

# Watershed Agricultural Council Conservation Easement Program

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



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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with the CE, and if not whether it can be modified to make it compatible or whether the purchase contract should be rescinded or modified to exclude the affected area.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.

