

Watershed Agricultural Council

Agriculture ♦ Forestry ♦ Conservation Easements ♦ Economic Initiatives

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

Acting in its capacity as a land trust, the Watershed Agricultural Council (WAC) is responsible for upholding the integrity of the perpetual conservation easements (CEs) it holds. WAC recognizes that while amendments to conservation easements are not routine, they can serve to strengthen an easement or improve its enforceability, so long as an amendment results in either a net beneficial, or not less than neutral, conservation outcome and is consistent with WAC's mission.

In furtherance of its mission, WAC accepts and administers easements that promote the economic viability of agriculture and forestry, the protection of water quality and the conservation of working landscapes through strong local leadership and sustainable public-private partnerships. On rare occasions, circumstances may arise that make it desirable to change the terms of existing CEs. By way of example, an amendment may be deemed desirable if there are unforeseen changes in laws or local land use practices that cause the CE to have unintended consequences. Or, for example, WAC may seek an amendment to improve the effectiveness of an existing CE, to prevent costly legal proceedings or to augment conservation benefits. The attached amendment guideline sets forth criteria under which WAC may request an amendment, or for situations under which WAC will consider an amendment request from a Grantor/landowner.

The following principles form the core of the amendment policy. With consideration to and by applying these principles, WAC ensures compliance with the law and industry standards and sets limits on the extent to which an amendment can modify a CE. To be acceptable, an amendment must satisfy all of the amendment principles and be contemplated by the attached guideline.

Amendment Principles:

1. Clearly serve the public interest and be consistent with WAC's mission.
2. Comply with all applicable local, state and federal laws.
3. Not jeopardize WAC's tax-exempt status or standing as a charitable organization under state or federal law.
4. Not result in private inurement or confer impermissible private benefit.
5. Be consistent with WAC's Conflict of Interest Policy.
6. Be consistent with the conservation purpose(s) and intent of the easement.
7. Be consistent with the documented intent of the donor or grantor and any direct funding source.
8. Have a net beneficial or neutral effect on the relevant conservation values protected by the easement.

WAC Amendment Guideline Requests

In reviewing such requests, WAC shall consider the requests under the following criteria:

1. Potential impacts to water quality.
2. Potential impacts to agriculture and/or forest lands.
3. The Conservation Purposes of the Deed of Conservation Easement.
4. The potential impacts on WAC's stewardship resources.

WAC will consider amendment requests to easements if the request satisfies one of the following categories:

A. Updates to Standard Language and Format

The standard language and format of conservation easements are periodically revised to reflect new standard clauses, statutory changes, changes in policy, or to improve enforcement and administration, or enhance the protection of the conservation values of the protected property, or consolidate the legal documents in order to simplify the protection process. Amendments for any of these purposes will be recommended so long as the changes are consistent with the conservation purposes intent of the original conservation easement. Updates may be initiated by either WAC or landowners, but require the consent of both parties in order to be adopted.

B. Correction of Error

WAC or the Grantor/landowner may initiate an amendment request to correct an error or oversight in an original conservation easement so long as sufficient written or documented information to support such a claim that error occurred in the development of the easement is provided.

C. Clarification of an Ambiguity

WAC or the Grantor/landowner may initiate an amendment request to seek clarification or ambiguous language.

D. Amendments to Achieve Conservation Benefit

WAC will consider amendment requests to add additional land to a conservation easement, where a determination is made by the easement committee that adding land via an amendment would be more effective and efficient than through the creation of a new easement.

E. Changes to Reserved Rights

1. Reserved Rights are those activities in the deed of conservation easement that require written approval of the grantee.
2. WAC will consider requests from land owners to extinguish Reserved Rights in order to promote greater conservation.
3. WAC or the landowner may initiate a modification of Reserved Rights request, so long as:
 - a. The modification does not result in a negative impact on conservation purposes of the easement as determined by the easement committee.
 - b. The modification does not result in private benefit for the landowner as determined by an appraisal conducted by an independent New York state certified appraiser. WAC will not accept cash for modification or changes to reserved rights.
 - c. All costs for such requests, including appraisal fees, are paid for by the landowner. WAC will consider sharing or incurring the associated costs if the proposed action has a clear conservation or stewardship benefit.

F. Amendments to Reconfigure Conservation Easements

WAC will consider proposals from grantors to amend conservation easements (CEs) to reconfigure defined use areas under the following scenarios:

1. Modification of boundary lines for the following designated use areas only: Agricultural Conservation Easement Areas (ACEAs), Forestry Conservation Easement Areas (FCEAs), Resource Protection Areas (RPAs), Multiple Use Area (MUA) and the Forest Area (FA).
2. Moving an Acceptable Development Area (ADA) or modifying boundary lines for ADAs that do not contain any pre-existing structures, so long as the size of the ADA does not increase.
3. Modification of boundary lines defining ADAs that contain existing structures.
(Modification of Future Acceptable Development Areas (FADAs), provided size is not increased, would not require a CE amendment)

G. Merging Two or More Separate Easements into One Easement

WAC will consider merging two or more easements together to create one easement, so long as the merger is consistent with the conservation purposes of the easement and no private benefit will be received by the landowner as the result of the merger as determined by a New York State Certified appraiser at sole cost to the land owner or incurred or shared by WAC if there is a clear conservation stewardship benefit

Requests Outside the Scope of Amendment Guidelines:

Amendment requests from Grantors/landowners that are not clearly addressed or considered by these guidelines may be presented to the Easement Committee for review and consideration as they are requested, provided they are consistent with the conservation purposes of the easement.