



Woodland Owner Notes

Practicing Forestry Under Local Regulations

As North Carolina's population expands, more and more forestland disappears, converted to residential, retail, industrial, and other nonforestry uses. The challenge of managing conflicts between forestry and nonforestry uses falls to local governments, especially as trees and other vegetative buffers are cleared. As trees are removed, perceived and real environmental impacts may bring about restrictive or prescriptive land use regulations. Other regulations may be created as citizens voice their concerns about the removal of individual trees or the cutting of multiple trees on private property. These regulations may exempt certain forestry practices or restrict the extent to which forestry can be conducted.

This publication examines tree protection regulations, zoning, and other ordinances. Guidance is offered on how to practice forestry under existing regulations and on how involvement in the community can retain forestry as a viable land use.

IMPORTANCE OF LOCATION AND JURISDICTION

Location will determine whether county or municipal regulations restrict forestry activities conducted on your property. Zoning and

Learn about county and municipal jurisdictions and the regulations that apply to your land.

unified development ordinances (UDOs) are enforceable only within a particular local govern-

ment's planning jurisdiction. Planning jurisdiction refers to the geographical area where a government has the authority to regulate land uses and create plans for growth and development. A municipal planning jurisdiction includes all area within the corporate boundary, all areas that have been annexed, and any area within the extraterritorial jurisdiction (ETJ). For the protection of public health and safety, cities may also enforce regulations

within one mile of their corporate boundaries without establishing an ETJ. A county's planning jurisdiction encompasses any area not within the planning jurisdictions of municipalities in the county. In rare instances, counties and municipalities may share zoning and planning responsibilities and regulations. County and municipal planning departments can provide information about where their regulations apply.

TYPES OF TREE PROTECTION REGULATIONS

Regulations designed to protect or preserve trees are commonly called "tree protection" or "timber harvesting" ordinances and typically address two common concerns of cities and counties: clearcutting of all trees on private property prior to development and

the loss of individual trees. These ordinances require special authorization from the North Carolina General Assembly (Table 1). Tree protection regulations typically do not stand alone but are often incorporated within other ordinances. They are often created by amending existing zoning ordinances or UDOs and may be found in the landscaping and vegetative buffer sections of these ordinances. In contrast, “street tree ordinances” regulate the removal, maintenance, and preservation of vegetation on public property and public rights-of-way. Street tree ordinances are usually enacted without special authorization from the General Assembly.

FORESTRY ACTIVITIES AND LOCAL ACTS

Communities can regulate the removal of trees, regardless of why or where trees are cut, or they can address specific practices, such as clearcutting on undeveloped property. Forestry activities may be exempt from a local government’s tree protection regulation if the local government voluntarily chooses to exempt forestry or if the local government is prohibited by the General Assembly within a local act (also called “session law”) from applying the tree protection regulation to forestry activities.

Some local governments **exempt forestry activities** from their tree protection regulations if one or both conditions are met, as defined in their local acts:

- If the property in which forestry activities are conducted **is enrolled in the county present use value taxation program** as determined under North Carolina General Statutes (N.C.G.S.) § 105-277.2 through 277.7.
- If forestry activities **are conducted under a forest management plan** prepared or approved by a forester registered with the state of North Carolina pursuant to Chapter 89B of the General Statutes.

Other local governments may exclude forestry activities from their regulations if the property on which forestry activities are conducted **meets the present-use value land classifications** as defined in N.C.G.S. § 105-277.2(2) and N.C.G.S. § 105-277.3(a)(3). **But the land does not have to be enrolled** in the present-use tax value program.

For more information on the present-use value tax program in North Carolina, see Woodland Owner Note 40, North Carolina’s Forestry Present-Use Property Tax Program: <http://www.ces.ncsu.edu/forestry/pdf/WON/won40.pdf>

For more information about developing a forest management plan for your forestland, see the publication entitled *A Family Forest: A Planning Guide to Protect, Enhance, and Manage Private Forestland*: <http://www.ces.ncsu.edu/forestry/resources/publications/documents/AFamilyForest.pdf>

Table 1. Local bills providing tree protection authority to local governments.*

Local Government.....	Session Laws (Local Bills)
Apex	2000 N.C. Sess. Laws 108
Asheville.....	1985 N.C. Sess. Laws 556
Cary	2000 N.C. Sess. Laws 108
	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
Chapel Hill	1977 N.C. Sess. Laws 330
	1989 N.C. Sess. Laws 478
Charlotte	1975 N.C. Sess. Laws 115
Clayton.....	2006 N.C. Sess. Laws 115
Cornelius.....	1997 N.C. Sess. Laws 420
Davidson.....	1997 N.C. Sess. Laws 420
Durham	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
Fuquay-Varina	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
Garner.....	2000 N.C. Sess. Laws 108
	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
Greenville	2006 N.C. Sess. Laws 102
Highlands.....	1985 N.C. Sess. Laws 828
	1991 N.C. Sess. Laws 519
Holly Springs.....	2003 N.C. Sess. Laws 73
Huntersville.....	1997 N.C. Sess. Laws 420
Kinston.....	2000 N.C. Sess. Laws 108
Knightdale	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
Kure Beach.....	1987 N.C. Sess. Laws 786
Matthews	1997 N.C. Sess. Laws 420
	2005 N.C. Sess. Laws 305
Morrisville	2000 N.C. Sess. Laws 108
	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
Mount Airy.....	2003 N.C. Sess. Laws 281
Nags Head.....	1997 N.C. Sess. Laws 420
New Hanover County	1987 N.C. Sess. Laws 786
Raleigh.....	1985 N.C. Sess. Laws 556
	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
	2004 N.C. Sess. Laws 203
Reidsville	2006 N.C. Sess. Laws 115
Rockingham	2003 N.C. Sess. Laws 246
Rutherfordton	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
	2004 N.C. Sess. Laws 203
Spencer	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
Statesville.....	2003 N.C. Sess. Laws 246
Southport.....	1987 N.C. Sess. Laws 242
Wake County	2001 N.C. Sess. Laws 191
	2003 N.C. Sess. Laws 128
	2004 N.C. Sess. Laws 203
Wilmington.....	1987 N.C. Sess. Laws 786
Wrightsville Beach	1987 N.C. Sess. Laws 786
	1989 N.C. Sess. Laws 611

*Note: The above information is subject to change. Refer to www.ces.ncsu.edu/forestry/ordinance/ or to the session laws at www.ncga.state.nc.us for updates to this information.

MODIFICATION OF LOCAL AUTHORITY TO REGULATE FORESTRY ACTIVITY

Session Law 2005-447, entitled “An Act to Clarify the Role of Counties and Cities in Regulating Certain Forestry Activities,” sought to clarify the authority of local governments to regulate forestry activities.

Under the law, municipalities and counties shall not adopt or enforce any ordinances, rule, regulation, or resolution that regulates:

- Forestry activities on forestland that is taxed on the basis of its present-use value as forestland.
- Forestry activity that is conducted in accordance with a forest management plan.

The law shall not be construed to limit, expand, or otherwise alter the authority of a municipality or county to:

- Regulate activities associated with development.
- Regulate trees pursuant to any local act of the General Assembly.
- Adopt ordinances that are necessary to comply with any federal or state law, regulation, or rule.
- Exercise its planning or zoning authority.

DEVELOPING YOUR FORESTLAND

Forest landowners interested in developing their property in the future need to know that Session Law 2005-447 allows counties and cities to wait for three years before approving a building permit or a site or subdivision plan if trees are removed that should have otherwise been preserved under county or municipal development regulations. Development regulations typically require that tree preservation areas or buffers be established before land is cleared prior to development. Approval time for permits can extend to five years if trees are cut in “willful” violation of these same development regulations.

AVOIDING PENALTIES

To avoid penalties, forest landowners should:

- Acquaint themselves with local tree protection, landscaping, and other vegetative buffer requirements **BEFORE** harvesting. There are specific consequences within many tree protection regulations that may include civil or criminal penalties. Local governments have the right to deny permits, levy fines, and require reestablishment of vegetation. Penalties may be financially significant. Fines or mitigation costs can be greater than the value of the timber harvested and exist to ensure compliance with local regulations.

- Determine which regulations apply to the land by checking with planning or inspections departments within the local government.

ZONING AND THE UDO

Zoning is an extremely powerful tool for regulating land use, and it is largely used by local governments to prevent

Zoning ordinances are the most common and extensive land use regulation in North Carolina.

conflicts between various land uses (e.g., not allowing a sawmill operation next to a hospital). Three-fourths of all counties in North Carolina have established either partial

or complete zoning within their planning jurisdictions. Almost all cities in North Carolina have zoning, but unlike counties they do not have partial zoning—they must enforce their zoning and planning authority throughout their entire jurisdiction.

Zoning can be inflexible—any use that is not specifically allowed or listed within a zoning ordinance may be prohibited. However, zoning ordinances may be amended to add additional permitted uses. Many land use requirements pertaining to landscaping, buffers along roadways, and the replanting of trees after cutting may be contained throughout various chapters of a zoning ordinance. Zoning applied to forestland may include restrictions and provisions that will determine:

- Whether trees may be harvested.
- Which trees may be harvested.
- Where the trees may be harvested.
- How the area to be harvested must be replanted or maintained after the trees are removed.

At the county level, forestry is exempt from zoning because the planting and production of trees and timber are considered agriculture and thus are bona fide farm purposes exempt from county zoning under state law. Bona fide farm purposes are defined in N.C.G.S. § 153A-340(b)(2). Municipalities are not required under state law to exempt bona fide farm purposes from their zoning ordinances—although some have chosen to exempt agricultural land uses, including forestry, to encourage these uses within their jurisdiction. They have received this authority to exempt agricultural activities from their zoning through local acts. Municipalities can also provide flexibility in their land use regulations for forest and farm lands that are in county voluntary agricultural district programs—but contained within their ETJs—under their existing planning and zoning authority.

Land use regulations, including the zoning ordinance itself, may be contained within a UDO (unified development ordinance). Many cities and counties are now compiling all of their land use regulations into this single unified section of a city or county's code of ordinances. Tree protection and tree harvesting provisions may be created under a city's zoning authority and incorporated into a zoning ordinance or UDO, and such provisions **would not be** affected by Session Law 2005-447. Counties may also adopt tree protection and tree harvesting provisions as part of their zoning ordinance or UDO. However, forestry operations that meet the bona fide farm definition in N.C.G.S. § 153A-340 (b)(2) are exempt from county zoning.

Note: Tree protection regulations created pursuant to local bills may or may not be included in the zoning ordinance or UDO. They are still enforceable and may simply be found somewhere else within a local government's code of ordinances. Contact your city or county government for information on its code of ordinances.

WATERSHED AND OTHER PROTECTIONS

Water supply watershed protection, floodplain and floodway development, noise, burning, air pollution control, soil erosion and sedimentation control, landscaping, and other ordinances may regulate forestry practices or have the potential to do so. These ordinances can impact landowners—even though they may not be included as part of a municipal or county zoning ordinance or in a UDO, but could be referenced within their code of ordinances and published elsewhere. Ordinances that address public health, safety, and welfare may be enacted under a local government's general ordinance-making authority (e.g., a burning ordinance) or pursuant to other state laws.

Water supply watershed protection ordinances, floodplain ordinances, and erosion and sedimentation control ordinances are enacted to restrict land uses that may harm a community's drinking water supply. These ordinances are enacted in response to the Water Supply Watershed Protection Act (N.C.G.S. § 143-214.5) and the Sedimentation and Pollution Control Act of 1973 (N.C.G.S. § 113A-50 through 82). Forestry, or silviculture as it is termed in the statutes, is allowed in all water supply watershed protection areas, **only if** the Forest Practices Guidelines Related to Water Quality (15A NCAC 01I .0101-.0209) are followed.

For more information on maintaining forestry exemptions under the Sedimentation and Pollution Control Act, see *Forestry Leaflets, WQ-1 (December 2007)* by the N.C. Division of Forest Resources: <http://www.dfr.state.nc.us/publications/Forestry%20Leaflets/WQ01.pdf>

Landscaping or vegetative buffer ordinances, enacted to reduce conflicts between land uses and to preserve the aesthetics of a community, may not address forestry practices specifically—but they may regulate the removal or maintenance of vegetation on private property. Landscaping rules may also be enacted through zoning rather than the general ordinance-making authority. Forest harvesting can be regulated under landscaping ordinances, and this must be considered before trees are cut or removed. Landscaping regulations may include tree protection provisions that allow for forestry.

Burning and noise ordinances may be enacted under local government's general ordinance-making authority. A local ordinance may restrict the open burning of debris or woodland within the county or city limits. Some ordinances may allow burning for agricultural and forestry purposes with a permit while others do not allow open burning for such purposes. Burning restrictions may apply only during certain weather and air quality conditions. Noise ordinances regulate the sources and level of sound allowed in a community, and some provide exemptions for forestry and agricultural activities or equipment.

PRACTICING FORESTRY FOR THE LONG TERM

Understanding current laws and regulations that may affect forestry is important. However, forest landowners can

Being involved with local planning and policymaking, while practicing good forestry management, will help encourage the viability of forestry as a land use option for future landowners.

encourage communities to allow forestry practices in the future by following these suggestions:

- Obtain an approved forest management plan.
- Follow the forestry best management practices outlined in that plan to comply with local ordinances.
- Understand and comply with all local, state, and federal laws or regulations that apply to your land and management activities.
- Get involved in the planning and zoning process within your local government before ETJs are created, before annexations occur, and before zoning regulations are adopted, amended, and enforced.
- Serve on zoning and planning boards or community advisory councils, which offer recommendations to local governments on zoning and regulations pertaining to community appearance and land use issues.
- Provide guidance to local officials about forestry management and about how local laws and regulations impact forestry in your community, when possible. (See the section, "Become involved in your community," below.)

Forest landowners need to anticipate development as they plan future management. Land uses will change, and forestry may be in conflict with new uses as communities grow. The following indicators can help you predict where and how your community will grow:

Comprehensive land use plans—Plans for future municipal or regional development will determine where residential, commercial, and other development will occur.

Evolution of land use regulation and forestry

A typical North Carolina scenario

As a community grows and develops, entire tracts of forested land are cleared. In some cases the community may be told that the tree-clearing is “forestry” so that it will be exempt from regulation as a result. Citizens become increasingly concerned about their community’s appearance and the benefits lost that those trees provided. To address these concerns, a “local act” is passed in the North Carolina General Assembly giving that community the authority to enact an ordinance to restrict cutting of trees on land prior to development.

Extraterritorial jurisdiction (ETJ)—Properties within or adjacent to an existing or planned ETJ are likely to be annexed by a municipality. Land use regulations may change in the ETJ, and new land uses other than forestry, such as commercial or residential development, will appear in the ETJ.

Municipal annexation agreements—Agreements made between cities will delineate areas that each city may annex in the future.

Ordinances—Zoning and other ordinances, whether developed or modified, will shape future development and determine allowable land uses.

Sewer and water extensions—Cities may extend water and sewer services to undeveloped areas to encourage population growth and new development. Landowners may have to pay for these extensions even if they do not access these utilities—unless they are in a voluntary agricultural district program that holds these fees in abeyance.

Transportation plans—Plans that guide the expansion of a city or county’s transportation infrastructure will show where roads are to be constructed and improved years in advance.

BECOME INVOLVED IN YOUR COMMUNITY

Tree protection and tree harvesting ordinances preserve visual appearance, protect habitat for wildlife and plants, and preserve trees important to a community’s history and heritage. Landowners need to recognize that community concerns about forestry may determine the practices allowed on their lands in the future. Involvement in the community and awareness of concerns is a first step. Once involved, landowners can offer expertise and guidance about the benefits of properly managed forestland to both local officials and fellow citizens.

Become a resource to your community and local government:

- Learn about city and county jurisdictions and regulations that apply to your land. Your city or county manager’s office and the city and county planning, zoning, environmental, engineering, and inspection departments can provide this information.
- Look online at local government Web sites for zoning ordinances, tree protection regulations, and other land use regulations. Remember that laws and regulations made available through local government web sites are not the legally enforceable versions—they are provided only for general guidance and reference. Local departments, city clerks, or county clerks maintain the official enforceable text.

Note: The failure of a county or municipal official to provide you with the most recent amendments to an ordinance or rule does not relieve you of the obligation of complying nor does it result in the imposition of liability upon that official or that official’s employer.

- Ask questions of local officials and government staff about zoning or tree protection ordinances in your community. Guidance and contact information are often available on a city or county’s planning, zoning, or environmental department web page and may also be available through the Extension Forestry web site entitled *Ordinances, Laws, Regulations, and Programs Affecting Forestry in North Carolina*, available at www.ces.ncsu.edu/forestry/ordinance.
- Ensure that your forestry operation complies with all applicable federal, state, and local laws and regulations. Achieving compliance with regulations must be a goal of your forest management plan. Referencing local regulations and permit requirements within the management plan is one way to accomplish this goal. Keep in mind that each time the plan is revised, these references must be checked and updated.

- Do not engage in any forest management practices without first consulting and receiving official guidance from local, state, or federal departments that enforce laws and regulations that may apply to your forestland. Obtain all guidance in writing.
- Participate in the various planning boards, citizen advisory councils, or other groups or committees to become aware of local policies that may affect the use or management of your forestland. When possible, offer your perspective—that of the forest landowner, consulting forester, or resource professional—to concerned citizens and local officials.

OTHER RESOURCES

For more information on forestry management practices and local regulations, review the following:

Publications

A Family Forest: A Planning Guide to Protect, Enhance, and Manage Private Forestland. North Carolina Cooperative Extension, North Carolina State University, Raleigh, N.C. <http://www.ces.ncsu.edu/forestry/resources/publications/documents/AFamilyForest.pdf>

North Carolina's Forestry Present-Use Property Tax Program. Woodland Owner Note 40. North Carolina Cooperative Extension, North Carolina State University, Raleigh, N.C. <http://www.ces.ncsu.edu/nreos/forest/pdf/WON/won40.pdf>

Web sites

North Carolina State University Extension Forestry, North Carolina Cooperative Extension, North Carolina State University, Raleigh, N.C. <http://www.ces.ncsu.edu/forestry/>

Ordinances, Laws, Regulations, and Programs Affecting Forestry Management in North Carolina. North Carolina Cooperative Extension, North Carolina State University, Raleigh, N.C. <http://www.ces.ncsu.edu/forestry/ordinance/>

UNC School of Government. University of North Carolina, Chapel Hill, N.C. <http://www.sog.unc.edu/>

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Checklist for practicing forestry

Use this checklist before undertaking any forestry activities that may be affected by local tree protection, zoning, and other regulations. The checklist will help ensure compliance with local regulations and thus help you avoid fines and other penalties. Add other items to the checklist as you discover them.

- Obtain a management plan developed by a registered forester, and make sure the plan is followed during all harvesting and management activities.
- Enter any qualifying acreage into your county's present-use value tax program. Make sure that you meet all of the program requirements and qualifications—including following the management plan.
- Determine which tree protection, landscaping, vegetative buffer, zoning, or other regulations apply to your forestry activities.
- Contact your local planning, inspections, or other local government offices that enforce land use and environmental protection regulations for details on these regulations.
- Verify which of your forestry activities are exempt under local regulations.
- Seek regulatory guidance and interpretation before you act. Obtain guidance in writing, and retain it for your records.
- Make sure that all required permits have been obtained.
- Consider visual and riparian buffers or other ways to preserve vegetation that may go beyond regulatory requirements. These considerations can help alleviate community and nearby neighbors' concerns.

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