

**State Agriculture Development Committee
Farmland Preservation Program
PURCHASE OF DEVELOPMENT EASEMENTS
GUIDELINES FOR REVIEWING TITLE COMMITMENT/POLICY**

SCHEDULE A

- Verify that the Commitment Date has not expired.
- The Title Policy Amount must agree with the total consideration for the development easement.
- Proposed Insured: Verify that the appropriate party is insured.
(CADB and/or Board of Chosen Freeholders are identified as Grantee).
- The final (preferably sealed) legal description prepared by the surveyor must be incorporated as Schedule A. The endorsement must contain all of the correct preparation dates, through and including the last revision.

A final easement policy must include, somewhere, either in the body of the policy or in an endorsement, the language that *“the amount of acreage is not insured; however, the metes and bounds description prepared by ___ (surveyor), of _____ (company), dated ___ (include all dates) and revised to _____ is insured”*.

This language must accompany the metes and bounds description to a final policy, so make sure the title company takes care of it at the initial review stage.

SCHEDULE B-1

- Schedule B-1 will reflect the conveyance of a Deed of Easement from Seller to Buyer.

The parties identified in the title commitment must be inserted in the Deed of Easement when identifying the Grantee and Grantor.

- Individuals: dower and courtesy rights and rights of possession.
 - If held in one name but a marital residence both husband and wife must sign the deed of easement.
 - Power of Attorneys must be submitted for review and recorded. Correct citations and signature lines for a Power of Attorney in a deed or other instrument are as follows, and either one is proper:
 - “John Doe, by his attorney-in-fact Carol Roe” (where upon Carol Roe would actually sign John Doe’s name.)

OR

 - “Carol Roe, attorney-in-fact for John Doe” (where upon Carol Roe signs her own name.)
- Trusts / Estates:
 - Will and any documents establishing Trustees
 - Letters of administration and testamentary
 - Must establish there is no lien for inheritance tax via NJ inheritance tax waiver or federal estate tax return
- Corporations:
 - Bylaws and Certificate of Good Standing
 - Resolution authorizing sale of development rights
 - Franchise tax lien search
- Limited Liability Company:
 - Operating Agreement, Member Consents and Certificate of Good Standing
- Partnerships:
 - Partnership Agreement and Certificate of Good Standing
- Municipalities:
 - Ordinance authorizing acquisition of land and sale of easement pursuant to N.J.S.A 40A12-13(b).

GUIDELINES FOR REVIEWING TITLE COMMITMENT/POLICY

Schedule B-I: REQUIREMENTS *continued*

- Schedule BI: REQUIREMENTS lists outstanding issues to be resolved before closing, such as: confirming marital status, payment of taxes, bankruptcies, judgments, mortgages, financing statement, inheritance taxes, IRS issues etc. Ensure that all issues are resolved at or prior to closing. All liens must be either paid off or subordinated to the development easement.
 - Judgment Search: Any judgments must be paid and discharged prior to closing or omitted from the title policy by Seller's Affidavit of Title.
 - A copy of the judgment must be attached to the Affidavit of Title. The Affidavit of Title should reference the date of the judgment search and note that the judgment shown thereon is not against deponent but persons of similar name.
 - All pages of the judgment(s) should be initialed at the bottom.
 - Marital Interest: Proof of interest in the property through marriage and/or divorce, if any, must be established to ensure all relevant parties are executing or subordinating interest to the Deed of Easement.
 - Copies of Divorce Decrees, Quit Claims, Property Settlement or Prenuptial Agreements or other documentation may be requested depending on the timeline of the nuptials or divorce and the acquisition of title to the property being preserved.
 - Bankruptcy: A court order allowing the sale free and clear of all liens and encumbrances is required.
 - Child Support must be paid current.
 - Affidavit of Title supplements the title search by explaining ambiguities and providing additional facts.
 - Any outstanding liens, loans or mortgages appearing on the title report must be removed or noted on the title commitment and policy as released or subordinated. For each lien, financing statement and mortgage, the following must be provided to the title company prior to closing:
 - A mortgage release
 - A Subordination Agreement. (The encumbrance must be explicitly subordinated to the Deed of Easement. The Agreement should specifically reference the Deed of Easement and incorporation of the Deed of Easement into the Agreement as schedule or appendix is recommended.)
 - A pay-down letter from the lender referencing the lending document(s) and how much is owed.
 - Pay off and cancellation of government tax or other lien.
 - Leases: any preexisting lease, verbal or written, vest rights in the tenant to use and occupy the property being preserved. This creates a potential adverse and prior right on the part of the tenant to the Deed of Easement that, if unrecorded, would not be insured by the title policy for the agricultural easement purchase.
 - Tenants must be notified and provided a copy of the Deed of Easement.
 - Additional language must be included in the Seller's Affidavit of Title to verify tenants have been notified and will be provided a copy of the recorded Deed of Easement and that any future leases would be consistent with the Agricultural Deed of Easement.

NOTE:

A copy of each of the above must be provided to the SADC prior to the legal review for closing.

GUIDELINES FOR REVIEWING TITLE COMMITMENT POLICY

SCHEDULE B-II

- Schedule B-II: EXCEPTIONS will reflect exclusions from the scope of the policy's coverage of the Counties interest in the deed of easement.

Copies of all recorded easements, restrictions and grant covenants which do not pertain to the premises must be removed. Ensure that a photocopy of all deeds, easements, rights of way, restrictions or conditions of record is attached to Schedule B, Section II of the title commitment.

Carefully review the various restrictions or easements of record to ensure that they do not permit use of the Premises that would conflict with the terms of the Deed of Easement. As a general rule title companies except third party interests from the insurance coverage for the Deed of Easement. Pre-existing easements are, in perpetuity, both potentially incompatible and superior to the Agricultural Deed of Easement and will be deducted from the SADC cost share.

Note any restrictions which limit access to the premises. If ingress or egress is not provided, then the appraisal value should be checked to ensure that the appraisal process considered this limitation.

- Utility Easements: The easement should be reviewed to determine if there is any negative impact on the continued use of land for agricultural purposes. Generally, a utility easement exception is not removed. Ensure that any noted utility easements appear on the survey plat.
- Conservation, open space, stream, sight easements or similar: The easement should be reviewed to determine if there is any negative impact on the continued use of land for agricultural purposes. Generally, easements of the like are covered by but deducted from the SADC cost share for the Agricultural Deed of Easement. Ensure that any easements appear on the survey plat.
- Access easements: The easement should be reviewed and will be part of the SADC cost share for the Agricultural Deed of Easement if the access provided does not pose a conflict with the Deed of Easement and is used for farming purposes on the property being preserved.

* Third party Easements to be recorded immediately prior to the Agricultural Deed of Easement will not be considered “pre-existing” and thus deducted from the SADC cost share.

- Survey: An endorsement must be issued indicating that a current survey has been prepared. Carefully review and noted “exceptions” to the survey endorsement to ensure that the Deed of Easement is enforceable.

Please ensure the consistency of all dates between the plat, metes & bounds, and endorsement.

- The final policy must contain an endorsement or note: *“the amount of acreage is not insured; however, the metes and bounds description prepared by ___ (surveyor), of _____ (company), dated ___ (include all dates) and revised to _____ is insured”.*
- Rights of the public in any roadway: This exception should be removed if the rights-of-way have been excepted from the premises.
- Taxes: At a minimum all taxes must be paid through the date of closing. Generally, the taxes are paid through the quarter.
 - An exception for “All government taxes, liens and assessments” must be removed. An acceptable exception to the policy would be: *“Lien for unpaid taxes. Taxes are paid through the ___ quarter 2011. Subsequent taxes not yet due and payable.”*

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Schedule B-II: EXCEPTIONS *continued*

- Tax Certificates/Liens: for program purposes certificates are to be treated like a mortgage, in which case the SADC will need:
 - (a) a payoff figure for the tax sale certificate;
 - (b) a copy of the certificate endorsed for cancellation; and
 - (c) a title company endorsement omitting the certificate as a lien (or some written statement that the exception will be omitted in the final easement policy).
- Financing Statements: Generally, financing statements are encumbrances on personal property and not on the premises, and therefore should be removed. If the title company is nonetheless unwilling to remove the exception, or if the Financing Statement does in fact encumber the land, the financing statement must be paid off or subordinated to the Deed of Easement. If the financing statement is to be subordinated, a Subordination Agreement must be provided to the title company and the SADC.
- “Subsurface conditions” – this exception is for fee policies only; since the County or SADC normally owns an ‘easement interest’ and does not own the land, this exception must be removed.
- “Possible rollback taxes” or “potential liability under NJSA 54:4-23.1” - or other such language must be removed due to the following:
 - the land could not have been preserved at closing with an existing or potential change of use triggering rollback taxes;
 - a future change in use to nonagriculture is a violation of the deed of easement and is an exclusion from coverage under standard policy terms.
- “Subject to restrictions, terms and conditions as are set forth in the Deed of Easement about to be insured hereunder.” Since the title insurance company is insuring the Deed of Easement itself, this exception must be removed. Under no circumstances can the deed of easement be an exception in the preliminary title report and/or final title insurance policy (see attached memo).
- “Estate and Interest, if any, of the United States of America and the State of New Jersey in all lands now or formerly flowed by tide waters,” you must verify the existence of riparian land, as the SADC will not cost share on riparian lands. Verify if riparian lands were noted in the application or appraisal. If there are no riparian lands identified on the survey, the exception should be removed.

additional items maybe added over time

last updated December 2011