

GREEN ACRES GRANT PROGRAM**CHAPTER 36****GREEN ACRES GRANT PROGRAM****Authority**

N.J.S.A. 13:8A-1, 13:8A-20, 13:8A-35 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; and P.L. 1992, c.88.

Source and Effective Date

R.1993 d.609, effective October 29, 1993.
See: 25 N.J.R. 3405(a), 25 N.J.R. 5666(a).

Executive Order No. 66(1978) Expiration Date

Chapter 36, Green Acres Grant Program, expires on October 29, 1998.

Chapter Historical Note

All provisions of this chapter became effective October 25, 1977 as R.1977 d.395. See: 9 N.J.R. 312(a), 9 N.J.R. 514(a).

1981 Revisions: The chapter was readopted pursuant to Executive Order 66(1978) with amendments effective January 9, 1981 as R.1981 d.7. See: 12 N.J.R. 512(a), 13 N.J.R. 91(b).

1982 Revisions: Amendments became effective August 1, 1982 as R.1982 d.231. See: 14 N.J.R. 461(a), 14 N.J.R. 835(a).

1985 Revisions: Amendments became effective August 5, 1985 as R.1985 d.400. See: 16 N.J.R. 2405(b), 17 N.J.R. 1885(a).

1986 Revisions: Subchapters 2, 3, 5 and 6 expired pursuant to Executive Order 66(1978) on January 9, 1986.

1988 Revisions: Subchapters 1, 4 and 7 were repealed and new rules adopted for the complete chapter effective November 21, 1988 as R.1988 d.549. See: 19 N.J.R. 2358(b), 20 N.J.R. 2891(a).

Subchapter 8, Public Hearing for the Sale, Exchange of, Easement on or Lease of Department-Held Land, was adopted as R.1991 d.151, effective March 18, 1991. See: 22 N.J.R. 593(b), 23 N.J.R. 852(b). Subchapter 9, Basis for Assistance to, and Eligibility Requirements for, Tax Exempt Nonprofit Organizations for the Acquisition of Land for Recreation and Conservation Purposes, was adopted as R.1993 d.265, effective June 7, 1993. See: 24 N.J.R. 2405(a), 25 N.J.R. 2472(a).

Pursuant to Executive Order No. 66(1978), Chapter 36 was readopted as R.1993, d.609. See: Source and Effective Date. Subchapter 8, Public Hearing for the Sale, Exchange of, Easement on or Lease of Department-Held Land, was repealed by R.1993 d.609, effective December 6, 1993. See: 25 N.J.R. 3405(a), 25 N.J.R. 5666(a).

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SUBCHAPTER 1. PRIORITIES AND OBJECTIVES

7:36-1.1 Introduction

(a) The purpose of the New Jersey Green Acres and Recreational Opportunities Program administered by the Department of Environmental Protection is to increase and preserve permanent outdoor recreational areas for the public's use and enjoyment.

(b) The Local Assistance provisions of P.L. 1974, c.102, P.L. 1978, c.118 and P.L. 1983, c.354 make State funds available for the development of outdoor recreation facilities and for the acquisition of open space lands.

7:36-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Acquisition project" means a single parcel of land or several parcels of land that form a contiguous public recreation or conservation open space area.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Development project" means outdoor recreation development, renovation or redevelopment on one site, several types of recreation development, renovation or redevelopment on one site, or development of several sites for similar activities.

"Diversion" means the use of public parkland contrary to restrictions or encumbrances placed upon such land which limit its use to public recreation and conservation in accordance with applicable law and with this chapter. This definition includes, but is not limited to, permanent easements, rights-of-way, leases or sales of such land granted or made for other than public recreation or conservation uses.

"Local unit" means a municipality or county within the State of New Jersey.

"Permanent" means the use of lands for public outdoor recreation and/or conservation in perpetuity.

"Project" means the acquisition or development activity for which Green Acres financial assistance is being sought.

"Recreation and conservation purposes" means use of lands for parks, natural areas, historic areas, forests, camping, fishing, water reserves, wildlife, reservoirs, hunting, boating, winter sports, and similar uses for either public outdoor recreation or conservation of natural resources, or both. (See P.L. 1975, c.155, Section 3, N.J.S.A. 13:8A-37.)

"Statewide Comprehensive Outdoor Recreation Plan" (SCORP) means that document, developed by the Department, which sets forth the policies for recreation and the use of open space in the State. The plan provides the guidelines for the coordination of outdoor recreation projects throughout the State.

"State House Commission" means that entity created by N.J.S.A. 52:20-1 et seq.

"Urban aid area" is an urban area as defined in P.L. 1978, c.14 (N.J.S.A. 52:27D-178).

7:36-1.3 Eligible applicants

(a) Any local unit authorized to acquire, administer, protect, develop and maintain lands for recreation and conservation purposes is eligible to make application under the program.

(b) School boards, parking authorities, housing authorities, and similar public agencies without primary recreation or conservation responsibilities are not eligible for Green Acres assistance.

(c) An open space project that complements a non-eligible agency's program may be approved under the Green Acres program if such open space project is sponsored by an eligible local unit.

(d) A Green Acres application shall be prepared with the assistance of various local agencies such as the park and recreation commission, the planning board, and/or the environmental commission.

7:36-1.4 Green Acres loans and grants

(a) To the extent that funds are available pursuant to the Green Acres bond issues enacted in 1961, 1971, 1974 and 1978 (P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; and P.L. 1978, c.118), local assistance grants will be made, in accordance with the provisions of this Chapter, to eligible local units in amounts of up to 50 percent of the total allowable cost of the project.

1. In the event that the sums available pursuant to P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102 and P.L. 1978, c.118 have been appropriated and obligated, the Department will make grants to local units for eligible urban aid and environmental incentive projects from funds available pursuant to P.L. 1983, c.354 in amounts not to exceed 25 percent of the total allowable cost of the project.

(b) Loans in amounts of up to 100 percent of the total allowable costs are available to eligible local units pursuant to the Green Acres Bond Act of 1983 (P.L. 1983, c.354).

(c) All Green Trust loans shall bear an interest rate of not more than two percent and shall be repaid within a 20 year period, as provided by P.L. 1983, c.354.

1. Initial development project limits are established at the time of the funding offering and are based on the cost estimate of a New Jersey licensed professional engineer, landscape architect, or architect.

2. Initial acquisition project limits are established at the time of funding offering and are based on the estimated fair market value of the land to be acquired.

(d) Pursuant to the Green Acres bond issues passed in 1961, 1971, 1974 and 1978 (P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; and P.L. 1978, c.118), a local unit may use as its matching share any other source of funding which may be available from a private agency, group or foundation, or from a Federal program, as well as local capital funds, bond revenues, surpluses or specific appropriations.

(e) When submitting an application for development or acquisition funding under the Green Acres bond programs, a local unit shall consider the financial burden it will incur to operate, maintain, police and protect the site.

(f) The following categories of funding are available pursuant to the 1983 Green Acres Bond program:

1. Green Trust loans covering 100 percent of the project cost are available in the following funding categories:

i. The development of county parks and major municipal facilities. Available funds will be based on yearly appropriations;

ii. Acquisition or development projects not to exceed \$100,000 in total project cost; or

iii. The acquisition of small projects, inholdings, and neighborhood parks. Generally, no maximum dollar amount is set. However, available funds are based on yearly appropriations.

2. The "urban aid" category for urban aid areas as defined in P.L. 1978, c.14, consisting of a Green Trust loan covering up to 75 percent of the cost of an acquisition or development project, together with a Green Acres

grant of up to 25 percent of the total eligible cost for the remaining cost. Generally, no maximum dollar amount is set. Available funds will be based on yearly appropriations and will, in no event, exceed 100 percent of the total project cost.

3. "Environmental incentive" assistance consisting of both a Green Trust loan covering up to 75 percent of the cost of an acquisition project and Green Acres grant covering up to 25 percent of the total eligible project cost. Generally, no maximum dollar amount is set. However, available funds are based on yearly appropriations and will, in no event, exceed 100 percent of the total project cost.

7:36-1.5 Application procedures

(a) For both the acquisition and development programs, the following three basic steps are required as part of the loan and grant funding application procedures:

1. The local unit shall submit a written application package for a project and shall meet with the Department concerning the specifics of the particular loan or grant application.

2. Upon approval of the application, funds will be distributed in accordance with an agreement between the State and the local unit which addresses, among other items, the following:

i. The loan and/or grant amount;

ii. The time period; and

iii. The project scope.

3. A notice of receipt of applications shall be sent by the Department to State, county and municipal officials.

(b) State funds will be disbursed in accordance with a schedule established by the Department, subject to availability and appropriations.

(c) The Department will accept applications on an annual basis from local units according to the following schedule:

1. June: The Department will request the submission of applications from county and municipal governments.

2. October: Local units must submit applications no later than October 31.

3. January: Priority lists and funding offerings will be made by the Department.

(d) In the case of acquisitions, schedule requirements set forth in (c) above may be modified by the Department for good cause provided that funds are available.

(e) All applications shall be submitted on a form provided by the Department.

7:36-1.6 Distribution of funds

The Department will distribute funds according to a priority ranking established by the Department. When more than one eligible funding request is submitted by the local unit, the Department reserves the right to limit funding to less than all project applications submitted.

7:36-1.7 General program criteria

(a) Decisions on applications reflect the extent to which applications meet the criteria established by the Department on the basis of the New Jersey Statewide Comprehensive Outdoor Recreation Plan (SCORP). The Department will determine the extent to which the project:

1. Serves multiple recreation and conservation purposes;
2. Serves recreation needs of a wide variety of citizens and provides for the special needs of groups such as the handicapped, elderly, disadvantaged, and/or low-income families and individuals;
3. Provides public access by economical and energy conserving means including public transit (existing or to be established), pedestrian or bicycle access;
4. Meets the most critical and under-supplied recreation needs as defined in the Statewide Comprehensive Outdoor Recreation Plan;
5. Combines with other public facilities;
6. Represents a regional program of joint municipal or county/municipal efforts;
7. Includes active public participation in the planning phase;
8. Evidences construction readiness;
9. Enhances, preserves or restores unique natural areas or land types; and
10. Has acquired development rights, life estates, remainder interests, conservation easements, or other interests not amounting to fee simple interest.

(b) No minimum or maximum acreage restrictions are placed on lands to be acquired or developed.

(c) No established minimum or maximum dollar grants are required by the Department except as provided in N.J.A.C. 7:36-1.4.

(d) No project shall receive financial assistance unless it:

1. Is a recreation and/or conservation unit;
2. Can be accomplished within a specific time; and
3. Provides a net increase in outdoor recreation conservation activity.

7:36-1.8 General provisions

(a) Green Acres loan or grant approval is contingent upon the local unit's compliance with all Federal, State and local laws, codes, and ordinances, including, but not limited to, the local unit's obtaining all necessary permits, licenses and grants.

(b) Prior to the final payment of a loan or grant by the Department, the local unit shall:

1. Adopt a comprehensive park ordinance which governs conduct and use of the public park facility; and
2. Have submitted and obtained Department approval of a mapped inventory of environmental, recreational and open space resource related information and submitted a concise concept plan or strategy for the provision of open space, recreation and natural resource protection.

(c) A local unit receiving any Green Acres funding shall recognize, evaluate, and protect water quality and the historic, cultural and natural features of the site.

(d) Once Green Acres assistance has been approved for a project, no development or change in use shall occur on the project site or on any other lands within the local unit that are used for recreation or conservation purposes at the time of the funding approval without prior approval of the Department.

1. Prior to the submission of a request for the Department's approval of a change in use, the local unit shall conduct a local public hearing pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12) so that all interested parties may present comments concerning the proposed change. A record of the public hearing shall be submitted to the Department along with the request for approval.

(e) Any fees charged by a local unit for the use of Green Acres funded facilities shall be established in accordance with the following requirements:

1. The local unit may charge a fee for the use of a recreation facility;
2. All fees shall be reasonable and non-restrictive;
3. Any conditions for registration, scheduling or membership shall be clearly posted at the site;
4. Provisions shall be made for use fees, on a daily basis, without the requirement of seasonal or yearly membership fees;
5. Differential fee rates based on family and seasonal registrations are permitted;
6. No fee over \$2.00 per person shall be charged without prior approval of the Department. A fee schedule may include the following categories:
 - i. Yearly, seasonal, monthly, weekly, daily;

ii. Individual, group, family;

iii. Resident, non-resident (when any per person fee exceeds \$2.00, non-resident fees shall not exceed double the rate charged to a resident); and/or

iv. Handicapped, senior citizen, disadvantaged.

7. Fees may be developed for each individual project and will be considered on an individual case basis.

8. Fees collected shall be used only for the operation, maintenance and/or for capital expenses related to the recreation facility or program as a whole provided, however, that priority shall be given to the facility for which the fee revenues were taken. A trust account shall be established by the local unit for this purpose.

i. Fees collected or revenues from facilities leased for an approved temporary use (see N.J.A.C. 7:36-6.9) shall be used only for the operation, maintenance, and/or for capital expenses related to the recreation facility or program as a whole.

9. No change in the approved fee schedule shall be made without prior approval of the Department.

(f) Facilities may be operated through a concession awarded by competitive bidding in accordance with applicable law. Any payments, fees or rentals shall be charged and collected directly by the local unit and shall be used to offset the operating cost of the recreation program as a whole in accordance with N.J.A.C. 7:36-1.8(e)8 above.

(g) Use of the Green Acres funded facilities shall not be restricted on the basis of residency, race, creed, color, sex, or national origin and local units shall comply with the Law Against Discrimination (N.J.S.A. 10:5-1 et seq.).

(h) Any liabilities incurred as a result of ownership, construction or operation of a facility shall be the responsibility of the local unit.

(i) Scheduling the use of a facility to accommodate organized sports, recreation or conservation activities is permitted and is the responsibility of the local unit.

1. Exclusive use agreements or discriminatory programming based on residency or upon factors which are in violation of the Law Against Discrimination (N.J.S.A. 10:5-1) are prohibited.

2. Facilities shall not be programmed for the sole use of a particular conservation group, sporting association or athletic club.

(j) Pursuant to N.J.S.A. 13:8A-1 et seq., lands acquired and/or developed with Green Acres funds may not be diverted to non-recreation or non-conservation uses or disposed of without the prior approval of the Commissioner and the State House Commission. (See N.J.A.C. 7:36-7.)

(k) Upon receipt of an acquisition or development loan or grant, all lands owned, dedicated or maintained for public recreation or conservation purposes by the local unit shall not be diverted or disposed of for uses other than those of public recreation or conservation without the prior approval of the Commissioner and the State House Commission. (See N.J.A.C. 7:36-7.)

1. A local unit sponsoring a new public recreation facility on open space and recreation lands not funded with Green Acres assistance may adopt fees and schedules for that recreation facility without being considered to have diverted its lands as described above provided that the facility is operated by the local unit itself or an agent or agency thereof having primary recreation responsibilities.

2. Development and operation of any new activities, such as a private club facility which would limit use of lands or facilities exclusively to members thereof and which restricts public use and enjoyment of a public recreation or conservation area is considered a diversion and requires Commissioner and State House Commission approval.

3. Change of any public recreation or conservation facility to a non-recreation/non-conservation use although remaining a public facility is a diversion and requires Commissioner and State House Commission approval.

(l) Rules concerning signs are as follows:

1. A sign available from the Department shall be posted in a prominent place indicating that the site was acquired and/or developed with State of New Jersey Green Acres financial assistance.

2. Where appropriate, signs indicating the accessibility of the facility to the handicapped shall be posted.

3. The local unit shall be responsible for the erection, maintenance and replacement of all project signs.

4. Permanent commercial billboards or any other type of displayed advertising or promotion of products or services is prohibited.

5. Posting of political campaign signs on the site is prohibited.

6. Posting of signs that restrict public access or use shall be approved by the Department in advance of posting.

(m) Rules concerning reservoir/flood control project are as follows:

1. A Green Acres loan or grant may be used for the acquisition or development of the recreation portion of a reservoir, flood detention area or storm water retention basin.

2. Recreation provided at Green Acres funded portion of the reservoir/flood control facilities shall be available for public use and enjoyment.

Case Notes

Provision applies to any property actually used for recreational or conservation purposes with condonation or authorization of municipality at time of grant. Cedar Cove, Inc. v. Stanzione, 122 N.J. 202, 584 A.2d 784 (1991).

Department of Environmental Protection cannot restrict disposition of municipal lands on lesser showing than is required by Green Acres Land Acquisitions and Recreation Opportunities Act. Cedar Cove v. Stanzione, 233 N.J. Super. 336, 558 A.2d 1351 (A.D.1989), certification granted 117 N.J. 647, 569 A.2d 1344, reversed 122 N.J. 202, 584 A.2d 784.

7:36-1.9 Public access to files

(a) Access to development files is permitted pursuant to N.J.S.A. 47:1A-1 et seq.

(b) Acquisition project files are public records under N.J.S.A. 47:1A-1 et seq., and public access is allowed except to those items concerning appraisal, fair market value, or other matters involving price.

(c) Any application materials or project information will, upon written request, be provided for a fee as set forth in N.J.S.A. 47:1A-1 et seq.

7:36-1.10 Contract compliance

(a) The Department will determine contract compliance at the time of loan or grant reservation by evaluating the following items:

1. For development projects, the local unit shall conform to the specific time limitations of the loan or grant contract by:

- i. Completing a standard development project in 24 months;
- ii. Completing an extraordinary development project in accordance with a schedule agreed upon at the time of project approval.

2. For acquisition projects, the local unit shall conform to the specific time limitations of the loan or grant contract by:

- i. Completing a standard acquisition project within 12 months after the fair market value certificate acceptance date.
- ii. Completing an extraordinary acquisition project in accordance with a schedule agreed upon at the time of project approval.

3. For development projects under normal circumstances, the local unit shall:

i. Have plans and specifications certified by a licensed professional engineer, landscape architect or architect within 150 days after the date of funding offering;

ii. Advertise for bids within 180 days after the date of funding offering; and

iii. Award all contracts within 210 days after the date of the funding offering.

4. For an acquisition project, the local unit shall enter into a purchase agreement or institute condemnation proceeding within 150 days after the Fair Market Value Certificate acceptance date.

5. In the event that the local unit fails to meet the established time limits, the Department may cancel the reservation of loan or grant funds established for a specific project. Any financial obligations incurred by the local unit prior to and as of the date of cancellation are the sole responsibility of the local unit.

6. Upon the request of the local unit, a loan or grant reservation of funds for a specific project involved in a court action will be maintained by the Department until the completion of such court actions.

7. The loan or grant reservation period may be extended by the approval of the Commissioner based on a review of extenuating circumstances on a project by project basis.

(b) The Department will conduct on site inspections and the local unit shall allow access to do so to insure compliance with the chapter.

(c) Upon the local unit's acceptance of a loan or grant the Department may conduct inspections of all other recreation/conservation lands in the open space inventory.

(d) The local unit shall submit additional information as may be required by the Department during its on-going compliance review.

(e) If the local unit refuses or fails to comply with this chapter, the Department may institute a suit to enjoin such violation, ex parte, by temporary and/or permanent injunction. The Department is not precluded from taking any other legal action as may be necessary to insure compliance by the local unit with this chapter.

SUBCHAPTER 2. FUNDING ALLOCATIONS IN COORDINATION WITH UNITED STATES DEPARTMENT OF INTERIOR

7:36-2.1 Eligibility

Subject to the availability of resources, the Department may combine Green Acres funding with available United States Department of the Interior Land and Water Conservation Funds.

**SUBCHAPTER 3. BASIS FOR ASSISTANCE:
DEVELOPMENT OF LAND FOR
RECREATION AND CONSERVATION
PURPOSES**

7:36-3.1 Terms of loan or grant

(a) No commitment of funds shall be made by the local unit prior to the Departmental funding offering. Costs incurred before the funding offering will not be eligible except as provided by (a)1 below.

1. If a project is approved, costs incurred for preliminary planning and engineering which are directly related to the project site may be reimbursed.

(b) Pursuant to the Green Acres bond issues passed in 1961, 1971, 1974 and 1978 (P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; and P.L. 1978, c.118), the Department may reimburse the local unit only after the project has been completed and all outstanding obligations paid by the local unit. Reimbursement shall be based on amounts up to 50 percent of the lowest qualified bid or up to 50 percent of the actual cost, whichever is lower; however, interim reimbursements based on costs incurred may be made by the Department for up to 90 percent of the grant amount prior to audit by the Department.

(c) Pursuant to the Green Acres bond issue passed in 1983 (P.L. 1983, c.354), financial assistance disbursed pursuant to that law shall be maintained in a separate bank account established at the time the funding offering is accepted, and shall be used only for the purpose of administering the project for which the financial assistance was made. This account shall be subject to audit by the Department.

7:36-3.2 Allowable costs

(a) Construction project contracts shall be awarded in accordance with N.J.S.A. 40A:11-1 et seq.

(b) The following costs are eligible for funding in the manner provided by this chapter:

1. Construction costs included in an accepted bid;
2. Engineering plans and specifications, and supervision and inspection costs not to exceed 13 percent of the total cost of actual construction of the project. Incidental costs, individually itemized, such as legal fees and advertising fees which are directly related to the project may be eligible for funding, but shall not be included in the total actual construction cost; and
3. Equipment required to make a facility initially operational.

(c) Force account labor (employees of the local unit) expenses are not allowable costs and will not be approved by the Department except under extraordinary circumstances. Each request will be reviewed on a project-by-project basis.

7:36-3.3 Control of land

(a) Projects shall be:

1. Located on land which is owned in fee simple by the local unit; or
2. Leased by the local unit for a minimum of 25 years of an irrevocable lease or easement agreement.

7:36-3.4 Development project elements

Development projects shall increase outdoor recreational opportunities and may include necessary support elements.

7:36-3.5 Renovation or rehabilitation projects

(a) Renovation or redevelopment of an existing facility is eligible for a Green Acres grant or loan.

(b) If insurance compensation covers a portion of the cost of the renovation or redevelopment, loan and grants will be reduced by the amount of the insurance payment.

7:36-3.6 Park/school development

The development of facilities on leased public school grounds for school as well as general public use is eligible for a Green Acres grant or loan provided that the facilities so developed are not exclusively used for the normal and usual activities of the educational institution.

7:36-3.7 Non-eligible projects

Assistance shall not be provided for amusement parks, employee residences, lodges, luxury cabins, or wholly indoor recreational facilities.

SUBCHAPTER 4. DESIGN CRITERIA

7:36-4.1 Structures

(a) Structures necessary and directly related to an outdoor recreation activity to be constructed within the project area will be eligible.

(b) Structures required for the proper administration and maintenance of project facilities will be eligible.

(c) Except as provided by (c)1 below, structures which are primarily intended for a recreational activity to be conducted wholly within the structure are not eligible.

1. Exceptions may be made for structures which partially enclose an outdoor recreation facility for the pur-

pose of extending the season of use. Requests will be reviewed on a project-by-project basis.

(d) The local unit shall maintain a standard insurance policy. The policy shall cover structural damage and other losses due to fire and lightning, resultant damages caused by smoke and water, windstorm, hail, riot attending a strike or damages from falling aircraft. The face amount shall be adequate to cover the cost of replacing the structure and shall be periodically adjusted to reflect changing costs. The Department shall be named additional insured in the policy or policies to the extent of its matching grant, or for the amount of the loan balance for the term of the loan, whichever is applicable.

7:36-4.2 Vandalism

Design criteria shall consider elements that will help to prevent or will reduce the effects of vandalism.

7:36-4.3 Underground utility service

(a) The local unit shall, to the extent practicable, place all new utility lines underground in the general area of developed recreation facilities.

(b) The burial, relocation, or screening of existing overhead utility lines may be eligible for loan or grant assistance.

7:36-4.4 Stormwater runoff

(a) To the greatest extent practicable, every project shall be designed to provide a system whereby all stormwater runoff created by the development will be retained on site for a period of time equal to the natural site runoff and absorption time. This plan shall comply with the guidelines set forth in the Stormwater Management Rules, N.J.A.C. 7:8.

(b) A stormwater runoff plan which includes both drawings and a narrative shall be prepared by a licensed professional engineer, architect or landscape architect and submitted to the Department for approval prior to the commencement of construction and shall be coordinated with the local soil conservation district.

7:36-4.5 Dredging of lakes and ponds

(a) Green Acres funds for dredging and the rehabilitation of lakes and ponds will be considered only if:

1. The lake or pond is owned by the local unit;
2. Substantial public access to the water area is provided;
3. A clear outdoor recreational benefit is shown in addition to any flood control advantages;
4. It is a first time Green Acres dredging project, and once funded, maintenance will be the responsibility of the local unit;

5. The project incorporates long-term corrective features including, but not limited to, sedimentation basins and other methods of maintaining the depth of the dredged areas;

6. The entire watershed has been taken into account, considering upstream and downstream conditions, particularly stormwater management and sediment/erosion control practices;

7. The activities of upstream and downstream governments and/or projects have been coordinated;

8. Project design includes equipment and procedures for sedimentation and siltation controls; and

9. The project is planned in consultation with the applicable State Soil Conservation Service District.

(b) Any dredging and spoils disposal shall be done in conformance with all State laws, rules and regulations and those of the United States Army Corps of Engineers, where applicable.

SUBCHAPTER 5. BASIS FOR ASSISTANCE: ACQUISITION OF LAND FOR RECREATION AND CONSERVATION PURPOSES

7:36-5.1 Terms of funding award

Lands to be acquired shall be consistent with a comprehensive master plan program for the municipality, county or region as a whole.

7:36-5.2 Eligible and ineligible acquisition costs

(a) The following costs are eligible:

1. Cash amounts expended to acquire title or permanent interest in the land based on approved amount of loan or grant;
2. Reasonable relocation payments for persons, families or businesses displaced by the acquisition are eligible, subject to the availability of funding. Evidence of an approved Workable Relocation Assistance Plan (WRAP) from the New Jersey Department of Community Affairs shall be provided;
3. Appraisal costs prepared under the direction of Department of Environmental Protection and the Department of Transportation for initial Fair Market Value Certifications and any Departmentally approved updates; and
4. Survey costs incurred for the actual field determination of acquired acreage.

(b) The following costs will not be eligible:

1. Administrative and operating costs related to acquisition;
2. Real property taxes; and
3. Increases in land costs in excess of the approved fair market value as a result of negotiations.

(c) Increases resulting from condemnation may be eligible for a supplemental or loan. (See N.J.A.C. 7:36-5.5).

7:36-5.3 Eligible acquisitions

(a) Acquisition may include the purchase of title, development rights, life estates, remainder interests, conservation easements, or other interests in real property suitable for open space purposes.

(b) Areas of historic significance, areas having unique natural features (such as ravines, outstanding overlook sites, etc.) or areas for recreational use or future development to enhance civic, community or recreation centers may be acquired.

(c) Sites with existing buildings or structures that will be utilized or renovated for the support of outdoor recreation are eligible if there is evidence that the sites will be properly maintained and operated by the local unit.

(d) Sites with existing buildings or structures that will be demolished to provide an open space area are eligible.

(e) Acquisition of an open space area that includes, but is not substantially occupied by, a library, an art gallery, or a museum is eligible. Such facility, if included, would be subject to all of the rules governing a standard recreational facility as described in N.J.A.C. 7:36-1.8 (General provisions).

(f) The funding of loans and grants for the acquisition of perpetual conservation easements that are in conformance with a comprehensive local master plan may be eligible when a clear public use or benefit is demonstrated, only if the easement:

1. Is contiguous and beneficial to significant public lands; or
2. Provides for public pedestrian or vehicular use; or
3. Provides for the acquisition of those rights necessary to serve as a buffer or protective area to existing permanent open space or to a unique natural or wildlife habitat.

(g) Environmental incentive assistance consisting of grants and loans as provided in N.J.A.C. 7:36-1.4(f)3 will be limited to projects predominantly in and which shall remain in a natural state, except for areas suitable for development such as waterfront recreation areas.

1. Future development of projects having received environmental incentive assistance consisting of grants

and loans as provided in N.J.A.C. 7:36-1.4(f)3 is prohibited unless specifically approved by the Department in advance.

7:36-5.4 Non-eligible acquisitions

(a) Non-eligible acquisitions are sites which will remain predominantly covered by buildings or structures.

(b) The acquisition and development of former landfill sites is ineligible.

7:36-5.5 Supplemental loan or grant payments

(a) A supplemental loan or grant may be approved, if funds are available, to help reduce the financial impact of condemnation awards providing that the following criteria are met:

1. The local unit has demonstrated significant progress and efficient use of the time between loan or grant approval and the initiation of a condemnation action. (See N.J.A.C. 7:36-1.10(a)4).

2. The final price paid is the result of a condemnation action.

3. Appeals from condemnation awards or court judgments shall be taken whenever either the State or local unit deems it necessary or advisable.

4. All updates or revisions of appraisals necessitated by the court action or condemnation award shall be completed in accordance with procedures outlined in the New Jersey Department of Transportation (DOT) and Department of Environmental Protection Memorandum of Agreement entered into July 12, 1976 and amended August 27, 1985. (See Appendix A of this chapter).

SUBCHAPTER 6. ACQUISITION REQUIREMENTS

7:36-6.1 Appraisal procedures

(a) The local unit shall follow the New Jersey Department of Transportation (DOT) appraisal procedures as outlined in the Department of Transportation and Department of Environmental Protection Memorandum of Agreement entered into July 12, 1976 and amended August 27, 1985.

(b) When advisable, the Department at its discretion, will review project appraisals.

7:36-6.2 Acquisition procedures

(a) After issuance of a fair market value certificate by DOT, negotiations are the responsibility of the local unit. The local unit should make every reasonable effort to acquire real property expeditiously by negotiation.

(b) If the property is acquired for more than the established appraised value, a statement of justification shall be submitted to the Department by local unit.

(c) All pertinent records documenting conformance to the provisions of this chapter shall be accurately and permanently kept on file by the local unit and shall be available for audit and review by the Department for a period of at least three years.

(d) The local unit must show the full cost of the acquisition as a local purchase expenditure. The loan or grant and any other grant contributions, gifts or donations must be noted and shown on all accounting records.

7:36-6.3 Relocation procedures

(a) Any relocation procedures, if applicable, shall be the administrative responsibility of the local unit.

(b) All pertinent records documenting conformance to N.J.S.A. 20:4-1 et seq. (Relocation) shall be kept on file by the local unit for a period of at least three years.

7:36-6.4 Eminent domain

(a) Condemnation proceedings shall be the responsibility of the local unit.

(b) The local unit shall notify the Department prior to initiating court action for condemnation.

(c) All pertinent records documenting conformance to N.J.S.A. 20:3-1 et seq. (Eminent Domain) shall be kept on file by the local unit for a period of at least three years.

(d) The Department will not disburse Green Acres assistance until the local unit has taken title to the subject property.

7:36-6.5 Closings

Closings and all real estate acquisition procedures related to the subject property shall be the sole responsibility of the local unit.

7:36-6.6 (Reserved)

7:36-6.7 Purchase concessions

(a) Purchase concessions such as temporary leasebacks, life rights, life estates, remainder interests and similar techniques may be allowed if approved by the Department on a project-by-project basis.

1. Prior to any final settlement, any final arrangement on life rights, life estates, remainder interests or any other purchase concession shall be submitted to the Department for review, comment and approval.

7:36-6.8 Donations

(a) Pursuant to the 1983 Green Acres Bond issue (P.L. 1983, c.354), donations of land received by a local unit may be used as a credit, on a dollar for dollar basis, towards a grant up to 25 percent of a specific project cost.

(b) Pursuant to the Green Acres Bond issues passed in 1961, 1971, 1974 and 1978 (P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; P.L. 1978, c.118), the Department will accept lands acquired by the local unit through donation or gift as an in kind credit to be used as all or part of the local share of a specifically designated approved acquisition project.

7:36-6.9 Temporary use

(a) Lands, buildings or structures that have been acquired as part of a local Green Acres acquisition or other municipally owned lands and facilities used for public recreation and conservation purposes (see N.J.S.A. 13:8A-47) may be used or leased for non-recreational uses on a temporary basis to a private individual or public agency when there is a clear public benefit and when the public use does not conflict with the park master plan for the development of the site. Terms of lease will be negotiated at the time of contract on a project-by-project basis.

1. Fees collected or revenues from leased facilities shall be in conformance with N.J.A.C. 7:36-1.8(e)8i.

(b) Before leasing any land, building or structure on Green Acres regulated lands, the local unit shall file with the Department, for review and approval, a copy of each of the following:

1. A statement as to the purpose and need for the lease;
2. The proposed lease agreement identifying the lessee and the use to which the building, structure or land will be put;
3. The park master plan; and
4. A park capital improvement program for the next five years indicating when the park will be developed.

7:36-6.10 Acquisition of a developed recreational facility

(a) A loan or grant for the acquisition of a developed outdoor recreation facility including but not limited to a marina, ski area or golf course is eligible under the Green Acres Program only when the local unit agrees to maintain and preserve the land and its physical improvements in a condition equal to or better than that which existed at the time of funding. This condition is to be determined by a qualified, unbiased third party on an annual basis. For example, in the case of a golf course, the United States Golfing Association.

(b) Specific provisions to assure compliance with this chapter will be included in the Green Trust Project Agreement or Green Acres Grant Contract.

(c) Any acquired developed facility shall be operated under the same provisions, rules and regulations governing a similar facility developed with Green Acres funds.

Case Notes

Department did not exceed its authority when it leased portion of state park to nonprofit development corporation for development of marina. *Jersey City v. State Dept. of Environmental Protection*, 227 N.J.Super. 5, 545 A.2d 774 (A.D.1988), certification denied 111 N.J. 640, 546 A.2d 551.

State Park, Forestry, and Resource Act only prohibited leasing lands acquired under Green Acres Land Acquisition Act if that leasing was done for acquisition of other lands and contravened declared purpose of Act. *Jersey City v. State Dept. of Environmental Protection*, 227 N.J.Super. 5, 545 A.2d 774 (A.D.1988), certification denied 111 N.J. 640, 546 A.2d 551.

Creation of public marina at a state park is an acceptable implementation of the expressed recreational pursuit of boating. *Jersey City v. State Dept. of Environmental Protection*, 227 N.J.Super. 5, 545 A.2d 774 (A.D.1988), certification denied 111 N.J. 640, 546 A.2d 551.

7:36-6.11 Waterfront acquisitions

In addition to private land above the high waterline, waterfront acquisitions shall include all private lands and interests below the current mean high waterline and continue to where the public interest begins.

7:36-6.12 Loan and grant payments

Loan and grant payments shall be made only to the local unit.

SUBCHAPTER 7. STATE HOUSE COMMISSION: BASIS FOR REVIEW

7:36-7.1 Retention and use

(a) Upon receipt of a loan or grant, all municipal or county lands and facilities used for public recreation and conservation purposes shall remain as public park, recreation, conservation and/or open spaces.

(b) The property described in (a) above and all lands and facilities developed or acquired with Green Acres assistance shall not be converted in whole or part for other than public recreation and conservation purposes without the approval of the Commissioner and the State House Commission.

(c) Approval as required in (b) above may be granted by the Commissioner and State House Commission only when, singularly or combined, the local unit has agreed to:

1. Substitution of other outdoor properties of at least equal fair market value and of reasonably equivalent

public recreation or conservation usefulness, size, quality, and location;

2. Cash repayment based on at least the current appraised fair market value in accordance with N.J.A.C. 7:36-6.1; and

3. In cases dealing with permanent easements, even though individual cases may appear to be insignificant, the perpetual nature of public lands and the cumulative effect over a long period of time is significant. In an effort to discourage this type of diversion, a minimum cash value of \$10,000 will be placed on any consideration for easements on such property, when the request is made on behalf of a non-public agency. Charges above this minimum will be determined by the Department on an individual project basis.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. BASIS FOR ASSISTANCE TO, AND ELIGIBILITY REQUIREMENTS FOR, TAX EXEMPT NONPROFIT ORGANIZATIONS FOR THE ACQUISITION OF LAND FOR RECREATION AND CONSERVATION PURPOSES

7:36-9.1 Definitions

The terms used in this subchapter shall have the following meanings:

“The Act” means the Open Space Bond Act of 1989, P.L. 1989, c.183.

“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection and Energy.

“Conservation restriction” means an interest in land less than fee simple absolute, 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, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;

2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

3. Removal or destruction of trees, shrubs, or other vegetation;

4. Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other mineral substance;

5. Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, or fish and wildlife habitat preservation; and

7. Other acts or uses detrimental to the retention of land or water areas.

“Cost of acquisition” means the fair market value or negotiated purchase price, including the value of any lands to be acquired by donation specifically to be incorporated as part of the project site, whichever is less, of all lands to be acquired by the nonprofit with the assistance of a grant pursuant to this subchapter. If funds are available, any reasonable survey and appraisal costs incurred in connection with such acquisition are also included.

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

“Diversion” means the use of land acquired using Green Acres funds in a manner prohibited by any applicable conservation restriction or historic preservation restriction or by this subchapter.

“Estimated land value” means the value of the project site based on any reasonable method determined by Green Acres to be reliable, such as discussions with real estate or appraisal professionals.

“Fair market value” means the land value certified by Green Acres, based on one appraisal for properties with an estimated land value of \$250,000 or less, or on two independent appraisals for properties with an estimated land value of more than \$250,000.

“Green Acres” means the New Jersey Green Acres Program, created pursuant to N.J.S.A. 13:8A-1 et seq., or its successor.

“Historic preservation restriction” means an interest in land less than fee simple absolute, 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 which is historically significant for its architecture, archaeology or associations, to forbid or limit any or all:

1. Alteration in exterior or interior features of such structure;

2. Changes in appearance or condition of such site;

3. Uses of such structure or site which are not historically appropriate; and

4. Other acts or uses detrimental to the appropriate preservation of such structure or site.

“Land” or “lands” means real property, including improvements thereof or thereon, rights-of-way, water, riparian, and other rights, easements, privileges, and all other rights or interests of any kind or description in, relating to, or connected with real property.

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

“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 which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code.

“Project” means the acquisition of the project site and all activities in furtherance of that acquisition from the time of the Department’s approval of the nonprofit’s application until the closing of title and conveyance to the State, by the nonprofit, of a conservation restriction or historic preservation restriction, as the case may be.

“Project site” means all those parcels which constitute a contiguous or unified recreation or conservation open space area and in which the nonprofit intends to acquire a real property interest as described in the approved grant application, regardless of how acquired.

“Recreation and conservation purposes” means the use of lands for parks, natural areas, ecological and biological study, historic areas, forests, camping, fishing, water reserves, wildlife preserves, hunting, boating, winter sports and similar uses for either public outdoor recreation or conservation of natural resources, or both.

“State” means the State of New Jersey.

“State House Commission” means that entity created by N.J.S.A. 52:20-1 et seq.

"State's proportionate share" means the total grant amount for the acquisition of the project site divided by the total cost of acquisition.

"Tidelands" or "riparian lands" means lands now or formerly flowed by the mean high tide. These lands are owned by the State of New Jersey unless the State has conveyed its ownership through a riparian grant.

7:36-9.2 Eligible applicants

(a) To qualify to receive a grant, the board of directors or governing body of the applying nonprofit shall:

1. Demonstrate to the Commissioner that it qualifies as a nonprofit;
2. Demonstrate that it has the resources to match the grant requested;
3. Agree to make and keep the lands accessible to the public, unless the Commissioner determines that public accessibility would be detrimental to the lands or any natural resources associated therewith;
4. Agree not to sell, lease, exchange, or donate the lands unless:
 - i. The transferee is the State, a local government unit, another nonprofit, or the Federal government if permitted by the applicable bond act;
 - ii. The lands will continue to be held for recreation and conservation purposes; and
 - iii. 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; and
5. Agree to execute and donate to the State at no charge a perpetual conservation restriction, historic preservation restriction, or both, as the case may be, which are approved by the State and to record such restriction either:
 - i. Immediately upon, and simultaneously with, the recordation of the deed for the project site; or
 - ii. Immediately upon the receipt of grant funds from the State for the acquisition of each parcel in the project site if such reimbursement occurs at a later date. Prior to any such later reimbursement, the nonprofit must submit the title insurance policy required by N.J.A.C. 7:36-9.12(a)4, updated as of the date of reimbursement and showing no encumbrances or exceptions other than those revealed by the title search required by N.J.A.C. 7:36-9.4(i) and accepted by the Department pursuant to N.J.A.C. 7:36-9.3(g).

7:36-9.3 Grants to nonprofits

(a) The State shall make a grant to a nonprofit for acquisition of lands for recreation and conservation purposes in the amount of 50 percent of the cost of acquisition

or \$500,000, whichever is less, depending on the availability of funds. In exceptional circumstances as described in (d) below, the Department will consider a grant in excess of \$500,000 for a project.

(b) In the case where the value of lands acquired by donation exceeds 50 percent of the cost of acquisition, Green Acres participation will be reduced by the amount exceeding 50 percent of the cost of acquisition.

(c) The Commissioner shall establish initial acquisition funding limits at the time funding is offered. Such limits shall be based on the estimated land value, as well as estimated survey and appraisal costs. The Department's participation may be limited to the initial grant offering.

(d) Provided that funds are available, the Commissioner may modify the funding limit set forth above based on considerations including, but not limited to:

1. Competition for funds/number and quality of applications; and
2. Recreational, historic, or ecological uniqueness of the project site.

(e) In no case will the value of lands owned by the nonprofit be accepted as all or part of the nonprofit's matching share of the cost of acquisition unless the nonprofit has received written approval from Green Acres prior to acquisition of such land. Approval shall be granted if such land is part of the project site.

(f) In no case will funds used for acquisition of land pursuant to the Green Acres acts, N.J.S.A. 13:8A-1 through 13:8A-55, or such other sums as may be appropriated from time to time for like purposes, be accepted as all or part of the nonprofit's matching share of the cost of acquisition.

(g) In no case shall funds be used to acquire land if the title search required by N.J.A.C. 7:36-9.4(i), or the title insurance policy required by N.J.A.C. 7:36-9.2(a)5 or N.J.A.C. 7:36-9.12(a)4, reveals that the acquisition would not assure the perpetual dedication of the project site to recreation and conservation purposes.

(h) In no case may funds be used to acquire less than the entire project site unless the Department agrees to such lesser acquisition because of unanticipated costs, owners unwilling to convey, clouds on title, or other circumstances making acquisition of the entire project site impracticable.

7:36-9.4 Application procedures

(a) If funds are available, the Department will accept applications annually, within 90 days after the date of publication of a notice of the availability of grant funds in the New Jersey Register.

(b) The nonprofit shall submit a written application package for each project site and shall meet with Green Acres concerning the specifics of the particular grant application.

(c) The nonprofit shall submit an application on a form provided by the Department which shall include, but not be limited to, documentation supporting the applicant's qualification as a nonprofit, a description of the project site, a discussion of the proposed use of the project site, and a narrative explaining how the project site satisfies the general program criteria set forth in N.J.A.C. 7:36-9.5(b) below.

(d) After approval of the application, the State and the nonprofit shall enter into an agreement which shall include the following:

1. The estimated grant amount;
2. The time period for acquisition;
3. The acreage, location, tax map block and lot listing, and metes and bounds description of the project site;
4. The administrative requirements for record keeping and project management; and
5. The specific conservation restriction and/or historic preservation restriction, as the case may be.

(e) The conservation or historic preservation restriction, as the case may be, shall include:

1. The conditions governing the use, future development, and maintenance of the project site, governing the public access to the project site, and governing 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 nonprofit does not comply with the conditions of the restriction.

(f) The Department shall send a notice of receipt of applications to appropriate State, county, and municipal officials. This notice shall include the location, tax map block and lot listing, and proposed use of the project site, and the grant amount requested. The notice will be sent within 60 days after the application deadline and will invite written comments on the proposed project. Green Acres will review all comments received and will consider them in determining whether to make, and the amount of, a grant.

(g) The Department will notify each nonprofit of the funding decision made on that nonprofit's grant application.

(h) Within 60 days after the last day on which Green Acres accepts applications, the Department will hold one public hearing to receive comment on all such applications. The Department will publish a notice announcing the time and location of the public hearing in no less than three official advertising newspapers in the State and in the New Jersey Register.

(i) Within 60 days after funds have been appropriated for the nonprofit's project, the nonprofit shall obtain, and provide to Green Acres a copy of, a title search of the project site, with copies of all easements, restrictions, and other instruments of record attached.

7:36-9.5 General program criteria

(a) When a nonprofit submits more than one eligible funding request, the Department reserves the right to limit funding to fewer than all applications submitted by the nonprofit or less than the total amount for which the nonprofit applies, or both.

(b) Decisions on whether or not an application is approved will be based on the following factors: open space needs; degree of environmental, historic, and/or cultural resource protection; amount of public participation, support, and planning; the quality of the project site; and other factors indicating the extent to which the project serves the purposes of the Act.

7:36-9.6 Eligible acquisitions

(a) An acquisition may include the purchase of title, development rights, life estate, remainder interest, easement, or other interest in real property suitable for recreation and conservation purposes.

(b) An area of historic significance (a site which meets the criteria for inclusion in the New Jersey or National Register of Historic Places) may be acquired.

(c) A site with existing buildings or structures which will be utilized or renovated for the support of recreation or conservation purposes is eligible.

(d) A site with existing buildings or structures which will be demolished to provide an open space area is eligible.

(e) A waterfront acquisition shall include, if at all possible, all private tidelands interests and continue to where the public interest begins.

7:36-9.7 Ineligible acquisitions

(a) Any site which will remain predominantly (more than 50 percent) covered by buildings or structures is ineligible.

(b) Any current or former landfill site, a site which is known or suspected to be contaminated with hazardous substances or hazardous waste, and any property which is adjacent to, or which may be adversely affected by, any such site is ineligible.

(c) Any site that has unmarketable or uninsurable title or that is, or is intended to be, used as a public road right-of-way is ineligible.

(d) The acquisition of State-owned tidelands or riparian lands is ineligible for reimbursement. However, in those cases where the State previously conveyed its ownership of certain tidelands, the acquisition of such privately held tidelands is eligible.

7:36-9.8 Appraisal process

(a) The nonprofit shall follow the following appraisal procedures:

1. The nonprofit shall meet with Green Acres who will instruct the nonprofit on the selection and hiring of the appraiser(s) and will discuss the appraisal assignment;
2. Green Acres will provide a list of pre-qualified appraisers from which the nonprofit may hire. This list is determined by Green Acres, based on a review and acceptance of each appraiser's work experience, professional qualifications, and sample work product. A nonprofit may hire an appraiser not included on the above referenced list only with the prior approval of Green Acres, which will be based on the review and acceptance of the items listed above;
3. The nonprofit shall submit for Green Acres' approval, draft appraisal contract(s) prior to contract execution;
4. The nonprofit shall contract the appraisal services;
5. The nonprofit shall schedule a meeting with Green Acres staff and the appraiser(s) to discuss the appraisal assignment and to visit the project site, prior to the commencement of the appraisal(s); and
6. The nonprofit shall submit to Green Acres three copies of each completed appraisal report. If the nonprofit has any information which could affect the land value finding, it should immediately submit it in writing to Green Acres.

7:36-9.9 Value determination

(a) Green Acres shall certify the fair market value of the project site based upon a review of the appraisal report(s), an inspection of the project site, an examination of the comparable sales used by the appraiser(s), and a review of all available applicable data that is pertinent to the fair market value estimated by the appraiser(s).

(b) Green Acres will send to the nonprofit a copy of the fair market value certification and appraisal(s) for review.

(c) In the case where the survey of the project site, submitted as part of the payment materials described at N.J.A.C. 7:36-9.12(a)2, shows a different acreage total than the acreage total shown in the fair market value certification, Green Acres will advise the appraiser(s), request an adjusted value, if needed, and revise the fair market value to reflect the actual acreage of the project site.

(d) Within 60 days after the nonprofit receives the fair market value certification, the nonprofit shall submit to Green Acres the following documents to indicate acceptance of Green Acres' certification of the fair market value of the project site:

1. A certified copy of an adopted resolution of the nonprofit, on a form provided by Green Acres, containing the following:
 - i. A statement that the nonprofit has reviewed and accepts the fair market value of the project site, as certified by Green Acres;
 - ii. A statement that the nonprofit has the ability and intention to finance its share of the cost of the project;
 - iii. The name of an officer of the nonprofit, and a statement that the officer is authorized to communicate with Green Acres on behalf of the respondent, and to provide additional information to Green Acres and furnish additional documents regarding the project;
 - iv. An estimate of the annual operating expenses of the project; and
 - v. A waiver of the nonprofit's right to hold the State or its agencies, instrumentalities, employees and representatives liable for damages arising directly or indirectly from the project; and
2. A completed Nonprofit Acquisition Master Sheet information form, on a form provided by Green Acres and containing the following information:
 - i. Information identifying the project and its sponsor; and
 - ii. For each parcel of land included in the project site, an identification of the parcel, its owner, the amount of acreage it contains, and the fair market value of the land and any improvements thereon.

(e) Green Acres receipt of the items listed at (d) above constitutes the nonprofit's acceptance of the fair market value.

7:36-9.10 Supplemental funding

(a) In the event that the certified fair market value exceeds the approved grant amount, Green Acres may increase the grant to equal the fair market value, provided that:

1. Funds are available;
2. The fair market value does not exceed the funding limit established at N.J.A.C. 7:36-9.3(a); and
3. The nonprofit has entered into a purchase agreement within 150 days of its acceptance of the fair market value.

(b) The Department reserves the right to refuse all supplemental funding requests.

7:36-9.11 Acquisition procedures

(a) The nonprofit should not initiate negotiations with the property owner until after Green Acres acknowledges the receipt of the items listed at N.J.A.C. 7:36-9.9(d). Any adverse consequences resulting from negotiations before such time shall be the sole responsibility of the nonprofit alone. All negotiations are the responsibility of the nonprofit. The nonprofit should make every reasonable effort to acquire the project site expeditiously.

(b) The nonprofit has the sole responsibility for closings and all real estate acquisition procedures related to the project site.

7:36-9.12 Grant payments

(a) Green Acres grant payments will be made in advance of the time of closing or as reimbursement after the time of closing. Advance payment requests must be initiated at least 60 days before the established date of closing to permit a review by Green Acres. To initiate this review, and for all payment requests, the following must be submitted for each parcel of land to be acquired as part of the project site for which payment is being requested:

1. A cancelled check or, in the case of advance payment requests, a copy of the purchase contract indicating date, time, and place of the scheduled closing;

2. Two copies of a land survey plan which must comply with N.J.A.C. 13:40-5.1 regarding preparation of land surveys and must show acreage, current tax map references (block, lot, and listed owner), all easements of record, fences, improvements, encroachments, water courses, wetlands, and pertinent natural features. The area of Green Acres participation must be clearly stated and labeled;

3. Two copies of a metes and bounds description, on the surveyor's letterhead, corresponding to the survey in (a)2 above and signed and sealed by a land surveyor licensed by the State. This legal description is to be used in the deed of conveyance and will become part of the agreement between the State and the nonprofit, and part of the conservation restriction or historic preservation restriction, as the case may be, which the nonprofit gives to the State;

4. Title insurance binder with copies of all easements, restrictions, and other instruments of record attached. After title is in the name of the nonprofit, a copy of the title insurance policy must be submitted which names the State as an additional insured and endorses the survey plan submitted under (a)2 above. The policy amount must be at least equal to the fair market value. Schedule B, Section II (Exceptions) must note that the parcel will become subject to Green Acres rules and regulations, whether proposed or promulgated, and a conservation restriction or historic preservation restriction, as the case may be;

5. A certified copy of the recorded deed which has used the surveyor's metes and bounds description, including area, and contains a clause indicating that the parcel is subject to Green Acres rules and regulations, whether proposed or promulgated. For advance payment requests, a copy of the most recent deed to the project site should be submitted;

6. Copies of cancelled checks, vouchers, or invoices for survey and appraisal costs;

7. A completed project payment form/requisition, on a form provided by Green Acres and containing the following information:

i. The name, address, title and telephone number of the chief executive officer of the nonprofit, and of the person designated in the resolution submitted under N.J.A.C. 7:36-9.9(d)1 as the nonprofit's authorized correspondent;

ii. Information identifying the project;

iii. A description of prior payments made for the project;

iv. A survey and a metes and bounds description of each parcel;

v. If the nonprofit is making the payment request after acquiring the project site, a copy of the title insurance policy for each parcel, or the policy number if the title insurance policy has previously been submitted;

vi. If the nonprofit is making the payment request before acquiring the project site, a copy of the title insurance binder for each parcel, or the binder number if the binder has previously been submitted;

vii. A certification, signed by the chief executive officer of the nonprofit, confirming the accuracy of the information contained on the form, and stating that no bonus has been given or received in connection with any bill for which the nonprofit seeks reimbursement; and

viii. Any other information reasonably required to verify that the nonprofit has incurred the costs for which reimbursement is sought;

8. A completed Parcel Acquisition Payment Information Sheet, on a form provided by Green Acres and signed by the person authorized pursuant to N.J.A.C. 7:36-9.9(d)1, containing the following information:

i. Information identifying the nonprofit and the project site;

ii. An itemized statement of the direct cost of acquiring the project site, and of the survey costs and appraisal costs incurred in connection with the acquisition;

iii. A justification of any difference between the direct cost of acquiring the project site and the fair market value of the project site as certified by Green Acres; and

iv. A justification of any difference between the project site as described in the grant application, and the project site as acquired; and

9. If the project site includes buildings or other improvements which are not to be demolished, a completed Post-Acquisition Insurance Certification on a form provided by Green Acres and signed by the person authorized pursuant to N.J.A.C. 7:36-9.9(d)1. In the certification, the nonprofit shall state the following:

i. That a standard casualty insurance policy covering the improvements is in effect, in an amount equal the full replacement cost of the improvements;

ii. That the policy or a certificate thereof is attached to the certification;

iii. The dates on which coverage begins and ends under the policy;

iv. That the policy names the Department as loss payee to the extent of the State's proportionate share of all insurance proceeds; and

v. That the policy provides that the insurer will not terminate or fail to renew the policy without at least 30 days prior written notice to the Department.

(b) After Green Acres reviews and approves the payment materials listed at (a) above, Green Acres will prepare and forward to the nonprofit a payment invoice reflecting the approved grant amount or 50 percent of the cost of acquisition, whichever is less. The nonprofit must verify, sign, and return the invoice to Green Acres for approval and processing.

(c) Grant payments will be mailed directly to the nonprofit. Green Acres grant checks cannot be signed over to the property owner, but must be deposited into the nonprofit's account.

7:36-9.13 Signs

The nonprofit shall erect, maintain, and replace on the project site, one or more permanent signs provided, or approved, by the Department.

7:36-9.14 General provisions

The nonprofit shall comply with all laws, rules, regulations, policies, and procedures applicable to the project site or its acquisition.

7:36-9.15 Retention and use

(a) Any change in approved use, public access, maintenance, or any development contrary to the approved use of

the lands acquired utilizing the grant requires the prior written approval of Green Acres.

(b) Lands which the nonprofit acquires pursuant to this subchapter shall not be disposed of, except pursuant to N.J.A.C. 7:36-9.2(a)4, or diverted to a use for other than recreation and conservation purposes without the prior approval of the Commissioner and the State House Commission and following a public hearing at least one month prior to any such approvals. A diversion includes, but is not limited to, a permanent easement, right-of-way, lease, or sale of such land granted or made for other than recreation or conservation purposes.

(c) Fifty percent of all proceeds received by the nonprofit as a result of the conveyance of any rights in the project site in conformance with N.J.A.C. 7:36-9.2(a)4 shall be paid to the Department for deposit in the bond fund used to assist the project. This reimbursement requirement will be included in the conservation restriction or historic preservation restriction, as the case may be.

(d) The State's proportionate share of all proceeds received by the nonprofit as a result of any casualty, other damage, or event causing a reduction in the value of the project site shall be paid to the Department for deposit in the bond fund used to assist the project unless the Department agrees in writing to a different disposition for the repair of the damage. This requirement will be included in the conservation restriction or historic preservation restriction, as the case may be.

7:36-9.16 Temporary use

Lands, buildings, or structures that have been acquired under this program for recreation and conservation purposes may be used or leased for non-recreation uses on a temporary basis only with the prior written approval of Green Acres.

7:36-9.17 Remedies

(a) If the nonprofit refuses or fails to comply with this subchapter, the grant agreement with the Department, the conservation restriction or historic preservation restriction, as the case may be, or any other applicable law, the Department may, after notices and reasonable opportunity to cure, institute a suit to enjoin such violation by temporary and/or permanent injunction and may take any other legal action as may be necessary to insure compliance.

(b) The nonprofit will pay whatever costs the Department incurs in enforcing the nonprofit's obligations pursuant to this subchapter, the grant agreement with the Department, the conservation restriction or historic preservation restriction, as the case may be, or any other applicable law. Such costs shall include, but not be limited to, personnel costs, attorneys' fees, and court costs.

7:36-9.18 Savings provision

If any provision in this subchapter shall be held 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.