

## **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 WAC's 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 be 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 polices 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: \_\_\_\_\_

\_\_\_\_\_

<u>Allocations</u>	<u>Original Allocations</u>	<u>Utilized/Conveyed</u>	<u>Remaining Allocations</u>
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: \_\_\_\_\_

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