

## **4.9 VOLUNTARY AGRICULTURAL DISTRICT PROGRAM**

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*Commentary: The Voluntary Agricultural District is not an overlay zoning district, and is not implemented in the same way as a zoning district would be.*

### **4.9.1. Authority**

The standards and provisions of this Voluntary Agricultural District Program are established pursuant to the authority conferred by N.C.G.S. 106-735 through 106-743 and Chapter 160D.

### **4.9.2. Purpose**

The purpose of this Program is to promote the health, safety, rural agricultural values, and general welfare of the county, and more specifically, increase identity and pride in the agricultural community, its way of life, and its importance in preserving the agrarian heritage of the county; encourage the economic and financial health of farming; increase protection from undesirable, non-farm development ; increase the protection of farms from nuisance suits and other negative impacts on properly managed farms ; and decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors.

### **4.9.3. Initial Participation is Voluntary**

Nothing contained within this Section shall require a landowner to initiate participation in the Program. Upon participation in the Program, compliance with the requirements of this Section shall be required to maintain status.

### **4.9.4. Implementation of Program**

In order to implement the purposes stated in above, this Program provides for the creation of Voluntary Agricultural Districts (VADs) as follows:

**A. Application**

1. A landowner may apply to participate in the Program by making application to the chairperson of the Advisory Board or a designated staff person. The application shall be on forms provided by the Advisory Board. The application to participate in a VAD may be filed concurrent with the certification for qualifying farmland (see Section 4.9.8).
2. The Advisory Board shall meet within 90 days of receipt of a complete application to render a decision on the application.

**B. Fees**

Applicants wishing to implement (Section 4.9.4), expand (Section 4.9.5), or withdraw (Section 4.9.6) from a VAD shall pay any administrative fees required for the action. A schedule of the required fees shall be available from the Cooperative Extension.

**C. Criteria for Initial Program Qualification**

A VAD, when initially established, shall contain a minimum of 10 contiguous acres of qualified farmland; or two or more qualified farms which contain a minimum of 10 acres in total and are located within a mile of each other.

**D. Review and Recommendation**

Upon receipt of an application, the chairperson shall forward copies immediately to the following offices for review and comment. Comments, if any, shall be returned to the Advisory Board at least one week prior to the date set for the Advisory Board action on the application.

1. The Brunswick County Tax Assessor;
2. Brunswick County Planning Department;
3. The Brunswick Soil and Water Conservation District office; and
4. The Natural Resources Conservation Service.

**E. Final Action**

Within 90 days of receipt of the application, the Advisory Board shall vote on the application in conformance with Section 2.5.1.C.

**F. Notification of Decision**

The chairperson shall notify the applicant of the Board's decision by first class mail.

**G. Conservation Agreement**

The landowner(s) requesting inclusion in a VAD shall execute a **Conservation** Agreement with the County to sustain agriculture in the VAD or EVAD in accordance with this Program. The Agreement shall be in a form which is reviewed and approved by the Agricultural Advisory Board (See Section 2.3).

**H. Appointment of New Advisory Board Members**

The following agencies shall appoint a member from each newly created VAD to represent the District on the Agricultural Advisory Board.

1. Farm Bureau;
2. Cooperative Extension;
3. Soil and Water Conservation District;
4. Farm Service; and
5. One at-large appointed by Agriculture Board.

**I. Appeal of Advisory Board Decision**

If an application is denied by the Advisory Board, the applicant shall have 30 days to appeal the decision to the Board of County Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners shall be final.

#### **4.9.5. Expansion of Program**

The Agricultural Advisory Board may decrease or increase the number of Voluntary Agricultural Districts as set forth above in "Implementation," above.

#### **4.9.6. Withdrawal from Program**

**A. By the Owner**

By written notice to the Advisory Board, a landowner of qualifying farmland may revoke a Conservation Agreement.

**B. By the Agricultural Advisory Board**

The Advisory Board may revoke the Agreement based on noncompliance by the landowner.

**C. Effect on Lands No Longer Included in a VAD**

1. Revocation shall result in loss of qualifying farm status, and consequently, loss of eligibility to participate in the Program.
2. Revocation by a landowner of an Agreement shall in no way affect the eligibility of the land to be taxed at its present use value as provided in N.C.G.S. 105-277.2 through N.C.G.S. 105-277.6.

**D. REMOVAL**

The tract will be removed from public record of the program within a reasonable time period.

**E. Effect on Lands Remaining in an VAD**

In the event that one or more participants in a VAD withdraw and the remaining acreage becomes less than 10 acres or results in the remaining land being noncontiguous, the initial VAD Program will continue to exist so long as there is one qualifying farm located within the District.

#### **4.9.7. Renewal**

Conservation Agreements shall be deemed automatically renewed for an additional term of ten (10) years, unless either the Advisory Board or the landowner gives written notice prior to the termination date.

#### **4.9.8. Certification and Qualification of Farmland**

In order for farmland to qualify for participation under the terms of this program, it shall meet the following requirements:

- A.** The farmland shall be real property consisting of at least three acres and not located in a planned development (Major Subdivisions, Planned Unit Developments [PUD], and Planned Groups of Structures) unless the development was originally designed and approved to accommodate agricultural uses and documented on the preliminary plan, site plan, and/or associated plats.
- B.** The property must be engaged in agriculture and defined as a Bona Fide Farm per Article 12 (Definitions) of the Brunswick County Unified Development Ordinance (UDO).
- C.** The property must be managed, if highly erodible land exists on the property, in accordance with the Natural Resources Conservation Service of the United States Department of Agriculture defined erosion-control practices that addresses highly erodible land.
- D.** The property is the subject of a Conservation Agreement, as defined in N.C.G.S. 121-35, between the County and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten years, except for the creation of not more than three lots that meet applicable county

watershed and subdivision regulations, or the regulations of any municipality which apply to the farm property. The Conservation Agreement shall be approved by the Advisory Board. The property owner may voluntarily revoke this Conservation Agreement by submitting a written request to the Advisory Board in accordance with Section 4.9.6.

- E.** The property must be located in the unincorporated area of Brunswick County, unless there is an agreement in place with a municipality where the county is authorized to exercise the authority of the municipality on its behalf.

#### **4.9.9. Record Notice of Proximity to a VAD**

##### **A. Procedure**

When Brunswick County computerizes its County Land Records System, the following requirements outlined in this subsection shall be implemented and enforced upon certification of qualifying farmland and designation of real property as an VAD District, the title to that qualifying farmland and real property within a VAD which is contained in the Brunswick County Land Records System shall be changed to include a notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half aerial mile of a VAD District.

*Commentary: With the automation of the Land Records System, research on any tract within ½ aerial mile of an VAD should alert a person of the proximity of the District to the tract being reviewed.*

##### **B. Limit of Liability**

In no event shall the County or any of its officers, employees, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by this Ordinance.

##### **C. No Cause of Action**

In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or VAD as defined in this Ordinance.

#### **4.9.10. Education**

The County may take such action as it deems appropriate through the Advisory Board or other entities or individuals to promote the purposes and objectives of this Program and encourage the formation of VADs including the implementation of a public information program to reasonably inform landowners of the Program.

#### **4.9.11. Abeyance of Water and Sewer Assessments**

##### **A. Purpose**

The purpose of this section is to help mitigate the financial impacts on farmers by some local and State capital investments unused by such farmers.

##### **B. Assessment and Abeyance**

1. Landowners belonging to voluntary agricultural districts shall not be assessed for, or required to connect to, water and/or sewer systems. Water and sewer assessments shall be held in abeyance, without interest, for farms inside a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.
2. Assessment procedures followed under 0.5. 153A-185 et seq. shall conform to the terms of this article with respect to qualifying farms that entered into conservation agreements while such article was in effect.

##### **C. Termination of Abeyance**

When the period of abeyance ends, the assessment shall be payable in accordance with the term set out in the assessment resolution.

**D. Suspension of Statute of Limitations**

Statutes of limitations dependent upon the operation of County ordinances are suspended during the time that any assessment is held in abeyance without interest.

**E. Other Statutory Abeyance Procedures**

Nothing in this section is intended to diminish the authority of the County to hold assessments in abeyance under N.C.G.S. 153A-201.

**F. Conflict with Water and/or Sewer System Construction and Improvement Grants**

To the extent that this section conflicts with the terms of Federal, State, or other grants under which county water and/or sewer systems are constructed, this section shall not apply.

**4.9.12. Advertisement Public Notification of an Voluntary Agricultural District**

The Advisory Board, in cooperation with the County, shall take measures as set forth below to provide notification to property owners, residents, and other interested persons adjoining any designated VAD with a goal of informing all current and potential residents and property owners in and adjoining the District, that farming and agricultural activities may take place in this VAD any time during the day or night.

The Brunswick County Tax Department/GIS Mapping shall maintain maps of approved Districts within the Geographic Information Mapping System Database as well as an overlay for all tracts located within one-half (1/2) mile of the property line of any tract of land enrolled in VAD.

**A. Signage**

Signs identifying an approved VAD shall be placed by the farmer upon the farmowner's property and outside of the NCDOT right of way.

**B. Maps**

Maps identifying approved VADs shall be provided to the following:

1. North Carolina Cooperative Extension Service;
2. Brunswick County Planning Department;
3. Natural Resources Conservation Service;
4. Soil and Water Conservation District;
5. Brunswick County Tax Department;
6. Register of Deeds; and
7. Any other such agency or office the Advisory Board deems appropriate.

**C. Public Notice**

The following notice provided by the Advisory Board shall be displayed in a prominent position in the office of the Register of Deeds and the public access area in the Brunswick County Tax Department:

NOTICE TO REAL ESTATE PURCHASERS IN  
BRUNSWICK COUNTY

**BRUNSWICK COUNTY VOLUNTARY AGRICULTURAL DISTRICT PROGRAM**

Brunswick County has established the Voluntary Agricultural District to protect and preserve agricultural lands and activities within the County.

Voluntary Agricultural Districts have been developed and mapped to inform all purchasers of real property that agricultural activities, including but not limited to: pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, controlled burning, and similar activities may take place in these Districts any time during the day or night.

For more information, contact the North Carolina Cooperative Extension Service.

910-253-2610  
P.O. Box 429  
Bolivia NC 28422

**D. Unified Development Ordinance Review**

Developers of Major Subdivisions or Planned Unit Developments shall designate on the preliminary development plan(s) and final plat(s), the existence of VAD Districts within a one-half (½) mile radius of the proposed development.

**4.9.13. Consultation Authority**

The Advisory Board may consult with the North Carolina Cooperative Extension Service, the Natural Resources Conservation Service, the North Carolina Department of Agriculture and Consumer Services, and with any other individual agency or organization the Advisory Board deems necessary to properly conduct its business.

**4.9.14. North Carolina Agency Notification**

An official copy of this Program ordinance shall be recorded with the North Carolina Commissioner of Agriculture's office after adoption. At least once a year, the County shall submit a written report to the North Carolina Commissioner of Agriculture and Consumer Services including the status, progress and activities of the County's Voluntary Agricultural District Program to include but not limited to:

- A.** Number of landowners enrolled;
- B.** Number of farms and acres enrolled;
- C.** Number of acres for which applications have been made;
- D.** Number of acres certified;
- E.** Number of acres denied;
- F.** Date acres certified;
- G.** Copy of any amendments;
- H.** Copy of provided report that includes Board of Commissioners, Soil and Water Conservation District, Farm Bureau, Farm Service, Tax Department/GIS Division, and Planning Department.

#### **4.9.15. Condemnation of Qualifying Farmland within a VAD**

Pursuant to N.C.G.S. 106-740, no public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a VAD until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed action. The procedures for such hearings shall be as set forth below.

**A. Schedule Public Hearing**

Upon receipt of a request for a public hearing, the Advisory Board shall have 30 days after receiving a request under this article to hold a public hearing and submit its findings and recommendations to the agency that proposed the condemnation. No formal initiation of condemnation may be initiated while the proposed condemnation is properly before the Advisory Board within the time limitations set forth in this Section.

**B. Advertise Public Hearing**

The Advisory Board shall run a notice of the public hearing in a newspaper having general circulation in Brunswick County at least 10 days prior to the date established for the hearing. The notice shall contain the date, time, and place of the hearing and shall provide the name of the agency requesting the hearing and the purpose of the action. The notice shall also indicate the approximate address of the property(ies) under consideration.

**C. Conduct Public Hearing**

- 1.** The Advisory Board shall conduct the public hearing and receive information and comments from the agency requesting the condemnation action and the citizens of Brunswick County. Additionally, the Advisory Board shall consider the following:
  - i.** Has the need for the project requiring the condemnation been satisfactorily shown by the agency requesting the action?
  - ii.** Has a financial impact analysis been conducted by the agency seeking the action?
  - iii.** Have alternatives been considered to the proposed action that are less disruptive to the agricultural activities and farmland base of the VAD within which the proposed action is to take place?
- 2.** The Advisory Board shall invite and allow input by the North Carolina Cooperative Extension Agent, U.S.D.A. Natural Resources Conservation Services, Farm Service Agency Personnel, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Advisory Board's review of the proposed action.

**D. Findings and Notification**

Within 10 days after the public hearing, the Advisory Board shall make a report containing its findings and be conveyed recommendations regarding the proposed action. The report shall be conveyed to the decision-making body of the agency proposing acquisition and made available to the public for comment.

#### **4.9.16. Enhanced Voluntary Agricultural District(s)**

A landowner may apply to participate in the Enhanced Voluntary Agricultural District (EVAD). Applicants must meet all requirements set forth by the VAD to be considered for the EVAD.

To be approved within the EVAD, the landowner must enter into a conservation agreement approved by the Advisory Board as defined in G.S. 121-35, that meets the condition set forth in G.S. 106-743.2. Such conservation agreement shall be irrevocable for a period of at least 10 years from the date the agreement is executed. At the end of its term, a conservation agreement shall automatically renew for a term of three years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the enhanced voluntary agricultural

district.

#### **4.9.16. Additional Benefits for EVAD**

Land enrolled in the EVAD program is entitled to all of the benefits available under the VAD program, and to the following additional benefits:

(1) Sale of nonfarm products. Landowners participating in EVAD may receive up to 25 percent of gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from County zoning regulations under G.S. 153A-340(b). A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed 25 percent of its gross sales.

(2) Agricultural cost share program. Landowners participating in EVAD are eligible under G.S. 143-215.74(b) to receive the higher percentage of NC Division of Soil and Water Conservation Agriculture Cost Share Program funds for the benefit of that farmland under the agriculture cost share program established pursuant to part 9 of Article 21 of chapter 143 of the General Statutes to benefit that farmland.

(3) Priority consideration. State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in EVAD.

#### **4.9.17. Conflict with Other Ordinances and Statutes**

Whenever the provisions of this Program (Section 4.9) conflict with other ordinances of Brunswick County, the provisions of this Program shall govern. Whenever the provisions of any Federal or State statute require more restrictive provisions than are required by this Program, the provisions of such statute shall govern.

#### **4.9.18. Amendments to the Voluntary Agricultural District Program**

The provisions of this Program (Section 4.9) may be amended from time to time after a public hearing and in consultation with the Advisory Board to the Board of Commissioners. Notice of the hearing shall be sent to program participants by first class mail at least 25 days prior to the hearing.