Title Curative Work in Renewable Energy Project Development

Why Early Title Review Matters for Project Sales and Financings

By Eugene Lerman

In renewable energy project development, title issues often begin as quiet diligence items. These issues can include superior mortgages, utility or pipeline easements, severed mineral interests, prior renewable energy leases, liens, signing-authority issues, and legal description problems.

Early in development, these issues often appear manageable. The project may still be moving through interconnection, permitting, environmental review, land acquisition, and layout changes. There may be no immediate sale or financing deadline and no active buyer, financing party, or title company diligence process.

But title issues rarely improve with time absent curative action.

By the time a project reaches sale, financing, or construction, unresolved title matters can become closing conditions. They can affect title insurance coverage. They can require long-lead solutions such as subordinations, non-disturbance agreements, crossing agreements, corrective instruments, releases, affidavits, and probate work. In some cases, they can require a project layout change or a difficult risk allocation discussion with a buyer, financing party, or title insurer.

That is why title curative work should not be viewed as administrative cleanup, but as part of preparing a project for sale, financing, and construction.

Title Review Is Not Just a Closing Checklist

Renewable energy and infrastructure projects depend on real property rights that must remain reliable over the life of the project.

A solar, storage, wind, transmission, or data center project may include leasehold and easement rights, which need to be enforceable against the relevant property owners and, in many cases, protected against other parties with interests in the project property.

A project lease may be well drafted, but still be subject to title issues if superior interests are not addressed. A project may have a strong commercial site-control package, but still face closing difficulties if recorded encumbrances impair the project's land rights. A project may have signed leases, but still require additional curative work if the signing parties did not hold all required interests, if signing authority documentation has not been obtained, or if the legal description is incorrect.

Site control is not only about having signed documents. It is about whether those documents create an insurable, marketable, financeable, and operationally workable real estate position.

Title review is the process of testing that position against the real property record. Title curative is the process of fixing the issues that prevent the project from reaching sale, financing, construction, or long-term operation on a reliable basis.

Early Title Review Is Not Full Curative

Early in the land acquisition process, title review often focuses on whether the developer can rely on the site-control documents being signed. At that stage, the project team is usually trying to confirm the basics: whether the correct owner is signing, whether the land is described correctly, and whether the signing party has authority to bind the relevant ownership interest.

These questions are fundamental. A lease, easement, or other site-control document can create problems later if the ownership record does not support the signing parties, if the legal description does not match the property intended for the project, or if the person signing for an entity, trust, estate, or otherwise on behalf of another party lacks documented authority.

This early review can also identify issues that should be addressed before a site-control document is signed. Those issues often involve ownership or authority questions that call into question whether the project is obtaining the real property rights it expects to obtain.

But early title review is not the same as full title curative.

Some title matters do not necessarily prevent a developer from entering into a site-control document, but still need to be tracked and resolved before sale, financing, or start of construction. For example, a mortgage may require a subordination or non-disturbance agreement, a third-party easement may require a crossing agreement, and oil and gas interests may require mineral-specific review or curative documents. Other recorded encumbrances may need to be reviewed against the project survey.

A project team can make better decisions when it separates issues that affect the validity or reliability of the site-control document from issues that are more appropriately handled through later title curative. Both categories matter, but they affect the project at different points in development.

Why Title Issues Often Surface Late

In many renewable energy transactions, title is reviewed more than once.

Early title review often begins before a formal title commitment is ordered. Developers may start with deed pulls and ownership review when they first evaluate a site. As the project advances, they may order a title commitment. A buyer may conduct its own title review in connection with an acquisition. Financing parties require title diligence before closing. The title company may also revisit the project when the survey, legal descriptions, insured parcels, and requested endorsements are being finalized.

Each review may reveal new issues, or may reclassify old issues as more significant once the transaction context changes.

An easement that seemed irrelevant during early diligence may become important once the final layout is prepared. A mortgage that was expected to be subordinated may become an issue when the mortgagee is slow to respond. An access gap may be manageable during development, but unacceptable to a buyer or financing party.

If title issues are identified early, they can often be worked into the ordinary development process. The developer can coordinate with landowners, mortgagees, easement holders, mineral owners, and title companies before the project is under closing pressure. If the same issues are discovered late or if curative work is delayed, the project may be operating under tight financing or construction deadlines that leave limited room for curative work. At that stage, title curative becomes more expensive, more visible, and more consequential.

Common Title Curative Issues in Renewable Energy Projects

The title issues that arise in renewable energy project development vary by project type, jurisdiction, land history, and transaction structure. But certain categories appear regularly.

One common category involves ownership and authority. Renewable energy projects often involve rural properties that have been held by families for generations with different ownership structures. Title may reveal heirship issues, authority questions, or inconsistencies between the record owner and the party that signed the lease. These issues can be manageable, but they often require time, documentation, and careful coordination.

Another category involves legal descriptions and property configuration. A lease may describe the wrong land, describe more land than the project uses, or fail to include an enforceable description for the portion needed for the project. Gen-tie routes, access rights, substations, laydown areas, excluded property, and other project rights may also require separate descriptions. If these issues are not coordinated early, they can create delays when title policies, surveys, memoranda, and financing documents need to align.

Mortgages, deeds of trust, and liens are another recurring category. If a landowner's mortgage is senior to the project lease or easement, the project will typically need a subordination or a non-disturbance agreement confirming that the project rights will not be disturbed if the mortgage is foreclosed. Other liens or foreclosure matters can also affect the project's land rights. Without appropriate curative work, a buyer or financing party may be concerned that the project's site-control rights could be impaired by a superior interest.

Access issues also appear frequently. Renewable energy projects often rely on access rights across multiple parcels, public roads, private roads, or utility corridors. A lease may provide access across the leased premises, but not reach all property within the project. In other cases, existing access easements may be sufficient during development for certain uses, but may be too narrow, non-assignable, or otherwise unsuitable for construction or operations traffic. Additional turning-radius, crane-path, or laydown rights may become necessary after title and survey review.

Third-party easements and rights-of-way are another frequent source of curative work. Utility, pipeline, road, and other recorded easements can affect project design. Some may be compatible with the project.

Others may require crossing agreements, releases, relocations, or layout adjustments. A project team should identify third-party easements, have them plotted on the survey where possible, evaluate restrictive language, determine whether crossing agreements or other consents are needed, and coordinate with easement holders.

Mineral rights also create recurring title curative issues. In many states, severed mineral interests, oil and gas leases, and related instruments can affect surface use and project operations. A solar project may require surface waivers, accommodation agreements, drill-site set-asides, affidavits of non-production, or title insurance solutions. A wind project may require analysis of facility locations, and potential interference with mineral development. The appropriate approach depends on the title record, applicable law, project layout, title company requirements, and the risk tolerance of buyers and financing parties.

Other problematic encumbrances can include prior renewable energy leases, deed restrictions, options, surface use agreements, boundary disputes, or other recorded claims that could impair the project's intended use. Some issues can be cleared by standard title company requirements. Others require legal analysis, negotiation, project-specific risk allocation, or a development decision about whether the parcel remains worth pursuing.

The practical point is that title curative is not a single task. It is the process of identifying which issues affect sale, financing, title insurance, or operations, and determining what must be resolved before the project reaches the next milestone.

The Difference Between Title Exceptions and Project Risks

Not every title exception is a project problem.

Renewable energy projects frequently involve large properties with long title histories. A title commitment may list numerous exceptions. Some may have no practical effect on the project. Others may be acceptable with title insurance coverage, construction protocols, or a project layout adjustment. Others may require curative instruments before closing.

Effective title review therefore requires more than reading the title commitment. It requires understanding the project.

The same title exception may have different significance depending on whether it affects a buildable area for generating facilities, an access route, or other project areas. A utility easement crossing the edge of a large parcel may be manageable. The same easement crossing a planned solar array may be more problematic. A mortgage may be manageable if the lender is cooperative, but problematic if the lender is unresponsive or refuses to enter into a subordination or non-disturbance agreement.

This is why title review for renewable energy projects should be integrated with all stages of development planning. The goal is not to remove every exception from the title commitment, but rather to identify which exceptions must be resolved for the project to move forward.

Title Curative and Project Finance

Title curative becomes especially important when a project approaches financing.

Lenders need confidence that the borrower's real property rights support the collateral package. A leasehold mortgage or deed of trust is only as strong as the underlying leasehold or easement rights. If those rights are subject to senior interests that can impair the project, the lender may require additional curative documents.

Title companies also play a central role. They must determine what can be insured, what exceptions must remain, what endorsements can be issued, and what requirements must be satisfied before closing.

Title and survey are closely connected. The surveyor relies on the title commitment to plot easements, encroachments, and other matters affecting the property. The title company relies on the survey to issue certain endorsements or to determine whether particular exceptions can be modified, insured over, or removed. If the legal descriptions in site-control documents, survey, title commitment, and financing documents do not align, the project can encounter closing issues.

If the title company is not comfortable with an unresolved issue, the issue may become a closing requirement. If the lender is not comfortable with the title company's position, the issue may become a financing issue.

This is where early curative planning can materially improve the financing process.

A developer that identifies title issues early can prioritize the items most likely to affect financing. It can begin outreach to landowner mortgage lenders before the financing timeline is compressed. It can pursue crossing agreements before construction pressure increases. It can address mineral waivers or surface use agreements before title insurance coverage becomes a gating issue. It can correct legal description issues before the title company is preparing final policies. It can address authority and ownership issues before a buyer turns them into closing conditions.

By contrast, a developer that waits until final diligence may still be able to solve the same issues, but with less time, less leverage, and more closing pressure.

Title Curative in Project Sales and Portfolio Transactions

Title issues are also important in project sales and portfolio transactions.

Buyers of renewable energy projects often conduct detailed diligence on site-control documents, title commitments, surveys, recorded instruments, and curative status. They are not only evaluating whether the developer signed leases or easements, but whether those rights can support the buyer's intended financing, construction, ownership, and exit strategy.

A project with unresolved title issues may still have value, but the issues can affect purchase agreement structure. A buyer may require curative work as a condition to closing. It may seek specific closing or post-closing deliverables. It may exclude certain parcels or require layout changes. In some cases, title issues can delay closing or reduce buyer confidence in the project.

These concerns are amplified in portfolio transactions. A single project with a few curative items may be manageable. A portfolio with dozens or hundreds of unresolved title items can create substantial diligence burden and closing uncertainty. The buyer may need to triage which issues are closing conditions, which can be handled post-closing, and which affect valuation or risk allocation. The seller may need to demonstrate that it has a credible curative plan.

For developers planning to sell projects, early title review can therefore support marketability. A project that comes to market with organized title materials and clear curative status is easier for buyers to diligence and easier to move through closing.

Building a Practical Title Curative Plan

A useful title curative plan begins with prioritization. Not every issue deserves the same level of attention. Some matters can be handled through standard title company requirements. Others affect sale, financing, construction, operations, or whether the project should continue to rely on a particular parcel.

A practical curative plan should identify the issue, the affected parcel or project right, the required curative action, the responsible party, the current status, and the timing sensitivity. Because project rights can change as layouts, documents, title commitments, and surveys are revised, the plan should be revisited before the project is marketed, financed, or moved into construction. It should also distinguish between items that must be resolved before sale, financing, construction, title policy issuance, or closing, and items that can be addressed later without materially affecting the project. That distinction helps the developer focus on the issues most likely to create closing delays.

A Note on Our Practice

Title curative work for renewable energy projects sits at the intersection of project development, real estate law, title insurance, and project finance.

It requires understanding how title issues affect not only the real property record, but also project construction, operations, and buyer and financing party requirements. It also requires judgment about which issues are material, which require curative instruments, and which can be insured over.

In our practice, we regularly assist renewable energy project developers with title review, title curative, site-control diligence, lease and easement review, and other real estate support for project sales and financings. That work includes curative strategy, document drafting, title company coordination, and, where appropriate, coordination with counsel for landowners, mortgagees, easement holders, and other third parties.

Conclusion

Title curative work is not simply a back-office diligence exercise. For renewable energy projects, it can affect project sales, financing, construction, and operations.

A project may have strong commercial fundamentals and signed site-control documents, but still face sale, financing, construction, or operational issues if title issues are not identified and addressed early and in a systematic way. Early title review allows developers to understand those issues before they become closing conditions. Early curative planning allows the developer to prioritize the issues that matter, coordinate with third parties and title companies, and preserve closing momentum.

If you are preparing a renewable energy project for sale, financing, construction, operations, or title insurance review, or if title curative issues have been identified on an existing project or portfolio, we would be happy to discuss the curative plan, required curative documents, title company coordination, and any third-party coordination needed to advance the project.

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