

**Easement Program 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.
- A.** 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

B. The Conservation Easement. 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.

C. 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.

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:
- B. 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.
- C. Septic systems may be located in Farm Areas (FA) with WAC's approval.
- D. Septic systems may not be located in Resource Protection Areas (RPA) or Forest Conservation Easement Areas (FCEA).
- E. Septic systems may only service the following type of structures: residential dwellings, Farm Support Housing and rural enterprise structures within the ADA.
- F. Requests to locate septic systems outside the ADA will be considered if:
 - 1. 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.
 - 2. A confirmation has been made by DEP Regulatory Review and Engineering that the most suitable site for the SSTS is outside the ADA;
 - 3. Space available within the ADA should be reserved for structures that would enhance agricultural productivity but are not allowed outside the ADA;
 - 4. There is no suitable location based upon future development plans for residences or other structures allowed under the CE;
 - 5. There is no suitable location for a septic system because of current or planned Whole Farm Plan BMPs or Agricultural operations.

- G. 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.
- H. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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,

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

- 2.** 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.
- 3.** 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 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 polices 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: :

- 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 (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;
- 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;

- 2.** 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
- a.** 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 :
 - i.** 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.
 - ii.** 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.
 - iii.** 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.
 - iv.** 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
 - v.** Review to ensure SSTS is located in Farm Area and not located in a Resource Protection Area (RPA) or FCEA.
 - vi.** 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.

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