N.C. Department of Agriculture & Consumer Services
N.C. ADFP Trust Fund
Environmental Conditions Table for Conservation Easement Applications

The ADFP Trust Fund agricultural conservation easement grant awards with public dollars. Therefore, the State has a fiduciary responsibility to ensure those funds support projects that have a public benefit. Unresolved environmental concerns directly threaten that benefit.

- Contamination can impair the agricultural productivity that the conservation easement is intended to protect. This means taxpayers would be paying to preserve land that cannot fulfill the program's statutory purpose.
- Environmental liabilities can attach to parties holding an interest in the property, meaning that funding a conservation easement on an impaired site could expose the State to remediation costs, legal claims, or enforcement complications.
- Appraised conservation easement purchase value assumes a marketable, unimpaired property. Undisclosed environmental conditions may mean the State is overpaying relative to the property's true value, which is inconsistent with responsible stewardship of appropriated funds.

Additionally, failing to address recognized environmental concerns can impact the federal conservation tax deduction.

- The "No Inconsistent Use" Rule (26 CFR § 1.170A-14(e)(2)): A deduction will not be allowed if the contribution would accomplish one of the enumerated conservation purposes but would permit the destruction of other significant conservation interests. This means if you are protecting farmland but there is contamination that threatens habitat or water quality, the Internal Revenue Service (IRS) could argue the easement fails to qualify.
- Conservation Purpose Protected in Perpetuity: The Internal Revenue Code (IRC) provides that a contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity. Any interest retained by the donor must be subject to legally enforceable restrictions that prevent the donor's retained interest from being used in ways inconsistent with the conservation purposes of the donation.

Unaddressed environmental concerns do not automatically impact deductibility, but they create substantial IRS audit risk under the "inconsistent use" and "exclusively for conservation purposes" tests. The best practice is to identify, disclose, and either remediate or exclude from the conservation easement.

Land Trust Alliance Standards and Practices (Standard 11) require that all easements meet IRC 170(h) standards regardless of whether a deduction is claimed. If a land trust or county government holds conservation easements that do not meet federal standards, it raises questions about whether the organization genuinely has "a commitment to protect the conservation purposes," one of the tests for being a "qualified organization" under IRC 170(h).

Compliance with IRC 170(h) is a quality-control standard for conservation easements. The tax deduction is one benefit of meeting the standard, but the standard itself ensures the conservation easement will actually work as intended in preserving conservation purposes and values. For agricultural conservation easements, there is a balance between conditions inherent to a farming operation and those that cross the line into environmental concerns that can jeopardize compliance with IRC 170(h).

The Environmental Conditions Table must be used by applicants and landowners to review environmental conditions on a property. **Material concerns are environmental conditions that may impact the federal conservation tax deduction, threaten the program's public benefit, or be scrutinized under federal or state laws and regulations.**

Material concerns alone do not cause an agricultural conservation easement application to be ineligible. Material concerns will be documented during the on-site evaluation of the grant application, and may be included in the grant contract to be remedied before recording of the agricultural conservation easement. Recognized environmental concerns will be formally documented during the open grant contract period and are subject to the requirements in the "*Environmental Audit Requirements and Checklist for Conservation Easement Programs*."

Environmental Condition	**Definition**	**Material Concerns (see definition above)**
Trash, Refuse, Garbage, Waste	Everyday items, packaging, or materials that are intentionally discarded by the landowner(s) or previous landowner(s), as useless, worthless, or consumed.	Examples: Unpermitted commercial waste dumping. Large-scale dumping. Large (requires heavy equipment or multiple truckloads) accumulation of plastics. Evidence of open burning. Former landfills. Rationale: Releasing hazardous toxins triggers strict liability under CERCLA. Allowing illegal landfills destroys protected conservation values and violates the IRC § 170(h) "No Inconsistent Use" rule.
Debris	The unintentional remains of something broken down, destroyed, or discarded that cannot be used in its current form.	Examples: Large and uncontrolled (unmanaged or spreading) piles of demolition debris. Debris that no functional reuse value. Debris containing suspected asbestos, lead paint, treated lumber, or other hazardous materials. Rationale: These are RECs under ASTM E1527-21. Ignoring them exposes the easement holder to risk under CERCLA.
Abandoned Vehicles, Parts, and Machinery	Motorized or mechanical equipment, and the components thereof, that are no longer operational or in active use.	Examples: Large or commercial junkyard operations. Machinery actively leaking oil, coolant, or battery acid into the soil or visible staining or dead vegetation under equipment. Rationale: Active release of hazardous substances is a severe ASTM REC, requiring immediate remediation to avoid CERCLA liability.

Appliances	Household or industrial electrical or mechanical machines that are discarded or no longer functioning.	Examples: Accumulations (multiple similar items) of dumped appliances, such as refrigerators and freezers, containing freon or compressors. Rationale: Active threat of toxic release, which is a CERCLA risk. Refrigerants (CFCs, HCFCs, HFCs) are regulated under Section 608 of the Clean Air Act, and improper release or venting is illegal. Industrial use that destroys open space violates IRC § 170(h) "No Inconsistent Use".
Hazardous Substances and Toxic Waste	Substances governed by environmental regulations, including petroleum hydrocarbons, solvents, heavy metals, or other materials posing a substantial threat to public health or the environment.	Examples: Leaking chemical drums. Open dumping of toxic waste. Open regulatory violations. Known groundwater contamination. Unlabeled containers with hazard pictograms. Industrial or manufacturing spills. Improper waste disposal, such as the burial of drums, waste pits, or the dumping of oil or solvents. Rationale: Severe ASTM RECs. Even small releases can trigger reporting requirements under EPCRA and create joint-and-several liability under CERCLA.

Fuel and Storage Tanks	Receptacles designed to hold petroleum products, agricultural chemicals, or other liquids.	Examples: Leaking underground storage tanks (LUSTs). Any active underground storage tank. ASTs lacking secondary containment leaking near water. Any indication of a former UST, such as fill or vent pipes, concrete islands without a documented closure report. Rationale: Highly regulated hazards with unseen cleanup costs. Severe ASTM RECs carrying maximum CERCLA liability risk.
Dilapidated Structures	Buildings, barns, or other structures that have fallen into a state of severe disrepair or ruin due to age or neglect.	Examples: Structures actively shedding friable asbestos shingles or lead paint flakes. The structure and its immediate footprint have other material concerns. Rationale: Crosses from an aesthetic or safety issue into a hazardous release, triggering potential CERCLA liability.
Scrap Tires	Used pneumatic tires are no longer suitable for their original intended purpose on vehicles or equipment.	Examples: Tires with no evidence of recent use or holding standing water. Unpermitted solid waste sites. Tires imported off-farm. Tires dumped into streams or ponds. Rationale: Unpermitted tire dumps are severe vector and fire hazards classified as ASTM RECs, carrying potential CERCLA exposure.

Scrap Metal	Discarded metal materials, parts, or fragments capable of being recycled or repurposed, but not currently in use.	Examples: Commercial-scale scrap or salvage yard operations. Scrap piles actively leaking hazardous fluids into the soil. Rationale: Destroys conservation values, violating the IRC § 170(h) "No Inconsistent Use" rule, while leaking fluids trigger CERCLA risk.