



## GREEN ACRES

### LOCAL GOVERNMENT UNIT AND NONPROFIT GUIDE

#### Multi-Party Acquisitions

Quite often, land preservation projects are completed by multiple parties, including municipalities, counties, and nonprofit organizations. These multi-party acquisitions are important because escalating land acquisition costs, and the cost of and responsibility for land management, are easier to bear when shared. When any or all of the partners are using Green Acres funding, it is important to carefully structure these multi-party acquisition transactions to ensure that each partner remains eligible for reimbursement.

Generally speaking, the partners will proceed with each step of the acquisition process together. One partner may take responsibility for all technical work (i.e. appraisals, surveys, preliminary assessments, etc.) or the responsibilities may be shared. Good communication with Green Acres will ensure that the cost-sharing and product delivery details are clearly understood.

With multi-party acquisitions, the deed must include the name of each partner, as Grantees. This will result in an undivided interest or “tenancy in common,” when all partners jointly own the entire property, with either equal or unequal shares. In those instances, the management responsibilities must be addressed through a formal agreement that specifically outlines each partner’s rights and identifies how, and by whom, the property will be managed after closing.

Often, one entity will transfer its ownership interest to a partner after closing. This is acceptable to Green Acres because the contract and deed will still reflect that entity’s ownership interest, albeit temporary, justifying reimbursement of costs and audit scrutiny.

#### Transferring Interest Before Closing

In very limited cases, however, one partner may not be able to take ownership, even temporarily, but wishes to use its Green Acres funding to assist in the transaction. **Adequate justification must be provided to explain why the funding recipient cannot acquire the land directly and prior approval must be given by Green Acres.** This may not always be approved, however it may still be possible to structure the transaction to allow it. In those cases, the deed would not include that partner’s name as Grantee, which could be problematic in terms of permitting Green Acres reimbursement to that partner. Again, careful planning prior to closing and good communication among the partners and with Green Acres will ensure that such costs remain eligible.

**Under no circumstances can Green Acres reimburse an applicant for an acquisition if that applicant did not have a legal interest in the transaction throughout the period up to the title closing.**

As an example, consider a partnership between a municipality and a county (or a nonprofit partner.) In order for Green Acres to reimburse the municipality for an acquisition that will ultimately be completed by the county (the county takes title alone), the municipality must have – and retain through closing - a contractual interest in the transaction. This can happen in two ways:

1. The municipality and the county are, as usual, named as the buyers in the contract with the owner. Each party's interest must reflect the Green Acres funding plus the match, if required. Prior to closing, the municipality may ask Green Acres if the deed may be in the County's name alone. The municipality can not be under any contractual obligation to transfer its interest to the County, and a certification to this effect will be required. With Green Acres approval, the deed could then be solely in the County's name.
2. The contract with the owner states that the buyer is “ \_\_\_\_\_ **County or its assigns.**” There would need to be a Green Acres-approved Assignment of Interest Agreement between funding partners establishing the interest of the municipality and the consideration given for those rights. This would need to reflect each party's Green Acres funding plus the match, if required. Again, prior to closing, the municipality may ask Green Acres if the deed may be in the County's name alone. The municipality can not be under any contractual obligation to transfer its interest to the County, and a certification to this effect will be required. **This type of transaction is most problematic for Green Acres and its use must be limited and justified. Do not structure your transaction this way before receiving approval from Green Acres.**

In either case, the Green Acres language MUST appear in the deed. This language is:

“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.”

Regardless of which of the above ways the municipality is a party to the transaction, it is responsible for meeting all Green Acres procedural requirements (e.g. appraisals, preliminary assessments, etc.) and submitting the reimbursement documentation (e.g. survey, title insurance, recorded deed, etc.) to Green Acres in accordance with our rules. Green Acres needs the documentation for our files to support funding to the municipality in the event of an audit.

### **State Participation**

If a nonprofit or local government anticipates that State acquisition funding may be needed to accomplish an acquisition, early discussions with Green Acres **is essential**. This will allow all parties to determine if the proposal is feasible; who will take the lead on negotiations and technical requirements, including obtaining appraisals, a survey, and title policy; and who will prepare the contract, the deed, the Assignment Agreement, if any, and/or the Management and Use Agreement, if necessary.

Also, if the State is a participant in the project, the above Green Acres language required by the local or nonprofit program must **not** be in the deed. For nonprofits, if the State is a tenant in common, or if the nonprofit obtains approval and transfers its interest to the State before or immediately after closing, the nonprofit does not need to donate to the State a conservation restriction on its interest in the land, as is normally required.