

# Watershed Agricultural Council Conservation Easement Program

## Guidelines for Rural Enterprises and Commercial Recreation



# Guidelines for Rural Enterprises and Commercial Recreation

The following guidelines are established by the Easement Committee to create standards pertaining to requests by landowners to create New Rural Enterprise buildings and improvements and the renovation of existing non-habitable buildings to create Rural Enterprise buildings 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 creation of Rural Enterprises.

## 1. Deed of Conservation Easement General Definitions, Conditions, Prohibitions -and Easement Committee Definitions

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to rural enterprise buildings. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to rural enterprise buildings, that version's definitions and clauses serve as the controlling legal language.

**B. Rural Enterprises (definition):** 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.

**C. Rural Enterprise (Buildings and Improvements):** 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.

**D. 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.

**E. 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.

**F. DUMPING, STORAGE AND APPLICATION OF WASTE :** 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. The routine containerized storage of household trash and garbage is permitted only if stored for purposes of eventual transport off site for proper disposal. 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. 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 and/or the FADA, or with prior written approval of Grantee if located outside of the ADA and/or the FADA.

G. The Easement Committee defines “non habitable building” in Section 1c as a building that is not currently habitable as a house or residence and is not used as an existing rural enterprise or as may be further defined by municipal building code.

## **2. General Conditions for creating New Rural Enterprise Buildings and Improvements and the Renovation of Existing Non-Habitable Buildings to Create Rural Enterprise Buildings.**

A. Based upon the definitions found in the Deed of conservation easement and listed in these guidelines under section 1, the following should be considered by landowners who propose to create New Rural Enterprise buildings and improvements or renovate existing non-habitable buildings to create Rural Enterprise buildings:

1. Requests to site a SSTS outside the ADA for New Rural Enterprise buildings and improvements or renovated existing buildings to create Rural Enterprises must conform to WAC’s Guidelines for Locating Septic Systems outside Acceptable Development Areas (ADA).
2. Rural enterprises that involve commercial camping outside the ADA(s) or include commercial recreational uses involving motorized vehicles are prohibited.
3. All rural enterprises buildings and improvements must be located within the ADA, however, non-motorized, commercial activities associated with a rural enterprise building

or improvement within the ADA may occur outside the ADA, including but not limited to commercial weddings, horseback riding or hunting so long as those activities do not conflict with the terms and conditions of the conservation easement and do not involve commercial camping outside the ADA.

### **3. Renovation of Existing Non-Habitable Buildings to Create Rural Enterprise Buildings**

A. If an existing non-habitable building with a footprint of less than 2000 square feet as defined in 1G above is converted in use to create a new rural enterprise building and no change to the existing physical footprint of the building has resulted from the change in use, the Easement Committee delegates authority to WAC staff to review and approve such requests without review and approval by the Easement Committee.

B. Approval by WAC staff above may be given to landowner so long as the following conditions are met:

1. Proposed changes to parking, access, ingress or egress will not result in water quality issues such as sedimentation, erosion or introduction of non point source pollution into a water body.
2. Existing septic systems and wells used in conjunction with the Rural Enterprise are located within the ADA. If a new septic system needs to be located outside the ADA, landowners must request WAC Easement Committee approval as required in WAC's Guidelines for locating Septic Systems outside Acceptable Development Areas.
3. Change in use of the building will not conflict with any of the terms and conditions of the CE.
4. Landowner will submit proposed request in writing describing intended uses to WAC staff for review.
5. If a reserved right request associated with conversion is required, Grantor must obtain approval from WAC's Easement Committee for such reserved right request before Staff can approve request.
6. Conversions of Non Habitable buildings to use as Rural Enterprises buildings that do not conform to the review standards in 3A above will be subject to review by the Easement Committee as per section 7 of these guidelines.

### **4. New Rural Enterprises Buildings under 500 Square Feet or Conversion of Non Habitable Building to a Rural Enterprise Building where Conversion Increases physical footprint of Building by less than 500 square feet.**

A. The Easement Committee delegates authority to WAC stewardship staff to review and approve requests from Grantors to: 1) create new Rural Enterprise Buildings under 500

square feet or 2) convert a non habitable building with a footprint of less than 2000 square feet to a rural enterprise building where conversion increases in size of the physical footprint of the building by less than 500 square feet, without review and approval by the Easement Committee.

B. Approval by WAC staff under 4 A above may be given to landowners so long as the following conditions are met:

1. Proposed changes to parking, access, ingress or egress will not result in water quality issues such as sedimentation, erosion or introduction of non point source pollution into a water body.
2. Existing septic systems and wells used in conjunction with the Rural Enterprise are located within the ADA. If a new septic system needs to be located outside the ADA, landowners must request WAC Easement Committee approval as required in WAC's Guidelines for locating Septic Systems Outside Acceptable Development Areas.
3. Change in use of the building will not conflict with any of the terms and conditions of the CE.
4. Landowner will submit proposed request in writing describing intended uses to WAC staff for review.
5. If a reserved right request associated with conversion is required, Grantor must obtain approval by Grantee for such reserved right request before Staff can approve request.
6. Creation of new Rural Enterprise Buildings under 500 square feet or Conversions of Non Habitable buildings to use as Rural Enterprises buildings that have increased the physical footprint in size by less than 500 square feet that do not conform to the review standards in 4A above will be subject to review by the Easement Committee as per section 4 of these guidelines.

## **5. Process and Standard of Approval for Creation of New Rural Enterprise Buildings over 500 Square Feet, or Conversion of Non Habitable Buildings greater than 2000 square feet to Rural Enterprise Buildings, or where Conversion Increases the Size of the Building Footprint by more than 500 Square Feet:**

A. The Deed of Conservation Easement defines the process and standard of approval for requests related to rural enterprises 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. Requests to Create New Rural Enterprise Buildings over 500 Square Feet, or Conversion of Non Habitable Buildings over 2000 square feet to Rural Enterprise Buildings, or where Conversion Increases the Size of the Building Footprint by more than 500 Square Feet**

A. Requests from Grantors to create a new Rural Enterprise Building over 500 square feet or convert a non habitable building to a Rural Enterprise Building where the conversion results in a change to the physical footprint of the building that is over 500 square feet, Grantors must include the following information in writing in order for WAC to determine whether the proposed activity is consistent with the Conservation Purposes and Standard of Approval clause of the CE:

1. Written request from Grantor to create a new rural enterprise building.
2. Map depicting size and location of proposed rural enterprise building and location of parking and ingress and egress, roads and watercourse and features and any associated improvements such as wells and septic systems.
3. Memorandum describing size, location of rural enterprise, including description of intended use, nature of business, location of parking and ingress and egress and location of septic systems and well (if any).

B. If an additional reserved right request is required, such as Rights of Way landowners must submit all associated and required reserved right requests along with the Rural Enterprise Building request for approval by the Easement Committee.

## **7. Standard for Review of Requests**

A. Plans submitted by landowners to create a new rural enterprise buildings 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 policies 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 socioeconomic 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 (AWAC) 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";

C. Consistency with the Conservation Purposes, Standard of Approval and The Agreement as interpreted and applied by WAC to requests by grantors to create new rural enterprise buildings greater than 500 square feet or convert a non habitable structure to arural enterprise buildings require review and approval of the following:

1. Demonstration by Grantor that proposed location and access would not substantially diminish water quality through sedimentation, erosion and introduction of non point source pollution.
2. All associated improvements including septic systems and well are located inside the ADA unless otherwise requested.
3. Demonstration by Grantor that any proposed commercial, rural enterprise activities associated with the building or improvement allowed in the ADA but occurring outside the ADA would be consistent with the Terms and conditions of the CE.

## **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 the 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