

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 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 (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.