

Watershed Agricultural Council Conservation Easement Program

Guidelines for Future Acceptable Development Areas (FADA)



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The following guidelines are established by the Easement Committee to create standards for reviewing requests by landowners to site Future Acceptable Development Areas (FADA) 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 siting of FADAs.

1. The Deed of Conservation Easement General Definitions, and Easement Committee Definitions

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to Future Acceptable Development Areas (FADA). If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to FADA's, that version's definitions and clauses serve as the controlling legal language:

B. Future Acceptable Development Area (FADA):

1. A Future Acceptable Development Area (FADA) is an area consisting of two or three acres, the specific location and configuration which shall be determined, prior to any permitted construction, only with prior written approval of the Grantee (WAC).
2. The FADA is the area, in which single family dwellings and associated Accessory Buildings and Improvements, Farm Support Housing, and buildings and improvements for Rural Enterprises may be constructed.
3. Agricultural Buildings and Improvements, farm operations, and farming practices are permitted within the FADA pursuant to the terms and conditions of the CE.
4. No more than 10 commercial campsites shall be allowed in a FADA.

C. Resource Protection Area (RPA):

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.

D. Incidental Agricultural Buildings and Improvements:

1. 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.

E. IMPERVIOUS SURFACES AND ROAD CONSTRUCTION:

1. 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.

2. Logging roads are allowed so long as they are consistent with a Forest Harvest Plan.

3. 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.

F. Use Areas

1. All uses of the Property shall be consistent with the Conservation Purposes of this Easement. Permitted uses of the Property vary depending on location. The Property is divided into two general easement areas (Agricultural Conservation Easement Area and the Forestry Conservation Easement Area) and three principal use areas (Acceptable Development Area, and Resource Protection Area, and the Farm Area) described below. The general easement areas and the principal use areas are shown on the Conservation Easement Survey, and in the Baseline Documentation.

2. General Site restrictions and prohibitions for FADAs

A. Based upon the definitions found in the Deed of Conservation Easement pertaining to FADA's, Grantors should consider the following when proposing a location for a FADA:

1. Proposed location is consistent with the Conservation Purposes of the Easement and will not substantially diminish or impair the agricultural, forestry, or water quality values of the Property.

2. Locating FADAs in Resource Protection Areas (RPA) or Forest Conservation Easement Area (FCEA) is prohibited. FADA may only be located in Farm Areas (FA).

3. FADA's may not be located on slopes greater than 15 percent average.

4. Soils within the FADA should be tested to demonstrate that one or more septic fields can be accommodated within the FADA.

5. Landowner is responsible for all survey costs, title search fees and recoding and filing fees necessary to implement the FADA and receive final approval by WAC.

6. The construction of buildings and improvements in an FADA may only occur only after final approval required under these guidelines and after the amendment and survey required by these guidelines have been recorded.

3. Process and Standard of Approval for Siting a FADA

A. The Deed of Conservation Easement defines the process and standard of approval for requests related to siting a FADA 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 water quality values of the Property.

4. Requests from Grantors seeking Preliminary and Final Approval to Site a FADA

A. FADA approval requires both preliminary approval and final approval from the Easement Committee as established in these guidelines.

B. Requests from Grantors seeking preliminary approval to site a FADA must include the following information:

1. Written request from landowner to site a FADA.
2. Map depicting size and location of proposed FADA site and location of access or driveway, septic field with perc tests, slopes, soils and any nearby watercourses and water features, if present.

3. Memorandum describing size, location of FADA, including description of access, driveway or ingress and egress, and impact of access or driveway on water courses and water quality, impact on agricultural operations, agricultural lands and forested lands, any additional reserved right requests that might be required as a result of citing a FADA. Memo must explain how proposed site will conform to the standards of review established in these guidelines.

C. If an additional reserved right request is necessary to site a FADA, such as approval of a Forest Harvest Plan, or Rights of Way, Grantors must submit all associated and required reserved right requests and materials with the preliminary request to locate a FADA.

D. Final approval by the Easement Committee may require all or some of the following tasks and materials to be submitted by landowner:

1. A survey or Map of Survey locating the proposed FADA based upon the legal description of the property used for the original conservation easement survey

2. An amended deed of conservation to be recorded at the county converting the FADA to an ADA and extinguishing the FADA right once exercised. The amendment will extinguish the FADA and convert it to an Acceptable Development Area (ADA).

3. Title Search to ensure any encumbrances recorded against property after the original Deed of Conservation Easement do not conflict with proposed site location of FADA.

5. Standard of Review for Requests to site Future Acceptable Development Area

A. FADA approval requires both preliminary approval and final approval from the Easement Committee as established by these guidelines.

B. Plans submitted by landowners to site a FADA will be reviewed by the Easement Committee against the following standards and require unanimous consent by a full quorum of 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 water quality values of the Property.

C. 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

2. Paragraphs C through H of the recitals in the Model Conservation Easement are as follows:

c. 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”;

d. 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.

e. 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”;

f. 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;

g. 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;

h. 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”;

D. Consistency with the Conservation Purposes, Standard of Approval Clause and the terms of the Agreement as interpreted and applied by WAC to requests by Grantors to site a FADA and obtain both preliminary and final approval requires review and approval by WAC of the following:

1. Preliminary Approval:

a. Impact of proposed location of FADA on water quality, i.e. sedimentation, erosion and introduction of non -point source pollution into water courses.

b. Impact of proposed access, driveway or ingress/egress on water quality, i.e. sedimentation, erosion and introduction of non- point source pollution into water courses

c. Impact of proposed site on agricultural lands

d. Suitability of soils to locate a septic system as demonstrated by a percolation test pit and identification of well locations within proposed areas

2. Final Approval: If Committee grants preliminary approval to a proposed plan to site a FADA, Grantors must seek final approval from the Easement Committee and present committee with the following materials for final approval:

a. Metes and Bounds Survey or a Map of Survey of easement property showing location of ADA prepared by a NYS certified surveyor at landowner’s expense. Survey must include location of percolation test pit(s) and wells.

b. Amended Deed of Conservation Easement that extinguishes FADA and reclassifies FADA as ADA. Prior to recording Amended Deed of Conservation Easement, landowner, at sole cost, must conduct a title search approved by WAC legal counsel to ensure the any encumbrances against the property do not conflict with the proposed FADA site location.

c. Any additional reserved right request that may require final approval

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.