

## **Grand Prairie Friends Title Standards for Conservation Projects**

### **POLICY**

1. Grand Prairie Friends will conduct a title search, by a competent professional issuing the title certificate or equivalent for all land acquired and all conservation easements acquired.
2. Grand Prairie Friends will obtain title insurance for all lands purchased.
3. Mortgages must be subordinated or discharged. An example mortgage subordination form is attached.
4. Rights of First Refusal and Options to Purchase must be released or subordinated.
5. Life Estates must be subordinated or terminated. Term Leases must be subordinated or terminated, with the exception of leases approved by the Board of Grand Prairie Friends.
6. Oil, gas and mineral leases must be surrendered, or released by the tenant, or extinguished by statutory abandonment proceedings. In certain cases, Grand Prairie Friends may accept or purchase lands in which the mineral rights are owned by another party if the Grand Prairie Friends Board determines that the conservation objectives of the land parcel are not, and will not be, impaired.
7. The fee in perpetual and long-term lease lands must be conveyed by quitclaim deed and appropriate documents evidencing due authority also recorded. Where applicable, statutory notice and publication must be given and evidence of the same recorded. If the fee owner refuses, then a subordination to the land purchase or conservation easement is required, at a minimum.
8. If there is corporate ownership, then a Corporate Resolution must be provided at closing.
9. Estates and heirs holding title must provide a Decree of Distribution.
10. Minors and those deemed incompetent must have duly appointed guardians.
11. Various documents, certificates and consents of partners and trustees must be provided at closing of partnerships or trusts that hold title to the land.
12. Deeds must have an ascertainable legal description of the land, with descriptions that can be identified. In some instances, a survey may be required.
13. Deeds known to lack the required witness or acknowledgment by a notary or having other known technical defects less than 15 years old must be signed and recorded again.
14. Other lien holders must release, discharge or subordinate their liens.

15. Any permits that are required due to subdivisions or other activities must be in place.
16. Any other title defects and other superior retained rights (such as mineral or timber rights) must be cleared as appropriate and all documents recorded must be in proper legal form.
17. Errors in technicalities must be corrected unless extreme age (100 years plus) renders the risk nil or unless the title insurer agrees in writing NOT to show the encumbrance at all on the title insurance policy. Affirmative coverage from the title insurer is NOT acceptable.
18. Unacceptable encumbrances (private landfills, paper streets, commercial sanitary waste disposal systems, etc.) must be terminated, subordinated or otherwise adjusted so that the purposes of the conservation easement are not jeopardized.
19. All tax liens must be paid even tax liens on less than fee interest in the land to be conserved, unless the title insurer agrees NOT to show the encumbrance at all on the title insurance policy. Affirmative coverage from the title insurer is NOT acceptable.

### Example Mortgage Subordination Agreement for a Conservation Easement

This example is from the Land Trust Alliance's Land Trust Standards and Practices 2004 Practice 9H: title Investigation and Subordination. An Attorney or the bank involved with the mortgage should write the specific subordination agreement for a given land transaction.

THIS SUBORDINATION AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2012, between \_\_\_\_\_, a \_\_\_\_\_ corporation with an office at \_\_\_\_\_ ("Mortgagee"), and \_\_\_\_\_, a nonprofit corporation incorporated under the laws of \_\_\_\_\_ having an office at \_\_\_\_\_ ("Easement Holder").

#### W I T N E S S E T H:

WHEREAS, Mortgagee is the holder of that certain mortgage dated \_\_\_\_\_ granted by \_\_\_\_\_ ("Mortgagor") in favor of Mortgagee to secure an indebtedness in the original principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) (the "Mortgage"); and

WHEREAS, the Mortgage created a lien on certain real property owned by Mortgagor in \_\_\_\_\_ County, \_\_\_\_\_ more particularly described on Exhibit A annexed hereto (the "Property"); and

WHEREAS, the Mortgage was recorded in the land records of \_\_\_\_\_ County, \_\_\_\_\_ on \_\_\_\_\_ in Book \_\_\_\_\_ at page \_\_\_\_\_; and

WHEREAS, Mortgagor has agreed to grant to Easement Holder a Deed of Conservation Easement (the "Conservation Easement") restricting the use of the Property, or a portion thereof; and

WHEREAS, a true and complete copy of the Conservation Easement has been provided to Mortgagor; and

WHEREAS, the Conservation Easement is intended to be recorded simultaneously herewith; and

WHEREAS, Easement Holder has agreed to accept the grant of the Conservation Easement, subject to the subordination or discharge of all prior liens, mortgages, and other encumbrances affecting the Property; and

WHEREAS, Mortgagee is willing to subordinate the lien of the Mortgage to the provisions of the Conservation Easement;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, Mortgagee and Easement Holder agree as follows:

1. The Mortgage, and all of Mortgagee's rights, interests, claims, remedies and privileges under the Mortgage are, and at all times shall continue to be, subject and subordinate in all respects to the Conservation Easement, with the same force and effect as if the Conservation Easement had been executed, delivered and recorded prior to the execution and delivery of the Mortgage.

2. If any action or proceeding is commenced by Mortgagee for the foreclosure of the Mortgage or the sale of all or part of the Property, Easement Holder will not be named as a party therein, and the sale of the Property (or a portion thereof) in any such action or proceeding shall be made subject to all rights of Easement Holder under the Conservation Easement.

3. If Mortgagee shall become the owner of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Conservation Easement shall not be affected thereby, but shall continue in full force and effect, and Mortgagee shall abide by all of the terms, covenants and conditions set forth in the Conservation Easement.

4. Easement Holder shall not amend or modify the Conservation Easement without the prior written consent of Mortgagee, which shall not be unreasonably withheld, and any amendment or modification of the Conservation Easement undertaken without Mortgagee's consent shall not be binding upon Mortgagee.

5. Easement Holder shall notify Mortgagee of any violation of the terms and conditions of the Conservation Easement which is not timely cured; provided, however, that Easement Holder's failure to notify Mortgagee of a violation of the Conservation Easement shall not bar Easement Holder from subsequently enforcing the terms of the Conservation Easement against Mortgagee or any other party.

6. All notices, requests, demands, elections, consents, approvals and other communications under this Agreement (each such communication, a "notice") must be in writing and delivered by hand, by United States mail or by commercial express courier service to Mortgagee and Easement Holder at the following addresses (or at any other address which Mortgagee or Easement Holder may designate by notice from time to time):

If to Mortgagee:

With a copy to:

If to Easement Holder:

