

# Watershed Agricultural Council Conservation Easement Program

## Policies and Guidelines for Easement Landowners



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Watershed Agricultural Council  
Conservation Easement Program  
nycwatershed.org



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# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside Acceptable Development Areas







# Guidelines for Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside Acceptable Development Areas

The following guidelines are established by WAC to create standards for the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside of the Acceptable Development Areas (ADA) on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). The Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the CE's terms and conditions related to the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside of ADAs.

## **1. The Deed of Conservation Easement's General Definitions and Clauses pertaining to the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside the ADA.**

A.WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside the ADA. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside the ADA, that version's definitions and clauses serve as the controlling legal language:

- 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 the Conservation Easement.
- 2) Agricultural Buildings and Improvements: A building or improvement used for farm operations and on-farm production, preparation, storage, and marketing of agricultural commodities as defined under Section 301 of the New York State Agriculture and Markets Law, as amended.
- 3) Incidental Agricultural Buildings and Improvements: 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.
- 4) Whole Farm Plan: A Watershed Agricultural Council (WAC) Whole Farm Plan (WFP) is a document that identifies, addresses and mitigates environmental concerns to protect the water resources of the New York City watershed without negatively impacting the economic viability of the agriculture enterprise while integrating farm business objectives into the decision

making process. The Whole Farm Planning Process - A WFP is developed by agricultural/conservation professionals and the participating landowner/producer following WAC policy, guidelines and standard operating procedures. The WFP gives specific consideration to aspects of the farm business that relate to water quality objectives and landowner/producer goals. The WFP addresses water quality issues identified through environmental assessments (Environmental Review/Problem Diagnosis (ERPD) and Agricultural Environmental Management (AEM)). The mitigation of these water quality concerns is achieved through the implementation of Best Management Practices (BMPs) consistent with NRCS and/or WAC Standards. The landowner/producer agrees to implement BMPs according to the WFP schedule and shall maintain and operate BMPs for their designated life span. The plan may periodically be updated or otherwise revised and shall remain in effect for any period when WAC either funds or otherwise ensures that funding is secured for Grantor for construction of BMPs. Grantor must maintain such BMPs in accordance with the Whole Farm Plan and any related contractual obligations.

Funding Restrictions - In the event that the Whole Farm Plan ceases to be funded and all contractual obligations the Grantor may have with respect to BMPs have expired, agricultural uses and activities on the Property shall be consistent with the New York State Environmental Conservation Law (ECL) including, but not limited to, requirements applicable to Concentrated Animal Feeding Operations (CAFOs) under ECL Article 17, Title 7, and with the federal Clean Water Act, 33 U.S.C. § 1251 et seq.

5) Impervious Surfaces and Roads Construction: 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. Logging roads are allowed so long as they are consistent with a Forest Harvest Plan. 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.

6) Best Management Practices (BMPs): Practices that prevent or reduce the availability, release or transport of substances which adversely affect surface and ground waters. These management practices may have standards associated with their installation, operation or maintenance, but do not impose effluent limits for specific substances.

7) Agricultural Conservation Easement Area (ACEA): Within the area identified as ACEA on the Conservation Easement Survey, Grantor has the right to produce crops, livestock and livestock products, to clear land for cultivation or pasture and conduct farm operations as defined under Section 301 of the New York State Agriculture and Markets Law, as amended, which shall be consistent with a Whole Farm Plan, as well as the right to engage in all other uses permitted by this Easement.

8) Farm Area (FA): The residual area of the Property that is within the Agricultural Conservation Easement Area, excluding the Acceptable Development Area(s) and the Resource Protection Area(s), identified on the Conservation Easement Survey, in which

Agricultural Buildings and Improvements, farm operations and farming practices are permitted pursuant to the terms of this Conservation Easement.

9) Resource Protection Area (RPA): 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. Fences are allowed anywhere within the RPA. Grazing and cultivation is permitted subject to Section 3.a above within those portions of an RPA which lie in the Agricultural Conservation Easement Area. However, the portion of the RPA within twenty-five (25) feet of the top of the bank of a watercourse shall not be plowed, cultivated, or tilled except to reestablish naturally disturbed vegetation. Trees and shrubs along streams and waterways on the Property shall be maintained so far as practicable to assist in achieving long-term water quality standards through nutrient absorption, sedimentation control from runoff and stream channel and bank stability.

10) Construction of Buildings and Improvements: No permanent or temporary buildings or other improvements shall hereafter be placed or maintained on the Property except as provided in accordance with this Section. Existing buildings and improvements are shown in the Baseline Documentation. Trailer parks, auto dealerships, and golf courses are expressly prohibited on the Property.

a) Fences: Existing fences may be removed, repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife without further approval of the Grantee.

b) Agricultural Buildings and Improvements: Grantor may remove, repair, enlarge, construct, or reconstruct Agricultural Buildings and Improvements within the ADA consistent with the Whole Farm Plan. New Agricultural Buildings, or the enlargement of existing Agricultural Buildings, within the Farm Area are permitted with prior notice to the Grantee to ensure such building construction is not located within the RPA and does not exceed an aggregate total of 5,000 square feet. Grantor may enlarge or construct Agricultural Buildings in the Farm Area greater than the aggregate 5,000 square foot threshold specified above only with prior approval from the Grantee. Prior to commencing any proposed action 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 reasonably necessary for Grantee to evaluate such request. Grantee shall give such approval within 45 days of receipt of Grantor's written request, unless it determines that the proposed Agricultural Buildings and Improvements would be unnecessarily located on productive soils, or would otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property. Approval shall be deemed given if no written decision is provided by Grantee within 45 days of receipt of Grantor's written request.

11) Baseline Documentation: The document entitled Baseline Documentation, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs,

maps, and supporting text, describes the general condition of the Property, including buildings and improvements, driveways, Acceptable Development Areas, Resource Protection Areas, and Farm Areas located on the Property as of the date of this Conservation Easement.

12) Baseline Documentation: The conservation values, various use areas and the current use, size, location and condition of improvements of the Property are described in a Baseline Documentation Report (the Report). Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but the report shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

B. WAC further defines the meaning of the following definitions found in the Deed of Conservation Easement:

1) Incidental Agricultural Buildings and Improvements: WAC further defines Incidental Agricultural Buildings and Improvements as a subset of Agricultural Buildings and Improvements that, because of their purpose, may be located in an RPA.

2) Bridges and Farm Roads or Footpaths: Bridges will not be charged toward the aggregate square footage described in Section 4 of these guidelines. Farm Roads or Footpaths that are not impervious will not be charged toward the aggregate square footage described in Section 4 of these guidelines.

## **2. General Restrictions for Constructing new Agricultural Buildings and Improvements Greater than 5000 Sq Ft Outside of the Acceptable Development Area (ADA)**

A. Agricultural Buildings and Improvements may be located in the ADA and FA only as per the terms and conditions of the CE and may not be located in RPA or FCEA.

B. Incidental Agricultural Buildings and Improvements may be located in the RPA.

C. Grantors (landowners) may construct up to 5000 square feet of Agricultural Buildings or Improvements outside the ADA within the Farm Area without Grantee (WAC) approval, but prior notification to WAC.

D. Grantors must obtain WAC's approval to build new Agricultural Buildings or Improvements or Expand Existing Agricultural Buildings or Improvements once the aggregate of 5000 square feet of Agricultural Building and Improvements has been exercised.

E. Agricultural Buildings and Improvements and Incidental Agricultural Buildings and Improvements constructed outside the ADA that create an impervious surface, whether they are Best Management Practices (BMPs) required by the Whole Farm Plan (WFP) or not, will be counted toward the 5000 sq foot aggregate.



F. Only Structural WFP BMPs (BMPs that create an impervious surface) will be charged toward the 5000 square foot aggregate. Non-Structural WFP BMPs, such as animal watering or feeding stations, will not be charged toward the 5000 square foot aggregate.

G. Temporary Agricultural Buildings and Improvements will be charged toward the 5000 square foot aggregate and require Grantee approval over the 5000 square foot aggregate. Once the buildings or improvements are removed, the square footage for the buildings or improvements will be deducted from the total aggregate using the Allocation Tracking Form Worksheet attached as “Appendix A” to these guidelines.

H. As a subset to Agricultural Buildings and Improvements, Incidental Agricultural Buildings and Improvements require Grantee (WAC) approval over the 5000 square foot aggregate.

### **3. Calculating Aggregate Square Footage of Agricultural Buildings and Improvements Outside the ADA**

A. Square footage will be calculated based on the amount of impervious surface created by the footprint of the newly constructed or expanded building or improvement, to include concrete and asphalt used for driveways or aprons associated with the building. Impervious surfaces used for roads that are part of a WFP will be charged toward the aggregate.

### **4. Tracking and Managing Aggregate Square Footage of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside the ADA**

A. WAC staff will utilize the Allocation Tracking Form (Appendix A) to track and manage the aggregate square footage of Agricultural Buildings and Improvements that have been built outside the ADA after the Deed of Conservation Easement closed.

1) The Allocation Tracking Form will be reviewed and updated during all annual ground monitoring visits or after the implementation of an approved Reserved Right request to construct an Agricultural Building or Improvement greater than 5000 square feet outside an ADA or after notification of the construction of a new Agricultural Building or Improvement under 5000 square feet.

B. The Allocation Tracking Form will track the total square footage of Agricultural Buildings and Improvements built outside the ADA after the Conservation Easement closed to determine whether the Grantor (landowner) needs to seek WAC’s approval for construction of new Agricultural Buildings and Improvements greater than the 5000 sq. ft aggregate.

1) The Allocation Tracking Form will also track the aggregate square footage for all new Buildings and Improvements over the 5000 square feet to determine if any new or proposed Agricultural Buildings and Improvements are within the threshold established by these guidelines.

2) Agricultural Buildings and Improvements outside the ADA that existed at the time of

closing and are identified in the Baseline Documentation Report (BDR), will not be charged toward the 5000 square foot aggregate and may be repaired, replaced or reconstructed as long as the foot print of the Agricultural Building or Improvement does not increase.

3) Any increase or expansion to the square footage of an existing structure will be charged toward the 5000 square footage aggregate.

C. Square footage may be subtracted from the Allocation Tracking Form for Buildings and Improvements that were constructed after the CE closed but have since been removed, such as temporary buildings or razed buildings.

D. The Allocation Tracking Worksheet will be kept in the Stewardship file and updated by WAC each time the aggregate square footage changes.

E. Upon conveyance of a portion of the property, the landowner will notify WAC and identify the aggregate square footage of Agricultural Buildings and Improvements to be assigned to the portion of property to be conveyed in the deed to the property.

F. The Baseline Documentation Report may be updated to reflect construction of new Agricultural Structures and Improvements via an Amendment to the Conservation Easement.

## **5. Whole Farm Plan (WFP) Best Management Practices (BMPs) and Agricultural Buildings and Improvements Greater than 5000 sq. ft. Outside the ADA.**

A. WFP planners may need to prescribe Agricultural Buildings and Improvements outside the ADA as part of a Whole Farm Plan (WFP) Best Management Practice (BMP).

B. Landowners of the easement-encumbered property will be charged toward the 5000 square foot aggregate for any structural WFP BMP that creates impervious surface.

C. Agricultural Buildings or Improvements in the ADA must be consistent with the WFP as per the Conservation Easement.

1) Review of Agricultural Buildings and Improvements inside the ADA will be conducted during the WFP Annual Status Review (ASR) to determine if the Agricultural Buildings and Improvements are consistent with the WFP.

2) Recommendations for WFP BMPs outside the ADA will be noted on the ASR and considered for revision as per the Agricultural Program's policy pertaining to WFP revisions.

## **6. Maximum Size for Agricultural Buildings and Improvements Greater than 5000 sq. ft. Outside the ADA**

A. Landowner (Grantor) may only construct Agricultural Buildings and Improvements in the Farm Area outside the ADA greater than the aggregate 5,000 square with WAC (Grantee) approval.

B. WAC will consider requests for the construction of new Agricultural Buildings and Improvements greater than 5000 square feet up to a maximum of 2 percent of the acreage of the Farm Area so long as the proposed buildings and improvements conform to the terms and conditions of the CE and these guidelines.

C. For landowners requesting construction of Agricultural Buildings and Improvements that exceed the aggregate of 2%, an inventory of all structures in the Farm Area will be conducted to determine whether all Agricultural Buildings or Improvements outside the ADA are being used in support of current agricultural operations and whether new buildings or improvements are necessary.

## **7. Process and Standard of Approval for constructing Agricultural Buildings and Improvements Greater than 5000 square feet Outside the ADA**

The Deed of Conservation Easement defines the process and standard of approval for requests related to constructing Agricultural Buildings and Improvements Greater than 5000 square feet Outside the ADA follows:

A. Grantor may enlarge or construct Agricultural Buildings in the Farm Area greater than the aggregate 5,000 square foot threshold specified above only with prior approval from the Grantee.

B. Prior to commencing any proposed action 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 reasonably necessary for Grantee to evaluate such request.

C. Grantee shall give such approval within 45 days of receipt of Grantor's written request, unless it determines that the proposed Agricultural Buildings and Improvements would be unnecessarily located on productive soils, or would otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property.

D. Approval shall be deemed given if no written decision is provided by Grantee within 45 days of receipt of Grantor's written request.

## **8. Requests to Locate Agricultural Buildings or Improvements Greater than 5000 sq. ft. Outside the ADA**

A. Landowner requests to construct Agricultural Buildings or Improvements Greater than 5000 sq. ft. Outside the ADA must include the following information:

- 1) Written request to activate a reserved right from the landowner stating need for developing a new Agricultural Building or Improvement greater than 5000 square feet outside of the ADA. Request should explain need for structure based on current or proposed agricultural operations and proposed agricultural uses.

- 2) Map depicting size and location of proposed Agricultural Building or Improvement outside the ADA, soils, watercourses and water features, roads and topographic contour lines depicting slope.
- 3) Memorandum describing size (square footage) and location, of Agricultural Building or Improvement outside of the ADA greater than 5000 square feet, distance from nearest watercourse or water feature.
- 4) Site plan locating structure and showing BMPs necessary to mitigate impact of Building or Improvement on water quality pre and post construction. Site plan should address impacts of sedimentation, erosion and other Non Point Source Pollutants. Plan should include narrative and maps that explain intended agricultural uses and explain how impacts of agricultural uses on water quality will be managed or mitigated. If Building or Improvement is also a WFP BMP, WFP Planner must provide a summary of the need for the proposed BMP and schedule for development and implementation in addition to information above.

## **9. Standard of Review for Requests to Construct Agricultural Building or Improvements Greater than 5000 square feet Outside the ADA**

- A. Requests from landowners to construct a high tunnel greenhouse, row cover structure or similar agricultural structure that will exceed the aggregate 5,000 square foot threshold outside the ADA and that covers field grown crops may be approved by staff consistent with the approval requirements of these guidelines.
- B. Staff will notify the Easement Committee of any such structures approved at the staff level.
- C. Plans submitted by landowners to construct Agricultural Buildings or Improvements Greater than 5000 sq. ft. Outside the ADA, other than those covered by paragraph 9. A above, will be reviewed by the Easement Committee against the following standards and require unanimous consent by the Easement Committee for approval:
  - 1) Standard of Approval: Grantor may enlarge or construct Agricultural Buildings in the Farm Area greater than the aggregate 5,000 square foot threshold specified above only with prior approval from the Grantee. Prior to commencing any proposed action 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 reasonably necessary for Grantee to evaluate such request. Grantee shall give such approval within 45 days of receipt of Grantor's written request, unless it determines that the proposed Agricultural Buildings and Improvements would be unnecessarily located on productive soils, or would otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property. Approval shall be deemed given if no written decision is provided by Grantee within 45 days of receipt of Grantor's written request.
- D. Additionally, the interpretation of the Standard of Approval must be consistent with the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation



Easement listed below:

1) 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”.

2) 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.

3) 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”.

4) 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 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.

5) 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.

6) 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”.

E. Consistency with the Standard of Approval and the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement above as interpreted and applied by WAC (grantee ) to requests by landowners (grantors) to Construct Agricultural Buildings or Improvements Greater than 5000 square feet outside the ADA require review and approval by WAC of the following:

F. Impact of proposed location of building or improvement on agricultural productivity and productive soils. Does location of proposed Agricultural Buildings and Improvements result in it being unnecessarily located on productive soils?

a. Impact of proposed Agricultural Building or Improvement on water resources by reviewing proximity to surface water, slopes and soils. Does proposed location substantially diminish or impair water quality?

b. Impact of proposed Agricultural Building or Improvement to Agricultural productivity. Does proposed location substantially diminish or impair the agricultural productivity?

## **10. Notification to Landowner of Approval or Denial of Grantor Request by Easement Committee**

D. 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.

E. Letter to Grantor shall include a copy of the motion and vote on motion.

F. 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.



# Appendix "A"

## Watershed Agricultural Council - Easement Program Deed of Conservation Easement - Allocation Tracking Form

Landowner Name: \_\_\_\_\_

Easement Name: \_\_\_\_\_

DEP ID #: \_\_\_\_\_

Original Grantor: \_\_\_\_\_

Chain of Title: \_\_\_\_\_

Allocations	Original Allocations	Utilized/Conveyed	Remianing Allocations
Future Acceptable Development Areas (FADA)			
Residential Dwellings			
Subdivisions (additional tax parcels)			
Agricultural Buildings and Improvements			
Recreational Buildings and Improvements			

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Allocations listed above indicate the remaining permitted allocations associated with this property from the Deed of Conservation Easement at this time. Should a conveyance occur, these allocations are required to be distributed accordingly in the respective deed(s).

Landowner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

WAC Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_





# Watershed Agricultural Council Conservation Easement Program

## Guidelines the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes





# Guidelines the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes

The following guidelines are established by WAC to create standards for the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). The Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the CE's terms and conditions related to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes.

## **A. The Deed of Conservation Easement's General Definitions and Clauses pertaining to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes.**

1. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes, that version's definitions and clauses serve as the controlling legal language:

**a. DUMPING, STORAGE AND APPLICATION OF WASTE:** Except as permitted herein, the dumping, storage, application, land filling, or accumulation of any kind of Waste in, on or upon the Property is prohibited. The application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes is prohibited without the prior written approval of Grantee. Any approved application shall be undertaken only if compliant with applicable law and consistent with the Whole Farm Plan.

**b. Best Management Practices (BMP):** Practices that prevent or reduce the availability, release or transport of substances which adversely affect surface and ground waters. These management practices may have standards associated with their installation, operation or maintenance, but do not impose effluent limits for specific substances.

**c. Waste:** The term Waste includes trash, refuse, debris, domestic septic effluent, sewage, sewage sludge or liquid, garbage, discarded chemicals, radioactive materials, and hazardous or toxic substances as defined by Federal, State or Local law.

**d. Whole Farm Plan :** A Watershed Agricultural Council (WAC) Whole Farm Plan (WFP) is a document that identifies, addresses and mitigates environmental concerns to protect the water resources of the New York City watershed without negatively impacting the economic viability of the agriculture enterprise while integrating farm business objectives into the decision making process.

The Whole Farm Planning Process - A WFP is developed by agricultural/conservation professionals and the participating landowner/producer following WAC policy, guidelines and standard operating procedures. The WFP gives specific consideration to aspects of the farm business that relate to water quality objectives and landowner/producer goals. The WFP addresses water quality issues identified through environmental assessments (Environmental Review/Problem Diagnosis (ERPD) and Agricultural Environmental Management (AEM)). The mitigation of these water quality concerns is achieved through the implementation of Best Management Practices (BMPs) consistent with NRCS and/or WAC Standards. The landowner/producer agrees to implement BMPs according to the WFP schedule and shall maintain and operate BMPs for their designated life span. The plan may periodically be updated or otherwise revised and shall remain in effect for any period when WAC either funds or otherwise ensures that funding is secured for Grantor for construction of BMPs. Grantor must maintain such BMPs in accordance with the Whole Farm Plan and any related contractual obligations.

Funding Restrictions - In the event that the Whole Farm Plan ceases to be funded and all contractual obligations the Grantor may have with respect to BMPs have expired, agricultural uses and activities on the Property shall be consistent with the New York State Environmental Conservation Law (ECL) including, but not limited to, requirements applicable to Concentrated Animal Feeding Operations (CAFOs) under ECL Article 17, Title 7, and with the federal Clean Water Act, 33 U.S.C. § 1251 et seq.

A WFP document can include the following documents, but not limited to:

1. Environmental Assessment using the Environmental Review/Problem Diagnosis (ERPD) or Agricultural Environmental Management (AEM)
2. RUSLE2 Soil Erosion Assessment, WINPST Pesticide Leaching and Run-off Assessment and other NRCS assessments as required
3. Plan narrative and photo documentation (pre and post planning and implementation)
4. Nutrient Management Plan
5. WFP Summary (Farm Mission, Vision and goals)
6. WFP-2 Funding and Scheduling Agreement
7. All WAC BMP procurement documentation, i.e. BMP Funding Agreement (WFP-1)
8. BMP Operations and Maintenance Agreements (O&M)
9. Record of communication with the Landowner/Participant
10. BMP designs and completed "as built"
11. Annual Status Reviews

2. Any contractual obligations that will affect the development and implementation of new and/or revised WFP, i.e. federal programs, easements.



3.WAC further defines the meaning of the following definitions found in the Deed of Conservation Easement pertaining to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production. Definitions are based on NYS Law pertaining to Regulated Waste.

**a. Septage:** Is the contents of a septic tank, cesspool, or other individual sewage treatment facility which receives domestic sewage waste.

**b. Sludge:** Is any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. "Sludge" does not include the treated effluent from a wastewater treatment plant.

**c. Raw Sewage:** Is any untreated sanitary waste.

**d. Regulated Waste:** Is a solid waste which is raw sewage, septage, sludge from a sewage or water supply treatment plant, [waste tires]\*, waste oil or industrial-commercial waste including hazardous waste.

**B. General Restrictions for the Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes.**

1. Prior to undertaking the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production, a landowner must comply with the applicable requirements of the New York State Environmental Conservation Law including, but not limited to: (i) ECL Section 27-0303 (waste transporter); (ii) 6 NYCRR Part 364 (waste transporter); (iii) ECL Section 27, Title 7 (Solid Waste Management); (iv) 6 NYCRR Part 360 (including Sections 360-1.7, 360-1.15, 360-4).

2. Prior to undertaking the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production, the proposed Application must be incorporated as a Best Management Practices in the landowner's and /or producer's Whole Farm Plan. The BMP must be reviewed and approved by the WAC Agricultural Committee and incorporated into the landowner's Whole Farm Plan prior to implementation.

3. Producer's operating on an easement landowner's property must have the landowner submit the reserved right request and other materials required under these guidelines ,for the Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production.

**C. Process and Standard of Approval for Requests for the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes.**

The Deed of Conservation Easement defines the process and standard of approval for requests for the Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes as follows:

The Deed of Conservation Easement defines the process and standard of approval as follows:

1. Grantor may engage in the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes only with prior approval from the Grantee.
2. 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
3. Grantee reserves the right to request additional information as may be required for the evaluation.
4. 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.
5. 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.
6. Grantee may approve the request, approve with conditions, or deny the request.
7. 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.

**D. Requests by Landowners for the Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes.**

1. Landowner requests for the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes must include the following:
  - a. Written request to activate a reserved right from the landowner stating need for the application.
  - b. Map depicting size and location of the affected area. Map should include Use Area boundaries, slope, water courses.
  - c. Memorandum describing size of application, contents of application, terms and conditions

of any regulatory approval applicable to the storage, transport and disposal of regulated waste, and description of the Whole Farm Best Management Practice specifications designs as approved by the Agricultural Committee.

**E. Standard of Review for Requests for the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes.**

1. Plans submitted by landowners for The application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes be reviewed by the Easement Committee against the following standards as defined in the Deed of Conservation Easement and require unanimous consent by the Easement Committee for approval:
2. Standard of Approval: 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. Conservation Purposes: This Conservation Easement is intended 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.
4. WAC has agreed that its interpretation of the Standard of Approval and Conservation Purposes clauses must be consistent with Sections 9c of the December 2010 "Agreement Among the New York City Department of Environmental Protection (NYCDEP) and the 1997 New York City Memorandum of Agreement Signatories Concerning NYCDEP's continuation of its Land Acquisition Program (the "Agreement").
5. Section 9c of the Agreement states that "guidance documents will specify , for each reserved right, what constitutes consistency with the conservation purposes of the easement, with reference to and consistent with the laws and polices identified in paragraphs C through H of the recitals in the Model Conservation Easement
6. The recitals in the Model Deed of Conservation Easement are as follows:
  - 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”.

d. 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 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.

e. 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.

i. 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”.

C. Consistency with the Standard of Approval, Conservation Purposes and Section 9c of the “Agreement” as interpreted and applied by WAC (grantee ) to requests by landowners (grantors) for the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes require review and approval by WAC of the following:

1. Review of NYS regulatory terms and conditions for the, storage, transport and application of Regulated Waste to determine if the proposed application is consistent with the Conservation Purposes and does not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property.

2. Review of Whole Farm Plan Best Management Practice as approved by the WAC Agricultural Committee.

## **7. Notification to Landowner of Approval or Denial of Grantor Request by Easement Committee**

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.







# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Commercial Bluestone Mining on Watershed Agricultural Council Conservation Easements





# Guidelines for Commercial Bluestone Mining on Watershed Agricultural Council (WAC) Conservation Easements

The following guidelines are established by WAC to create standards for the development of Commercial Bluestone Mining on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). The Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the CE's terms and conditions related to the Commercial Mining of Bluestone.

## **1. The Deed of Conservation Easement General Definitions, Conditions, Prohibitions and Easement Committee Definitions for Bluestone Mining.**

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to Bluestone Mining. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to Bluestone Mining, that version's definitions and clauses serve as the controlling legal language:

**1) Bluestone Extraction Plan** A plan that provides for the identification and application of resource specific managerial and/or structural Best Management Practices designed to mitigate potential adverse environmental impacts of commercial bluestone mining.

**2) Mining** Except as may be reasonably necessary to carry out the uses permitted on the Property under the terms of this Easement, the exploration for, or development and extraction of, soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance by any surface mining method or any other method is prohibited with the exception of bluestone extraction undertaken with written approval of the Grantee.

Prior to commencing any commercial bluestone mining, Grantor, at their sole cost, shall submit a Bluestone Extraction Plan following the guidelines described in the City's Water Quality Protection Guidelines for Bluestone Quarrying or such successor standard approved by Grantee. Prior to commencing any commercial bluestone mining, such plan shall be reviewed and approved by Grantee.

**3) 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 Sections 3.a and 3.b above and the terms of this Conservation Easement. However, no more than 10 commercial campsites shall be allowed in an ADA.

**4) Farm Area (FA)** The residual area of the Property that is within the Agricultural Conservation Easement Area, excluding the Acceptable Development Area(s) and the Resource Protection Area(s), identified on the Conservation Easement Survey, in which Agricultural Buildings and Improvements, farm operations and farming practices are permitted pursuant to Section 3.a above, Section 4.b, and the terms of this Conservation Easement.

**5) Resource Protection Area (RPA)** 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. Fences are allowed anywhere within the RPA. Grazing and cultivation is permitted subject to Section 3.a above within those portions of an RPA which lie in the Agricultural Conservation Easement Area. However, the portion of the RPA within twenty-five (25) feet of the top of the bank of a watercourse shall not be plowed, cultivated, or tilled except to reestablish naturally disturbed vegetation. Trees and shrubs along streams and waterways on the Property shall be maintained so far as practicable to assist in achieving long-term water quality standards through nutrient absorption, sedimentation control from runoff and stream channel and bank stability.

**6) Agricultural Conservation Easement Area (ACEA)** Within the area identified as ACEA on the Conservation Easement Survey, Grantor has the right to produce crops, livestock and livestock products, to clear land for cultivation or pasture and conduct farm operations as defined under Section 301 of the New York State Agriculture and Markets Law, as amended, which shall be consistent with a Whole Farm Plan, as well as the right to engage in all other uses permitted by this Easement

**7) Forest Conservation Easement Area (FCEA)** Within the area identified as FCEA on the Conservation Easement Survey, Grantor has the right to produce timber and other related forest products, including, but not limited to, firewood, maple syrup, Christmas trees, ginseng, and mushrooms as well as the right to engage in all other uses permitted by this Easement. The confinement or pasturing of livestock, the production of orchards, field crops of any kind or forage for livestock is prohibited within the FCEA. No buildings, except Incidental Agricultural Buildings and Improvements, and Recreational Buildings and Improvements pursuant to Section 4, may be constructed in the FCEA.

B.WAC further defines the meaning of the following definitions found in the Deed of Conservation Easement:

1) WAC defines Commercial Bluestone Mining as the exploration for, development or extraction and removal of bluestone from an easement encumbered property.

## **2. General Restrictions for Commercial Bluestone Mining**



- A. A complete Bluestone Mining Plan attached as Appendix “A” to these guidelines must be submitted to the Easement Committee for review and approval prior to the commencement of any Commercial Bluestone Mining.
- B. For any proposed Commercial Bluestone Mining that requires a Mined Land Reclamation Permit or Bluestone Exploration Authorization Permit under NYS Law, landowners may submit to WAC for review and approval, the NYS permit plans in lieu of the Appendix “A” Bluestone Mining Plan.
- C. Any activities that would need to be conducted in conjunction with the proposed Commercial Bluestone Mining that would require additional Reserved Rights plans such as a Forest Harvest Plans, Water Course and Stream Work or Rights of Way must be submitted with the Bluestone Mining Plan for review and approval by WAC prior to commencing any Commercial Bluestone Mining or other proposed activity.
- D. In the event that any of the terms or conditions of any approved WAC Bluestone Mining Plan are not being adhered to by the landowner or activities not identified in the plan are creating an adverse water quality impact that significantly diminishes water quality , WAC staff may require that mining operations cease until such terms and conditions or activities are addressed in a manner that is consistent with the terms and conditions of the Conservation Easement.
- E. Soil, Sand, Gravel, rock and other mineral substances may not be removed from the easement encumbered property for use or utilization on unencumbered portions (out parcels or excluded areas) of a property.

### **3. The Process for Requesting and the Standard of Approval for Conducting Commercial Bluestone Mining on WAC Conservation Easement Encumbered Properties**

- A. The current Deed of Conservation Easement defines the process and standard of approval for requests related to conducting Commercial Bluestone Mining 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 to Conduct Commercial Bluestone Mining on WAC Conservation Easement Encumbered Property**

A. Requests must include the following information:

1) Written request to activate a reserved right from landowner stating intent for opening a Commercial Bluestone Mine.

2) Completed Bluestone Mining Plan , Appendix "A" or NYS Mined Land Reclamation Permit plan or Bluestone Exploration Authorization Permit plan.

3) Maps required under Bluestone Mining Plan.

#### **5. Standard of Review for Requests to Conduct Commercial Bluestone Mining on WAC Easement Encumbered Properties**

A. Plans submitted by landowners to engage in Commercial Bluestone Mining will be reviewed by the Easement Committee against the standards found in sections C through G below and require unanimous consent by the WAC Easement Committee for approval.

B. The WAC Bluestone Mining Plan, attached as Appendix "A" to these guidelines consists of the following sections:

1. Landowner Information
2. Permit Information
3. Goals and Objectives
4. Job Size and Scheduling
5. Map Requirements
6. Soils Information
7. Quarry Access Haul Roads
8. Watercourse Crossing
9. Watercourse Best Management Practices
10. Mining Method
11. Storage, Stabilization and Disposition of Excavated Materials
12. Site Stabilization and Reclamation
13. Signatures
14. WAC Approvals of Bluestone Mining Plan

C. Standards for the following Sections of the Bluestone Mining Plan are as follows:

1) Permit Information (Section 2)

a. If a New York State DEC Mined Land Reclamation Permit or NYS DEC Bluestone Exploration Authorization is required to mine and has been issued to a landowner, landowners of a WAC Conservation Easement Encumbered property who wish to engage in Bluestone Exploration or Extraction may submit a Mined Land Reclamation Permit plan or Bluestone Exploration Authorization Permit plan to the Easement Committee for review and approval in lieu of the Bluestone Mining Plan prior to conducting any Bluestone Exploration or Mining.

b. If it is determined by the NYS DEC that no NYS DEC permit is required, landowners of WAC Easement Encumbered properties who wish to engage in the exploration or extraction of Bluestone must still have a Bluestone Mining Plan approved by WAC in order to engage in Commercial Bluestone Mining.

2) Goals and Objectives (Section 3)

a. In addition to outlining the landowners' goals and objectives, landowners should explain how water quality objectives of the easement will be met and how reclamation activities will be achieved.

3) Job Size and Scheduling (Section 4)

a. Any open Bluestone Mines must be in good standing and being mined in accordance with an approved WAC Bluestone Plan and State Permits if landowners wish to open an additional Bluestone Mine on their property.

b. Any Bluestone Mine that is no longer active that was approved by WAC must be reclaimed to satisfy the terms and condition of the easement and these guidelines before a new bluestone mine can be reviewed and considered for approval by WAC.

c. Total acreage that may be affected by Bluestone mining on a property should not exceed 4 acres any given time.

4) Map Requirements (Section 5)

a. Map features may be combined onto one map (Mining Plan and Soils Map)

5) Quarry Access Roads (Section 7)

a. Any BMPs that will be required to construct new road will be required to alter existing roads shall be listed in Section 9 Water Quality Best Management Practices

6) Water Crossing (Section 8)

a. All water features potentially affected by the proposed Bluestone Mining activity will be identified in the Table in Section 8 of the Bluestone Mining Plan and utilize the symbols in the Table legend.

7) Water Quality Best Management Practices (Section 9)

- a. Any water crossing identified in the Table in Section 8 must have a Best Management Practice (BMP) prescribed , if necessary, in the Table in Section 9 of the Bluestone Mining Plan.
- b. If DEC Stream Permit or WAC Stream Work Reserved Right is required, the permit or WAC approval must be obtained before any Bluestone Mining is conducted.
- c. Any BMPs prescribed shall be maintained as necessary during the entire period of the approved plan.

8) Mining Methods (Section 10)

- a. All methods of mining should be listed in sequence of activities utilizing the terms provided in Section 10.
- b. Approved Duration of plan should not exceed two (2) years

9) Storage, Stabilization and Disposition of Excavated Materials (Section 11)

- a. Table for Storage and Disposition will/shall reference mining methods as described in Section 10 and depicted on Map.
- b. Stabilization may include additional BMPs to those prescribed in Section 9 as determined by WAC staff on site if site conditions change.

10) Site Stabilization and Reclamation (Section 12)

- a. Slopes shall be graded to shallowest achievable standard consistent with topography
- b. Remaining Stockpile and overburden shall be placed in the quarry area , graded toward the open face or existing slope contour to the shallowest achievable gradient.
- c. Top soils shall be graded last over any overburden or stockpiles.
- d. Seed and Mulch shall be applied after grading.
- e. All roads identified in plan must be graded and stabilized where necessary
- f. All temporary BMPs must be removed.

D. 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”.

E. Standard of Approval Clause : 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.

F. Additionally, the interpretation of the Conservation Purposes shall be consistent with the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement listed below:

- 1) 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”
- 2) 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.
- 3) 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”.
- 4) 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 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.
- 5) 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.
- 6) 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”.

G. Consistency with the Conservation Purposes, Standard of Approval Clause and the laws and policies identified above and interpreted and applied by WAC to requests from grantors to conduct Commercial Bluestone Mining require review and approval of the following:



1) Review and Approval by WAC of a complete Bluestone Mining Plan ( Appendix “A” ) or NYS Mined Land Reclamation Permit plan or Bluestone Exploration Authorization Permit plan. Content of plan will be reviewed against standards listed in Section 5 C of these Guidelines.

2) Does the proposed Commercial Bluestone Plan meet the requirements of Sections 5C through 5G of this guidance document? If not, identify any and all deficiencies.

3) Are the proposed mitigation measures sufficient to prevent substantial diminishment or impairment of agricultural productivity or water quality? Are additional measures needed?

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

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.



## Appendix “A”

### Watershed Agricultural Council Bluestone Mining Plan

#### 1. Landowner Information

Landowner Name: \_\_\_\_\_

Mailing Address : \_\_\_\_\_

Property ID #: \_\_\_\_\_

Date: \_\_\_\_\_

#### 2. Permit Information

Is there a NYS DEC Bluestone Exploration Authorization for this project?

☐ Not needed      ☐ Yes

If yes, date of current application? \_\_\_\_\_

Is there a Current DEC Mined Land Reclamation Permit for this project?

☐ Not Needed      ☐ Yes

If yes, date of application \_\_\_\_\_

\*Including a copy of the application will assist WAC in the review of your project.

#### 3. Goals and Objectives

What are your overall goals and objectives for the property with respect to this project? Describe natural features, physical condition, drainage, vegetation, surrounding land use:

#### 4. Job Size and Scheduling

Is there a Quarryman supervising this project?                      No      Yes, see below:

Name of Quarryman : \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Is there a mining contract with a Bluestone mining company or quarryman?

    No      Yes, see below:

Name : \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

What is the term of the contract? \_\_\_\_\_

What is the Contract start date? \_\_\_\_\_

What is the Contract completion date? \_\_\_\_\_

**Total acre involving this project:** Includes the areas where overburden material is or will be removed; areas where overburden is or will be stored; areas where by product waste is or will be dumped; areas where Bluestone is or will be extracted from the rock bed; and all other area disturbed or to be disturbed through excavation, stockpiling, and/or quarrying. This does not include quarry access and haul roads, except in the immediate vicinity of the excavation or stockpiles. \_\_\_\_\_

**1. Limits of proposed Quarry Area** to be affected shall be staked or flagged or marked at all corners, vertices at a minimum of 100 foot intervals and be clearly visible and easily identifiable. WAC staff may also utilize GPS to establish boundary of proposed quarry in conjunction with stakes or flags.

a. Number of stakes/flags/ Markers Utilized \_\_\_\_\_

b. Approximate location of markers identified on map - Marked as "F" on map

**2. Estimated quantity of Bluestone** to be extracted annually: \_\_\_\_\_

## 5. Map requirements

At a minimum, two site-specific maps are required: 1) the **Bluestone Mining Plan Map** and 2) a **Soils Map**. Additional maps necessary to explain the proposed operation shall also be attached to this Plan. Below are items that should be included in maps, the more information that can be provided, the better WAC can review the proposal:

	Mining	Plan Map	Soils Map		Other Maps	
Title Block and Legend	Yes	No	Yes	No	Yes	No
Scale at least 1" = 500'	Yes	No	Yes	No	Yes	No
Contour intervals shown not exceeding 20'	Yes	No	Yes	No	Yes	No
Boundary of affected land shown	Yes	No	Yes	No	Yes	No
Existing and proposed roads shown	Yes	No	Yes	No	Yes	No
Watercourses and Wetlands within 300' of proposed quarry area shown	Yes	No	Yes	No	Yes	No
Proposed stockpile areas shown	Yes	No	Yes	No	Yes	No

## 6. Soils Information

Soil classifications and descriptions are listed below for the soils in the area of quarrying operations, stockpile areas and roads. The soil series and map symbols are to be shown on the Soils Map. Soil map are available at your local NRCS and/or Soil and Water Conservation District Offices.

			Erosion Hazard	
Soil Series and Map Symbols	Slopes (Percent)	Slight	Moderate	Severe



## 7. Quarry Access Haul Roads

Do new roads have to be constructed or existing roads altered? ☐ Y ☐ N

If yes,

Start Date: \_\_\_\_\_ Finish Date: \_\_\_\_\_

Any required BMPs for roads must be included in Section 9, Water Quality BMPs

What is the total length (in feet) of the Road used to transport Bluestone from the quarry to a public road:

\_\_\_\_\_

Will any Quarry Rubble be transported off-site: ☐ Yes ☐ No

## 8. Watercourse Crossing

Indicate Crossing Location on Map ➡	C1	C2	C3	C4	C5	C6
Drainage Type (1)						
Duration of Flow (2)						
Existing Crossing (3)						
Proposed Crossing (4)						
Drainage Bottom (5)						
Stream Bank Type (5)						
Bank Height (feet)						

(Show in the Bluestone Mining Plan Map and the Soils Map using C1,C2,C3, etc.)

.(1) Drainage Type: ST stream; SP spring; SE seep

.(2) Duration of Flow: PM permanent; IN intermittent;

.(3) Existing Crossing: NO none; PB permanent bridge; PC permanent culvert; OT other

(4) Proposed Crossing: TB\* temporary bridge; PB permanent bridge; TC\* temporary culvert  
PC\* permanent culvert; OT other

\* indicate bridge and culvert size (e.g. length, width and diameter)

.(5) Type of Bank or Bottom: RO rock; GR gravel; MU mud; SM soil mixture; OT other

(Show in the Bluestone Mining Plan Map and the Soils Map using C1,C2,C3, etc.)

## 9. Water Course Best Management Practices

Describe Best Management Practices (BMP) to be taken near Watercourses to reduce or eliminate water quality impacts. BMPs must correlate with water features identified on table in Section 8 “Water Course Crossings”:

Indicate on Map	Filter Type (1)	Slopes	Type of BMP	Comments
C1/BMP 1				
C2/BMP 2				
C3/BMP 3				
C4/BMP 4				
C5/BMP 5				
C6/BMP 6				

(1) Filter Type: SS stream side; WL wetland; SP spring; SE seep; VP vernal pool; OT other

Is a DEC Stream Crossing Permit required? ☐ No ☐ Yes

If “Yes”, please attach or indicate when the Permit will be applied for. Before WAC can issue final approval for this project, a copy of the permit must be on file. An additional Reserved Right request for stream work may be required and submitted with this application.

## 10. Mining Method

### Provide a written description of the following:

2. Phases of Exploration, Cuts and Excavations (describe sequence and details of the proposed excavation such as Removal Vegetation, Strip and Stockpile top soils, Strip and Stockpile Overburden, Locate face for stone quarrying, Stockpile of cut stone, Removal of any woody biomass).

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(Attach additional pages as necessary to fully describe the quarrying method proposed)

3. Will there be any rock blasting? ☐ No ☐ Yes If yes explain:

4. Bluestone Preparation (describe activities planned):

(Attach additional pages as necessary to fully describe the Bluestone preparation methods proposed)

5. What steps will be taken for dust control during the course of the quarrying?:

6. What steps will be taken for Wash Water Control during Quarrying?

## 11. Storage, Stabilization and Disposition of Excavated Materials

FROM*	TO*	NATURE OF MATERIAL**	ESTIMATED VOLUME	PROPOSED STABILIZATION

\* Key these columns to Bluestone Mining Plan Map (indicate A,B,C,, etc.),

\*\* Nature of Material: WO wood; ST stumps; TO topsoil; SU subsoil; QR quarry rubble; BP Bluestone product; OT other.

## 12. Site Stabilization and Reclamation

Please describe in the following table all the steps planned in order to accomplish final site stabilization and reclamation. Will there be sufficient materials on site for reclamation of Mine site?

Activity	Description	Will be Successful If...

## 13. Signatures

I attest and certify that the information in the Bluestone Mining Plan is true and accurate to the best of my knowledge and that I am familiar with and will be bound by all applicable Federal, State, and local laws and rules and regulations. I agree to abide by the provisions of the Bluestone Mining Plan and any reasonable conditions that WAC may require for its approval. I also agree to advise WAC at least two weeks in advance of any harvest and at least two weeks before the project is complete.

WAC Easement Landowner(s): \_\_\_\_\_ Date: \_\_\_\_\_

WAC Easement Landowner(s): \_\_\_\_\_ Date: \_\_\_\_\_

WAC Representative: \_\_\_\_\_ Date: \_\_\_\_\_



## 14. WAC Approval of Bluestone Mining Plan

1. ☐ Approved by WAC Easement Committee as written

Start Date:\_\_\_\_\_ End Date : (Date approval expires):\_\_\_\_\_

2. ☐ Approved by WAC Easement Committee with conditions

Date approval expires:\_\_\_\_\_

Conditions:

3. ☐ Not approved

Reasons not approved:

WAC Representative Signature:\_\_\_\_\_

Date:\_\_\_\_\_ WAC Representative Name:\_\_\_\_\_

WAC Representative Phone Number:\_\_\_\_\_

Fax:\_\_\_\_\_ e-mail:\_\_\_\_\_

## WAC APPROVAL OF EXTENSION AND OR AMENDMENT OF BLUESTONE MINING PLAN

### 1. Extension

- ☐ Approved Date extension expires:

WAC Representative:\_\_\_\_\_ Date:\_\_\_\_\_

### 2. Amendment

- ☐ Date Approved By the Easement Committee\_\_\_\_\_ Date amendment expires:\_\_\_\_\_

WAC Representative:\_\_\_\_\_ Date:\_\_\_\_\_

**Terms of Amendment:**

# Watershed Agricultural Council Conservation Easement Program

## Conservation Easement Monitoring Guidelines





# Easement Program

## Conservation Easement Monitoring Guidelines

The following guideline establishes the standards and practices associated with routine monitoring of WAC easements purchased with funds provided by the NYCDEP.

### A. Purpose of Monitoring

Routine monitoring of Watershed Agricultural Council (WAC) Conservation Easements (CE) is necessary to ensure that:

1. The terms and conditions of the easement and any Reserved Right approvals are upheld.
2. There is clear communication between WAC and Easement Landowners.
3. Monitoring requirements are met pursuant to the contract with NYCDEP.
4. The CE's conservation purposes are maintained consistent with Section 170(h) of the Internal Revenue Code.

### B. Monitoring Schedules

1. Prior to commencing annual routine monitoring, Easement Program Staff will create an Annual Monitoring Calendar to help establish a monitoring schedule for all properties encumbered by a WAC CE.
  - a. The calendar will include monitoring visits for CEs expected to close in the first six months of the calendar year.
  - b. New CEs that close in the last six months of the calendar year may be scheduled for their first ground monitoring visit the following calendar year as long as the first ground monitoring visit occurs within six months of the closing date.
2. Within 20 days of the beginning of each calendar year, the Annual Monitoring Calendar will identify the monitoring visit type and anticipated inspection date by month/quarter. The calendar identifies properties to be monitored on a quarterly basis.
3. NYCDEP staff may accompany WAC staff on up to 20 percent of the annual inspections as indicated on the Annual Monitoring Calendar and described in the contract between WAC and DEP.

## **C. Number and Types of Monitoring Visits**

1. All WAC CE Properties that have been purchased using DEP funds will be monitored twice annually. Of the two required monitoring visits for purchased easements, one must be a ground monitoring visit, and the second may be conducted via aerial fly-over or a second ground visit.
  - a. All easements shall have an initial ground monitoring visit within six months of the closing date.
  - b. For easements that close after July 1st, and appear on the annual monitoring calendar, only one visit is required and that shall be a ground monitoring visit.
  - c. Easements with a history of violations or significant Reserved Right approvals may receive two ground monitoring visits annually determined at the discretion of the Easement Program Director or Stewardship Coordinator.

## **D. Monitoring Visits and Monitoring Reports**

1. The purpose of monitoring is to ensure the terms and conditions of the easement and any Reserved Right approvals are upheld. Monitoring of the Whole Farm Plan (WFP) and determining if the landowner is farming in accordance with a WFP will be conducted independently of routine monitoring visits via an Annual Status Review (ASR) by WAP staff (see Section E).
2. Activities associated with inspections of the Easement Property shall include, but not be limited to; a review of the stewardship file, Baseline Documentation Report , applicable surveys and GIS maps, the Deed of Conservation Easement, previous monitoring reports, Reserved Right request approvals, past violations, and Whole Farm Plans; a ground traverse and visual examination of the Easement Property; and, where feasible, an interview with the Easement Landowner and any tenant operator of the Easement Property.
3. The details of each inspection shall be recorded in a Monitoring Report (Attachment “A”).
4. Annually, and prior to each monitoring visit, Easement Program Staff shall:
  - a. Send letters to all landowners that will have their Properties’ monitored in the upcoming calendar year, notifying them that they will be contacted prior to the ground monitoring visit.
  - b. Send a letter, make a telephone call or email landowners at least 1 week prior to conducting an actual monitoring visit, notifying them that a monitoring visit is scheduled for their property. Landowners will be invited to participate in the monitoring visit.
  - c. Prepare for monitoring inspections by reviewing all stewardship files and the Baseline Documentation Report as well as database information to ensure it is current and accurate (see Section D2).
5. During a Ground Monitoring Visit, WAC staff shall:
  - a. Physically inspect the Property to determine adherence to the terms and conditions of the Easement. Inspections shall include a ground traverse of use-areas and identification



- of boundary lines, as well as a meeting with each Easement Landowner, when possible, to discuss recent and planned activities and/or any other issues that may have arisen for the respective Easement Property.
  - b. Complete the Ground Monitoring Report (Attachment “A”) for each WAC CE-encumbered property during all ground monitoring visits.
  - c. Complete an Allocation Tracking Form to ensure the landowners retained rights (additional tax Parcels, new residences, Agricultural Structure Square Footage, Recreational Structure Square Footage, FADAs) are current and accurate (Attachment C).
6. During an Aerial Monitoring Visit, WAC staff shall:
- a. Visually inspect Easement Properties along flight path for compliance with the terms of the Deed of Conservation Easement.
  - b. Complete the Aerial Monitoring Report (Attachment “B”) for each WAC CE-encumbered property observed during aerial monitoring flights.
7. Quarterly reports that summarize the respective monitoring visits will be submitted to the NYCDEP at each quarters end. Individual Property monitoring reports will be made available to the NYCDEP upon request.
8. Easement Landowners may be sent a follow-up letter that addresses any inquiries regarding notifications or reserved rights, potential issues, or violations identified during the monitoring visit at the end of the quarter in which their Property was monitored. Landowners will not be routinely sent a copy of the monitoring report.
9. Copies of monitoring reports will be placed in the respective stewardship files.

## **E. Monitoring of Whole Farm Plans**

1. On an annual basis, WAP staff shall review the status of the design and implementation of Whole Farm Plans for all Easement Properties.
2. Prior to the beginning of the calendar year, the Easement Program Director and Easement Program Agricultural Conservation Planner will coordinate with the Agricultural Program Manager to develop and schedule Annual Status Reviews to be conducted on farm properties with conservation easements.
3. The Agricultural Conservation Planner will create an Annual Status Review Calendar based on the calendar year that lists the Properties by quarter.
4. WAP Staff, utilizing the Agricultural Program’s most current and approved Annual Status Review Form shall determine whether the most current Whole Farm Plan satisfactorily addresses all water quality issues or whether a revision or new Whole Farm Plan shall be necessary.
5. WAC shall update and/or revise a Whole Farm Plan whenever there is a significant change in the operation on an Easement Property resulting in a potential negative impact on

water quality, or if there has been a change of ownership of the Easement Property.

6. The Agricultural Conservation Planner shall notify the Easement Program Director of any properties requiring WFP revisions, updates, or a new WFP. The Easement Program Director will notify the Agricultural Program Manager of easement-encumbered properties that require revisions or updates to the WFP, or require a new WFP. Both program managers will work with the Executive Director to allocate resources necessary to complete all revisions, updates or new WFPs.

## **F. Potential Violations Identified During Monitoring**

1. WAC staff shall make reasonable efforts to resolve and correct any perceived, minor violations of the Easement.
2. WAC Staff will immediately notify the Easement Program Director and Easement Program Stewardship Coordinator of any actual or potential violations identified during a monitoring visit on a Property. The Easement Program Director and Easement Program Stewardship Coordinator shall determine the appropriate action necessary to resolve the violation as outlined in the Easement Landowner's Deed of Conservation Easement.
3. Violations of WFPs will be determined using the Enforcement Section of the Deed of Conservation Easement and via consultation with the WAP Whole Farm Planner as informed by the WAP Guideline: Farming in Accordance with a Whole Farm Plan (WFP).
4. WAC staff shall follow the process of notifying the Easement Landowner of a violation as identified in the Violation's clause of the Easement (see "Enforcement" as per the Deed of Conservation Easement).

## **G. Post Monitoring Visits – Reserved Right request and Updates to the BDR**

1. All Reserved Right requests identified during monitoring visits will be processed consistent with the terms and conditions of the conservation easement and all relevant policies and guidelines of the Easement Committee when addressing Easement Landowner requests for approval of activities under the terms of a respective Easement.
2. All stewardship activities identified by WAC staff during monitoring visits, such as Reserved Rights requests, amendment requests, technical support, violations, notifications (such as conveyances, leases, as of right uses) will be tracked by property on a spreadsheet and/or database and compiled quarterly.
3. As per Section D(8) above, WAC Stewardship Staff may send landowners a letter at the end of each quarter in which a Property was monitored. The letter will review and describe any issues, violations, requests or notifications identified during the monitoring visit. Prescriptions and time frames meant to address potential or actual violations will be sent in a separate letter as per the resolution of the WAC Easement Committee.

## H. Updating Baseline Documentation

1. WAC shall update baseline documentation whenever necessary, including but not limited to, when an Easement Property has been subdivided, sold, or amended.

- a. In the event that a Property is subdivided and/or conveyed or an existing tax parcel restricted by a WAC Conservation Easement is conveyed from an original Grantor Easement, a new Stewardship Binder must be created for the new property and the Stewardship Binder for the original Grantor Easement must be modified to reflect the reduction of acreage to the original grantor Easement.
- b. Content for Stewardship Binders for newly created properties restricted by an original grantor Easement shall include the following:

- ☐ 8 ½" x 11" Original Grantor Survey Map
- ☐ 8 ½" x 11" Topo map-with property location
- ☐ 8 ½" x 11" Original Property Map-with all subdivision
- ☐ 8 ½" x 11" Subdivided Property (Survey or Map)
- ☐ 11" x 17" Photopoint Location Map
- ☐ Baseline Document Report Text
  - ☐ Property Deed- \_\_\_\_\_
  - ☐ Deed of Conservation Easement
  - ☐ Whole Farm Plan or WFP-2
  - ☐ Forest Management Plan (if applicable)
  - ☐ Bluestone Extraction Plan (if applicable)
    - Bluestone Quarry Photopoint Map
    - Photos of Bluestone
  - ☐ Full Property Photopoint Map (plotter format)
  - ☐ Photos of Property
  - ☐ ADA Photopoint Map (plotter format)
  - ☐ Photos of ADA
  - ☐ Allocation Tracking Form (as day of conveyance)
  - ☐ Reserved Right Reminder Form



## WATERSHED AGRICULTURAL COUNCIL EASEMENT PROGRAM ANNUAL MONITORING REPORT

1. AMV Date: \_\_\_\_\_ Previous AMV Date: \_\_\_\_\_ Total AMV Time (hours): \_\_\_\_\_

2. Easement Acres: \_\_\_\_\_ PID: \_\_\_\_\_  
CEID: \_\_\_\_\_

3. Current Owner(s): \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

(Preferred contact)

Home Phone Number: ☐  
Cell Phone Number: ☐  
Email Address: ☐

4. Original Easement Grantor(s): \_\_\_\_\_  
Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_

5. Did the owner attend the monitoring visit? **Yes** **No**  
Did any other interested parties attend? **Yes** **No** If so, who? \_\_\_\_\_

6. Is there an agricultural assessment on the easement property? **Yes** **No**

7. Is there any Agricultural activity occurring on the Property? **Yes** **No**

### Current Agricultural Uses: (Include quantities)

- ☐ Dairy ☐ Non-Dairy/Livestock ☐ Equine  
☐ Poultry ☐ Hay/Pasture/Crops ☐ Produce ☐ Fallow/None  
☐ Other \_\_\_\_\_

Manager of Ag. activity: \_\_\_\_\_ ☐ Producer ☐ Supplemental

WFP Planner: \_\_\_\_\_

8. Has there been, or do you have plans to transfer, convey, subdivide, or lease the Property? ☐ Yes ☐ No

### Future Property Planning:

- ☐ Continuing Agriculture ☐ Transitioning ☐ Estate Planning ☐ Find A Farmer  
☐ Rented Lands, CE Interest ☐ Other \_\_\_\_\_

9. Has there been construction or conversion of any Agricultural, Residential, Recreational, or Rural Enterprise structures on the Property? **Yes** **No**
10. Has there been any application of domestic septic effluent, or has an individual subsurface sewage treatment system (SSTS) been installed on the Property? **Yes** **No**
11. Are there any new, or proposed farm-related refuse/debris/equipment storage areas? **Yes** **No**
12. Has there been, or is there proposed Commercial Forestry on the Property? **Yes** **No**
13. Has there been, or is there proposed application of pesticide/fertilizer within FCEA? **Yes** **No**
14. Has there been, or is there proposed Mining (Bluestone) on the Property? **Yes** **No**
15. Has there been, or is there proposed stream work on the Property? **Yes** **No**
16. Has there been, or are there proposed rights of way or utility easements on the Property? **Yes** **No**
17. Has there been, or are there proposed Towers and Communication Devices on the Property? **Yes** **No**
18. Are you aware of any encroachment(s) on the Property? **Yes** **No**
19. Potential Violations:
20. Comments/Discussion:
21. Description of Photos Taken:
22. Comments for Next Inspection:

**Stewardship Specialist Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_





## WATERSHED AGRICULTURAL COUNCIL EASEMENT PROGRAM SECOND VISIT MONITORING REPORT

1. Date:

2. PID#:  
CEID#

3. Current Owner(s):

4. Property Name:

5. Did you observe any possible violations to the terms of the Conservation Easement? Yes No

Notes:

6. Are there any new apparent activities or buildings on the Property? Yes No  
If yes, explain:

7. Were any photographs taken? Yes No

8. Additional Remarks:

Steward Signature: \_\_\_\_\_ Date: \_\_\_\_\_





# WATERSHED AGRICULTURAL COUNCIL

## EASEMENT PROPERTY ALLOCATION TRACKING FORM

PID #: \_\_\_\_\_

CEID #: \_\_\_\_\_

Current Easement Property Landowner(s): \_\_\_\_\_

Original Easement Grantor(s) to WAC: \_\_\_\_\_

Property Name: \_\_\_\_\_ (Recorded) L./Pg. Date: \_\_\_\_\_

### Easement Property Tax Parcels:

County	S-B-L	Acres

County	S-B-L	Acres

### Underlying Chain of Title (Fee):

_____	to: _____	L./Pg.-Date: _____	Map #: _____
_____	to: _____	L./Pg.-Date: _____	Map #: _____
_____	to: _____	L./Pg.-Date: _____	Map #: _____
_____	to: _____	L./Pg.-Date: _____	Map #: _____

Property Allocations	Original Allocations	Utilized/Conveyed*	Remaining Allocations
Future Acceptable Development Areas (FADA)			
Agricultural Buildings and Improvements			
Residential Dwellings			
Recreational Buildings and Improvements			
(additional tax parcels)			

\*Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Stewardship Specialist: \_\_\_\_\_ Date: \_\_\_\_\_

Landowner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Ground Monitoring      Second Visit

Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____
Date: _____	Date: _____

### History of Reserved Rights

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

### Forest Management Plan

Original Approval Date: \_\_\_\_\_

Valid From: \_\_\_\_\_ to: \_\_\_\_\_

### History of Violations

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

### History of Amendments

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_ Status: \_\_\_\_\_





# Watershed Agricultural Council Conservation Easement Program

## WAC Easement Program Guidelines for the Creation of New Farm Support Housing and associated Accessory Buildings and Improvements and the Renovation of Existing Non- Habitable Buildings to Create Farm Support Housing





# WAC Easement Program Guidelines for the Creation of New Farm Support Housing and associated Accessory Buildings and Improvements and the Renovation of Existing Non- Habitable Buildings to Create Farm Support Housing

The following guidelines are established by WAC to create standards for the construction of New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). The Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the CE's terms and conditions related to the construction of New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing.

## **1. The Deed of Conservation Easement's General Definitions and Clauses pertaining to the Construction of New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing.**

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to the construction of New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing , that version's definitions and clauses serve as the controlling legal language:

- 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 the Conservation Easement.
- 2) *Farm Support Housing:* Farm Support Housing shall consist of apartments, single or multi- family dwellings, or other buildings, including trailers or mobile homes, to be used to house farm tenants, employees, seasonal employees, family members or others engaged in agricultural production on the Property.

3) **Farm Support Housing:** Existing Farm Support Housing and associated Accessory Buildings and Improvements may be removed, repaired, replaced and enlarged within the ADA. New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing is permitted within the ADA only with the prior written approval of the Grantee. If the Farm Support Housing is no longer needed for that purpose, the buildings may continue in residential use. Construction of Farm Support Housing outside of the ADA is prohibited.

4) **Dumping, Storage and Application of Waste:** Except as permitted herein, the dumping, storage, application, land filling, or accumulation of any kind of Waste in, on or upon the Property is prohibited. The routine containerized storage of household trash and garbage is permitted only if stored for purposes of eventual transport off site for proper disposal. The storage and treatment of sewage by an individual subsurface sewage treatment system servicing residential dwellings, Farm Support Housing and other buildings used for rural enterprises allowed under this Easement is permitted only within the ADA, or with prior written approval of Grantee if located outside of the ADA.

5) **Accessory Buildings and Improvements:** A building or improvement, located within the same Acceptable Development Area(s) as the residential dwelling(s), the use of which is customarily incidental and subordinate to the residence(s). Accessory Buildings and Improvements may include: garages, tool sheds, pool and storage sheds, swimming pools, tennis courts, noncommercial greenhouses, decks, septic fields, wells, and other buildings and improvements customarily incidental to the residence(s).

B. WAC further defines the meaning of the following definitions found in the Deed of Conservation Easement pertaining to New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing:

1) Trailers - Travel Trailers and RVs are not considered Farm Support Housing.

## **2. General Restrictions for Constructing New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing.**

A. Any apartments, single or multi-family dwellings, or other buildings, including trailers or mobile homes , to be used for farm support housing ,either new or renovated, that have or require permanent utilities, (septic system, electric and water) and are permanently fixed to the ground require WAC approval.

B. The removal, repair, replacement and enlargement of Existing Farm Support Housing within the ADA does not require prior written approval from the Grantee.

## **3. Process and Standard of Approval for constructing New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing.**

The Deed of Conservation Easement defines the process and standard of approval follows:

- A. Grantor may construct New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing only with prior approval from the Grantee.
- B. 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.
- C. Grantee reserves the right to request additional information as may be required for the evaluation.
- D. 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.
- E. 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.
- F. Grantee may approve the request, approve with conditions, or deny the request.
- G. 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 to Locate to construct New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing.**

- A. Landowner requests to construct New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing must include the following information:
  - 1) Written request to construct New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing.
  - 2) Map depicting proposed location of New Farm Support Housing and associated Accessory Buildings and Improvements and/or the renovation of existing non-habitable buildings. Map should depict use area boundaries, water resources, associated accessories or improvements, topographical lines.
  - 3) Memorandum describing agricultural operations, labor/ staffing model and need for additional farm support housing.



- 4) Site plan locating proposed New Farm Support Housing and associated Accessory Buildings and Improvements and/or the renovation of existing non-habitable buildings. Site plan should include all best management practices (BMPs) needed (if any) pre/post construction to mitigate the effects of construction upon water quality and agricultural lands.

## **5. Standard of Review for Requests to Construct New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing**

A. Plans submitted by landowners to construct New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing will be reviewed by the Easement Committee against the following standards found in the Deed of Conservation Easement and require unanimous consent by the Easement Committee for approval:

- 1) Standard of Approval: 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.

- 2) Conservation Purposes: This Conservation Easement is intended 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.

B. WAC has agreed that its interpretation of the Standard of Approval and Conservation Purposes clauses must be consistent with Section 9(c) of the December 2010 "Agreement Among the New York City Department of Environmental Protection (NYCDEP) and the 1997 New York City Memorandum of Agreement Signatories Concerning NYCDEP's continuation of its Land Acquisition Program ( the "Agreement").

- 1) Section 9c of the Agreement states that "guidance documents will specify, for each reserved right, what constitutes consistency with the conservation purposes of the easement, with reference to and consistent with the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement

C. The recitals (paragraphs C-H) in the Model Deed of Conservation Easement are as follows:

- 1) 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".

- 2) 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.

3) 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”.

4) 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 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.

5) 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.

6) 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”.

C. Consistency with the Standard of Approval, the Conservation Purposes and Section 9(c) of the “Agreement” as interpreted and applied by WAC (grantee ) to requests by landowners (grantors) to construct New Farm Support Housing and associated Accessory Buildings and Improvements and the Renovation of Existing Non-Habitable Buildings requires review and approval by WAC of the following :

- 1) Memorandum submitted by landowner stating necessity for farm Support Housing to be used to house farm tenants, employees, seasonal employees, family members or others engaged in agricultural production on the Property.
- 2) Site Plan and/or map depicting location of proposed housing and improvements.
- 3) Impact of proposed housing and improvements to determine if proposed housing and

improvement are consistent with the Conservation Purposes and do not substantially diminish or impair the agricultural , forestry or water quality values of the Property.

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

- 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.



# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Dumping, Storage of Waste







# Guidelines for Dumping, Storage of Waste

The following guidelines are established by the Easement Committee to create standards for the Dumping and Storage of Waste on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). 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 the dumping and storage of waste:

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

A. The Deed of Conservation Easement defines waste as follows:

1. Waste is defined as trash, refuse, debris, domestic septic effluent, sewage, sewage sludge or liquid, garbage, discarded chemicals, radioactive materials, and hazardous or toxic substances as defined by Federal, State or Local Law.

B. The Deed of Conservation Easement Conditions or Prohibits waste as follows:

1. Except as permitted (herein), the dumping, storage, application, land filling, or accumulation of any kind of Waste in, on or upon the Property is prohibited.
2. The routine containerized storage of household trash and garbage is permitted only if stored for purposes of eventual transport off site for proper disposal.
3. The routine storage or accumulation of farm related building debris and other farm related refuse or equipment generated or used on the property, that does not substantially diminish or impair the agricultural or forest productivity or water quality of the Property, is permitted only within the ADA (Acceptable Development Area) and/or the FADA (Future Acceptable Development Area), or with prior written approval of Grantee if located outside of the ADA and/or the FADA.

C. The Deed of Conservation Easement Defines Acceptable Development Area 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 the Conservation Easement.

D. The Easement Committee considers “Farm Related Building Debris and other Farm Related Refuse or Equipment” as building materials from agricultural structures on the easement property as well as farm equipment and materials associated with the property’s agricultural operations allowed under the terms and conditions on the CE.

E. The Easement Committee does not consider brush piles to be waste or debris and may be located anywhere on the property.

## **2. Routine containerized storage of household trash and garbage**

A. As permitted by the CE, the routine containerized storage of household trash and garbage is permitted only if stored for the purposes of eventual transport off site for proper disposal.

B. If routine containerized household trash and garbage is noted during a monitoring visit to a property, WAC staff will discuss duration of storage. If duration has exceeded 60 days, landowners will be reminded of their obligation not to permanently dispose of the household trash onsite and that the trash needs to be eventually transported off site as per the terms of the CE.

C. WAC staff may conduct a return monitoring visit 60 days after initial monitoring visit, to determine whether any progress was made in the management of the trash.

D. If routine containerized household trash still exists after the return monitoring visit described in section 2 C, the owner will be given a written notice to transport the trash and/or garbage offsite within one month (30 days) of the date of notice. If, upon a follow up visit 30 days after notice has been issued, the routine containerized household trash and/or garbage still exists, WAC reserves the right to pursue enforcement action as defined under the “Enforcement” clause of the CE .

## **3. Farm Related Building Debris and other Farm Related Refuse or Equipment**

A. As required by the CE, “Farm Related Building Debris and other Farm Related Refuse or Equipment” must be located in an Acceptable Development Area (ADA) or requires Grantee approval to be located outside an ADA.

B. If during monitoring of the property, WAC staff finds Farm Related Building Debris and other Farm Related Refuse or Equipment outside of an ADA , the landowner will be given the following options:

1. Relocate the Farm Related Building Debris and other Farm Related Refuse or Equipment inside the ADA.
2. Submit a request and plans for approval by WAC to locate a Farm Related Building Debris and other Farm Related Refuse or Equipment site outside the ADA following the requirements outlined in Section 4 of these guidelines.



3. Remove Farm Related Building Debris and other Farm Related Refuse or Equipment from the property.

C. If WAC staff finds Farm Related Building Debris and other Farm Related Refuse or Equipment outside the ADA during a monitoring visit and a landowner refuses to pursue options outlined in section 3B, WAC will proceed with enforcement action as per the Enforcement Clause of the CE.

#### **4. Process and Standard of Approval for Locating Farm Related Building Debris and other Farm Related Refuse or Equipment Outside the ADA**

A. The Deed of Conservation Easement defines the process and standard of approval for requests related to siting Farm Related Building Debris and other Farm Related Refuse or Equipment outside the ADA 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. 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.

#### **5. Requests to Locate Farm Related Building Debris and other Farm Related Refuse or Equipment outside the ADA as a Reserved Right**

A. Requests to locate Farm Related Building Debris and other Farm Related Refuse or Equipment outside the ADA must include the following information:

1. Written request to activate a reserved right from landowner stating need for locating Farm Related Building Debris and other Farm Related Refuse or Equipment outside of ADA. The determination of the need shall describe amount and type of refuse and debris

being generated be based on the nature and size of agricultural operations and term of use. Request must specify whether the debris and refuse site will be a onetime use of debris and refuse or whether the site will involve ongoing use and management of debris and refuse.

2. Map depicting size and location of proposed Farm Related Building Debris and other Farm Related Refuse site, soils, watercourses and water features, roads and topographic contour lines depicting slope.

3. Memorandum describing size, location, content of farm related debris and refuse, distance from nearest watercourse or water feature, plan to manage debris and refuse (if necessary) and explanation of how proposed site will conform to the standards of review established in section 6 of these guidelines.

## **6. Standard of Review for Requests to locate Farm Related Building Debris and other Farm Related Refuse or Equipment Outside ADA**

A. Plans submitted by landowners to locate Farm Related Building Debris and other Farm Related Refuse or Equipment outside the ADA will be reviewed by the Easement Committee against the following standards and require unanimous consent by the Committee for approval:

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, Section 4 A 5 of these Guidelines: 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.

B. Additionally, the interpretation of the Conservation Purposes shall be consistent with the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement listed below:

1. 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”;

2. 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.

3. 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”.

4. 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 (WAC) 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.

5. 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.

6. 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”

C. Consistency with the Conservation Purposes, Standards of Approvals and the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement listed in Section 6A 1-2 and 6B 1-6 above as interpreted and applied by WAC to requests by grantors to locate Farm Related Building Debris and other Farm Related Refuse or Equipment Outside ADA requires the following from grantors:

1. For activities involving onetime accumulation of Farm Related Building Debris and other Farm Related Refuse or Equipment Outside ADA for a specific use or purpose such as infill using construction materials all of the following must be satisfied:
  - a. Site must be located outside of an RPA and at least 100 ft from a stream, watercourse or water body.
  - b. Debris or refuse must be generated from activities occurring on the easement property.
  - c. Importing of debris and refuse from outside of the property is prohibited.

- d. Demonstration of insufficient room or space in ADA to store debris or refuse
- e. Review of other debris and refuse sites outside the ADA to examine cumulative effect of proposed activity
- f. Review of Soils and slopes of proposed location to assess potential for sedimentation and erosion and leaching of Non Point Source Pollutants
- g. Site size not to exceed 10,000 square feet. Size of site to be based upon operational needs of landowner as described in request.

2. For activities involving reoccurring Accumulation of Debris and Refuse all of the following must be satisfied :

- a. Site must be located outside of an RPA and at least 100 ft from a stream, watercourse or water body
- b. Debris or refuse must be generated from activities occurring on the easement property
- c. Importing of debris and refuse from outside of the property is prohibited
- d. Demonstration of insufficient room or space in ADA to store debris or refuse
- e. Review of other debris and refuse sites outside the ADA to examine cumulative effect of proposed activity
- f. Review of Soils and slopes of proposed location to assess potential for sedimentation and erosion and leaching of Non Point Source Pollutants
- g. Site size not to exceed 10,000 square feet. Size of site to be based upon operational needs of landowner as described in request.
- h. Proposed method of managing debris and refuse site

C. Management practices for Farm Related Building Debris and other Farm Related Refuse or Equipment sites that were approved by the grantee but do not adhere to terms and conditions of grantee approval will be subject to the terms of the Enforcement Clause of the CE.

## **7. Historic, Inactive Debris Piles and Refuse**

A. If during a monitoring visit, WAC staff locates an inactive, historic debris or refuse site on the property (debris or refuse pile that does not appear to have been used for a significant period of time), staff will notify landowner of location of debris site and discuss location and content to determine if the debris site has been in use after the CE was recorded.

1. If it is determined by WAC staff that the debris and refuse site is in current use or has been in use since the date of the Conservation Easement (CE) closing, landowners will be required to follow the requirements of Section 5 of these Guidelines.

2. If landowner states that debris or refuse pile existed prior to the date of the CE or was unaware of an inactive, historic debris or refuse pile, and it appears that the debris and refuse site has not been in use prior to the date of the CE, WAC staff will review Environmental Site Assessment (ESA), Survey and Baseline Documentation Report (BDR) to determine if debris or refuse existed prior to the date of the CE.

B. If the ESA, BDR or Survey confirm that the debris site existed prior to the date of the CE and the debris site appears to be inactive and the landowner confirms the debris site has not be in use since the date of the CE, the Easement Committee delegates to WAC staff the authority to grant approval to allow for the debris/refuse site to remain on the property so long as the following requirements are met:

1. Site is inactive and will remain inactive

2. Site does not appear to pose a significant water quality problems.

3. Site is added to the Baseline Documentation Report and landowner agrees to sign updated Baseline Documentation Report.

C. Inactive debris sites will be added to the BDR and will be monitored regularly to ensure that no new or additional accumulation has occurred.

D. Landowners that convert inactive debris sites to active farm related debris and refuse sites will be required to adhere to the standards established for Farm Related Debris and Refuse outlined in Section 4 of these Guidelines.

## **8. Notification to Landowner of Approval or Denial of Grantor Request by Easement Committee**

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.





# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Forest Harvest Plans





# Guidelines for Forest Harvest Plans

The Easement Committee establishes the following guidelines for forest harvests on easement properties and properties in contract:

**1. Where required in a conservation easement and the purchase and sales contract, forest harvests shall only be conducted on properties that:**

- a. Have a Forest Management Plan (FMP) that has been approved by WAC within the past ten (10 ) years consistent with the Forest Management Plans Guidelines (dated April 16, 2009)
- b. Have a WAC Forest Harvest Plan (FHP) that has been approved by the Easement Committee.

**2. The FHP is a plan that is intended to: 1) summarize the information and activities regarding specific forest harvests, 2)ensure harvest activities, including optional silvicultural practices and required best management practices implementation are consistent with water quality protection, 3) provide a basis for reviewing and approving the plan, and 4) outline the requirements to which the landowner must adhere.**

**3. All FHPs shall contain the following Required information:**

**a. Landowner information:**

1. Date of plan and landowner name, mailing address and other contact information and WAC property ID.

**b. Property information:**

1. Verification and date of FMP completion. If the landowner does not have a WAC approved FMP, the landowner must first obtain a FMP as per the Easement Committee FMP Guidelines (April 16, 2009)
2. Name and contact information of forester or person completing FHP.
3. Name and contact information of logger or person(s) conducting the harvest activities.
4. Term of the contract if applicable, proposed beginning and end dates of project.

**c. Objectives for the harvest.**

**d. Job size and scheduling:**

1. Estimated removal volume in Board Feet and/or cords, and/or number of trees.
2. Harvest area in acres,
3. Estimated time when project will be marked,
4. Estimated time period when roads, skid trails and landings will be built.

**e. Water Resources:**

1. Describe any special watercourse/wetland precautions to be taken.
2. Include copies of all required permits (Federal, State, Local) such as DEC stream crossing or USACOE wetland permits.
3. Describe and identify Best Management Practices that will be employed for the protection of water resources and maintained in good working order as described in the NYCDEC BMP Guidelines.
4. For each stream/wetland crossing, indicate:
  - i. Drainage type (stream, spring, seep)
  - ii. Duration of flow (perennial, intermittent)
  - iii. existing or proposed crossing, size and type (temporary for permanent bridge, culvert or other)
  - iv. Drainage bottom (rock, gravel, mud, soil mixture, other)
  - v. stream bank type (rock, gravel, mud, soil mixture, other)
  - vi. bank height (feet)
5. For each riparian buffer area, indicate:
  - i. Buffer type (watercourse, stream side, wetland, spring, seep, lake, pond, other) for each area
  - ii. Slope
  - iii. Width of buffer
  - iv. Initial/residual basal area

**f. Access System:**

1. List the estimated length, in feet, of all existing and proposed primary skid trails.
  - i. Estimate the total surface area in roads and landings in square feet and calculate the percentage of road/landing area compared to the harvest area.
2. Describe how all existing and proposed primary skid trails must be flagged in the field before the FHP is considered complete. The flagging color will be identified in the FHP.

3. Proposed Best Management Practices for stabilizing the access system during the active timber harvest. These BMP's can include but are not limited to corduroy for crossing unstable soils, gravel, geo-textile fabric, water bars and culverts.
4. Proposed Best Management Practices for the post-harvest stabilization of the access system. These can include but are not limited to trail grading, water bar and broad based dip installation.
5. Proposed Best Management Practices for the post-harvest stabilization of the stream crossing approaches. These BMP's can include but are not limited to water bar installation, gravel, geo- textile fabric and corduroy.

**g. FHP Map requirements:**

1. Property boundaries and harvest area
2. Forest stands in harvest area
3. Logging units within or across stands
4. Water courses (perennial/intermittent streams, lakes/ponds, rivers, springs and seeps)
5. Wetlands
6. Stream and wetlands crossings,
7. Riparian buffers areas,
8. Topography (at least 20 foot contours),
9. Existing and proposed truck roads, skid trails and landings
10. Map scale should not be smaller than 1 inch = 330 feet for properties smaller than 300 acres and 1 inch = 660 feet for properties more than 300 acres.
11. USGS quadrangle (7.5 minute series) used with name

**h. The Following is Optional for all FHP's:**

All FHPs may include some or all of the following silvicultural information if provided by the Forester and/or logger:

1. Prescriptions for individual stands, each stand shall be indicated on the FHP map:
  - i. Goals/Objectives
  - ii. Methods used to promote regeneration
  - iii. Riparian buffer area management used



- iv. Other factors to consider
- 2. Stand treatment for each stand
  - i. Type of cut
  - ii. How cut trees are designated
  - iii. Residual AGS basal Area/acre
  - iv. If stand is adjacent to property boundary, how boundary is marked.
  - v. Other information such as proposed chemicals treatments, etc.
- 3. Stand diagnosis for each stand:
  - i. Forest type/description
  - ii. Acres
  - iii. Timber size
  - iv. Initial basal area/acres
  - v. Soil survey soil type(s)
  - vi. Source of regeneration, factors limiting regeneration, quality of existing regeneration
  - vii. Endangered or threatened species
  - viii. Other factors to note

**i. All FHPs submitted to WAC shall be submitted on a Forest Harvest Plan Form (attached).**

**j. The WAC Easement Committee delegates approval authority to Easement Program Staff for the review and approval of all FHP requests. Review and pending approval of FHP requests shall be consistent with the requirements of these guidelines.**

**k. Easement Program staff will notify the Easement Committee of any approved FHPs.**

**l. Amending a FHP: All changes to the FHP after approval by WAC Easement Committee must be approved by the WAC Watershed Forester and Easement Stewardship Specialist prior to the landowner undertaking any action inconsistent with the approved FHP.**



# Watershed Agricultural Council Conservation Easement Program

## Forest Management Plans Guidelines





## Forest Management Plans Guidelines

The Easement Committee establishes the following guidelines for Forest Management Plans on properties under contract and under easement:

- 1. When required by the conservation easement, a landowner must have a Forest Management Plan approved by WAC.**
- 2. Forest Management Plans may include any and all of the following use areas : Agricultural Conservation Easement Areas (ACEA), Forestry Conservation Easement Areas ( FCEA), Resource Protection Areas (RPA), Acceptable Development Areas (ADA).**
- 3. While Forest Management Plans may make specific management recommendations for properties, and the Deed of Conservation Easement requires both a Forest Management Plan and a Forest Harvest Plan prior to a landowner commencing a commercial timber harvest, timber harvests conducted in accordance with a Forest Harvest Plan may not always follow the specific management recommendations of a Forest Management Plan.**
- 4. The content of a Forest Management Plan accomplishes the following:**
  - a. Provide easement landowners with the basic information regarding their property so they can make informed forest stewardship decisions.
  - b. Provide a tool for communicating stewardship expectations between the landowner, WAC and forestry professionals.
  - c. Provide the basic property attributes that are necessary for WAC to effectively steward its easements.
  - d. Ensures water quality is protected through sound and sustainable forest management and stewardship and balances water quality protection with the needs of the landowner to promote working landscapes.
- 5. The cost of developing a Forest Management Plan is the sole responsibility of the easement landowner. The easement landowner can apply for Forest Management Plan funding from the WAC Forestry Program to off-set the cost of plan development.**

**6. The review and approval of Forest Management Plans for WAC easement properties will be done by WAC Forestry Program staff in accordance with the New York City Department of Environmental Protection's Water Quality Guidelines for Timber Harvesting referred to in the WAC Deed of Conservation Easement clause pertaining to Forest Management or successor documents such as .the WAC Watershed Forestry Program Handbook (the "Handbook") and its subsequent revisions. Any successor documents such as the WAC Forestry Handbook must be adopted by the WAC easement Committee (EC) via formal motion. If the WAC Forestry Handbook is adopted as the successor document, a Forest Management Plan's content shall follow specifications listed in Section 14 , sections A through W of the Handbook, titled, "Watershed Forest Management Plan Specifications."**

**7. All Forest Management Plans for WAC easement properties must meet the minimum standards for Watershed Forest Management Plans set forth in the WAC Forestry Handbook. If a Forest Management Plan does not meet the minimum standards for Forest Management Plans as defined in the Handbook, Forestry Program will not approve the plan and the Easement Program Manager will send a letter to the landowner notifying them that their Forest Management Plan is not to program standards.**

**8. A copy of the completed Forest Management Plan shall be filed in the Easement Program stewardship files of respective properties once approved by the Forestry staff and Easement Program Manager.**



# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Future Acceptable Development Areas (FADA)







# Guidelines for Future Acceptable Development Areas (FADA)

The following guidelines are established by the Easement Committee to create standards for reviewing requests by landowners to site Future Acceptable Development Areas (FADA) on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). 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 the siting of FADAs.

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

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to Future Acceptable Development Areas (FADA). If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to FADA's, that version's definitions and clauses serve as the controlling legal language:

B. Future Acceptable Development Area (FADA):

1. A Future Acceptable Development Area (FADA) is an area consisting of two or three acres, the specific location and configuration which shall be determined, prior to any permitted construction, only with prior written approval of the Grantee (WAC).
2. The FADA is the area, in which single family dwellings and associated Accessory Buildings and Improvements, Farm Support Housing, and buildings and improvements for Rural Enterprises may be constructed.
3. Agricultural Buildings and Improvements, farm operations, and farming practices are permitted within the FADA pursuant to the terms and conditions of the CE.
4. No more than 10 commercial campsites shall be allowed in a FADA.

C. Resource Protection Area (RPA):

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.

D. Incidental Agricultural Buildings and Improvements:

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.

E. IMPERVIOUS SURFACES AND ROAD CONSTRUCTION:

1. 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.

F. Use Areas

1. All uses of the Property shall be consistent with the Conservation Purposes of this Easement. Permitted uses of the Property vary depending on location. The Property is divided into two general easement areas (Agricultural Conservation Easement Area and the Forestry Conservation Easement Area) and three principal use areas (Acceptable Development Area, and Resource Protection Area, and the Farm Area) described below. The general easement areas and the principal use areas are shown on the Conservation Easement Survey, and in the Baseline Documentation.

**2. General Site restrictions and prohibitions for FADAs**

A. Based upon the definitions found in the Deed of Conservation Easement pertaining to FADA's, Grantors should consider the following when proposing a location for a FADA:

1. Proposed location is consistent with the Conservation Purposes of the Easement and will not substantially diminish or impair the agricultural, forestry, or water quality values of the Property.

2. Locating FADAs in Resource Protection Areas (RPA) or Forest Conservation Easement Area (FCEA) is prohibited. FADA may only be located in Farm Areas (FA).

3. FADA's may not be located on slopes greater than 15 percent average.

4. Soils within the FADA should be tested to demonstrate that one or more septic fields can be accommodated within the FADA.

5. Landowner is responsible for all survey costs, title search fees and recoding and filing fees necessary to implement the FADA and receive final approval by WAC.

6. The construction of buildings and improvements in an FADA may only occur only after final approval required under these guidelines and after the amendment and survey required by these guidelines have been recorded.

### **3. Process and Standard of Approval for Siting a FADA**

A. The Deed of Conservation Easement defines the process and standard of approval for requests related to siting a FADA 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. 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 water quality values of the Property.

### **4. Requests from Grantors seeking Preliminary and Final Approval to Site a FADA**

A. FADA approval requires both preliminary approval and final approval from the Easement Committee as established in these guidelines.

B. Requests from Grantors seeking preliminary approval to site a FADA must include the following information:

1. Written request from landowner to site a FADA.
2. Map depicting size and location of proposed FADA site and location of access or driveway, septic field with perc tests, slopes, soils and any nearby watercourses and water features, if present.

3. Memorandum describing size, location of FADA, including description of access, driveway or ingress and egress, and impact of access or driveway on water courses and water quality, impact on agricultural operations, agricultural lands and forested lands, any additional reserved right requests that might be required as a result of citing a FADA. Memo must explain how proposed site will conform to the standards of review established in these guidelines.

C. If an additional reserved right request is necessary to site a FADA, such as approval of a Forest Harvest Plan, or Rights of Way, Grantors must submit all associated and required reserved right requests and materials with the preliminary request to locate a FADA.

D. Final approval by the Easement Committee may require all or some of the following tasks and materials to be submitted by landowner:

1. A survey or Map of Survey locating the proposed FADA based upon the legal description of the property used for the original conservation easement survey
2. An amended deed of conservation to be recorded at the county converting the FADA to an ADA and extinguishing the FADA right once exercised. The amendment will extinguish the FADA and convert it to an Acceptable Development Area (ADA).
3. Title Search to ensure any encumbrances recorded against property after the original Deed of Conservation Easement do not conflict with proposed site location of FADA.

## **5. Standard of Review for Requests to site Future Acceptable Development Area**

A. FADA approval requires both preliminary approval and final approval from the Easement Committee as established by these guidelines.

B. Plans submitted by landowners to site a FADA will be reviewed by the Easement Committee against the following standards and require unanimous consent by a full quorum of the Committee for approval:

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, 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 water quality values of the Property.

C. WAC has agreed that its interpretation of the Standard of Approval and Conservation Purposes clauses must be consistent with Section 9 (c) of the December 2010 “Agreement Among the New York City Department of Environmental Protection (NYCDEP) and the 1997 New York City Memorandum of Agreement Signatories Concerning NYCDEP’s continuation of its Land Acquisition Program (the “Agreement”).

1. Section 9c of the Agreement states that “guidance documents will specify, for each reserved right, what constitutes consistency with the conservation purposes of the easement, with reference to and consistent with the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement

2. Paragraphs C through H of the recitals in the Model Conservation Easement are as follows:

c. 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”;

d. 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.

e. 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”;

f. 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 (WAC) 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;

g. 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;

h. 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”;

D. Consistency with the Conservation Purposes, Standard of Approval Clause and the terms of the Agreement as interpreted and applied by WAC to requests by Grantors to site a FADA and obtain both preliminary and final approval requires review and approval by WAC of the following:

1. Preliminary Approval:

- a. Impact of proposed location of FADA on water quality, i.e. sedimentation, erosion and introduction of non -point source pollution into water courses.
- b. Impact of proposed access, driveway or ingress/egress on water quality, i.e. sedimentation, erosion and introduction of non- point source pollution into water courses
- c. Impact of proposed site on agricultural lands
- d. Suitability of soils to locate a septic system as demonstrated by a percolation test pit and identification of well locations within proposed areas

2. Final Approval: If Committee grants preliminary approval to a proposed plan to site a FADA, Grantors must seek final approval from the Easement Committee and present committee with the following materials for final approval:

- a. Metes and Bounds Survey or a Map of Survey of easement property showing location of ADA prepared by a NYS certified surveyor at landowner’s expense. Survey must include location of percolation test pit(s) and wells.
- b. Amended Deed of Conservation Easement that extinguishes FADA and reclassifies FADA as ADA. Prior to recording Amended Deed of Conservation Easement, landowner, at sole cost, must conduct a title search approved by WAC legal counsel to ensure the any encumbrances against the property do not conflict with the proposed FADA site location.
- c. Any additional reserved right request that may require final approval



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

- 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.



# Watershed Agricultural Council Conservation Easement Program

## Guidelines for the Subdivision of Tax Parcels within WAC Conservation Easements (CE)





## Guidelines for the Subdivision of Tax Parcels within WAC Conservation Easements (CE)

The Easement Committee has adopted the following guidelines regarding subdivisions of properties under CE:

**1. Proposals for subdivision of individual tax parcels shall be approved if the following conditions are met:**

- a. All tax parcels are at least 7 acres in size .This minimum size will ensure that the subdivided parcel remains eligible for an agricultural exemption under New York State Agricultural Markets Law, 25 AA, Section 301.
- b. The application from the Grantor meets the minimum requirements set forth in these Guidelines;
- c. All other requirements and standards of the existing CE, as applied to the new tax parcels, are met.
- d. If the Conservation Easement specifically restricts subdivisions in a certain way ( i.e establishes a minimum size), then that restriction will be respected by and incorporated into the approval process.

**2. Upon requesting approval to subdivide a tax parcel within a CE, the grantor shall submit a Subdivision Plan for review by the Easement Committee. The plan shall include the following information for each tax parcel within the CE:**

- a. A map of the CE property that includes the size and boundaries of all proposed individual tax parcels, CEs, and use areas within CEs;
- b. Nature of agricultural and/or forestry activity currently occurring on the property;
- c. Physical description of the property, including relevant structures, use areas such as ACEAs, Forestry Conservation Easement Areas (FCEA), Resource Protection Areas (RPA), and Acceptable Development Areas (ADA);
- d. Description of proposed or existing agricultural and /or forestry activities planned for all tax parcel(s ).This should include a description of current or proposed agricultural activities



that will continue after the proposed subdivision and whether activities will continue under an existing Whole Farm Plan (WFP) or require a new or revised WFP;

e. A description of how buildings, structures, residences, and all other established rights will be allocated among the new CEs and tax parcels, and how the proposed allocation among the parcels will support existing or proposed agricultural activities for new parcels;

f. A description of how the configuration of use areas (ACEA, FCEA, RPA, ADA) for all parcels will support proposed agricultural and/or forestry activities described in section 2d;

g. Written confirmation from the municipality that the proposed subdivision is consistent with local zoning ordinances. If the municipality refuses to provide such a statement, the Stewardship Specialist shall indicate this in the narrative statement included in the packet.





# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Locating Septic Systems Outside Acceptable Development Areas (ADA)





## Guidelines for Locating Septic Systems Outside Acceptable Development Areas (ADA)

The following guidelines are established by the Easement Committee to create standards for reviewing requests by landowners to site sub-surface sewage treatment systems (SSTS) on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). 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 septic systems on easement encumbered properties.

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

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to septic system location. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to septic systems, that version's definitions and clauses serve as the controlling legal language:

B. Dumping, Storage and the Application of Waste :

1. Except as permitted herein, the dumping, storage, application, land filling, or accumulation of any kind of Waste in, on or upon the Property is prohibited.
2. The storage and treatment of sewage by an individual subsurface sewage treatment system servicing residential dwellings, Farm Support Housing and other buildings used for rural enterprises allowed under this Easement is permitted only within the ADA, or with prior written approval of Grantee if located outside of the ADA.

C. Acceptable Development Area :

1. 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 the Conservation Easement.

D. Resource Protection Areas :

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. Buildings and Improvements :**

1. No permanent or temporary buildings or other improvements shall hereafter be placed or maintained on the Property except as provided in accordance with this Section. Existing buildings and improvements are shown in the Baseline Documentation. Trailer parks, auto dealerships, and golf courses are expressly prohibited on the Property.

a. Residential Dwellings: Existing residential structures and associated Accessory Buildings and Improvements may be removed, repaired, replaced and enlarged within the ADA. With prior notice to the Grantee, no more than (#) new residential structures and their Accessory Buildings and Improvements may be constructed, provided that such structures and improvements are located within the ADA. Construction of residential structures outside of the ADA is prohibited.

b. Farm Support Housing: Existing Farm Support Housing and associated Accessory Buildings and Improvements may be removed, repaired, replaced and enlarged within the ADA. New Farm Support Housing and associated Accessory Buildings and Improvements and the renovation of existing non-habitable buildings to create Farm Support Housing is permitted within the ADA only with the prior written approval of the Grantee. If the Farm Support Housing is no longer needed for that purpose, the buildings may continue in residential use. Construction of Farm Support Housing outside of the ADA is prohibited.

c. Rural Enterprises :Existing Rural Enterprise buildings and improvements may be removed, repaired, replaced and enlarged within the ADA. New Rural Enterprise buildings and improvements and the renovation of existing non-habitable buildings to create Rural Enterprise buildings is permitted within the ADA only with the prior written approval of the Grantee. Construction of Rural Enterprise buildings outside of the ADA is prohibited.

c. Physical description of the property, including relevant structures, use areas such as ACEAs, Forestry Conservation Easement Areas (FCEA), Resource Protection Areas (RPA), and Acceptable Development Areas (ADA);

d. Description of proposed or existing agricultural and /or forestry activities planned for all tax parcel(s ).This should include a description of current or proposed agricultural activities.

## **2. General Considerations for Locating Septic Systems**

A. Based upon the definitions and clauses found in the Deed of Conservation Easement pertaining to Septic Systems, Grantors (landowners) should consider the following when

considering a location for a septic system on a WAC Conservation Easement Property:

1. Septic systems must be located inside the Acceptable Development Area (ADA) or with prior written approval of Grantee may be located outside of the ADA as per these guidelines.
2. Septic systems may be located in Farm Areas (FA) with WAC's approval.
3. Septic systems may not be located in Resource Protection Areas (RPA) or Forest Conservation Easement Areas (FCEA).
4. Septic systems may only service the following type of structures: residential dwellings, Farm Support Housing and rural enterprise structures within the ADA.
5. Requests to locate septic systems outside the ADA will be considered if:
  - a. The proposed location is based upon a percolation test by a qualified professional that reveals there is no suitable location within the ADA for a conventional septic system but a conventional system can be located outside the ADA.
  - b. A confirmation has been made by DEP Regulatory Review and Engineering that the most suitable site for the SSTS is outside the ADA;
  - c. Space available within the ADA should be reserved for structures that would enhance agricultural productivity but are not allowed outside the ADA;
  - d. There is no suitable location based upon future development plans for residences or other structures allowed under the CE;
  - e. There is no suitable location for a septic system because of current or planned Whole Farm Plan BMPs or agricultural operations .
6. Landowners with Conservation Easements that have a version of the "Dumping , Storage and Application of Waste Clause" that does not include a provision that allows for locating a septic system outside an ADA ( grantee approval) and who need to locate a septic system outside their ADA in a manner consistent with these guidelines may submit a request to amend their conservation easements to update to the language of the "Dumping , Storage and Application of Waste Clause" found in Section 1 B of these guidelines.
7. Landowners with Conservation Easements that have a version of the "Dumping , Storage and Application of Waste Clause" that does not include a provision that allows for locating a septic system outside an ADA (grantee approval) and who do not amend the Dumping, Storage and Application of Waste Clause must locate all septic systems inside the ADA

### **3. Amendments to Deeds of Conservation Easement for Septic Systems**

A. Landowners who wish to amend their Conservation Easements as a described under section 2 A 6 of these guidelines may submit a request to amend along with other materials required in section 4 of these guidelines .

B. Amendment requests and related materials will be reviewed against the standards of review (Section 6) of these guidelines.

B. Amendments will utilize a boilerplate amendment developed by WAC to update a landowners CE to the current version of the Dumping , Storage and Application of Waste Clause” found in Section 1 B of these guidelines.

C. The cost of the amendment , and recording of legal fees will be paid for by WAC. No reconfiguration or re-surveying of the ADA is necessary.

D. If the easement committee approves the amendment request , both the landowner and WAC will sign the amendment . The amendment will then be recorded by WAC at no cost to the landowner.

E. Landowners may implement or construct a SSTS allowed under the amendment upon preliminary approval of their amendment.

### **4. Request from Landowners to Locate Septic Systems outside ADA**

A. Landowners requesting WAC approval to locate a septic system outside an ADA must submit the following materials to the Easement Committee for review:

1. Written request from Grantor to locate a septic system outside an ADA. If landowner is seeking an amendment allowed under section 1 A 6 , of these guidelines, a letter must indicate an amendment is being requested,

2. Map depicting size and location of proposed septic system, all percolation test sites, soils, topographic contour lines, easement usearea boundaries, all watercourses, and structures to be serviced by proposed septic system.

3. Memorandum describing type and use of structure to be serviced by septic system and need to locate the septic system outside the ADA as per section 2 A 5 of these guidelines.

4. Any blueprints or design specifications of type of proposed system, or engineer comments or notes.

5. Process and Standard of Approval for Locating a Septic Systems Outside an ADA as a Reserved Right



A. The Deed of Conservation Easement defines the process and standard of approval for requests related to locating septic systems outside the ADA 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

## **6. Standard of Review for Requests**

A. Plans submitted by landowners to locate septic systems outside ADAs will reviewed by the Easement Committee against the following standards and require unanimous consent by the Committee for approval:

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,: 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.

B. WAC has agreed that its interpretation of the Standard of Approval and Conservation Purposes clauses must be consistent with Section9(c) of the December 2010 "Agreement Among the New York City Department of Environmental Protection (NYCDEP) and the 1997 New York City Memorandum of Agreement Signatories Concerning NYCDEP's continuation of its Land Acquisition Program ( the "Agreement").

1. Section 9(c) of the Agreement states that “guidance documents will specify, for each reserved right, what constitutes consistency with the conservation purposes of the easement, with reference to and consistent with the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement

2. Paragraphs C through H of the recitals in the Model Conservation Easement are as follows:

c. 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”;

d. 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.

e. 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”;

f. 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;

g. 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;

h. 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

C. Consistency with the Conservation Purposes, Standard of Approval and the Agreement as interpreted and applied by WAC to requests by landowners to locate septic systems outside an ADA require review and approval of the following :

1. Review of proposed location based upon regulatory guidance that there is no suitable location within the ADA for a conventional septic system but a conventional system can be located outside the ADA.
2. Landowner has demonstrated that there is no suitable location inside the ADA based upon future development plans for residences or other structures allowed under the CE.
3. Review of proposed location because there is no suitable location inside the ADA for a septic system because of current or planned WFP BMPs or agricultural operations.
4. Review of all previous percolation test/results, and letters/comments from Engineer of proposed systems to determine if there is no suitable location for a proposed septic system inside the existing ADA
5. Review to ensure SSTS is located in Farm Area and not located in a Resource Protection Area (RPA) or FCEA.
6. Impact on Agricultural lands on proposed location in FA.

## **7. 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.



# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Pesticide and Fertilizer Application for the Purpose of Forest Management







## Guidelines for Pesticide and Fertilizer Application for the Purpose of Forest Management

The following guidelines are established by WAC to create standards for the Application of Pesticides and Fertilizer for the Purpose of Forest Management on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). The Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the CE's terms and conditions related to the Application of Pesticides and Fertilizer for the Purpose of Forest Management.

### **1. The Deed of Conservation Easement's General Definitions and Clauses pertaining to Pesticide and Fertilizer Application for the Purpose of Forest Management.**

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to the Pesticide and Fertilizer Application for the Purpose of Forest Management. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to the Pesticide and Fertilizer Application for the Purpose of Forest Management, that version's definitions and clauses serve as the controlling legal language:

**1) Forest Conservation Easement Area (FCEA):** Within the area identified as FCEA on the Conservation Easement Survey, Grantor has the right to produce timber and other related forest products, including, but not limited to, firewood, maple syrup, Christmas trees, ginseng, and mushrooms as well as the right to engage in all other uses permitted by this Easement. The confinement or pasturing of livestock, the production of orchards, field crops of any kind or forage for livestock is prohibited within the FCEA. No buildings, except Incidental Agricultural Buildings and Improvements, and Recreational Buildings and Improvements pursuant to Section 4, may be constructed in the FCEA.

**2) FOREST MANAGEMENT :** Trees may be cut to control insects, disease and invasive species, to enhance wildlife habitat, to prevent personal injury and property damage, and for other domestic uses, including firewood and construction of permitted buildings and fences on the Property. The application of pesticide and fertilizer shall be prohibited unless: (i) such use is necessary for forest management; and (ii) such use is in compliance with an approved Forest Management Plan for the Property; and (iii) Grantee has approved such use; and (iv) such use is consistent with the terms of this Easement. Any and all Commercial Forestry activities shall require a Forest Management Plan and a Forest Harvest Plan, approved by WAC or its successor pursuant to Section 14 of this Easement, submitted at Grantor's sole cost, and consistent with the New York City Department of Environmental Protection's Water Quality Guidelines for Timber Harvesting or such successor standard

approved by Grantee. In the event that Grantor submits a Forest Management Plan and/or a Forest Harvest Plan to Grantee for approval, and Grantee (or its successor pursuant to Section 14 of this Easement) notifies the Grantor in writing that it has no program to approve such a Plan or Plans, Grantor may undertake Commercial Forestry activities so long as the activities are conducted consistent with the NYSDEC Forest Management Stewardship Plans and in accordance with the technical standards set forth in the New York State Department of Environmental Conservation's "Best Management Practices for Water Quality" field guide or such successor standards.

**3) Forest Management Plan:** A written plan that establishes comprehensive and long-term goals for forest health, management of forest resources, and protection of water quality on the Easement Property, which Plan has been reviewed, updated, and approved by the Grantee at least every ten years.

B. WAC further defines the meaning of the following definitions found in the Deed of Conservation Easement pertaining to Pesticide and Fertilizer Application for the Purpose of Forest Management. These definitions are based upon definitions found in NYS Law pertaining to pesticides:

**1) Pesticide means:** (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans /or other animals, which the department shall declare to be a pest; and (2) any substance or mixture of substances intended as a plant regulator, defoliant or desiccant.

**2) Pesticide use** means performance of the following pesticide-related activities: application; mixing; loading; transport, storage or handling after manufacturer's seal is broken; cleaning of pesticide application equipment; and any required preparation for container disposal.

**3) General use pesticide** means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of Article 33 of the New York State Environmental Conservation Law. These include pesticides that may be purchased "over the counter" without a license.

**4) Restricted use pesticide** means a pesticide that is classified for restricted use` under the provisions of article 33 of the Environmental Conservation Law or under section 3(d)(1)(C) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Purchase and use of such pesticides require a license in the State of New York.

**5) Commercial application of pesticides** means any application of any pesticide except as defined in "private" or "residential" application of pesticides . Commercial application of pesticides includes companies or persons hired to apply pesticides of either general use or restricted use pesticides.

**6) Private application of pesticides** means the application of a restricted use pesticide for

the purpose of producing an agricultural commodity: (1) On property owned or rented by the applicator or the applicator's employer; or (2) if applied without compensation other than the barter of personal services between producers of agricultural commodities, on property owned or rented by a party to such a barter transaction.

**7) Agricultural commodity** means any plant or part thereof, or animal, or animal product, produced by an individual (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable individuals) primarily for sale, consumption, propagation or other use by humans or animals.

**8) Residential application of pesticides** means the application of general use pesticides by ground equipment on property owned or leased by the applicator, excluding any establishments selling or processing food and any residential structure other than the specific dwelling unit in which the applicator resides.

## **2. General Requirements for the Application of Pesticides and Fertilizer for the Purpose of Forest Management.**

A. WAC Approval is not required for the application of General Use Pesticides on the Easement Property for the Purpose of Forest Management.

B. WAC approval is not required for the application of fertilizers in any forested areas of the property for the purpose of forest management.

C. WAC approval is required for the application of Restricted Use pesticides on any forested areas of the Easement Property for the purpose of forest management.

D. If the CE restricts application of pesticides and fertilizers to the Forest Conservation Easement Area (FCEA) and landowner wishes to apply Restricted Use pesticides to forested lands in Use Areas other than the FCEA for the purpose of Forest Management, they may do so with WAC's approval following these guidelines.

E. The WAC Easement Committee delegates the authority to the Easement Program staff to review and approve requests, approve with conditions, or deny requests by landowners for the Application of Pesticides and Fertilizer for the Purpose of Forest Management following the standards established by these guidelines.

## **3. Process and Standard of Approval for the Application of Pesticides and Fertilizer for the Purpose of Forest Management.**

The Deed of Conservation Easement defines the process and standard of approval as follows:

A. Grantor may engage in the Application of Pesticides and Fertilizer for the Purpose of Forest Management only with prior approval from the Grantee.

- B. 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
- C. Grantee reserves the right to request additional information as may be required for the evaluation.
- D. 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.
- E. 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.
- F. Grantee may approve the request, approve with conditions, or deny the request.
- G. 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. Landowner Requests for the Application of Pesticides and Fertilizer for the Purpose of Forest Management.**

- A. Landowner requests for the Application of Pesticides for the Purpose of Forest Management should include the following information:
  - 1) Written request to activate a reserved right from the landowner stating need for the Application of Pesticides for the Purpose of Forest Management.
  - 2) Map depicting location of affected areas including topography, watercourses, water features, and forested lands.
  - 3) Memorandum summarizing proposed activities, including period or dates of proposed application, type of pesticide being applied, specific areas/locations, means and rate of application any state, federal, local permits if required, distance and impact if any on water courses on property, and any proposed Best Management Practices (BMPs) required for application (to be reviewed by WAC Forestry staff)

#### **5. Standard of Review for Requests for Application of Pesticides and Fertilizer for the Purpose of Forest Management.**

- A. Plans submitted by landowners for the Application of Pesticides and Fertilizer for the Purpose of Forest Management. will be reviewed by the Easement Committee against the following standards as required under the Deed of Conservation Easement and require unanimous consent by the Easement Committee for approval:

1) Standard of Approval: 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.

2) Conservation Purposes: This Conservation Easement is intended 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.

B. WAC has agreed that its interpretation of the Standard of Approval and Conservation Purposes clauses must be consistent with Sections 9c of the December 2010 "Agreement Among the New York City Department of Environmental Protection (NYCDEP) and the 1997 New York City Memorandum of Agreement Signatories Concerning NYCDEP's continuation of its Land Acquisition Program ( the "Agreement").

1) Section 9c of the Agreement states that "guidance documents will specify , for each reserved right, what constitutes consistency with the conservation purposes of the easement, with reference to and consistent with the laws and polices identified in paragraphs C through H of the recitals in the Model Conservation Easement

C. The recitals in the Model Deed of Conservation Easement are as follows:

1) 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".

2) 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.

3) 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".

4) 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 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.

5) 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.

6) 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".

C. Consistency with the Standard of Approval, the Conservation Purposes and Section 9 (C) the "Agreement" as interpreted and applied by WAC (grantee ) to requests by landowners (grantors) for the Application of Pesticides and Fertilizer for the Purpose of Forest Management require review and approval by WAC of the following:

1) Memorandum summarizing proposed activities. Memorandum will be reviewed by WAC Forestry staff to determine if proposed application is consistent with the Conservation Purposes of the CE and does not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property.

2) Map depicting proposed area for application.

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

A. WAC Easement Program staff shall submit a letter to Grantor no later than 5 business days after the staff makes its decision regarding such request.

B. Letter to Grantor shall include a copy of any decision document prepared by the staff.

C. Letter to Grantor shall outline any additional requirements, if the request is approved with contingencies or conditions or if denied, set forth in detail a site specific basis for such denial.



# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Construction of Recreational Buildings and Improvements Greater than 1000 Square Feet Outside Acceptable Development Areas





# Guidelines for Construction of Recreational Buildings and Improvements Greater than 1000 Square Feet Outside Acceptable Development Areas

The following guidelines are established by the Easement Committee to create standards for the construction of Recreational Buildings and Improvements Greater than 1000 Square Feet Outside of the Acceptable Development Areas (ADA) on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). The Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the CE's terms and conditions related to the construction of Recreational Building and Improvements greater than 1000 Square Feet Outside of ADA's.

## 1. The Deed of Conservation Easement General Definitions pertaining to the construction Recreational Structures or Improvements Greater than 1000 Square Feet Outside the ADA

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to the Construction of Recreational Buildings and Improvements Greater than 1000 Square Feet Outside the ADA. If other versions of Deed of Conservation have different definitions and clauses pertaining to the Construction of Recreational Buildings and Improvements Greater than 1000 Square Feet Outside the ADA, that version's definitions and clauses serve as the controlling legal language:

- 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 the Conservation Easement.
- 2) **Recreational Buildings and Improvements:** A building or improvement used for recreational activities that does not include any permanent utilities, and/or septic systems.
- 3) **Construction of Buildings and Improvements:** No permanent or temporary buildings or other improvements shall hereafter be placed or maintained on the Property except as provided in accordance with this Section. Existing buildings and improvements are shown in the Baseline Documentation. Trailer parks, auto dealerships, and golf courses are expressly prohibited on the Property.

**4) Recreational Uses:** Use of the Property for rural recreational uses is permitted anywhere on the Property. These uses may include, but are not limited to, hunting, fishing, trapping, skiing, snowmobiling, horseback riding, hiking, and non-commercial camping. Golf courses, commercial recreational uses involving motorized vehicles, and commercial camping outside the ADA(s) is prohibited on the Property. The construction of buildings and improvements for recreational uses are allowed anywhere on the Property, with the exception of the RPA, and shall not be improved by permanent utilities. An aggregate 1,000 square feet of recreational buildings is permitted, with prior notice to Grantee. Construction or conversion of buildings over the 1,000 square foot aggregate, up to a maximum 5,000 square foot aggregate, is permitted only with advance written approval of the Grantee.

**5) Impervious Surfaces and Roads Construction:** 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. Logging roads are allowed so long as they are consistent with a Forest Harvest Plan. 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.

**6) Agricultural Conservation Easement Area (ACEA):** Within the area identified as ACEA on the Conservation Easement Survey, Grantor has the right to produce crops, livestock and livestock products, to clear land for cultivation or pasture and conduct farm operations as defined under Section 301 of the New York State Agriculture and Markets Law, as amended, which shall be consistent with a Whole Farm Plan, as well as the right to engage in all other uses permitted by this Easement.

**7) Farm Area (FA):** The residual area of the Property that is within the Agricultural Conservation Easement Area, excluding the Acceptable Development Area(s) and the Resource Protection Area(s), identified on the Conservation Easement Survey, in which Agricultural Buildings and Improvements, farm operations and farming practices are permitted pursuant to the terms of this Conservation Easement.

**8) Resource Protection Area (RPA):** 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. Fences are allowed anywhere within the RPA. Grazing and cultivation is permitted subject to Section 3.a above within those portions of an RPA which lie in the Agricultural Conservation Easement Area. However, the portion of the RPA within twenty-five (25) feet of the top of the bank of a watercourse shall not be plowed, cultivated, or tilled except to reestablish naturally disturbed vegetation. Trees and shrubs along streams and waterways on the Property shall be maintained so far as practicable to assist in achieving long-term water quality standards through nutrient absorption, sedimentation control from runoff and stream channel and bank stability.

9) **Baseline Documentation:** The document entitled Baseline Documentation, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including buildings and improvements, driveways, Acceptable Development Areas, Resource Protection Areas, and Farm Areas located on the Property as of the date of this Conservation Easement.

10) **Baseline Documentation:** The conservation values, various use areas and the current use, size, location and condition of improvements of the Property are described in a Baseline Documentation Report (the Report). Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but the report shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

## **2. General Restrictions for constructing new Recreational Buildings and Improvements Greater than 1000 Sq Ft Outside of the Acceptable Development Area (ADA).**

- A. Recreational Buildings and Improvements may be located in the ADA, FA and FCEA.
- B. Recreational Buildings and Improvements may not be located in the RPA.
- C. Landowners may construct up to 1000 square feet of Recreational Buildings or Improvements outside the ADA in FA or FCEA without WAC approval, but with prior notification to WAC.
- D. Grantors must obtain WAC's approval to build new Recreational Buildings or Improvements greater than the 1000 square foot aggregate outside the ADA.
- E. Recreational Buildings or Improvements may not have any permanent utilities, including plumbing, septic systems, grey water systems or electricity.
- F. Recreational Buildings or Improvements may not be used for commercial camping or as part of a commercial enterprise involving motorized vehicles used outside the ADA.

## **3. Calculating Aggregate Square Footage of Recreational Buildings and Improvements Outside the ADA.**

- A. Square footage will be calculated based on the amount of impervious surface created by the foot print of the newly constructed recreational building or improvement, to include concrete and asphalt used for driveways or aprons associated with the building, or upon notification of the construction of a recreational building or improvement less than 1000 square feet.



#### **4. Tracking Aggregate Square Footage of Recreational Buildings and Improvements Greater than 1000 Square Feet Outside the ADA**

A. WAC staff will utilize the Allocation tracking Form ( Appendix A) to track the aggregate square footage of Recreational Buildings and Improvements Outside the ADA.

1) The Allocation Tracking Form will be reviewed and updated during all annual ground monitoring visits or after the of implementation of an approved reserved right request to construct a Recreational Building or Improvement greater than 1000 square feet outside an ADA or upon notification by a landowner.

B. The Allocation Tracking Form will track the total square footage of Recreational Buildings and improvements outside the ADA to determine whether the grantor (landowner) needs to seek WAC's approval for construction of Recreational Buildings and Improvements greater than the 1000 sq. ft aggregate.

1) The Allocation Tracking Form will also track the aggregate square footage for all new buildings and Improvements approved by WAC over the 1000 square foot aggregate to ensure that any new construction over the 1000 square foot aggregate does not exceed the 5000 square foot threshold.

2) Recreational Buildings and Improvements Outside the ADA that existed at the time of closing and are identified in the Baseline Documentation Report (BDR), will not be charged toward the 1000 square foot aggregate and may be repaired, replaced or reconstructed as long as the foot print of the Recreational Building or Improvement does not increase.

3) Any increase or expansion to the square footage of an existing Recreational Building or Improvement will be charged toward the 1000 square footage aggregate or require WACs approval if the 1000 square foot allowed under the CE has been exercised.

C. Square footage may be subtracted from the Allocation Tracking Form for Recreational Buildings and Improvements that were constructed after the CE closed but have since been removed or razed .

D. The Allocation Tracking Worksheet will be kept in the Stewardship file and updated each time the aggregate square footage changes.

E. Upon conveyance of a portion of the property, the landowner will notify WAC and identify the aggregate square footage of Recreational Buildings and Improvements to be assigned to the portion of property to be conveyed in the deed to the property.

F. Baseline Documentation Report may be updated to reflect construction of new Recreational Buildings and Improvements via an Amendment to the Conservation Easement.



## **5. Maximum Square Footage for Recreational Buildings and Improvements Outside the ADA.**

- A. Grantor may construct Recreational Buildings and Improvements in the outside the ADA in the FA and FCEA up to 1000 with notice to WAC.
- B. Construction of Recreational Buildings and Improvements greater than 1,000 square feet up to 5000 square feet require WAC approval.

## **6. Process and Standard of Approval for constructing Recreational Buildings and Improvements Greater than 1000 square feet Outside the ADA**

- A. The Deed of Conservation Easement defines the process and standard of approval for requests related to constructing Recreational Buildings and Improvements Greater than 1000 square feet Outside the ADA 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.

## **7. Requests to Locate Recreational Buildings or Improvements Greater than 1000 sq. ft. Outside the ADA**

- A. Requests to construct Recreational Buildings or Improvements Greater than 1000 sq. ft. Outside the ADA must include the following information:
  - 1. Written request to activate a reserved right from the landowner stating need for constructing a new recreational building or improvement greater than 1000 square feet outside of the ADA.

2. Map depicting size and location of proposed site for recreational building or improvement outside of the ADA, to include soils, watercourses and water features, roads and topographic contour lines depicting slope.
3. Memorandum describing size (square footage) and location, of recreational building or improvement outside of the ADA greater than 1000 square feet, distance from nearest watercourse or water feature.
4. Site plan identifying BMPs to mitigate impact of building or improvement on water quality pre and post construction. Site plan should address impacts of sedimentation, erosion and other Non Point Source Pollutants. Plan should also explain intended recreational uses and explain how impacts (if any) of proposed recreational uses on water quality will managed or mitigated.

## **8. Standard of Review for Requests to Construct Recreational Building or Improvements Greater than 1000 square feet Outside the ADA**

A. Plans submitted by landowners to construct Recreational Buildings or Improvements Greater than 1000 sq. ft. Outside the ADA will be reviewed by the Easement Committee against the following standards and require unanimous consent by the Easement Committee for approval:

- 1) Standard of Approval: 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.
- 2) 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".

B. Additionally, the interpretation of the Conservation Purposes shall be consistent with the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement listed below:

- 1) 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"
- 2) 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.

3) 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”.

4) 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 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.

5) 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.

6) 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.”

C. Consistency with the Conservation Purposes, Standard of Approval and the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement above and as interpreted and applied by WAC to requests by landowners (grantors) to Construct a Recreational Building or Improvements Greater than 1000 square feet Outside the ADA w require review and approval by WAC of the following:

- 1) Impact of proposed location of building or improvement on water resources, by reviewing slopes, soils and proximity to surface water resources.
- 2) Impact of proposed location of building or improvement on agricultural productivity and productive soils.
- 3) Impact of proposed recreational uses of structure and impact on water resources by reviewing proximity to surface water, slopes and soils.

## **9. Notification to Landowner of Approval or Denial of Grantor Request by Easement Committee.**

- 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.

## Appendix "A"

### Watershed Agricultural Council - Easement Program Deed of Conservation Easement - Allocation Tracking Form

Landowner Name: \_\_\_\_\_

Easement Name: \_\_\_\_\_

DEP ID #: \_\_\_\_\_

Original Grantor: \_\_\_\_\_

Chain of Title: \_\_\_\_\_

Allocations	Original Allocations	Utilized/Conveyed	Remianing Allocations
Future Acceptable Development Areas (FADA)			
Residential Dwellings			
Subdivisions (additional tax parcels)			
Agricultural Buildings and Improvements			
Recreational Buildings and Improvements			

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Allocations listed above indicate the remaining permitted allocations associated with this property from the Deed of Conservation Easement at this time. Should a conveyance occur, these allocations are required to be distributed accordingly in the respective deed(s).

Landowner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

WAC Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_





# Watershed Agricultural Council Conservation Easement Program

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





## 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 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.

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:

1. The RoW does not substantially reduce the viability of an ADA for its intended purposes;
2. The RoW is designed to minimize impacts on an RPA by using perpendicular crossings at narrow points within the RPA;
3. The RoW crosses the RPA at site of an existing crossing
4. 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.





# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Rural Enterprises and Commercial Recreation





# Guidelines for Rural Enterprises and Commercial Recreation

The following guidelines are established by the Easement Committee to create standards pertaining to requests by landowners to create New Rural Enterprise buildings and improvements and the renovation of existing non-habitable buildings to create Rural Enterprise buildings on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). 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 the creation of Rural Enterprises.

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

**A.** WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to rural enterprise buildings. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to rural enterprise buildings, that version's definitions and clauses serve as the controlling legal language.

**B. Rural Enterprises (definition):** shall include, but not be limited to, farm stands, lawful home occupations, professional home offices, bed and breakfasts, farm machinery and auto repair, saw mills, firewood distribution, campgrounds, home schooling, day care and other educational programs. However, trailer parks, auto dealerships, and golf courses are expressly prohibited on the Property.

**C. Rural Enterprise (Buildings and Improvements):** Existing Rural Enterprise buildings and improvements may be removed, repaired, replaced and enlarged within the ADA. New Rural Enterprise buildings and improvements and the renovation of existing non-habitable buildings to create Rural Enterprise buildings is permitted within the ADA only with the prior written approval of the Grantee. Construction of Rural Enterprise buildings outside of the ADA is prohibited.

**D. Recreational Uses:** Use of the Property for rural recreational uses is permitted anywhere on the Property. These uses may include, but are not limited to, hunting, fishing, trapping, skiing, snowmobiling, horseback riding, hiking, and non-commercial camping. Golf courses, commercial recreational uses involving motorized vehicles, and commercial camping outside the ADA(s) is prohibited on the Property. The construction of buildings and improvements for recreational uses are allowed anywhere on the Property, with the exception of the RPA, and shall not be improved by permanent utilities. An aggregate 1,000 square feet of recreational buildings is permitted, with prior notice to Grantee. Construction or conversion of buildings

over the 1,000 square foot aggregate, up to a maximum 5,000 square foot aggregate, is permitted only with advance written approval of the Grantee.

**E. 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 the Conservation Easement.

**F. DUMPING, STORAGE AND APPLICATION OF WASTE :** Except as permitted herein, the dumping, storage, application, land filling, or accumulation of any kind of Waste in, on or upon the Property is prohibited. The routine containerized storage of household trash and garbage is permitted only if stored for purposes of eventual transport off site for proper disposal. The storage and treatment of sewage by an individual subsurface sewage treatment system servicing residential dwellings, Farm Support Housing and other buildings used for rural enterprises allowed under this Easement is permitted only within the ADA, or with prior written approval of Grantee if located outside of the ADA. The routine storage or accumulation of farm related building debris and other farm related refuse or equipment generated or used on the property, that does not substantially diminish or impair the agricultural or forest productivity or water quality of the Property, is permitted only within the ADA and/or the FADA, or with prior written approval of Grantee if located outside of the ADA and/or the FADA.

G. The Easement Committee defines “non habitable building” in Section 1c as a building that is not currently habitable as a house or residence and is not used as an existing rural enterprise or as may be further defined by municipal building code.

## **2. General Conditions for creating New Rural Enterprise Buildings and Improvements and the Renovation of Existing Non-Habitable Buildings to Create Rural Enterprise Buildings.**

A. Based upon the definitions found in the Deed of conservation easement and listed in these guidelines under section 1, the following should be considered by landowners who propose to create New Rural Enterprise buildings and improvements or renovate existing non-habitable buildings to create Rural Enterprise buildings:

1. Requests to site a SSTS outside the ADA for New Rural Enterprise buildings and improvements or renovated existing buildings to create Rural Enterprises must conform to WAC’s Guidelines for Locating Septic Systems outside Acceptable Development Areas (ADA).
2. Rural enterprises that involve commercial camping outside the ADA(s) or include commercial recreational uses involving motorized vehicles are prohibited.
3. All rural enterprises buildings and improvements must be located within the ADA, however, non-motorized, commercial activities associated with a rural enterprise building

or improvement within the ADA may occur outside the ADA, including but not limited to commercial weddings, horseback riding or hunting so long as those activities do not conflict with the terms and conditions of the conservation easement and do not involve commercial camping outside the ADA.

### **3. Renovation of Existing Non-Habitable Buildings to Create Rural Enterprise Buildings**

A. If an existing non-habitable building with a footprint of less than 2000 square feet as defined in 1G above is converted in use to create a new rural enterprise building and no change to the existing physical footprint of the building has resulted from the change in use, the Easement Committee delegates authority to WAC staff to review and approve such requests without review and approval by the Easement Committee.

B. Approval by WAC staff above may be given to landowner so long as the following conditions are met:

1. Proposed changes to parking, access, ingress or egress will not result in water quality issues such as sedimentation, erosion or introduction of non point source pollution into a water body.
2. Existing septic systems and wells used in conjunction with the Rural Enterprise are located within the ADA. If a new septic system needs to be located outside the ADA, landowners must request WAC Easement Committee approval as required in WAC's Guidelines for locating Septic Systems outside Acceptable Development Areas.
3. Change in use of the building will not conflict with any of the terms and conditions of the CE.
4. Landowner will submit proposed request in writing describing intended uses to WAC staff for review.
5. If a reserved right request associated with conversion is required, Grantor must obtain approval from WAC's Easement Committee for such reserved right request before Staff can approve request.
6. Conversions of Non Habitable buildings to use as Rural Enterprises buildings that do not conform to the review standards in 3A above will be subject to review by the Easement Committee as per section 7 of these guidelines.

### **4. New Rural Enterprises Buildings under 500 Square Feet or Conversion of Non Habitable Building to a Rural Enterprise Building where Conversion Increases physical footprint of Building by less than 500 square feet.**

A. The Easement Committee delegates authority to WAC stewardship staff to review and approve requests from Grantors to: 1) create new Rural Enterprise Buildings under 500



square feet or 2) convert a non habitable building with a footprint of less than 2000 square feet to a rural enterprise building where conversion increases in size of the physical footprint of the building by less than 500 square feet, without review and approval by the Easement Committee.

B. Approval by WAC staff under 4 A above may be given to landowners so long as the following conditions are met:

1. Proposed changes to parking, access, ingress or egress will not result in water quality issues such as sedimentation, erosion or introduction of non point source pollution into a water body.
2. Existing septic systems and wells used in conjunction with the Rural Enterprise are located within the ADA. If a new septic system needs to be located outside the ADA, landowners must request WAC Easement Committee approval as required in WAC's Guidelines for locating Septic Systems Outside Acceptable Development Areas.
3. Change in use of the building will not conflict with any of the terms and conditions of the CE.
4. Landowner will submit proposed request in writing describing intended uses to WAC staff for review.
5. If a reserved right request associated with conversion is required, Grantor must obtain approval by Grantee for such reserved right request before Staff can approve request.
6. Creation of new Rural Enterprise Buildings under 500 square feet or Conversions of Non Habitable buildings to use as Rural Enterprises buildings that have increased the physical footprint in size by less than 500 square feet that do not conform to the review standards in 4A above will be subject to review by the Easement Committee as per section 4 of these guidelines.

## **5. Process and Standard of Approval for Creation of New Rural Enterprise Buildings over 500 Square Feet, or Conversion of Non Habitable Buildings greater than 2000 square feet to Rural Enterprise Buildings, or where Conversion Increases the Size of the Building Footprint by more than 500 Square Feet:**

A. The Deed of Conservation Easement defines the process and standard of approval for requests related to rural enterprises 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.

## **6. Requests to Create New Rural Enterprise Buildings over 500 Square Feet, or Conversion of Non Habitable Buildings over 2000 square feet to Rural Enterprise Buildings, or where Conversion Increases the Size of the Building Footprint by more than 500 Square Feet**

A. Requests from Grantors to create a new Rural Enterprise Building over 500 square feet or convert a non habitable building to a Rural Enterprise Building where the conversion results in a change to the physical footprint of the building that is over 500 square feet, Grantors must include the following information in writing in order for WAC to determine whether the proposed activity is consistent with the Conservation Purposes and Standard of Approval clause of the CE:

1. Written request from Grantor to create a new rural enterprise building.
2. Map depicting size and location of proposed rural enterprise building and location of parking and ingress and egress, roads and watercourse and features and any associated improvements such as wells and septic systems.
3. Memorandum describing size, location of rural enterprise, including description of intended use, nature of business, location of parking and ingress and egress and location of septic systems and well (if any).

B. If an additional reserved right request is required, such as Rights of Way landowners must submit all associated and required reserved right requests along with the Rural Enterprise Building request for approval by the Easement Committee.

## **7. Standard for Review of Requests**

A. Plans submitted by landowners to create a new rural enterprise buildings will reviewed by the Easement Committee against the following standards and require unanimous consent by the Committee for approval:

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: 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.

B. WAC has agreed that its interpretation of the Standard of Approval and Conservation Purposes clauses must be consistent with Section 9(c) of the December 2010 “Agreement Among the New York City Department of Environmental Protection (NYCDEP) and the 1997 New York City Memorandum of Agreement Signatories Concerning NYCDEP’s continuation of its Land Acquisition Program (the “Agreement”).

1. Section 9(c) of the Agreement states that “guidance documents will specify, for each reserved right, what constitutes consistency with the conservation purposes of the easement, with reference to and consistent with the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement.

2. Paragraphs C through H of the recitals in the Model Conservation Easement are as follows:

c. 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”;

d. Article 25-AA of the New York Agriculture and Markets Law authorizes the establishment of agricultural districts and states: “The socioeconomic 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.

e. 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”;

f. 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;

g. 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;

h. 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";

C. Consistency with the Conservation Purposes, Standard of Approval and The Agreement as interpreted and applied by WAC to requests by grantors to create new rural enterprise buildings greater than 500 square feet or convert a non habitable structure to a rural enterprise buildings require review and approval of the following:

1. Demonstration by Grantor that proposed location and access would not substantially diminish water quality through sedimentation, erosion and introduction of non point source pollution.
2. All associated improvements including septic systems and well are located inside the ADA unless otherwise requested.
3. Demonstration by Grantor that any proposed commercial, rural enterprise activities associated with the building or improvement allowed in the ADA but occurring outside the ADA would be consistent with the Terms and conditions of the CE.

## **8. Notification to Landowner of Approval or Denial of Grantor Request by Easement Committee:**

- 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 the 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



# Watershed Agricultural Council Conservation Easement Program

## Waiver/Amendment Guideline







## Waiver/Amendment Guideline

Acting in its capacity as a land trust, the Watershed Agricultural Council (WAC) is responsible for enforcing and upholding the integrity of the perpetual conservation easements (CEs) it holds. WAC recognizes that while waivers and amendments to conservation easements are not routine nor considered lightly, they can serve to strengthen an easement or improve its enforceability, so long as the waiver or amendment results in either a beneficial, or net-neutral, impact on the conservation purpose of the CE and is consistent with WAC's mission.

In furtherance of its mission, WAC purchases and enforces CEs that protect the water quality of the New York City watersheds and protect agricultural and forestry lands by limiting the form, location, and density of development and to facilitate stewardship of the Easement Property. Circumstances may arise that warrant an amendment or waiver of certain provisions of existing CEs WAC may seek to waive or amend CE terms to improve the effectiveness of an existing CE, or to augment conservation benefits. The following waiver/amendment guideline is intended to provide guidance on the criteria, conditions and standards for review and approval of amendments or waivers; it is not intended to alter the terms of any CE deed and, should there be any inconsistency between the guideline and a CE deed, the CE deed controls.

### A. Authority

CEs are acquired by WAC under the authority of Article 49, Title 3 of the New York State Environmental Conservation Law (ECL). Conditions for modifying CEs are set forth at Section 49-0307 which provides that CEs may be modified "as provided in the instrument creating the easement."

WAC's Agricultural Conservation Easement template provides in Paragraph 26 "WAIVER OR AMENDMENT" that:

"This Easement may not be materially amended without the written consent of the Grantee, Grantor, and the Attorney General. Any other amendment, modification or waiver will require the written consent of the Grantee and Grantor. Any amendment, modification, or waiver shall be consistent with the purposes of this Easement and shall comply with Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Environmental Conservation Law or any regulations promulgated pursuant to that law."

WAC's Forest Conservation Easement template provides in Paragraph 19 "WAIVER OR AMENDMENT" that:

"The Conservation Easement may not be materially amended without the written consent of the Grantee, Grantor, and the NYS Attorney General. Any other amendment,

modification or waiver shall require the written consent of the Grantee and Grantor. Any amendment, modification, or waiver shall be consistent with the Conservation Purposes of the Conservation Easement and shall comply with Article 49 of the NYS Environmental Conservation Law or any regulations promulgated thereunder.”

Section 170(h) of the Internal Revenue Code requires that the conservation purpose of a conservation easement be protected in perpetuity, meaning that any amendment or waiver thereto shall not adversely impact the conservation purpose of the conservation easement.

## **B. Fundamental Criteria for Waiver/Amendment Approval.**

The following principles form the core of the waiver/amendment guideline. Each of these principles constitute a pre-condition to every waiver or amendment and any waiver/amendment granted by the Easement Committee shall satisfy all the following:

1. Preserves or enhances the conservation purpose(s) of the CE.
2. Preserves or enhances the public interest of the CE.
3. Is consistent with WAC’s mission.
4. Complies with all applicable local, state and federal laws and regulations.
5. Does not jeopardize WAC’s status as a qualified not-for-profit conservation organization under state or federal law.
6. Is consistent with WAC’s Conflict of Interest Policy.
7. Does not result in private inurement or confer impermissible private benefit.
8. Has a net beneficial or neutral effect on the relevant conservation values protected by the easement.
9. Does not materially amend the CE without the written consent of the Attorney General.

## **C. Review Factors.**

In analyzing the fundamental criteria set forth in Section B above, WAC shall identify, evaluate and document the following factors:

1. Potential impacts to water quality.
2. Potential impacts to agriculture and/or forest lands.
3. Potential impacts to the Conservation Purposes of the CE.
4. Potential impacts to WAC’s stewardship resources.
5. Potential impacts on enforcement of the CE.

## **D. Examples of Potentially Permissible Amendments.**

As explained above, all of the Section B criteria must be met before a waiver/easement can be granted. Following are examples of specific types of amendments that WAC may review and guidance on specific factors that may be of particular significance to certain types of amendments. It is not intended to suggest that the Section B criteria do not apply to these types of amendments.

### **1. Updates to Standard Language and Format**

Standard language and format of a CE may be amended for the following reasons:

- a. to correct grammatical or typographical errors,
- b. to reflect new standard clauses,
- c. to reflect statutory changes,
- d. to reflect policy changes,
- e. to improve enforcement and administration procedures, and/or
- f. to enhance the protection of the conservation values of the protected property.

## **2. Correction of Error**

To correct an error or oversight in an original CE or survey so long as sufficient written or documented information to support such a claim that error occurred in the development of the easement is provided.

## **3. Clarification of an Ambiguity**

To seek clarification of ambiguous language.

## **4. Increase Conservation Benefit**

To add additional land or restrictions to a conservation easement, where adding land or restrictions would increase the conservation benefit of the easement.

## **5. Changes to Reserved Development Rights**

- a) Reserved Development Rights are those permitted uses specifically identified in the CE that are either allowed without prior notice to or approval of Grantee, allowed only with prior written notice, or allowed only with prior notice and written approval.
- b) The addition of new Reserved Development Rights shall be prohibited.
- c) The extinguishment or reduction of Reserved Development Rights shall be authorized to increase conservation benefit.
- d) All other modifications to the terms, permissions or restrictions of Reserved Development Rights, as set forth in the CE, may be considered so long as:
  - a. The modification does not result in a negative impact on conservation purposes of the CE.
  - b. The modification does not result in private benefit for the landowner, including but not limited to increased property value as determined by an appraisal conducted by an independent New York state certified appraiser.
  - c. All costs for such requests, including appraisal fees, shall paid for by the landowner. WAC will consider sharing or incurring the associated costs if the proposed action has a clear conservation or stewardship benefit. Except for costs, WAC shall not accept payment as consideration for modification or changes to Reserved Development Rights.

## 6. Reconfiguration of Designated Use Areas

To reconfigure Designated Use Areas under the following scenarios:

- a) Modification of boundary lines for the following designated use areas only: Agricultural Conservation Easement Areas (ACEAs), Forestry Conservation Easement Areas (FCEAs), Resource Protection Areas (RPAs), Multiple Use Area (MUA) and the Forest Area (FA).
- b) Relocating an Acceptable Development Area (ADA) or modifying boundary lines for ADAs that do not contain any pre-existing structures, so long as the size of the ADA does not increase or encroach on any RPA.
- c) Modification of boundary lines defining ADAs that contain existing structures so long as the size of the ADA does not increase or encroach on any RPA.
- d) Modification of Future Acceptable Development Areas (FADAs), so long as the size of the FADA does not increase or encroach on any RPA, shall not require a CE amendment. Relocation of the FADA still requires notice and written approval of WAC.
- e) Reconfigurations may be initiated by either WAC or the landowner and require the written consent of both parties.

## 7. Merging Two or More Separate Easements

To merge two or more easements to create a single easement, so long as:

- a. The merger preserves or enhances the conservation purposes of both easements and no impermissible private benefit will be received by the landowner as the result of the merger.
- b. All costs for such mergers, including appraisal fees, shall be paid for by the landowner. WAC will consider sharing or incurring the associated costs if the proposed action has a clear conservation or stewardship benefit. Except for costs, WAC will not accept payment as consideration for mergers.

**E. All decisions to approve waivers or amendments shall be within the sole discretion of WAC. Prior decisions to approve waivers or amendments to the subject CE or any other CE held by WAC shall not serve as binding precedent on any future requests.**

## F. Discretionary Waivers

## **What is a Waiver?**

1. Waivers allow for an activity that may not comply with the permissions or restrictions of Reserved Development Rights, as set forth in the CE.
2. Waivers do not require an amendment to the CE and cannot be used as a substitute for an amendment.
3. Waivers may be used to resolve a minor or technical violation of the CE. For example, where an ambiguity in the CE may result in a violation, a discretionary waiver may be issued to resolve it.

## **Effect of Waiver**

4. Waivers are revocable at any time at WAC's sole discretion.
5. Waivers may be renewed at the sole discretion of WAC.
6. Waivers are unique and landowner-specific and do not run with the land.
7. Any active Waivers shall automatically expire upon transfer of title to the property.

## **Waiver Approval**

8. Waivers must meet the fundamental criteria described in Section B above and the Section C review factors shall be applied to all waivers.
9. Waivers must also meet the following criteria:
  - a. Waivers shall be temporary in nature with a defined term and expiration.
  - b. Waivers shall be considered only for a defined purpose or activity.
  - c. Waivers shall not involve the placement or construction of permanent structures or infrastructure.
  - d. Waivers shall only involve uses or activities that are incidental and subordinate to the primary agricultural/forestry use or natural resource protection use of the property.
  - e. Waivers may require a demonstration by the landowner that the conditions and restrictions of the CE may have caused unnecessary hardship that can be temporarily avoided by the waiver. For the sake of clarity, any demonstrated hardship does not justify a waiver if the criteria in Section B & C are not met.
  - f. Waivers shall be the minimum forbearance deemed necessary and adequate to address

any potential hardship proven by the landowner and at the same time preserve and protect the conservation purpose of the CE.

g. Landowner shall hold WAC harmless and indemnify WAC from any and all claims arising out of the approval of a waiver.

h. WAC may impose additional conditions and restrictions as are directly related and incidental to the proposed waiver.

## **G. Waiver Review Process**

a. Form of Waiver Request; Necessary Submission Materials

2. WAC staff shall prepare a draft recommendation report on waiver requests based on consistency with these guidelines;

3. Staff recommendation report, including a draft waiver decisional document and resolution, shall be provided to legal counsel for completeness and consistency with these guidelines;

4. A copy of the material provided to legal counsel shall be forwarded at the same time to DEP.

5. A complete final written recommendation shall be provided to the EC for its consideration and determination.

6. Waiver recommendations presented to the EC shall include the following;

a) A written Waiver request from the landowner

b) Staff memo detailing the waiver request (relevant CE clauses, legal counsel findings, waiver term, motion, justification for approval/denial under this Guideline, etc.).

c) Relevant mapping to visually display waiver proposal

d) Proposed EC resolution including the activity-specific waiver document

7. The EC shall review waiver recommendation at regularly scheduled EC meetings. EC determinations on waivers require unanimous vote of the EC and may contain conditions as the EC determines reasonable and appropriate.

8. WAC staff shall inspect activity/property-specific waivers at the beginning and end of the term and as otherwise necessary to determine full compliance with the approved waiver.



# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Water Resources, Stream Work and Resource Protection Areas (RPA)





# Guidelines for Water Resources, Stream Work and Resource Protection Areas (RPA)

The following guidelines are established by the Easement Committee to create standards for reviewing requests by landowners to conduct activities related to stream work and/or occurring within the RPA on Watershed Agricultural Council (WAC) Conservation Easement (CE) properties. 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.

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

A. The Deed of Conservation Easement describes water resources and stream work as follows:

- 1) Grantor may use, maintain, establish, and construct, water sources, water courses, and water bodies, including ponds, on the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property.
- 2) Grantor may alter the non-channelized, natural flow of water over the Property in order to improve drainage of agricultural or forest soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the purposes of this Easement and is carried out consistent with the Whole Farm Plan.
- 3) Any stream work, including but not limited to, gravel removal, stream bank or bed disturbance or stabilization, or bridge and culvert construction, shall only be undertaken with prior approval of the Grantee, except for emergency work resulting from natural events beyond the control of the Grantor, such as the need to restore transportation routes, maintain farm operations, and to protect health, safety, and property.

B. The Deed of Conservation Easement describes Resource Protection Areas as follows:

- 1) Resource Protection Area (RPA) 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.

2) Fences are allowed anywhere within the RPA.

3) Grazing and cultivation is permitted within those portions of an RPA which lie in the Agricultural Conservation Easement Area.

4) The portion of the RPA within twenty-five (25) feet of the top of the bank of a watercourse shall not be plowed, cultivated, or tilled except to reestablish naturally disturbed vegetation.

5) Trees and shrubs along streams and waterways on the Property shall be maintained so far as practicable to assist in achieving long-term water quality standards through nutrient absorption, sedimentation control from runoff and stream channel and bank stability.

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

6) Incidental Agricultural Buildings and Improvements : 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.

C. The Deed of Conservation Easement describes “Recreational Uses “ as follows:

1) The construction of buildings and improvements for recreational uses are allowed anywhere on the Property, with the exception of the RPA, and shall not be improved by permanent utilities.

D. The Easement Committee does not consider a bridge to be a recreational improvement under the description of “Recreational Uses” in these guidelines.

2. The Easement Committee does not consider decks, docks, gazebos, hunting blinds, tree stands, picnic tables, signs or trellises less than 500 cumulative square feet to be permanent recreational buildings or improvements that are otherwise prohibited within an RPA.

E. WAC staff shall notify the Easement Committee of any emergency stream work conducted.

## **2. Water Resource Work Addressed Through Whole Farm Plans**

A. As identified in Section 1(A)2 of these guidelines Grantor may alter the non-channelized, natural flow of water over the Property in order to improve drainage of agricultural or forest soils , reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the purposes of this Easement and is carried out consistent with the Whole Farm Plan.

B. The Easement Program Agricultural Planner, during the Whole Farm Plan (WFP) Annual Status Review (ASR) will identify easement properties in which improvements to non-

channelized flows are being proposed or practiced and indicate in the ASR that the WFP should be revised to address such improvements if the improvements are not part of the Grantor's current WFP. Such revisions may include planning and/or implementation of WFP Best Management Practices (BMPs) related to improvements.

### **3. Process and Standard of Approval for Requests for Stream Work**

A. The current Deed of Conservation Easement defines the process and standard of approval for requests related to Stream Work 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. Grantor Requests to Conduct Stream Work**

A. Requests from grantors seeking approval to conduct stream work defined in section 1A3 of these guidelines must include the following information:

- 1) Written request from Grantor to conduct stream work
- 2) Map depicting the following: Easement Boundaries, Use Areas, location of streams, location of work to be conducted in stream, and topographic contour lines
- 3) Photos of reach of stream that will be affected by stream work
- 4) Sketch plan or blueprint of proposed work
- 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 (if any), impact



or importance of proposed project to agricultural lands and operations, and impact or importance of proposed project to forested lands and forested lands infrastructure. Memo must indicate if the proposed project is a Whole Farm Plan Best Management Practice.

B. Requests for stream work that will require State and/or Federal regulatory permits should seek Easement Committee approval prior to submitting application(s) for regulatory permits. Permit applications to regulatory agencies should include stream work plan first approved by Easement Committee as part of regulatory permit application.

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

C. Requests for stream work that are a Whole Farm Plan (WFP) Best Management Practice (BMP) must include information required for requests as identified in these guidelines.

1) Requests for Stream Work that are BMPs for WFPs may be approved by staff without Committee approval if the BMP design plans have been approved by a certified technician in the Watershed Agricultural Program (WAP) and are consistent with the approval requirements of these guidelines.

2) WAC staff will notify Committee of any approved WFP BMPs for stream work.

## 5. Standard of Review for Requests

A. Requests submitted by landowners to conduct Stream Work 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 conduct Stream Work, review and approval of the following are required under unanimous consent by the Easement Committee:

1. Review of impact of proposed project to mitigate effects of sedimentation and erosion on agricultural or forested lands and water quality
2. Review of impact of proposed project on stream bank and lands downstream from project
3. Review of impact of proposed project on existing stream bank vegetation such as trees and shrubs
4. Review of project design specification by appropriate technical staff
5. 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”;
  - d. 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;
  - e. 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;

f. 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 (Grantor).**

- 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.





# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Locating Towers and Communication Devices





# 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 SURFACES AND ROAD CONSTRUCTION: 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 non commercial 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).

#### **5. 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”;

d. 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;

e. 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;

f. 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.

# Watershed Agricultural Council Conservation Easement Program

## Enforcement Guideline







# Enforcement Guideline

This guideline defines the process by which enforcement actions shall occur, clarifies the deed requirement of immediate notice to landowners, and specifies the role of the Easement Committee (“EC”) when potential violations of conservation easements (“CEs”) occur and/or when remedial actions are needed. The Easement Committee has the discretion to adapt these procedures to the different circumstances presented by a particular enforcement event.

## 1. DEED LANGUAGE

Section 22 or 23 of the deed of CE (titled Enforcement in all CE versions) provides a sequence of steps to follow when a violation is discovered:

### ENFORCEMENT

***“In the event a violation or imminent violation of this Easement occurs, Grantee shall immediately notify the Grantor to request that the activity cease and arrange a site visit to mutually resolve the situation to the satisfaction of both parties.***

***If the Grantor ceases the activity in violation, but is unwilling or unable to cure any violation within ten (10) calendar days after the Grantee’s initial site visit, Grantee shall send Grantor a written notice of non-compliance, which shall notify Grantor of the violation and the measures reasonably calculated to cure such violation or imminent violation. Grantor shall have twenty (20) calendar days from the date the Grantor receives such notice, or such other period Grantee may deem appropriate, to cure the conditions constituting the violation. In the event the Grantor fails to cure the violation within the aforementioned twenty (20) calendar days or period designated by Grantee, Grantee shall seek to enforce such other legal and/or equitable remedies as Grantee deems necessary to ensure compliance with the terms and purposes of this Easement.***

***In the event that the Grantor refuses to cease such activity or agree to a site visit, or when Grantee determines that a violation or imminent violation could substantially impair the purposes of this Easement, or that an imminent or immediate threat to the City’s drinking water supply exists, Grantee may seek an injunction to stop it, temporarily or permanently. If a court with jurisdiction determines that a violation may exist or has occurred, the court may also issue an order requiring the Grantor to restore the Property to its condition prior to the violation.***

***In any case where a court finds that a violation has occurred, the Grantor shall***

***reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time."***

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## **2. IDENTIFYING AND RESPONDING TO SUSPECTED VIOLATIONS**

### **A. Discovery, Documentation, Request for Cessation and Response to an Uncooperative Landowner.**

CE violations may be discovered during routine Annual Monitoring Visits ("AMV"), Annual Status Reviews ("ASR"), aerial monitoring inspections, or reported by neighbors and/or other third parties such as a partner agency (i.e. DEP, DEC, NRCS, SCWD, CCE, municipality, etc.). WAC shall not divulge the source of a third party report to any other party, including the landowner, unless allowed to do so in writing by the source or by WAC's legal counsel, or required to do so by law or court order.

#### **i Review the Survey prior to the site visit**

Staff shall review the survey and any subdivision maps to confirm current ownership and attempt to locate the activity within the appropriate use area on the property.

#### **ii Landowner Interview**

The landowner should be interviewed and advised of WAC's preliminary concerns pending a review of the deed and the circumstances. At this initial discovery stage staff should not be determining whether the deed has been violated or not, but should be collecting information on what portion of the easement property has been impacted, determining the impacts, and recording the landowner's explanation of the situation. In the case of an obvious major violation, staff shall advise the landowner of the violation and request cessation.

#### **iii Inspect and Document Suspected Violations**

Within seven (7) working days of the discovery of a minor violation, WAC's EP Stewardship Staff shall visit the property to inspect and document the suspected violation. If a major violation is discovered, reported or suspected, the initial inspection will be performed immediately. If for some reason an immediate inspection is not possible, the landowner will be contacted to request cessation of the activity until an inspection can be performed. Photos keyed to a photo point map are taken and, if possible, compared with photos taken before the activity in question occurred. Details of the potential violation are recorded, including: location, dates, times, parties involved (loggers, neighbors, etc.), and scope/scale of activities in question. Damages should be documented in quantitative terms, e.g. number of trees cut down, length and width structure/improvement, etc., and an initial assessment should be compared to the pre-disturbance condition of the property. This can later be referenced to specific sections of the baseline documentation report and/or reports of monitoring visits conducted before the violation occurred.

**iv. Request for Cessation**

Staff should find out whether the activity is complete or in progress in order to assess the urgency of the matter and the severity of the potential violation. Staff should request cessation as required by the easement deed to allow a review of the activity by staff and the EC. If damaging activity is underway and the landowner is not available or is non-responsive, staff should send a written request for cessation to the owner and provide a copy to an agent or any responsible party on the property during the inspection.

**v. Encroachment**

If the landowner is unaware of the activity or it appears to be an encroachment, WAC will provide guidance to the landowner on how to address the situation, and offer an immediate site visit to address any activity that is threatening or damaging sensitive resource areas on the property or otherwise violates the CE terms. See Giii below for more guidance on encroachments.

**vi. Uncooperative Owner**

If the activity is clearly a major violation and the landowner is unwilling to cease the activity, staff must immediately notify the EC and seek a legal determination on whether to pursue an injunction to stop the activity. If the landowner refuses to allow Stewardship Staff to enter the property to conduct the inspection, the Easement Program Director shall contact the landowner to seek their cooperation and, if not received, immediately consult with WAC legal counsel and the EC to determine whether seeking an injunction as allowed by the CE deed is appropriate, and what next steps can be taken to address the potential violation. Where a grantor prohibits access by staff and prior to obtaining access by other means, an effort should be made to inspect from the road frontage or by air and document the activity. See H below for more guidance on uncooperative owners.

**B. Confirm Violation and Determine Severity**

Within 5 business days after the inspection of the suspected violation, Stewardship Staff shall review the information gathered during the inspection against the terms of the CE and other stewardship resources. At this point, staff confirms the violation, determines severity (Technical, Minor, or Major violation as defined herein) and recommends corrective actions necessary.

**a. Technical violation:** A violation of the terms of the CE that has a de minimus impact on the conservation purposes or the resources protected by the CE and requires no urgent action. Technical violations can often be resolved by explaining the terms of the CE to the landowner both verbally and via written correspondence. Technical violations will be handled directly by Staff and reported at the next EC meeting.

**b. Minor violation:** A violation that involves some damage to the conservation purposes or the resources protected by the CE. Minor violations may require some small degree of repair or restoration in order to restore compliance with the terms of the CE. Minor violations will be handled directly by Staff and reported at the next EC Meeting. In some cases, such as where the landowner is hostile or unresponsive, the minor violation should be reported to Terra Firma consistent with the requirements of their coverage.

**c. Major violation:** Any action that causes permanent or substantial damage to the

conservation purposes or the resources protected by the easement or directly impacts water quality. Major violations will likely require restoration and/or remediation work to restore the site to a condition similar to that before the violation occurred. All correspondence with the landowner relating to major violations or potential major violations shall be sent by certified mail, return receipt requested. Discovery of a potential major violation must be reported immediately to Terra Firma consistent with the requirements of their program. Examples of major violations include but are not limited to the construction of a building or improvement such as a residence or rural enterprise parking lot located outside of the ADA when the deed limits that improvement to the ADA; the observed or reported failure of a septic system; and stream work done without prior approval.

ii If a violation also conflicts with applicable ordinances, laws, regulations or permits, Staff will inform the EC and recommend whether or not the appropriate agency should be notified of the activity and its impact on any regulated resource area, consistent with the CE deed section on Other Laws and Regulations in Effect.

### **C. Notice to DEP**

If there is an imminent or immediate threat to the City's drinking water supply or if the violation may be due to gross or willful negligence, DEP should be immediately notified of the situation.

i. Depending on the nature of the violation, DEP may choose to initiate their third party enforcement rights under the deed.

ii. DEP may, in extreme circumstances, notify the NYS Attorneys General office who also has third party enforcement rights.

iii. Prior to commencing an enforcement action in a court of competent jurisdiction, the City of New York or the New York State Attorney General must first notify Grantee and Grantor, give Grantee sixty (60) days to take appropriate action, including commencing an enforcement action, and give Grantor sixty (60) days from the receipt of such notice to cure the breach.

### **D. Notice to Easement Committee**

For all violations, a timeline and Staff recommendations shall be reported to the EC via the Violation Summary at the next EC meeting. Major violations or potential major violations shall be presented to EC for formal consideration at the first opportunity with the understanding that the EC may postpone a determination until further information is available.

### **E. Easement Committee determination**

Potential violations may require interpretation of the CE deed language to assess whether a violation exists or not. Potential violations must be reported promptly to the EC for review. When staff determine that a potential violation is either remedied or not a violation, that information shall be brought to the EC for a formal determination that it is consistent with the CE deed terms and any applicable guideline.



## **F. Landowner Follow-up**

- i. Stewardship Staff shall document all meetings related to a potential violation within seven (7) working days. As required by the Enforcement Section in the deed, Staff will send a written notice of non-compliance to the landowner if the violation has not been cured by the landowner within 10 days of Grantee's initial site visit. Further correspondence will at a minimum be generated as required by the timelines in the Enforcement Section of the CE deed.
- ii. As soon as practicable, following each EC meeting where the matter has been discussed, another letter shall communicate any decisions rendered by the EC, confirm any agreements made with the Grantor about resolving the violation, and conveying any schedules for completion of the necessary work. All notices relating to either major violations or minor violations shall be sent via certified mail or hand delivered.

## **G. Voluntary Restoration/Compliance**

- i. If the landowner agrees to restore the property to the satisfaction of WAC, a written plan will be prepared for signature by the landowner and approval by the EC. In situations where remediation is extensive, Stewardship Staff checks in with the Grantor and visits the property as work progresses. The property is inspected by WAC at important milestones and on the date by which restoration work is to be completed. The restoration work is documented with photographs, narrative description, and quantitative measurements (such documentation, as well as all correspondence with the landowner, is stored in WAC's permanent and working files). After the inspection, Stewardship Staff sends the Grantor a follow-up letter (hand delivered and/or certified mail) confirming remediation efforts and status of the violation. The EC is advised of all developments regarding landowner compliance in timely fashion, is provided copies of all correspondence, and makes determinations regarding the status of the violation as appropriate.
- ii. Remediation should result in restoration of the property to either its pre-violation condition or something better from a resource protection perspective. WAC must take care to avoid giving the impression that a landowner can "buy his or her way out" of an easement violation. Any alternative other than full restoration must be carefully scrutinized to make sure that it is either better than or equal to the circumstances prior to the violation, and so does not confer impermissible private benefit or private inurement to the Grantor.
- iii. When third parties encroach on land under CE and damage the property, WAC will assist the landowner's efforts to stop the violation and remediate any damages caused by third-party actions. The remediation obligation for a third party violation is the same as that for a landowner violation. If the third party is unwilling to cooperate with the Grantor and WAC, WAC may seek a court order compelling either the third-party violator or the Grantor to cease the activity and remediate the damage. The binding legal agreement between the Grantor and WAC obligates the Grantor to protect and defend their property from encroachments that violate the CE deed.

## **H. Non-compliance**

i. If the Grantor refuses to cease the activity in violation or to voluntarily restore the property, the CE Program Director consults with WAC's attorney and EC to discuss the violation and obtain a determination regarding an enforcement strategy. Potential strategies include but are not limited to:

- a. Sending a second certified letter demanding cessation of the violation and the immediate restoration of the affected conservation values;
- b. Asking other agencies with enforcement authority to address the activity;
- c. Initiating litigation with the approval of the WAC Board, to obtain a court order against the Grantor.

ii. Litigation seeking an injunction requires approval from the WAC Board, and should be pursued consistent with the CE deed Enforcement section where necessary to defend easement interests, stop damage to the easement property, and to obtain full remediation of the property.

## **I. Public Relations**

An enforcement action may lead to inquiries from the media, neighbors, other landowners, government agencies, etc. When enforcing a CE violation, certainly if legal action is involved, WAC shall designate a spokesperson for the organization and adhere to the following guidelines in managing public relations. Unless otherwise delegated, WAC's designees are reserved to the Executive Director, and Easement Program Director.

i. WAC does not seek publicity in the event of a violation. WAC may choose, however, to respond to inquiries, correct misstatements of facts reported in the media, and clarify its role and responsibilities as the CE Grantee. Such duties and all communications shall be reserved through WAC's Easement Program Director.

ii. In discussing the violation publicly, WAC shall not attribute motive or intention to the violator. Public statements will instead focus on the fact that the CE was violated and it is WAC's obligation to see that the violation is remedied and the original conservation values restored to the greatest extent possible.

iii. WAC respects the Grantor's privacy, regardless of whether or not the violation resulted from a mistake or misunderstanding. Again, the focus is on the need to remedy the violation, not on the Grantor.

iv. When pursuing legal action, WAC should consult with its attorney as to what information may be released before making any public statements about the violation and/or enforcement actions. WAC shall not divulge the source of a third party report to any other party, including the landowner, unless allowed to do so by the source or by WAC's legal counsel or required to do so by law or court order.