

Disclaimer for Draft Model County Land Preservation Ordinance Notes

The intent of the editors of this model ordinance was to produce a "clean" ordinance that gives counties a great deal of operational and fiscal flexibility. However, this model ordinance is provided here only for review, reference, and example purposes. It does not constitute a legal document or the provision of legal advice. For this document to be valid and legally enforceable it must be modified, reviewed, and approved by a county board of commissioners and a county attorney or other legal counsel. Many of the provisions in this document are required while others are optional. All guidance and authority for what counties must and may include in their ordinance is derived from The Historic Conservation and Preservation Agreements Act, N.C.G.S. 121-34, *et. seq.*, The Farmland Preservation Enabling Act, N.C.G.S. 106-735, *et. seq.*, and Chapter 153A. Please refer to the **Notes** section of this document, which offers guidance on this model ordinance. Copies of county land preservation program ordinances currently in effect or that are being proposed may be found on the NC County Ordinances page of this website. These currently include Buncombe, Durham, Forsyth, Orange and Wake Counties. The following is a link to NC County Ordinances: [NC County Ordinances](#). These ordinances are provided for reference and example purposes only and do not constitute the provision of legal advice.

The URL for the Draft Model Land Preservation Ordinance in MSWord format is as follows:
<<http://www.cals.ncsu.edu/wq/lpn/modelordinances/countyDraft.doc>>.

The URL for these Notes in MSWord format is as follows:
<<http://www.cals.ncsu.edu/wq/lpn/modelordinances/countyDraftNotes.doc>>.

Notes

Article V, section (d)

The County, in enacting this ordinance and executing conservation easements, shall rely on statutory authority as provided under N.C.G.S. § 121-34 through 42.

Article VI, General Provision

1. A county could also utilize an Ag Advisory Board or other pre-existing advisory board to fulfill the requirements of this ordinance.
2. Subject to the Board's discretion, members of the committee may be compensated for their services or may serve as volunteers. A per diem compensation, if any may be set by the Board and appropriated to Committee members for their time and contributions. As an alternative, the Board may choose to offer reimbursements to committee members for any expenses incurred and directly associated with their service to the program.

Article VI, section (b)

Some localities, in addition to the residency requirement, have also required committee members to be property owners within the County. However, the Land Preservation Program benefits all County residents and serves purposes beyond those of participating landowners. Thus, membership on the committee should not be restricted to property owners.

Article VI, section (g)

The purpose of this provision is to give the County Board of Commissioners discretion to remove members from the committee. The only exception to this discretion is removal of a member for an illegal reason; e.g. race or religion. An attempt to remove a member for an illegal reason could create liability for the County. Any committee member who is removed is eligible for reappointment at any time, as this model ordinance contains no prohibition on reappointment. To give committee members more protection from removal, some ordinances require a unanimous vote for removal.

Article VI, section (h)

This section of the ordinance may also include a reference to Robert's Rules of Order or a requirement that they be used as a guide for procedure.

Article VII, section (a)

The Board shall designate a department or county official to distribute and receive applications on behalf of the county and the committee. This task will most likely be delegated to either the Planning Department or the County Soil and Water Conservation Office.

Article VII, section (f)

The conservation agreement shall be short and meet the format requirements prescribed by the County Register of Deeds so as to reduce filing fees.

Article VII, section (g)

This article sets forth requirements for consideration of the application itself. A separate set of application approval criteria (not included with this model draft) will need to be developed by the Committee or its designee. This disclaimer should make it clear that the application itself does not create any property right.

Article VIII

If the property qualifies as farmland eligible for participation in an agricultural district program under N.C. Gen. Stat. § 106-735 through 743, then participation in the above program shall not prevent the owner from applying for participation in the Land Preservation Program as provided under this ordinance. Participation in the agricultural district program or other farmland preservation program is not inconsistent with participation in this program.

Article IX

The following are examples of limitations and restrictions that a County may adopt and enforce over property within the program:

- i. No construction or placing of buildings, dwellings, roads, signs, billboards or other structures on or above the ground;
- ii. No extraction, excavation or removal of loam, peat, gravel, soil, rock or other mineral substance that will alter the surface;
- iii. No dumping or storage of trash, soil, waste, or any other unsightly or offensive materials.
- iv. No removal or destruction of trees, shrubs, or other vegetation; or
- v. Any use of the land must not interfere with its ability to predominantly remain in its natural condition or harm any other purposes consistent with this agreement.

Article X, section (A)

This article could also contain a provision whereby the county may acquire development rights or land through Like-Kind Exchange as described in article X, section (A)(2)(i)(1).

Article X, sections (A)(2)(d) and (B)

All termination provisions should comply with IRS regulations.

Article X, section (A)(8) General

Buybacks for land or property interests acquired through an installment sale from a conveyor could be provided for in County ordinance, however, it involves a sales arrangement that goes to another level of complexity and thus will not be addressed in this model ordinance.

Article X, section (A)(8)

All terms and restrictions of the conservation agreement shall be effective immediately upon the first payment.

Article X, section (c)(1)

The appraiser must be licensed by the North Carolina Appraisal Board. A list of licensed Appraisers is available through the North Carolina Appraisal Board.

Article X, section (c)(2)

This section is not applicable to the conveyance of fee simple interests.

Article X, section (d)

The County is not bound to accept any of the appraised values acquired in accordance with the provisions of this ordinance, and therefore has the authority to make whatever offer is deemed necessary. If the offer is not accepted, the owner shall have the right to renegotiate a purchase price with the County.

RESOURCES: Counties seeking information on developing and drafting a land preservation program ordinance may contact the

Institute of Government:

919-966-5381

<<http://ncinfo.iog.unc.edu>>.

North Carolina Association of County Commissioners

919-715-2893

<<http://www.ncacc.org>>.

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