

WAC Easement Program Guidelines for Pesticide and Fertilizer Application for the Purpose of Forest Management

The following guidelines are established by WAC to create standards for the Application of Pesticides and Fertilizer for the Purpose of Forest Management 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 Application of Pesticides and Fertilizer for the Purpose of Forest Management.

1. The Deed of Conservation Easement's General Definitions and Clauses pertaining to Pesticide and Fertilizer Application for the Purpose of Forest Management.

A. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to the Pesticide and Fertilizer Application for the Purpose of Forest Management. If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to the Pesticide and Fertilizer Application for the Purpose of Forest Management, that version's definitions and clauses serve as the controlling legal language:

1) Forest Conservation Easement Area (FCEA): Within the area identified as FCEA on the Conservation Easement Survey, Grantor has the right to produce timber and other related forest products, including, but not limited to, firewood, maple syrup, Christmas trees, ginseng, and mushrooms as well as the right to engage in all other uses permitted by this Easement. The confinement or pasturing of livestock, the production of orchards, field crops of any kind or forage for livestock is prohibited within the FCEA. No buildings, except Incidental Agricultural Buildings and Improvements, and Recreational Buildings and Improvements pursuant to Section 4, may be constructed in the FCEA.

2) FOREST MANAGEMENT : Trees may be cut to control insects, disease and invasive species, to enhance wildlife habitat, to prevent personal injury and property damage, and for other domestic uses, including firewood and construction of permitted buildings and fences on the Property. The application of pesticide and fertilizer shall be prohibited unless: (i) such use is necessary for forest management; and (ii) such use is in compliance with an approved Forest Management Plan for the Property; and (iii) Grantee has approved such use; and (iv) such use is consistent with the terms of this Easement. Any and all Commercial Forestry activities shall require a Forest Management Plan and a Forest Harvest Plan, approved by WAC or its successor pursuant to Section 14 of this Easement, submitted at Grantor's sole cost, and consistent with the New York City Department of Environmental Protection's *Water Quality Guidelines for Timber Harvesting* or such successor standard approved by Grantee. In the event that Grantor submits a Forest Management Plan and/or a Forest Harvest Plan to Grantee for approval, and Grantee (or its successor pursuant to Section 14 of this Easement) notifies the Grantor in writing that it has no program to approve such a Plan or Plans, Grantor may undertake Commercial Forestry activities so long as the activities are conducted consistent with the NYSDEC Forest Management Stewardship Plans and in

accordance with the technical standards set forth in the New York State Department of Environmental Conservation's "Best Management Practices for Water Quality" field guide or such successor standards.

3) **Forest Management Plan:** A written plan that establishes comprehensive and long-term goals for forest health, management of forest resources, and protection of water quality on the Easement Property, which Plan has been reviewed, updated, and approved by the Grantee at least every ten years.

B. WAC further defines the meaning of the following definitions found in the Deed of Conservation Easement pertaining to Pesticide and Fertilizer Application for the Purpose of Forest Management. These definitions are based upon definitions found in NYS Law pertaining to pesticides:

1) **Pesticide** means: (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans /or other animals, which the department shall declare to be a pest; and (2) any substance or mixture of substances intended as a plant regulator, defoliant or desiccant.

2) **Pesticide use** means performance of the following pesticide-related activities: application; mixing; loading; transport, storage or handling after manufacturer's seal is broken; cleaning of pesticide application equipment; and any required preparation for container disposal.

3) **General use pesticide** means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of Article 33 of the New York State Environmental Conservation Law. These include pesticides that may be purchased "over the counter" without a license.

4) **Restricted use pesticide** means a pesticide that is classified for restricted use` under the provisions of article 33 of the Environmental Conservation Law or under section 3(d)(1)(C) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Purchase and use of such pesticides require a license in the State of New York.

5) **Commercial application of pesticides** means any application of any pesticide except as defined in "private" or "residential" application of pesticides . Commercial application of pesticides includes companies or persons hired to apply pesticides of either general use or restricted use pesticides.

6) **Private application of pesticides** means the application of a restricted use pesticide for the purpose of producing an agricultural commodity: (1) On property owned or rented by the applicator or the applicator's employer; or (2) if applied without compensation other than the barter of personal services between producers of agricultural commodities, on property owned or rented by a party to such a barter transaction.

7) **Agricultural commodity** means any plant or part thereof, or animal, or animal product, produced by an individual (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable individuals) primarily for sale, consumption, propagation or other use by humans or animals.

8) **Residential application of pesticides** means the application of general use pesticides by ground equipment on property owned or leased by the applicator, excluding any establishments selling or processing food and any residential structure other than the specific dwelling unit in which the applicator resides.

2. General Requirements for the Application of Pesticides and Fertilizer for the Purpose of Forest Management.

A. WAC Approval is not required for the application of General Use Pesticides on the Easement Property for the Purpose of Forest Management.

B. WAC approval is not required for the application of fertilizers in any forested areas of the property for the purpose of forest management.

C. WAC approval is required for the application of Restricted Use pesticides on any forested areas of the Easement Property for the purpose of forest management.

D. If the CE restricts application of pesticides and fertilizers to the Forest Conservation Easement Area (FCEA) and landowner wishes to apply Restricted Use pesticides to forested lands in Use Areas other than the FCEA for the purpose of Forest Management, they may do so with WAC's approval following these guidelines.

E. The WAC Easement Committee delegates the authority to the Easement Program staff to review and approve requests, approve with conditions, or deny requests by landowners for the Application of Pesticides and Fertilizer for the Purpose of Forest Management following the standards established by these guidelines.

3. Process and Standard of Approval for the Application of Pesticides and Fertilizer for the Purpose of Forest Management.

The Deed of Conservation Easement defines the process and standard of approval as follows:

- A. Grantor may engage in the Application of Pesticides and Fertilizer for the Purpose of Forest Management only with prior approval from the Grantee.
- B. 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
- C. Grantee reserves the right to request additional information as may be required for the evaluation.
- D. 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.
- E. 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.
- F. Grantee may approve the request, approve with conditions, or deny the request.
- G. 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. Landowner Requests for the Application of Pesticides and Fertilizer for the Purpose of Forest Management.

- A. Landowner requests for the Application of Pesticides for the Purpose of Forest Management should include the following information:
 - 1) Written request to activate a reserved right from the landowner stating need for the Application of Pesticides for the Purpose of Forest Management.
 - 2) Map depicting location of affected areas including topography, watercourses, water features, and forested lands.
 - 3) Memorandum summarizing proposed activities, including period or dates of proposed application, type of pesticide being applied, specific areas/locations, means and rate of

application any state , federal , local permits if required, distance and impact if any on water courses on property, and any proposed Best Management Practices (BMPs) required for application (to be reviewed by WAC Forestry staff)

5. Standard of Review for Requests for Application of Pesticides and Fertilizer for the Purpose of Forest Management.

A. Plans submitted by landowners for the Application of Pesticides and Fertilizer for the Purpose of Forest Management. will be reviewed by the Easement Committee against the following standards as required under the Deed of Conservation Easement and require unanimous consent by the Easement Committee for approval:

- 1) Standard of Approval: 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.
- 2) Conservation Purposes: This Conservation Easement is intended 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.

B. WAC has agreed that its interpretation of the Standard of Approval and Conservation Purposes clauses must be consistent with Sections 9c 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

C. The recitals in the Model Deed of Conservation Easement are as follows:

- 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 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, the Conservation Purposes and Section 9 (C) the "Agreement" as interpreted and applied by WAC (grantee) to requests by landowners (grantors) for the Application of Pesticides and Fertilizer for the Purpose of Forest Management require review and approval by WAC of the following:

- 1) Memorandum summarizing proposed activities. Memorandum will be reviewed by WAC Forestry staff to determine if proposed application is consistent with the Conservation Purposes of the CE and does not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property.
- 2) Map depicting proposed area for application.

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

- A. WAC Easement Program staff shall submit a letter to Grantor no later than 5 business days after the staff makes its decision regarding such request.
- B. Letter to Grantor shall include a copy of any decision document prepared by the staff.
- C. Letter to Grantor shall outline any additional requirements, if the request is approved with contingencies or conditions or if denied, set forth in detail a site specific basis for such denial.

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