

ARTICLE IV. FARMLAND PROTECTION PROGRAM

DIVISION 1. GENERALLY

Sec. 14-86. Purpose.

The purpose of this article is to promote the best use of land in the county so that development and growth will be accompanied by protection of our attractive and ecologically desirable forests and farms. The county residents derive many benefits; clean water and air, plant and animal habitat, fresh fruit and vegetables and visual pleasure from these forests and farms. Farmland protection will enable us to continue producing food and fiber on our best soils near the more densely developed city area.

(Ord. of 5-13-96, § A-1)

Sec. 14-87. Enactment.

Pursuant to the authority conferred by G.S. 106-735 through 106-743, and for the purpose of promoting health, safety, general welfare and morals of the county, the county commissioners do enact the following article, which shall be known as the “Durham County Voluntary Farmland Protection Program Ordinance.”

(Ord. of 5-13-96, § A-2)

Sec. 14-88. Definitions.

That Section 14-88 of the Durham County Code of Ordinances in hereby amended to read as follows:

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Board. Farmland Protection Advisory Board (hereinafter referred to as “Farmland Board”).

Chairman. Chairman of the farmland protection advisory board (Farmland Board).

Voluntary Agricultural District. VAD. An area designated by the board of county commissioners (hereinafter referred to as “BOCC”) within which landowners can apply to be a participating member. The VAD is an area that supports sustainable farming, conservation and protection of farmland resources.

Ordinance. Voluntary Farmland Protection Ordinance.
(Ord. of 5-13-96, § A-3)

Sec. 14-89. Farmland Protection Advisory Board (Farmland Board).

That Section 14-89 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *Creation:* A farmland protection advisory board (Farmland Board), to consist of members appointed by the board of county commissioners (BOCC), is hereby established.

(b) *Mission:* The Farmland Board shall foster the wise use of our farmland resources by working with farmers, the community, government entities and agencies and other resources to identify and implement strategies for the preservation and enhancement or our farming community while protecting the land and soils for future generations.

(c) *Membership:* The Farmland Board shall be composed of a minimum of ten (10) voting members and a maximum of fifteen (15) voting members, the exact number to be determined by the Farmland Board. All Farmland Board members shall reside in Durham County; moving out of Durham County shall be cause for removal of the member. Moving out of the VAD that a member represents shall be cause for removal of the member, although the member may become one of the Farmland Board’s appointments. The Farmland Board membership shall be based upon the following:

(1) Six (6) members shall be appointed by the Board of County Commissioners (hereafter “BOCC”). These members shall be active farmers and /or be engaged in a business or activity that is involved in the farming community of Durham County. These members shall be appointed from the following categories:

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|-----------------------------|--------------------|
| (1) Little River VAD | (1) Eno River VAD |
| (1) Flat River VAD | (1) Lick Creek VAD |
| (1) Business representative | (1) Cape Fear VAD |

However, in the event that after reasonable advertisement, no qualified candidates for a VAD appointment comes forward, then the Farmland Board shall not be bound by the VAD representation requirement and may instead appoint an at-large member. The BOCC will attempt to ensure that female and minority farmers are represented on the Farmland Board.

(2) One (1) member shall be appointed from each of the following elected or appointed Farmland Boards:

- a. The Durham BOCC, appointed by its Chair;
- b. Durham Soil and Water District Supervisor, appointed by its Chair;
- c. The Farmland Board of directors of the Durham County Farm Bureau, appointed by its Chair; and
- d. The Durham Open Space and Trails Commission; appointed by its Chair

(3) Up to five (5) members may be appointed by the Farmland Board. These members

may represent a special interest, or focus that the Farmland Board feels would be helpful in fulfilling its duties and responsibilities.

Appointments made by the Farmland Board shall be approved with a majority vote of the Farmland Board, and shall serve three (3) year terms. Members may be nominated from the floor, or by a Nominations Committee. Prospective members shall fill out an application for the Farmland Board appointments as provided by the staff.

Members appointed by the Farmland Board shall be subject to the BOCC's policy on board appointments.

(d) Advisors. Advisors from the cooperative extension service, state forest service, farm service agency (FSA) and the Durham Soil and Water Conservation District staff, and the city/county planning department will assist the Farmland Board.

(e) Tenure: Appointments to the Farmland Board will be made as needed. Appointments will be for three-year terms and Farmland Board members may apply for and receive reappointment.

(f) Vacancies. Any vacancy on the Farmland Board is to be filled by the BOCC for the remainder of the unexpired term.

(g) Removal of Members. A member of the Farmland Board may be removed by the body that appointed that member for any of the following reasons:

- (1) Violation of attendance, ethics, or conflict of interest as deemed by the BOCC;
- (2) Moving out of Durham County;
- (3) Non-payment of taxes; and
- (4) Any reason deemed sufficient by the body or official that appointed the member.

I.e. Reasons for removal include the following: Neglect of duty, failure to carry out duties, misfeasance, malfeasance lack of attendance and failure to comply with the commissioner's resolution on appointments to boards and commissions.

(h) Funding.

- (1) The per diem compensation of the members of the Farmland Board shall be fixed by the BOCC.
- (2) Funds will be appropriated to the Farmland Board to perform its duties.

(i) Procedure.

- (1) *Chairman.* The Farmland Board is to elect a chairman and vice-chairman each year at its January meeting following the appointment of new members or reappointment of existing members. The chairman shall preside over all regular or special meetings of the Farmland Board. In the absence or disability of the chairman, the vice-

chairman shall preside and shall have and exercise all the powers of the chairman. Additional officers may be elected as needed.

- (2) *Jurisdiction.* The jurisdiction of the Farmland Board shall be limited to the county, except in the case where farmland lies in Durham and an adjacent county. The part of the farmland in the county can be included in this program and the contiguous farmland being contained in another county can only be included with the permission of the BOCC of the county in question, unless the farm is already taxed entirely by Durham.
- (3) *Farmland Board year.* The Farmland Board will use the county fiscal year as its year of operation.
- (4) *Meetings.* The Farmland Board shall establish a regular meeting schedule for each calendar year with a regular meeting time, place and date. The Farmland Board shall meet at a minimum at least six (6) times during the year and the Farmland Board can call additional meetings as required by need and business. All meetings shall be subject to applicable provisions of the North Carolina Open Meetings Law, NCGS Chapter 143, Article 33C. The Farmland Board shall keep permanent minutes of its meetings, recommendations and other actions. Notice of all meetings shall be given as required by law.
 - a. *Special Meetings.* The chair may call a special meeting of the Farmland Board at any time by giving oral or written notice to all members in advance in compliance with North Carolina Open Meetings Law. Special meetings shall also be scheduled upon the request of at least (5) members of the Farmland Board.
 - b. *Cancellation of Meetings.* Whenever there is no business to come before the Farmland Board, the Chair or Vice-chair may dispense with a regular meeting by giving notice to all members not less than twenty-four (24) hours prior to the time set for the meeting.
 - c. *Attendance.* It is expected that members appointed to the Farmland Board will regularly attend its meetings. Members may forfeit the remainder of their terms and may be replaced under the following conditions:
 1. Any member who has three (3) unexcused absences of regular Farmland Board meetings within a one-year time period.

When the Farmland Board finds that a member has become disqualified for membership because his or her attendance or residence requirement does not meet Farmland Board regulations, the Chair of the Farmland Board shall notify the body that appointed the member so that a new member may be appointed for the remainder of the unexpired term.

- (4) *Quorum.* A quorum shall be eight Farmland Board members or 50 percent of current

members.

- (6) *Majority vote.* The concurring vote of a majority of the quorum shall be necessary to take action on any matter.
- (7) *Records.* The Farmland Board shall keep minutes showing the vote upon each question, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Farmland Board and shall be public records.
- (8) *Administration.* The Durham Soil and Water Conservation District will serve as the primary staff support and provide administrative support for the Farmland Board. Staff liaison and support will also be provided by the County Open Space program staff.
- (9) *Duties.* The Farmland Board shall:
 - a. Review and approve or disapprove applications for qualified farmland and for membership in a VAD and make recommendations concerning the establishment and modification of VAD's, and of potential conservation easements and other programs or polices that will promote the preservation of farmland resources in Durham County.
 - b. Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this article.
 - c. Hold public hearings pursuant to section 14-92 of this article.
 - d. Advise the BOCC on projects, programs or issues, affecting the agricultural economy and any other activities within the county that will affect agricultural districts.
 - e. Advise and promote to the BOCC financial incentives and benefits to promote participation in the VAD program and the viability of farmland in Durham County
(Ord. of 5-13-96, § A-4)
 - f. Educate the public and the farming community in Durham of the benefits of protection of farmland and continuation of farming.
 - g. Act on behalf of the County in promoting and administering the farmland protection program and advising staff on program direction and goals.
 - h. Review and advise staff on potential conservation easements, voluntary agricultural districts, and other programs which further the protection of farmland in Durham County.

- i. Represent the farming community on behalf of the County at public and educational venues throughout the County.
- (10) The Farmland Board shall produce by March of each year a written annual report to the BOCC that shall include the status, progress and activities of the county's farmland protection program of the preceding fiscal year and shall include:
- a. Number of member farms participating in VAD's;
 - b. Number of Agricultural Conservation Easements granted to the County;
 - c. Yearly budget summary;
 - d. Other activities;
 - e. Farmland Board Membership status; and
 - f. Proposed program emphasis for upcoming year.
- (11) *Conduct of Business.* All members of the Farmland Board are subject to the Durham County Ethics Policy, while conducting or representing business of the Farmland Board.
- (12) *Conflicts of interest.* Farmland Board members hold their positions for the benefit of the general public and Durham County. Conflicts can arise in situations in which a Farmland Board member's duty to act in the public interest conflicts with a potential desire to advance his or her own interest. These conflicts of interest can include financial, associative, and personal bias. As a general rule, members shall refrain from taking part in actions that might reasonably call into question the impartiality and fairness in those decisions.
- (13) *Bylaws.* The Farmland Board may adopt additional bylaws for its conduct of business, including policies for excused or unexcused absences, rules of procedure, etc.

Sec. 14-90. Application and certification of qualifying and voluntary agricultural district.

That Section 14-90 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *Requirements.*

(1) To secure county certification as qualifying farmland, a farm must:

- a. Be participating in the farm present use value taxation program established by G.S. 105-277.2 through 105-277.7 or is otherwise determined by the county or its agent to meet all the qualifications of this program set forth in G.S. 105-277.3;
- b. Be certified by the Durham Soil and Water District as being a farm on which at least two-thirds of the land is composed of soils that:

- 1. Are best suited for providing food, seed, fiber, forage, timber and oil seed

- crops;
 - 2. Have good soil qualities;
 - 3. Are favorable for all major crops common to the county where the land is located;
 - 4. Have a favorable growing season; and
 - 5. Receive the available moisture needed to produce high yields for an average of eight out of ten years; or be one on which at least two-thirds of the land has been used in agricultural, horticultural or forestry operations as defined in G.S. 105-277.2 (1, 2, 3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies.
- c. Be managed, if highly erodible land exists on the farm in accordance with the Durham Soil and Water Districts defined erosion-control practices that are addressed to such highly erodible land;
 - d. Be the subject of a conservation agreement, as defined in G.S. 12 1-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least ten years, except for the creation of not more than three lots, or one per 20 acres, that meet applicable county zoning and subdivision regulations.

(2) Reserved.

(b) *Voluntary agriculture districts.* To be included in a voluntary agricultural district, a landowner may apply to the chairman for such inclusion at the same time he applies for qualifying farmland certification, or at any time subsequent to receiving qualifying farmland certification.

(1) The purpose of voluntary agricultural districts shall be to encourage the economic and financial health of farming areas, to increase protection from nuisance suits, undesired nonfarm development and other negative impacts on participating farms and to increase the identity and pride in the agricultural community and its way of life.

(2) Requirements to participate:

a. To qualify to become a participating farm in an agricultural district a farm shall comply with N.C.G.S. § 106-73 8.

b. Any additional criteria adopted by the Farmland Board regarding farming activities.

(3) Landowners may apply to participate in existing districts and are encouraged to do so.

(c) *Procedure.*

- (1) To secure certification as a qualifying farm, and if so desired by the applicant, a landowner apply to the Farmland Board. Application forms may be obtained from the Farmland Board members or the local soil and water conservation district office.
- (2) Upon receipt of an application, the Soil and Water Conservation District staff will process the application with copies forwarded as follows:
 - a. Local tax assessor office.
 - b. Local office of the NRCS.
- (3) Within 60 days of receipt of the application from the local tax assessor and NRCS office, the Farmland Board will meet and render a decision regarding the application. The Soil and Water Conservation staff will notify the applicant by mail if the real property for which certification is sought satisfies the criteria established in section 14-89 and if the land has been certified as qualifying farmland, and also as a member of a VAD, if application was so sought.
- (4) The Soil and Water District Staff will notify the tax supervisor of any new participating VAD farms approved by the Farmland Board.

(d) The Soil and Water District staff will administer the program and will ensure that the VAD's and participating farms are marked on county maps displayed for public view in the following county offices:

- (1) Registrar of deeds.
- (2) Code enforcement.
- (3) Tax supervisor.
- (4) Soil and water conservation district.
- (5) Cooperative extension.
- (6) Any other office deemed necessary by the Farmland Board; i.e. FSA, city/county planning department, etc.

(e) *[Action to encourage the formation of voluntary agricultural districts.]* The county may take such action as it deems appropriate through the Farmland Board or other body or individual to encourage the promotion of VADs and to further their purposes and objectives, including, at a minimum a public information program to reasonably inform landowners of the farmland protection program.

(Ord. of 5-13-96, § A-5)

Sec. 14-91. Land use incentives for VAD participation.

That Section 14-91 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) Purpose. The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between voluntary agricultural district participants and nonfarm landowners in proximity to districts.

(b) Procedure.

(1) Waiver of water and sewer assessments.

a. Purpose. The purpose of this section is to help mitigate the financial impacts on farmers of some local and state capital investments unused by such farmers.

b. Procedure.

1. Landowner(s) belonging to voluntary agricultural districts shall not be assessed for, or required to connect to water and/or sewer systems which are assessed by the County of Durham.
2. Water and sewer assessments will be held in abeyance, without interest, for farms inside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.
3. When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
4. Assessment procedures followed under G.S. ch. 153A, art. 9 shall conform to the terms of this article with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.
5. Nothing in this section is intended to diminish the authority of the county to hold assessments in abeyance under G.S. 153A-201.

(2) The county shall not spend monies to convert land to nonfarm uses in voluntary agricultural districts unless no feasible alternative to such conversion exists.
(Ord. of 5-13-96, § A-9)

Sec. 14-92. Public Hearings Prior to Condemnation.

That Section 14-92 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *Purpose.* Pursuant to G.S. 106-740, no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district until such agency or unit has requested the local agricultural advisory board to hold a public hearing on the proposed condemnation.

(b) *Procedure.*

- (1) Upon receiving a request from an applicant, the Farmland Board shall publish notices describing the proposed action in the appropriate newspapers of the area within two days of the request, and will in the same notice, notify the public of a public hearing on the proposed condemnation, to be held within 30 days of receipt of the request.
- (2) The Farmland Board will meet to review:
 - a. If the need for the project has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency.
 - b. Alternatives to the proposed action that is less impactive and disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place.
- (3) The Farmland Board will consult with the county cooperative extension service agent, NRCS and soil and water district personnel, director of planing, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Farmland Board's review of the proposed action. Land value will not be a factor in the selection between properties under consideration for the proposed action.
- (4) Within ten days after the pubic hearing, the Farmland Board will make a report containing its findings and recommendations regarding the proposed action. The report will be made available to the public for comment prior to its being conveyed to the decision-making body of the agency proposing acquisition.
- (5) Pursuant to G.S. 106-740, the county will not permit any formal initiation of condemnation by local agency action while the proposed condemnation is properly before the Farmland Board within these time limitations.

(Ord. of 5-b3-96, § A-7)

Sec. 14-93. Record notice of proximity to farmlands.

That Section 14-93 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *Purpose.* The purpose of this section is to help prevent potential conflicts from occurring between qualifying farms and nonfarm landowners regarding acceptable and responsible farming operations and practices.

(b) *Procedure.* The County's computerized land records system will include a notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of a VAD.

(c) *[Not liable in damages in good faith.]* In no event shall the county or any of its officers, employees or agents be held liable in damages for any misfeasance, malfeasance or nonfeasance occurring in good faith in connection with the duties or obligations imposed by any ordinance adopted under subsection (b).

(d) *[Researching the title of a tract.]* In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary agricultural district as defined in this article. (Ord. of 5-13-96, § A-8)

Sec. 14-94. Revocation of conservation agreement.

That Section 14-94 of the Durham County Code of Ordinances in hereby amended to read as follows:

By written notice to the Farmland Board, a landowner of qualifying farmland may revoke the conservation agreement formulated pursuant to section 14-90 of this article. Such revocation shall result in the loss of qualifying farm status, and consequently, loss of eligibility to participate in a voluntary agricultural district and benefits thereof. However, if only a portion of the district is affected by the revocation and the remainder of the district meets the criteria of section 14-90 the district still exists.

(Ord. of 5-13-96, § A-6)

Sec. 14-95. State and local agency notification.

That Section 14-95 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) The Farmland Board shall consult as much as possible with the state department of agriculture, the state division of soil and water conservation and any other entity the Farmland Board deems necessary to the proper conduct of its business.

(b) A copy of this article shall be recorded with the state commissioner of agriculture's office

after adoption. At least once a year the Farmland Board shall submit a written report to the commissioner of agriculture including the status, progress and activities of the county's farmland protection program, including voluntary agricultural districting information regarding:

- (1) Number of landowners enrolled.
- (2) Number of acres applied.
- (3) Number of acres certified.
- (4) Number of acres denied.
- (5) Date of certification.

(c) Copies of the annual reports cited in subsection (b) will be sent to:

- (1) Board of County Commissioners
 - (2) State Division of Soil and Water Conservation;
 - (3) Durham Planning Department;
 - (4) Durham Planning Commission; and
 - (5) Any other entities the Farmland Board deems appropriate.
- (Ord. of 5-13-96 § A-b)

Sees. 14-96—14-125. Reserved.

DIVISION 2. GUIDELINES

Sec. 14-126. Generally.

That Section 14-126 of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) *Generally.* The protection of the county's best agricultural land in a manner that directs and accommodates growth and development is a high priority to the residents of the county. To this end the county establishes the following goals:

- (1) To protect and conserve those soils in the county best suited to agricultural uses;
- (2) To identify and harmonize policies of government at all levels which may conflict with the goal of protection of farmland;
- (3) To reduce land use conflicts between agricultural and other land uses; and
- (4) To promote agriculture as an integral part of the county economy. Nontraditional farms will also be promoted.

These program guidelines contain policies and procedures for administering a farmland protection program that includes the acquisition of conservation easements.

(b) *Duties and responsibilities of the Durham Farmland Protection Advisory Board.* The farmland protection advisory board (hereinafter referred to as the Farmland Board) as organized and empowered pursuant to the Durham County Voluntary Farmland Protection Ordinance shall administer this farmland protection program. The Farmland Board, with guidance from the county attorney and county staff, shall act on behalf of the county in administering this farmland protection program. The Farmland Board shall review properties proposed for purchasing or donations of agricultural conservation easements, work with county commissioners on funding options, and acts necessary for the implementation of this program. The Farmland Board shall administer this program within the financial resources provided by the BOCC and outside funding resources. The Farmland Board will make recommendations to the BOCC regarding the purchase of conservation easements, and acceptance of donated conservation easements. The BOCC will be the final decision maker regarding the purchase of conservation easements, and accepting the donation of conservation easements.

(c) *Definition of conservation easements.* For purposes of this program, conservation easements are defined as: "All right, title, and interest in the use of land for any and all purposes which are not directly and customarily incidental to agricultural or open space uses."

(d) *Definition of agricultural uses.* For purposes of this program, agricultural uses are defined as: "Agricultural uses include, but are not limited to, the production of crops, trees, horticultural

specialties, livestock, and livestock products. Associated uses allowable are sales and processing necessary and customarily incidental to the agricultural activities on-site which are in keeping with the purpose of the program.

(e) *Definition of open space.* For purposes of this program, open space is defined as: “Open space is land used for recreation, natural resource protection, amenities, and/or bufferyards. Open space may include, but is not limited to, lawns, walkways, active recreation areas, playgrounds, wooded areas, greenways, and water courses.

(Ord. No. 7-12-99, § I)

Sec. 14-127. Agricultural priority areas (APA).

That Section 14-127 of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) The designation of agricultural priority areas in the county is intended to identify geographic areas containing the most productive agricultural soils in active farming areas. Agricultural priority area designation is the first step in directing the expenditure of funds for conservation easements acquisition. Efforts to coordinate with the city/county planning department in regards to the urban growth boundary and priority growth area will be made.

(b) *Criteria for designation.* The following are guidelines for the designation of agricultural priority areas:

- (1) Areas should contain sufficient contiguous agricultural land to facilitate its permanent agricultural use.
- (2) Areas should consist primarily of soils identified in the county as prime or locally important.
- (3) Land in the area should be primarily in agricultural use.

(c) *Procedure for designation and/or termination.* Agricultural priority areas will be recommended by the Farmland Board and adopted by the BOCC. In determining areas to include, the Farmland Board may confer with any governing body affected by the proposed APA, receive recommendations from the soil and water conservation district and city/county planning department, and/or conduct a public meeting to receive public comments. The BOCC will establish APAs by resolution and adopt an official map showing boundaries of all APAs. Termination of an APA shall be by resolution approved by the BOCC.

(d) *Protection from public capital projects.* The county will promote, to the extent possible, protection of continued agricultural use of land in APA's from incompatible capital projects that are not planned at the time of APA establishment and which would result in extensive, direct and/or indirect conversion of farmland resources. If possible, no project funded directly or indirectly by the BOCC will be conducted on land included in an APA if it would lead to the

direct conversion of farmland.
(Ord. No. 7-12-99, § II)

Sec. 14-128. Acquisition of Agricultural Easements by Purchase or Donation.

That Section 14-128 of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) General. The county may purchase conservation easements in agricultural and/or open space lands. All applications for the purchase of conservation easements will be evaluated based upon a farmland ranking system to be developed by the Farmland Board and made available to the public. Highest priority will be given to farms located within an approved APA and Voluntary Agricultural District. There may be instances when purchasing agricultural conservation easements on small farms outside of the APA may serve county citizens well. Applications will be ranked based upon various site factors, such as the level of development pressure and agricultural production capability. Conservation easements may be purchased in accordance with the ranking of farm properties and the availability of allocated funds. Compensation for conservation easements will be based on the Farmland Board's determination of the difference between fair market value and agricultural or open space value appraisals. The purchase price will be subject to negotiation. Typically all purchase and donation negotiations will be conducted by assigned county staff and recommended to the BOCC for their review and approval.

(b) Description. The purchase of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The conservation easements will be held in public trust by the county.

(c) Minimum eligibility criteria. The agricultural and/or open space land must be at least 20 acres in size or contiguous to at least two qualifying farms which will create a tract of not less than 20 acres and be in agricultural and/or open space use or be of such significant agricultural, open space, or environmental importance that the minimum 20 acre size will be waived upon recommendation of staff.

(d) Application procedure. A request for consideration must be submitted to the Farmland Board through the cooperative extension service, county soil and water conservation district, the county open space staff or local USDA FSA Center.

(e) Review and ranking of applications. The Farmland Board will review and rank each of the applications using the farmland ranking system.

(f) Acquisition/Donation of Conservation Easements.

(1) The BOCC will consider the purchase or donation of conservation easements upon the recommendation of the Farmland Board after staff review of the property and preliminary negotiations with the property owner.

- (2) County staff assigned to the easement program will adopt guidelines and procedures to include the following in both the purchase and donation of conservation easements:
 - a. Farmland and Open Space property and resource appropriateness for inclusion into program.
 - b. Negotiation with landowner to determine easement parameters, reserved rights, restrictions and County interests.
 - c. Development of preliminary easement language
 - d. Baseline report documentation.
 - e. Information to property owner for required surveys, appraisals, deeds, titles and other necessary documentation.
 - f. Negotiation with landowner on purchase price of easement if applicable.
- (3) The County Attorney will review all pertinent information to ensure all documents are proper and legal for execution of documents conveying the conservation easements to the County.
- (4) The County Attorney or his/her designee will negotiate the final easement language with the landowner's legal representative and with review of assigned county staff.
- (5) The final signed and recorded easement and supporting documentation will be permanently archived in the Durham County Administrative offices with copies provided for the landowner, County Open Space staff, the Farmland Board and the Soil and Water Conservation District office.
- (6) For both purchased and donated conservation easements the County will determine appropriate expenses the landowner incurs that may be reimbursable by the County.

(g) *Public disclosure.* During negotiations concerning the purchase or acceptance of conservation easements, information will be kept confidential, as allowed by law. Following an agreement between the landowner and the BOCC, information may be made public as provided by law. Following closing of each acquisition, information may be made public as provided by law.

(Ord. No. 7-12-99, § III)

Sec. 14-129. Donation of conservation easements.

That Section 14-129 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *General.* The BOCC may accept a voluntary donation or devise of conservation easements.

(b) *Description.* The donation of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The conservation easements will be held in public trust by the county in perpetuity.

(c) *Minimum eligibility criteria.* The agricultural and/or open space land must be at least 20 acres in size or contiguous to at least two qualifiable farms which will create a tract of not less than 20 acres and be in agricultural and/or open space use or be of such significant open space, agricultural or environmental importance that the 20 acre minimum will be waived upon recommendation of staff.

(d) *Application procedure.* Upon contact by landowner, a meeting will be set with the county staff to discuss the possible donation and negotiate the parameters, reserved rights and restrictions of the agreement.

(e) *Review of applications.* The Farmland Board will review the documentation to determine whether the minimum eligibility criteria are met or whether to waive any of the criteria.

(f) *Public disclosure.* During negotiations concerning the donation of conservation easements, information will be kept confidential, as allowed by law. Following a donation agreement, information may be made public as provided by law.

(Ord. No. 7-12-99, § IV)

Sec. 14-130. Repurchase of conservation easements.

That Section 14-130 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *General.* The designation of agricultural priority areas and the subsequent purchase of conservation easements are intended to create areas with sufficient amounts of contiguous agricultural and/or open space land to facilitate the permanent agricultural and/or open space use of the land. While program activity will be directed toward that goal, success is dependent on the voluntary participation of landowners. If a landowner or several owners of small tracts are the only participants in their area, the goal may not be achieved. These landowners could become land locked by development and agricultural activity and/or open space use may become impractical. In such a situation it may be in the best interest of the landowner and the public to allow repurchase of the conservation easements for the property in question. Other circumstances could also affect a property's suitability for continued agricultural and/or open space use. Repurchase of conservation easements by a landowner is foreseen as an unusual and infrequent occurrence, and would take place with the concurrence of the Farmland Board and the BOCC.

(b) *Repurchase procedure.* A landowner requesting a review of his property for possible repurchase of conservation easements should do so by certified letter to the Durham County

Manager. The letter should state the reason for the request and the date that the property was entered into the program. Upon approval in principle to the repurchase, the landowner must submit two appraisals of value for the property in question. One appraisal will establish the fair market value of the property at its current highest and best use. The second appraisal will establish the value of the property for agricultural or open space use. Other appraisals will be secured as necessary. The Farmland Board will review the appraised values and recommend to the BOCC to either repurchase the property or decline to repurchase the property. If a repurchase price is approved by the Farmland Board of commissioners, the landowner will be notified. If the price is acceptable to the landowner, he/she will submit a written offer to purchase the conservation easements. If this offer is granted by the county, closing proceedings will begin. The county may accept the bid and advertise for upset bids. When legal documents are prepared and adequate financing is available, a date, time, and location for closing will be agreed upon. Payment shall be made directly to the county at closing by a certified check or equivalent payment.

(Ord. No. 7-12-99, § V)

Sec. 14-131. Property use restrictions.

That Section 14-131 of the Durham County Code of Ordinances is hereby amended to read as follows:

In addition to restrictions set out elsewhere in these guidelines, the following restrictions will generally apply to property included in the purchase, acquisition of determinable conservation easements or donation of conservation easements. Individual easement parameters, restrictions, reserved rights and conservation purposes will be negotiated with the landowner by county staff with subsequent approval by the county attorney prior to any BOCC action.

- (1) Residences permitted on the land from which conservation easements have been conveyed are existing dwellings and the replacement of existing dwellings. Request for additional dwellings shall be considered on a case-by-case basis.
- (2) All permitted nonagricultural structures shall, when feasible, be located in the immediate vicinity of existing structures, described as homestead or curtilage, as reasonable expansions of the homestead or curtilage or on the area(s) of the property of least productive capability. Such permitted structures shall, when feasible, utilize existing or common driveways, lanes or rights-of-way.
- (3) The extraction of minerals by surface mining and extraction and removal of topsoil from the property are prohibited. The extraction of subsurface or deep-mined minerals, including natural gas and oil, and the noncommercial extraction of minerals including limestone, shale and other minerals shall be permitted, as long as the removal activity does not significantly diminish the agricultural potential of the land.
- (4) Use of the property for dumping, storage, processing, or landfill of nonagricultural solid waste generated off-site is prohibited. Land application of biosolids is acceptable.

- (5) Use of the property for dumping, storage, processing, or landfill of hazardous or nuclear waste is prohibited.
 - (6) Signs, billboard, and outdoor advertising structures may not be displayed on the property except to state the name of the property, farmland status, the name and address of the occupant, to advertise an on-site activity and to advertise the property for sale or rent, as allowed by the county sign ordinance.
 - (7) Agricultural land will be managed in accordance with sound soil and water conservation practices in a manner which will not destroy or substantially or irretrievably diminish the productive capability of the property.
 - (8) County officials shall have the right to enforce these restrictions by injunction and all other appropriate proceedings allowable by law. Representatives of the county may enter upon the property for the purposes of inspection concerning compliance with the farmland protection program.
 - (9) The county will hold the conservation easements in public trust for farmland protection and/or open space purposes and will not voluntarily assign these rights except to another organization bound to hold such rights for the same purposes.
 - (10) All tracts of land from which conservation easements were purchased with federal or state funds will be subject to federal and state regulations concerning farmland protection.
 - (11) Timbering operations. Clear cutting of timber is not allowed. A request to waive this restriction will be considered only if a valid management plan prepared by a registered forester or consulting forester, is submitted with the request.
- (Ord. No. 7-12-99, § VI)

**Sec. 14-132. Durham County Farmland/Open Space Protection Program Guidelines
Farmland Ranking System.**

That Section 14-132 of the Durham County Code of Ordinances in hereby amended by being deleted.



Durham County Farmland Protection Program



Farmland Ranking System

The following point system provides a framework for evaluating farms that are interested in conveying a conservation easement. It is one of several tools used to consider farms and one that is particularly useful for the Farmland Protection Advisory Board when they are evaluating and recommending farms to the Board of County Commissioners where Durham County funds may be used as a portion of the project. The scoring specifically looks at criteria that are uniquely important in Durham County for evaluating farms. The point system has been developed by the Farmland Protection Advisory Board over an 18 month time period and was initially adopted in November 2008. As a new policy document, it is likely to be reevaluated based on experience gained in the practical application of the scoring to proposed farms. Additional Definitions are available as well.

Part I. Farm and Farming Community (55% of total score)

The 100 points for this section are divided as follows:

A. The Farm is located in an Agricultural Priority Area?	0 to 22
Yes – 22 pts No = 0 pts	
B. The Farm is enrolled in the Voluntary Agricultural District	0 to 5
Yes= 5 pts No=0 pts	
C. Percent of the proposed easement in Active Agricultural Land	2.5 to 10
75.1 - 100% = 10 pts, 50.1 - 75% = 7.5 pts, 25.1 to 50% = 5 pts, 1 to 25% = 2.5 pts	
D. Adjacency to Existing Conserved Farms	0 to 15
Adjacent to a protected farm plus another within .5 mile = 15 pts Adjacent to a protected farm = 13 pts w/in 0.25 mile of protected farm = 10 pts w/in 0.5 mi of protected farm = 5 pts	
E. Farm Management Plans (Economic and Natural Resource Conservation measures)	0 to 25
Whole Farm BMP's applied = 20 pts Cropland BMP's applied = 10 pts Forest Management Plan applied = ADD 5 pts Farm has a Transition/Business Plan = ADD additional 5 pts	
F. Proposed Easement Acreage	5 to 13
110 acres or greater (average farm size) = 13 pts 51 -109 acres = 10 pts 0 to 50 acres = 5 pts	
G. Producer Information (add points together for total)	0 to 10
Landowner generates 50% or more of income from Farm = 4 pts Meets the federal definition for a "Limited Resource" farmer = 3 pts Meets the federal definition for a "Beginning" farmer = 3 pts	

Part II. Environmental & Open Space Amenities (20% of total score)
The 100 points for this section are divided as follows:

A. The Site is Identified in an adopted plan	0 to 40
Specifically identified as a Priority tract = 40 pts Site contributes to a specific goal in plan = 30 pts Site or location is mentioned in a plan = 20 pts	
B. Durham County Natural Areas Inventory Site	0 to 15
Yes, has a portion in an Inventory site = 15 pts, No = 0 pts	
C. Natural Heritage Site	0 to 5
Yes, has a portion in a State of N.C. Natural Heritage site = 5 pts, No = 0 pts	
D. Adjacency to other protected open space	0 to 20
Adjacent & another within .5 mile = 20 pts, adjacent= 15 pts, w/in 0.25 mi. = 10 pts, w/in .5 mile = 5 pts	
E. Prime or Statewide Important Soils	2.5 to 10
70 - 100% of easement consists of prime or statewide soils = 10 pts 50 - 69.9% = 7.5 pts, 25 to 49.9 % = 5 pts, 1-24.9% = 2.5 pts	
F. Proximity to Urban Growth Boundary	0 to 10
Farm is adjacent to the urban growth boundary or within 1 mile of it = 10 <u>p t s , m o r e t h a n 1 m i l e = 0 p t s</u>	

Part III. Scenic Amenities (15% of total score)
The 100 points for this section are divided as follows:

A. Farm is located on a designated scenic byway	0 to 20
Yes = 20 pts, No= 0 pts	
B. Farm has road frontage on a public road	0 to 10
At least 300 feet = 10 pts, 1- 299 ft = 5 pts , none= 0 pts	
C. Traffic Volume on Road	0 to 10
Road averages 10,000 trips per day or greater = 10 pts Road averages 7,000 to 9,999 trips per day = 8 pts Road averages 4,000 to 6,999 trips per day or a thoroughfare = 6 pts Road averages 1,000 to 3,999 trips per day or a minor thoroughfare = 4 pts Road is a through street with no count, or up to 999 trips per day = 2 pts Farm is located on a dead end street = 0 pts	
D. The View of the Farm from road and beyond	0 to 30
The Farm's visibility from the street = up to 10 pts The visual impact that development would have = up to 10 pts Open Views into the Farm, the amount visible = up to 10 pts	
E. Attractiveness of the Farm's Details	-30 to 30
Areas of woodland, ponds and field in a pleasing composition = 0 to 10 pts Attractive, well-maintained buildings and fences = 0 to 10 pts Active agriculture or farm operations = 0 to 5 pts Historic farm buildings = 0 to 5 pts <u>U n a t t r a c t i v e F e a t u r e s = s u b t r a c t 5 t o 3 0 p t s</u>	

Part IV. Historic & Cultural Importance (10% of total score)
The 100 points for this section are divided as follows:

<p>A. Century Farm (a N.C. Program recognizing for 100+ year old continuous family farms)</p> <p style="text-align: right;">0-40</p> <p>The farm is a registered Century Farm = 40 pts The Farm is not registered, but would qualify = 20 pts Does not qualify = 0 pts</p>	
<p>B. The Farm contains an Identified Historic Site or Archaeological Feature (County or Nat'l Register)</p> <p style="text-align: right;">0-30</p> <p>Registered Historic feature = 20 pts Eligible but not Registered = 10 pts Archaeological Feature = ADD 10 pts None of the above = 0 pts</p>	
<p>C. Farm's other Cultural Features (e.g., historical significance, minority farm family, etc.)</p> <p style="text-align: right;">0-30</p>	

Total Farm Score:

<p>Part V. Bonus Points Bonus Points are added to the Farm's total score, and can total a maximum of 18 pts</p>		
	A. Farm is a Direct local food marketer	0 to 2
	B. Farm has Unique qualities or markets (such as organically certified, alternate crop or method, provide a needed community service, etc.)	0 to 3
	C. The Farm is 200 acres or greater	0 to 3
	D. The Farm allows Public Use (such as agri-tourism, pick your own, contains a public trail, public fishing or hunting is permitted, hosts school tours, etc.; to qualify the farm must show a demonstrated record of public involvement on the farm)	0 to 8
	E. Landowner donates 25% or more of appraised easement value	0 to 2

Final Farm Score:



Durham County Farmland Protection Program



Determining the Value of a Conservation Easement

The value of a conservation easement is determined by a qualified appraiser who will be hired by Durham County. The valuation process has the following steps:

1. First, the appraiser will look at the farm to come up with his/her estimate of the likely value of the property if it was sold on the regular market place without restrictions, called “fair market value”. This analysis looks at recent land sales in the area, and factors in characteristics such as the property’s location, size, access, surrounding land uses, and development potential.
2. Next, the appraiser will look at the same property and its likely value if it was purchased with the easement restrictions in place. The appraiser will need a general list of major easement restrictions, such as how many home sites are still possible, what uses can still be made of the property, etc. The appraiser will then use their educated judgment to estimate what the property would be worth on the open market place if it was sold with these restrictions in place. This value is typically substantially less than the unrestricted “fair market value” of the property.
3. The difference between the two values derived above is considered the value of the easement rights. If the property owner is willing to sell the conservation easement for less than its appraised value, the difference is called a “bargain sale” which is considered a charitable donation on federal taxes, and a tax credit on state taxes. See the examples below.

Example of the Appraised Value of a Conservation Easement on a 100 acre farm:

1 .	F a i r M a r k e t V a l u e ” :	Value of the farm without easement (100 acres x \$7000 /acre)	“ \$700,000
2 .	Value after the Easement is conveyed:	Value of the farm with easement restrictions in place (1 0 0 a c x \$ 3 0 0 0 / a c r e)	- \$300,000
3. Value of the Easement rights:		Reduction in market value due to the easement restrictions	= 400,000

Example of a “Bargain Sale”

1. “Fair Market Value” of the Easement:	\$400,000
As determined by the process above	
2. Amount that the landowner wishes to receive:	- \$300,000
3. “Bargain Sale” Value:	= \$100,000
This donated value may be considered a charitable donation on federal taxes, and a tax credit on state taxes	

Appendix 4

Durham County Listings in the *National Register of Historic Places* As of October 22, 2008

American Tobacco Company Manufacturing Plant (Durham) 9/28/2000
J.S. Bassett House (Faculty Ave. TRN) (Durham) 11/29/1979 Bennett
Place State Historic Site (Durham) 2/26/1970 Richard D.
Blacknall House (Durham) 3/1/1990 Bright Leaf Historic
District (Durham) 12/30/1999
Bull Durham Tobacco Factory (W. T. Blackwell Tob.Fact.) (Durham) 9/10/1974 Bullington
Warehouse (Durham) 8/30/1982
City Garage Yard/Fire Drill Tower (Durham) 5/3/2000 Clark
and Sorrell Garage (Durham) 8/16/2000 Cleveland Street
Historic District (Durham) 9/20/1985 Cranford-Wannamaker House
(Faculty Ave. TRN) (Durham) 11/29/1979
J.S. Crowell House (Durham) 11/29/1979
Dillard/Gamble Houses (Durham) 1/19/1979
Downtown Durham Historic District (Durham) 11/1/1977 Duke
Homestead and Tobacco Factory (Durham) 11/13/1966 Duke Memorial
United Methodist Church (Durham) 8/11/1985 Durham Cotton Mills Village
Historic District (Durham) 8/9/1985 (former) North Durham County Prison
Camp (Durham) 12/31/1998
Durham Hosiery Mill (Durham) 11/14/1978
Durham Hosiery Mill #2 (Burned 1985, Deteriorated) (Durham) 11/27/1985
East Durham Historic District (Durham) 12/23/2004 Emmanuel
AME Church (Durham) 8/9/1985 Ephphatha Church (Durham)
8/9/1985
Erwin Cotton Mills Company Mill #1 and Headquarters Building (Durham) 11/20/1984
Fairtosh Plantation (Durham vicinity) 4/3/1973 Wiley
and Elizabeth Forbus House (Durham) 4/28/2005 Forest Hills
Historic District (Durham) 12/28/2005 Golden Belt Historic
District (Durham) 8/9/1985 Golden Belt Historic District (Boundary Increase)
(Durham) 7/30/1996
Golden Belt Historic District Additional Documentation (Durham) 9/24/2008
Greystone (Stagg House) (Durham) 6/1/1982 Hardscrabble
(Durham vicinity) 1/20/1972
John Sprunt Hill House (Durham) 1/30/1978 Kinchen
Holloway House (Durham) 8/29/2008 Holloway Street Historic
District (Durham) 9/20/1985 Horton Grove Complex (Durham
vicinity) 3/17/1978 Lakewood Park Historic District (Durham)
5/1/2003

Leigh Farm (Chapel Hill vicinity) 9/5/1975
Liberty Warehouse Nos. 1 & 2 (Durham) 8/6/2008
Little Creek Site 31Dh351 (Archaeology) (Chapel Hill vicinity) 1/11/1985
Bartlett Mangum House (Durham) 5/25/1989
Meadowmont (Chapel Hill vicinity) 7/11/1985
Mechanics and Farmers Bank (Durham) 5/15/1975
Morehead Hill Historic District (Durham) 8/9/1985
Morehead Hill Historic District Boundary Increase (Durham) 6/2/2004
North Carolina Central University Historic District (Durham) 3/28/1986
North Durham-Duke Park District (Durham) 6/20/1985
William Thomas O'Brien House (Durham) 8/9/1985
Pearl Mill Village Historic District (Durham) 8/9/1985
W.H. Pegram House (Faculty Ave. TRN) (Durham) 11/29/1979
George Poland House (Bahama vicinity) 12/4/2004
Powe House (Durham) 8/9/1985
Scarborough House (Durham) 8/9/1985
Smith Warehouse (Durham) 9/16/1985
St. Joseph's AME Church (Durham) 8/11/1976
Stagville (Durham vicinity) 5/25/1973
Marcus Tilley House (Bahama vicinity) 1/14/2000
Trinity Historic District (Durham) 3/26/1986
Trinity Historic District boundary increase 2 (Durham) 1/9/2008
Trinity Historic District Boundary Expansion (Durham) 6/4/2004
Adolphus Umstead House (Bahama vicinity) 9/14/1989
Venable Tobacco Company Warehouse (Durham) 8/9/1985
Venable Tobacco Company Prizery Building (Durham) 8/21/2003
Watts Hospital (Durham) 4/2/1980
Watts and Yuille Warehouses (Durham) 4/5/1984
Watts-Hillandale Historic District (Durham) 4/25/2001
West Durham Historic District (Durham) 3/26/1986
West Point on the Eno (Durham vicinity) 8/9/1985

Appendix 5: List of Interviews and Public Meetings

Interviews

Talmadge Layton
Danny Page
Sue Gray
Ellen Ziemer
Keith Whitfield
Milton Ganyard
Samantha Gasson-Stirrup
Sarah Leavitt/Michael Turner
Nancy Herndon
James Ellis
Bill Sparrow
Dave Artigues
Randy and Remy Brue
Farm Credit - Kent Davis
Farmers Market - Erin Kauffman
SEEDS - Kavanah Ramsier
Farmland Protection Advisory Board - Kathryn Spann
Triangle Land Conservancy - Tandy Jones
Farm Supply - Steve Holder
Farm Supply - George Davis
Magnolia Grill - Ben Barker
Eno River Restaurant and Market - Richard Holcomb
Whole Foods - Amy Eller
SWCD - Eddie Culberson
Extension - Delphine Sellars/Michelle Wallace
Planning - Helen Youngblood/Julia Mullen
County Commission - Becky Heron
Open Space & Real Estate -Jane Korest/Wendy Seddon
Forestry - George Brown
Asst. County Manager - Drew Cummings
Forestry - George Brown
InterFaith Food Shuttle -Jill Staton-Bullard/Sun Butler/

Public Meetings

Farming in the 21st Century: The New Frontier - Bahama Ruritan Club, January 31, 2009 Open
Forum Meetings: Little River Community Complex - April 28, 2009
East Durham Branch Library - April 20, 2009
Durham County Farm Bureau Monthly Meeting -July 9, 2009
Durham Farmers Market Customer Survey - August 1, 2009

Appendix 6: Authority for County Action

In 1986, the North Carolina General Assembly passed the North Carolina Farmland Preservation Enabling Act.ⁱ The stated purpose of this Act is "to authorize counties to undertake a series of programs to encourage the preservation of farmland as defined herein."ⁱⁱ In addition to enabling counties to create Voluntary Agricultural District ordinances, which Durham County adopted in 1996 and amended in 1999 and 2003 [Durham Code of Ordinances 14-IV], the Act also created the North Carolina Farmland Preservation Fund and enabled counties to develop purchase of agricultural conservation easements (PACE) programs. By later amendment, the General Assembly created a matching mechanism for distribution of Farmland Preservation Trust Fund monies, with preference to counties adopting a countywide farmland protection plan.ⁱⁱⁱ The Act declares that a countywide farmland protection plan shall do the following (denoted by page numbers of this report in parentheses):

1. Contain a list and description of existing agricultural activity in the county (pp. 18-40).
2. Contain a list of existing challenges to continued family farming in the county (pp. 11, 18-40, 41-52).
3. Contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy (pp. 28-35, 40).
4. 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 (pp. 53-60, 67, 69-76)
5. Contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan (pp. 77-79, 61-62)

The statute suggests that such a countywide farmland protection plan may be formulated with the assistance of an agricultural advisory board, which Durham County appointed as part of its Farmland Protection Program ordinance (Durham Code of Ordinances 14-IV). That board, known as the Durham Farmland Protection Advisory Board, will take the lead role in administering this plan and reporting to the Board of County Commissioners on its progress.^{iv}

ⁱ NCGS § 106-735 et seq.

ⁱⁱ NCGS § 106-735(b). "Qualifying farmland" is defined in § 106-737.

ⁱⁱⁱ NCGS § 106-744 (c)(1).

^{iv} Such a plan might also be formulated by a planning agency or other advisory board such a soil and water conservation district that has responsibility for land preservation in the county.