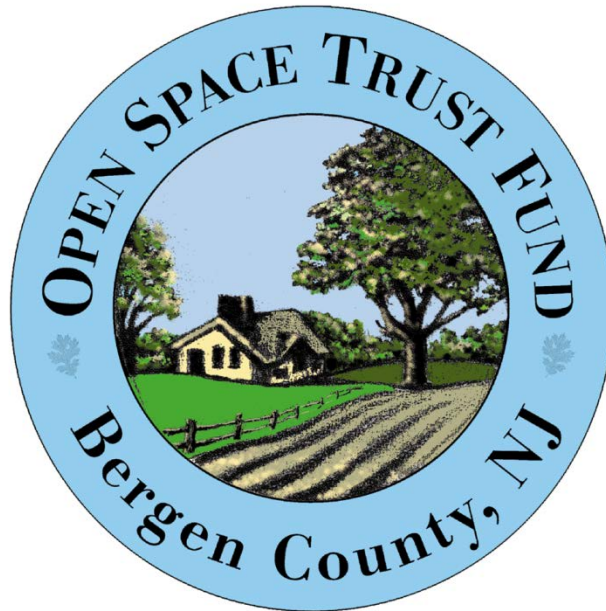


**Bergen County Open Space, Recreation, Floodplain  
Protection, Farmland & Historic Preservation Trust Fund**

**Floodplain Protection Program  
Rules & Procedures Manual**



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## **Bergen County Trust Fund Floodplain Protection Program Partnership Rules**

### **Program Overview**

The Bergen County Floodplain Protection Program involves the acquisition of floodprone homes and lands associated with the homes, from sellers and the demolition of the structures. The purchased property, cleared of all structures, is then maintained for open space purposes, in perpetuity, in order to restore and/or conserve the natural floodplain functions. Applicants to the Program (also known as Grantees) are responsible for oversight in ensuring and enforcing proper land use post preservation.

First priority for grants will be given to floodplain protection projects that have qualified for acquisition funding by the Federal Emergency Management Agency (FEMA) and the NJ Department of Environmental Protection (NJDEP) Blue Acres Program. These grants will be known as *Federally Funded Projects*. Second priority for grants will be given to floodplain protection projects that have not secured acquisition funding from FEMA and/or NJDEP funding sources. These grants will be known as *Locally Funded Projects*. No funding will be provided for flood proofing actions; which are any combination of structural and non-structural additions, changes, or adjustments to structures in order to reduce or eliminate flood damage to real estate.

This Program will provide matching funds in partnership with FEMA, NJ Blue Acres Program, and the municipal applicant, up to a maximum of 25% of total project costs for *Federally Funded Projects* and up to a maximum of 75% of total project costs for *Locally Funded Projects*.

Grant Applications will be submitted to the Bergen County Department of Planning & Economic Development (Department), for staff review to determine eligibility and application completeness. If an application is deemed complete, then staff will then conduct a preliminary site assessment. Viable applications will then be presented to the Floodplain Protection Committee (FPC), a subcommittee of the Trust Fund Public Advisory Committee, who will assess each application according to established acquisition strategy and criteria. The FPC's recommendations will be forwarded to the County Executive and the Board of County Commissioners who will award grant funding based upon appraised values.

Applicants will be notified of their grant award and will receive a formal Grant Agreement from the County setting out grant award requirements. The Grant Agreement must be executed by the applicant and the County prior to any disbursement of funds from the County.

Grant applications will be available to Bergen County municipalities and may be filed throughout the year on a rolling basis. *Federally Funded Projects* applicants are required to provide their full application to the other funding agencies, including any mapping, project analysis or determination of Benefit-Cost Ratio. *Locally Funded Projects* applications must be accompanied by a municipal Floodplain Acquisition Plan (FAP) which assesses flooding risk and delineates the desirable area(s) for acquisition. The Department will assist municipalities, on an as-needed basis, with the preparation of this Plan and associated mapping. The Department will also conduct its own Benefit-Cost Ratio analysis for each project.

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**Goals of the Program**

1. Move Bergen County residents out of harm's way from flooding events.
2. Reduce the risk to first responders who conduct search and rescue operations.
3. Reduce the risk of future property loss.
4. Lower municipal costs for post-flood clean-up and repair of buildings and infrastructure.
5. Lessen the ancillary impacts to local businesses.
6. Add open space in neighborhoods.
7. Create a permanent, self-sustaining solution to repeat flooding.

**Eligible Applicants**

Any Bergen County municipal government and the County of Bergen.

**Program Priorities**

1. Work with municipalities to identify the residential properties in floodplains that are most susceptible to regular, chronic flooding.
2. Restore and/or conserve the natural functions of floodplains.
3. Leverage available acquisition funding from Federal and State programs.

**Acquisition Strategies and Criteria**

The following list of acquisition strategies shall guide the allocation of grant funds from the Bergen County Trust Fund for this program:

- 1) For cases of a declared natural disaster, the applicant must file a Letter of Intent with FEMA for a project to be considered qualified for this program.
- 2) Give consideration to specific projects as they relate to the municipality's overall, long-term flood acquisition plans.
- 3) Encourage preservation of multiple parcels/homes in a flood prone area to achieve the most effective flood storage and protection capabilities.
- 4) Discourage 'checkerboard' preservation within flood-prone neighborhoods.
- 5) Concentrate on properties that have experienced severe, repetitive loss due to flooding or extreme damage from a specific storm event.
- 6) Prioritize municipalities that have established Local Hazard Mitigation Plans, who have also signed on to the Bergen County Hazard Mitigation Plan.

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- 7) Determine funding levels/cost share percentages for projects based on what other project funding has been obtained, e.g. FEMA, NJ Blue Acres, etc.
- 8) Ensure that projects are consistent with the objectives of Bergen County and Municipal Open Space Plans.
- 9) Only private, residential properties shall be considered. Non-residential properties will be considered, if appropriate, and are located within a target acquisition area.
- 10) Give priority to projects based on the level of damage to the structure; unsafe, uninhabitable structures shall receive the highest priority.
- 11) All funds will be distributed to the municipality (or County); funds will not be distributed to individual property owners.
- 12) All properties receiving funding must be cleared of structures and permanently deed restricted as open space within 90 days of the property's acquisition date.
- 13) This program works with willing homeowners. However, in limited situations, condemnation actions will be permitted for *Locally Funded Projects*.
- 14) The Bergen County Floodplain Protection grant to a municipality shall not exceed allowable project costs; the specific cost share amount will be determined on a case-by-case basis and will be detailed in the Grant Agreement.
- 15) Professional Services cost reimbursement is available to applicants. Professional Services Costs will be reimbursed from grant award's unexpended balance, should there be a balance. Professional Services costs, individually itemized associated with the project, includes the cost of: appraisals, title searches and title insurance, legal, engineering and/or survey, environmental investigation/assessment if necessary. Professional Services cost reimbursement is limited to a maximum of two percent (2%) of the land acquisition costs, or \$20,000 whichever is less.

**Floodplain Protection Committee (FPC)**

The FPC, a sub-committee of the Trust Fund Public Advisory Committee (TFPAC) is comprised of five members and shall review, prioritize and make funding recommendations to the County Executive and the Bergen County Board of County Commissioners. Committee meetings shall be held on an as-needed basis. A quorum shall consist of three FPC members.

The FPC will be populated with the following members: the current TFPAC vice-chair and the League of Municipalities Representative. Selected by the TFPAC chair: (2) two TFPAC members; (1) one Environmental/Conservation Representative. The TFPAC Chair will select two (2) Alternate members. Terms shall be for one year and members selected at the annual TFPAC Reorganization meeting.

Each year at their first annual meeting, the FPC shall elect two officers from their ranks: a Chairperson and Vice-Chairperson, for a term of one year. The Chairperson shall preside at all meetings of the FPC and shall appoint all standing and ad hoc committees as may be required. The Vice-Chairperson shall

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perform the duties of the Chairperson in his/her absence. Should the office of Chairperson become vacant, the Vice-Chairperson shall succeed to the office of the Chairperson for the balance of the term.

The Vice-Chairperson shall perform such duties as may be assigned by the Chairperson.

### **Eligible Properties**

To be eligible for a floodplain protection grant, applicants (“Grantee”) must verify that the property is not needed as a part of an intended planned project. Acquisition may be from a willing seller or by condemnation for *Locally Funded Projects*. The most desirable method is purchase from a willing seller. Condemnation may be used to acquire property from holdout landowners after most properties in the project area have been obtained through voluntary sales. The use of condemnation will help reduce the checkerboard pattern of vacant lots and buildings due to those owners who did not wish to sell and/or move. Minimum eligibility criteria are:

1. The property must be located in Bergen County.
2. The property must be residential. Non-residential properties will be considered, if appropriate, and are located within a target acquisition area.
3. Property must have sustained either severe repetitive loss (SRL) or repetitive loss (RL) as determined by FEMA, or, property must have sustained substantial damage (greater than 50%).
4. Properties in the process of foreclosure or currently held by a bank post-foreclosure that meet the criteria in items 1-3;
5. All incompatible easements or encumbrances can be extinguished;
6. The property cannot be contaminated with hazardous materials at the time of acquisition, other than incidental demolition or household waste.

### **Eligible Activities**

Acquisition of flood-prone and flood-damaged structures, and the lands – buildings associated with these homes. Flood events that are eligible include:

1. Overland water flow.
2. Excessive land saturation due to cumulative rainfall or snowmelt.
3. Slope failure, slope erosion or mudflow – public access to these properties may be limited due to public safety issues.

### **Funding Categories**

#### *Federally Funded Projects:*

Projects funded by a combination of Federal and State funding will receive the highest priority. FEMA’s Hazard Mitigation Grant program, as an example, typically provides 75% of the grant funding necessary for an acquisition project. The NJDEP Blue Acres Program, which is an extension of the DEP Green Acres Program, can provide the remaining 25%, based upon the availability of funding.

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If a municipality is pursuing funding from FEMA or NJDEP's Blue Acres Program, then the County will provide a grant up to 25% of the project acquisition cost; based upon available funding. Applicants are required to meet with Department staff and provide the full application given to the other funding agencies, including any mapping, project analysis or determination of Benefit-Cost Ratio. If the project is a nationally declared disaster, which has received obligated funds from FEMA, the application shall be given highest priority for review and funding recommendation.

*Locally Funded Projects:*

If a municipality seeks the majority of the acquisition funding from the County Trust Fund Floodplain Protection Program, then a municipality can submit a grant application for up to 75% of the project acquisition cost; based upon available funding. The applicant municipality will be required to submit a Floodplain Acquisition Plan (FAP).

## **Locally Funded Project Procedures**

### **Floodplain Acquisition Plans**

In order to submit a *Locally Funded* Bergen County Floodplain Protection project application, municipalities must develop a Floodplain Acquisition Plan (FAP) for their entire town with assistance of County staff. FAPs are acquisition plans that target the potential universe of properties that may be acquired by the Municipality. Once completed, they are the property of the municipality and will not be released to anyone, including homeowners. Being on the potential list simply means a property is flood-prone; as such, there is no direct action as a result of "being on the list." It has no effect on property value, assessed tax rate, and is not public information. A FAP will help in the long-term understanding of flood issues in a community, from both municipal and County perspectives. FAPs will assist in defining the future funding projections of the Bergen County Floodplain Protection Program.

FAPs shall consist of three elements and are the proprietary property of the municipality:

- Narrative - a brief recounting of the history of flooding in the municipality and goals for their flood mitigation effort;
- Map - which includes, among other things: riparian sources, floodplains, floodways, homes with active National Flood Insurance Policies, information from Flood Insurance Rate Maps, Flood Insurance Studies, and the identification of previously preserved properties.
- "Project Areas" – derived from the narrative and map, areas to be the focus of flood mitigation efforts shall be identified, including a list of specific parcels therein.

### **Approval Process**

The Approval Process shall be in two steps:

1. Floodplain Protection Committee's grant award recommendation submitted to the County Executive and the Board of County Commissioners. This defines either a lump sum amount; or band of available funds; if necessary, to be encumbered for use in a defined Project Area.

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2. Approval of grant recommendation by the Board of County Commissioners via County Commissioner Resolution. This authorizes County Staff to release a clearly delineated dollar amount to a municipality for the acquisition and preservation of specific, individual property.
  - o As awards are granted on a rolling basis, County staff will ensure that grant awards are included in the Public Hearing Notice in compliance with N.J.S.A. 40:12-14, et seq.

The Application Process is as follows:

1. Application – Municipality files an application with Bergen County’s Floodplain Protection Program, which includes all documentation delineated on the application checklist, including a FAP if application is to the *Locally Funded Project* and has not been approved by another funding agency.
2. Review – Department staff determines that application has met eligibility requirements and presents application to the Floodplain Protection Committee. Both “Priority” and “Alternate properties” shall be included on the application’s acquisition list, and all resultant Municipal and County resolutions, in the event that a “Priority” property withdraws from the program.
3. Appraisal – Appraisal of property to determine reasonable, pre-flood event market value based on comparable sales. The pre-flood event is determined by FEMA.
4. Contract – Municipality enters into a sales contract with willing landowner. If any property is obtained through condemnation (Eminent Domain Act of 1971, N.J.S.A. 20:31et seq.), appropriate legal documentation will be conducted.
5. Grant Agreement – Municipality enters into a grant agreement with Bergen County.
6. Acquisition – Bergen County sends approved funds to Municipality who in turn purchases, fee simple, the eligible structures and lands from a landowner.
7. Demolition – an entire removal of a residence(s) and any appurtenances within 90 days of the property’s acquisition; costs for demolition shall not be funded by the Bergen County Trust Fund Program.
8. Preservation – a permanent deed restriction will be placed on the land at the time of closing and it will be held in perpetuity by the Municipality as preserved open space. Properties may be used for active or passive recreation.

### **Requirements for Matching Funds**

Bergen County will provide up to a maximum of 75% of total project cost if it is a *Locally Funded Project*. It is up to the municipality to either find matching grant funds, or provide the remaining monies themselves. Match funding sources include, but are not limited to: FEMA, NJDEP Blue Acres, NJDEP Green Acres, and homeowner donation of value (acceptance of a reduced price, which can then be considered a donation of land for tax purposes). These matching funds may not be derived from the Bergen County Trust Fund Open Space Acquisition program category.



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**Open Space Restrictions**

To be eligible, a project must result in property acquisition that meets the requirements of:

- The grantee will dedicate and maintain the property in perpetuity for uses compatible with open-space, recreational, or wetlands management practices, and consistent with conservation of natural floodplain functions, by recording deed restrictions consistent with the deed provided by the County, and list the property on the Municipal Recreation and Open Space Inventory, per NJ Green Acres Rules (N.J.A.C. 7:36 et seq.) if Green Acres funds are used.
- The property acquired, accepted, or from which structures are removed will carry a permanent deed restriction providing that the property be maintained for open-space, recreational, or wetlands management purposes only.
- No new structures will be built on the property except as indicated below:
  - 1) A public building that is open on all sides and functionally related to a designated open-space or recreational use;
  - 2) A structure that is compatible with open-space, recreational, or wetlands management usage and proper floodplain management policies and practices in compliance with the rules and regulations adopted by the NJDEP (N.J.A.C. 7:1 et seq.);
  - 3) Any structures built on the property according to the second subparagraph above will be elevated or flood-proofed to the Base Flood Elevation (BFE) plus 1 foot of freeboard and meet applicable requirements of the NFIP floodplain management regulations at 44 CFR § 60.3.
- The grantee must obtain the approval of the County before conveying ownership (fee title) of the property to another public agency or qualified conservation organization. Property transfer to private citizens and corporations will not be approved.
- The grantee accepts responsibility for monitoring and enforcing the deed restriction and/or easement language.

**Application Information**

Applicants are responsible for completing a floodplain protection application, generated by the County. Generally, the application will detail project description and property information; total project cost estimate information for the value of the properties; market value documentation (assessed values or appraisals if available) as specified; identification of each property address included in the project scope of work (SOW), along with a photograph of each identified property. Applicant must hold a public hearing; advertise the public hearing (Public Notice and paid advertisement); provide minutes and public hearing and Resolution authorizing submission of application. The application document can be modified by the County at its best judgment for efficiency purposes.

The applicant should include additional, alternate properties it may substitute should one or more of the proposed properties drop out due to lack of eligibility or owner withdrawal. The applicant shall provide the same level of information for the substituted properties as provided for the proposed properties.

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## **Assurances**

Applicants must include a written Statement of Assurances in their application. Acquisition projects without these formal assurances will not be considered for funding. The Statement of Assurances must provide acknowledgment of, and agreement to, the following requirements that apply to acquisition of the property:

- Participation by property owners is voluntary in the *Federally Funded Projects* category. The prospective participants have been/will be informed in writing that participation in the program is voluntary, and that the applicant will not use its eminent domain authority to acquire their property for project purposes should negotiations fail. A *Notice of Voluntary Interest* document form will be provided by the NJ State Police;
- Each property owner will be informed, in writing, of what the applicant considers to be the market value of the property. The applicant will use the *Statement of Voluntary Participation* to document the market value of the property and will provide a copy for each property after award. A *Statement of Voluntary Participation* form will be provided by the County;
  - For projects under the *Locally Funded Projects*, the applicant will adhere to the appropriate state statute and rules concerning condemnation of land for the remaining properties in the project area after most properties in the project area have been obtained through voluntary sales.
- The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions and restricted from use or development that interferes with that purpose;
- Existing buildings will be removed within 90 days of settlement;
- Every 3 years from the date of acquiring the property, the Grantee must submit to the County a report certifying that it has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant. If the subject property is not maintained according to the terms of the grant, the Grantee, its representatives, successors and assigns are responsible for taking measures to bring the property back into compliance.

## **Transaction Requirements**

Before the grantee acquires a property, it will ensure the property is not contaminated with hazardous materials, confirm a clear title, and determine the appropriate acquisition offer for the property. After acquiring the property, the grantee must take steps to convert and maintain the property permanently as open space.

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## **Valuation**

### Appraisal Policy

#### Purpose:

To establish a policy outlining the requirements for appraisal reports submitted by municipalities seeking funding through the Bergen County Floodplain Protection Program and ensure that the consequent funding valuations are based on the accepted property valuation contained within the appraisal reports.

#### Applicability:

All applicants seeking funding shall submit (2) two copies of one appraisal prepared in compliance with USPAP Standard 1 which requires a written report, addressing the stated requirements to be in compliance with this policy, and that also meets USPAP Standard 2.2 (b) for a Summary Appraisal Report. All appraisals and reports must be prepared by a Certified General or Certified Residential Real Estate Appraiser licensed in the State of New Jersey, who is currently on the “List of Approved Appraisers” of the NJDEP Green Acres Program.

#### Informational Note:

Applicants who will also be seeking funding through the NJ-DEP Green Acres or Blue Acres programs are referred to N.J.A.C. 7:36-8.3 which requires a Self-Contained Appraisal Report as defined by USPAP Standard 2.2(a), as well as an on-site meeting and property inspection with NJDEP staff and the certified (approved) appraiser, prior to the commencement of the appraisal. Compliance with this NJDEP provision is not required by the County; however, the applicant should be aware of this requirement.

#### Policy:

Municipal applicants shall provide two (2) copies of one (1) appraisal report, one (1) shall be an original hardcopy, signed by the appraiser, and one (1) shall be submitted in a digital version performed by a New Jersey State Certified General or Certified Residential Real Estate Appraiser who is currently a NJ-DEP Green Acres Program-approved appraiser. In addition, Bergen County requires a USPAP Standard 2.2(b) compliant, summary appraisal report. Other funding agencies may require more extensive reports, please see “Informational Note” above.

Municipalities shall provide an appraisal valuing the **pre-flood condition** market value of applicant property; e.g., assuming that the property has not been damaged by flood waters or flooding as of the appraisal value date. Bergen County will pay pre-flood market values, and will provide cost share funding for up to **one year after the municipality’s initial offer is made to the property owner**. Said offer shall be automatically withdrawn after that time period expires.

In the *Federally Funded Project* program, in which Bergen County provides up to 25% of the acquisition costs as a subordinate funder, Bergen County will utilize the Certified Market Value (CMV) accepted and/or certified by the majority funding agency; e.g., FEMA or NJDEP.

In the *Locally Funded Project* program, in which Bergen County is the majority funder, providing up to 75% of the acquisition cost, all appraisals will be subject to a review by an appraiser hired by Bergen County. After said appraisal review, a property shall receive an “Accepted Market Value” (AMV) upon which Bergen County may cost share for the project. The AMV is for Bergen County valuation purposes

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only and is not to be substituted, characterized or confused with the Certified Market Value (CMV) issued by NJDEP. Details of this policy can be found under “Trust Fund Appraisal Review” (below).

### **Survey Standards**

Protocols for conducting surveys will correspond with the current survey requirements for the NJDEP Blue Acres Program (N.J.A.C.7:36, *et seq.*). Survey is for property boundary survey work of land only, described in the NJPCS NAD83 bearings with corner markers set and metes and bounds descriptions provided per the NJDEP Green Acres Standard Scope of Survey Work, which includes standards and requirements for all work that would be reviewed by Green Acres. Contact the NJDEP Green Acres for appropriate standards and instructions.

### **Preliminary Assessment**

Protocols for conducting a Preliminary Assessment will correspond to the current requirement of the NNDEP. A Preliminary Assessment is the process of collecting and reviewing available information to identify any potentially contaminated areas of concern on a property. The performance of a Preliminary Assessment at a property will help minimize public liability for site cleanup costs and help ensure that any lands acquired or developed with public funds can be utilized for recreation without risk to public health. Contact the NJDEP Green Acres for appropriate standards and instructions.

### **Trust Fund Appraisal Review**

#### **Appraisal Requirements**

Bergen County Floodplain Protection Program requires an appraisal of the Subject Property prepared under USPAP Standard 1 and reported, at minimum, utilizing a “summary appraisal report” as defined by USPAP Standard 2.2 (b). All appraisals prepared for this program will include the County of Bergen and the Flood Mitigation Program as intended users of the appraisal.

Prior to conducting an appraisal, the Municipality must obtain a “Statement of Voluntary Participation” executed by all parties with an equitable interest in the subject property; documenting the property owner’s understanding and acceptance of the voluntary nature of property acquisition.

An executed copy of the “Statement of Voluntary Participation” shall be amended into the appraisal report. The property owner is defined herein as any party with an equitable interest in the Subject Property.

The appraisal date and value date shall be as of current date. The value estimated must utilize current arm’s length market data, but shall assume the condition, layout and structural components; including, but not limited to, HVAC systems, appliances, plumbing and plumbing fixtures and electrical system and components of the improvements and property as they were on the day before the most recent flood event and/or disaster.

The “appraisal date” of all appraisal reports must be within one year of the date of the application for funding.

Municipality shall provide Bergen County with one (1) original hardcopy and one (1) digital copy of the written appraisal report.

Should the property owner disagree with the Municipality’s appraised value and want to commission a second appraisal report; the Municipality shall at their sole discretion determine if they will accept the owner’s appraisal.

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If a second appraisal is to be considered, the property owner shall commission this valuation at their sole cost and expense. The property owner's appraisal must be prepared by a New Jersey State Certified General or Certified Residential Real Estate Appraiser who is currently a NJ-DEP Green Acres Program-approved appraiser. If property value as estimated in the second appraisal is greater than 10% higher than the Municipality's appraisal, then a third appraisal must be commissioned by the Municipality. Bergen County will accept for review all three appraisals, but will only reimburse the appraisal fees for assignments directly hired by the Municipality. The reimbursement shall be based on the cost-share participation percentage.

In such situations, the AMV will be determined by the review appraiser hired by Bergen County. The review appraiser's opinion will be final and binding on all parties that executed the "Statement of Voluntary Participation".

The cost of all appraisals contracted by the municipality is eligible for reimbursement at the cost share participation percentage unless the appraisal fees and expenses are reimbursed by another governmental agency. The cost of an appraisal contracted by the property owner is *not* eligible, even if cost share participation is ultimately based on that appraisal.

### **Trust Fund Appraisal Review**

All *Locally Funded Project* application appraisals submitted for funding through the Bergen County Floodplain Protection Program shall be reviewed by an appraiser hired by Bergen County ("Review Appraiser") who is currently a New Jersey State Certified General Real Estate Appraiser (SCGREA) and is on the current List of Approved Appraisers of the New Jersey Green Acres Program.

The Review Appraiser shall review the appraisals in accordance with all appropriate current USPAP requirements; including, but not limited to, the Scope of Work rule and Standard 3 requirements. If applicable, the Review Appraiser shall develop questions regarding the development of the opinion of value, and transmit these to the applicant's appraiser with copy to the applicant.

The Review Appraiser shall contact the applicant's appraiser (via e-mail, phone, or letter) to address any questions regarding the development of the opinion of value that are not addressed in the appraisal report or resolved via written correspondence from the applicant's appraiser.

It is the applicant's sole responsibility to directly contact their appraiser and instruct them to respond to the Reviewer's questions regarding the development of the value conclusion and the final value conclusion which may occur as the result of the appraisal review.

The Review Appraiser shall develop an opinion as to the completeness, accuracy, relevance and adherence to USPAP appraisal guidelines and reasonableness of the analysis in the work under review given law, regulations and intended user requirements applicable to the work under review (USPAP Sec. 3-3).

If the Review Appraiser concludes the applicant's appraiser provides reasonable documentation, assumptions and analysis to support the credible assignment results and adequately addresses all the questions raised, the value conclusion shall be deemed Bergen County's "Accepted Market Value" (AMV) upon which Bergen County may cost share for the project.

- The AMV is not a certified value and is not a substitute or replacement for NJDEP Green Acres' Certified Market Value (CMV) or Average of Appraised Values.

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- Bergen County's maximum cost share participation on a project shall not exceed 75% of Green Acres' CMV or if in the absence of Green Acres funding, the Bergen County's maximum cost share participation at 75% of the determined AMV.
- Bergen County may cost share on a project up to the lower of either the contract value or the AMV.

If the Review Appraiser concludes that the applicant's appraiser does not provide reasonable documentation, assumptions, analysis to support credible assignment results and the value conclusions in the appraisal report and fails to adequately address all questions raised, leaving significant issues unresolved, then the Review Appraiser shall, at the direction of the County, develop an independent opinion of value which shall be deemed the AMV for Bergen County's cost share participation percentage.

### **Foreclosure**

If a property is under foreclosure, the offer to the bank will be post-flood, current fair market value or the remaining principal balance on the mortgage, whichever is less.

### **Hazardous Materials**

The grantee shall take steps to ensure that a property with past or present commercial or industrial use, or that is adjacent to such property, or that is suspected of having hazardous contaminants may be present at the site, is not contaminated at the time of acquisition. It shall ensure that the property owner provides information identifying what, if any, hazardous materials have been deposited or stored on the property (this does not include household hazardous wastes).

The Grantee shall require the owner to remove hazardous materials and containers. The owner must provide certification from the appropriate State agency that the site is clean before the Grantee can purchase any interest in the property. Any cleanup costs associated with obtaining clean-site certification, and any costs associated with hazardous materials are not eligible project costs.

The seller must also agree to indemnify the County and the Grantee for any liability arising from previous contamination of the property. A Phase I environmental site assessment is necessary prior to property acquisition. The cost of Phase II environmental site assessment remediation plans, cleanup, and certification of the property are not eligible grant project costs.

### **Clear Title**

The Grantee shall conduct a title search for each property it plans to acquire. The purpose of the title search is to ensure that the owner is the sole and actual titleholder to the property, or identify other persons with a property interest, and to ensure that the title is clear. This means that there are no mortgages or liens outstanding at the time of sale. In addition, there may not be incompatible easements or other encumbrances to the property that would make it either ineligible for acquisition or noncompliant with open space land use restrictions.

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Other requirements in particular include:

- A title insurance policy demonstrating that clear (fee) title conveys must be obtained for each approved property that will be acquired;
- The Grantee shall conduct a title search for each property it plans to acquire. The title search is to ensure that the owner is the sole and actual titleholder to the property, or identify other persons with a property interest, and to ensure that the title is clear. This means that there are no mortgages or liens outstanding at the time of sale. In addition, there may not be incompatible easements or other encumbrances to the property that would make it either ineligible for acquisition or noncompliant with open space land use restrictions;
- A physical site inspection for each property verifying no physical encumbrances to the property (where appropriate this may require a site survey to clearly establish property boundaries);
- All incompatible easements or encumbrances must be extinguished;
- The Grantee shall take possession at settlement;
- The Grantee must record the deed at the same time as and along with the programmatic deed restrictions;
- The deed transferring title to the property and the programmatic deed restrictions will be recorded according to State law and within 14 days after settlement; and
- All property transfers shall be consistent with Trust Fund Program Rules.

### **Removal of Structures**

All existing structures must be completely removed and/or disposed of in accordance with applicable laws within 90 days of closing and settlement of the property acquisition transaction. If numerous properties are purchased on different dates, the Grantee is still responsible for structure removal within 90 days of settlement for each individual property.

### **Conversion to Open Space**

The County and the Grantees agree to apply specific deed restriction language to all acquired properties to ensure the property will be maintained in perpetuity as open space and consistent with natural floodplain functions, as agreed by accepting Bergen County floodplain protection grant funding. This is done for each property by recording the open space and land use restriction, consistent with Bergen County Floodplain Protection Program model deed language provided by the County. Any modifications to the model deed restriction language can only be made with prior approval from the County of Bergen's Office of County Counsel.

## **Open Space Requirements/Land Use**

After settlement of the property acquisition transaction, the property must permanently be maintained for open space purposes and consistent with natural floodplain functions. Allowable land uses generally may include parks for outdoor recreational activities, wetlands management, nature preserves. Allowable land uses generally do not include walled buildings, flood control structures (such as levees, dikes, or floodwalls), paved surfaces, bridges, cemeteries, actions that pose health, safety or environmental risk in the floodplain, above or below-ground pumping stations or storage tanks, placement of fill materials, or other uses that obstruct the natural and beneficial use of the floodplain. Restrictions applied are similar to those approved by FEMA in 44 CFR Chapter 1, Section 206.434, item (e).

- i. The property shall be dedicated and maintained in perpetuity for uses compatible with open space, recreation or wetlands management.
- ii. No new structures will be built, except for a public facility that is open on all sides and functionally related to a designated open space or recreational use.

## **Subsequent Transfer of a Property Interest**

Post-grant award, the Grantee may convey a property interest only with the prior approval of the County and only to certain entities.

The transferee must be another public entity or a qualified conservation organization. A qualified conservation organization means an organization with a conservation purpose where the organization has maintained that status for at least 2 years prior to the opening of the grant application period that resulted in the transfer of the property interest to the Grantee, pursuant to Section 170(h) (3) and (4) of the Internal Revenue Code of 1954, as amended, and the applicable implementing regulations.

The transferee must document its status as a qualified conservation organization, where applicable. Any request to convey an interest in the property must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of the original Bergen County Floodplain Protection Grant, and must reference and incorporate the original deed restrictions providing notice of the conditions in this section. The statement must also incorporate a provision for the property interest to revert to the Grantee in the event that the transferee ceases to exist or loses its eligible status as defined under this section.

## **Monitoring and Reporting and Inspection**

The Grantee will work with the County to ensure that the property is maintained in accordance with land use restrictions. The Grantee must monitor and inspect acquired properties every 3 years to ensure that the inspected parcels continue to be used for open space purposes.

Every 3 years, the Grantee, and County must coordinate to ensure the Grantee submits documentation to the County certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

If the property subsequently transfers to an allowable transferee, the Grantee will coordinate with that entity to submit the information. The County has the right to enter the parcel, with notice, in order to inspect the property to ensure compliance with land use restrictions.



## **Enforcement**

If the required monitoring (or other information) identifies that the subject property is not being maintained according to the terms of the grant, the Grantee is responsible for taking measures to bring the property back into compliance.

In the event a property is not maintained according to the identified terms, the County shall notify the Grantee (which includes successors in interest) that they have 60 days to correct the violation. If the Grantee fails to demonstrate a good faith effort within the terms of the grant agreement within 60 days, the County shall enforce the terms of the grant agreement by taking any measures it deems appropriate, including bringing an action of law or equity in a court of competent jurisdiction. If the Grantee fails to bring the property into compliance, then the County may enforce the terms of the grant agreement by taking any measures it deems appropriate including:

- Withholding any and all grant awards from the Trust Fund Program pending corrective action;
- Requiring the transfer of title; and/or
- Bringing an action of law or equity in a court of competent jurisdiction against the Grantee and/or their respective successors and assigns.

The County also reserves the right to transfer the property title to a qualified third party for future maintenance.

## **Grant Closeout Requirements**

At completion of the grant activity, the County shall identify that all required grant activities have been accomplished (in accordance with all programmatic guidance and proper grant management practices), that all properties identified in the application have been acquired, and that the deed restriction language provided by the County was recorded with each corresponding deed. The Grantee shall provide to the County the following property reporting requirement information for each property acquired and :

- A photograph of the property site after project implementation;
- A copy of the recorded deed and attached deed restrictions for each property;
- Latitude and longitude coordinates of the property;
- Signed Statements of Voluntary Participation form from the owner of each property acquired in the project SOW. If any property is obtained through condemnation, appropriate legal documentation must be attached.
- For each property identified on FEMA's Repetitive Loss list, a completed FEMA form AW-501, documenting the completion of mitigation on the repetitive loss property.