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ENVIRONMENTAL PROTECTION
NATURAL & HISTORIC RESOURCES

Proposed Repeal and New Rules: N.J.A.C. 7:36

Authorized By: Bradley M. Campbell, Commissioner, Department of Environmental Protection.

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..

Calendar reference: See summary below for explanation of exception to calendar requirement.

DEP Docket Number: 18-05-06/161
Proposal Number:

A public hearing concerning these proposed rules will be held on Thursday, July 28, 2005 from 2:00 p.m. until 4:00 p.m. The hearing will be held in the
New Jersey Department of Environmental Protection
Public Hearing Room
401 East State Street, 1st floor
Trenton, New Jersey 08625

Submit written comments by September 3, 2005 to:
Gary Brower, Esq.
Attn: DEP Docket No.
Office of Legal Affairs
Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department strongly recommends that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh formats should not be used. Submission of the disk is not a requirement. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing to repeal the existing

Green Acres rules and replace them with the new rules. As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Under the Green Acres Program, the Department, through the Garden State Preservation Trust, makes funding available to any qualifying municipal or county government (local government unit). Funds are additionally made available to any tax-exempt nonprofit organization which is a charitable conservancy for the purpose of N.J.S.A. 13:8B-1 et seq. (nonprofit) if the organization's purposes include the acquisition and preservation of recreation and conservation lands. The Department proposed new rules specifically codify the procedures by which Green Acres administers the matching grants and loans under the existing rules. These procedures are contained in application guidance documents and the project agreement that Green Acres currently provides to all applicants for funding.

Funds for Green Acres grants to local government units were made available under the Green Acres bond acts passed in 1961, 1971, 1974, and 1978. The New Jersey Green Acres Bond Act of 1983 (P.L. 1983, c.354) also authorized funds for low-interest Green Acres loans, urban aid grants, and incentive grants to local government units. Subsequent Green Acres bond acts in 1987, 1989, 1992, and 1995 provided additional funds for the Green Acres Program.

The Open Space Preservation Bond Act of 1989 (P.L. 1989, c.183), the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88), and the Green Acres, Farmland and Historic Preservation and Blue Acres Bond Act of 1995 (P.L. 1995, c.204) (Acts) authorized the Department to award a total of $45 million in matching grants to nonprofits for the acquisition of land for recreation and conservation purposes.

In 1998, a constitutional amendment was passed that established a stable source of funding to preserve open space, farmland, and historic sites, and to develop outdoor recreational facilities. The Garden State Preservation Trust (GSPT) Act was signed into law in 1999, establishing the statutory framework necessary to implement the voter-approved amendment. The GSPT Act provided specific requirements for various aspects of Green Acres-funded land acquisition and park development projects.

In August 2004, the Highlands Water Protection and Planning Act, P.L. 2004, C. 120, N.J.S.A. 13:20-1 et seq., was enacted to preserve open space and protect natural resources in that region. The Highlands Act sets environmental standards and creates a Highlands Water Protection and Planning Council charged with developing a regional master plan for the entire Highlands Region. The Highlands Act also amended the GSPT Act in several ways that are discussed in this summary and incorporated into the rules. For example, the proposed new rules require consistency with the Highlands Regional Master Plan for acquisition and park development projects located in the Highlands, similar to the existing requirement for consistency with the Pinelands Comprehensive Management Plan for projects located in Pinelands. Also, the GSPT Act established certain appraisal requirements, described at N.J.A.C. 7:36-8.3, that affect

properties to be acquired with Green Acres funding that have been impacted by changes in land use zoning, New Jersey environmental law, or Department regulation.

Under Executive Order No. 66(1978), the Green Acres Program rules at N.J.A.C. 7:36 are scheduled to expire on December 31, 2005. Rather than readopt the existing rules, the Department is proposing to repeal the existing rules and promulgate revised and reorganized new rules. The proposed new rules set forth the criteria under which the Department will award loans and matching grants to local government units, and 50 percent matching grants to nonprofits, for the acquisition or development of land for outdoor recreation and conservation purposes. The rules also explain the process by which a local government unit or nonprofit must obtain approval for the disposal, or diversion to a use other than recreation and conservation, of lands acquired with Green Acres assistance or otherwise encumbered with Green Acres restrictions.

The proposed rules are organized to chronologically describe the procedures for applying for and using Green Acres funding. Subchapters 1 and 2 contain general provisions and definitions. Subchapter 3 describes the eligibility of local government units applying for Green Acres loans and matching grant funds for acquisition and development projects. Subchapters 4 through 9 describe the process local government units must follow to obtain and expend Green Acres funding to acquire land for recreation and conservation purposes. Subchapters 10 through 14 describe the process by which local government units may develop outdoor recreational facilities with Green Acres funding. Subchapters 15 through 20 describe the process nonprofits must follow to obtain and expend Green Acres matching grants. Subchapters 21 through 24 describe the process by which nonprofits may develop outdoor recreational facilities with Green Acres funding. The existing rules do not include procedures for nonprofit development projects since funding to nonprofits to develop parkland was authorized for the first time by the GSPT Act, which was enacted after the existing rules were adopted. Finally, Subchapters 25 and 26 describe the maintenance, retention, and use requirements for Green Acres funded parkland and, in the case of local government units, certain unfunded parkland. They also describe the process a local government unit or nonprofit must follow to obtain approval when seeking to dispose of or divert parkland. There is one Appendix to the rules which is a listing of the Densely Populated Counties, Densely Populated Municipalities, Highly Populated Counties, and Highly Populated Municipalities. Local government unit recreational development projects located in the municipalities and counties included in this Appendix qualify for partial grants as described at N.J.A.C. 7:36-11.1. In addition, in order for a nonprofit development project to be eligible for funding, either the project 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, as discussed at N.J.A.C. 7:36-21.1.

Subchapter 1. General Provisions

N.J.A.C. 7:36-1.1, Purposes and Objectives, describes the overall purposes of the Green Acres Program rules. The principal mission of the Green Acres Program is to ensure that an increasing

amount of land is held for public outdoor recreation and conservation purposes. The Green Acres rules are written to facilitate the provision of funding to local government units and nonprofits to accomplish such recreation and conservation projects. The rules also explain Green Acres' role as steward of the funded and unfunded parkland. Local government units and nonprofits that accept Green Acres funding retain the right and responsibility to independently manage their recreation and conservation lands, within certain restrictions established by Green Acres to protect the public's investment. The rules are meant to clearly advise funding recipients of these restrictions.

These rules implement the purposes and objectives of the Green Acres laws, expanding public outdoor recreation and conservation resources in New Jersey by assisting local governments and nonprofits to increase, improve, and preserve permanent open space and outdoor recreation resources; establishing application and funding procedures; establishing restrictions on land acquired or developed with Green Acres funding, and certain other parkland held by local government units, to ensure its permanent use for recreation and conservation purposes; and establishing procedures and standards under which a local government unit or nonprofit must obtain approval to dispose of or divert from recreation and conservation purposes parkland encumbered with Green Acres restrictions.

N.J.A.C. 7:36-1.2 describes the scope of the rules. The proposed new rules will update and clarify the criteria under which the Garden State Preservation Trust will award funding to counties, municipalities, and nonprofits for the acquisition and development of land for outdoor recreation and conservation purposes, and the procedures such project sponsors must follow to accomplish those acquisition and park development projects. The proposed new rules also will explain the requirements for use and maintenance of parkland and the process necessary for the disposal or diversion to a use other than recreation and conservation, of those lands acquired with Green Acres assistance or otherwise encumbered with Green Acres restrictions.

N.J.A.C. 7:36-1.3 and 1.4 establish that the rules are to be construed liberally and that the rules are severable, respectively.

N.J.A.C. 7:36-1.5 contains the Green Acres Program mailing address, telephone number, and internet address for information and submissions.

N.J.A.C. 1.6 provides the Department the authority to relax the strict application of certain administrative or procedural requirements of the rules when consistent with Green Acres laws. Such relaxation will be considered only when necessary and in the public interest, and for good cause shown. Statutory requirements, legislative mandates, and substantive requirements of the chapter may not be waived. The proposed new rules describe, among other things, the steps required to apply for and administer a land acquisition or park development project, the steps required to apply for and complete an application to divert parkland, and the order in which such steps should be taken. There can, of course, be some reasonable leeway in certain administrative or procedural requirements. It would be extremely difficult, however, to anticipate or articulate

every circumstance under which such reasonable leeway exists. The purpose of this new provision is to provide flexibility regarding relatively minor procedural or administrative steps, such as extending the timing of a particular submission. For example, a local government unit should submit the Recreation and Open Space Inventory (ROSI) as part of an application for funding under N.J.A.C. 7:36-6.4, yet may be unable to submit it until after the date on which all complete applications are evaluated under N.J.A.C. 7:36-7.2. While this missing item would technically render the application incomplete, and thus ineligible for consideration, it is not essential for Green Acres' review of the proposed acquisition. The application could still be evaluated and ranked pending receipt of the ROSI. Providing the Commissioner with this flexibility would allow the Department to be responsive to the needs of the applicants without sacrificing any essential oversight.

N.J.A.C. 7:36-1.7 has been added to ensure the tax-exempt nature of bonds issued by the State for recreation and conservation projects. The local government unit or nonprofit organization using Garden State Preservation Trust funds must be cognizant that they cannot use such funds, or the land or facilities acquired or developed with such funds, in a manner that would violate the United States Internal Revenue Code relative to the tax free nature of the bonds. This proposed provision is intended to advise the local government unit or nonprofit of its responsibility to adhere to the limitations related to private earning based on such tax exempt bonds as established by the Code.

Subchapter 2. Definitions

N.J.A.C. 7:36-2.1 contains definitions of terms used throughout the chapter. Many of the terms are new and are defined to explain their use relative to the various procedural requirements by which the Green Acres Program is administered. Some of the new terms in the definition subchapter are taken directly from the Garden State Preservation Trust Act (GSPT Act) enacted in 1999, as well as subsequent amendments. Other terms and definitions are continued from the existing rules, with modifications as necessary to update or clarify them.

"Additional insured" is a new definition. The term is used in N.J.A.C. 7:36-9.4 and 20.4 to describe the scope of the title insurance policy required to be obtained by a local government unit or nonprofit, respectively, that is acquiring land with Green Acres funding. This requirement is designed to protect the State's investment of funding in the event there is later discovered to be a problem with the title to the land. The term also is used in N.J.A.C. 7:36-25.13 and 25.14 as a requirement for approval of leases, use agreements, or concession agreements on funded or unfunded parkland. In this context, the Department's intent is that the State be given at least the same protections as the policy provides to the lessee, parkland user, concessionaire, local government unit, or nonprofit.

"Applicant" is a new term and has been included to identify the entity that is applying for Green Acres funding in subchapters 3 through 24; requesting an amendment to a Recreation and Open Space Inventory or seeking approval of a change in use, lease, use agreement, or concession

agreement on parkland in subchapter 25; or seeking approval for a diversion or disposal of funded or unfunded parkland in subchapter 26. It is important to note that the applicant for a disposal or diversion must be the local government unit or nonprofit that accepted Green Acres funding, even if the request for the diversion itself is on behalf of another entity. Also, in many portions of the proposed rules, "applicant" is used as a simpler term when referring to requirements that apply to both a local government unit and a nonprofit.

"Bureau of Tidelands Management" is a new term. It is used in N.J.A.C. 7:36-4.5 and 15.5, Acquisition of Waterfront Land, to inform potential applicants what agency must be contacted to determine ownership of any potential riparian land.

In recent years, Green Acres has given additional attention to the impact on trees when applicants seek to dispose of or divert parkland. New terms have been added to the proposed rules to clarify the criteria which Green Acres will consider when seeking to obtain a separate assessment of the value of certain trees to be removed as the result of the approval of a disposal or diversion of parkland when reviewing applications for park development or diversions/disposals of parkland. For example, "caliper," "diameter at breast height," "replacement tree," and "tree" are used in N.J.A.C. 7:36-26 to establish the relative impact on, and thus potential compensation value of, trees to be affected by a proposed diversion. The definitions were developed in consultation with Department's Division of Parks and Forestry, New Jersey Forestry Service. Of particular note, the definition of "replacement tree" refers to national standards for sizing and description of nursery stock established by the American Nursery and Landscape Association (formerly the American Association of Nurserymen) and last updated in 2004.

The definitions of "conservation restriction" and "historic preservation restriction" have been modified from the previous rules. The portions of the definitions that were omitted included examples of uses and activities that would or would not be allowed under the restriction. Those examples are not necessarily included verbatim in each restriction, but are used by Green Acres and the local government unit or nonprofit as a guide in evaluating and writing the specific restriction required for each applicable project. The abridged versions of the definitions still fully describe the instruments and their purposes, without including examples that may not be appropriate for particular acquisition projects.

The proposed new rules include the term "convey" as defined in the Garden State Preservation Trust Act at N.J.S.A. 13:8C-3. The term is used throughout the rules when referring to a transfer of ownership of land.

The term "Cost" has been modified from the existing rules to more closely match the definition in the GSPT Act. It is a more complete description of the types of costs that are considered eligible for funding under a Green Acres acquisition or development project.

"Cost of acquisition" has been added to more succinctly explain the sum total of costs that are

eligible for funding as part of an acquisition project. The term is used throughout the subchapters dealing with acquisition projects, when the meaning is the total of allowable costs.

The terms "densely populated county," "densely populated municipality," "highly populated county," and "highly populated municipality" are new. In recent years, the Department has sought to increase funding for open space and park development projects in cities and large or densely developed suburban communities. To provide incentives to municipalities, counties, and nonprofit organizations to acquire land and/or develop recreational facilities where a greater concentration of New Jersey's residents live, it was necessary to create new terms, with corresponding population thresholds. For counties, the definition of "highly populated county" was based on language in the GSPT Act that established a minimum requirement for State acquisition and development funding in highly populated counties, specifically those with a population density of at least 1,000 people per square mile. In looking at the demographics of the State, however, the Department felt it was important to establish another tier for those counties that are even more densely populated. Green Acres reviewed the population densities of all of New Jersey's counties and determined that there were three counties (Essex, Hudson, and Union) whose population densities exceed 5,000 people per square mile. The responsibility for providing recreation and open space opportunities in those counties is even greater because Essex, Hudson, and Union counties also include major cities with some of the highest populations in the State. In addition, the New Jersey State Development and Redevelopment Plan uses as a designation criteria a population density of 7,500 people per square mile for Urban Centers and 5,000 people per square mile for Regional Centers. Finally, the average population density of the ten "highly populated counties" as established in the GSPT Act is 3,937 people per square mile. Accordingly, the Department believes that a standard of 5,000 people per square mile as a basis for an increased level of funding is appropriate. The combination of these factors led the Department to establish the term "densely populated county" to allow for additional incentives for those counties that are home to at least 5,000 people per square mile. That same density threshold of 5,000 people per square mile was used as the basis for the definition of "Densely Populated Municipality." The Department also determined that it would be appropriate to provide similar incentives to municipalities with a large total number of residents because those local government units are under pressure to provide open space and recreation to a large population. The term "highly populated municipality" applies to municipalities that have a total population of 35,000, a threshold based on the U.S. Census Bureau's threshold for an "urbanized area" in the 2000 Federal Census. These terms will guide the Department in focusing more Green Acres funding where the majority of New Jersey residents live.

As discussed above, the Department recognizes that municipalities and counties are ultimately responsible for providing recreation and conservation opportunities for their constituents. For many years, however, Green Acres funding for urban projects, especially development, was limited. The majority of Green Acres funding was approved for acquisition projects in areas of the State where more open space is available, which consequently had lower population levels. Paradoxically, while there are fewer opportunities to create open space in the cities, a greater number of people ultimately enjoy urban parks because they are close to home for so many.

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Recently, the Department has sought to increase funding to local government units in urban and more populated areas. One method the Department has employed has been to structure its funding recommendations to the Garden State Preservation Trust by applying a multiplier that recognizes a municipality's or county's population data. In the last few years, the Department's recommendations to the Trust have generally reflected the following factors, assuming that a "base award" would be presented to those municipal sponsors outside of the population centers:

County project sponsors –
Densely populated county (more than 5,000 people per square mile) - 3x base award
Highly populated county (more than 1,000 people per square mile) - 2.5x base award
County with less than 1,000 people per square mile- 2x base award

Municipal project sponsors-
Urban Aid Municipalities - 2x base award
Densely or highly populated municipalities– 1.5x base award
All other municipalities receive the base award

The above multiplication factors and base award method may need to be adjusted in future funding round(s) based on total requests, funding availability, and other priorities discussed under proposed N.J.A.C. 7:36-4.1 (general provisions and funding policies for local government unit acquisition projects) and proposed N.J.A.C. 7:36-10.1 (general provisions and funding policies for local government unit development projects), as well as in the legislative findings of the Garden State Preservation Trust Act (N.J.S.A. 13:8C-2). For example, the Department's funding recommendations in 2004 also included additional funding made available specifically for acquisition projects in the Highlands. Consequently, while the Department's recommendations to the Trust generally followed the above multiplier system, there were variations due to higher awards to municipalities and counties in the Highlands. So, while the levels of project funding recommended to the Garden State Preservation Trust may vary, any funding recommended by Green Acres will reflect the Department's commitment to ensuring that sufficient funding is focused on urban recreation and conservation projects.

The proposed new rules include several provisions from the Garden State Preservation Trust Act that can be applied to encourage and facilitate acquisition and development projects in areas with greater populations. For example, the Act allows the Garden State Preservation Trust to increase grant funding for urban aid acquisition projects from 50 percent to 75 percent (see proposed N.J.A.C. 7:36-5.1(d)), which the Department has recommended and the Trust approved in the last few funding rounds. Also, the loan terms established by the Act allow for loans with an interest rate of "not more than two percent per year." In recent years, the Department has recommended, and the Trust approved, loans for acquisition and development projects in Urban Aid municipalities at a zero percent interest rate. Finally, the proposed new rules will allow partial grant funding for development projects in densely or highly populated municipalities or counties (See proposed N.J.A.C. 7:36-11.1(b)1 and (b)2), where partial grants in the existing

rules are limited to Urban Aid development projects. While the proposed rules cannot dictate what approvals will be made by the Garden State Preservation Trust, the Department will continue to advocate these tools to ensure that the majority of New Jersey's residents benefit from Green Acres funding.

The definition of "development" was modified from the existing rules to incorporate language from the GSPT Act. One modification reflects the addition in the GSPT Act definition that specifies that development may involve the construction, renovation, or repair of improvements. The GSPT Act also modified the definition of development to exclude shore protection or beach renourishment or replenishment activities. This modification is discussed in the summary of N.J.A.C. 7:36-10.3.

The definition of "dispose of" was modified and expanded from the existing rules to incorporate the specific components of the term "convey" into this definition. The definition was also modified to distinguish between disposals (which are subject to Commissioner and State House Commission approvals) and administrative transfers of parkland for recreation and conservation purposes which do not require such approvals.

The example cited in the definition "divert" or "diversion has changed from the existing rules. It has been modified to more accurately illustrate the defined term.

The terms "endangered species" and "threatened species" are new. The definition of "endangered species" relates both to animal and plant species; the term "threatened species" relates only to animals. The meaning of the terms, as they relate to animals, are based on consultation with the Department's Division of Fish and Wildlife, Endangered and Nongame Species Program. The meaning of the term "endangered species," as it relates to plant species, is based on consultation with the Department's Office of Natural Lands Management. These terms are used in proposed N.J.A.C. 7:36-7.1 and 18.1 which are the project award criteria by which the Department evaluates local government unit and nonprofit acquisition applications, respectively. They also are used in proposed N.J.A.C. 7:36-25.13 as part of the criteria by which the Department will evaluate a proposed lease, use agreement, or concession agreement for recreation and conservation purposes as they may impact parkland; at proposed N.J.A.C. 7:36-26.1 as a standard by which the Department will evaluate disposals and diversions; at proposed N.J.A.C. 7:36-26.4 as an item to be addressed in the alternatives analysis required for a minor diversion of parkland; and at proposed N.J.A.C. 7:36-9 as it relates to the alternatives analysis required for a major diversion of parkland.

The new term, "fee simple" was added to define the absolute interest in land that can be acquired with Green Acres funding. The definitions of "conservation restriction" and "historic preservation restriction" include the term, so the Department determined that including a definition for "fee simple" would clarify the differences between the types of interests that can be acquired. The definition was taken from *The Dictionary of Real Estate Appraisal*, published by the American Institute of Real Estate Appraisers.

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The term "Garden State Preservation Trust" is new. It was added to describe the committee established by the Garden State Preservation Trust Act that, among other things, has approval authority over applications submitted to Green Acres by local government units and nonprofits to acquire or develop land for recreation and conservation purposes.

The term "Garden State Preservation Trust Fund" is new and was added to describe the fund, established by the Act, from which Green Acres funding is derived.

"Grant incentive project" is a new definition but describes a category of acquisition funding found in the existing rules under N.J.A.C. 7:36-5.1(b). The proposed new rules no longer include this acquisition funding category, however, the project agreements for previously approved grant incentive projects contained special conditions regarding future recreational development of the project site. Therefore, the definition is important because adherence to the special conditions will continue to be important in the stewardship of the lands, as discussed in N.J.A.C. 7:36-25.4.

"Hypothetical land value" is a new definition, added to address the requirement in the GSPT Act to establish two values for a parcel of land being acquired with Green Acres funding. This requirement is discussed below in the summary of the appraisal procedures (N.J.A.C. 7:36-8.3 and 19.3) and the determination of the eligible land cost (N.J.A.C. 7:36-8.4 and 19.4). The term was derived from the definition of "hypothetical condition" found in the Uniform Standards of Professional Appraisal Practice (USPAP) as it relates to circumstances that are contrary to what exists but are supposed for the purpose of analysis. It is important to differentiate between a parcel's current market value and its hypothetical land value because, as further discussed in N.J.A.C. 7:36-4.8 and 15.8 (Matching share; donations toward the cost of acquisition), Green Acres' participation, and thus the local government unit's or nonprofit's matching share of the cost of acquisition, is calculated differently depending on which value the local government unit or nonprofit bases its purchase price.

"Indoor recreation" is a new term that was defined in the Garden State Preservation Trust Act. It is used in N.J.A.C. 7:36-25 and -26 regarding the construction of facilities for indoor recreation on unfunded parkland, which are considered a diversion in the existing rules but not in the proposed new rules, and the construction of facilities for indoor recreation on funded parkland, which are considered a diversion in the existing rules and may be classified as a minor diversion in the proposed new rules.

The term "New Jersey Forestry and Wetlands Best Management Practices Manual" is new and refers to a document available from the Department's Division of Parks and Forestry. It is used in the proposed rules at N.J.A.C. 7:36-26.5 and 26.10 to address the compensation for trees that are being impacted as a result of a proposed disposal or diversion of parkland.

"New Jersey Meadowlands Master Plan" is a new term that was included to describe a plan

created by the State to guide development of a large environmentally sensitive region of New Jersey. It is the responsibility of an applicant for Green Acres funding to ensure that a proposed acquisition or recreational development project located within the Meadowlands District is consistent with the New Jersey Meadowlands Master Plan.

The definition of "Open Space and Recreation Plan" (OSRP) is new. It was added to describe the planning document prepared by a local government unit to identify and examine its open space and recreation resources and establish ways to protect and enjoy them. The purpose of an OSRP is to articulate a local government's vision of open space and recreation, and provide a framework for implementation. The OSRP is an important planning document, so Green Acres requires the local government unit's Planning Board to adopt their OSRP as part of their master plan. A local government unit must have a Green Acres-approved OSRP to qualify under the Planning Incentive acquisition category at N.J.A.C. 7:36-5.1. A nonprofit may acquire land identified in one or more local government unit's OSRP to qualify under the Planning Incentive acquisition category at N.J.A.C. 7:36-16.1.

"Parcel" is a new term and is used throughout the proposed new rules to describe a particular tract of land. It may consist of a single tax lot and block or a unified group of lots and blocks.

"Pinelands Comprehensive Management Plan" is a new term that was included to describe a plan created by the State to guide development of a large environmentally sensitive region of New Jersey. It is the responsibility of an applicant for Green Acres funding to ensure that a proposed acquisition or recreational development project located within the Pinelands is consistent with the Pinelands Comprehensive Management Plan.

"Plan endorsement" is a new term. According to the Plan Endorsement Guidelines published by the New Jersey State Planning Commission's Office of Smart Growth, "Plan endorsement is a tool developed by the State Planning Commission to provide the technical assistance and the coordination for municipalities, counties, regional and State agencies to meet the publicly supported goals of the State Planning Act, N.J.S.A. 52:18A-196 et seq. It is a voluntary review process that is designed to assist government agencies at all levels to develop and implement plans that will achieve the goals, policies and strategies of the State Plan." There are two levels of plan endorsement: initial plan endorsement, which includes review and acceptance by the State Planning Commission of the local government unit's existing planning documents, and advanced plan endorsement, which includes additional approved planning efforts beyond those required as part of the initial plan endorsement. The Department has determined that points should be offered under the project award criteria in N.J.A.C. 7:36-7.1 (acquisition) and 13.1 (development) to municipalities that have shown their commitment to the goals of the State Planning Act by pursuing and obtaining plan endorsement from the State Planning Commission. Points will be awarded for achieving initial plan endorsement, and additional points for advanced plan endorsement. Therefore, the proposed rules include the term, "plan endorsement" to describe what a municipality must do to be eligible for such additional points. Such points are not offered under the project award criteria to nonprofits because they do not have the ability or

authority to seek plan endorsement. Since nonprofits do not compete against local government units for Green Acres funding, the difference in point eligibility will not affect project ranking or funding decisions.

The term "project" is new and was added to clarify the entirety of the acquisition or park development initiative being undertaken by a local government unit or nonprofit (Subchapters 3 through 24) or the scope of the activity for which the disposal or diversion being requested by a local government unit or nonprofit (Subchapters 25 and 26).

The term "public entity" is new and is used under proposed N.J.A.C. 7:36-26.10 to determine the applicable compensation ratio for a proposed major disposal or diversion of parkland.

The term "Public Trust Doctrine" has been added to the proposed new rules. The Doctrine establishes that the government is responsible for preserving and protecting the right of the people to use public lands and resources. Proposed N.J.A.C. 7:36-3.2 states that any local government unit that does not meet its responsibilities to provide public access to the waterfront and to tidally-flowed and dry sand areas subject to the Public Trust Doctrine is not eligible for Green Acres funding. This prohibition is consistent with the Coastal Zone Management Rules at N.J.A.C. 7:7E-8.11 and governing law

"Qualifying open space referendum county" and "qualifying open space referendum municipality" are new terms and are taken directly from the Garden State Preservation Trust Act. These terms are used in the proposed new rules to establish a local government unit's eligibility under the Site Specific Incentive or Planning Incentive acquisition funding categories (N.J.A.C. 7:36-5.1). The definition allows for two methods of becoming "qualifying": either the local government unit has enacted a open space tax or has established an alternative to a tax that is acceptable to the Department. In establishing standards for such alternatives, Green Acres requires the alternative funding means to be established for a ten year period and to be equivalent to at least one cent per $100 of assessed value of real property, which is double the rate required of a tax. The alternative also must be "stable and reasonable equivalent in effect" to an annual tax levy, according to the GSPT Act. Alternatives that would be considered include bonding, annual appropriations, and sources of income such as leases that are dedicated by the local government unit to open space preservation.

"Rare species" is a new term developed in consultation with the Department's Office of Natural Lands Management and Division of Fish and Wildlife. It is used in the proposed new rules in N.J.A.C. 7:36-25.13 as part of the criteria by which the Department will evaluate a proposed lease, use agreement, or concession agreement for recreation and conservation purposes as they may impact parkland; at proposed N.J.A.C. 7:36-26.4 as an item to be addressed in the alternatives analysis required for a minor diversion of parkland; and at proposed N.J.A.C. 7:36-26.9 as it relates to the alternatives analysis required for a major diversion of parkland.

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The definition of "Recreation and Conservation Purposes" has been modified from the existing rules to more closely match the definition in the Garden State Preservation Trust Act. The proposed definition differs from the definition in the Act by listing other examples of recreation and conservation allowed under other Green Acres laws.

The term "Recreation and Open Space Inventory" has been modified from the existing rules. The term "at the time of receipt of Green Acres funds" was deleted because that timeframe is not part of the instrument itself. "Time of receipt of Green Acres funds" is still used in the rules (see N.J.A.C. 7:36-4.1 and 10.1) to describe the point at which the land listed on the ROSI becomes encumbered with Green Acres restrictions.

The term "structure" has been modified from the existing rules. In the existing rules, the terms "building" and "structure" are used together, often interchangeably. This revised definition is intended to clarify that a building is considered equivalent to a structure for the purposes of the proposed new rules.

The term "Tidelands" was updated from the existing rules based on input from the Tidelands Resource Council staff. The term "riparian lands" was added because the two terms are used almost synonymously by the public.

"Time of receipt of Green Acres funding" has been modified from the existing rules to distinguish between the term's application to development projects versus acquisition projects. The term is important since it represents the point at which land held by the local government unit as parkland but not purchased with Green Acres funds becomes protected in perpetuity, as described at N.J.A.C. 7:36-4.1(d) and 10.1(d). For both acquisition and development projects, the "time of receipt" is actually a period of time, not a specific date. It may be best described as a "window": any parkland acquired by the local government unit after the window "opens" (at the time of an at-risk authorization under N.J.A.C. 7:36-6.3 or the project approval letter under N.J.A.C. 7:36-8.1), until it "closes" (at the time of the payment for each parcel for acquisitions under N.J.A.C. 7:36-9.4 or at the time of the first payment for development projects under N.J.A.C. 7:36-14.5) must be held by the local government unit in perpetuity as parkland. For development projects, the time of receipt of Green Acres funding is now proposed to end upon receipt of the first disbursement of Green Acres funds. This change was made because the project is considered consummated when construction is underway. For acquisition projects, the time of receipt continues if more than one parcel is acquired. All parkland held by the local government unit at the time of receipt of Green Acres funding must be included in the Recreation and Open Space Inventory required under N.J.A.C. 7:36-6.5 and 12.5. In addition, the ROSI must be updated if the local government unit acquires additional parkland during the "window" of the time of receipt of Green Acres funding.

"Urban Aid municipality" is a new definition for a term that is included in the Garden State Preservation Trust Act and has historically appeared in the Green Acres laws. Each year, the New Jersey Department of Community Affairs (DCA) issues a list of municipalities that qualify

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for its Municipal (Urban) Aid program. Green Acres bases its Urban Aid acquisition and development categories (N.J.A.C. 7:36-5.1 and 11.1, respectively) and eligibility for nonprofit development projects (N.J.A.C. 7:36-21.1) on DCA's list.

Subchapter 3. Local Government Unit Projects: Eligibility of Local Government Unit Applicants

Under N.J.A.C. 7:36-3.1, Eligible Applicants, any local government unit that has the authority to enter into a project agreement with Green Acres 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. The elected governing body of a municipality or county is authorized to apply for Green Acres funding on behalf of the municipality or county, respectively.

Under N.J.A.C. 7:36-3.2, Ineligible Applicants, certain agencies are ineligible to apply for Green Acres funding because they do not have primary recreation and conservation responsibilities or do not have the authority to meet the financial obligations mentioned in N.J.A.C. 7:36-3.1. This section also provides that local government units that are in default on any prior obligations to the State or that are not in compliance with Green Acres rules for a previously approved acquisition or development project are ineligible to apply for funding for a new Green Acres project. The rules also now include the provision that a local government unit that does not 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 is not eligible for Green Acres funding. This prohibition is consistent with 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

Proposed N.J.A.C. 7:36-4.1, General Provisions and Funding Policies, discusses Green Acres' general funding policies and practices, and provides the maximum funding limits and the basic requirements that local government units must meet in completing a Green Acres acquisition project. In general, under proposed N.J.A.C. 7:36-4.1(a) and (b), the Department will limit awards based on demand for available funds and the number and quality of applications submitted by each applicant. The proposed new rules clarify that the Department also considers such things as the population of the municipality and/or county in which the proposed project is located (as discussed above regarding the definitions of densely and highly populated municipalities and counties) and the local government unit's progress on projects previously approved for Green Acres funding. Also, while Green Acres has always awarded additional points in the project award criteria system described at N.J.A.C. 7:36-7.1 to municipalities and counties whose acquisition proposals were consistent with the State Development and Redevelopment Plan (State Plan), the proposed new rules provide incentives in the form of additional points for municipalities that have achieved varying levels of plan endorsement, as described in proposed N.J.A.C. 7:36-7.1(b)4.

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Proposed N.J.A.C. 7:36-4.1(c) clarifies that all Green Acres funding approved by the Garden State Preservation Trust is subject to appropriation by the legislature. Practically speaking, this means that the funding for an approved project will not be available for use by a local government unit until after an appropriation bill containing the project is signed into law, and the local government unit meets all applicable procedural requirements described in the rules.

Proposed N.J.A.C. 7:36-4.1(d) specifies that 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 such purposes at the time of receipt of Green Acres funding. The intent of this provision, which has always been part of the rules, procedural applications, and project agreements provided by Green Acres, is to ensure that Green Acres funding results in a net gain of land for recreation and conservation purposes. It would be contrary to the mission of the Green Acres Program and the Garden State Preservation Trust Act if a local government unit was provided funding to acquire a parcel for recreation and conservation purposes and then was allowed to divert to another use a parcel it already holds for those purposes.

Proposed N.J.A.C. 7:36-4.1(e) provides that local government units are responsible for obtaining all permits and administering projects in accordance with all applicable Federal, local, and State statutes, laws, regulations, and ordinances.

Proposed N.J.A.C. 7:36-4.1(f) states that, in order to safeguard public funds, it is critical that applicants do not make a profit from a Green Acres funded acquisition or development project. Therefore, the rules now clarify the long-standing agency practice that Green Acres will not make payment to a local government unit that exceeds the amount the local government unit expended on allowable costs for the project.

Through proposed N.J.A.C. 7:36-4.1(g), Green Acres encourages the local government unit to review the Department's Landscape Project prior to applying to Green Acres for funding. The Landscape Project provides maps and other data that identify critical areas for imperiled species based on land-use classifications. This information may be of assistance in the local government unit's overall land use planning, as well as in their land preservation prioritization efforts.

Proposed N.J.A.C. 7:36-4.1(h) states that the local government unit is responsible for obtaining and using the most current applicable forms required as part of the administration of a Green Acres funded acquisition project.

N.J.A.C. 7:36-4.2, Eligible Projects, states that land that will be used for recreation and conservation purposes can be acquired with Green Acres funding. Consistent with the definition of "recreation and conservation purposes" in the Green Acres statutes, the Garden State Preservation Trust Act, and at N.J.A.C. 7:36-2.1, land acquired must be used for public outdoor recreation and conservation purposes. The rule includes examples of lands that are eligible for

acquisition with Green Acres funding.

N.J.A.C. 7:36-4.3, Ineligible Projects, describes certain land that cannot be acquired with Green Acres funding because its acquisition does not fulfill a public outdoor recreation or conservation need or its use for public outdoor recreation and conservation purposes is somehow restricted.

Several changes are proposed for this section regarding what types of acquisition projects are ineligible for Green Acres funding. The existing rules include limitations as to how great an area of a project site could be covered by buildings (no more than 50%) and whether or not a nonhistoric structure can be acquired. Instead, the proposed new rules only allow for the acquisition of a project site containing structure(s) if the structure(s) will be demolished to create open space (except for an historic structure) or will be used in support of the site's recreation and conservation purposes. Instead of requiring calculations of building coverage, the proposed new rules clearly establish the intent of the limitation and, in addition, more fully address the acquisition of structures in N.J.A.C. 7:36-4.4.

The proposed new rules include at N.J.A.C. 7:36-4.3(a)5 a new prohibition against acquiring land to which the local government unit cannot acquire clear title. This was included to emphasize that it would not be a wise investment of Green Acres funding to acquire land with "cloudy" title because the land's ownership - and thus the public's use and enjoyment of such land - could subsequently be disputed and, perhaps, forfeited. Although the title insurance policy required at N.J.A.C. 7:36-9.4 is meant to address this issue, Green Acres believes it is important to discourage a local government unit from pursuing the purchase with Green Acres funding of land with potentially unresolvable title issues.

The Garden State Preservation Trust Act specifically prohibits local government units from using Green Acres funding to acquire land that is already permanently preserved for recreation and conservation purposes, as determined by the Department. The Department will consider requests to determine whether or not land is permanently preserved for such purposes.

Under N.J.A.C. 7:36-4.4, Acquisition of Structures, Green Acres funding may be used to acquire land that contains a structure if the structure will be removed to create open space or will be used to support the site's outdoor recreation and conservation resources. In fact, if a structure on acquired land is to be removed, the cost to demolish and/or remove it is eligible for funding under the acquisition project. It is important to note that, after the acquisition project is deemed complete by Green Acres, if a local government unit decides to demolish a structure acquired with Green Acres funding, it may be considered a change in use subject to the public notification requirements described at N.J.A.C. 7:36-25.6.

The Garden State Preservation Trust Act included a requirement whereby a local government unit that acquires land using Green Acres funding must inspect that land to determine if any existing structures are or may be an historic property, submit its findings to the Department's Historic Preservation Office, and, for any structures that may be an historic property, request

from the Historic Preservation Office a determination of the potential for inclusion of the structure in the New Jersey Register of Historic Places. Local government units must obtain written approval from Green Acres before demolishing any structure acquired with Green Acres funding, whether or not funding is being sought for demolition costs.

N.J.A.C. 7:36-4.5, Acquisition of Waterfront Land, directs a local government unit to obtain information from the Department's Bureau of Tidelands Management regarding the ownership of any potential riparian land that is part of a proposed project site prior to submission of an application for funding. Green Acres funding cannot be used by a local government unit to acquire, from a private landowner, any riparian land in which the State has not conveyed its interest. Green Acres will fund the purchase by a local government unit of the State's interest in riparian lands.

Under N.J.A.C. 7:36-4.6, Acquisition of Agricultural Lands, Green Acres may assist a local government unit in acquiring for recreation and conservation purposes land that is currently farmed. It is not the intention of the Department to reduce the amount of active and viable farmland in New Jersey. In fact, a local government unit may only apply to Green Acres to acquire active farmland if the owner is a willing seller or the property is on the market, is undergoing subdivision, or is integral to the proposed acquisition project. The local government unit must first take specified steps to ensure that the purchase of the farmland with Green Acres funding will not unnecessarily undermine an existing or proposed project under the State or county farmland preservation programs.

Under N.J.A.C. 7:36-4.7, Acquisition of Conservation Restrictions or Historic Preservation Restrictions, Green Acres may provide funding to assist a local government unit in acquiring less than fee simple interest in land in the form of a permanent conservation or historic preservation restriction. This type of interest is often referred to as a site's "development rights" or an "easement" on the land. In general, the goals of the Green Acres Program are best met through the purchase of property in fee simple. Under those circumstances, the public can enjoy the full recreation and conservation benefits of the property in exchange for its investment of funding. In those instances when a fee simple purchase is not possible, but preservation of a site’s natural or historic resources fulfills a public need or compelling public purpose, Green Acres will consider funding the purchase of a conservation or historic preservation restriction. Such public need or compelling public purpose would include preservation of a unique natural resource, such as habitat for endangered or threatened species, or preservation of an important viewshed, such as from an historic battlefield or the Appalachian Trail. For historic preservation restrictions, the site must be listed or eligible for listing in the State or National Register of Historic Places.

Green Acres encourages the local government unit to negotiate full public access on the property as part of the easement. When that is not possible, the interest that the local government unit acquires must allow meaningful public access and preserve the site's recreation and conservation resources to a degree that warrants the investment of Green Acres funding. Meaningful access would include such things as public access on a scheduled basis; access to areas of interest on

the site, i.e. a fishing pond or other recreation activity area; or a substantial public trail corridor that connects existing parkland. The rules clarify that Green Acres will limit its participation in the purchase of an easement that does not provide meaningful public access, as determined by Green Acres. Specifically, when the purchase of a conservation or historic preservation restriction does not include such access, Green Acres will provide to the local government unit for land acquisition costs half of what the local government unit would otherwise be eligible to receive for the purchase of the restriction. Also, when acquiring an easement, the local government unit should attempt to obtain the right of first refusal, thus providing an opportunity to acquire the remaining property rights in the future. Finally, the proposed new rules require a local government unit that will be acquiring an easement on land to prepare a "Present Condition Report." The Present Condition Report must include maps, photographs, and written descriptions of the property that document the condition of the property just prior to the time of closing. This will provide the local government unit and Green Acres with the baseline documentation needed to conduct effective stewardship inspections in the future to ensure that the project site is being managed in conformance with the applicable conservation and/or historic preservation restriction.

Under most circumstances, Green Acres acquisition funding is provided to a local government unit as a matching grant, with little or no loan funding. Proposed N.J.A.C. 7:36-4.8, Matching Share; Donations Toward the Cost of Acquisition, allows the local government unit to use a private donation of cash or land value or certain public funds, in addition to the local government unit's own funds, as its match for the Green Acres acquisition funding. For donations of land value, the land being considered as a donation must be located within the approved project site, and its review, valuation, and acquisition must comply with the Green Acres rules. Also, the local government unit must use a qualifying donation of land value as its matching share within two years of acquiring the land by donation, or within two years of the project's approval by the Garden State Preservation Trust, whichever is later.

A local government unit cannot use as its matching share any funding obtained through Green Acres or the Garden State Preservation Trust, except when using Green Acres loan funding to wholly or partially match a Green Acres grant. Other funding provided by the State is eligible to be used as the local government unit's matching share, as are private donations and Federal funds.

There are instances when the local government unit receives a donation of land value that exceeds the amount needed to match the Green Acres funding on a particular parcel. It is Green Acres' policy to consider such excess of land value to be a "donation credit" that the local government unit may use as its matching share for the next eligible acquisition of land in the project site, as long as it complies with the conditions of this chapter.

The GSPT Act establishes that a donation is the difference between the "fair market value" and purchase price of a particular parcel of land. As discussed in more detail under proposed N.J.A.C. 7:36-8.3, the GSPT Act requires that an appraisal of a parcel of land must include not

only a value that represents the land's fair market value, but also a value, described in the rules as the hypothetical land value, that is based on the land use zoning, State environmental laws, and Department regulations that were in existence as of January 1, 2004. In some instances, the fair market value and hypothetical land value may be identical if there were no changes in the above referenced zoning, laws, or regulations.

The hypothetical land value must be obtained and used by the local government unit in its negotiations, in accordance with the GSPT Act. A property's hypothetical land value, however, is not its fair market value because it does not take into account present conditions and current restrictions, and thus does not represent a value that a private buyer would be willing to pay. Therefore, the hypothetical land value may not be used to calculate a matching donation.

Proposed N.J.A.C. 7:36-4.9, Acquisition by Condemnation, has been added to the rules to better guide a local government unit that is considering acquiring by condemnation a parcel of land in its project site. Green Acres funding may be used by a local government unit to acquire a parcel of land by condemnation provided it is done in accordance with the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq. When a local government unit condemns a parcel of land in the project site, Green Acres will consider the condemnation award to be the updated certified market value of the parcel, and thus the new eligible land cost on which Green Acres will base its participation. Green Acres shall consider a request by the local government unit for supplemental funding, if necessary, pursuant to N.J.A.C. 7:36-9.3. It is important to note that Green Acres considers a condemnation award to mean the value established by the court through either the Condemnation Commissioners or a jury. A Consent Judgment or other negotiated settlement is not a condemnation award under this subsection because Green Acres' investment should be based on an objective analysis of land value alone, not on subjective negotiations between parties that may address issues unrelated to the land's fair market value. As part of its request for a disbursement of Green Acres funding, the local government unit must submit certain items documenting its condemnation action, such as a copy of the final judgment, as described at N.J.A.C. 7:36-9.4. As a reminder, a local government unit should not institute condemnation proceedings for a particular parcel before funding is approved under N.J.A.C. 7:36-8.1 and the eligible land cost has been established under N.J.A.C. 7:36-8.4, unless it has first obtained an at-risk authorization under N.J.A.C. 7:36-6.3.

Proposed N.J.A.C. 7:36-4.9, Allowable Project Costs, lists the items that are eligible for Green Acres funding under an acquisition project, as well as those that are not eligible. Generally speaking, Green Acres can provide funding for those costs it deems "necessary or useful and convenient" (from the GSPT Act definition of "cost") for the local government unit to complete the acquisition project, such as the cost to acquire the land as well as related incidental costs. For land acquisition costs, under the proposed new rules, Green Acres will base its participation on the *greater* of either (a) the purchase price, up to the hypothetical land value or (b) the eligible land cost. The local government unit is responsible for any land acquisition costs above that Green Acres maximum limit. Other technical costs associated with the acquisition project, such as appraisals, surveys, preliminary assessments, relocation, demolition, and well testing, are

also eligible as long as they are incurred in accordance with this chapter. Under the proposed new rules, certain incidental costs also are eligible but are capped at two percent of either the eligible land cost or $20,000, whichever is less. This cap, which was established after a review of the incidental costs associated with a broad range of projects, is reasonable and necessary to allow Green Acres to direct as much of its money as possible to direct land acquisition costs. Incidental costs will not be based on the hypothetical land value, since it does not represent the land's fair market value.

As stated above, if a condemnation award exceeds the eligible land cost established under N.J.A.C. 7:36-8.3, the condemnation award may be funded by a supplemental loan or matching grant under N.J.A.C. 7:36-9.3.

Under the existing rules, Green Acres provides funding to demolish structures to create open space, with a cap of ten percent of the parcel's eligible land cost or $100,000, whichever is less. Under the proposed new rules, demolition funding will continue to be based on the parcel's eligible land cost but will not be based on the parcel's hypothetical land value for the reasons provided above regarding the local government unit's matching share and donation credits (N.J.A.C. 7:36-4.8). The proposed rules, however, eliminate the funding cap for demolition of structures on land located in Urban Aid municipalities. This change was made to assist cities in creating open space in ways that previously may have been considered cost-prohibitive. Green Acres funding for such demolition work, as for all costs, is still subject to the availability of funds. As always, the local government unit must award any contracts for the removal or demolition of structures in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1-et seq.

Proposed N.J.A.C. 7:36-4.10(a)7 provides for local government units to apply for funding to test any private wells that exist on land to be acquired as part of an approved Green Acres project, in conformance with the Private Well Testing Act, N.J.S.A. 58:12A-26 et seq.

Proposed N.J.A.C. 7:36-4.10(b) lists those costs that are not eligible for Green Acres funding. Under the proposed rules, funding will no longer be provided for any costs associated with a project that the Garden State Preservation Trust does not approve. Under the existing rules, Green Acres offers reimbursement for appraisals of a project site that it preliminarily deems eligible for funding but does not subsequently approve. Since Green Acres no longer requires the submission of appraisals before project approval, as discussed below under proposed N.J.A.C. 7:36-6.4, a local government unit no longer must incur allowable costs for an acquisition that may not be approved by the Garden State Preservation Trust.

The proposed new rules clarify Green Acres' funding participation in the identification and remediation of a contaminated site. As before, Green Acres funding can be used for the preliminary assessment required under N.J.A.C. 7:36-8.2. The proposed new rules expand such funding to additional necessary testing, as determined by the Department, and they clarify that Green Acres funding cannot be used to remediate a project site that has "areas of concern"

identified through the preliminary assessment or some other means.

Subchapter 5. Local Government Unit Acquisition Projects: Funding Award Categories

N.J.A.C. 7:36-5.1, Funding Award Categories, describes Green Acres' categorization of acquisition projects and the type of funding available under each category.

Under the existing rules, there are three categories of acquisition projects: Standard, Grant Incentive, and Urban Aid. Standard acquisition projects are eligible for only low-interest (not more than two percent) loans. Grant incentive projects qualify for low-interest loans and partial (25 percent) grants from Green Acres, due to the land's environmental sensitivity; historic, archeological, or cultural 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. Grant incentive projects are subject to certain limitations and special conditions as to future use, as described in the project agreement for each acquisition. Urban Aid acquisitions are eligible for loans and either 25 percent or 50 percent grants, depending on the bond act from which the project was funded. Those categories are either being modified or eliminated in the proposed new rules.

Under the existing rules, all acquisition projects were eligible for loans with a twenty-year payback period. The Garden State Preservation Trust Act made several changes to the funding allocation. For example, the Act established a repayment term of not more than thirty-years for acquisition loans. The Act also stated that all acquisition projects would be eligible for a minimum of a 25% matching grant. At the same time, the demand for Green Acres funding became so great that another source of loan funding – the Department's Environmental Infrastructure Financing Program (EIFP) - was made available for eligible land preservation projects. Now, applicants for certain categories of open space acquisition projects normally are not offered Green Acres loan funding; rather, they are encouraged to apply for EIFP funding to supplement the Green Acres matching grant award. As always, a local government unit can decline to seek or obtain any Department loan and, instead, use its own funds as its matching share.

Under the proposed new rules, a "Planning Incentive" acquisition project is one sponsored by a local government unit that is collecting an open space tax, or has an alternative dedicated funding source approved by Green Acres, and has an Open Space and Recreation Plan (OSRP) approved by Green Acres. Funding under this category is in the form of a 50 percent matching grant, with the possibility of the Garden State Preservation Trust increasing the grant funding to 75 percent under certain circumstances. Green Acres loans are not normally provided for Planning Incentive projects because they may qualify for the EIFP loan funding. Land identified for potential acquisition in the OSRP may be acquired under the Planning Incentive acquisition project as long as each parcel acquired with Green Acres funding meets all eligibility requirements of this chapter.

A "Site Specific Incentive" acquisition project is one that is sponsored by a local government unit that is collecting an open space tax, or has an alternative dedicated funding source approved by Green Acres, but does not yet have an approved OSRP. Funding under this category is in the form of a 50 percent matching grant, with the possibility of the Garden State Preservation Trust increasing the grant funding to 75 percent under certain circumstances. Similar to Planning Incentive projects, Green Acres loans are not normally provided for Site Specific Incentive projects. Although the funding ratios for this category parallel those for Planning Incentive projects, applications under the Site Specific Incentive category are for a single parcel or unified parcels of land, as in the Standard category described below.

Matching grant and loan funding also is available under the "Urban Aid" acquisition category, which is comprised of projects located in municipalities designated as eligible for "Urban Aid" under N.J.S.A. 52:27D-178. Each year, the New Jersey Department of Community Affairs issues a list of municipalities that qualify as "Urban Aid," on which Green Acres bases its review. Several early Green Acres Bond Acts directed the Department to provide 25 percent grants to Urban Aid projects to supplement loan funding, others require that 50 percent matching grants be offered. Therefore, under the existing rules, the percentage of matching grant funds awarded to Urban Aid projects varies depending on the source of the funding. The 25 percent grant funding to Urban Aid projects is no longer available. The Garden State Preservation Trust Act allows for a 50 percent matching grant, with the possibility of the Garden State Preservation Trust increasing the grant funding to 75 percent upon demonstration of "special need or exceptional circumstances." Urban Aid acquisition projects are eligible for Green Acres loans to match grant funding. Urban Aid projects are akin to Standard and Site Specific Incentive acquisitions, described below, in that their scope is usually limited to one parcel or a small number of unified parcels.

Local government units that do not yet have a dedicated open space tax or alternative funding source are eligible to apply under the "Standard" acquisition category. Standard acquisition projects generally consist of one parcel or a unified group of parcels, such as a greenway. Funding under this category is in the form of a 25 percent matching grant, with the possibility of the Garden State Preservation Trust increasing the grant funding to 50 percent under certain circumstances. Standard acquisition projects also have the potential to receive a Green Acres loan, subject to available funding, especially if the land to be acquired may not qualify for EIFP funding, for example due to the intended future recreational use and development of the land.

The proposed new rules clarify that acquisition applications are reviewed and compete for available funding against other applications in the same category.

Subchapter 6. Local Government Unit Acquisition Projects: Application Process

Proposed N.J.A.C. 7:36-6.1, Timing, provides that a local government unit may submit an application for Green Acres funding at any time. At least two times each year, complete applications compete for available funding and are approved by the Garden State Preservation

Trust. In recent years, Green Acres has recommended projects for approval to the Garden State Preservation Trust once per year. Due to the competitive real estate market and the overwhelming demand for Green Acres funding, especially for acquisition projects, the Department and the Garden State Preservation Trust determined that the maximum amount of funding should be made available in the Spring funding round, rather than withhold funding for a Fall round, when some of the land identified for preservation might no longer be available. Thus, in effect, Green Acres' subsequent recommendation to the Trust each year is that no additional projects be funded.

Proposed N.J.A.C. 7:36-6.2, Preapplication Procedures, describes the steps that the local government unit is either recommended to take or must take prior to submitting an application for Green Acres funding. The rules encourage the local government unit to schedule a pre-application meeting with Green Acres staff to discuss all aspects of a Green Acres project and to attend Green Acres workshops, when offered.

The current rules require the local government unit to advertise and hold a public hearing on the proposed acquisition project, preferably before it submitted its application for Green Acres funding, but no later than when it receives from Green Acres a letter stating the acquisition project is technically eligible for funding. (See existing N.J.A.C. 7:36-6.5.) The proposed new rules eliminate the "technically eligible" provision. Accordingly, a local government unit is required under the proposed new rules to hold the mandatory public hearing before it applies to Green Acres in all cases. The proposed new rules also require the local government unit to hold the hearing in the evening. The intent of these proposed rule changes is to make it easier for the public to attend the Green Acres-related hearing than if the hearing was held during the day. In fact, the proposed rules clarify that the local government unit may hold the hearing as part of a regular public meeting, as long as the hearing is properly advertised and the subject matter of the hearing is limited to proposed the Green Acres project(s) so that the public is not required to sit through discussions of unrelated subjects. The proposed new rules also now state that the elected governing body of the municipality or county must hold the public hearing. This will allow the public to voice their opinions to the committee, council, board, etc. that is authorized to adopt the required resolution and file the application on behalf of the municipality or county. (See proposed N.J.A.C. 7:36-6.2(b).) These changes are proposed to increase the public's awareness of the proposed application, increase their opportunity to participate in the hearing at the most appropriate time in the application process, and ensure that their concerns are heard by the appropriate officials of the local government unit who can then decide whether or not to proceed with the filing of an application. It is important to note that the Department will accept and consider any eligible application for Green Acres funding submitted by the governing body of the local government unit.

Under proposed N.J.A.C. 7:36-6.3, At-risk Authorization to Proceed with Acquisition, a local government unit may request from Green Acres a letter that authorizes the local government unit to proceed with an acquisition of a parcel, at the local government unit's own risk, before the Garden State Preservation Trust has approved its application for funding. A local government

unit also should obtain an at-risk authorization prior to signing an option or purchase contract or otherwise negotiating a purchase price with the property owner, or before instituting condemnation proceedings on a parcel of land before Green Acres has established the eligible land cost for that parcel. Unless the local government unit has first obtained this at-risk letter, Green Acres will not provide funding for land that the local government unit acquires prior to application approval. The at-risk letter does not obligate the local government unit to apply for funds, nor does it obligate the Garden State Preservation Trust to approve the local government unit's acquisition application. The land acquired under an at-risk authorization must comply with the eligibility and procedural requirements set forth in these rules. The intent of this requirement is to prevent the local government unit from committing to an acquisition or to a purchase price before Green Acres has established the eligibility of the land and the extent of its funding participation and thus running the risk that the negotiated purchase price will exceed amount on which Green Acres can base its participation.

Under the proposed new rules, upon receipt of an at-risk letter, the local government unit must hold a public hearing complying with the requirements contained at N.J.A.C. 7:36-6.2(b), if one was not already held, and forward to Green Acres the Recreation and Open Space Inventory submissions described at proposed N.J.A.C. 7:36-6.5. It is important to note that, if the local government unit receives an at-risk letter for a property that is later approved for funding, the rules specify that the Green Acres' restrictions apply to the local government unit's funded and unfunded parkland retroactively to the date of the at-risk letter. Thus, the local government unit's obligations commence at the same time as does their eligibility for funding.

The public hearing requirement has been added to the at-risk authorization section because, in order for the public to have a meaningful opportunity to comment on a proposed acquisition, the public must be advised of the acquisition and have an opportunity to participate in a hearing held before the acquisition occurs. In the existing rules, the local government unit could acquire the project site under an at-risk authorization and subsequently hold the hearing, albeit before applying for Green Acres funding. That, however, could deprive the public of an effective opportunity to express their views on, and possibly influence, the local government unit's decision to acquire the project site in the first place. Although the local government unit is not required to subsequently apply for a parcel for which it obtains an at-risk authorization, the Department believes that the new public hearing requirement is reasonable in exchange for the flexibility of acquiring the land prior to formal project approval by the GSPT or before the eligible land cost is established.

Proposed N.J.A.C. 7:36-6.4, Application Requirements, contains the submittal and procedural requirements of a Green Acres acquisition application, which vary slightly depending on the category under which the proposed application qualifies.

For projects in all categories, a fill-in-the-blank application form must be submitted, which includes such information as the name and address of the local government unit, name of the local government unit's contact person for the project, the location of the project site, and the

amount of funding being requested. The local government unit's funding request must include an estimate of allowable costs as described at proposed N.J.A.C. 7:36-4.10. A resolution by the local government unit's governing body authorizing the submission of an application must be included, along with proof of publication of the public hearing notice and the hearing minutes. Also required for all projects is a Recreation and Open Space Inventory (ROSI) and related mapping submissions described at proposed N.J.A.C. 7:36-6.5.

For applications under the Standard, Site Specific, and Urban Aid acquisitions categories, the application requirements also include a narrative description of the project site that addresses each of the project award criteria described at N.J.A.C. 7:36-7.1. Photographs of the project site, a street map showing the project site's location, tax map(s) of the site, letters of public support for the purchase, and any existing survey(s) of the project site, if available, also must be submitted as part of the application. The local government unit must submit a "project reference map" that shows such information as tax block and lot number, size of project site, and wetlands lines, if applicable. Green Acres now requires the project reference map to show any Category One waters, which have been designated by the Department as requiring additional protection due to their environmental sensitivity. The project reference map will be used in the appraisal process to help ensure accurate valuation of the project site, as discussed under N.J.A.C. 7:36-8.3.

For applications under the Planning Incentive acquisition category, the local government unit must submit, in addition to the application form, resolution, ROSI, letters of support, and public hearing items described above, an Open Space and Recreation Plan prepared according to guidelines provided by Green Acres. Green Acres requires the following items in an Open Space and Recreation Plan: a summary of the OSRP's purpose, goals, significant findings, and proposed actions; a statement of the local government unit's goals and policies related to open space and recreation and its decisions about implementing the OSRP; an inventory of land currently held for recreation and conservation purposes and a map showing the location and configuration of all such sites; an analysis of the adequacy of the current open space and recreation system to satisfy present and projected public recreational needs; an assessment of lands with open space and recreation potential and interest, and the lands' ability to meet the public's needs and a map showing the location and configuration of all such sites; an action plan describing the local government unit's proposed steps to meet and adhere to the plan's goals and policies; a discussion of the public participation process that was used to gather citizen input and to assess community open space and recreation needs; and evidence that the local government unit's Planning Board has adopted or will adopt the OSRP as part of its master plan.

A Planning Incentive application has fewer submission requirements because, at the time of application, the local government unit may not yet have identified the particular parcel or parcels it will initially acquire. Instead of basing its review on the features of a specific parcel of land, as is done for other funding categories, Green Acres would base its review on the planning effort successfully completed by the local government unit.

Green Acres will send a letter to the local government unit acknowledging receipt of the application, providing the file number assigned to the application, and requesting any missing information. Green Acres also will inspect the project site as part of its review of the application. A local government unit must monitor the project site and report to Green Acres any changes in ownership, planned private use (such as approval for construction), or physical condition (such as a fire) that could affect the application or the project site's market value. Green Acres acknowledges that for Planning Incentive projects, which often have a long list of potential acquisition sites, such monitoring is meaningful only to the extent that specific parcels have been identified as priorities to be acquired upon project approval.

The existing rules include a provision at N.J.A.C. 7:36-6.5 under which Green Acres determines whether or not a project is technically eligible for funding, prior to project approval. Green Acres then instructs the local government unit to obtain appraisals of the project site to be submitted prior to project approval. This requirement was later limited to Standard and Urban Aid acquisition projects. Planning Incentive projects were exempt because requiring appraisals of every parcel in their project sites prior to approval would be cost-prohibitive and unreasonable. Green Acres no longer requires appraisals in advance of project approval for any acquisition project, so this provision was deleted from the proposed new rules. Reflecting this change, appraisal procedures are presented in the proposed new rules after the section on project approval so that local government unit is aware of the chronological order in which it must administer the acquisition project.

Proposed new N.J.A.C. 7:36-6.5, Recreation and Open Space Inventory submissions, describes the Recreation and Open Space Inventory (ROSI) and related mapping that are required as part of an application for funding. The proposed new rules establish a specific subsection for the ROSI because of the important role it plays in the administration of a Green Acres project and the subsequent stewardship of the local government unit’s parkland. The ROSI is defined at N.J.A.C. 7:36-2.1 as a "listing of all of a local government unit’s funded and unfunded parkland, including a description sufficient to identify each such parcel." As stated earlier, a local government unit that receives Green Acres funding cannot convey, dispose of, or divert to a use 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. In other words, a local government unit that acquires a parcel of land with Green Acres funding agrees to permanently preserve all of its existing funded and unfunded parkland for recreation and conservation purposes. This ROSI becomes part of the Green Acres Project Agreement described at proposed N.J.A.C. 7:36-9.1 and is recorded by the local government unit after a disbursement of funding under proposed N.J.A.C. 7:36-9.4, to notify the public, especially title searchers, of the Green Acres restrictions. This section of the rules further requires that tax maps corresponding to each parcel listed on the ROSI must be submitted as part of an application, but may be waived if Green Acres has on file accurate and current tax maps keyed to the local government unit’s ROSI. Any changes in tax block or lot numbers must be so noted on the ROSI. An updated ROSI is required with every application, even if there have been no changes, so that the governing body, through the current chief executive officer and planning board chairperson or parks director who sign the

form, is aware of the restrictions that exist on its funded and unfunded parkland.

Subchapter 7. Local Government Unit Acquisition Projects: Award Criteria; Application Ranking and Evaluation

Proposed N.J.A.C. 7:36-7.1, Project award criteria, establishes that Green Acres must rank Urban Aid, Standard, and Site Specific Incentive acquisition applications using a point system based on the project award criteria described in this section. The criteria were developed by Green Acres to gauge a project's consistency with the recreation and conservation goals of the New Jersey Open Space and Outdoor Recreation Plan; the State Development and Redevelopment Plan, the New Jersey Meadowlands Master Plan, Pinelands Comprehensive Management Plan, or Highlands Regional Master Plan, as applicable; and the Green Acres Bond Acts, as well as with Department priorities regarding preservation of natural and recreational resources. Such priorities may include the determination that additional funding should be awarded to projects that preserve open space in the Highlands, restore urban parks, or give additional protection to critical water resources. Green Acres has modified the project award criteria to give additional points to projects that reflect Department priorities, such as water quality protection, creation of recreation and conservation opportunities in highly or densely populated municipalities or counties, reclamation of former brownfield sites, and adherence to the State Plan.

Also, certain project award criteria have been amended. For example, under the existing rules, points are given based on the intensity of need for open space for recreation (existing N.J.A.C. 7:36-7.1(b)1i). The intensity of need was based on a ratio of acres of parkland per thousand residents. This acres-per-population is no longer considered an accurate standard, so this criteria was eliminated in the proposed new rules. Also, the existing rules encourage projects that protect water quality, whereas the proposed new rules now consider water "resources" which is more encompassing because it considers both the quality and quantity of water. (proposed N.J.A.C. 7:36-7.1(b)2ii(2)) The proposed new rules also give points for protection of waterbodies classified as "Category One", pursuant to N.J.A.C. 7:9B because preservation of such waterbodies and their associated special water resource protection areas is a major initiative of the Department of Environmental Protection. (proposed N.J.A.C. 7:36-7.1(b)2ii(5)) Also, the proposed new rules increase the number of points awarded for projects that are consistent with local and State planning objectives, including whether the local government unit has obtained an approved petition for initial plan endorsement or advanced plan endorsement by the State Planning Commission. (Proposed N.J.A.C. 7:36-7.1(b)4). The proposed new rules provide points depending on the likelihood of threat of development of the proposed project site for non-recreation or conservation purposes, as required by the GSPT Act. Points are no longer given for projects based on whether or not scheduled programming will be offered because that is not necessarily a true indication as to whether the public's recreation and conservation needs would be met by approving a proposed acquisition project. The existing rules award points for donations in excess of 25 percent of the land's fair market value to encourage applicants to provide a match to Green Acres funding. The proposed new rules no longer offer points for such

projects because local government units are required to provide a matching share of more than 25 percent of the cost of acquisition for the majority of acquisition projects approved by the Garden State Preservation Trust. The proposed new rules now offer points for acquisitions that support a school construction initiative in an "Abbott District" pursuant to N.J.A.C. 6A:10A, ensuring that urban students have adequate public outdoor space to help meet their physical, social, and educational needs. Points are also now proposed for projects that will result in the reclamation of former brownfields site consistent with the Department's "Brownfields to Greenfields" initiative that encourages the restoration of brownfield sites into recreational or natural areas. Also, as directed by the GSPT Act, a point is now given to projects undertaken by a municipality in the Highlands planning area, that has amended its development regulations to establish one or more receiving zones for the transfer of development potential from the Highlands preservation area, consistent with P.L. 2004, c. 120 (N.J.S.A.13:20-3). Also, a point will be given to any 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. The intent of the last two items is to reward municipalities that are showing their commitment to smart growth by taking steps to direct development to the most appropriate areas.

Under proposed N.J.A.C. 7:36-7.2, Ranking and Evaluation, complete applications in each category compete against other similar applications in the same funding round. Urban Aid, Standard, and Site Specific Incentive applications are ranked using the point system described above. The proposed new rules clarify the criteria on which Planning Incentive applications are evaluated, such as the content of the local government unit's Open Space and Recreation Plan; progress in spending any previously approved funding; and the projected need for funding based on planned acquisitions of land.

Subchapter 8. Local Government Unit Acquisition Projects: Approval, Preliminary Assessment, and Appraisal Procedures; Determination and Notification of Eligible Land Cost

Under proposed N.J.A.C. 7:36-8.1, Approval or Denial of Application; Award of Funding; Procedural Letter, the Department will make a recommendation for project approval or denial to the Garden State Preservation Trust. Based on the decision of the Garden State Preservation Trust, the Department will send a letter to each applicant, notifying the local government unit if its application has been approved or not. If the application is approved, the letter will state the amount of the funding award and note that the funding is contingent on the passage of a legislative appropriation. If the local government unit's application is not approved, the letter will provide the reason for the denial.

After the funding has received legislative appropriation, Green Acres will send a procedural letter to each local government unit whose project is approved. The letter will provide the local government unit with guidelines for preparing the items required for disbursement of funding under proposed N.J.A.C. 7:36-9.4, such as the deed, title insurance, and survey. The procedural letter also instructs the local government unit to conduct a preliminary assessment report

according to proposed N.J.A.C. 7:36-8.2 and to obtain appraisals according to the requirements of proposed N.J.A.C. 7:36-8.3..

Proposed N.J.A.C. 7:36-8.2 Preliminary Assessment Report, requires the local government unit to obtain a preliminary assessment report for each parcel to be acquired as part of the project. It is the intention of Green Acres not to assist in the acquisition of land which, when used for recreation and conservation purposes, will pose a threat to public health. The preliminary assessment must contain the information required under the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E. The local government unit must address any areas of concern identified in the preliminary assessment to the Department's satisfaction before Green Acres disburses its funding.

Proposed N.J.A.C. 7:36-8.3 Appraisal Procedures, describes in detail the steps that a local government unit must take when obtaining appraisals for a Green Acres acquisition project. Green Acres staff works closely with the local government unit and their Green Acres-approved appraisers to coordinate the required appraisal reports – one appraisal for a parcel valued under $250,000, or two for a parcel valued over $250,000. In order to perform appraisals for a Green Acres project, an appraiser must be licensed as a Certified General Real Estate Appraiser as established by the State Real Estate Appraisal Board. Information regarding such licensing and certification can be obtained from the State Real Estate Appraisal Board at P.O. Box 45032, Newark, New Jersey 07101. According to N.J.A.C. 13:40A, the rules governing the State Real Estate Appraisal Board, New Jersey appraisers must conform to the standards established by the Uniform Standards of Professional Appraisal Practice (the USPAP). The existing rules at N.J.A.C. 7:36-6.6(b)3 state that appraisals must be "in the format provided" by Green Acres. The required format has always been a Self Contained Appraisal Report as established in the USPAP. The proposed new rules at N.J.A.C. 7:36-8.3(b)5 clarify that requirement by specifying that appraisal reports must be a Self Contained Appraisal Report.

Green Acres staff will meet with the local government unit and the appraiser(s) at the project site before the appraisal work begins to coordinate the appraisal process and share appraisal instructions and information. The local government unit is responsible for contracting with the appraisers and submitting the appraisal report(s) to Green Acres upon completion.

The proposed new rules describe the appraisal requirements established by the Garden State Preservation Trust Act that apply statewide to appraisals conducted between August 10, 2004 and June 30, 2009. During this period, appraisals of lands to be acquired for recreation and conservation purposes must be prepared under two scenarios: (1) using the land use zoning of the lands and any State environmental laws or Department rules and regulations that may affect the value of the lands in effect at the time of the proposed acquisition; and (2) using the land use zoning of the lands and any State environmental laws or Department rules and regulations that may affect the value of the lands in effect on January 1, 2004. The value established under scenario (1) is the eligible land cost; the value established under scenario (2) is the hypothetical land value. This requirement applies only to those lands for which the owner at the time of

proposed acquisition is either the same person who owned the lands on August 10, 2004 or is an immediate family member. The requirement does not apply if Federal moneys will be used in the acquisition or if the appraisal will value a Pinelands Development Credit.

Under proposed N.J.A.C. 7:36-8.4, Determination and Notification of Eligible Land Cost, in most cases Green Acres reviews the appraisal(s) and certifies the market value of the project site based on the appraised value(s). This certified market value becomes the "eligible land cost" on which Green Acres bases its participation. When two appraisals have been obtained and the difference between the two values is 10 percent or less of the higher appraisal, unless the local government unit requests a certification of market value, Green Acres will consider the average of the two appraisals as the "eligible land cost" on which it will base its funding. If either of the appraisal values exceeds $3 million, Green Acres will not average the values, but will certify the market value of the parcel, regardless of the difference between the two appraisal values. Green Acres shall periodically audit its appraisal review process by providing a certified market value even if the appraisals qualify for an average of the appraisal values. In such instances, the certified market value will be considered the eligible land cost for the parcel.

When a local government unit condemns a project site, Green Acres will consider the condemnation award to be the updated eligible land cost on which Green Acres will base its participation, as stated in N.J.A.C. 7:36-4.9(d).

Green Acres will send a letter to the local government unit that states the eligible land cost and, until the requirement ends on June 30, 2009, the hypothetical land value for the project site. The letter will include a payment form that the local government unit will later use in its request for advance payment or reimbursement for a particular parcel. Under the current rules, Green Acres requires the local government unit to formally acknowledge the eligible land cost, as proof that it understands that Green Acres' participation will be based on that amount. That formal acknowledgment is no longer required under the proposed new rules since this information is now more clearly communicated in the Green Acres rules and correspondence.

Proposed N.J.A.C. 7:36-8.4(e) provides that Green Acres may adjust the eligible land cost if the survey required under N.J.A.C. 7:36-9.4 shows a different acreage than what was evaluated in the appraisals.

Subchapter 9. Local Government Unit Acquisition: Project Agreement, Negotiations for Purchase of Project Site, Supplemental Funding, Disbursements, Loan Repayment, and Accounting and Recordkeeping Requirements

Proposed N.J.A.C. 7:36-9.1, Project Agreement, specifies the contents of the Green Acres project agreement between the local government unit and the Department that is required as part of an acquisition project. Generally, the project agreement describes the project site; the type and approved amount of Green Acres funding; the local government unit's match requirement, if any; the conditions that attach to the local government unit's use of Green Acres funding, and

the project period during which the acquisition project must be completed (generally two years from the effective date of the project agreement). The project agreement sets forth the remedies that are available to the Department if the local government unit does not comply with the project agreement, the Green Acres Program rules, or the Green Acres laws. Such remedies include issuing a written notice of noncompliance, withholding funding, terminating the project agreement, and demanding immediate repayment of all Green Acres funding. The Department also may institute legal action against the local government unit. Finally, the local government unit is responsible for any costs incurred by the Department for enforcing the project agreement.

The project agreement also contains a declaration that includes the Recreation and Open Space Inventory (ROSI). After the first disbursement is made to the local government unit for the project under proposed N.J.A.C. 7:36-9.4, the local government unit must have the declaration recorded by the county clerk to make it known that the parkland listed on the ROSI is encumbered with Green Acres restrictions. Proposed N.J.A.C. 7:36-9.1(c)8 requires that the deed by which the local government unit acquires a project site must state that the land is subject to Green Acres restrictions. This deed language, in addition to the recordation of the ROSI, is intended to ensure that all funded and unfunded parkland is permanently preserved.

In addition to returning the signed agreements to Green Acres, for projects involving a loan, the local government unit must submit to Green Acres verification that a bond ordinance, supplemental debt statement, and revised capital budget have been approved by the Department of Community Affairs.

Upon receipt of the signed agreement and the verification form, if applicable, the Department will establish an account for the project from which acquisition payments will be made when the local government unit has met all requirements described at proposed N.J.A.C. 7:36-9.4. Green Acres then will return to the local government unit a fully executed project agreement which contains the declaration that must be recorded by the local government unit upon receipt of a disbursement of Green Acres funding under N.J.A.C. 7:36-9.4.

Green Acres will prepare an amendment to the project agreement to reflect any approved changes, such as to the project scope or the project period, or to incorporate any additional funds approved under proposed N.J.A.C. 7:36-9.3.

Proposed N.J.A.C. 7:36-9.2, Negotiations for Purchase of Project Site, establishes when and by whom negotiations for the local government unit's acquisition may be conducted. The Garden State Preservation Trust Act contains provisions regarding negotiations for purchase of land for recreation and conservation purposes with Green Acres funding. The Act specifies that the local government unit must share both the eligible land cost and the hypothetical land value with the landowner, and must use the higher of those two values as the basis for negotiations. It is important to note that there are a number of factors that may determine the final purchase price, including land value, available funds, environmental constraints, priority of the acquisition, and survey and title issues. As in the current N.J.A.C. 7:36-9.2(b), the proposed rules prohibit

anyone who performed an appraisal of the project site to conduct negotiations for the purchase of the project site. Appraisers are specifically mentioned because they may also be real estate agents or brokers who may play a negotiating role in land acquisitions. This prohibition serves to avoid any potential or perceived conflict of interest in the establishment of the value for the project site.

Proposed N.J.A.C. 7:36-9.3 Supplemental Funding, describes the conditions under which Green Acres may consider a written request from a local government unit to obtain funding in excess of the initial loan or matching grant award. The local government unit may request additional funds, for example, if the allowable costs exceed the initial GSPT award plus any required match.

The proposed rules state that, subject to available funding, Green Acres shall increase the basis of its participation to 10 percent over the eligible land cost when the local government unit certifies that, despite bona fide negotiations, an agreement cannot be reached with the landowner. In the current rules, this additional funding is in the form of a loan only, regardless of the project's funding award category (see existing N.J.A.C. 7:36-5.1). Under the proposed new rules, the additional funding would be in the same matching grant or grant/loan ratio under which the project's funding was approved. This change was made because the vast majority of acquisition projects now receive matching grants, and it is unreasonable to require all of the items necessary to administer a loan, for a relatively small amount of loan funding. Also, under the new proposed rules, a local government unit likely would not need to apply this "10 percent" rule if the hypothetical land value exceeded the eligible land cost because, under those circumstances, Green Acres would base its participation on the purchase price, up to the hypothetical land value. (See N.J.A.C. 7:36-4.10)

It is the intent of this "10 percent" rule to safeguard Green Acres funding while remaining flexible and helping the local government unit to avoid costly condemnation proceedings. If a local government unit does condemn a project site, Green Acres will increase its funding based on the condemnation award, if funds are available. For purposes of these rules, 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.

If supplemental funds are recommended by Green Acres and approved by the Legislature, the Department will enter into an amendment to the project agreement.

Under N.J.A.C. 7:36-9.4, Disbursement of Loan or Matching Grant, acquisition payments will be in the form of a reimbursement after the local government unit takes title to the land or as an advanced payment in time for closing. All payment requests must include certain documents dealing with the real estate transaction, such as the recorded deed, survey, title insurance, metes and bounds description, and cancelled checks for all allowable costs. For payments in advance of closing, Green Acres requires at least 60 days advance notice, and will accept certain preliminary documents until the final documents are available, such as a contract of sale until the

deed is executed or a title insurance binder until the title policy can be issued. All documents required for payment must conform to Green Acres guidelines, which are provided to the local government unit in advance, and must be approved by Green Acres before disbursement can be made.

One of the requirements for the title insurance policy has changed from the existing rules. Currently, N.J.A.C. 7:36-9.3(c)2iv requires the title insurance policy to name the State as an additional insured and to include in Schedule B (Exceptions) a statement that the parcel is subject to Green Acres restrictions. Proposed N.J.A.C. 7:36-9.4 does not require the inclusion of the statement regarding Green Acres restrictions because such restrictions are not an exception to the title policy when the State is an additional insured.

For land surveys, the proposed new rules specify standardized land survey documents including plans of survey, deed descriptions, and digital file requirements. The proposed new rules require conformance with the Local and Nonprofit Land Survey Overview, included in the proposed rules as Appendix 2. This document is additionally available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 and is on the Green Acres web page at www.nj.gov/dep/greenacres/scope.doc. The Overview defines the desired format, field methodology, and the presentation of findings on the plan of survey and in the corresponding metes and bounds description of the property. This is a change from the existing rules that required only adherence to the rules of the State Board of Professional Engineers and Land Surveyors at N.J.A.C. 13:40-5 and requested other general information. Green Acres determined that such guidelines were insufficient to obtain acceptable land surveys that would meet the local government unit's or Green Acres' needs. Land surveys are critical to properly identifying the project site including marking the location of the parcel on the ground; locating any natural and man-made features; identifying any easements, rights-of-way, or other restrictions on the property; identifying and establishing dimensions of encroachments, gores, overlaps, or other potential conflicts with adjoining properties; and providing an accurate, unambiguous and modern metes and bounds description that will identify the limits of the Green Acres area of participation. Green Acres uses land surveys to facilitate mapping the parcel in the Department's Geographic Information System/Land Information System (GIS/LIS) which is used for State open space planning purposes. Land surveys also assist local government units in their land management efforts and are used by Green Acres in meeting its stewardship responsibilities, such as conducting effective inspections pursuant to proposed N.J.A.C. 7:36-25.1(c). The Local and Nonprofit Land Survey Overview provides clear guidance to local government units and surveyors regarding the quality and content of the deliverables required in order to obtain Green Acres funding.

The proposed rules require that the Present Condition Report described at N.J.A.C. 7:36-4.7 be prepared and accepted by Green Acres prior to the disbursement of funds for the acquisition of a conservation or historic preservation restriction.

Upon receipt and approval of all required documentation, Green Acres prepares and sends to the

local government unit an invoice that the local government unit signs and returns. The local government unit must open a non-interest-bearing bank account into which the Department will transfer the Green Acres loan funds, if applicable. The Department will mail grant funds to the local government unit in the form of a check, which the local government unit will deposit into the account. The existing rules at N.J.A.C. 7:36-9.3(g) limit the time the local government unit may keep a Green Acres funding disbursement in a bank account so that the funding would not earn interest and potentially violate the requirements of the bonds sold by the State to fund the conservation project. The proposed new requirement for a non-interest-bearing account will achieve the same purpose. Again, it is the ultimate responsibility of the local government unit to ensure the tax-exempt nature of the bonds issued by the State and used by the local government unit for the acquisition project pursuant to proposed N.J.A.C. 7:36-1.7.

The rules now clarify when the local government unit must record the declaration, specifically upon receipt of a disbursement of Green Acres funding.

The proposed rules include at N.J.A.C. 7:36-9.4(g) and (h) the conditions for receiving Green Acres funding in advance of closing and the steps that must be taken if the scheduled closing date is delayed.

The local government unit may withdraw the project at any time before it receives Green Acres funding. After Green Acres funding is disbursed, the local government unit must obtain Green Acres approval before it can terminate the project. If the local government unit terminates the project, it is responsible for any costs it has incurred as part of the project. The local government unit also must repay, with interest, any disbursements received from Green Acres for the project.

The proposed new rules state that Green Acres will provide signs that the local government unit must post at the project site, so that the public is aware that the land was acquired with Green Acres funding and is therefore permanently protected for recreation and conservation purposes.

Proposed N.J.A.C. 7:36-9.5, Terms of Loan Repayment, requires a local government unit to repay its Green Acres acquisition loan over a period of not more than 30 years. Prior to the Garden State Preservation Trust Act, all Green Acres loans were repayable over 20 years. The proposed rule describes the local government unit's repayment responsibilities and the consequences of late repayment or default. This information is included in the project agreement between the local government unit and the Department.

It is important to note that, by signing the project agreement under N.J.A.C. 7:36-9.1, the local government unit agrees not to convey, dispose of, or divert to a use for other than recreation or conservation purposes its funded and unfunded parkland, without the approval of the Commissioner and the State House Commission, pursuant to N.J.A.C. 7:36-26. Therefore, even after the Green Acres loan is repaid in full, the Green Acres restrictions remain on the local government unit's funded and unfunded parkland.

Proposed N.J.A.C. 7:36-9.6, Accounting and Recordkeeping, describes the local government unit's responsibilities for accounting, recordkeeping, and audits related to the use of Green Acres funding. The local government unit must provide Department representatives access to Green Acres project-related records and must conduct annual audits in conformance with the Federal and State single audit act requirements. Audits are required to ensure that Green Acres funds are expended properly. Audits must conform to Federal Office of Management and Budget (OMB) Circular A-133: "Audits of States, Local Governments, and Non-Profit Organizations," which sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities (a State, local government, or nonprofit organization) expending Federal awards. Audits must also conform to the State OMB Circular 98-07: "Single Audit Policy for Recipients of Federal Grants, State Grants, and State Aid" which establishes State policy and procedures and outlines the responsibilities of State agencies and grant recipients to ensure that recipient single audits are performed according to Federal and State requirements. Such audits evaluate the local government unit's effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations regarding the Green Acres funding received over the year. A single audit is intended to be cost-effective for Green Acres local government units in that one audit is conducted in lieu of multiple audits of individual programs.

Subchapter 10. Local Government Unit Development Projects: Project Eligibility, Conditions, and Limitations

Proposed N.J.A.C. 7:36-10.1, General Provisions and Funding Policies, discusses maximum funding limits and the basic requirements that local government units must meet in completing a Green Acres development project and is similar to proposed N.J.A.C. 7:36-4.1 for local government unit acquisition projects, with a few differences.

Green Acres funding can be used only for the development of outdoor recreational facilities on land that the local government unit owns or on which the local government unit has an irrevocable 25 year lease or use agreement. To maximize the benefit from Green Acres funding, the proposed new rules require that the 25-year lease term must begin or restart from the date of the proceed to bid letter described at proposed N.J.A.C. 7:36-14.2(a). The requirement for a particular lease start date is new and is being added to ensure that the term of the lease coincides to the greatest degree possible with the lifespan of the facilities being developed as part of the project. If the land on which the recreational facilities will be built is owned by the Department, Green Acres may allow a shorter lease term because there is reasonable assurance that the public will continue to have access to the facilities and the investment of Green Acres funding thus will not be lost after the lease expires.

The proposed new rules encourage local government units to develop “environmentally friendly” facilities through the use of clean and renewable energy, energy efficient technology, and recycled products.

Proposed N.J.A.C. 7:36-10.2, Eligible Projects, specifies that only facilities that will be used for public outdoor recreation and conservation purposes can be developed with Green Acres funding, and provides several examples. The proposed new rules allow for the rehabilitation or restoration of facilities that were developed with Green Acres funding or other State or Federal funds administered through Green Acres under certain circumstances. Specifically, a recreational facility is eligible for a Green Acres funded redevelopment if it was constructed or last redeveloped with funds through Green Acres 20 years ago or more or if the local government unit can demonstrate that the rehabilitation is necessary due to normal wear and tear on the facility and not to abuse, neglect, or vandalism, consistent with existing N.J.A.C. 7:36-10.2(a)6.

Proposed N.J.A.C. 7:36-10.3, Ineligible Projects, describes certain types of facilities that cannot be developed with Green Acres funding because their use for public outdoor recreation and conservation purposes is in some way restricted or limited.

The proposed new rules clarify that Green Acres will not fund a park development project that will significantly damage or unnecessarily disturb the site's natural resources. In the past, such projects generally were not approved because they scored poorly in the project award criteria due to an unsuitable project site or design. Park development projects usually require physical alteration of the property (for example, through grading, clearing, construction), but should not entail significant disturbance when a more sensitive design is possible or a more suitable location is available. The proposed new rules deem ineligible any project that will significantly impair a site's natural resources, as determined by the Department based on careful consideration of the circumstances of each particular proposal.

The proposed new rules identify certain shore protection or beach renourishment or replenishment activities as a new category of ineligible projects. This change was made to reflect the modified definition of "development" in the Garden State Preservation Trust Act (N.J.S.A. 13:8C-3).

The Department's Shore Protection Program, administered by the Bureau of Coastal Engineering in the Office of Engineering and Construction, provides funding assistance and coordination for shore protection projects, including beach nourishment, shore protection structures, and coastal dredging. To receive Shore Protection Program funding, the primary purpose of a municipal or county project must be shore protection, i.e., providing protection from storm waves or preventing erosion, and the projects must be situated along a tidally flowed waterway. Funding for structures that serve a recreation purpose may be eligible for Shore Protection Program funding as part of a larger shore protection project.

Consistent with the Garden State Preservation Trust Act, the Green Acres Program generally will not provide funding for projects that are eligible for funding under the Shore Protection Program. Green Acres will continue to fund the construction of structures that are a necessary component of a recreation facility and that are not part of a larger shore protection project. Examples of

such eligible Green Acres projects include construction of bulkheading as part of a boat ramp and dune planting around a waterfront pedestrian boardwalk.

The proposed new rules also now deem the use of tropical hardwood as ineligible for funding because the harvesting of such wood contributes to the deforestation of the world's rainforests. Such degradation of natural resources is inconsistent with the Department's mission and thus Green Acres funding will not be used to acquire or use tropical hardwood as part of a development project.

Under proposed N.J.A.C. 7:36-10.4, Dredging of a Pond, Lake, or Segment of a Stream or River, a local government unit must meet certain criteria before Green Acres will consider funding a dredging project. One objective of this section is to ensure that the local government unit will address the problems that contributed to the siltation and thus reduce the possibility of recurrence.

Proposed N.J.A.C. 7:36-10.5, Development on Landfills, differs in some respects from existing N.J.A.C. 7:36.10.5. The existing rules require an alternatives analysis prior to considering an application for a park development on a former landfill. Due to the inherent challenges faced when developing a former landfill, Green Acres' preference was not to fund such developments unless alternate sites were not available. To promote the beneficial reuse of such sites, Green Acres no longer requires an alternatives analysis, beyond that required of all development projects in the environmental assessment, before considering a development project located on a former landfill. In fact, the Department now actively encourages the reclamation of brownfields sites such as landfills and offers technical assistance and information about funding through the Office of Brownfield Reuse, the Bureau of Landfill and Recycling Management in the Division of Solid and Hazardous Waste, and the New Jersey Environmental Infrastructure Financing Program to municipalities attempting to adaptively reuse these sites.

Green Acres still will not fund the development of facilities on landfills unless the local government unit provides certain evidence that the landfill was properly closed and that it will not present a threat to public health or safety. The preliminary assessment that the local government unit is required to obtain under proposed N.J.A.C. 7:36-13.4 is vital in determining whether or not Green Acres will participate in the development of a recreational facility on a former landfill. Also required are closure approval letters and disruption permits from the appropriate regulatory agency, whether the Department, the Pinelands Commission, or the New Jersey Meadowlands Commission, to assure that the landfill has been properly closed and that there is no more risk that landfill leachate or methane releases will contaminate the site.

Proposed N.J.A.C. 7:36-10.6, Allowable Project Costs, lists the items that are eligible for reimbursement as part of a Green Acres development project, as well as those that are not eligible. The proposed new rules establish a cap on incidental costs incurred by the local government unit as part of the project. This cap, which was established after a review of the incidental costs associated with a broad range of projects, is reasonable and necessary to allow

Green Acres to direct as much of the available funding as possible to actual park improvement costs. Permit application fees, which are listed as an incidental cost in the existing rules, have been separated out in the proposed new rules, and thus are not subject to this cap.

As in proposed N.J.A.C. 7:36-4.10(b)4 for acquisitions, described above, proposed N.J.A.C. 7:36-10.6(b)3 more clearly explains Green Acres' funding participation in the identification and remediation of "areas of concern" identified through the preliminary assessment or some other means.

Proposed N.J.A.C. 7:36-10.7, Matching Share; Donations Toward the Cost of Development, has been added to the proposed new rules because Green Acres development funding sometimes includes a matching grant component. This section lists the types of funding that the local government unit can use as its matching share of the development project costs. As described at N.J.A.C. 7:36-4.8 for acquisition projects, a local government unit cannot use as its matching share any funding obtained through Green Acres or the Garden State Preservation Trust, except if the development project is funded by Green Acres through a combination of grant and loan funds. Other funding provided by the State is eligible to be used as the local government unit's matching share, as are Federal funding and private donations.

Subchapter 11. Local Government Unit Development Projects: Funding Award Categories

Proposed N.J.A.C. 7:36-11.1 describes the Green Acres development project funding award categories. The Garden State Preservation Trust generally provides funding for development projects in the form of low-interest (not more than two percent per year) loan funds, repayable over not more than twenty years. Historically, partial grant funding has only been available for the development of urban recreational facilities, specifically in municipalities designated as Urban Aid under N.J.S.A. 52:27D-178. Several Green Acres laws direct the Department to provide 25 percent grants to Urban Aid projects to supplement the loans; others, including the Garden State Preservation Trust Act, require that 50 percent matching grants be offered. Therefore, the percentage of grant funds awarded to Urban Aid projects varies depending on the source of the funding.

To promote the development of parks in areas of significant population, Green Acres is proposing additional incentives and partial grant funding to projects located in the cities, suburbs, and other developed communities throughout New Jersey. The proposed new rules allow for the provision of 25 percent matching grant funds, with the potential for a supplemental loan, for a development project located in a Densely Populated Municipality or a Highly Populated Municipality, or sponsored by a Highly Populated County. Projects sponsored by Densely Populated Counties are eligible for 50 percent matching grant funds, with the potential for a supplemental loan. A list of these municipalities and counties is included in the proposed new rules as Appendix 1.

Development projects that do not qualify under the above categories are eligible for low-interest

loans under the Standard development category.

As with acquisition applications, the proposed new rules clarify that development applications are reviewed and compete against other applications in the same funding award category.

Subchapter 12. Local Government Unit Development Projects: Application Process

The pre-application and application processes for local government unit development projects set forth in the proposed new rules at N.J.A.C. 7:36-12.1 through 12.5 are similar to those for local government unit acquisition projects set forth at proposed N.J.A.C. 7:36-6.1 through 6.5, as described above, with some differences to address development projects..

To prevent the destruction or dislocation of threatened and endangered species, local government units planning a park development project on an undisturbed property or portion of a property are required to submit a Natural Heritage Data Request Form to the Department's Office of Natural Lands Management and forward the results of the search with their application. Local government units pursuing such projects also are encouraged to review the Department's Landscape Project when establishing their recreation goals for the project site, prior to applying to Green Acres for funding. Although it is a new requirement for the local government unit to review these specific resources, which are now easily available, it is consistent with the intent and stipulations of the environmental assessment which is currently required as part of an application under current and proposed N.J.A.C. 7:36-12.4(a)6.

Under proposed N.J.A.C. 7:36-12.3, that local government units seeking an at-risk authorization for a development project must first submit an application for Green Acres funding. Also, Green Acres is not required to provide an at-risk authorization for a development project, as it is for an acquisition project. The proposed new rules draw these distinctions to recognize that development projects are not as time-sensitive as acquisition projects, and thus may not warrant departures from the normal Green Acres process and timing that can make project administration more difficult if and when the project is approved.

Under proposed N.J.A.C. 7:36-12.4, there are several items required as part of an application for development funds that are development-specific, including an environmental assessment of the proposal, a units and quantities cost estimate for the project, a conceptual site plan, a copy of the lease or use agreement for a project located on property not owned in fee simple by the local government unit, an estimate of annual operating expenses required to maintain the proposed project site, and a list of all permits that may be required for the proposed development project. The results of the riparian information search required under proposed N.J.A.C. 7:36-12.2(c) and the Natural Heritage Data Request required under proposed N.J.A.C. 7:36-12.2(d) must also be submitted. For proposed development projects located in the areas regulated by the New Jersey Meadowlands Commission or the Pinelands Commission, applicants are required to submit to Green Acres evidence that a pre-application meeting was held with the appropriate Commission and that the Commission supports the proposed development.

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Proposed N.J.A.C. 7:36-12.5, Recreation and Open Space Inventory submissions, is substantively identical to N.J.A.C. 7:36-6.5 as it describes the Recreation and Open Space Inventory (ROSI) and related mapping that are required as part of an application for funding.

Subchapter 13. Local Government Unit Development Projects: Award Criteria, Application Ranking, Approval Procedures

Proposed N.J.A.C. 7:36-13.1, Project Award Criteria, establishes a point system for ranking development projects that is similar to that for local government unit acquisition projects at proposed N.J.A.C. 7:36-7.1, as described above. Acquisition-specific criteria, namely the extent to which the project satisfies the need for open space, meets environmental protection goals, creates or extends a greenway or protects a water resource, and has recreation development potential, have been omitted. Development-specific criteria have been included. These include the extent to which a project satisfies the statewide and local need for recreation facilities and the extent to which it is designed to include multiple recreation and conservation purposes, use effective landscaping, provide opportunities for use by diverse user groups, include significant tree plantings, minimize adverse impacts on the environmentally sensitive features of the site, and meet the standards of the U.S. Green Building Council.

As with acquisition projects, Green Acres has modified the project award criteria to give additional points to development projects that reflect Department priorities, such as water quality protection, creation of recreation and conservation opportunities in highly or densely populated municipalities or counties, reclamation of former brownfield sites, and adherence to the State Plan. The proposed new rules also provide a point under the ranking system for park development projects that support a school construction initiative in an "Abbott District" pursuant to N.J.A.C. 6A:10A, similar to acquisition projects.

Under proposed N.J.A.C. 7:36-13.2, Ranking, prior to recommending approval of development applications, Green Acres must rank each application in accordance with the project award criteria described at proposed N.J.A.C. 7:36-13.1 and determine how it compares to other applications in the same funding award category.

Proposed N.J.A.C. 7:36-13.3, Approval or Denial of An Application; Award of Funding; Procedural Letter, is substantively identical to proposed N.J.A.C. 7:36-8.1, as described above, except for the content of the procedural letter. Applicants for development projects are instructed to submit a preliminary assessment report for the project site, as described in proposed N.J.A.C. 7:36-13.4, just as for acquisition projects in proposed N.J.A.C. 7:36-8.2. For development projects, instead of requiring appraisals, the procedural letter directs the local government unit to submit a copy of the construction plans for the project that will be used when the local government unit seeks to bid the construction contract under proposed N.J.A.C. 7:36-14.2, accompanied by a signed Development Compliance Checklist, a Pre-Construction Engineering Certification Form, and proof that all required permits, approvals, or waivers have

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been obtained. The letter also states that the local government unit's attorney must certify that each contract awarded for the project was let in conformance with the Local Public Contracts Law. Finally, the local government unit is directed to erect and maintain a sign at the project site according to a construction sign detail provided by Green Acres that advises the public that Green Acres funding is being used for the development.

Proposed N.J.A.C. 7:36-13.4, Preliminary Assessment Report, describes the requirement that the local government unit must obtain a preliminary assessment report for each parcel to be developed as part of the project and is substantively identical to proposed N.J.A.C. 7:36-8.2.

Subchapter 14. Local Government Unit Development Projects: Project Agreement, Bid Procedures, Supplemental Funding, Construction Requirements, Site Inspections, Disbursements, of Loan or Matching Grant, Loan Repayment, Project Closeout, and Accounting and Recordkeeping Requirements

Proposed N.J.A.C. 7:36-14.1, Project Agreement, specifies the contents of the Green Acres project agreement between the local government unit and the Department. This section is nearly identical to proposed N.J.A.C. 7:36-9.1, regarding the project agreement for local government unit acquisition projects, as described above. The project agreement for development projects differs in that it does not reference deed requirements, and it provides the Department the ability to issue a stop work order to halt a particular development project as an additional remedy for the local government unit's noncompliance with the project agreement, the Green Acres Program rules, or the Green Acres laws.

Proposed N.J.A.C. 7:36-14.2, Bid Procedures, describes the requirements for bidding the contract(s) for the development project. Before the local government unit goes out to bid on a development project, it must first submit construction plans, a completed Development Compliance Checklist Form, Pre-Construction Engineering Certification Form, and proof that all necessary permits or waivers have been obtained for the project. The Development Compliance Checklist certifies that bid specifications and contracts meet affirmative action requirements, and that the project was designed to be barrier-free. The Pre-Construction Engineering Certification confirms that bid documents and contracts must require that facilities are constructed in accordance with all applicable State and local construction codes. Upon receipt of these items, Green Acres will review the documents and, if they are adequate, send a letter to the local government unit verifying that the construction plans are consistent with the approved project scope and authorizing the local government unit to solicit bids on the project construction contracts. The local government unit must include in the invitation to bid a statement that Green Acres funding is being used for the project and that suspended, disqualified, or debarred vendors cannot participate in the project.

Proposed N.J.A.C. 7:36-14.3, Supplemental Funding, provides that local government units may request funding in excess of the Green Acres award. Green Acres bases its funding recommendation to the GSPT on the local government unit's estimate of construction costs and

other allowable costs provided in the application for funding. If the local government unit has bid the project at least two times and the bids are greater than the Green Acres award (taking into consideration other allowable costs and the local government unit's matching share, if applicable), the local government unit is eligible to request supplemental funds. Also, if there are contract cost overruns and Green Acres has determined that the cost of the work covered by the change order(s) under proposed N.J.A.C. 7:36-14.4(c) are allowable under these rules and the project agreement, Green Acres may approve supplemental funds. When supplemental funding is approved, the Department and the local government unit must enter into an amendment to the project agreement described at proposed N.J.A.C. 7:36-14.1. As with all requests for Green Acres funding, the approval of supplemental funds is subject to available funding.

Proposed N.J.A.C. 7:36-14.4, Construction Requirements; Site Inspections, provides that, once construction has begun, the local government unit is responsible for ensuring that the project is completed in accordance with the project agreement. Green Acres staff also will periodically inspect the project site. The local government unit must submit any change orders, processed in accordance with the Local Public Contracts Law, to Green Acres. Change orders should be submitted prior to implementation so Green Acres can determine if the costs are allowable under these rules and the project agreement. The local government unit is required to erect and maintain a sign at the project site during the construction that will advise the public that Green Acres funding is being used for the development.

Proposed N.J.A.C. 7:36-14.5, Disbursement of Loan or Matching Grant. Under the existing rules, development project payments are made either as reimbursement after the local government unit incurs allowable costs or in anticipation of incurring allowable costs, but not more than thirty days before the local government unit needs to make a payment to a project contractor as required under existing N.J.A.C. 7:36-14.5(f). Under the proposed new rules, Green Acres may disburse all or the majority of the funding in advance of the local government unit incurring the allowable project costs. This change was made to expedite the release of funding to the local government unit once certain procedural requirements have been met. The Department has determined that bidding the project, awarding the construction contract, and beginning construction of the development project constitutes a sufficient basis for releasing the approved funds. The entire amount of a loan award can be released in advance, allowing the local government unit to begin repayments under N.J.A.C. 7:36-14.7. The Department shall disburse only 90 percent of a grant in advance. Withholding a small portion of the grant provides the State with additional assurance that the project will be completed as approved and all items required for project closeout under N.J.A.C.7:36-14.6 will be submitted in a timely manner, at which time the balance of the grant payment will be disbursed. Under the existing rules, Green Acres also has certain limitations regarding minimum payment amounts or frequency of disbursements; the proposed new rules no longer contain those limitations because they are no longer necessary in light of the advance payment provision. The processes for requesting, processing, and receiving payment; terminating the project; and recording the declaration are substantively the same as those for acquisition projects as described above at proposed N.J.A.C. 7:36-9.4.

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Proposed N.J.A.C. 7:36-14.6, Project Closeout, directs the local government unit to submit to Green Acres certain documentation to verify that the development project has been completed in accordance with the project agreement. These include a record drawing showing the project as built and a certification that the project was constructed in accordance with the plans submitted under proposed N.J.A.C. 7:35- 13.3(d). The proposed new rules now also require photographs of the completed facility(ies) to assist Green Acres during future inspections. After receipt of the required documents, Green Acres will conduct a final site inspection of the project site and deliver a sign the local government unit must post at the project site that identifies the parkland as a Green Acres funded site that is permanently dedicated to recreation and conservation purposes.

Proposed N.J.A.C. 7:36-14.7, Terms of Loan Repayment, which describes the interest rates and repayment term of the loan, and proposed N.J.A.C. 7:36-14.8, Accounting and Recordkeeping, which describes the local government unit's responsibilities related to maintaining project-related records and conducting audits, are substantively the same as proposed N.J.A.C. 7:36-9.5 and proposed N.J.A.C. 7:36-9.5, as described above.

Subchapter 15. Nonprofit Acquisition Projects: Project Eligibility, Conditions and Limitations

Proposed N.J.A.C. 7:36-15.1, General Provisions and Funding Policies, is similar to existing N.J.A.C. 7:36-4.1 for local government unit acquisition projects, as described above. This section specifies that nonprofits can apply to Green Acres for 50 percent matching grant funding to acquire land for recreation and conservation purposes. Unlike the local government units, however, a nonprofit is not required to submit a Recreation and Open Space Inventory or to permanently restrict all of its parkland to recreation and conservation purposes. As required by the Garden State Preservation Trust Act, a nonprofit must donate to the State a conservation or historic preservation restriction, as applicable, on the land acquired using Green Acres funding. The proposed new rules emphasize that all land acquired by nonprofits with Green Acres funding must be accessible to the public, unless the Department's Commissioner determines that public accessibility would pose an unacceptable risk to the land or its natural resources.

As with acquisitions by local government units, this subsection clarifies that Green Acres will not disburse to a nonprofit more than the nonprofit paid for the project site plus other allowable project costs. This is critical to ensuring that no nonprofit makes a profit on a land preservation project funded by Green Acres. Under this subsection, as for local government units under proposed N.J.A.C. 7:36-3.2, a nonprofit that is not in compliance with the requirements of this chapter regarding any other previously approved Green Acres project, may be ineligible for funding until such noncompliance is resolved to the Department's satisfaction.

N.J.A.C. 7:36-15.2, Eligible Projects and Funding Policies, N.J.A.C. 7:36-15.3, Ineligible projects, N.J.A.C. 7:36-15.4, Acquisition of Structures, and N.J.A.C. 7:36-15.5, Acquisition of Waterfront Land are identical to N.J.A.C. 7:36-4.2, 4.3, 4.4, and 4.5, as described above, which

contain similar provisions for the types of acquisition projects that can be funded by Green Acres.

Proposed N.J.A.C. 7:36-15.6, Acquisition of Agricultural Lands, is substantively identical to proposed N.J.A.C. 7:36-4.6, as described above, with one exception. Proposed N.J.A.C. 7:36-4.6(a) lists a number of conditions under which farmland can be acquired by a local government unit if there is not a willing seller. These conditions are not included in proposed N.J.A.C. 7:36-15.6 because a nonprofit does not have the right to condemn property and thus can only acquire land from willing sellers.

Proposed N.J.A.C. 7:36-15.7, Acquisition of Conservation Restrictions or Historic Preservation Restrictions, is similar to proposed N.J.A.C. 7:36-4.7, as described above. The Garden State Preservation Trust Act specifically requires that any interest in land acquired by a nonprofit with Green Acres funding must provide public access. It is assumed that land acquired in fee simple will provide public access. When a fee simple acquisition is not possible, the rules provide some flexibility by allowing nonprofits to purchase conservation or historic preservation restrictions on land that provides for public access or, at a minimum, that is adjacent to parkland within the nonprofit's project site that provides for access and is being acquired with Green Acres funding under the nonprofit's project. In the latter case, however, Green Acres will limit its funding of land acquisition costs to half of what the nonprofit would otherwise be eligible to receive for the purchase of the restriction, similar to N.J.A.C. 7:36-4.7(d) for local government unit acquisitions.

Proposed N.J.A.C. 7:36-15.8, Matching Share; Donations Toward the Cost of Acquisition, is substantively identical to proposed N.J.A.C. 7:36-4.8, as described above, which provides similar guidance about what matching funds can be used to fund the Green Acres acquisition project.

Proposed N.J.A.C. 7:36-15.9, Allowable Project Costs, is substantively identical to proposed N.J.A.C. 7:36-4.9, as described above, except that it does not include relocation payments to persons, families, or businesses displaced by an acquisition since nonprofits are not liable for relocation payments. Also, the proposed new rules require the nonprofit to advertise and award any construction contract, such as for the demolition of structures, in accordance with the Local Public Contracts Law. Although this law does not specifically apply to nonprofit organizations, the Department has determined that this requirement is reasonable to ensure the fair and equitable awarding of demolition contracts with public funds.

Subchapter 16, Nonprofit Acquisition Projects: Funding Award Categories

Under the existing rules, there is only one Green Acres funding category of nonprofit acquisitions, which is identified in the proposed new rules as the Standard acquisition project category. The Garden State Preservation Trust Act allowed for a new planning-based category of nonprofit acquisitions, which the proposed new rules identify as the Planning Incentive

acquisition category. In reviewing the scope and success of some nonprofits, it was clear that this new category would help to address the unique needs of the more active land preservation organizations in New Jersey.

A Standard acquisition project is undertaken by a nonprofit that generally is working independently and focusing on a relatively small project site, usually one parcel or a unified group of parcels. A Planning Incentive acquisition project can be undertaken by a nonprofit that is working in cooperation with a local government unit to help implement the local government unit's Open Space and Recreation Plan. A Planning Incentive project also can be undertaken by a nonprofit that is successfully focusing its preservation efforts on more than one region of the State. These nonprofits can be pursuing the preservation of lands described in their own acquisition plan(s), the OSRP(s) of one or more local government unit, or some other public or private plan or preservation initiative approved by Green Acres.

Subchapter 17. Nonprofit Acquisition Projects: Application Process

Proposed N.J.A.C. 7:36-17.1, Timing, and N.J.A.C. 7:36-17.2, Preapplication Procedures, are substantively identical to proposed N.J.A.C. 7:36-6.1 and 6.2, as described above, except that the nonprofit does not need to hold a public hearing, as is required of local government units. Instead, the nonprofit must publish a notice in the newspaper of each municipality in which the proposed project site is located and send a letter to the clerk of the municipality(ies), both of which must state that the acquisition application has been submitted to Green Acres and is available for review at the Green Acres office. Under proposed N.J.A.C. 7:36-17.4, Application Requirements, the nonprofit must provide to Green Acres proof of publication of the newspaper notice(s) and a copy of the letter(s) to the relevant municipalities.

Proposed N.J.A.C. 7:36-17.3, At-risk Authorization to Proceed with Acquisition, requires the nonprofit to obtain permission from Green Acres prior to proceeding with an acquisition of a parcel before the Garden State Preservation Trust has approved its application for funding and Green Acres has established the eligible land cost for the parcel. It is substantively the same as N.J.A.C. 7:36-6.3, as described above.

Proposed N.J.A.C. 7:36-17.4, Application Requirements, contains the submittal and procedural requirements of a Green Acres nonprofit acquisition application. The application requirements are substantively the same as those for local government units seeking to acquire land using Green Acres funding, described above at proposed N.J.A.C. 7:36-6.4, except the nonprofit is not required to submit a Recreation and Open Space Inventory. The nonprofit is required to submit its by-laws and a letter from its attorney certifying that it qualifies as a nonprofit under this chapter.

As with local government unit Standard acquisition applications under proposed N.J.A.C. 7:36-6.4(a), the requirements for nonprofit Standard acquisition applications include general application information as well as site-specific information.

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Nonprofit Planning Incentive acquisition projects require the same general application information as Standard acquisition projects, such as the application form, proof of eligibility, and copies of the required letter(s) to the municipality(ies) and newspaper notices. In addition, the nonprofit must submit the appropriate municipal or county Open Space and Recreation Plan and, if applicable, a letter from the local government unit(s) in which the project site is located, stating that the nonprofit is assisting the local government unit in its acquisition efforts. Or, for more regional or statewide Planning Incentive projects, the nonprofit must submit the appropriate plan(s) for each municipality and/or region in which the acquisition(s) will occur. As with local government units, nonprofit Planning Incentive applications have fewer submission requirements because, at the time of application, the nonprofit may not yet have identified the particular parcel or parcels it will initially acquire. Instead of basing its review on the features of a specific parcel of land, as is done for Standard acquisition projects, Green Acres would base its review on the nonprofit's successful planning efforts.

As with local government unit projects, Green Acres acknowledges receipt of all nonprofit acquisition applications, inspects the project site, and requires the nonprofit to report any changes to the project site, if known, that may affect Green Acres' consideration of the application.

Subchapter 18. Nonprofit Acquisition Projects: Award Criteria, Ranking and Evaluation

The project award criteria at proposed N.J.A.C. 7:36-18.1, which are used to evalutate applications for acquisition funding, are nearly identical to those for local government unit acquisition projects at proposed N.J.A.C. 7:36-7.1, as described above. The variations relate to certain criteria applicable only to local government units. Under proposed N.J.A.C. 7:36-18.2, Ranking and Evaluation, Green Acres ranks each project in the standard category in accordance with the project award criteria described at proposed N.J.A.C. 7:36-18.1, comparing it with other applications in the same category and funding round. Green Acres evaluates Planning Incentive applications in a manner similar to local government unit Planning Incentive applications, as described at N.J.A.C. 7:36-7.2, except that nonprofits are not responsible for the planning efforts of the local government unit(s) in which the development project site is located and therefore are not evaluated based on such planning efforts.

Subchapter 19. Approval, Preliminary Assessment, and Appraisal Procedures; Determination and Notification of Eligible Land Cost is substantively identical to proposed N.J.A.C. 7:36-8, as described above. Proposed Subchapter 19 describes how Green Acres makes recommendations to the Garden State Preservation Trust regarding projects to be approved or denied, describes the requirement that the nonprofit obtain a preliminary assessment of the project site, provides guidance to the nonprofit in obtaining appraisals of the project site, and establishes how Green Acres establishes and provides to the nonprofit the eligible land cost and hypothetical land value for a parcel.

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Subchapter 20. Nonprofit Acquisition Projects: Project Agreement, Negotiations for Purchase of Project Site, Supplemental Funding, Disbursement of Matching Grant, and Accounting and Recordkeeping Requirements

Proposed N.J.A.C. 7:36-20.1, Project Agreement, specifies the contents of the project agreement between the nonprofit and the Department. This section is similar to proposed N.J.A.C. 7:36-9.1, regarding the project agreement for local government unit acquisition projects, as described above.

The agreement contains conditions that are specifically required for nonprofit projects under the GSPT Act. For example, the nonprofit must agree to donate to the State a permanent conservation restriction, historic preservation restriction, or both, as applicable, on the project site. Green Acres will prepare the conservation or historic preservation restriction. The nonprofit also must provide public access to the project site, unless the Commissioner determines such access would pose an unacceptable risk to the land or its natural resources. Also, the project agreement allows that the nonprofit may transfer its interest in the project site to another nonprofit, a local government unit, the State, or the Federal government, provided Green Acres has issued written approval of such transfer in advance. Green Acres shall return to the nonprofit one fully executed project agreement that contains the conservation restriction or historic preservation restriction that the nonprofit must have recorded as required under N.J.A.C. 7:36-20.4.

Proposed N.J.A.C. 7:36-20.2, Negotiations for Purchase of Project Site, establishes when and by whom negotiations for the nonprofit's acquisition may be conducted and is substantively identical to proposed N.J.A.C. 7:36-9.2 for local government units.

Proposed N.J.A.C. 7:36-20.3, Supplemental Funding, is similar to proposed N.J.A.C. 7:36-9.3 for local government units. One difference is that, since nonprofits cannot condemn property, the allowance for additional funds based on a condemnation award is not included in this section. Also, nonprofits are not eligible for additional funding to avoid condemnation as local governments are under N.J.A.C. 7:36-9.3-(b)4.

Under proposed N.J.A.C. 7:36-20.4, Disbursement of Matching Grant, nonprofit acquisition project payments will be made either as a reimbursement after the nonprofit takes title to the land or as a payment in advance of closing. The requirements for payment requests are substantively identical to those for local government units acquiring land at proposed N.J.A.C. 7:36-9.4, as described above. The requirements regarding the transmittal of invoices and grant disbursements, and the consequences of a delayed closing are also the same as those applicable to local government units under proposed N.J.A.C. 7:36-9.4. At the time of closing, or immediately upon receipt of the matching grant disbursement, the nonprofit shall have the conservation restriction or historic preservation restriction recorded by the county clerk or registrar as a first encumbrance on the project site. The recorded restriction must be returned to Green Acres.

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Proposed N.J.A.C. 7:36-20.5, Accounting and Recordkeeping, describes the nonprofit's responsibilities for accounting, recordkeeping, and audits related to the use of Green Acres funding. This subsection is substantively identical to proposed N.J.A.C. 7:36-9.6 for local government units, as described above.

Subchapter 21. Nonprofit Development Projects: Project Eligibility

The Garden State Preservation Trust Act included a provision authorizing Green Acres to provide matching grants to nonprofits for the development of land for outdoor recreational and conservation purposes. Subchapters 21 through 24 in the proposed new rules set forth the administrative processes and requirements pertaining to nonprofit development funding. These subchapters are substantively identical to those pertaining to local government unit development funding, with variations as required and described below.

Proposed N.J.A.C. 7:36-21.1, General Provisions and Funding Policies, is substantively identical to proposed N.J.A.C. 7:36-10.1, as described above. One notable difference is that development projects sponsored by nonprofit organizations must be located in an Urban Aid, Densely Populated, or Highly Populated Municipality, or in 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 substantially less money available for nonprofit development funding, as compared to development funding to local government units. The intent of these eligibility limits is to encourage nonprofit organizations to focus their efforts and these resources towards providing recreation and open space opportunities in the State's urban and older suburban areas where the majority of New Jersey's residents live, and where such opportunities are more limited. There is only one category of nonprofit development projects because, unlike local government unit development projects, varying levels of grant ratios cannot be offered for nonprofit projects. As with acquisition projects, nonprofits are eligible to apply to Green Acres for 50 percent matching grant funding for development projects.

Proposed N.J.A.C. 7:36-21.2, Eligible Projects, and proposed N.J.A.C. 7:36-21.3, Ineligible Projects, which describe the types of projects that can and cannot be developed with Green Acres funding, are substantively identical to proposed N.J.A.C. 7:36-10.2 and proposed N.J.A.C. 7:36-10.3. Proposed N.J.A.C. 7:36-21.4, Dredging of a Pond, Lake, or Segment of a Stream or River, describes the conditions under which Green Acres will consider funding a dredging project, and is substantively identical to proposed N.J.A.C. 7:36-21.4. Proposed N.J.A.C. 7:36-21.5, Development on Landfills, is substantively identical to proposed N.J.A.C. 7:36-21.5 which establishes the conditions under which Green Acres will fund a development on a former landfill.

Proposed N.J.A.C. 7:36-21.6, Allowable Project Costs, lists the costs associated with the development project that are eligible for funding by Green Acres and is substantively identical to proposed N.J.A.C. 7:36-10.6. As with local government unit development projects, proposed

N.J.A.C. 7:36-21.6 requires that nonprofits conform to the Local Public Contracts Law. Although this law does not specifically apply to nonprofit organizations, the Department has determined that this requirement is reasonable to ensure the fair and equitable awarding of contracts with public funds. Proposed N.J.A.C. 7:36-10.7, Matching Share; Donations Toward the Cost of Development, is substantively identical to proposed N.J.A.C. 7:36-21.7, that lists the types of funding that the nonprofit can use as its matching share of the development project costs.

Subchapter 22. Nonprofit Development Projects: Application Process

The timing and pre-application processes for nonprofit development projects set forth at proposed N.J.A.C. 7:36-22.1 and 22.2 are substantively identical to those for nonprofit acquisition projects set forth at proposed N.J.A.C. 7:36-17.1 and 17.2, as described above. Proposed N.J.A.C. 7:36-22.3, At-Risk Authorization to Proceed with Development, and proposed N.J.A.C. 7:36-22.4, Application Requirements, are substantively identical to proposed N.J.A.C. 7:36-12.3 and proposed N.J.A.C. 7:36-12.4 for local government unit development projects, as described above. One difference in the application requirements is that, as with nonprofit acquisition applications at proposed N.J.A.C. 7:36-17.4, the nonprofit seeking Green Acres development funding must submit a copy of its by-laws and a letter from its attorney certifying that it qualifies as a nonprofit under this chapter.

Subchapter 23. Nonprofit Development Projects: Award Criteria, Application Ranking, Approval Procedures

Proposed N.J.A.C. 7:36-23, Award Criteria, Application Ranking, Approval Procedures, describes the point system and ranking methods used to evaluate nonprofit development applications as well as the procedural steps required after the Garden State Preservation Trust approves or denies a nonprofit development application. Proposed N.J.A.C. 7:36-23 is substantively identical to proposed N.J.A.C. 7:36-13 regarding local government unit development projects, as described above, except that, as with nonprofit acquisition projects, during the application review process, nonprofits are not responsible for the planning efforts of the local government unit(s) in which the development project site is located and therefore are not evaluated based on such planning efforts. As discussed above, the approval procedures described in proposed N.J.A.C. 7:36-23.3 include the requirement that the nonprofit must let all contracts in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. Again, although nonprofits are not normally subject to this law, the Department has determined that this requirement is reasonable to ensure the fair and equitable awarding of contracts with public funds.

Subchapter 24. Nonprofit Development: Project Agreement, Bid Procedures, Supplemental Funding, Construction Responsibility, Disbursements, Loan Repayment, Project Closeout, and Accounting and Recordkeeping Requirements

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Proposed N.J.A.C. 7:36-24.1, Project Agreement, specifies the contents of the Green Acres project agreement between the nonprofit and the Department and is similar to the requirements for a local government unit development project described above at proposed N.J.A.C. 7:36-14.1. The project agreement for nonprofit development projects also contains conditions that are specifically required for nonprofit projects under the Garden State Preservation Trust Act, as with the nonprofit acquisition project agreements described at proposed N.J.A.C. 7:36-20.1. For example, the nonprofit must agree to donate to the State a permanent conservation restriction, historic preservation restriction, or both, as applicable, on the project site. Green Acres must prepare the conservation or historic preservation restriction so that it applies to the development project. As discussed at proposed N.J.A.C. 7:36-15.1, (General provisions for nonprofit acquisition projects) public access is required on land acquired by a nonprofit with Green Acres funding, except if such access would pose an unacceptable risk to the site's natural resources. This exception does not apply to nonprofit development projects, because any development that would pose such a risk would not be approved by the Garden State Preservation Trust. All nonprofit development projects therefore must provide for public access.

Proposed subchapters N.J.A.C. 7:36-24.2 through -24.7 are substantively identical to proposed N.J.A.C. 7:36-14.2 through -14.6 for local government unit development projects, as described above. Specifically, proposed N.J.A.C. 7:36-24.2, Bid Procedures, describes the requirements for bidding the contract(s) for the development project. Proposed N.J.A.C. 7:36-24.3, Supplemental Funding, provides that nonprofits may request funding in excess of the Green Acres award. Proposed N.J.A.C. 7:36-24.4 Construction requirements, site inspections, provides that, once construction has begun, the nonprofit is responsible for ensuring that the project is completed in accordance with the project agreement. Proposed N.J.A.C. 7:36-24.5, Disbursement of matching grant, lists the items that the nonprofit must submit to obtain a grant disbursement from Green Acres. Proposed N.J.A.C. 7:36-24.6, Project Closeout, directs the nonprofit to submit to Green Acres certain documentation to verify that the development project has been completed in accordance with the project agreement. Finally, proposed N.J.A.C. 7:36-24.7, Accounting and Recordkeeping, describes the nonprofit's responsibilities related to maintaining project-related records and conducting audits.

SUBCHAPTERS 25 AND 26

Post Acquisition and Post-Development Requirements

The Green Acres statutes and bond acts impose certain restrictions on the use, conveyance or transfer of parkland which has been acquired or developed with Green Acres funding ("funded parkland"), or which a local government unit held for recreation and conservation purposes at the time it received Green Acres funding ("unfunded parkland"). The proposed rules in subchapters 25 and 26 recodify existing Green Acres rules at N.J.A.C. 7:36-20 and 21 but also incorporate a number of changes designed to implement the GSPT Act and to incorporate more stringent measures to protect all Green Acres-encumbered parkland from being disposed of or diverted to non-recreation or non-conservation purposes.

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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

N.J.A.C. 7:36-25.1, Maintenance requirements for funded parkland; compliance inspection, recodifies existing N.J.A.C. 7:36-20.1 with several substantive changes. This section requires local government units and nonprofits to adequately maintain funded parkland, including any recreation and conservation facilities on the parkland. Green Acres staff will regularly inspect funded parkland to ensure it is properly maintained and that the parkland is otherwise in compliance with the use requirements of the project agreement, the Green Acres Program rules, and the Green Acres laws. Green Acres will notify the local government unit or nonprofit in advance of each inspection and will send a summary of the findings of the inspection after it is completed. This letter will direct the local government unit or nonprofit to correct any instances of noncompliance with the terms of the project agreement or the Green Acres Program rules and laws.

New language at proposed N.J.A.C. 7:36-25.1(c)2 and 5 will incorporate the process by which Green Acres reviews fee schedules for funded parkland into the parkland inspection process. Currently, fee schedule review is addressed at N.J.A.C. 7:36-20.6(f).

Proposed N.J.A.C. 7:36-25.1(c)3 will require local government units and nonprofits to provide to the Department, on or before the date of the inspection, a copy of any lease, use agreement or concession agreement that applies to the funded parkland. Although proposed N.J.A.C. 7:36-25.13 and 25.14 will continue the Department's practice of requiring preapproval of such leases, use agreements and concession agreements, proposed N.J.A.C. 7:36-25.1(c)3 is designed as a check on compliance with these requirements. In instances where the local government unit or nonprofit has not obtained preapproval of the lease, use agreement or concession agreement as required by proposed N.J.A.C. 7:36-25.13 and 25.14, the Department will provide comments on and take appropriate enforcement action with respect to such agreements through the parkland inspection process. See proposed N.J.A.C. 7:36-25.1(c)5iii.

In addition, a new subsection at proposed N.J.A.C. 7:36-25.1(d) reiterates the Department's longstanding policy concerning the failure of a local government unit or nonprofit to correct an instance of noncompliance identified by the Department in the time frame specified by the Department through the parkland inspection process. As in the past, continued noncompliance may render the local government unit ineligible to receive Green Acres funding as provided in N.J.A.C. 7:36-3.2 or the nonprofit ineligible to receive Green Acres funding as provided in N.J.A.C. 7:36-15.1 and 21.1, or may subject the local government unit or nonprofit to legal action by the Department as appropriate to enforce the terms and conditions of the original project agreement under which the local government unit or the nonprofit received Green Acres

funding.

N.J.A.C. 7:36-25.2, Disposal or diversion of funded parkland and unfunded parkland, exceptions, prohibits a local government unit or nonprofit from disposing of or diverting funded or unfunded parkland to a use for other than recreation and conservation purposes without the approval of the Commissioner and the State House Commission. This section recodifies N.J.A.C. 7:36-20.2 with several clarifying and substantive amendments.

The statement at proposed N.J.A.C. 7:36-25.2(a) and (b) that the diversion or disposal of funded or unfunded parkland without the prior approval of the Commissioner and the State House Commission is void and of no legal effect codifies the rulings of the New Jersey courts in several Green Acres-related cases, particularly *First American Title Ins. Co. v. Township of Rockaway*, 322 *N.J. Super*. 583, 592 (Ch. Div. 1999).

The Department has expanded the illustrative list of activities that may constitute diversions at proposed N.J.A.C. 7:36-25.2(c) (current N.J.A.C. 7:36-20.2(e)) to include billboards and communications towers and antennas, and to clarify that subsurface easements can constitute a diversion. As in the current version of the Green Acres rules, this list presumes that the listed activities are not conducted for a recreation and conservation purpose. For example, internal park roads do not usually constitute a diversion of parkland, but a new through road or the widening of a County or State road on the edge of a park may constitute a diversion because they are not primarily for a recreation or conservation purpose.

In general, a local government unit cannot convey or transfer funded or unfunded parkland without the approval of the Commissioner and the State House Commission, through the approval process described at proposed N.J.A.C. 7:36-26. Exceptions to this policy are listed at proposed N.J.A.C. 7:36-25.2(d) and include certain regional flood control projects, certain grandfathered leaf composting facilities, certain building demolitions, administrative transfers of parkland (addressed in more detail at proposed N.J.A.C. 7:36-25.5) and the designation of certain parking lots on parkland for dual use by commuters (addressed in more detail at proposed N.J.A.C. 7:36-25.15).

In addition, proposed N.J.A.C. 7:36-25.2(d)6 would allow municipalities or Counties which own parkland through which a municipal or County drainage, sewer or water utility runs but for which a formal easement was never recorded to assume an easement width of 20 feet (as calculated by measuring ten feet on each side from the center of the pipe or drainage structure) for the purpose of future replacement or enlargement of the line. The 20-foot assumed easement width is based on a survey of past easements approved by the Department through the diversion process and on consultation with several engineers active in the diversion field concerning typical minimum easement widths. Proposed N.J.A.C. 7:36-25.2(d)6 would not allow municipalities or Counties to co-locate non-municipal or non-County utilities (such as BPU-regulated electric lines or natural gas lines) within the assumed easement corridor, and would not allow the conversion of these corridors to roads for utility purposes without prior approval as a

diversion. Similar language at proposed N.J.A.C. 7:36-25.2(d)7 would allow parkland owners to assume a right of way for existing bridges in connection with bridge replacements. The width of the assumed right of way for bridges will vary depending on the width of the road rights of way on either end of the bridge.

Proposed N.J.A.C. 7:36-25.2(d)8 and 9 codify and clarify the Department's longstanding policy that certain leases of funded parkland do not constitute a diversion of parkland. The 25-year limitation in proposed N.J.A.C. 7:36-25.2(d)8 is based on Section 32 of the GSPT Act (N.J.S.A. 13:8C-32(b)), which imposes a 25-year limit on recreational leases of funded parkland.

N.J.A.C. 7:36-25.3, Amendment of Recreation and Open Space Inventory (ROSI), recodifies the amendment process at existing N.J.A.C. 7:36-20.3, but also incorporates a number of changes designed to implement the holding of the New Jersey Superior Court in *In re Amendment to Recreation of Open Space Inventory of the City of Plainfield to Remove Park-Madison Site, Block 246, Lot 1*, 353 *N.J. Super* 310 (App. Div. 2002) ("the *Plainfield* case"). In the *Plainfield* case, the court opined that the N.J.A.C. 7:36-20.3 procedure for amending ROSIs must be construed as an exception to the diversion process, and that this exception must be construed strictly so it does not "swallow up" the statutory mandate against diversions and the administrative diversion process. Based on this conclusion, the Court ruled that a public body such as the City of Plainfield should not be allowed to remove a property from its ROSI "except in the clearest case of a bona fide inaccuracy in its filed ROSIs for the relevant years."

In order to implement the Court's opinion in the *Plainfield* case, the Department has proposed changes to the ROSI amendment process designed to create a presumption that a parcel listed on a ROSI is parkland (proposed N.J.A.C. 7:36-25.3(c)), clarify that the burden of proof is on the local government unit requesting the amendment (proposed N.J.A.C. 7:36-25.3(d)), expanding and clarifying the list of factors the Department evaluates in determining if a parcel was "held" for recreation and conservation purposes during the relevant time frame (proposed N.J.A.C. 7:36-25.3(f)), strengthening the public notice and hearing requirements for ROSI amendment requests (proposed N.J.A.C. 7:36-25.3(h)) and incorporating the "bona fide error" standard of the *Plainfield* case as a substantive decisionmaking criterion (proposed N.J.A.C. 7:36-25.3(j)).

Proposed N.J.A.C. 7:36-25.3(a) and (b) recodify current N.J.A.C. 7:36-20.3(a) with editorial changes.

As discussed above, consistent with the *Plainfield* case, proposed N.J.A.C. 7:36-25.3(c) would create a presumption that a parcel listed on a ROSI is Green Acres-encumbered parkland, and would require a local government unit to rebut this presumption in order to remove the parcel form the ROSI. Proposed N.J.A.C. 7:36-25.3(d) contains new language specifying that the burden of proof for ROSI amendment requests is on the local government unit, not the Department, and that the failure of the local government unit to adequately document its amendment request may be sufficient grounds for the Department to deny the request.

New language at proposed N.J.A.C. 7:36-25.3(e) would clarify that the addition of a newly funded 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 does not require a ROSI amendment but that any 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.

Proposed N.J.A.C. 7:36-25.3(f) recodifies the current N.J.A.C. 7:36-20.3(c) with several changes designed to clarify the current criteria and to implement the ruling in the *Plainfield* case. In addition, subsequent to the Appellate Division's decision in the *Plainfield* case, L. 2002, c. 124 (codified at N.J.S.A. 13:8A-47 and N.J.S.A. 13:8C-32) created a statutory exception under which the temporary use for recreation and conservation purposes of lands included in a redevelopment plan adopted prior to July 18, 2002 does not subject those lands to the Green Acres diversion requirements and process (as unfunded parkland) when the lands are eventually used for other purposes as designated in the redevelopment plan. The statute sought to clarify the interface between the Green Acres laws and the 1992 "Local Redevelopment and Housing Law," N.J.S.A. 40A:12A-1 et seq. and to apply the Court's holding in the *Plainfield* case prospectively, not retroactively. The exemption created by the statute does not apply to lands 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, the Federal "Urban Park and Recreation Recovery Act of 1978," or a County or local open space trust fund. The statute also includes a provision allowing a municipality that adopted a redevelopment plan prior to the date of the court opinion to opt instead to include the lands in question on its ROSI as unfunded parkland, thereby subjecting them to the Green Acres diversion requirements. The L. 2002, c. 124 exemption is set forth at proposed N.J.A.C. 7:36-25.3(f)4 as one of the factors the Department will evaluate in determining whether a property belongs on a ROSI.

Proposed N.J.A.C. 7:36-25.3(g) contains the procedure for the Department's review of a ROSI amendment request initiated by a local government unit. This subsection incorporates and expands the language at current N.J.A.C. 7:36-20.3(d) and (e).

In proposed N.J.A.C. 7:36-25.3(h), and elsewhere through proposed N.J.A.C. 7:36-25 and 26, the Department has proposed a number of expanded public notice and hearing requirements designed to ensure that citizens concerned about the diversion or disposal of parkland, or the removal of parkland from a ROSI, are given adequate notice and opportunity to comment on parkland-related matters pending before the Department. In the past, hearings on ROSI amendment requests were limited to situations where Green Acres determined there was sufficient public interest in the removal of a property from the local government unit's ROSI. However, the *Plainfield* case and other ROSI disputes over the past five years demonstrated that the "sufficient public interest" standard did not adequately protect the public since the public did not always know that the local government unit had requested a ROSI amendment and often did not express its interest until after it was informed of the Department's decision on the request. Therefore, given the *Plainfield* case's presumption that the listing of a property on a ROSI is valid until proven otherwise, proposed N.J.A.C. 7:36-25.3(g)3 will make public hearings

mandatory for most ROSI amendment requests. The exceptions to this public hearing requirement will be (1) where the Department determines that a request to correct block and lot identifications or a typographical error in the listing of the size of a parcel has unequivocal merit (proposed N.J.A.C. 7:36-25.3(g)1); (2) where a local government unit requests to establish the true size of the parkland based on a survey reviewed and approved by the Department (proposed N.J.A.C. 7:36-25.3(g)1); (3) where the Department determines on the basis of the information provided by the local government unit that it never held the property in question (proposed N.J.AC. 7:36-25.3(g)1); or (4) where the Department determines on the basis of the information provided by the local government unit that the parcel or area in question was, in fact, held for recreation and conservation purposes at the time of receipt of Green Acres funding, and, therefore, that denial of the ROSI amendment request is appropriate (proposed N.J.A.C. 7:36-25.3(g)2). If the Department is not able to approve or deny the ROSI amendment request under one of these categories, the public hearing requirement at proposed N.J.A.C. 7:36-25.3(g)3 will apply. For example, if a local government unit provides information to establish that it never held the property in question, but the Department feels such information is not complete, a public hearing will be required.

In addition to continuing the existing requirements for newspaper notice of pending applications and certified mail notice to neighboring property owners, applicants for a ROSI amendment, diversion or disposal will now be required to provide additional notice in the form of (1) postings on municipal or County web sites (if such a site exists) (proposed N.J.A.C. 7:36-25.3(h)2ii); (2) written notice to certain government entities including environmental commissions and open space advisory bodies (proposed N.J.A.C. 7:36-25.3(h)2iii); and (3) the posting of a sign on the affected parkland or property (proposed N.J.A.C. 7:36-25.3(h)2v). The Department considers the signage requirement to be a particularly important form of notice, since regular users of the parkland or property may not see the required legal notices and/or display ad. In addition to the expanded notice requirements, proposed N.J.A.C. 7:36-25.3(h)4 now prescribes the minimum content of the public hearing notice, requires the information submitted to the Department in support of the ROSI amendment request to be available for inspection at the public library serving the municipality in which the local government unit is located and the local government unit's business offices, and requires the local government unit to accept written comment on the ROSI amendment request during a public comment period that will close two weeks after the hearing date. Upon conclusion of the public hearing, proposed N.J.A.C. 7:36-25.3(i) requires the local government unit to provide the Department with proof of publication, mailing and posting of the required public hearing notices, a copy of the transcript of the public hearing, a summary of the public comments and the local government unit's responses, and copies of any information submitted by commenters at the public hearing.

Proposed N.J.A.C. 7:36-25.3(i) through (l) contain the procedure for the Department's approval or denial of a ROSI amendment request initiated by a local government unit. These subsections incorporate and expand the language at current N.J.A.C. 7:36-20.3(e) and (f).

Proposed N.J.A.C. 7:36-25.3(m) would continue the practice at current N.J.A.C. 7:36-20.3(g) of allowing the Department to initiate a ROSI amendment request, with amendments designed to make this procedure consistent with the other changes to this section.

Proposed N.J.A.C. 7:36-25.3(n) states that once the Department determines under proposed N.J.A.C. 7:36-25.3(m)3ii that a parcel was held for recreation and conservation purposes at the time of receipt of Green Acres funding, and directs the local government unit to amend its ROSI, the failure of the local government unit to amend the ROSI and/or record the amended ROSI will not affect the validity of the statutorily-imposed Green Acres restrictions on the parcel.

Proposed N.J.A.C. 7:36-25.3(o) recodifies current N.J.A.C. 7:36-20.3(h) with language clarifying that third party appeal rights for ROSI amendments are limited to the local government unit and those with a constitutional right to a hearing.

N.J.A.C. 7:36-25.4, Development of parkland acquired as a grant incentive project, sets forth special requirements for a local government unit that wants to develop environmentally sensitive land acquired as a grant incentive project under current N.J.A.C. 7:36-5.1(b)1, to develop land with cultural, historic, or archaeological resources acquired as a grant incentive project under current N.J.A.C. 7:36-5.1(b)2, or to develop waterfront land acquired as a grant incentive project under current N.J.A.C. 7:36-5.1(b)3. Although the Department has now proposed to abolish the grant incentive category, continuation of this section is necessary to regulate the properties acquired by local government units previously under this category. For properties under this category, the Department and the local government units executed project agreements under current N.J.A.C. 7:36-9.1 containing special conditions requiring Green Acres approval before developing the grant incentive project site. Proposed N.J.A.C. 7:36-25.4 largely recodifies current N.J.A.C. 7:36-20.4, with changes designed to coordinate the approval process under this section with the change of use requirements at N.J.A.C. 7:36-25.6, including the public notice and hearing requirements of proposed N.J.A.C. 7:36-25.6

Proposed N.J.A.C. 7:36-25.5, Administrative Transfer of Funded or Unfunded Parkland, is a new section that combines the parkland transfer provisions of current N.J.A.C. 7:36-20.2(a) with the transfer provisions of Sections 27 and 34 of the GSPT Act (N.J.S.A. 13:8C-27c(3)(c) and N.J.S.A. 13:8C-34). This section contains specific procedural and substantive requirements that apply to transfers of parkland between the Federal government, the State, local government units and nonprofits, including notice to the Department of proposed transfers and Department review of transfer documents prior to and after the transfer to ensure that the land continues to be subject to Green Acres restrictions and that reasonable public access to the property continues to be allowed.

Proposed N.J.A.C. 7:36-25.6, Change in purpose or use of funded or unfunded parkland, is a new section based on Section 33 of the GSPT Act (N.J.S.A. 13:8C-33) and the Department's contractual and statutory powers over funded parkland. Under this section, local government units and nonprofits must comply with certain notice and hearing requirements prior to changing

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the recreation and conservation purpose for which funded or unfunded parkland is being used to another recreation or conservation purpose, including, but not limited to, developing the land for public recreation. The notice and hearing requirements of this section also apply to proposals by local government units to construct buildings for public indoor recreation on unfunded parkland and conversion of buildings originally constructed to support outdoor recreation to indoor recreation uses. While not a Department approval process (with one exception discussed below), the public notice and hearing requirements of this section are designed to give the public and the Department adequate notice of and opportunity to comment on proposed changes in use of funded or unfunded parkland prior to their implementation by a local government unit or nonprofit.

Proposed N.J.A.C. 7:36-25.6(a) incorporates the general statutory mandate concerning the need to conduct public hearings on and provide notice to the Department of changes in use of parkland (N.J.S.A. 13:8C-33), and includes specific notice requirements for the required public hearings.

Proposed N.J.A.C. 7:36-25.6(b), would require a local government unit or nonprofit to 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. This subsection is intended to give the Department, as the holder of a legal interest in funded parkland, a meaningful role in determining whether the proposed perpetual restriction is appropriate.

Proposed N.J.A.C. 7:36-25.6(c) and (d) provide guidance for local government units and nonprofits concerning activities that do and do not constitute a change in purpose or use under this section. Proposed N.J.A.C. 7:36-25.6(c) contains several examples of changes in purpose or use that require compliance with the procedures at proposed N.J.A.C. 7:36-25.6(a). The first example, proposed N.J.A.C. 7:36-25.6(c)1 is intended to address situations where a local government unit constructs recreation and conservation facilities, such as athletic fields or playgrounds, on undeveloped parkland. Although the Department does not use the terms “active recreation” and “passive recreation” in this chapter because of the difficulty of precisely defining these categories, proposed N.J.A.C. 7:36-25.6(c)1 is intended to apply to situations where parkland previously dedicated to “passive recreation” is to be converted to “active recreation.”

The second example, proposed N.J.A.C. 7:36-25.6(c)2, would classify as a change in purpose or use the conversion of buildings originally constructed on parkland in support of outdoor recreation to indoor recreation uses or purposes.

Similarly, proposed N.J.A.C. 7:36-25.6(c)3 would require compliance with the notice and hearing requirements of proposed N.J.A.C. 7:36-25.6(a), prior to the imposition of restrictions on funded or unfunded parkland that are intended to prohibit the development or use of the parkland for one or more recreation purposes. If such restrictions are to be imposed on funded parkland in perpetuity through a deed restriction, covenant, conservation easement or other legal mechanism,

written Department approval is also required under proposed N.J.A.C. 7:36-25.6(b).

In order to reduce the burden of this section on local government units and nonprofits, the Department has defined at proposed N.J.A.C. 7:36-25.6(d) a number of parkland activities that will not constitute a "change in purpose or use" under this section. In addition, proposed N.J.A.C. 7:36-25.6(e), will allow local government units to combine the procedural requirements of proposed N.J.A.C. 7:36-25.6(a) with public 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.

Proposed N.J.A.C. 7:36-25.6(f) specifies that compliance with the notice and hearing requirements of this section does not exempt a proposed change in purpose or use or building construction from compliance with other applicable Federal, State, County or local regulatory requirements.

Proposed N.J.A.C. 7:36-25.7, Construction of buildings on funded parkland; use of existing buildings on funded parkland, recodifies the funded parkland-related provisions of current N.J.A.C. 7:36-20.5 with changes designed to strengthen the Department's protection of the natural resources values while providing more flexibility to local government units and nonprofits concerning the use of existing buildings on funded parkland.

Proposed N.J.A.C. 7:36-25.7(a) recodifies current N.J.A.C. 7:36-20.5(a) with the additional requirement that the local government unit or nonprofit comply with the change in use procedures at proposed N.J.A.C. 7:36-25.6.

Proposed N.J.A.C. 7:36-25.7(b) recodifies current N.J.A.C. 7:36-20.5(c) with several minor editorial clarifications.

Proposed N.J.A.C. 7:36-25.7(c) recodifies current N.J.A.C. 7:36-20.5(c)1 with changes to the Department's decision making timeframe and provisions to allow the Department to address natural resource and recreation impacts of the proposed building as part of its approval.

Proposed N.J.A.C. 7:36-25.7(d) recodifies current N.J.A.C. 7:36-20.5(d), with several clarifying changes. First, the term "a portion of" has been added as a qualifier in the first sentence since construction of new buildings on funded parkland entirely for public indoor recreation is prohibited by the GSPT Act and the Green Acres laws. Second, in order to provide more flexibility for local government units and nonprofits, court games, public meeting spaces and multipurpose spaces have been added to the list of activities permitted in up to 25 percent of the square footage of buildings constructed in support of recreation and conservation purposes.

Proposed N.J.A.C. 7:36-25.7(e) would allow enclosure of outdoor swimming pools or ice rinks existing as of the effective date of the proposed new chapter, provided the local government unit

or nonprofit complies with the change in use procedures at proposed N.J.A.C. 7:36-25.6 and obtains the prior approval of Green Acres. While the GSPT Act and previous Green Acres laws limit construction of new buildings for public indoor recreation to unfunded parkland, existing outdoor swimming pools and ice rinks represent a substantial public investment by the Green Acres Program and local government units over the last forty years. In order to protect this investment in light of changing climatic conditions, which often drastically shorten the season during which pools and ice rinks can be used and/or make operation of unenclosed facilities economically infeasible, the Department has decided to allow construction of structures to enclose existing pools and rinks on funded parkland. However, this rule would not allow construction of new indoor swimming pools or ice rinks on funded parkland or the enclosure of any swimming pools or ice rinks constructed on funded parkland after the effective date of these new rules. In general, construction allowed under this proposed subsection may include indoor ancillary facilities, such as rest rooms, locker rooms and concession stands, to the extent such facilities would normally be approved by the Department as being in support of recreation and conservation purposes under proposed N.J.A.C. 7:36-25.7(a) through (c). However, construction of any new indoor recreation facilities, such as bleachers, a basketball court or gymnasium space, as part of the same structure would require approval as a minor diversion or disposal of parkland under proposed N.J.A.C. 7:36-26.2(b)5.

Proposed N.J.A.C. 7:36-25.7(f) and (g) are intended to provide local government units and nonprofits with more flexibility regarding the use of buildings which existed on the parkland as of the effective date of the Green Acres restriction (that is, the time of receipt of Green Acres funding). While local government units and nonprofits often contemplate using existing buildings in support of recreation and conservation purposes at the time of purchase of parkland, such uses are not always feasible. These sections would allow local government units and nonprofits to use existing structures for community centers, recreation centers, museums or park employee or caretaker residences, subject to Green Acres approval of the lease or agreement under which the use is authorized by the local government unit, provided such uses do not interfere with the use of the surrounding parkland by the public.

Proposed N.J.A.C. 7:36-25.8, Construction of buildings on unfunded parkland; use of buildings on unfunded parkland, recodifies the unfunded parkland-related provisions of current N.J.A.C. 7:36-20.5 with several substantive changes. First, as was discussed in the Department's response to comments on the 1998 rulemaking, 30 N.J.R. 3790, and consistent with Section 33 of the GSPT Act, N.J.S.A. 13:8C-33, the Department will no longer be requiring Green Acres approval for construction of buildings in support of recreation and conservation purposes, or for public indoor recreation purposes, on unfunded parkland. However, prior to constructing these types of buildings on unfunded parkland, the local government unit will have to comply with the notice and hearing provisions of proposed N.J.A.C. 7:36-25.6 (Change in purpose or use of funded or unfunded parkland). In addition, as will be the case for funded parkland under proposed N.J.A.C. 7:36-25.7(f) and (g), proposed N.J.A.C. 7:36-25.8(b) and (c) would allow for the use of an existing building on unfunded parkland for a community center, recreation center or museum (subject to the change in use procedures at proposed N.J.A.C. 7:36-25.6) or a park employee or

caretaker residence (under a lease approved by Green Acres under proposed N.J.A.C. 7:36-25.13).

Proposed N.J.A.C. 7:36-25.9, Fees for use of funded parkland and recreation and conservation facilities on funded parkland, recodifies current N.J.A.C. 7:36-20.6 with several minor changes. Under proposed N.J.A.C. 7:36-25.9(c), the Department has added several categories of fees, such as single use, yearly, monthly, weekly, team and family, to the list of permissible fee categories. In addition, as discussed under the summary of proposed N.J.A.C. 7:36-25.1 above, new language at proposed N.J.A.C. 7:36-25.9(f) shifts the Department's review of fee schedules to the parkland inspection process.

Proposed N.J.A.C. 7:36-25.10, Public access to and use of funded parkland, recodifies current N.J.A.C. 7:36-20.7, including the requirement that local government units and nonprofits ensure that funded parkland is open to all New Jersey residents. New language at proposed N.J.A.C. 7:36-25.10(f) would require local government units or nonprofits that charge fees or require permits for access to funded parkland to provide for reasonable public access to such facilities during non-business hours by either allowing access on a first-come first-served basis, providing automated fee collection or scheduling or other reasonable methods. In proposing this requirement, the Department's objective is to prevent members of the public from being deprived of the use of facilities on funded parkland for administrative reasons.

Under this section, a local government unit or nonprofit may still schedule the use of funded parkland for organized sports or activities as long as such scheduling allows reasonable access to the general public. The local government unit or nonprofit may not exclude users based on residency or in any manner otherwise prohibited under the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or other applicable laws.

Proposed N.J.A.C. 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, recodifies N.J.A.C. 7:36-20.8 with several changes designed to ensure consistency with the rulings of the New Jersey courts in *Barkawi v. Haledon*, 1999 WL 33601519, and recent litigation brought by the Rutgers Constitutional Litigation Clinic against municipalities with "residents only" parkland ordinances, Smith v. Jones, Docket No. L-259-05 (Law Div., Middlesex County). In the *Barkawi* case, the Appellate Division of the New Jersey Superior Court, in an unreported decision, invalidated a municipal ordinance which prohibited nonresidents from using its parks unless they were participants in or spectators at a sanctioned sporting event or were the guest of a resident. In its decision, the court determined that the parks in question did not contain facilities with limited capacities, and noted both the "public forum" character of public parks and the potential search and seizure implications of requiring nonresidents to show identification to use the municipality's parks. On this basis, the court concluded that there was no justification for excluding nonresidents from the parks. In the more recent litigation, the Rutgers Constitutional Law Clinic challenged thirteen municipal "residents only" ordinances, citing the *Barkawi* case as the controlling precedent. The class action

litigation was eventually expanded to involve sixty municipalities. Several months after the litigation was filed, the trial court judge ruled that any municipalities that have imposed "residents only" bans on their parks must work to repeal them.

Proposed N.J.A.C. 7:36-25.12, Posting of signs on funded parkland, recodifies current N.J.A.C. 7:36-20.9 with several clarifications. New language at proposed N.J.A.C. 7:36-25.12(b) would memorialize the Department's longstanding practice of requiring a Green Acres sign to be posted on land or facilities that are approved by the Department and the State House Commission as replacement for the diversion or disposal of funded parkland or facilities. In addition, the Department has expanded the list of authorized signs at proposed N.J.A.C. 7:36-25.12(c) to include Green Acres construction signs, public hearing signs and commemorative or memorial signs or plaques and to clarify that signs acknowledging the managing agency for the parkland, property boundary signs, hazard warning signs and "no hunting" signs are acceptable on funded parkland.

Proposed N.J.A.C. 7:36-25.13, Leases, use agreements, or concession agreements for recreation and conservation purposes on funded or unfunded parkland for recreation and conservation purposes, recodifies current N.J.A.C. 7:36-20.10 with several changes designed to strengthen the Department's oversight of leases, use agreements and concession agreements on funded parkland while affording local government units more flexibility in entering into leases, use agreements and concession agreements on unfunded parkland.

During the adoption of the current rules in 1998, several commenters questioned whether the Department should be reviewing and approving leases for recreation and conservation purposes on parkland and questioned the five-year term limit on leases for recreation and conservation purposes. 30 N.J.R. 3791 (Comments 47 and 48). In response, the Department agreed to review whether approval of leases for recreation and conservation purposes is still necessary and to solicit public input on providing greater flexibility to local government units in leasing parkland for recreation and conservation purposes.

Based on the Department's review of this issue and experience over the last six years, the Department believes it is still necessary to retain an oversight role over leases and agreements on funded parkland, even if such leases or agreements are intended for recreation and conservation purposes. Given the substantial public investment in funded parkland, it is not unreasonable for the Department to determine whether a lease or agreement truly is for "recreation and conservation purposes" (as defined at proposed N.J.A.C. 7:36-2.1), to evaluate the length of the lease or agreement (proposed N.J.A.C. 7:36-25.13(b)4) and verify that the public will have reasonable access to the funded parkland during the lease or agreement (proposed N.J.A.C. 7:36-25.13(b)3).

Accordingly, proposed N.J.A.C. 7:36-25.13(a) will continue the practice at current N.J.A.C. 7:36-20.10(a) of requiring a local government unit or nonprofit which seeks to enter into or renew a lease, use agreement of concession agreement which would support or promote the use

of funded parkland (or a facility on funded parkland) for recreation and conservation purposes to submit the proposed lease or agreement for Department review and approval. However, the new subsection would require the submittal to be at least 45 days before the local government unit or nonprofit intends to execute the lease or agreement rather than 30 days, in order to allow the Department sufficient time to complete its review. In addition, the proposed new subsection would codify the previously implicit statement that leases or agreements not approved in advance by the Department are void and of no legal effect.

Proposed N.J.A.C. 7:36-25.13(b) contains the minimum substantive standards for such leases or agreements, some of which are currently found at N.J.A.C. 7:36-20.10(b), including for lease terms (length) and renewals. Although the Department has decided to retain its oversight role for leases of funded parkland for recreation and conservation purposes, it has proposed several changes to clarify the interface between these rules and the laws governing public contracting and to provide local government units and nonprofits with more flexibility in the leasing process. Proposed N.J.A.C. 7:36-25.13(b)1 codifies the longstanding policy that leases of funded parkland are not exempt from the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1-et seq. (although current N.J.A.C. 7:36-20.10(d) contains a reference to competitive bidding, it is limited to concession agreements.) Proposed N.J.A.C. 7:36-25.13(b)4 would afford the Department more flexibility to approve lease terms of more than five years, but not less than 25 years, for good cause shown. However, in most cases, the Department expects to limit its approvals to five-year terms as a means of promoting unfettered public access to parkland and forcing the regular re-evaluation and updating of leases and agreements affecting funded parkland. The Department also notes that leases of 25 years or more, even for recreation and conservation purposes, now require Department and State House Commission approval under Section 32 of the GSPT Act (N.J.S.A. 13:8C-32(b)).

Proposed N.J.A.C. 7:36-25.13(c) sets forth additional requirements for compensatory mitigation that will apply 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.

Proposed N.J.A.C. 7:36-25.13(d) sets forth the criteria under which the Department may approve or disapprove proposed leases or other agreements for use of funded parkland for recreation and conservation purposes, or renewals thereof. The criteria in this subsection parallel the substantive standards for such agreements at proposed N.J.A.C. 7:36-25.13(b) and (c).

Proposed N.J.A.C. 7:36-25.13(e) recodifies the requirement at existing N.J.A.C. 7:36-20.11(d) that payments, rentals or other consideration received under a lease or agreement for funded parkland must be used for operating, maintenance or capital expenses related to the local government unit's or nonprofit's funded parkland or recreation program.

Proposed N.J.A.C. 7:36-25.13(f) represents the biggest change to the Department's current practice concerning leases, use agreements and concession agreements for recreation and conservation purposes on parkland. Under this subsection, the Department would no longer

require prior approval of leases of or agreements for unfunded parkland for recreation and conservation purposes, but would switch to an audit system. While these leases are still required to comply with the same substantive standards that will apply to leases of funded parkland (proposed N.J.A.C. 7:36-25.13(b) through (e)), prior Department review will be at the applicant's option.

There are several reasons why the Department is proposing to alter its process for review of leases, use agreements and concession agreements for recreation and conservation purposes on unfunded parkland. At present, while most local government units appear to understand that unfunded parkland cannot be conveyed without the approval of the Department and the State House Commission, very few leases and use agreements for unfunded parkland are submitted to the Department for review. This low rate of compliance caused the Department to re-evaluate the need for such approvals and to conclude that an audit-type approach would sufficiently protect the State's interest in unfunded parkland. The Department anticipates that in the event a local government unit enters into a lease, use agreement or concession agreement for unfunded parkland that violates the standards at proposed N.J.A.C. 7:36-25.13(b) through (e), such violations would come to the Department's attention through citizens' complaints or other means, at which time the Department would take appropriate action to inform the local government unit of the violation and direct corrective action. Therefore, the Department does not view proposed N.J.A.C. 7:36-25.13(f) as weakening the standards for leases, use agreement or concession agreements on unfunded parkland, but rather, as shifting the compliance review for these leases from the Department to the local government unit while streamlining the procedural requirements for their execution.

Proposed N.J.A.C. 7:36-25.14, Leases, use agreements or concession agreements regarding funded or unfunded parkland for purposes other than recreation or conservation, recodifies current N.J.A.C. 7:36-20.11 with several clarifications and additional substantive requirements. In particular, throughout this section, the Department has made changes to explicitly extend its applicability to nonprofits as well as local government units.

Proposed N.J.A.C. 7:36-25.14(a) recodifies current N.J.A.C. 7:36-20.11(a) with several changes. As it has since 1998, the Department will continue to allow the temporary use of parkland for a non-recreation or conservation purpose under a lease, use agreement or concession agreement with a term that will not exceed two years in most cases (with certain exceptions pertaining to historic structures discussed below). However, in proposed N.J.A.C. 7:36-25.14(a) and elsewhere in this section, the Department is clarifying that this option is only available where the proposed lease, use agreement or concession agreement will serve another public purpose (for example, temporary use of parkland for workspace for a road project). While the proposal reflects the Department's longstanding policy and practice, current N.J.A.C. 7:36-20.11(a) is not explicit on this point.

Under proposed N.J.A.C. 7:36-25.14(a), a local government unit or nonprofit which seeks to enter into or renew a lease, use agreement of concession agreement to support or promote the use

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of funded parkland (or a facility on funded parkland) for other than a recreation or conservation purpose would be required to submit the proposed lease or agreement for Department review and approval at least 45 days, rather than 30 days, before it intends to execute the lease or agreement in order to allow the Department sufficient time to complete its review. In addition, the proposed new subsection would codify the previously implicit statement that leases or agreements not approved in advance by the Department are void and of no legal effect.

Proposed N.J.A.C. 7:36-25.14(b) recodifies and expands the minimum substantive standards for leases or agreements at current N.J.A.C. 7:36-20.11(b), including for lease terms (length) and renewals. The proposed subsection would limit the term of most of these leases and agreements to two years. However, in order to provide more flexibility in the face of unforeseen site conditions or other unanticipated circumstances, proposed N.J.A.C. 7:36-25.14(b)2 would allow the Department to grant one six-month extension, for good cause shown, to the two year limit for non-recreation and conservation leases, use agreements or concession agreements. Further extensions of this time limit, or failure to demonstrate good cause for the six month extension, would still require the approval of the Commissioner and the State House Commission as a diversion of parkland under proposed N.J.A.C. 7:36-26. In addition, consistent with current N.J.A.C. 7:36-20.11(c), proposed N.J.A.C. 7:36-25.14(b)2ii would allow longer terms for leases or agreements involving historic structures on parkland.

Proposed N.J.A.C. 7:36-25.14(c) recodifies the remainder of current N.J.A.C. 7:36-20.11(c) and contains additional requirements pertaining to leases, use agreements or concession agreements for historic structures.

Proposed N.J.A.C. 7:36-25.14(d) is a new subsection that recodifies part of current N.J.A.C. 7:36-20.11(b)1 and imposes additional requirements in situations where a proposed lease, use agreement or concession agreement will interfere with the use of a developed recreation or conservation facility on the parkland.

Proposed N.J.A.C. 7:36-25.14(e) sets forth new requirements for compensatory mitigation that will apply 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. This subsection contains new language specifically authorizing the Green Acres Program to disapprove a lease that will have an adverse impact on the natural resources value of the parkland which will not be sufficiently mitigated by the restoration plan proposed by the applicant. In the alternative, the Department may require approval of the lease or agreement as a diversion of parkland under proposed N.J.A.C. 7:36-26.

Proposed N.J.A.C. 7:36-25.14(f) sets forth the criteria under which the Department may disapprove proposed leases or other agreements for use of funded parkland for recreation and conservation purposes. The criteria in this subsection parallel the substantive standards for such agreements at proposed N.J.A.C. 7:36-25.14(b) and (c).

Proposed N.J.A.C. 7:25.14(g) recodifies current N.J.A.C. 7:36-20.11(d) without substantive

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change but, as discussed above, would now apply to nonprofits as well as local government units.

Under proposed N.J.A.C. 7:36-25.14(h), a lease, use agreement or concession agreement that does not serve another public purpose would be considered a diversion of parkland requiring approval under proposed N.J.A.C. 7:36-26. In particular, under proposed N.J.A.C. 7:36-25.14(c), the Department has clarified that in order to be approved under this section, leases of or agreements involving historic structures must also be for a public purpose other than recreation or conservation.

Proposed N.J.A.C. 7:36-25.15, Designated Commuter Parking Lots on Parkland, is a new section designed to implement L. 2003, c. 290 (codified at N.J.S.A. 13:8A-56). This statute provides that, subject to the approval of the Commissioner under certain conditions, a parking lot located on, and which is used to provide public access to, certain types of County or municipal parkland may also be used by the public as a designated commuter parking lot, and that the additional use as a commuter parking lot does not constitute a disposal or diversion of parkland. Proposed N.J.A.C. 7:36-25.15(a) through (d) combine the substantive standards of N.J.S.A. 13:8A-56a and b with procedural requirements for applying for a commuter parking designation and conducting the public hearing required by N.J.S.A. 13:8A-56a. Proposed N.J.A.C. 7:36-25.15(e) implements the language at N.J.S.A. 13:8A-56d concerning revocation of such approvals. Similarly, proposed N.J.A.C. 7:36-25.15(f) implements the language at N.J.S.A. 13:8A-56e concerning improvements to parking lots designated and approved for commuter parking use under this section. Finally, consistent with N.J.S.A. 13:8A-56c, proposed N.J.A.C. 7:36-25.15(g) would require expansion of approved parking lots to be processed as a disposal or diversion of parkland.

N.J.A.C. 7:36-25.16, Adjudicatory hearing requests, describes the process a local government unit or any other person with a constitutional right to request a hearing must follow to request an adjudicatory hearing to contest Green Acres' determination as to whether or not a parcel of land is parkland encumbered with Green Acres restrictions. The rule lists the information required as part of a request for such a hearing which, if granted, will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. This section recodifies current N.J.A.C. 7:36-20.12.

Subchapter 26. Procedures for Commissioner and State House Commission Approval of the Disposal or Diversion of Funded or Unfunded Parkland

Under the GSPT Act and the current Green Acres Program rules, N.J.A.C. 7:36, a local government unit or nonprofit that accepts Green Acres funding is subject to various restrictions and responsibilities pertaining to the use of its parkland. The land which was purchased with Green Acres funding or on which facilities were developed with Green Acres funding becomes designated as funded parkland and is subject to various statutory, regulatory and contractual restrictions and encumbrances (known, collectively, as Green Acres restrictions). See N.J.S.A.

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13:8C-32(a) and N.J.A.C. 7:36-2.1. In addition, any lands held by a local government unit for recreation and conservation purposes at the time it received the Green Acres funding become designated as unfunded parkland and are subject to the same contractual and statutory Green Acres restrictions that apply to the funded parkland. N.J.S.A. 13:8C-32(b) and N.J.A.C. 7:36-2.1.

This policy has been in place, either by contract or by statute, since the inception of the Green Acres Program in the early 1960's. The objective of this policy is to prevent a net loss of parkland in municipalities or Counties that receive Green Acres funding. Without this policy, funding recipients would be free to substitute funded parkland for existing unfunded parkland, leading to a net loss of parkland.

While there are some differences in how funded parkland and unfunded parkland are regulated under the GSPT Act and the Green Acres Program rules, N.J.A.C. 7:36, neither funded nor unfunded parkland may be conveyed, diverted or disposed of by a local government unit or nonprofit without the approval of the Commissioner and the State House Commission. The GSPT Act defines a "conveyance" as a sale, donation, exchange, transfer or lease for 25 years or more. N.J.S.A. 13:8C-3, proposed N.J.A.C. 7:36-2.1. The GSPT Act defines "land" as "real property, including improvements thereof or thereon, rights-of-way, water, lakes, 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." N.J.S.A. 13:8C-3, proposed N.J.A.C. 7:36-2.1. The GSPT Act defines "recreation and conservation purposes" as "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." N.J.S.A. 13:8C-3. Since the promulgation of the current N.J.A.C. 7:36 in 1998, the Green Acres rules have defined the term "dispose of" as "to convey or transfer, including to sell, exchange, or donate, title to, or permanent possession and control of, an interest in parkland to another person or entity." N.J.A.C. 7:36-2.1.

Therefore, except as noted below, the conveyance to another entity of almost any legal interest in funded or unfunded parkland will require the approval of the Commissioner and the State House Commission. Three exceptions to this rule are as follows: First, a local government unit or nonprofit may convey funded or unfunded parkland to the Federal government, the State of New Jersey, another local government unit or a nonprofit (as defined under proposed N.J.A.C. 7:36-2.1) for continued preservation and use for recreation and conservation purposes without State House Commission approval. However, advance notice to the Department and other procedural requirements apply. N.J.S.A. 13:8C-34, proposed N.J.A.C. 7:36-25.5. Second, as discussed above, leases, use agreements or concession agreements of less than 25 years for recreation and conservation purposes do not require State House Commission approval, but must either be approved by the Green Acres Program under proposed N.J.A.C. 7:36-25.13 (funded parkland) or comply with the standards at proposed N.J.A.C. 7:36-25.13(f) (unfunded parkland). Third, also

as discussed above, the Department may approve short-term non-recreation leases of parkland for other public purposes under proposed N.J.A.C. 7:36-25.14.

Under the GSPT Act and the Green Acres bond acts, neither funded nor unfunded parkland may be used for a purpose other than recreation and conservation purposes without the approval of the Commissioner and the State House Commission. The use of parkland for other than recreation and conservation purposes is known as a “diversion”. N.J.A.C. 7:36-2.1. Examples of uses of parkland that may constitute diversions are listed at proposed N.J.A.C. 7:36-25.2(c). This list is intended to be illustrative, not exhaustive.

Under the proposed new rules, the Department seeks to implement more stringent measures to protect all Green Acres-encumbered parkland from being disposed of or diverted to non-recreation/conservation purposes, including the following:

- Creating a more stringent "public purpose" threshold for diversion or disposal applications, so that diversion or disposal applications are only considered when there is a compelling public need for the diversion or disposal of public lands or a significant public benefit would result. In particular, the Department seeks to clarify and strengthen the public purpose requirement as part of this rulemaking. In some cases, the "public purpose" criteria may be satisfied by an overwhelming and extraordinary replacement opportunity, including acquisition of significant replacement acreage that will strengthen protection of the State's natural, recreational or historic resources.

- Requiring "scoping" hearings for diversion/disposal applications so that the public is informed --as early in the process as possible--that Green Acres-encumbered lands are proposed to be used for other than recreation and conservation purposes.

- Increasing the ratio of replacement land to parkland proposed for disposal or diversion. Presently, the minimum replacement to diversion/disposal ratio is 1:1; the Department has developed higher replacement land ratios for projects depending on the quality of the diversion parcel and the type of project proposed. In addition, the proposed new rules would require that parks that provide services to significant populations be replaced with recreation areas that serve the same, if not broader population.

- Improving the alternative sites analysis component of the diversion/disposal application. The proposed new rules would allow the Department to engage, at the applicant's expense, independent consultants to perform the alternative sites analysis for certain projects as necessary to ensure objectivity in this process.

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- Incorporating into the Department's review of diversion or disposal applications decision-making criteria that address natural resources and water supply protection, State Plan consistency, and other Department priorities, as applicable.

- Prohibiting the use of dedicated open space tax funding (N.J.S.A. 40:12-15.1 through 15.9) for the purchase of replacement lands since allowing this funding source to be used to replace other parkland results in a net loss of protected lands and of funding available to increase parkland holdings.

Based the Department's experience in processing applications for diversions and disposals of parkland since 1998, the Department now proposes a new subchapter at N.J.A.C. 7:36-26 to set forth the procedure for Commissioner and State House Commission approval of disposals and diversions. While the new subchapter preserves the basic structure of the current procedure at N.J.A.C. 7:36-21, it contains more detail on the substantive standards for approving diversions or disposal of parkland, imposes additional procedural and substantive requirements on applicants in an effort to "raise the bar" on diversions or disposals of parkland, makes a distinction between "minor" and "major" diversions of parkland, and contains completely new sections on compensation for minor and major diversions of parkland.

Proposed N.J.A.C. 7:36-26.1, Department policy on disposals and diversions; substantive standards, outlines the Department's general policy on diversions and disposals of parkland (proposed N.J.A.C. 7:36-26.1(a)) and the substantive standards that applicants must meet for approval of a diversion or disposal of parkland (proposed N.J.A.C. 7:36-26.1(d)) and the substantive standards to be employed by the Department in evaluating applications for diversions or disposals of parkland (proposed N.J.A.C. 7:36-26.1(c) and (e)).

Proposed N.J.A.C. 7:36-26.1(a) articulates the Department's general policy of strongly discouraging the disposal or diversion of parkland except as a last resort when there is no feasible, reasonable or available alternative site for a project. Under this subsection, 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 and there is no feasible, reasonable and available alternative site for the project. If a feasible, reasonable and available alternative exists that would avoid the use of parkland, then it must be selected.

Proposed N.J.A.C. 7:36-26.1(b) states that the diversion or disposal of funded or unfunded parkland without the prior approval of the Commissioner and the State House Commission is void and of no legal effect. This proposed subsection codifies the rulings of the New Jersey courts in several Green Acres-related cases, particularly *First American Title Ins. Co. v. Township of Rockaway*, 322 *N.J. Super*. 583, 592 (Ch. Div. 1999).

Proposed N.J.A.C. 7:36-26.1(c) states that in evaluating applications for the disposal or diversion

of parkland, the Department will carefully weigh the competing public interests, the impact of the proposed disposal or diversion on the affected parkland and other parkland throughout the State, the possible adverse consequences of the project under the criteria at proposed N.J.A.C. 7:36-26.1(e), the objectives of the GSPT Act, and the proposed compensation (replacement land, replacement recreational facilities and/or monetary compensation).

Proposed N.J.A.C. 7:36-26.1(d) largely recodifies current N.J.A.C. 7:36-21.1(c), with several changes intended to clarify the respective burdens of proof of the applicant and the Department and to cross-reference other proposed changes to the existing subchapter. As under the current rules, an applicant for the diversion or disposal of funded and unfunded parkland must meet certain threshold requirements. There must be a compelling public need for or significant benefit to be realized from the disposal or diversion, no feasible alternatives, and acceptable compensation for the parkland disposed of or diverted. Also, the local government unit or nonprofit must provide a resolution endorsing the proposed disposal or diversion and must hold a public hearing before the disposal or diversion application will be reviewed by the State House Commission.

Proposed N.J.A.C. 7:36-26.1(d)1 incorporates and clarifies the language of current N.J.A.C. 7:36-21.2(a)1 concerning the "compelling public need" and "significant public benefit" thresholds that must be met by all applications for disposal or diversion of parkland. Under proposed N.J.A.C. 7:36-26.1(d)1ii, an applicant may meet the "significant public benefit" threshold for projects designed to enable the development 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. Proposed N.J.A.C. 7:36-26.1(d)1iii also provides, in the alternative, that for a major disposal or diversion of parkland, the applicant may meet its threshold requirements by demonstrating that it will provide an exceptional recreation and/or conservation benefit through compensation that will substantially improve 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, without resulting substantially in any of the adverse consequences listed at N.J.A.C. 7:36-26.1(e).

Proposed N.J.A.C. 7:36-26.1(d)2 requires the applicant to demonstrate 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 a proposed major disposal or diversion of funded or unfunded parkland. Under this paragraph, it is 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 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 or may deny the application.

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Proposed N.J.A.C. 7:36-26.1(e) codifies for the first time a number of substantive standards to be employed by the Department in evaluating whether a proposed diversion or disposal of parkland should be denied because it will have adverse consequences that will not be mitigated by the proposed compensation. In particular, the Department seeks to incorporate into the Department's review of diversion or disposal applications decision-making criteria that address natural resources and water supply protection, State Plan consistency, and other Department policies, as applicable. The application of the decision-making criteria at proposed N.J.A.C. 7:36-26.1(e) will be in addition to the procedural requirements for applications for diversion or disposal of parkland.

Proposed N.J.A.C. 7:36-26.1(f) cross-references the lists of activities that may constitute a diversion or disposal of parkland (proposed N.J.A.C. 7:36-25.2(c)) and do not constitute a diversion or disposal of parkland (proposed N.J.A.C. 7:36-25.2(d)).

Proposed N.J.A.C. 7:36-26.2, Minor and Major Disposals or Diversions of Funded or Unfunded Parkland, establishes for the first time the categories of minor and major disposal or diversions of parkland. Under proposed N.J.A.C. 7:36-26.2(a), all applications for disposal or diversion of parkland will be classified by the Department as either minor or major. Activities that may be classified by the Department as minor disposals or diversions of parkland are described in detail at proposed N.J.A.C. 7:36-26.2(b). Under proposed N.J.A.C. 7:36-26.2(c), all activities that do not qualify as minor under one or more of the categories at proposed N.J.A.C. 7:36-26.2(b) will be classified by the Department as major disposals or diversions of parkland.

Minor Disposals and Diversions of Parkland

In developing the five categories of minor disposals or diversions of parkland at proposed N.J.A.C. 7:36-26.2(b), the Department attempted to identify activities with a clear public purpose and minimal parkland impact for which the process of obtaining the approval of the Commissioner and the State House Commission could be simplified. This approach is intended to both afford applicants more flexibility in accommodating competing public needs and allow the Department to focus its limited staff time and resources on processing and analyzing applications for major disposals or diversions of parkland. In addition, as will be discussed below, the Department has attempted to make the compensation for minor disposals or diversions of parkland simpler, more equitable and more predictable.

The five categories of minor disposals or diversions of parkland proposed at N.J.A.C. 7:36-26.2(b) are as follows: (1) easements (surface or subsurface) over, under or through less than one acre of parkland (proposed N.J.A.C. 7:36-26.2(b)1); (2) fee disposals or long-term (more than two years) non-recreation/conservation leases or uses of less than 0.50 acre of parkland, or non-recreation/conservation leases of more than two years of a non-historic building on parkland (proposed N.J.A.C. 7:36-26.2(b)2); (3) the conveyance of up to 0.50 acre of parkland to a neighboring property owner to resolve a boundary dispute, encroachment or access dispute that

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existed prior to the time of receipt of Green Acres funding as it pertains to the parkland proposed for conveyance (proposed N.J.A.C. 7:36-26.2(b)3); (4) equal exchanges of acreage (no size limit) within the same block and lot, contiguous parkland area or with an adjacent landowner (proposed N.J.A.C. 7:36-26.2(b)4); and (5) construction of a building for public indoor recreation on funded parkland (proposed N.J.A.C. 7:36-26.2(b)5).

To qualify under the first two categories, the disposal or diversion must be requested for a public purpose by a public entity or the agent of a public entity, and is subject to certain limitations on size (relative to the surrounding parkland) and parkland impact. Proposed N.J.A.C. 7:36-26.2(b)1 and 2.

Under proposed N.J.A.C. 7:36-26.2(b)3, the Department seeks to give applicants more flexibility to resolve boundary disputes, encroachments or access disputes that existed but were not addressed at the time the parkland proposed for conveyance became encumbered with Green Acres restrictions, while imposing appropriate safeguards to prevent abuse of this category. Therefore, under this category, the applicant must demonstrate that the dispute predated the effective date of the Green Acres restrictions on the parkland, the proposal cannot have a significant adverse impact on the natural resources values or public use of the surrounding parkland and the proposal cannot create access for any use of the adjacent property that did not exist as of the effective date of the Green Acres restrictions. Proposed N.J.A.C. 7:36-26.2(b)3i through v.

Similar restrictions are proposed to apply to the fourth category, proposed N.J.A.C. 7:36-26.2(b)4, which governs equal exchanges of land 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. To qualify as a minor disposal or diversion of parkland, such exchanges must be initiated by a public entity or the agent of a public entity or by the applicant to fulfill a public purpose, the value (monetary and ecological) of the properties to be exchanged must be reasonably equivalent, the proposal cannot have a significant adverse impact on the natural resource values or public use of the surrounding parkland, and the proposal cannot compromise the integrity of the parkland boundary. Proposed N.J.A.C. 7:36-26.2(b)4i through vi.

The fifth category, proposed N.J.A.C. 7:36-26.2(b)5 is designed to make it easier for applicants to construct buildings for public indoor recreation on funded parkland, subject to certain limitations. Under the GSPT Act and the Green Acres bond acts, the construction of buildings for public indoor recreation on funded parkland constitutes a diversion of parkland. Proposed N.J.A.C. 7:36-26.2(b)5 would classify these diversions as minor if the building involves less than 50,000 square feet of disturbance or covers less than five percent of the total area of the parkland parcel not already occupied by structures or impervious coverage (whichever is less) and will not have a significant impact on the public use or natural resource values of the surrounding parkland.

Under proposed N.J.A.C. 7:36-26.2(c), all other types of diversions and disposals of parkland not qualifying under the criteria at proposed N.J.A.C. 7:36-26.2(b) will be classified as major disposals or diversion. Major disposals or diversions of parkland will include diversions and disposals that are proposed by applicants under the minor category but which the Department determines do not meet one of more of the qualifications pertaining to a particular category of minor disposal or diversion.

Proposed N.J.A.C. 7:36-26.3, Minor disposals or diversions of funded or unfunded parkland; general procedural requirements; outlines the general procedural requirements for applications for minor disposals or diversions of parkland. These requirements are similar to the outline at current N.J.A.C. 7:36-21.1(b), with several clarifications.

As has been the Department's practice under the current rules, the application process for minor disposals or diversions of parkland is proposed to be divided into a pre-application phase and a final application phase. The purpose of the two-phase approach is to allow the Department to evaluate the merits of the proposed disposal or diversion before the applicant has expended significant time or money to fulfill the necessary technical requirements such as surveys and/or appraisals.

Proposed N.J.A.C. 7:36-26.4 outlines the pre-application requirements for minor disposals or diversions of parkland. The first step in the pre-application process for minor disposals or diversions of parkland is a pre-application conference with the Department (proposed N.J.A.C. 7:36-26.4(a) through (c)), after which the applicant may file a pre-application that conforms to the requirements of proposed N.J.A.C. 7:36-26.4(d).

In general, proposed N.J.A.C. 7:36-26.4(d) incorporates the requirements of current N.J.A.C. 7:36-21.2 (Pre-application requirements), with changes designed to provide the Department with sufficient information for its decision-making. In particular, proposed N.J.A.C. 7:36-26.4(d)2 greatly expands and strengthens the alternatives analysis requirements of current N.J.A.C. 7:36-21.2(a)2. As discussed above, under proposed N.J.A.C. 7:36-26.1(d)2, the burden is on the applicant (not the Department) to demonstrate the lack of alternatives to the proposed disposal or diversion of parkland through the required alternatives analysis.

Under proposed N.J.A.C. 7:36-26.4(d)9, applicants proposing the equal exchange of land as a minor disposal or diversion of parkland must provide additional information relating the rationale for the exchange and the relative values of the lands proposed to be exchanged. The remaining requirements of proposed N.J.A.C. 7:36-26.4(d) are substantially similar to the requirements of current N.J.A.C. 7:36-21.2(a).

Proposed N.J.A.C. 7:36-26.4(e) establishes the substantive standards for the Department's review of the alternatives analysis required to be submitted under proposed N.J.A.C. 7:36-26.4(d)2. Although the Department has attempted, where possible, to eliminate application requirements for minor disposals or diversions of parkland, including appraisals and technical

requirements related to evaluation of replacement land, as applicable, an alternatives analysis will still be required to avoid the approval of disposals or diversions of parkland where obvious alternatives to the use of parkland exist. Under this subsection, if the alternatives analysis submitted by the applicant 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. Guidance on what may be considered "not feasible," "not reasonable" or "not available" is set forth at proposed N.J.A.C. 7:36-26.4(e)1 through 3.

Proposed N.J.A.C. 7:36-26.4(f) through (i) outline the steps to be followed by the Green Acres Program in determining the completeness of a pre-application for a minor disposal or diversion of parkland (proposed N.J.A.C. 7:36-26.4(f)), reviewing the complete pre-application (proposed N.J.A.C. 7:36-26.4(g)), determining whether to authorize the applicant to proceed to the final application phase of the application process (proposed N.J.A.C. 7:36-26.4(h)) and accepting for review purposes the compensation proposed by the applicant for the proposed minor disposal or diversion of parkland (proposed N.J.A.C. 7:36-26.4(i)). As part of this process, the Green Acres Program will either deem the pre-application complete or advise the local government unit or nonprofit that the request is incomplete and additional information must be submitted. Proposed N.J.A.C. 7:36-26.4(f). The local government unit or nonprofit must then decide if it wishes to proceed with the State House Commission application, amend its proposal, or withdraw its proposal.

If the local government unit or nonprofit wishes to proceed with the proposed minor disposal or diversion of parkland, it must remedy any pre-application deficiencies identified by Green Acres. Green Acres will then review the proposal and notify the local government unit or nonprofit as to whether or not (1) its proposal meets the substantive standards for approval of disposals or diversions of parkland, (2) whether additional information is needed to make such a determination, (3) whether the proposed disposal or diversion does not qualify as a minor disposal or diversion of parkland but may be processed as a major disposal or diversion of parkland or (4) whether the local government unit or nonprofit should submit a final application for Commissioner and State House Commission approval. Proposed N.J.A.C. 7:36-26.4(h). As set forth at proposed N.J.A.C. 7:36-26.4(j), if Green Acres authorizes an applicant to proceed with a final application, such authorization does not constitute conceptual approval of the application (since only the Commissioner and the State House Commission are authorized to approve disposals or diversions of parkland). Rather, the authorization 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.

Proposed N.J.A.C. 7:36-26.4(i) provides that if Green Acres authorizes the applicant to submit a final application for a minor disposal or diversion of parkland pursuant to proposed N.J.A.C. 7:36-26.4(h)3, the authorization shall accept for application review purposes the compensation

proposed by the applicant under the criteria set forth at N.J.A.C. 7:36-26.5. However, such proposed compensation remains subject to the review and approval of the Commissioner and the State House Commission.

Proposed N.J.A.C. 7:36-26.5 outlines compensation requirements for minor disposals or diversions of parkland. In general, the Department has sought to simplify the compensation process for minor disposals or diversions of parkland by allowing applicants to remit monetary compensation where appropriate. Often, it has been difficult for applicants to come up with replacement land as compensation for small-scale disposals or diversions of parkland such as road widenings or bridge replacements. It has also been the Department's experience that it is difficult for appraisers to attach a value to the highest and best use or intended use of small areas of parkland. In addition, in cases where monetary compensation has been approved in the past, the Department has not always had the resources to follow up with or audit applicants to verify that the compensation has been applied in the manner approved by the Commissioner and the State House Commission. Based on these concerns, the Department proposes to allow monetary compensation for most categories of minor disposals or diversions of parkland, but to require the compensation to be remitted to the Department for deposit in the GSPT Fund prior to formal release of the Green Acres encumbrances on the parkland approved for disposal or diversion. However, in order to allow some flexibility to applicants, proposed N.J.A.C. 7:36-26.5(b) would allow the Department to approve the use of the compensation by the applicant for a parkland acquisition or parkland development project scheduled to be completed within six months of the approval of the minor disposal or diversion of parkland. In such cases, the Department will not execute a release of the Green Acres restrictions from the parcel approved for disposal or diversion until completion of the acquisition or development project.

The monetary compensation figures for minor disposals or diversion of parkland involving easements, and for fee conveyances or other non-easement diversions of parkland contained in proposed N.J.A.C. 7:36-26.5(a)1 and 4, were developed by the Department taking into consideration a number of factors: (1) the current "nominal compensation" value of $1,000.00 established by the Green Acres review appraisers as the minimum value for any land interest in New Jersey; (2) the benefits to applicants of not being required to do an appraisal for the parkland involved in a minor disposal or diversion, (3) a survey by Green Acres of average property values Statewide, and (4) the need to set compensation levels high enough to deter, not attract, disposals or diversions of parkland. However, for both these categories, if the pre-application information submitted by the applicant or other information reasonably available to the Department indicates that the adjusted tax assessed value or market value of either the parkland or comparable land in the particular municipality in which the parkland is located exceeds the minimum compensation values established at proposed N.J.A.C. 7:36 26.5(a)1 and 4, Green Acres will require additional compensation based on that information.

For minor disposals or diversions of parkland involving a lease of or the temporary use of parkland or the lease of an existing building on parkland, proposed N.J.A.C. 7:36-26.5(a)2 would require the applicant to propose the compensation for the lease or use agreement, subject

to the review and approval by the Department. Since such arrangements would involve periodic remittance of rentals to the applicant, the Department would allow the proceeds to be applied toward operating, maintenance or capital expenses related to the applicant's funded parkland or its recreation program.

For minor disposals or diversions of parkland involving the exchange of land, proposed N.J.A.C. 7:36-26.5(a)3 specifies that the Department will require the minimum compensation to be at least an equal area of land of equal value (from recreational, ecological and monetary perspectives) as the land proposed to be disposed of or diverted. The replacement land must be within, adjacent to or contiguous to the parkland proposed to be disposed or diverted.

If a proposed minor disposal or diversion of parkland involves the construction of a building for public indoor recreation on funded parkland, proposed N.J.A.C. 7:36-26.5(a)5 would require the minimum compensation to be the estimated fair market value of the affected parkland based on its highest and best use or intended use, whichever will yield a higher value. If Green Acres is unable to establish this value based on available information, an appraisal of the parkland may be required.

Proposed N.J.A.C. 7:36-26.5(a)6 would require additional compensation for the removal of trees of more than six inches diameter at breast height (DBH) or the clear cutting of more than 0.50 acre of parkland associated with minor diversions or disposal of parkland in the easement (proposed N.J.A.C. 7:36-26.5(a)1), fee conveyance or non-easement diversion (proposed N.J.A.C. 7:36-26.5(a)4) and public indoor recreation building (proposed N.J.A.C. 7:36-26.5(a)5) categories. Since 1998, the removal of trees on parkland, whether to facilitate recreational development of the parkland or not, has been a topic that has generated many inquiries and complaints by citizens to the Green Acres Program. In addition, the Department believes it is appropriate to require a separate assessment of the value of certain trees to be removed as the result of the approval of a disposal or diversion of parkland. Over the last several years, the Department has required applicants to evaluate and assign a monetary value to tree losses anticipated as part of their projects. This policy would now be codified at proposed N.J.A.C. 7:36-26.5(a)6. Tree replacement plans submitted by the applicant will be reviewed by Green Acres in consultation with the Department's Division of Parks and Forestry and are subject to the approval of the Commissioner and the State House Commission as part of the application.

In formulating tree replacement plans as required by proposed N.J.A.C. 7:36-26.5(a)6, applicants are encouraged to incorporate, to the extent feasible, the best management practices recommended for reforestation in the New Jersey Forestry and Wetlands Best Management Practices Manual. This document was developed by the Department's State Forest Service based on sound science as reported by major universities, the forest experiment stations of the U.S. Forest Service, and best management practices of other states in the Mid-Atlantic region, and is intended to assist foresters in avoiding lasting impacts to water resources. In addition, tree replacement plans will be required to conform to 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, as may be amended and supplemented. This document is considered to be the industry standard for tree maintenance and pruning and is widely used and supported by organizations such as The International Society of Arboriculture, National Arbor Day Foundation, and American Forests.

Compensation for tree losses associated with the lease or use of parkland for non-recreation or non-conservation purposes (proposed N.J.A.C. 7:36-26.5(a)2) or the exchange of parkland for non-parkland (proposed N.J.A.C. 7:36-26.5(a)3) will be taken into account by the Department as part of its review and approval of the compensation proposed under these categories. For example, if an applicant proposes under N.J.A.C. 7:36-26.5(a)3 to exchange wooded parkland for cleared farmland, additional replacement land may be required under proposed N.J.A.C. 7:36-26.5(a)3i to meet the requirement of equal ecological value Likewise, under N.J.A.C. 7:36-26.5(a)2ii, 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, the Department may require adjustment of the proposed lease terms or rentals to compensate for such impacts.

As discussed above, proposed N.J.A.C. 7:36-26.5(b) specifies that monetary compensation for minor disposals or diversions of parkland will either be deposited in the GSPT Fund or (if approved by the Department) applied to a parkland acquisition or development project scheduled to be completed by the applicant within six months of the approval of the minor disposal or diversion.

Proposed N.J.A.C. 7:36-26.5(c) contains content requirements for the compensation proposal to be submitted by the applicant as part of the pre-application under N.J.A.C. 7:36-26.4(d)5, depending on whether the applicant proposes monetary compensation (proposed N.J.A.C. 7:36-26.5(c)1), construction of park improvements (proposed N.J.A.C. 7:36-26.5(c)2), dedication of replacement land (proposed N.J.A.C. 7:36-26.5(c)3), or dedication of payments from a lease, concession agreement or use agreement (proposed N.J.A.C. 7:36-26.5(c)4). In addition, proposed N.J.A.C. 7:36-26.5(c)5 contains detailed requirements for the submission of a plan for tree replacement or monetary compensation for tree loss as part of the compensation proposal.

Proposed N.J.A.C. 7:36-26.5(d) sets forth the methodology to be used by Department in determining the value of the parkland that is the subject of a proposed minor disposal or diversion of parkland for comparison to the minimum values outlined in proposed N.J.A.C. 7:36-26.5(a)1 and 2. As discussed above, the Department requires the adjusted tax assessed value or market value of the parkland proposed to be disposed of or diverted to 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. As appropriate, the value of the impact of a proposed easement on parkland must also be calculated based on this methodology. Although the Department seeks to avoid requiring appraisals for minor disposals or diversions of parkland, in the event Green Acres is not able, to its satisfaction, to establish the adjusted tax assessed value, market value or easement impact value of the affected parkland based on information provided by the applicant or other reasonably available information, it may require the applicant to obtain an appraisal of

the parkland proposed for disposal or diversion. Proposed N.J.A.C. 7:36-26.5(d)3.

Proposed N.JA.C. 7:36-26.5(e) specifies that all replacement lands dedicated as a condition of the approval of a minor disposal or diversion of funded parkland are classified by the Department as funded parkland. Accordingly, the deed for the replacement lands must incorporate the Green Acres restrictions for funded parkland by reference.

Since the Commissioner and the State House Commission are the approval authorities for disposals or diversions of parkland, proposed N.J.A.C. 7:36-26.5(f) reiterates that any compensation proposal accepted by the Green Acres Program for application review purposes or negotiated between Green Acres and applicants under this section is still subject to final approval of the Commissioner and the State House Commission.

Proposed N.J.A.C. 7:36-26.6 sets forth the final application requirement for minor disposals or diversions of parkland. These requirements largely parallel and incorporate the requirements of current N.J.A.C. 7:36-21.4, with certain exceptions highlighted below.

- In a departure from current N.J.A.C. 7:36-21.4, the Department now proposes to require applicants to submit the majority of the final application technical requirements for review prior to scheduling the required public hearing on the application. Proposed N.J.A.C 7:36-26.6(a). In the past, applicants would often conduct the public hearing prior to completing the final application requirements. This change will allow the public to have the complete picture of the application prior to the hearing. In particular, the Department is concerned about giving the public the opportunity to review the value information (including appraisals, if required) for the parkland proposed to be disposed of or diverted and the proposed replacement land. This information is prepared by the applicant but needs to be reviewed by Green Acres and accepted by the Green Acres review appraisers prior to the public hearing. Under proposed N.J.A.C. 7:36-26.6(a)3, the Department will now also require submittal of a draft public hearing notice which must comply with the requirements of proposed N.J.A.C. 7:36-26.6(e)3.

- Because of the procedural change discussed above, proposed N.J.A.C. 7:36-26.6(b) outlines the procedure for the Department's determination of completeness of the final application for public hearing purposes.

- Proposed N.J.A.C. 7:36-26.6(c)2 requires the public hearing on an application for a minor disposal or diversion to be held at least 90 days before the date of the State House Commission meeting at which the application is considered. The current requirement, at N.J.A.C. 7:36-21.4(d)1, allows the hearing to be held 30 days before the State House Commission meeting. However, in recent years this requirement has conflicted with internal administrative procedures established by the State House Commission for placement of applications on its meeting agendas. These procedures

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now require affected State agencies to obtain agency head approvals and provide background information to the Commission approximately six weeks prior to the anticipated meeting date. In order to meet these deadlines and allow sufficient time for final Green Acres staff review of applications and review and approval of the applications by the Commissioner, a lead time of at least 75 days is necessary. This lead time, combined with the fact that that applicants have 15 days after the hearing to submit the post-hearing information (such as public comments and hearing transcripts, specified at N.J.A.C. 7:36-26.6(f)), results in the 90-day hearing requirement.

- As explained above in the context of ROSI amendments (proposed N.J.A.C. 7:36-25.3) and changes of use of parkland (proposed N.J.A.C. 7:36-25.6), the public notice and hearing requirements at proposed N.J.A.C. 7:36-26.6(c) through (e) have been expanded to provide more comprehensive public notice of the required public hearing and a more formal opportunity to submit written public comment on the application.

- Proposed N.J.A.C. 7:36-26.6(f) outlines the remainder of the final application requirements for minor disposals or diversions of parkland. The only substantive change from current N.J.A.C. 7:36-21.4 is the requirement at proposed N.J.A.C. 7:36-26.6(f)2 to submit a public hearing transcript (in addition to a summary).

Proposed N.J.A.C. 7:36-26.6(g) through (h) outline the procedures for the Department's review of the final application, the Commissioner's review and approval or disapproval of the application and the referral of approved applications to the State House Commission for consideration. Proposed N.J.A.C. 7:36-26.6(i) specifies the requirements for remittance of monetary compensation for approved diversions and for the Department's release of the Green Acres restrictions on parkland approved for disposal or diversion.

Major Disposals and Diversions of Parkland

As discussed above, all applications for disposal or diversion of parkland that do not qualify as minor under one or more of the categories at proposed N.J.A.C. 7:36-26.2(b)1 through 5 will be classified by the Department as major disposals or diversions of parkland. The application requirements for major disposals or diversions of parkland are set forth at proposed N.J.A.C. 7:36-26.7 through N.J.A.C. 7:36-26.11. The procedure for applying for approval of a major disposal or diversion of parkland parallels the application procedure for minor disposals or diversions of parkland, with the following exceptions: (1) the scoping hearing requirement at proposed N.J.A.C. 7:36-26.8; (2) the compensation requirements of proposed N.J.A.C. 7:36-26.10; (3) certain final application requirements pertaining to compensation and replacement land at proposed N.J.A.C. 7:36-26.11; and (4) the procedure at N.J.A.C. 7:36-26.9(f)2iii for use of independent experts to analyze alternatives to the proposed disposal or diversion of parkland. These differences are examined in detail below.

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Proposed N.J.A.C. 7:36-26.7, Major disposals or diversions; general procedural requirements, provides a general overview of the procedural requirements at proposed N.J.A.C. 7:36-26.8 through 26.11.

Proposed N.J.A.C. 7:36-26.8, Scoping Hearing requires an additional public hearing for major disposal or diversion of parkland so that the public is informed, as early in the process as possible, that Green Acres-encumbered lands are proposed to be used for other than recreation and conservation purposes. This additional "scoping" hearing arises from the Department's experience with processing applications for large-scale disposals and diversions of parkland. Under the current Green Acres rules, an applicant may choose to hold a public hearing on an application for disposal or diversion of parkland as late as 30 days before the State House Commission approval of the application. At that point, the applicant has most likely been discussing the project with the Department for six months to a year, but may not have given adequate notice to its own constituents about its plan to convert parkland to another use. In some cases, this has led to affected residents objecting to the proposed disposal or diversion of parkland at a point where the applicant has invested substantial resources in planning for the underlying project to be located on parkland and does not wish to alter its plans.

Since Green Acres-encumbered parkland is presumed to be preserved in perpetuity for recreation and conservation purposes, the Department determined that scoping hearings would be the appropriate mechanism for providing the public with a meaningful opportunity to comment on a proposal early in the process. While the Department recognizes that requiring scoping hearings will make the application process for major disposals or diversions of parkland more lengthy and complex than the current application procedure, a major disposal or diversion of parkland does represent a serious impact on preserved parkland, and merits a public discussion at the earliest possible opportunity. However, because of the additional time required to conduct a scoping hearing, the Department decided to limit the scoping hearing requirement to the "major" category of disposals and diversions.

The procedural and substantive requirements for scoping hearings are set forth at N.J.A.C. 7:36-26.8. Proposed N.J.A.C. 7:36-26.8(c) contains specific requirements for the content and dissemination of the public notice for the scoping hearing. Proposed N.J.A.C. 7:36-26.8(d) specifies that an applicant conducting a scoping hearing must discuss with the public the size and purpose of the proposed disposal or diversion, alternatives to the proposed disposal or diversion and, to the extent known, the compensation to be offered for the proposed disposal or diversion. Proposed N.J.A.C. 7:36-26.8(e) requires the applicant to provide the Department with documentation related to the scoping hearing as part of any pre-application filed under N.J.A.C. 7:36-26.9(d).

The pre-application requirements for major disposals or diversions of parkland are set forth at proposed N.J.A.C. 7:36-26.9(d). These procedures are identical to the pre-application requirements for minor disposals or diversions of parkland at proposed N.J.A.C. 7:36-26.4(d), with three exceptions: (1) the application requirements related to the scoping hearing (discussed

in the summary of proposed N.J.A.C. 7:36-26.8 above), (2) compensation requirements (discussed in the summary of proposed N.J.A.C. 7:36-26.10 below) and (3) the procedure at N.J.A.C. 7:36-26.9(f)2iii for use of independent experts to analyze alternatives to the proposed disposal or diversion of parkland. Similarly, the procedures at proposed N.J.A.C. 7:36-26.9(f) through (i) for Green Acres review of the pre-application largely parallel the requirements of proposed N.J.A.C. 7:36-26.4(f) through (i).

The proposed procedure at N.J.A.C. 7:36-26.9(f)2iii for use of independent experts to analyze alternatives to the proposed disposal or diversion of parkland is based on the Department's concern that alternatives analyses submitted by applicants for major disposals or diversions of parkland do not always constitute an objective examination of the non-parkland options reasonably and feasibly available to applicants. In recent years, disputes about alternatives analyses have played a central role in several legal appeals of the approval of the disposal or diversion of parkland by the Commissioner and the State House Commission. In recognition of this problem, N.J.A.C. 7:36-26.9(f)2iii would authorize the use of independent experts in complex cases to evaluate the alternatives analysis submitted by the applicant. Under this provision, the applicant would be required to reimburse the Department for the expert's services and the pre-application will not be considered complete until the Department has received and reviewed the recommendations of the expert.

Proposed N.J.A.C. 7:36-26.10 outlines the compensation requirements for major disposals or diversions of parkland and replaces and overhauls the current compensation rules at N.J.A.C. 7:36-21.3. Under both the current and proposed rules, a local government unit or nonprofit may provide compensation for the parkland being disposed of or diverted by replacing it with land of equal or greater market value and of at least equal size, and of reasonably equivalent quality, location, and usefulness for recreation and conservation purposes. In some cases, monetary compensation, to be used to construct parkland improvements or for future open space purchases, may be acceptable as compensation. However, in developing the compensation scenarios at proposed N.J.A.C. 7:36-26.10 (particularly at proposed N.J.A.C. 7:36-26.10(g)), the Department's overriding objective, consistent with the GSPT Act and the various Green Acres statutes, is to prevent a net loss of parkland Statewide. Therefore, the focus of the compensation requirements is on obtaining replacement land wherever feasible.

Another consideration in the Department's overhaul of current N.J.A.C. 7:36-21.3 was the Department's intention to increase the ratio of replacement land to parkland proposed for disposal or diversion. Presently, the minimum replacement to diversion/disposal ratio is 1:1. Under the proposed new rules, Green Acres has developed a higher replacement land ratio, with the applicable ratio for a particular diversion or disposal depending on the quality of the parcel proposed for diversion or disposal and the type of project proposed. This change is intended to respond to concerns that allowing 1:1 replacement of parkland makes it too easy to disrupt established parkland and does not do enough to either deter disposals or diversions of parkland or encourage applicants to find alternative non-parkland locations for their projects. An analysis of the disposal/diversion applications approved by the Commissioner and the State House

Commission over the last five years indicates that the overall ratio of compensation land to parkland disposed or diverted has been about 3:1. However, on an individual basis, compensation has ranged from 1:1 to almost 40:1, (taking into account size alone, not value).

In establishing higher minimum compensation ratios for major disposals or diversions of parkland through these rules, the Department is seeking both to introduce more uniformity into its approvals of disposals or diversions of parkland and to ensure that the public is better off as a result of these approvals. In many cases, allowing 1:1 replacement of parkland means that the public is actually worse off from a parkland perspective. For example, if an applicant removes an acre from a ten-acre park and replaces with a one-acre park in another location across town, the municipality's options for recreational development of the original park are diminished and the small size and location of the new parkland parcel may not be conducive to providing recreational opportunities for other residents. In addition, given the increasing land costs and scarcity of land in many parts of the State, it is important that parkland not be considered available, developable land.

Proposed N.J.A.C. 7:36-26.10(a) sets forth the general rule that applicants for a major disposal or diversion of parkland must provide compensation that meets the minimum requirements of N.J.A.C. 7:36-26.10. However, this subsection also provides that applicants, in their discretion, may propose compensation that exceeds the minimum requirements of this section. This provision is designed to ensure that a local government unit or nonprofit, as the property owner, is not constrained in its negotiations with other entities whose projects will impact parkland to accept a lower amount of compensation than might otherwise be agreed upon between the parties.

Proposed N.J.A.C. 7:36-26.10(b) provides that, in establishing compensation for major disposals or diversions of parkland, the Department's primary objectives are to prevent a net loss of parkland, to discourage the use of parkland for other than recreation and conservation purposes, and to ensure that the public is adequately compensated for the fair market value of the parkland to be disposed or diverted. To achieve these objectives, an applicant seeking approval of a major disposal or diversion of parkland must propose to compensate for the disposal or diversion by offering replacement land or monetary compensation in accordance with the compensation ratios at proposed N.J.A.C. 7:36-26.10(g) and the criteria at proposed N.J.A.C. 7:36-26.10(i) and (j) and proposing to replace any recreational facilities affected by the proposed disposal or diversion in accordance with proposed N.J.A.C. 7:36-26.10(c)3.

Under proposed N.J.A.C. 7:36-26.10(c), an applicant proposing a major disposal of parkland that will either fulfill a compelling public need or yield a significant public benefit (as defined at proposed N.J.A.C. 7:36-26.1(d)1) may choose the method of compensation from the table at proposed N.J.A.C. 7:36-26.10(g), subject to review by the Green Acres Program as part of the application process and the approval of the Commissioner and the State House Commission. Proposed N.J.A.C. 7:36-26.10(c)1 provides that, for disposals or diversions of parkland in general, including easements on, over or through parkland, applicants may propose replacement

land, monetary compensation, or a combination of both, provided the remaining requirements of N.J.A.C. 7:36-26.10 are met. Under proposed N.J.A.C. 7:36-26.10(c)2, compensation for leases, concession agreements or use agreements that are classified as major disposals or diversions of parkland will be proposed by applicants and reviewed by Green Acres. Proposed N.J.A.C. 7:36-26.10(c)2ii would 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.

Consistent with current N.J.A.C. 7:36-21.3(c), proposed N.J.A.C. 7:36-26.10(c)3 requires the replacement of recreational facilities affected by a proposed major disposal or diversion of parkland in addition to any replacement land or monetary compensation proposed by the applicant.

Under proposed N.J.A.C. 7:36-26.10(c)4, an applicant for a major disposal or diversion of parkland must include in the compensation proposal submitted under N.J.A.C. 7:36-26.9(d)5 a plan to either replace or provide compensation for the removal of any tree with a diameter at breast height (DBH) of greater than six inches, especially the removal of any trees of significant size (with a DBH of eighteen inches or greater), or the clear cutting of more than 0.50 acre. This language parallels the tree replacement requirements for minor disposal or diversions of parkland discussed above (proposed N.J.A.C. 7:36-26.5(c)5). Tree replacement plans submitted by the applicant will be reviewed by Green Acres in consultation with the Division of Parks and Forestry and are subject to the approval of the Commissioner and the State House Commission as part of the application.

In formulating tree replacement plans as required by proposed N.J.A.C. 7:36-26.10(c)4, applicants are encouraged to incorporate, to the extent feasible, the best management practices recommended for reforestation in the New Jersey Forestry and Wetlands Best Management Practices Manual. This document was developed by the Department's State Forest Service based on sound science as reported by major universities, the forest experiment stations of the U.S. Forest Service, and best management practices of other states in the Mid-Atlantic region, and is intended to assist foresters in avoiding lasting impacts to water resources. In addition, tree replacement plans will be required to conform to 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, as may be amended and supplemented. This document is considered to be the industry standard for tree maintenance and pruning and is widely used and supported by organizations such as The International Society of Arboriculture, National Arbor Day Foundation, and American Forests.

Proposed N.J.A.C. 7:36-26.10(d) sets forth the substantive requirements relating to the use of replacement land as compensation for a major disposal or diversion of parkland, including requirements pertaining to the size, location and quality of such land. Proposed N.J.A.C. 7:36-26.10(d)2 codifies the Department’s policies for determining whether land offered by an applicant is eligible to be used as replacement land. Of particular note, proposed N.J.A.C. 7:36-

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26.10(d)2ii4 states that land purchased by a local government unit in whole or in part with funds from a dedicated County or municipal open space tax or with bonds financed with a dedicated open space tax (N.J.S.A. 40:12-15.1 through 15.9) will no longer be eligible as replacement land, since allowing this funding source to be used to replace other parkland results in a net loss of protected lands and of funding available to increase parkland holdings. Under proposed N.J.A.C. 7:36-26.10(d)3, if an applicant proposes to compensate for a major disposal or diversion of parkland with a combination of replacement land and monetary compensation, the ratio of the replacement land to the parkland proposed to be disposed of or diverted must be at least 1:1. This requirement is designed to ensure that any replacement land that is offered by the applicant will be at least as useful (taking into account size alone) as the land proposed to be diverted or disposed.

Consistent with current N.J.A.C. 7:36-21.3, proposed N.J.A.C. 7:36-26.10(d)5 and 6 require the proposed replacement land to have a market value that is equal to or greater than the parkland proposed for disposal or diversion. The proposed replacement land must also be of reasonably equivalent or superior quality, including, but not limited to, location, usefulness for recreation purposes and value for ecological, natural resource and conservation purposes. Under proposed N.J.A.C. 7:36-26.10(d)7, if the proposed replacement land does not meet any of these criteria, the Department may require additional compensation.

Proposed N.J.A.C. 7:36-26.10(d)8 would require, to the extent feasible, that replacement land to be located in the same municipality as the parkland proposed for disposal or diversion. However, if no such lands are available, the new rule would allow the proposal of replacement lands within the same watershed as the parkland proposed for disposal or diversion.

Proposed N.J.A.C. 7:36-26.10(d)9 recodifies the requirements at current N.J.A.C. 7:36-21.3(e) concerning the proffer of “paper streets” as replacement land.

Proposed N.J.A.C. 7:36-26.10(d)10 recodifies the requirements at current N.J.A.C. 7:36-21.4(a)4 pertaining to replacement land with a history of current or past industrial use. In revising this chapter, the Department determined that such requirements should be moved from the final application phase of the application to the compensation proposal component of the pre-application, in order to allow sufficient time for the applicant to produce, and the Department to review, any required preliminary assessment information prior to submittal of a final compensation proposal under N.J.A.C. 7:36-26.11(b)5. The remaining substantive requirements of this paragraph are unchanged from current N.J.A.C. 7:36-21.4(a)4.

Proposed N.J.A.C. 7:36-26.10(e) sets forth the substantive requirements relating to the use of monetary compensation as compensation for a major disposal or diversion of parkland. In particular, proposed N.J.A.C. 7:36-26.10(e)2 would prohibit the use of County or municipal open space funds or other dedicated recreation and conservation funding sources as monetary compensation under this section. Proposed N.J.A.C. 7:36-26.10(e)3 and 4 require additional information to be included as part of the preliminary compensation proposal when monetary

compensation is proposed to be used for construction of park improvements (proposed N.J.A.C. 7:36-26.10(e)3) or acquisition of land (proposed N.J.A.C. 7:36-26.10(e)4). Proposed N.J.A.C. 7:36-26.10(e)5 specifies the requirements for use of the monetary compensation once approved by the Commissioner and the State House Commission.

Proposed N.J.A.C. 7:36-26.10(f) contains the Department's protocols for valuation of both the parkland proposed for disposal or diversion and any proposed replacement land. Proposed N.J.A.C. 7:36-26.10(f)1 continues the Department's longstanding policy (currently codified at N.J.A.C. 7:36-21.4(a)1ii) of valuing such lands based on their highest and best use, or intended use, whichever results in a higher market value. In establishing such values, an applicant may rely on either tax assessor's information or an appraisal in compiling a preliminary compensation proposal as part of its preapplication (proposed N.J.A.C. 7:36-26.10(f)2) but must either obtain an appraisal or an appraisal waiver (proposed N.J.A.C. 7:36-26.10(l)) in compiling a final compensation proposal as part of the final application (proposed N.J.A.C. 7:36-26.10(f)3).

Proposed N.J.A.C. 7:36-26.10(g) consists of a table which sets forth eight rows of minimum compensation ratios for major disposals or diversions of parkland. For several of the compensation scenarios, the required minimum compensation will differ depending on whether the project is classified by the Department as "public" or "private" under proposed N.J.A.C. 7:36-26.10(h). This subsection defines a "public" diversion as one that meets the public purpose thresholds of proposed N.J.A.C. 7:36-26.1(d)1 and is to be constructed by or sponsored by a public entity (as defined at proposed N.J.A.C. 7:36-2.1). A "private" diversion for purposes of this section is one that meets the public purpose thresholds of proposed N.J.A.C. 7:36-26.1(d)1 but is not constructed by or sponsored by a public entity. For example, an affordable housing project to be constructed by a municipality or under contract with a municipality would be classified as "public" under this section, but an affordable housing project to be constructed by a private developer would be classified as "private" (assuming it meets the public purpose thresholds at proposed N.J.A.C. 7:36-26.1(d)1). The proposed compensation ratios are lower for "public" projects since the source of funding for any proposed compensation will most often be public funds and because "public" disposals or diversions often involve the applicant's need to balance competing public needs on its own limited supply of publicly-owned or otherwise available property. By contrast, projects that would be classified as "private" under this section involve projects that, while they may serve a public purpose, are to be constructed for profit on parkland not owned by the project sponsor. In addition to acknowledging the public policy differences between these two types of projects, the enhanced ratios for "private" projects are intended to act as an even greater deterrent to the use of parkland for these projects and to prevent parkland from being targeted as "cheap land" for these types of projects. The Department notes that while proposed N.J.A.C. 7:36-26.10(g) sets the minimum compensation ratios for "private" projects, the property owner (local government unit or nonprofit) is still the applicant for the approval of any required disposal or diversion of parkland, and is free to negotiate a higher compensation ratio with the project sponsor within the limits of its discretion. See proposed N.J.A.C. 7:36-26.10(a).

The matrix at proposed N.J.A.C. 7:36-26.10(g) is divided into several columns, some of which contain ratios for replacement land based on the acreage of the land proposed for disposal or diversion and some of which contain ratios for monetary compensation based on the value of the land proposed for disposal or diversion. In general, while the Department has tried to provide some flexibility to allow monetary compensation for small-scale major disposals or diversions where appropriate, in some cases limits have been placed on the monetary compensation ratios in order to ensure that the approval of the major disposal or diversion of parkland does not lead to a significant net loss of parkland Statewide. See proposed N.J.A.C. 7:36-26.10(j). For example, the cash compensation ratios for subsurface and surface easements do not limit the exercise of the monetary compensation option since the underlying legal interest in the property affected by the easements will continue to be owned by the applicant as parkland. However, in order to reinforce the Department's policy that Green Acres-encumbered parkland is not developable land that is "for sale" for other projects, proposed N.J.A.C. 7:36-26.10(j) limits the selection of the monetary compensation option for non-easement diversions and fee conveyances of parkland and the use of monetary compensation to purchase parkland improvements for disposals or diversions of parkland by private entities and for the category of legalizing past disposals or diversions. In addition, the ratios for cash compensation for parkland improvements and land purchases are higher than the replacement land ratios. These distinctions will be discussed in more detail below.

Although the ratios for replacement land at proposed N.J.A.C. 7:36-26.10(g) are based on the size of the land proposed for disposal or diversion, proposed N.J.A.C. 7:36-26.10(d) specifies that such replacement land must be of equal or greater total market value to the parkland proposed for disposal or diversion and of reasonably equivalent quality, location and usefulness for recreation and conservation purposes. Therefore, in some cases, the applicant may need to provide a greater ratio of replacement land to parkland in order to meet the value and/or quality requirements of proposed N.J.A.C. 7:36-26.10(g). See proposed N.J.A.C. 7:36-26.10(d)7. In most cases, the market value of the parkland proposed for disposal or diversion and any proposed replacement land will be estimated by the applicant's tax assessor as part of the pre-application (see proposed N.J.A.C. 7:36-26.9(d)4) and then verified, and the compensation adjusted, by the applicant on the basis of an appraisal as part of the final application (see proposed N.J.A.C. 7:36-26.9(d)1 and 5). Any appraisals commissioned by the applicant for purposes of N.J.A.C. 7:36-26 must be obtained in accordance with the appraisal requirements for a local government unit acquisition project at N.J.A.C. 7:36-8.3 or 19.3, as applicable.

Under current N.J.A.C. 7:36-21.4(a)1i, if the ratio of replacement land to the disposed of or diverted parkland is 2:1 or greater, and the applicant's tax assessor certifies that the replacement land is of at least equal market value to the disposed of or diverted parkland and has the same development potential, Green Acres may waive the final application appraisal requirements in its discretion. These appraisal waiver provisions were designed to both reward applicants willing to offer more replacement land than the minimum (by reducing the application requirements) and to encourage other applicants to offer more replacement land. The matrix at proposed N.J.A.C. 7:36-26.10(g) continues the Department's practice of allowing a discretionary appraisal waiver

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for public projects at a ratio higher than that of the "with appraisals" compensation ratio. However, for the reasons discussed above, the appraisal waiver ratios for private projects are proportionately higher than those for public projects. In addition, for applications involving the legalization of an unauthorized diversion or disposal for a private project, the appraisal waiver option is not proposed to be offered. The procedure for obtaining an appraisal waiver is set forth at proposed N.J.A.C. 7:36-26.10(l).

Although the table at proposed N.J.A.C. 7:36-26.10(g) contains eight rows of compensation scenarios, they can be grouped into four categories, as follows: subsurface easements; surface easements; diversions and disposals other than easements; and legalization of unauthorized diversions or disposals. (As noted above, proposed N.J.A.C. 7:36-26.10(c)2, not this table, governs compensation for leases, concession agreements or use agreements that are classified as major disposals or diversions of parkland). The application of these ratios to a particular proposal will also governed by the replacement land criteria at proposed N.J.A.C. 7:36-26.10(i) and (j). A discussion of the compensation ratios for each category and the criteria for the application of the ratios to each category follows.

For the category of subsurface easements under parkland, applicants may offer either a fee simple interest in land or a surface easement to be used for recreation and conservation purposes (such as a trail easement) as replacement land for the proposed disposal or diversion. Proposed N.J.A.C. 7:36-26.10(i)1. The table at proposed N.J.A.C. 7:36-26.10(g) would allow replacement land for public projects to be offered at a 1:1 ratio (either with appraisals or with an appraisal waiver) or for private projects at a 2:1 ratio (with appraisals) or 4:1 ratio (with an appraisal waiver). In this category, the replacement ratios are relatively low, and appraisals may be waived for public projects even at a 1:1 replacement ratio, since the applicant will retain ownership of the underlying parkland affected by the proposed easement. However, the other provisions of proposed N.J.A.C. 7:36-26.10 would allow the Department to require higher replacement ratios in cases where the proposed easement would have a significant impact on the natural resource or other values or future utility of the affected or surrounding parkland.

If an applicant chooses to offer monetary compensation for a proposed subsurface easement on parkland, the table at proposed N.J.A.C. 7:36-26.10(g) and the criteria at proposed N.J.A.C. 7:36-26.10(i)2 set a $2,500.00 minimum for the compensation. As discussed above in connection with proposed N.J.A.C. 7:36-26.5(a)1 and 2, the proposed $2,500.00 minimum compensation takes into account (1) the current "nominal compensation" value of $1,000.00 established by the Green Acres review appraisers as the minimum value for any land appraisal in New Jersey; (2) the benefits to applicants of not being required to do an appraisal for the parkland (as applicable), (3) a survey by Green Acres of average property values Statewide, and (4) the need to set compensation levels high enough to deter, not attract, disposals or diversions of parkland. In addition, the monetary compensation ratios for this category are higher than the replacement land ratios, in order to encourage the offer of replacement land where feasible. In particular, the ratios for monetary compensation associated with projects classified as "private" under proposed N.J.A.C. 7:36-26.10(h) are considerably higher than those for "public" projects

in order to discourage the targeting of public parkland for location of underground infrastructure (such as natural gas pipelines and fiberoptic lines) and to ensure that when such intrusions do occur, the public is adequately compensated for the use of the parkland.

The requirements for compensation for major disposals or diversions of parkland in the surface easements category largely parallel those for subsurface easements. See proposed N.J.A.C. 7:36-26.10(g) and proposed N.J.A.C. 7:36-26.10(i). However, because surface easements can generally be presumed to have a greater impact on the value and future use of the affected parkland, the replacement ratios for both public and private projects are higher than for the subsurface easements category.

In the category of major disposals or diversion of parkland (other than easements), the table at proposed N.J.A.C. 7:36-26.10(g) sets minimum ratios for replacement land of 2:1 (with appraisals) and 3:1 (with an appraisal waiver) and a minimum ratio for monetary compensation of 4:1 in connection with projects classified as "public" under proposed N.J.A.C. 7:36-26.10(h). As discussed above, the Department intends to increase the minimum ratio of replacement land to diverted parkland to 2:1 to minimize the disruption of established parkland, to deter disposals or diversions of parkland, to encourage applicants to find alternative non-parkland locations for their projects, to prevent the net loss of parkland Statewide and to ensure that the public is better off as a result of the approval of a major disposal or diversion of parkland. For the reasons discussed above, the corresponding ratios for "private" projects are proposed for replacement land at 4:1 (with appraisals) and 6:1 (with an appraisal waiver) and for monetary compensation at 10:1.

In order to provide some flexibility to applicants in situations in which the offer of replacement land is not feasible at the time of application, the table at proposed N.J.A.C. 7:36-26.10(g) and the criteria at proposed N.J.A.C. 7:36-26.10(j) would allow the offer of monetary compensation in this category, subject to certain limitations. Most importantly, in order for the applicant to offer monetary compensation, 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. Proposed N.J.A.C. 7:36-26.10(j)2i. If these conditions are not met, replacement land must be provided. These limitations are designed to achieve the Department's policy objective of avoiding a net loss of parkland Statewide and to discourage attempts to "buy out" large areas of parkland.

In situations where the monetary compensation ratios do apply, the minimum compensation established by the table at proposed N.J.A.C. 7:36-26.10(g) and proposed N.J.A.C. 7:36-26.10(j)ii is $5,000.00 This minimum figure is double the minimum for the easement categories since easements are often assumed for appraisal purposes to be valued at 50 percent of the fair market value of the land in question.

If monetary compensation is offered in this category for the purpose of land acquisition, the proposed minimum compensation ratio for a public project is 4:1. The higher compensation

ratio (compared to the replacement land ratio) is intended to cover transaction costs associated with the future purchase of parkland and to hedge against rising property values, in order to ensure that when the land acquisition is completed, at least twice the replacement land can be purchased as would have otherwise been required under the 2:1 replacement land ratio. Similarly, in order to both discourage the use of parkland for public projects without the offer of replacement land, and to achieve the future purchase of replacement land at a 4:1 ratio as would otherwise be required, the ratio for monetary compensation for land acquisition in connection with private projects is proposed to be 10:1. In addition, while applicants for public projects have the option under the table at proposed N.J.A.C. 7:36-26.10(g) to offer monetary compensation for parkland improvements (subject to the size limitations discussed above), this option is not available for private projects in order to discourage the conversion of parkland to monetary compensation in situations where a private entity will benefit from the proposed disposal or diversion. See proposed N.J.A.C. 7:36-26.10(j)2iv.

The final category covered by the compensation table at proposed N.J.A.C. 7:36-26.10(g) is the legalization of past diversions or disposals. Although, as discussed above, the disposal or diversion of parkland without the prior approval of the Commissioner and the State House Commission is considered under the Green Acres laws and New Jersey case law to be void and of no legal effect, the Department is sometimes asked to "legalize" the unauthorized disposal or diversion of parkland. In some cases, such disposals or diversions have occurred because one or more of the parties to the transaction was not aware of the Green Acres restrictions on the property, whether by mistake or inadvertence. In other cases, the local government units or nonprofits were aware of the Green Acres restrictions at the time of the attempted disposal or diversion but proceeded with the transaction in order to address a public health issue or other emergency situation. However, the Department is aware of cases where local government units or nonprofits have proceeded to dispose of or divert parkland without regard to the Green Acres restrictions. Proposed N.J.A.C. 7:36-26.10(j)3, describes the manner in which the Department will consider the circumstances that led to the particular unauthorized diversion or disposal.

The compensation ratios at proposed N.J.A.C. 7:36-26.10(g) and the criteria at proposed N.J.A.C. 7:36-26.10(j)3 pertaining to the "legalization" of past diversions or disposals of parkland are designed to be quite stringent in order to deter future illegal diversions or disposals of parkland and penalize past illegal diversions or disposals of parkland. In addition to the high compensation ratios, the minimum monetary compensation proposed for this category is $10,000. In particular, the Department has set very high minimum ratios in connection with the illegal use of parkland for projects classified as "private" under N.J.A.C. 7:36-26.10(h) and will require appraisals for such applications in order to accurately determine the current value of the affected parkland (proposed N.J.A.C. 7:36-26.10(j)3iv). For both public and private projects in this category, the Department proposes to require monetary compensation to be used for land acquisition, and not parkland improvements, as a deterrent to illegal disposals and diversions and to reinforce the policy that parkland should not be converted to monetary compensation on a routine basis (proposed N.J.A.C. 7:36-26.10(j)3iii). However, proposed N.J.A.C. 7:36-26.10(j)3ii would allow the Department to take mitigating circumstances into account for both

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public and private projects and to reduce the compensation ratios for this category on a case by case basis. In no case will the Department consider compensation at a ratio of less than 1:1 (for diversion or disposals involving easements) or 2:1 (for other diversions or disposals), as applicable

Proposed N.J.A.C. 7:36-26.10(k) outlines the requirements for use of monetary compensation by applicants for land acquisition or parkland improvements if retention of such compensation is approved by the Commissioner and the State House Commission. Under proposed N.J.A.C. 7:36-26.10(k)1, monetary compensation for park improvements must be applied to new parkland improvements and not for improvements already budgeted or approved by the applicant, and such improvement must be completed within one year of the approval of the application by the Commissioner and the State House Commission. Under proposed N.J.A.C. 7:36-26.10(k)2, monetary compensation for land acquisition must be expended on land that is eligible as replacement land under proposed N.J.A.C. 7:36-26.10(d) and such acquisitions must be completed within two years of approval of the application. Since Green Acres normally reviews the attributes of proposed replacement lands when such lands are proposed at the time of application, proposed N.J.A.C. 7:36-26.10(k)2ii requires the applicant to submit relevant information to Green Acres for review prior to completing the land acquisition. If the deadlines in this subsection are not met, Green Acres may, upon written notice, require the applicant to remit the amount of the approved monetary compensation for deposit in the GSPT Fund.

As discussed above, proposed N.J.A.C. 7:36-26.10(l) contains the procedural requirements for obtaining an appraisal waiver.

Proposed N.J.A.C. 7:36-26.10(m) specifies that the Department will classify as funded parkland lands dedicated as replacement for the disposal or diversion of funded parkland.

Proposed N.J.A.C. 7:36-26.10(n) recodifies current N.J.A.C. 7:36-21.3(f), which allows "banking" of replacement land under certain limited circumstances, without change.

Proposed N.J.A.C. 7:36-26.10(o) addresses compensation requirements for projects that will neither fulfill a compelling public need nor yield a significant public benefit as those terms are described at proposed N.J.A.C. 7:36-26.1(d)1. In such cases, an applicant must propose compensation sufficient to establish that, due to the amount of the compensation alone, the proposed major diversion or disposal will result in an exceptional recreation and/or conservation benefit. See proposed N.J.A.C. 7:36-26.1(d)1iii. As discussed above, such applications must still meet all other requirements of this subchapter, and may still be denied by the Department if they will result in one or more of the adverse consequences listed at proposed N.J.A.C. 7:36-26.1(e).

Since the Commissioner and the State House Commission are the approval authorities for disposals or diversions of parkland, proposed N.J.A.C. 7:36-26.10(p) reiterates that any compensation proposed by an applicant under this section is subject to review by Green Acres

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and requires the approval of the Commissioner and the State House Commission.

Proposed N.J.A.C. 7:36-26.11 sets forth the final application requirement for major disposals or diversions of parkland. These requirements largely parallel and incorporate the requirements of current N.J.A.C. 7:36-21.4, with certain exceptions highlighted below.

- In a departure from current N.J.A.C. 7:36-21.4, the Department now proposes at N.J.A.C. 7:36-26.11(a) to require applicants to submit the majority of the final application technical requirements for review prior to scheduling the required public hearing on the application. In the past, applicants would often conduct the public hearing prior to completing the final application requirements. This change is necessary to allow the public to have the complete picture of the application prior to the hearing. In particular, the Department is concerned about giving the public the opportunity to review the value information (including appraisals, if required) for the parkland proposed to be disposed of or diverted and the proposed replacement land. This information is prepared by the applicant but needs to be reviewed by Green Acres and accepted by the Green Acres review appraisers prior to the public hearing. Under proposed N.J.A.C. 7:36-26.11(b)7, the Department will now also require submittal of a draft public hearing notice which must comply with the requirements of proposed N.J.A.C. 7:36-26.11(h)3.

- Because of the procedural change discussed above, proposed N.J.A.C. 7:36-26.11(c) and (d) now outline the procedure for the Department's determination of completeness of the final application for public hearing purposes.

- Proposed N.J.A.C. 7:36-26.11(e)2 now requires the public hearing on an application for a minor disposal or diversion to be held at least 90 days before the date of the State House Commission meeting at which the application is considered. The current requirement, at N.J.A.C. 7:36-21.4(d)1, allows the hearing to be held 30 days before the State House Commission meeting. However, in recent years this requirement has conflicted with internal administrative procedures established by the State House Commission for placement of applications on its meeting agendas. These procedures now require affected State agencies to obtain agency head approvals and provide background information to the Commission approximately six weeks prior to the anticipated meeting date. In order to meet these deadlines and allow sufficient time for final Green Acres staff review of applications and review and approval of the applications by the Commissioner, a lead time of at least 75 days is necessary. This lead time, combined with the fact that that applicants have 15 days after the hearing to submit the post-hearing information (such as public comments and hearing transcripts, specified at N.J.A.C. 7:36-26.11(i)), results in the 90-day hearing requirement.

- As explained above in the context of ROSI amendments (proposed N.J.A.C. 7:36-

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25.3) and changes of use of parkland (proposed N.J.A.C. 7:36-25.6), the public notice and hearing requirements at proposed N.J.A.C. 7:36-26.11(e) through (h) have been expanded to provide more comprehensive public notice of the required public hearing and a more formal opportunity to submit written public comment on the application. In particular, proposed N.J.A.C. 7:36-26.11(g) would authorize the Department to require the applicant to retain a neutral facilitator to conduct the required public hearing if the Department is aware that the proposed major disposal or diversion is likely to generate substantial adverse comment at the public hearing. This provision is being proposed to address complaints that have arisen in the past about the conduct by local government units of public hearings for proposed disposals or diversions of parkland.

- Proposed N.J.A.C. 7:36-26.11(i) outlines the remainder of the final application requirements for minor disposals or diversions of parkland. The only substantive change from current N.J.A.C. 7:36-21.4 is the requirement at proposed N.J.A.C. 7:36-26.11(i)2 to submit a public hearing transcript (in addition to a summary).

Proposed N.J.A.C. 7:36-26.11(j) and (k) outline the procedures for the Department's review of the final application, the Commissioner's review and approval or disapproval of the application and the referral of approved applications to the State House Commission for consideration. Proposed N.J.A.C. 7:36-26.11(l) and (m) specify the requirements for remittance of monetary compensation for approved diversions and for the Department's release of the Green Acres restrictions on parkland approved for disposal or diversion.

Social Impact

Among other findings in the GSPT Act, N.J.S.A. 13:8C-2 declares that the acquisition and preservation of open space properties in New Jersey enhances the quality of life of the citizens of New Jersey and is a paramount policy of the State. The proposed new rules will extend the positive social impacts of the existing rules by enabling the Department to continue to provide the means for local government units and nonprofits to obtain and use Green Acres funding to acquire and develop land for recreation and conservation purposes for the public's use and enjoyment. Land acquired under this program must be open to the public unless the Commissioner of the Department determines that public use of the land poses an unacceptable risk to natural resources on the land. Even in those extremely rare cases where public access to the land might be limited, the acquisition of such land benefits the public by preserving the site's natural resources. In addition, the continued development of recreational facilities on parkland with Green Acres funding will help to meet the public's need for active and passive recreational opportunities.

The proposed new rules also reflect the Department's policy of providing increased funding

to park projects in New Jersey's urban and more densely and highly populated areas. Green Acres will offer qualifying local government units additional matching grant funding and focus nonprofit development funding in those areas, which will result in a positive social impact as additional open spaces and recreational opportunities are created.

Finally, the proposed new rules will continue to ensure that the public will be able to enjoy permanently protected recreation and conservation lands. Consistent with the Department's policies over the last forty years and the GSPT Act, the rules will continue to prohibit local government units and nonprofits from conveying, disposing of, or diverting parkland to other uses except under limited circumstances, and only if the parkland is replaced with lands of greater economic, environmental, recreation, and conservation value. In those instances where a disposal or diversion of parkland must be considered as part of addressing a compelling public need or achieving a significant public benefit, the proposed new rules give additional guidance regarding the process to apply for and compensate for such disposal or diversion. This will ensure that, although there might be a disposal or diversion of a specific parcel of land, in almost every instance there will be a net gain in public parkland in addition to the social benefits to be derived from the project for which the disposal or diversion of parkland is proposed.

In particular, the proposed new rules would create a more stringent "public purpose" threshold for diversion or disposal applications, so that diversion or disposal applications are only be considered when there is a compelling public need for the diversion or disposal of public lands or a significant public benefit would result. In some cases, the "public purpose" criteria may be satisfied by an overwhelming and extraordinary replacement opportunity, including acquisition of significant replacement acreage that will strengthen protection of the State's natural, recreational or historic resources. However, even in such cases, the diversion or disposal of parkland will only be approved in situations with an overall positive social impact.

Economic Impact

The proposed new rules will continue the positive economic impacts of the existing rules by enabling the continued distribution of Green Acres funding to local government units and nonprofits to acquire and preserve land for recreation and conservation purposes and to develop outdoor recreational facilities. Local government units benefit economically because they can acquire land or develop outdoor recreational facilities with a matching grant and/or a low-interest loan. Pursuant to the Garden State Preservation Trust Act, acquisition loans are now repayable over a term of not more than thirty years. In most cases, local government units find Green Acres funding preferable to and more economical than financing such activities independently.

Many communities have discovered that there is an economic benefit to preserving open space. Numerous fiscal impact studies have shown that certain types of development (for example, single family residential housing) actually result in a net tax loss to a community when the costs of services that must be provided to residents are taken into account.

Nonprofits benefit economically because they can receive a matching grant from the State for a portion of the project cost of acquiring land or developing recreational facilities, not to exceed 50 percent of the cost of acquisition or development. A nonprofit can use financial resources it has on hand, funds it has raised for the specific land acquisition or park development project, or the value of lands or services donated to the nonprofit as part of the approved project to match the State grant.

Upon accepting Green Acres funding, the local government unit or nonprofit must agree to maintain, protect, and permanently keep open to the public, unless the Commissioner approves otherwise, the lands it acquires or develops utilizing Green Acres funding. Local government units and nonprofit are responsible for all maintenance and protection costs related to their funded parkland.

Certain acquisition project costs, including the costs of surveys and appraisals, are eligible for Green Acres funding. Also, the cost of obtaining title insurance and reasonable administrative costs incurred by the local government unit or nonprofit as part of the acquisition may be eligible for reimbursement. For development projects, Green Acres will fund the cost of eligible and approved construction by local government units or nonprofits. If funds are available, Green Acres will fund certain professional services, such as engineering fees, at up to 13 percent of the cost of construction, as well as other incidental costs.

When acquiring land, the rules require the local government unit or nonprofit to contract for appraisal, survey, and legal services, and to obtain title insurance on the lands acquired with Green Acres funding. Local government units and nonprofits are required to contract for engineering, construction, and legal services for development projects. Accordingly, the rules create demand for, and thus provide economic benefit to, certain survey, appraisal, title insurance, engineering, construction, and legal professionals. The costs of these services is borne by the local government unit or nonprofit, but offset by the Green Acres funding.

In some situations, the proposed new rules will require a local government unit or nonprofit that seeks to dispose of or divert parkland to incur additional application costs compared to the existing rules. While the Department has attempted to streamline the application and compensation process to the extent feasible for minor disposals or diversions of parkland, additional procedural and substantive requirements will now apply to proposals that are classified as major disposals or diversions of parkland. Some of these requirements, such as expanded public notice requirements, will involve additional costs that must be borne by the applicant. In some cases, the local government unit or nonprofit applying for a disposal or diversion of parkland may be able to pass these costs along to another entity, such as a developer or other government agency. However, even in cases where such costs cannot be mitigated, the Department believes that the proposed new procedures for major disposals or diversions of parkland are necessary to protect parkland from disposal or diversion except under the most compelling circumstances and to ensure that the public is adequately informed of and

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compensated for the disposal or diversion of parkland.

While the proposed new rules may lengthen the application process for proposals classified as major disposals or diversions of parkland, the Department does not believe that the additional procedural requirements will necessarily lead to increased project costs as long as the local government unit or nonprofit allows sufficient time for the application process when planning its project.

Environmental Impact

The proposed new rules will continue the positive environmental impact of the existing rules by enabling the Department to continue to provide funding under the Green Acres Program to help local government units and nonprofits acquire and preserve land for conservation purposes. As acknowledged in the GSPT Act, the protection and preservation of the existing diversity of animal and plant species is essential to sustaining both the environment and the economy of the State, and the conservation of adequate habitat for endangered, threatened, and other rare species is necessary to preserve this biodiversity.

Lands acquired or developed by local government units or nonprofits with Green Acres funding, or parkland held by the local government unit at the time of receipt of Green Acres funding, cannot be diverted for uses other than recreation and conservation without the approval of the Commissioner of the Department and the State House Commission. In addition, as a condition of funding, nonprofits must donate to the State a permanent conservation restriction or historic preservation restriction, as applicable, on the lands acquired or developed with Green Acres funding. Thus, the natural, historic, and recreational resources of these lands will be permanently protected. Development project applicants must submit an environmental assessment that addresses impacts of and alternatives to the proposed recreation project prior to approval of the funding request.

The proposed new rules will have a positive environmental impact on parkland proposed for disposal or diversion and parkland throughout the State by strengthening the Department's analysis of disposal and diversion requests. In particular, proposed N.J.A.C. 7:36-26.1(e) will more explicitly authorize the Department to take into account the environmental impact of a proposed disposal or diversion on other parkland and on other natural resources in determining whether to approve an application. Other changes to the procedures for applying for approval of a disposal or diversion of parkland, including requirements related to tree replacement, are also designed to assist the Department in more fully evaluating the environmental impact of such proposals and to ensure that applicants adequately compensate for the natural resource impacts of such proposals.

Federal Standards Statement

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995,

c.65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. N.J.A.C. 7:36 is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. do not call for a Federal standards analysis for these rules.

Jobs Impact

Pursuant to N.J.S.A. 52:14B-et seq. (P.L. 1995, c. 166), all rule proposals must contain a jobs impact statement assessing the number of jobs to be generated or lost if the proposed rule takes effect.

The Department anticipates that these proposed rules will produce an overall increase in jobs in the State. The proposed new rules will allow funding for projects in the urban and densely populated areas of the State to be increased, in part through the creation of the nonprofit development category and focusing of nonprofit development funding in those areas only. As a result, construction jobs in urban areas may increase.

As part of an approved project, local government units and nonprofits must retain the services of certain businesses such as appraisal, survey, title insurance, engineering, construction, and legal firms for acquisition projects. For development projects, local government units and nonprofits are required to contract for engineering, construction, and legal services. Many local government units and nonprofits also hire consultants to prepare applications for Green Acres funding. Accordingly, the proposed new rules will create demand for certain survey, appraisal, title insurance, engineering, construction, and legal professionals. The number of acquisition or development projects that local government units and nonprofits undertake, however, and the corresponding impact on employment in the above noted job areas, will depend upon the amount of funding that the Garden State Preservation Trust and the Legislature make available for the Green Acres Program.

In those rare instances where a business is displaced as a result of an approved land acquisition project, the local government unit must comply with existing relocation laws. If funds are available, reasonable relocation costs may be eligible for reimbursement under the existing and proposed new rules.

The expanded application requirements for major disposals or diversions of parkland may in some cases lead to increased employment for consultants associated with the application process, including, but not limited to, appraisers, surveyors, engineers, construction experts, natural resources experts and law firms.

Agricultural Industry Impact

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Pursuant to P.L. 1998, c. 48, adopted on July 2, 1998, codified at N.J.S.A. 52:14B-4(a)(2), the Department has evaluated the proposed new rules to determine the nature and extent of their impact on the agricultural industry.

It is not the intention of the Department to reduce the amount of active and viable farmland in New Jersey. In fact, it is the Department's policy to promote the retention of farmland through preservation and cooperative projects with the Department of Agriculture and the County Agricultural Development Boards. The rules allow for the acquisition of farmland by local government units, but they establish guidelines under which active farmland can be considered for funding. Under the current and proposed rules, a local government unit may only apply to Green Acres to acquire active farmland if the owner is a willing seller or the property is on the market, is undergoing subdivision, or is integral to the proposed acquisition project. The local government unit must first take certain steps to ensure that the purchase of a farmland property with Green Acres funding will not unnecessarily undermine an existing or proposed project under the State or county farmland preservation programs. For nonprofits, which do not have the right of eminent domain, the acquisition of farmland can only be accomplished if there is a willing seller.

Often, local government units and nonprofits preserve farmland through the acquisition of a conservation easement on the land. Conservation easements on agricultural lands help maintain contiguous open space, preserve woodlands and protect wildlife habitat and water quality. Such easements have been used very effectively in greenway projects linking public lands. Protected farmland buffers greenway parcels from incompatible development and retains the scenic quality of viewsheds. Easement purchases also assist farmers by providing working capital that can be invested into the agricultural operation. Public access easements, often in the form of trails through and along farmland, are designed to minimize their impact on the agricultural use of the property.

If farmland is acquired with Green Acres funding, the proposed new rules would continue the Department's practices of allowing the local government unit or nonprofit to enter into agricultural leases to continue production on the land, provided certain environmental safeguards are incorporated into the lease and provided the public is still afforded reasonable access to the land.

Regulatory Flexibility Analysis

Local government units are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Nonprofits, some of which may be small businesses under the Act, must have as one of their primary purposes the acquisition or preservation of land to qualify for Green Acres funding assistance. The costs involved in acquiring and developing land for recreation and conservation purposes under the Green Acres Program thus are often part of a nonprofit's normal operating costs. Under the current and proposed rules, some of the costs of

acquisition, specifically land, survey, and appraisal costs, are eligible for 50 percent reimbursement. Under the proposed rules, nonprofits are now also eligible to receive up to 50 percent matching grant funding to develop land for recreation and conservation purposes, which previously was not available.

Nonprofits must follow the application procedures and comply with the grant conditions imposed by the Green Acres Program. The administrative costs of applying for, and complying with, the conditions of the grant are minimized because Green Acres provides technical assistance as requested in the application process. Also, much of the documentation required for a Green Acres project is produced during the nonprofits' normal land acquisition and development activities, so the nonprofits can rely on existing staff and available resources.

Because costs of application and compliance are unique to each project, the resources available to a nonprofit to meet those costs vary. Among the factors that affect the cost of a project are the following: the size or number of individual parcels contained in the project site, the availability of volunteer labor, donations from interested persons, the location of the project site, the environmental sensitivity of the project site, and the cost of acquisition or development. Through the course of Green Acres funded acquisition and development projects, nonprofits need to retain the services of certain businesses, such as appraisal, survey, title insurance, engineering, construction, and legal firms. While the nonprofits must contract for these services, a portion of such costs are eligible for reimbursement, if funds are available. The nonprofits must keep and submit billing records to receive reimbursement of allowable costs.

In some cases nonprofits may incur substantial technical costs when applying for approval for the disposal or diversion of parkland. However, in such circumstances, the filing of an application is entirely within the nonprofit's discretion. Presumably, therefore, a nonprofit will only apply for a disposal or diversion of parkland in situations where there will be an overall social, economic and/or environmental benefit.

The purposes of the Green Acres Program include assisting nonprofits in the acquisition and development of recreation and conservation land for the public benefit, and ensuring the permanent protection of both funded and unfunded parkland. The requirements imposed are the minimum necessary for efficient management of the program. Therefore, no lesser requirements or exemptions for small business nonprofits are provided.

Smart Growth Impact

Executive Order No. 4(2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the rule's impact on smart growth and the implementation of the State Plan.

According to the New Jersey Department of Community Affairs' web page at www.state.nj.us/dca/osg/smart, smart growth is "well-planned, well-managed growth that adds new homes and creates new jobs, while preserving open space, farmland, and environmental resources." Land preservation is a central component of the statewide land use planning that promotes smart growth. Open space can protect the quality and quantity of surface and groundwater resources, guide development and growth, preserve natural and historic resources, shape community character, and provide land for recreation. The Green Acres rules provide a framework for funding the open space and environmental resource preservation efforts of local government units and nonprofits.

Green Acres regularly prepares New Jersey's Statewide Comprehensive Outdoor Recreation Plan (SCORP), to provide statewide policy direction on open space and recreation issues. One of the primary goals of the SCORP is to "implement open space and recreation planning policies and projects that are consistent with New Jersey's smart growth principles and the Statewide Development and Redevelopment Plan." One goal of the State Plan is to preserve and enhance areas with open space, recreational, historic and scenic value. As the SCORP points out, the State Plan contains no less than 34 policies designed to improve statewide planning and coordination of open space and recreation policy among all levels of government.

Parks and open space play critical roles in urban revitalization projects that, in turn, attract new residential development to New Jersey's cities. By enhancing the quality of life for urban residents, open space preservation and park development can reduce the demand for new residential housing developments in the suburban or rural areas, which often destroy undeveloped woodlands and farms.

These proposed rules support the Department's goal of creating a "green infrastructure" that will preserve New Jersey's natural resources and provide close-to-home recreation opportunities in the State's urban, suburban, and rural areas. Greenway projects that help achieve this goal minimize the impacts of sprawl and landscape fragmentation through strategic efforts to conserve interconnected open space – smart conservation that complements New Jersey's smart growth efforts. Identifying the appropriate land and preserving sufficient land to achieve this goal requires thoughtful planning and adequate funding. The proposed rules facilitate the funding of land preservation and park development projects by Green Acres and describe, among other things, the planning required by local government units and nonprofits to obtain that funding.

Green Acres historically has encouraged local government units and nonprofits to pursue land acquisition and park development projects that are consistent with the State Plan through the program's priority ranking system. Under the new proposed rules, the ranking system has been amended to award additional points to projects that reflect smart growth goals.

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The proposed new rules will also continue the Department's policy of requiring applicants for the disposal or diversion of parkland to analyze the consistency of such proposals with the State Plan. In addition, proposed N.J.A.C. 7:36-26.1(e) would now explicitly authorize the Department to use inconsistency with the goals and objectives of the State Plan as a basis for denying such applications.

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Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:36, Green Acres Program.

Full text of the proposed new rules follows:

CHAPTER 36
GREEN ACRES PROGRAM

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.

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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, P.O. 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.

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 in 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

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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 Subchapters 3 through 24, the local government unit or nonprofit that is seeking to obtain Green Acres funding. With respect to Subchapters 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.

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

"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 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.

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"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 N.J.A.C. 7:36-21.3(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 4.5 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.

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"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, Chapter 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, and the Garden State Preservation Trust Act.

"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.

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"Green Acres statutes" means N.J.S.A. 13:8A-1 et seq., N.J.S.A. 13:8A-19 et seq., and N.J.S.A. 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 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 Appendix 1 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 Appendix 1 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

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and other rights, easements, privileges, and any other rights or interests in, relating to, or connected with real property.

"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.

“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, P.O. 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 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 P.O. Box 204, Trenton, New Jersey 08625-0204 or on the Commission's web page at 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 Subchapters 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 Subchapters 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 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 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 http://www.anla.org/applications/Documents/Docs/ANLAStandard2004.pdf.

"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

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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

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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, 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

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applicable Landscape Project maps and reports, 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 or by writing to the Division of Fish & Wildlife, P.O. 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 P.O. 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;

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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 P.O. 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

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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;

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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:

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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, attached as Appendix 2 and incorporated herein by reference. The Overview is available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at 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,

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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

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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

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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 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 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 or option 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

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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.

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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;

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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, 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, 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;

xv. The location and area of freshwater wetlands, available from the Department at 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;

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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; 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

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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 parks director, 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 paragraph 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 P.O. 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:

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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

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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 has been provided, zero to ten 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 ten 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;

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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;

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 planning area, as defined in N.J.S.A.13:20-7a, 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 the Highlands preservation area as defined in N.J.S.A.13:20-7b, 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) 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.

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(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) above; 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, i.e. 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 Muncipality, 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, PRELIMINARY ASSESSMENT, AND APPRAISAL PROCEDURES; DETERMINATION AND NOTIFICATION OF ELIGIBLE LAND COST

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

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(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;

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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

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local government unit also shall provide the Project Reference Map to the appraiser(s) hired under 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 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 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

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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 (i.) 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.

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(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 PROJECTS: PROJECT AGREEMENT, NEGOTIATIONS FOR PURCHASE OF PROJECT SITE, SUPPLEMENTAL FUNDING, DISBURSEMENTS OF LOAN OR MATCHING GRANT, 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;

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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).

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(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

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(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 exceed 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

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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 (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 ½ 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,

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corresponding to the survey required under (1) above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor, each with an 8 ½" x 11" reduced survey plan described at (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, available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at www.nj.gov/dep/greenacres.

iii. Until the title insurance policy described at 2(iii) 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).

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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 the format 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 ½ 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 (1) above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor, each with an 8 ½" x 11" reduced survey plan described at (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 Green Acres Scope of Work for Professional Land Surveying Services, available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at 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.

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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

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account to receive all Green Acres disbursements for all of the projects. Such account 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 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 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

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under the New Jersey Court Rules Governing Civil Practice at 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, 5 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:

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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,); and State OMB Circular 98-07: "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).

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.

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(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

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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 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 owned by the Department, or is subject to Green Acres restrictions, 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 #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 or by writing to the Division of Solid and Hazardous Waste, P.O. Box 414, Trenton, New Jersey 08625-0414. Additional information about the procurement and use of recycled products is available at 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 P.O. 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,

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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. § 460l, 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;

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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 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

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(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

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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 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; or

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

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.

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(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.

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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 or by writing to Bureau of Tidelands Management, Land Use Regulation Program, P.O. 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 or by writing to Natural Heritage Program, P.O. 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 Project maps and reports, 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 Project can be found at www.nj.gov/dep/fgw/ensp/landscape or by writing to the Division of Fish & Wildlife, P.O. 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.

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(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;

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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 or the Pinelands, a letter from the New Jersey Meadowlands Commission or Pinelands Commission, as applicable, stating that a pre-application conference was held with the local government unit, with the applicable Commission'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.

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(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 parks director, 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 paragraph 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.

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SUBCHAPTER 13. LOCAL GOVERNMENT UNIT DEVELOPMENT PROJECTS: AWARD CRITERIA, APPLICATION RANKING, APPROVAL PROCEDURES; PRELIMINARY ASSESSMENT REPORT

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 has been provided, zero to ten 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:

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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;

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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 planning area, as defined in P.L. 2004, c. 120 (N.J.S.A.13:20-3), 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 the Highlands preservation area as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A.13:20-3).

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) 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

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(USGBC) Leadership in Energy and Environmental Design (LEED™) Green Building Rating System for New Construction and Major Renovations Version. Information on the USGBC LEED™ System is available at 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;

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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; and

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.

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.

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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 PROJECTS: PROJECT AGREEMENT, BID PROCEDURES, SUPPLEMENTAL FUNDING, CONSTRUCTION REQUIREMENTS, SITE INSPECTIONS, DISBURSEMENT OF LOAN OR MATCHING GRANT, PROJECT CLOSEOUT, TERMS OF LOAN

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REPAYMENT, ACCOUNTING AND RECORDKEEPING

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.

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(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;

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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

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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

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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

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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 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. Such account 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

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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 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;

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

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(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, 5 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

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(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

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(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 Project maps and reports, 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 Project can be found at www.nj.gov/dep/fgw/ensp/landscape or by writing to the Division of Fish & Wildlife, P.O. 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 P.O. 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

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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.

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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 P.O. 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.

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(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

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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

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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, attached as Appendix 2 and incorporated herein by reference. The Overview is available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at 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,

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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

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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 or option 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;

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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, 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, or as determined from other State or Federal mapping or from a site delineation;

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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;

xv. The location and area of freshwater wetlands, available from the Department at 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;

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

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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.

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(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, 1 to 5 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;

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(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;

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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 ten 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 ten 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;

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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;

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

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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, PRELIMINARY ASSESSMENT, AND APPRAISAL PROCEDURES; DETERMINATION AND NOTIFICATION 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

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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

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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 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

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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 (i.) 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

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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;

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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

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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

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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 or option 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

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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 (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(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 nonprofit 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;

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(2) One 3 ½ 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 (1) above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor, each with an 8 ½" x 11" reduced survey plan described at (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, available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at www.nj.gov/dep/greenacres.

iii. Until the title insurance policy described at 2(iv) 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. 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

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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 nonprofit 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 ½ 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 (1) above, submitted on the surveyor's letterhead, and signed and sealed by the surveyor, each with an 8 ½" x 11" reduced survey plan described at (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, available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at 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;

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(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.

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.

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(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. Such account 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 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 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 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

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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 98-07: "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.

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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 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 owned by the Department, or is subject to Green Acres restrictions, 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 #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 or by writing to the Division of Solid and Hazardous Waste, P.O. Box 414, Trenton, New Jersey 08625-0414. Additional information about the procurement and use of recycled products is available at 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 P.O. 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:

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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. § 460l, 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;

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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 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:

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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 1 or 2 above. Incidental costs are limited to a maximum of two

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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; or

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

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.

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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 or by writing to Bureau of Tidelands Management, Land Use Regulation Program, P.O. 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

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www.nj.gov/dep/parksandforests/natural/heritage/datareq.html or by writing to Natural Heritage Program, P.O. 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 Project maps and reports, 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 Project can be found at www.nj.gov/dep/fgw/ensp/landscape or by writing to the Division of Fish & Wildlife, P.O. 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

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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;

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

12. 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);

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

14. 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;

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

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

17. A letter from the nonprofit's attorney certifying that the applicant organization qualifies as a nonprofit under this chapter; and

18. 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.

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(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 ten 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.

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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 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-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;

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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 (LEED™) Green Building Rating System for New Construction and Major Renovations Version. Information on the USGBC LEED™ System is available at 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.

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(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)1 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; and

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.

7:36-23.4 Preliminary Assessment Report

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(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

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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.

SUBCHAPTER 24. NONPROFIT DEVELOPMENT PROJECT: PROJECT AGREEMENT, BID PROCEDURES, SUPPLEMENTAL FUNDING, CONSTRUCTION REQUIREMENTS, SITE INSPECTIONS, DISBURSEMENT OF MATCHING GRANT, PROJECT CLOSEOUT, ACCOUNTING AND RECORDKEEPING

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

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(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).

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(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

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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."

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(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.

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(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),

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except as provided under 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. Such account 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 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

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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;

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

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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

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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, use agreement or concession agreement that applies to the funded parkland;

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 and/or from use for the specific purpose(s) for which it was acquired or constructed; 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, use agreements or concession 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

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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 required by other laws, regulations, codes, or ordinances in connection with non-parkland uses; 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; 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; 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

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the Green Acres restrictions to the same extent as it would have been had the leaf composing 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, use agreement or concession agreement, or renewal thereof, which supports or promotes 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

9. Any lease, use agreement or concession 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. 7:25.14.

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.

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(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 shall not constitute an amendment under this section; however, any 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

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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;

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 N.J.S.A. 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. §§460l-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

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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 (l) 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 or who hold easements on land located within 200 feet of the property that is the subject of the ROSI amendment request; and

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v. Post and maintain in a legible condition until the public comment period is concluded under 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;

4. The notices and advertisements required under 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
P.O. 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

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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

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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

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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 (l) 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;

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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) 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.

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) 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:

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1. 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 the 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;

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; and

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.

(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

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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 (d) 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;

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;

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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;

5. All notices and information required to be provided to the Department under paragraph 4 above shall be submitted to the following address:

New Jersey Department of Environmental Protection
Green Acres Program
Bureau of Legal Services and Stewardship
P.O. 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, or, if the local government unit is a County 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:

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(1) 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 the 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;

(4) 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 area of parkland that is the subject of the proposed change in purpose or use.

(5) Post and maintain in a legible condition until the public comment period is concluded under iii(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;

iii. The notices and advertisements required under i. 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;

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(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
P.O. Box 412
Trenton, New Jersey 08625-0412

2. At least 30 days in advance of any public hearing to be held under 1. above, the local government unit or nonprofit shall provide the Department with proof of publication of the notices of public hearing required under 1i(1) above; proof of publication of the display ad required under 1ii above; a dated copy of the posting required under 1i(2) above (if applicable); copies of and proof of mailing of the notices required under 1i(3) and (4) above; and proof of the posting and maintenance of a sign as required under 1i(5) 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 1. above, including a copy of the transcript required by 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

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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, as long as such replacement involves less than one-quarter acre of additional 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

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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 paragraph 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 [insert effective date of new chapter], subject to the following:

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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 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

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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

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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.

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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, 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.

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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, use agreement or concession 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, use agreement or concession 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.;

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, parkland user or concessionaire), provide for a longer initial term of less than 25 years; or

ii. The lease or concession 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.

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6. Specify the payment, rental, or other consideration to be paid by the lessee, parkland user or concessionaire to the local government unit or nonprofit for the lease or use of the parkland;

7. Require that the lessee, parkland user or concessionaire 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, parkland user or concessionaire 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, concessionaire, 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, parkland user or concessionaire to implement the plan; or

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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 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, use agreement or concession 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.;

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 1 through 7 above:

i. Whether the lessee, parkland user or concessionaire 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, parkland user or concessionaire 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 or concessionaire'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;

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(e) A local government unit or nonprofit that enters into a lease, use agreement or concession 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 may enter into or renew a lease, use agreement or concession 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, use agreement or concession agreement complies with the requirements of (b) through (e) above. At its option, the local government unit may submit the lease, use agreement or concession agreement to the Department for review and approval. A copy of any lease, use agreement or concession 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, use agreements or concession 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, use agreement or concession 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, use agreement or concession 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 ii below, the lease or agreement shall provide for a term of no more than two years, but may provide that the lessee, parkland user or concessionaire, upon a showing of good cause and with Department approval, may be granted one extension not to exceed six months;

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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, parkland user or concessionaire), 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 i 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 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, parkland user or concessionaire 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, parkland user or concessionaire 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, parkland user or concessionaire 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

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lessee, parkland user, concessionaire, 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, use agreement or concession 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, parkland user or concessionaire shall maintain and/or restore the building in accordance with plan and methods acceptable to the Department's Historic Preservation Office (available at P.O. 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, parkland user or concessionaire 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 in accordance with N.J.A.C. 7:36-26.

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(f) The Department will consider the following factors in determining whether to approve or deny a lease, use agreement or concession 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, parkland user or concessionaire failed to meet one or more terms of the prior lease or agreement or to demonstrate sound administrative or management practices; or

ii. If the lessee, parkland user or concessionaire 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 or concessionaire'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 (g) below;

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(g) A local government unit or nonprofit that enters into a lease, use agreement or concession 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.

(h) A lease, use agreement or concession agreement regarding the use of funded or unfunded parkland for a purpose other than recreation and conservation which does not have a beneficial public purpose or which does not otherwise qualify for approval under this section shall be deemed a diversion of parkland and shall require approval by the Commissioner and the State House Commission under N.J.A.C. 7:36-26.

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.

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;

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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;

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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 (c)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.

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(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 21 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
P.O. 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
P.O. 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;

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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 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

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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

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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 or 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;

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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 on a documented occurrence of a threatened, endangered, or rare species, or on the habitat of such species, including fragmentation of such habitat; 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;

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

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(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 (1.0) 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 ten (10.0) 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 (1.0) 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 (2.0) 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, use agreement or concession 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-

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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 (5.0) 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 (1.0) 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

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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. 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;

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:

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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, 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;

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

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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); and

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.

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; 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; and 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

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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

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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. 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 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. An explanation of the applicant's reasons for rejecting each alternative identified in 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;

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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; and

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 P.O. Box 412, Trenton, New Jersey 08625 or posted on the Green Acres web site at www.nj.gov/dep/greenacres/.

i. A reference map or maps, if necessary, on 8 1/2 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

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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), 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 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);

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.

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(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;

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; 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.

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(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

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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, 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), provided that the total minimum compensation so calculated is equal to or greater than the market value of the impact of the easement on the parkland as determined pursuant to (d) below; or

ii. If the 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 1i. above, Green Acres shall, in the alternative, establish the minimum compensation required;

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2. For a diversion of parkland that entails a lease, use agreement or concession 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, use agreement or concession 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, use agreement or concession 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, use agreement or concession 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, provided that the total compensation so calculated is equal to or greater than the market value of the parkland subject to the disposal(s) or diversion(s) as determined pursuant to (d) below; or

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ii. If the 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 2i. above, Green Acres shall, in the alternative, establish the minimum compensation required based on the per acre market value of the parkland;

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 eighteen 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 paragraphs 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 (c)3 below, as applicable;

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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, concession agreements 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;

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 eighteen 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 eighteen 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 eighteen 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,

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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 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 updated). 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

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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 i-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

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(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, attached as Appendix 2 and incorporated herein by reference. The Overview is available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at 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;

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

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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;

iv. Provide written notice of the hearing via certified mail (return receipt requested) to

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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 minor disposal or diversion; and

v. Post and maintain in a legible condition until the public comment period is concluded under 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;

3. The notices required under 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:

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New Jersey Department of Environmental Protection
Green Acres Program
Bureau of Legal Services and Stewardship
P.O. 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;

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

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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;

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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.JA.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 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; 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

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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); and

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(l), remit to the Department any monetary compensation required by the approval prior to implementing the disposal or diversion.

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

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(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 pubic 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

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commission and County open space advisory committee, if any;

iv. Provide written notice of the scoping 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 major disposal or diversion; and

v. Post and maintain in a legible condition until the public comment period is concluded under 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;

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 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;

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:

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Green Acres Program
Bureau of Legal Services and Stewardship

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Trenton, New Jersey 08625-0412

(d) At the scoping hearing, the local government unit or nonprofit shall explain that the purpose of the hearing is to accept public comment on a major disposal or diversion of parkland that is under consideration; shall 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; 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; discuss 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.

(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; 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; and 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

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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 the 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

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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) and any other alternative suggested at the scoping hearing or in the written comments submitted during the public comment period for the scoping hearing. 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

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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);

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; and

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;

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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 P.O. Box 412, Trenton, New Jersey 08625 or posted on the Green Acres web site at www.nj.gov/dep/greenacres/.

i. A reference map or maps, if necessary, on 8 1/2 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), 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 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;

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;

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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)v;

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;

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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;

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; 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:

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(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, such authorization does not constitute conceptual approval of the application, but is an informal determination by Green Acres that, based on the

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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, 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, concession agreement or use agreement:

i. Green Acres shall assess whether the compensation that the applicant proposes to receive for the lease, concession agreement 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

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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 eighteen 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 eighteen 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 in proposing replacement trees or monetary compensation for tree replacement;

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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 updated). 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 i-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:

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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 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

(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

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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;

(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;

(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;

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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, 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 may 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;

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

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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;

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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.

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

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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)	
Type of Diversion or Disposal	Project Sponsor [1]	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.
Diversions or Disposals 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.

[1] 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).

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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.

(h) For the purposes of this section, including Table 1 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 $2,500.00, 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;

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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 iii below, the minimum compensation amount is $5,000.00, even if a lesser amount would otherwise be determined utilizing the ratios in Table 1 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 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 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 or an alternate ratio approved by the Department pursuant to ii above; and

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v. If the applicant offers monetary compensation to be used for land acquisition under 3iii or 3iv above, the minimum compensation amount is $10,000.00, even if a lesser amount would otherwise be determined utilizing the ratios in Table 1 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; and

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 thirty 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 N.J.A.C. 7:36-26.11(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;

3. If the applicant does not complete the parkland improvements or land acquisition within the time frames specified in 1ii 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

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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 Scope of Work for Professional Land Surveying Services, available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at done in compliance with the Local and Nonprofit Land Survey Overview, attached as Appendix 2 and incorporated herein by reference. The Overview is available from Green Acres at P.O. Box 412, Trenton, New Jersey 08625 or on the Green Acres web page at www.nj.gov/dep/greenacres. Technical assistance regarding the preparation of the land survey is available from Green Acres;

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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)1 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.

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(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)1 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

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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;

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 major disposal or diversion; and

v. Post and maintain in a legible condition until the public comment period is concluded under 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

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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;

3. The notices required under 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
P.O. 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

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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;

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,

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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.JA.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

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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.

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Appendix 1

Densely and Highly Populated Municipalities/ Counties

Atlantic
Atlantic City
Margate 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
Hasbrouck Heights Borough
Leonia Borough
Little Ferry 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 Laurel Township
Riverside Township

Camden
Audubon Borough

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Audubon Park Borough
Cherry Hill Township
Collingswood Borough
Haddon Township
Merchantville Borough
Mount Ephraim Borough
Oaklyn Borough
Woodlynne Borough

Essex
Caldwell Borough
Glen Ridge Borough
Maplewood Township
Nutley Township
South Orange Village Township
West Orange Township

Gloucester
Washington Township

Hudson
East Newark Borough
Guttenburg Town
Harrison Town

Mercer
Ewing Township
Hamilton Township
Princeton Borough

Middlesex
Dunellen Borough
East Brunswick Township
Edison Township
Highland Park Borough
Jamesburg Borough
North Brunswick
Piscataway Township
Sayreville Borough
South Amboy City
South Brunswick Township
South River Borough

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Monmouth
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
Red Bank Borough
Shrewsbury Township
South Belmar Borough

Morris
Dover Town
Morristown Town
Parsippany Troy
Victory Gardens Borough

Ocean
Berkeley Township
Dover Township
Jackson Township
Manchester Township
Point Pleasant Borough
Seaside Heights Borough

Passaic
Clifton City
Haledon Borough
Hawthorne Borough
Prospect Park Borough
Wayne Township

Somerset
Bound Brook Borough
Bridgewater Township
Franklin Township
Hillsborough Township
North Plainfield

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Somerville Borough
South Bound Brook Borough

Union
Fanwood Borough
Garwood Borough
Linden City
Roselle Park Borough
Union Township
Winfield Township

Highly Populated Counties
Bergen
Camden
Mercer
Middlesex
Monmouth
Morris
Passaic

Densely Populated Counties
Essex
Hudson
Union

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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 decimals 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.

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- **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.
- **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.

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- **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.

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- **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.
- **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.