



N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
*Conservation Easement
Legal Prescreens*



During the grant contract period, title commitments and title opinions submitted by the grantee are reviewed to ensure that no issues prevent the recording of the conservation easement.

This Conservation Easement Grant Application Title Review Prescreen is a proactive measure to ensure that applicant organizations review the landowner's fee simple ownership in the conservation easement area for potential issues that would prevent completion of the easement acquisition.

Significant title concerns could jeopardize the project, and Grantees will be liable for returning grant contract funds if the conservation easement is not recorded.

Please review these potential issues and discuss them with the landowner. If potential title concerns are found, please identify them within the application and contact Farmland Preservation staff.

For projects seeking USDA NRCS funding, please contact USDA NRCS staff for program requirements and remedies relating to ownership, title, access, liens, encroachments, or environmental concerns.

Please note:

Title Review Prescreen is not an exhaustive list. Please be thorough in your discussions with landowners. Potential title issues may result in the termination of the contract despite attempts to remedy them. Before submitting a grant application or signing the grant contract, the grantee should gather as much information and documentation as possible regarding the fee simple ownership of the property.

One common issue resulting in contract termination and failure to record the conservation easement is related to lienholders' failure to subordinate. It is essential to discuss all liens with the landowner, including but not limited to commercial, private, and federal loans. If subordination is not obtainable, the project cannot proceed.

Discuss and confirm with the landowner if any written or oral leases apply to the proposed conservation easement area. All leases related to the conservation easement area must be subordinated.

Issue	Question	NCDA&CS Requirements	Potential Remedy
Ownership Concerns that could prevent title certification, including but not limited to any known clouds on title.	Does any portion of the property have associated ownership concerns that could prevent title certification?	A marketable title with a title search of at least 60 years, certified by an attorney licensed to practice law in North Carolina, is required.	All ownership concerns must be resolved before continuing the conservation easement project.
Title concerns such as ongoing civil actions, judgments, life tenants or remaindermen, and open estates.	Are there any potential title concerns, such as ongoing civil actions, judgments, life tenants or remaindermen, or open estates?	A marketable title with a title search of at least 60 years, certified by an attorney licensed to practice law in North Carolina, is required. Copies of all exceptions noted are also required.	a. All civil actions must be closed. b. Judgments must be cancelled of record. c. Life tenant and all remaindermen must be willing to sign the conservation easement. d. Open estates will be reviewed on an individual basis.
Boundary Line disputes, discrepancies, encroachments. These could include buildings, roads, and other encroachments that impact the proposed easement area.	Are there any unresolved boundary disputes, discrepancies, or encroachments on any portion of the proposed conservation easement area?	Boundary line disputes must be resolved, and encroachments must be removed.	a. Resolve issue with adjacent landowner before application (this is necessary before application for NRCS-ALE partnership funding). b. Remove the area of dispute from the easement (this will be reflected on the survey or any associated maps) if applicable.
Legal access to all portions of the proposed easement area.	Does the entire proposed easement area have legal access from a public road, or is there an insurable, unconditional, and transferable legal right of way recorded for the easement?	The landowners are responsible for providing sufficient legal access to the entire easement area. Legal access must be identified on the survey map.	A deeded access agreement must be completed before easement recording.

Judgments, Liens, Mortgages, or other subordination needs.	Is there a judgment, lien, mortgage, or deed of trust related to the proposed conservation easement area?	A Subordination Agreement signed by the lienholder, a Release Deed releasing the easement area, and payment of the lien in full or cancellation must be identified and communicated to NCDA&CS legal and satisfied before or at closing.	a. Subordination agreement agreed upon with the lender. Judgments must be cancelled. b. Pay off what is owed for judgments, liens, or mortgages.
Bankruptcy	Are the landowners (including spouses) involved in an active bankruptcy proceeding?	Any properties involved in a bankruptcy proceeding must be identified during the application period.	a. If the landowner has an active bankruptcy, the bankruptcy must be resolved before the contract award. b. The landowner must provide a trustee's court order authorizing enrollment in the conservation easement program.
Deed Restrictions	Is any portion of the proposed conservation easement area subject to an existing easement or deed restriction?	Any easements that restrict development rights may be ineligible for easement funds, including restrictive covenants.	a. Release and/or modification of the deed restrictions. b. Removal of the area from the conservation easement, if possible.
Existing Easements that may restrict development rights	Are there any other options, rights-of-way, or easements on the proposed conservation easement area, such as utilities, gas lines, fiber optic lines, pipelines, power lines, roads, railroads, access, ditches, flowage easements, etc.?	These must be identified in the application. Ensure none of these other options interfere with conservation purposes, including access, title, development, or other land restrictions.	a. Utility easements will be reviewed by NCDA&CS legal and may require either termination or removal from the conservation easement area before contract award. b. Subordination, agreements, or other legal remedies as necessary.

Environmentally Hazardous Sites, including brownfields or other recognized environmental concerns.	Are there any recognized environmentally hazardous sites, including brownfields, within the proposed conservation easement area?	A Phase I Environmental Assessment (ESA) or equivalent <u>must</u> be completed.	a. A Phase I ESA with recognized environmental concerns will require a remedy and/or a Phase II ESA with a remedy before easement recordation. b. If the Phase I or II ESA reveals concerns without an applicable remedy, this may result in the denial or cancellation of the contract award.
Mineral Rights Reservation	Are the surface or subsurface resource rights (oil, gas, minerals, existing conservation easement, etc.) owned or reserved by a third party that is not a landowner of this property?	If active mining is occurring, the grantee and/or landowner must ensure that the rights have been terminated. An affidavit certifying that there is no current or planned mining activity will be required.	a. The fee owner must attempt to acquire mineral rights. b. Additional remedies will be discussed on an individual basis.
Established energy leases, such as wind or solar energy development leases, or others?	Are there any energy-related leases on the proposed conservation easement property, including solar, wind, or geothermal energy leases?	The current easement language is not compatible with these industry leases.	a. The leases must be terminated before the grant contract award. Remove the area of dispute from the easement (this will be reflected in the survey or any associated maps) if applicable.
Additional leases on the proposed conservation easement area, such as agricultural leases, recreation or hunting leases, public access leases, or others.	Are there any other land leases on the proposed conservation easement property, including written or oral agreements, such as agricultural leases, recreation or hunting leases, public access leases, or others?	These must be identified in the application and remedied during the due diligence period.	a. If the lease is incompatible with the easement, it must be terminated before the grant contract award, or the leased property will be removed from the easement area. b. If the lease is compatible with the easement language, it must be subordinated to the conservation easement.