

Watershed Agricultural Council Conservation Easement Program

Guidelines for Water Resources, Stream Work and Resource Protection Areas (RPA)



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The following guidelines are established by the Easement Committee to create standards for reviewing requests by landowners to conduct activities related to stream work and/or occurring within the RPA on Watershed Agricultural Council (WAC) Conservation Easement (CE) properties. With respect to the grantor (landowner) and grantee (WAC), the Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the deed.

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

A. The Deed of Conservation Easement describes water resources and stream work as follows:

- 1) Grantor may use, maintain, establish, and construct, water sources, water courses, and water bodies, including ponds, on the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property.
- 2) Grantor may alter the non-channelized, natural flow of water over the Property in order to improve drainage of agricultural or forest soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the purposes of this Easement and is carried out consistent with the Whole Farm Plan.
- 3) Any stream work, including but not limited to, gravel removal, stream bank or bed disturbance or stabilization, or bridge and culvert construction, shall only be undertaken with prior approval of the Grantee, except for emergency work resulting from natural events beyond the control of the Grantor, such as the need to restore transportation routes, maintain farm operations, and to protect health, safety, and property.

B. The Deed of Conservation Easement describes Resource Protection Areas as follows:

- 1) 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.

2) Fences are allowed anywhere within the RPA.

3) Grazing and cultivation is permitted within those portions of an RPA which lie in the Agricultural Conservation Easement Area.

4) 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.

5) 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.

a. The Deed of Conservation Easement defines Incidental Agricultural Buildings and Improvements as follows:

6) 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.

C. The Deed of Conservation Easement describes “Recreational Uses “ as follows:

1) 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.

D. The Easement Committee does not consider a bridge to be a recreational improvement under the description of “Recreational Uses” in these guidelines.

2. The Easement Committee does not consider 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 that are otherwise prohibited within an RPA.

E. WAC staff shall notify the Easement Committee of any emergency stream work conducted.

2. Water Resource Work Addressed Through Whole Farm Plans

A. As identified in Section 1(A)2 of these guidelines Grantor may alter the non-channelized, natural flow of water over the Property in order to improve drainage of agricultural or forest soils , reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the purposes of this Easement and is carried out consistent with the Whole Farm Plan.

B. The Easement Program Agricultural Planner, during the Whole Farm Plan (WFP) Annual Status Review (ASR) will identify easement properties in which improvements to non-

channelized flows are being proposed or practiced and indicate in the ASR that the WFP should be revised to address such improvements if the improvements are not part of the Grantor's current WFP. Such revisions may include planning and/or implementation of WFP Best Management Practices (BMPs) related to improvements.

3. Process and Standard of Approval for Requests for Stream Work

A. The current Deed of Conservation Easement defines the process and standard of approval for requests related to Stream Work 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.

4. Grantor Requests to Conduct Stream Work

A. Requests from grantors seeking approval to conduct stream work defined in section 1A3 of these guidelines must include the following information:

- 1) Written request from Grantor to conduct stream work
- 2) Map depicting the following: Easement Boundaries, Use Areas, location of streams, location of work to be conducted in stream, and topographic contour lines
- 3) Photos of reach of stream that will be affected by stream work
- 4) Sketch plan or blueprint of proposed work
- 5) Memorandum describing reason work is required, nature of work, description of materials and methods of construction, dates of proposed work, list of required permits (if any), impact

or importance of proposed project to agricultural lands and operations, and impact or importance of proposed project to forested lands and forested lands infrastructure. Memo must indicate if the proposed project is a Whole Farm Plan Best Management Practice.

B. Requests for stream work that will require State and/or Federal regulatory permits should seek Easement Committee approval prior to submitting application(s) for regulatory permits. Permit applications to regulatory agencies should include stream work plan first approved by Easement Committee as part of regulatory permit application.

1) If a regulatory agency reject plans submitted by Grantor that were previously approved by the Easement Committee, Grantor must resubmit plan to Grantee with changes proposed by regulatory agency for Grantee approval.

C. Requests for stream work that are a Whole Farm Plan (WFP) Best Management Practice (BMP) must include information required for requests as identified in these guidelines.

1) Requests for Stream Work that are BMPs for WFPs may be approved by staff without Committee approval if the BMP design plans have been approved by a certified technician in the Watershed Agricultural Program (WAP) and are consistent with the approval requirements of these guidelines.

2) WAC staff will notify Committee of any approved WFP BMPs for stream work.

5. Standard of Review for Requests

A. Requests submitted by landowners to conduct Stream Work will be reviewed by the Easement Committee against 1) the Conservation Purposes Clause, 2) the Standard of Approval Clause and 3) the laws and policies identified in Sections C-H of the Recital Clauses in the Model Deed of Conservation Easement (listed below in section 5 B 1-3). When these clauses are interpreted and applied by WAC (grantee) to requests by landowners (grantor) for approval to conduct Stream Work, review and approval of the following are required under unanimous consent by the Easement Committee:

1. Review of impact of proposed project to mitigate effects of sedimentation and erosion on agricultural or forested lands and water quality
2. Review of impact of proposed project on stream bank and lands downstream from project
3. Review of impact of proposed project on existing stream bank vegetation such as trees and shrubs
4. Review of project design specification by appropriate technical staff
5. Review of proposed time frame for start and completion of project

B. Clauses used as Basis of Interpretation for Requests:

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 Clause: 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.
3. Recital Clauses in the Model Deed of Conservation Easement :
 - a. 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”;
 - b. 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.
 - c. 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”;
 - d. 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;
 - e. 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;

f. 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

6. Notification to Landowner (Grantor) of Approval or Denial of Request by Easement Committee (Grantor).

- 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.

