



## Easement Program Guidelines for Locating Towers and Communication Devices

The following guidelines are established by the Easement Committee to create standards for reviewing requests by landowners to locate Towers and Communication Devices on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). With respect to the Grantor (landowner) and Grantee (WAC), the Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the deed's terms and conditions related to locating Towers and Communication Devices.

### 1. The Deed of Conservation Easement General Definitions, Conditions, Prohibitions and Easement Committee Definitions

A. The Deed of Conservation Easement describes Towers and Communication Devices as follows:

- 1) Towers and Communication Devices: Communication towers or devices, wind turbines, satellite or television antennae or such similar equipment may be placed on the Property, subject to applicable governmental approval, but only in a manner consistent with the Conservation Purposes of this Easement and with prior written approval of Grantee if such devices or equipment is located outside of the ADA.

B. The Deed of Conservation Easement defines Acceptable Development Area (ADA) as follows:

- 1) Acceptable Development Area (ADA): The area(s) identified on the Conservation Easement Survey, in which single family dwelling(s) and associated Accessory Buildings and Improvements, Farm Support Housing, and buildings and improvements for Rural Enterprises may be constructed. Agricultural Buildings and Improvements, farm operations, and farming practices are permitted within the ADA pursuant to the terms of this Conservation Easement. However, no more than 10 commercial campsites shall be allowed in an ADA.

C. The Deed of Conservation Easement defines IMPERVIOUS SURFACES AND ROAD CONSTRUCTION AS

FOLLOWS:



1. Impervious Roads and Surfaces: Except for roads, driveways, barnyards, lanes or other improvements constructed within the ADA or consistent with the provisions of a current Whole Farm Plan, no portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other impervious paving material.
2. Logging roads are allowed so long as they are consistent with a Forest Harvest Plan.
3. The location and construction of impervious surfaces and roads shall be implemented, in so far as practicable, to avoid substantially diminishing or impairing the agricultural productivity or water quality benefits of the Property.

D. The Deed of Conservation Easement defines Resource Protection Area (RPA) as follows:

1. The area identified on the Conservation Easement Survey, which contains unique or special natural features such as streams, wetlands or slopes and supporting buffer lands in which no permanent buildings or improvements, except for Incidental Agricultural Buildings and Improvements may be built.

E. The Deed of Conservation Easement defines Incidental Agricultural Buildings and Improvements as follows:

1. A building or improvement used for, and subordinate to, farm operations including, but not limited to, pump houses, sap storage structures, irrigation equipment, bridges, farm roads, stream crossings, and foot paths.

F. The Easement Committee defines "such similar equipment" under "Towers and Communication Devices" in these guidelines to mean equipment that is similar in design and use as communication towers or devices, wind turbines, satellite or television antennae. "Such similar equipment" does not include structures or improvements, such as substations or transfer stations and utility structures that are used in conjunction with the equipment and devices identified under 1A1 above. However, "such similar equipment" may include cell tower utility boxes associated with proposed cell towers if the device or equipment is a necessary part of the cell tower because the cell tower cannot operate without such equipment and the utility box is in close proximity. "Such similar equipment" also includes solar panels.

G. Access and service roads required to install and maintain equipment and devices identified in Section 1A1 above are allowed outside the ADA as part of the request for approval required under these guidelines so long as they are consistent with the terms and conditions of the CE and these guidelines.



## **2. General Site restrictions and prohibitions for Towers and Communication Devices outside the Acceptable Development Area (ADA).**

- A. Communication towers or devices, wind turbines, satellite or television antennae or such similar equipment may not be located in a Resource Protection Area (RPA) except for non- commercial wind turbines or solar panels that generate power for on-site farm use in support of a property's agricultural operations and which may be classified as Incidental Agricultural Improvements, if no practical alternative site exists.
- B. Communication towers or devices, wind turbines, satellite or television antennae or such similar equipment, including commercial wind turbines that export power to a commercial grid may be located in Agricultural Conservation Easement Areas (ACEA), Forest Conservation Easement Areas (FCEA) or an Acceptable Development Area (ADA).
- C. New service or access roads to communication towers or devices, wind turbines, satellite or television antennae or such similar equipment may not be located in Resource Protection Areas (RPA) with the exception of new roads used to access noncommercial wind turbines or solar panels which may be classified as an Incidental Agricultural Improvement as per Section 2(1) of these guidelines , if no practical alternative site exists.
- D. Existing roads in an RPA in their current configuration may be utilized to provide access to proposed locations for communication towers or devices, wind turbines, satellite or television antennae.
- E. The total area disturbed during construction and the total area affected after construction of proposed projects for communication towers or devices, wind turbines, satellite or television antennae or such similar equipment, including new roads, must be consistent with the requirements of the Standard of Approval Clause and the Conservation Purposes Clause of the CE.

## **3. Process and Standard of Approval for locating Towers and Communication Devices outside the Acceptable Development Area (ADA).**

- A. The current Deed of Conservation Easement defines the process and standard of approval for requests related to locating Towers and Communication Devices outside ADAs as follows:
  - 1. Prior to commencing any proposed action, including Commercial Forestry, where Grantor is required to obtain Grantee's approval hereunder, Grantor shall request such approval in writing and shall provide Grantee with information and plans as may be necessary for Grantee to evaluate such request



2. Grantee reserves the right to request additional information as may be required for the evaluation.
3. Grantor's request shall be deemed approved if no written response is provided by Grantee within 45 days of the receipt of the request for approval.
4. Written response from the Grantee may include, but is not limited to, a requirement that Grantor submits to Grantee additional information to evaluate the request.
5. Grantee may approve the request, approve with conditions, or deny the request.
6. Grantee's approval shall be conditioned so that the approval 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.

#### **4. Requests by Grantors to locate Towers and Communication Devices outside the Acceptable Development Area (ADA).**

A. Requests from grantors seeking approval locate Towers and Communication Devices outside the Acceptable Development Area (ADA) defined in section 1A3 of these guidelines must include the following information:

1. Written request from Grantor to locate Towers and Communication Devices outside the Acceptable Development Area (ADA).
2. Map depicting the following: Easement Boundaries, Use Area boundaries, stream locations, location of watercourses and wetlands, location of work to be conducted, including proposed location for equipment or device(s) as well as service or access roads, and topographic contour lines.
3. Photos or images of proposed equipment, area in which equipment will be located and access roads or area of proposed access roads.
4. Site Plan to prevent and /or mitigate effects of sedimentation and runoff during construction of project and any subsequent maintenance of roads and improvements.
5. Memorandum describing reason work is required, nature of work, description of materials and methods of construction, dates of proposed work, list of required permits (in any) and impact on agricultural lands, agricultural operations, impact on forested lands and forest lands infrastructure. Memo should indicate if the project is subject to State Environmental Quality review Act (SEQRA).
6. Copy of Proposed lease or Right of Way associated with project if applicable.

B. Requests to locate Towers and Communication Devices outside the Acceptable Development Area (ADA) that will require State and/or Federal regulatory Permits should



seek easement committee approval prior to submitting application(s) for regulatory permits.

1.If a regulatory agency reject plans submitted by landowner that were previously approved by the Easement Committee, landowner must resubmit plan to WAC with changes proposed by regulatory agency for WACs approval.

C. Requests that require additional Reserved Right Requests (such as Rights of Way (RoW) or Forest Harvest Plans (FHP) must be submitted along with the request to locate Towers and Communication Devices outside the Acceptable Development Area (ADA).

#### **4. Standard of Review for Requests to locate Towers and Communication Devices outside the Acceptable Development Area (ADA).**

A. Requests submitted by landowners to locate Towers and Communication Devices and Other Such Devices will be reviewed by the Easement Committee against 1) the Conservation Purposes Clause , 2) the Standard of Approval Clause and 3) the laws and policies identified in Sections C-H of the Recital Clauses in the Model Deed of Conservation Easement (listed below in section 5 B 1-3). When these clauses are interpreted and applied by WAC (grantee) to requests by landowners (grantor) for approval to locate Towers and Communication Devices and Other Such Devices outside of Acceptable Development Areas (ADA), review and approval of the following are required under unanimous consent by the Easement Committee:

1. Review of proposed project's site plan developed to mitigate the effects of sedimentation and erosion and protect water quality
2. Review of impact on Agricultural and Forest lands
3. Review of project design specifications
4. Review of comments from appropriate technical staff
5. Review of Lease or Right of Way to ensure terms are consistent or subordinate to terms and conditions of WAC CE.
6. Review of proposed time frame for start and completion of project.

B. Clauses used as Basis of Interpretation for Requests:

1.Conservation Purposes Clause of Conservation Easement: “to protect the water quality of the New York City watersheds, and to protect agricultural and forestry lands by limiting the form, location, and density of development and promoting good stewardship by the implementation of Whole Farm Plans”.



2. Standard of Approval Clause: Grantee may approve the request, approve with conditions, or deny the request. Grantee's approval shall be conditioned so that the approval 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.

3. Recital Clauses in the Model Deed of Conservation Easement :

- a. Article 14, Section 4 of the New York State Constitution states that "The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products";
- b. Article 25-AA of the New York Agriculture and Markets Law authorizes the establishment of agricultural districts and states: "The socio economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the State as a whole. It is, therefore, the declared policy of the State to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the State to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.
- c. The New York Environmental Conservation Law, Article 49, Title 3, authorizes conservation easements which are intended to: "implement the state policy of conserving, preserving and protecting environmental assets and natural and manmade resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands";
- e. The Ad Hoc Task Force of Agriculture and New York City Watershed Regulations Policy Group issued recommendations which resulted in the formation of the Watershed Agricultural Council (AWAC) and the development of the Whole Farm Planning / Best Management Practices Program designed to meet the watershed's water quality objectives and sustain and improve the economic viability of watershed farms;
- f. The Constitution and By-Laws of The Watershed Agricultural Council of the New York City Watersheds, Inc., as amended, includes among its objectives and guiding principles



the protection of the New York City water supply, the maintenance of the economic viability of agricultural and forest enterprises and the acquisition of easements to protect sensitive lands, provide economic incentives to farmers for pollution prevention and allow for inter-generational transfer of farmlands and operations;

- g. The New York City Watershed Memorandum of Agreement dated January 21, 1997 authorizes an agricultural easement program and provides "funding for the acquisition of Watershed Agricultural Easements and for Watershed Conservation Easements on non-agricultural lands under common ownership with farms from Property owners who have Whole Farm Plans approved by WAC

#### **6. Notification to Landowner (Grantor) of Approval or Denial of Request by Easement Committee (Grantee).**

- A. WAC staff shall submit a letter to Grantor no later than 5 business days after committee motion is rendered notifying Grantor of committee's decision regarding such request.
- B. Letter to Grantor shall include a copy of the motion and vote on motion.
- C. Letter to Grantor shall outline any additional requirements if motion is approved with contingencies or conditions or if denied, set forth in detail a site specific basis for such denial.