

## Rhode Island NRCS Title Commitment Documentation Requirements for Agricultural Conservation Easement Program- Agricultural Land Easement (ACEP-ALE)

**Note:** Title Documentation should be submitted a minimum of 90 days prior to closing. Deed and internal controls review are contingent on this document and the sooner NRCS receives it we can perform those reviews. Make sure the commitments are valid, they expire every 6 months. Please review **528.62 Title Review and Clearance**

### 528.62 C (1)

*When securing title insurance, at a minimum, the eligible entity **must**—*

- (i) Acquire ALTA title insurance for all acquisitions in the full amount of the agricultural land easement purchase price.
- (ii) Provide NRCS with a copy of the title insurance commitment and all supporting documents at least 90 days in advance of the planned closing date.
  - a. The title commitment must be free and clear of any and all outstanding rights or encumbrances on the title except those that NRCS decides are administratively acceptable or waivable.
  - b. If any such encumbrances are acceptable or waivable, they must be listed on the certificate of use and consent. **Any encumbrances that are not acceptable must be removed or subordinated to the provisions of the agricultural land easement deed.**
- (iii) Ensure the title insurance company is approved by the State insurance commissioner or its equivalent.

The following is considered a complete Preliminary Title Commitment Binder:

- (i) Copy of the unexecuted ALTA title policy
- (ii) Copy of all of the exceptions/encumbrances of record (of record meaning that there is a book/page or plan # listed) listed in the ALTA title policy
  - a. Copies should be legible and display the registry's stamp showing the book/page number or the plan number
  - b. If any of the copies of the exceptions/encumbrances reference, within the text of the deed, a right of way, utility easement, access easement, etc on a particular plan number, please be sure to include that plan number as well. **The reviewer will need to be able to identify the location of the exception/encumbrance.**
- (iii) Copy of the Chain of Fee Title
- (iv) Copy of an unexecuted, unsigned mortgage discharge or mortgage subordination (if applicable, examples attached)
  - a. Important: Be sure to include the book and page numbers of all recorded liens under number 6 of the subordination form.

Prior to purchasing an agricultural land easement, onsite inspections, due diligence, and landowner interviews must be completed and all title evidence must be reviewed to ensure that programmatically and legally sufficient title in the property is obtained. These reviews will include thorough examination of both unrecorded and recorded exceptions to the title to determine whether any existing exceptions to the title, encumbrances, agreements, leases, easements, other clouds on the title, or other circumstances exist that would in any way undermine NRCS's ability to achieve the purposes of the program or the eligible entities ability to enforce the easement

Attachment: Title Exception Guide for NRCS Conservation Easement Programs

## Title Exception Guide for NRCS Conservation Easement Programs

Following is a general guide of how common title exceptions should be handled for the NRCS conservation easement programs. The following is only intended as a guide and does not supersede any advice from the USDA Office of General Counsel or instructions from NRCS or take into account special circumstances that may result in handling a particular exception in a different manner. Any exceptions not determined to be acceptable must be removed or subordinated.

<b>Description of Title Exception</b>	<b>ACEP-ALE Easements</b>	<b>Non-ACEP-ALE Easements</b>
Lack of Right of Access	Generally must be removed.	Must be removed.
Access Subject to Terms and Conditions of xxxx	Generally must be removed; review referenced document to determine whether conditions of access are acceptable.	Generally must be removed; review referenced document to determine whether conditions of access are acceptable.
Taxes for Current Year, Due But Not Yet Payable	Generally acceptable.	Generally acceptable.
Outstanding Taxes for a Previous Year	Must be removed.	Must be removed.
Liens and Judgments	Must be removed.	Must be removed.
Mortgage or Deed of Trust	Must be removed or subordinated.	Must be removed or subordinated.
Utility Right of Way	Generally acceptable subject to determination that inclusion will not impact the purposes of the easement.	Generally acceptable if the right of way does not allow improvement (such as paving, mowing, etc.) and subject to determination that inclusion will not impact the purposes of the easement.
County Road	County road should not be within boundaries of easement – therefore should be removed.	County road should not be within boundaries of easement – therefore should be removed.
Change in Boundary Due to Accretion or Avulsion of Waterway	Generally acceptable.	Generally acceptable.
Public Right to Body of Water	Generally acceptable.	Generally acceptable.
General Exception for Mineral Interests	Generally must be removed, refer to mineral matrix for additional guidance.	Generally must be removed, refer to mineral matrix for additional guidance.
Reserved Mineral Rights	Generally must be removed or subordinated, refer to mineral matrix for additional guidance.	Generally must be removed or subordinated, refer to mineral matrix for additional guidance.

<b>Description of Title Exception</b>	<b>ACEP-ALE Easements</b>	<b>Non-ACEP-ALE Easements</b>
Life Estate	Generally must be removed if landowner only holds life estate or if another person who does not sign the deed owns a life estate.	Generally must be removed if landowner only holds life estate or if another person who does not sign the deed owns a life estate.
Terms and Conditions of NRCS Conservation Easement Deed	Generally acceptable.	Generally acceptable.
Existing Conservation Easement	Only acceptable if the terms of the existing easement offer less protection than the proposed NRCS easement and the terms are compatible.	Only acceptable if the terms of the existing easement offer less protection than the proposed NRCS easement and the terms are compatible.
Within Boundaries of Irrigation or Diking District	Generally acceptable.	Only acceptable if determination is made that rights of irrigation district will not interfere with the purposes of the conservation easement.
Flowage Easement	Generally acceptable if it does not interfere with agricultural viability.	Only acceptable if the flowage easement does not allow for the removal of soil or vegetation or otherwise interfere with the restoration and management of the easement.
Leases or Easements for Wind or Solar Energy Development	Must be removed or subordinated unless determined compatible with agricultural uses of the land.	Must be removed or subordinated.
Agricultural Leases	Generally acceptable when subordinated.	Must be terminated prior to acquisition, unless it is a grazing lease on a WRE or HFRP easement.
Public Access Easements or Hunting Leases	Generally acceptable unless use levels interfere with easement purposes.	Generally acceptable unless use exceeds levels authorized in the deed.
Bankruptcy	Consult with a realty specialist before proceeding.	Consult with a realty specialist before proceeding.
Existing Covenants, Restrictions, Contracts for Sale, Options, or Rights of First Refusal	Consult with a realty specialist before proceeding.	Consult with a realty specialist before proceeding.

<b>Description of Title Exception</b>	<b>ACEP-ALE Easements</b>	<b>Non-ACEP-ALE Easements</b>
Previously Reserved Rights	Review reserved right; determine impact; accept or require subordination or release.	Review reserved right; determine impact; accept or require subordination or release.
Unrecorded Leases and Tenancies	Generally acceptable for the title commitment but must addressed in the certificate of use and consent.	Generally acceptable for the title commitment but must addressed in the certificate of use and consent.
Ingress/Egress to an Adjacent Landowner	Generally acceptable as long as the scope and location of ingress/egress is fully described; treat this similar to a road.	Generally acceptable as long as the scope and location of ingress/egress is fully described; treat this similar to a road.
Other Exceptions of Record	Must be removed.	Must be removed
Other Exceptions Not of Record	Generally acceptable.	Generally acceptable.
Gap Check (i.e., items appearing after the date of the title commitment but prior to closing)	Must be removed.	Must be removed.