

EDA CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS Completion Instructions

Recipients of financial assistance awards from the Economic Development Administration (EDA) for construction projects must hold title in fee simple or a long-term lease to all Project property. In addition, the Recipient must not use any power of eminent domain to acquire title to Project property to advance the interests of private parties. EDA uses this Certificate as to Project Site, Rights-of-Way, and Easement (Site Certificate) to expedite the review of a Recipient's interest in Project property. The following instructions are provided to assist you in completing the Site Certificate. If you have any further questions, contact the EDA Project Engineer and/or EDA Legal Counsel.

The EDA Site Certificate is comprised of three parts: (i) Part One requires a description of all of the Project property that is needed for the project, and is to be completed by the Recipient's professionally registered Architect/Engineer; (ii) Part Two affirms that the Recipient has good title, as acceptable to EDA and is to be completed by the Recipient's Attorney; and (iii) Part Three affirms that any power of eminent domain has not been used to acquire Project property to advance the interest of private parties and is to be completed by the Recipient's authorized representative.

Part One – Certificate of Architect/Engineer – Description of Properties needed for EDA Project

Note: Depending on the specific project, Items 1, 2 or 3 may not be applicable. Use Item 1 for acreage parcels, such as tracts or lots, Item 2 for easements and rights-of-way and Item 3 for property that is associated with a permit.

Item 1 – Provide a description of each tract of the project property and an indication of what project element is to be built thereon.

- For Item 1, the goal is to have an adequate metes and bounds legal description of the project property that is adequate for an attorney to issue a title opinion on the second page of this Site Certificate. A narrative description is not necessary, but can be included.
- It is anticipated that an Exhibit will be attached to set out the metes and bounds description required for this Item. The Exhibit should include a map that clearly depicts the project components relative to the metes and bounds description.
- In some limited instances, only easements or rights-of-way are needed for a Project. In such a case, this Item should be completed with "N/A."

Item 2 – Provide a description of all easements required for the project.

- The goal for Item 2 is to have a complete description of all easements and rights-of-way needed for the Project. It is anticipated that an Exhibit will be attached to provide this list of easements and rights-of-way. The Exhibit should include a map that clearly depicts the project components relative to the easements and rights-of-way. Copies of these documents can be attached, but it is sufficient to provide a brief, accurate, narrative description of the needed documents.

- If easements or rights-of-way are not needed Item 2 should be completed with “N/A.”

Item 3 – Provide a description of any permits needed for the project.

- The goal is to have a description of all permits that are related to the property requirements for the project. For example, include railroad and/or highway right-of-use permit(s).
- It is anticipated that an Exhibit will be attached to provide this list of required permits. The Exhibit should include a map that clearly depicts the components relative to the permits.
- In an instance where no permits are needed for the project, this item should be completed with “N/A.”

Part Two – Title Opinion

Item 1 – The title opinion that must be completed by an attorney.

- This title opinion should be recent. Unless otherwise approved in advance by EDA, the termination date of the Period of Examination Dates in the title opinion must be a current date not more than 30 days before the date this title opinion is submitted to EDA.
- The title search and opinion should be for the land described in the Certificate of Architect/Engineer in Part One of this Site Certificate.
- In some instances, the attorney may want to rely on an examination of title documentation other than a personal search of the public records. In such instances, it is recommended that the attorney contact the regional counsel located in EDA’s regional office to coordinate appropriate language.
- In the event the owner occupies the project land pursuant to a long-term lease, the attorney should contact the EDA regional counsel to coordinate appropriate language.
- All instruments disclosed in the title search should be identified in this item. Any such instrument may be included as an exhibit as necessary. If there are no instruments disclosed in the title search, this Item should be completed with “None.”
- EDA relies on the attorney’s statement that follows regarding the impact the disclosed instruments have on the project. Any concern in this regard should be stated in writing.
- NOTE: Some financial assistance awards require the Recipient to provide EDA with proof that notification of EDA’s assistance was recorded in the property records of the appropriate jurisdiction. In that situation, the title opinion must be updated through the recording of the notice document verifying that the notice is an unsubordinated first lien/notice.

Item 2 – Attorney’s certification of the owner’s acquisition of all required easements or rights-of-way.

- If Item 2 of the Certificate of Architect/Engineer on the first page of this Site Certificate is marked “N/A,” a similar notation should be made here.

Item 3 – Attorney’s certification of adequacy of title examination.

- The attorney should indicate that the title examination performed is adequate.

Item 4 – Attorney’s certification that all needed permits have been obtained and are valid.

- If Item 3 of the Certificate of Architect/Engineer on the first page of this Site Certificate is marked “N/A,” a similar notation should be made here.

Item 5 – Remarks and Explanation.

- If the attorney has no statement to make, Item 5 should be completed with “None.”

The attorney should carefully note and follow the directions provided in the five bulleted items of Part Two – Title Opinion of this Site Certificate (below the attorney’s signature block), which are:

- ◆ It is the sole responsibility of the recipient of the EDA award to provide a legal opinion verifying that the recipient has good title to all property required for completion of the project as defined by the award.
- ◆ A long term leasehold interest is acceptable only if held by the recipient of the EDA award for a period not less than the estimated useful life of the project and only if lease provisions adequately safeguard EDA's interest in the project.
- ◆ Only legal descriptions of the property described herein should be attached to this form.
- ◆ If this title opinion is based on a title insurance policy, any exceptions listed on the policy should be explained and resolved in Items #1 and #5 above, as applicable.
- ◆ EDA relies on this title opinion and does not make independent findings regarding title to the property described herein.

Part Three – Certification Regarding Eminent Domain

Part Three is the Recipient’s certification that the Recipient has and will not use any available power of eminent domain (including the commencement of eminent domain proceedings) for the purpose of advancing the economic interests of private parties in connection with any property comprising the Project. Part Three must be completed by the authorized representative of the Recipient.