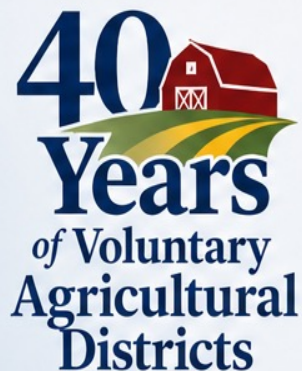




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North Carolina Department of
Agriculture and Consumer Services

VAD ORDINANCE UPDATE

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The Architecture of Farmland Preservation

A Legal History and Overview of
NCGS Chapter 106
Article 61

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Legal Disclaimer

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The Enabling Act Doctrine

- Dillon's Rule Context: Counties possess no inherent regulatory power.
- The Statute as an Instrument: Article 61 is enabling legislation.
- Local Execution: Grants counties explicit authority to pass VAD ordinances.
- State-Level Oversight: Coordinated via NCDA&CS.

NC
Constitution



State
Legislature



County
Authority

Legal History and Evolution

- 1985 (S.L. 1985-1025): Enactment of the original Enabling Act to combat suburban fragmentation.
- 2005 (S.L. 2005-390): Passage of H.B. 527, creating the Enhanced VAD (EVAD) tier.
- Modernizations: Legislative updates streamlining enrollment and expanding advisory board powers.

1985



2005



Modern
Updates

Why Article 61 Exists: The 1985 Foundation

- **The Problem:** Rapid urban sprawl and skyrocketing land valuations forcing family farms into foreclosure or sale.
- **The Legislative Solution:** The 1985 General Assembly passed the *Agricultural Development and Farmland Preservation Enabling Act*.
- **The Mechanism:** Declares that the preservation of working lands is in the public interest.
- **The Philosophy:** Built entirely on voluntary cooperation and local, county-level management rather than heavy-handed state zoning.

The Administrative Core: County Advisory Boards

- Statutory Requirement: Local ordinances must establish an Agricultural Advisory Board to administer the program.
- Board Composition: Appointed by Commissioners; must consist of a majority of actively engaged local farmers.
- Technical Advisors: Typically features local Cooperative Extension Directors and Soil & Water District Supervisors as ex-officio technical guides.
- Core Duties: Reviewing application qualifications, managing disputes, and advising county commissioners on land-use conflicts.

Mechanics of a Voluntary Agricultural District (VAD)

- Statutory Basis: NCGS § 106-738.
- Enrollment Mechanism: Completely voluntary application process.
- Property Qualifications: Session Law 2021-78 incorporated “bona fide farm purposes” as a qualifier.
- Revocability: Landowners may withdraw at any time via localized notice protocols.



The 2005 Transformation: The Enhanced VAD (EVAD) and Property Law

- Statutory Basis: NCGS § 106-743.1 (Session Law 2005-390)
- Instrument Type: Irrevocable conservation agreement.
- Duration: Fixed 10-year term with automatic 3-year renewals.
- Legal verbiage: The restriction legally 'runs with the land.'
- Recording: Required to be recorded with the County Register of Deeds.
- Additional benefits beyond VAD

Category	Voluntary Agricultural District (VAD)	Enhanced Voluntary Agricultural District (EVAD)
Agreement Type	Non-binding, 10-year revocable agreement	Binding, 10-year irrevocable conservation agreement
Program Purpose	Promote agriculture, forestry, and horticulture; reduce conflicts with neighbors	Includes all VAD purposes, plus enhanced economic and zoning benefits
Legal Protection	May receive public hearings before condemnation; record notice of proximity	Same as VAD, plus stronger assurances for property use under zoning law; may receive additional priority in state grants
Waiver of Water & Sewer Assessments	Optional, may be held in abeyance until connected to service	Same as VAD
Advisory Board Representation	Provides a voice on county Agricultural Advisory Board	Same as VAD
Signage & Public Visibility	Standard signage promoting district participation	Same as VAD
Subdivision & Development Notifications	Preliminary plans must acknowledge proximity to districts	Same as VAD
Non-Farming Product Sales	Not included	Landowners may sell up to 25% of gross sales from non-farm products while maintaining bona fide farm status under zoning regulations
Cost-Share Programs Eligibility	Standard participation	Eligible for higher percentage of cost-share funds for farmland under conservation agreements
Priority Consideration for Grants	Not specified	State agencies encouraged to give priority to EVAD participants

Category	Voluntary Agricultural District (VAD)	Enhanced Voluntary Agricultural District (EVAD)
Enforceability	Agreement revocable; benefits lost if withdrawn	Agreement irrevocable; more secure protection for agricultural use
Additional Land Use Restrictions	Standard agricultural use restrictions (e.g., max lots, non-farm construction limits)	Same as VAD, plus ensures off-site product processing recognized as bona fide farm purpose

Statutory Defenses Against Nuisance Litigation

- Codified Intent: Text explicitly written to decrease the likelihood of nuisance lawsuits (SL 2021-78)
- Legal Defense: Strengthens the 'Coming to the Nuisance' doctrine.
- Constructive Notice: Proximity buffers must appear on public records (SL 2018-113 and 2021-78)

Inter-Governmental Restraints: Eminent Domain

- Statutory Basis: NCGS § 106-740 (1985 Enabling Act)
- Sovereign Conflict: Restricts state and local eminent domain powers (it does not prohibit ED).
- The Mandate: Administrative public hearings required before public funds can be used.
- Purpose: Forces an environmental and agricultural alternatives analysis.

New: The Forced Rezoning Speed Bump (House Bill 126)

- Modern Expansion: Extends advisory board scrutiny from condemnation to zoning.
- 45-Day Action Window: Advisory Board holds a public hearing and files an impact report.
- 120-Day Moratorium: Strict statutory freeze prohibiting the execution of forced rezoning.

The Ultimate Shield: 'Bona Fide Farm' Exemptions

- Zoning Barrier: Counties cannot use zoning to restrict 'bona fide farm' activities (NCGS 160D-903).
- Objective Criteria: Tied directly to state-level standards (e.g., farm tax certificates).
- The Down-Zoning Ban: Localities cannot reduce land use rights without absolute written owner consent (SL 2024-57).

Conclusion & Legal Takeaways

- Summary: Article 61 balances police powers with constitutional property rights.
- Statutory Impact: Decentralizes land preservation to local, expert boards.
- Future Outlook: Continues to serve as a model for statutory farmland preservation.
- Questions & Discussion