GENERAL LAND USE MANAGEMENT TOOLS AND TECHNIQUES

At the county and city level, planning and zoning are important farmland protection tools. When a local area strives to sustain its agricultural economy and protect farmland, these objectives should be reflected in the planning and zoning process. The most commonly used tools are highlighted below.

Comprehensive Plans

The Comprehensive Plan is the county's documented vision and guidebook for the future. It provides the social, political, and economic frameworks on which local leaders make land use decisions. It explains the county's position on development policy to the public and provides a basis for public decisions on spending over the next 10 to 20 years. North Carolina state law requires jurisdictions that use zoning to have a comprehensive plan to guide development and administration of local zoning.

Comprehensive plans are developed under the leadership of county staff and in collaboration with multi-sector organizations in the county, region, and state. This assures that the outcomes of the plan have the support of everyone affected by it. A comprehensive plan covers a wide range of topics from private land use, to parks and recreation, to housing. The plan is updated every five years and helps elected officials make decisions about development applications, infrastructure development, zoning (where applicable) and other concerns about the county's long-term priorities.

Because of the depth and breadth of the plan's coverage, it is a crucial document in determining the long-term viability of the agricultural sector. Through codified and documented data on agriculture such as maps and coordinates, it gives a visual picture of agriculture's current state and where the future should be headed. More importantly, it also envisions the future needs of agriculture and development and in which areas the two are likely to intersect or collide. While it is focused on the county, its geographic coverage extends to larger areas, such as the state and region, and smaller communities within it. The coverage allows more specific citizen input and detail for the planned development of a particular section.

While comprehensive plans will vary in specifics, all plans are roughly similar structures. It includes: 1) a jurisdiction's goals and vision, 2) objectives, policies to meet those objectives, and 3) implementation strategies and the schedule for updating the plan. The plan may also include separate elements to address specific areas of concern, such as local food manufacturing and marketing. Davidson County's Land Development Plan includes several agriculturally related objectives including the protection of agricultural land and development of long term plans.

Zoning[1]

Zoning is a common land use planning tool or law that divides a county or town into districts, or "zones" that specify allowable or conforming land uses. For example, manufacturing may be allowed in the industrial district but housing is not. Zoning codes also prescribe the intensity or density of the use such as the number of residential units per acre or apartment buildings with ceiling limits. Codes are usually attached with contingent clauses to provide added protections to neighboring property owners. The official zoning map allows property owners to see the type of restrictions that apply to their land. Zoning codes can be amended in later periods so farmers should look carefully at the list of allowed uses to be sure that all farm activities of interest in that area are included.

According to North Carolina state law, new and existing bona fide farms are exempt from county zoning. However, as agricultural processing approaches the scale of a commercial manufacturing facility, the agricultural nature of the land use is put under question. In addition, counties do not have the right to regulate forestry activity, as long as that activity is a bona fide farm activity or meets the requirements to be exempt from county regulation under state law.

Cities and towns still retain the right to exercise zoning powers and their zoning codes often do not allow certain agricultural uses within city limits. Except for planning and zoning authority specified in local laws and for state and federal requirements, cities are prohibited from restricting forestry activities when the landowner is following a forestry management plan or the land is taxed on the basis of its present use value as forestland.

Under House Bill #607,the 2005 Agricultural Development and Farmland Preservation Enabling Act, cities may amend their ordinances applicable to their planning jurisdiction to provide flexibility to farming operations that are part of VAD programs. Some municipalities have also received authority through state bills to provide exemptions for farming or forestry operations that meet certain criteria.[4]

Several different zoning techniques that may be used to encourage the protection of farmland are outlined below.

> **Performance Standards -** Performance standards can minimize the impact of development on farming. They may be used to steer development away from prime agricultural soils and existing farm operations. They usually are applied on a case-by-case basis, and they require discretionary decisions by a local planning board. Some factors that can be used as performance standards are:
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> - Potential for conflict with agriculture.
> - Need to minimize the amount of converted agricultural soils.
> - Agricultural productivity of the land and soils involved.
> - Compatibility with existing or permitted uses on adjacent property.

[1] Some material referenced from "Planning for an Agricultural Future: A Guide for North Carolina Farmers and Local Governments."

Cluster Zoning - Cluster zoning ordinances allow or require houses to be grouped close together on small lots to protect open land. They increase density on part of a parcel while leaving the rest undeveloped. This allows the construction of the same number of houses, while minimizing the impact to the area's natural resources.

For example, the zone's residential density is one unit per five acres and the parcel in question is 100 acres. This parcel could be divided into either 20 5-acre parcels or 20 1-acre parcels and an 80-acre undeveloped parcel. In both examples, the result is 20 building lots (not considering the 80-acre parcel as a separate building lot) with a density of one unit per five acres. In the latter example, however, a relatively large, agriculturally viable parcel remains.

Cluster subdivisions may keep land open for future agricultural use, but generally they are not designed to support commercial agriculture. In addition, clustering may create tension between residential and agricultural land uses if new neighbors object to the sights, sounds and smells of commercial farming. To increase its usefulness as a farmland protection tool, provisions should be made to protect commercial farming or recognize that cluster arrangements may be more appropriate near less-intensive farming operations.

Sliding Scale Zoning - Sliding scale zoning uses a scale to determine the number of lots that potentially could be developed in an area. Owners of smaller parcels are allowed to divide more land into lots than are owners of larger parcels. To keep farmland in productive use, maximum lot sizes (usually two or three acres) typically are established. Non-farm development is directed to less productive land.

Large-Lot Zoning - Generally, large-lot zoning (that designates minimum lot sizes as small as five to ten acres) is not considered a farmland protection technique. In fact, it may encourage the premature conversion of farmland since it often results in the purchase of more residential acreage than homebuilders actually want or need. Large-lot zoning is often used in conjunction with lists of "permitted by right" uses that fail to view agricultural areas as important commercial zones worthy of special protection from incompatible uses.

Agricultural Protection Zoning (APZ) - Agricultural protection zoning stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development. For APZ to be effective, the area's farming industry must be profitable, and farmers must be committed to keeping their land in production. Agricultural protection zoning ordinances designate areas where farming is the primary land use. They discourage development that could impair the land's use for commercial agriculture and they restrict the density of residential development. They generally require building on small lots as opposed to dividing tracts into large, equally sized lots. Most ordinances make use of a fixed density, for instance, Montgomery County Maryland allows only one dwelling for every 25 acres. Others are based on a sliding scale, with the dwelling and acreage allowances more flexible.

Overlay Districts - Some communities have used agricultural overlay districts to direct development away from prime farmland. While overlays lessen the impact of development on agriculture, they generally regulate how–not if–farmland is developed. So far, such districts have not been used to change underlying density requirements or limit non-farm uses. Agricultural overlay districts can be used to trigger cluster zoning provisions, buffer strips or other performance standards.

Subdivision Regulations

Municipalities and counties typically have local laws to control how property owners divide land into smaller parcels and these subdivision ordinances include minimum requirements for water supply, road construction, setbacks, and other public safety considerations. Ordinances usually require a map that shows all the new parcels being created. Minor subdivisions may be exempt from formal review, but the Planning Commission typically reviews all subdivision proposals. It often calls a public meeting as part of the review process to provide community members—including farmers—an opportunity to comment. Once approved, a subdivision map is recorded at the courthouse as a permanent record of the change in property lines. If a VAD is nearby, some local laws require a notice of that district to be recorded with the subdivision map.

SPECIFIC FARMLAND PROTECTION TOOLS AND TECHNIQUES

Voluntary Agricultural Districts

In 1985, the North Carolina General Assembly, through the Farmland Preservation Enabling Act, set forth the concept of "voluntary agricultural districts" as an effective and politically viable way to protect North Carolina farmland. Voluntary Agricultural Districts (VADs) form partnerships between farmers, county commissioners, and land use planners in order to promote and protect agriculture as an integral part of the County.

Half of North Carolina's 100 counties (including Davidson County) have passed ordinances establishing VADs since 1985, and in doing so, commissioners appoint a local board to oversee the program. This board determines eligibility and guidelines for enrollment, specific to each county. The Davidson County Voluntary Farmland Preservation Program Ordinance states its purpose to provide the following benefits to farmers and county residents:

- The program preserves and maintains agricultural areas within the County;
- The program informs non-farming neighbors and potential land purchasers that the participating farm may emit noise, dust, and smells (this feature may help avoid conflicts between neighbors and potential nuisance claims);
- The program gives the farming community a better voice in Davidson County policy affecting farmland;
- Farmer participation in the program is voluntary and the farmer may terminate his/her participation at any time;
- The program requires the Davidson County Commissioners to use farmland "as a last resort" if they are attempting to condemn county lands;
- The program would provide green space and natural resources as the County's population and development expands;
- The program maintains opportunities to produce locally grown food and fiber.

An agricultural district is initiated when interested landowners submit a proposal to the Davidson County Agricultural Advisory Board. The district shall contain a minimum of 5 acres for horticultural use, 10 acres for agricultural use, and 20 acres for forestry use. This includes leased and/or rented land.

Enhanced Voluntary Agricultural Districts

Authorized in 2005, Enhanced Voluntary Agricultural Districts (EVAD) create a new category that offers landowners an additional tier of benefits, if they are willing to waive their right to withdraw from the VAD program at any time. These additional benefits include:

1. Enrolled farms can receive up to 25 percent of revenue from the sale of other non-farm products, while still retaining their bona fide farming exemption from county zoning.
2. Enrolled farms would have lower cost-share requirements for NC Agricultural Conservation Cost Share funds.
3. Counties and cities may hold all utility assessments in abeyance for any enrolled farms that choose not to connect to the utility lines.
4. State and local agencies are encouraged to tie additional future benefits and funding priority to participants in the EVAD, given their commitment to maintain their farms.
5. Municipalities are explicitly authorized to adopt their own VAD ordinances, including the EVAD option.
6. Cities are authorized to amend their zoning ordinances to provide greater flexibility and stability to farming operations. This can be particularly important to farms that are newly included within expanded extraterritorial jurisdiction lines.

Agricultural Conservation Easements

In general, landowners possess a variety of rights to their property, including the rights to use water resources, harvest timber or develop the property consistent with local regulations. Some or all of these rights can be transferred or sold to another person. The mechanism for transfer is known as Agricultural Conservation Easements (ACE), which includes both the donation of rights as well as the purchase of rights (also known as Purchase of Development Rights programs (PDR)). Such programs enable landowners to voluntarily separate and sell their right to develop land from their other property rights. Participating farmers are typically offered the difference between the restricted value of the land and the fair market value of the land. A permanent conservation easement is recorded in the land records binding all future owners. The land remains in private ownership and on the tax rolls.

Conservation Easement

Whether the program is called a Purchase of Development Rights, or Agricultural Conservation Easement Program, the same basic principles apply. Restrictions are placed on the agricultural property, which will limit the use of the property to agriculture and prevent its subdivision in a manner that will harm its agricultural viability. The conservation easement is attached to the deed of the property in order to ensure that the aforementioned restrictions apply to all future owners of the property. Typically, landowners either donate the easement to receive a tax shelter, or receive remuneration from the sale of the easement. Property generally faces lower property tax assessments, however, the value of the land is lowered and the use of the land is limited.

Local PDR programs can prevent development that would effectively eliminate the future possibility of farming in an area. Selling an easement allows farmers to cash in a percentage of

the equity in their land, thus creating a financially competitive alternative to development. Agricultural producers often use PDR program funds to buy and/or improve land, buildings and equipment, retire debt and increase the viability of their operations. The reinvestment of PDR funds in equipment, livestock, and other farm inputs also may stimulate local agricultural economies.

Benefits

- Protects farmland permanently, while keeping it in private ownership.
- Participation in PDR programs is voluntary.
- Allows farmers to capitalize on unrealized assets–their land.
- Can be implemented by state or local governments, or by private organizations.
- Can provide farmers with a financially competitive alternative to development.
- Can protect ecological as well as agricultural resources.
- Removes the non-agricultural value of land, which, in some places helps keep it affordable to farmers.

Drawbacks

- It is expensive.
- Can be oversubscribed. In North Carolina, funding for PDR has been limited, with demand far exceeding available funds.
- Can be time consuming to purchase easements is time consuming. Participants in the State program generally must wait at least a year before all details regarding their easements are finalized.
- Requires an ongoing investment of time and resources to monitoring and enforcing easements.

Agricultural Conservation Easements in North Carolina

The conservation easement is the legal instrument that protects the land for agriculture over time. It is a voluntary deed restriction that landowners place over their own land. Ownership is maintained and the land may be sold or passed to heirs, however, future owners must abide by the easement. Most conservation easements are permanent. The farmland owner retains all other rights of ownership and can continue to farm the land as he or she did before. The land remains private and on the tax rolls.

Because agriculture is always evolving, agricultural conservation easements must be flexible and tailored to meet its ever-changing conditions. Generally, they:

- Extinguish virtually all non-farm development rights (i.e., the right to build residential or non-agricultural structures).
- Limit future uses of the land that degrade the agricultural value or productivity of the land.
- Encourage the business of farming.
- Permit the construction of new farm buildings and farm employee housing.
- Do not require public access.

Appendix C: Agricultural Land Preservation Techniques

Landowners in North Carolina must work with a government entity, such as a county or Soil and Water Conservation District (SWCD), or a conservation organization, such as a land trust, to agree to develop the conservation easement and monitor the property to be sure that the terms of the easement are fulfilled in perpetuity. Landowners who *donate* an agricultural conservation easement may receive a federal income tax deduction, as well as a reduction in the value of the property for estate tax purposes. North Carolina has a state conservation tax credit available for donations of property or easements for conservation purposes.

The effectiveness of PDR programs depends on how well communities address several key issues. These include deciding what kind of farmland to protect, which geographical areas to focus on and how to set priorities; what restrictions to put on the use of the land; how much to pay for easements; how to raise purchase funds; how to administer PDR programs; and how to monitor and enforce easements.

Setting Priorities

Setting priorities for a PDR program is an exercise in achieving balance. Since the program is voluntary, it needs to be attractive to the farmers who own the county's prime agricultural resources. Flexible easement conditions and reasonable prices to facilitate participation by farmland owners are as important as raising the public funds to buy the easements. The process of setting priorities assumes funding and participation. It takes a number of forms.

With the development of Geographic Information Systems (GIS), strategic farmland mapping is a relatively new expression of a jurisdiction's priorities. It is a very effective way to graphically depict what are the most important and the most vulnerable land so that purchases with limited funds can be strategic. This sort of mapping is also an indispensable tool for education of the public and local officials about the connection between the agricultural resources and public infrastructure decisions.

Eligibility criteria are minimum requirements for participation. Sometimes they are reflections of purpose clauses or other legal requirements in state PDR enabling legislation or local ordinances. They often include categories such as location, develop-ability, parcel or farm size, soil quality, and stewardship provisions. These criteria are the first round of a selection process because they decide who can apply to sell easements.

Once applications are received, a ranking formula is used to decide the order in which offers will be made until the funds allocated to that 'batch' of properties is spent. It is a means of stating preferences among eligible applicants. Because the goal of the program is the long-term protection of the land base, ranking formulas typically are heavily weighted for soil quality and size characteristics and for adjacency to other farmed and/or protected land. However, they often contain categories of points measuring economic productivity, capital investment, ease of development/threat, and degree of public policy support (i.e., agricultural protection zoning) context for the purchase.

Appendix C: Agricultural Land Preservation Techniques

Determining Easement Value

In general, the value of an easement is the fair market value of the property minus its restricted value, as determined by a qualified appraiser. For example, if the market value of an unprotected parcel of farmland is $200,000, but worth only $100,000 if protected with an agricultural conservation easement, then the farmer is paid the difference of $100,000 for selling the development rights. Landowners may choose to donate some or all of the value of their development rights as a way to permanently protect their farmland and potentially reduce income and estate taxes.

Program Costs

Most PDR programs (including North Carolina's) require a local dollar match from the land owners, a land trust, county or municipal government, or other another source for the implementation of PDR projects. If a county is to implement its own PDR program, as is the interest in Davidson County, the county government must provide funding to leverage additional state and federal dollars even for basic program costs such as easement management and monitoring. A partnership with a competent entity, such as a land trust, is often an effective way to start a county program by reducing cost and developing institutional background and experience.

The following outlines several ways local communities can finance their PDR programs. There are, of course, many other innovative ways to fund land preservation.

Bonds - In the past decade, many North Carolina communities have recognized that farmland conservation is a long-term investment. While bonding has been successful in other States, no North Carolina county has bonded directly for farmland protection. Wake County issued bonds for watershed protection, with a portion being used for farmland conservation[2]. Orange County has issued bonds for public recreation facilities and has matched the amount with a general appropriation for farmland protection.

General Revenues - Other communities have set aside annual appropriations to pay for farmland protection projects by using current revenues. The Counties of Buncombe, Orange, Currituck, Rowan, and Forsyth have all used general appropriations to fund conservation easements.

Real Estate Transfer Taxes – Many states and local governments fund the purchase of development rights through real estate transfer taxes at a rate of 1% to 2% of the transaction value. This option was not available in North Carolina until less than a year ago. A change in State law will allow a community to link the revenue needed to preserve farmland to the source of development pressure that is causing farmland transition. Most areas exempt low income and elderly from the requirements.

[2] http://www.wakegov.com/parks/openspace/default.htm

Purchase of Development Rights (PDR) Grants - In 1985, the North Carolina Department of Agricultural and Consumer Services established an Agricultural Development and Farmland Preservation Trust Fund (ADFPTF), to act as the primary state-wide purchaser of agricultural conservation easements (PACE). From 1998- 2002, the ADFPTF gave out $2.4 million in five grant cycles, protecting 4,412 acres on 33 farms. The General Assembly has only appropriated minimal funding since then.

House Bill 607, in 2005, revived the fund for $8 million, which is now guided by a 19 member advisory committee providing recommendations to the Commissioner of Agriculture, although funding was allocated until the 2007 budget. It has a particular interest in supporting local VAD programs. In 2006, five pilot programs promoting local partnerships, conservation easements and the development of VADs, received grants.

Additionally, the Clean Water Management Trust Fund issues grants to local governments, state agencies, and conservation nonprofits to purchase conservation easements on farms that serve as riparian buffers to priority waterways. The North Carolina Tobacco Trust Fund Commission has provided funding to land trusts to purchase development rights on tobacco farms in transition.

At the federal level, Federal Farm and Ranch Land Protection Program (FRPP) makes grants available for conservation easements on a nationally competitive basis. Several land trusts (Piedmont Land Conservancy, Tar River Land Conservancy, Land Trust for Central NC, etc.) as well as counties (Wake and Durham) have used these funds to protect farmland in North Carolina.

Public/Private Partnerships - Some communities have successfully used partnerships with private organizations to facilitate their PDR programs. In some areas, local land trusts, once formed primarily by conservationists concerned about vanishing habitat and open space, have formed to tackle the challenges of preserving farmland. It is possible for a private land trust to have the needed easement settlement and administration expertise that communities may lack.

For example, a land trust may play a key role in assembling PDR applications; holding, monitoring and enforcing easements; managing the PDR program; or providing a portion of the local match as in-kind credit or in cash. In addition, land trust involvement may increase the incentive for farmer participation, since landowners who donate an easement or a portion of their property to a qualified conservation organization such as a land trust or Soil and Water Conservation District may receive a federal tax deduction, thus offsetting some of their capital gains tax liability.

Stewardship and Monitoring

When landowners sell or donate an agricultural conservation easement to the State, municipality or a qualified nonprofit conservation organization, that agency or organization then 'holds' the easement. The holder of an easement is obligated to monitor the land involved and uphold and enforce the terms of the agreement.

Known as stewardship, the process of holding and maintaining easements is an important consideration to any PDR program. Good stewardship will help ensure the perpetual nature of the easement. The entity holding the easement should set up a system for administering, monitoring and enforcing the easement terms. That involves creating baseline documentation, maintaining a good working relationship with the landowner, monitoring the property, and, if needed, addressing violations.

Transfer of Development Rights (TDR)

Transfer of development rights programs, also known as density exchange programs, allow landowners to transfer the right to develop one parcel of land to a different parcel of land. (By contrast, cluster zoning usually shifts density within a parcel.) TDR programs can protect farmland by shifting development from agricultural areas to areas planned for growth. ***It is important to recognize that TDR programs do not reduce the number of building rights. TDR programs simply reallocate them geographically.***

Since TDR programs are based on having a definable right to development, any area seeking to implement such a program must have a means, preferably statutory, to allocate such rights. Typically this is done through zoned density and in areas without zoning, may be achieved through an assignment of engineering capacity in accordance with subdivision regulations. Without a means to assign such development rights, a TDR program simply cannot be implemented.

The TDR legislation itself provides the legal framework under which development rights are transferred from one lot, parcel or area of land in any sending district to another lot, parcel, or area of land in one or more receiving districts. To implement TDR, receiving and sending districts are designated and mapped in accordance with a comprehensive plan. Sending districts may include agricultural land and the receiving districts must have the infrastructure needed to support increased development. Development rights are documented as conservation easements that are enforceable by the town or other designated entity. They may be bought or sold by the municipality for deposit in a development rights bank.

Flexibility is important throughout the TDR process. For TDR to work, communities must build consensus on its use as a way to protect resources and direct future growth. A market must exist for both the development rights (either in the private sector or via a community development rights bank) and the higher density development that will result. While the TDR technique holds promise in theory, it has not been greatly utilized in North Carolina due to the complexity of its

administration and its unproven track record. However, Orange County is currently in the third and final phase of a study to develop a TDR program.

Because residential TDR programs are notoriously hard to implement, variations have been adopted to allow the application of a residential sending unit to either an environmental or commercial receiving purpose. While this is not a common practice and does not involve like kind and quality exchange, it has been used to some success in the United States, most specifically the States of Colorado, Washington, Pennsylvania, and Maryland. An example of such application is St. Mary's County Maryland.

> ***St. Mary's County*** in Maryland also allows the use of TDRs to enhance the maximum footprint of a commercial structure using TDRs in all but three zoning districts; Residential - High Density, Industrial (I) and Commercial Marine (CM). Each TDR can be used to increase the building footprint by 2,000 square feet up to 60,000 square feet, where allowed, beyond which TDRs can be used to increase the building foot print in 1,000 square foot increments. The TDR program allows developers a fee in lieu option that is equivalent to $12,000 per TDR and sets a de facto TDR price cap at the fee in lieu rate.
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> Because it is uncommon for commercial development to exceed the allowed maximum lot coverage ratios and building footprints, TDRs have only been used once on a commercial project. This project is currently being submitted for Commissioner approval and involves a 90,000 square foot expansion to a 50,000 square foot retail facility. According to St. Mary's Land Use and Growth Management Department staff, the project had little difficulty attracting TDR sellers with most TDRs transferring between $8,500 and $10,000 per right. In terms of the cost of the development project, TDRs added approximately $10.00 per square foot to the cost of new construction.

Agricultural Tax Relief

Tax relief is an important issue for farmers. Farms need land to operate and property taxes on farmland are a significant expense. Taxes on farm buildings are often substantial as well. Farmers often say, "Cows don't go to school," which reflects the concept that taxes on agricultural land should be proportionate to its demand on municipal services and its ability to generate income. As proven in over 200 County Cost of Community Services (COCS) studies, farmland provides more in property tax revenues than it requires in public services, keeping it in production may help control the cost of community services.

Since overtaxed agricultural land may be more susceptible to conversion to non-agricultural uses, tax relief measures may also be considered a farmland protection tool. The expense of property taxes may discourage farmers from buying land and can force existing farmers to sell. Farmers' savings from property tax relief programs can be significant and may make the difference between staying in business and selling out. Several federal, state and local programs now exist to offer various kinds of property tax relief for farmers.

Appendix C: Agricultural Land Preservation Techniques

Property - Present Use Value assessment allows for agricultural and forested land to be taxed at its farming value, rather than market value for development. When land is no longer in agricultural production, the owner is subject to a rollback penalty of the deferred taxes for the year of disqualification and the three preceding years, with interest. Owners of agricultural land need to apply to the county tax assessor to receive this assessment. Farmers are entitled to a state income tax credit equal to the amount of property tax paid on farm machinery, attachments and repair parts.

Sales - Commercial farms can receive an exemption for sales tax on items used in their farm operations, such as farm machinery, containers, tobacco drying equipment, grain storage facilities, fuel, potting soil, feed, seed, and fertilizers. Farmers must obtain an exemption number from the North Carolina Department of Revenue.

Estate - The donation or sale of an agricultural conservation easement usually reduces the value of land for estate tax purposes. The Internal Revenue Code also contains certain valuation exemptions, which can reduce estate taxes for working farms.

Income – Local jurisdictions may use tax policies to stimulate investment in agricultural sectors. In other states, this has included providing incentives such as a reduction in property taxes for participants in VAD programs or the elimination of business taxes for value-added processing facilities.

Right To Farm Laws

The continued development of agricultural areas has increased the potential for conflicts between farmers and their neighbors. North Carolina implemented Right to Farm laws to protect farm and forestry operations from being declared a nuisance as long as they have been in operation for at least one year. They are, however, not protected if there is evidence of negligence or improper operation. Other state protections include the notice of proximity provision which is provided as a benefit for participants in a VAD program, and the pre-litigation mediation of farm nuisance disputes. With state authorization, counties have the power to adopt stronger Right to Farm laws.

Definition of a Farm

The State of North Carolina (N.C. Gen. Stat. § 153A-340 (2006)) defines *bona fide farm purposes* to include:
…the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products as defined in G.S. 106.581.1 having a domestic or foreign market.

Swine production in the State of North Carolina is treated as a special case, and local governments may regulate swine facilities designed to handle 600,000 pounds of livestock or more annually.

Agricultural land is defined as: *Land that is part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program.*

Horticultural Land is defined as: *Land that is … engaged in the commercial production or growing of fruits or vegetables or nursery or floral production.*

N.C. Gen. Stat. § 105-277.3 (2006) provides further specifics for the three classes of farmland. Agricultural and horticultural land must produce and average gross income of at least $1,000 and be under a sound management program. Forestland must be following a written sound forest management plan for the production and sale of forest products. Agricultural land must include 10 acres, forestland must include 20 acres, and horticultural land must include 5 acres in production.

Appendix C: Agricultural Land Preservation Techniques