Farm Law for Producers and Landowners

The Bona Fide Farm Exemption: Connecting the Dots

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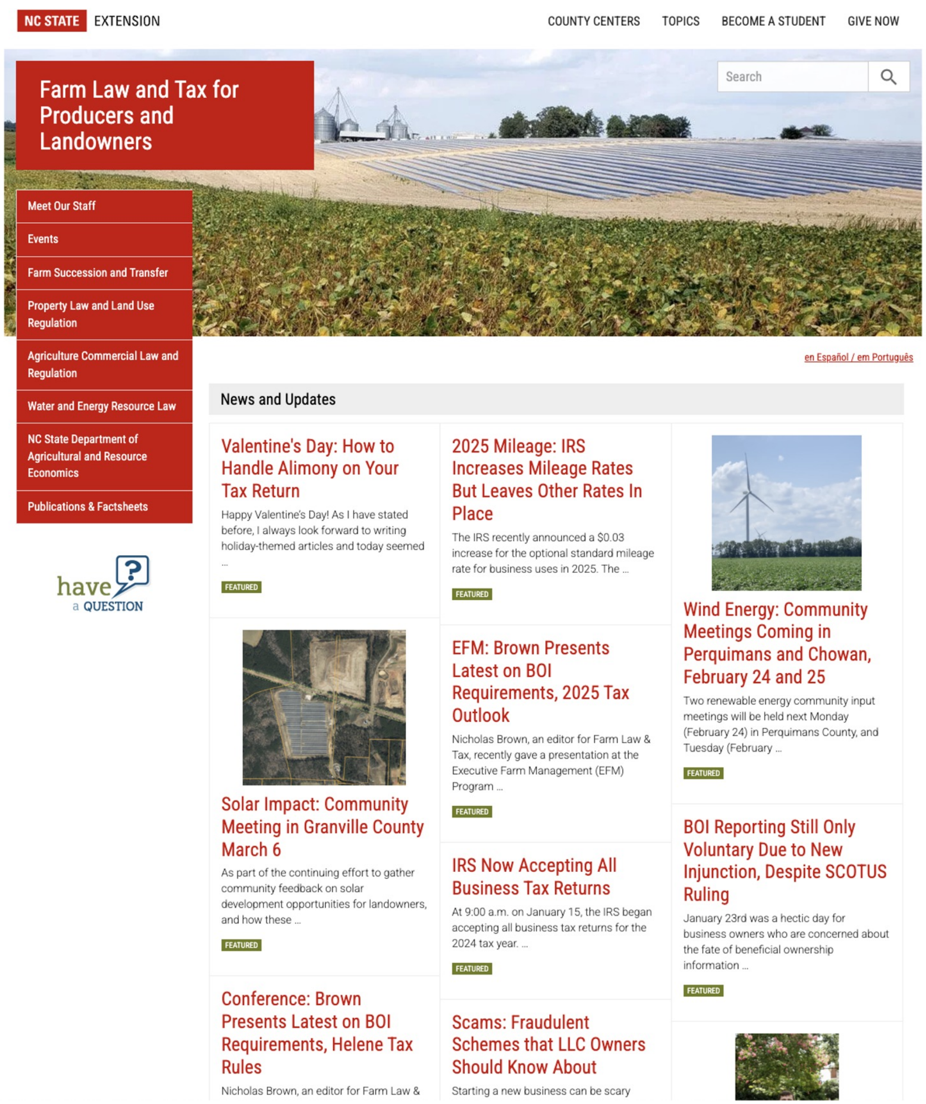
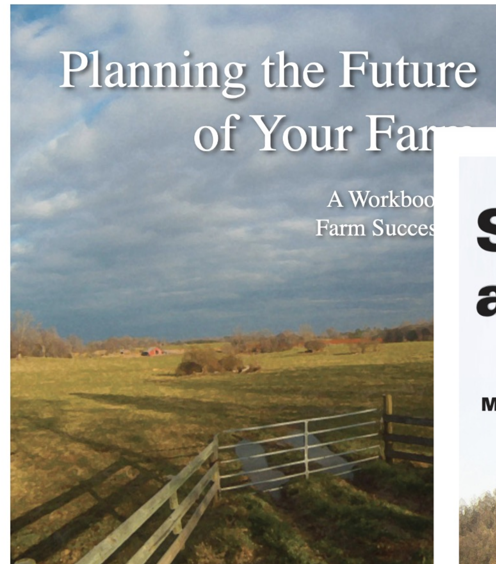
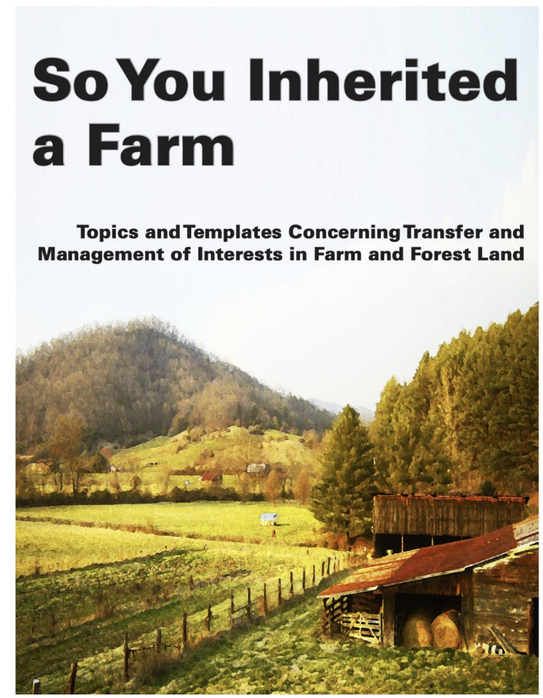
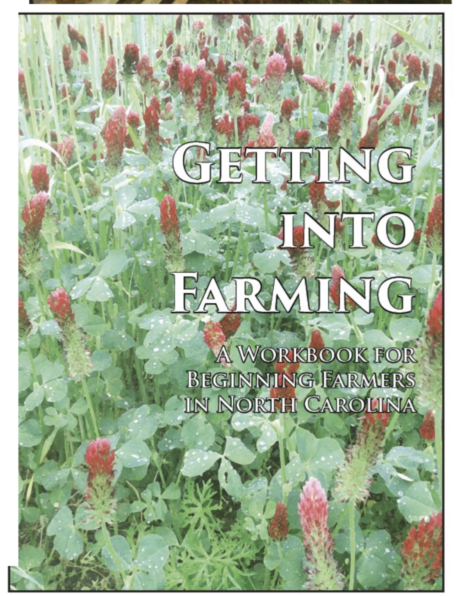
NC STATE EXTENSION

https://farmlaw.ces.ncsu.edu/









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NC STATE EXTENSION

Federal, State Law and Local Authority

- Federal government power is limited
  - by the grant of authority in the words and phrases of the U.S. Constitution
  - by the rights "we the people" have reserved to ourselves alone
- All other power is reserved to the states via the 10th Amendment
  - **Land Use** is a function generally reserved to the states
  - Unless Congress chooses to intervene (e.g. environmental laws)
- Local government (in NC) has no inherent power
  - all zoning and taxing authority comes from state statute

The Nature of Agriculture and Farm Exemptions

- **Often conflated with location** (e.g. in a rural area, on land that *was once* a farm)

- **Production Income** serves as the basis for exemption qualification (evidence is the qualifier)

- land use activities that directly support farm production (planting and harvesting) or *incidental to* that production

- applies to zoning, sales taxes, property taxes, farm labor exemptions, etc.

- Generally, if the production-related activity supports the owner or operator's production, it qualifies that land or operator for an exemption
  - but once that activity supports *another* owner's or operator's land use activity, exemption lost for that activity

- Agritourism definition continues to expand

Zoning Law Theory

- Considered a fundamental “police power” of local government to protect health and welfare
  - In North Carolina, local authority comes from state legislature (NCGS § 160D-901)
- Impacts private property rights with use restrictions, potentially a government public “taking” in violation of US Const. 5th Am “takings clause”
- General concept approved of by US Supreme Court (*Village of Euclid v. Ambler Realty* [citation, 1922]
  - So long as imposition of use restrictions follows a publicly disclosed plan, such invasion of rights is not a taking
- Courts have provided ‘guardrails’ to protect integrity of local process and balance takings concerns (in long series of dispute resolution opinions)
  - e.g. *PHG Asheville, LLC v. City of Asheville*, 822 S.E.2d 79 (N.C. Ct. App. 2018). Regarding sufficiency of evidence in a special use permit zoning hearing
  - e.g. *Anderson Creek Partners, L.P. v. County of Harnett*, 382 N.C. 1, 876 S.E.2d 476 (2022), bringing ‘impact fee’ requirements (known as “exactions”) within bounds of US Supreme Court jurispudence on zoning as violation of US Const. 5th Am., *Nollan v. California Coastal Comm'n* (1987) and *Dolan v. City of Tigard* (1994)

Zoning Codes Applied

- Per *Euclid*: zoning restrictions applied through a comprehensive area plan (county or municipality) derived with public input (often called a Unified Development Ordinance [UDO])
- Separates incompatible uses (e.g. industrial vs. residential)
- Can provide resource (e.g. water quality) protection through pervious surface management (e.g. building lot size, building size, etc.)
- Creates zones with allowable uses (permitted by 'right' or outright prohibited) along with parcel development parameters (e.g. building setbacks from parcel boundary)
  - as well as uses that may be approved by special permit (with public input)
  - zones and uses outlined in UDO detail, often with a table

Exemptions from Zoning Code

- **Statutory and Common Law Vested Rights** (NCGS § 160D-108 & § 160D-108.1): protects developers and property owners from having to comply with new or changed zoning regulations after they have begun a project in good faith reliance on a prior approval.
- **Manufactured Homes (NCGS § 160D-912):** Local governments generally cannot prohibit the use of manufactured homes on individual lots in areas zoned for residential use. They must be treated similarly to other types of single-family residences, provided they meet certain building and aesthetic standards.
- **Child Care Facilities (NCGS § 160D-904):** Family child care homes (serving up to eight children) and small child care centers are generally treated as a residential use and cannot be subjected to any zoning requirements different from those applicable to single-family residential dwellings.
- **Religious Assembly:** Although not a complete exemption, North Carolina recognizes that zoning cannot unduly burden the exercise of religion, and local ordinances must comply with state and federal laws that protect religious institutions from unreasonable land use restrictions (e.g., the Religious Land Use and Institutionalized Persons Act - RLUIPA, 42 U.S.C. § 2000cc et seq.) (exercise in federal supremacy under US Const. Art. VI)
- **Farming: The Bona Fide Farm (NCGS §160D-903)**

The "Bona Fide Farm"

- Zoning exemption applied to parcel used for "farm purposes" described in NCGS §160D-903,
  - specifically: "the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry"
  - and generally: "all other forms of agriculture, as defined in G.S. 106-581.1"
- A bona fide farm parcel may not be annexed by a municipality without consent of the parcel owner [NCGS §160A-58.54(c)]
- A bona fide farm parcel located in municipal extraterritorial jurisdiction (ETJ) is not subject to municipal zoning restrictions
  - So long as parcel *remains* a bona fide farm
- Not generally considered an exemption against the NC Building Code

§ 106-581.1. Agriculture defined

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

(1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.

(2) The planting and production of trees and timber, including pine orchards planted and maintained for the purpose of harvesting pine needles for sale, or the harvesting of pine needles for sale from land with a forest management plan.

(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing. The raising, management, care, **and training of horses includes the boarding of horses**.

(4) Aquaculture as defined in G.S. 106-758.

(5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings **on the farm**, including building and structure repair, replacement, expansion, and construction incident to the farming operation.

(6) **When *performed on the farm***, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, biofuel production for commercial sale, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting,storage, and other activities performed to add value to crops, livestock, and agricultural items **produced on a farm**, and similar activities incident to the operation of a farm.

(7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain.

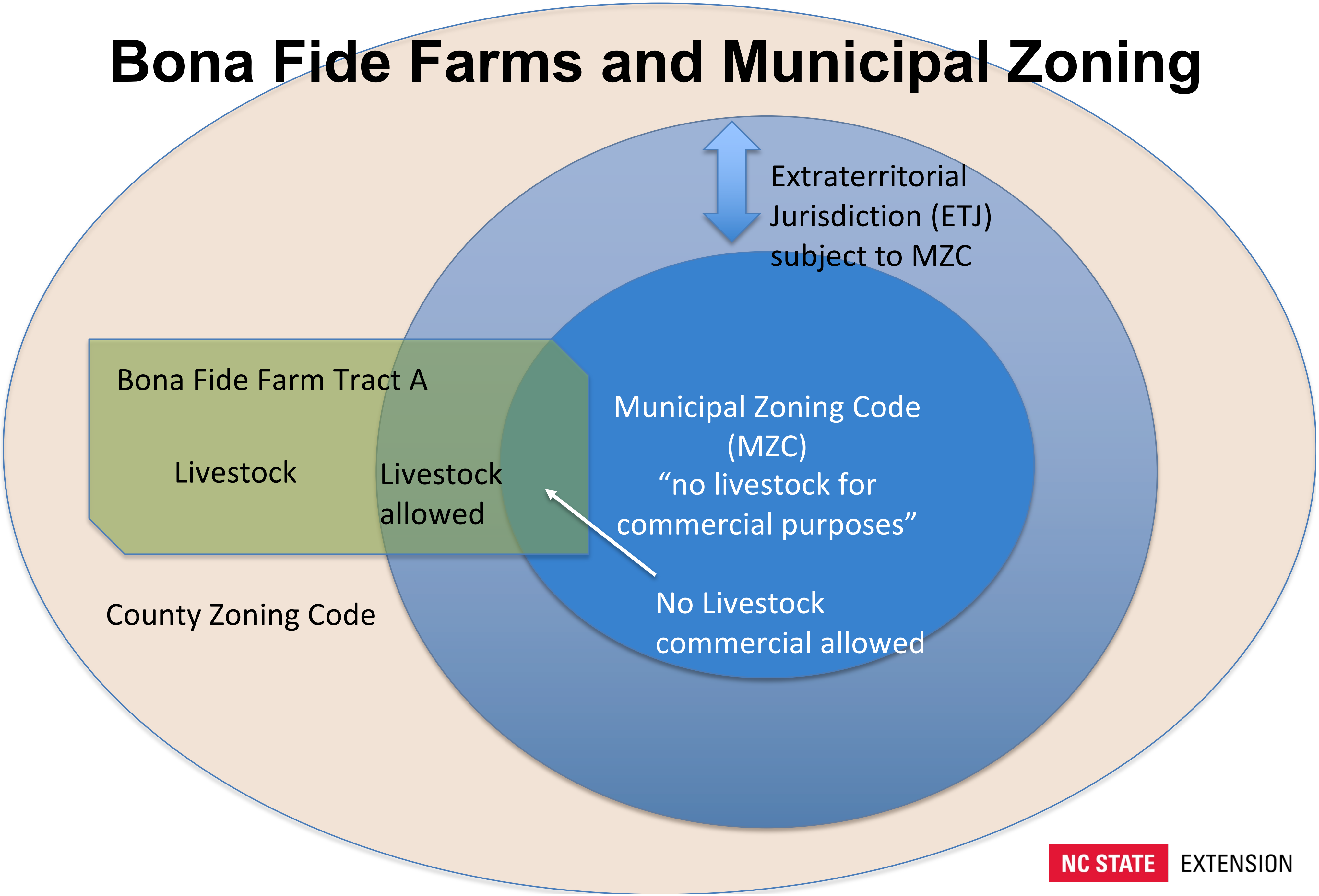
"Agritourism" not defined, except what it is *not* by the NC Court of Appeals:

- ***Jeffries v. Cty. of Harnett* (2018):** This case established a limit on what qualifies as agritourism. The North Carolina Court of Appeals held that **commercial shooting activities** (such as a gun range, rifle ranges, and pistol pits) were **not exempt** as agritourism, even when conducted on a bona fide farm. The court reasoned that agritourism activities must be similar to the examples listed in the statute (farming, ranching, historic, cultural, natural activities) and should allow the public to view or enjoy **rural activities**, implying a reliance on the aesthetics or nature of the farm setting.

- ***Clement v. Cumberland County ATV LLC* (2020):** This case involved a recreational **all-terrain vehicle (ATV) park** operating on a property with present-use value classification. While the final ruling focused on procedural issues, the underlying dispute was whether an ATV park constituted an exempt agritourism activity. Local county decisions and similar disputes have often addressed whether high-impact recreational uses qualify under the exemption.

Related case law: Bona Fide Farm succumbs to overlap with federal requirement (e.g. water quality buffer), see ***Cabarrus County v. Mullis*** (2025) (article *Bona Fide Farm: Court Limits Exemption in Stream Protection Buffer Zone*)

Bona Fide Farms and Municipal Zoning



"Sufficient Evidence" of Bona Fide Farm (NCGS 160D-903[a])

- Parcel owner or tenant/lessee (a/k/a "operator") files a **Schedule F** to their federal income tax return
- Parcel owner has a "**forest management plan**"
- Parcel owner or operator possesses a **Qualifying Farmer Certificate** issued by NC Department of Revenue (per N.C.G.S. § 105-164.13E)
- Parcel upon which farming activity is performed (e.g. "when performed on a farm") qualifies for NC **Present Use Value** deferred property tax program (per N.C.G.S. §105-277.3)
- "**but other evidence may also be considered**"
  - farm sales receipts?
  - photographic evidence?

Connecting the dots…

Bona Fide Farm Purpose
- **PUV Qualification**
- **Forest management plan**
- **Qualifying Farmer Certificate** (NCDOR)
- **Schedule F** (federal)

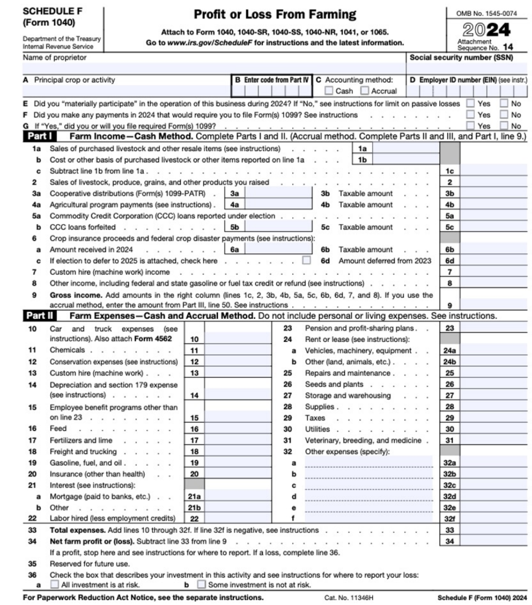
PUV Qualification
- Ag: 10 acres + $1000/yr x 3 prev yrs
- Hort: 5 acres + $1000/yr x 3 prev yrs
- Forestry: 20 acres + **forest management plan**

Qualifying Farmer Certificate (NCGS § 105-164.13E)
- Issued by NCDOR
- $10,000/year for 3 preceding years

Schedule F "Profit or Loss from farming"
- revenue and expenses from **farm production**
- Does not include "tourism" fees, rent, etc.

The Schedule F

- Reports profit and loss from farming
  - Income and expenses from farm related activity
  - includes farm support payments
- Attached to personal Form 1040
- Often used to substantiate **Present Use Value** income qualification
- Often used to verify **Qualified Farm Certificate** compliance
- Acceptance of validity (?): Signature line on Form 1040 states "Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete." (attesting to knowledge of Title 26 of the U.S. Code, particularly 26 U.S.C. § 7206 (Fraud and false statements)



SCHEDULE F (Form 1040)
Department of the Treasury Internal Revenue Service

Profit or Loss From Farming

Attach to Form 1040, 1040-SR, 1040-SS, 1040-NR, 1041, or 1065.
Go to *www.irs.gov/ScheduleF* for instructions and the latest information.

OMB No. 1545-0074
2024
Attachment Sequence No. 14

Name of proprietor | **Social security number (SSN)**

A Principal crop or activity | **B Enter code from Part IV** | C Accounting method: ☐ Cash ☐ Accrual | **D Employer ID number (EIN)** (see instr.)

E Did you "materially participate" in the operation of this business during 2024? If "No," see instructions for limit on passive losses ☐ Yes ☐ No
F Did you make any payments in 2024 that would require you to file Form(s) 1099? See instructions ☐ Yes ☐ No
G If "Yes," did you or will you file required Form(s) 1099? ☐ Yes ☐ No

Part I Farm Income—Cash Method. Complete Parts I and II. (Accrual method. Complete Parts II and III, and Part I, line 9.)

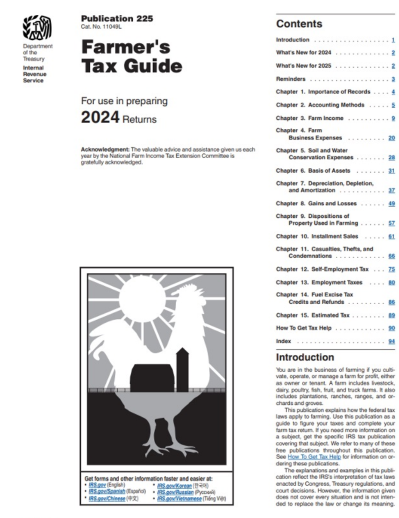
1a Sales of purchased livestock and other resale items (see instructions) 1a
b Cost or other basis of purchased livestock or other items reported on line 1a 1b
c Subtract line 1b from line 1a 1c
2 Sales of livestock, produce, grains, and other products you raised 2
3a Cooperative distributions (Form(s) 1099-PATR) 3a | 3b Taxable amount 3b
4a Agricultural program payments (see instructions) 4a | 4b Taxable amount 4b
5a Commodity Credit Corporation (CCC) loans reported under election 5a
b CCC loans forfeited 5b | 5c Taxable amount 5c
6 Crop insurance proceeds and federal crop disaster payments (see instructions):
a Amount received in 2024 6a | 6b Taxable amount 6b
c If election to defer to 2025 is attached, check here ☐ | 6d Amount deferred from 2023 6d
7 Custom hire (machine work) income 7
8 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions) 8
9 **Gross income.** Add amounts in the right column (lines 1c, 2, 3b, 4b, 5a, 5c, 6b, 6d, 7, and 8). If you use the accrual method, enter the amount from Part III, line 50. See instructions 9

Part II Farm Expenses—Cash and Accrual Method. Do not include personal or living expenses. See instructions.

10	Car and truck expenses (see instructions). Also attach **Form 4562**	10	23	Pension and profit-sharing plans	23
11	Chemicals	11	24	Rent or lease (see instructions):	
12	Conservation expenses (see instructions)	12	a	Vehicles, machinery, equipment	24a
13	Custom hire (machine work)	13	b	Other (land, animals, etc.)	24b
14	Depreciation and section 179 expense (see instructions)	14	25	Repairs and maintenance	25
15	Employee benefit programs other than on line 23	15	26	Seeds and plants	26
16	Feed	16	27	Storage and warehousing	27
17	Fertilizers and lime	17	28	Supplies	28
18	Freight and trucking	18	29	Taxes	29
19	Gasoline, fuel, and oil	19	30	Utilities	30
20	Insurance (other than health)	20	31	Veterinary, breeding, and medicine	31
21	Interest (see instructions):		32	Other expenses (specify):	
a	Mortgage (paid to banks, etc.)	21a	a		32a
b	Other	21b	b		32b
22	Labor hired (less employment credits)	22	c		32c
			d		32d
			e		32e
			f		32f

33 **Total expenses.** Add lines 10 through 32f. If line 32f is negative, see instructions 33
34 **Net farm profit or (loss).** Subtract line 33 from line 9 34
If a profit, stop here and see instructions for where to report. If a loss, complete line 36.
35 Reserved for future use.
36 Check the box that describes your investment in this activity and see instructions for where to report your loss:
a ☐ All investment is at risk. b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 11346H **Schedule F (Form 1040) 2024**



Department of the Treasury
Internal Revenue Service

Publication 225
Cat. No. 11049L

Farmer's Tax Guide

For use in preparing
2024 Returns

Acknowledgment: The valuable advice and assistance given us each year by the National Farm Income Tax Extension Committee is gratefully acknowledged.

Get forms and other information faster and easier at:
- IRS.gov (English)
- IRS.gov/Spanish (Español)
- IRS.gov/Chinese (中文)
- IRS.gov/Korean (한국어)
- IRS.gov/Russian (Pусский)
- IRS.gov/Vietnamese (Tiếng Việt)

Oct 25, 2024

Contents

Introduction

You are in the business of farming if you cultivate, operate, or manage a farm for profit, either as owner or tenant. A farm includes livestock, dairy, poultry, fish, fruit, and truck farms. It also includes plantations, ranches, ranges, and orchards and groves.

This publication explains how the federal tax laws apply to farming. Use this publication as a guide to figure your taxes and complete your farm tax return. If you need more information on a subject, get the specific IRS tax publication covering that subject. We refer to many of these free publications throughout this publication. See How To Get Tax Help for information on ordering these publications.

The explanations and examples in this publication reflect the IRS's interpretation of tax laws enacted by Congress, Treasury regulations, and court decisions. However, the information given does not cover every situation and is not intended to replace the law or change its meaning.

“Agritourism” revenue: Schedule F vs. Schedule C

Income from activities that the IRS considers "non-farm" or "commercial" in nature is reported on **Schedule C, Profit or Loss From Business**, not on Schedule F, Profit or Loss From Farming.

- **Schedule F (Farming Income):** Used for income and expenses directly related to the **cultivation, operation, or management of a farm** for profit, such as growing and harvesting crops or raising livestock. It also includes the basic processing of the raw commodity, such as washing or grading.
- **Schedule C (Non-Farm Business Income):** Used for income and expenses from activities that are **tangential to farming** (i.e., you are selling a service, experience, or processed/value-added product). This is where most agritourism activities fall.

Agritourism Examples Reported on Schedule C

Income from the following agritourism activities should generally be reported on **Schedule C** because they are classified as commercial or entertainment activities:

- **Venue Rental:** Hosting weddings, corporate events, or parties in a barn or other farm structure.
- **Entertainment:** Charging admission for corn mazes, pumpkin patches, hayrides, or petting zoos.
- **Food Sales:** Operating a full-service restaurant or selling value-added products like jams, baked goods, or wine, even if the primary ingredients are from the farm.
- **Gift Shop Sales:** Reselling merchandise, crafts, or products purchased from other sources.
- **On Site Lodging:** Overnight stay on the farm (cabins, yurts) (primitive camp?)

Present Use Value (PUV) program (NCGS § 105-277.2)

- Differential valuation **property tax** assessment
  - Standard tax rate applied to lower value
- Deferred property tax
  - ”Abated” after 3 years
  - 3-year roll back if property/ownership loses qualification
- Qualified land owned by individual
  - 20 acres for forestry (must include forest management plan)
  - 10 acres of farmland (row crops, pasture)
  - 5 acres for horticulture land
- **Income Requirement: $1000 gross farm income**
- Read PUV **Program Guide** (NCDOR) for scenarios

Farm revenue and PUV $1000

- NCGS §105-277.3(a)(1): To meet the income requirement, agricultural land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income ***includes*** income from the sale of the agricultural products produced from the land, grazing fees for livestock, the sale of bees or products derived from beehives other than honey, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004.
  - **Update**: Income from sale of honey now counts as income for PUV qualification (Farm Act of 2023 SESSION LAW 2023-63)
- **Income appears "production oriented" and does not refer to definition of agriculture in § 106-581.1.**
  - "Agritourism" does not fit into the PUV manual descriptions of acceptable or non-acceptable income
  - Refer to IRS Publication 225 ("Farmers Tax Guide") regarding what counts as "farm income")

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)
- Present Use Value: Transferring Property Enrolled in Present Use Value Property Taxation

Forest Management Plan

- Contents not defined by §160D-903, but are defined in connection to PUV:
  - NCGS § 105-277.2(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the **production and sale** of forest products, then the forestland is operated under a sound management program.
- May be prepared by landowner, consulting forester or NC Division of Forestry

Forest Management Plan defined elsewhere in GS

- **Environmental Regulation (NCGS §160D-920)** (General restriction on local government to adopt ordinance to limit forest production under a 'forest management plan')
  - A "forest management plan" is defined as: "A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan *shall include* silvicultural practices that both ensure optimal *forest productivity* and environmental protection of land by either *commercially growing timber* through the establishment of forest stands or by ensuring the *proper regeneration of forest stands to commercial levels of production*." (emphasis supplied) (**NCGS §160D-921**)
- **Forest Development Act** (NCGS § 106-1010) (directs Commissioner of Agriculture to develop programs to ensure environmental protection in forest practices)
  - Qualifications for cost-sharing programs require "Approved Forest Management Plan": "An 'Approved forest management plan' means the forest management plan submitted by the eligible landowner and approved by the Commissioner. Such plan *shall include* forest management practices to insure both *maximum forest productivity* and environmental protection of the lands to be treated under the management plan." (emphasis supplied) (N.C.G.S. **§106-1012**)

Qualifying Farmer Certificate (NCGS § 105-164.13E)

- Tangible personal property, digital property, and services exempt from sales and use tax when purchased by a **qualifying farmer** for use in **farming operations**.
- A **qualifying farmer** is a farmer who has
  - an annual gross income for the preceding income tax year of ten thousand dollars **($10,000)** or more from farming operations
  - or who has an average annual gross income for the **three (3) preceding income tax years** of ten thousand dollars ($10,000) or more from farming operations.

Farmer Input Exemption Certificate: Exempted Items

- Pesticides
- Baby chicks and poults
- Commercially built facility and Building materials for raising or feeding of animals
- Bulk tobacco barns, racks or accessories to cure or dry tobacco
- Fuel and Electricity (separate meters)
- Fertilizer, plastic mulch, seeds, lime, land plaster
- Farm machinery, repair parts and lubricants
- Containers
- Grain, feed, soybean storage facility and parts

New Farm - Conditional Farmer Exemption Certificate (Form E-595CF)

- A conditional farmer exemption certificate (CF) issued by the Department is valid for the income tax year in which the certificate is issued and the following two income tax years
- A person issued a CF must submit the required documentation to the Department within 90 days following the end of each income tax year covered by the CF.
- A conditional farmer exemption certificate may not be extended or renewed beyond the original three-year period (must file E-595CF if qualify)
- Fifteen year bar on new CF application

Conditional Farmer Exemption Certificate – Strict Requirements

- CF holder must maintain documentation of the **items purchased** and copies of State and federal income tax returns that reflect activities from farming operations for the period of time covered by the CF and for three years following the expiration of the CF
- NCDOR may require a person who was issued a CF number to provide any other verification information
- Failure to provide the information requested by NCDOR, or qualification failure in audit triggers liability for any taxes claimed as exempt, immediately due and payable with interest.
- Additionally, where the person does not timely provide the information requested by the Department, the $250.00 misuse of exemption certificate penalty applies to each seller identified by the Department from which the person made a purchase

What about this "Conservation Agreement" NCGS §153A-340(b)

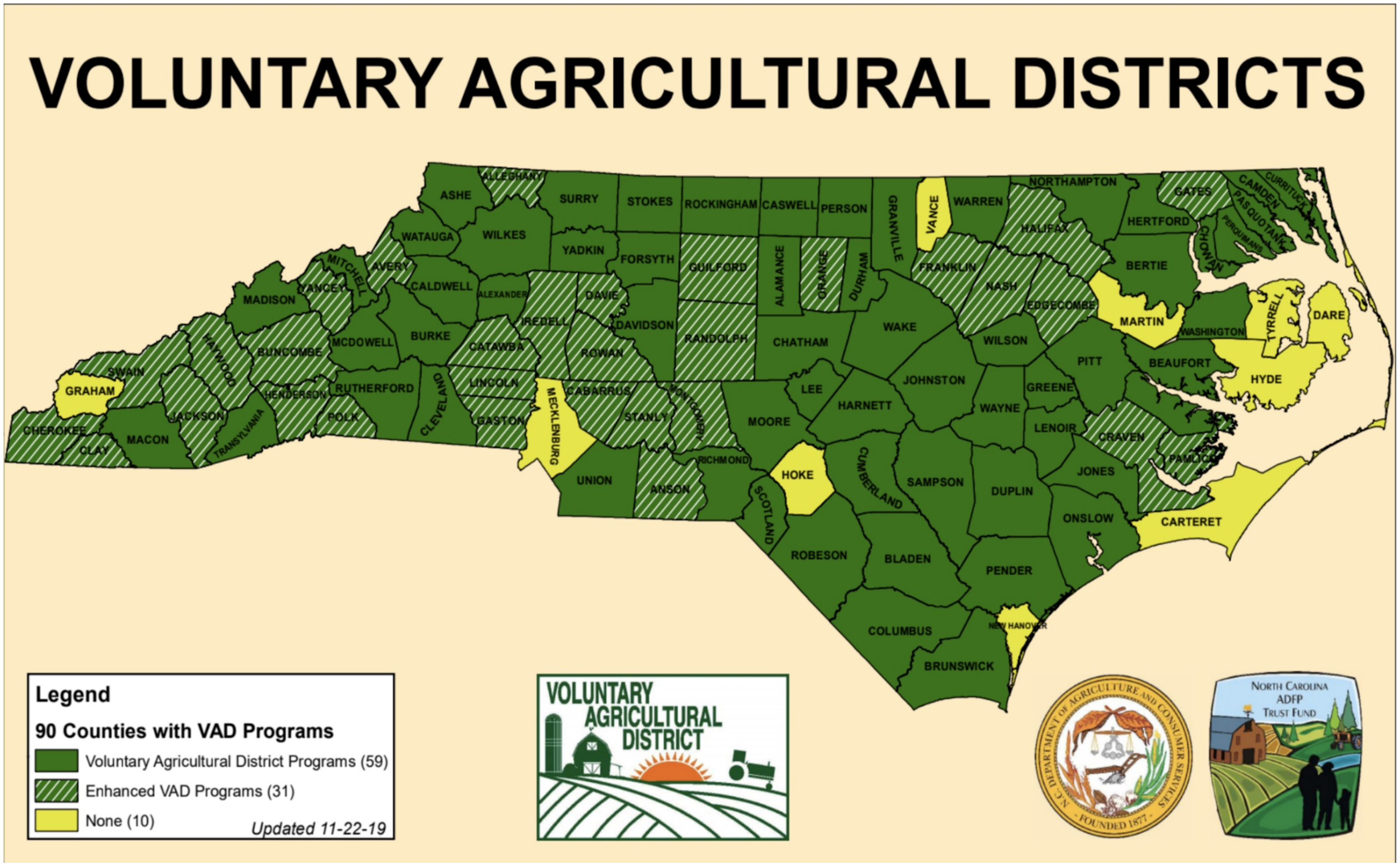
[County zoning] regulations may not affect property used for bona fide farm purposes; provided, however, that ***this subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes****.*

Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2*, bona fide farm purposes include the production and* ***activities relating or incidental to the production*** *of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry,* ***and all other forms of agriculture, as defined in G.S. 106-581.1****…*

"Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2…"

- Reference to **Enhanced Voluntary Agricultural District**
  - Cherokee, Clay, Swain, Jackson, Haywood, Buncombe, Henderson, Polk, Yancey, Avery, Alleghany, etc.
- Voluntary agreement to keep land in its current state of use, either open space or working farm or forest
- 10-year **irrevocable** term Conservation Agreement (NCGS §121-35)
  - Lists restricted activities to keep land in "agricultural, horticultural, farming or forest use"
- **Relevance**: "may receive up to twenty-five percent (25%) of its gross sales from the sale of ***nonfarm products*** and still qualify as a **bona fide farm**"

“conservation agreement” = Enhanced Voluntary Agriculture District



outdated map, illustration only

Information on Enhanced Voluntary Ag Districts (EVADs)

- Counties consistently face challenges with landowner renewals (check chain of title to confirm whether conservation agreement still exists)
  - 10 year agreements automatically renew for 3 years if not terminated (see Conservation Easements and Agreements: Obligations, Modification and Termination)
- NC Department of Agriculture and Consumer Services handy reference maps (includes EVAD program administration and contacts)

Bona Fide Farm Exemption NCGS §153A-340(b)

1) *[County zoning] regulations may not affect property used for bona fide farm purposes; provided, however, that **this subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes**.*
2) ***Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2**, bona fide farm purposes include the production and **activities relating or incidental to the production** of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, **and all other forms of agriculture, as defined in G.S. 106-581.1**…*

"Activities incident to farm…"

"Activities incident to the farm include **existing or new residences constructed to the applicable residential building code** situated on the farm occupied by the owner, lessee, or operator of the farm and ***other buildings or structures sheltering or supporting the farm use and operation***."

"buildings or structures sheltering or supporting the farm use and operation"

- A building or structure that is used for **agritourism** is a bona fide farm purpose if the building or structure is located on a property that
  - (i) is **owned** by a person who holds a **qualifying farmer sales tax exemption certificate** from the Department of Revenue pursuant to G.S. 105-164.13E(a) **or**
  - (ii) is ***enrolled*** in the **Present Use Value program** pursuant to G.S. 105-277.3.
- Failure to maintain the requirements of this subsection **for a period of three years** after the date the building or structure was originally classified as a bona fide purpose pursuant to this subdivision shall subject the building or structure to applicable zoning and development regulation ordinances adopted by a county pursuant to subsection (a) of this section in effect on the date the property no longer meets the requirements of this subsection. [NCGS **§ 153A-340(b)(2a)**]... **What happens?**

Bona Fide Farm Exemption NCGS §153A-340(b)

1) *[County zoning] regulations may not affect property used for bona fide farm purposes; provided, however, that **this subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes**.*
2) ***Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2**, bona fide farm purposes include the production and **activities relating or incidental to the production** of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, **and all other forms of agriculture, as defined in G.S. 106-581.1**…*

§ 106-581.1. Agriculture defined

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

(1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.

(2) The planting and production of trees and timber, including pine orchards planted and maintained for the purpose of harvesting pine needles for sale, or the harvesting of pine needles for sale from land with a forest management plan.

(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing. The raising, management, care, **and training of horses includes the boarding of horses**.

(4) Aquaculture as defined in G.S. 106-758.

(5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings **on the farm**, including building and structure repair, replacement, expansion, and construction incident to the farming operation.

(6) **When *performed on the farm***, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, biofuel production for commercial sale, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting,storage, and other activities performed to add value to crops, livestock, and agricultural items **produced on a farm**, and similar activities incident to the operation of a farm.

(7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain.

“and all other forms of agriculture, as defined in G.S. 106-581.1”

- §106-581.1(6): ***When performed on the farm***, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, **agritourism**, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on a farm, and similar activities incident to the operation of a farm.

“When performed on the farm…”

For purposes of this subdivision, "when performed on the farm" in G.S. 106-581.1(6) shall include the farm within the jurisdiction of the county **and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located.**
NCGS § 153A-340(b)(2)

Definition of Agritourism related to *use* of building for Bona Fide Farm exemption

- For purposes of this section, **"agritourism"** means any activity carried out **on a farm** or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or **natural** activities and attractions.
- *A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of **its farm or rural setting**.* [NCGS **§ 160D-903(a)]**

Building Code Compliance [NCGS 143-138(b4)]

- (b4) **Exclusion for Certain Farm Buildings**. – Building rules do not apply to
  - (i) farm buildings that are located **outside the building-rules jurisdiction of any municipality**,
  - (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality *if* the farm buildings are greenhouses or therapeutic equine facilities,
  - (iii) a primitive camp, or
  - (iv) a primitive farm building.
- a **"farm building"** means any nonresidential building or structure that is used for a **bona fide farm** purpose as provided in G.S. 160D-903(a). [NCGS 143-138(b4(1)]

Definition of "Farm Building"

- A building used **primarily** for the storage of agricultural commodities or products or storage and use of materials for agricultural purposes, whether or not the building is located on the same property where the agricultural commodities or products were produced, provided the building is surrounded and adjoined by **public ways and yards**, as those terms are defined in the 2018 North Carolina Building Code, of **not less than 60 feet in width**. The owner of a qualifying building under this sub-subdivision shall **post a placard** on the front of the building. The placard shall be not less than 24 inches by 24 inches in size with a red background, white reflective stripes, and a white reflective border. The placard shall display the words "Ag. Exempt" in white reflective letters not less than 12 inches tall. (NCGS § 143-138[b4][1][d])

Does "shall not lose status" equal a "right to build"?

- (1a) A "farm building" ***shall not lose its status* as a farm building** because it is used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place **on the farm because of its farm or rural setting**. [NCGS §143-138(b4(1a)]
- This exemption appears limited to those buildings described in that statute section

Building Code Requirements (from NCDOI guidance paper)

- An **existing farm building** that is to be used for a function such as a wedding venue and adds systems such as **plumbing or HVAC** for that function, those systems are **not exempt** from the requirements of the codes.
- *New buildings* constructed specifically for functions such as wedding venues are **not exempt** from the requirements of the codes.
- **Electrical systems are never exempt** from the requirements of the codes."*
- * presentation by Carl Martin, NC DOI
- see NCGS § 160D-1110(c) **for exemptions including when "farm buildings" are exempt ($40,000 limit)**

Roadside Stands and Building Permit

NC Department of Insurance
Office of the State Fire Marshal - Engineering Division
1202 Mail Service Center, Raleigh, NC 27699-1202
919-661-5880

Roadside Produce Stands Exempt from the Building Code

Code: 2012 NC Building Code
Section: 101.2

Date: October 15, 2013
Rev.: August 15, 2015

Question:
Is a roadside produce stand exempt from the building code?

Answer:
Yes, if it meets the requirements of General Statute 143-138, paragraph (b4), subsection (3) which states:

> *A "farm building" shall include any structure used for the display and sale of produce, no more than 1,000 square feet in size, open to the public for no more than 180 days per year, and certified by the Department of Agriculture and Consumer Services as a Certified Roadside Farm Market.*

Paragraph (b4) of GS 143-138 also indicates that farm buildings must be outside the jurisdiction of a municipality unless it is a greenhouse.

Keywords:
shelter, canopy, fruit

- Exempt if..
  - ≤ 1000 sq. feet
  - Open ≤ 180 days per year
  - Certified as a "Roadside Farm Market" by NCDA&CS

NCGS §143-138(b4)(b)

Scenario One: The Wedding Venue

- Luthien and Kleya purchase a 11 acre tract of land in Cleveland County with intent to use as wedding and festival venue
- The sign the NCDOR Form AV-5 upon purchase, accepting PUV deferment liability
- They do not renew the tenancy of current farm tenant (and tenant does not return next year)
- L&K seek permits to upgrade farm structure

Discussion points:

- What is relevance of AV-5?
- What is relevance of non-renewal of farm tenancy?
- Is this a ‘farm building’?
  - is it relevant whether farm is inside Shelby ETJ?

Scenario Two: Non-Farm Purposes

- Bona Fide Farm operator begins advertising **welding services** to the general public.
- The area is zoned Rural-Residential and small businesses are not allowed without special use permit.

Discussion points:

- Is welding a farm purpose?
- Does offering to public change status as incidental to farming

Scenario Three: "Forest Management Plan"

- Landowner builds a tactical training course (trails and skills stations) (alt: "haunted forest"?) on a 25-acre forested parcel in the ETJ of municipality (not enrolled in PUV).
- When challenged, landowner presents a handwritten "forest management plan"
- Landowner insists tactical skills course in woods is 'agritourism'

Discussion points:

- How should county evaluate the landowner-written forest management plan?
  - can it consider skills course a temporary use until timber harvest?
- How does county determine definition of agritourism?
- …

Scenario Four: Applied to set-back requirements?

- Landowner seeks permit to add an addition to a farm building that would violate set-back requirements in the R-A zone..

Discussion points:

- Does BFF or Building Code exemptions apply to set backs?
- …

THANKS FOR INVITING ME!

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