Overview of Land Preservation Tools

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Types of Land

- Farm land
- Forest land
- Open space
- Historic
Right-to-Farm Laws

- Prelitigation mediation (N.C.G.S. § 7A-38.3)
  - Mandatory
- N.C. Right-to-Farm Law (N.C.G.S. § 106-701)
  - Reverses coming to the nuisance rule
Right-to-Farm Laws

- Exceptions to N.C. law
  - Pollution or change in condition of a stream
  - Overflow of lands
  - Negligent or improper operations
  - Farms within city limits on enactment date
  - New operations

- Constitutionality
Use value taxation

- Assessed at current use
- Agricultural, horticultural & forestlands
- Three year recapture
- Qualify for 4 previous years
- Application required
  - January 31 or 30 days from date of notice of change
  - New application only at transfer
Use value taxation

- **Agricultural lands**
  - 10 or more acres
    - May include wasteland and woodland
    - Multiple tracts w/ one of 10 acres
  - $1,000 gross income for 3 years
  - Individually owned
  - Sound management
Use value taxation

- **Forestland**
  - 20 acres or more
    - May include wasteland
    - Multiple tracts w/ one of 20 acres
  - Individually owned
  - Sound management
    - Written sound forest management plan w/ application
    - Implement plan
Use value taxation

Horticultural lands
• 5 or more acres
  • May include wasteland and woodland
  • Multiple tracts w/ one of 5 acres
• $1,000 gross income for 3 years
• Individually owned
• Sound management
Voluntary Agricultural Districts under N.C.G.S. §106-738

- County ordinance
- Enacted by Board of Commissioners
Ag districts: Elements of an Ordinance

- Minimum contiguous acres of qualifying farmland or minimum number of qualifying farms
- Formation upon execution of agreement(s) to sustain agriculture
- Form of agreement approved by agricultural advisory board (or alternative board or official)
- Each district must have a representative on the ag. advisory board
Qualifying farmland/farms

- Participating in farm present-use-value program (or otherwise determined by the county)
- 2/3 of land high quality (NRCS)
- Highly erodible land standards met (NRCS)
- Subject to a conservation agreement
Conservation agreement

- Non-farm construction, except for three lots prohibited
- Dumping soil or other materials as landfill prohibited
- Removal of trees and other vegetation limited
- Mining prohibited
- Other activities detrimental to conservation
Conservation agreement

- Permitted uses
  - Agriculture
  - Forestry
  - Outdoor recreation
- 10 year duration
- Revocable
Agricultural Advisory Board

- Review and recommend
- Hold public hearings on proposed condemnations
- Advise Commissioners on agriculture
- Countywide farmland protection plans
- Perform other tasks as assigned
Ag District Benefits

- Limitations on condemnation
- Record notice of proximity to farmlands
- Waiver of water and sewer assessments (optional)
- Affect on nuisance actions
Purchase of agricultural easements authorized

- Voluntary acquisitions
- Not more than three lots
- Perpetual agreements
  - 20 year repurchase option (may be longer)
  - Commercial agriculture no longer practicable
Amended by H.B. 1132 (S.L. 00-0171)
• Effective date: July 1, 2000
Trust Fund Amendments

- Eligible entities
  - Nonprofit conservation organizations
    - 30% match
  - Enterprise tier 4 & 5 counties w/ countywide farmland protection plans
    - 15% match
Eligible entities (continued)

- Enterprise tier 1, 2 & 3 counties with countywide farmland protection plans
  - No match
- Counties without countywide farmland protection plans
  - 30% match
Trust Fund Amendments

- Countywide Farmland Protection Plans
  - Inventory of agricultural resources
  - Challenges to family farming
  - Opportunities
  - Maintenance tools
  - Schedule & funding
Conservation Easements

- Conservation and Historic Preservation Agreements Act
  - Avoid common law restrictions
  - Avoid Real Property Marketable Title Act
  - Complies with requirements of federal tax law
Easements at common law

**Types**

- **Easement appurtenant**
  - dominant tenement/servient tenement
  - Runs with land
- **Easement in gross**
  - No dominant tenement
  - Personal
Creation of easements at common law

- Express grant in a deed
- Reservation in a deed
- By prescription (7 or 20 years)
- Implied easements
- Statutory cartway proceeding
Covenants running with the land (common law)

- Express (restrictive)
- Implied
Conservation easements created under other law

- 1996 FAIR Act
  - CREP and wetlands
- Migratory Bird Hunting Stamp Act
- Section 404 of the Clean Water Act - mitigation agreements
- Different tax benefits
Formation: Landowner disclosure obligations

- Known title defects
- Existing security interests
- Marital status
- CERCLA hazardous waste
- Underground storage tanks
- Neighboring land uses - present/planned
Formation: Conservation agency obligations

- Title search/records review
- CERCLA
  - Due care (due diligence)
    - Indicia of ownership
    - PESA (?)
- Full discussion of plans/objectives/goals
- Discussion of plans for transferring rights
Preparation and recording of documents

- Deeds
- Agreements
- Supplemental documents
Scope of the easement

- **Physical**
  - Boundaries

- **Restrictions**
  - Negative
  - Affirmative
    - Access by conservation agency
    - Maintenance by landowner and/or agency
Scope of the easement (continued)

- Activities outside the easement boundary
- Changed circumstances
  - Neighboring property
  - Agricultural/Forestry technology
  - Loss of protected feature
Compliance & transfers of rights

- Who pays for enforcement?
  - Attorney fees
  - Monitoring
Compliance & transfers of rights (continued)

- Actions of third parties
  - Trespassers
  - Tenants
  - Legal actions
    - Eminent domain
    - Non-governmental
      - Cartway proceeding
Compliance & transfers of rights (continued)

- Subsequent easement holders
- Subsequent landowners
Compliance & transfers of rights (continued)

- Disclosure/education of purchasers
- Conservation agency cooperation in sales/financing
Dispute resolution mechanisms

- Arbitration
- Mediation
Conservation easements: Maintenance of farming and forestry

- Adequate income opportunities
- Continuation of normal farming and forestry practices
- Flexibility for changes in practices
- Changes in laws
Conservation easements: Taxation

- Property tax
- Federal income tax
- N.C. income tax
- Federal estate tax
Property Tax

- Reduces FMV
- N.C. requires county tax authorities to consider easement
Federal Income Tax

- Charitable deduction
  - FMV before easement less FMV after easement

- May spread over 5 years
  - avoid limitation on charitable deduction
Charitable deduction
  • Unaffected by use of conservation tax credit

Conservation tax credit
N.C. Conservation Tax Credit

- **Qualifying use**
  - Beach access
  - Access to public waters
  - Access to public trails
  - Fish & wildlife conservation
  - Other land conservation purposes

- **25% of FMV**
  - $250,000/$500,000 annual limit
Qualified recipient
Fee or conservation easement
No reversion
Certificate from DENR
Five year carry-forward
Federal Estate Tax

- Charitable deduction (testamentary gifts)
- 40% reduction in FMV of property subject to conservation easement
  - Subject to exclusion limitation
    - 2000 - $300,000
    - 2001 - $400,000
    - 2002 - $500,000
Example without Conservation Easement

- 100 acres @ $180,000/acre = $18,000,000
- $1,290,800 tax on first $3,000,000
- $8,250,000 tax @ 55% on remainder
- $400,000 tax @ 5% on amounts above $10,000,000
- $9,940,800 - 220,550 (unified credit - $675,000) = $9,720,250 tax due
Example with Conservation Easement

- $100,000 value with conservation easement
- $17,900,000 charitable deduction
- Reduce value of property in estate by 40%
- Value of land in estate = $60,000
- $615,000 of unified credit remains to apply to other property
N.C. Cooperative Extension Educational Programs

- **Publications**
  - Land Preservation Notebook
    - [http://www.ag-econ.ncsu.edu/faculty/feitshans/land.htm](http://www.ag-econ.ncsu.edu/faculty/feitshans/land.htm)
  - Swine Farm Zoning Notebook
    - [http://www2.ncsu.edu/unity/lockers/project/waterprimer/SwineFarmZoningNotebook/](http://www2.ncsu.edu/unity/lockers/project/waterprimer/SwineFarmZoningNotebook/)
  - A Compilation of State Statutes and Regulations Relating to Pesticide Drift
- **N.C. Cooperative Extension Community Planning Assistance Team**