

WLRM Section 3 - Conservation Tools in the Toolbox

Disclaimer: The materials produced and distributed by the Community Conservation Committee of the North Carolina Association of Soil and Water Conservation Districts area intended to serve only as general guidance for local soil and water conservation districts involved in working lands preservation. These materials, including example conservation easement documents and all support documents, should not be used in lieu of professional legal advice. The Community Conservation Committee recommends that all legal documents be reviewed by an attorney licensed to practice in the state of North Carolina..

This section provides a summary of programs and methods for furthering working lands preservation in your SWCD. It is not meant to be comprehensively inclusive and SWCD are encouraged to do research on their own or contact resource people for additional information. Funding sources for programs will be covered in Section 4.

General Information Literature

The resources provided are a good place to start discussions with your SWCD supervisors or with your County Commissioners. The following lists of “further information sources” were also provided in the original hardcopy manual. Also available to you are the resource people listed in Section 1. They may be available to assist with preparing presentations or to talk to a local group. In this section we will provide a brief summary of the following; Conservation Easements, Agricultural Districts, Countywide Farmland Protection Plans, Cost of Community Services, and other Local Options.

Further Information Sources

- Farmland Preservation Tools handout. NC Department of Agriculture. 2007. <http://www.ncadfp.org/documents/FarmlandPreservationToolshandout.pdf>
- The Farmland Protection Toolbox fact sheet. American Farmland Trust. 2008. http://www.farmlandinfo.org/farmland_preservation_literature/index.cfm?function=article_view&articleID=27761
- Planning for an Agricultural Future: A Guide for North Carolina Farmers and Local Governments. American Farmland Trust, 2007.
Handout is not available online, but can be ordered at the following website; <http://www.farmland.org/programs/states/nc/default.asp>
- NC General Statutes Chapter 106 Article 61. Agricultural Development and Farmland Preservation Enabling Act. (GS 106-735 to 106-744).
NC General Statutes Look-up at <http://www.ncga.state.nc.us/gascripts/statutes/Statutes.asp>

Conservation Easements

Conservation easements will be discussed in greater depth in WLRM Sections 2, 6, and 7. As a valuable tool in the conservation toolbox, we mention the concept briefly in this section. A working lands conservation easement is a deed restriction voluntarily placed on a property in which development rights and other rights are restricted when they are incompatible with

commercial agricultural and forestry practices. Conservation easements are allowable under the law and defined in GS 121 “Conservation and Historic Preservation Act”. SWCD are eligible to act as easement holders/grantees based on rights listed in GS 139 “District Law”. Term or permanent easements are developed between the landowner “grantor” and a governmental or non-profit organization “grantee”. The non-profit or public agency (easement holder) is responsible for monitoring the easement to ensure that the terms of the agreement are met. Permanent donated easements allow for federal and state tax benefits, as further discussed in WLRM Section 2. The easement value is determined by assessing the fair market value of the land without an easement and then subtracting the value of the land when restrictions are in place.

Further Information Sources

- Protecting Your Farm with a Conservation Easement. Sustaining Working Farms through Conservation Partnership brochure. Conservation Trust for NC. 2007.
Handout is not available online, but the following brochure provides similar information;
<http://www.asapconnections.org/Protecting%20Your%20Farm%20With%20a%20Conservation%20Easement.pdf>
- Conservation Easements. Department of Agriculture and Consumer Services handout.
<http://www.ncadfp.org/documents/ConservationEasementHandout.pdf>
- Agricultural Conservation Easements fact sheet. American Farmland Trust. 2006.
http://www.farmlandinfo.org/documents/27762/ACE_01-2011_.pdf

Agricultural Districts

The Department of Agriculture and Consumer Services houses the statewide program for Agricultural Districts, for more information visit <http://www.ncadfp.org/index.htm>. The purpose of an agricultural district is to protect working lands from non-agricultural development, to increase the identity of the agricultural community with non-farming constituents in the county as well as to protect working lands against nuisance suits. NC General Statute (GS) 106 “Agricultural Development and Preservation of Farmland” gives two options for agricultural districts; Voluntary Ag Districts (VAD) and Enhanced Voluntary Ag Districts (EVAD). Enrollment into both programs is voluntary and the landowner receives some added benefits including public education on agricultural issues, increased nuisance protections, waiver of water and sewer assessments, increased funding eligibility, public hearing requirements for condemnation of land, notification provided to new landowners where property is within a certain distance of a VAD or an EVAD, and enrollment and withdrawal at landowners’ convenience. A county can have a VAD as well as an EVAD; municipalities can also adopt ordinances for farms within the town limits or sign an MOU to support the county ordinance. To obtain copies of model ordinances for VAD, EVAD, or Municipal Districts visit <http://www.cals.ncsu.edu/wq/lpn/modelordinances.htm#intro>.

Benefits VAD

- Protection from nuisance lawsuits based on notices provided to new landowners within a half-mile of an existing VAD.
- Enrolled land receives a public hearing prior to condemnation.
- Possible waiver of water and sewer assessments if no such connection exists at the time of enrollment.

- Possible signage noting boundaries of the district as well as identification of each property enrolled.
- Possible city ordinance flexibility to farming operations.

Requirements VAD

- Property must be participating in a farm present-use-value taxation program as defined in GS 105.
- Property should be managed in accordance with NRCS erosion control practices for highly erodable land.
- The landowner will place a voluntary 10-year conservation agreement on their land that prohibits non-farm use, except creation of three lots or less that meet county zoning.
- The landowner can revoke the agreement with a written notice within 30 days to the board supervising the VAD process.

Benefits EVAD

- All benefits from VAD apply
- Eligibility to receive up to 90% cost-share assistance.
- Priority given on grants from state funding sources.
- Possible waiver of all utility assessments.
- Farm may receive up to 25% of gross sales in non-farm products and maintain its zoning exemption as a bona fide farm.

Requirements EVAD

- The landowner will place a voluntary 10-year conservation agreement on their land that prohibits non-farm use, with the exception of the creation of three lots or less that meet county zoning, this agreement cannot be revoked during the term of the agreement.
- The conservation agreement automatically renews for 3 additional years, unless the landowner provides a written notice within 30 days of the end of the 10-year term.

Process for Establishing a VAD or EVAD

- Begin to review program at <http://www.ncadfp.org/index.htm> and the model ordinances at <http://www.cals.ncsu.edu/wq/lpn/ncordinances.htm#ordinance>. Collect information to present the concept to your supervisors. If they feel that VADs and/or EVADs will be a benefit to the county, proceed to the next step. Visits to surrounding SWCD will illustrate how existing programs were set up.
- Discuss your interest with the Department of Agriculture. Contact Dewitt Hardee for additional information.
- Put together a stakeholder group consisting of landowners from different parts of the county; resource people such as Extension, Planning Department, Farm Bureau, County Commissioners, as well as representatives of agricultural commodity groups, environmental groups, etc. The stakeholder group will be key contacts in determining the desire/need for a VAD or an EVAD in your county. One end result may be the identification of the best group of members to spearhead this effort. If the SWCD is chosen, proceed to the next step. If another group volunteers will lead the project, monitor the process and help where you can.

- Provide information to your SWCD board on the outcome of the stakeholder process. If the consensus is to move forward with the SWCD taking the lead, have the SWCD board adopt a resolution supporting the development of a VAD or EVAD. Have a supervisor present this resolution at the next County Commissioners meeting with any other letters of support from groups that participated in the stakeholder process.
- Once the County Commissioners concur with the SWCD, create a workgroup to determine how the VAD/EVAD should be managed in your county. Draft a local ordinance based on what works best for your county as well as statewide requirements.
- Part of the local ordinance will define the composition of the Agricultural Advisory Board. The board is required to be composed of a representative from each agricultural district. It is further recommended to consider permanent seats for resource group representatives such as the County Commissioners, Planning Department, Extension, SWCD, etc. Length of office as well as how members are appointed and by who should be clearly defined. It is recommended that SWCD and other groups nominate candidates for the VAD board and that the county commissioners make the official appointment. The board will have the following responsibilities;
 - Make recommendations on the establishment of and modification to agricultural districts.
 - Make recommendations on all future ordinances.
 - Hold public hearings on projects likely to affect an agricultural district, including condemnation of land.
 - Advise the County Commissioners on projects, programs, or issues affecting the local agricultural economy and take the lead on applicable projects such as development of a Countywide Farmland Protection Plan (more information below) or installation of regional multi-use processing facilities.
- The local ordinance will also include qualifications the landowner is required to meet such as number of acres to enroll; the current standard is 10 acres.
- The local ordinance will also determine any application fees required to pay for signs and processing the application. Some SWCDs have received the funding they need for signs by soliciting a local sponsor such as Farm Credit or Farm Bureau. Contact surrounding SWCD to get samples of their sign designs as well as recommendations for sign printing companies.
- Once an ordinance is approved by the SWCD, present it for adoption to your County Commissioners as well as to the staff of the Department of Agriculture and Consumer Services. An initial signing ceremony offers an easy public awareness opportunity.
- The Agricultural Advisory Board will meet quarterly or more often if the Board determines it, and should follow all open meetings and open records laws required of a public entity. At the initial meetings, officers will be elected as well as establishing protocol and procedures for running the program. An application for participation in the program will need to be developed and approved; other SWCD will be able to give you examples. All the program

information should be included on a web page, either as a part of a county site or one maintained independently for the VAD/EVAD.

- A written report to the County Commissioners and the Department of Agriculture is required on a yearly basis consisting of a summary of activities and accomplishments of the farmland preservation program.
- If your county adopted their ordinance prior to 2005 a review is suggested. The current ordinance should be compared to model ordinance to ensure the ordinance complies with all statute amendments from 2005.

Further Information Sources

- North Carolina Agricultural Districts. NC Department of Agriculture and Consumer Services brochure. 2007. <http://www.ncadfp.org/documents/VADBrochure.pdf>
- Enhanced Farmland Protection for North Carolina Landowners. Southwestern NC Resource Conservation and Development Council brochure. 2007. <http://www.ncadfp.org/documents/EVADBrochure.pdf>
- Agricultural District Programs Fact Sheet. American Farmland Trust. 2007. http://www.farmlandinfo.org/documents/37067/ag_districts_05-2008.pdf
- North Carolina Voluntary Agricultural Districts – A Progress Report. American Farmland Trust. 2004. http://www.farmlandinfo.org/documents/29926/Voluntary_Agriculture_Districts.pdf
- Right to Farm Laws Fact Sheet. American Farmland Trust. 1998. http://www.farmlandinfo.org/documents/27747/FS_RTF_9-98.pdf

Countywide Farmland Protection Plans

A Countywide Farmland Protection Plan is a local planning tool for working lands and their infrastructural resources to be identified and referenced by the County Land Use Plan. A Countywide Farmland Protection Plan will identify agricultural regions, needs of the agricultural community, as well as spatially displaying local agricultural resources. As the North Carolina landscape becomes more urban, all agricultural planning efforts should involve input from urban citizens and municipal local governments. If assistance is needed, staff at the Department of Agriculture and Consumer Services will do a review of the draft plan prior to the plan being adopted by the County Commissioners. The plan must be approved by the SWCD or the County Agricultural Advisory Board and then sent for final approval by the County Commissioners. Once approved by the Commissioners, it will be submitted to the Department of Agriculture and Consumer Services for acceptance. Having an accepted plan by the Department of Agriculture reduces match requirements for Agricultural Development and Farmland Protection Trust Fund grants for tier II and III counties. A tier I county with an adopted plan has no match requirements. Each plan should cover the following items;

- Existing agricultural activities and agricultural challenges in the county
- Opportunities to maintain/enhance small family farms
- How to address other farmland preservation tools such as agricultural economic development, farm diversification, marketing assistance, finance opportunities, estate planning, etc.
- Inclusion within comprehensive land use plans

- Have a long-term action plan for securing funding with a timeline and funding sources identified.

Further Information Sources

- County Farm & Forest Land Protection Planning. Department of Agriculture 2007. Resource is not found on web, however following website has statewide model farmland protection plan example;
<http://www.ncadfp.org/FarmlandPreservationModel.htm>
- Alamance County: Farmland Protection Plan. October, 2007.
<http://www.ncadfp.org/documents/FarmlandProtectionPlanbound2.25.pdf>

Local Purchase of Development Rights programs (PDR)

Local purchase of development rights programs are authorized statewide under GS106. By 2008, very few counties have one established, included is a summary of some of the programs currently existing in the state.

Orange County – Lands Legacy Program

In 2000, Orange County developed a voluntary land acquisition program to protect critical county natural areas, wildlife habitat, prime farmland, and cultural and historic sites. More information can be found at http://www.co.orange.nc.us/ercd/lands_legacy.asp. Highest priority sites are targeted for acquisition via a two-year action plan. Since 2007, thirty-two sites and a total of 2275 acres have been preserved. Legacy Funding includes sales tax revenues, county bonds, funds generated from new development, as well as state and federal funds. Priority sites include;

- Natural Areas and Wildlife Habitat (NC Natural Heritage sites)
- Prime Forest areas
- Prime or Threatened Farmlands
- Lands of Cultural, Archaeological or Scenic Significance
- Future Parklands
- Watershed Riparian Buffer lands

Further Information Sources

- Lands Legacy Program for Orange County NC. Orange County Environment & Resource Conservation. 2000. <http://www.co.orange.nc.us/deapr/lands%20legacy/landlegacy.pdf>

Forsyth County Farmland Preservation Program

The Forsyth PDR program was the first local program for purchase of development rights created in North Carolina, but has not received any funding since 2000. The program started in 1984 and currently has 25 properties consisting of 1256 acres enrolled. It was funded by county general appropriations and state and federal funds when available. The program is managed by the Forsyth SWCD and contact information is provided at <http://www.co.forsyth.nc.us/CES/Conservation/Default.aspx>. Priority is given to properties based on a soils productivity assessment and site assessment criteria, which include the following parameters;

- Farm size
- Percentage of farm in agriculture

- Proximity to public water and sewer
- Probability of conversion
- Proximity to planned development
- Proximity to Agricultural Priority Areas
- Capital investment in the Farm Operation
- Conservation Program
- Historic, Scenic, and Environmental Qualities
- Specialty Products

Cost of Community Services

A Cost of Community Services Study (or referencing an existing one) can be a valuable tool when speaking to the County Commissioners and the general public regarding the overall benefit of agricultural operations. Residential properties use a greater amount of county services and are a heavier burden on the tax base than keeping the land in working land status. Counties need to balance community goals such as economic development and housing with open space. Of five studies done on Chatham, Wake, Union, Orange, and Alamance, the residential use of taxes per every dollar paid out averages to \$1.35, whereas working lands (at the reduced PUV rate) is \$0.59 and industrial/commercial is \$0.31. The Land Preservation Notebook at <http://www.cals.ncsu.edu/wq/lpn/cost.html> contains local Cost of Community Services Studies that can be used as an example for your county.

Further Information

- Cost of Community Services Studies Fact Sheet. American Farmland Trust. 2007. http://www.farmlandinfo.org/documents/38422/COCS_08-2010.pdf
- Local Government Topics: Costs of Community Services. Local Government Information and Education Network of University of Illinois Extension Service. 2000. <http://extension.illinois.edu/factsheets/LGIEN%202000-001.pdf>

Other Local Options

Agricultural Sustainability

Local programs established to assist local growers with production of food, fiber, and value-added products as well as marketing and sales of products including agritourism and other business activities can help the viability of a county's agricultural community. Some tools include Community Supported Agriculture, farmer markets, pick your own operations, and many others. For more information please contact the Department of Agriculture and Consumer Services' Marketing Division. The CD material includes local ordinances from Davie and Guildford Counties.

Further Information Sources

- Starting Your Agritourism Venture. Department of Agriculture and Consumer Services. Agritourism Office handout. 2006. http://www.ncagr.gov/markets/agritourism/documents/Starting_Your_Agritourism_Venture.pdf
- North Carolina Agritourism Survey Results. Department of Agriculture and Consumer Services. Agritourism Office brochure. 2005.

<http://www.ncagr.gov/markets/agritourism/documents/2005SurveyWithLetter.pdf>

- Business Resources for Agritourism Farmers. Department of Agriculture and Consumer Services. Agritourism Office handout. 2004. 2008 Revision at http://www.ncagr.gov/markets/agritourism/documents/Business_Resources_Agritourism_Farmers.pdf

Local Zoning

It is beyond the scope of this manual to cover all the options available for agricultural friendly zoning. One concept worth mentioning is Agricultural Protection Zoning, where designated regions of the county are restricted to farmland as primary land use as well as reducing residential density allowed in the zone. Another concept is cluster zoning, where houses are required to be grouped together on small lots with communal open spaces designated within the development. Cluster zoning allows for greater stretches of working lands while still supporting development needs. Davie County and Guilford County have passed agritourism/zoning laws to allow more flexibility in the local zoning code for agricultural operations. In 2011, Senate Bill 380 was introduced to clarify the Definition of “Bona Fine Farm Purposes”, allowing for exemptions from municipal zoning and building code enforcements if the property meets specific requirements. At the time of providing this update, SB 380 passed the Senate body and was sent to the House body, it may be voted on this session or next session. Refer to <http://www.ncga.state.nc.us/> to look up the status of the bill.

Further Information Sources

- Agricultural Protection Zoning Fact Sheet. American Farmland Trust. 1998. http://www.farmlandinfo.org/documents/29478/FS_APZ_9-98.pdf

Present-use Value Program

It is beyond the scope of this manual to go into detail regarding the Present-use Value Program (PUV) but it is worth noting since many landowners utilize this conservation tool. PUV is a tool commonly used in NC to lower tax rates and keep the family farm intact or in the family. Lands classified as agricultural land, horticulture land, forest land, and wildlife conservation land and meeting specific criteria can be assessed at a value consistent with its current use and not at market value. Applications can be obtained from the assessor of the county where the property is located.

Further Information Sources

- Present-Use Value Program Guide. North Carolina Department of Revenue, Property Tax Division. 2009. http://www.dor.state.nc.us/publications/puv_guide.pdf
- 2012 Use-Value Manual for Agricultural, Horticultural and Forest Land. North Carolina Use-Value Advisory Board, North Carolina Department of Revenue. http://www.dor.state.nc.us/downloads/uvab_manual_2012.pdf
- Wildlife Conservation Land Program. NC Wildlife Resources Commission. http://www.ncwildlife.org/Wildlife_Species_Con/documents/Introduction_WCLP.pdf

On the Horizon Options

It is worth noting the growing movement for building local, living economies. An example was provided at the 2010 NC Land Trust Assembly meeting closing presentation from Earthwise Company, (<http://www.earthwiselife.com/>). The community represented was a planned development where a portion of the land was set aside for farming activities. A farmer could rent the land to grow produce for the community or the individuals in the community could rent a plot for their own production.

Another growing movement is the community gardens concept, currently being offered in many urban areas in NC. A person can elect to farm a plot within a community common area. In many community garden programs, excess produce is donated to local hunger shelters. For more information visit <http://nccommunitygarden.ncsu.edu/primer.html>.

A third well established movement is the local food co-ops and farmer markets. The US Department of Agriculture maintains information on certified farmer markets and several umbrella organizations are working in this arena, one online directory is Local Harvest, at <http://www.localharvest.org/>. In the 2009 state legislators created a law forming the North Carolina Sustainable Local Food Advisory Council, information about this group can be found at <http://www.ncagr.gov/localfood/>. All of these efforts are part of the localvore movement, an increasing effort to “eat local” thereby reducing your carbon footprint. The great advantage to the farming community is you have a steady local network of consumers that are willing to support local agriculture infrastructure ensuring the preservation of working lands.

Further Information Sources

- Building Communities with Farms; Insights from Developers, Architects and Farmers on Integrating Agriculture and Development. Vickey Ranney, Keith Kirley and Michael Sands. The Liberty Prairie Foundation. <http://www.prairiecrossing.com/libertyprairiefoundation/cwf.pdf>
- Eat Smart, Move More North Carolina: Growing Communities through Gardens. NC Cooperative Extension and Physical Activity & Nutrition Branch, NC Division of Public Health. <http://nccommunitygarden.ncsu.edu/ESMMGardens-LoRez.pdf>

Other General Resources

- The Cost of Community Services in Alamance, Chatham, Durham, Franklin, Gaston, Guilford, Henderson, Orange, and Wake Counties. Mitch Renkow. Department of Agriculture and Resources Economics. North Carolina State University. <http://www.cals.ncsu.edu/wq/lpn/cost.html>
- Davie County Agribusiness Use Ordinance. 2006. http://www.farmlandinfo.org/documents/31672/n_Davie_agribusiness_ordinance.pdf
- Farmland Protection Action Guide; 24 Strategies for California. Institute for Local Self Government. 2002. http://www.ca-ilg.org/sites/ilgbackup.org/files/resources/Farmland_Action_Guide.pdf
- Forsyth County Farmland Preservation Program Guidelines. July 1997. <http://www.cals.ncsu.edu/wq/lpn/PDFOrdinances/ForsythPresProgramSearchable.pdf>

- Woodland Owner Notes: Protecting Working Forests with Voluntary Agriculture District Programs. NC Cooperative Extension.
<http://www.ces.ncsu.edu/forestry/pdf/WON/won44.pdf>
- Southern Woodland Owners & Conservation Agreements: What they think and what to say. A Guide for Land Trusts and Resource Professionals. America Forest Foundation. 2010.
<http://www.forestfoundation.org/publications>
- 2010 Southeastern U.S. Land Trusts Survey Report. Land Trust Alliance. Southeast Regional Program.
<http://atlanticcoastconservancy.org/Documents/2010%20Southeastern%20U.S.%20Land%20Trusts%20Survey%20Report.pdf>
- Keeping the Farm in the Family; Farmland Protection Tools for North Carolina Landowners. Farm Prosperity Project.
<http://www.ces.ncsu.edu/fletcher/programs/herbs/prosperity/brochures/FPP-farmland-protection-tools-brochure.pdf>

Resources on CD Only

- Guilford County Agritourism Ordinance
- Watauga County Introduction Presentation for VAD Board. Jerry Dorsett. 2008
- Haywood County DRAFT Farmland Preservation Plan. 2008