

Watershed Agricultural Council

Agriculture ♦ Forestry ♦ Conservation Easements ♦ Economic Viability

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Watershed Agricultural Council's (WAC) Agricultural Conservation Easement Program Land Planning Guideline

In furtherance of its mission, WAC acquires and administers conservation easements (CEs) that promote the economic viability of agriculture and forestry, the protection of water quality, and the conservation of working landscapes. This Land Planning Guideline sets forth criteria for Easement Program (EP) Staff to work with interested approved applicants to design land plans for their prospective CE in accordance with the conservation purposes of the Deed *“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.”*

The thresholds established in this guideline may not be appropriate for all properties and staff have some flexibility in the development of a plan. Ultimately, the Easement Committee (EC) reviews the land plan and makes the final decision to approve or deny.

The land planning process is designed to work with landowners to build a common vision for the management of their farm property under the terms of the CE. The goal is to set the framework for the successful stewardship of the proposed CE.

The Planning Process

Landowners are encouraged to be actively engaged in the land planning stage. The land plan determines where on the property certain activities can take place. Landowners (and their families) are encouraged to work together to outline the future goals for the farm property. This includes potential future residential uses, commercial uses such as Rural Enterprises, and other farm related business opportunities. Additionally, the land plan shall be developed to accommodate anticipated farm transition and/or sale to the next generation of owners, all while keeping water quality protection as a priority. An important message to convey to the landowner is that while the CE is perpetual, the associated Whole Farm Plan (WFP) may be periodically revised based on individual farm operational goals and best management practices.

Once the EC approves a Land Plan Memo and Motion with supporting land plan map, EP Staff orders an appraisal. After this step, changes to the land plan are rarely allowed as the appraised value is based on the land plan map as appraised.

Defining and Identifying the Use Areas of the Conservation Easement

The development of the land plan outlines the use areas (as defined in the Deed of CE). EP Staff shall review the terms of the use areas with the landowner. An eased property consists of two general easement areas and three principal use areas – *text in italics is directly from the Deed of CE:*

Agricultural Easement Program Land Planning Guideline – V.2.0, 7.27.20

General Easement Areas:

1. *Agricultural Conservation Easement Area (ACEA): 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.*

EP Staff shall review the Whole Farm Plan (WFP) with the WAP Planner to identify the lands currently covered by specific agricultural operations including: NMP, CREP, BMPs, and other planned farm expansion. All the agricultural activity should be included in the ACEA to maximize the viability of the agricultural operation. As defined above, landowners have the right to produce crops, livestock and livestock products, to clear land for cultivation or pasture, and to conduct farm operations consistent with a WFP within an ACEA. EP Staff will discuss with landowners and/or operators if the farm operation currently utilizes silvopasture. Silvopasturing integrates trees, livestock, and forage into a single system on one site and is best fit for the ACEA.

2. *Forest Conservation Easement Area (FCEA): 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.*

EP Staff shall review with the WAC Forestry Program to see if there are any FMPs covering the property. EP Staff will work with the landowner to identify any lands that may be enrolled in 480a, and therefore potentially appropriate for FCEA. FCEA should only be used on lands that are not currently used for the agricultural operation or planned expansions. The total size of the FCEA should be reviewed with staff to make sure there are significant resources for forestry management. Not all properties are suited for a FCEA depending on the nature of the farm operation, the location of Surface Water Criteria ("SWC") and landowner objectives. Activities allowed in the FCEA are also permitted within the ACEA.

Principal Use Areas:

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 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.

- 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, non-commercial greenhouses, decks, septic fields, wells, and other buildings and improvements customarily incidental to the residence(s).
- 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.
- Rural Enterprises - 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.

EP Staff shall work with the landowner and the WAP planner to outline the area needed for current and future farm expansions associated with planned BMPs, residential uses, commercial Rural Enterprises, and Farm Support Housing needs. In addition, staff shall review the current location of the septic system, potential areas for an upgrade or replacement system(s) associated to the current residence, current and/or planned Rural Enterprise structures, and Farm Support Housing. EP Staff will also discuss the location of wells, and access for traffic associated with existing or planned Rural Enterprise structures. EP Staff will discuss the total number of residences allowed on the easement. The total number of residences shall be limited to help promote agricultural use of the property in the future. Adequate space should be planned in the ADA to allow for these structures and associated access and infrastructure.

EP Staff should work to keep the aggregate acreage for the ADA(s) at or below 10% of the total acres eased with a cap of 35 acres for an ADA. The goal to provide adequate room for the agricultural operation is most important, however.

2. Resource Protection Area (RPA): The area 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. 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.

EP Staff shall review the GIS data to identify all surface water resources on the property. The RPA contains unique or special natural features such as streams, wetlands or slopes and supporting buffer lands. Ideally, the RPA is a 100' setback from the bank of the stream (on each side of the stream) and 25' from the edge of ponds. EP Staff shall best reflect actual field conditions, utilizing their own professional judgment and that of the surveyors, when mapping RPA. For instance, it may be more practical to measure a smaller stream from the centerline. EP Staff should discuss the difference between the RPA terms of the Deed of CE verse the landowner's obligations under WFP BMPs identified. For instance, grazing and cultivation is permitted in a portion of the RPA within the ACEA. Agricultural and recreational structures are NOT permitted within the RPA with the exceptions of Incidental Agricultural Buildings and Improvements.

- *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.*

EP Staff should always prioritize ADA designation around the farmstead near waterbodies as opposed to RPA due to the restriction on agricultural buildings (etc.). EP Staff should discuss plans for recreational structures around ponds or vistas in the RPA. These recreational structures need to be outside of the RPA, therefore exceptions for small areas around ponds may need to occur. The Easement Committee does not consider bridges, 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 otherwise prohibited within RPA.

3. *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.]*

The FA is the land outside of the ADA and RPA, within the ACEA. This area is available for all agricultural uses including Agricultural Buildings and Improvements and Recreational Buildings. Residential structures, Farm Support Housing and Rural Enterprises are NOT permitted in this area.

- *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.*
 - *Grantor may remove, repair, enlarge, construct, or reconstruct Agricultural Buildings and Improvements within the ADA consistent with the WFP. New Agricultural Buildings, or the enlargement of existing Agricultural Buildings, within the Farm Area are permitted with prior notice to Grantee to ensure such building's 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 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.

- **Recreational Buildings and Improvements** - *A building or improvement used for recreational activities that does not include any permanent utilities, and/or septic systems.*
 - *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 Grantee.*

Other Considerations

1. **Independent Transfer**: The Deed of CE allows for the independent transfer of individual tax parcels. EP Staff shall analyze the viability of each individual tax parcel as a standalone agricultural operation. Separately, staff will review whether each tax parcel is independently eligible for an easement or if the property is eligible only as combined under the same easement. EP Staff shall work with landowners to understand the implications of each scenario for the future transfer of the eased property and shall work to protect and preserve the viability of future farm operation(s) on each tax parcel. WAC strongly prefers that tax parcels are merged through the easement process as the potential future transfer of individual tax parcels inevitably leads to more grantors and complexity for WAC stewardship
2. **Merger**: Parcels that do not have independent value as standalone agricultural operations should be merged, if contiguous, or not included in the proposed conservation easement. Depending on the complexity involved, merger of the tax parcels can occur after the appraisal and during the purchase and sale contract period, if the offer is accepted.
3. **Subdivision**: Retaining a future subdivision is highly discouraged by the Easement Program. Subdivisions create future stewardship burdens. If a landowner is considering a subdivision of the property it should be identified during the land planning phase and analyzed as if it already exists. If deemed appropriate, the land plan can include a proposed lot, contingent on its subdivision prior to closing the easement. Depending on the complexity of the subdivision, it may be appropriate to require its completion prior to entering the purchase and sale contract.
4. **Excluded Areas**: Excluded areas are best utilized for areas of the property that may have small encroachments from neighbors or tax parcel configurations that may cause future stewardship burdens. Excluded areas are not to be used for proposed future subdivision and/or potential future residences. EP Staff shall work with landowners to identify these areas and shall review issues as they arise.
5. **Acknowledgement & Disclosure**: EP Staff will require a signed Landowner Acknowledgment to signify all parties agree the land plan is in final form and ready for committee review. This

acknowledgment shall include language indicating that any future change to the land plan may require an appraisal update and that any fees, for update, shall be at the landowner's expense. EP Staff shall request any existing ROWs, mortgages, liens, leases, and/or third-party interests be disclosed. EP Staff may conduct an informal title search and/or request proof of ownership.

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