

## **Watershed Agricultural Council**

### **Guidelines for Addressing Rights-of-Way on Existing and Candidate Farm Easements**

For purposes of this Guideline, rights-of-way (RoW) are defined as perpetual real property interests affecting, or proposed to affect, a farm easement, and filed, or to be filed, at the applicable county real property office. The following Guidelines are to be implemented by the Watershed Agricultural Council (WAC) Easement Program to assist in (1) the identification and treatment of RoWs that exist on properties prior to being encumbered by a WAC conservation easement (CE); (2) the stewardship of Properties that are encumbered by a CE and have a pre-existing RoW; and (3) the planning and implementation of newly proposed RoWs across properties already encumbered by a CE.

#### **1. Identification and treatment of RoWs prior to encumbering a property with CE**

- A. After obtaining a Commitment for Title Insurance and prior to the closing of a CE, WAC will review RoWs that exist on a property as a superior interest to the WAC Conservation Easement on the Schedule B of the Commitment to Title Insurance Policy. Such Rights of way may include but are not limited to public utility easements, private access easements, and NYS Department of Environmental Conservation Public Fishing Rights (PFR).
- B. Once acquired, CEs are subordinate to any RoWs that existed on a property prior to the acquisition; thus WAC must ensure that the CE is not incompatible with such RoWs. Thus WAC must determine whether a given RoW is compatible with the CE, and if not whether it can be modified to make it compatible or whether the purchase contract should be rescinded or modified to exclude the effected area. RoWs should not prevent WAC from obtaining marketable title to a property as defined under New York State Law, WAC's Contract with the New York City Department of Environmental Protection (DEP) and by the Easement Program Purchase and Sales Contract Guidelines.
- C. Activities performed consistent with RoWs that appear on the Schedule B of the Commitment to Title Insurance Policy (obtained by WAC to insure its CEs) do not require WAC approval.
- D. For RoWs not known at the time of appraisal but considered acceptable, WAC will need to address whether consultation with the appraiser is necessary prior to closing.

#### **2. Stewardship of CEs with pre-existing RoWs**

- A. The grantor of the CE must ensure that the RoW interest holder's actions, if they exceed the terms and conditions of the RoW, do not violate the terms and conditions of the CE. In the event that actions by the holder of the RoW result in violations of the CE, or require that grantor to obtain approval by WAC prior to such actions occurring, the real property implications of the

RoW commitment are wholly the responsibility of the CE grantor and enforcement of the CE remains WAC's responsibility.

- B. CE grantors seeking a reserved right request necessitated by actions of the RoW beneficiary may follow the standards and processes for requesting reserved right activation for planning and implementation of new RoWs as described in section 3 of these guidelines.
- C. During the annual inspections of the CE, areas encumbered by a ROW shall be inspected, especially if there has been activity on the ROW since the last inspection.

### 3. Planning and implementation of new RoWs through CEs

- A. The CE states in the RoW clause: "No rights-of-way, easements of ingress or egress or utility easements shall be granted or developed, on, over, under or across the Property without prior written approval of Grantee." Contact between WAC, the grantor and the third party would be expected to proceed as follows:
  - 1. If the third party contacts the grantor prior to contacting WAC, and the grantor is willing to consider the proposed RoW, the grantor should contact WAC immediately to request approval of the RoW request.
  - 2. If the third party contacts WAC prior to contacting the grantor, WAC will immediately contact the grantor to facilitate discussion.
- B. As stated in the CE Standard of approval clause, the "Grantor (landowner) shall request such approval in writing and shall provide Grantee (WAC) with information and plans as may be necessary for Grantee to evaluate such request."
- C. **Submission Requirements.** Information and plans for RoW requests submitted to WAC must include the following information in order to allow WAC to determine whether the proposed activity "is consistent with the Conservation Purposes of this Easement and will not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property" as stated in the CE standard of approval clause:
  - 1. Letter Requesting development of a RoW through the property
  - 2. Map depicting proposed location of RoW; includes tax parcel boundaries, CE use area boundaries, ortho image of property and natural resource features.
  - 3. Copy of any relevant legal documents describing terms and conditions of RoW
  - 4. Description of construction activities that may be needed to implement the ROW and a detailed description of on-going maintenance needs, including frequency of visits, site inspections, etc.

5. Written Analysis of impact of RoW on the conservation easement and its impact on use areas and other relevant clauses and terms and conditions of the WAC Deed of CE, demonstrating how the proposed RoW will not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property. Analysis will include time frame for project and description of the stages of development for the project (potential sub contractor's tasks and timeframe for completing the RoW).
  6. A list of any regulatory permits that might be required for the RoW project.
- D. WAC will seek to discuss, with the grantor and third party, the timing and scheduling of any regulatory permit applications with regard to WAC approval procedures to make the process as efficient as possible.
- E. WAC staff will coordinate with the CE grantor and the RoW requestor to ensure that all information listed in above in sections 3 (C) 1-4 is complete and ready for review by the WAC Easement Committee. Before submitting information to the WAC Easement Committee for review and decision, WAC Staff will review the information provided by the grantor for the following:
1. Impact of proposed RoW on current agricultural operations and Agricultural Use Areas that are protected specifically for agricultural production as defined in Section 301 of Agricultural and Markets Law 25 AA.
  2. Impact of Proposed RoW on Acceptable Development Areas (the areas within the CE in which development can take place).
  3. Impact of proposed RoW on forested areas. A RoW request may require additional Forest Management Plan and a Forest Harvest Plan reserved-right request from grantor to complete RoW request.
  4. Impact of proposed RoW on Resource Protection Area (RPA) (water resources on property) to ensure proposed activities does not substantially diminish water resources. (i.e through the introduction of any additional non point source pollutants such as increased sedimentation or runoff). Any proposed RoW that crosses a stream resulting in disturbance of stream bed or bank will require an additional Stream Work Reserved Right Request.  
The terms and Conditions of the RoW (i.e as defined by legal documents to be filed with county) to ensure compatibility with CE.
- F. **WAC staff Recommendations to the WAC Easement Committee.** Once a request for a RoW has been reviewed by WAC staff as described above, staff will submit the request to the Easement Committee with a recommendation to grant or deny the request based upon the ability of the grantor to satisfy the requirements outlined in Sections 3 c-e.
- G **The Easement Committee will review the completed request** to ensure that the requested RoW is: (1) "consistent with the Conservation Purposes of this Easement" and (2) "will not substantially diminish or impair the

agricultural, forestry, or the water quality values of the Property", as stated in the CE's Standard of Approval Clause.

- H. In its interpretation of the Standard of Approval Clause, the WAC Easement Committee will consider the following:
  - a. The RoW does not substantially reduce the viability of an ADA for its intended purposes;
  - b. The RoW is designed to minimize impacts on an RPA by using perpendicular crossings at narrow points within the RPA;
  - c. The RoW crosses the RPA at site of an existing crossing
  - d. If the proposed RoW crosses an RPA without an existing crossing and it is determined that the proposed RoW would create a disturbance to a stream in an RPA as defined in the specific CE, an additional Stream Work reserved right request would be required.
  
- I. If the grantor's request is approved by the WAC Easement Committee, WAC Easement Program Staff will be responsible for coordinating with the grantor and RoW beneficiary to ensure the proper implementation of the RoW reserved-right request according to the terms and conditions of the RoW reserved-right plan as approved by the Easement Committee. Any significant changes to the plan, including changes to the timetable or subcontractor tasks as described in the Written Analysis required in section 3C(4) of these guidelines, will be identified by the WAC Stewardship Specialist and presented to the Easement Program Manager, who will present such changes for further consideration and review by the Easement Committee.