

***These NJNLT **Guidelines for Conveyance of Land** were duly adopted by the NJNLT Board of Trustees on October 3, 2014.*

New Jersey Natural Lands Trust
Guidelines for Conveyance of Land

1. Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Applicant” means a person who submits an application to the Trust requesting a conveyance of land.

"Biodiversity" means the totality of genes, species, and ecosystems within a geographical region.

"Board" means the Board of Trustees of the New Jersey Natural Lands Trust.

“Convey” or “conveyance” means to sell, donate, exchange, transfer, or lease.

“Cumulative impacts” means the successive addition of direct or secondary impacts from individual projects over time.

"Improved stewardship" means preservation and/or restoration of natural values of land to enhance biodiversity and natural diversity.

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

“Lands of interest to the Trust” means Trust-owned and managed lands, State Natural Areas, State Natural Heritage Priority Sites, State parks, State forests, State Wildlife Management Areas and other lands deemed significant by the Trust.

"Local government unit" means a municipality, county, or other local political subdivision of this State, or any agency thereof whose primary purpose is to acquire, administer, protect, develop, and maintain lands for recreation and conservation purposes.

"Natural diversity" means all species and distinct populations of plants and animals within their native habitat.

"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 in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received Federal income tax exemption status under section 501(c) of the 1954 Internal Revenue Code, as amended.

"Person" means an individual, corporation, club, partnership, association, political subdivision of this State and any state, Federal or interstate agency or an agent or employee thereof.

"Practicable alternative" means other choices available and capable of being carried out after taking into consideration existing technology, and logistics in light of overall project purposes, and may require an area not owned by the applicant which could reasonably have been or could be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the applicant's proposed project.

"Preservation" means any measures, including no action at all, which are required in order to protect a natural resource feature or to avoid injury, destruction or decay of a natural resource feature or to otherwise maintain or protect those features.

"Project"- means development project in its entirety (e.g., sewer line, residential development, road project) of which the conveyance of Trust lands is a proposed component.

"Replacement lands" means lands proposed to be received by the Trust as compensation for a conveyance.

"Restoration" means the reversal of a disturbance and/or the reestablishment of the original ecological function(s) and/or value(s) of the land.

"Secondary impacts" means the effects of additional development likely to be constructed as a result of the approval of a particular conveyance and/or project. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by the proposed activities that affect lands of interest to the Trust.

"Trust" means the New Jersey Natural Lands Trust, created and established in but not of the Division of Parks and Forestry of the Department of Environmental Protection (Department) pursuant to N.J.S.A. 13:1B-15.119, including its staff.

2. The Trust shall not convey land to any person except in accordance with the following process or in accordance with Section 6:

- A. A complete application shall be submitted to the Trust requesting a conveyance of land in accordance with Sections 5(A) through 5(E);
- B. Public notice and comment shall be provided on the complete application in accordance with Sections 5(F) through 5(L);
- C. The Board, after considering the complete application and public comment at a minimum of one open public meeting, may approve or disapprove the conveyance of land or may request additional information under Section 5(M). The Board may only approve a conveyance of land if it finds that the criteria, requirements and process set forth in this subchapter have been satisfied. The Board's approval is conditioned upon compliance with the criteria, requirements and process set forth in this subchapter; and
- D. The Trust's conveyance is subject to any and all restrictions in the deed that conveyed title in such lands to the Trust.

3. It is the Trust's policy to strongly discourage the conveyance of Trust land for any reason. The use of Trust land for purposes other than preservation in a natural state for enjoyment by the public and protection of natural diversity should be a last resort, and should only be considered where the proposed conveyance is necessary for a project that would satisfy a compelling public need by mitigating a hazard to the public health, safety or welfare or where such a conveyance would yield a significant public benefit by improving the delivery of essential services to the public. In the event that the applicant demonstrates such a compelling public need or significant public benefit, the proposed conveyance and replacement lands shall meet the following minimum approval criteria and requirements:

- A. The conveyance of land and replacement lands shall enhance preservation, restoration, improved stewardship and/or natural diversity/biodiversity on lands of interest to the Trust, as defined above, taking into consideration the factors listed in Section 4, below;
- B. The conveyance of land and replacement lands shall not significantly affect the public's enjoyment of the remaining portion of the affected Trust Preserve or other lands of interest to the Trust;
- C. There shall be no practicable, feasible and available alternative to the conveyance of land, as demonstrated by the analysis required under Section 5(B)(6); and

D. The applicant shall compensate the Trust for the conveyance of Trust land with replacement land that: is at least five acres in size or five times the acreage of the land proposed to be conveyed, whichever is greater; has a geographical, hydrological and/or ecological nexus to land proposed to be conveyed; is of greater ecological value and usefulness for natural diversity/biodiversity; and is of equal or greater market value than the land proposed to be conveyed.

4. In determining whether preservation, restoration, improved stewardship and/or natural diversity/biodiversity will be enhanced as a result of the proposed conveyance and replacement lands, the Trust shall consider the following, as may be applicable:

- A. Whether the quantity and quality of the replacement land satisfy the criteria set forth in the *Guidelines for Land Acquisition*;
- B. Whether lands of interest to the Trust will be positively or adversely affected by the proposed conveyance, replacement lands and/or project;
- C. Whether secondary impacts to lands of interest to the Trust may result from or be prevented by the proposed project;
- D. Whether cumulative impacts to lands of interest to the Trust may result from or be prevented by the proposed project;
- E. Whether adequate resources are available to the Trust to ensure responsible, long-term stewardship of the replacement land; and
- F. Any other factor(s) that the Trust determines will have a positive or an adverse effect on the natural diversity/biodiversity of lands of interest to the Trust if the Trust approves the proposed conveyance.

5. An applicant requesting a conveyance of land shall comply with the following process:

- A. An applicant shall submit a complete application to the Trust, together with an application fee, in such amount as shall from time to time be established by the Trust, to defray the actual costs of processing such application. No application filed pursuant to this subchapter shall be considered complete unless all required fees have been paid. The Trust shall maintain a schedule of such fees and make such schedule available to all persons upon request. Such schedule shall, in addition to application fees, establish such other fees for

Trust services or documents determined by the Trust to be necessary or appropriate to equitably apportion the costs of such services or documents to the users thereof.

Complete applications shall be submitted to:

New Jersey Natural Lands Trust
501 East State Street
Mail Code 501-04, PO Box 420
Trenton, New Jersey 08625-0420

- B. The application shall include, but not be limited to, the following information on the land proposed to be conveyed and/or the replacement lands:
- i. A description of the applicant's project, the conveyance and the replacement lands;
 - ii. An explanation of why the applicant is seeking the conveyance of Trust land;
 - iii. A description of how the conveyance and replacement lands will enhance preservation, restoration, improved stewardship and/or natural diversity/biodiversity on lands of interest to the Trust taking into consideration the factors listed in Section 4 above;
 - iv. A description of how the conveyance and replacement lands will affect the public's enjoyment of the remaining portion of the affected Trust Preserve or other lands of interest to the Trust;
 - v. A detailed explanation and analysis as to how and why the proposed conveyance is necessary and would satisfy a compelling public need by mitigating a hazard to the public health, safety or welfare or would yield a significant public benefit by improving the delivery of essential services to the public;
 - vi. An alternatives analysis that identifies, describes and explains why alternative plans, including a no-build alternative and all practicable alternatives using both public and private lands will not satisfy the applicant's need to obtain the conveyance. The analysis shall describe the economic and environmental impact of each alternative and why each was rejected;
 - vii. Information on whether the Trust will continue to hold a legal interest, e.g., fee or conservation easement, on the lands to be conveyed subsequent to the conveyance;
 - viii. To the extent known, information on whether the property was conveyed to the Trust as part of mitigation or compensation for another project undertaken by the prior owner;

- ix. To the extent known, information on whether the property was conveyed to the Trust with a deed restriction, covenant or other condition prohibiting any acts or uses that are detrimental to the preservation of land in its natural state and to the protection of elements of natural diversity;
- x. Information regarding the replacement land being proposed including, but not limited to, the following information:
 - a) An appraisal of the land to be conveyed and an appraisal of the replacement land in accordance with xi below;
 - b) A title report for the proposed replacement land to determine existing restrictions, encumbrances, easements, liens, or other factors that may affect the value of the land;
 - c) A copy of an environment assessment report based on an outline provided by the Trust which describes the existing environmental features, including elements of natural diversity determined through a survey, of the land to be conveyed and of the replacement land; and identifies and compares alternative replacement lands;
 - d) A preliminary assessment (“PA”) report for the proposed replacement land. The PA report shall include the information required under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E
 - e) A land survey plan for the land to be conveyed and for the replacement land. Each survey plan shall be prepared in accordance with the Scope of Survey Services used by the Department’s Green Acres Program (Green Acres), which is available upon request from the Trust or which can be found at the Green Acres webpage at <http://www.state.nj.us/dep/greenacres/survey/scope.html>. In addition to meeting the Green Acres Scope of Survey Services, orange fiberglass survey markers/stakes shall be installed at all property corners, and white fiberglass survey marker/stakes spaced 200’ apart shall be installed along all property boundary lines;
 - f) Metes and bounds descriptions, stating acreage, corresponding to the survey plans required under e above, submitted on the surveyor’s letter head, and signed and sealed by the surveyor;
 - g) A municipal or county map and a site map, drawn to scale, showing the land to be conveyed and showing the replacement land. For the replacement land, the site map shall include the tax map block and lot current as of the date of request, the owner 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 of Environmental Protection (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), 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); and
- h) A reference map or maps, if necessary, on 8 ½ by 11 inch paper, showing the general location of the land to be conveyed and the replacement land
- xi. Appraisals of the land to be conveyed and of the replacement land shall be provided as follows:
- a) For a parcel with an estimated land value of less than \$250,000, the applicant shall obtain at least one professionally and independently prepared appraisal. For a parcel with an estimated land value of \$250,000 or more, the applicant shall obtain two professionally and independently prepared appraisals.
 - b) All appraisals shall be prepared by a State-Certified General appraiser who Green Acres has approved based on such appraiser's sample work product;
 - c) All appraisals shall be based on the highest and best use or the use intended subsequent to the conveyance of land, whichever is higher, and shall be submitted as 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>;
 - d) Prior to starting the appraisal(s), the appraiser(s) shall request a joint meeting with the Trust to discuss the scope of work and to visit the property(ies);
 - e) The applicant shall obtain a report by an engineer, architect, or other specialist to supplement the appraisal of the project site if the Trust determines that the unique nature of the property necessitates a cost approach to valuation; and
 - f) The applicant shall submit to the Trust, in writing, any information it has that could affect the appraised value of the property.

- xii. Information regarding whether other approvals/permits are required for the applicant's project, as described under Section 5(B)(i), by Federal, interstate, State and local agencies; copies of all applications made for such approvals/permits; information regarding whether any such approvals/permits or denials have been received; and information regarding whether applicant's proposed project is consistent with the rules, plans, or policies of other Federal, interstate, State and local agencies;
- xiii. Verification that a copy of the application for the conveyance of land has been submitted to the clerk of the municipality, the clerk of the county, and the environmental commission in which the property proposed to be conveyed is located; all property owners within 200 feet of the property proposed to be conveyed; any group having expressed an interest in the property proposed to be conveyed; the individual(s) or group who donated the property to the Trust; and any governmental agency or agencies involved in the original conveyance of the property to the Trust. Verification may be done by means of a certified mail notice with return receipt requested; and
- xiv. Any other information that the Trust determines in its discretion is necessary to evaluate whether the conveyance will satisfy the statutory goals of the Trust to preserve land in its natural state and protect elements of natural diversity/biodiversity and meet the criteria set forth in Sections 3 and 4 above.

C. Within 60 days of its receipt of an application, the Trust will either:

- i. Notify the applicant that the application is complete; or
- ii. Notify the applicant that the application is incomplete and the applicant shall submit the information requested by the Trust.

D. Copies of information submitted by the applicant in response to a notification that an application is incomplete shall be submitted to the same persons to whom copies of the application were initially distributed, as listed in Section 5(B)(xiii) above. Verification that this information was submitted may be shown to the Trust by means of a certified mail notice with return receipt requested.

E. If an application is not complete within 90 calendar days after the receipt of the Trust's request for additional information, the Trust may cancel and return the application unless the applicant can demonstrate good cause for the delay in completing the application.

- i. All fees submitted with an application that is cancelled shall be nonrefundable, but will be applied toward resubmission of the application, provided that such resubmission is within one year of the date of cancellation.
 - ii. A resubmission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by a new application and fee pursuant to Section 5(A), above.
- F. Once an application is declared complete and the applicant is notified by the Trust of the date of the open public meeting of the Trust at which the application shall be considered, the applicant shall:
 - i. Provide newspaper notice of its application to the Trust at least 60 calendar days before the open public meeting of the Trust at which the application shall be considered in the official newspaper of the municipality in which the land to be conveyed is located and in a newspaper of general circulation; and
 - ii. Supply 15 copies of the complete application to the Trust.
- G. The newspaper notice required by Section F above shall include the following information:
 1. The name of the applicant;
 2. A description of the conveyance, replacement lands and project;
 3. The location of the conveyance, replacement lands and project (according to the tax map block and lot);
 4. The municipality and county in which the land to be conveyed is located;
 5. A statement that the application can be reviewed at either the municipal clerk's office or, by appointment, at the Trust's offices, at the address in Section 5(G)(vi) below; and
 6. A statement that the Trust will accept public comments on the application for 30 calendar days from the date of the published notice, and that public comment shall be sent to:

New Jersey Natural Lands Trust
501 East State Street
Mail Code 501-04, PO Box 420
Trenton, New Jersey 08625-0420

- H. Proof of the publication of the public notice required in Section 5(G), above, shall be submitted to the Trust at least 30 calendar days prior to the open public meeting at which the application shall be considered.
- I. The Trust shall provide copies of the complete application packet and a summary of public comment to each Board member prior to the open public meeting at which the application shall be considered.
- J. The applicant shall provide newspaper notice that its application is to be considered by the Trust at least 30 calendar days (as a legal notice) and again at 15 calendar days (as a paid advertisement) before the open public meeting at which the application shall be considered in the official newspaper of the municipality in which the land to be conveyed is located and in a newspaper of general circulation. The newspaper notice shall conform to the requirements of Section 5(G) i through vi and shall indicate that there is an opportunity for public comment at the open public meeting. Written proof of the newspaper notices shall be submitted to the Trust no later than 48 hours before the meeting.
- K. The applicant shall send notice by certified mail with return receipt requested that its application is to be considered by the Trust 15 calendar days before the open public meeting at which the application shall be considered in the to those entities listed in Section 5(B)(xiii), above.
- L. The applicant shall be responsible for the costs of a Trust-appointed court stenographer for that portion of the public meeting during which the Board will consider the application for conveyance of land, and any other costs incurred by the Trust which are related to the hearing of the application. The applicant shall provide the Trust with a copy of the transcript of these proceedings.
- M. The Trust may require that the applicant provide any other information that the Trust determines in its discretion is necessary to respond to comments raised at the public meeting related to whether the conveyance will satisfy the statutory goals of the Trust to preserve land in its natural state and protect elements of natural diversity/biodiversity and meet the criteria set forth in Sections 3 and 4 above. The applicant shall provide any such information within a reasonable time frame as required by the Trust. If the requested information is not provided within the requested time frame, the Trust may cancel and return the application in accordance with Section 5(E) above.
- N. The Trust will take final action on the application at an open public meeting in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6.

6. The Trust-initiated land conveyance:

A. The Trust may initiate a land conveyance where it determines in its sole discretion that the conveyance of land shall facilitate management of lands of interest to the Trust and enhance preservation, restoration, improved stewardship and/or natural diversity/biodiversity of lands of interest to the Trust taking into consideration the factors listed in Section 4 above and provided:

- i. That the transferee is a Local government unit, nonprofit or State or Federal agency that has as its primary purpose to acquire, administer, protect, develop and maintain lands for recreation and conservation purposes; that conservation restrictions shall continue to apply to the land being conveyed or such other assurances to ensure that the land being conveyed is retained in a natural condition appropriate for the conservation of soil, vegetation or wildlife and subject to such terms and conditions as may be deemed appropriate by the Trust; and that the document by which the land is transferred specifies this; or
- ii. That the land to be conveyed had been identified by the Board at a public meeting as a potential subsequent land conveyance at the time of the Trust's acquisition.

B. The Trust-initiated conveyance is subject to any and all restrictions in the deed that conveyed title in such lands to the Trust.

C. The Trust-initiated conveyance must be approved by the Board at a public meeting and comply with all conditions imposed by the deed that conveyed title in such lands to the Trust.

7. Severability

A. If any provision of these Guidelines or the application of these Guidelines to any person or circumstances is held invalid, the remainder of the Guidelines and the application of such Guidelines to persons or circumstances other than those to which it is held invalid shall not be affected thereby.