

Voluntary Agricultural Districts and Enhanced VAD Update



Updating VAD Ordinances

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Voluntary Agricultural Districts Updates

- N.C. General Statutes Chapter 106, Article 61: The Farmland Preservation Enabling Act allows local governments to adopt ordinances which provide for Voluntary Agricultural Districts
- G.S. 106-738(b): The purpose of such agricultural districts shall be to increase identity and pride in the agricultural community and its way of life and to ***decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors***, and other negative impacts on properly managed farms.
- VAD Statute Updated Most Recently in 2018 and 2021
- Local governments need to update ordinances to comply with the statutory changes

Components of a VAD Ordinance

- Required in ordinances:
 - Qualifying Farmland
 - Creation of districts
 - Agricultural advisory board
 - Record notice of proximity to farmlands
- Optional in ordinances:
 - Public hearings on condemnation of farmland
 - Waiver of water and sewer assessments
 - Enhanced Voluntary Agricultural Districts
 - 10-year irrevocable Conservation Agreement
 - Waiver of utility assessments
 - 90% cost share
 - EVAD may receive priority consideration for grants.

Voluntary Agricultural Districts Update

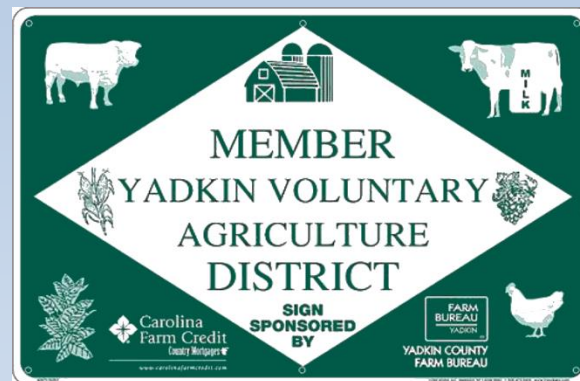
- G.S. 106-737: Qualifying Farmland
 - Replaces “definition of agriculture” with “bona fide farm” as one of three statutory requirements to be qualified farmland
 - Bona fide farm (G.S. 106-743.4(a) and G.S. 160D-903): Production and activities relating or incidental to the production of:
 - Crops, Grains, Fruits, Vegetables, Ornamental and flowering plants, Dairy, Livestock, Poultry, and all other forms of agriculture, as defined in G.S. 106-581.1
 - G.S. 106-581.1: Crops, Horticulture, Forestry, Livestock, Dairy, Poultry, Horses, Bees, Aquaculture, Agritourism and value-added operations for items produced on the farm, Public or private grain warehouse or warehouse operation, and General farm operations

Voluntary Agricultural Districts Update

- G.S. 160D-903: Sufficient evidence that the property is being used for bona fide farm purposes:
 - A farm sales tax exemption certificate issued by the Department of Revenue.
 - A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
 - A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
 - A forest management plan.
- County Zoning regulations do not affect property used for bona fide farm purposes, including bona fide farms in a municipality's extraterritorial jurisdiction (ETJ)

Voluntary Agricultural Districts Update

- G.S. 106-737: Qualifying Farmland
 - New requirement: The form of the conservation agreement **shall** be approved by the agricultural advisory board.
- Action Items:
 - Update ordinance to require VAD farms are used for bona fide farm purposes, as that term is defined in G.S. 106-743.4(a) and G.S. 160D-903
 - The form of the conservation agreement shall be approved by the agricultural advisory board



Qualifying Farmland

- To qualify for inclusion in an Ag District, farmland **must**:
 - Bona fide farm (G.S. 106-743.4(a) and G.S. 160D-903)
 - If designated by the United State Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) as Highly-Erodible Land (HEL), the land must be managed in accordance with NRCS practices for highly erodible land
 - Subject to a 10-year Conservation Agreement
 - VAD: Revocable with written notice
 - Enhanced VAD: Irrevocable and must be recorded



Voluntary Agricultural Districts Update

- G.S. 106-738: Voluntary Agricultural Districts
 - Clarifies that the execution of the conservation agreement is what “triggers” the establishment of the VAD.
 - The ordinance shall provide the minimum size, including acreage; number of tracts; and appropriate proximity of multiple tracts of agricultural land, forestland, or horticultural land that may comprise a voluntary agricultural district.
 - Eliminates the requirement that each district have a representative on the Agricultural Advisory Board
 - Clarifies the purpose of VADs from “increase protection from nuisance suits” to “decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors.”

Voluntary Agricultural Districts Update

- G.S. 106-738: Voluntary Agricultural Districts
- Action Items:
 - Update ordinance to eliminate the requirement that each district have a representative on the Agricultural Advisory Board (if applicable)
 - Update ordinance to provide the minimum size, including acreage; number of tracts; and appropriate proximity of multiple tracts of agricultural land, forestland, or horticultural land that may comprise a voluntary agricultural district.
 - Update publications for the change in one of the statutory purposes of the program: decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors
 - Update administrative process for when a VAD is established

VAD Benefits

- G.S. 106-739. Agricultural advisory board
 - **Must** be formed to comply with statute
 - Advises Board of Commissioners/City Council on agricultural issues
 - If authority is delegated: establishment and modification of voluntary agricultural districts
 - If ordinance includes public hearing provision: holds public hearings on public projects affecting agriculture, especially condemnation of farmland



Voluntary Agricultural Districts Update

- G.S. 106-739: Agricultural Advisory Board
 - Adds clarifying language that the agricultural advisory board **shall** be “organized and appointed by the board of county commissioners or the city council adopting the ordinance.”
 - Adds “or decisions” to the list of authority that a county or city may confer to the VAD board
 - Elaborates on delegated authority:
 - “The board of county commissioners or the city council may make decisions regarding the establishment and modification of voluntary agricultural districts or may delegate that authority to the agricultural advisory board. If the authority is delegated to the agricultural advisory board, the agricultural advisory board's decisions shall be appealable to the board of county commissioners or city council by an owner of land that has been denied enrollment in a voluntary agricultural district or has been removed from a voluntary agricultural district by the agricultural advisory board.”

Voluntary Agricultural Districts Update

- G.S. 106-739: Agricultural Advisory Board
 - Adds to the list of authority that may be conferred to the VAD board:
 - “Execute agreements with landowners necessary for enrollment of land in a voluntary agricultural district.”
 - Adds the following requirement:
 - “The members of the agricultural advisory board **shall** be chosen to provide the broadest possible representation of the geographical regions of the local government and to the extent possible, all segments of agricultural production existing within the local government. A majority of the members of the agricultural advisory board shall be actively engaged in agriculture.”
 - Adds language to allow for administrative support:
 - “The agricultural advisory board may, at the discretion of the board of county commissioners or the city council, utilize an existing local government agency for the purpose of administration, record keeping, and other related tasks or duties.”

Voluntary Agricultural Districts Update

- G.S. 106-739: Agricultural Advisory Board
- Action Items:
 - Update ordinance to determine if the Agricultural Advisory Board or the Board of Commissioner/City Council makes decisions regarding the establishment and modification of voluntary agricultural districts
 - Update ordinance for membership of the Agricultural Advisory Board:
 - Broadest possible representation of the geographical regions of the local government
 - All segments of agricultural production existing within the local government (to the extent possible)
 - Majority of the members are actively engaged in agriculture
 - Update if a local government agency will formally provide administrative support

Voluntary Agricultural Districts Update

- G.S. 106-741: Record of Notice of Proximity to Farmlands
 - Clarifies that record notice must be provided on the public record for properties within ½ mile of “the property line of any tract of land enrolled in a voluntary agricultural district.”
- Action Item:
 - Ensure that record notice mechanisms (GIS, deed notation) are measuring ½ mile from the property lines of VADs, rather than from the center of the parcel



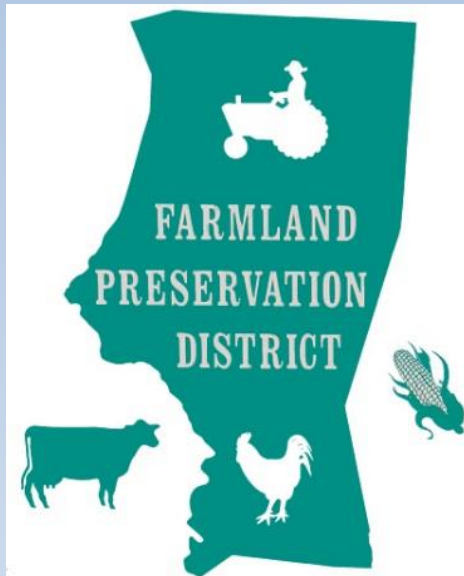
VAD Benefits

- G.S. 106-741: Record of Notice of Proximity to Farmlands
 - “All counties shall require that land records include some form of notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of the property line of any tract of land enrolled in a voluntary agricultural district.”
 - Geographic Information System (GIS)
 - Deed notation
 - Signage



Voluntary Agricultural Districts Update

- Additional Updates
 - Clarified language from “county” to “local government”
 - Counties and Cities may adopt VAD ordinances
 - Added the requirement of reporting the number of enrolled farms and acres to the annual report for the N.C. Department of Agriculture and Consumer Services



VAD Benefits

- The following three slides are optional provisions for VAD ordinances
- It is encouraged that counties adopt these provisions to provide the maximum benefit to VAD landowners

VAD Benefits

- G.S. 106-740: Public hearings on condemnation of farmland
 - “...**may provide** that no State or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district under this Part or an enhanced voluntary agricultural district under Part 3 of this Article until such agency has requested the local agricultural advisory board established under G.S. 106-739 to hold a public hearing on the proposed condemnation.”
 - The Ag Advisory Board submits written findings and a recommendation to the decision-making body of the agency proposing acquisition.
 - Have 30 days after receiving a request to hold the public hearing and submit its findings and recommendations to the agency.
 - The agency may not formally initiate a condemnation action while the proposed condemnation is properly before the advisory board within these time limitations.

VAD Benefits

- G.S. 106-742: Waiver of water and sewer assessments
 - “A county or a city that has adopted an ordinance under this Part **may provide** by ordinance that its water and sewer assessments be held in abeyance, with or without interest, for farms, whether inside or outside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.”
 - The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
 - Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.
 - Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance
 - This benefits landowners because a landowner belonging to the district shall not be required to connect to the county or municipal water and/or sewer systems.

Enhanced Voluntary Ag District Programs

- **Requires** a 10-year irrevocable Conservation Agreement
- **Must** be recorded
- Automatically renews for 3 years after the initial period unless notice is given by the landowner
- G.S. 106-743.5: Waiver of utility assessments
 - **May provide** all assessments for utilities provided by that county or city are held in abeyance, with or without interest, for EVAD farms
 - Similar provisions as for VADs and the waiver of water and sewer assessments
- Offers additional benefits to the landowner:
 - May sell nonfarm products without losing zoning exemption.
 - 90% cost share
 - EVAD may receive priority consideration for grants.

Voluntary Agricultural Districts Update

- G.S. 106-743.1: Enhanced Voluntary Agricultural Districts
 - Eliminates the requirement that each EVAD have a representative on the Agricultural Advisory Board
- Action Item:
 - Update ordinance to eliminate the requirement that each EVAD have a representative on the Agricultural Advisory Board (if applicable)



Questions?

