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State:	North Carolina
Jurisdiction Type:	State
Municipality:	N/A
Year (adopted, written, etc.):	2004
Community Type – applicable to:	Urban; Suburban; Rural
Title:	State of North Carolina Agricultural Land Protection Ordinance – Counties
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Abstract

Counties have all the same powers with regard to agricultural land protection as cities have (see above). Additionally, counties have further authority, not provided to cities, under the Farmland Preservation Enabling Act, located at Article 61 within Chapter 106. Under § 106-736, counties may establish by ordinance a farmland preservation program. Such a program must provide for the establishment of voluntary agricultural districts consisting of a minimum number of acres (to be determined by the board of commissioners) and the formation of such districts by means of an agreement with the landowners. § 106-738. The program must also create an agricultural advisory board that reviews proposed agricultural districts and ordinances. § 106-739. Under § 106-744, counties are authorized to purchase agricultural conservation easements over qualifying farmlands located within a voluntary agricultural district. § 106-744. Agricultural conservation easements are defined by § 106-744(b)1 as a “negative easement in gross restricting residential, commercial, and industrial development of the land for the purpose of maintaining its agricultural production capability.

Resource

§ 106-736. Farmland preservation programs authorized

A county may by ordinance establish a farmland preservation program under this Article. The ordinance may authorize qualifying farms, as defined in G.S. 106-737, to take advantage of one or more of the benefits authorized by the remaining sections of this Article.

§ 106-738. Voluntary agricultural districts

(a) An ordinance adopted under this Article shall provide:

(1) For the establishment of voluntary agricultural districts consisting initially of at least the number of contiguous acres of qualifying farmland or the number of qualifying farms deemed appropriate by the board of county commissioners;

(2) For the formation of such districts upon the execution by the owners of the requisite acreage of an agreement to sustain agriculture in the district;

(3) That the form of this agreement must be reviewed and approved by an agricultural advisory board established under G.S. 106-739 or some other county board or official;

(4) That each such district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of such agricultural districts shall be to increase identity and pride in the agricultural community and its way of life and to increase protection from nuisance suits and other negative impacts on properly managed farms. The county may take such action as it deems appropriate to encourage the formation of such districts and to further their purposes and objectives.

§ 106-739. Agricultural advisory board

An ordinance adopted under this Article shall provide for the establishment of an agricultural advisory board, organized and appointed as the county shall deem appropriate. The county may confer upon this advisory board authority to:

(1) Review and make recommendations concerning the establishment and modification of agricultural districts;

(2) Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this Article;

(3) Hold public hearings on public projects likely to have an impact on agricultural operations, particularly if such projects involve condemnation of all or part of any qualifying farm;

(4) Advise the board of county commissioners on projects, programs, or issues affecting the agricultural economy or way of life within the county;

(5) Perform other related tasks or duties assigned by the board of county commissioners.

§ 106-744. Purchase of agricultural conservation easements

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by G.S. 106-737 located within a voluntary agricultural district as defined by G.S. 106-738.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations; and

(2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the purchase of agricultural conservation easements, including transaction costs, and shall distribute Trust Fund monies for such purchases, including transaction costs, as follows:

(1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.

(2) To counties according to the match requirements under subsection (c1) of this section.

(c1) A county that is an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c2) The Commissioner of Agriculture shall adopt rules governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or

instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement.

(e) As used in subsection (c1) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

(1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.

(2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.

(3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.

(4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.

(5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739.