

Land Summit: Right to Farm, Bona Fide Farm, PUV, VADs, and Tenancy

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2021 NC Cooperative Extension Conference

PLANNING GUIDE

County Land Summit Workshop Series



<https://localfood.ces.ncsu.edu/wp-content/uploads/2020/07/Planning-Guide-for-County-Land-Summits.pdf?fwd=no>

Land Summit Planning

Workshop 1 – Your County’s Land Use Future

Workshop 2 – Protecting Your Farm and Forestland

Workshop 3 – The Business of Agriculture

A Typical Workshop

- Lasts 2-3 hours (be sure to include networking and break times)
- Can be held face to face and virtually
- Time between workshops is up to you (i.e. spaced out as a series)

Workshop 1 – Your County’s Land Use Future



SUGGESTED TOPICS:

Update on County Land
Use Plan

Land Subdivision

Requirements

Bona Fide Farm Zoning

Exemption

Voluntary Ag Districts

Utility Easements

Eminent Domain

SUGGESTED SPEAKERS:

County Manager

County Land Planner

County Tax Department

Utility Company

Representatives

DOT



County Land Summit Series

Workshop 1: Federal, State, and Local Government Land Regulatory Authority

List of Resources

Listed below are links to helpful resources on topics related to federal, state, and local authorities' ability to regulate land usage. Resources are categorized according to the topics presented at the Forsyth County Land Summit, Workshop 1: Federal, State, and Local Government Land Regulatory Authority, on March 26, 2020, sponsored by Forsyth County Cooperative Extension, Forsyth Soil & Water Conservation District, and the Local Food Program Team of the North Carolina Cooperative Extension Service, Economic Impacts Work Group.

county planning efforts, take a look at this [instructional module](#) created by the UNC Institute of Government. Remember that it is important that you become familiar with the county planning office in the county where your land is located.

Stormwater Planning/ Environmental Concerns

Environmental and natural resource regulation generally concerns laws related to how and when farming and other land use activities impact ecosystem processes and the health of soil, air, and water in a manner detrimental to wildlife and people. This is a broad area of law that includes legislation, regulations on their application and enforcement, and judicial decisions interpreting their scope and permissible impact and limitations on human commerce.

- [US Environmental Protection Agency Laws and Regulations that Apply to Your Agricultural Operation](#)
- [North Carolina Ag Laws](#)
- [Natural and Constructed Wetlands](#)
- [Solar Farms](#)

County Long Range Planning

Generally speaking, local governments have the authority to plan for such things as streets, water, and handling of waste. Some government authorities also address such public issues as land use, utilities, transportation, community and economic development, environment, and historic preservation.

As a landowner, it is critically important that you stay abreast of any city or county long range planning efforts that may impact your land usage. For more information on the why, how, what, and where of



Christmas Tree Farm in Western NC

Zoning and Land Use Law

Land ownership and its use are conditionally protected by the US Constitution. Over the course of almost a millennium of English and American common law jurisprudence, the law has recognized that certain land uses cause unreasonable harm to neighboring landowners or the public at large. The law has long recognized trespass, nuisance, both public and private, as well as other legal concepts, as both limiting and protecting the rights of landowners. Similarly, municipal and county authorities have the right to zone areas within their jurisdictional boundaries for certain permitted uses, disallowing and impacting freedom of choice by landowners. In addition, Federal and State statutes have protected the value that natural resources provide, measured as ecosystem services that include clean water and air quality wildlife and fish, and tourism. These legal regulations, which are passed to protect the public and other landowners, sometimes conflict with the legal rights of individual property ownership and use. Read more at [Land Use Law](#).

To protect against overreach by regulating authorities on agricultural land, North Carolina has passed laws protecting land that meets the definition of a "Bona Fide Farm." In the zoning context, this term applies to a parcel of land that enjoys special status as engaged in farm and/or forestry use regardless of whether such use is inconsistent with the particular zoning overlay on that parcel.

[Voluntary Ag Districts](#) are a relatively recent development meant to preserve and protect farmland. To date, over 90 NC counties have adopted enabling legislation to create voluntary ag districts.

Read more about NC Agribusiness Law at: <https://farmlaw.ces.ncsu.edu/agribusiness-law/>

Present Use Value Property Tax

The North Carolina Legislature enacted the present use value program to allow for reduced tax values of individually owned property involved in agricultural, horticultural or forestry management.

- [NC Department of Revenue and UNC Institute of Government Present Use Value Presentation](#)
- [NC Department of Revenue 2019 Present Use Value Guide](#)
- [Forestry Present Use Value Considerations](#)

It is important to consult your [county program](#) regarding this topic as well.

Rights of Way, Easements, and Eminent Domain

A right of way grants someone, usually a public entity, the right to traverse your property to get to another location. An easement generally gives another entity, typically a utility company, the right to use your land.

Eminent Domain is the right of a government authority to take private property for public use, upon payment of reasonable compensation.

[Duke Energy](#) and [NC DOT](#) have posted Frequently Asked Questions about Rights of Way on their respective web sites.



Workshop 2 – Protecting Your Farm and Forestland



SUGGESTED TOPICS:

Land Title and Transfer
Issues
Forestry Management
Land Probate Issues
Conservation Easements
and other programs
Farm Succession Planning

SUGGESTED SPEAKERS:

Extension Specialists
NC Forest Service
County Clerk of Court
Conservation Group
Soil & Water
Conservation



County Land Summit Series

Workshop 2: Protecting Your Farm and Forestland

Resource Sheet

Listed below are links to helpful resources on topics related to federal, state, and local authorities' ability to regulate land usage. Resources are categorized according to the topics presented at the Forsyth County Land Summit, Workshop 2: Protecting Your Farm and Forestland, sponsored by Forsyth County Cooperative Extension, Forsyth Soil & Water Conservation District, and the Local Food Program Team of the North Carolina Cooperative Extension Service, Economic Impacts Work Group.

How Can I Ensure that My Property Is Classified as a Farm?

Being classified as a "Bona Fide Farm" in NC bestows many benefits to a landowner, chief among them exemption from county zoning laws. There are a number of safe harbors that qualify a property for eligibility, including a farm sales tax exemption certificate, a tax listing evidencing present-use-value taxation, a copy of a federal income tax form that evidences farm activity, a forestry management plan, and a USDA farm identification number.

Voluntary Agricultural Districts are a tool established by the NC General Assembly to enable individual counties to adopt ordinances that help preserve and protect farmland. Agricultural Advisory Boards are established to oversee the implementation and operation of the

VADs and conduct public hearings when development threatens the agricultural use of the affected land. Counties may also pass ordinances that allow for Enhanced Voluntary Agricultural Districts to protect farms from development for 10 years.

For information on Present Use Value Taxation, see the Workshop 1 Resource Sheet.

How Do I Protect My Farm/Forestland Boundaries?

Patrolling property boundaries may be a daily exercise for some landowners, but others may not have the time to do so as frequently. What can a landowner do to lessen the incidence of trespass? Hunting season increases the likelihood of unwanted visitors to your property, both human and animal. What are good wildlife management practices? What considerations should you have when you enter into a hunting lease?

Proper boundary management includes clearly marking your property boundaries through fencing, posting, and following state legislated forestland painting guidelines.

Forest stewardship and wildlife management should also be high on your to-do list as a responsible landowner.

Check out these additional resources on timber and forest management

- [Wildlife and Forest Stewardship](#)
- [Forest Land Enhancement Practices](#)
- [Timber Sales: A Planning Guide for Landowners](#)

There are several things a landowner can do to minimize their liability from lawsuits filed by both trespassers and invitees (think, hunting leases). Purchasing liability insurance, proper posting, fencing and warning or removal of attractive nuisances and other dangers, and entering into written agreements with potential users of your land are all good ways to protect both you and your property from potential legal liability.

Finally, leasing your land to another operator to farm or manage is a popular way to keep your working lands working. [Keeping Farmland in Farming](#) is an excellent resource on lease agreements.

What is Land Title and How Do I Transfer It?

Land title refers to your ownership of real property or land. This means that you have a partial or full interest in the rights to use the land. This includes the right to transfer your interest in the land to others.

Land title can be transferred by written documents such as deed, will, or trust, or through probate proceedings, and can also be impacted by both voluntary and involuntary encumbrances, like mortgages, liens, easements, rights of way, and eminent domain.

Individual interests in land can also be transferred to business entities, which can help minimize personal liability issues. Limited liability companies are an especially popular structure for interests in farm and forest land.

As more and more farmers age out from their livelihoods, the future of farmland and farming grows more uncertain. Children who have left the farm to pursue other careers and interests may feel saddled with the burdensome question of what to do with the farm when their parents pass.

It is important to plan now for what happens to the farm in the event of your death or disability. Estate planning is the key to maintaining your legacy and ensuring the continued viability of your farming operation.

Other useful resources on land transfer and estate planning.

- [Your Estate Plan – Where to Begin](#)



What are Conservation Easements?

A conservation easement is a legal document that restricts certain property rights to protect specific conservation values of the property. It involves a legal, enforceable separation of certain land rights between a landowner (grantor) and a qualified conservation organization or public agency (grantee). The easement is a recorded deed restriction that runs with the land title.

Many state and federal programs offer temporary or term-limited conservation protection. Term agreements and conservation contracts vary in scope, scale, payments, and responsibility depending upon their purpose and the duration of the agreement. While many programs are similar to traditional cost-share assistance, this group of programs tends to require a lengthier contract or agreement.

Other valuable conservation resources: [NC Association of Soil and Water Conservation Districts](#)

[Living with Your Conservation Easement](#)

A key resource for government planners is the [CEFS Government Guide to Building Local Food Economies](#).



Read more about NC Agribusiness Law at: <https://farmlaw.ces.ncsu.edu/agribusiness-law/>

Workshop 3 – The Business of Agriculture



SUGGESTED TOPICS:

Collaborative Farming

Arrangements

Leasing and Tenancy

Employment and Labor

Law

FarmLink (Connecting

Aspiring Farmers with

Farmland)

SUGGESTED SPEAKERS:

Extension Specialists

Local Attorney



County Land Summit Series

Workshop 3: The Business of Agriculture

Resource Sheet

Below are links to helpful resources on topics covered in the Local Food Program Team's County Land Summit Series. Workshop 3: The Business of Agriculture. While Workshops 1 and 2 in the County Land Summit Series focused in large part on government regulatory authority and what you, as a landowner, can do to protect your land, Workshop 3 centers on the role that other people play in the business of farming.

Should I Go Solo or Should I Farm with Others?

Deciding to work your land as an individual or family business, picking a legal structure for your farming operation, and potentially entering into the unknown of collaborative farming are critical first steps in the business of agriculture. Whatever legal structure you pick, do so with the advice of an attorney. The LLC is an especially popular legal structure now because of its flexibility. From a single-member LLC to one having 100 members or more, the limited liability company, if done right, shields the owner-members from damages that could arise from potential lawsuits. Other than the sole proprietorship and general partnership, all forms of legal structures offer some degree of protection from personal exposure to financial losses.

Another legal structure that is beginning to resurge in popularity, at least in North Carolina, is the cooperative. The cooperative structure requires a minimum of 5 owner-members and is unique because of its democratic governance and patronage structures. Known for its slogan "one member/one vote", this structure is especially appealing to farmers of lesser means. For more information on the cooperative structure, as well as other collaborative forms of business, read this [2018 report](#) that studied Collaborative Farming in North Carolina.

Choosing to go into business with others is a big step and should be done so with caution. Personalities, risks, common interests, resources, skill sets, and other considerations all need to be taken into account before forming a new legal entity. A good way to learn whether it is a good idea to start a new business with another person is to deal with that person on a contract basis first. In other words, test the waters before you invest time, energy, and money into a business that may not succeed because you did not vet your business partner well enough.

Should I Lease My Land?

If you want to keep your land in farming, you will need someone to farm it. For most landowners, that will mean developing an agreement with a farmer for how the land will be farmed.

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Many landlord and tenant arrangements are based on family or neighbor relationships, and are often not in writing. In areas where farmers utilize fairly large tracts of land, rotating a limited number of commodity crops through the years, land is changing hands between generations, which will likely change the way farmers and landowners have been doing business together. As more and more parents pass on, adult children inheriting rights in farms may want to hold on to those rights but are seeking a more formalized agreement with the farmer who has been tending the land. Closer to urban areas, some landowners who wish to hold on to the land for the foreseeable future may find opportunity in working with a farmer whose farming practices require a stronger tenure relationship than the traditional handshake. Even within families, a successor must often become a tenant before he or she becomes an owner of the land. Check out this [article](#) for a great resource on both landowner and tenant considerations when entering into a lease arrangement.

Another resource to help guide your decision-making on lease and other contractual arrangements with third parties: <https://content.ces.ncsu.edu/evaluating-conservation-easements-solar-leases-and-land-lease-proposals>

How Do I Find Land to Buy? How Do I Find Land to Lease? Can Someone Mentor Me?

NC FarmLink is a program of NC State Extension that connects farmers, landowners and service providers across North Carolina, helping to grow the state's agriculture industry. NC FarmLink maintains databases of both available farmland and farmers looking for land, working with landowners and farmers to ensure an appropriate and lasting match is made. NC FarmLink staff will guide you through considerations and assist you in locating resources you will need when negotiating a land tenure arrangement. They envision a resilient agriculture industry where farmers have affordable options for accessing farm and forestland to create sustainable farm operations; where landowners have viable opportunities for keeping their land in farming; and where agriculture continues to be an integral part of our economy, environment and communities across North Carolina.

Read more at: <https://ncfarmlink.ces.ncsu.edu/about-nc-farmlink/>

Read more about NC Agribusiness Law at: <https://farmlaw.ces.ncsu.edu/agribusiness-law/>



What About Employment and Labor Laws?

The business of farming by nature is very labor-intensive and most farmers, if not all, at some point in their career, will need to locate people to do the work of farming. If you find that you are not able to get the work done with just family members, you will have to deal with state and federal employment and labor laws.

Employment and labor laws cover such things as discrimination, taxes, minimum wage, overtime, comp, child labor, immigration, migrant housing and sanitation. Furthermore, certain agricultural employees are subject to the Migrant and Seasonal Agricultural Worker Protection Act, which requires vehicle safety training for farm laborers.

A great resource on North Carolina farm labor laws is here: <https://content.ces.ncsu.edu/flue-curing/tobacco-information/complying-with-north-carolina-farm-labor-regulations>.



Role of the County Agent

- Identify and coordinate speakers (ask Andrew or Becky for help, if you need it)
- Set the schedule for all 3 workshops or combination
- Market the Workshops
- Host the Workshops (County Extension Office or other venue)

Role of the Extension Specialist

- Make presentations, as needed
- Moderate panel discussions, if needed
- Support the county agent on speaker selection and topics
- Share resources with attendees

Resource Sheets

- One stop shop connecting the reader to Extension fact sheets and publications on topics addressed in each workshop
- Intended to orient the reader to relevant concerns of a landowner
- All resource sheets are available online, along with speaker presentations

Land Summit 2022 Schedule

- Moore County (Sandhills Area)
 - 3 part morning series, February 8-10
- Ashe County (High Country Area)
 - Day-long series
 - Commitment to seeking lunch sponsor
- Online Agent Trainings
 - supported by LFPT
- Seeking ongoing support



Local Food Program

Thank you!

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Select Farm Law Topic Issues

Verbal Tenancy - What happens when land changes hands

Present Use Value Property Tax

Right to Farm - What is it?

Bona Fide Farm zoning - Who qualifies?

Voluntary Ag Districts

Solar Etc.

Land Summit Support Publication

- Supported by Tobacco Trust Fund
- Printing of 300 copies for 2022 workshops
- Topics include estate planning, purchase options, PUV, Tenancy, etc.
- Templates (“go by’s”)
- PDF available at www.farmlaw.ces.ncsu.edu

So You Inherited a Farm

Topics and Templates Concerning Transfer and Management of Interests in Farm and Forest Land



Verbal Farm Tenancies

- Scenario: Farmer has prepped or planted or is grazing ground on a handshake with the land owner
 - Owner dies
 - Owner sells
 - Co-owner objects to tenancy upon discovery
- No hard figures or research, but likely a majority of farming on rented land is verbal (no written lease)
- [N.C.G.S. §42-23](#) protects tenancy until Dec 1 (26 counties) or Jan 1 (remainder of counties)
- If landowner does not terminate 30 days prior, farmer's tenancy renews
 - Sample termination letter

Verbal Farm Tenancies

- Owner dies and heirs do nothing before Dec 1 or Jan 1
 - Farmer's tenancy does not renew: permission to farm another year has died with the previous owner; heir(s) will have to grant a new permission
- Owner sells property
 - Rent should be apportioned between “Lessor” owner and new owner
 - this should be done at closing (similar to how property taxes are allocated) (should be disclosed in purchase contract)
 - Farmer may not renew without new permission
 - Farmer may collect “trade fixtures” at end of term
- Article on [Farm Law](#)

Present Use Value

- Differential assessment of qualified agricultural, forest and horticulture land
 - Counties required to apply local tax rate to a lower appraisal
- Strict ownership, size and income qualifications
 - 10 acres in ag use (mostly open, some trees, no residence); \$1000 gross income (3 year average)
 - 5 acres in hort use (includes structures, probably no livestock); \$1000 gross income (3 year average)
 - 20 acres (forest management plan, no income requirement)
- Must be owned by individual (or entity owned by individuals; trust benefitting only individuals)

Present Use Value Disqualification

- Tax deferment program, full taxes must be paid at some point in future
 - benefit: only past 3 years must be paid
 - called a “roll back”
- Purchaser may agree to continued use and lien
- Roll Back assessed by county upon disqualification
 - voluntary removal (sell to non-farm purchaser)
 - discovery upon transfer
 - discovery upon audit (all PUV tracts reviewed once every 8 years)
 - some counties have shorted 8 year review
 - use of new satellite imagery to discover land changes
- Care exercised in subdivision and transfer
 - careful not to reduce tract size below min acreage
 - careful to allocate ‘roll back’ or ‘continued use’ to purchaser (must be done in purchase contract [or non-farm commercial lease, e.g. solar])
- Fact Sheet submitted for review
 - Article on [Farm Law](#)

Right to Farm ([N.C.G.S. §106-700](#))

- Scenario: Neighbor complains about animals, smell, etc.
- Farmer is protected under NC Right to Farm statute
- Statute revised after Murphy-Brown swine nuisance verdicts, important changes:
 - 1 year statute of limitations (from time “fundamental change” in land use happens)
 - standing to sue: must be within ½ mile of source
 - damages limitation to reduction in land value
 - and no **punitive damages**, serves as disincentive to lawyers working on contingency
 - plaintiff must pay for an expensive case out of own pocket (and may have to pay farmer’s attorney fees/costs if found to be a “malicious” lawsuit)
- Extension response to farmer: Take no action
- Extension response to landowner: “This is an uphill battle, farm must be pretty egregious to defeat the right to farm law”
- Various background articles on [Farm Law](#)

RTF “Fundamental Change”

- Farm can only be a nuisance due a change if “fundamental change” from previous operations
- Fundamental change is not:
 - A change in ownership or size.
 - An interruption of farming for a period of no more than three years.
 - Participation in a government-sponsored agricultural program.
 - Employment of new technology.
 - A change in the type of agricultural or forestry product produced.
 - Grazing cattle to poultry house?
 - Forestry harvest cleared for poultry house?

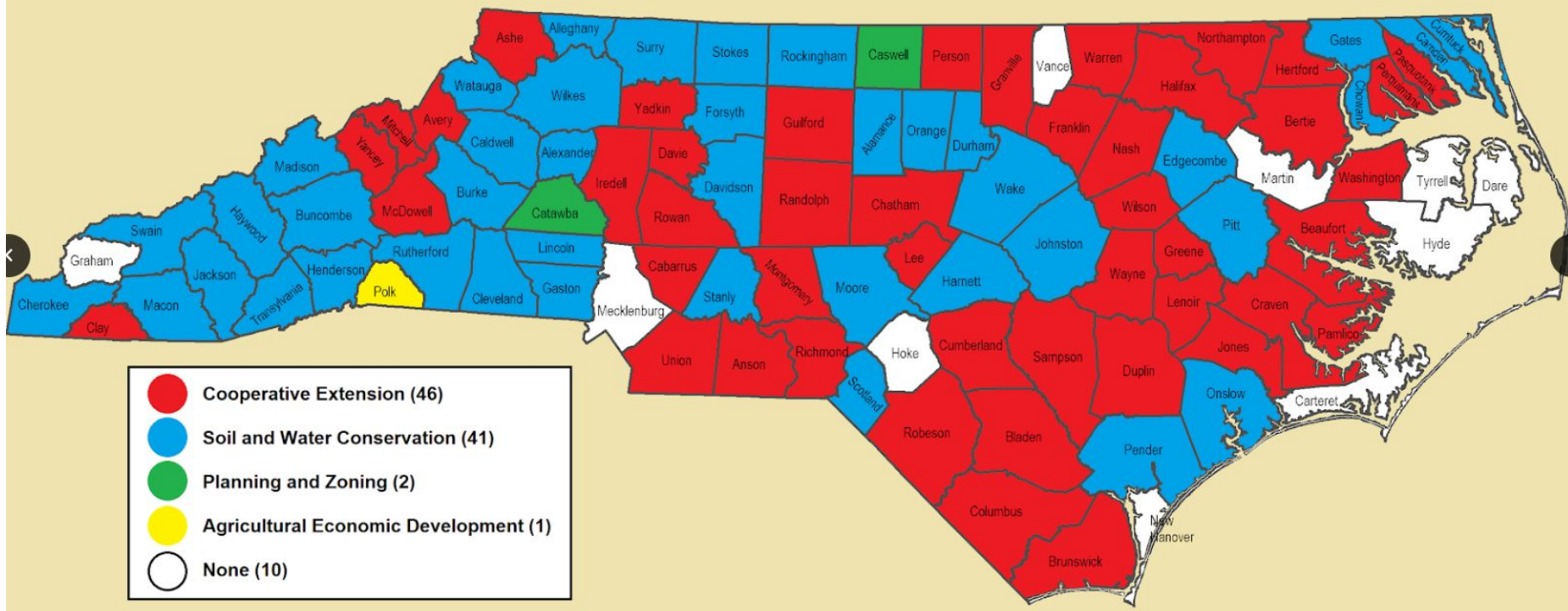
Bona Fide Farm ([N.C.G.S. 160D-903](#))

- The ‘new’ zoning exemption for farming and forestry
 - formerly a general exemption
 - drawback of old exemption: county could interpret “agricultural use”
- Now, objective qualifications (safe harbors), one of:
 - Sales Tax Exemption Certificate (from NCDOR)
 - Land qualifies for PUV
 - Forestry plan
 - Owner or tenant files a Schedule F (tax P&L farming)
- An exemption from county stopping operation
- Has a statutory definition of “agritourism”
- Not an exemption from state building code

Voluntary Agricultural Districts

- County program (91 counties)
 - Hoke latest to adopt
 - half administered by Cooperative Extension, half by Soil & Water
- Voluntary agreement not to remove from farm or forest use for 10 years (freely revocable, no ramifications)
- Requires a Conservation Agreement
 - stand alone or part of application
- Enhanced VAD agreements are **irrevocable** for 10 years
 - auto 3 year renewal if do not terminate
 - cannot revoke if attractive purchase offer emerges
- Farm Act 2020: VAD Board may enroll land if delegated
- Conservation agreement article on [Farm Law](#)

Voluntary Agricultural Districts by Administrative Entity



Fence Law and Livestock Liability

- NC Fence Law: criminal misdemeanor for not keeping livestock fenced
 - statutory liability for escaped poultry *if* damage to other's crops
- Impoundment process for unclaimed livestock
- Off-farm liability to motorists based on negligence theory
 - plaintiff must show farmer did not take reasonable steps to contain animal (*not* strict liability)
 - **reasonable steps**: periodic check fencing, count cows, hot or barbed wire
 - if animal history of escapes, extra containment effort
- On-farm injury subject to negligence theory (was this a dangerous animal?)
 - probably some protection under 99E laws
- [Fact Sheets Published](#)

Solar Development

- Prior to 2017, siting anywhere near 3 phase power lines
- HB 589: Duke Energy largely in control of RFPs
 - effectively limits new sites to larger 80MW
 - (1MW \approx 5,068 solar panels \approx 5 ac) (1MW \approx 200 homes)
- Tranche 1 and 2 closed
- Tranche 3 re-opening for 80MW new capacity
 - unsure of locations
- Landowner question: how do I get a solar facility?
 - Response: contact a developer (Cypress Renewables, Strata Solar, etc.)
- HB 329 Report: study of financial assurances for removal, hazardous waste, recycling, etc.
- Fact sheet in CALS editing

General Matters

- Neighbor's tree falls on across property line and causes damage ([Farm Law](#) article)
 - generally responsibility of damaged landowner (insurance)
 - must prove tree was a danger and neighbor ignored it
- Trespass is a crime only if land is posted according to statute
 - special purple swatch for hunting trespass
- Blocked farm paths
 - if no agreement, must prove easement in court



Local Food Program

THANKS FOR INVITING ME!

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