER 23. NONPROFIT DEVELOPMENT PROJECTS: AWARD CRITERIA, APPLICATION RANKING, APPROVAL PROCEDURES**

### **7:36-23.1 Project award criteria**

(a) The Department shall assign priority points in accordance with (b) below to each development project after it has received a complete application under N.J.A.C. 7:36-22.4. The assignment of priority points reflects the degree to which a proposed project is consistent with the most recent New Jersey Statewide Comprehensive Outdoor Recreation Plan (available from

Green Acres), as supplemented and/or amended; the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; and the findings, declarations, and, as applicable, special considerations for funding awards set forth in the Green Acres laws and State open space and recreation priorities, and this chapter.

(b) The Department shall assign priority points according to the following protocol:

1. The Department may assign a maximum of 20 points based on the population density and the extent to which there is a shortage of similar recreational facilities within the area from which the majority of users of the proposed project are expected to come.

2. The Department may assign a maximum of 15 points based on the extent to which public involvement and support in the planning process for a project, beyond the minimum requirement of the newspaper notice required under N.J.A.C. 7:36-22.2, has been sought and obtained and based on the extent to which the project is consistent with applicable planning documents. Green Acres shall evaluate the degree to which:

i. There is public support, as demonstrated through letters from the municipal and county planning boards, park agencies, recreation departments, environmental commissions, civic groups and agencies, user groups, and the general public, zero to five points; and

ii. The project is consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; the New Jersey Statewide Comprehensive Outdoor Recreation Plan; and local and county land use plans, especially open space and recreation elements thereof, as demonstrated in excerpts from or specific references to such plans in the project application, zero to 10 points.

3. The Department may assign a maximum of 24 points based on the overall quality of a project by evaluating the extent to which:

i. The project is accessible to population centers; is accessible by public transportation, walking or bicycling; and will create public access where none exists or where existing access is undeveloped or restricted, zero to four points;

ii. The project improves needed public access (visual

and/or physical) to water, zero to six points;

iii. The project is designed to include multiple recreation and conservation purposes, use effective landscaping, provide opportunities for various active and passive recreational uses by diverse user groups, and include significant tree planting, zero to eight points; and

iv. The project is cost-effective as determined by weighing the quality of conservation or recreation opportunities provided by the project against the anticipated cost. Considerations include: cost of alternative locations and facilities; whether the project can be completed at a lower cost due to donations or partnerships; and cost of future operation and maintenance; negative six to six points.

4. The Department may assign a maximum of 14 points to a project that incorporates the following items:

i. Private investment or ecotourism potential, one point;

ii. Municipal and county (urban complex) strategic revitalization plans and programs consistent with the State Plan, New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable, one point;

iii. Waterfront development or redevelopment, one point;

iv. Trails, bike paths, or greenways, one point;

v. Historic or archaeological resource enhancement or preservation, one point;

vi. Wildlife habitat protection, one point;

vii. Protection of "Category One Waters," as defined at N.J.A.C. 7:9B-1.4, and associated special water resource protection areas established pursuant to N.J.A.C. 7:8; or protection of other water resources, one point;

viii. Multiple uses and provides active and passive recreation opportunities, one point;

ix. Development of a prior Green Acres-funded

acquisition or development, one point;

x. Private donation of land, equipment, labor, or cash, one point;

xi. Design and construction that utilizes clean and renewable energy and maximizes energy efficiency, one point;

xii. Rehabilitation or redevelopment of an existing facility, one point;

xiii. The provision of recreation required as part of a school construction project in an Abbott district established pursuant to N.J.A.C. 6A:10A, one point; and

xiv. Reclamation of a former brownfields site, one point.

5. The Department may assign a maximum of 12 points to a project whose design minimizes adverse impacts on the environmentally sensitive features of the site, by evaluating the degree to which:

i. The facilities are proposed to be located in already cleared areas, to minimize additional clearing of trees and vegetation, zero to four points;

ii. The facilities are proposed to be located where topography and soil conditions are suitable, to minimize grading, excavation, fill, and drainage of a site, zero to four points; and

iii. The project retains, enhances, or establishes vegetative buffers, or incorporates other site-sensitive techniques, to minimize impacts on sensitive areas such as shellfish beds, beach/dune systems, forests, wetlands, steep slopes, endangered or threatened species habitat, and aquifer recharge areas, zero to four points.

6. The Department may assign a maximum of one point to a project that involves structures whose design and construction meet the most recent version of the U.S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEEDTM) Green Building Rating System for New Construction and Major Renovations Version. Information on the USGBC LEEDTM System is available at [www.usgbc.org](http://www.usgbc.org) or by writing to the U.S. Green Building Council, 1015 18th Street NW, Suite 508, Washington, DC 20036.

### **7:36-23.2 Ranking**

(a) Upon receipt of an application containing all the information required under N.J.A.C. 7:36-22.4, Green Acres shall determine if the project is eligible for funding in accordance with the requirements of N.J.A.C. 7:36-21.2.

(b) If the development project is eligible for Green Acres funding, the Department shall determine the total number of priority points assigned to the project based on the project award criteria described in N.J.A.C. 7:36-23.1.

(c) The Department shall rank the projects on a priority list according to the total number of priority points assigned each project, with the project assigned the greatest total number of priority points ranking first.

### **7:36-23.3 Approval or denial of an application; award of funding; procedural letter**

(a) Based on available funding, the number of nonprofit development applications received, and the total priority points assigned to the project under N.J.A.C. 7:36-23.2, the Department shall make a recommendation for approval or denial of the application to the Garden State Preservation Trust.

(b) If the application is approved by the Garden State Preservation Trust, the Department shall notify the nonprofit in writing of the amount of the Green Acres funding award, which is subject to legislative appropriation.

(c) If the application is denied by the Garden State Preservation Trust, the Department shall notify the nonprofit in writing of the reason for the denial.

(d) After the notification of the funding award under (b) above, and after the funding award has received legislative appropriation, Green Acres shall send to the nonprofit a procedural letter, a Development Compliance Checklist, and a Pre-Construction Engineering Certification. The procedural letter directs the nonprofit to:

1. Submit, by the deadline specified in the procedural letter, a construction schedule; one copy of construction plans for the project, signed and sealed by a New Jersey licensed landscape architect, architect, or engineer; and the Pre-Construction Engineering Certification, signed by a New Jersey licensed engineer

or architect, certifying that all construction plans and specifications meet all applicable State and local codes and current engineering requirements;

2. Return to Green Acres a certification by the nonprofit's attorney that each contract was let in conformance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. This certification is required for each executed contract for professional services or construction. The certification must be on the form provided by Green Acres, and should be submitted to Green Acres immediately upon execution of each contract for the development project;

3. Secure and submit to Green Acres permits or letters of waiver provided by all agencies claiming jurisdiction;

4. Obtain and submit to Green Acres, by the deadline specified in the procedural letter, a preliminary assessment of the project site in accordance with N.J.A.C. 7:36-23.4;

5. Erect and maintain a sign, according to the detail sheet provided by Green Acres, that identifies the development as a Green Acres funded project;

6. Return to Green Acres the Development Compliance Checklist, executed by the nonprofit's chief executive officer and attorney, verifying that the nonprofit has complied or will comply with the Green Acres development requirements described in (d)l through 5 above and the bid procedures outlined in N.J.A.C. 7:36-24.2, and that confirms that:

- i. The State Affirmative Action requirement (P.L. 1975, c.127, N.J.S.A. 10:5-31 through 38) has been incorporated into the specifications; and

- ii. The design of the facility conforms to all applicable State and Federal Barrier Free Codes and the Americans with Disabilities Act (42 U.S.C. § § 12101 et seq.) requirements;

7. Submit, for a project located on property not owned in fee simple by the nonprofit, a copy of a lease or use agreement for the property that meets the requirements of N.J.A.C. 7:36-21.1(f), if not previously submitted; and

8. If applicable, satisfy the procedural requirements for a change in purpose or use at N.J.A.C. 7:36-25.6, including, but not limited to, the requirement for a public hearing.

#### **7:36-23.4 Preliminary assessment report**

(a) The nonprofit must obtain a preliminary assessment report of the project site prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. Upon receipt of the preliminary assessment report, Green Acres shall determine if the report contains the required information and shall notify the nonprofit as follows:

1. If the preliminary assessment report does not contain the required information, Green Acres shall send the nonprofit a deficiency letter identifying the additional information that must be submitted. The nonprofit shall submit the information by the date specified in the letter.

2. If the preliminary assessment report contains the required information and does not identify any areas of concern, as defined under the Technical Requirements for Site Remediation:

i. Green Acres shall send the nonprofit a letter acknowledging the sufficiency of the preliminary assessment report;

ii. The chief executive officer of the nonprofit shall certify, on a form provided by Green Acres with the sufficiency letter, that the nonprofit has reviewed the preliminary assessment report and has determined to proceed with the development of the project site; and

iii. The nonprofit shall return the certification to Green Acres within 30 days of the date of the sufficiency letter. Green Acres shall not disburse any funding under N.J.A.C. 7:36-24.5 until it is in receipt of this certification.

3. If the preliminary assessment report contains the required information and identifies one or more areas of concern, as defined under the Technical Requirements for Site Remediation:

i. Green Acres shall send a letter notifying the nonprofit that the areas of concern must be addressed to the Department's satisfaction before the nonprofit starts construction of the development project;

ii. Once the areas of concern have been addressed to the Department's satisfaction, the nonprofit shall submit evidence of such to Green Acres;

iii. Once Green Acres has reviewed and approved

the nonprofit's submission, Green Acres shall send the nonprofit a letter of sufficiency;

iv. The chief executive officer of the nonprofit shall certify, on a form provided by Green Acres with the sufficiency letter, that the nonprofit has reviewed the preliminary assessment report and the manner in which the areas of concern have been addressed, and has determined to proceed with the development of the project site; and

v. The nonprofit shall return the certification to Green Acres within 30 days of the date of the letter of sufficiency. Green Acres shall not disburse any funding under N.J.A.C. 7:36-24.5 until it is in receipt of this certification.

<b>SUBCHAPTER 24.</b>	<b>NONPROFIT</b>	
<b>DEVELOPMENT</b>	<b>PROJECT:</b>	<b>PROJECT</b>
<b>AGREEMENT,</b>	<b>BID</b>	<b>PROCEDURES,</b>
<b>SUPPLEMENTAL</b>	<b>FUNDING,</b>	<b>CONSTRUCTION</b>
<b>RESPONSIBILITY,</b>	<b>DISBURSEMENTS,</b>	<b>PROJECT</b>
<b>CLOSEOUT,</b>	<b>ACCOUNTING</b>	<b>AND</b>
<b>RECORDKEEPING</b>	<b>REQUIREMENTS</b>	

#### **7:36-24.1 Project agreement**

(a) Each Green Acres development project shall have a project agreement, which shall be executed by the nonprofit and the Department. The project agreement shall set out the rights and responsibilities of the nonprofit and the Department in regards to the development project and shall contain all information identified in (c) below.

(b) Green Acres shall send the project agreement to the nonprofit for approval and signature after the funding award made under N.J.A.C. 7:36-23.3(b) has received legislative appropriation. The nonprofit shall ensure that the project agreement is approved and signed by the nonprofit's attorney, and executed by the person authorized under the resolution described at N.J.A.C. 7:36- 22.4(a)2 or an updated resolution submitted by the nonprofit.

(c) The project agreement shall contain:

1. A description of the project facility(ies) to be developed;

2. The estimated cost of the development project;

3. The amount of the Green Acres funding award pursuant to N.J.A.C. 7:36- 23.3(b) and the nonprofit's matching share of the cost of the development project;

4. The following conditions:

i. That the nonprofit shall make and keep the lands accessible to the public;

ii. That the nonprofit shall agree not to convey the lands unless:

(1) The transferee is the State, a local government unit, another nonprofit, or the Federal government, if permitted by the applicable Green Acres laws;

(2) The lands will continue to be held for public recreation and conservation purposes, and

(3) The Commissioner approves the transfer in writing prior to the nonprofit's offering, for sale or conveyance, of any of its interest in the project site. This requirement for written approval is met if an intended transferee is named in the project agreement executed under this section; and

iii. That the nonprofit shall agree to execute and donate to the State, at no charge, a permanent conservation restriction, historic preservation restriction, or both, as applicable, on the project site, in a form prepared by the State. The conservation or historic preservation restriction shall include:

(1) The conditions governing the use, future development, and maintenance of the project site; the public access to the project site; and the conveyance of any interest in the project site;

(2) The State's right to enforce the conditions of the restriction; and

(3) The remedies available to the State in the event the nonprofit does not comply with the conditions of the restriction;

5. Any other special conditions;

6. The project period during which the development project must be completed, generally two years from the effective date of the project agreement;

7. The requirements for recordkeeping and project administration; and

8. Other terms and conditions, including a statement

of the remedies described at (j) through (m) below and a statement of the requirements for maintenance, use, development, and disposal or diversion of parkland as described at N.J.A.C. 7:36-25 and 26.

(d) The nonprofit shall return the signed project agreement to Green Acres.

(e) Upon receipt of the project agreement executed in accordance with (b) above, the Department shall establish an account from which Green Acres shall disburse the matching grant.

(f) After the project agreement has been fully executed by the State, Green Acres shall send to the nonprofit a copy of the fully executed project agreement and a Development Payment Request form that the nonprofit shall use to request a disbursement of funds under N.J.A.C. 7:36-24.5.

(g) The nonprofit shall record and return to Green Acres the conservation restriction or historic preservation restriction, as applicable, contained in the project agreement as required under N.J.A.C. 7:36-24.5(e).

(h) Green Acres may extend the project period established in the project agreement upon request, if the nonprofit demonstrates that it is making a good faith effort to complete the project in an expeditious manner.

(i) The Department and the nonprofit shall execute an amendment to the project agreement to reflect any supplemental funding provided under N.J.A.C. 7:36- 24.3.

(j) In addition to any other rights or remedies available to the Department under law, if the nonprofit does not comply with any of the requirements of the project agreement; the conservation restriction and/or historic preservation restriction, as applicable, required under (c)4iii above; this chapter; or the Green Acres laws, or if the nonprofit makes any material misrepresentation in the project application and/or the documentation submitted in support of the application, the Department may take any of the following actions:

1. Issue a written notice of noncompliance directing the nonprofit to take and complete corrective action within 30 days of receipt of the notice. If the nonprofit does not take corrective action, or if the corrective action taken is not adequate in the judgment of the Department, then the Department may take any of the actions described at (j)2 through 5 and (k) below;

2. Withhold a matching grant disbursement or portion

thereof;

3. Order suspension of work on the project for a period of not more than 45 days after the date of the stop work order, unless the Department and the nonprofit agree to an extension of that period;

i. A stop work order shall contain the reasons for the issuance of the stop work order, a clear description of the work to be suspended, instructions as to the issuance of further orders by the nonprofit for materials or services, and suggestions for minimizing costs;

ii. Upon receipt of the stop work order, the nonprofit shall immediately comply with the terms of the order and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order;

iii. The Department shall, within the period of the stop work order or any extension of it, either rescind the stop work order, terminate the work covered by the order, or authorize the resumption of work; and

iv. If the Department rescinds a stop work order or if the period of a stop work order or an extension of it expires, the nonprofit shall promptly resume the suspended work. The Department shall, as necessary, make an equitable adjustment to the project period;

4. Terminate the project agreement; and/or

5. Demand immediate repayment of all Green Acres funding that the nonprofit has received.

(k) If the nonprofit fails to comply with any of the terms of the project agreement; the conservation restriction and/or historic preservation restriction, as applicable, required under (c)4iii above; this chapter; or the Green Acres laws, the Department may initiate suit for injunctive relief or to seek specific enforcement, without posting bond, it being acknowledged that any actual or threatened failure to comply will cause irreparable harm to the State and that money damages will not provide an adequate remedy.

(l) If the Department incurs legal or other expenses, including its own personnel expenses, for the collection of payments due or in the enforcement or performance of any of the nonprofit's obligations under the project agreement; the conservation restriction and/or historic

preservation restriction, as applicable, required under (c)4iii above; this chapter; or the Green Acres laws, the nonprofit shall pay these expenses on demand by the Department.

(m) The Department is not required to mitigate any damages to the nonprofit resulting from the nonprofit's noncompliance with the terms of the project agreement; the conservation restriction and/or historic preservation restriction, as applicable, required under (c)4iii above; this chapter; or the Green Acres laws.

#### **7:36-24.2 Bid procedures**

(a) Upon receipt of the construction plans, the Pre-Construction Engineering Certification, and the Development Compliance Checklist required under N.J.A.C. 7:36-23.3(d), the certification from the nonprofit's chief executive officer regarding the preliminary assessment required under N.J.A.C. 7:36-23.4, and proof that all necessary permits, approvals, or waivers have been obtained, Green Acres shall conduct a review. If any changes to the plans or documents are required, Green Acres will send the nonprofit a letter requesting the necessary changes. Once Green Acres approves the submitted documents and verifies that the construction plans are consistent with the approved project scope, Green Acres will send the nonprofit a proceed to bid letter.

(b) After receipt from Green Acres of the proceed to bid letter, the nonprofit shall solicit bids on the project contracts in conformance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

(c) The nonprofit shall include the following statement in each advertisement and invitation to bid:

"Please be advised that State funds through the Green Acres Program are being utilized in this project. Under N.J.A.C. 7:1-5, vendors currently suspended, debarred, or disqualified are excluded from participation on this project."

(d) All bid specifications and contracts shall require that all facilities must be constructed in accordance with all applicable State and local construction codes.

(e) The nonprofit shall submit the Local Public Contracts Law certification required under N.J.A.C. 7:36-23.3(d) immediately upon execution of each contract for professional services or construction.

#### **7:36-24.3 Supplemental funding**

(a) A nonprofit may request, in writing, supplemental funding if:

1. The nonprofit has solicited bids on the project at least two times, and the bid selected or the negotiated contract amount for the project's construction, plus the other allowable project costs listed at N.J.A.C. 7:36-21.6, exceed the funding amount awarded under N.J.A.C. 7:36-23.3(b) plus the nonprofit's matching share of the allowable project costs;

2. The nonprofit incurs contract cost overruns and has submitted to Green Acres a copy of the change order(s) for the cost overruns under N.J.A.C. 7:36-24.4(c); or

3. The amount of the Green Acres funding award approved by the Garden State Preservation Trust in N.J.A.C. 7:36-23.3 plus the nonprofit's matching share of the development project is less than the estimated cost of the development project submitted with the application in N.J.A.C. 7:36-22.4.

(b) Provided sufficient funds are available, Green Acres shall increase the amount of funding for a project in response to a request submitted under (a) above.

(c) Any supplemental funding provided under this section is subject to legislative appropriation.

(d) The Department and the nonprofit shall execute an amendment to the project agreement in accordance with N.J.A.C. 7:36-24.1 to reflect any supplemental funding provided under this section,

#### **7:36-24.4 Construction requirements; site inspections**

(a) Green Acres shall periodically inspect the project to ensure compliance with the project agreement established under N.J.A.C. 7:36-24.1.

(b) The nonprofit is responsible for supervising the construction of the project and for ensuring that all construction contract specifications are met.

(c) The nonprofit shall submit to Green Acres a copy of each change order processed in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. Green Acres encourages the nonprofit to submit all change orders before the nonprofit undertakes the work covered by the change order to ensure that the proposed costs are allowable under the project agreement.

(d) The nonprofit shall erect and maintain for the duration of the project a construction sign that identifies the project as Green Acres funded and meets Green Acres' specifications for size, content and design provided with the procedural letter at N.J.A.C. 7:36-23.3(d).

#### **7:36-24.5 Disbursement of matching grant**

(a) Green Acres shall disburse the matching grant in advance of the nonprofit's incurring allowable project costs, or as reimbursement of accrued allowable project costs.

(b) For each request for payment, the nonprofit shall submit:

1. A Development Payment Request form that Green Acres provides with the fully executed project agreement under N.J.A.C. 7:36-24.1(c), with the following items completed:

i. The project name, name of nonprofit, and municipality and county in which the project site is located;

ii. An itemized statement of the costs incurred or to be incurred; and

iii. A certification by the nonprofit's chief financial officer that the information entered on the payment request form is accurate and that the nonprofit is maintaining an accurate record of accounts for the project, including cancelled checks and vouchers which must be submitted to Green Acres upon request.

2. For requests for payment in advance of the nonprofit incurring allowable construction costs, the nonprofit also shall:

i. Certify that construction of the project has commenced;

ii. Erect a construction sign as required under N.J.A.C. 7:36-24.4(d); and

iii. Submit a copy of the construction contract that provides a breakdown of the costs for which advanced payment is requested.

(c) Upon receipt of a request for payment under (b) above and approval of all required documentation, Green Acres shall send to the nonprofit a payment invoice for 50 percent of the allowable project costs, up to the matching grant

amount approved under N.J.A.C. 7:36-23.3(b), except as provided under (c)1 below. The nonprofit's chief financial officer or the nonprofit's authorized designee shall verify, sign, and return the invoice to Green Acres for processing, along with information related to the bank account required under (d) below.

1. For payments in advance of the nonprofit incurring costs, Green Acres shall disburse up to ninety percent of the matching grant.

2. Before final payment shall be disbursed, the nonprofit shall submit and Green Acres shall approve the items required for project closeout under N.J.A.C. 7:36-24.6(b).

(d) The nonprofit shall establish a separate, non-interest-bearing bank account for the purpose of receiving Green Acres disbursements for the project. If a nonprofit has undertaken more than one Green Acres funded project, it may establish a single bank account to receive all Green Acres disbursements for all of the projects. If the nonprofit will be receiving Green Acres disbursements only as a reimbursement, it may designate an existing account into which the disbursement will be received, provided proper accounting procedures are in place to allow for easy and accurate financial tracking of Green Acres disbursements. Any account into which Green Acres disbursements are deposited will be subject to audit by the State. Upon receipt of the signed invoice and bank account information, the State shall mail each matching grant disbursement to the nonprofit in the form of a check. The nonprofit shall not sign over the check to a contractor or any other person but shall deposit the check into the nonprofit's bank account.

(e) Immediately upon receipt of the matching grant disbursement under this section, the nonprofit shall have the conservation or historic preservation restriction provided by Green Acres at N.J.A.C. 7:36-24.1(c) recorded by the county clerk or registrar as a first encumbrance on the project site. The recorded restriction shall be returned to Green Acres.

(f) The nonprofit may unilaterally withdraw the project at any time before it receives Green Acres funding. The nonprofit shall not terminate the project agreement after it receives any Green Acres funding without the written consent of Green Acres.

(g) If the nonprofit terminates the project agreement under (f) above, the nonprofit is responsible for any costs of the development incurred as of the time of

termination. The nonprofit shall also repay, with interest at the judgment interest rate established under the New Jersey Court Rules Governing Civil Practice at R. 4:42-11(a)(ii) in effect at the time of termination, any disbursements that Green Acres made to the nonprofit for the project.

#### **7:36-24.6 Project closeout**

(a) The nonprofit shall notify Green Acres when the development project is complete.

(b) Upon receipt of the notification under (a) above, Green Acres shall send to the nonprofit a project closeout letter that directs the nonprofit to submit to Green Acres a copy of each of the following:

1. A post-construction certification, on a form provided by Green Acres with the closeout letter, by a New Jersey licensed landscape architect, architect, or engineer that the project has been completed substantially in accordance with the construction plans submitted under N.J.A.C. 7:36-23.3(d) and describing any variation between the completed project and the construction plans;

2. A record drawing showing the project as built; and

3. Digital images and prints that clearly show the development project, as completed.

(c) Green Acres shall conduct a final site inspection within 45 days of its receipt of the items listed under (b) above.

(d) Green Acres shall provide to the nonprofit a sign (or signs, as applicable) that identifies the parkland as a Green Acres funded site that is permanently dedicated to recreation and conservation purposes. The nonprofit shall post the sign(s) in a prominent place on the funded parkland and maintain it.

#### **7:36-24.7 Accounting and recordkeeping**

(a) The nonprofit shall maintain and make available to the Department for inspection upon request all financial documents and records related to the project that are required to be maintained in accordance with (e) below.

(b) The nonprofit, its contractors, and subcontractors shall employ generally accepted accounting procedures that adequately identify the costs associated with the Green Acres matching grant.



(c) The nonprofit shall maintain separate records for each project including the amount, receipt, and disposition of all funding received for the project, including Green Acres matching grants, and contributions, gifts, or donations from any other sources.

(d) The nonprofit shall conduct annual audits and submit audit reports in conformance with the Single Audit Act of 1984, P.L. 98-502 and the Single Audit Act Amendments of 1996, P.L. 104-156 (31 U.S.C. § 7501 et seq.), Federal Office of Management and Budget (OMB) Circular A-133: "Audits of States, Local Governments, and Non-Profit Organizations," incorporated herein by reference, and State OMB Circular 04-04: "Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid," incorporated herein by reference.

1. Audit reports shall address the nonprofit's compliance and all specific instances of noncompliance with the material terms and conditions of the project agreement and applicable laws and regulations.

2. Audit reports shall contain an itemized schedule of all project-related financial assistance received by the nonprofit identifying: grantor agency, program title, State account number, and total disbursement.

(e) The nonprofit shall provide a duly authorized representative of the Department access to all records, books, documents, and papers pertaining to the project agreement and/or the project for audit, examination, excerpt, and transcript purposes. Such records shall be maintained and access shall be provided during performance of the project and for three years after the latter date of either final repayment or audit resolution. The nonprofit shall include this requirement in all project-related contracts.

(f) The Department shall adjust the nonprofit's final payment, if necessary, based on the results of the annual audit.

**SUBCHAPTER 25. REQUIREMENTS FOR MAINTENANCE OF PARKLAND; WHAT CONSTITUTES A DISPOSAL OR DIVERSION OF PARKLAND; AMENDMENT OF RECREATION AND OPEN SPACE INVENTORIES; ADMINISTRATIVE TRANSFER OF PARKLAND; CHANGES IN USE OF PARKLAND; CONSTRUCTION OF BUILDINGS ON PARKLAND; FEES; PUBLIC ACCESS TO AND USE OF PARKLAND; LEASES, USE**

**AGREEMENTS AND CONCESSION AGREEMENTS; DESIGNATED COMMUTER PARKING LOTS; ADJUDICATORY HEARING REQUESTS**

**7:36-25.1 Maintenance requirements for funded parkland; compliance inspection**

(a) Each local government unit or nonprofit is responsible for the satisfactory care, maintenance, and operation of funded parkland. Each local government unit or nonprofit shall maintain and preserve funded parkland in a condition which is equal to or better than the condition of the land at the time it was acquired or developed with Green Acres funding.

(b) Each local government unit or nonprofit shall maintain any development constructed with Green Acres funding in reasonable repair in order to ensure its continuous use for the purpose(s) for which it was constructed, as such purpose(s) are set forth in the project agreement entered into pursuant to N.J.A.C. 7:36-14.1 or 24.1.

(c) The Department shall inspect funded parkland every three years to ensure compliance with the terms of the project agreement, this chapter, and the Green Acres laws, as follows:

1. The Department shall notify the local government unit or nonprofit in advance of the date of the inspection;

2. On or before the date of the inspection, the local government unit or nonprofit shall provide to the Department for its review and approval a copy of any fee schedule that applies to the use of the funded parkland by the public;

3. On or before the date of the inspection, the local government unit or nonprofit shall provide to the Department for its review a copy of any lease, or use agreement that applies to the funded parkland and has not already been approved by the Green Acres Program;

4. As part of the inspection, the Department shall evaluate the maintenance of the parkland; the integrity of parkland boundaries; the presence of Green Acres sign(s); diversions, if any, from recreation and conservation purposes generally; compliance with the parkland use requirements of this subchapter; and such other aspects of the parkland administration necessary to determine compliance with the project agreement, this chapter, and the Green Acres laws; and

5. The Department shall provide an inspection summary to the local government unit or nonprofit after completion of the inspection. The summary shall include:

i. The status of compliance with the project agreement, the deed of conservation restriction or historic preservation restriction, this chapter, and the Green Acres laws;

ii. Comments, if any, on the local government unit's or nonprofit's fee schedule;

iii. Comments, if any, on any leases, or use agreements for which the local government unit or nonprofit has not already obtained prior approval as required by N.J.A.C. 7:36-25.13 or 25.14; and

iv. A summary of the actions that the local government unit or nonprofit must take in order to correct any instance of noncompliance, and, for each instance of noncompliance, a deadline for compliance.

(d) The failure of a local government unit or nonprofit to correct an instance of noncompliance identified in an inspection summary by the deadline specified pursuant to (c)5iv above may, pursuant to N.J.A.C. 7:36-9.1 or 14.1, render the local government unit ineligible to receive a disbursement of Green Acres funding or, pursuant to N.J.A.C. 7:36-20.1 or 24.1, the nonprofit ineligible to receive a disbursement of Green Acres funding. The Department may also initiate legal or other action as appropriate to enforce this chapter, the Green Acres laws, the terms and conditions of the original project agreement under which the local government unit or the nonprofit received Green Acres funding and/or a deed of conservation restriction or historic preservation restriction executed as a condition of Green Acres funding.

#### **7:36-25.2 Disposal or diversion of funded parkland and unfunded parkland; exceptions**

(a) Except as provided in (d) below, a local government unit shall not divert to a use other than recreation and conservation purposes or dispose of any funded or unfunded parkland unless the local government unit obtains prior approval from the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26. The diversion or disposal of funded or unfunded parkland by a local government unit without the approval of the

Commissioner and the State House Commission is void and of no legal effect.

(b) Except as provided in (d) below, a nonprofit shall not divert to a use other than recreation and conservation purposes or dispose of any funded parkland unless the nonprofit obtains prior approval from the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26. The diversion or disposal of funded parkland by a nonprofit without the approval of the Commissioner and the State House Commission is void and of no legal effect.

(c) As examples, uses that may constitute the diversion of funded or unfunded parkland from recreation and conservation purposes include, but are not limited to: bridges; through roads or other transportation improvements; rights-of-way; public or private utility or other non-recreation easements (surface or subsurface); communications towers, antennas or other communications equipment, whether freestanding or attached to existing structures; billboards; municipal buildings, libraries, schools, and fire, police, or emergency services facilities; housing; well houses or water towers; solid waste facilities (including composting facilities); private recreation and conservation facilities; wetlands creation or buffer areas or threatened or endangered species habitat creation or mitigation required by other laws, regulations, codes, or ordinances in connection with non-parkland uses, including habitat creation or wetlands mitigation required by permits; deposit of dredge spoils, except those used as part of a development as defined in these rules; sewage sludge disposal; pump stations; stormwater management facilities such as detention, retention, or sedimentation basins and outfall structures to manage stormwater generated off-site, including flow easements or implied flow easements; and flood control facilities such as levees, berms, flood walls, channel construction, and ponding areas unless the flood control facilities will not have any negative effect on the natural resource or recreational value of the parkland.

(d) The following activities do not constitute a diversion or disposal of funded or unfunded parkland:

1. Construction of a regional flood control project that is part of a regional flood control plan and that will, as a significant design element and purpose of the project, create or enhance a permanent water body suitable for water-dependent public recreation, provided the project does not have any significant adverse impact on the natural resource or recreational value of the affected parkland;

2. The continued operation of a municipal or County leaf composting facility that existed as of the time of receipt of Green Acres funding, provided that the facility is in compliance with all applicable State and local regulations; however, any expansion of the facility (including the use of adjacent parkland as a regulatory buffer for the composting facility), any use of the composting facility for materials other than leaves, or any use of the facility for another non-recreation or non-conservation purpose requires the approval of the Commissioner and the State House Commission as a diversion under N.J.A.C. 7:36-26. In addition, in the event the local government unit ceases operation of the facility, the underlying land shall be subject to the Green Acres restrictions to the same extent as it would have been had the leaf composting facility not existed;

3. The removal of a non-historic structure from funded or unfunded parkland to facilitate or expand the recreation or conservation use of the parkland, whether or not the structure was purchased with Green Acres funding;

4. The administrative transfer of parkland by a local government unit or nonprofit to another local government unit, the State, the Federal government or a nonprofit for recreation and conservation purposes, provided such transfer complies with the procedural requirements of N.J.A.C. 7:36-25.5;

5. The use of a parking lot as a designated commuter parking lot, provided the parking lot was constructed on parkland prior to June 30, 1999 and was not constructed with Green Acres funding and that such use is approved by the Commissioner under N.J.A.C. 7:36-25.15;

6. Replacement or enlargement of an existing municipally-owned or County-owned drainage structure or sewer or water pipeline within a 20-foot assumed easement width (as calculated by measuring ten feet on each side from the center of the pipe or drainage structure). However, construction of new privately-owned utilities or construction of new roads to service municipal or County utilities within the assumed easement shall constitute a diversion of parkland;

7. Replacement or enlargement of a highway or pedestrian bridge within an existing road right-of-way or, if no right-of-way is formally delineated, within an

assumed right-of-way corridor created by connection of the road rights-of-way on either end of the bridge;

8. Any lease or use agreement, or renewal thereof, which supports or promote the use of parkland for recreation and conservation purposes, has a term of less than 25 years and is approved by the Department under N.J.A.C. 7:36-25.13; and any concession agreement meeting the requirements of N.J.A.C. 7:36-25.13(f); and

9. Any lease or use agreement for the use of parkland for a beneficial public purpose other than recreation and conservation purposes which is approved by the Department under, and subject to the limitations of, N.J.A.C. 7:36-25.14.

### **7:36-25.3 Amendment of Recreation and Open Space Inventory (ROSI)**

(a) If a local government unit believes a ROSI submitted to the Department as a component of a project agreement pursuant to N.J.A.C. 7:36-9.1 or 14.1 does not accurately or completely describe the lands held for recreation and conservation purposes at the time of receipt of Green Acres funding, or that any information provided for land on the ROSI is inaccurate or incomplete, the local government unit shall submit a request to the Department for an amendment to the ROSI.

(b) A local government unit's request for a ROSI amendment shall be submitted in writing and may propose addition or removal of a parcel of land or an interest in a parcel of land from the ROSI, an increase or decrease in the area of a parcel listed on the ROSI, or correction of the block and lot identification of a parcel listed on the ROSI. The ROSI amendment request shall include adequate documentation for the Department to evaluate the request under (f) below.

(c) The inclusion of a parcel on any ROSI submitted by a local government unit in connection with a land acquisition or park development project funded by Green Acres shall create a rebuttable presumption that the parcel in question, and any portion thereof, is encumbered with Green Acres restrictions, whether or not the parcel or portion of the parcel was removed by the local government unit from a subsequent ROSI.

(d) The local government unit shall bear the burden of proving the merits of any ROSI amendment request filed pursuant to (a) above. The failure of the local government unit to provide adequate documentation to support its request and/or to demonstrate that there is a bona fide

inaccuracy in the ROSI shall be sufficient grounds for the Department to deny a request under this section.

(e) The addition of parcel(s) to a ROSI to update the ROSI as part of a Green Acres funding application under N.J.A.C. 7:36-6.4 or 12.4 or the removal of parcel(s) from ROSI as a result of a transfer of parkland that complied with the requirements of N.J.A.C. 7:36-25.5 shall not constitute an amendment under this section; however, any other addition or removal of a parcel(s) from the ROSI or acreage changes to a previously-listed parcel(s) must still comply with the procedural requirements of this section.

(f) The Department shall consider the following in evaluating a ROSI amendment request:

1. The purpose for and the method by which the local government unit acquired the parcel, including whether' the local government unit acquired the parcel for recreation and conservation purposes or used a funding method that was dedicated to recreation and conservation purposes;

2. Any evidence relevant to the local government unit's intentions regarding the use of the parcel or portion of the parcel at the time of acquisition and at the time of receipt of Green Acres funding, including, but not limited to:

i. Whether the local government unit took any formal action to dedicate the parcel for recreation and conservation purposes;

ii. Whether the local government unit took any formal action to dedicate the parcel for any other purpose;

iii. Whether the parcel is identified with a recreation or conservation designation or as existing parkland on the official map of the municipality, on its zoning map, in the local government unit's master plan, or in any other official publication of the local government unit; or

iv. Whether the parcel is identified as parkland by signs placed by or approved by the local government unit or by any other means;

3. Any evidence relating to any use of the property for recreation and conservation purposes by the public at or prior to the time of receipt of Green Acres funding that was acknowledged, acquiesced,

encouraged, funded, or supported by the local government unit, including whether recreation equipment was installed upon or other improvements were made to the property to facilitate use of the property for recreation and conservation purposes, by or with the authorization of the local government unit; and

4. Any evidence relating to the exemption of the property from Green Acres restrictions under N.J.S.A. 13:8A-47b(2)(a) or 13:8C-32b(2)(a) due to its inclusion in a redevelopment plan adopted pursuant to N.J.S.A. 40A:12A-7 prior to July 18, 2002. A local government unit claiming such exemption shall also demonstrate that:

i. The property was not acquired or developed for recreation or conservation purposes with financial assistance in whole or in part provided by the State; the Federal Land and Water Conservation Fund established under 16 U.S.C. § § 4601-4 et seq.; the Federal "Urban Park and Recreation Recovery Act of 1978," 16 U.S.C. § § 2501 et seq.; or a county or local open space trust fund created pursuant to N.J.S.A. 40:12-15.1 et seq.; and

ii. The local government unit has not adopted an ordinance or resolution specifically including the property on the ROSI.

(g) The Department shall review the ROSI amendment request submitted by the local government unit pursuant to (a) above, taking into account the considerations at (f) above, and shall take one of the following actions:

1. If the Department determines on the basis of the information provided by the local government unit that a request to correct the block and lot identification or a typographical error in the listing of the size of a parcel has unequivocal merit, that the local government unit has established the true size of the Green Acre-encumbered parcel on the basis of a survey reviewed and approved by the Department, or that the local government unit never owned, leased or otherwise controlled the property in question, it shall approve the local government unit's request in writing. The local government unit shall amend the ROSI, record a new declaration which includes the amended ROSI with the County clerk or registrar, and return a copy of the recorded declaration to the Department;

2. If the Department determines on the basis of the information provided by the local government unit that the parcel or area in question was used for or held for

recreation and conservation purposes at the time of receipt of Green Acres funding with the acknowledgment, encouragement or support (including financial) of the local government unit, the Department shall deny the request to amend the ROSI under (h)1 below; or

3. For all other ROSI amendment requests, including requests for which the Department is not able to determine on the basis of the information provided by the local government unit whether the parcel or portion of the parcel was used for or held for recreation and conservation purposes at the time of receipt of Green Acres funding, the Department shall direct the local government unit to hold a public hearing regarding the requested amendment in accordance with (h) below.

(h) A public hearing held by a local government unit on a ROSI amendment request pursuant to (g)3 above shall be advertised and conducted in accordance with the following procedures:

1. The public hearing shall be held on a weekday in the evening in the municipality in which the property that is the subject of the ROSI amendment request is located. If the property that is the subject of the ROSI amendment request is located in more than one municipality, the public hearing shall be held at a central hearing location that is approved in advance by the Department. The local government unit shall produce a transcript of the public hearing for submission to the Department;

2. At least 30 days prior to the hearing, the local government unit shall:

i. Publish a legal notice of the hearing in the official newspaper(s) of the municipality(ies) in which the property that is the subject of the ROSI amendment request is located and, if the local government unit is a County, also in a local newspaper of general interest and circulation;

ii. Post notice of the hearing on its official web site (if any) in the same manner as other public hearing notices are posted;

iii. Provide written notice of the hearing to Green Acres, the governing body, local planning board(s), environmental commission(s) and open space advisory committee(s) of the municipality(ies) in which the parkland is located, if any, and, if the local government unit is a County, also to the

County governing body, County planning board, County environmental commission and County open space advisory committee, if any;

iv. Provide written notice of the hearing via certified mail (return receipt requested) to all persons who own land located within 200 feet of the property that is the subject of the ROSI amendment request and to any easement holders for that land who are listed in the tax records for the municipality(ies) in which the land is located; and

v. Post and maintain in a legible condition until the public comment period is concluded under (h)4v below, a sign on the property that is the subject of the ROSI amendment request or in other prominent location(s) approved by the Department. Such sign shall advise the public of the ROSI amendment request, the public hearing on the proposed ROSI amendment and the opportunity for public comment on the proposed ROSI amendment. Such sign shall be of sufficient size and visibility and contain sufficient detail as to inform the general public of the filing of the ROSI amendment request and the method by which the public may obtain information about such filing, and shall be subject to the Department's approval;

3. At least 15 days prior to the hearing, the local government unit shall publish a display ad in the official newspaper(s) of the municipality(ies) in which the property that is the subject of the ROSI amendment request is located, and, if the local government unit is a County, also in a local newspaper of general interest and circulation; and

4. The notices and advertisements required under (h)2 and 3 above shall include the following information:

i. The name of the applicant and the date, time and location of the public hearing;

ii. A general description of the ROSI amendment request;

iii. The street address (if available), municipality, county, tax map block and lot, and size of the property that is the subject of the ROSI amendment request;

iv. A statement that all information submitted by the local government unit to the Department in support of the ROSI amendment request is available to the public for inspection at the local government unit's business office and the public library that serves the

municipality in which the property that is the subject of the ROSI amendment request is located; and

v. A statement inviting participation in the public hearing on the ROSI amendment request and notifying the public that, in the alternative, written comments may be submitted to the local government unit during a public comment period that will close two weeks after the hearing date. The statement shall provide an address for submittal of written comments to the local government unit and shall require that copies of any written comments also be sent to:

New Jersey Department of Environmental Protection  
Green Acres Program  
Bureau of Legal Services and Stewardship  
PO Box 412  
Trenton, New Jersey 08625-0412

(i) After the public hearing and the public comment period are concluded and the public comments received have been considered, the local government unit shall determine whether or not to seek the Department's approval of the proposed ROSI amendment request. If it makes a determination to proceed, the local government unit shall provide the Department with the following information within 60 days of the close of the public comment period:

1. Proof of publication of the notice of public hearing required under (h)2i above; proof of publication of the display ad required under (h)3 above; a dated copy of the posting required under (h)2ii above (if applicable); copies of and proof of mailing of the notice required under (h)2iii and iv above; and a proof of the posting and maintenance of a sign as required under (h)2v above;

2. A copy of the transcript of the public hearing as required by (h)1 above;

3. A summary of the public comments made at the public hearing and/or provided in writing during the public comment period and the local government unit's response to the public comments; and

4. Copies of any written information submitted by commenters during the public comment period, including at the public hearing.

(j) Upon receiving the submittal outlined in (i) above,

the Department shall conduct a final review of the ROSI amendment request taking into consideration the information provided by the local government unit, the information presented at the public hearing and during the public comment period and any other information reasonably available to the Department. The Department shall not approve the request unless:

1. The information submitted by the local government unit, considered with the information available from other sources, demonstrates to the Department's satisfaction that the amendment will correct a bona fide inaccuracy in the ROSI; and

2. If the requested amendment would remove a parcel or a portion of a parcel from a ROSI, the parcel or portion of parcel in question should not be classified as parkland under the criteria at (f) above.

(k) If the Department approves a request to amend a ROSI, it shall so notify the local government unit in writing. The local government unit shall then amend the ROSI and send it to the Department. The Department shall then either:

1. Direct the local government unit to execute a new declaration containing the amended ROSI. The local government unit shall have the declaration recorded with the County clerk or registrar and shall return a copy of the recorded declaration to the Department within 30 days of the recording date;

2. Approve the incorporation of the amendment as a revision to a ROSI submitted in connection with an application for funding under N.J.A.C. 7:36-6.4 or 12.4 or a pending project agreement under N.J.A.C. 7:36-9.1 or 14.1; or

3. Send to the local government unit a legal release of the Green Acres restrictions from the parcel previously listed in the ROSI. The local government unit shall have the release recorded with the County clerk or registrar and return the original of the release to the Department within 30 days of the recording date.

(l) If the Department denies a request to amend a ROSI, it shall so notify the local government unit in writing. The denial of a request to amend a ROSI under this section shall not preclude the local government unit from requesting to divert or dispose of the parcel in question by submitting an application for State House Commission approval of such diversion or disposal under N.J.A.C. 7:36-26.

(m) If the Department, subsequent to its execution of a project agreement, has reason to believe that the ROSI incorporated into the project agreement does not include a parcel or portion of a parcel that was held by a local government unit for recreation and conservation purposes at the time of receipt of Green Acres funding and so should have been listed on the ROSI as unfunded parkland, or that the ROSI includes a parcel or portion of a parcel that was inappropriately listed and should be removed, the Department shall use the following process for determining whether to amend the local government unit's ROSI:

1. The Department shall send the local government unit a letter identifying the parcel or portion of the parcel that should be listed on or removed from the ROSI and stating the basis for its belief that the parcel was either held by or not held by the local government unit for recreation and conservation purposes at the time of receipt of Green Acres funding.

2. If the local government unit agrees that the parcel should be listed on or removed from its ROSI, the local government unit shall promptly amend the ROSI by using one of the methods listed in (k) above.

3. If the local government unit disagrees that the parcel should be listed on or removed from its ROSI, the following procedures shall be utilized:

- i. Within 30 days of receiving the Department's letter pursuant to (m)1 above, the local government unit shall submit to the Department documentation supporting its assertion that the land was either held for or not held for recreation and conservation purposes at the time of receipt of Green Acres funding;

- ii. The Department shall evaluate the documentation submitted by the local government unit taking into account the considerations listed at (f) above, and then shall notify the local government unit in writing of its final determination that the parcel was or was not held for recreation and conservation purposes at the time of receipt of Green Acres funding; and

- iii. If the Department determines that the parcel should be listed on or removed from the ROSI, within 90 days of such determination the local government unit shall amend the ROSI using one of the methods listed in (k) above.

(n) If the Department determines under (m)3ii above that a parcel was held for recreation and conservation purposes at the time of receipt of Green Acres funding, the failure of the local government unit to amend the ROSI and/or record the amended ROSI as directed by the Department under (m) above shall not affect the statutorily-imposed validity of the Green Acres restrictions on the parcel.

(o) The local government unit, or any other person with a constitutional right to request a hearing, may request an adjudicatory hearing under N.J.A.C. 7:36-25.16 to contest a denial under (m)1 above of a request to amend a ROSI or to contest the Department's determination under (m)3ii above that a parcel was held for recreation and conservation purposes at the time of receipt of Green Acres funding.

#### **7:36-25.4 Development of parkland acquired as part of a grant incentive project**

(a) This section establishes the procedures and requirements for any development of parkland acquired by a local government unit prior to June 30, 1999 as part of a grant incentive project.

(b) A local government unit may develop parkland acquired as part of a grant incentive project for the preservation of environmentally significant areas under the following procedures and requirements:

1. If the proposed development consists of de minimis development (for example, the installation of unpaved paths, trails, boardwalks, or minor landscaping), the local government unit need not obtain prior approval from the Department provided the following conditions are met:

- i. The proposed development meets all special conditions in the project agreement; and

- ii. The proposed development supports the use of the parkland for recreation and conservation purposes and will have no significant adverse impact on the natural resource values of the parkland.

2. If the proposed development consists of development other than de minimis development, the local government unit may proceed with the development provided the following conditions are met:

- i. The proposed development meets all special conditions in the project agreement;

ii. The proposed development supports the use of the parkland for recreation and conservation purposes and will have no significant adverse impact on the natural resource values of the parkland;

iii. If the proposed development is to be located in the area(s) delineated on the project reference map as areas in which development for recreation and conservation purposes is not expected to adversely impact the natural resource values of the parkland, the local government unit shall, prior to commencing construction:

(1) As applicable, satisfy the procedural requirements for a change in purpose or use of funded parkland at N.J.A.C. 7:36-25.6, including, but not limited to, the requirement for a public hearing; and

(2) Obtain the Department's approval for any building to be constructed as part of the development in accordance with N.J.A.C. 7:36-25.7; and

iv. If the proposed development is to be located in the area or areas delineated on the map included in the project agreement for the acquisition project as areas in which development for recreation and conservation purposes is expected to adversely impact the natural resource values of the project, or the project reference map does not contain such delineation, the local government unit shall, prior to commencing construction:

(1) As applicable, satisfy the procedural requirements for a change in purpose or use of funded parkland at N.J.A.C. 7:36-25.6, including, but not limited, to the requirement for a public hearing;

(2) Obtain the Department's approval for any building to be constructed as part of the development in accordance with N.J.A.C. 7:36-25.7; and

(3) Obtain approval of the proposed development in accordance with (e) and (f) below.

(c) The development of parkland acquired as part of a grant incentive project for the preservation of environmentally significant areas is prohibited if such development:

i. Does not meet the special conditions in the project agreement;

ii. Does not support the use of the parkland for recreation and conservation purposes; or

iii. Will have a significant adverse impact on the natural resource values of the parkland.

(d) A local government unit may develop parkland acquired as part of a grant incentive project for waterfront access, the protection of cultural, historic or archaeological resources or any other purpose under the following procedures and requirements:

1. As applicable, the local government unit shall satisfy the procedural requirements for a change in purpose or use of funded parkland at N.J.A.C. 7:36-25.6, including, but not limited to, the requirement for a public hearing;

2. The local government unit shall obtain approval for any building to be constructed as part of the development in accordance with N.J.A.C. 7:36-25.7; and

3. The local government unit shall obtain prior approval of the proposed development in accordance with (e) and (f) below.

(e) A local government unit seeking the Department's approval of its proposed development of parkland under (b)2 or (d) above shall follow the following procedures and requirements:

1. Upon conclusion of any public hearing required by (b)2 or (d)1 above, and consideration of the comment received at the public hearing, the local government unit shall determine whether or not to seek the Department's approval of the proposed development; and

2. If it makes a determination to proceed, the local government unit shall submit to the Department a written request for approval of the proposed development which includes the following information:

i. Proof of publication, mailing and/or posting of the notices of public hearing required under N.J.A.C. 7:36-25.6(a)1;

ii. A copy of a transcript of the public hearing required under N.J.A.C. 7:36-25.6(a)1;



iii. A summary of the public comments made at the public hearing and/or provided in writing during the public comment period and the local government unit's response to the public comments;

iv. Copies of any written information submitted by commenters at the public hearing or during the public comment period;

v. A site map, showing the location of the proposed development;

vi. A narrative description of the proposed development;

vii. A narrative description of the impacts that the proposed development is likely to have on environmental, cultural, historical, archaeological or waterfront resources, as appropriate; and

viii. For requests for which the local government unit has determined that the change in use requirements of N.J.A.C. 7:36-25.6 do not apply, a brief written explanation of the basis upon which such exemption is claimed.

(f) Subsequent to its receipt of a request for approval of a proposed development under (b)2 or (d) above, the Department shall notify the local government unit in writing of its approval or denial or shall request more information from the local government unit. The Department shall approve a request for approval under (b)2 or ((I) above if the information submitted by the local government unit in support of its request demonstrates that the proposed development will not have a significant adverse impact on the natural resource values, waterfront access, cultural, historic or archaeological resources, as applicable, of the project site and the project, assuming the development was completed, would nonetheless have been assigned points sufficient to qualify as a grant incentive project.

#### **7:36-25.5 Administrative transfer of funded or unfunded parkland**

(a) A local government unit or nonprofit may transfer funded or unfunded parkland to a local government unit, the State, the Federal government or a nonprofit, subject to the following:

1. Except in the case of a transfer to the State or the Federal government, the proposed transferee must be eligible to receive Green Acres funding under N.J.A.C.

7:36-3.1 (if the transferee is a local government unit) or N.J.A.C. 7:36-15.1 and 21.1 (if the transferee is a nonprofit);

2. The deed, or other instrument by which the local government unit or nonprofit legally effects the transfer of the parkland to the transferee, shall establish the following conditions of transfer:

i. The transferred property shall continue to be used solely for recreation and conservation purposes and shall be reasonably accessible to the public to the same extent as or greater than prior to the transfer; and

ii. The Green Acres restrictions and any other applicable recreation and conservation restrictions on the parkland shall continue to apply;

3. At least 90 days prior to its final approval of the proposed transfer, the local government unit or nonprofit currently holding the parkland shall hold at least one public hearing on the proposed transfer of parkland in accordance with the public hearing procedures at N.J.A.C. 7:36-25.6(a)1 and 2. The local government unit or nonprofit may combine the public hearing required under this paragraph with any other required public hearing on the acquisition or management of the parkland, as long as the notice requirements of N.J.A.C. 7:36-25.6(a)1 and 2 and (a)4i are met and the notice of the combined public hearing adequately informs the public that the proposed transfer of parkland will be discussed at the hearing;

4. The local government unit or nonprofit shall provide the Department with the following notices and information:

i. At least 30 days prior to any public hearing to be held on the proposed transfer of parkland, advance written notice of the hearing;

ii. At least 90 days prior to the execution of the transfer by the local government unit or nonprofit, a copy of a draft deed or other instrument by which the parkland is to be transferred;

iii. Within 90 days after final approval of the proposed transfer of parkland by the local government unit or nonprofit, written proof that a public hearing was held as required under (a)3 above; and

iv. Within 90 days of the execution of the transfer, written notice that the transfer of parkland has been

executed, including a copy of the recorded deed or other instrument by which the transfer was accomplished; and

5. All notices and information required to be provided to the Department under (a)4 above shall be submitted to the following address:

New Jersey Department of Environmental Protection  
Green Acres Program  
Bureau of Legal Services and Stewardship  
PO Box 412  
Trenton, New Jersey 08625

(b) If the transferor is a county, the county shall comply with the requirements of N.J.S.A. 40A:12-13.5, as applicable, prior to the transfer;

(c) Any transfer of parkland that does not comply with the requirements of this section is void and of no legal effect.

#### **7:36-25.6 Change in purpose or use of funded or unfunded parkland**

(a) A local government unit or nonprofit may change the recreation and conservation purpose or use for which funded or unfunded parkland is being used to another recreation or conservation purpose or use, including, but not limited to, development of the lands for public outdoor recreation, or construction by a local government unit of a building or other structure on unfunded parkland for public indoor recreation, in accordance with the following procedures:

1. The local government unit or nonprofit shall hold at least one public hearing on the proposed change in purpose or use at least 90 days prior to final approval of the change in purpose or use or proposed construction by the local government unit or nonprofit. The public hearing shall be held on a weekday in the evening in the municipality in which the parkland that is the subject of the proposed change in purpose or use is located. If the parkland is located in more than one municipality or the nonprofit is a regional nonprofit, the public hearing shall be held at a central location approved in advance by the Department within the county or region served by the local government unit or nonprofit. The local government unit or nonprofit shall produce a transcript of the public hearing for submission to the Department. The local government

unit or nonprofit shall provide public notice of the hearing as follows:

i. At least 30 days prior to the hearing, the local government unit or nonprofit shall:

(1) At its option, publish a legal notice of the hearing in the official newspaper(s) of the municipality(ies) in which the parkland is located and, if the local government unit is a county or the nonprofit is a regional nonprofit, also in a local newspaper of general interest and circulation;

(2) Post notice of the hearing on its official web site (if any) in the same manner as other public hearing notices are posted;

(3) Provide written notice of hearing to Green Acres, the governing body, planning board(s), environmental commission(s) and open space advisory committee(s) of the municipality(ies) in which the parkland is located, if any, and, if the local government unit is a county, also to the county governing body, county planning board, county environmental commission and county open space advisory committee, if any; and

(4) Post and maintain in a legible condition until the public comment period is concluded under (a)1iii(4) below, a sign on the parkland that is the subject of the proposed change in purpose or use or in other prominent location(s) approved by the Department. Such sign shall advise the public of the proposed change in purpose or use, the public hearing on the proposed change in purpose or use and the opportunity for public comment on the proposed change in purpose or use. Such sign shall be of sufficient size and visibility and contain sufficient detail as to inform the general public of the proposed change in purpose or use and the method by which the public may obtain information about such proposed change, and shall be subject to the Department's approval;

ii. At least 15 days prior to the hearing, the local government unit or nonprofit shall publish a display ad in the official newspaper(s) of the municipality(ies) in which the parkland that is the subject of the proposed change in purpose or use is located and, if the local government unit is a county or the nonprofit is a regional nonprofit, also in a local newspaper of general interest and circulation; and

iii. The notices and advertisements required under (a)1i and ii above shall include the following information:

(1) The name of the local government unit or nonprofit and the date, time and location of the public hearing;

(2) A general description of the proposed change of purpose or use;

(3) The street address (if available), municipality, county, tax map block and lot and size of the land(s) for which the change in purpose or use or construction is proposed; and

(4) A statement inviting participation in the public hearing and notifying the public that, in the alternative, written comments on the proposed change or purpose or use may be submitted to the local government unit or nonprofit during a public comment period that will end on the date that is two weeks after the hearing date. The statement shall provide an address for submittal of written comments to the local government unit or nonprofit and shall require that copies of any written comments also be sent to:

New Jersey Department of Environmental Protection  
Green Acres Program  
Bureau of Legal Services and Stewardship  
PO Box 412  
Trenton, New Jersey 08625-0412

2. Within 60 days of the close of the public comment period for any public hearing to be held under (a)1 above, the local government unit or nonprofit shall provide the Department with proof of publication of the notices of public hearing if any, required under (a)1i(1) above; proof of publication of the display ad required under (a)1ii above; a dated copy of the posting required under (a)1i(2) above (if applicable); copies of and proof of mailing of the notices required under (a)1i(3) above; and proof of the posting and maintenance of a sign as required under (a)1i(4) above;

3. Within 90 days after approving the proposed change in purpose or use or proposed construction, the local government unit or nonprofit shall provide the Department with written proof that one or more public hearings were held under (a)1 above, including a copy

of the transcript required by (a)1 above; and

4. Within 90 days after changing the purpose or use of the funded or unfunded parkland or commencing construction of a structure or building for public indoor recreation on unfunded parkland, the local government unit or nonprofit shall provide the Department with written notice of the change in purpose or use or of the commencement of construction.

(b) In addition to meeting the public notice and hearing requirements listed in (a) above, a local government unit or nonprofit must obtain the written approval of the Department before it may impose any perpetual restriction, such as, but not limited to, a deed restriction, covenant or easement, on funded parkland to prohibit the development or use of the parkland for one or more recreation purposes.

(c) For the purposes of this section, a change in recreation and conservation purpose or use of parkland shall include:

1. The construction of recreation and conservation facilities, such as athletic fields or playgrounds, on undeveloped parkland or an undeveloped portion of parkland;

2. On funded parkland, the conversion of buildings originally acquired or constructed in support of recreation and conservation purposes to indoor recreation uses or purposes; and

3. The imposition of restrictions, through regulation, ordinance or other legal mechanism, intended to prohibit the development or use of funded or unfunded parkland for one or more recreation purposes. The imposition of perpetual restrictions on funded parkland also requires written Department approval under (b) above.

(d) For the purposes of this section, a change in recreation and conservation purpose or use of parkland shall not include:

1. The replacement of existing recreation and conservation development or facilities with development or facilities for another recreation and conservation purpose or use, or the renovation or repair of existing facilities, as long as such replacement, renovation or repair involves less than one-quarter acre of additional permanent disturbance of parkland;

2. The use of an existing structure on funded or unfunded parkland for another recreation or conservation

purpose, as long as no expansion of the structure is proposed;

3. The construction of additional support structures, such as bleachers, concession stands, picnic shelters or lighting towers, within the boundary of an existing developed recreation area, in order to enhance the existing purpose or use of that area;

4. Use of undeveloped parkland for short-term events such as festivals, carnivals or parades;

5. Implementation of natural resource management techniques and activities on funded or unfunded parkland, such as deer management, fishing controls or invasive species controls; or

6. The construction of recreation and conservation facilities identified by the local government unit or nonprofit in an approved application for Green Acres funding for acquisition or development of parkland.

(e) The notices and public hearing required pursuant to this section may be combined by the local government unit with public notices and hearings conducted for approval of a municipal or county master plan, parkland site master plan, municipal or county park master plan, application for municipal or county open space funding or approval of a municipal or county budget, as long as such notices and hearing comply with the requirements of this section.

(f) In addition to satisfying the requirements of this section, the local government unit or nonprofit shall obtain all other applicable Federal, State, county or local approvals for the proposed change in recreation and conservation purpose or use of parkland.

#### **7:36-25.7 Construction of buildings on funded parkland; use of existing buildings on funded parkland**

(a) A local government unit or nonprofit shall not construct a building on funded parkland unless the building directly supports the use of the funded parkland for recreation and conservation purposes, the local government unit or nonprofit complies with the change in use procedures at N.J.A.C. 7:36-25.6 (as applicable), and the local government unit or nonprofit obtains prior approval from the Department in accordance with (b) and (c) below or as part of a Green Acres-funded development project under N.J.A.C. 7:36-13.3 or 23.3. Buildings that are considered to directly support the use

of parkland for recreation and conservation purposes and that may be constructed under this section include, for example; park equipment storage sheds, restrooms, concession stands, locker rooms, interpretive centers, park administration offices, and maintenance facilities for the parkland.

(b) A local government unit or nonprofit seeking the Department's approval of the proposed construction of a building on funded parkland shall, at least 90 days before approval of the proposed construction by its governing body, submit to Green Acres a written request for approval of the proposed construction. The request shall include a statement of the purpose of the construction, a narrative description of the proposed construction, a site map, and a conceptual drawing of the building (with interior dimensions and uses labeled).

(c) The Department shall notify the local government unit or nonprofit in writing of its approval or disapproval of the proposed construction within 60 days of Green Acres' receipt of the request or shall request more information from the local government unit or nonprofit. Any approval issued by the Department under this subsection may include conditions as appropriate to protect the natural resource values and recreation functionality of the funded parkland, to preserve public access to the funded parkland and to minimize adverse impacts to adjacent properties.

(d) The local government unit or nonprofit may use a portion of any building constructed on funded parkland under this section for public indoor recreation activities, such as arts and crafts and games (including court games), or as a public meeting or multipurpose space, provided the primary use of the building directly supports the use of the funded parkland for recreation and conservation purposes. The use of the building for public indoor recreation activities or public meeting or multipurpose space shall take up no more than 25 percent of the square footage of the building.

(e) A local government unit or nonprofit may construct a structure to enclose an outdoor swimming pool or ice skating rink that existed as of January 3, 2006, subject to the following:

1. The local government unit or nonprofit shall comply with the change in use procedures at N.J.A.C. 7:36-25.6;
2. The local government unit or nonprofit shall obtain the prior approval of the Department under (b) above;
3. Construction of additional facilities as part of the

structure, such as space for other recreation and conservation activities, space for activities in support of the swimming pool or ice skating rink or space for activities in support of the parkland parcel on which the swimming pool or ice skating rink is located, shall be subject to the Department's review and approval under (a) through (d) above; and

4. Structures approved by the Department under this subsection are not eligible for Green Acres funding.

(f) A local government unit or nonprofit may use a building that existed on funded parkland at the time of receipt of Green Acres funding as a new community center, recreation center or museum, provided the local government unit or nonprofit complies with the change in use procedures at N.J.A.C. 7:36-25.6 and obtains the prior written approval of the Department under (f)1 and 2 below.

1. A local government unit or nonprofit seeking the Department's approval of the use of a building that existed on funded parkland at the time of receipt of Green Acres funding as a new community center, recreation center or museum shall, at least 90 days before the anticipated change in use, submit to the Department a written request for approval of the use, a narrative description of the intended use, a site map, and a conceptual drawing of the building (with interior dimensions and uses labeled).

2. The Department shall notify the local government unit or nonprofit in writing of its approval or disapproval of the proposed use within 60 days of its receipt of the request or shall request more information from the local government unit or nonprofit. In determining whether to issue such approval, the Department shall give particular consideration to whether alternative uses of the building that support recreation and conservation purposes may be reasonably implemented by the local government unit or nonprofit and whether the use of the building as proposed will have a significant adverse impact on the use of the surrounding parkland by the public. Any approval issued by the Department under this subparagraph may include conditions as appropriate to protect the natural resource values and recreational functionality of the funded parkland, to preserve public access to the funded parkland, and to minimize adverse impacts on adjacent properties.

(g) A local government unit or nonprofit may use a building that existed on funded parkland as of the time of

receipt of Green Acres funding as a caretaker or park employee residence under a lease or other agreement approved in advance by the Department under N.J.A.C. 7:36-25.13.

#### **7:36-25.8 Construction of buildings on unfunded parkland; use of buildings on unfunded parkland**

(a) A local government unit shall not construct a building on unfunded parkland unless the building directly supports the use of the parkland for recreation and conservation purposes or is to be used for public indoor recreation as defined at N.J.A.C. 7:36-2.1, and the local government unit complies with the change in use procedures at N.J.A.C. 7:36-25.6 (as applicable).

(b) A local government unit may use a building that existed on unfunded parkland as of the time of receipt of Green Acres funding as a new community center, recreation center or museum, provided the local government unit or nonprofit complies with the change in use procedures at N.J.A.C. 7:36-25.6.

(c) A local government unit may use a building that existed on unfunded parkland as of the time of receipt of Green Acres funding as a caretaker or park employee residence under a lease or other agreement approved in advance by the Department under N.J.A.C. 7:36-25.13.

#### **7:36-25.9 Fees for use of funded parkland and recreation and conservation facilities on funded parkland**

(a) A local government unit or nonprofit may establish a fee schedule for the use of funded parkland or for the use of recreation and conservation facilities on funded parkland, provided that the fees conform with (b) and (c) below.

(b) The fees shall not be so excessive as to discourage reasonable public access.

(c) The fees may be established in the following categories:

1. Yearly, seasonal, monthly, weekly, daily, single use or hourly. However, if the local government unit or nonprofit establishes yearly, seasonal, monthly and/or weekly fees, it shall also establish daily or single use fees;

2. Individual, group, team or family;

3. Local government unit resident or non-resident. However, the fee charged to a non-resident who lives in

the State shall not be greater than two times the fee charged to a local government unit resident;

4. Handicapped, senior citizen, youth or student; and

5. Nonprofit, for profit or corporate.

(d) A local government unit or nonprofit shall use any fees it collects for the use of funded parkland or a recreation and conservation facility on funded parkland for operating, maintenance, or capital expenses related to its funded parkland or to its recreation program as a whole. A local government unit shall establish a separate account to serve as a repository for the fees, if permitted to do so by law.

(e) The Department reserves the right to request that an audit be conducted and an audit report submitted in conformance with the Single Audit Act of 1984, P.L. 98-502 and the Single Audit Act Amendments of 1996, P.L. 104-156 (31 U.S.C. § § 7501 et seq.), Federal Office of Management and Budget (OMB) Circular A-133: "Audits of States Local Governments, and Non-Profit Organizations," incorporated herein by reference, and State OMB Circular 04-04: "Single Audit Policy for Recipients of Federal Grants, State Grants, and State Aid," incorporated herein by reference, showing the use of collected fees.

(f) The Department shall review and approve or disapprove fee schedules established under this section and the management and use of the fees collected as part of its inspection of funded parkland under N.J.A.C. 7:36-25.1(c). The Department may also investigate the establishment, management and use of fees for funded parkland in response to complaints from the public about noncompliance with this section. The Department reserves the right to request additional information and justification if a fee appears to be based on a category other than those allowed under (c) above or to be excessive when compared with fees charged at similar facilities, or if the use of fees appears to fail to conform to (d) above. The failure of a local government unit or nonprofit to correct an instance of fee noncompliance identified by the Department by the deadline specified by the Department may, pursuant to N.J.A.C. 7:36-9.1 or 14.1, render the local government unit ineligible to receive a disbursement of Green Acres funding or, pursuant to N.J.A.C. 7:36-20.1 or 24.1, the nonprofit ineligible to receive a disbursement of Green Acres funding. The Department may also initiate legal or other action as appropriate to enforce this chapter, the Green Acres laws, and/or the terms and conditions of the

original project agreement under which the local government unit or the nonprofit received Green Acres funding.

#### **7:36-25.10 Public access to and use of funded parkland**

(a) A local government unit or nonprofit shall ensure that funded parkland is open and that reasonable public access, as determined by the Department, is afforded to all New Jersey residents.

(b) A local government unit or nonprofit that intends to close an area of funded parkland to public access or use for more than 30 days in order to protect public safety, conduct routine maintenance, or protect a specific natural or cultural resource shall notify Green Acres in writing in advance of the closure. The local government unit or nonprofit shall post a sign at the area being closed that states the reason for the closure and, if known, the date of anticipated reopening of the area.

(c) A local government unit or nonprofit may schedule the use of a recreation and conservation facility to accommodate organized sports or other recreation or conservation purposes. However, the local government unit or nonprofit shall not schedule the use of a facility in such a way that the public is denied reasonable access to or use of the facility, and the local government unit or nonprofit shall provide public access to another comparable facility for the period for which access to the recreation and conservation facility is scheduled.

(d) A local government unit or nonprofit shall not enter into exclusive use agreements or allow discriminatory scheduling of the use of the funded parkland or its recreation and conservation facilities based on residency or otherwise in violation of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or other applicable law.

(e) If yearly or seasonal rentals, reservations, memberships or permits are offered for the use of recreation and conservation facilities on funded parkland, such as marina slips, swimming pools, ice rinks, tennis courts, golf courses, or athletic fields, and the demand for such rentals, reservations, memberships or permits exceeds the available supply, the local government unit or nonprofit shall:

1. Conduct a fair and equitable system to distribute the rentals, reservations, memberships or permits;
2. Limit the time period for rentals of marina slips to a maximum of five years;

3. Limit the time period for other rentals, reservations, memberships or permits to a maximum of two years; and

4. Provide for daily or one-time use of the facilities as required under N.J.A.C. 7:36-25.9(c).

(f) The local government unit or nonprofit shall post at the funded parkland or facility the conditions and fees, if any, for its use or a telephone number and a web address (if available) by which a user may obtain information about those conditions and fees. If the local government unit or nonprofit charges fees or requires permits or reservations for access to recreation and conservation facilities on funded parkland, it shall provide for reasonable public access to available facilities during non-business hours. Such access may be provided by allowing access on a first-come first-served basis, providing automated fee collection or other reasonable method. For the purposes of this paragraph, "reasonable public access" shall not include or require access to facilities, such as golf courses and swimming pools, that require operation by employees or representatives of the local government unit or nonprofit in order to function properly or to protect the public health, safety or welfare.

**7:36-25.11 Fees for use of unfunded parkland and recreation and conservation facilities on unfunded parkland; public access to and use of unfunded parkland**

A local government unit shall ensure that undeveloped unfunded parkland is open and reasonable public access is afforded to all New Jersey residents. A local government unit that operates or develops a recreation and conservation facility on unfunded parkland without Green Acres funding may adopt fees and schedule the use of that facility at its discretion.

**7:36-25.12 Posting of signs on funded parkland**

(a) The Department shall provide each local government unit or nonprofit that is awarded Green Acres funding for the acquisition of parkland or the development of parkland or a recreation and conservation facility on parkland with one or more signs that identify the parkland or facility as a Green Acres funded site dedicated to permanent recreation and open space. The local government unit or nonprofit shall post the sign(s) in a prominent place or places on the funded parkland or, as applicable, at the recreation and conservation facility, and shall maintain such sign(s).

(b) If a local government unit or nonprofit receives approval to divert or dispose of funded parkland under the procedures at N.J.A.C. 7:36-26, the local government unit or nonprofit shall relocate the sign identifying the parkland and/or recreation and conservation facility as a Green Acres funded site to the replacement land and/or recreation and conservation facility approved by the Commissioner and the State House Commission.

(c) Except as provided in (a) and (b) above, the local government unit or nonprofit shall not post temporary or permanent signs on funded parkland, except:

1. The park closure sign(s) required under N.J.A.C. 7:36-25.10(b);

2. The Green Acres construction sign(s) required under N.J.A.C. 7:36-14.4 or 24.4;

3. Signs that acknowledge sponsors of or contributors to the acquisition or development of the parkland, donors of equipment or services in support of the operation and/or maintenance of the parkland or recreation and conservation facility(ies), or other entities that conduct activities on behalf of the parkland, including the managing agency for the parkland;

4. Signs which describe or enhance the use of parkland for recreation and conservation purposes, including, but not limited to, signs identifying the park and any facilities within the park, park entrance, interpretive and directional signs, historic markers, property boundary signs, hazard warning signs, "no hunting" signs or other similar signs;

5. Commemorative or memorial signs or plaques; and

6. Public hearing notice signs required under this chapter.

**7:36-25.13 Leases, use agreements, or concession agreements for recreation and conservation purposes on funded or unfunded parkland**

(a) If a local government unit or nonprofit seeks to enter into or to renew a lease, or use agreement which would support or promote the use of funded parkland or a recreation and conservation facility on the funded parkland for recreation and conservation purposes, the local government unit or nonprofit shall submit the proposed lease or agreement to the Department for approval at least 45 days before it intends to execute the lease or agreement.

Any such lease or use agreement that is executed without the Department's approval is void and of no legal effect.

(b) The lease or agreement shall:

1. Be awarded in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Local Land and Building Law, N.J.S.A. 13:12-1 et seq. and N.J.A.C. 7:36-25.6, as applicable;

2. Describe the specific use to which the parkland or facility will be put during the term of the lease or agreement and explain how this use will promote the use of funded parkland for recreation and conservation purposes;

3. Require that the public shall have reasonable access during the term of the lease or agreement to the parkland or facility which is the subject of the lease or agreement;

4. Establish the initial term of the lease or agreement pursuant to the following:

i. The lease or agreement shall provide for an initial term of no more than five years, or for good cause shown (such as the proposed construction of substantial capital improvements by the lessee or parkland user, provide for a longer initial term of less than 25 years; or

ii. The lease or agreement may provide for an initial term of 25 years or more; however, a term of 25 years or more shall be deemed to constitute a conveyance of parkland and requires the approval of the Commissioner and the State House Commission under N.J.A.C. 7:36-26;

5. Establish that the local government unit or nonprofit may, subject the approval of the Department at the end of the initial term and each additional term, renew the lease or agreement at the end of the initial term and thereafter for additional terms. Any renewal term shall be for no more than five years, or for good cause shown less than 25 years, unless a longer renewal term is approved by the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26. The Department shall evaluate a request for renewal of a lease or agreement under the substantive standards for lease approval at (d) below;

6. Specify the payment, rental, or other consideration to be paid by the lessee or parkland user to the local

government unit or nonprofit for the lease or use of the parkland;

7. Require that the lessee or parkland user comply with the lease, the applicable requirements of this subchapter, and any deed restrictions pertaining to the parkland;

8. Specify that any activities conducted on parkland under the lease or agreement are governed by the requirements of this chapter, the lease and any deed restrictions pertaining to the parkland;

9. Require the lessee or parkland user to name the Department as an additional insured under any insurance policy required by the lease or agreement, such that the Department shall have in all respects at least the same protections as the policy provides to the lessee, parkland user, local government unit or nonprofit; and

10. If the parkland is to be leased or used for agriculture, require that:

i. The parkland shall be farmed using management practices that conserve soil and water, such as those agricultural management practices approved by the State Agriculture Development Committee under the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and that minimize the use of herbicides, pesticides, and fertilizers in accordance with the Pesticide Control Code at N.J.A.C. 7:30;

ii. Any forests on the parkland to be leased or used shall be managed in accordance with the New Jersey Forestry and Wetlands Best Practices Manual; and

iii. The agricultural use of the parkland shall not adversely impact any documented occurrence of a threatened, endangered, or rare species or the habitat of such species.

(c) If the use of the parkland under the proposed lease or agreement will have an adverse impact on the natural resource values of the parkland, the local government unit or nonprofit shall require that the person seeking the lease or agreement propose a compensatory mitigation plan. If the plan is accepted by the local government unit or nonprofit and approved by the Department, implementation of the plan shall be included as a mandatory condition of the lease or agreement. The Department will not approve any lease or agreement, or a renewal thereof, under this subsection unless:

1. It is satisfied with the character, quality and extent



of the mitigation and restoration proposed by the local government unit or nonprofit and the commitment of the lessee, or parkland user to implement the plan; or

2. The proposed lease or agreement is approved as a diversion or disposal of parkland by the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26.

(d) The Department will consider the following factors in determining whether to approve or deny a lease or use agreement, or a renewal thereof, under this section:

1. Whether the lease was awarded in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Local Land and Buildings Law, N.J.S.A.13:12-1 et seq. and N.J.A.C. 7:36-25.65, as applicable;

2. Whether the lease or agreement will sufficiently promote or support recreation or conservation purposes;

3. Whether the lease or agreement will provide reasonable public access to the funded parkland;

4. Whether the lease or agreement complies with the requirements of (b) and (c) above;

5. Whether the lease or agreement will provide sufficient compensation (payment, rental or other consideration) for allowing the proposed use of the parkland or a facility on parkland;

6. If the lease or agreement would have a term of 25 years or more or would otherwise constitute a diversion or disposal of parkland, whether the lease or agreement has received prior approval of the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26;

7. If the lease or agreement would have an adverse impact on the natural resource values of the parkland, whether the lease or agreement includes a compensatory mitigation plan which would adequately compensate for the adverse impact and/or adequately restore the parkland; and

8. With respect to renewals, in addition to (d)1 through 7 above:

i. Whether the lessee or parkland user failed to meet one or more terms of the prior lease or

agreement or to demonstrate sound administrative or management practices;

ii. If the lessee or parkland user is seeking a renewal term of more than five years, whether the local government unit or nonprofit has shown good cause for the lessee's, parkland user's holding or continuing to hold a long term lease; or

iii. Whether the local government unit or nonprofit used compensation (payments, rentals or other consideration) it received under the prior lease or agreement for purposes other than those allowed under (e) below.

(e) A local government unit or nonprofit that enters into a lease or use agreement under this section shall use any payments, rentals, or other consideration it receives under the lease or agreement for operating, maintenance, or capital expenses related to its funded parkland or to its recreation program as a whole.

(f) A local government unit or nonprofit may operate a recreational facility on funded parkland through a concession agreement awarded by competitive bidding in accordance with applicable law. The concessionaire shall pay any payments or rentals collected directly to the local government unit or nonprofit, who shall use such payments or rentals for operating, maintenance or capital expenses related to its funded parkland or its recreation program as a whole.

(g) A local government unit may enter into or renew a lease or use agreement which would promote or support the use of unfunded parkland for recreation and conservation purposes without the prior approval of the Department, provided the lease or use agreement complies with the requirements of (b) through (e) above. At its option, the local government unit may submit the lease or use agreement to the Department for review and approval. A copy of any lease or use agreement executed by a local government unit under this subsection shall be made available to the Department upon its request. Any lease or agreement executed by a local government unit under this subsection that does not comply with (b) through (e) above is void and of no effect.

**7:36-25.14 Leases or use agreements regarding funded or unfunded parkland for purposes other than recreation and conservation**

(a) If a local government or nonprofit unit seeks to enter into or to renew a lease or use agreement which would

allow the use of funded or unfunded parkland or a recreation or conservation facility on the parkland for a beneficial public purpose other than a recreation and conservation purpose, the local government unit or nonprofit shall submit the proposed lease or agreement to the Department for approval at least 45 days before it intends to execute the lease or agreement. A lease or use agreement which would allow the use of funded parkland or unfunded parkland or a facility on the parkland for a public purpose other than recreation and conservation purposes but that is not approved by the Department is void and of no legal effect.

(b) The lease or agreement shall:

1. Describe the specific use to which the parkland or facility on the parkland will be put during the term of the lease or agreement and explain how this use will be beneficial to the public;

2. Establish the term of the lease or agreement pursuant to the following:

i. Except as allowed under (b)2ii below, the lease or agreement shall provide for a term of no more than two years, but may provide that the lessee or parkland user, upon a showing of good cause and with Department approval, may be granted one extension not to exceed six months;

ii. For leases of historic structures under (c) below, the lease or agreement shall generally provide for an initial term of no more than five years, but for good cause shown (such as the proposed construction of substantial capital improvements by the lessee or parkland user), the lease or agreement may provide for a longer initial term not of less than 25 years; or

iii. A lease or agreement that provides for a longer term than provided at (b)2i or ii above shall be deemed to constitute a diversion of parkland and requires the approval of the Commissioner and the State House Commission under N.J.A.C. 7:36-26;

3. Establish the renewal term for the lease or agreement as follows:

i. Except as allowed under (c) below for leases or agreements for the use of historic structures, the lease or agreement may not be renewed for any term after its initial term (including an extension authorized by the Department under (b)2i above), unless such renewal is approved by the

Commissioner and the State House Commission as a diversion of parkland in accordance with N.J.A.C. 7:36-26; or

ii. For leases or agreement for the use of historic structures under (c) below, the lease or agreement shall establish that the local government unit or nonprofit may, subject the approval of the Department at the end of the initial term and each additional term, renew the lease or agreement at the end of the initial term and thereafter for additional terms. Any renewal term shall be for no more than five years, or for good cause shown less than 25 years, unless a longer renewal term is approved by the Commissioner and the State House Commission as a diversion of parkland in accordance with N.J.A.C. 7:36-26. The Department shall evaluate a request for renewal of a lease or agreement under the substantive standards for lease approval at (f) below;

4. Specify the payment, rental, or other consideration to be paid by the lessee or parkland user to the local government unit or nonprofit for the lease or use of the parkland or the facility on the parkland;

5. Require the lessee or parkland user to comply with the lease or agreement, the applicable requirements of this subchapter and any deed restrictions pertaining to the parkland;

6. Specify that any activities conducted on parkland under the lease or agreement are governed by the lease or agreement, the requirements of this chapter and any deed restrictions pertaining to the parkland;

7. Require the lessee or parkland user to name the Department as an additional insured under any insurance policy required by the lease or agreement, such that the Department shall have in all respects at least the same protections as the policy provides to the lessee, parkland user, local government unit or nonprofit; and

8. If applicable, require the restoration of the parkland to its pre-lease or pre-agreement condition or to an improved condition in accordance with a restoration plan approved by the Department.

(c) In addition to the requirements at (b) above, a lease or use agreement for the use of an historic building for a public purpose other than a recreation and conservation purpose shall require that:

1. The public shall have reasonable public access to the building;

2. The lessee or parkland user shall maintain and/or restore the building in accordance with plan and methods acceptable to the Department's Historic Preservation Office (available at PO Box 404, Trenton, New Jersey 08625-0404) or its successor; and

3. The use of the building under the lease or agreement shall not interfere with the use of the surrounding parkland for recreation and conservation purposes.

(d) If the use of the parkland under the proposed lease or agreement will interfere with the use of a developed recreation and conservation facility on the parkland, the local government unit or nonprofit shall, to the extent feasible, make the same recreation and conservation use available to the public at other facility(ies) for the duration of the lease or agreement and shall notify the Department of the extent of the anticipated interference and of its plan to accommodate the same recreation and conservation use at other facility(ies) for the duration of the lease or agreement as part of the submission under (a) above.

(e) If the use of the parkland under the proposed lease or agreement will have an adverse impact on the natural resource values of the parkland, the local government unit or nonprofit shall require that the person seeking the lease or agreement propose a compensatory mitigation plan. If the plan is accepted by the local government unit or nonprofit and approved by the Department, implementation of the plan shall be included as a mandatory condition of the lease or agreement. The Department will not approve any lease or agreement under this subsection unless:

1. It is satisfied with the character, quality and extent of the mitigation and restoration proposed by the local government unit or nonprofit and the commitment of the lessee or parkland user to implement the plan; or

2. The proposed lease or agreement is approved as a diversion or disposal of parkland by the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26.

(f) The Department will consider the following factors in determining whether to approve or deny a lease or use agreement, or a renewal thereof, under this section:

1. Whether the lease or agreement will provide a sufficient public benefit;

2. The impact of the lease or agreement on the current or future use of the parkland by the public for recreation and conservation purposes;

3. Whether the lease or agreement will provide sufficient compensation (payment, rental or other consideration) for the use of the parkland or a facility on parkland for other than recreation and conservation purposes;

4. Whether the lease or agreement will comply with the requirements of (b) above and, if applicable, with the requirements for leases of historic structures in (c) above;

5. If the lease or agreement would have a term longer than provided in (b)2 or 3 above or would otherwise constitute a diversion or disposal of parkland, whether the person seeking the lease or agreement has secured the prior approval of the Commissioner and the State House Commission in accordance with N.J.A.C. 7:36-26;

6. If the lease or agreement would have an adverse impact on the natural resource values of the parkland, whether the lease or agreement includes a compensatory mitigation plan which would adequately compensate for the adverse impact and/or adequately restore the parkland;

7. If the lease or agreement is for use of an historic building in accordance with (c) above, whether the lease or agreement provides reasonable public access to the building or unduly interferes with the use of the surrounding parkland; and

8. With respect to renewals of leases for historic buildings pursuant to (c) above:

i. Whether the lessee or parkland user failed to meet one or more terms of the prior lease or agreement or to demonstrate sound administrative or management practices;

ii. If the lessee or parkland user is seeking a renewal term of more than five years, whether the local government unit or nonprofit has shown good cause for the lessee's, parkland user's holding or continuing to hold along term lease; or

iii. Whether the local government unit or nonprofit used compensation (payments, rentals or other consideration) it received under the prior lease or agreement for purposes other than those allowed under

(g) below.

(g) A local government unit or nonprofit that enters into a lease or use agreement under this section shall use any payments, rentals, or other consideration it receives under the lease or agreement for operating, maintenance, or capital expenses related to its funded parklands or to its recreation program as a whole.

**7:36-25.15 Designated commuter parking lots on parkland**

(a) A local government unit may seek administrative approval from the Commissioner for the dual use of all or a portion of a parking lot located on, and which is used to provide public access to, funded or unfunded parkland as a designated commuter parking lot, provided the parking lot was constructed prior to June 30, 1999 and provided that no Green Acres funding was used to pay for construction of the parking lot.

(b) A local government unit seeking approval under (a) above shall:

1. Prior to submitting a request for administrative approval, hold at least one public hearing in the municipality where the parking lot is located in accordance with the change in purpose or use procedures at N.J.A.C. 7:36- 25.6. The notices required by N.J.A.C. 7:36-25.6 shall specify that the public hearing will be conducted jointly by the local government unit and the Department, and a representative of the Department will participate in the public hearing; and

2. After the public hearing (including the public comment period required by N.J.A.C. 7:36-25.6(a)1) is concluded and the public comments have been reviewed, determine whether or not to proceed with the request for administrative approval from the Commissioner. If it makes a determination to proceed, the local government unit shall submit to the Department a written request for administrative approval which includes the following information:

i. Proof of publication, mailing and/or posting of the notices of public hearing required under N.J.A.C. 7:36-25.6(a)1;

ii. A copy of a transcript of the public hearing as required under N.J.A.C. 7:36-25.6(a)1;

iii. A summary of the public comments made at

the public hearing and/or provided in writing during the public comment period and the local government unit's response to each of the public comments;

iv. Copies of any written information submitted by commenters at the public hearing;

v. Site maps, showing the location of the parking lot for which dual parkland and commuter use is proposed, the portion(s) of the parking lot proposed for commuter parking use and the location of improvements, if any, proposed for the parking lot for commuter parking purposes;

vi. A narrative description of the proposed dual use, including an explanation of whether dual use is proposed for all or a portion of the parking lot and whether dual use is proposed for a parking lot as it currently exists or if improvement of the parking lot is proposed. If improvements to the parking lot are proposed, the narrative description shall describe those improvements in detail. The narrative description shall also describe how the dual use of the parking lot will fulfill a compelling public need or yield a significant public benefit (as defined at N.J.A.C. 7:36-26.1(d)1), will not substantially inhibit use of the parking lot for public access to the lands for recreation and conservation purposes, and will not substantially harm the recreation and conservation purposes for which the parkland was acquired. The narrative description shall include an accounting of the spaces to be allocated to park users and to commuters, a showing that adequate parking will continue to be available to park users during periods of commuter parking use and a description of enforcement measures, if any, to be taken by the local government unit to ensure adequate public access to the parkland for recreation and conservation purposes. Examples of enforcement measures include, but are not limited to, signage, metering, and routine patrols;

vii. A copy of an ordinance or resolution adopted by the local government unit which holds the parkland, designating the parking lot for dual use as a public park access and commuter parking lot subject to the approval of the Commissioner under this section;

viii. Documentary proof that the parking lot was constructed prior to June 30, 1999 and that no Green Acres funding was used to pay for construction of the parking lot; and

ix. A narrative description of any impacts that the

proposed dual use of the parking lot is likely to have on environmental, cultural, historical, archaeological or waterfront resources.

(c) The Commissioner shall approve a request submitted under (b)2 above only if he or she finds, in consultation with the Commissioner of Transportation, that the following criteria are satisfied:

1. The local government unit which owns the parkland has adopted an ordinance or resolution designating the parking lot for dual use as a public park access and commuter parking lot subject to the approval of the Commissioner under this section;

2. The parking lot was constructed prior to June 30, 1999;

3. No Green Acres funding was used to pay for construction of the parking lot;

4. The additional use of the parking lot for commuter parking, and any improvements which may be made thereto, will fulfill a compelling public need or yield a significant public benefit;

5. The additional use of the parking lot for commuter parking, and any improvements which may be made thereto, will not substantially inhibit use of the parking lot for public access to the lands for recreation and conservation purposes; and

6. The additional use of the parking lot for commuter parking, and any improvements which may be made thereto, will not substantially harm the recreation and conservation purposes for which the lands were acquired.

(d) The Commissioner may condition the approval granted pursuant to (c) above as necessary to ensure that the requirements of (c)4 through 6 above continue to be met during the term of the approval. The conditions established by the Commissioner, may include, but are not limited to:

1. A limit on the term of the approval;

2. A limit on the number of spaces within the parking lot that are designated for commuter parking purposes;

3. The requirement that specified measures be undertaken by the local government unit to ensure

adequate public access to the parking lot for recreation and conservation purposes; and

4. Maintenance requirements to be assumed by the local government unit requesting the approval.

(e) The Commissioner may revoke any approval granted pursuant to this section, after conducting at least one public hearing in the municipality in which the parkland is located, if the facts or findings upon which the approval was based have changed to the extent that the requirements for approval outlined in (c) above are no longer met.

(f) No improvements shall be made to any parking lot designated and approved for dual use as a public park access and commuter parking lot pursuant to this section without the approval of the Commissioner after the joint conduct by the local government unit or the Department of at least one public hearing on the proposed improvements in the municipality in which the parkland is located. Such approval shall be granted only if the Commissioner finds that the improvements meet the criteria set forth in (c) above and do not constitute an expansion of the parking lot.

(g) The expansion of any parking lot or the construction of any additional parking lot on parkland for which an approval for a dual use public park access and commuter parking lot has been granted by the Commissioner pursuant to this section shall be deemed to constitute a disposal or diversion of parkland and requires the approval of the Commissioner and the State House Commission under N.J.A.C. 7:36-26.

#### **7:36-25.16 Adjudicatory hearing requests**

(a) A local government unit, or any other person with a constitutional right to request a hearing, that is aggrieved by one of the following decisions by the Department may request an adjudicatory hearing:

1. Denial of a ROSI amendment request under N.J.A.C. 7:36-25.3(g); or

2. A determination under N.J.A.C. 7:36-25.3(g) that a parcel was held for recreation and conservation purposes at the time of receipt of Green Acres funding.

(b) To request an adjudicatory hearing, the local government unit or other person with a constitutional right to request a hearing shall, within 30 days of the Department's issuance of a notice of its decision, submit a written hearing request including the information listed at (d) below to the following address:

New Jersey Department of Environmental Protection  
Office of Legal Affairs  
ATTENTION: Adjudicatory Hearing Requests  
PO Box 402  
Trenton, New Jersey 08625-0402

(c) A local government unit or other person with a constitutional right to request a hearing that submits a request for an adjudicatory hearing under (b) above shall also send a copy of the hearing request to:

New Jersey Department of Environmental Protection  
Green Acres Program  
Bureau of Legal Services and Stewardship  
PO Box 412  
Trenton, New Jersey 08625-0412

(d) The following information shall be included in a request for an adjudicatory hearing:

1. The name, address, and telephone number of the local government unit or other person with a constitutional right to request a hearing and its authorized representative;
2. A copy of the written notice of the decision provided by the Department to the local government unit that is the subject of the hearing request and, if the local government unit is requesting the hearing, proof of the date the local government unit received the notice;
3. A statement of the appellant's basis for contesting the Department's decision that is the subject of the hearing request;
4. Information supporting the hearing request and specific reference to or copies of other written documents relied on to support the request;
5. An estimate of the time required for the hearing (in days and/or hours);
6. A request, if necessary, for a barrier-free hearing location for physically disabled persons; and
7. An indication of whether the local government unit or other person with a constitutional right to request a hearing is willing to negotiate a settlement with the Department prior to the Department's sending

the hearing request to the Office of Administrative Law.

(e) If the local government unit or other person with a constitutional right to request a hearing fails to include all of the information required under (d), the Department may deny the hearing request.

(f) Any adjudicatory hearing held under this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

## **SUBCHAPTER 26. STANDARDS AND PROCEDURES FOR COMMISSIONER AND STATE HOUSE COMMISSION APPROVAL OF THE DISPOSAL OR DIVERSION OF FUNDED OR UNFUNDED PARKLAND**

### **7:36-26.1 Department policy on disposals and diversions; substantive standards**

(a) It is the Department's policy to strongly discourage the disposal or diversion of both funded and unfunded parkland. The use of parkland for other than recreation and conservation purposes should be a last resort, and should only be considered by a local government unit or nonprofit when the proposed disposal or diversion is necessary for a project that would satisfy a compelling public need or yield a significant public benefit as defined at (d)1 below.

(b) A local government unit or nonprofit that seeks to dispose of or divert funded or unfunded parkland shall submit an application in accordance with the procedures in this subchapter for approval from the Commissioner and the State House Commission. Any disposal or diversion of parkland without the prior approval of the Commissioner and the State House Commission is void and of no legal effect.

(c) In evaluating applications for the disposal or diversion of parkland, the Department will carefully weigh the competing public interests presented by the project as opposed to the preservation of the parkland in its current condition; the impact of the proposed project on the parkland and other parkland throughout the State; the possible adverse consequences of the project, including the adverse consequences listed in (e) below; the objectives of the GSPT Act; and the proposed compensation in determining whether to approve the application.

(d) No application for the disposal or diversion of parkland under this subchapter shall be approved by the

Commissioner and the State House Commission unless the applicant proposing the disposal or diversion complies with all of the procedural requirements of this subchapter and the proposed disposal or diversion meets the following minimum substantive criteria:

1. The disposal or diversion of funded or unfunded parkland is for a project that will:

i. Fulfill a compelling public need, as demonstrated by the applicant in accordance with N.J.A.C. 7:36-26.4(d)1iv (minor disposals or diversions of parkland) or 7:36-26.9(d)1iv (major disposals or diversions of parkland), by mitigating a hazard to the public health, safety or welfare;

ii. Yield a significant public benefit, as demonstrated by the applicant in accordance with N.J.A.C. 7:36-26.4(d)1iv (minor disposals or diversions of parkland) or 7:36-26.9(d)1iv (major disposals or diversions of parkland), by improving the delivery by the local government unit or nonprofit, or by an agent thereof, of essential services to the public or to a segment of the public having a special need; or, if the purpose of the proposed disposal or diversion is to enable the construction of an inclusionary development as defined by the Fair Housing Act, N.J.S.A. 52:27D-304f, by ensuring that at least 20 percent of the housing units in the development are set aside for low and moderate income households; or

iii. For major disposals or diversions of parkland, provide an exceptional recreation and/or conservation benefit, as demonstrated by the applicant under N.J.A.C. 7:36-26.10(o), by substantially improving the quantity and quality of parkland, within the boundaries of the local government unit or watershed where the parkland proposed for disposal or diversion is located if feasible, without resulting substantially in any of the adverse consequences listed at N.J.A.C. 7:36-26.1(e);

2. For a major disposal or diversion of parkland subject to N.J.A.C. 7:36- 26.10, the applicant has demonstrated to the Department's satisfaction, through the alternatives analysis required by N.J.A.C. 7:36-26.9(d)2, that there is no feasible, reasonable and available alternative to the disposal or diversion of funded or unfunded parkland. It shall be the Department's presumption that there is a feasible, reasonable and available alternative not involving

parkland for the project for which an applicant seeks to divert or dispose of parkland. The applicant must rebut this presumption through the alternatives analysis in order to obtain the approval of the Commissioner and the State House Commission under this subchapter. If the applicant is not able to rebut this presumption, the Commissioner and the State House Commission may, in their discretion, approve an application for a major disposal or diversion of parkland based on the exceptional recreation and/or conservation benefit to be provided by the applicant;

3. The applicant shall compensate for the disposal or diversion of funded or unfunded parkland with eligible replacement land, parkland improvements, dedicated funds for the acquisition of land for recreation and conservation purposes or other monetary compensation, in accordance with N.J.A.C. 7:36- 26.5 (minor disposals or diversions of parkland) or 7:36-26.10 (major disposals or diversions of parkland);

4. For a major disposal or diversion of parkland subject to N.J.A.C. 7:36- 26.10, the applicant shall compensate for the loss of any recreation and conservation facilities resulting from the disposal or diversion of parkland with replacement recreation and conservation facilities in accordance with N.J.A.C. 7:36-26.10(c)3; and

5. The applicant's governing body shall:

i. Endorse the proposed disposal or diversion of funded or unfunded parkland by resolution, in accordance with the provisions pertaining to minor disposals or diversions of parkland at N.J.A.C. 7:36-26.4(d)10 and 26.6(f)4 or the provisions pertaining to major disposals or diversions of parkland at N.J.A.C. 7:36-26.9(d)11 and 26.11(i)4; and

ii. For major disposals or diversions of parkland, hold a scoping hearing on the proposed disposal or diversion, and for both minor and major disposals or diversions of parkland hold a public hearing regarding the complete application at least 90 days before the date of the State House Commission meeting at which the application is considered. Such hearing(s) shall be held, for minor disposals or diversions of parkland, in accordance with N.J.A.C. 7:36- 26.6(c) through (e), or, for major disposals or diversions of parkland, in accordance with N.J.A.C. 7:36-26.8 and 26.11(e) through (h) (major disposals or diversions of parkland).

(e) An application that otherwise meets the requirements

of this subchapter may be denied if the Department determines that allowing the diversion or disposal of the funded or unfunded parkland would have one or more of the following adverse consequences and that such adverse consequence(s) would not be sufficiently mitigated by the compensation proposed by the applicant. The Department may deny a proposed diversion or disposal that would:

1. Have significant adverse impact(s) on the public's use and enjoyment of the parkland or the remainder of the parkland or of parkland connected to the parkland proposed for disposal or diversion;

2. Have significant adverse impact(s), including cumulative and secondary impact(s), on the public's use and enjoyment of other Federal, State, local government unit or nonprofit parkland, including, but not limited to, greenways and trail systems, whether or not such parkland is contiguous to the parkland proposed for diversion or disposal;

3. Fragment an existing or planned park or trail system;

4. Result in the loss of a central, unique or significant parkland site or feature;

5. Substantially interfere with the provision of adequate and accessible parkland by the Federal government, State government or a local government unit;

6. Have a significant adverse impact, including fragmentation, on a documented occurrence of a threatened, endangered, or rare species, or on the habitat of such species, including, but not limited to rare, threatened or endangered wildlife habitat ranked 3, 4 or 5 according to the Landscape Maps; or be inconsistent with any Habitat Conservation Plan required pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq. or any Habitat Conservation Agreement executed under that Act;

7. Substantially interfere with Federal, State or local water quality protection efforts, including programs to protect water quality, prevent flooding and protect the shoreline, or be inconsistent with a Department approved Water Resource Management Plan. For the purposes of this paragraph, "programs to protect water quality" include, but are not limited to, regulation of aquifer recharge areas. Category One (C-1)

waterbodies, freshwater and coastal wetlands and implementation of the Highlands Regional Master Plan or the Pinelands Comprehensive Management Plan;

8. Remove a physical or visual buffer that protects or screens a significant natural resource or feature or create a physical or visual barrier that obstructs access to or blocks a desired view of a significant natural resource or feature;

9. Not support the goals of the State Plan, including, but not limited to, the goal of conserving the State's natural resources and systems, and the goal of preserving and enhancing areas with historic, cultural, scenic, open space and recreational value; or

10. Not be consistent with the Statewide Policies set forth in the State Plan, as applied in accordance with the guidance provided by the State Plan's Policy Map, including, but not limited to, the policies pertaining to historic, cultural and scenic resources; open lands and natural systems; planning regions established by statute; coastal resources; special resource areas; and design.

(f) Examples of uses of parkland that may constitute the diversion of funded or unfunded parkland from recreation and conservation purposes are set forth at N.J.A.C. 7:36-25.2(c). A list of activities that do not constitute a diversion or disposal of funded or unfunded parkland is set forth at N.J.A.C. 7:36-25.2(d).

#### **7:36-26.2 Minor and major disposals or diversions of funded or unfunded parkland**

(a) The Department shall classify a proposed disposal or diversion of funded or unfunded parkland as either a minor or major disposal or diversion. A local government unit or nonprofit shall utilize the procedures set forth at N.J.A.C. 7:36-26.3 through 26.6 to apply for approval of a minor disposal or diversion of parkland. A local government unit or nonprofit shall utilize the procedures set forth at N.J.A.C. 7:36-26.7 through 26.11 to apply for approval of a major disposal or diversion.

(b) The Department will classify the following as a minor disposal or diversion of parkland:

1. A diversion through the granting of an easement, whether surface or subsurface, over, under or through up to one acre of parkland, provided the following criteria are met:

- i. The easement will be granted to a public entity or



the agent of a public entity for a project that serves a public purpose;

ii. The easement will occupy less than 10 percent of the total area of the parkland parcel;

iii. The total cumulative area of parkland affected by the project for which the easement is requested is limited as follows, whether the request for disposal or diversion of parkland is made in a single application or incrementally through multiple applications submitted in phases over time:

(1) If only one parkland parcel is affected by the project, the total area of parkland disposed of or diverted for the project, including the area affected by the easement, will not exceed one acre; and

(2) If more than one parkland parcel is affected by the project, the total area of parkland disposed of or diverted for the project, including the area affected by easement, will not exceed two acres.

iv. The easement will not have a significant adverse impact on the intended use by the applicant or the public of the parkland parcel and of any surrounding parkland and will not result in any permanent net loss of recreation and conservation facilities; and

v. The easement will not have a significant adverse impact on the natural resource values of the parkland parcel and of any surrounding parkland;

2. A disposal of up to 0.50 acre of parkland through the transfer or sale of a fee simple interest, or the diversion of up to 0.50 acre of parkland through the granting of a lease or use agreement for other than recreation and conservation purposes for a term that exceeds the limitations set forth in N.J.A.C. 7:36-25.14, or the lease of an existing non-historic building on up to 0.50 acre of parkland for other than recreation and conservation purposes, provided the following criteria are met:

i. The disposal or diversion is requested by a public entity or the agent of a public entity for a project that serves a public purpose;

ii. The disposal or diversion will involve less than five percent of the total area of the parkland parcel;

iii. The total area of parkland affected by the

project for which the disposal or diversion is requested is limited as follows, whether the request for disposal or diversion of parkland is made in a single application or incrementally through multiple applications submitted in phases over time:

(1) If only one parkland parcel is affected by the project, the total area of parkland disposed of or diverted for the project, including the area affected by the proposed disposal or diversion, will not exceed 0.50 acre; and

(2) If more than one parkland parcel is affected by the project, the total area of parkland disposed of or diverted for the project, including the area affected by the proposed disposal or diversion, will not exceed one acre.

iv. The disposal or diversion will not have a significant adverse impact on the use by the applicant or the public of the parkland parcel(s) and of any surrounding parkland by the public and will not result in any permanent net loss of recreation and conservation facilities; and

v. The disposal or diversion will not have a significant adverse impact on the natural resource values of the parkland parcel and of any surrounding parkland;

3. A conveyance, through the transfer or sale of a fee simple interest or easement, of up to 0.50 acre of parkland to the owner of an adjacent property in order to resolve a boundary dispute, encroachment or access dispute, provided the following criteria are met:

i. The applicant demonstrates to the Department's satisfaction that the boundary dispute, encroachment or access dispute existed prior to the time of receipt of Green Acres funding as it pertains to the parkland proposed for conveyance;

ii. The disposal or diversion will not have a significant adverse impact on the intended use of the remainder of the parkland parcel and of the surrounding parkland by the applicant or the public, and will not result in any permanent net loss of recreation and conservation facilities;

iii. The disposal or diversion will not have a significant adverse impact on the natural resource values of the remainder of the parkland parcel or the surrounding parkland; and

iv. The disposal or diversion will not create access for any use of the adjacent property that did not exist as of the time of receipt of Green Acres funding as it pertains to the parkland proposed for conveyance. For example, the conveyance of access rights to serve a pre-existing residence would be classified as a minor disposal, but the conveyance of access rights that would serve a new residence to be built on the adjacent property or enable subdivision or other development of the adjacent property would be classified as a major disposal;

4. A disposal of parkland as part of an exchange for other land which is of at least equal acreage and located within the same block and lot as the parkland to be disposed of, other contiguous land held by the applicant that is not classified as parkland, or an adjacent parcel owned by another landowner, provided the following criteria are met:

i. The disposal is either requested by a public entity or the agent of a public entity or is initiated by the applicant;

ii. The exchange is for a project that will fulfill a public purpose that facilitates or supports the recreation and conservation use of the parkland. For purposes of this subparagraph, "public purpose" may include the exchange of acreage between the applicant and the owner of an adjacent property in order to resolve a boundary dispute, encroachment or access dispute that existed prior to the time of receipt of Green Acres funding as it pertains to the property proposed for exchange. However, the resolution of encroachments arising after the time of receipt of Green Acres funding as it pertains to the parkland proposed for exchange shall not constitute a public purpose under this paragraph. Examples of projects that may qualify under this subparagraph include, but are not limited to, the relocation of roads or utilities within a park to improve the functioning of the park. A land exchange that facilitates or supports a public purpose other than recreation and conservation purposes will be processed as a major disposal or diversion of parkland under N.J.A.C.7:36-26.7 through 26.11;

iii. The applicant demonstrates to the Department's satisfaction that the market value and natural resource value of the properties to be exchanged is reasonably equivalent or that the land to be transferred to the applicant is of greater market

value and natural resource value than the land proposed to be disposed of;

iv. The disposal will not have a significant adverse impact on the intended use of the remainder of the parkland parcel and of any surrounding parkland by the applicant or the public, and will not result in any permanent net loss of recreation and conservation facilities;

v. The disposal or diversion will not have a significant adverse impact on the natural resource values of the remainder of the parkland parcel and of any surrounding parkland; and

vi. The exchange will not compromise the integrity of the parkland boundary; and

5. A diversion for the construction of a building for public indoor recreation on funded parkland, provided the following criteria are met:

i. The diversion will involve less than 50,000 square feet of disturbance or occupy no more than five percent of the total area of the parkland parcel not already occupied by structures or impervious coverage measured cumulatively from January 3, 2006, whichever is less. For the purposes of this subparagraph, the area of the proposed diversion includes all associated facilities, including parking lots, access roads and utilities;

ii. The diversion will not have a significant adverse impact on the use by the applicant or the public of the parkland parcel or any surrounding parkland and will not result in any permanent net loss of recreation and conservation facilities; and

iii. The diversion will not have a significant adverse impact on the natural resource values of the parkland parcel and of any surrounding parkland.

(c) Any disposal or diversion of parkland that does not meet the criteria at (b)1 through 5 above shall be classified as a major disposal or diversion of parkland. If an applicant applies for approval of a disposal or diversion in accordance with the application procedures for a minor disposal or diversion of parkland and the Department determines that the proposal does not meet one or more of the criteria at (b)1 through 5 above, the Department shall direct the applicant to reapply in accordance with the procedures at N.J.A.C. 7:36-26.7 through 26.11.

**7:36-26.3 Minor disposals or diversions of funded or unfunded parkland; general procedural requirements**

(a) An applicant shall utilize the following procedure to apply for approval of a minor disposal or diversion of parkland by the Commissioner and the State House Commission:

1. Prior to providing any written submission, the applicant shall contact Green Acres to discuss the proposed disposal or diversion of parkland and related procedural requirements and to request a pre-application conference under N.J.A.C. 7:36-26.4(a) through (c);

2. After the pre-application conference has been conducted, the applicant shall submit to Green Acres a pre-application for the proposed disposal or diversion in accordance with N.J.A.C. 7:36-26.4(d);

3. After review of the pre-application by the Department under N.J.A.C. 7:36-26.4(e) through (h), and if authorized to proceed pursuant to N.J.A.C. 7:36-26.4(h)3, the applicant shall submit to Green Acres a final application for Commissioner and State House Commission approval of a minor disposal or diversion of parkland in accordance with N.J.A.C. 7:36-26.6(a);

4. Once the Department has determined that the application is complete for public hearing purposes under N.J.A.C. 7:36-26.6(b), the applicant shall hold a public hearing on the complete application and provide for a public comment period during which written comments may be submitted, in accordance with N.J.A.C. 7:36-26.6(c) through (e), to obtain public comment on the proposed disposal or diversion;

5. Following the public hearing and after the close of the public comment period, the applicant shall submit the additional information as required in accordance with N.J.A.C. 7:36-26.6(f);

6. Pursuant to N.J.A.C. 7:36-26.6(g), the Commissioner shall approve or disapprove the application and Green Acres shall provide notice of his or her action to the applicant. If the Commissioner approves the application, Green Acres shall inform the State House Commission that the local government unit or nonprofit has submitted an application for approval of a minor disposal or diversion of parkland which has been approved by the Commissioner, and provide a summary of the approved application to the

State House Commission;

7. Once the State House Commission has considered and acted upon the application, the Department shall notify the applicant of the Commission's approval or disapproval in accordance with N.J.A.C. 7:36-26.6(h);

8. After receiving approval from the Commissioner and the State House Commission, the applicant shall, in accordance with N.J.A.C. 7:36-26.6(i), remit to the Department any monetary compensation required pursuant to the approval prior to implementing the disposal or diversion; and

9. Pursuant to N.J.A.C. 7:36-26.6(j), upon receipt of the monetary compensation and/or proof that any other required compensation requirements either have been satisfied or will be satisfied in a timely manner, the Commissioner shall execute a release of the Green Acres restrictions on the parkland approved to be disposed of or diverted.

**7:36-26.4 Minor disposals or diversions; pre-application requirements**

(a) Prior to submitting an application for approval of a minor disposal or diversion of parkland, a local government unit or nonprofit shall contact Green Acres to request information on the Department's rules pertaining to the proposed disposal or diversion of parkland and the related procedural requirements and to request a pre-application conference with Green Acres.

(b) A pre-application conference shall include a review of the applicable rules, procedures and forms, and a visit to the parkland that the local government unit or nonprofit is proposing to dispose of or divert and to the proposed replacement land that would be required pursuant to N.J.A.C. 7:36- 26.5, if applicable. A pre-application conference may include a visit to the lands that the local government unit or nonprofit would identify in a pre-application as part of the alternatives analysis required under (d)2 below.

(c) Official representative(s) of the local government unit or nonprofit shall participate in the pre-application conference. Consultants or contractors of the local government unit or nonprofit may attend the pre-application conference.

(d) Subsequent to the pre-application conference, the local government unit or nonprofit shall submit a pre-application that includes the following:

1. A detailed description of the proposed minor disposal or diversion, including the following information:

i. Block(s) and lot(s) information for the parkland proposed for disposal or diversion;

ii. The acreage of the parkland proposed to be disposed of or diverted;

iii. The purpose of the project for which the disposal or diversion is proposed, including the intended future use and owner of the parkland proposed for disposal or diversion;

iv. A description of how the proposed minor disposal or diversion would fulfill a compelling public need or yield a significant public benefit, as defined at N.J.A.C. 7:36-26.1(d)1;

v. A description of how the parkland is proposed to be disposed of or diverted, including:

(1) The name of the prospective buyer, lessee, or grantee of an easement, as applicable;

(2) A description of the type of legal interest to be conveyed, if any; and

(3) A description of any conditions or restrictions on the intended use of the parkland proposed for disposal or diversion;

vi. If the project for which the disposal or diversion is proposed involves a lease or use agreement, a draft of the lease or use agreement and a statement of the total compensation proposed to be received by the applicant for the lease or use agreement;

vii. If the project for which the disposal or diversion is proposed involves the construction of a building or infrastructure on the parkland proposed to be disposed or diverted, a set of plans and specifications for the construction, if available;

viii. A general description of the natural features, history and current use of the parkland proposed to be disposed or diverted, including parkland contiguous to or functionally related to the parkland proposed to be disposed of or diverted; and

ix. A detailed description of the funded and/or unfunded recreation and conservation facilities and/or activities, if any, to be affected by the project for which the disposal or diversion is proposed, and an explanation of how they will be affected;

2. An alternatives analysis. Such analysis shall:

i. Identify each alternative course of action that could be taken to fulfill the compelling public need for or yield the significant public benefit to be derived from the project for which the applicant proposes to dispose of or divert parkland, including the alternative of locating the applicant's project on the proposed replacement land (if applicable). In accordance with(e) below, the analysis shall include each alternative which is feasible, reasonable and available to the applicant, including the alternative of "no build" or "no action," and, as applicable, alternatives that use private lands or other public lands;

ii. Describe each alternative in detail and, for each, provide the following:

(1) The environmental impact of the alternative;

(2) A listing of all Department permits required to construct or utilize the alternative;

(3) An identification, based on the Landscape Maps and other publicly available information of any documented occurrence of a threatened, endangered, or rare species, or the habitat of such species, that will be affected;

(4) The overall cost of the alternative;

(5) The timetable or schedule necessary to implement the alternative to the proposed disposal or diversion;

(6) If the alternative involves acquisition or leasing of an alternative site not owned by the applicant, the estimated land value or lease cost of the alternative site; and

(7) If the alternative involves use of an alternative site, an identification of any zoning, land use, environmental or other constraints associated with the alternative site and documentation of all attempts undertaken by the applicant to remove or adapt to such constraints;

iii. Include a description of the methods used by the applicant to identify alternatives to the proposed disposal or diversion; and

iv. Include an explanation of the applicant's reasons for rejecting each alternative identified in (d)2i above; and, if applicable, explain why the alternative cannot fulfill the compelling public need for, or yield the significant public benefit to be derived from, the project for which the applicant proposes to dispose of or divert parkland;

3. An environmental assessment report, formatted in accordance with an outline provided by Green Acres, which describes the existing environmental features of both the land proposed for disposal or diversion and of the proposed replacement land, if any, and how those features will be affected by the proposed minor disposal or diversion;

4. A value statement, on a form obtained from Green Acres, listing the adjusted tax assessed value of the funded or unfunded parkland proposed to be disposed of or diverted, as estimated by the tax assessor of the municipality in which the parkland is located. In completing the statement, the value of the parkland proposed to be disposed of or diverted shall be based on its highest and best use or the use intended subsequent to the disposal or diversion, whichever would result in a higher market value for the land;

5. A compensation proposal based on the requirements of N.J.A.C. 7:36-26.5 and the value statement required under (d)4 above;

6. A listing of any other Federal, interstate, State, County and local approvals or permits required for the project for which the proposed minor disposal or diversion is requested, including the following information for each approval or permit:

i. The date of application for the approval or permit;

ii. The issuance date, anticipated issuance date and/or status of the approval or permit;

iii. The name and phone number of a contact person at the Federal, interstate, State or local agency responsible for permit issuance;

7. A copy of the deed for the parkland proposed to be disposed or diverted;

8. The following maps, provided in accordance with the instructions regarding format and number of copies that are set forth in the Green Acres pre-application checklist available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or posted on the Green Acres web site at [www.nj.gov/dep/greenacres/](http://www.nj.gov/dep/greenacres/).

i. A reference map or maps, if necessary, on 8 1/2 inch by 11 inch paper, showing the general location of the parkland in its entirety that would be affected by the proposed disposal or diversion; the specific portion of the parkland proposed to be disposed of or diverted, including any affected recreation or conservation facilities; the location of any easement(s) proposed as part of the disposal or diversion; and the proximity of the parkland proposed for disposal or diversion to any other Federally-, State-, county-, municipally- or nonprofit-owned parkland;

ii. If the applicant proposes to offer replacement land to be dedicated as parkland to compensate in full or in part for the proposed disposal or diversion of parkland, a municipal or County map and a site map, drawn to scale, showing the parkland proposed to be disposed of or diverted, and showing the proposed replacement land. The site map shall include, for the proposed replacement land, the tax map block and lot number(s) (current as of the date of request), the owner(s) of record, the approximate dimensions and area (in acres), existing improvements and easements, road rights-of-way, wetlands (as shown on maps prepared by the Department under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and available from the Department at [www.nj.gov/dep/gis/](http://www.nj.gov/dep/gis/)), floodplains (as shown on the New Jersey State Flood Hazard Area maps prepared under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. and available from the Department at [www.nj.gov/dep/gis/](http://www.nj.gov/dep/gis/) or as determined from other State or Federal mapping or from a site delineation), and tidelands (as determined from New Jersey Tidelands claim maps, conveyance overlays, and atlas sheets and available from the Department at [www.nj.gov/dep/gis/](http://www.nj.gov/dep/gis/));

iii. If the proposed disposal or diversion will result in the relocation or modification of any recreation and conservation facilities, a municipal or County map and a site map, drawn to scale, showing the proposed relocated or modified recreation and conservation facilities;

iv. Copies of the current municipal tax maps for the parkland proposed for diversion or disposal, the replacement land (if applicable), and any land that will contain recreation and conservation facilities to be relocated, modified or constructed as a result of the proposed diversion or disposal; and

v. Aerial or GIS-based maps of the parkland proposed for diversion or disposal, the replacement land (if applicable) and any properties containing recreation and conservation facilities to be removed, or to be constructed or newly utilized, as a result of the proposed diversion or disposal;

9. For applications proposing the exchange of land, the following additional information:

i. A detailed rationale for the proposed exchange, including information sufficient to demonstrate that the proposed exchange meets the criteria at N.J.A.C. 7:36-26.2(b)4; and

ii. A statement, on a form obtained from Green Acres, of the relative tax assessed values of the parkland proposed to be exchanged and the proposed replacement land;

10. A resolution of the governing body of the applicant endorsing the proposal to dispose of or divert the parkland; and

11. Any other information requested by the Department to clarify the pre-application requirements.

(e) As provided at N.J.A.C. 7:36-26.1(a), if the alternatives analysis submitted by the applicant under (d)2 above identifies a feasible, reasonable and available alternative to the use of parkland for the project for which the disposal or diversion of parkland is proposed, then such alternative must be selected by the applicant, even if it is not preferred by the applicant and does not possess all qualities sought by the applicant. For purposes of this analysis, an alternative may be considered:

1. "Not feasible" if it:

i. Cannot be carried out using sound engineering principles and practices and current construction methods, technologies and practices; or

ii. Would bring about unresolvable logistical problems;

2. "Not reasonable" if it:

i. Would result in the essential project purpose, as set forth pursuant to (d)1iii above, not being met;

ii. Would result in the incurring of additional construction costs of an extraordinary magnitude. However, the incurring of increased costs alone shall not disqualify an alternative from consideration unless the cost increase is determined by the Department to be disproportionate to the overall project cost and/or the benefit to be obtained by the proposed project;

(1) In assessing costs associated with a particular alternative under (3)2ii above, the applicant shall take into consideration the comparative cost of constructing the project on parkland, including the estimated cost of providing compensation under N.J.A.C. 7:36-26.5 for the value of the parkland to be diverted or disposed of as determined under N.J.A.C. 7:36-26.5(d) and the replacement of trees under N.J.A.C. 7:36-36.5(a)6.

iii. Would cause extraordinary operational or safety problems;

iv. Would result in adverse social, economic or environmental impacts of extraordinary magnitude, including, but not limited to, serious community disruption;

(1) In assessing costs associated with a particular alternative under (e)2iv above, the applicant shall take into consideration the comparative cost of constructing the project on parkland including the estimated cost of providing compensation under for the value of the parkland to be diverted or disposed of as determined under N.J.A.C. 7:36-26.5(a)(6); or

v. Would create unique problems, including, but not limited to, unusual negative outcomes, unfair distribution of burdens, extraordinary costs or the loss of irreplaceable community resources; and

3. "Not available" to the applicant if the alternative relies on use of land that is not owned by the applicant, and

i. The owner is unwilling to sell or transfer the land to the applicant or to allow the applicant to lease or otherwise obtain, utilize, expand or manage the land for the purposes of the project; and

ii. Condemnation of the land is not available to the

applicant or is not reasonable under one or more of the factors at (e)2 above.

(f) Upon receipt of a pre-application submission from the applicant, Green Acres shall:

1. Determine if the submission is complete. A submission shall not be deemed to be complete if it does not contain all information required for a pre-application under (d) above, including the alternatives analysis required under (d)2 above; and

2. Notify the applicant that:

- i. Its pre-application is complete and will be reviewed by Green Acres; or

- ii. Its pre-application is incomplete but that Green Acres shall nonetheless consider the pre-application submission, provided the applicant submits the missing information by the date specified in the notification.

(g) Once Green Acres is in receipt of a complete pre-application submission, it shall review the submission in order to:

1. Confirm whether the proposed disposal or diversion qualifies as a minor disposal or diversion of parkland under the criteria at N.J.A.C. 7:36- 26.2(b)1 through 5;

2. Determine whether the proposed disposal or diversion preliminarily appears to meet the substantive standards for approval of disposals or diversions or parkland set forth at N.J.A.C. 7:36-26.1;

3. Determine whether the proposed disposal or diversion preliminarily appears to merit denial because it will result in one or more of the adverse consequences set forth at N.J.A.C. 7:36-26.1(e); and

4. Determine whether the compensation proposal submitted by the applicant under N.J.A.C. 7:36-26.4(d)5 complies with the requirements of N.J.A.C. 7:36-26.5 and/or whether additional compensation is required to adequately compensate for the proposed minor disposal or diversion of parkland.

(h) Upon the conclusion of its review of the complete pre-application, Green Acres shall notify the applicant that:

1. Additional information is necessary in order for Green Acres to make a determination on the pre-application, with a deadline by which the information must be submitted to Green Acres;

2. The proposed disposal or diversion is denied. Grounds for denial may include, but are not limited to, failure to meet the substantive standards for approval of disposals or diversions of parkland set forth at N.J.A.C. 7:36- 26.1; insufficient compensation to meet the requirements of N.J.A.C. 7:36- 26.5; failure to qualify as a minor disposal or diversion of parkland under the criteria at N.J.A.C. 7:36-26.2(b)1 through 5; or a determination by the Department that the proposed diversion or disposal will result in one or more of the adverse consequences set forth at N.J.A.C. 7:36-26.1(e); or

3. The applicant is authorized to submit to Green Acres a final application for Commissioner and State House Commission approval in accordance with N.J.A.C. 7:36-26.6.

- (i) If Green Acres authorizes the applicant to submit a final application for a minor disposal or diversion of parkland pursuant to (h)3 above, the authorization shall accept the proposed compensation for application review purposes, with conditions as appropriate, that meets the criteria set forth at N.J.A.C. 7:36-26.5.

- (j) If Green Acres authorizes an applicant to submit a final application for a minor disposal or diversion of parkland pursuant to (h)3 above, such authorization does not constitute conceptual approval of the application, but is an informal determination by Green Acres that, based on the information provided by the applicant, the proposal appears to meet both the procedural and substantive standards for approval of the disposal or diversion and that the filing of the final application is merited.

#### **7:36-26.5 Minor disposals or diversions of parkland; compensation**

- (a) An applicant shall, except as provided at (a)3 below, compensate for a minor disposal or diversion of parkland with eligible replacement land or monetary compensation to be used for the acquisition of land for recreation and conservation purposes or parkland improvements. The minimum compensation required for the minor disposal or diversion of parkland is as follows:

1. For a disposal or diversion of parkland that consists

of the granting of an easement over, under or through up to one acre of parkland and that is classified under N.J.A.C. 7:36-26.2(b)1 as a minor disposal or diversion of parkland:

i. The minimum compensation for the diversion is \$2,500 for the first 0.10 of an acre of parkland to which the easement would apply and \$1,000 for every additional tenth of an acre subject to the easement (or partial tenth of an acre, if the area to which the easement applies exceeds a multiple of 0.10 acre); or

ii. If the adjusted tax assessed value or estimated or appraised market value of the impact of the easement on the parkland, as determined pursuant to (d) below, exceeds the minimum compensation due, as calculated pursuant to (a)1i above, Green Acres shall require payment of the adjusted tax assessed value or estimated or appraised market value instead of the minimum compensation;

2. For a diversion of parkland that entails a lease or use agreement and that is classified under N.J.A.C. 7:36-26.2(b)2 as a minor disposal or diversion of parkland:

i. Green Acres shall assess whether the compensation that the applicant proposes to receive for the lease or use agreement is fair and appropriate; and, if not, advise the applicant as to the minimum amount of compensation that must be secured if the application is to be reviewed and approved by the Commissioner and the State House Commission;

ii. If a proposed lease or use agreement would involve the removal of trees to facilitate the activities to be conducted under the lease or agreement, Green Acres may require adjustment of the proposed lease terms to compensate for such impacts; and

iii. Any payments, rentals or other consideration received by the applicant from the lease or use agreement shall be used by the applicant for its operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole;

3. For a disposal or diversion of parkland that entails the exchange of land for an adjacent property held by a landowner other than the applicant or for other non-parkland owned by the applicant, and that is classified

under N.J.A.C. 7:36-26.2(b)4 as a minor disposal or diversion of parkland, the applicant shall propose, subject to review by Green Acres, the dedication as parkland of replacement land that is:

i. At least equal in area and of at least equal value (from recreational, ecological and monetary perspectives) to the parkland that would be disposed of or diverted;

ii. Located within, adjacent to or contiguous to the parkland proposed to be disposed or diverted; and

iii. Eligible to be used as replacement land under the criteria at N.J.A.C. 7:36-26.10(d)2;

4. For a disposal or diversion of parkland that entails the disposal or diversion of up to 0.50 acre of parkland and that is classified as a minor disposal or diversion of parkland under N.J.A.C. 7:36-26.2(b)2 or 3:

i. The minimum compensation is \$5,000 for disposals or diversions of less than 0.25 acre and \$10,000 for diversions or disposals of 0.25 to 0.50 acre; or

ii. If the adjusted tax assessed value or estimated or appraised market value of the parkland subject to the disposal(s) or diversion(s), as determined pursuant to (d) below, exceeds the minimum compensation due, as calculated pursuant to (a)4i above, Green Acres shall require payment of the adjusted tax assessed value or estimated or appraised market value instead of minimum compensation;

5. For a disposal or diversion of parkland that entails the construction of a building for public indoor recreation on funded parkland and that is classified under N.J.A.C. 7:36-26.2(b)5 as a minor disposal or diversion of parkland, the applicant shall propose, subject to review by Green Acres, monetary compensation for the disposal or diversion at least equal to the market value of the affected parkland as determined under (d) below. For purposes of this determination, "affected parkland" shall include the footprint of the building and the area of any parking facilities or support structures constructed as part of the public indoor recreation facility; and

6. For a disposal or diversion of parkland that entails the removal of one or more trees with a DBH greater than six inches, especially the removal of any trees of significant size (with a DBH of 18 inches or greater) or the clear cutting of more than 0.50 acre of parkland and



that is classified under N.J.A.C. 7:36-26.2(b) as a minor disposal or diversion of parkland, the applicant shall provide compensation for such removal in accordance with a plan submitted by the applicant pursuant to (c)5 below and accepted by Green Acres under N.J.A.C. 7:36-26.4(i). Such compensation for tree removal shall be in addition to any other compensation required under (a)1, 4 and 5 above.

(b) Monetary compensation for minor disposals or diversions of parkland required pursuant to (a)1, 2, 5 or 6 above shall be remitted to the Department by the applicant for deposit into the GSPT Fund. In the alternative, the Department may approve the use of the monetary compensation by the applicant for a parkland acquisition or parkland development project to be undertaken by the applicant and which is scheduled to be completed within six months of the approval of the minor disposal or diversion.

(c) A compensation proposal submitted under N.J.A.C. 7:36-26.4(d)5 shall include the following information:

1. If the compensation proposal includes payment of monetary compensation, a statement attesting that the applicant has the ability to make such payment and will:

i. Remit the monies to Green Acres for deposit in the GSPT Fund; or

ii. Retain the monies in a dedicated account to the extent approved by the Department under (b) above for parkland improvements or land acquisition. In such case, the applicant shall indicate whether its intent is to use the monies for parkland improvements or land acquisition, and shall provide the additional information required under (c)2 and 3 below, as applicable;

2. If the compensation proposal includes a proposal to construct parkland improvements, the following information:

i. A detailed description of the type, cost, location and intended use of the parkland improvements to be constructed;

ii. Drawings or plans for the parkland improvements, if available; and

iii. The timetable or schedule for construction of the parkland improvements;

3. If the compensation proposal includes the provision of replacement land to be purchased by or received by the applicant in exchange for the parkland, the following information, if known at the time of submission of the pre-application:

i. A description of the replacement land;

ii. A description of the intended use for recreation and conservation purposes of the replacement land;

iii. The size and location of the land to be acquired; and

iv. The block and lot number and acreage of the proposed replacement land;

4. If the project for which the disposal or diversion of parkland is proposed involves any leases or use agreements for the parkland, a statement that the applicant will utilize any payments, rentals or other consideration received for operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole; and

5. If the project for which the disposal or diversion of parkland is proposed involves the removal of any tree with a DBH greater than six inches, especially the removal of any trees of significant size (with a DBH of 18 inches or greater), or the clear cutting of more than 0.50 acre, a plan to either replace or provide compensation for the removal of all such trees. The plan shall provide for the planting of new replacement trees by the applicant or the applicant's agent or shall offer monetary compensation at least equal to the costs that would be incurred with respect to such planting of the replacement trees, subject to the following:

i. All reasonable efforts shall be made to preserve trees of significant size (with a DBH of 18 inches or greater), including, but not limited to, if feasible, relocation of infrastructure, roadways and buildings. Removal of trees of significant size (with a DBH of 18 inches or greater) from parkland requires the specific approval of the Department and may require additional compensation;

ii. The plan shall indicate the total number of trees over six inches DBH to be removed, the size and species of each such tree to be removed, and the total number of each species to be removed;

iii. The number of replacement trees to be planted shall be calculated on a square inch by square inch basis; however, the number of replacement trees may include trees required to be planted as a mitigation measure by another Department permitting program for the same project for which the disposal or diversion of parkland is proposed or the substitution of comparable wooded replacement land;

iv. The size of the replacement trees shall not be less than two-inch caliper;

v. The plan may take into account the condition of trees which are dead, dying or diseased, and may assert preexisting legal rights pertaining to tree removal (such as tree clearing rights in utility corridors), in proposing replacement trees or monetary compensation for tree replacement;

vi. The replacement trees shall be planted in location(s) determined as follows:

(1) If the parkland to be disposed of or diverted is a portion of a larger parcel of parkland, the replacement trees shall be planted within the larger parcel of parkland; or

(2) If the parkland to be disposed of or diverted constitutes the entire parcel of parkland, the replacement trees shall be planted on funded or unfunded parkland in the same municipality as the parkland that is proposed to be disposed or diverted;

vii. The species of the replacement trees shall be native species as appropriate to the planting site;

viii. The proposal shall include a planting plan describing the methods to be used, setting forth appropriate timing constraints on when planting may be carried out, and proposing planting sites for each replacement tree;

ix. The proposal shall include a maintenance commitment, including a commitment to water and prune the new trees, as needed, and to replace any replacement tree which does not survive for at least two years; and

x. The planting and maintenance of replacement trees shall conform to the standards set forth in the "American National Standard for Tree Care Operations--Tree, Shrub and Other Woody Plant

Maintenance--Standard Practices," NASI A300.1-1995, approved June 1, 1995, which document is incorporated herein by reference (as amended and supplemented). A copy of this document may be obtained at the following address:

American National Standards Institute  
11 West 42nd Street  
New York, New York 10036

xi. The proposal shall be certified by a forester in good standing on the Approved Forester List established by the Department pursuant to N.J.A.C. 7:36-2. By such certification the forester shall attest that the proposal conforms with the requirements of (c)5i through x above.

xii. Applicants are encouraged, to the extent feasible, to utilize the best management practices recommended for reforestation in the New Jersey Forestry and Wetlands Best Management Practices Manual.

(d) For the purposes of this section, the adjusted tax assessed value, market value of the parkland proposed to be disposed of or diverted, or value of the impact of an easement on the parkland shall be based on its highest and best use or the use intended for the land subsequent to its disposal or diversion, whichever would result in a higher value. In determining the adjusted tax assessed value, estimated market value of the parkland, or value of the impact of an easement on the parkland for purposes of this section, including for comparison to the minimum values in (a)1 or 2 above, Green Acres shall rely on:

1. The value statement submitted by the applicant under N.J.A.C. 7:36- 26.4(d)4;

2. Other information reasonably available to Green Acres for the parkland subject to the proposed disposal or diversion or for comparable land in the municipality in which the parkland is located; or

3. In the event Green Acres is not able, to its satisfaction, to establish the adjusted tax assessed value, market value of the affected parkland, or value of the impact of an easement on the parkland based on information provided by the applicant, an appraisal of the parkland proposed for disposal or diversion, obtained by the applicant upon the request of Green Acres and performed in accordance with N.J.A.C. 7:36-8.2 or 19.2, as applicable.

(e) All replacement lands dedicated as parkland pursuant

to (a)3 or (c) above as a result of the disposal or diversion of funded parkland, including lands purchased by the applicant with monetary compensation, shall be subject to the same Green Acres restrictions as funded parkland, and the deed for each replacement parcel shall incorporate the Green Acres restrictions by reference.

(f) All compensation proposed by the applicant under this section and accepted by Green Acres for application review purposes under N.J.A.C. 7:36-26.4(i) is subject to the approval of the Commissioner and the State House Commission.

**7:36-26.6 Minor disposals or diversions of parkland; final application requirements; public hearing requirements; procedure for Commissioner and State House Commission review and approval**

(a) An applicant that has been authorized under N.J.A.C. 7:36-26.4(h)3 to submit a final application seeking approval for a minor disposal or diversion of parkland shall submit the final application within 180 days of the authorization and prior to scheduling a public hearing on the application. The final application shall include the following:

1. A land survey plan for the parcel of parkland proposed to be disposed of or diverted and the proposed replacement land, if applicable. The survey plan shall:

i. Be prepared in compliance with the Local and Nonprofit Land Survey Overview, set forth herein as chapter Appendix 2. The Overview is available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or on the Green Acres webpage at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres). Technical assistance regarding the preparation of the land survey is available from Green Acres.

ii. Show acreage, tax map references (blocks and lots) current as of the date of the plan, all easements of record, fences, improvements, encroachments, water courses, wetlands, and pertinent natural features; and

iii. Be submitted on paper (an original and two copies) and also electronically in a format compatible with the Mapping and Digital Data Standards at N.J.A.C. 7:1, Appendix A;

2. Two copies of a metes and bounds description for the parcel of parkland proposed to be disposed of or diverted and the proposed replacement land, if

applicable, stating acreage, corresponding to the surveys required under (a)1 above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor;

3. A proposed public notice for the public hearing required under (c) below, which notice shall comply with the requirements at (e)3 below;

4. Any other information requested by the Department to clarify the final application requirements.

(b) Upon receipt of a final application, Green Acres shall review the submittal to determine whether the application is complete for public hearing purposes or whether additional information is required. If additional information is required, Green Acres shall notify the applicant that the application must be resubmitted with the additional information. Once Green Acres is in receipt of an application submittal that includes the additional information, Green Acres will notify the applicant as to whether the final application is complete for public hearing purposes.

(c) Once the Department has determined that the final application is complete for public hearing purposes, the applicant shall hold a public hearing to obtain public comment on the application and shall offer the public the opportunity to submit written comments. The public hearing shall be conducted in accordance with the following:

1. The hearing shall be held in the municipality in which the parkland proposed to be disposed of or diverted is located. If the parkland is located in more than one municipality, the applicant shall conduct a public hearing in each affected municipality or in a central location approved by the Department;

2. The public hearing shall be held at least 90 days before the date of the State House Commission meeting at which the application is considered;

3. The applicant shall provide notice of the public hearing in accordance with (e) below. In addition, the applicant is encouraged to issue a press release prior to the public hearing;

4. The hearing shall be conducted on a weekday in the evening; and

5. The applicant shall ensure that a transcript of the hearing is produced for submission under (f) below.

(d) A public hearing held pursuant to this section may be scheduled to occur as part of a meeting of the applicant's governing body, as long as separate notice of the hearing is provided in accordance with (e) below and the applicant adjourns the meeting of the governing body to conduct the public hearing.

(e) The applicant shall provide notice of the public hearing and of the opportunity for the public to submit written comments in accordance with the following; and shall maintain a record that documents that the notice requirements were met:

1. At least 30 days prior to the hearing, the applicant shall:

i. Publish a legal notice in the official newspaper of the municipality (or municipalities) in which the parkland proposed for disposal or diversion is located and, if the applicant is a County or a regional nonprofit, also in a local newspaper of general interest and circulation;

ii. Post notice of the hearing on its official web site (if any) in the same manner as other public hearing notices are posted;

iii. Provide written notice of the hearing to Green Acres, the governing body, local planning board(s), environmental commission(s) and open space advisory committee(s) of the municipality(ies) in which the parkland is located, if any, and, if the local government unit is a county, also to the county governing body, county planning board, county environmental commission and county open space advisory committee, if any, the Council on Affordable Housing, and the Highlands Council, Pinelands Commission or other regional regulatory agency identified by the Department, as applicable;

iv. Provide written notice of the hearing via certified mail (return receipt requested) to all persons who own land located within 200 feet of the parkland that is the subject of the proposed minor disposal or diversion, and to any easement holders for that land who are listed in the tax records for the municipality(ies) in which the land is located; and

v. Post and maintain in a legible condition until the public comment period is concluded under (e)3vi below, a sign on the parkland that is the subject of the proposed diversion or disposal. Such sign shall advise the public of the proposed diversion or

disposal, the public hearing on the proposed disposal or diversion and the opportunity for public comment on the proposed disposal or diversion. Such sign shall be located at each public entrance to the parkland proposed for diversion or disposal and/or in other prominent location(s) approved by the Department. Such sign shall be of sufficient size and visibility and contain sufficient detail as to inform the general public of the proposed diversion or disposal of parkland and the method by which the public may obtain information about such proposed diversion or disposal, and shall be subject to the Department's approval;

2. At least 15 days prior to the hearing, the applicant shall publish a display ad in the official newspaper(s) of the municipality(ies) in which the parkland that is the subject of the proposed disposal or diversion is located and, if the applicant is a county or regional nonprofit, also in a local newspaper of general interest and circulation; and

3. The notices required under (e)1 and 2 above shall include the following information:

i. The name of the applicant and the date, time and location of the public hearing;

ii. A description of the proposed disposal or diversion and a statement of the purpose for which it is proposed;

iii. The street address (if available), municipality, County, tax map block and lot and size of the property that is the subject of the proposed diversion or disposal and the proposed replacement land (if any);

iv. A description of the compensation, if any, to be provided by the applicant;

v. A statement that an application for Commissioner and State House Commission approval of the disposal or diversion has been submitted to Green Acres and is available for review at the municipal offices and the library serving the municipality(ies) in which the parkland proposed for disposal or diversion is located and at the Green Acres Program offices; and

vi. A statement inviting participation in the public hearing and notifying the public that, in the alternative, written comments may be submitted to the applicant during a public comment period that will close on a date that is two weeks after the hearing date. The statement shall provide an address for submittal of

written comments to the local government unit or nonprofit and shall require that copies of any written comments also be sent to:

New Jersey Department of Environmental Protection  
Green Acres Program  
Bureau of Legal Services and Stewardship  
PO Box 412  
Trenton, New Jersey 08625-0412

(f) Upon conclusion of the public hearing, and at least 75 days before the date of the State House Commission meeting at which the application is considered, the applicant shall provide the Department with the following additional post hearing information:

1. Proof of publication of the notice of public hearing required under (e)1i above; a dated copy of the posting required under (e)1ii above (if applicable); proof of publication of the display ad required under (e)2 above; copies of and proof of mailing of the notices required under (e)1iii and iv above; and proof of the posting and maintenance of a sign as required under (e)1v above;

2. A copy of a transcript of the public hearing as required under (c)5 above;

3. A summary of the public comments made at the public hearing and/or provided in writing during the public comment period and the applicant's response to the public comments;

4. A resolution, adopted by the applicant's governing body after the public hearing, reaffirming the applicant's request for approval of its application for the disposal or diversion of parkland. The resolution shall include a summary of the proposed disposal or diversion and of the amount of compensation, if any, to be provided by the applicant; and

5. A letter from the applicant's attorney stating that:

i. The attorney has reviewed the entire application for Commissioner and State House Commission approval;

ii. It is the attorney's opinion that the applicant is empowered to proceed with the application;

iii. It is the attorney's opinion that the applicant is not in violation of any applicable Federal, State, or local laws, rules, regulations, codes, or ordinances

pertaining to the proposed minor disposal or diversion of parkland or to the project for which the disposal or diversion is sought; and

iv. If the applicant is a local government unit, it is the attorney's opinion that the local government unit has complied, to the extent applicable, with the Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq. (including, but not limited to, N.J.S.A. 40A:12-13.5 et seq. if the local government unit is a county), the statutory provisions governing municipal parks and playgrounds (N.J.S.A. 40:61-1 et seq.), the statutory provisions governing county parks and playgrounds (N.J.S.A. 40A:37-1 et seq.), the statutory provisions governing boards of recreation commissioners and the establishment of municipal and county parks and playgrounds (N.J.S.A. 40:12-1 et seq.), the local open space tax statute, N.J.S.A. 40:12-15.1 through 15.9, and any other statute governing the conveyance, disposal or diversion of land or parkland held by a local government unit.

(g) After receiving the applicant's complete post hearing submittal as required under (f) above, the Commissioner shall approve or disapprove the final application for a minor disposal or diversion of parkland.

1. If the Commissioner disapproves the final application, the Commissioner shall notify the applicant of the disapproval in writing; and

2. If the Commissioner approves the final application:

i. The Commissioner shall submit a summary of the approved application, together with any conditions that the Commissioner determined to impose on his or her approval of the disposal or diversion, to the State House Commission for its consideration;

ii. The Commissioner shall request that the State House Commission, if feasible, consider the application at its next scheduled meeting, provided the date of the meeting is at least 90 days after the date of the public hearing held pursuant to (c) above; and

iii. Green Acres shall notify the applicant of the Commissioner's approval of its application, any conditions that the Commissioner determined to impose on his or her approval, and the anticipated date on which the State House Commission will consider the final application (if known).

(h) After the State House Commission determines

whether to approve or disapprove the final application for a minor disposal or diversion of parkland, and (in the case of approval) whether to impose any conditions on its approval, Green Acres shall notify the applicant of the State House Commission's decision(s).

(i) If the application is approved by the Commissioner and the State House Commission, the applicant shall, after receiving notice of these approvals pursuant to (g) and (h) above, determine whether it will proceed with the disposal or diversion. If the applicant determines to proceed, the applicant shall:

1. Except as provided by (i)2 and 3 below, remit to Green Acres, for deposit in the GSPT Fund, the amount of any monetary compensation proposed by the applicant pursuant to N.J.A.C. 7:36-26.5 and approved by the Commissioner and the State House Commission;

2. Remit to Green Acres, for deposit in the Shade Tree and Community Forest Preservation License Plate Fund established pursuant to N.J.S.A. 39:3-27.81 the amount of any monetary compensation for tree removal approved by the Commissioner and the State House Commission; and

3. If the application as approved by the Commissioner and the State House Commission allows the applicant to retain the monies for its use for parkland improvements or land acquisition, deposit the monies into a dedicated account as required under N.J.A.C. 7:36-26.5(c)1.

(j) Upon receipt of any payment required under (i)1 or 2 above, proof of deposit of compensation-monies into a dedicated account under (i)3 above and/or proof of any other compensation requirements either have been satisfied or will be satisfied in a timely manner, the Commissioner shall:

1. Execute a release of the parkland to be disposed of or diverted. The release shall recite the particular purpose for which the disposal or diversion was approved, the compensation for the disposal or diversion and any conditions imposed on the disposal or diversion by the Commissioner and/or the State House Commission; and

2. If the compensation for the disposal or diversion consists, in whole or in part, of replacement land, execute with the applicant an agreement releasing the Green Acres restrictions on the parkland disposed of or

diverted and subjecting the replacement land to the Green Acres restrictions.

#### **7:36-26.7 Major disposals or diversions; general procedural requirements**

(a) A local government unit or nonprofit shall utilize the following procedure to apply for the approval of a major disposal or diversion of parkland by the Commissioner and the State House Commission:

1. Prior to providing any written submission, the applicant shall contact Green Acres to discuss the proposed disposal or diversion of parkland and related procedural requirements and to request a pre-application conference under N.J.A.C. 7:36-26.9(a) through (c);

2. Either before or after the pre-application conference has been conducted, the applicant shall conduct a scoping hearing in accordance with N.J.A.C. 7:36-26.8 to solicit public comment on the proposed disposal or diversion of parkland and alternatives to the proposed disposal or diversion of parkland;

3. After the pre-application conference and scoping hearing have been conducted, the applicant shall submit a pre-application-for the proposed-disposal or diversion in accordance with N.J.A.C. 7:36-26.9(d);

4. After review of the pre-application by the Department under N.J.A.C. 7:36-26.9(f) and (g), and if authorized by the Department to proceed pursuant to N.J.A.C. 7:36-26.9(h), the applicant shall submit to Green Acres a final application for Commissioner and State House Commission approval of a major disposal or diversion of parkland in accordance with N.J.A.C. 7:36-26.11(a) and (b);

5. Once the Department has determined that the application is complete for public hearing purposes under N.J.A.C. 7:36-26.11(c) and (d), the applicant shall hold a public hearing on the complete application, and provide for a public comment period during which written comments may be submitted, in accordance with N.J.A.C. 7:36-26.11(e) through (h), to obtain public comment on the proposed disposal or diversion;

6. Following the public hearing and after the close of the public comment period, the applicant shall submit the additional information as required in accordance with N.J.A.C. 7:36-26.11(i);

7. Pursuant to N.J.A.C. 7:36-26.11(j), the Commissioner shall approve or disapprove the application and Green Acres shall provide notice of the Commissioner's action to the applicant. If the Commissioner approves the application, Green Acres shall inform the State House Commission that the local government unit or nonprofit has submitted an application for approval of a major disposal or diversion of parkland which has been approved by the Commissioner, and provide a summary of the approved application to the State House Commission;

8. Once the State House Commission has considered and acted upon the application, the Department shall notify the applicant of the Commission's approval or disapproval in accordance with N.J.A.C. 7:36-26.11(k);

9. If the applicant determines to proceed with the major disposal or diversion of parkland after receiving approval from the Commissioner and the State House Commission, the applicant shall, in accordance with N.J.A.C. 7:36-26.11(1), remit to the Department any monetary compensation required by the approval prior to implementing the disposal or diversion; and

10. Pursuant to N.J.A.C. 7:36-26.11(m), upon receipt of the monetary compensation and/or proof that any other required compensation requirements either have been satisfied or will be satisfied in a timely manner, the Commissioner shall execute a release of the Green Acres restrictions on the parkland approved to be disposed of or diverted.

#### **7:36-26.8 Major disposals or diversions of parkland; scoping hearing**

(a) Prior to submitting a pre-application to Green Acres for a major disposal or diversion of parkland under N.J.A.C. 7:36-26.9, a local government unit or nonprofit intending to seek approval of a major disposal or diversion of parkland shall conduct a scoping hearing to solicit preliminary public comment on the proposed disposal or diversion. A scoping hearing shall be conducted in accordance with the following:

1. The scoping hearing shall be held in the municipality in which the parkland proposed for disposal or diversion is located. If the parkland is located in more than one municipality, the applicant shall conduct a scoping hearing in each affected municipality or in a central location approved by the Department;

2. The local government unit or nonprofit shall provide notice of the scoping hearing in accordance with (c) below. In addition, the local government unit or nonprofit is encouraged to issue a press release prior to the scoping hearing;

3. All scoping hearings shall be conducted on a weekday in the evening; and

4. The local government unit or nonprofit shall produce a transcript is made of the public hearing for submission to the Department under (e) below.

(b) A scoping hearing held under this section may be scheduled to occur as part of a meeting of the governing body of the applicant, as long as separate notice of the hearing is provided in accordance with (c) below and the applicant adjourns the meeting of the governing body to conduct the public hearing.

(c) A local government unit or nonprofit shall provide notice of the scoping hearing and of the opportunity for the public to submit written comments in accordance with the following, and shall maintain a record that documents that these notice requirements were met:

1. At least 30 days prior to the hearing, the applicant shall:

i. Publish a legal notice of the scoping hearing in the official newspaper of the municipality (or municipalities) in which the parkland proposed for disposal or diversion is located and, if the applicant is a county or a regional nonprofit, also in a local newspaper of general interest and circulation;

ii. Post notice of the scoping hearing on its official web site (if any) in the same manner as other public hearing notices are posted;

iii. Provide written notice of the scoping hearing to Green Acres, the governing body, local planning board(s), environmental commission(s) and open space advisory committee(s) of the municipality(ies) in which the parkland is located, if any, and, if the local government unit is a county, also to the county governing body, county planning board, county environmental commission and county open space advisory committee, if any, the Council on Affordable Housing, and the Highlands Council, Pinelands Commission or other regional regulatory agency identified by the Department, as applicable;

iv. Provide written notice of the scoping hearing via certified mail (return receipt requested) to all persons who own land located within the parkland that is the subject of the proposed major disposal or diversion, and to any easement holders for that land who are listed in the tax records for the municipality(ies) in which the land is located; and

v. Post and maintain in a legible condition until the public comment period is concluded under (c)3iv below, a sign on the parkland that is the subject of the proposed diversion or disposal. Such sign shall advise the public of the proposed diversion or disposal, the public hearing on the proposed disposal or diversion and the opportunity for public comment on the proposed disposal or diversion. Such sign shall be located at each public entrance to the parkland proposed for diversion or disposal and/or in other prominent location(s) approved by the Department. Such sign shall be of sufficient size and visibility and contain sufficient detail as to inform the general public of the proposed diversion or disposal of parkland and the method by which the public may obtain information about such proposed diversion or disposal, and shall be subject to the Department's approval; and

2. At least 15 days prior to the hearing, the applicant shall publish a display ad in the official newspaper(s) of the municipality(ies) in which the parkland that is the subject of the proposed disposal or diversion is located and, if the applicant is a county or regional nonprofit, also in a local newspaper of general interest and circulation;

3. The notices required under (c)1 and 2 above shall include the following information:

i. The name of the local government unit or nonprofit and the date, time and location of the scoping hearing;

ii. A general description of the major diversion or disposal being considered and a statement of the purpose it would serve;

iii. The street address (if available), municipality, county, tax map block and lot and size of the property that would be the subject of the major diversion or disposal being considered; and

iv. A statement inviting participation in the public

hearing and notifying the public that, in the alternative, written comments may be submitted to the local government unit or nonprofit during a public comment period that will close two weeks after the date of the scoping hearing. The statement shall provide an address for submittal of written comments to the local government unit or nonprofit and shall require that copies of any written comments also be sent to:

New Jersey Department of Environmental Protection  
Green Acres Program  
Bureau of Legal Services and Stewardship  
PO Box 412  
Trenton, New Jersey 08625-0412

(d) At the scoping hearing, the local government unit or nonprofit shall:

1. Explain that the purpose of the hearing is to accept public comment on a major disposal or diversion of parkland that is under consideration;

2. Describe the proposed disposal or diversion, including the lands affected, the total acreage of parkland to be affected and the project for which the disposal or diversion is sought;

3. Set forth the compelling public need that the project would fulfill, the significant public benefit it would yield, or the exceptional recreational and/or conservation benefit it would provide; and

4. Discuss past and ongoing efforts to identify alternatives to the proposed disposal or diversion considered by the local government unit or nonprofit and the reason(s) for rejecting any alternatives, and, to the extent known, the compensation that the local government unit or nonprofit would provide for the proposed disposal or diversion; and.

5. Accept comment on any alternative sites suggested by the public and on alternative methods of achieving its project objectives without the diversion or disposal of parkland.

(e) If the local government unit or nonprofit decides, after the scoping hearing, to proceed with the submission of an application for disposal or diversion of the parkland, the local government unit or nonprofit shall include, in the pre-application submitted to the Department pursuant to N.J.A.C. 7:36-26.9(d), the following information



pertaining to the scoping hearing:

1. Proof of publication of the notice of public hearing required under (c)1i above; proof of publication of the display ad required under (c)2 above; a dated copy of the posting required under (c)1ii above (if applicable); copies of and proof of mailing of the notices required under (c)1iii and iv above; and proof of the posting and maintenance of a sign as required under (c)1v above;

2. A copy of a transcript of the public hearing as required under (a)4 above; and

3. A summary of the public comments made at the public hearing and/or provided in writing during the public comment period and the applicant's response to the public comments.

#### **7:36-26.9 Major disposals or diversions of parkland; pre-application requirements**

(a) Prior to submitting an application for approval of a major disposal or diversion of parkland, a local government unit or nonprofit shall contact Green Acres to request information on the Department's rules pertaining to the proposed disposal or diversion of parkland and the related procedural requirements and to request a pre-application conference with Green Acres.

(b) A pre-application conference shall include a review of the applicable rules, procedures and forms, and a visit to the parkland that the local government unit or nonprofit is proposing to dispose of or divert and to the proposed replacement land that would be required pursuant to N.J.A.C. 7:36- 26.10, if applicable. A pre-application conference may include a visit to the lands that the local government unit or nonprofit would identify in a pre-application as part of the alternatives analysis required under (d)2 below.

(c) Official representative(s) of the local government unit or nonprofit shall participate in the pre-application conference. Consultants or contractors of the local government unit or nonprofit may attend the pre-application conference.

(d) Subsequent to the pre-application conference, the local government unit or nonprofit may submit a pre-application that includes the following:

1. A detailed description of the proposed major disposal or diversion, including the following information:

i. Block(s) and lot(s) information for the parkland proposed for disposal or diversion;

ii. The acreage of the parkland proposed to be disposed of or diverted;

iii. The purpose of the project for which the disposal or diversion is proposed, including the intended future use and owner of the parkland;

iv. A description of how the proposed major disposal or diversion would fulfill a compelling public need or yield a significant public benefit, as defined at N.J.A.C. 7:36-26.1(d)1;

v. A description of how the parkland is proposed to be disposed of or diverted, including:

(1) The name of the prospective buyer, lessee, or grantee of an easement, as applicable;

(2) A description of the type of legal interest to be conveyed, if any; and

(3) A description of any conditions or restrictions on the intended use of the parkland proposed for disposal or diversion;

vi. If the project for which the disposal or diversion is proposed involves a lease or use agreement, a draft of the lease or use agreement and a statement of the total compensation proposed to be received by the applicant for the lease or use agreement;

vii. If the project for which the disposal or diversion is proposed involves tie construction of a building or infrastructure on the parkland proposed to be disposed of or diverted, a set of plans and specifications for the construction, if available;

viii. A general description of the natural features, history and current use of the parkland proposed to be disposed or diverted, including parkland contiguous to or functionally related to the land proposed to be disposed of or diverted; and

ix. A detailed description of the funded and/or unfunded recreation and conservation facilities and/or activities, if any, to be affected by the project for which the disposal or diversion is proposed, and an explanation of how they will be affected;

2. An alternatives analysis. Such analysis shall:

i. Identify each alternative course of action that could be taken to fulfill the compelling public need for or yield the significant public benefit to be derived from the project for which the applicant proposed to dispose of or divert parkland including all alternatives presented at the scoping hearing by the applicant pursuant to N.J.A.C. 7:36-26.8(d), any other alternative suggested by the public at the scoping hearing or in the written comments submitted during the public comment period for the scoping hearing and the alternative of locating the applicant's project on the proposed replacement land. In accordance with(e) below, the analysis shall include each alternative which is feasible, reasonable and available to the applicant, including the alternatives of "no build" or "no action," and, as applicable, alternatives that use private lands or other public lands;

ii. Describe each alternative in detail and, for each, provide the following:

- (1) The environmental impact of the alternative;
- (2) A listing of all Department permits required to construct or utilize the alternative; and
- (3) An identification of any threatened, endangered, or rare species or the habitat of such species that will be affected;
- (4) The overall cost of the alternative;
- (5) The timetable or schedule necessary to implement the alternative to the proposed disposal or diversion;
- (6) If the alternative involves acquisition or leasing of an alternative site not owned by the applicant, the estimated land value or lease cost of the alternative site; and
- (7) If the alternative involves use of an alternative site, an identification of any zoning, land use, environmental or other constraints associated with the alternative site and documentation of all attempts undertaken by the applicant to remove or adapt to such constraints.

iii. A description of the methods used by the applicant to identify alternatives to the proposed

disposal or diversion; and

iv. An explanation of the applicant's reasons for rejecting each alternative identified in (d)2i above; and, if applicable, explain why the alternative cannot fulfill the compelling public need for, or yield the significant public benefit to be derived from, the project for which the applicant proposes to dispose of or divert parkland;

3. An environmental assessment report, formatted in accordance with an outline provided by Green Acres, which describes the existing environmental features of both the land proposed for disposal or diversion and of the proposed replacement land, if any, and how those features will be affected by the proposed major disposal or diversion;

4. A statement, on a form obtained from Green Acres, of the adjusted tax assessed value of the funded or unfunded parkland proposed to be disposed of or diverted, as estimated by the tax-assessor of the municipality in which the parkland is located. As provided by N.J.A.C. 7:36-26.10(f)1, in completing the statement, the value of the parkland proposed to be disposed of or diverted shall be based on its highest and best use or the use intended subsequent to the disposal or diversion, whichever would result in a higher market value for the land;

5. A preliminary compensation proposal based on the requirements of N.J.A.C. 7:36-26.10 and the value statement required under (d)4 above;

6. A description of how the proposed project for which the diversion or disposal of parkland is proposed, and the proposed compensation, will support the State Development and Redevelopment Plan Goals (including, but not limited to, conserving the State's natural resources and systems, and preserving and enhancing areas with scenic, open space and recreational value), and will be consistent with the State Development and Redevelopment Plan's Policy Map and the Statewide Policies (including, but not limited to, those directed to scenic resources, open lands and natural systems, planning regions established by statute, coastal resources, special resource areas and design, threatened and endangered species, habitat for threatened and endangered species, water quality protection and stormwater control);

7. A listing of any other Federal, interstate, State, county and local approvals or permits required for the

project for which the proposed minor disposal or diversion is requested, including the following information for each approval or permit:

i. The date of application for the approval or permit;

ii. The issuance date, anticipated issuance date and/or status of the approval or permit;

iii. The name and phone number of a contact person at the Federal, interstate, State or local agency responsible for permit issuance;

8. A copy of the deed for the parkland proposed to be disposed or diverted;

9. The following maps, provided in accordance with the instructions regarding format and number of copies that are set forth in the Green Acres pre-application checklist available from Green Acres at PO Box 412, Trenton, New Jersey 08625 or posted on the Green Acres web site at [www.nj.gov/dep/greenacres/](http://www.nj.gov/dep/greenacres/).

i. A reference map or maps, if necessary, on 8 1/2 inch by 11 inch paper, showing the general location of the parkland in its entirety that would be affected by the proposed disposal or diversion, the specific portion of the parkland proposed to be disposed of or diverted, the location of any easement(s) proposed as part of the disposal or diversion and the proximity of the parkland proposed for disposal or diversion to any other Federally-, State-, county-, municipally- or nonprofit-owned parkland;

ii. If the applicant proposes to offer replacement land to be dedicated as parkland to compensate in full or in part for the proposed disposal or diversion of parkland, a municipal or county map and a site map, drawn to scale, showing the parkland proposed to be disposed of or diverted, and showing the proposed replacement land. The site map shall include, for the proposed replacement land, the tax map block and lot number(s) (current as of the date of request), the owner(s) of record, the approximate dimensions and area (in acres), existing improvements and easements, road rights-of-way, wetlands (as shown on maps prepared by the Department under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and available from the Department at [www.nj.gov/dep/gis/](http://www.nj.gov/dep/gis/)), floodplains (as shown on the

New Jersey State Flood Hazard Area maps prepared under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. and available from the Department at [www.nj.gov/dep/gis/](http://www.nj.gov/dep/gis/) or as determined from other State or Federal mapping or from a site delineation), and tidelands (as determined from New Jersey Tidelands claim maps, conveyance overlays, and atlas sheets and available from the Department at [www.nj.gov/dep/gis/](http://www.nj.gov/dep/gis/);

iii. If the proposed disposal or diversion will result in the relocation or modification of any recreation and conservation facilities, a municipal or county map and a site map, drawn to scale, showing the parkland proposed to be disposed of or diverted, and a site location map showing the proposed relocated or modified recreation and conservation facilities;

iv. Copies of the current municipal tax maps for the parkland proposed for diversion or disposal, the replacement land (if applicable), and any land that will contain recreation and conservation facilities to be relocated, modified or constructed as a result of the proposed diversion or disposal; and

v. Aerial or GIS-based maps of the parkland proposed for diversion or disposal, the replacement land (if applicable) and any properties containing recreation and conservation facilities to be removed, or to be constructed or newly utilized, as a result of the proposed diversion or disposal;

10. Proof of proper notice of the scoping hearing, including the following:

i. Proof of publication of the notice(s) required pursuant to N.J.A.C. 7:36-26.8(c)1i and (c)2; proof of publication of the display ad required under N.J.A.C. 7:36-26.8(c)2; a dated copy of the posting required pursuant to N.J.A.C. 7:36-26.8(c)1ii (if applicable); copies of and proof of mailing of the written notices required pursuant to N.J.A.C. 7:36-26.8(c) 1iii and iv; and proof of the posting and maintenance of a sign as required under N.J.A.C. 7:36-26.8(c)1v;

ii. A copy of the transcript of the scoping hearing required under N.J.A.C. 7:36-26.8(a)4;

iii. A summary of the public comments received at the scoping hearing and/or provided in writing during the public comment period and the applicant's response to the public comments; and

iv. Copies of any written comments submitted as part of the record of the public hearing in accordance with N.J.A.C. 7:36-26.8;

11. A resolution of the governing body of the applicant endorsing the proposal to dispose of or divert the parkland; and

12. Any other information requested by the Department to clarify the pre-application requirements.

(e) As provided at N.J.A.C. 7:36-26.1(a), if the alternatives analysis submitted by the applicant under (d)2 above identifies a feasible, reasonable and available alternative to the use of parkland for the project for which the disposal or diversion of parkland is proposed, then such alternative must be selected by the applicant, even if it is not preferred by the applicant and does not possess all qualities sought by the applicant. For purposes of this analysis, an alternative may be considered:

1. "Not feasible" if it:

i. Cannot be carried out using sound engineering principles and practices and current construction methods, technologies and practices; or

ii. Would bring about unresolvable logistical problems;

2. "Not reasonable" if it:

i. Would result in the essential project purpose, as set forth pursuant to (d)1iii above, not being met;

ii. Would result in the incurring of additional construction costs of an extraordinary magnitude. However, the incurring of increased costs alone shall not disqualify an alternative from consideration unless the cost increase is determined by the Department to be disproportionate to the overall project cost and/or the benefit to be obtained by the proposed project;

(1) In assessing costs associated with a particular alternative under (e)2ii above, the applicant shall take into consideration the comparative cost of constructing the project on parkland, including the estimated cost of providing compensation under N.J.A.C. 7:36-26.10 for the value of the parkland to be diverted or disposed of as determined under N.J.A.C. 7:36-26.10(f) and the replacement of trees

under N.J.A.C. 7:36-26.10(c)4;

iii. Would cause extraordinary operational or safety problems;

iv. Would result in adverse social, economic or environmental impacts of extraordinary magnitude, including, but not limited to, serious community disruption;

(1) In assessing costs associated with a particular alternative under (e)2iv above, the applicant shall take into consideration the comparative cost of constructing the project on parkland including the estimated cost of providing compensation under N.J.A.C. 7:36-26.10 for the value of the parkland to be diverted or disposed of as determined under N.J.A.C. 7:36-26.10(f) and the replacement of trees under N.J.A.C. 7:36-26.10(c)4; or

v. Would create unique problems, including, but not limited to, unusual negative outcomes, unfair distribution of burdens, extraordinary costs or the loss of irreplaceable community resources; and

3. "Not available" to the applicant if the alternative relies on use of land that is not owned by the applicant; and

i. The owner is unwilling to sell or transfer the land to the applicant or to allow the applicant to lease or otherwise obtain, utilize, expand or manage the land for the purposes of the project; and

ii. Condemnation of the land is not available to the applicant or is not reasonable under one or more of the factors at (e)2 above.

(f) Upon receipt of a pre-application submission from the applicant, Green Acres shall:

1. Determine if the submission is complete. A submission shall not be deemed to be complete if it does not contain all information required for a pre-application under (d) above, including the alternatives analysis required under (d)2 above; and

2. Notify the applicant that:

i. Its pre-application is complete and will be reviewed by Green Acres;

ii. Its pre-application is incomplete but that Green Acres shall nonetheless consider the pre-application

submission, provided the applicant submits the missing information by the date specified in the notification; or

iii. It is necessary for the Department to engage one or more experts to evaluate the alternatives analysis submitted by the applicant under (d)2 above. If such evaluation is necessary, the Department shall:

(1) Include an estimate of the cost to the Department to engage the expert(s); and

(2) Direct the applicant to submit payment of this amount in full within 90 days of the notice in order to obtain further review of the pre-application. A pre-application for which the Department finds it necessary to engage an expert for alternatives analysis review shall not be considered complete until the Department has received and reviewed the recommendations of the expert.

(g) Once Green Acres is in receipt of a complete pre-application submission, it shall review the submission in order to:

1. Determine whether the proposed disposal or diversion appears to meet the substantive standards for approval of disposals or diversions or parkland set forth at N.J.A.C. 7:36-26.1; and

2. Determine whether the proposed disposal or diversion appears to merit denial because it will result in one or more of the adverse consequences set forth at N.J.A.C. 7:36-26.1(e).

(h) Upon the conclusion of its review of a complete pre-application, Green Acres shall notify the applicant that:

1. Additional information is necessary in order for Green Acres to make a determination on the pre-application, with a deadline by which the information must be submitted to Green Acres;

2. The proposed disposal or diversion is denied. Grounds for denial may include, but are not limited to, failure to meet the substantive standards for approval of disposals or diversions of parkland set forth at N.J.A.C. 7:36-26.1; insufficient compensation to meet the requirements of N.J.A.C. 7:36-26.10; or a determination by the Department that the proposed

diversion or disposal will result in one or more of the adverse consequences set forth at N.J.A.C. 7:36-26.1(e); or

3. The applicant is authorized to submit to Green Acres a final application for Commissioner and State House Commission approval in accordance with N.J.A.C. 7:36-26.11.

(i) If Green Acres authorizes the applicant to submit a final application for a major disposal or diversion of parkland pursuant to (h)3 above, the authorization shall accept the preliminary compensation proposal for application review purposes, with conditions as appropriate, and shall require the submittal under N.J.A.C. 7:36-26.11(b)5 of a final compensation proposal that meets the criteria set forth at N.J.A.C. 7:36-26.10.

(j) If Green Acres authorizes an applicant to submit a final application for a major disposal or diversion of parkland pursuant to (h)3 above, such authorization does not constitute conceptual approval of the application, but is an informal determination by Green Acres that, based on the information provided by the applicant, the proposal appears to meet both the procedural and substantive standards for approval of the disposal or diversion and that the filing of the final application is merited.

**7:36-26.10 Major disposals or diversions of parkland; compensation for parkland proposed to be disposed of or diverted**

(a) An applicant shall provide compensation for a major disposal or diversion of funded or unfunded parkland. All such compensation shall meet the minimum requirements of this section. However, in its discretion, the applicant may propose compensation that exceeds the minimum requirements of this section.

(b) In requiring compensation for major disposals or diversions of parkland, the Department's primary objectives are to prevent a net loss of parkland (including, but not limited to, the quantity, quality and accessibility of parkland), to discourage the use of parkland for other than recreation and conservation purposes, particularly when a feasible and reasonable alternative site is available, and to ensure that the public is adequately compensated for the market value of the parkland to be disposed or diverted.

(c) In order to achieve the objectives of (b) above, an applicant seeking approval of a major disposal or diversion of parkland that will either fulfill a compelling public need or yield a significant public benefit, as defined at N.J.A.C.

7:36-26.1(d)1, shall, pursuant to N.J.A.C. 7:36-26.9(d)5, propose to compensate for the disposal or diversion by offering replacement land, monetary compensation or other compensation, as follows:

1. For a disposal or diversion of parkland that consists of the granting of an easement over, under or through parkland, or for a disposal or diversion that involves the fee simple conveyance of parkland, an applicant may propose as compensation:

i. Replacement land, provided that the applicable requirements at (d) below are met;

ii. Monetary compensation, provided that the applicable requirements at (e) below are met; or

iii. A combination of replacement land and monetary compensation, provided that the applicable requirements at both (d) and (e) below are met;

2. For a diversion of parkland that entails a lease or use agreement:

i. Green Acres shall assess whether the compensation that the applicant proposes to receive for the lease or use agreement is fair and appropriate; and, if not, advise the applicant as to the minimum amount of compensation that must be secured if the application is to be approved by the Commissioner and sent to the State House Commission for approval; and

ii. Green Acres shall require that any payments, rentals or other consideration received by the applicant from the lease or agreement be used by the applicant for its operating, maintenance or capital expenses related to its funded parkland or to its recreation program as a whole;

3. If a disposal or diversion of parkland will result in the loss of any recreation and conservation facilities, Green Acres shall require the applicant to compensate for the loss by providing replacement recreation and conservation facilities of reasonably equivalent usefulness, size, quality and location. The replacement facilities shall be in addition to any replacement land or monetary compensation proposed by the applicant;

4. If the project for which the disposal or diversion of parkland is proposed involves the removal of any tree with a DBH greater than six inches, especially the removal of any trees of significant size (with a DBH of

18 inches or greater), or the clear cutting of more than 0.50 acre, the applicant shall provide a plan to either replace or provide compensation for the removal of all such trees, to be submitted as part of a pre-application pursuant to N.J.A.C. 7:36-26.9(d)5. The plan shall provide for the planting of new replacement trees by the applicant or the applicant's agent or shall offer monetary compensation at least equal to the costs that would be incurred with respect to such planting of the replacement trees, subject to the following:

i. All reasonable efforts shall be made to preserve trees of a significant size (with a DBH of 18 inches or greater), including, but not limited to, if feasible, relocation of infrastructure, roadways and buildings. Removal of such trees from parkland requires the specific approval of the Department and may require additional compensation;

ii. The plan shall indicate the total number of trees over six inches DBH to be removed, the size and species of each such tree to be removed, and the total number of each species to be removed;

iii. The number of replacement trees to be planted shall be calculated on a square inch by square inch basis; however, the number of replacement trees may include trees required to be planted as a mitigation measure by another Department permitting program for the same project for which the disposal or diversion of parkland is proposed or the substitution of comparable wooded replacement land;

iv. The size of the replacement trees shall not be less than two-inch caliper;

v. The plan may take into account the condition of trees which are dead, dying or diseased and may assert preexisting legal rights pertaining to tree removal (such as tree clearing rights in utility corridors), in proposing replacement trees or monetary compensation for tree replacement;

vi. The replacement trees shall be planted in location(s) determined as follows:

(1) If the parkland to be disposed of or diverted is a portion of a larger parcel of parkland, the replacement trees shall be planted within the larger parcel of parkland; or

(2) If the parkland to be disposed of or diverted constitutes the entire parcel of parkland, the

replacement trees shall be planted on funded or unfunded parkland in the same municipality as the parkland that is proposed to be disposed or diverted;

vii. The species of the replacement trees shall be native species as appropriate to the planting site;

viii. The proposal shall include a planting plan describing the methods to be used, setting forth appropriate timing constraints on when planting may be carried out, and proposing planting sites for each replacement tree;

ix. The proposal shall include a maintenance commitment, including a commitment to water and prune the new trees, as needed, and to replace any replacement tree which does not survive for at least two years; and

x. The planting and maintenance of replacement trees shall conform to the standards set forth in the "American National Standard for Tree Care Operations--Tree, Shrub and Other Woody Plant Maintenance--Standard Practices," ANSI A300.1-1995, approved June 1, 1995, which document is incorporated herein by reference (as amended and supplemented). A copy of this document may be obtained at the following address:

American National Standards Institute  
11 West 42nd Street  
New York, New York 10036

xi. The proposal shall be certified by a forester in good standing on the Approved Forester List established by the Department pursuant to N.J.A.C. 7:3-2. By such certification the forester shall attest that the proposal conforms with the requirements of (c)4i through x above;

xii. Applicants are encouraged, to the extent feasible, to utilize the best management practices recommended for reforestation in the New Jersey Forestry and Wetlands Best Management Practices Manual.

(d) Replacement land proposed by the applicant as compensation for a major disposal or diversion of parkland shall meet the following requirements:

1. The preliminary compensation proposal submitted by the applicant under N.J.A.C. 7:36-26.9(d)5 shall

include the following:

i. A description of the replacement land;

ii. A description of the intended use for recreation and conservation purposes of the replacement land;

iii. The size and location of the land to be acquired; and

iv. The block and lot number and acreage of the proposed replacement land;

2. The proposed replacement land shall be eligible to be used as replacement, as follows:

i. Land that falls under one or more of the following categories is eligible to be used as replacement land under this subchapter:

(1) Land held by a local government unit for general municipal or county purposes that does not qualify as parkland under one or more of the factors at N.J.A.C. 7:36-25.3(f);

(2) Land described in a local government unit's current master plan as proposed or future parkland that does not qualify as parkland under one or more of the factors at N.J.A.C. 7:36-25.3(f);

(3) Vacant land for which there is no evidence of any intended use by the local government unit and that does not qualify as parkland under one or more of the factors at N.J.A.C. 7:36-25.3(f);

(4) Privately-owned land, including recreation and conservation facilities and private parkland that are not deed restricted or encumbered with an easement or other legal instrument for recreation and/or conservation purposes;

(5) Recreation and conservation facilities and parkland owned by a nonprofit organization that are not encumbered with Green Acres restrictions or deed restricted for recreation and/or conservation purposes;

(6) Board of Education property, except lands leased to or otherwise controlled by a local government unit in connection with a Green Acres development project; and/or

(7) Land owned by a water utility, municipal

utilities authority, improvement authority, or other public or quasi-public agency for other than a recreation and conservation purpose, except lands leased to or otherwise controlled by a local government unit in connection with a Green Acres development project;

ii. Land that falls under one or more of the following categories is not eligible to be used as replacement land under this subchapter:

(1) Land already encumbered by Green Acres restrictions as funded or unfunded parkland;

(2) Land that qualifies as parkland under one or more of the factors at N.J.A.C. 7:36-25.3(f);

(3) Land purchased by or developed by a local government unit for recreation and conservation purposes between its most recent time of receipt of Green Acres funding and the approval by the Commissioner and the State House Commission of an application for proposed disposal or diversion, whether or not such land is legally encumbered with Green Acres restrictions at the time of such approval, except for land specifically identified by the applicant as replacement land at the time of its acquisition; and/or

(4) Land purchased by a local government unit in whole or in part with funds from a dedicated county or municipal open space tax authorized under N.J.S.A. 40:12-15.1 through 15.9 or with bonds financed with a dedicated open space tax; and

iii. The Department shall determine on a case by case basis the eligibility of land in the following categories for use as replacement land:

(1) Land already encumbered by a conservation restriction or other partial deed restriction;

(2) Land held by or managed by a homeowner's association;

(3) Land held by a local government unit as a result of or as a condition of subdivision approval; and

(4) Land leased to or otherwise controlled by a local government unit in connection with a Green Acres development project;

3. In no case shall the acreage of the replacement land be less than the acreage of the parkland to be disposed of or diverted. For example, if an applicant proposes to provide compensation through a combination of replacement land and monetary compensation, the ratio of the replacement land to the parkland proposed to be disposed of or diverted shall be at least 1:1;

4. The minimum acreage of the replacement land to be provided for a specific type of disposal or diversion of parkland shall be determined in accordance with the provisions of Table 1 at (g) below;

5. For applications proposing replacement land as the only form of compensation, the proposed replacement land shall have a market value that is equal to or greater than the parkland proposed for disposal or diversion;

6. The proposed replacement land shall be of reasonably equivalent or superior quality to the parkland proposed for disposal or diversion, including, but not limited to, location, accessibility, usefulness for recreation purposes, and value for ecological, natural resource and conservation purposes. In evaluating the usefulness of the proposed replacement land, the Department shall pay particular attention to ensuring that parks that provide services to significant populations are replaced with recreation areas that serve the same, if not broader population;

7. If the proposed replacement land is inadequate to meet the criteria in (d)5 and 6 above, the Department shall require the applicant to supplement its proposal with additional compensation in excess of that which would otherwise be required under Table 1 at (g) below. Such additional compensation may consist of either additional replacement land or monetary compensation, or both, and the amount of such compensation must be sufficient to compensate in full for any shortfalls in the market value or quality of the proposed replacement land;

8. The replacement lands shall be located in the same municipality in which the parkland proposed for disposal or diversion is located. However, if no such lands are available, the applicant may propose replacement lands in the same subwatershed or watershed as the parkland proposed for disposal or diversion;

9. The replacement land shall not consist of land on which streets are shown on a subdivision plan as either offered for dedication or dedicated but not constructed



(also known as “paper streets”), unless the paper streets are an integral part of a larger parcel of proposed replacement land or are suitable to serve an independent recreation or conservation purpose and are vacated by ordinance; and

10. The proposed replacement land shall either be free of contamination by hazardous substances or shall be remediated to the Department's satisfaction prior to its dedication as parkland. If the proposed replacement land has a current or past industrial use, appears to have been disturbed based on a review of aerial photography or a site inspection, or Green Acres receives information about the replacement land that indicates that it has a history of contamination, the applicant shall submit a preliminary assessment report for the replacement land as part of the preliminary compensation proposal required by N.J.A.C. 7:36-26.9(d)5. Such report shall contain the information required under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. Green Acres shall review the preliminary assessment report to determine if the report contains the required information and shall notify the applicant as follows:

i. If the preliminary assessment report does not contain the required information, Green Acres shall send the applicant a deficiency letter identifying the information that must be submitted and asking the applicant to resubmit the preliminary assessment report with this information;

ii. If the preliminary assessment report contains the required information and does not identify any areas of concern, as defined under the Technical Requirements for Site Remediation, Green Acres shall send the applicant a letter acknowledging the sufficiency of the preliminary assessment report. The chief executive officer of the applicant shall certify, on a form obtained from Green Acres with the sufficiency letter, that the applicant has reviewed the preliminary assessment report and determined to proceed with the application for approval of the disposal or diversion. The applicant shall return the certification to Green Acres as part of a final compensation proposal submitted as part of the final application for a major disposal or diversion of parkland under N.J.A.C. 7:36-20.11(b)5; or

iii. If the preliminary assessment report contains the required information and identifies one or more areas of concern, as defined under the Technical Requirements for Site Remediation, Green Acres

shall send a letter notifying the applicant that a plan for addressing the areas of concern to the Department's satisfaction must be submitted as part of a final compensation proposal submitted as part of the final application for a major disposal or diversion of parkland under N.J.A.C. 7:36-26.11(b)5 before the application will be submitted for Commissioner and State House Commission approval.

(e) Monetary compensation proposed by the applicant as compensation for a major disposal or diversion of parkland shall meet the following requirements:

1. The minimum amount of monetary compensation to be provided for a specific type of disposal or diversion of parkland shall be determined in accordance with Table 1 at (g) below and-subject to the limitations of (i) through (k) below;

2. No county or municipal open space tax funds levied under N.J.S.A. 40:12- 15.1 through 15.9 or other dedicated recreation and conservation funding sources may be used as monetary compensation under this subchapter;

3. If the applicant proposes to use the monies for construction of parkland improvements, the preliminary compensation proposal submitted under N.J.A.C. 7:36-26.9(d)5 shall include the following:

i. A detailed description of the type, cost, location and intended use of the parkland improvements to be constructed;

ii. Drawings or plans for the parkland improvements, if available; and

iii. The timetable or schedule for construction of the parkland improvements;

4. If the applicant proposes to use the monies for land acquisition, the preliminary compensation proposal submitted under N.J.A.C. 7:36-26.9(d)5 shall include the information at (d)1 above, to the extent known at the time of the submittal; and

5. The applicant must demonstrate the ability to, immediately upon approval of the application by the Commissioner and the State House Commission under N.J.A.C. 7:36-26.11(j) and (k):

i. Remit the monies in full to Green Acres for deposit into the GSPT Fund in accordance with

N.J.A.C. 7:36-26.11(l); or

ii. Deposit the monies into a dedicated account to be used only for purposes consistent with the approval, if the application as approved by the Commissioner and the State House Commission under N.J.A.C. 7:36-26.11(j) and (k) allows the applicant to retain the monies for its use for parkland improvements or land acquisition.

(f) Valuation of the parkland proposed for disposal or diversion and/or the proposed replacement land shall be determined in accordance with the following:

1. For the purposes of this section, the market value of the parkland proposed to be disposed of or diverted shall be based on the highest and best use or the use intended for the land subsequent to its disposal or diversion, whichever would result in a higher market value;

2. In submitting a preliminary compensation proposal as part of a pre-application under N.J.A.C. 7:36-26.9(d)5, the applicant may determine the market value of the parkland proposed for disposal or diversion and/or the market value of the proposed replacement land by using either the tax assessor's certification required by N.J.A.C. 7:36-26.9(d)4 or an appraisal obtained by the applicant and performed in accordance with N.J.A.C. 7:36-8.3 or 19.3, as applicable; and

3. If authorized by the Department to submit a final application in accordance with N.J.A.C. 7:36-26.9(h)3, the applicant shall either obtain an appraisal of both the parkland proposed for disposal or diversion and the proposed replacement land or request an appraisal waiver under (l) below. Any appraisal obtained by the applicant to fulfill the requirements of N.J.A.C. 7:36-26.11(c)1 shall be performed in accordance with N.J.A.C. 7:36-8.3 or 19.3, as applicable.

(g) The minimum amount of compensation that shall be provided for a major disposal or diversion of parkland that consists of an easement under, over or through parkland or that consists of the disposal or diversion of parkland shall be determined in accordance with Table 1 below and the provisions of (h) through (k) below:

**Table 1**

**Table for Determining Minimum Compensation to be Provided for Major Disposals and Diversions of Parkland**

		If compensation is to be provided in the form of replacement land		If compensation is to be provided in the form of monetary compensation	
		Minimum Ratios Based on Acreage  (ratio of acreage of land to be offered as compensation to the acreage of the land to be disposed of or diverted)		Minimum Ratios Based on Market Value  (ratio of monetary compensation to be offered as compensation, in dollars, to the market value of the land to be disposed of or diverted, in dollars)	
<b>Type of Diversion or Disposal</b>	Project Sponsor <sup>1</sup>	For Lands for Which Appraisals are Obtained	For Lands for Which Appraisal Waiver is Obtained	If Money is to be Used for Parkland improvements	If Money is to be Used for Land Acquisition
Subsurface Easement Under Parkland  7:36-26.10(i)1 and 2	Public	1:1	1:1	2:1 \$2,500 min.	2:1 \$2,500 min.
	Private	2:1	4:1	10:1 \$2,500 min.	10:1 \$2,500 min.
Surface Easement Over or Through Parkland  7:36-26.10(i)3	Public	1:1	2:1	4:1 \$2,500 min.	4:1 \$2,500 min.
	Private	4:1	6:1	10:1 \$2,500 min.	10:1 \$2,500 min.
<b>Diversions or Disposals</b>  7:36-26.10(j)1 through 3	Public	2:1	3:1	4:1 \$5,000 min.	4:1 \$5,000 min.
	Private	4:1	6:1	N/A	10:1 \$5,000 min.
Legalizing Past Diversions or Disposals  7:36-26.10(j)4	Public	5:1	10:1	N/A	10:1 \$10,000 min.
	Private	20:1	N/A	N/A	20:1 \$10,000 min.

<sup>1</sup> The terms “public” and “private” as used in Table 1 shall have meanings as defined at N.J.A.C. 7:36-26.10(h).

(h) For the purposes of this section, including Table 1 in (g) above, the term “public” used in reference to a diversion or disposal denotes that the project for which the diversion or disposal is proposed is constructed by or sponsored by a public entity; and the term “private” used in reference to a diversion or disposal denotes that the project for which the diversion or disposal is proposed is not constructed by or sponsored by a public entity. The classification of a diversion or disposal as public or private shall be determined by Green Acres based on the pre-application information provided by the applicant.

(i) Criteria for the selection of replacement land or monetary compensation under Table 1 in (g) above for a major disposal or diversion of parkland which consists of an easement under, over or through parkland are as follows:

1. If the applicant chooses to offer replacement land as compensation, the applicant may offer either a surface easement to be used for recreation and conservation purposes (such as a permanent trail easement) or a fee simple interest in land as the replacement land; and

2. If the applicant chooses to offer monetary compensation, the minimum amount that the applicant may offer is \$2,500, even if a lesser amount would otherwise be determined utilizing the ratios in Table 1 to determine the minimum monetary compensation needed.

(j) Criteria for the selection of replacement land or monetary compensation under Table 1 in (g) above for a major disposal or diversion of parkland which consists of the disposal or diversion of parkland are as follows:

1. If the applicant chooses to offer replacement land as any part of the proposed compensation, the applicant shall either:

i. Obtain and submit for the Department's review as part of the final application submitted under N.J.A.C. 7:36-26.11(b)1, an appraisal for the parkland for which the disposal or diversion is proposed and apply the ratio in Table 1 at (g) above applicable to land for which no appraisal waiver is obtained to determine the minimum acreage needed for compensation; or

ii. Obtain an appraisal waiver pursuant to (l)

below and apply the ratio in Table 1 at (g) above applicable to land for which an appraisal waiver is obtained to determine the minimum acreage needed for compensation;

2. If the applicant chooses to offer only monetary compensation, the following restrictions shall apply:

i. The size of the parkland proposed for disposal or diversion must be less than five acres and must comprise less than five percent of the total parkland parcel;

ii. Except as provided in (j)2iii below, the minimum compensation amount is \$5,000, even if a lesser amount would otherwise be determined utilizing the ratios in Table 1 in (g) above to determine the minimum monetary compensation needed;

iii. The Department may require additional monetary compensation as necessary to adequately compensate for the impact of the proposed disposal or diversion on the surrounding parkland; and

iv. If the disposal or diversion is proposed for a project that is classified as “private” under (h) above, the monies may only be used by the applicant for land acquisition, and not for parkland improvements;

3. If the applicant has, contrary to the Green Acres laws, allowed the diversion or disposal or parkland without the approval of the Commissioner and the State House Commission, and is seeking approval of the diversion or disposal in order to legalize this past and/or continuing action and/or inaction, the following shall apply:

i. The applicant shall utilize the ratios in Table 1 in (g) above pertaining to legalizing past diversions or disposals;

ii. If mitigating circumstances apply, the applicant may request that the Department allow the applicant to use ratios that are less than the applicable ratios in Table 1 in (g) above for legalizing past diversions or disposals, in consideration of those mitigating circumstances. However, in no case shall the Department consider compensation at a ratio of less than 1:1 (for diversions or disposals involving easements) or 2:1 (for other diversions or disposals), as applicable;

iii. If the proposed disposal or diversion is for a project that is classified as “public” under (h) above, the applicant may not choose to offer monetary compensation to be used for parkland improvements, rather, the applicant shall offer either replacement land or monetary compensation to be used for land acquisition;

iv. If the proposed disposal or diversion is for a project that is classified as “private” under (h) above, the applicant may not choose to offer monetary compensation for parkland improvements and may not obtain an appraisal waiver; rather, the applicant shall offer either replacement land or monetary compensation to be used for land acquisition under the applicable ratios in Table 1 in (g) above or an alternate ratio approved by the Department pursuant to (j)3ii above; and

v. If the applicant offers monetary compensation to be used for land acquisition under (j)3iii or iv above, the minimum compensation amount is \$10,000, even if a lesser amount would otherwise be determined utilizing the ratios in Table 1 in (g) above to determine the minimum monetary compensation needed.

(k) If an applicant is authorized pursuant to (e)5 above and N.J.A.C. 7:36- 26.11(l) and (m) to retain its compensation monies to be used for parkland improvements or land acquisition, the applicant shall utilize the monies in accordance with the following:

1. An applicant that is approved to utilize its monies for parkland improvements shall:

i. Utilize the monies for new parkland improvements and not for improvements that were already budgeted and/or approved by the applicant; and

ii. Complete the parkland improvements within one year of the date of approval of the application for the disposal or diversion of parkland by the State House Commission. For good cause shown, the Department may grant one six-month extension of this deadline;

2. An applicant that is approved to utilize its monies for land acquisition shall:

i. Utilize the monies for acquisition of land that

meets the criteria for replacement land at (d) above;

ii. At least 30 days prior to each acquisition of replacement land using money from a dedicated account established under (e)5 above, the applicant shall submit to Green Acres for review all remaining pre-application requirements and final application requirements pertaining to the replacement land as provided at N.J.A.C. 7:36-26.9(d) and 26.11(b); and

iii. Complete the land acquisition within two years of the date of the approval of the application for the disposal or diversion of parkland by the State House Commission. For good cause shown, the Department may grant one six-month extension of this deadline; and

3. If the applicant does not complete the parkland improvements or land acquisition within the time frames specified in (k)lii and 2iii above, the Department may, upon 30 days' written notice, require that the applicant remit to Green Acres the full amount of the approved monetary compensation for deposit in the GSPT Fund.

(l) An applicant may obtain an appraisal waiver in accordance with the following procedures:

1. The applicant shall submit to Green Acres a certification by the tax assessor of the local government unit where the land is located that the proposed replacement land is of at least equal market value and has substantially similar development potential to the parkland to be disposed of or diverted. The certification shall be on a form obtained from Green Acres;

2. Green Acres shall review the submittal to determine if it is complete. The failure of the applicant to provide complete information on the tax assessor's certification, including valuation information, shall be sufficient grounds for denial of an appraisal waiver request; and

3. If Green Acres determines that the submittal is complete, and if it concurs based on the tax assessor's certification and any other available information, that the proposed replacement land is of at least equal market value and of substantially similar development potential, Green Acres may, in its discretion, waive the appraisal requirement for

the application.

(m) All replacement lands dedicated as parkland as a condition of the approval of a disposal or diversion of funded parkland, including lands purchased by the applicant with monetary compensation, shall be subject to Green Acres restrictions as funded parkland, and the deed for each replacement parcel shall incorporate the Green Acres restrictions by reference.

(n) If the parkland proposed to be disposed of or diverted comprises no more than three acres and no more than five percent of the area of the park in which it is located, the local unit or nonprofit may propose to compensate for the disposal or diversion by “banking” a parcel of land that is significantly larger than the replacement land that would otherwise be required under this section. The local unit shall specify the portion of the banked parcel that replaces the parkland initially proposed to be disposed of or diverted, and shall reserve the remainder of the banked parcel. The following conditions apply to the reserved remainder:

1. The reserved remainder shall be subject to Green Acres restrictions as of the date that the local unit or nonprofit executes a written agreement with Green Acres establishing the land compensation “bank” subsequent to Commissioner and State House Commission approval under this subchapter of the initial disposal or diversion;

2. The local unit or nonprofit shall use the reserved remainder only as replacement land for subsequent proposed disposals or diversions of funded or unfunded parkland that comprise no more than three acres and no more than five percent of the area of the park in which it is located;

3. Any subsequent proposed disposal or diversion of parkland for which the banked remainder of the parcel is used as replacement land shall meet all the requirements of this subchapter; and

4. Acceptance and/or approval of a proposal to bank replacement land under this section is within the sole discretion of the Department.

(o) For a project that will neither fulfill a compelling public need nor yield a significant public benefit as defined at N.J.A.C. 7:36-26.1(d)1, the applicant shall propose compensation in excess of that which would otherwise be required under this section, sufficient to establish that, due to the amount of the proposed

compensation alone, the proposed major diversion or disposal will result in an exceptional recreation and/or conservation benefit.

(p) All compensation proposed by the applicant under this section is subject to review by Green Acres and requires the approval of the Commissioner and the State House Commission under N.J.A.C. 7:36-26.11(j) and (k).

#### **7:36-26.11 Major disposals or diversions of parkland; final application requirements**

(a) An applicant that has been authorized by Green Acres under N.J.A.C. 7:36-26.9(h)3 to submit a final application for a major disposal or diversion of parkland shall submit the application to Green Acres within 180 days of such authorization and prior to scheduling a public hearing on the application.

(b) A final application shall include all information required for the pre-application and the following:

1. An appraisal of the parkland proposed to be disposed of or diverted and an appraisal of the replacement land proposed as compensation (if applicable), performed in accordance with the requirements of N.J.A.C. 7:36-8.3 or 19.3, as applicable. In any appraisal of parkland proposed to be disposed of or diverted, the value of the parkland shall be based on its highest and best use or the use intended subsequent to the disposal or diversion, whichever would result in a higher market value for the land. However, notwithstanding the provisions of this paragraph, no appraisal is required if the applicant has obtained an appraisal waiver pursuant to N.J.A.C. 7:36-26.10(l);

2. A title report for the proposed replacement land, as applicable, to-determine existing restrictions, encumbrances, easements, liens, or other factors which may affect the market value of the land;

3. Three copies of a land survey plan for the parcel of parkland proposed to be disposed of or diverted and, if applicable, two copies of a land survey plan for the proposed replacement land. Each survey plan shall:

- i. Be done in compliance with the Local and Nonprofit Land Survey Overview, set forth herein as chapter Appendix 2. The Overview is available from Green Acres at PO Box 412, Trenton, New

Jersey 08625 or on the Green Acres web page at [www.nj.gov/dep/greenacres](http://www.nj.gov/dep/greenacres). Technical assistance regarding the preparation of the land survey is available from Green Acres;

ii. Show acreage, tax map references (blocks and lots) current as of the date of the plan, all easements of record, fences, improvements, encroachments, water courses, wetlands, and pertinent natural features; and

iii. Be submitted on paper (an original and two copies) and also electronically in a format compatible with the Mapping and Digital Data Standards at N.J.A.C. 7:1, Appendix A;

4. Two copies of metes and bounds descriptions for the parcel of parkland proposed to be disposed of or diverted and the proposed replacement land, corresponding to the surveys required under (b)3 above, stating acreage, submitted on the surveyor's letterhead, and signed and sealed by the surveyor;

5. A final compensation proposal based on the requirements of N.J.A.C. 7:36- 26.10 and the information required under (b)l through 4 above. The final compensation proposal shall include:

i. A narrative description of any replacement land, parkland improvements, lands to be acquired or replacement recreation and conservation facilities proposed by the applicant pursuant to N.J.A.C. 7:36-26.10;

ii. A description of the intended use for recreation and conservation purposes of any proposed replacement land or other land to be acquired; and

iii. If a preliminary assessment was prepared by the applicant for the proposed replacement land under N.J.A.C. 7:36-26.10(d)10 and does not identify any areas of concern, a certification, on a form obtained from Green Acres, by the chief executive officer of the applicant that the applicant has reviewed the preliminary assessment report and has determined to proceed with the application for approval of the disposal or diversion; or

iv. If a preliminary assessment was prepared by the applicant for the proposed replacement land under N.J.A.C. 7:36-26.10(d)10 and identifies one or more areas of concern, as defined under the

Technical Standards for Site Remediation, N.J.A.C. 7:26E, a plan for addressing such areas of concern prior to the dedication of the replacement land as parkland;

6. Updated copies of any of the maps required under N.J.A.C. 7:36-26.9(d) 9, if there have been any changes in the information depicted in the maps;

7. A proposed public notice for the public hearing required under (e) below, which notice shall comply with the requirements of (e)3 below; and

8. Any other information requested by the Department to clarify the final application requirements.

(c) Upon receipt of a final application, Green Acres shall review the submittal to determine whether the application is complete for public hearing purposes, including whether:

1. The appraisals submitted under (b)l above should be accepted as sufficient to meet the requirements for such appraisals;

2. The final compensation proposal submitted under (b)5 above meets the requirements of N.J.A.C. 7:36-26.10; and

3. All other requirements of (b) above have been satisfied.

(d) Upon receipt of the final application, including the information required under (b) above, Green Acres shall notify the applicant as to whether the application is complete for public hearing purposes or whether additional information is required. If additional information is required, Green Acres shall notify the applicant that the application must be resubmitted with the additional information. Once Green Acres is in receipt of an application submittal that includes the additional information, Green Acres will notify the applicant as to whether the final application is complete for public hearing purposes.

(e) Once the Department has determined that the final application is complete for public hearing purposes, the applicant shall hold a public hearing to obtain public comment on the application and shall offer the public the opportunity to submit written comments. The public hearing shall be conducted in accordance with the following:

1. The hearing shall be held in the municipality in which the parkland proposed to be disposed of or diverted is located. If the parkland is located in more than one municipality, the applicant shall conduct a public hearing in each affected municipality or in a central location approved by the Department;

2. The hearing shall be held at least 90 days before the date of the State House Commission meeting at which the application is to be considered;

3. The applicant shall provide notice of the hearing in accordance with (h) below. In addition, the applicant is encouraged to issue a press release prior to the public hearing;

4. The hearing shall be conducted on a weekday in the evening; and

5. The applicant shall ensure that a transcript of the hearing is produced for submission under (i) below.

(f) A public hearing held pursuant to this section may be scheduled to occur as part of meeting of the applicant's governing body, as long as separate notice of the hearing is provided in accordance with (h) below and the applicant adjourns the meeting of the governing body to conduct the public hearing.

(g) If the Department is aware that the proposed major disposal or diversion is likely to generate substantial adverse comment at the public hearing, it may require the applicant to retain a neutral facilitator to conduct the hearing.

(h) The applicant shall provide notice of the public hearing and of the opportunity for the public to submit written comments in accordance with the following; and shall maintain a record that documents that the notice requirements were met:

1. At least 30 days prior to the hearing, the applicant shall:

i. Publish a legal notice in the official newspaper of the municipality (or municipalities) in which the parkland proposed for disposal or diversion is located and, if the applicant is a county or a regional nonprofit, also in a local newspaper of general interest and circulation;

ii. Post notice of the hearing on its official web site (if any) in the same manner as other public hearing notices are posted;

iii. Provide written notice of the hearing to Green Acres, the governing body, local planning board(s), environmental commission(s) and open space advisory committee(s) of the municipality(ies) in which the parkland is located, if any, and, if the local government unit is a county, also to the county governing body, county planning board, county environmental commission and county open space advisory committee, if any, the Council on Affordable Housing, and the Highlands Council, Pinelands Commission or other regional regulatory agency identified by the Department, as applicable;

iv. Provide written notice of the hearing via certified mail (return receipt requested) to all persons who own land or who hold easements on land located within 200 feet of the parkland that is the subject of the proposed disposal or diversion, and to any easement holders for that land who are listed in the tax records for the municipality(ies) in which the land is located; and

v. Post and maintain in a legible condition until the public comment period is concluded under (h)3vi below, a sign on the parkland that is the subject of the proposed diversion or disposal. Such sign shall advise the public of the proposed diversion or disposal, the public hearing on the proposed disposal or diversion and the opportunity for public comment on the proposed disposal or diversion. Such sign shall be located at each public entrance to the parkland proposed for diversion or disposal and/or in other prominent location(s) approved by the Department. Such sign shall be of sufficient size and visibility and contain sufficient detail as to inform the general public of the proposed diversion or disposal of parkland and the method by which the public may obtain information about such proposed diversion or disposal, and shall be subject to the Department's approval;

2. At least 15 days prior to the hearing, the applicant shall publish a display ad in the official newspaper(s) of the municipality(ies) in which the parkland that is the subject of the proposed disposal or diversion is located and, if the applicant is a county or a regional nonprofit, also in a local



newspaper of general interest and circulation; and

3. The notices required under (h)1 and 2 above shall include the following information:

i. The name of the applicant and the date, time and location of the public hearing;

ii. A description of the proposed disposal or diversion and a statement of the purpose for which it is proposed;

iii. The street address (if available), municipality, county, tax map block and lot and size of the property that is the subject of the proposed major diversion or disposal and the proposed replacement land (if any);

iv. A description of the compensation, if any, to be provided by the applicant;

v. A statement that an application for Commissioner and State House Commission approval of the disposal or diversion has been submitted to Green Acres and is available for review at the municipal offices and the library serving the municipality(ies) in which the parkland proposed for disposal or diversion is located and at the Green Acres Program offices; and

vi. A statement inviting participation in the public hearing and notifying the public that, in the alternative, written comments may be submitted to the applicant during a public comment period that will close on a date that is two weeks after the hearing date. The statement shall provide an address for submittal of written comments to the local government unit or nonprofit and shall require that copies of any written comments also be sent to:

New Jersey Department of Environmental Protection  
Green Acres Program  
Bureau of Legal Services and Stewardship  
PO Box 412  
Trenton, New Jersey 08625-0412

(i) Upon conclusion of the public hearing, and at least 75 days before the date of the State House Commission meeting at which the application is considered, the applicant shall provide the Department with the following additional post hearing information:

1. Proof of publication of the notice of public hearing required under (h)1i above; proof of publication of the display ad required under (h)2 above; a dated copy of the posting required pursuant to (h)1ii above (if applicable); copies of and proof of mailing of the written notices required under (h)1iii and iv above; and proof of the posting and maintenance of a sign as required under (h)1v above;

2. A copy of a transcript of the public hearing as required under (e)5 above;

3. A summary of the public comments made at the public hearing and/or provided in writing during the public comment period and the applicant's response to the public comments;

4. A resolution, adopted by the applicant's governing body after the public hearing, reaffirming the applicant's request for approval of its application for the disposal or diversion of parkland. The resolution shall include a summary of the proposed disposal or diversion and of the amount of compensation, if any, to be provided by the applicant; and

5. A letter from the applicant's attorney stating that:

i. The attorney has reviewed the entire final application submitted for Commissioner and State House Commission approval;

ii. It is the attorney's opinion that the applicant is empowered to proceed with the application;

iii. It is the attorney's opinion that the applicant is not in violation of any applicable Federal, State, or local laws, rules, regulations, codes, or ordinances pertaining to the proposed major disposal or diversion of parkland or to the project for which the disposal or diversion is sought; and

iv. If the applicant is a local government unit, it is the attorney's opinion that the local government unit has complied, to the extent applicable, with the Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq. (including, but not limited to, N.J.S.A. 40A:12-13.5 et seq. if the local government unit is a county), the statutory provisions governing municipal parks and playgrounds (N.J.S.A. 40:61-1 et seq.), the statutory provisions governing county parks and

playgrounds (N.J.S.A. 40A:37-1 et seq.), the statutory provisions governing boards of recreation commissioners and the establishment of municipal and county parks and playgrounds (N.J.S.A. 40:12-1 et seq.), the local open space tax statute, N.J.S.A. 40:12-15.1 through 15.9, and any other statute governing the conveyance, disposal or diversion of land or parkland held by a local government unit.

(j) After receiving the applicant's complete post-hearing submittal as required under (i) above, the Commissioner shall approve or disapprove the final application for a major disposal or diversion of parkland.

1. The Commissioner shall not approve any application until he or she is satisfied that:

i. If compensation is required for the disposal or diversion under N.J.A.C. 7:36-26.10, the compensation to be provided is sufficient; and

ii. All applicable requirements of this subchapter are met;

2. If the Commissioner disapproves the final application, the Commissioner shall notify the applicant of the disapproval in writing; and

3. If the Commissioner approves the final application:

i. The Commissioner shall submit a summary of the approved application, together with any conditions that the Commissioner has determined to impose on his or her approval of the disposal or diversion, to the State House Commission for its consideration;

ii. The Commissioner shall request that the State House Commission, if feasible, consider the application at its next scheduled meeting, provided the date of the meeting is at least 90 days after the date of the public hearing held pursuant to (e) above; and

iii. Green Acres shall notify the applicant of the Commissioner's approval of its application, any conditions that the Commissioner determined to impose on his or her approval, and the anticipated date on which the State House Commission will consider the final application (if known).

(k) After the State House Commission determines whether to approve or disapprove the final application for a major disposal or diversion of parkland, and (in the case of approval) whether to impose any conditions on its approval, Green Acres shall notify the applicant of the State House Commission's decision(s).

(l) If the application approved by the Commissioner and the State House Commission includes monetary compensation, the applicant shall, prior to proceeding with the disposal or diversion:

1. Remit to Green Acres, for deposit in the Shade Tree and Community Forest Preservation License Plate Fund established pursuant to N.J.S.A. 39:3-27.81, the total amount of any monetary compensation for tree removal approved by the Commissioner and the State House Commission; and

2. If the application as approved by the Commissioner and the State House Commission allows the applicant to retain the monies for its use for parkland improvements or land acquisition, deposit the monies into a dedicated account as required under N.J.A.C. 7:36-26.10(e)5.

(m) Upon receipt of payment under (l)1 above, proof of deposit of compensation monies into a dedicated account under (l)2 above and proof that any other compensation requirements either have been satisfied or will be satisfied in a timely manner, the Commissioner shall:

1. Execute a release of the parkland to be disposed of or diverted. The release shall recite the particular purpose for which the disposal or diversion was approved; the compensation for the disposal or diversion and any conditions imposed on the disposal or diversion by the Commissioner and/or the State House Commission; or

2. If the compensation for the disposal or diversion consists, in whole or in part, of replacement land, execute with the applicant an agreement releasing the Green Acres restrictions on the parkland disposed of or diverted, and subjecting the replacement land to the Green Acres restrictions.

## Appendix 1 Densely and Highly Populated Municipalities/ Counties

### **Atlantic**

Atlantic City  
Margate City  
Pleasantville City  
Ventnor City

### **Bergen**

Bergenfield Borough  
Bogota Borough  
Cliffside Park Borough  
Dumont Borough  
Edgewater Borough  
Elmwood Park Borough  
Englewood City  
Fair Lawn Borough  
Fairview Borough  
Fort Lee Borough  
Garfield City  
Hackensack City  
Hasbrouck Heights Borough  
Leonia Borough  
Little Ferry Borough  
Lodi Borough  
Maywood Borough  
New Milford Borough  
North Arlington Borough  
Palisades Park Borough  
Ridgefield Park Village  
River Edge Borough  
Rochelle Park Township  
Rutherford Borough  
Teaneck Township  
Wallington Borough  
Wood-Ridge Borough

### **Burlington**

Evesham Township  
Mount Holly Township  
Mount Laurel Township  
Pemberton Borough  
Riverside Township  
Willingboro Township

### **Camden**

Audubon Borough  
Audubon Park Borough  
Camden City  
Cherry Hill Township  
Collingswood Borough

Gloucester City  
Gloucester Township  
Haddon Township  
Lindenwold Borough  
Merchantville Borough  
Mount Ephraim Borough  
Oaklyn Borough  
Pennsauken Township  
Winslow Township  
Woodlynne Borough

### **Cumberland**

Bridgeton City  
Millville City  
Vineland City

### **Essex**

Belleville Township  
Bloomfield Township  
Caldwell Borough  
East Orange City  
Glen Ridge Borough  
Irvington Township  
Maplewood Township  
Montclair Township  
Newark City  
Nutley Township  
Orange City Township  
South Orange Village Township  
West Orange Township

### **Gloucester**

Glassboro Borough  
Monroe Township  
Washington Township  
Woodbury City

### **Hudson**

Bayonne City  
East Newark Borough  
Guttenburg Town  
Harrison Town  
Hoboken City  
Jersey City  
Kearny Town  
North Bergen Township  
Union City  
Weehawken Township

West New York Town

### **Mercer**

Ewing Township  
Hamilton Township  
Trenton City  
Princeton Borough

### **Middlesex**

Carteret Borough  
Dunellen Borough  
East Brunswick Township  
Edison Township  
Highland Park Borough  
Jamesburg Borough  
New Brunswick City  
North Brunswick  
Old Bridge Township  
Perth Amboy City  
Piscataway Township  
Sayreville Borough  
South Amboy City  
South Brunswick Township  
South River Borough  
Woodbridge Township

### **Monmouth**

Asbury Park City  
Avon By The Sea Borough  
Belmar Borough  
Bradley Beach Borough  
Freehold Borough  
Highlands Borough  
Howell Township  
Keansburg Borough  
Keyport Borough  
Long Branch City  
Marlboro Township  
Middletown Township  
Neptune City Borough  
Neptune Township  
Red Bank Borough  
Shrewsbury Township  
South Belmar Borough

### **Morris**

Dover Town  
Morristown Town  
Parsippany Troy  
Victory Gardens Borough

**Ocean**

Berkeley Township  
Brick Township  
Dover Township  
Jackson Township  
Lakewood Township  
Manchester Township  
Point Pleasant Borough  
Seaside Heights Borough

**Passaic**

Clifton City  
Haledon Borough  
Hawthorne Borough  
Passaic City  
Paterson City  
Prospect Park Borough  
Wayne Township

**Salem**

Penns Grove Township  
Salem City

**Somerset**

Bound Brook Borough  
Bridgewater Township  
Franklin Township  
Hillsborough Township  
North Plainfield  
Somerville Borough  
South Bound Brook Borough

**Union**

Elizabeth City  
Fanwood Borough  
Garwood Borough  
Hillside Township  
Linden City  
Plainfield City  
Rahway City  
Roselle Borough  
Roselle Park Borough  
Union Township  
Winfield Township

**Warren**

Phillipsburg Town

**Highly Populated Counties**

Bergen  
Camden  
Mercer  
Middlesex  
Monmouth  
Morris  
Passaic

**Densely Populated Counties**

Essex  
Hudson  
Union

Appendix 2

**New Jersey Department of Environmental Protection  
Green Acres Program**

Local and Nonprofit Land Survey Overview

**A land survey plan prepared as part of a Green Acres project must be conducted by a New Jersey Licensed Professional Land Surveyor and must meet the following requirements:**

- **Size of plan** must be 30x42 inches or 24x36 inches folded to approximately 8-1/2 x 11 inches with the title block facing up.
- **Orientation of parcel** must have north pointing upward or left in landscape view, or upward or right in portrait view.
- **Clockwise bearings** must be used so that metes and bounds description of the parcel can be read in a clockwise fashion.
- **Scale of parcel** must be standard engineering scale in feet, and all data must be presented clearly.
- **Line and curve tables** are not acceptable. Label line and curve data directly on the survey course.
- **Significant figures** – Bearings must be rounded to whole seconds; distances and New Jersey State Plane Coordinate System (NJSPCS) NAD 1983 coordinates must be rounded to two decimal places in feet; and acres must be rounded to three decimal places except along waterways where one decimal place is required.
- **Mathematical closure** – All property surveys must form closed polygons with all sides defined by mathematical survey expressions being bearing and distances on all straight line segments and tie lines: radius, arc length, delta, chord bearing/distance on all curved lines; general calls must have tie lines.
- **Mathematical survey expressions** must be used to define all courses of the parcel being surveyed.
- **Area** must be stated in acres to three decimal places unless bounded by a waterway or Tidelands Claim, then one decimal place.
- **Aerial photographs and planimetric mapping** must be current to within two (2) years of survey.
- **Areas of claim of tidelands ownership by State of New Jersey** must be shown with area to 1/10th acre.
- **Waterways** at boundary must show mathematical tie lines. Terms “trash-line” and “debris line” are not acceptable.
- **Roads** - Survey lines should run to the center of the public road; area subject to the paramount rights of the public must be identified.
- **Subdivision of lands** - Survey and describe the entire property, then except out lands remaining.
- **Title block** must meet requirements of State Board of Professional Engineers and Land Surveyors.
- **Legend of acquisition** must include project name and number, funding source, acquisition partner (if any), seller name and identification number (available from Green Acres), municipality, county, list of each tax block and lot surveyed, interest being obtained for each lot, and area summary.
- **Corner marking** - Detailed enlargements may be required to be made to show a corner marker set or the relationship to markers found near a corner.
- **Plan certification** – Plan must contain the standard language certification.
- **Location map** must be placed in the upper right hand corner of the plan with the perimeter of survey drawn, indicating the site and the north arrow.
- **Line weight and type** - Perimeter survey lines shall be solid and be the most prominent line weight on the plan.
- **Street address** of the subject parcel being surveyed must be given only if the municipality has assigned a street number.
- **Municipal tax block and lot numbers** - The block and lots of the parcel and all adjoiners must be labeled. Internal lot lines and individual areas per lot shall be stated on the plan, and individual lot areas shall be restated in the metes and bounds description.
- **Any permanent-type building**, improvements, structures or foundations must be shown.
- **Any utility easements**, visible or known of record, overhead wires or pole lines within the parcel must be shown.
- **Encroachments** shall be clearly drawn, labeled, and dimensioned to the property line. Such encroachments may need to be excluded from Green Acres encumbrances and funding.
- **Watercourses** must be labeled including the name of the stream and showing the direction of flow and the area within the bed.

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- **All drains and sewers** that are visible on the surface of and within the limits of the parcel must be shown.
- **The name of record owners** and the latest deed book and page reference for adjoining lands must be provided.
- **Roads not open** are to be indicated as paper streets. If they are not vacated, they are subject to possible rights. The area of the paper streets must be labeled.
- **Tax Map** - If the survey finds that the municipal tax map erroneously locates the parcel, note this discrepancy on the plan.
- **Deed book and page number** of the reference deeds actually used must be indicated graphically.
- **Point of beginning** must be labeled "Description Point of Beginning" or "P.O.B." with coordinates.
- **Survey to follow deed lines** - The lines of the survey are to run with the lines in the deeds.
- **Public road rights-of-way and rivers** that are acquired in fee must be identified as subject to such existing rights.
- **Private rights-of-way and easement widths** must be shown with record or physical width provided.
- **Deed conflicts** must be clearly labeled with information for all adjoiners, including name, tax block and lot, and deed book and page.
- **Record gore areas** shall require a separate metes and bounds description of the gore area for potential use in a quit claim deed.
- **Record overlap areas** shall require a description of the overall metes and bounds of property, subject to the overlap.
- **Corner marking and line marking** is decided by the "Ultimate User" (the local government unit or nonprofit and also the State of New Jersey).
- **Corner markers** must be set at the perimeter and at limits of all public access easements.
- **Omit markers** that would otherwise be set at the right-of-way line of a public road or on lands common with other lands of the local government unit (or nonprofit) or internal to the project.
- **Found markers** that are found within a radius of 1.5 feet of the true may be considered as marked.
- **Offset markers** must be set if the corner is inaccessible.
- **Public access corner markers** must be set on all public access corridors.
- **Three monument minimum** - Set a minimum of three new monuments for corner markers.
- **Cap detail** must be drawn on the plan to show survey firm, year set, and the corner number. Also state diameter of rebar.
- **Acceptable corner markers** are standard 3-1/2 inch or 2-1/2 inch bronze or aluminum disk.
- **Disks** may be used for corner markers if the survey corner falls on a large boulder.
- **Monuments** may be pre-cast or poured in place, not less than 4 inches square on top containing a standard disk.
- **Rebar** must be capped with metal disk as plastic caps are not capable of being stamped in the field.
- **Original signature and seal** must appear on plan; a rubber stamp or computer-generated signature is not acceptable.

#### Digital files must be submitted on a HD 1.44MB 3.5 "5.25" or mini CD-R compact disks

- Submit a **Digital** file that shall be a .dxf format single layer digital drawing containing closed survey lines.

#### Deed description format

- **Deed description type** is that of a separate document metes and bounds description of property with reduced plan attached.
- **Letterhead of survey firm** is required for the separate metes and bounds "Deed Description" of property and must contain the name, address, phone number, and e-mail address of survey firm.
- **Description heading** should include the title "Deed Description" and the qualifying supplemental terms such as "of Conservation Easement" or "of Gore Area" with project name and number, seller name, tax data, municipality, and county.
- **Description introduction** shall read: "All that certain tract or parcel of land located (at, on or along street address) in the (City, Borough, Town, or Township) of \_\_\_\_\_, County of \_\_\_\_\_, New Jersey, bounded and described as follows:"
- **Description second paragraph** must describe the point of commencement and/or the point of beginning with coordinates identified.
- **Body of description** should read clockwise, with numbered courses. It should not include any new information not on plan. Description shall include call corners with assigned corner number if cap stamped with number.
- **Use augmenting and qualifying clauses** as required, such as "together with..." or "subject to..."
- **Recite areas described**, total area contained, then specify the area of each included tax lot.

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- **Closing paragraph and call for survey** must read: “The above description was written pursuant to a survey of property designated as Block \_\_, Lot \_\_, on the municipal tax map of (\_\_\_\_ municipality name), County of \_\_\_\_\_, State of New Jersey. Said survey was prepared by (\_\_\_\_ Survey firm’s name and address), (\_\_\_\_ date), revised through (\_\_\_\_ last revision date, if any), and is marked as file No. \_\_\_\_\_. A reduced copy of said plan is attached hereto and made a part hereof.”
- **Original signature, embossed seal and date signed** must appear on description; rubber stamps are not acceptable.