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Agricultural District Programs Provide Flexible Options for Farmland Preservation

Andrew B. Waters

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American farmland is disappearing at a rapid rate. According to a 2022 study sponsored by the American Farmland Trust (AFT), 18.4 million acres of farmland will be lost by 2040 if current development trends continue. Under a “runaway sprawl” scenario, AFT projects that 24.4 million farmland acres, an area roughly the size of Indiana, would be lost by 2040 (Hunter et al., 2022).

North Carolina is at the center of this crisis. The state ranks second behind Texas in projected farmland loss in AFT’s analysis:

The state of North Carolina stands out with the ignominious distinction of being a sizable state that nevertheless will convert 11.6% of its agricultural land—nearly 1.2 million acres—to subdivisions, strip malls, and scattered rural housing... Five North Carolina counties will see more than 35% of their agricultural land converted (Hunter et al., 2022, p. 23).

Like other states, North Carolina attempts to slow farmland loss through preservation programs. Conservation easements (CEs) have become a popular option for farmland preservation. Many areas attempt to limit farmland loss through programs that provide financial compensation for CEs. However, the permanence of CEs limits their appeal to many agricultural landowners.

Agricultural District Programs (ADPs) provide a more flexible alternative to farmland preservation than CEs. ADPs are incentive-based programs that allow farm and ranch landowners to form special areas where commercial agriculture is encouraged and protected but not required by regulation or permanent restrictions.

Enrollment in ADPs is voluntary and typically entitles the landowner to a suite of benefits. These incentives vary widely across the United States. While most ADPs limit special assessments and the use of eminent domain on participating farms, many programs have unique

characteristics. In Wisconsin, ADP participation qualifies landowners for a state income tax credit. In California, ADP participation helps indemnify landowners against claims arising from agriculture laborer housing. Terms and requirements for ADP programs also vary widely across states and regions. The Kentucky ADP program requires an initial minimum enrollment of 2 years, while the Utah program requires a commitment of 20 years (AFT, 2016).

As the issue of farmland loss becomes more severe in years to come, state and local governments must look beyond PACE programs to provide a variety of farmland preservation programs. This article compares CE and ADP programs and reviews North Carolina’s Voluntary Agricultural District (VAD) program as an ADP example. First authorized in 1985, VAD programs now exist in 91 of North Carolina’s 100 counties. According to the North Carolina Department of Agriculture and Consumer Services (NCDACS), the state authority that administers the program, over 10,000 farms of almost 900,000 acres of working farms and forests are enrolled in the VAD program (NCDAS, n.d.). To assist the reader, Table 1 lists the common acronym used in this article.

The Rise of Conservation Easements in Farmland Preservation

Farmland conservation programs emerged in the United States during the New Deal. The Soil Conservation and Domestic Allotment Act of 1936 established direct payments to farmers for soil conservation practices (Cox, 2006). Today, federal programs providing financial incentives and cost share for conservation practices on agricultural land are administered by the Natural Resources Conservation Service, while other state and local conservation agencies provide similar services.

These programs historically focused on conservation management and practices but did little to address the

Table 1: Acronym List

| Acronyms | Full Names | Descriptions |
|----------|--|---|
| AAB | Agricultural Advisory Board | The citizen advisory board charged with overseeing ADPs in North Carolina. |
| ADP | Agricultural District Programs | Farmland preservation programs with voluntary, term-limited participation requirements. |
| AFT | American Farmland Trust | A national nonprofit that studies farmland preservation issues. |
| CE | Conservation Easement | A legal instrument that permanently restricts property development to protect farmland and other environmental characteristics of land. |
| EVAD | Enhanced Voluntary Agricultural District | An ADP program in North Carolina that requires a 10-year commitment. |
| NCDACS | North Carolina Department of Agriculture and Consumer Services | The agency that oversees the ADP program. |
| PACE | Purchase of Conservation Easement Programs | A state or local program that provides funds to purchase conservation easements. |
| VAD | Voluntary Agricultural District | North Carolina's primary ADP program. |

conversion of agricultural land to commercial and residential development. However, as development pressure increased during the latter part of the twentieth century, CEs emerged as a popular farmland preservation method.

The concept of CEs first dates to the 1880s, when deed restrictions were used to protect private land in Boston's park system (Bray, 2010). A CE is a voluntary legal or deed restriction that limits development or natural resource extraction activities on a property. In almost all cases, a CE is an appurtenant easement, which is permanent and attaches to the title of the land, remaining in place when the property changes ownership (Byers and Ponte, 2005). A CE is conveyed by a private landowner to a qualified agency, which assumes the legal right and obligation to enforce the development restrictions (Owley et al., 2017).

In 1964, the Internal Revenue Service authorized the first federal charitable income tax deduction for donated CEs. In 1981, the National Conference of Commissioners on Uniform State Laws (now the Uniform Law Commission) promulgated the Uniform Conservation Easement Act, resulting in an explosion of CEs nationwide. Today, all 50 states have CE-enabling statutes (Cheever and McLaughlin, 2015).

Accompanying the rise in CEs has been the popularity of state and federal programs that provide funding for CE acquisitions. Purchased CEs are popular policy options for state and local governments because

- CEs avoid government land-use regulations.
- CE prices typically reflect market values and characteristics.
- CEs can target specific land types and conservation values (Boyd, Caballero, and Simpson, 2000).

In 1996, the federal government created the Farmland Protection Program, which provided funds to buy CEs on agricultural land. The establishment of this program spurred the development of state and local Purchase of Agricultural Conservation Easement (PACE) programs. PACE programs typically match local or state funding with federal CE acquisition program funding or other private funding sources.

According to a report by The Trust for Public Land, 35 states have dedicated funding sources for CE acquisitions (Trust for Public Land, 2021). These programs often focus on specific property types and conservation values, ranging from water quality to habitat protection. AFT reports that, as of January 2020, there were 28 state-wide PACE programs in the United States focusing on farmland preservation, along with 21 local ones.

Agricultural District Program: A Conservation Easement Alternative

Despite the popularity of PACE programs, the permanent restrictions of CEs remain an impediment for many agricultural landowners. Drawbacks for permanent CEs include

- limiting future farm infrastructure development;
- restrictions on emerging agricultural land use such as agrovoltaics;
- limiting property distribution options among heirs;
- expensive transaction costs such as surveys, appraisals, and environmental assessment reports.

Resistance to these drawbacks has led to the development of “Agricultural District Programs” (ADPs). These are voluntary, temporary farmland preservation programs that still provide some measure of protection for at-risk agricultural properties but lack the permanence and severe enforcement mechanisms of CEs.

According to Bills and Boisvert (1988), ADPs are rooted in early attempts to reduce property tax on agricultural property. California’s 1965 Land Conservation Act (popularly known as the Williamson Act) was the initial framework for voluntary agreements between local governments and owners of agricultural land. The act authorized local California governments to create “agricultural preserves.” Agricultural landowners within these preserves could sign contracts to restrict the use of their land for an annually renewable 10-year period. In return, participants received a reduced property tax rate. Bills and Boisvert concluded that “one of the more arresting features of the district approach is that it can be a mechanism for achieving a more comprehensive line of attack on land use conflicts near the urban fringe” (p. 18).

AFT defines ADPs as programs that create special areas or districts where commercial agriculture is encouraged and protected. Enrollment is voluntary, and participating landowners typically receive benefits for participation. According to a 2016 AFT report, there are 19 agricultural district programs in 16 states, with 3 states—California, New Jersey, and North Carolina—offering two levels of ADP benefits (AFT, 2016). In their analysis, AFT found that 63% of ADP provisions protect agricultural resources including farmland, while 20% of ADP provisions increase agricultural viability and 17% of ADP provisions increase security for agricultural operations.

North Carolina’s VAD Program

North Carolina’s two ADPs are the Voluntary Agricultural District (VAD) and the Enhanced Voluntary Agricultural District (EVAD) program. The VAD program was established in 1986 with the passage of the “Agricultural Development and Farmland Preservation Enabling Act” (NC General Statute 106, Article 61). By statute, local governments in North Carolina wishing to establish a VAD must approve a local ordinance and establish an agricultural advisory board (AAB) to oversee program governance. AABs are organized and appointed by the

county commissioners or city council adopting the ordinance.

To qualify for the VAD program, farming activity on the applicant’s parcels must qualify as a bona fide farm according to state statute (NCGS 106-581.1) and be managed in accordance with NRCS practices for highly erodible land. In addition, county commissioners may set minimum acreage requirements for participation (NC General Statute 106, Article 61).

Participation in the VAD program requires a voluntary conservation agreement. The agreement must prohibit nonfarm use or development of the enrolled land for 10 years, except for the creation of not more than three residential lots that meet applicable zoning and subdivision regulations. However, the participating landowner may revoke the conservation agreement at any time during the 10-year term by providing written notice to the local government administering the VAD program (NCGS Article 61). The language and form of recording the voluntary conservation agreement differ from county to county.

The VAD program aims to increase identity and pride in the local agricultural community and decrease the likelihood of legal disputes on properly managed farms. VAD participants do not receive financial compensation for their participation but do receive other benefits, such as protections for farming activities. VAD programs must establish some form of notice to reasonably alert a person researching the title of a particular tract that such a tract is located within half a mile of a VAD participating parcel. This provision aims to provide agricultural landowners with some measure of protection against nuisance claims.

Additionally, a VAD ordinance may require a public hearing conducted by the AAB pursuant to any proposed condemnation on a participating parcel and exempt participating landowners from mandated water and sewer assessments. VAD participants may also qualify for higher ranking in state cost-share programs (NCGS Article 61). Most VAD programs provide landowners with signage signifying their VAD participation, although the landowners are not required to display the sign. Some counties also hold annual events for VAD participants such as special programming and participant recognition ceremonies.

In North Carolina, the AABs required to enable VAD programs are also authorized under state statutes to undertake additional farmland preservation and recognition initiatives. AABs can oversee farmland preservation planning processes, which are supported by grants through the NCDACS. Some AABs in North Carolina also oversee PACE programs.

The North Carolina Enhanced Voluntary Agricultural District Program

North Carolina general statutes also enable the establishment of enhanced voluntary agricultural district (EVAD) programs, which provide increased VAD benefits and participation requirements. To participate in the EVAD program, agricultural landowners must also sign a 10-year conservation agreement. However, this agreement is irrevocable during the 10-year term and must be recorded with the register of deeds. After the initial 10-year term, the conservation agreement automatically renews for 3 years unless the landowner provides written notice that they wish to withdraw from the program.

EVAD participants receive all the benefits of the standard VAD program. Additionally, EVAD landowners may receive up to 25% of their gross revenues from selling nonfarm products and still qualify as a bona fide farm, exempting them from zoning regulations under state law. EVAD participants also qualify for the highest available percentage of cost-share funds available through state programs and receive priority consideration for state agricultural grants (NCGS Article 61).

Conclusions

Despite growing awareness about the detrimental impacts of prevailing land use and development trends on farm and forest land, these resources are vanishing at an alarming rate. Many farming communities across the United States want to stop or alter these trends, but the principles of private property rights embedded in the American legal system frequently challenge sustainable land-use reform at the policy or regulation level (Freyfogle, 2017).

CEs can be an effective voluntary mechanism for addressing these challenges, but many landowners remain wary of the perpetual nature of CEs and their enforcement provisions, making them suitable for only a small percentage of American farmland owners. Out-of-pocket expenses for CE-related transactions and concerns about IRS audits of CE transactions also limit landowner interest in permanent farmland protection options (DuPont, 2011).

ADP programs can fill this void by providing a cost-effective and conditional alternative to permanent conservation that can still address the issue of rapidly escalating farmland loss. The flexible nature of ADP programs creates opportunities for governments and other farmland preservation advocates to create place-based approaches for voluntary farm and forest land initiatives. Although ADPs such as the North Carolina VAD program often focus on nuisance relief and cost-share preference, the opportunities for ADP incentives are limited only by the imaginations of local policy makers and farmland preservation advocates.

North Carolina's requirement that ADPs be governed by local AABs creates additional opportunities for farmland preservation. AABs can oversee farmland preservation planning initiatives and seek grants for other types of agricultural infrastructure and investments. More significantly, AABs create opportunities for democratic stakeholder participation in local government decisions regarding farmland policy and practices.

However, the most significant benefit of ADP programs may not be the incentives and relief they convey to participants, or the creation of agricultural advisory boards, but the farmland preservation ethic and value they promote. Signage and other marketing tools associated with these programs promote local agricultural and agricultural conservation initiatives, enhancing their farming participants' sense of community and identity. Decades ago, the conservationist Aldo Leopold wrote, "It is inconceivable to me that an ethical relation to land can exist without love, respect, and admiration for land, and a high regard for its value" (Leopold, 1949, p. 223). ADPs can be an effective tool for expressing that value in urbanizing agricultural areas.

These characteristics can make ADPs an attractive option for local governments and communities seeking more flexible, less restrictive options for farmland preservation than permanent conservation easements. Although ADPs alone cannot stop the drastic loss of American farmland, they can be an effective component of a comprehensive farmland preservation policy.

For More Information

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About the Authors: Andrew Waters is a farmland preservation coordinator for Chatham County, North Carolina, and an instructor, Master of Public Administration program with Clemson University.

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