

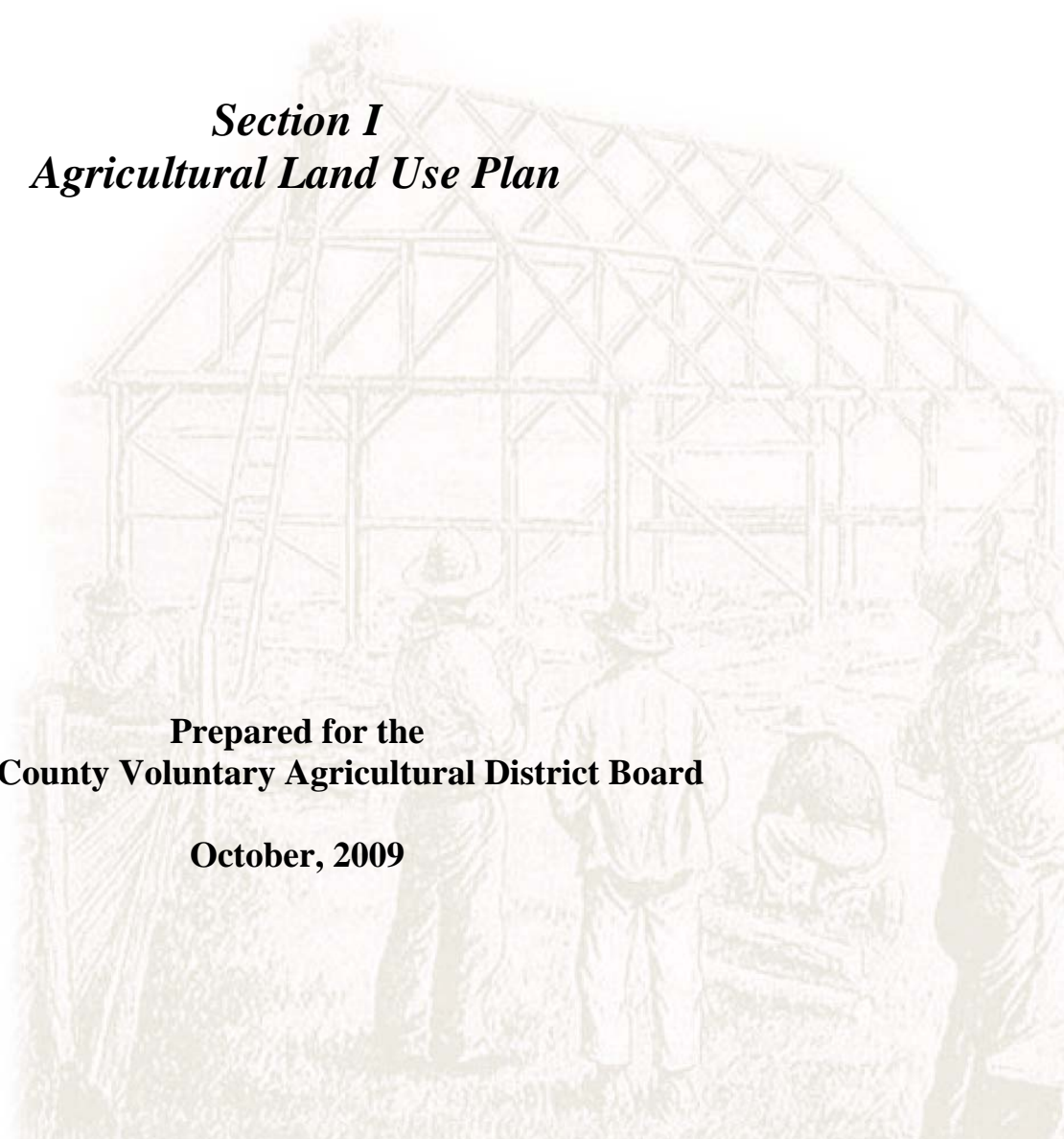


Stanly County, North Carolina Farmland Preservation Plan

Section I Agricultural Land Use Plan

**Prepared for the
Stanly County Voluntary Agricultural District Board**

October, 2009



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County Project Leader

Lori Ivey
North Carolina State Cooperative Extension

Chester Lowder
North Carolina Farm Bureau

Study Team Leader

J. Philip Gottwals, ACDS, LLC

Study Team Members

Rueben Hermoso, PhD, ACDS, LLC
Anna Jensen, ACDS, LLC
Bill Stroud, ACDS, LLC

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1.0 Project Background

The Agricultural Land Use Plan is a component of the Stanly County Farmland Preservation Plan and is intended to guide land use policy making in Stanly County as transitional forces such as rising land development change the way the County interacts with the agricultural and forest products industry. How the industry and County respond to these changes will have a significant impact on the community and industry alike.

Recommendations in this strategic plan are drawn from empirical and anecdotal evidence collected during the study period of January, 2009 through June, 2009. During this period an extensive amount of data was collected, only a portion of which is presented in this document. Interpretations of this data were utilized in preparing both the findings and recommendations section of this report.

2.0 Population and Housing

This section of the Farmland Preservation Plan analyzes land use trends for Stanly County and their implications for the County's agricultural industry. For comparative purposes agricultural, housing and population trends for counties within a 40-mile radius are provided as well as comparative agricultural and farmland statistics for adjacent counties.

As noted in Table 1, Stanly County's population is expected to increase by 4.7 percent, from 2000-2008 to a total of more than 60,000 residents. By 2013, Stanly is expected to add another 1,357 residents. But the growth rates are lower compared to North Carolina's as a whole.

Table 1: Stanly County Population Projections					
	2000	2008 Projection	% Growth 2000-2008	2013 Projection	% Growth 2008-2013
Stanly County	58,100	60,810	4.66%	62,167	2.23%
North Carolina	8,049,313	9,231,191	14.68%	10,087,671	9.28%
<i>Source: ESRI</i>					

Tables 2 and 3 indicate the rate at which Stanly County is adding households is significantly lower than the regional area, partly due to slowdowns in major local economic generators as well as in key agricultural production sectors. Stanly offers a housing stock that is biased towards lower wage earners, attracting low and fixed income residents, who are often elderly, increasing the County's median age. This population tends to own their own homes, mostly single family, and have much of their equity invested in their residences. The housing stock in the County has a 90 percent occupancy rate while the share of ownership is at 70 percent (against 22 percent for renters). But vacancy rates are projected to increase slightly in the coming years if the current slowdown continues to persist.

Most of the growth in housing is radiating from the Charlotte- Mecklenburg County metropolitan area to the west and to a lesser degree from the Salisbury area to the north. Because of this characteristic, development patterns are relatively easy to predict and are likely to occur within water and sewer service areas and along major thoroughfares as has historically been the case.

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Due to its demographics and commute distances to regional cities, development within these corridors is likely to target active seniors and young, working families with moderately priced housing stock. The capacity of the incorporated and unincorporated areas to manage this growth will be a long-term question that has implications for farmland protection. Issues of annexation and land use regulation may become a high priority of non-farming residents, particularly in the incorporated areas. Unincorporated areas will likely be forced to deal with poorly planned, low density subdivisions.

**Table 2: Comparative Housing Market Statistics
Stanly County**

		Census 2000	2008		2013	
		Number	Number	% Change	Number	% Change
Total Population		58,100	60,810	5%	62,167	2%
Total Households		22,223	23,475	6%	24,094	3%
Median HH Income		\$36,941	\$45,288	23%	\$51,744	14%
Median Age		37	39.4	6%	40.9	4%
Average Household Size		2.53	2.50	-1%	2.49	0%
Total Housing Units		24,582	26,288	7%	27,179	3%
	Occupied	22,223	23,475	6%	24,094	3%
	Owner	16,947	17,943	6%	18,207	1%
	Renter	5,276	5,532	5%	5,887	6%
	Vacant	2,359	2,813	19%	3,085	10%
Median House Value		\$84,141	\$119,423	42%	\$126,683	6%
Average House Value		\$102,525	\$142,448	39%	\$154,595	9%
Median Monthly Owner Costs for Units with Mortgage		\$836				
Average Monthly Owner Costs for Units with Mortgage		\$926				
Median Rent		\$344				
Average Rent		\$336				
Average Gross Rent (with Utilities)		\$473				

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Table 3: 40 Mile Market Area (Anson, Cabarrus, Montgomery, Rowan, and Union Counties)						
		Census 2000	2008		2013	
		Number	Number	% Change	Number	% Change
Total Population		437,177	550,323	26%	645,566	17%
Total Households		161,901	204,178	26%	239,447	17%
Median HH Income		\$42,579	\$56,159	32%	\$66,333	18%
Median Age		35.4	37	5%	37.9	2%
Average Household Size		2.63	2.64	0%	2.65	0%
Total Housing Units		176,889	225,020	27%	263,946	17%
	Occupied	161,901	204,178	26%	239,447	17%
	Owner	123,211	156,169	27%	182,263	17%
	Renter	38,690	48,009	24%	57,184	19%
	Vacant	14,988	20,842	39%	24,499	18%
Median House Value		\$99,393	\$154,229	55%	\$171,121	11%
Average House Value		\$124,997	\$195,227	56%	\$217,373	11%
Median Monthly Owner Costs for Units with Mortgage					\$994	
Average Monthly Owner Costs for Units with Mortgage					\$1,095	
Median Rent					\$406	
Average Rent					\$411	
Average Gross Rent (with Utilities)					\$542	
Source: ESRI, 2008.						

2.1 Infrastructure Assessment**Table 4:Stanly County Roadways by Classification**

Freeway or Interstate	No freeways I-485, Charlotte bypass
Major and Other Principal Arterials	US 52: North-South roadway linking Richfield, New London, Albemarle, and Norwood US 49: East-West corridor for the central North Carolina region
Minor Arterial	NC Highway 24/27 west of Albemarle to Locust/Stamfield NC Highway 24/27/73 east of Albemarle to the County line
Major Collector	NC 73 west of Albemarle Renee Ford Road NC 200 North-South through Stamfield and Locust Running Creek Church Road from NC 24/27 to US 52 NC 205 from Oakboro to NC 24/27 NC 742 from Oakboro south to the County line NC 138 from Oakboro to Albemarle NC 731 NC 740 from Albemarle to New London NC 8 from New London to the County line
Minor Collector	Love Mill Road from the County line to Stamfield Barrier Store Road from the western County line becoming Five Point Road Ridgecrest Road from NC 205-NC 24/27 intersection until Millingport Road Swift Road from NC 205 to Liberty Mill Church Road to NC 24/27 St. Martin Road from Oakboro to Albemarle at NC 24/27 Plank Road from Aquadale to Cottonville Cottonville Road from Cottonville north to south to Stamly School Road Indian Mound Road from Norwood to NC 24/27/73 Stony Gap Road from US 52 to NC 24/27/73 Ridge St. from Albemarle to Mt. View Church to Palestine Kemp Road from Albemarle to Palestine Road to Palestine Airport Road from Albemarle through Palestine to NC 740 Old Salisbury Road from Albemarle to Richfield Pennington Road from Albemarle to Austin Road Austin Road from NC 73 to US 52 Main St. in Richfield north to the County line
Local Streets	<i>Throughout the County in less populated areas and within subdivisions</i>

Like many systems in central North Carolina, the roadway system in Stanly County consists of several thoroughfares that connect the County seat with outlying rural areas, regional metropolitan centers, coastal areas, and the central North Carolina region. The thoroughfares include NC 24/27, NC 73, NC 138, NC 740 and US 52 and link the County seat to other areas in a radial roadway pattern. The pattern extends to a lesser degree in other centers within the State such as Locust/Stamfield, Oakboro, Richfield, and New London.

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Generally, road conditions make it difficult to move agricultural equipment due to poor sight lines, low/no shoulders, and narrow road widths.

The County anticipates population and economic growth in the future and road widening projects are in various stages of completion. Along NC 24/27, some locations within Albemarle, such as Saint Martin Road, have been widened from four lanes to five. Interstate 485, the 67-mile outer loop around Charlotte, is still undergoing construction on the segment between NC 27 and Interstate 77 which will encourage additional development in Stanly. While the southern part of the loop along Interstate 85 has been open, the northeast segment between Interstate 77 and 85 will not be complete before 2012. Other transportation infrastructure projects in various stages of completion include:

- The extension of Ridge Street to Airport Road to provide better airport access.
- The widening of NC 49 to four lanes from east of SR 2444 to the Yadkin River.
- The widening of US 52 from Richfield to Salisbury.

As these, and other, road improvements are completed, pressure to convert agricultural land to a development use is expected to increase, particularly in the western portions of the County.

2.2 Land Use Assessment

The inventory of existing land uses within Stanly County is limited to those areas subject to the Land Use Plan, which include unincorporated areas outside of municipal jurisdictions. Eight general land use areas were identified within the existing land use survey that was part of the plan and include:

1. Agricultural Uses

Agriculture and related uses account for the second largest single land use in all of Stanly County. The largest concentration of this type of land is in the northern part of Stanly County near Millingport, although agricultural activity is located throughout the County. Other large agricultural concentrations can be found in south central Stanly County near Aquadale and St. Martin Rd. Albemarle and other communities have retained their places as important agricultural centers of the region. As noted in the prior section, the concentration of agricultural land use in western Stanly County puts this use directly in the expected path of development.

2. Wooded Areas

Stanly County contains a large amount of wooded acreage with second- and third-tier growth forest areas. The land includes 89,048 acres with large concentrations of forest land. Tree coverage is greater east of US 52 and NC 138 and is less in the western side. Interestingly, land use studies find that while tree coverage appears to be the largest land use activity, much of the wooded areas may be used for animal pastures, outside of the Uwharrie National Forest.

3. Commercial Uses

Land for commercial use is defined to include retail sales establishments, personal service businesses, healthcare offices, eating and drinking establishments, banks, professional offices, and agribusinesses. These areas are mostly found in the County's municipalities with the largest concentration located along the US 52 corridor north of Albemarle. Charlotte serves as a metropolitan region and thus reduces the demand for large-scale commercial development in other areas. But economic and population growth in the near term has been seen, and it is expected that land will be provided in areas like Albemarle, Locust/Stamfield, and New London/Richfield to address the growth trends.

4. Industrial Uses

Industrial activities, which include manufacturing, warehousing, and distribution, are limited in Stanly County, since such operations tend to locate close to population centers within incorporated areas of the counties. The largest industrial activities in the area are the Albemarle-Stanly County Airport and in the City of Albemarle. Smaller scale productions are present west of Norwood and in northeastern Stanly County near the airport. The limited presence of industrial activity is expected to continue as long as public services essential to industrial activity are not provided in these areas.

5. Parks and Recreational Uses

The largest area in this category is the Morrow Mountain State Park, a 4,693-acre preserve located in east central Stanly County. Other parks and recreation areas in the County are comprised of privately-owned golf courses and other facilities within incorporated areas.

6. Public and Semi-Public Uses

This land category includes schools, churches, government-owned institutions, and fraternal clubs and organization. These places can be found throughout the County, typically along major thoroughfares and in established unincorporated population centers such as Aquadale and Millingport.

7. Residential Uses

Residential uses include all types of housing from single-family, detached homes to rental units. Within Stanly County, concentrations of residential development can be found in the following areas:

- The north and east of Albemarle and extending to Badin.
- Along the shores of Badin Lake and Lake Tillery in eastern Stanly County.
- In south central Stanly County in Aquadale, St. Martin Road, and adjacent to the Oakboro Extraterritorial Jurisdiction (ETJ).
- South of the Stamfield/Locust ETJs.

8. Surface Waters

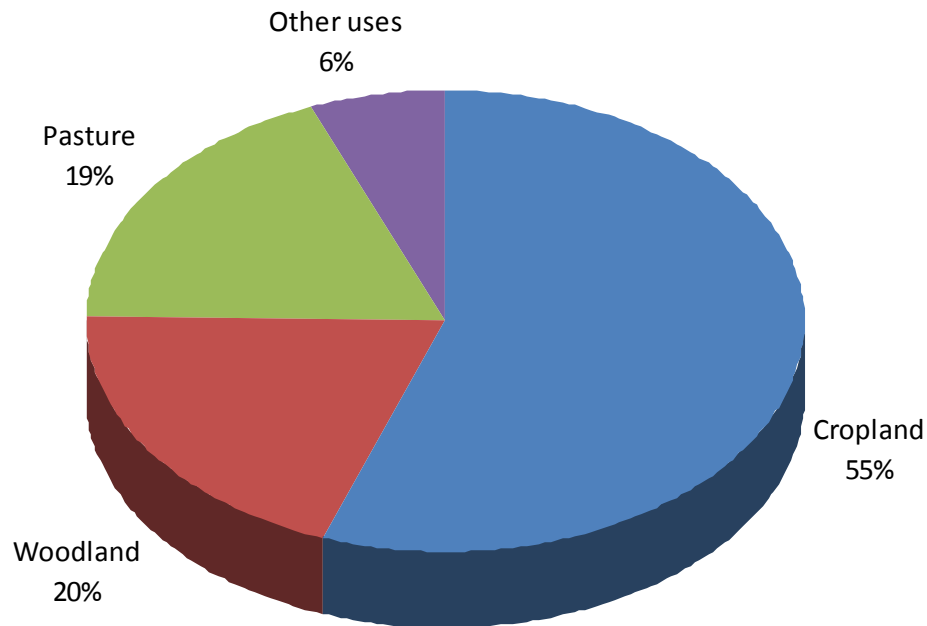
Stanly County is characterized by manmade lakes such as the Tuckertown, Badin, Falls, and Tillery reservoirs, which define much of the eastern boundary of the County. The lakes cover 6,638 acres or nearly four percent of the County's land area.

Stanly County has retained much of its rural character despite development pressures due to growth in the Charlotte metropolitan area. The County presents a variety development patterns with trends growing in the western end, like Locust and Stanfield, which are oriented toward Charlotte commuters; as well as the eastern side, such as the shorelines of the Narrows and Tillery reservoirs, which are oriented toward recreational housing. Because of the County's location relative to Charlotte, its inventory of good roads and public services and large amounts of agricultural and open spaces, development pressure is expected to track with that of the larger metropolitan area. Given the prevailing low density zoning throughout the unincorporated areas of the County, this growth is likely to consume large blocks of agricultural land, unless code changes are made.

3.0 Farmland Assessment

In 2007, approximately 41 percent (104,517 acres) of Stanly County's 252,838 acres were estimated to be in farm ownership or farm use, making agriculture one of the largest land uses in the County. Land in farms in Stanly County includes 58,195 acres of cropland (55 percent); 20,558 acres of pastureland, and 19,712 acres of woodland (See Figure 1).

Figure 1: Land in Farms



Source: 2002 U.S. Census of Agriculture.

Farmlands in the County are concentrated mostly in western and southern Stanly County running from Richfield to Locust and Stanfield. Adequate Prime and Productive soils have been a challenge in agricultural production. As a result, most of the crops produced are used for feed, which complements the dominant poultry industry.

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Table 5: 2007 Comparative Farm Statistics and Percentage Change from 2002

	Stanly		Anson		Cabarrus		Montgomery		Rowan		Union	
	2007	Change	2007	Change	2007	Change	2007	Change	2007	Change	2007	Change
Approximate land area (acres)	252,838		340,205		233,210		314,624		327,238		407,917	
Land in farms (acres)	104,517	-3%	90,770	-10%	66,780	-9%	42,523	2%	115,942	1%	178,193	-7%
Percentage share of land in farms to total land area	41%	-1%	27%	-3%	29%	-3%	14%	0%	35%	0.19%	44%	-3%
Average market value of land and buildings per acre (dollars)	4,020	9%	3,567	29%	5,621	12%	3,713	11%	5,195	45%	5,206	41%
Farms (number)	713	-1%	487	-10%	611	-7%	289	-1%	983	3%	1,107	-10%
Pastureland, all types (acres)	5,886	-43%	3,360	-57%	3,135	-74%	2,951	-31%	5,254	-66%	6,346	-58%
Percentage of total land in farms	6%	-4%	4%	-4%	5%	-12%	7%	-3%	5%	-9%	4%	-4%
Total cropland (acres)	58,192	-19%	27,777	-21%	34,570	-20%	11,649	-9%	63,782	-7%	121,067	-11%
Percentage of total land in farms	56%	-11%	31%	-4%	52%	-7%	27%	-3%	55%	-4%	68%	-3%

Source: 2007 U.S. Census of Agriculture

	Stanly		Anson		Cabarrus		Montgomery		Rowan		Union	
	2002	Change	2002	Change	2002	Change	2002	Change	2002	Change	2002	Change
Approximate land area (acres)												
Land in farms (acres)	107,549		100,447		73,346		41,769		115,332		190,704	
Percentage share of land in farms to total land area	43%	43%	30%	30%	31%	31%	13%	13%	35%	35.24%	47%	47%
Average market value of land and buildings per acre (dollars)	3,650		2,774		4,920		3,337		3,595		3,688	
Farms (number)	719		539		658		292		951		1,224	
Pastureland, all types (acres)	10,368		7,769		12,154		4,255		15,231		15,097	
Percentage of total land in farms	10%	10%	8%	8%	17%	17%	10%	10%	13%	13%	8%	8%
Total cropland (acres)	71,470		34,965		42,951		12,868		68,574		135,580	
Percentage of total land in farms	66%	66%	35%	35%	59%	59%	31%	31%	59%	59%	71%	71%

Source: 2007 Census of Agriculture.

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Table 5 compares agricultural land use across counties adjacent to Stanly from 2002 to 2007. Like its neighbors, Stanly is losing agricultural acreage; however, it is losing acreage at a lower rate than Anson, Cabarrus, and Union counties. Much of the acreage that is being displaced is pastureland, of which 43 percent was lost between 2002 and 2007. The loss of cropland is consistent with development patterns since croplands are typically well drained, and therefore, also suitable for development. This type of suburban growth causes the loss of productive soils for crops, as well as land for livestock and dairy operations. Such changes then also lead to the decline of agricultural support businesses such as grain dealers.

Despite across the board losses in farmland, aggregate land and building value have risen dramatically across the region. Much of this change is driven by increases in raw land value, while some of the change is driven by increased investment in infrastructure. Stanly County land and building values increased 10 percent between 2002 and 2007, although it was the lowest growth rate in the region.

4.0 Land Use Tools

Loss of farmland and its associated benefits—food production, stabilization of local economies, protection of the environment, and enhancement of the quality of life—are being felt to varying degrees throughout the country. Common to most situations is the threat to the land base from sprawling suburban development and the vulnerability of a challenged industry, which is often in transition. Given the diversity of types of agriculture and the various governmental structures, protection of agriculture and farmland takes many forms. They are often found in the form of land use regulations, agricultural economic development initiatives, and Purchase of Development Rights to permanently secure a land base for the industry. The communities around the nation making the greatest strides are those employing some combination of the tools described in this section—as well as a robust economic development strategy – all customized to their respective circumstances.

In this section, land use planning techniques are discussed, as well as programming considerations for Voluntary Agricultural Districts (VAD), Purchase of Development Rights (PDR) and Transfer of Development Rights (TDR). In addition, the current menu of options made available to jurisdictions and landowners by the State of North Carolina to help protect agriculture in their communities, completes this section.

Examples of Counties with farmland protection in their land use planning process

Cumberland County, Buffering Bases – In response to mounting development pressure from Fort Bragg, the County saw a need to restrict growth within a 1 mile buffer from the base. The Regional Land Use Advisory Commission recommended a 5-acre minimum lot size for these properties; however, the County has developed a unique solution which offers landowners with 5-acre tracts a compensation payment, equivalent to a percentage of their property taxes, in exchange for 5 or 10 year conservation agreements to limit residential development. This agreement allows all manner of agricultural and silviculture activities, including retail and processing facilities, to remain on the land.

Davie County, Agribusiness Ordinance – The Davie County Commissioners approved an Agribusiness Use amendment to the county zoning text, allowing a streamlined permitting process for the construction of buildings, signs, and parking areas associated with existing farm operation. According to Davie County Planning Director Andrew Meadwell, “Ninety percent of our land is zoned rural-agriculture, and we didn’t have any guidelines that addressed these situations that would encourage consumers to go directly to farms for sales or festivals. Our permitting process was too cumbersome, and we wanted to speed up the process for new investments.”

Source: American Farmland Trust.

4.1 General Land Use Management Tools and Techniques

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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 regarding 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 in collaboration with organizations from across several sectors in the County, region, and State. This cooperation 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 should be updated every five years and should help 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 its trends in the area. 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, 3) policies to meet those objectives, and 4) implementation strategies and the schedule for updating the Plan. The Plan also may include separate elements to address specific areas of concern, such as local food manufacturing and marketing.

Zoning¹

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

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

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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. As zoning codes can be amended in later periods, 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, if on-farm agricultural processing approaches the scale of a commercial manufacturing facility, the agricultural nature of the land use is put into question. Counties also 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.

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 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 voluntary agricultural district is nearby, some local laws require a notice of that district to be recorded with the subdivision map.

4.2 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 Stanly 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 Stanly County Voluntary Farmland Preservation Program Ordinance states its purpose is 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 Stanly 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 Stanly 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 Voluntary Agricultural District Board or the Stanly County Agricultural Advisory Board. The district shall contain a minimum of 5 acres for horticultural use, 10 acres of agricultural use, and 20 acres for forestry use. This includes leased and/or rented land.

Enhanced Voluntary Agriculture Districts

Authorized in 2005, Enhanced Voluntary Agriculture Districts (EVAD) created 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 are as follows.

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 are eligible for up to 90 percent in 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 priorities 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.

Purchase of Development Rights (PDR)

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. PDR programs, also known as Purchase of Agricultural Conservation Easements (PACE), 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.

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 an unrealized asset—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.
- PDR programs generally are oversubscribed. In North Carolina, funding for PDR has been limited, with demand far exceeding available funds.
- Purchasing easements is time consuming. Participants in the State program generally must wait at least a year before all details regarding their easements are finalized.

- Monitoring and enforcing easements requires an ongoing investment of time and resources.

North Carolina Agricultural Conservation Easements

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.

Conservation Easement

Whether the program is called a Purchase of Development Rights, or Purchase of Agricultural Conservation Easements, 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. Farmers receive the money from the sale of the easement, along with a lower property tax rate, however, the value of the land is lowered and the use of the land is limited.

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 would 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.

Landowners in North Carolina must find 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 monitor the property forever 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 and conservation easement 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 can be an 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, developability, parcel or farm size, soil quality, and stewardship provisions. These criteria form a basis for 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) for the purchase.

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 another source for the implementation of PDR projects. If a county is to implement its own PDR program, as is

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the intent in Stanly County, the County government must provide funding to leverage additional state and federal dollars. 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 farms. 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. Alamance County has set aside a portion of the Present Use Value roll back tax to be allocated to farmland preservation efforts.

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 percent to 2 percent of the transaction value. This option was not available in North Carolina until recently. A change in State law allows 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.

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 has recently been reduced due declining State revenue. 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.

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 nonprofit land trust 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

Transfer of Development Rights (TDR) programs, also known as density exchange programs, allows 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, and may be achieved through an assignment of engineering capacity in accordance with subdivision regulations.

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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. Orange County is currently in the third and final phase of a study to develop a TDR program.

Agricultural Tax Relief

Tax relief is an important issue for farmers. Farms need land on which 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 ability to generate income. As has been the case in more than 300 Cost of Community Services studies conducted across the United States, farmland provides more in property tax revenues than it requires in public service expenses, thus 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.

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.

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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 an 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.

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<i>Protection Tool</i>	<i>Definition</i>	<i>Benefits</i>	<i>Drawbacks</i>	<i>Applicability/Status-Stanly County</i>
Comprehensive Plan	Guiding vision of what a community wants to be in the future and a strategy for achieving that.	An organized way to identify productive farmland and set growth and protection goals. Serves as basis for land use regulations.	Not legally binding. May be changed or ignored by officials as they rule on development proposals.	Stanly County has a 2002 Land Use Plan, which is an update of the 1977 Land Use Analysis and Development Plan. Aside from updates, the 2002 plan identifies current growth trends and guides desired growth policies. Portions of the Plan will be updated in 2009-2010 and offer an opportunity to review conservation programs.
Differential Assessment	Taxation of farmland based on its agricultural use rather than its development value.	Modest incentive to keep land in commercial farming.	Also benefits land speculators waiting to develop land.	Tax benefits through Present Use Tax Valuation are available to farmers in Stanly County, and must be applied for. Additional tax benefits are available to stimulate farm level investment through income tax credits, if adopted at the local level.
Agricultural Districts	Designation of an area of viable agricultural land. Initiated and self-selected by landowners, adopted by county. Eligibility, minimum acreage is determined by each county. Land can go in and out at any time.	Farmed land within district is provided a minimum level of protection from nuisance claims and public condemnation processes. Enhanced districts allow for additional benefits including a higher level of protection.	Area defined by willing landowners and has no real longevity as a protection tool.	In 2002, the Stanly County Farm Preservation Committee presented a recommendation to employ the agricultural district in Stanly County to the Stanly County Planning Commission.

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<i>Protection Tool</i>	<i>Definition</i>	<i>Benefits</i>	<i>Drawbacks</i>	<i>Applicability/Status-Stanly County</i>
Right to Farm Laws	<p>In NC for land in ag district:</p> <ol style="list-style-type: none"> 1. Definition of agriculture 2. One-Year of Operation 3. Sound ag practices determination 	<p>Strengthens the ability of farmers to defend themselves against nuisance suits. Shields farmers from excessively restrictive local laws and unwanted public infrastructure. Available to all farms in the State.</p>	<p>Not meant to shield from all legal disputes with neighbors. Does not stop complaints from non-farm neighbors. May not protect major changes in farm operations or new operations.</p>	<p>These protections are afforded to farmland to all farms in the State under North Carolina State Law.</p> <p>Stanly County, with State authorization, may adopt a more stringent Right to Farm Ordinance to protect against specious nuisance claims.</p>
Agricultural Zoning	<p>Zoning that allows residential development at a rate of one unit per 20 or fewer acres in a predominantly farming area. Ideally, the allowed density can be built on much smaller lots rather than large lots with each residence.</p>	<p>Limits non-farm development in areas intended for agricultural use. Can protect large areas of farmland at low public cost.</p>	<p>Local government can rezone land. Landowners may complain about loss of 'equity value' if land values have begun to escalate due to development pressure.</p>	<p>Unincorporated areas of the County are zoned for low density development, providing no specific protection for commercial farming operations.</p> <p>The County has formulated provisions for non-residential and residential/agriculture development and also provides guidance for cluster development.</p>
Purchase of Development Rights	<p>Voluntary separation and sale of the development rights from land in exchange for a permanent conservation easement. Typically paid difference between restricted value and fair market value. Land remains in private ownership and on tax rolls.</p>	<p>Provides permanent protection of farmland and puts cash into farm and farm economy.</p>	<p>Public cost may be high. Combined with being voluntary, it may be difficult to protect a critical mass of farmland.</p>	<p>The PDR was one of nine strategies in the Land Use Plan to guide growth management and to achieve the Plan's objectives.</p>

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<i>Protection Tool</i>	<i>Definition</i>	<i>Benefits</i>	<i>Drawbacks</i>	<i>Applicability/Status-Stanly County</i>
Transfer of Development Rights	Voluntary separation and sale of development rights from land in one part of a jurisdiction to be used to increase density in another part. Conservation easement placed on sending parcel.	Developers compensate farmland owners. Creates permanent protection of farmland and shifts some costs to private sector.	Difficult to establish and administer. Opposition by landowners in receiving areas. Needs to be an integral part of a jurisdiction's growth management strategy at a time that sending area resources are relatively intact and intensification of receiving areas is feasible.	Like PDRs, TDRs are one part of nine strategies in the Land Use Plan to guide growth management and to achieve the Plan's objectives.
Private Land Trusts	Local non-profit 501.c (3) corporations designed to identify resources to be protected, accept permanent conservation easements from landowners, and monitor their provisions through time.	Can provide permanent land protection. Can forge public-private partnerships. Greatly facilitate the donation of conservation easements from landowners able to benefit from income tax benefits.	Private land trusts rarely have funds to buy easements. Conservation deals sometimes based on allowing limited development. May create islands of protection rather than a critical mass of contiguous lands. Unless specifically designed for agricultural protection, farming may be virtually impossible on conservation easements designed for other purposes.	The Land Trust for Central North Carolina is currently the only Land Trust active in the area. At the state level, there is also the North Carolina chapter of the Nature Conservancy.

5.0 Implications for the Agricultural Land Use Plan:

This analysis of land use trends and projections found the following issues to be of particular importance to Stanly County's agricultural industry:

Residential development and population growth in Stanly County is lower than statewide and regional averages but is still increasing. Such development is impacting agriculture by competing for scarce land resources. This is particularly true in rural areas where there are few development controls. Farmland protection initiatives should have zoning requirements such as the APZ for farmland protection.

Although Stanly County has experienced a decrease in land in farms, the agricultural land base is still relatively intact. Once farmland is lost to development of any kind, it is rarely converted back to agricultural use. Maintaining a core land base in active agriculture is necessary for the survival of the industry. A VAD program is a key element in preserving the inventory of farmland in Stanly County. More importantly, the EVAD should be actively promoted to achieve permanence in the preservation of farmland.

Low density rural residential development occurring in Stanly County has a significant impact on farm businesses. Poorly planned, scattered residential development can bring new non-farm neighbors to the doorstep of farm businesses. These new neighbors may be unfamiliar with agricultural practices and can generate time consuming and potentially expensive conflicts. Subdivision of land should include a review of setback requirement, an examination of performance standards to incorporate flexibility in agricultural operations, and an analysis of the implications of clustering. Right to Farm laws should be properly enforced to minimize conflicts.

The rate and type of development that occurs in Stanly County will be influenced by regional economic factors as well as by local land use policies and decisions. Planning for agriculture at the County level can positively affect development patterns within the community so that both agriculture and the broader community benefit.

Land Use Plan decisions made by individual municipalities will have a major impact on unincorporated areas of the County, both through their extraterritorial jurisdiction control (ETJ) and through where they channel growth. Without coordination, land use planning efforts will only go so far. Though not binding, the 2002 Land Use Plan and its future updates should be referred to for planning decisions.

6.0 Recommendations

Given that land use policy is determined at the county and municipal level, these recommendations offer guidance to the County and the Voluntary Agricultural District Board (VADB) in supporting preservation activities at all levels of government. As well, the recommendations offer guidance for improving the level of education and understanding of the general public regarding agriculture and agricultural land preservation techniques. The study team realizes that the County will not be able to implement all aspects of the recommendations, but expects that this list should spark a debate that helps to further classify, refine, and prioritize agricultural land preservation initiatives.

As priorities are developed, key municipal and county agencies should consider adopting them as part of their individual work plans, and the VADB should work with agencies and municipalities to integrate them into their comprehensive plans. It is also noted that the commitment and support of the County along with the municipalities and industry is critical to the success of this plan as well as the economic development recommendations included in the “Farmland Preservation Plan.”

Note: Each recommendation includes a priority ranking which is based on the frequency and urgency of issues identified during the study; cost considerations address funding issues, exclusive of personnel requirements, based on the study team’s experience; and responsibility which is based on the logical agency(s) to oversee implementation.

Ten-Year Objective

A long term objective should be to create a land use planning culture in which agriculture is treated as an important economic and ecological sector and not assumed to be property that is simply awaiting residential development. Future agricultural land use initiatives and policy will focus on improving the regulatory, physical, and fiscal conditions under which agriculture operates by directing public resources to enhance industry infrastructure, protecting prime soils, and preparing an environment that supports future agricultural planning such as Purchase of Development Rights (PDR).

Furthermore, such a policy should ensure that the public will have a better understanding of the importance of agriculture as a land use and as a vital economic sector to their particular community. With this understanding, it is the study team’s expectation that the general public will support and endorse agricultural planning initiatives including the full funding of agricultural preservation programs. The County should be prepared to lead the debate and to support such efforts.

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The Land Use recommendations are offered to improve the integration among agriculture, forestry, and suburban land uses in Stanly County. Given the rate of residential growth in Stanly, these traditionally land-dependent industry sectors suffer from neighbor conflict, land fragmentation, transportation limitations, and other challenges to traditional production practices. Many of these limitations are driven by the incompatibility of mixing residential and industrial uses. Because rural zoning typically treats agriculture, forestry, and residential uses as complementary, the conflict has been built into land use regulations.

Beyond issues of inter-sector conflict, Stanly County's proximity to the greater Charlotte metropolitan area, and its robust housing market, have made open land more valuable, often putting its cost beyond its profit-making ability to support commodity agriculture and forestry uses. Land use policies such as zoning, infrastructure development, and subdivision regulations can also detract from agricultural and forestry value while enhancing residential and commercial values.

The land use recommendations fall within three broad focus areas. The focus areas are largely independent, but have some level of interactivity and are briefly described below:

1. ***Working Lands Protection*** – These recommendations target improvements in or development of policies and programs with the sole purpose of protecting the land base that supports the industries of agriculture and forestry. The general purpose is to respect the needs of these industries while providing reasonable protections for all citizens and industry constituents.
2. ***Future County Policy and Planning*** – This area focuses on meeting the needs of modern agricultural and forestry practices and ensuring that future planning and policy support such needs. Therefore it examines a wider array of policies than just land use and includes taxation, health, transportation, and labor that are intended to bring local conditions in line with regional competitors.
3. ***State and Federal Advocacy*** – This category's recommendations are influenced more heavily by people and groups outside of Stanly County, its local municipalities, agencies, and other entities.

Successful implementation of these recommendations will involve a multidisciplinary effort supported by the public sector, private industry and agricultural operations as well as state and local agencies. The partnerships necessary will be driven by the specific implementation needs of each recommendation. Funding support for each respective recommendation must also be built independently on the merits of the recommendation and evidenced needs.

Recommendations are presented and described on the following pages.

FOCUS AREA 1: Working Lands Protection

Access to commercially viable tracts of working land is imperative to maintaining both Stanly County's rural beauty and its rural industries such as agriculture and forestry. The following recommendations provide policy guidance to develop protection for such working lands while integrating the increasing residential context of the County into the agricultural and forestry base.

RECOMMENDATION 1

Strengthen the Stanly County Voluntary Agricultural District Program

Stanly County has recently implemented the Voluntary Agricultural District (VAD) as a countywide initiative. As noted earlier in the report, the VAD is a vital first step in protecting agriculture in a rapidly growing area, but it is no substitute for a viable agricultural industry. If strengthened, however, the VAD has the potential to be a powerful focal point of education for the real estate community, the general public, and local elected officials about the benefits and needs of agriculture in their communities.

Strengthening of the VAD can also bring additional benefits to farmers over and above those offered by notification or expansion to an Enhanced Voluntary Agricultural District. The specific action items recommended follow.

ACTIONS

- Adopt the Enhanced Voluntary Agricultural District Program to expand options for landowners. Apply additional county based benefits such as an abatement of property taxes during the term of the EVAD easement. (See Appendix A.)
- Create a countywide Right to Farm law that applies to agricultural district properties. Right to Farm protections should include annual notification of property location with affected area with tax notifications as well as required notification forms at settlement, and the creation of a mandatory arbitration board to review, as a requirement, agricultural nuisance claims with VAD/EVAD districts to determine good agricultural practices and provide a remedy. (See Appendix B.)
- Develop a countywide ordinance to protect agricultural water rights for qualifying district properties, based on agronomic and livestock requirements. May include provisions to allow for lateral connections to service livestock and crop needs.
- Conduct an annual educational tour of district properties to keep public officials informed of the importance of the VAD/EVAD structure and to establish a formal contact mechanism between farmers and public officials.

IMPLEMENTATION RESPONSIBILITY: Voluntary Agricultural District Board, Cooperative Extension Service, Farm Bureau, Stanly County Soil and Water District, and County Planning Department staff.

RECOMMENDATION 2

Develop a Strategic Farmland Map as the Basis for Soliciting and Monitoring Farmland Preservation Needs and Critical Infrastructure

Strategic mapping is a dynamic process that must be constantly updated and revised. The primary goal of producing a strategic farmland map is to identify where to start on permanent protection, but it can also be used to expand and hone other elements of the farmland protection program such as targeting expansion areas for grey water irrigation systems. If the map is integrated into the outreach process of the Comprehensive Land Use Plan's update, it presents an opportunity for building alliances among the environmental interests in the County, developers, real estate agents, farmers, and others. (Appendix C demonstrates existing base layers.)

ACTIONS

- Calculate the total acreage of the farmed parcels.
- Calculate the build-out capacity (number of houses), if those parcels were developed.
 - Plot undeveloped and platted residential lots.
 - Plot undeveloped or abandoned industrial and commercial areas.
- Generate an address list of land owners of those parcels.
- Develop and update farmland protection focus areas.
- Identify the parcels that are in production (or coded for agriculture) but not in the VAD. These property owners can be contacted to notify them of the benefits of participation in the district.
- Track development projects and major subdivisions.
- Identify key public infrastructure (existing and planned) such as water and sewer systems.
- Identify green infrastructure, parks, recreation areas, Ecosystem Enhancement Program (EEP) easements, trails, and historic sites.
- Identify key private infrastructure such as grain and feed dealers, wood products processing, farmers' markets, and similar systems.
- Identify private wells and water features.
- Highlight Comprehensive Land Use Plan elements such as growth districts, generalized zoning categories, and ETJ's.
- Conduct seminars with the map to educate people about the benefits of agriculture and its integration with the broader community.

IMPLEMENTATION RESPONSIBILITY: Cooperative Extension Service, Farm Bureau, Stanly County GIS Office, and County Planning Department staff.

RECOMMENDATION 3

Create a County Supported Land Preservation Program

Demand for permanent land preservation programming is high in Stanly County, particularly among young farmers. Given the current state of funding at the North Carolina Agriculture Development and Farmland Preservation Trust Fund, the ability of Stanly County to compete for funds may be stymied both by the limited funding of the program statewide as well as by the criteria by which priority is given to funding individual easement projects. If the County is to compete successfully and meet constituent demand, new programs and funding sources may be required.

ACTIONS

- Create a Farmland Protection Committee and charge it with establishing guidelines for developing a county farmland preservation program. This activity should be strongly linked with Recommendation 2. (See Appendix D for a discussion of PDR Program Structure.)
- Establish initial and long-term protection goals to guide the creation of appropriate preservation toolkit, to include:
 - Set acreage goals for agricultural and forestry lands,
 - Identify critical agricultural and forestry infrastructure,
 - Link agricultural and forestry protection goals of natural resource and water protection goals, and
 - Integrate cultural and other goals as appropriate.
- Identify target areas for conservation where agricultural operations are clustered, development pressure is expected, and/or key agricultural infrastructure is concentrated.
 - Target initial program activity on:
 - Consolidated blocks of high productivity agricultural and forestry soils.
 - Areas with moderate to high growth pressure and low land fragmentation.
 - Integrate target areas with regional plans and conservation organization activities, such as:
 - Watershed and trail protection areas.
 - Greenspace initiatives.
 - Cultural sites.
 - Federal areas.
 - Other county preservation, recreation, and open space programs.
- Develop a full preservation toolkit to:
 - Integrate permanent easement tools such as Purchase of Development Rights (PDR), Transfer of Development Rights (TDR), and mitigation/farmland banking.
 - Develop model easement language.
 - Develop an easement valuation tool e.g., LESA.
 - Create an easement scoring system.
 - Study innovative approaches to enhancing easement value such as water recharge overlays, watershed best practice overlays, Option to Purchase at Agricultural Value program, and highway scenic easements.
 - Create flexible easement payment terms to meet land owners needs.

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- Support lump-sum payments.
 - Implement Installment Purchase Agreements to encourage participation from tax motivated landowners. (See Appendix F for a discussion of Installment Purchase Agreements.)
 - Develop a revolving loan fund to facilitate cash motivated transactions and support young farmer access.
 - Retirement programming.
- Examine temporary preservation and protection programs such as term easements, tax circuit breaker programs, and lease of development rights.
- Identify required agency support to hold and manage easements or contract management to existing, experienced contractors such as a land trust or Soil and Water District.
- Develop a local funding option.
 - Link to development (e.g., roll back tax, open space funds, or recordation fee)
 - Examine the use of dedicated funds to facilitate leveraging.
- Conduct outreach with landowners and financial professionals
 - Prepare materials directed at landowners explaining agricultural conservation easements to include a sample easement.
 - Prepare documents highlighting estate management and tax planning benefits of proposed programs to financial professionals.
- Conduct before and after easement appraisals on a representative sample of willing farmland owners to determine approximate easement values and develop an understanding of the process.

IMPLEMENTATION RESPONSIBILITY: Voluntary Agricultural District Board, Cooperative Extension Service, Farm Bureau, and County Planning Department staff.

FOCUS AREA 2: Future County Policy and Planning

Planning is an ongoing process particularly in a county undergoing significant structural change. Because of this, Stanly must actively and continuously support agriculture, forestry and related industries across all policy areas. As with any policy or planning element, education and training play a key role in the successful outcome of this Focus Area.

RECOMMENDATION 1

Update Subdivision Regulations and Zoning Code to Make Land Use Policies Farm Friendly

Local land use policy in Stanly County generally treats agriculture as place holder for land destined for residential development, and thereby it encourages the co-mingling of residences and ag-industrial activity. This is nowhere more evident than in the western portions of the County where agricultural, residential, and commercial uses seem to be randomly mixed. The development pressures created by hopscotch development of mixed use and quality have varied local impacts on agricultural land value. The general trend, even through the current recession, has been a steady increase in land values that favors residential development over other activities and fragments high value farm parcels.

Agricultural operations find it difficult to operate in such an environment, and the opportunity cost of holding land in that situation often outweighs the operational gain. Local and county ordinances exacerbate some of the operational effects of farming in these areas. For instance, required setbacks for wells are minimal on a residential lot in a farming area, yet a farmer must yield production ground to keep mandatory setbacks on the application of inputs. Farmers view these actions as a de facto taking of their right to generate an income from their property. Code written to deal with development pressure needs to be reviewed and managed with agriculture in mind, if agriculture in these areas is going to survive.

ACTIONS

- Appoint a farmer led team to review county land use regulations and policy with involvement from elected officials and community members
 - Review the need for an Agricultural Overlay Zone as part of the Comprehensive Plan Update, that would:
 - Limit the impact of development in agricultural zones using tools.
 - Cluster development requirements.
 - Soil mitigation.
 - Transportation oriented development.
 - Apply to best agricultural and forestry soil types in the County.
 - Focus on areas with high concentration of operating resource based businesses.
 - Provide a scoring advantage for PDR applications.
 - Serve as a potential sending area, if a TDR ordinance is adopted.
 - Review permitted uses vis-à-vis current farm industry needs.
 - Agriculturally related processing.

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- Food distribution.
 - Alternative energy.
 - High intensity agriculture.
- Examine the need to create performance based standards for agriculture and agribusiness activities including emerging opportunities such as those above. (See Appendix G for sample performance zoning standards.)
- Make recommendations for changes and updates as necessary.
- Develop a regular schedule for review and update.
- Conduct regularly scheduled workshops with elected officials and agency staff apprise them of changing market and regulatory conditions.
 - Prepare an annual ‘state of agriculture report.’
 - Develop a response system to manage farmer interests in proposed regulatory and program changes.
- Develop a virtual agricultural policy book to keep farmers informed of land use related development requirements.
- Build beneficial relationships with neighboring jurisdictions and municipalities to improve inter-jurisdictional planning efforts to avoid unintended cross- jurisdictional effects such as development spillover, orphaned water and sewer improvements, ETJ expansions, etc.
- Update subdivision code to enforce greater set-backs on residential and commercial development in VAD/EVAD impact areas. By example, well setbacks of 100 feet from a property line may be advisable for residential buildings adjacent to agricultural operations.
- Plan to use this as an opportunity to educate people about the benefits of agriculture.
- Improve Right to Farm protections as specified in Working Lands Protection Recommendation 1.

IMPLEMENTATION RESPONSIBILITY: Voluntary Agricultural District Board, Cooperative Extension Service, Farm Bureau, and County Planning Department staff.

RECOMMENDATION 2

Formally Adopt the Agricultural and Farmland Preservation Plan as a County Policy Guidance Instrument

Because implementation of a Farmland Preservation Plans require the efforts of numerous county departments to be truly successful, it is highly recommended that the Voluntary Agricultural District Board seek formal adoption of the Plan by the Stanly County Commissioners. Furthermore, the Plan should be integrated within the County's Comprehensive Land Use Plan and other, similar documents.

ACTIONS:

- Seek the explicit inclusion of the Agricultural and Farmland Preservation Plan as an element of the Stanly County Comprehensive Land Use Plan.
- Seek inclusion of the appropriate elements of the Agricultural and Farmland Preservation Plan within the strategic and/or comprehensive plans of other, related, agencies such as the Stanly County Economic Development, Department of Public Works, Parks and Recreation, local water and sewer agencies, and others as deemed appropriate.
- Communicate with state legislators and North Carolina State Farm Bureau about the need for programs outlined in the Plan. Coordinate efforts to adopt state funding and state legislation, as needed, to support full implementation of the plan, especially where regional cooperation is necessary for successful implementation.
- Encourage towns and municipalities to adopt relevant elements of the Plan as part of their comprehensive land use strategies.
- Encourage adoption of Land Use elements of the Agricultural and Farmland Preservation Plan in ETJs.

IMPLEMENTATION RESPONSIBILITY: Voluntary Agricultural District Board, Cooperative Extension Service, Farm Bureau, and County Planning Department staff.

RECOMMENDATION 3

Develop a Regulatory and Policy Action Program

The stated policy of Stanly County and the State of North Carolina is to be supportive of agriculture and attendant industries. Yet, many policies and regulatory enforcement actions have inadvertent negative impacts on the industry. Addressing these issues in a non-confrontational manner, as early in the process as possible, can reduce these impacts.

ACTIONS

- Develop a policy action program to improve agricultural economic viability and public health:
 - Ensure continuation of Present Use Value taxation,
 - Expand EEP program to include agricultural soil (Prime and Productive) protection, and
 - Explore amendments to state health code and local zoning ordinances to expand on-farm processing capacity (e.g., Maine, Pennsylvania, and Ohio).
- Review NCDOT transportation policy related to rural roads and the impact of new development on agriculture.
 - Suggested items for review include highway infrastructure development, road speed, volume, shoulder width, and tagging and overweight limits for agriculture and forestry uses.
- Support development of a countywide institutional food buying program supporting local food purchases.
 - Develop a definition of local agriculture that fits both the producers' and consumers' needs.
 - Institute a single point of trade for local foods.
 - Establish a local food purchasing target consumption and price level.
- Engage an agricultural ombudsman at the County Economic Development or Cooperative Extension Office to support the regulatory, infrastructure, and program needs of individual farmers and industry clusters.

IMPLEMENTATION RESPONSIBILITY: Voluntary Agricultural District Board, Cooperative Extension Service, Stanly County Farm Bureau, and County Planning Department staff.

FOCUS AREA 3: State and Federal Advocacy

Some of the success of agriculture is predicated on a series of private and public actions, most of which are outside of the jurisdictional control of Stanly County. In light of this, this category's recommendations are influenced more heavily by people and groups outside of Stanly County, its local municipalities, agencies, and other entities. Effecting changes within this Focus Area will require advocacy and education.

RECOMMENDATION 1

Advocate for Farm Friendly State Agricultural Policies

As agriculture becomes a smaller element of both the County's land use and general economy, it will become increasingly difficult to keep the interests of agriculture in the forefront of policy development. Study team members found that keeping policy makers, agricultural industry leaders, and the general public informed and educated goes a long way toward developing better relations and maintaining awareness. In addition, the agricultural industry has common needs in workforce development, farm management, finance, and other issues that can be supported through a combination of public and private resources.

ACTIONS

- Seek review of NCDOT policies related to rural road design to allow for greater shoulder width and a requirement for tractor turn-offs to enhance traffic flow and traffic safety.
- Support full funding of the North Carolina Agricultural Development and Farmland Preservation Trust Fund at levels that match other programs in the Mid-Atlantic.
- Advocate for a state water policy that gives agriculture preferential access for irrigation and livestock watering.
- Encourage statewide funding of grey water irrigation systems for nonfood crops.
- Improve wildlife controls to reduce crop damage losses from deer and other nuisance species.
- Expand the EEP program to include protection of Prime and Productive Soils and Soils of Statewide Importance.
- Develop an individualized new/young farmer training program at the State level:
 - Identification of feeder sources for interns and participant screening criteria.
 - Creation of a program of work tailored to individual farm and intern needs.
 - Development of a formal mentor program targeting:
 - Newly graduating interns, and
 - Other pre-qualified new/beginning farmers.
 - Development of evening farm start-up and management classes targeting beginning farmer.
 - Overhaul FFA and vocational agriculture programs to focus on farm management and technical skill sets in emerging fields such as agricultural biotechnology.
- Work with educational institutions at the post-secondary and continuing education level to develop flexible training modules for use by agricultural operations to include:
 - Language training for managers and workers,
 - Advanced farm management training, and

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- Other issue-based training as necessary.
- Review neighboring jurisdictions' Farmland Preservation Plans and Comprehensive Land Use Plans on a regular basis.
- Conduct joint Voluntary Agricultural District Board meetings on a regular basis to encourage regional planning.
- Encourage regular meetings of planning and public utility/highway departments to encourage better integration of agricultural planning.
- Work with regional partners to advance agricultural district enhancements and/or term easements at the State level to improve the functionality of the Voluntary Agricultural District program as a land preservation tool.

IMPLEMENTATION RESPONSIBILITY: Action items under this recommendation require significant interagency cooperation with a range of potential task leaders. It is expected that overall leadership will be provided by the North Carolina Cooperative Extension Service with support from Farm Bureau, NCDACS, Soil and Water District, agricultural industry associations, as well as other agencies.

APPENDIX A

Agricultural Term Easements

Polk County EVAD Easement

Term Agreement Program Descriptions

Agriculture Term Easements and Lease of Development Rights (LDR) are perhaps best described as “*Term Agreements*.” All are phrases used to describe a voluntary mechanism to temporarily suspend the potential development of agricultural real estate for a definitive time frame in exchange for some contractual (monetary or otherwise) consideration. The Enhanced Voluntary Agriculture District in North Carolina is just such a tool.

The length of the term of an agricultural agreement in existing programs varies depending on the goal of the program. Some programs offer tax rebates, such as Delaware’s Commercial Forest Plantation program, while other programs offer access to programs and technical assistance, such as North Carolina’s EVAD. The popularity of these programs is often based on the perceived returns generated to the landowner. Developing pricing formulas is difficult and unlike most PDR programs that remove the development right for a perpetual period. With term agreements, the agreed upon price for a shorter term should require less monetary consideration (or other types of compensation) as the term is shortened.

For example, the price offered for a PDR typically uses an approach of taking the difference of the current “best use” appraised value minus the agricultural value. This method results in areas with the most development pressure attracting the higher PDR values. This has proven to be effective, but does require significant capital investment and commitment to buy PDRs.

Conversely, term agreements do not necessarily result in the same “lost value” approach. Such would be the case when the term (speculation period) is reduced within a reasonable planning horizon. Factors that affect an acceptable price for a willing seller may change considerably when the term is much shorter and do not necessarily coincide with the loss of the land’s development value.

At the purest level, term agreements are very similar to a landowner leasing a property to a farmer to be used entirely for an agricultural operation. If, during the term of the lease, the land owner wanted to change the use of the property, the lease would have to be renegotiated with all parties agreeing to make the changes or the lease would have to be purchased at its face value.

Examples of Usage

In Southern Maryland, an effort to entice farmers to halt production of tobacco included payments made over a ten-year period to the farmer based on the quantity of voluntary forgone tobacco production. In return for the money, the farmer entered a covenant that included a promise to keep the real estate in farming. This met the region’s goal of stopping the production of tobacco and protecting the agricultural land base without disadvantaging the underlying agricultural infrastructure.

The Massachusetts Farm Viability Program requires farmers that accept grants and technical assistance to place a development term agreement on the farm real estate. Depending on the size of the farm, the owner enters term agreements of either five or ten years. The State anticipates

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the benefit of the training, improved economics from the farm, and the time afforded for the various land planning and PDR strategies.

Issues Associated with Term Agreements

Term agreements, by themselves, do not easily fit long-term farmland protection goals. Several states have tried to use term agreements of 25 years or more only to find them expensive and cumbersome. Both Vermont and Pennsylvania found the capital expended to attract a long-term easement was not much different than the capital needed for perpetual PDRs.

Term agreements can be attractive when the goal of the program is not solely to preserve the real estate. Term agreements are best used when both the farmer and the municipality share the burden of *enhancing farm viability*. The combination of a relatively short-term period (less than 10 years) and decoupling the monetary consideration with a perceived “lost development” value communicates the goals and can better balance the pricing mechanisms.

Applicability of Term Easements in Stanly County

Stanly County has a very diverse base of agricultural real estate due to the various degrees of development pressure and types of soils. This diversity can result in municipalities and the County having very different land planning policies and economic development objectives. As well, this diversity makes landowners view the economic value of land holding very differently. Compounding the problem is the rapid rate of the change in the demographics and current weak farm economy.

When used effectively, term agreement help bridge these gaps by attempting to match local community needs with farm and forest landowner goals. From a community side, using term agreements allows time for the planning process to catch up, while providing an incentive for farmers to maintain farm real estate, thus meeting both land planning and economic goals. For example, a five-year to ten-year term agreement whose consideration is equivalent to a real estate tax rebate or the price a farmer would pay to lease a property for five years, is often sufficient to keep the real estate from being sub-divided. Such an agreement also assists the landowner by reducing the affects of rising land values during this time.

The pricing of the agreement does not necessarily need to be solely based on a monetary price per acre. Instead, the agreement may be in exchange for technical or non-specific funding programs. Programs similar to the Massachusetts program that requires recipients of loans, grants etc., to participate in a term agreement are also practical. But not all farmers have the same needs. Therefore, a term agreement program could include the real estate easement in exchange for a variety of services such as: training, loan or grant programs, flat price-per-acre offers, or a combination of the factors. For example, if the farmer enrolls in an education program that further enhances the long-term viability of the farm community, he/she may be eligible for a higher value term agreement than the farmer who doesn't want to participate in other programs. Or, if zero and low interest loans or grants are offered, there may be no additional monetary consideration for the term agreement, etc.

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Other options to consider include the County establishing a minimum price per acre, with the option of the municipalities enhancing the value based on their own growth planning needs. In this example, the price set by the County may be based on the lowest denominator with the expectation that municipalities could increase the protection (eased) value for highly developable properties within a targeted slow growth area.

Contractual agreements are necessary, but do not need to be cumbersome. They need to incorporate features that prohibit the property from being entered into a development process. Furthermore, they need to provide a “make whole” provision that fairly compensates the County and provides a reasonable disincentive to keep farmers from pulling out of an agreement. Of course, since these are not perpetual agreements, the key to success will be to keep the program simple, yet attractive, to landowners of the developable farms.

Based on interviews with local landowners in Stanly County, fair compensation is likely to be equated to the prime carrying cost of land, property taxes. Therefore, it is recommended that an approach to adding viability to an EVAD would include providing a discernible tax credit benefit such as a tax rebate or Payment in Lieu of Taxes arrangement.

As sample EVAD term agreement follows.

10 yr. Agricultural Conservation Agreement

Agreement between _____ (**Grantor**) residing at _____, hereinafter referred to as "Grantor", and the Polk County North Carolina Agricultural Development and Farmland Preservation Advisory Board, with its headquarters located at P. O. Box 236, #4 Courthouse Annex Bldg., Columbus, North Carolina, hereinafter referred to as the "Board", (Grantee).

Whereas, on April 17, 2006 the Polk County North Carolina Agricultural Development and Farmland Preservation Advisory Board adopted the Enhanced Farmland Preservation ordinance for the purpose of preserving agricultural lands through voluntary agricultural agreements, and

Whereas, Grantor presently owns a parcel(s) of land hereinafter briefly described as:

ALL THAT TRACT OR PARCEL OF LAND Situated in Township (Description of property)

Tax Account Number:

The Grantor desires to enroll in the Enhanced Farmland Preservation Program.

Now, therefore, in consideration of the above desires and purposes, the parties hereto mutually agree and covenant as follows:

1. Grantor agrees to abide by restrictions cited in Article VII of the Enhanced Farmland Preservation Ordinance, and hereby do restrict, the use and development of said parcel of land.
2. The restrictions cited in Article VII of the Enhanced Farmland Preservation Ordinance shall commence immediately upon the recording of this instrument by the parties hereto and shall continue for a term of ten (10) years. This restriction shall be considered a covenant running with land and shall apply to any successor, assignees, heirs, devisees, or transferees from the Grantor but shall not require the consent of the Board, or in any way inhibit the ability of the Grantor to convey fee title or to lease or mortgage said land.
3. The ownership of the subject parcel shall remain with the Grantor, his heirs, devisees, transferees, successors or assigns and no rights are conveyed by reason of this easement to any person nor are any rights conveyed to enter upon said land without the consent of the Grantor.
4. The parties hereto agree that this easement is offered by the Grantor and will be received by the Board under the authority conferred by the North Carolina G. S. Section 106-735 thru 106-744 Chapter 153A, in conjunction with Ratified House Bill 607, and is subject to the provisions of said law as the same and may be amended from time to time.

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5. At the expiration of said term, this Agreement shall be automatically renewed for a term of three (3) years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the Enhanced Agricultural Program. If no action is taken by either party, this agreement is terminated in total at the end of thirteen (13) years.

IN WITNESS WHEREOF, the parties hereto have caused their signatures to be hereunto affixed this ____ day of _____, 20__.

Notary Signature

Grantor

Polk County North Carolina Agricultural Development and Farmland Preservation Board

By: _____
Doug Harmon, Chairman
Grantee

APPENDIX B

Carroll County Right to Farm Legislation



Chapter 173, RIGHT TO FARM

[History: Adopted 12/2/94 by Ord. No. 127. Amendments noted where applicable.]

§ 173-1. Findings and policy.

§ 173-2. Definitions.

§ 173-3. Limitation of actions.

§ 173-4. Resolution of disputes and procedure for complaints; investigation and declaration.

§ 173-5. Right to farm notice and real estate transfer disclosure.

§ APPENDIX A

§ APPENDIX B

§ 173-1. Findings and policy.

A. It is the declared policy of the county to preserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the County of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to constitute a nuisance, trespass, or other interference with the reasonable use and enjoyment of land, including, but not limited to, smoke, odors, flies, dust, noise, chemicals, or vibration, provided that nothing in this chapter shall in any way restrict or impede the authority of the state and of the County to protect the public health, safety, and welfare. *[Amended 11/21/02 by Ord. No. 02-18]*

B. It is in the public interest to promote a more clear understanding between agricultural operations and nonagricultural residential neighbors concerning the normal inconveniences of agricultural operations which follow generally accepted agricultural practices and do not endanger public health or safety.

C. This chapter is not intended to and shall not be construed as in any way modifying or abridging local, state, or federal laws relating to health, safety, zoning, licensing requirements, environmental standards (including those standards which relate to air and water quality), and the like.

D. An additional purpose of this chapter is to promote a good-neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or use. These potential problems include, but are not limited to, noises, odors, dust, flies, chemicals, smoke, vibration, and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural operations and

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be prepared to accept attendant conditions as the natural result of living in or near rural areas. However, this chapter shall be effective regardless of whether disclosure was made in accordance with § [173-5](#) herein.

§ 173-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AGRICULTURAL LAND -- All real property within the boundaries of Carroll County that is lying in the Agriculture and Conservation Districts, or that is lying in other zoning districts if carried on the tax rolls of the State Department of Assessments and Taxation as agricultural or that is lying in other zoning districts if it has been used as an agricultural operation continuously for one year. *[Amended 11/21/02 by Ord. No. 02-18]*

AGRICULTURAL OPERATION -- Includes, but is not limited to, all matters set forth in the definition of "operation" in the Courts and Judicial Proceedings Article of the Annotated Code § 5-308(a), as amended from time to time; the production of all matters encompassed within the definition of "farm product" in the Agriculture Article of the Annotated Code § 10-601(c), as amended from time to time; the cultivation and tillage of the soil; composting; production, harvesting, and processing of agricultural crops; raising poultry; production of eggs; production of milk and dairy products; production of livestock, including pasturage; production of bees and their products; production of fish; production of fruit, vegetables, and other horticultural crops; production of aquatic plants; aquaculture; production of timber and any commercial agricultural procedure performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market; and usage of land in furtherance of educational and social goals, such as 4-H, Future Farmers of America, and the like.

GENERALLY ACCEPTED AGRICULTURAL PRACTICES -- Those methods used in connection with agricultural operations which do not violate applicable federal, state, or local laws or public health, safety, and welfare and which are generally accepted agricultural practices in the agriculture industry. "Generally accepted agricultural practices" includes practices which are recognized as best management practices and those methods which are authorized by various governmental agencies, bureaus, and departments, such as the Carroll County Cooperative Extension Service of the University of Maryland, the Carroll County Natural Resource Conservation Service, and the like. If no generally accepted agricultural practice exists or there is no method authorized by those agencies mentioned herein which governs a practice, the practice is presumed to be a generally accepted agricultural practice.

§ 173-3. Limitation of actions.

A. A private action may not be sustained with respect to an agricultural operation conducted on agricultural land on the grounds that the agricultural operation interferes or has interfered with the use or enjoyment of property, whether public or private, if the agricultural operation was, at the time the interference is alleged to arise, conducted substantially in accordance with generally accepted agricultural practices.

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B. Notwithstanding any provision of this section, no action alleging that an agricultural operation has interfered with the reasonable use or enjoyment of real property or personal well-being shall be maintained if the plaintiff has not sought and obtained a final judgment of the agricultural reconciliation committee, as defined in § [173-4](#) herein.

§ 173-4. Resolution of disputes and procedure for complaints; investigation and declaration.

A. Nuisances which affect public health.

(1) Complaints. A person may complain to the Carroll County Health Department to declare that a nuisance which affects public health exists.

(2) Investigations. The Health Officer may investigate all complaints of nuisance received against an agricultural operation. When a previous complaint involving the same condition resulted in a determination by the Health Officer that a nuisance condition did not exist, the Health Officer may investigate the complaint, but the Health Officer may also determine not to investigate such a complaint. The Carroll County Health Department may initiate any investigation without citizen complaint.

(3) Declaration of nuisance. If the Health Officer determines that a nuisance exists, the Health Department may declare the existence of a nuisance. In determining whether a nuisance condition exists in connection with an agricultural operation, the Health Officer shall apply the criteria provided in this chapter. Further, the Health Officer may consider the professional opinion of the Carroll County Cooperative Extension Service of the University of Maryland, or other qualified experts in the relevant field in determining whether the agricultural operation being investigated is conducted in accordance with generally accepted agricultural management practices.

B. Resolution of disputes regarding agricultural operations.

(1) Should any matter arise regarding an interference with the use or enjoyment of property from agricultural operations conducted on agricultural land, the parties to that matter shall submit the matter to the Agricultural Reconciliation Committee by first contacting the Agricultural Land Preservation Program Administrator, Carroll County Department of Planning, 225 North Center Street, Westminster, Maryland, 21157. *[Amended 11/21/02 by Ord. No. 02-18]*

(2) There is hereby established the Carroll County Agricultural Reconciliation Committee, which shall arbitrate and mediate disputes involving agricultural operations conducted on agricultural lands and issue opinions on whether such agricultural operations are conducted in a manner consistent with generally accepted agricultural management practices.

(3) The Agricultural Reconciliation Committee shall be composed of five persons. The Carroll County Board of County Commissioners shall appoint the members of the Agricultural Reconciliation Committee, one member shall be from a municipality and chosen from a list of recommendations submitted by the Carroll County Chapter of the Maryland Municipal League, one member shall be a member of a homeowners' association and a resident of Carroll County,

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one member shall be a resident of Carroll County who is not engaged or otherwise has a pecuniary interest in the commercial practice of agriculture, and 2 members who shall be members of the Agriculture Commission and selected as set forth herein. The Agriculture Commission shall select from among its members on a case-by-case basis, 2 people with competence in the subject matter of the dispute at issue, whose names shall be submitted to the Board of County Commissioners and upon the Board's approval shall serve as members of the Agricultural Reconciliation Committee.

(4) The Agricultural Reconciliation Committee will conduct its proceedings in an informal manner, and the rules of evidence shall not apply. The Agricultural Reconciliation Committee has the power, but is not required hereunder, to hold hearings, to compel testimony under oath and the production of documents. In each case before it the Agricultural Reconciliation Committee shall issue orders settling or otherwise resolving controversies arising out of agricultural operations, including but not limited to the invasion of property and personal rights by agricultural operations conducted on agricultural land. Proceedings shall be conducted in accordance with the duly adopted Rules of Procedure for the Carroll County Agricultural Reconciliation Committee which may be amended from time to time. The Reconciliation Committee will render a written decision within 30 days of the final proceedings and may extend the decision deadline for one additional 30 day period. *[Amended 11/21/02 by Ord. No. 02-18]*

(5) Orders of the Agricultural Reconciliation Committee shall be binding on the parties as a matter of law, but their enforcement shall be suspended by operation of law if, within 30 days of the date of the Committee's judgment, a party appeals such order to the Circuit Court for Carroll County. Appeal from orders of the Committee shall be by a trial de novo.

(6) If the Agricultural Reconciliation Committee or a Court finds that the conduct of a party in bringing or maintaining an action in connection with an agricultural operation conducted on agricultural land was in bad faith or without substantial justification, the Reconciliation Committee or Court may require that party to pay to the owner of the agricultural operation (or any other party opponent) the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by that party in defending against the action.

§ 173-5. Right to farm notice and real estate transfer disclosure.

A. Upon any transfer of real property by any means, the transferor shall provide the purchaser or lessee a statement specifically advising the purchaser or lessee of the existence of this chapter which shall be in substantially the form set forth in Appendix A at the end of this chapter.

B. Any person who violates any provision of this section is guilty of an infraction punishable by a civil penalty not exceeding \$100.00. Failure to comply with any provision of this right to farm notice and real estate transfer disclosure section shall not prevent the recording of any document, or the title to real property or any mortgage or deed of trust made in good faith or for value, and it shall not affect the application of this chapter. *[Amended 11/21/02 by Ord. No. 02-18]*

APPENDIX A
REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN THE COUNTY OF CARROLL, STATE OF MARYLAND, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE EXISTENCE OF THE CARROLL COUNTY RIGHT TO FARM ORDINANCE IN COMPLIANCE WITH CHAPTER 173 OF THE CODE OF PUBLIC LOCAL LAWS AND ORDINANCES OF CARROLL COUNTY (RIGHT TO FARM).

SELLER'S INFORMATION

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

AGRICULTURAL OPERATIONS (as defined in the Carroll County Right to Farm Chapter) LAWFULLY EXIST IN ALL ZONING DISTRICTS WITHIN THE COUNTY. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, fumes, dust, flies, the operation of machinery of any kind during any 24-hour period (including aircraft), vibration, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, and pesticides. Carroll County has determined that inconveniences or discomforts associated with such agricultural operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted agricultural management practices. Carroll County has established a reconciliation committee to assist in the resolution of disputes which might arise between persons in this county regarding whether agricultural operations conducted on agricultural lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted agricultural practices. If you have any questions concerning this policy or the reconciliation committee, please contact the Carroll County Planning Department for additional information.

Seller _____ Date: _____

Seller _____ Date: _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT:

Buyer _____ Date: _____

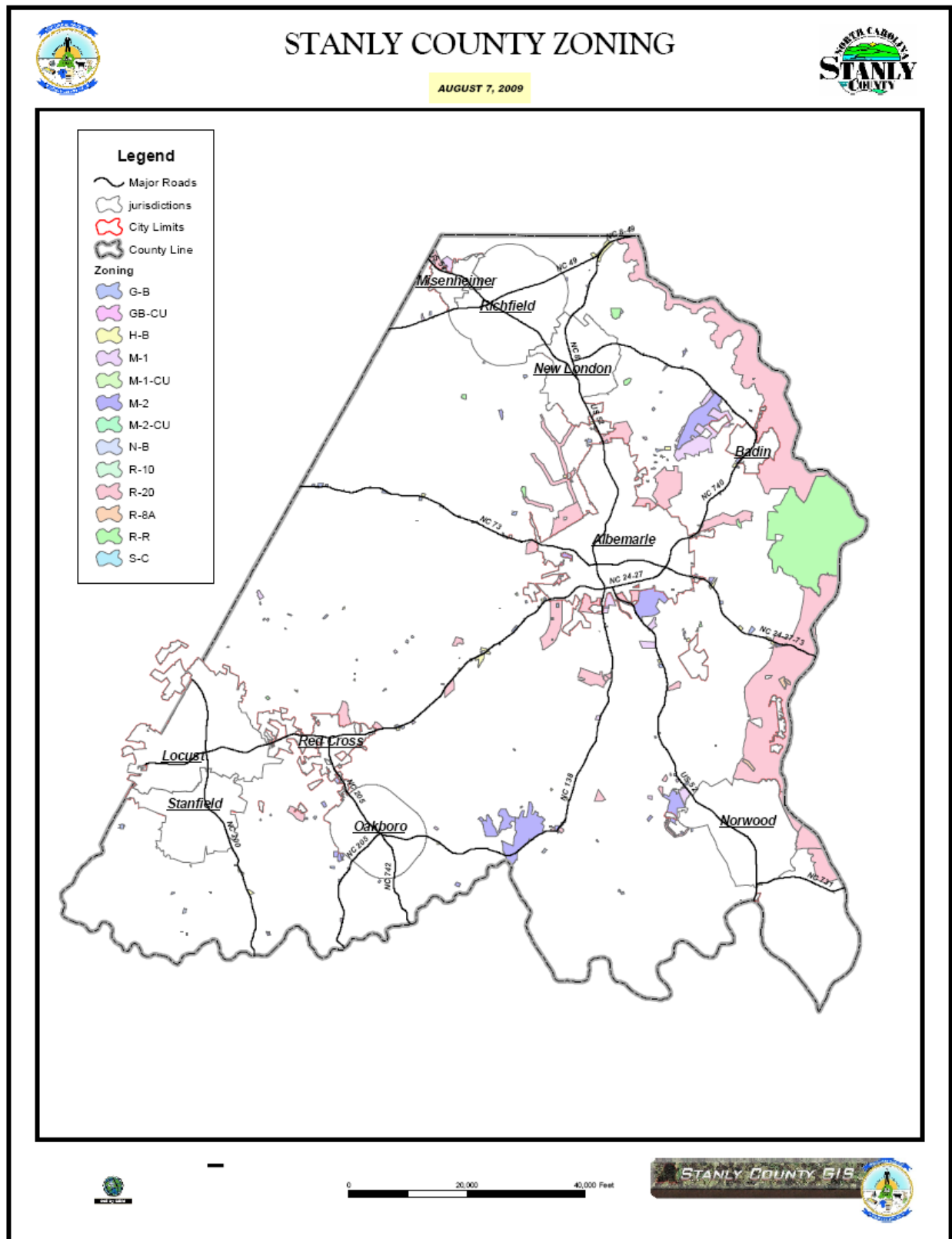
Buyer _____ Date: _____

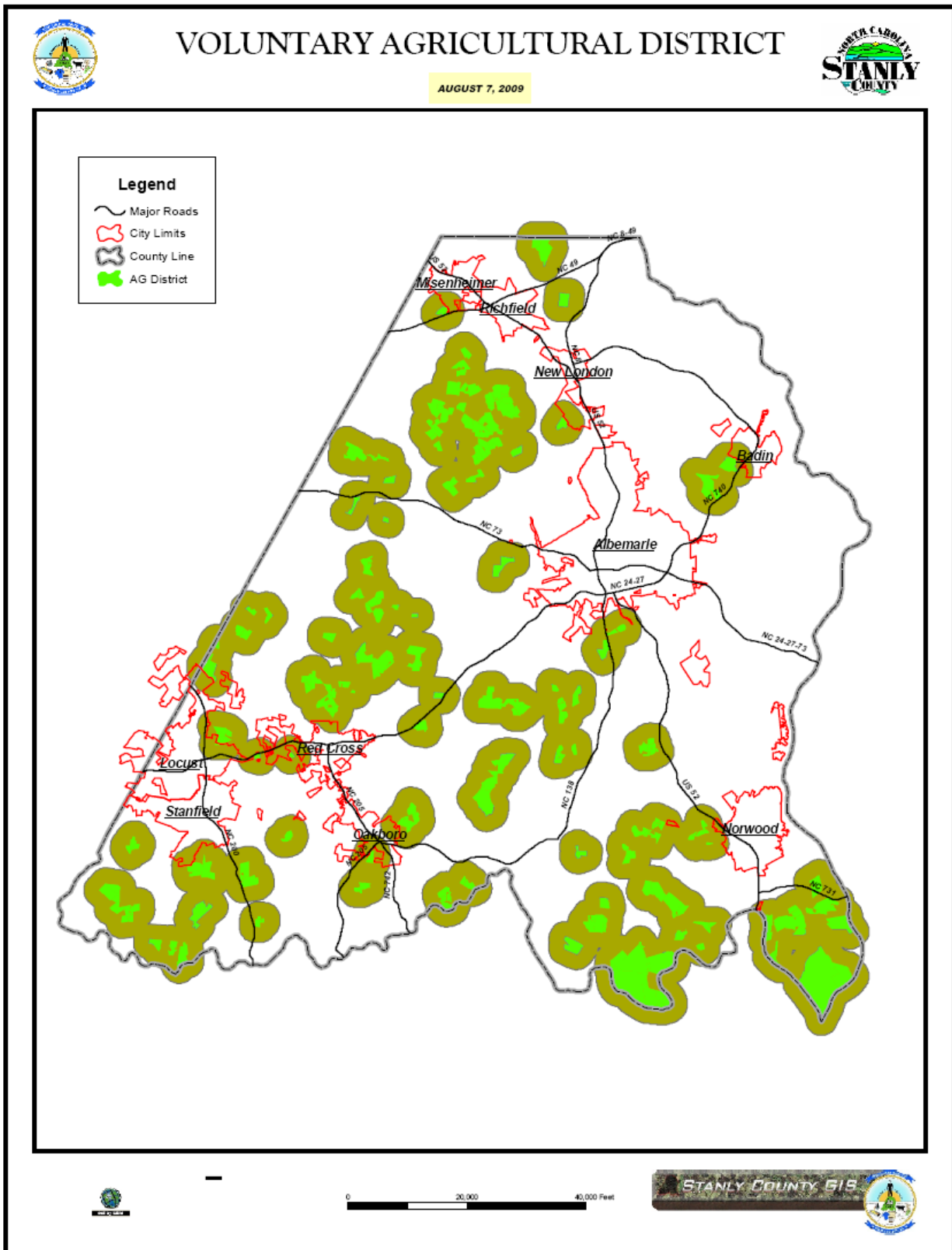
IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

APPENDIX B
CARROLL COUNTY RIGHT TO FARM NOTICE

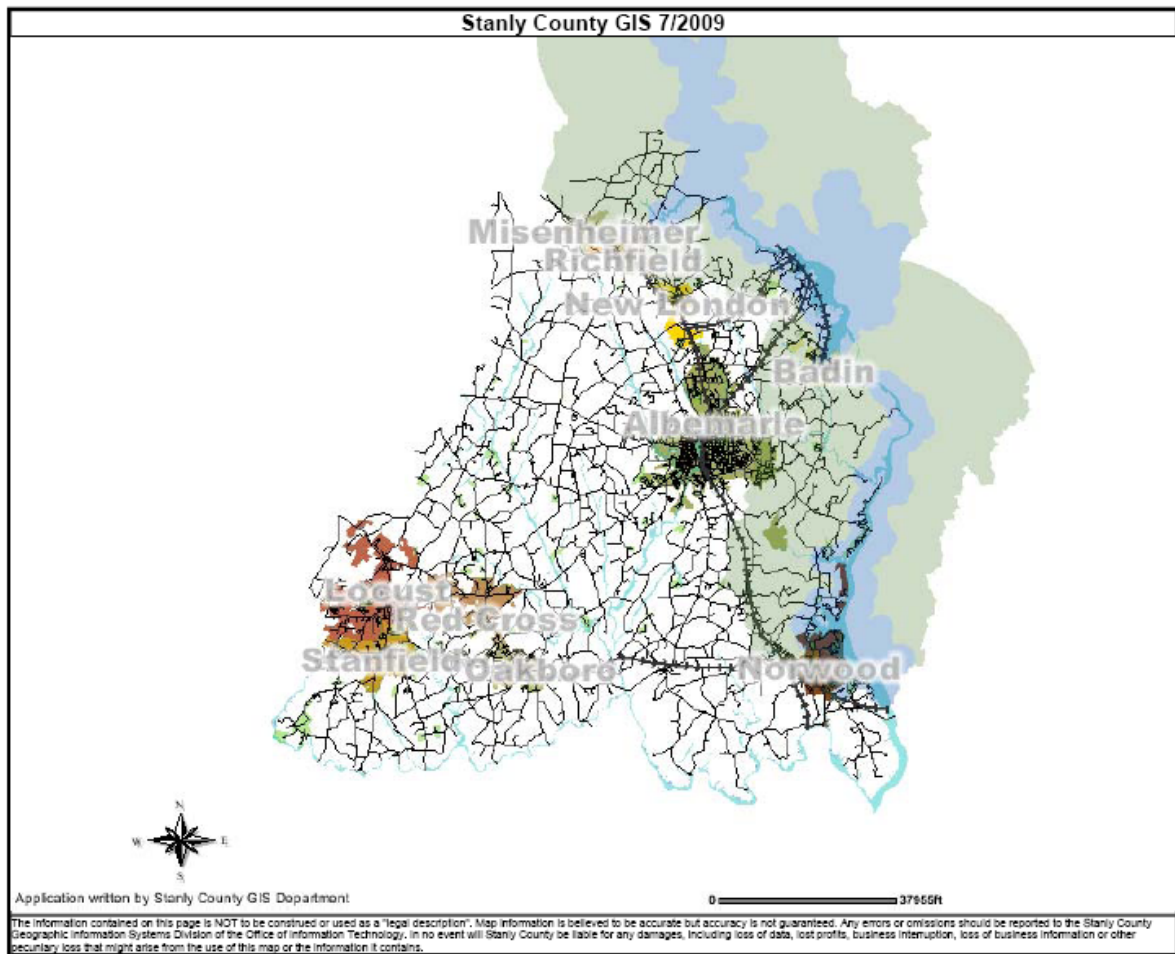
Carroll County recognizes and supports the right to farm agricultural lands in a manner consistent with generally accepted agricultural management practices. Residents of property on or near agricultural land should be prepared to accept the inconveniences or discomforts associated with agricultural operations, including but not limited to noise, odors, flies, fumes, dust, the operation of machinery of any kind during any 24-hour period (including aircraft), vibration, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Carroll County has determined that inconveniences or discomforts associated with such agricultural operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted agricultural practices. Carroll County has established an agricultural reconciliation committee to assist in the resolution of disputes which might arise between persons in this county regarding whether agricultural operations conducted on agricultural lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted agricultural practices. If you have any questions concerning this policy or the reconciliation committee, please contact the Planning Department.

APPENDIX C
Sample Map Layers

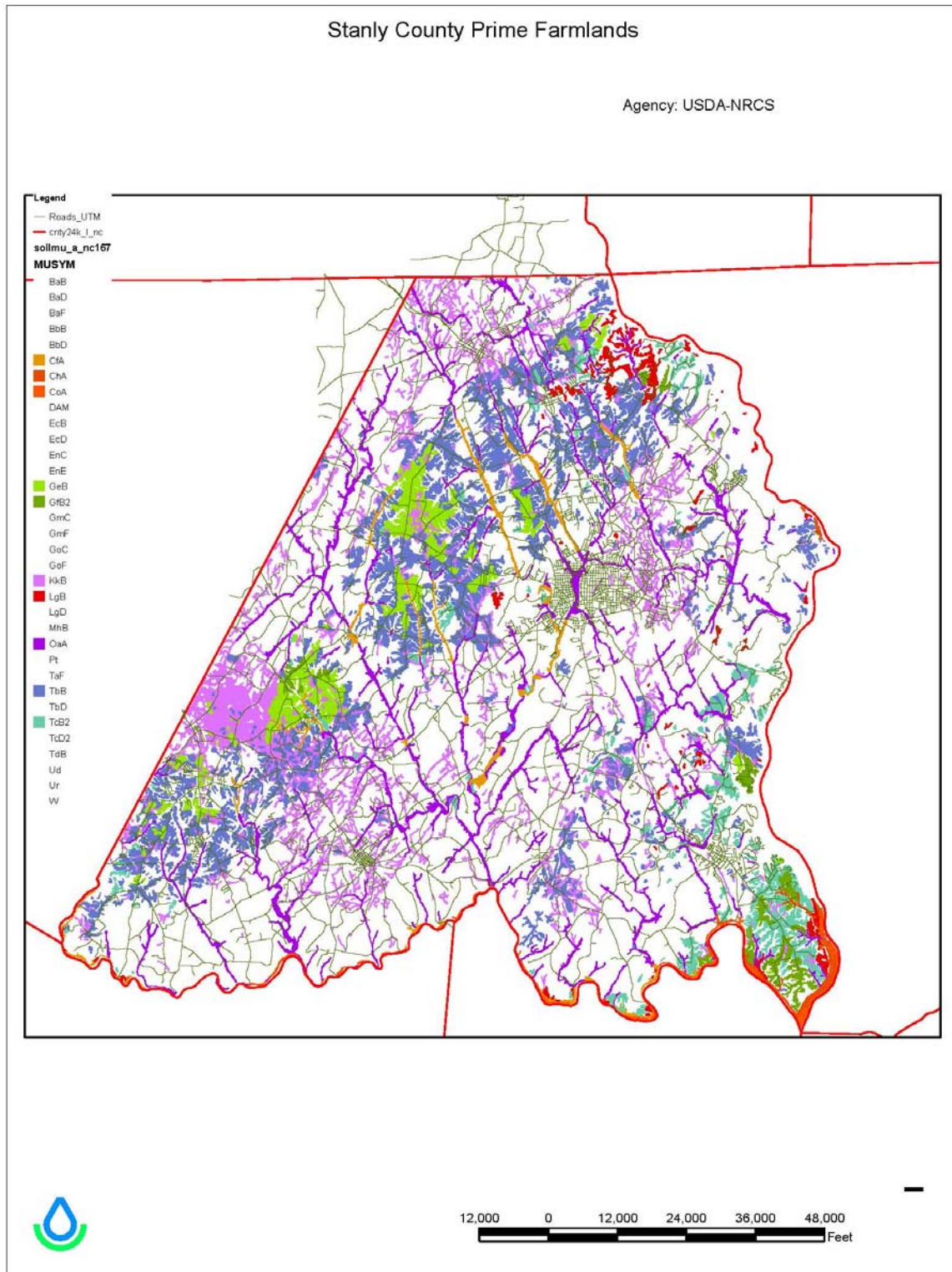




Stanly County Watersheds



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APPENDIX D
PDR Program Structure

Program Structures

A Stanly County PDR program could have different structures depending upon the county's interests and capabilities as well as those of other public and private partners in the region. Possible program structures include:

1. County staff manages program and complete PDR projects

Benefits:

- Gives county greater control of projects
- Reduces administrative costs for other partners

Drawbacks:

- Increased county staff costs and potential legal liability
- Limited use of other public and private sector resources
- Requires significant staff expertise in land transactions

2. County hires contractor to manage program and projects

Benefits:

- Gives county greater control of projects
- Utilizes private sector expertise in land transactions

Drawbacks:

- Greater cost to Stanly County and potential legal liability
- Limited use of other public sector resources

3. County staff oversees grants to towns or land trusts

Benefits:

- Reduced county cost, staff requirements and potential legal liability
- Leverages significant public and private sector resources

Drawbacks:

- Less county control of projects

It is recommended that Stanly County pursue the third program structure and establish a matching grants program. This program would provide up to 50 percent of the funds required to purchase conservation easements on priority farmland. This approach is appropriate for Stanly County as it would compliment other public and private farmland protection efforts currently underway and would reduce the county's overall program costs.

Governance

Several entities could have official oversight over a Stanly County PDR program. These options include:

1. Stanly County Agriculture Advisory Board
2. Stanly County Environmental Review Board
3. Stanly County Commissioner Committee
4. Newly Created PDR Program Committee

It is recommended that Stanly County pursue the fourth option by creating a new Stanly County PDR Program Committee. This approach is beneficial as it: 1) dedicates a specific body to overseeing the county PDR program, 2) is best suited to integrating Stanly County's interest in protecting farmland and open space, 3) can integrate the multiple groups interested in protecting farmland and open space in Stanly County. This newly formed committee should have representatives from:

- Stanly County Commissioners
- Conservation organization(s)
- Local farmers
- Local Forest Products Operators
- Municipal Government
- Stanly County Agriculture Advisory Board
- Stanly County Soil and Water District
- Stanly County Cooperative Extension
- Stanly County Planning Department

This new committee should have formal oversight responsibilities for the Stanly County PDR program. Specifically, the committee should:

1. Define program objectives including conservation targets for overall farmland protection goals;
2. Develop formal ranking criteria for evaluating potential projects;
3. Create an application form for all potential open space and farmland projects;
4. Establish an application process;
5. Coordinate public outreach efforts about the Stanly County PDR program;
6. Review pending applications and select program recipients;
7. Identify transaction tasks that must be completed prior to distribution of Stanly County funds;
8. Oversee the completion of accepted projects to insure program requirements are fulfilled.
9. Evaluate the operations of the Stanly County PDR program and make recommendations to the Stanly County Commissioners about ways to improve the program.

Operations

It is recommended that Stanly County Department of Planning provide staff support for the previously described Stanly County PDR Program Committee. However, this staff support will differ depending upon the structure selected for the program (see the section *Program Structures* for more detail).

Agricultural Conservation Easements

Agricultural conservation easements are designed to keep land available for farming and support continued farm viability and productivity. In general, agricultural conservation easements limit subdivision of the property, non-farm development and other uses that are inconsistent with commercial agriculture. Most of these agreements permit commercial development related to the farm operation and the construction of farm buildings.

However, they do not restrict farming practices or require public access to the property. One issue that Stanly County should pay close attention to is the affordability of farmland after it has been protected by an agricultural conservation easement. Some parts of the country – most notably in Massachusetts – have seen the price of protected farmland grow beyond the capability of farmers to purchase. These rising values are caused by competition from non-farmers that seek small farm estates and have the ability to pay significant sums of money for these properties.

As a result, the State of Massachusetts has required that all agricultural conservation easements, called agricultural preservation restrictions in Massachusetts, purchased by the state have a clause that gives the state a transferable right to repurchase the property at its agricultural value. Thus, when a protected farm property comes up for sale, the state has the right either to purchase the property at its agricultural value and re-sell it or transfer this purchase right to another farmer interested in buying the property. Under the state law the land must remain in agricultural use.

This clause has been somewhat controversial in Massachusetts as it can be seen as having the effect of reducing the resale value of a protected farm property. However, Massachusetts' officials have responded that any diminution in value should be accounted for by an appraisal at the time of purchase so there should be no loss to the original landowner.

Stanly County should pay close attention to the issue of farm affordability. Due to its proximity to New York City, it is likely that there will be strong competition between farmers and non-farmers for purchases of protected farmland. This competition could lead to the same problems seen in Massachusetts. Stanly County is strongly advised to consider requiring the inclusion of an option to repurchase at agricultural value clause in any conservation easements it helps purchase on farmland.

Assuming that the recommended program structure is accepted (a matching grants program),

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Stanly County Planning Department Staff should undertake limited operations responsibilities including:

1. Assist the PDR Program Committee in the previously described functions;
2. Create educational materials for local officials and landowners about the Stanly County PDR program;
3. Collaborate in conducting educational workshops for local officials and landowners about PDR programs and conservation easements;
4. Assist in writing grants to leverage state, federal or private funding;
5. Evaluate proposed agricultural conservation easements to insure consistency with principles outlined in the Stanly County Agricultural and Farmland Preservation Plan.
6. Work with partner organizations such as CCLC and the Nature Conservancy in the completion of accepted projects;
7. Review monitoring and stewardship efforts of grantees.

Application Process

Stanly County should establish an application process to solicit applications from interested towns and land trusts. In the program's first year it may desirable to have a Request for Proposals (RFP) to broadly announce the new program and its availability to towns and land trusts on the behalf of landowners.

However, in future years, Stanly County should consider establishing minimum acceptance criteria and accepting applications year-round. If an application met the determined standard, it would be placed on a program waiting list. When funds become available, they would be allocated in the application order. Applications should be screened with the following evaluation criteria.

DRAFT ELIGIBILITY CRITERIA

In order to be eligible to participate in a County support Purchase of Development Rights program, the applicant property(s) must meet the following basic requirements:

- ☐ **AGRICULTURAL DISTRICT:** Property must be enrolled in a Voluntary Agricultural District or Enhanced Voluntary Agricultural District.
- ☐ **DEVELOPABILITY:** Applicant property must be developable based on zoning, soils, and other physical characteristics of the property (wetlands, steep slopes, etc.).
- ☐ **ENCUMBERANCE:** Applicant property may not be wholly encumbered by another restrictive easement or similar encumbrance.
- ☐ **SIZE:** Applicant property offered as a single easement, or in combination with others, must comprise at least 100 acres. *Note: Individual applicants with fewer than 100 acres must demonstrate that they are contiguous to permanently preserved parcels and will serve a valuable in-fill purpose.*
- ☐ **SOILS:** Applicant property must contain at least 50 percent Class I, II, III soils or soils classified as “Unique” by the Natural Resource Conservation Service.
- ☐ **STEWARDSHIP:** Land must have a Soil Conservation and Water Quality Plan, Forest Management Plan, Nutrient Management Plan, CAFO Plan, or similar plan.
- ☐ **TAX STANDING:** Must be in good standing with local, state, federal tax authorities.

DRAFT RANKING FORMULA

Once an applicant has passed the initial screening outlined above, the applicant will be ranked against concurrent applications using the following formula. (Maximum score is 160)

Farm Characteristics (Maximum of 60 Points)

1. Soil Quality (Maximum 30 points) _____Points
 - Applicant property has 60 percent or greater Class I and II soils (30 points)
 - Applicant property has 40 percent to 59 percent Class I and II soils (20 points)
2. Size of Application (Maximum 30 points) _____Points
 - Application represents more than 200 acres (20 points)
 - Application represents 100 to 199 acres (10 points)
 - Application represents less than 100 acres, but is contiguous to permanently preserved parcels of more than 100 acres (5 points)
 - Application represents contiguous acreage (10 points)

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Location Factors (Maximum of 75 points)

5. Adjacency to Agricultural Land (Maximum 20 points) _____Points
Applicant property is adjacent to permanently protected land (20 points)
Applicant property is within ½ mile of permanently protected land (10 points)
Applicant property is adjacent to actively farmed land (10 points)
6. Adjacency to water and sewer service, highway access points, or principal/major arterial roadway (Maximum 20 points) _____Points
Adjacent to water or sewer lines (10 points)
Adjacent to highway access points or principal/major arterial roadway (10 Points)
Proximate to (within ½ mile) water or sewer lines (5 Points)
Proximate to (within ½ mile) highway access points or principal/major arterial roadway (5 Points)
7. Adjacency to developed areas (Maximum 10 points) _____Points
Adjacent to Municipalities and designated development areas (10 points)
Adjacent to Extraterritorial Jurisdictions (5 points)
8. Road Frontage (Maximum 10 points) _____Points
Total feet of road frontage (up to 5,000 feet) ____/500
9. Development Pressure (Maximum 5 points) _____Points
Town growth rate (5-yr simple average of new housing units) exceeds
County growth rate. (5 points)
10. Adjacency to critical environmental areas or unique natural resources
(Maximum 10 points) _____Points
Adjacent to or within a critical or unique environmental resource (e.g. Tillery or Badin watershed, Uwharrie National Forest, etc) (10 Points)

Discretionary Points (Maximum of 25 points) _____Points

At the County's discretion, it may award up to 25 points to an applicant's ranking score based on qualitative considerations or specific localized conditions at the time of the application. The rationale for awarding such points should be clearly delineated and may include factors such as:

- Value of the easement purchase (cost of easement relative to appraised value)
- Consistency of application with County, town, and municipal plans
- Imminent sale or intergenerational transfer
- Operational continuity
- Exceptional scenic value
- Economic productivity
- Cultural or historic significance
- Farm contains important agricultural infrastructure

APPENDIX E

Vermont Option to Purchase at Agriculture Value

Vermont Housing & Conservation Board

**POLICY POSITION: OPTION TO PURCHASE AT AGRICULTURAL
VALUE ACQUISITION PROGRAM POLICY**

9/24/2007

The Vermont Housing and Conservation Board (“VHCB”) makes grants to nonprofit conservation organizations, municipalities and certain state agencies for the purpose of conserving important agricultural lands, historic properties, outdoor recreation opportunities and natural areas. A goal of VHCB’s agricultural land conservation program is to “make reasonable efforts to assure that conserved farmland is accessible and affordable to future generations of farmers.” This goal is most often met by acquiring the Option to Purchase at Agricultural Value (“OPAV”) on important farmland during the initial acquisition and configuration of development rights. However, VHCB conserved more than 300 farms before the OPAV emerged as a common conservation tool. This policy provides VHCB with the opportunity to purchase, through a designated state agency or nonprofit partner, an OPAV on previously conserved farms to ensure their future affordability.

Due to the limited funding available for this program, this policy focuses public resources on farms in transition, with the goal of keeping good farmland in the hands of commercial farmers. By purchasing OPAV’s on transitioning farms, VHCB achieves the dual outcomes of acquiring perpetual affordability controls on already conserved farms and of assisting farmers with access to high quality farmland at an affordable price - facilitating affordable conveyances of conserved farms to the next generation of farmers now and in the future.

I. Minimum Eligibility Criteria:

1. **Conserved Farm** The farmland in question shall be subject to a perpetual conservation easement acceptable to VHCB.
2. **Facilitates a Transfer** Currently, funds are only available for the purchase of an OPAV, which facilitates the transfer of a conserved farm to a farmer with a minimum of 3 years experience managing or working on a farm and a reasonable plan for the operation and profitability of the farm being purchased.

This goal is most immediately met by funding contemporaneous transfers of conserved farms to farmer-buyers (including transfers completed no more than 12 months prior to the submission of an application for funding). Since the opportunity to purchase a farm may arise unexpectedly and require immediate action, requests for funding that facilitate direct, contemporaneous transfers may be considered at any of the Board’s regularly scheduled meetings.

Projects that involve deferred transfers (including but not limited to lease to purchase arrangements, ownership transferring partnerships, transaction involving non-farmer interim owners, or other forms of staged sales) are typically less reactive, are process driven, and involve

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a period of planning and negotiation between the parties. Therefore, requests for funding for these project types shall be considered once, annually – typically at the Board’s last meeting of the fiscal year, if funds are still available at that time.

Applicants may, however, submit an application for a deferred transfer prior to the last meeting of the fiscal year, if that project represents an unpredictable circumstance or special opportunity that requires immediate Board action. (The pre-application process for this program will help to identify projects that require this expedited approach.)

3. **Appraisal** Any farm participating in this program must have an acceptable appraisal that values both the OPAV as well as the new ‘after’ value of the farm subject to the OPAV. Farms where infrastructure is included in the OPAV/Easement must be appraised with separate values for the land and the contributory value of the structures.

II. Selection Criteria:

1. **Need** Priority will be given first to (a) contemporaneous farm transfers that may not occur without the financial assistance of this program, and then to (b) deferred transfers between farmers where public funds are needed to bridge the period of transition from one owner to the next.

2. Impact

A. **Risk** Priority will be given to OPAV purchases that will preserve the affordability of high quality farms with high or imminent estate conversion potential.

B. **Leverage** Priority will be given to OPAV purchases leveraged by non-VHCB funds, bargain sales or other donations of conservation restrictions, which increase the impact of the VHCB award by accomplishing additional conservation gain with limited funding.

3. Quality

A. **Resource** Priority will be given to projects involving one or more of the following: (a) farms with agricultural soils that meet VHCB’s priorities (prime and statewide); (b) farms located within an existing block of conserved farmland and/or located in a strong farming community; or (c) farms that are a keystone farm in their region and/or significant to their community.

B. **Business Plan (Viability)** Priority will be given to projects in each of the following scenarios: (a) Farms transferring to managers with a proven track record of farm management and an acceptable plan for operation – especially managers who have been farming, for at least one year, the land they intend to purchase with the VHCB award. (b) Farms transferring directly to new managers with a well-documented business plan (generally developed by or to the minimum standards of the Vermont Farm Viability Enhancement Program) that indicates positive economic growth. (c) Deferred farm transfers to new managers with a well documented business plan (generally developed by or to the minimum standards of the Vermont Farm Viability

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Enhancement Program) that indicates positive economic growth and an ability by the farmer to purchase the farm at the end of the deferred period.

VHCB will generally expect new managers to have some farm experience, preferably two years of relevant management experience. Special attention shall be paid to plans which focus specifically on a farm transfer. In some cases a farm plan will be required as a condition of disbursement. Business plans will be reviewed by VHCB staff and/or qualified consultants. Plans are not a priority for farmers with more than 8 years experience successfully managing a farm, that at the time of application already own the equipment and livestock (if applicable) necessary for their proposed operation.

III. Delivery System:

1. **Applications** The application process involves a pre-application phase followed by an appraisal, and then a formal request for funding:
 - a. Pre-applications for all projects may be submitted to VHCB staff at any point during the calendar year. Pre-applications should include as much detail about the transaction as is available by the date of submission, such as tentative purchase price, purchase and sales contract, lease agreement, etc.
 - b. Once VHCB staff have reviewed and approved a pre-application, VHCB will cost-share an appraisal of the OPAV. After the appraisal is complete, an applicant may submit a formal request for funding.
 - c. Requests for funding that facilitate contemporaneous transfers may be considered at any of the Board's regularly scheduled meetings (including transfers completed no more than 12 months prior to the submission of an application for funding).
 - d. Requests for funding for deferred transfers shall be considered by the Board at their last meeting of a given fiscal year, if funds are still available at that time. (Applicants may, however, submit an application for a deferred transfer prior to the last meeting of the fiscal year, if that project represents an unpredictable circumstance or special opportunity that requires immediate Board action).
2. **Caps** Awards for OPAV purchase will be capped at \$75,000, of which up to \$70,000 shall fund the acquisition of the OPAV and up to \$5,000 shall cover Grantee's associated costs.
3. **Grantees** Applicants may be a designated state agency, municipality or qualified nonprofit; however, all applications must include an existing VHCB stewardship partner who will co-hold and steward the OPAV.
4. **OPAV Details** The base value for the property in the OPAV will be set by appraisal. Any other easement revisions or changes from standard OPAV language shall also be appraised. Easement and OPAV revisions shall be considered and approved at the sole discretion of VHCB.

IV. Guidelines for Transactions:

1. Contemporaneous Transactions:

A. Full Disclosure VHCB shall receive and review the complete terms of the sale and determine they are fair and consistent with the market

B. Purchase Price The purchase price to the farmer shall not exceed the appraised fair market value of the farm subject to the OPAV.

C. Timing of Disbursement If awarded, VHCB funds shall be disbursed simultaneous with the signing of an OPAV and the transfer of the farm to the farmer buyer. If the transfer of the farm has occurred prior to the award, but not greater than 12 months prior to the submission of an application for funding, disbursement shall occur simultaneous with the conveyance of the OPAV.

2. Deferred Transactions:

A. Full Disclosure VHCB shall receive and review the complete terms of the lease, partnership, transfer, etc. and determine they are fair and consistent with the market.

B. Purchase Price The purchase price to the farmer shall not exceed the appraised fair market value of the farm subject to the OPAV, but may be adjusted at a reasonable rate of interest if the conveyance will occur more than a year after the date of the award.

C. Impact of Award on Purchase Price If awarded, the VHCB grant must directly lower the purchase price of the farm by the amount of the award plus any interest on the award accrued over the term of the transaction.

D. Lease Payments For requests involving lease to own arrangements, the Board will generally expect that a reasonable portion of lease payments build equity in the farm for the buyer, thereby further lowering the purchase price at the time of transfer. The Board may seek the advice of appropriate experts in reviewing lease to own arrangements.

E. Option to Purchase Deferred transfer agreements must provide the farmer buyer the opportunity to purchase the farm, at the agreed upon price, at any point during the transition period, and provide the farmer the right to extend the lease for up to 6 additional months provided s/he has secured financing to make the purchase within the extension period.

F. Grantee Assumes Rights of Buyer If the farmer buyer withdraws or defaults prior to the purchase of the farm, but after disbursement of VHCB funds, the Grantee shall assume the rights of the buyer under the terms of the lease or other transfer agreement, and may exercise the right to purchase the farm outright at its agricultural value as set forth in the OPAV

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G. Non-Farmer Interim Owners For transactions involving non-farmer interim owners, either private or non-profit, the interim owner shall recoup only his/her initial investment and transaction costs, which may accrue reasonable interest over the term of the transaction

H. Timing of Disbursement If awarded, VHCB funds shall be disbursed simultaneous with the conveyance of an OPAV.

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APPENDIX F

Installment Purchase Agreements

Introduction

The use of installment purchase agreements to save farmland is an innovative funding mechanism that has generated a great deal of interest as PACE programs gear up around the country. Its two-fold purpose is to help programs successfully compete with developers by providing unique financial and tax advantages to landowners and to enable jurisdictions to leverage present and future revenues to protect land while it is still available. First applied to the purchase of development rights in Howard County, Maryland in 1989, installment purchase agreements are now being used in a number of other jurisdictions as well to protect farmland.

What is an installment purchase agreement?

An installment purchase agreement (IPA) to save farmland is an alternative to a lump sum payment for the purchase of an agricultural conservation easement (PACE). Jurisdictions with PACE programs may use this landowner payment method if it suits their goals and conditions are right. An IPA is used by a governmental entity to buy agricultural conservation easements and pay for them over time with dedicated revenues and maturing zero coupon bonds that were purchased at closing.

What are the components?

An agricultural conservation easement is a binding legal instrument, recorded in the land records, that restricts land to its agricultural and natural resource uses. The landowner continues to own the land and may sell it for its restricted value. The easement is permanent and binds all future owners as well.

An installment purchase agreements (IPA) is the vehicle of payment by the jurisdiction to the landowner. Instead of cash at settlement, the landowner is given an installment purchase agreement, which is a legal, valid and binding promise to pay in 20 or 30 years (typical time periods). While the principal will not be paid until the end of that time period, tax-free interest on the face value of the IPA will be paid to the landowner (or whomever holds the IPA) twice a year for the term of the agreement. While IPAs are used to buy permanent easements that bind all future owners of the land, the IPA itself is separate from the land and the easement and can be transferred to someone other than the original grantor of the easement.

A dedicated revenue source is a steady income stream to the jurisdiction during the term of its IPA commitments that is used to make the interest payments to the holders of the IPA's.

A zero-coupon bond is the means of financing the principal “balloon” payment at the end of the term of the IPA. A jurisdiction buys these U.S. Treasury bonds at a deep discount from their face value because they pay no periodic interest payments. Instead, the interest from the zero-coupon bond builds up over time (accrues) and is paid in a lump sum at maturity when the bond is redeemed at its face value. After buying the “zero”, the government entity simply holds it until maturity in order to make the final principal payment to the holder of the IPA.

How does it work?

A landowner voluntarily applies to sell an agricultural conservation easement to a government farmland preservation program. After going through a process of eligibility determination, public notice, priority ranking, price determination, and official approval action, a date is set for settlement of purchase of the easement. The day before settlement, the jurisdiction purchases a zero-coupon bond with a face value equal to the purchase price of the easement. Because these bonds are deeply discounted, the jurisdiction only spends a small percentage (approximately 27 percent to 18 percent for a 20 to 30 year obligation) of the purchase price of the easement at the time of sale. On that same day, the interest of the IPA is locked in at least equal to the yield on the zeros purchased. A jurisdiction may choose to guarantee a minimum interest rate on the IPAs for predictability during the easement acquisition process. If this is the case, then, on the day of settlement, the interest rate to the landowner from the IPA is the higher of the jurisdiction's minimum or the zero's yield. This interest remains the same throughout the term of the IPA.

At settlement, the landowner grants a permanent agricultural conservation easement to the jurisdiction that is recorded in the land records. An installment purchase agreement (IPA), which has the full faith and obligation of the jurisdiction behind it, is given to the landowner to hold until the end of its term (typically 20 or 30 years). The jurisdiction makes twice yearly interest payments to the holder of the IPA over this term. These interest payments come from whatever identified revenue source the jurisdiction has established.

Why use it?

The use of installment purchase agreements has advantages for both the landowners and the jurisdiction that is purchasing conservation easements.

The **landowner**, who has sold the easement and accepted an installment purchase agreement as compensation, receives semi-annual interest payments on the face value of the IPA. This stream of **interest income** over the term of the agreement (typically 20 or 30 years) is **tax exempt** from federal, state and local income taxes. By entering into an IPA for the sale of a conservation easement, a landowner may **defer capital gains** until they actually receive the principal amount at the end of the term.

If the landowner needs to realize the purchase price of the easement during the term of the agreement, the IPA can be securitized, that is, sold on the bond market. This particular course of action does trigger capital gains, however. The ability to sell the IPA offers **flexibility for better estate planning**. If they choose, the heirs can sell the IPA rather than having to sell the land to pay estate taxes.

As with lump sum payments for easements, if a landowner agrees to a price for the easement that is less than its appraised value, they may be able to realize a **charitable tax deduction** on their federal income taxes for the difference.

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All of these financial and tax advantages are in addition to the traditional advantages to selling an easement rather than selling out to development – namely, the ability to keep one’s home, land and livelihood. As one Howard County farmer said when weighing his choices, “It’s not what you get, it’s what you get to keep!”

When a jurisdiction enters into an IPA with a landowner, it purchases zero-coupon bonds for the face value of the easement. The “zeros” cost the jurisdiction approximately 10 percent of their face value. The jurisdiction holds this bond while it accrues in value and then uses it to pay the “balloon” principal payment at the end of the term of the IPA. The use of these two components offers several **advantages to jurisdictions**. Payment with an IPA requires **minimal depletion of program funds** while protecting large numbers of acres at a critical point in time. By financing the principal payments with zeros, the jurisdiction **leverages dollars over time** but does not leave future governments with balloon payments.

The landowner’s “bundle of benefits” - financial, tax, flexibility, and intangibles – can make the jurisdiction’s offer competitive with developers and may make some landowners willing to sell easements at less than full easement value. This allows for further leveraging of current dollars by the jurisdiction.

History

The use of installment purchase agreements for farmland protection was pioneered in Howard County, Maryland in 1989. Equidistant between Baltimore, Maryland and Washington, D.C., Howard County experienced intense development pressure in the 1970s and 1980s. The county participated in the state purchase of development rights (PDR) program for a number of years, beginning in 1980. In 1982, after a public referendum, the county began its own program, funded by a dedicated portion of a 1 percent real estate tax. By 1987, the state and county programs had protected 7,500 acres. The late eighties brought intense development pressure and the purchase of development rights program stalled because land prices had risen dramatically and the lump sum payments were not nearly enough to be a viable option for farmers. The farmland available for protection was rapidly diminishing and the county was challenged to find a way to make the program work or give up on ten years of farmland protection.

The solution came in the form of a reinvigorated program conceived by financial advisor Daniel P. O’Connell that combined installment purchase agreements and zero-coupon bond financing with traditional elements of a farmland protection program. Directed by the County Executive, county agencies, financial advisor and bond counsel worked together to develop the innovative approach. Once up and running in 1989, the county began buying easements at a rate that allowed it to double, in the first three years, the acreage accomplishments of the previous ten years. It became a viable alternative to development for almost 80 landowners, preserving another 9,000 acres to date. In the process it has allowed the county to leverage \$9 million upfront and \$3 million annually to enter into \$55 million worth of IPAs. Ten of the IPAs have been sold by landowners through competitive bids to local brokerage firms in order to liquidate them. In 1990, the new program won The Government Finance Officers Association Award for Excellence in Financial Management.

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Since then, Harford County, Maryland, Burlington County, New Jersey, Peninsula Township, Michigan, and Virginia Beach, Virginia have developed PACE programs using installment purchase agreements and zero-coupon bonds.

Transferability

The basic concept of paying for preservation easements through a long-term installment purchase agreement offering tax-exempt interest income and principal at the end of the term should be applicable in other public jurisdictions. The financing plan is adaptable for use by jurisdiction that 1) seeks to preserve for public purposes valuable assets owned by individuals, 2) is enabled under state and any applicable local laws to enter into bonding multi-year obligations, **and** 3) has a predictable cash flow for the term of the obligation.

Issues to Consider

Dedicated revenue stream - Since IPAs have the “full faith and obligation” of the jurisdiction behind it, the interest payments must be made throughout the term of the agreement. The ability to make the interest payments should be secured with a dedicated revenue source to ensure the smooth operation of the financing mechanism. The act of dedicating a revenue source to farmland protection, rather than leaving it to the uncertainties of annual budget allocations, reinforces the notion that farmland protection is a long-term investment, both in the land base for agriculture and in growth management.

Administrative costs – Once the program is set up, most of the operating expenses are those that accompany the running of the easement program itself, rather than the IPA. Somewhat more support from the county’s legal and finance departments may be needed and the county’s bond counsel assists in each settlement. A bank, serving as paying agent, mails semi-annual checks to IPA holders.

Authority - Since IPAs constitutes long-term debt, each agreement will require approval of the purchaser’s governing body in the same manner that bonds require approval. Different state and local laws may mandate voter or state regulatory/legislative approval, and may dictate the time and terms of each IPA. Finally, any state or local limitations on negotiating the sale of IPAs with balloon payments at the end will need to be addressed, potentially by using another government agency or authority as a conduit for payments. In general, however, a local government can enter into IPAs if it can negotiate the sale of general obligation bonds.

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Daniel (Pat) O’Connell
President, Evergreen Capital Advisors, Inc
32 Nassau Street, 4th Floor
P.O. Box 190
Princeton, NJ 08542-0190
609-279-0068

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PAYMENT COMPARISON			
<i>Farmer Jones – 102 acres</i>			
<i>Lump Sum Method</i>		<i>Installment Purchase Agreement</i>	
102 acres		102 acres	
Easement valued at \$3,500/acre	\$357,000	Easement valued at \$3,500/acre	\$357,000
Direct cash payment	\$357,000	Installment purchase agreement	
		6.5% tax free interest for 30 years	
		\$357,000 x 6.5% = \$23,205 annually	
		(in semi annual payments)	\$23,205
		CUMULATIVE EFFECT	
		Total Tax free interest paid over 30 years	\$696,150
		Principal payment after 30 years	\$357,000
		(subject to capital gains)	
Total benefit to farmer minus 25% in taxes	\$357,000	Total benefit to farmer	\$1,053,150
Depletion of Farmland Protection Fund	\$357,000	Initial county cost to secure easement	\$35,700

APPENDIX G

Sample Performance Zoning

Jefferson County WV Changes to Zoning Code

Section I: Agricultural Land Use Plan

Sec. 2.421 Country Inn

Country inns are permitted in the Agricultural (AG), Countryside (CS), Estate (ES), and Neighborhood Conservation (NC) districts subject to the following standards:

A. Building appearance and character.

1. The structure, site development, and *landscaping* shall convey a rural character.
2. In design, a country inn may be a *conversion* or enlargement of an existing structure or new *construction*.
 - a. If new construction, the design shall be such that it fits into the historic context of the buildings in the area, or designed to blend into the landscape so as to have minimal visual impact.
 - b. If an enlargement, it shall be consistent with the character of the existing building and historic details restored to be true to the original design.
 - c. Adaptive re-use of existing *historic structure* shall be approved by the Jefferson County Historic Landmarks Commission as a means of preserving a historic structure. Incentives may be available for this purpose. See Section 5.305, *Renovation Incentives*.

B. Duration of accommodation. The duration of overnight guest accommodation shall not exceed twenty-nine consecutive nights.

C. Accessory commercial sales and services. When located on sites over 25 acres, or over 10 acres in the Estate (ES) district, country inns may provide additional services including:

1. Restaurant, dining facilities, and banquet seating for weddings, showers, and similar events with seating capacity limited to 80, or 2 times the number of rooms, whichever is less, or seating capacity limit of 250 guests when sites are greater than 75 acres in size.
2. Social or business functions.
3. Spa services for overnight accommodation clientele.
4. Gift shops.
5. Any parking associated with these functions shall be located a minimum distance of 100 feet from adjacent properties or no less than 50 feet from adjacent properties if a bufferyard of 0.7 opacity is provided.

D. Size. The country inn shall have no more than 30 rooms on *parcels* ranging in size from 10 to 250 acres in size. However, when located on *parcels* exceeding 250 acres in size one additional room may be added for each 10 acres of land area in excess of 250 acres, provided however, in no case may a country inn exceed 55 rooms.

E. Setback. The country inn and associated parking shall be set back at least 100 feet from adjacent properties or any agricultural uses.

F. Room Density.

1. Farmsteads: no more than one room per 2.5 acres.
2. Hamlets: 15 rooms per acre.

G. Density Transfer. On *farmsteads* that are larger than 200 acres, the site for a country inn may be subdivided from the farmstead and still be allocated *density* from the farmstead, provided that the country inn site is at least 10 acres.

H. Location in Hamlet. In a hamlet, commercial lodging shall be located in the commercial center and meet the standards for hamlets. See Division 10.200, *Hamlet Design*.

Section I: Agricultural Land Use Plan

Table 3.201A Residential Use District Standards						
District and Development Type <i>Average lot size</i>	Min. OSR	Density		Required Utilities	Minimum Site Area	
		Max. Gross	Max. Net			
Agricultural (AG)						
Farmstead <i>40 ac.</i>	0.00	0.025	0.025	on site	40 ac.	
Equestrian <i>5 ac.</i>	0.50	0.090	0.183	on site	35 ac.	
Cluster <i>1 ac.</i>	0.80	0.111	0.833	on site	18 ac.	
Planned <i>15,000 sf.</i>	0.90	0.191	2.134	community	80 ac.	
Hamlet <i>6,000 sf.</i>	0.92	0.300	4.461	community	150 ac.	
*Hamlet transit access <i>4,800 sf</i>	0.55	2.50	9.000	community	40 ac.	
Countryside (CS)						
Farmstead <i>40 ac.</i>	0.00	0.025	0.025	on site	40 ac.	
Single-family <i>5 ac.</i>	0.00	0.183	0.183	on site	5 ac.	
Equestrian <i>3 ac.</i>	0.30	0.211	0.301	on site	20 ac.	
Cluster <i>1 ac.</i>	0.70	0.250	0.833	on site	20 ac.	
Planned <i>20,000 sf.</i>	0.80	0.300	1.653	community	60 ac.	
Hamlet <i>6,000 sf.</i>	0.90	0.462	4.461	community	100 ac.	
*Hamlet rail transit access <i>4,800 sf avg.</i>	0.40	3.00	9.000	community	25 ac.	
Estate (ES)						
Single-Family <i>2 ac.</i>	0.30	0.397	0.411	on site	2 ac.	
Cluster <i>20,000 sf.</i>	0.60	0.661	1.653	community/public	6 ac.	
Planned <i>15,000 sf.</i>	0.65	0.925	2.500	public	20 ac.	
Residential (RS)						
Single-family <i>15,000 sf.</i>	0.15	1.96	2.13	public	15,000 sf.	
Cluster <i>10,000 sf.</i>	0.30	2.25	2.90	public	5 ac.	
Planned <i>6,000 sf.</i>	0.40	3.50	5.00	public	10 ac.	
Townscape (TS)						
Single-family <i>5,000 sf.</i>	0.20	4.25	5.54	public	5,000 sf.	
Planned	0.25	5.00	9.00	public	2 ac.	
Multi-family	0.25	7.00	14.00	public	3 ac.	
Village (VC)						
Single-family <i>15,000 sf.</i>	0.00	2.00	3.00	on site/public	15,000 sf.	
Cluster <i>8,000 sf.</i>	0.20	3.00	4.5	public	2 ac.	
Affordable housing (see Article 5, Incentives) provides bonuses that exceed these values.						
*Density for Hamlet Rail Transit Access may be used only for all portions of properties located within a 2,000 feet radius of the transit access facility or station and parking area.						

Section I: Agricultural Land Use Plan

Height, Building. The maximum height of a *building* permitted on a lot. Building height is determined from the vertical distance as measured ~~from the lowest ground elevation on the building to the highest point on the building, excluding chimneys and antenna;~~ from the average grade around the building to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the average height between the eavs and the ridge for gable, hip, or gambrel roofs.

Shallow Bedrock. This is an area where bedrock is within three feet of the surface, as determined by the general soil classifications found in Jefferson County. Any area where rock outcrops appears on the surface shall be considered shallow bedrock areas regardless of soil type, unless determined not to be shallow bedrock by a qualified geotechnical engineer or engineering geologist by means of soil test borings, test pits, air track drill probes, or applicable geophysical methods.

Wellhead Protection Area. This is a buffer extending ~~300~~ 100 feet from any municipal or public well.

Sec. 4.518 Wellhead Protection

Wellhead areas shall be protected by the following:

- A. **Drainage Direction.** All drainage shall be away from the well location.
- B. **Wellhead Protection Area.**
 - 1. *Construction* shall be at least 50 feet from the well, and 100 feet from any municipal or public well, except for the well house and its access.
 - 2. No *septic tanks* shall be permitted within the wellhead protection area.
 - 3. No underground storage tanks shall be permitted in the wellhead protection area.

Wetland. Those areas inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions; or areas that are defined and delineated in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" dated January 10, 1989 "1987 Wetlands Delineation Manual", and as may be amended from time to time; or as further defined and delineated by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, or the West Virginia Department of Environmental Protection. There are several special types of wetlands that have additional or different standards:

- A. **Farmed Wetlands.** Wetlands that were drained, dredged, filled, leveled, or otherwise manipulated before December 23, 1985, for the purpose of, or to have the effect of, making the production of an agricultural commodity possible, and continue to meet specific wetland hydrology criteria (U.S. Department of Agriculture).
- B. **Marl Wetlands.**

