

## **Guidelines for Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside Acceptable Development Areas**

The following guidelines are established by WAC to create standards for the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside of the Acceptable Development Areas (ADA) 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 CE's terms and conditions related to the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside of ADAs.

### **1. The Deed of Conservation Easement's General Definitions and Clauses pertaining to the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside the ADA.**

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside the ADA. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to the Construction of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside the ADA, that version's definitions and clauses serve as the controlling legal language:

- 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.
- 2) **Agricultural Buildings and Improvements:** A building or improvement used for farm operations and on-farm production, preparation, storage, and marketing of agricultural commodities as defined under Section 301 of the New York State Agriculture and Markets Law, as amended.
- 3) **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.
- 4) **Whole Farm Plan:** A Watershed Agricultural Council (WAC) Whole Farm Plan (WFP) is a document that identifies, addresses and mitigates environmental concerns to protect the water

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resources of the New York City watershed without negatively impacting the economic viability of the agriculture enterprise while integrating farm business objectives into the decision making process. The Whole Farm Planning Process - A WFP is developed by agricultural/conservation professionals and the participating landowner/producer following WAC policy, guidelines and standard operating procedures. The WFP gives specific consideration to aspects of the farm business that relate to water quality objectives and landowner/producer goals. The WFP addresses water quality issues identified through environmental assessments (Environmental Review/Problem Diagnosis (ERPD) and Agricultural Environmental Management (AEM). The mitigation of these water quality concerns is achieved through the implementation of Best Management Practices (BMPs) consistent with NRCS and/or WAC Standards. The landowner/producer agrees to implement BMPs according to the WFP schedule and shall maintain and operate BMPs for their designated life span. The plan may periodically be updated or otherwise revised and shall remain in effect for any period when WAC either funds or otherwise ensures that funding is secured for Grantor for construction of BMPs. Grantor must maintain such BMPs in accordance with the Whole Farm Plan and any related contractual obligations.

Funding Restrictions - In the event that the Whole Farm Plan ceases to be funded and all contractual obligations the Grantor may have with respect to BMPs have expired, agricultural uses and activities on the Property shall be consistent with the New York State Environmental Conservation Law (ECL) including, but not limited to, requirements applicable to Concentrated Animal Feeding Operations (CAFOs) under ECL Article 17, Title 7, and with the federal Clean Water Act, 33 U.S.C. § 1251 et seq.

**5) Impervious Surfaces and Roads Construction:** 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. Logging roads are allowed so long as they are consistent with a Forest Harvest Plan. 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.

**6) Best Management Practices (BMPs):** Practices that prevent or reduce the availability, release or transport of substances which adversely affect surface and ground waters. These management practices may have standards associated with their installation, operation or maintenance, but do not impose effluent limits for specific substances.

**7) Agricultural Conservation Easement Area (ACEA):** Within the area identified as ACEA on the Conservation Easement Survey, Grantor has the right to produce crops, livestock and livestock products, to clear land for cultivation or pasture and conduct farm operations as defined under Section 301 of the New York State Agriculture and Markets Law, as amended, which shall be

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consistent with a Whole Farm Plan, as well as the right to engage in all other uses permitted by this Easement.

8) **Farm Area (FA):** The residual area of the Property that is within the Agricultural Conservation Easement Area, excluding the Acceptable Development Area(s) and the Resource Protection Area(s), identified on the Conservation Easement Survey, in which Agricultural Buildings and Improvements, farm operations and farming practices are permitted pursuant to the terms of this Conservation Easement.

9) **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. Fences are allowed anywhere within the RPA. Grazing and cultivation is permitted subject to Section 3.a above within those portions of an RPA which lie in the Agricultural Conservation Easement Area. However, 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. 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.

10) **Construction of Buildings and Improvements:** No permanent or temporary buildings or other improvements shall hereafter be placed or maintained on the Property except as provided in accordance with this Section. Existing buildings and improvements are shown in the Baseline Documentation. Trailer parks, auto dealerships, and golf courses are expressly prohibited on the Property.

a) **Fences:** Existing fences may be removed, repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife without further approval of the Grantee.

b) **Agricultural Buildings and Improvements:** Grantor may remove, repair, enlarge, construct, or reconstruct Agricultural Buildings and Improvements within the ADA consistent with the Whole Farm Plan. New Agricultural Buildings, or the enlargement of existing Agricultural Buildings, within the Farm Area are permitted with prior notice to the Grantee to ensure such building construction is not located within the RPA and does not exceed an aggregate total of 5,000 square feet. Grantor may enlarge or construct Agricultural Buildings in the Farm Area greater than the aggregate 5,000 square foot threshold specified above only with prior approval from the Grantee. Prior to commencing any proposed action 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 reasonably necessary for Grantee to

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evaluate such request. Grantee shall give such approval within 45 days of receipt of Grantor's written request, unless it determines that the proposed Agricultural Buildings and Improvements would be unnecessarily located on productive soils, or would otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property. Approval shall be deemed given if no written decision is provided by Grantee within 45 days of receipt of Grantor's written request.

11) **Baseline Documentation:** The document entitled Baseline Documentation, incorporated by this reference, that the Grantor and Grantee mutually agree, as depicted by photographs, maps, and supporting text, describes the general condition of the Property, including buildings and improvements, driveways, Acceptable Development Areas, Resource Protection Areas, and Farm Areas located on the Property as of the date of this Conservation Easement.

12) **Baseline Documentation:** The conservation values, various use areas and the current use, size, location and condition of improvements of the Property are described in a Baseline Documentation Report (the Report). Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but the report shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

B. WAC further defines the meaning of the following definitions found in the Deed of Conservation Easement:

1) **Incidental Agricultural Buildings and Improvements:** WAC further defines Incidental Agricultural Buildings and Improvements as a subset of Agricultural Buildings and Improvements that, because of their purpose, may be located in an RPA.

2) **Bridges and Farm Roads or Footpaths:** Bridges will not be charged toward the aggregate square footage described in Section 4 of these guidelines. Farm Roads or Footpaths that are not impervious will not be charged toward the aggregate square footage described in Section 4 of these guidelines.

## **2. General Restrictions for Constructing new Agricultural Buildings and Improvements Greater than 5000 Sq Ft Outside of the Acceptable Development Area (ADA)**

A. Agricultural Buildings and Improvements may be located in the ADA and FA only as per the terms and conditions of the CE and may not be located in RPA or FCEA.

B. Incidental Agricultural Buildings and Improvements may be located in the RPA.

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C. Grantors (landowners) may construct up to 5000 square feet of Agricultural Buildings or Improvements outside the ADA within the Farm Area without Grantee (WAC) approval, but prior notification to WAC.

D. Grantors must obtain WAC's approval to build new Agricultural Buildings or Improvements or Expand Existing Agricultural Buildings or Improvements once the aggregate of 5000 square feet of Agricultural Building and Improvements has been exercised .

E. Agricultural Buildings and Improvements and Incidental Agricultural Buildings and Improvements constructed outside the ADA that create an impervious surface, whether they are Best Management Practices (BMPs) required by the Whole Farm Plan (WFP) or not , will be counted toward the 5000 sq foot aggregate.

F. Only Structural WFP BMPs (BMPs that create an impervious surface) will be charged toward the 5000 square foot aggregate. Non-Structural WFP BMPs, such as animal watering or feeding stations, will not be charged toward the 5000 square foot aggregate.

G. Temporary Agricultural Buildings and Improvements will be charged toward the 5000 square foot aggregate and require Grantee approval over the 5000 square foot aggregate. Once the buildings or improvements are removed, the square footage for the buildings or improvements will be deducted from the total aggregate using the Allocation Tracking Form Worksheet attached as "Appendix A" to these guidelines.

H. As a subset to Agricultural Buildings and Improvements, Incidental Agricultural Buildings and Improvements require Grantee (WAC) approval over the 5000 square foot aggregate.

### **3. Calculating Aggregate Square Footage of Agricultural Buildings and Improvements Outside the ADA**

A. Square footage will be calculated based on the amount of impervious surface created by the footprint of the newly constructed or expanded building or improvement, to include concrete and asphalt used for driveways or aprons associated with the building. Impervious surfaces used for roads that are part of a WFP will be charged toward the aggregate.

#### **4. Tracking and Managing Aggregate Square Footage of Agricultural Buildings and Improvements Greater than 5000 Square Feet Outside the ADA**

A. WAC staff will utilize the Allocation Tracking Form (Appendix A) to track and manage the aggregate square footage of Agricultural Buildings and Improvements that have been built outside the ADA after the Deed of Conservation Easement closed.

1) The Allocation Tracking Form will be reviewed and updated during all annual ground monitoring visits or after the implementation of an approved Reserved Right request to construct an Agricultural Building or Improvement greater than 5000 square feet outside an ADA or after notification of the construction of a new Agricultural Building or Improvement under 5000 square feet.

B. The Allocation Tracking Form will track the total square footage of Agricultural Buildings and Improvements built outside the ADA after the Conservation Easement closed to determine whether the Grantor (landowner) needs to seek WAC's approval for construction of new Agricultural Buildings and Improvements greater than the 5000 sq. ft aggregate.

1) The Allocation Tracking Form will also track the aggregate square footage for all new Buildings and Improvements over the 5000 square feet to determine if any new or proposed Agricultural Buildings and Improvements are within the threshold established by these guidelines.

2) Agricultural Buildings and Improvements outside the ADA that existed at the time of closing and are identified in the Baseline Documentation Report (BDR), will not be charged toward the 5000 square foot aggregate and may be repaired, replaced or reconstructed as long as the foot print of the Agricultural Building or Improvement does not increase.

3) Any increase or expansion to the square footage of an existing structure will be charged toward the 5000 square footage aggregate .

C. Square footage may be subtracted from the Allocation Tracking Form for Buildings and Improvements that were constructed after the CE closed but have since been removed, such as temporary buildings or razed buildings.

D. The Allocation Tracking Worksheet will be kept in the Stewardship file and updated by WAC each time the aggregate square footage changes.

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E. Upon conveyance of a portion of the property, the landowner will notify WAC and identify the aggregate square footage of Agricultural Buildings and Improvements to be assigned to the portion of property to be conveyed in the deed to the property.

F. The Baseline Documentation Report may be updated to reflect construction of new Agricultural Structures and Improvements via an Amendment to the Conservation Easement.

**5. Whole Farm Plan (WFP) Best Management Practices (BMPs) and Agricultural Buildings and Improvements Greater than 5000 sq. ft. Outside the ADA.**

A. WFP planners may need to prescribe Agricultural Buildings and Improvements outside the ADA as part of a Whole Farm Plan (WFP) Best Management Practice (BMP).

B. Landowners of the easement-encumbered property will be charged toward the 5000 square foot aggregate for any structural WFP BMP that creates impervious surface.

C. Agricultural Buildings or Improvements in the ADA must be consistent with the WFP as per the Conservation Easement.

1) Review of Agricultural Buildings and Improvements inside the ADA will be conducted during the WFP Annual Status Review (ASR) to determine if the Agricultural Buildings and Improvements are consistent with the WFP.

2) Recommendations for WFP BMPs outside the ADA will be noted on the ASR and considered for revision as per the Agricultural Program's policy pertaining to WFP revisions.

**6. Maximum Size for Agricultural Buildings and Improvements Greater than 5000 sq. ft. Outside the ADA.**

A. Landowner (Grantor) may only construct Agricultural Buildings and Improvements in the Farm Area outside the ADA greater than the aggregate 5,000 square with WAC (Grantee) approval.

B. WAC will consider requests for the construction of new Agricultural Buildings and Improvements greater than 5000 square feet up to a maximum of 2 percent of the acreage of the Farm Area so long as the proposed buildings and improvements conform to the terms and conditions of the CE and these guidelines.

C. For landowners requesting construction of Agricultural Buildings and Improvements that exceed the aggregate of 2%, an inventory of all structures in the Farm Area will be conducted to determine whether all Agricultural Buildings or Improvements outside the ADA are being used in support of current agricultural operations and whether new buildings or improvements are necessary.

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## **7. Process and Standard of Approval for constructing Agricultural Buildings and Improvements Greater than 5000 square feet Outside the ADA**

The Deed of Conservation Easement defines the process and standard of approval for requests related to constructing Agricultural Buildings and Improvements Greater than 5000 square feet Outside the ADA follows:

- A. Grantor may enlarge or construct Agricultural Buildings in the Farm Area greater than the aggregate 5,000 square foot threshold specified above only with prior approval from the Grantee.
- B. Prior to commencing any proposed action 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 reasonably necessary for Grantee to evaluate such request.
- C. Grantee shall give such approval within 45 days of receipt of Grantor's written request, unless it determines that the proposed Agricultural Buildings and Improvements would be unnecessarily located on productive soils, or would otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property.
- D. Approval shall be deemed given if no written decision is provided by Grantee within 45 days of receipt of Grantor's written request.

## **8. Requests to Locate Agricultural Buildings or Improvements Greater than 5000 sq. ft. Outside the ADA**

- A. Landowner requests to construct Agricultural Buildings or Improvements Greater than 5000 sq. ft. Outside the ADA must include the following information:
  - 1) Written request to activate a reserved right from the landowner stating need for developing a new Agricultural Building or Improvement greater than 5000 square feet outside of the ADA. Request should explain need for structure based on current or proposed agricultural operations and proposed agricultural uses.
  - 2) Map depicting size and location of proposed Agricultural Building or Improvement outside the ADA, soils, watercourses and water features, roads and topographic contour lines depicting slope.

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3) Memorandum describing size (square footage) and location, of Agricultural Building or Improvement outside of the ADA greater than 5000 square feet, distance from nearest watercourse or water feature.

4) Site plan locating structure and showing BMPS necessary to mitigate impact of Building or Improvement on water quality pre and post construction. Site plan should address impacts of sedimentation, erosion and other Non Point Source Pollutants. Plan should include narrative and maps that explain intended agricultural uses and explain how impacts of agricultural uses on water quality will be managed or mitigated. If Building or Improvement is also a WFP BMP, WFP Planner must provide a summary of the need for the proposed BMP and schedule for development and implementation in addition to information above.

#### **9. Standard of Review for Requests to Construct Agricultural Building or Improvements Greater than 5000 square feet Outside the ADA**

**A. Requests from landowners to construct a high tunnel greenhouse, row cover structure or similar agricultural structure that will exceed the aggregate 5,000 square foot threshold outside the ADA and that covers field grown crops may be approved by staff consistent with the approval requirements of these guidelines.**

**B. Staff will notify the Easement Committee of any such structures approved at the staff level.**

C. Plans submitted by landowners to construct Agricultural Buildings or Improvements Greater than 5000 sq. ft. Outside the ADA, **other than those covered by paragraph 9. A above**, will be reviewed by the Easement Committee against the following standards and require unanimous consent by the Easement Committee for approval:

1) Standard of Approval: Grantor may enlarge or construct Agricultural Buildings in the Farm Area greater than the aggregate 5,000 square foot threshold specified above only with prior approval from the Grantee. Prior to commencing any proposed action 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 reasonably necessary for Grantee to evaluate such request. Grantee shall give such approval within 45 days of receipt of Grantor's written request, unless it determines that the proposed Agricultural Buildings and Improvements would be unnecessarily located on productive soils, or would otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property. Approval shall be deemed given if no written decision is provided by

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Grantee within 45 days of receipt of Grantor's written request.

B. Additionally, the interpretation of the Standard of Approval must 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

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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 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 Standard of Approval and the laws and policies identified in paragraphs C through H of the recitals in the Model Conservation Easement above as interpreted and applied by WAC

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(grantee ) to requests by landowners (grantors) to Construct Agricultural Buildings or Improvements Greater than 5000 square feet outside the ADA require review and approval by WAC of the following:

1) Impact of proposed location of building or improvement on agricultural productivity and productive soils. Does location of proposed Agricultural Buildings and Improvements result in it being unnecessarily located on productive soils?

2) Impact of proposed Agricultural Building or Improvement on water resources by reviewing proximity to surface water, slopes and soils. Does proposed location substantially diminish or impair water quality?

3) Impact of proposed Agricultural Building or Improvement to Agricultural productivity. Does proposed location substantially diminish or impair the agricultural productivity?

#### **10. 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.

Appendix "A"

Watershed Agricultural Council - Easement Program

Deed of Conservation Easement - Allocation Tracking Form

Landowner Name: \_\_\_\_\_

Easement Name: \_\_\_\_\_

DEP ID #: \_\_\_\_\_

Original Grantor: \_\_\_\_\_

Chain of Title: \_\_\_\_\_

\_\_\_\_\_

<u>Allocations</u>	<u>Original Allocations</u>	<u>Utilized/Conveyed</u>	<u>Remaining Allocations</u>
Future Acceptable Development Areas (FADA)			
Residential Dwellings			
Subdivisions (additional tax parcels)			
Agricultural Buildings and Improvements			
Recreational Buildings and Improvements			

NOTES: \_\_\_\_\_

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Allocations listed above indicate the remaining permitted allocations associated with this property from the Deed of Conservation Easement at this time. Should a conveyance occur, these allocations are required to be distributed accordingly in the respective deed(s).

Landowner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

WAC Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FINAL**