



**Department of  
Environmental  
Conservation**

# **Environmental Easements**

## **One Last Step To The COC**

**May 22, 2019**

# Environmental Easement Defined

- ECL § 71-3603
- An interest in real property, which contains a use restriction and/or a prohibition on the use of the land in a manner inconsistent with engineering controls.

# Environmental Easements

§ 71-3605. Environmental easements; certain common law rules not applicable.

- Granted by the title owners of the relevant real estate
- Title owner shall furnish abstracts of title and other documents sufficient to enable the department to determine that the easements shall be enforceable.

# Environmental Easements

- Environmental easement shall
  - be in a form prescribed by the department
  - describe the property encumbered by the easement by adequate legal description or by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor or,
  - if the easement encumbers the entire property described in a deed of record, the easement may incorporate by reference the description in such deed,
  - otherwise it shall refer to the liber and page of the deed or deeds of the record owner or owners of the real property burdened by the environmental easement.



# Draft Easements

- Applicants only have to submit the documents required in the easement checklist. They do not have to submit a draft of the easement as part of the package.
- DEC will prepare the easement upon receipt of your complete easement package.

# Time Period For Easement

Pursuant to ECL § 27-1415(9)(b), an easement shall be executed:

- Within 180 days of commencement of the remedial design, or
- At least three months prior to the date of the anticipated issuance of the certificate of completion.

# Time Period for Easements

- Project Manager will send an Easement Request Letter to the Authorized Representative or Attorney for the Applicant.
- Upon receipt of the letter, Applicant should compile all of the documentation in the easement checklist and submit it to my attention at:
  - Bradford Burns, Esq.  
NYS Department of Environmental Conservation  
Office of General Counsel  
625 Broadway  
Albany, NY 12233-1500
- In addition, an electronic copy should be sent to me, the Project Manager and Project Attorney.



# What Will You Need In Your Easement Package?

- Current deed and supporting title documentation.
- Copy of tax map.
- Corporate resolution (if applicable).
- Legal description of easement area, with electronic copy in word format.
- One full sized survey and an electronic copy.
- Draft Notice to Municipality.
- Signed easement checklist.
- Any applicable transfer tax forms.



# Title Requirements



# Title Requirements

- For most properties, a last owner search will be sufficient to document ownership and authority to convey an easement to the Department.
- If Owner has a recent abstract or title report, send that in with a copy of the current deed.
- A warranty deed is sufficient to document ownership.

# Title Requirements

- The Department reserves the right to request additional information, up to requiring a full Title Report, where it determines that complexities in documenting ownership may substantially cloud title.
- Examples of properties that may require a full Title Report include properties that contain "lands under water"; restricted deed transfers such as a Quit Claim deed; and multiple party ownership.

# Title Requirements

## If Title Report or Abstract Required

- Title Report or an Abstract of Title identifies who has title to the property and all others with an interest in the property.
- Every title report or title abstract shall provide a Certification Page, Schedule A, and Schedule B.
- The Certification Page shall indicate who has the right to convey or mortgage the property that is subject to the EE.
- Schedule A shall provide the legal description of the property.

# Title Requirements If Title Report or Abstract Required

- Schedule B shall list the exceptions to the title or issues which require clearance or amplification before the title company is willing to issue its policy.
- A copy of the Tax map must be included in the report.
- Title Insurance will generally not be required for the Environmental Easement.

# The Survey



# Survey Requirements

- **A survey map is required as part of an Environmental Easement package.**
- The survey must bear the name, address, telephone number, signature and certification of the professional land surveyor who performed the survey, his or her official seal and registration number, the date the survey was completed, the dates of all of the surveyor's revisions.
- The survey boundaries must be drawn to a convenient scale, with that scale clearly indicated. A graphic scale, shown in feet and meters, must be included.
- The symbols and abbreviations that are used on the survey must be identified by the use of a legend.

# Survey Requirements

- Diagrams must be accurately presented.
- The point of beginning of the legal description must be shown.
- The legal description must be correct.
- The legal description must state the acreage.
- If the deed(s) description differs from the measured bearings/angles/distances, both must be indicated on the survey.
- The survey must be signed by the surveyor!!!



# Survey Requirements

- The survey must correctly depict the environmental easement area with corresponding metes and bounds description and acreage, and include the following sentence:

"This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the New York Environmental Conservation Law. The engineering and institutional controls for this Easement are set forth in more detail in the Site Management Plan (SMP). A copy of the SMP must be obtained by any party with an interest in the property. The SMP can be obtained from NYS Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233 or at [derweb@dec.ny.gov](mailto:derweb@dec.ny.gov)".



# Survey Requirements

Submittal of the approved survey to the Department must include the following:

- A "D" sized copy (24" x 36") of the final signed, stamped map.
- A 600 DPI scan of the final signed, stamped map or a fully rendered PDF (not scanned).
- An AutoCAD .dwg or exported .dxf file of the polyline (at a minimum) of the final survey.
- The electronic files listed above should be sent using NYSDEC's File Transfer Service found at <https://fts.dec.state.ny.us/fts/>. Files should be directed to Robert Morrell at [robert.morrell@dec.ny.gov](mailto:robert.morrell@dec.ny.gov), Julianna DiBiase at [Julianna.DiBiase@dec.ny.gov](mailto:Julianna.DiBiase@dec.ny.gov), and Shane May at [shane.may@dec.ny.gov](mailto:shane.may@dec.ny.gov).



# The Easement

- Once you have forwarded a complete easement package, DEC will draft the easement and send it to your attorney in electronic format.
- Upon receipt, two (2) copies of the easement should be printed out and executed by the owner.
- Both easements should be mailed back to DEC to fully execute the easement.
- DEC will mail you one (1) original easement and the original transfer forms that are required by the County Clerk.

# Recording Requirements

- ECL § 71-3606(8) requires that “an environmental easement shall be duly recorded and indexed as such in the office of the recording officer for the county or counties where the land is situate in the manner prescribed by article nine of the real property law.”
- ECL § 71-3607(1) requires that “whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any document modifying or terminating such environmental easement.”

# Transfer Tax Forms

- Every County Clerk will require that a TP-584 be submitted with the easement.
- Most (not all) will take a TP-584.2 form.
- NYC Registrar requires a TP-584 and the NYC-RPT form. Westchester County now requires an RPT form.
- If your Site is in NYC, check with your Title Company before you file to determine what forms are necessary.
- Do not include a date of conveyance on the transfer tax forms. DEC will change them when it executes the easement.

# Final Easement Requirements for COC

- Copy of recorded Environmental Easement with recording page from County Clerk which shows date and location of recording.
- Copies of the Notice to Municipality with proof of mailing. Proof can be copies of the certified mail receipt. Attorney mailing affidavit is acceptable.
- Final Survey (if changes have been made prior to issuance of SMP)

# Extinguishment of Easements

- The Department will consider extinguishing an Environmental Easement when there are no longer any institutional controls, engineering controls, use restrictions and/or any site management requirements applicable to the remedial site.
- If you believe an Environmental Easement is no longer necessary on the Site, a request for extinguishment should be made to the Project Manager of the Site.
- Once approved by the Project Manager, DEC will draft a Termination and Release of Environmental Easement and send it to Applicant for recording.

# Frequently Asked Questions





## **Question: Can I Sign The Easement If The SMP Has Not Been Finalized?**

**Answer: Yes. The Environmental Easement simply incorporates by reference the controls and requirements which are identified in the Site Management Plan. It states that the Grantor will comply with the SMP that is in place at the time of granting the Environmental Easement, or any amendments to the SMP after the Environmental Easement has been executed.**

## **Question: Who Needs To Get Notice of The SMP Under The Environmental Easement?**

Answer: Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP. This does not mean only interested parties who could potentially disturb any engineering controls at the property. It includes all parties, even tenants. This language cannot be changed.

# Question: Who Needs To Be A Party To The Environmental Easement?

Answer: DEC will include the following parties as Grantor:

- 1) Fee Owner
- 2) Beneficial Owner
- 3) Long Term Ground Lease Holder

If the Applicant is not the fee owner, please make sure that the fee owner is aware of the terms of the Environmental Easement. DEC will not make any changes to the Fee Owner's obligations under the easement, even if they are not the Applicant under the BCA.

## **Question: What is the difference between the Project Attorney and Real Property Attorney?**

**Answer: The Real Property Attorney only works on that part of the project which requires the Applicant to obtain an environmental easement on the subject property. The Project Attorney deals with all other matters relative to the Site.**

## **Question: What happens if I need to file a Change of Use or Amendment while finalizing the Environmental Easement?**

**Answer:** Filing a Change of Use or Amendment to the BCA should not delay the processing of the environmental easement, so long as there is no substantive change to the BCA (such as a new or additional Applicant, or a change to the site boundary). In order to expedite the processing of your Change of Use or Amendment, please send all originals to Site Control. Do not send original documents to me.

# Questions

Bradford D. Burns

Corporate Bureau Chief, Office of General Counsel

625 Broadway, 14<sup>th</sup> Floor

Albany, NY 12233

[bradford.burns@dec.ny.gov](mailto:bradford.burns@dec.ny.gov)

518-402-9518

