

**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 polices 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.