

# AGRICULTURAL AND FORESTAL DISTRICTS

“IT IS THE POLICY of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth’s agricultural and forestal lands for the production of food and other agricultural and forestal products (and) as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes .... to provide a means for a mutual undertaking by landowners and local governments to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth’s economy and an economic and environmental resource of major importance.”

The Agricultural and Forestal Districts Act, Code of Virginia<sup>3</sup>

Since 1977, the Agricultural and Forestal Districts Act has authorized local voluntary agreements between landowners and county governments to protect prime agricultural areas from incompatible development. In essence, the act invites communities to relieve pressures that encourage owners to convert farms to other uses. “Ag districts” shield landowners from local and state government decisions that could diminish the viability of their farm and forest operations. Districts provide stability for conservation-minded landowners and enable localities to reward people for voluntarily protecting an economic and environmental resource of major importance.

By voluntarily establishing a district, property owners agree not to convert farm and forest land to more intensive commercial, industrial, or residential uses for a period of four to ten years. In return, the locality and the Commonwealth agree not to take actions or make infrastructure investments that will place increased pressure on landowners to convert land in the district to those more intensive land uses. Twenty-five Virginia counties, including Augusta, now use ag district ordinances to protect

more than 650,000 acres of land.<sup>4</sup>

## Landowner Benefits

Agricultural and forestal districts offer rural landowners stronger protection from development pressures than does zoning. Ag districts provide a higher level of certainty that farms and forests will be maintained because they restrict the powers of the local, state, and, to some extent, the federal governments. From the landowner's point of view, ag districts provide the following benefits:

- **Land-Use Taxation** - Qualified land in an ag district is eligible for use-value, or land-use, taxation, whether or not the local government has a county-wide use-value program. By enrolling in a district, an owner can be assured that his property will be taxed at its lower use-value for the long term. Augusta County now permits use-value assessment for all four categories of land eligible under Virginia law. However, if in the future, the county withdraws use-value assessment from any or all of the four categories (agricultural, forestal, horticultural, and open space), qualifying land within ag districts will continue to receive the tax benefit.
- **Nuisance Ordinances** - Local governments are barred by the Virginia Agricultural and Forestal Districts Act from enacting any “laws or ordinances within a district in a manner that would unreasonably restrict farm structures or farming and forestry practices.” Laws that arbitrarily limit customary farming practices like manure spreading, noisy farm machinery, or prescribed burning cannot be enforced in ag districts. Restrictions that are directly related to public health and safety, such as those preventing water pollution or regulating traffic on public roads, can, however, be enforced in a district.<sup>5</sup>
- **Land-Use Regulations** - A local ag district ordinance also takes precedence over other local land-use regulations except those pertaining to public health and safety.<sup>6</sup> For instance, setbacks for the construction of poultry barns or other intensive agricultural operations in ag districts would be those established for agricultural zoning districts of the local zoning ordinance. Residential or commercial zoning district setbacks could not be applied in the ag districts.<sup>7</sup> Setbacks from streams would be enforceable because they relate to protecting the safety of drinking water. Ag districts also ensure that future impacts on farming and forestry will be taken into account in local ordinances, comprehensive plans, and land-use planning decisions. This includes

zoning changes affecting parcels of land adjacent to any district.<sup>8</sup> For instance, the density of residential development on an adjacent parcel could be limited if it were found to have a negative impact on forestry or farming in a district.<sup>9</sup> Likewise a rezoning request or a conditional-use permit application could be denied because of its impact on the district.<sup>10</sup>

- **State Regulations** - State agencies are required to modify all regulations and procedures under the ag districts act “to encourage the maintenance of farming and forestry in districts.” While this provision does not affect regulations needed to promote public health and safety, it does require agencies to consider the impact their actions have on the future of farming and forestry in the district. For instance, if deer or other game animals, which are managed by the state, were destroying crops in an ag district, game-management procedures would have to be modified to reduce the impact on the district. Likewise, if improvements to a state highway would bring increased traffic and increased pressure on district landowners to convert their land to residential uses, the state would have to consider that impact when planning the improvements.<sup>11</sup>
- **Condemnation of Land** - Within districts, landowners have some protection from the acquisition of land by state and local government agencies or by public service corporations like utility companies. The board of supervisors can block the condemnation of land in a district by such entities if it involves more than one acre from an individual farm or 10 acres from the entire district.

## Community Benefits

Agricultural and forestal districts also benefit the larger community, other local taxpayers, and the cause of efficient local government. Some of the community-wide benefits of ag districts are described below.

- **Protecting Scenic Natural Areas** - Districts serve the public good by maintaining the rural character of the community, protecting agricultural and forest land, and contributing to the preservation of the water supply and other natural resources.
- **Promoting Efficient Development Patterns** - Districts facilitate the efficient provision of local government services by helping concentrate new development in and around existing communities where services can be provided in the most cost-effective manner.

- **Ensuring Equitable Tax Policies** - Districts also help ensure that use-value taxation meets the objectives set for it in the Code of Virginia: “encouraging the preservation and proper use” of “real estate devoted to agricultural, horticultural, forestal, and open space uses.” By committing land to farm and forest uses for an extended period of time, ag districts discourage the abuse of use-value taxation programs by investors seeking to acquire and hold land for speculative development. Ag districts can “promote a balanced economy and ameliorate pressures which force real estate to more intensive uses”<sup>12</sup> by discouraging land speculation and moderating the market value of land.<sup>13</sup>

## Basic Criteria for Establishing an Ag District

Under state law, land must meet a few basic criteria before the establishment of an ag district can be considered.<sup>14</sup>

- ❑ Landowners must ask their local governments to create the district. Enrollment in an ag district is completely voluntary.
- ❑ Each district must have a core of at least 200 acres in one or more contiguous parcels. It may surround land that is not part of the district.
- ❑ Other parcels may be included in the district if their closest boundary is within one mile of the boundary of the core, or if they are adjacent to a parcel that is in the district.
- ❑ An owner may enroll all or part of his land in a district.<sup>15</sup>

There is no minimum acreage for each landowner, no minimum number of landowners (one parcel can be a district), and no maximum size for districts. Districts can cross city and county boundaries if approved by all local governments having jurisdiction over them. Generally, the more land in a district, the greater protection it provides for property owners.

## Applying for a District

Agricultural and forestal districts are voluntary. A district must be initiated by landowners and approved by ordinance by the local governing body. An individual or group of property owners starts the application process by asking their county supervisors or city council to adopt an ordinance placing their land in a district. The locality has the option of either enacting a new ordinance each time a new district is created or amending a single ordinance to include each new district. Augusta County already



*Agricultural and forestal districts, like this one in the Middle River District in Augusta County, are one voluntary protection measure that landowners can use to maintain the long-term availability and viability of farmland.*

has ag districts and applications for new districts can be obtained from the planning office.

A model application reproduced from the *Code of Virginia* is provided in Appendix 3 of this publication. As set forth in the code, applicants must provide basic information about their property and the district, such as its location and parcel sizes.

## Conditions for Participation in a District

Applicants also can propose conditions under which the district would be created and suggest a term of four to ten years at which time the district could be renewed or terminated.<sup>16</sup> The board of supervisors or city council also may add its own conditions and must approve all conditions through a local ordinance. As the following examples show, the conditions or restrictions placed on a district can vary from county to county or between districts within a locality.

- **Augusta County**, in creating the Middle River ag district near New Hope: 1) limited subdivisions of land within the district to divisions for transfer to immediate family members, and 2) barred the construction of “new non-agricultural or non-forestal buildings” for a period of seven years. The county can extend these conditions to any newly created districts or establish new conditions as districts are created.<sup>17</sup>
- **Albemarle County’s** Agricultural and Forestal Districts Ordinance

prohibits land from being “developed to a more intensive use, other than a use resulting in more intensive agricultural or forestal production,” in all of its ag districts. The county defines a “more intensive use” as 1) “any use which is not permitted by right in the Rural Areas zoning district,” 2) any subdivision of land except into parcels larger than 21 acres, and 3) rental or condominium development at a density greater than one unit per 21 acres. New districts are simply added to the ordinance when created, sometimes with stated review periods varying from six to ten years.<sup>18</sup>

- **Shenandoah County** usually requires participants in each district to “establish a landowners committee ... to help keep track of changes in ownership of land within the district.” The county regularly reviews districts after ten years.<sup>19</sup>
- **New Kent County** simply adds a new section to its ag districts ordinance each time a new district is created or an existing district is renewed or expanded. The district-specific code sections include review periods and conditions for that district. In some districts, parcels cannot be developed to a more intensive use. Other districts require that Agricultural and Forestal Best Management Practices, including nutrient management plans for agronomic croplands, be employed. In still others, the ordinance stipulates that lands along all rights-of-way, within distances varying from 25 feet to 100 feet from the center line, are excluded from the district.<sup>20</sup>

The board of supervisors can vote to excuse individual landowners from any of the conditions placed on the district on a case-by-case basis. State law also prohibits conditions that bar the construction of “dwellings for persons who earn a substantial part of their livelihood from a farm or forestry operation on the same property, or for members of the immediate family of the owner, and division of parcels for such family members.”<sup>21</sup>

## Procedures for Creating, Expanding, and Renewing Districts

When landowners apply for the creation of an ag district, the county board of supervisors, planning commission, and an ag district committee all participate in the process of shaping the district. When it receives its first application for a district, the board must establish an ag district advisory committee to assist in the creation of all future districts in the county. Under state law, the committee must consist of:

- four landowners who are agricultural or forestal producers;
- four other local landowners;
- the commissioner of revenue; and
- a member of the board of supervisors.

Each application for a district is first referred to the county planning commission, which must notify participating and adjacent landowners of the proposal. The application is then referred to the advisory committee. It is the committee's duty to "render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relationship to the entire locality" to the supervisors and planning commission.

The committee sends its advice and the application back to the planners, who hold a public hearing and receive testimony on the proposal. The planners can make recommendations on the creation of the district, including modifications to its boundaries and suggested conditions to be placed on it. This recommendation is passed to the supervisors, who must hold a second public hearing before voting to create or deny the district. In deciding on an application for a district, the county must consider:

- the agricultural and forestal significance of land within and adjacent to the district;
- the soils, climate, and topography of the district;
- the nature of land uses other than farming and forestry in and adjacent to the district;
- local development patterns;
- the county comprehensive plan and zoning regulations; and
- the environmental benefits of retaining district lands in agricultural and forestal uses.

Land may also be added to a district after it is created through the process described above. If the board denies an application for a district, landowners may reapply immediately.

## Removing Land From Districts

Landowners can apply in writing to the board of supervisors for their land to be removed from a district at any time after its creation. Following a public hearing and with the advice of the planning commission and the advisory committee, the board can accept or reject an application for removal from a district. If removal is denied, the landowner may appeal



*Two agricultural and forestal districts near Keezletown, established simultaneously in 1998, protect 4,402 acres of prime farmland in Rockingham County.*

the board's decision to the local circuit court.

## Review of a District

The ordinance creating a district must prescribe a period of four to ten years before the county may review the existence of the district. If the locality determines a review is unnecessary, it must pass a resolution setting a new review period. If the board determines a review is necessary, it must notify the affected landowners, seek the advice of the planning commission and the advisory committee, and hold public hearings. During the review, the board may, by ordinance:

- terminate the district;
- modify its boundaries;
- change the conditions applying to the district; or
- continue it with the same boundaries and conditions that existed before the review.

The district ceases to exist only if the board passes a resolution dissolving it. If no action is taken, the district remains in effect.