



# Woodland Owner Notes

## Protecting Working Forests with Voluntary Agricultural District Programs

*This publication outlines the requirements and benefits of voluntary agricultural district programs in North Carolina and explains how forest landowners can join these programs.*

North Carolina is one of the fastest growing states in the country, which has led to significant loss of forest and farmland. With this growth come residents who may not understand or appreciate traditional rural land uses such as forestry or farming, particularly activities like tree cutting and harvesting. Their concerns may lead to increases in land use regulations, including tree protection regulations, which can affect forestry operations or even result in lawsuits. In North Carolina there are local ordinances, called voluntary agricultural district (VAD) ordinances, that establish programs to promote and preserve traditionally rural land uses like forestry and farming. Benefits to the forestland owner vary from one county or town to another, but they typically include signage and various notification provisions intended to reduce nuisance issues between forestry and other types of land uses — including residential. Also, some local governments may choose to include other forest landowner benefits such as waiver of water and sewer assessments for land that is enrolled in a VAD program.

### FORESTLAND PRESERVATION PROGRAMS

Although they are often referred to as farmland preservation programs, VAD and Enhanced Voluntary Agricultural District (EVAD) programs also include forestland

and horticulture land. As the names imply, participation in a VAD or EVAD program is *voluntary*. Landowners are not required to be enrolled, even in counties and towns that have passed an ordinance creating such a program. Landowners not enrolled are not affected by the program. These programs are authorized by the Agricultural Development and Farmland Preservation Enabling Act (N.C.G.S. §§ 106-735 et seq.) that was passed in 1986.

### CREATION OF VOLUNTARY AGRICULTURAL DISTRICT PROGRAMS

VAD and EVAD programs are created under the act and through a local government's general ordinance-making authority and, in North Carolina, are not associated with a county or town's zoning authority. Because a VAD ordinance does not give a local government zoning authority, forestland, farmland, or horticultural land cannot be zoned pursuant to a VAD program. Many local governments — counties and towns — have VAD and EVAD programs in North Carolina. Contact your local Cooperative Extension office or Soil and Water Conservation District office to see if your community has a program. Local governments could have one ordinance that creates both programs or separate VAD

and EVAD program ordinances. The primary differences between a VAD program, authorized under N.C.G.S. § 106-738 of the act, and EVAD program, authorized under N.C.G.S. § 106-743.1, are (1) the type of agreement that is signed and (2) the additional benefits that an EVAD program can offer.

In instances where a county has a program and a town does not, the county and town may sign a memorandum of understanding allowing the county to administer its VAD program within the corporate limits of a town. This allows forest and farmland located within a town's corporate boundaries to be enrolled in the county VAD program. State law N.C.G.S. § 160A 383.2 grants municipalities zoning flexibility for land enrolled in VAD and EVAD programs. This provision is particularly relevant to land located within the zoning authority of a municipality.

### **BENEFITS FOR VAD AND EVAD PROGRAMS**

Benefits for VAD and EVAD programs provided for under the act, which may or may not be included in your local government's program, include:

#### **Public hearings on condemnation of farmland**

— An advisory board can hold public hearings on public projects likely to have an impact on an operation or if projects involve condemnation of all or part of qualifying forest, farm, or horticultural land. Before a state or local government agency can condemn any interest in qualifying land within a VAD or EVAD, it must request that the local agricultural advisory board (established under N.C.G.S. § 106-739) hold a public hearing.

**Record notice of proximity** — A county that has a computerized land records system may require that such records include some form of notice to alert a person researching the title of a particular tract if the tract is located within a half-mile of a voluntary agricultural district.

**Waiver of water and sewer assessments** — Water and sewer assessments may be held in abeyance, with or without interest for farms inside or outside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.

Other VAD and EVAD benefits not specifically listed under the act, but that may be included in your local government's program pursuant to N.C.G.S. § 106-738(B) or other authorities, include:

**Notices** — Notices may be posted in the register of deeds' office, and copies made available to anyone recording a deed or plat, stating the existence of a voluntary agricultural district program and describing the activities

### **A Benefit to Forestry...and the Community**

Though it may not be listed in an ordinance as a benefit, one of the most important reasons to have a VAD or EVAD program is that it provides an opportunity to include forestry in policy making and education. Forestry professionals and landowners can participate on VAD advisory boards or be appointed to planning boards and other local government commissions. In these roles, they can provide a voice for forestry in the community and educate others about its importance.

that may occur within these programs. These notices will explain that activities could occur during the day or night and include, but not be limited to, logging, sawing, pesticide spraying, truck operations, and other agricultural activities.

**Signed Statement and Registration** — Individuals applying for a building permit or persons registering a deed could be required to sign a statement that they have reviewed the most current maps indicating the locations of agricultural districts and noted the proximity of these districts to their property. This statement also attests that they understand that forestry, agricultural, and horticultural activities can occur at any time in these districts during the day or night.

**Maps** — Maps identifying agricultural districts may be posted in the register of deeds' office, Cooperative Extension and Soil and Water Conservation offices, inspections and planning departments, and other local agencies and offices.

**Signage** — Signs identifying approved districts may be placed along the rights-of-way of major roads that pass through or next to those districts. Additionally, members of voluntary agricultural districts may be provided with signs, for free or for a fee depending on the program, to place on their property enrolled in a district.

**Subdivision and development review** — Preliminary development plans or plats for subdivisions or planned unit developments that are within a specified distance of voluntary agricultural districts must designate their proximity to those districts.

**Public expenditures** — Before a county or town can spend funds to acquire land within a voluntary agricultural district for a use other than forestry, farming, or horticulture, it may be required to submit detailed information to the VAD advisory board showing that it has considered alternatives. The act also empowers the advisory board to

hold public hearings on any public projects likely to affect agricultural, forestry, or horticultural operations.

Many of the mechanisms for advertising the presence of agricultural districts and the activities that occur within those districts, including signs in the community and maps, posted notices, and signed statements acknowledging the presence of a district within local government offices, are useful. These notify adjoining property owners of farm, forest, and horticulture activities that could occur on the land. However, the most legally effective provision for defending a nuisance lawsuit may be the record notice of proximity provision of the act. This provision also lets agencies and divisions such as transportation departments know where voluntary agricultural districts are located when planning for roads, utilities, or development — so that they can adjust their plans to reduce impacts on districts.

### **ADDITIONAL BENEFITS FOR ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS ONLY**

EVAD programs provide benefits in addition to those offered by VAD programs. Under N.C.G.S. § 106-743.4 of the act, a forestry, farming, or horticultural operation can sell products not produced on site and receive up to 25 percent of gross sales from these non-farm products, while still having those sales fall under the bona fide farm purpose exemption from county zoning.

A second benefit is that an operation can bring in and process (through value-added production) any amount of a product not grown on the operation as long as the final product is recognized by the North Carolina Department of Agriculture and Consumer Services as a “Goodness Grows in North Carolina Product.” This value-added processing can be considered a bona fide farm purpose that is also exempt from county zoning. Counties may not recognize the processing of products grown off site as a bona fide farm purpose. This provision provides some additional flexibility for forestry, farm, and horticultural operations subject to a conservation agreement in the EVAD program.

A third benefit is that under the act, state departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to any person who farms land that is subject to an EVAD conservation agreement as defined in N.C.G.S. § 106-743.2. Additionally, forest landowners that also have qualifying farmland subject to an EVAD conservation agreement are eligible to receive a higher percentage of Agriculture Cost Share Program funds.

### **ENROLLMENT REQUIREMENTS**

To enroll in a VAD or EVAD program, you must meet three requirements.

The first requirement is based on present-use value: at least 20 acres of forestland and a forest management plan. For more information on present-use value and forestry, please read Woodland Owner Note 40, available online at <http://www.ces.ncsu.edu/forestry/pdf/WON/won40.pdf>. Forestland does not have to be enrolled in a present-use value program, but it must qualify for enrollment.

Secondly, the land must be subject to a conservation agreement. The type of conservation agreement, which keeps land in forestry, depends on the program, VAD or EVAD, in which your land is enrolled.

The conservation agreement for a VAD is a non-binding, 10-year agreement. With a non-binding conservation

#### **Agreement or Easement: What is the Difference?**

The act uses the definition of a “conservation agreement” from N.C.G.S. § 121-35(1). This broad definition includes a variety of agreements, including VAD and EVAD conservation agreements and permanent conservation easements. Unlike a permanent conservation easement, a VAD conservation agreement is enforceable only by revocation of the agreement and loss of VAD program benefits. A permanent conservation easement is enforceable through a court order. The EVAD conservation agreement is a hybrid; some counties reserve the option to enforce by court order while others limit enforcement to revocation of the agreement. Unlike permanent conservation easements, neither VAD nor EVAD agreements provide any state or federal tax benefits, nor do they provide for any payment for the agreement.

agreement, a landowner can leave the program at any time, usually with 30 days’ written notice to the advisory board. The EVAD conservation agreement is binding, and once the land is enrolled in the program, it remains subject to the agreement for 10 years and cannot be withdrawn. EVAD programs do, however, provide additional benefits for that time period.

A third requirement is that the land be managed in accordance with the U.S. Department of Agriculture Soil Conservation Service’s (now called the Natural Resources Conservation Service) defined erosion control practices for highly erodible land. For more information on these practices, visit your local Soil and Water Conservation district or Cooperative Extension office.

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## HOW DO I ENROLL MY FORESTLAND IN A VAD OR EVAD PROGRAM?

Contact your county Cooperative Extension office or local Soil and Water Conservation office for more information on VAD or EVAD programs and for an enrollment application. Remember, if you have land already enrolled in your county's present-use value-deferred taxation program, or would qualify for this program, then you already meet one of the requirements for joining. Please see the Resources section for more information on VAD programs.

## MAINTAINING YOUR PROGRAM QUALIFICATION

The VAD and EVAD requirements that allow you to receive your program benefits will be outlined in the conservation agreement that you sign. Some of the key requirements are:

- That you create no more than three lots that meet applicable county zoning and subdivision regulations.
- That the land be used only for forestry or farm uses as provided for in the agreement.

Uses allowed under the conservation agreement are established under the Conservation and Historic Preservation Agreements Act (defined within N.C.G.S. § 121-35), which specifically allows land to be used for forestry and farming. When creating lots on your land, be sure that the total size of one or all of the lots combined does not consume so much acreage that your land no longer qualifies for both the present-use value and the VAD or EVAD program. Continuing to meet the requirements for enrollment in your county's present-use value program is critical. You may drop your enrollment in the present-use value program and remain enrolled in the VAD or EVAD program — *if* you still meet the requirements to qualify for the present-use value program.

## AFTER YOU ENROLL

After your property is enrolled in the program, check to see if it is listed on maps and within your local government's land records system if your program's ordinance provides this benefit. Having your property noted as being enrolled in a VAD or EVAD program will help notify new residents

that forestry and its related activities will be occurring on your land. Signage is optional, but many landowners who enroll post signs on their property to show pride in their program — and to let their neighbors know that they are adjacent to land that is enrolled in a voluntary agricultural district program. Additionally, some landowners choose to join agricultural advisory boards or participate in other program activities promoted by the advisory board that educate the community about the importance of forestry, farming, and horticulture.

## WHAT IF MY COUNTY OR TOWN DOES NOT HAVE A PROGRAM?

If you would like to establish a VAD or EVAD program in your county or town, contact your county Cooperative Extension office or local Soil and Water Conservation district office. They can guide you through the process of creating a program. Talk to other forestland owners, farmland owners, and producers in your area to see if they would be interested in starting a program. These programs are typically initiated by growers and created through community support for forestry, farming, and horticulture. Organizations such as the North Carolina Farm Bureau and the North Carolina Grange may provide support and opportunities to connect with other landowners interested in district programs. Also, talk to forestland owners and farmers in other communities that have VAD and EVAD programs to see what steps they have taken to create these programs. If a program already exists in your area, but you would like to see additional benefits added to the program ordinance, work with others in your community to add these benefits. Other resources that can help you develop or revise VAD or EVAD programs include the North Carolina Department of Agriculture and Consumer Services and North Carolina State University. Web sites for the agencies, departments, and organizations noted in this publication are listed in the Resources section.

**RESOURCES:**

North Carolina Cooperative Extension Service County Extension Centers  
[www.ces.ncsu.edu/index.php?page=countycenters](http://www.ces.ncsu.edu/index.php?page=countycenters)

North Carolina Soil and Water Conservation Districts  
[www.enr.state.nc.us/dswc/pages/district\\_offices.html](http://www.enr.state.nc.us/dswc/pages/district_offices.html)

Extension Forestry, North Carolina State University  
[www.ces.ncsu.edu//forestry](http://www.ces.ncsu.edu//forestry)

Department of Agricultural and Resource Economics, North Carolina State University  
[www.ag-econ.ncsu.edu](http://www.ag-econ.ncsu.edu)

North Carolina Department of Agriculture and Consumer Services  
[www.ncadfp.org/FarmlandPreservation.htm](http://www.ncadfp.org/FarmlandPreservation.htm)

Land Preservation Notebook Web site  
[www.cals.ncsu.edu/wq/lpn](http://www.cals.ncsu.edu/wq/lpn)

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