



**Orange County
Transfer of Development Rights
Feasibility Study**
Phase III Report

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6.22.2009

PREFACE

This technical report describes in detail the decision-making processes that led to the creation of the Strategic Growth and Resource Conservation Plan in Orange County. The history, research and considerations taken into account in key decisions for the program are discussed. It is primarily intended for members of the Board of County Commissioners and the Joint Advisory Board, although members of the public seeking in-depth information may also benefit from a review of the information.

The primary publication intended for public distribution is the Strategic Growth and Resource Conservation Plan, which is a four-page document included here as Appendix A and also available at: www.co.orange.nc.us/planning/TDR_files/index.html. That document describes in a straightforward, concise manner the elements of the Strategic Growth and Resource Conservation program in the form of a plan that will be presented for adoption by the Board of County Commissioners.

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GLOSSARY OF TERMS

Chapter 1. Strategic Growth and Conservation Program

1.1 SGRC Program Feasibility Study

This report is the result of the third phase of Orange County's development of a Strategic Growth and Resource Conservation (SGRC) Program. The first two phases, collectively known as the Feasibility Study, were conducted during 2005 and 2006. The overall purpose of the Feasibility Study was to address and provide recommendations on several issues critical to the feasibility of an SGRC program in Orange County. Additional detail on the Feasibility Study can be found in the Phase II Report ([www.co.orange.nc.us/planning/TDR_files/Phase II Report Final 10.13.06 .pdf](http://www.co.orange.nc.us/planning/TDR_files/Phase_II_Report_Final_10.13.06_.pdf)).

This chapter discusses in brief the planning process used to determine the feasibility of creating and operating a development credit program in Orange County.

The major issues addressed in the Feasibility Study were the legal, administrative, design, and economic feasibility of a Transfer of Development Rights (TDR) program in Orange County and North Carolina in general. Background legal and economic research was conducted, as well as interviews with key stakeholders that included developers, elected officials from municipalities, and Orange County staff. A Task Force of stakeholders was appointed to assist the consultants in evaluating the results of the research. Case studies of similar programs in other locations throughout the country were conducted. Generalized maps of potential strategic growth and rural conservation areas were created, and various options for how to calculate credits were offered. In addition, the Feasibility Study evaluated the effects, positive and negative, that an SGRC program may have on existing programs and services in Orange County.

One important conclusion of the Feasibility Study was that a traditional TDR program would require additional authority from the state of North Carolina. Consequently, the charge to Staff and Consultants in the third phase of the process was to develop recommendations for a Strategic Growth and Resource Conservation Program that achieves similar objectives as a traditional TDR program, but relies on existing County authority.

A summary of the SGRC Program development during the first two phases, in terms of contracting and in terms of results produced, are detailed in the following two tables.

Table 1-1. Contracted Service Process

Contracting Process	
June 23, 2004	BOCC authorizes issuance of RFQ to professional planning consultants to develop a countywide TDR program.
July 6, 2004	RFQ posted on APA national and North Carolina Chapter websites.
Aug. 13, 2004	Deadline for RFQ responses. Five were received.
Sept. 8-13, 2004	Interviews at the Governmental Service Center.
Oct. 13, 2004	Finalists (Freilich, Leitner & Carlisle/James Nicholas/J, J, & G and Louis Berger/UNC Charlotte Urban Institute) are selected and additional questions are sent.
Nov. 22, 2004	BOCC selects Louis Berger/UNC Charlotte Urban Institute
Mar. 2005	BOCC approves consultant contract for Phases I and II.
June 23, 2005	BOCC appoints TDR Task Force.
June 27, 2006	BOCC receives the consultant's TDR Feasibility Study draft report and affirms the recommendation of the TDR Task Force that the process of designing a TDR program should go forward.
Sept. 19, 2006	BOCC approves contract with Louis Berger/UNC Charlotte Urban Institute to conduct Phase III of the TDR/SGRC program development.
Nov. 2, 2006	BOCC approves budget for Phase III of consultant contract.
Dec. 19, 2006	Orange County staff give consultant formal notice to proceed with Phase III.

Table 1-2. Program Development Process

SGRC Program Development Process			
Phase I and Phase II were both completed in June 2006, with deliverables accepted by BOCC in October 2006. Deliverables can be found at http://www.co.orange.nc.us/planning/TDR_files/index.html .			
	Delivered	Available on web	New to NC
Phase I - Background Research and Data Gathering			
A. Property values and market trends analysis	Oct. 2006	Yes	No
B. Draft Feasibility Decision Flowchart	Oct. 2006	Yes	No
C. Public Engagement Process Plan	Oct. 2006	Yes	No
D. Legal assessment	Oct. 2006	Yes	Yes
E. Case studies of other TDR/SGRC programs	Oct. 2006	Yes	Yes
F. Key stakeholder interviews	Oct. 2006	Yes	Yes
Phase II - Feasibility Study and Concept Plan			
A. Assess Sending Area potential	Oct. 2006	Yes	Yes
B. Assess Receiving Area potential	Oct. 2006	Yes	Yes
C. Determine overall economic viability	Oct. 2006	Yes	Yes
D. Assess issues, constraints and opportunities (legal, administrative, financial)	Oct. 2006	Yes	Yes
E. Finalize Feasibility Decision Flowchart	Oct. 2006	Yes	Yes
F. Identify impacts of SGRC on existing county programs	Oct. 2006	Yes	Yes
Phase III - Program Design and Implementation Plan			
A. Program Design Options	Oct. 2007 (draft)	Yes	Yes
B. Administrative Design Options	Oct. 2007 (draft)	Yes	Yes
C. Implementation Plan	Oct. 2007 (draft)	Yes	Yes
D. Ordinance Development	Upcoming	Not yet	Yes

1.2 SGRC Program Implementation Plan

Each of the four major categories of the Feasibility Study identified decisions that needed to be made in order to craft an SGRC program, decisions that were constrained by legal or other obstacles and the remaining questions and issues that needed to be addressed. Following are the SGRC Program decisions made during the Feasibility Study (the program would be unfeasible otherwise):

- Orange County participation only. Municipalities may participate later, once the program is better established.
- Modify existing zoning ordinances and subdivision regulations in alignment with the land use authority rights already granted to Orange County. No state enabling legislation will be sought.
- Minimal government involvement in the SGRC transaction. The County will act as a facilitator, but not a broker, between buyers and sellers of SGRC credits.
- SGRC credits cannot “float” – that is, the conservation easement protecting the rural conservation area must occur at the same time as the credits are used in the strategic growth area.
- The mechanism for carrying out SGRC actions is carried out through conditional zoning provisions and private developer agreements, the latter being authorized in N.C. General Statute §153A-349.

Following are the SGRC Program decisions left to be determined as part of the Implementation Plan:

- Criteria and maps delineating rural conservation and strategic growth areas.
- Formulas to determine how credits are calculated in rural conservation and strategic growth areas.

These decisions, questions and issues then formed the basis for this third phase of the SGRC program development. The purpose of the third phase was to conduct additional research and discussion to address the issues and questions raised during the first two phases, then to formulate a complete implementation plan for an SGRC Program for the Board of County Commissioners to consider for adoption. In addition, this third phase addresses how the performance of the SGRC program should be measured and tracked. This report details the implementation planning process that has been underway since December, 2006.

An appendix to this report is the actual Implementation Plan that will be considered for adoption. Additional appendices include proposed changes to the Orange County ordinances that would be necessary to implement the SGRC program, as well as a proposed conservation easement and other forms necessary for staff to administer and track the progress of the SGRC program.

Chapter 2. SGRC Program and Administration

2.1 SGRC Goals & Objectives

Early in the planning process, Staff and Consultants sought direction from the Board of County Commissioners as to the primary goals for the program, which would then be used to guide recommendations for program and administrative design. The resulting three goals were identified:

Goal # 1

Rural Preservation. Promote the voluntary placement of conservation easements on farms, water quality protection lands, historic properties and wildlife habitat to preserve them in their farmed or undeveloped state.

Goal # 2

Strategic Urbanization. Provide incentives for increased development in the Economic Development zoning districts, and the Efland-Mebane and Hillsborough transition areas and Rural Community Nodes as identified in the Comprehensive Plan and on the Comprehensive Land Use Plan map.

Goal # 3

Monitor Program Performance. Identify and track appropriate, cost-effective measures of the degree to which the program is meeting the rural preservation and strategic urbanization goals.

The Commissioners also indicated an interest in promoting both residential and non-residential development in the urbanizing areas of the County. The creation of a mechanism that would allow nutrient trading or the trade of impervious surface area values between properties to help lower stream and watershed impacts may also be a future modification to the general SGRC process. Finally, they signaled a willingness to allow the program to take several years to mature and establish a track record of SGRC Program transactions.

Consultants and Staff identified these two additional objectives for success of the SGRC Program:

Simplicity and Ease of Understanding. The program should be nuanced to accomplish the Goals while being easy to explain and straightforward for participants. More complex features can be added to the program as it matures.

Legal Framework. The program should rest upon the existing legal framework of planning and zoning authority vested in the County by the State of North Carolina, especially the broader powers granted to county governments in 1973 and embodied in N.C. General Statute §153A, especially parts 349.1 to 349.13 that outline a procedure for creating agreements with private developers. No new authority is to be requested from the General Assembly.

This chapter describes the core goals and basic characteristics of the SGRC Program, breaking out its characteristics into Program Design and Administrative Design.

2.2 SGRC Program Design

2.2.1 Planning Process for SGRC Program Design

Overview. Planning Department Staff and Consultants worked closely together to conduct analyses and develop initial program design recommendations. A Working Group of representatives from selected County Advisory Boards – dubbed the Joint Advisory Board – provided review and comment on the initial recommendations. The public was then invited to give feedback on the draft SGRC Program Design at an informal SGRC Open House. A final draft of the SGRC Program Design recommendations was then forwarded to the Board of County Commissioners for public hearing and eventual consideration of adoption. (See Section 2.2.3 for final draft SGRC Program Design recommendations.)

Analysis of Previous Findings and Additional Assessment. Planning Department staff and Consultants reviewed the findings from the Feasibility Study and the SGRC Goals set by the Board of Commissioners. These key program design issues were identified for initial analysis and deliberation:

- Designation of Growth and Conservation Areas: whether to use mapped areas or a parcel-specific criteria-based designation
- Eligibility criteria: whether to use any eligibility criteria, and if so, what criteria to use
- Partial participation: whether Conservation Area properties must participate by placing all undeveloped property under easement or may choose to protect only part of the property
- Reversal of participation: whether to allow Conservation Area owners to “buy back” the conservation easement on their property
- Economic Factors: a closer look at the economic factors that influence Conservation Area sales of conservation easements and Growth Area development project proposals
- Conservation Points Allocation: fixed formula or merit based? Per acre or per housing unit? Exclude existing structures or overlook them to provide an extra incentive?
- Growth Area Development Intensity Bonus & Bonus Limits: fixed formula or merit-based? One-to-one ratio? Density limits fixed or criteria-based?
- Allowing Commercial uses of Points: define a formula for commercial development intensity bonuses?
- Incentives for Participation: points allocation/translation bonuses? Downzoning? Streamlined approval process?
- Growth Area design guidelines: what amenities/buffer or other design requirements should be specified?

For a listing of all issues and the rationales for and against each available option, please see Appendix D. Note that administrative design issues and options are included in the list in Appendix D and are discussed in section 2.3 of this report.

The issues associated with designation of areas and eligibility criteria were tackled first. Consultants conducted analysis using GIS (Geographic Information Systems) to evaluate the number and extent of properties that would qualify for SGRC Program participation under different area designation and eligibility scenarios.

Recommendations were developed for presentation to an SGRC Working Group (see below for composition of the Working Group.)

Planning Department staff and Consultants then examined the second set of program design issues, associated primarily with awarding of Conservation Points and Growth Area Development Intensity Bonuses. Consultants conducted analyses using GIS (Geographic Information Systems) to evaluate the distribution of Conservation Points under different points awarding formulas, and the resulting possible impacts on average sales price of Conservation Points (CPs). Consultants also conducted interviews and focus group sessions with developers to gain insight into the monetary value of Development Intensity Bonuses. (See section 2.2.2, Economic Analysis.)

Together with Staff and the County Attorney, recommendations were developed for each remaining program design issue with an eye towards:

- simplicity and ease of understanding,
- fitting within the legal framework outlined by the County Attorney,
- reflecting County policy objectives for preservation and growth, and
- balancing the monetary value of CPs and Development Intensity Bonuses so they were in reasonable enough proximity to each other to allow a market to function.

The recommendations on the second set of design issues were then presented to the SGRC Working Group at its second meeting for their feedback.

Working Group. An SGRC Working Group was formed to review and comment on Staff and Consultants' initial program and administrative design recommendations. The Working Group consisted of representatives of several existing Advisory Boards, plus key staff from the Planning and Environment and Resource Conservation departments, the County Attorney, and the Consultants. These Advisory Boards were invited to nominate one or two members to participate in the Working Group:

- Planning Board
- Economic Development Commission
- Agricultural Preservation Board
- Historic Preservation Board
- Commission for the Environment
- Affordable Housing Advisory Board

The first Working Group meeting was held on April 23, 2007. Staff and Consultants presented initial recommendations on designation of Growth and Conservation Areas and Eligibility Criteria.

The Working Group expressed strong interest in the next set of issues scheduled for discussion, those related to Conservation Points awarding and Growth Area Development Intensity Bonuses and Design Guidelines. (See section 2.2.3 for those issues and recommendations.)

A second SGRC Working Group meeting was held on October 1, 2007. Staff and Consultants presented initial recommendations on methodologies for awarding of Conservation Points and Growth Area Development Intensity Bonuses.

Submittal to Orange County Planning Staff. The final SGRC recommendations as presented in this report were submitted to the Orange County Planning Staff in March, 2008.

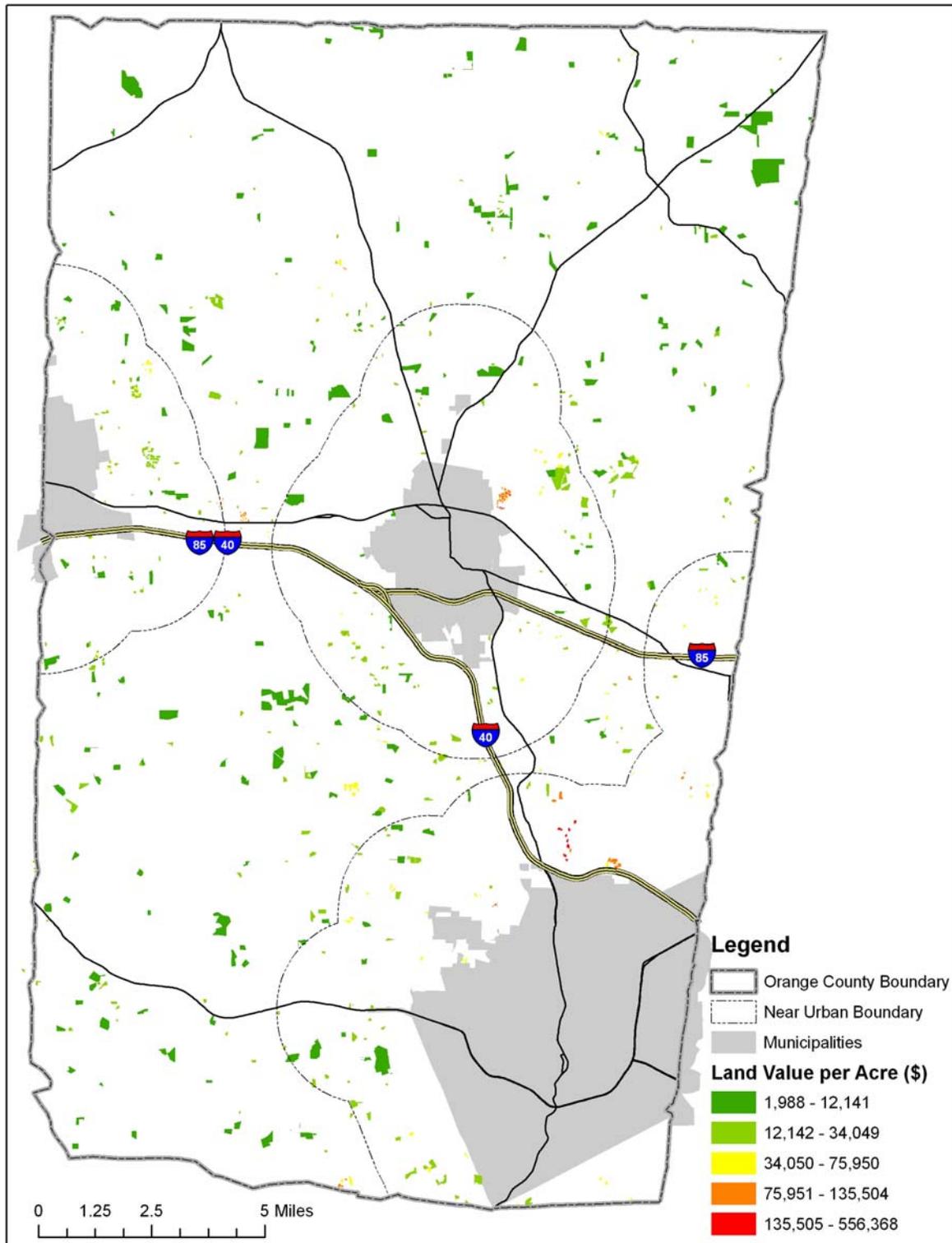
2.2.2 Economic Analysis

A successful SGRC Program needs to “balance” potential sending area credits and receiving area credits in order to ensure that the amount that a developer is willing to pay for a receiving area credit is comparable to the amount that a sending area land owner would be willing to accept for his development rights. Moreover, the density bonus achieved by using SGRC credits must make economic sense to developers, or they simply won’t participate in the program. This section will address directly the assumption made previously that a density bonus in Orange County will be beneficial to a developer and will quantify the willingness of developers to pay for additional units of density. This analysis forms the basis of a later section focusing on achieving the balance of credits.

Characteristics of Recent Residential Development in Orange County. In determining how much developers may be willing to pay for density bonuses under the SGRC Program, we first needed to characterize recent development trends in terms of location, density and value. Understanding trends in recent development will assist in predicting how the housing market in Orange County will affect SGRC transactions by focusing on only the most relevant, recent transactions. “Recent development” is defined as parcels within Orange County (excluding municipalities and municipal extra-territorial jurisdiction (ETJ)) that have been built upon from January, 2004 through February, 2007. This analysis focuses on residential development because data are not readily available for the few commercial transactions that exist.

Location. Of the 916 parcels recently developed in unincorporated Orange County, about half are located in “near-urban” areas. Near-urban areas were defined as those within two miles of a municipal or ETJ boundary, as illustrated in Figure 2-1. The fact that the recently developed parcels are split between the two areas, even though the near-urban area is less than one third the size of the rural area, simply confirms that development in the proximity of urban areas is more attractive to developers and home buyers. Existing demand for housing in the near-urban areas is critical to the success of the SGRC Program. The distinction between near-urban and rural areas is important because the housing markets in near-urban and rural areas are quite different – the type and density of housing built, the price of land, and even the demographics of those who live in the different areas. In addition, using near-urban and rural areas in analyzing housing trends is a helpful proxy for receiving and sending areas, respectively.

Figure 2-1. Recently Developed Parcels, by Land Value per Acre



Value. The median land value *per acre* of recently developed parcels near-urban areas is double that of recently developed rural parcels, \$32,000 per acre compared to \$14,000 per acre (Table 2-1). This finding confirms that there are different housing markets in the two areas, and that the SGRC Program will need to take into account the inherent differences in land value when setting formulas to convert developable acres from the rural areas to the near-urban areas.

Table 2-1. Land Value Statistics for Near-Urban vs. Rural Areas

Area Type	Land Value per Acre					Median Parcel Size
	MIN	MAX	Average	Median	Std dev	
Near-Urban	0	556,368	38,063	24,576	47,943	1.6
Developed	0	556,368	43,081	28,305	50,785	1.5
Recent development	0	556,368	90,141	32,298	130,425	1.5
Undeveloped	0	446,359	22,067	13,241	32,688	2.4
Rural	0	175,267	16,658	11,958	16,127	3.4
Developed	0	175,267	18,567	14,426	16,130	2.8
Recent development	0	127,313	24,743	14,257	27,577	4.1
Undeveloped	0	155,945	12,024	7,517	15,154	6.1

The reason for using land value per acre, rather than simple land value or total value per acre, is to assess the parcels on a level playing field, without taking into account the size of the parcel, or the size or value of the house itself.

Moreover, data in Table 2-2 show that the range and standard deviation of land values in the near-urban areas is nearly four times that of the rural areas, indicating strong fluctuations in value in the near-urban areas. Large differences in value are significant when considering that the SGRC Program must take into account differences in land value to correctly set formulas that will result in appropriate economic incentives.

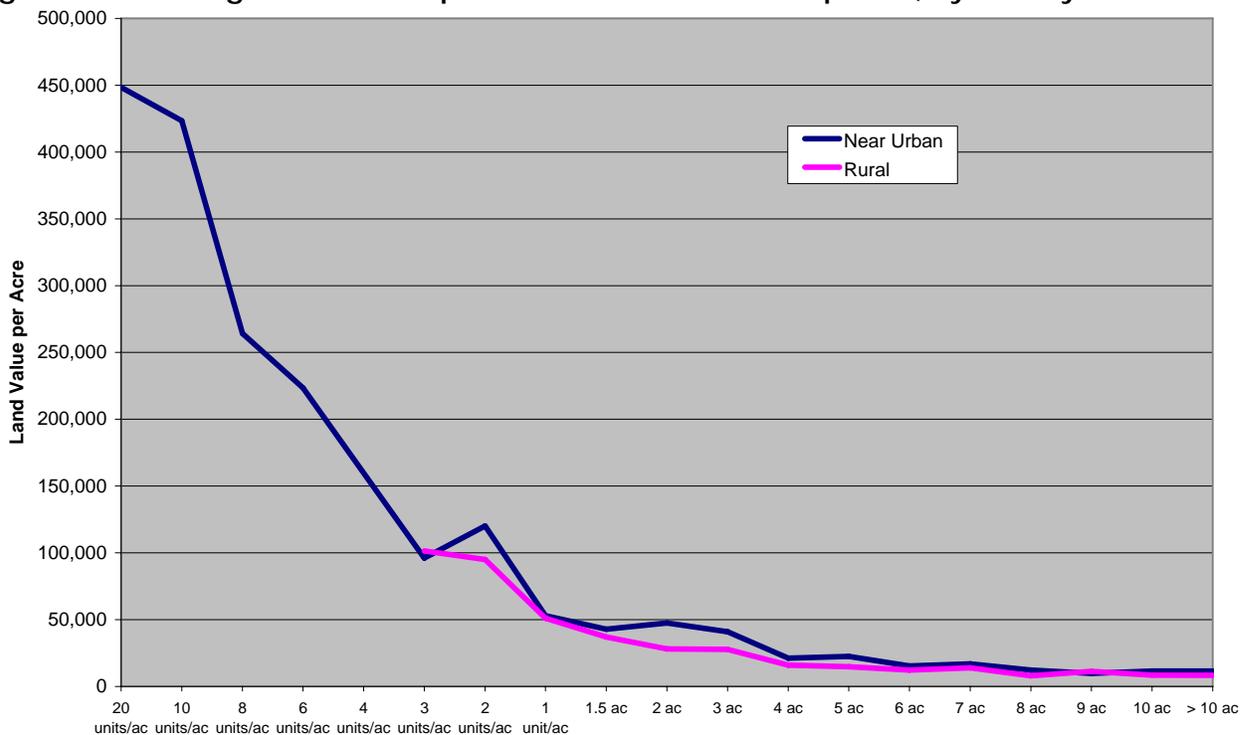
To further investigate how much distance from a municipality influences land value, we ran a cross-correlation between distance, parcel size, land value and total (land + building) value per acre (Table 2-2). A value close to one in the table indicates that the two variables are strongly influence each other, while a value of less than 0.5 indicates that the two variables are largely independent. A negative value indicates that when one variable increases, the other decreases. For example, land value per acre is correlated with total value per acre very strongly, with a value of 0.95, indicating that when land value is high, total value is very likely to be high. The correlation values between distance from municipal boundary and land value per acre and parcel size do not show a strong correlation. This indicates that the variables are largely independent, and land value is based on additional factors.

Table 2-2. Cross-Correlation of Key Variables for Recently Developed Parcels

Variable	Distance from municipal boundary	Parcel Size	Land Value per acre	Total Value per acre
Distance from municipal boundary	1.0			
Parcel Size	0.26	1.0		
Land Value per acre	-0.38	-0.21	1.0	
Total Value per acre	-0.32	-0.17	0.95	1.0

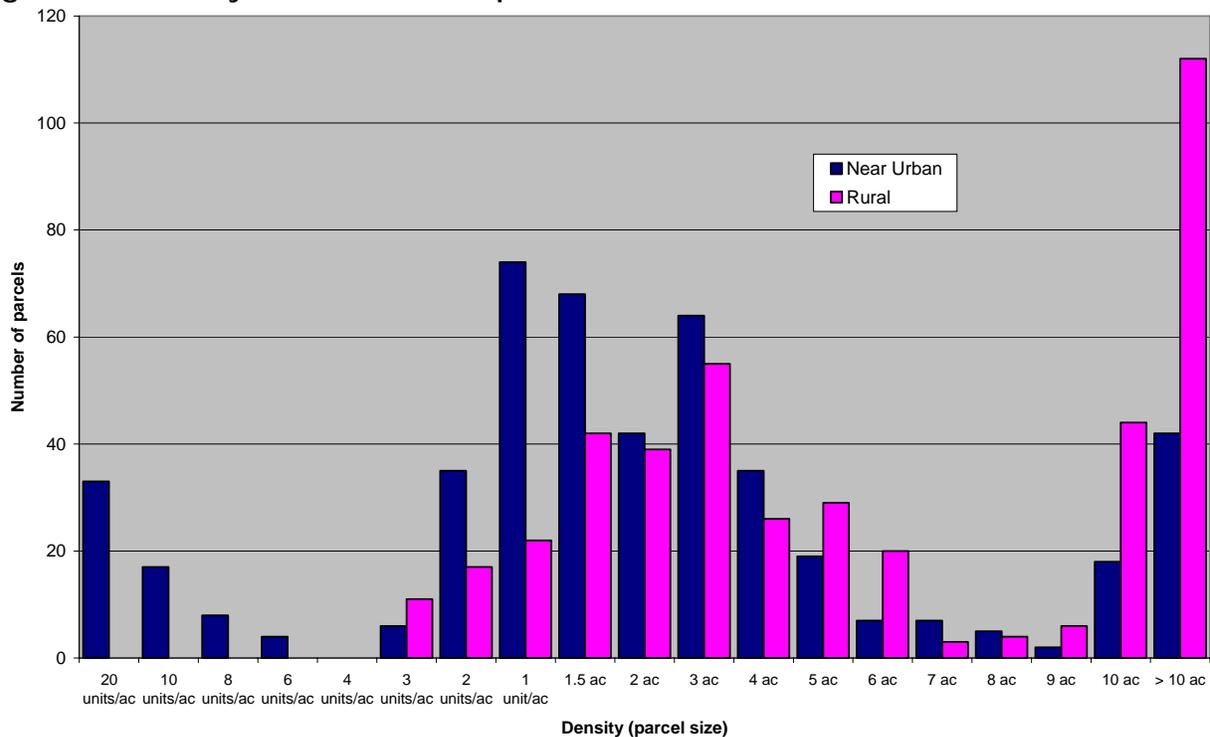
Density. Land value per acre is higher for housing developed at higher density, for both near-urban and rural areas (Figure 2-2). This finding is an indication that developing at higher densities may yield a higher return to developers, which is crucial to the success of a SGRC Program that proposes to increase the density of development in near-urban areas. If the returns to developing at lower densities were greater than developing at higher densities, using SGRC as a method to develop at higher densities would not make sense. Likewise, if housing is currently being built at relatively low densities, regardless of higher density allowed by zoning, that would indicate that the market for higher density housing in Orange County is not strong, and a SGRC Program may need additional incentives to be successful.

Figure 2-2. Average Land Value per Acre for Recent Development, by Density



Recently developed parcels in the near-urban geographies were developed at an average of 1.5 acres per unit, while those in rural areas were developed at an average of 4.1 acres per unit. The histogram in Figure 2-3 illustrates the distribution of both near-urban and rural development density. Most parcels in the near-urban areas were developed between one and three acres per unit, likely because current zoning does not permit development at greater than one unit per acre in most cases. Both near-urban and rural development experience another peak at one unit per 10 acres or more, likely because current zoning regulations are less stringent for such large parcels.

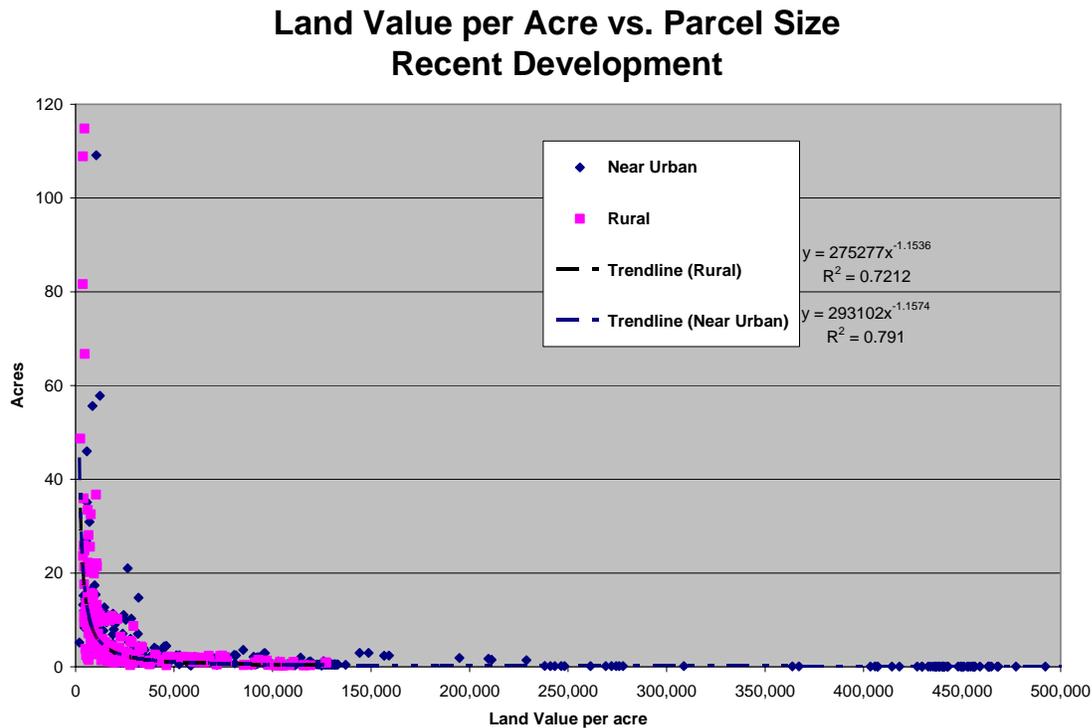
Figure 2-3. Density of Recent Development



One issue raised during this analysis was whether large-lot (10 acres or greater) development can be more beneficial to developers than higher density development, such as would be produced with the SGRC Program. There is some indication, as discussed above, that there is a tendency to develop large-lot subdivisions in Orange County, as evidenced by the relatively high number of 10+ acre parcels developed recently. This type of development may, however, be the unintended result of a different approval process for such subdivisions, rather than an indication of profitability at different densities.

Two findings indicate that it still may be more profitable for a developer to develop at higher densities. Land value per acre declines as parcel size increases, as discussed above and illustrated in Figure 2-4. Figure 2-4 also illustrates that there are few properties with a land value per acre higher than expected (“outliers”). In the figure below, each dot represents one of the 916 recently developed parcels. Most of the parcels are clustered near the axes, indicating either a large parcel size with low land value per acre, or a small parcel size with high land value per acre. Just a few parcels are farther from the axes, indicating a higher-than-expected land value for parcels that size. Both of these findings seem to support a more profitable development by increasing density on any particular parcel.

Figure 2-4. Land Value vs. Parcel Size for Recent Development



Developer Interest in TDR in Orange County. While the data are helpful in indicating trends in recent development, the economic analysis would not be complete without a discussion with developers currently working in Orange County. The conversation with the developers was intended to gauge their response to the proposed SGRC program, characterize the current housing market and viability of higher density development, and assess their willingness to pay for additional density credits.

In general, the developers were supportive of the idea of a SGRC-type program, and said that it made sense to them. Especially in the I-85 corridor (Mebane, Hillsborough and east of Hillsborough), they do see a market for higher density housing. Their biggest concern was the additional cost, in terms of time and money, involved in the SGRC transaction. Working directly with sending area landowners would involve an additional negotiation for the developers, which they indicated was a primary source of delays and uncertainty. The developers suggested several alternative scenarios that could reduce the transactional costs to them, and thus incentivize participation in the SGRC Program. First, the county could take a more active role in serving as a broker to match developers and landowners, perhaps acquiring a binding agreement to sell development rights within a certain price range from landowners prior to negotiation with developers. Second, there could be third-party brokers, such as land trusts, nonprofit conservation organizations, or companies specializing in wetlands mitigation, that the developers could hire to conduct the transaction with the sending area landowner. A third option would be to pay the county a fee-in-lieu of conservation credits, which the county could in turn use to fund its own land preservation program. This alternative would have the advantage of allowing the county to select parcels most worthy of preservation. An additional complication with this alternative would be

the issue of equitably setting the fee, since it will no longer be determined by the fair market.

An additional concern was whether the SGRC Program could succeed in protecting the right land in the sending area. A substantial amount of land in Orange County has soil that is inappropriate for septic systems, making the land essentially undevelopable anyway. The developers expressed concern that the development rights for this marginal land would be offered at a lower price than land more worthy of permanent protection. In addition, the land most in danger of development (i.e. closer to the municipalities) also costs more. The developers urged the creation of credit formulas that incentivize the preservation of land that truly deserves it, rather than marginal (cheap) land far from urban areas.

In terms of the developers' willingness to pay for an additional unit of density in a receiving area, they generally agreed that they would be willing to pay their per unit cost for raw land. For example, a particular parcel costs \$15,000 per acre, and current zoning would allow it to be built at one unit per acre (one unit = \$15,000). With SGRC conservation credits, they could build four units on that acre, meaning they would be willing to pay up to \$15,000 for each of the three TDR credits they would need to buy (land = \$15,000, three credits = \$45,000; four units = \$60,000). The resulting per unit cost to acquire the land and development rights would be the same as the no-SGRC (or "base") option. One developer acknowledged that there might need to be a discount factor in this equation, to account for the fact that he might have to build a smaller house (and thus have less profit) due to the smaller lot sizes. The developers acknowledged that this formula may not be feasible for a development with several different types of homes.

In summary, the data analysis and discussions with developers indicated that a SGRC Program is economically viable, and that there would likely be interest from developers in participating provided that appropriate formulas for credit allocation and reduced transactional costs are incorporated into the SGRC program and administrative design.

2.2.3 Program Design Recommendations

Designated Growth Areas. Growth Areas are comprised of the following (except as noted below):

- i. Economic Development Zoning Districts;
- ii. Parcels in Rural Community Nodes or land within the 10-year and 20-year Transition Areas in the Efland-Mebane area as depicted in the Land Use Element of the Comprehensive Plan;
- iii. Land within the County jurisdiction joint planning areas or Hillsborough Transition areas as depicted in the proposed Hillsborough Strategic Plan.

Properties are excluded from Growth Areas and are designated as Conservation Areas if any of these criteria are met:

- i. Enrolled in the state's use value tax-assessment program;
- ii. Listed on the National Historic Register, or is otherwise designated as a historic site or as containing a historic structure;
- iii. Contains environmentally sensitive features or areas:
 1. Water Supply Watershed designated Critical Area;
 2. Within 150 feet of the main body or perennial stream of a river;

3. A wetland;
4. A Natural Heritage Inventory site;
5. A Prime Rated Forest Habitat area; or,
6. A Wildlife Corridor area.

(See map in Figure 2-5 below illustrating the application of these area designation criteria.)

Growth Area Eligibility. All Growth Area properties that are not subject to a conservation easement, deed restriction or other enforceable agreement prohibiting development are eligible to participate in the SGRC Program.

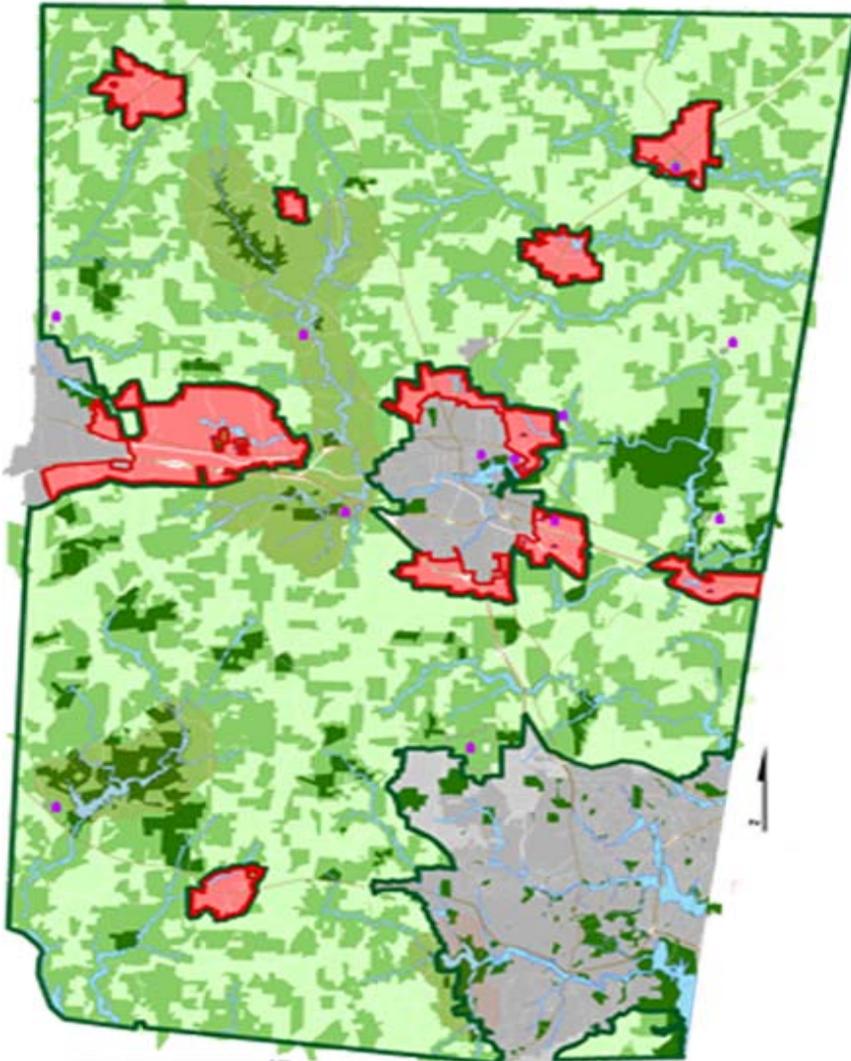
Designated Conservation Areas. All land within County land regulatory jurisdiction that is not designated as Growth Area is designated as Conservation Area.

Conservation Area Eligibility. Not all properties within the designated Conservation Areas are eligible to participate in the SGRC Program. Eligibility criteria are:

- a. Must have unused development potential based on current land development regulations and absence of any deed restrictions or conservation easements.
- b. Must meet at least one of the following additional criteria:
 - i. Is 50 acres or larger
 - ii. Is adjacent to a publicly-owned park designated primarily for natural habitat preservation or passive recreation, or to a privately-owned property under a permanent conservation easement;
 - iii. Is enrolled in the state's use value tax assessment program;
 - iv. Contains a National Historic Register site or structure.
 - v. Is in a Water Supply Watershed designated Critical Area;
 - vi. Contains land that is within 150 feet of the main body or perennial stream of a river;
 - vii. Contains a wetland;
 - viii. Contains a Natural Heritage Inventory site;
 - ix. Contains a Prime Rated Forest Habitat area; or,
 - x. Contains a Wildlife Corridor area;
- c. Owners of properties smaller than 50 acres may agree to bundle their acreage to meet that criteria, provided that all properties in the bundle meet the criteria for unused development potential.

(See map in Figure 2-5 illustrating the application of these area designation and property eligibility criteria.)

Figure 2-5. Strategic Growth and Resource Conservation Program Map



Map Legend

	Growth Areas
	Conservation Areas Eligible Properties
	Conservation Areas Ineligible Properties
	Watershed Critical Areas (CA Eligible)
	Already Protected Properties (CA Ineligible)
	Lakes, Rivers
	Municipalities

Conservation Points. Proposed conservation easements on eligible Conservation Area properties are assigned Conservation Points (CPs) as follows:

- a. One CP per acre is awarded to all participating CA properties;
- b. Additional CPs are awarded based on pre-easement tax-assessed land value:

Tax-assessed land value per acre	Additional CPs per acre
\$0 – 9,999.99	0.0
\$10,000 – 14,999.99	0.5
\$15,000 – 19,999.99	0.9
\$20,000 – 24,999.99	1.2
\$25,000 – 29,999.99	1.4
\$30,000 and higher	1.5

- c. Up to one additional credit per acre is awarded based on actual acreage meeting any one or more of eligibility criteria b) iii-x above, or containing steep slopes of 25% or higher.
- d. The total CPS assigned to an eligible CA property are the sum of CPs awarded under steps a, b, and c above.

Development Intensity Bonus. Eligible Growth Area property owners may apply for a development intensity bonus to be awarded upon conveyance to the County of a privately-purchased conservation easement on an eligible Conservation Area property.

- a. For Residential Development:
 - i. CPs are translated to Growth Area development intensity bonuses at a 3:1 ratio, meaning for every three CPs assigned to the conservation easement, 1 additional housing unit may be built in the Growth Area property.
 - ii. Alternatively, owners of Growth Area properties 25 acres or larger may enter into a Development Agreement with the County, which will negotiate a development intensity bonus taking CPs into account along with other factors, such as provision of affordable housing or LEED-certified construction.
 - iii. The final gross density of projects using CPs may not exceed 15 housing units per acre.
- b. For Non-Residential or Mixed-use Development:
 - i. Owners of Growth Area properties 25 acres or larger may enter into a Development Agreement with the County, which will negotiate a development intensity bonus taking CPs into account along with other performance factors agreed to by the property owner.
 - ii. Growth Area properties of less than 25 acres are not eligible at this time for non-residential or mixed-use density bonuses through the program, but may be added to the program at a later date.

Design Requirements. Design requirements will be incorporated into eventual SGRC ordinance provisions based on the County’s design guidelines developed for the Efland-Mebane area. These will apply to all Growth Area properties participating in the SGRC Program and will serve to ensure that the increased development intensity does not negatively impact nearby land values or quality of life.

2.3 SGRC Administrative Design

In addition to the considerations of how the SGRC Program will be operated from the perspective of the users (participants) of the program, the project team also considered how SGRC would operate internally. The following two sections illustrate a process workflow for both residential and commercial properties, highlighting areas that would be applicable only to proposed projects using SGRC conservation credits. First, it is useful to understand how residential and commercial planning review processes operate in Orange County now, described briefly in the following section.

2.3.1 Existing Planning Process

After the initial contact with the Orange County Planning & Zoning Department staff ("staff"), the developer prepares a description of the location of the site, which staff then reviews to determine if the site is within a managed area (e.g., critical watershed), the suitability of the soils for in-ground septic treatment, and if the proposed use "fits" the existing zoning code. This is followed by a Preapplication Meeting, which describes the site in more detail, notably determining the "yield" or number of residential units (or commercial square feet of floor area) that the proposed development site could contain. Different requirements will be placed on the developer depending if the proposed residential subdivision is a minor, major, Special Use, or Planned Development application, which in turn depends on the number of units being proposed and if the site is located in an urban or rural area (refer to Table 2-3).

Table 2-3. Unit Thresholds for Residential Subdivision Review Type

Subdivision Type	Rural Designation		Urban Designation	
	Minimum	Maximum	Minimum	Maximum
Minor	1	5	N/A	N/A
Major	6	20	21	79
Special Use Permit	21	40	21	79
Rezoning to Planned Unit Development (PUD)	41		80	

Generally, if the subsequent Application Fee and Application are furnished, then the staff must review the application and approve or disapprove with comments. Once approved, the developer then prepares a conceptual site plan, noting important features of and near the site, but not necessarily having all lot lines surveyed. This concept plan is then reviewed at a Neighborhood Meeting, a drop-in style meeting of nearby residents that are notified of the proposal and meeting opportunity by staff. The Planning Board then reviews the (modified, if needed) concept plan, and can approve, disapprove, or disapprove unless corrective actions are taken by the developer. Once the concept plan has gained approval, the developer then must prepare a preliminary plat (surveyed), present the proposal again at a Planning Board meeting, at a quarterly public hearing (if the proposal has 20 or more residential units), and then obtain approval from the Orange County Board of Commissioners. The Final Plat is subsequently submitted, recorded, and fees submitted by the developer.

If the subdivision is classified as a “Minor” subdivision type in Table 2-3, then it may be eligible for an optional two-step review process: concept plan – final plat submittals followed by administrative review only. A “Major Rural” subdivision review may follow a pre-application conference / concept plan review process followed by a Planning Board review. A preliminary plat would then be submitted for Planning Board and Board of County Commissioners review; if approved, the developer would then submit a final plat for recordation.

Commercial developments typically undergo a slightly less lengthy process, notably omitting the Neighborhood Meeting requirements, but are still required to be presented at a quarterly public hearing for official comments. Commercial sites using the Economic Development District (EDD) designation would also be required to adhere to the EDD Design Manual specifications, which may be somewhat more costly and time consuming to meet.

This entire process is likely to take 12 to 15 months or longer, depending on the preparedness of the developer and his familiarity with the planning process; the complexity / controversial nature of the proposed development action; and how the timing of the proposal effort aligns with the required meeting schedule (particularly the quarterly public hearing meeting). This planning process, while extensive, helps to ensure that adequate public review of proposals are conducted at a level that Orange County feels is commensurate with the potential impact of the proposed development action.

2.3.2 SGRC Planning Process and Agency / Participant Responsibilities

The SGRC Program would influence the development review process at several levels. The developer and staff would want to know, for example, how SGRC credits would influence the site yield or if bonus credits could be accommodated. Perhaps most significantly is the negotiation process between the developer and Resource Conservation Area participant to reach an agreed-upon price for the conservation credits.

The flow diagrams on the following pages (Tables 2-4 and 2-5) illustrate the planning process in a step-by-step fashion for both residential and commercial (EDD) development types highlighting actions led by the developer (**red** text) and Orange County staff (**green** text). Additionally, a pre-review process involving a hypothetical Resource Conservation Area participant is demonstrated (**blue** text); and, at the end, the annual performance report described more fully in Chapter 3 is summarized (**purple** text). Any task in the flow diagram that is required uniquely as a part of the SGRC Program is in **bold** text.

Table 2-4. Residential Planning Flow Process

Step Taken	Comments
A. Orange County Promotes SGRC Program After Approving Ordinance Revisions	<i>Work through homebuilders and realtor associations; distribute brochure; create on-line, self-guided presentation on SGRC program</i>
B. SGRC Ordinance(s) Goes into Effect a. Create new field in Parcel GIS Database to Tag SGRC Actions b. Internal Review with O.C. Staff to Rehearse SGRC Process	<i>Note that the Conditional Use Zoning / Permit process would also need to go into effect prior to initiating SGRC.</i>
C. Landowner (Resource Conservation Area) Expresses Interest to Orange County a. Name/Contact Information b. Parcel(s) Identification and Acreage/Number of SGRC Credits c. Known Resources Identified Through a Checklist d. Information on SGRC Program Provided by OC Staff	
D. Validation of Participation Requirements in SGRC Program to Landowner (Resource Conservation Area) a. Validate Parcel(s) in Resource Conservation Area b. Validate Resource Information Supplied by Landowner c. Provide Additional Information to Landowner on SGRC Program	<i>Baseline Report (Figure 1) is prepared and logged into SGRC database. Participant is logged into the Resource Conservation Area Participant database (Figure 2).</i>
1. Developer Call / Visit to Planning & Zoning Department	<i>Initial communication with developer</i>
2. Locate and Define the Site a. Water/Sewer Provision b. Inside Strategic Growth Area	<i>Verify that the parcel meets location requirements and the intended use fits with land use / zoning ordinance table</i>
3. Concept Review g. Discuss developer expectations for density and use i. Base zoning ii. Potential with density bonuses (e.g. affordable housing, LEED) h. Review the Development Process and Design Standards with and without SGRC i. Discuss potential issues that will need to be addressed in the design j. Notify Interested Resource Conservation Area Applicants	<i>Attended by developer, Planning Staff</i>
4. Concept Plan Development k. Sketch Plan l. Location of Notable Features m. Negotiate with Resource Conservation Area Participant(s)	<i>In the concept plan for projects proposing to use SGRC, it would be wise to have a qualitative notation identifying any resources, utilities, roadways, or school capacities that would be negatively affected should the SGRC option be pursued.</i>
5. Pre-Application Conference n. Explain the review and approval process o. Identify remaining problems or issues that will need to be addressed prior to submittal of an application	<i>Attended by developer, Planning Staff</i>

Table 2-4. Residential Planning Flow Process (Continued)

Step Taken	Comments
6. Initiate the Application Submittal p. Pay Application Fee(s) q. Internal Staff Review i. Approve ii. Disapprove with Comments	
7. Concept Plan Development r. On-Site Visit with O.C. Staff s. Sketch Plan (conventional or flexible) t. Lot Layouts (not necessarily surveyed) u. Location of Notable Features v. Negotiate with Resource Conservation Area Participant(s)	<i>In the concept plan for projects proposing to use SGRC, it would be wise to have a qualitative notation identifying any resources, utilities, roadways, or school capacities that would be negatively affected should the SGRC option be pursued.</i>
8. Neighborhood Informational Meeting w. Mailings (Address List from Developers) Sent to People within 500' Buffer Around Project x. Drop-In Style Meeting Format	<i>During this meeting, there is an opportunity to explain both the CUP and SGRC process / program and how they benefit Orange County.</i>
9. Concept Plan Review y. O.C. Staff Only z. Same Review Group as Preliminary Plan Review aa. Offer Comments to Developer bb. Note CUP Conditions for Approval	<i>Note that no conditional use requirement will be LESS restrictive than any overlay district requirement already in place. A CUP essentially requires a rezoning to a Conditional Use District.</i>
10. Planning Board Review of Concept Plan cc. Staff/ Developer Presentations dd. Public Comments ee. Review Concept Plan i. Approve ii. Disapprove (One-Year Moratorium) iii. Disapprove with Corrective Actions	<i>The CUP process would allow public boards to attach additional conditions on approval, especially design and mitigation measures to offset negative impacts due to denser land uses.</i>
11. Preliminary Plat Development ff. Roads / Driveway Permit gg. Erosion Control Review hh. Environmental Health Review ii. Fire Suppression Plan jj. Solid Waste Review kk. Lot Surveys Completed ll. Binding Option Signed with R.C.A. Landowner mm. Easement Language and R.C.A. Strategic Growth Area Shown on Map	<i>The SGRC property appraisal would be presented at this time, should the Resource Conservation Area landowner and developer mutually agree that one is necessary. At this time, the developer could pursue a Development Agreement with the County as an alternative to the traditional approval process.</i>
12. Preliminary Plat Review nn. O.C. Staff Only oo. Conduct R.C.A. Review (if initial review older than two years) pp. Letter to Developer for Comment (if significant comments) qq. Review Signed Binding Option Agreement	

Table 2-4. Residential Planning Flow Process (Continued)

Step Taken	Comments
13. Public Hearing (20+ Units) rr. Formal Public Hearing / CUP Hearing (Required) ss. Comments	
14. Planning Board tt. Present Final Easement Language uu. Present Map of Resource Conservation Area Property vv. Preliminary Plat Review i. Approve ii. Disapprove iii. Approve with Conditions (including SGRC Transaction)	<i>Map should note location of conservation easement.</i>
15. County Commission Meeting ww. Present Final Easement Language xx. Present Map of Resource Conservation Area Property yy. Preliminary Plat Review i. Approve ii. Disapprove iii. Approve w/Conditions (including SGRC Transaction)	<i>Map should note location of conservation easement.</i> <i>Commission would approve/disapprove of a Development Agreement at this stage, if applicable.</i>
16. Final Plan Submittal zz. Permits Completed aaa. Signing Sheets Submitted to County Engineer bbb. SGRC Transaction Completed i. Payment to R.C.A. Landowner ii. Deed Modification to Include Easement iii. Modify GIS Parcel Layer to Tag SGRC Action iv. Record Actions in SGRC Transaction database (Figure 3)	<i>Notes:</i> (1) Utilize the log spreadsheets provided to track information on each SGRC transaction and inquiry (Figures 2 and 3) (2) Important to keep copies of all records (e.g., easement, dates of meetings) in a dedicated file for each project to provide an administrative record. (3) Development Agreement would be recorded at this stage if applicable
Benchmarking and Progress Reporting (Annual) a) Search for Parcel IDs with Recorded SGRC Participation i) Conservation Parcels ii) Strategic Growth Parcels iii) Develop Mapping of SGRC Active Parcels Overlaid with SG and RC Areas, Town Boundaries b) Research i) Inquiries Regarding SGRC (first two years ONLY) ii) Number of Acres Conserved iii) Price Range and Average of Credits iv) Number of SGRC Transactions v) Number of Units Constructed with SGRC Credits vi) Number of Units Allowed in SG Parcels Without SGRC c) Report i) Presentation to Board of County Commissioners	<i>Notes:</i> (1) Inquiries are noted as benchmarks in the first two years of the SGRC program since it is unlikely that many SGRC transactions will occur initially. (2) Use one-page report format provided for annual reporting (or as requested by Planning Board / BOCC) (Figure 4) (3) May be difficult to get price per credit information since transaction is between third parties.

ii) Recommended Adjustments to Program iii) Comments from Participants	
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Table 2-5. Commercial Planning Flow Process

Step Taken	Comments
A. Orange County Promotes SGRC Program After Approving Ordinance Revisions	<i>Work through homebuilders and realtor associations; distribute brochure; create on-line, self-guided presentation on SGRC program</i>
B. SGRC Ordinance(s) Goes into Effect a. Create new field in Parcel GIS Database to Tag SGRC Actions b. Internal Review with O.C. Staff to Rehearse SGRC Process	<i>Note that the Conditional Use Zoning / Permit process would also need to go into effect prior to initiating SGRC.</i>
C. Landowner (Resource Conservation Area) Expresses Interest to Orange County c. Name/Contact Information d. Parcel(s) Identification and Acreage/Number of SGRC Credits e. Known Resources Identified Through a Checklist f. Information on SGRC Program Provided by OC Staff	
D. Validation of Participation Requirements in SGRC Program to Landowner (Resource Conservation Area) g. Validate Parcel(s) in Resource Conservation Area h. Validate Resource Information Supplied by Landowner i. Provide Additional Information to Landowner on SGRC Program	<i>Baseline Report (Figure 1) is prepared and logged into SGRC database. Participant is logged into the Resource Conservation Area Participant database (Figure 2).</i>
1. Developer Call / Visit to Planning & Zoning Department	<i>Initial communication with developer</i>
2. Locate and Define the Site a. Water/Sewer Provision b. Inside Strategic Growth Area	<i>Verify that the parcel meets location requirements and the intended use fits with land use / zoning ordinance table</i>
3. Concept Review i) Discuss developer expectations for density and use Base zoning ii) Potential with density bonuses (e.g., LEED) c. Review the Development Process and Design Standards with and without SGRC d. Discuss potential issues that will need to be addressed in the design e. Notify Interested Resource Conservation Area Applicants	<i>Attended by developer, Planning Staff</i>
4. Concept Plan Development f. Sketch Plan g. Location of Notable Features h. Negotiate with Resource Conservation Area Participant(s)	<i>In the concept plan for projects proposing to use SGRC, it would be wise to have a qualitative notation identifying any resources, utilities, roadways, or school capacities that would be negatively affected should the SGRC option be pursued.</i>
5. Pre-Application Conference i. Explain the review and approval process j. Identify remaining problems or issues that will need to be addressed prior to submittal of an application	<i>Attended by developer, Planning Staff</i>

Table 2-5. Commercial Planning Flow Process (Continued)

Step Taken	Comments
4. Preliminary Plan Development k. Detailed plan developed l. Binding Option Signed with R.C.A. Landowner m. Easement Language and R.C.A. Strategic Growth Area Shown on Map	<i>The SGRC property assessment would be presented at this time, should the Resource Conservation Area landowner and developer mutually agree that one is necessary. At this time, the developer could pursue a Development Agreement with the County as an alternative to the traditional approval process.</i>
5. Initiate the Application Submittal n. Pay Application Fee(s) o. Staff review application to ensure it is complete	<i>A new EDD review cycle begins on the first and third Monday of each month. If an application is not complete by the fifth day following the cycle deadline, the submittal will need to be resubmitted in a future review cycle.</i>
6. Preliminary Staff Review/Distribution to Review Agencies p. Planning Staff conduct internal review q. Agencies conduct review and submit comments to the Planning Department r. Staff compiles the comments and prepares a Preliminary Report. The report will be distributed to the developer and the review agencies prior to the Development Review Meeting.	<i>A full list of the agencies who may be consulted to review the submittal is included in the Economic Development District Design Manual</i>
7. Development Review Meeting s. Agency comments summarized, conflicting requirements discussed t. Conduct R.C.A. Review (if initial review older than two years) u. Review Signed Binding Option Agreement v. Staff will decide to approve or deny application w. Approval will include all conditions and requirements necessary to comply with the zoning ordinance and the EDD Design Manual. x. Applicant notified in writing of decision to approve or deny, along with any conditions of approval	<i>Attended by developer, Planning Staff and review agencies</i>
8. County Commission Joint Quarterly Public Hearing y. Present Final Easement Language z. Present Map of Resource Conservation Area Property aa. Development Plan Review i. Approve ii. Disapprove iii. Approve w/Conditions (including SGRC Transaction)	<i>Map should note location of conservation easement.</i> <i>Following this stage and after Planning Board review and recommendation Board of Commissioners would approve/disapprove of a Development Agreement at this stage, if applicable.</i>

Chapter 3. SGRC Performance: Measuring Success

3.1 The Reason for Measuring Performance

We really don't know how much transfer credits are selling for, or how many have been created or applied in strategic growth areas.

During one of the peer conservation program interviews, this was one of the responses we received. Not surprisingly, the South Carolina community that operated this particular development credit program did not advertise it or view it as a success. Other communities did not aggressively report the performance of their programs.

Even though transfer credits have to be applied as deed restrictions (or, sometimes, covenants) and most transfer credit transactions can only occur as part of at least an administrative review process, it is possible that this statement can be true. Over time, as the SGRC program matures and the Orange County staff and elected / appointed officials that helped to create the program change, the potential for losing track of the SGRC program is great. Initially, the project team anticipates very few transactions, which may also create a tendency to stop recording information about the credit transactions that do occur. Measuring the performance of the SGRC Program allows Orange County staff, officials, and citizens to determine if the Program is living up to their expectations, how to change the Program, and further promote it to reach potential participants.

This chapter describes how Orange County will measure the ongoing performance and outputs of the SGRC Program, and then describes ways of increasing or restraining the amount of SGRC activity.

3.2 Initial Benchmarks

Books have been written; companies started and thrived; many lecture courses have been taught, and magazines and software programs launched to address performance measurement. Entering into a detailed discussion is not relevant, nor should the task of measuring performance be difficult or onerous for Orange County.

Measuring performance simply requires four things to be successful:

- Data, in a format and quantity that is suitable to the task;
- Relationships, between the performance measurement(s) and the goals / objectives of the program;
- Analysts, that are capable and have the time to prepare and report information to decision-makers; and
- Reaction, from decision-makers to modify the program that is being measured.

A SGRC scorecard has been created that describes a number of performance benchmarks that Orange County Planning and Zoning staff will complete as transfer credits are created and applied. Since the project team anticipates that, like almost all similar programs, the SGRC Program will begin slowly, the first two years will include a benchmark to measure how many contacts are made with property owners and developers inquiring about the Program. The SGRC scorecard is shown in Figure 3-1.

Figure 3-1. SGRC Scorecard

Orange County SGRC Scorecard

Date Submitted: _____

Submitted To: _____

Description	Current Year		Previous Year		Previous Year	
	Res (units)	Com. (sq ft)	Res (units)	Com. (sq ft)	Res (units)	Com. (sq ft)
Period Covered (mm-yyyy)						
Inquiries About SGRC Program (Year 1 and 2 ONLY)						
Number of SGRC Acres Conserved						
Average Price per Conservation Credit						
Low Price for Conservation Credit						
High Price for Conservation Credit						
Residential Units Constructed Using SGRC Credits						
Commercial Square Footage Constructed Using SGRC Credits						
SGRC Credits Extinguished						
Existing Development Allowed						
SGRC Development Allowed						
Variance (Existing v. SGRC Development)						
Additional Staff Comments:						

As shown in the preceding figure, the following performance factors are included in the SGRC scorecard:

- Inquiries About SGRC Program (Year 1 and 2 ONLY)
- Number of SGRC Acres Conserved
- Average Price per Conservation Credit
- Low Price for Conservation Credit
- High Price for Conservation Credit
- Units Constructed Using SGRC Credits
- SGRC Credits Extinguished
- Existing Development Allowed
- SGRC Development Allowed
- Variance (Existing v. SGRC Development)

The first six measures are oriented towards measuring effects on Strategic Growth areas; the remaining measures are dedicated to realizing the effects of the SGRC Program on Resource Conservation areas. The area for comments at the bottom of the scorecard is reserved for notes on performance and issues that may have arisen during the course of the year regarding comments received from participants and staff. The first measure,

Inquiries about the SGRC Program, may include meetings with developers; baseline reports prepared for Resource Conservation Area participants; or other contacts with potential participants. After the second performance report is issued to the Planning Board and Board of County Commissioners, this measure will be dropped, since the Program should have “legs” by then and recording inquiries can be time-consuming.

3.3 Monitoring Performance

No performance measurement system works without some time dedicated to its maintenance and a process for implementing change to improve performance (and the performance monitoring system). The following sections describe how the performance of the SGRC Program works, and suggestions for making changes to the Program, if determined by the Board of County Commissioners and Planning Board.

3.3.1 Performance Reporting

The only times that the Orange County Planning staff should make a record in the SGRC scorecard are when (A) an inquiry or contact is made about the SGRC Program (first two years only); (B) when a transfer credit is purchased or sold; or (C) when a transfer credit is actually applied during the (conditional use) development review / approval process.

The general steps for monitoring performance are outlined below.

Step 1. Collect Data. Orange County staff (Planning Department) should maintain records on inquiries (first two years only); when a transfer credit is purchased / sold; and, at the end of the development review process, note the number of credits extinguished and amount of development that occurred with the credits as opposed to the development that would have occurred without the SGRC Program in place.

Step 2. Present to Planning Board. At the beginning of the new fiscal year (July), Orange County staff will submit the SGRC scorecard to the Planning Board for their review and comment. The Planning Board and staff will discuss options for modifying the existing SGRC Program based on the indications provided by the scorecard.

Step 3. Present to Board of County Commissioners and Take Public Comments. The Board of County Commissioners should have one meeting to discuss the results of the SGRC Program for the previous year and receive public comments, and a second meeting (September) to present recommended changes to make the SGRC Program better serve the community.

Step 4. Making Changes. Orange County Planning staff, county manager, land records, legal counsel, and other service divisions should have one coordination meeting to discuss changes. The Orange County Planning staff will follow-up to ensure that these changes are carried out by the end of the calendar year (December). Education materials and presentations may have to be modified; any changes to the code of ordinances may occur at a later time, but within the first three months of the new calendar year (January – March). This would require another pass through the Board review / adoption process, and review at a Quarterly Public Hearing.

3.3.2 Ways to Encourage Additional SGRC Activity

During the performance monitoring process, it is likely that one or more changes to the SGRC Program will be suggested, particularly to increase or, less likely, to decrease the amount of participation in the SGRC Program. The following are suggestions on how to modify the Program to encourage more participation from the development community and landowners (NOTE: The following are not in priority order).

Option Number 1: Streamline the Planning Review Process. Developer representatives on the initial Task Force and during external interviews expressed interest in shortening the development review process that Orange County uses in order to gain interest in the SGRC Program. In particular, the Quarterly Public Hearing process can add three or more months onto the review. The project team noted, for example, that Pitkin County utilizes a "One-Step Special Review" process to review proposed private developments that make use of development credit transactions. The trade-off is that there is less time for the public and other stakeholders to review a proposed project, perhaps especially meaningful in the early stages of the SGRC Program.

Option Number 2: Engage Municipalities in Orange County in SGRC. Any significant expansion of the SGRC Program is quite likely to require the involvement of Hillsborough, Chapel Hill, Mebane, or Carrboro. Although the rewards to the towns are smaller, participating in SGRC still translates into a surrounding area that retains a rural character.

Option Number 3: Create a SGRC Approval Procedure that is Conducted Administratively. While the Conditional Use Permit process that is indicated by the Implementation Plan has benefits, it nevertheless requires a quasi-judicial hearing on its actions. Creating a mechanism that can approve SGRC transactions by Orange County staff – under well-managed guidelines – may reduce the risk or perception of risk that a private developer will invest in a less-established planning process to gain the desired result. Like streamlining, this option would tend to reduce the amount of public scrutiny to SGRC-enhanced private development proposals, and is better considered after the program has become established over a period of time. An additional drawback is the necessity of ensuring legal sufficiency in any SGRC-type program, a circumstance that will need to be analyzed carefully prior to modifying the program to a more administratively-owned process.

3.3.3 Ways of Modulating the Rate of SGRC Program Transactions

Although the project team considers the situation highly unlikely, there are conceivable situations where the public, elected officials, or staff feel that slowing down or adding more conditions to the SGRC Program is desirable. If the County is suddenly deluged with more applications from willing senders or receivers than the public review process can manage or than the current policy boards are comfortable with, there are ways of slowing down SGRC activity. The following, not in priority order, are measures that, while enhancing the benefits of the SGRC Program, would likely reduce participation by Strategic Growth or Resource Conservation participants, or both groups.

Option Number 1: Make Affordable Housing and Environmentally Sound Design Practices Required. Currently, a Strategic Growth Participant (e.g., private development interest) can optionally choose to bolster the density in an eligible proposed development by demonstrating a commitment to either or both affordable

housing and environmentally sensitive building or site design practices or certifications, such as the LEED standard promulgated by the US Green Building Council. By requiring such participation as a precondition, the number of interested development parties would be reduced, although the benefits of inclusionary housing practices and energy-efficient structures would accrue to all of the remaining SGRC transactions.

Option Number 2: Modify Strategic Growth and Resource Conservation Area Extent or Conditions. By reducing the amount of land eligible to participate in the SGRC program, there will be fewer participants. For example, increasing minimum parcel size to something greater than 50 acres would sharply reduce the amount of Resource Conservation participation, as would limiting the Resource Conservation areas to the three critical watersheds in Orange County or productive farming operations. The effect would be to have a more focused conservation program with fewer participants, and the potential for fewer SGRC transactions.

APPENDICES

- A. Draft SGRC Plan
- B. Sample Development Agreements for SGRC Program
- C. Ordinance Modifications for SGRC Program Implementation
- D. Program and Administrative Design Options Pro's and Con's
- E. Sample Conservation Easement Template for SGRC
- F. Sample Reporting Figures (MS-Excel native format)
- G. Summary of Public Engagement Process
- H. SGRC Education and Marketing Plan
- I. TDR Program Manager Case Studies (Implementation Phase)

A. Draft SGRC Plan

(Please see the following pages, which are intended to print on 11" x 17" sheets.)

Strategic Growth & Resource Conservation Plan

Program Administration

How Does the Program Work For Conservation Area Landowners?

Step 1. Come into the Orange County Planning and Zoning Office and ask to work with our staff to complete a Baseline Report describing how many Conservation Points (CPs) your property is worth. Any portion of your Orange County property 50 or more acres in size in an eligible Conservation Area can be conserved with the SGRC program. Smaller properties may also be eligible, and all eligible properties earn extra CPs, if the property has wetlands, drinking water supply, natural habitat areas, or meets other historic or environmental criteria.

Step 2. Orange County will contact you when someone interested in purchasing your CPs has contacted us. We will put you in touch with the Growth Area property owner to work out your own price for your CPs.

Step 3. Once the development process has been approved, the Growth Area property owner will pay you for your CPs; at that time, you will have to sign an agreement to place a conservation easement on that portion of your property that will remain undeveloped in perpetuity.

How Does the Program Work for Growth Area Landowners/Developers?

Step 1. Come into the Orange County Planning and Zoning Department to get familiar with the SGRC planning process and requirements, including streamlining the development review process and getting "bonus credit" for including affordable housing and LEED-certified elements.

Step 2. During the development of your conceptual site plan, our staff will work with you to determine how many residential units you can place on your property with and without purchasing Conservation Points (CPs) from a Conservation Area property owner participating in the SGRC program.

Step 3. If you choose to use CPs from the SGRC program, we will contact property owners with CPs to sell. You will then negotiate directly with them on the price of the CAPs.

Step 4. Once the development project is approved, you must pay the Conservation Area participant prior to starting construction on any phase of the project.

Orange County Strategic Growth & Resource Conservation Planning

The planning process had four major phases:

- 01** Background Research Define available options
 - 02** Feasibility Study Determine which options are feasible
- Once phase 2 identified feasible options, the County proceeded with phases 3 and 4:
- 03** Implementation Plan Define how the program would work
 - 04** Ordinance Development Put the plan into effect

Orange County Strategic Growth & Rural Conservation Planning, a collaborative effort of County Staff, a Citizen Task Force, a Working Group representing County Advisory and Planning Boards, the public in Orange County, and consultants from Louis Berger Group, Inc., and the UNC Charlotte Urban Institute.



Strategic Growth & Resource Conservation Plan

STRATEGIC GROWTH & CONSERVATION PLAN

This Strategic Growth & Resource Conservation Plan (the SGRC Plan) documents Orange County's vision for a program that provides options for preserving some of the County's rural areas through incentives for strategically-planned growth in its urbanizing areas. The Plan presents the SGRC Program goals and objectives, developed in consultation with the Board of County Commissioners. The SGRC Plan also outlines how the program would work and how it would be administered. Defined Growth Areas (GAs) and Conservation Areas (CAs) are illustrated in a map.

The Strategic Growth & Resource Conservation Plan was the third part of a four-part planning process undertaken by Orange County beginning in 2005 (see back page for a description of all four phases). The planning process was conducted for the County by a consultant team from Louis Berger Group, Inc. and UNC Charlotte, with oversight by County staff, and with input from a citizen Task Force, a Working Group of County Advisory and Planning Boards, and the public.

Orange County Strategic Growth & Rural Conservation Planning, a collaborative effort of County Staff, a Citizen Task Force, a Working Group representing County Advisory and Planning Boards, the public in Orange County, and consultants from Louis Berger Group, Inc., and the UNC Charlotte Urban Institute.

SGRC PROGRAM GOALS

Goal # 1

Rural Preservation. Promote the voluntary placement of conservation easements on farms, water quality protection lands, historic properties and wildlife habitat to preserve them in their farmed or undeveloped state.

Goal # 2

Strategic Urbanization. Provide incentives for increased development in the Economic Development zoning districts, and the Efland-Mebane and Hillsborough transition areas and Rural Community Nodes as identified in the Comprehensive Plan.

Goal #3

Monitor Program Performance. Identify and track appropriate, cost-effective measures of the degree to which the program is meeting the rural preservation and strategic urbanization goals.

Strategic Growth & Resource Conservation Plan

GROWTH AREAS

Designated Growth Areas. Growth Areas are comprised of the following (except as noted below):

- i. Economic Development Zoning Districts;
- ii. Rural Community Nodes or 10-year and 20-year Urbanizing Transition Areas in the Efland-Mebane area as depicted in the Comprehensive Plan Land Use Element;
- iii. Land within the County jurisdiction joint planning areas or Hillsborough Transition areas as depicted in the proposed Hillsborough Strategic Plan.

Properties are excluded from Growth Areas and are designated as Conservation Areas if any of these criteria are met:

- i. Enrolled in the state's use value tax-assessment program;
- ii. Listed on the National Historic Register, or is otherwise designated as a historic site or as containing a historic structure;
- iii. Contains environmentally sensitive features or areas:
 1. Water Supply Watershed designated Critical Area;
 2. Within 150 feet of the main body or perennial stream of a river;
 3. A wetland;
 4. A Natural Heritage Inventory site;
 5. A Prime Rated Forest Habitat area; or,
 6. A Wildlife Corridor area.

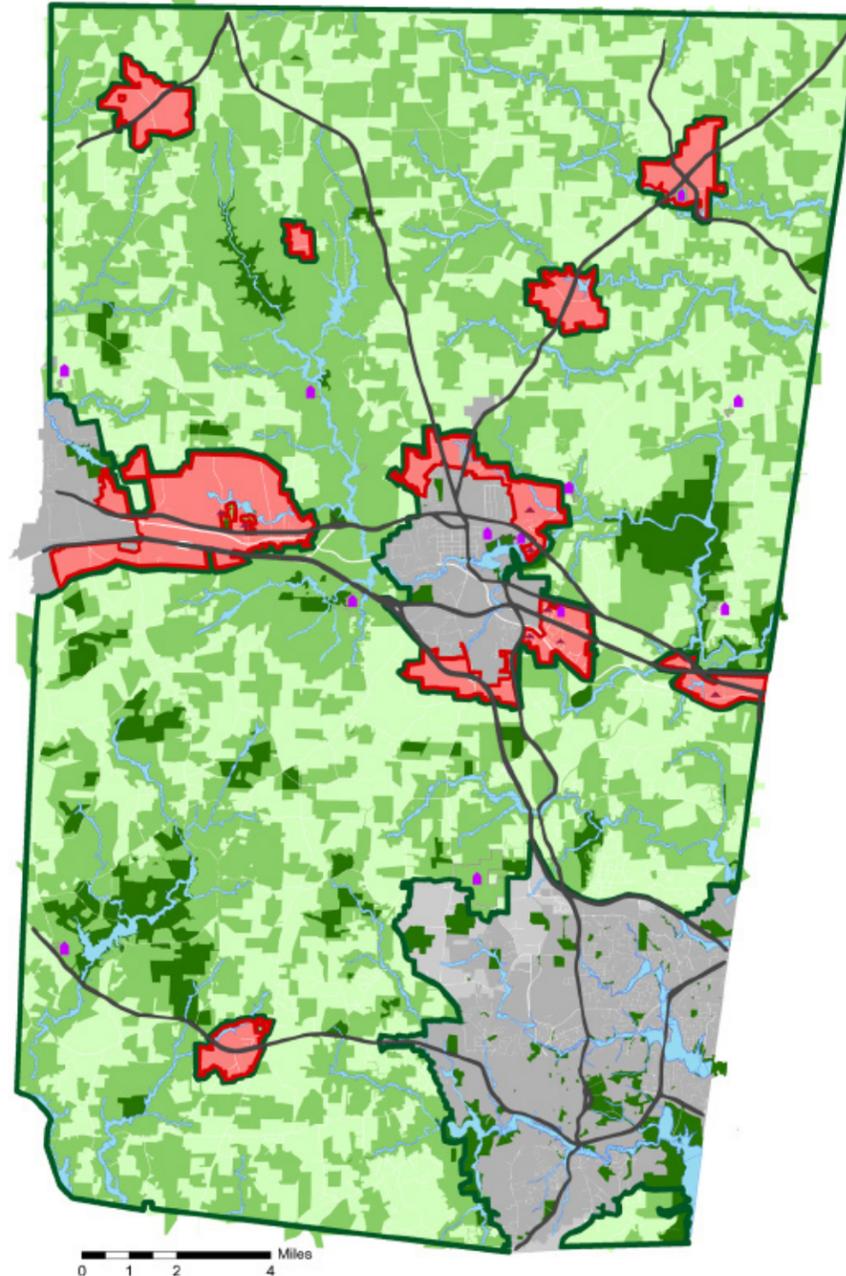
Eligibility. All Growth Area properties that are not subject to a conservation easement, deed restriction or other enforceable agreement prohibiting development are eligible to participate in the SGRC Program.

Development Intensity Bonus. Eligible Growth Area property owners may apply for a development intensity bonus to be awarded upon conveyance to the County of a privately-purchased conservation easement on an eligible Conservation Area property.

- a. For Residential Development:
 - i. Conservation Points (CPs) from a participating Conservation Area property are translated to Growth Area development intensity bonuses at a 3:1 ratio, meaning for every 3 CPs assigned to the conservation easement, 1 additional housing unit may be built in the Growth Area property.
 - ii. Alternatively, owners of properties 25 acres or larger may enter into a Development Agreement with the County, which will negotiate a development intensity bonus taking CPs into account along with other factors, such as provision of affordable housing or LEED-certified construction.
 - iii. The final gross density of projects using CPs may not exceed 15 housing units per acre.
- b. For Non-Residential or Mixed-use Development:
 - i. Owners of properties 25 acres or larger may enter into a Development Agreement with the County, which will negotiate a development intensity bonus taking CPs into account along with other performance factors agreed to by the property owner.
 - ii. Properties of less than 25 acres are not eligible at this time for non-residential or mixed-use density bonuses through the program, but may be added to the program at a later date.

Design Requirements. Design requirements will be developed based on the County's design guidelines developed for the Efland-Mebane area. These will apply to all Growth Area properties participating in the SGRC Program and will serve to ensure that the increased development intensity does not negatively impact nearby land values or quality of life.

STRATEGIC GROWTH & RESOURCE CONSERVATION PROGRAM MAP CONSERVATION AREAS



- Growth Area
- Conservation Area Eligible Properties
- Conservation Area Ineligible Properties
- Watershed Critical Area (CA Eligible)
- Already Protected Properties (CA Ineligible)
- Lakes, Rivers
- Municipalities

Designated Conservation Areas. All land within County land regulatory jurisdiction that is not designated as Growth Area is designated as Conservation Area (CA).

Eligibility. Not all properties within the designated Conservation Areas are eligible to participate in the SGRC Program. Eligibility criteria are:

- a. Must have unused development potential based on current land development regulations and absence of any deed restrictions or conservation easements.
- b. Must meet at least one of the following additional criteria:
 - i. Is 50 acres or larger
 - ii. Is adjacent to a publicly-owned park designated primarily for natural habitat preservation or passive recreation, or to a privately-owned property under a permanent conservation easement;
 - iii. Is enrolled in the state's use value tax assessment program;
 - iv. Contains a National Historic Register site or structure.
 - v. Is in a Water Supply Watershed designated Critical Area;
 - vi. Contains land that is within 150 feet of the main body or perennial stream of a river;
 - vii. Contains a wetland;
 - viii. Contains a Natural Heritage Inventory site;
 - ix. Contains a Prime Rated Forest Habitat area; or,
 - x. Contains a Wildlife Corridor area;
- c. Owners of properties smaller than 50 acres may agree to bundle their acreage to meet that criteria, provided that all properties in the bundle meet the criteria for unused development potential.

Conservation Points. Proposed conservation easements on eligible Conservation Area properties are assigned Conservation Points (CPs) as follows:

- a. One CP per acre is awarded to all participating CA properties;
- b. Additional CPs based on pre-easement tax-assessed land value:

Tax-assessed land value per acre	Additional CPs per acre
\$0 – 9,999.99	0.0
\$10,000 – 14,999.99	0.5
\$15,000 – 19,999.99	0.9
\$20,000 – 24,999.99	1.2
\$25,000 – 29,999.99	1.4
\$30,000 and higher	1.5

- c. Up to one additional CP per acre based on actual acreage meeting any one or more of eligibility criteria iii-x above, or containing steep slopes of 25% or higher.

B. Sample Development Agreements for SGRC Program

To implement the Strategic Growth and Resource Conservation Plan (SGRC) as part of the Comprehensive Plan, the County intends to rely on Development Agreements between the County and the Growth Area landowner and the conditional zoning provisions of the County's existing land development ordinances. Development Agreements between county governments and property owners are authorized by NC General Statute Chapter 153A, Article 18, part 3A (NC G.S. 153A-349.1 *et seq*), as enacted in 2005.

Examples of Development Agreements are attached here:

- Orange County, NC and Habitat for Humanity (2009)
- Catawba County, NC and Crescent Resources (2006)

C. Ordinance Modifications for SGRC Program Implementation

To implement the Strategic Growth and Resource Conservation Plan (SGRC) as part of the Comprehensive Plan, the County intends to rely on Development Agreements between the County and the Growth Area landowner and the conditional zoning provisions of the County's existing land development ordinances. NC counties are authorized to use conditional zoning by NC General Statute Chapter 153A, Article 18, part 2 (NC G.S. 153A-342), as enacted in 2005.

The existing conditional zoning ordinance provisions will need to be modified by the addition of a few considerations that are particular to the SGRC, specifically:

- All SGRC Growth Area applications for conditional zoning must include the following:
 - A Conservation Easement Agreement
 - between an SGRC-eligible Conservation Area property owner and the County
 - placing a permanent conservation easement on the SGRC-eligible Conservation Area
 - fully executed and meeting the content requirements for such agreements as adopted by the County as part of the SGRC
 - A Development Agreement whose execution is contingent upon approval of the conditional zoning application
 - between an SGRC-eligible Growth Area property owner and the County
 - specifying the extension of public utilities and services to be provided by the County
 - specifying the requirements or limitations on any aspect of development to be provided by the property owner (the developer), including but not limited to:
 - *density or intensity of development*,
 - *design of buildings and other elements of the proposed development*
 - *infrastructure or other public facilities*
 - *impervious cover limitations*
 - *tree save/planting, other open space*
 - incorporating by reference a "SGRC Growth Area Concept Plan", analogous to those currently required under the County's subdivision ordinance (Sec. 46-123 of the Code of Ordinances of Orange County)
- An option for an SGRC Growth Area application for conditional zoning for inclusion of third party-certified environmentally sensitive building or site design practices or standards in the Development Agreement, and the awarding of commensurate "bonus points" that translate into additional allowable development density or intensity.

D. Program and Administrative Design Options Pro's and Con's

The following pages describe a number of options that were considered during the implementation planning process, and how the project team assessed each option's strengths and weaknesses. The tables below represent several options that were considered by the SGRC Task Force during the planning process, but the actual process recommended by the Task Force and adopted by the Orange County Commissioners may include different options.

Administrative Design Options

Option	For	Against
<p>1. Pre-Certification of CA Properties</p> <p><i>Should the Orange County staff meet with potential CA property owners and certify their properties as being eligible for CA Points prior to and unassociated with any development action <u>instead of waiting until the SGRC transaction is initiated by a development action?</u></i></p>	<ul style="list-style-type: none"> ■ Creates a "pool" of known, eligible credits available when developers come in the door ■ Reduces pressure on the development review process by decoupling the CA eligibility from the rest of the transaction process 	<ul style="list-style-type: none"> ■ The baseline certification report may have to be done all over again if a long period of time (e.g., two years) passes between the original (pre) certification and the actual credit transaction occurs ■ May create a false expectation of readiness on the part of the CA property owners
<p>2. Property Valuation</p> <p><i>Should a third-party property valuation be done to determine an objective value of the Conservation Area property and hence the number of credits that the (conserved) property is worth, <u>instead of allowing individual negotiations between Conservation Area and Growth Area landowner / developer to set the SGRC credit price?</u></i></p>	<ul style="list-style-type: none"> ■ Offers one way of helping to ensure some equity of credit market value 	<ul style="list-style-type: none"> ■ Adds additional complexity and expense to the SGRC process for both Sending and SGA interests
<p>3. Incentives Through Process Streamlining</p> <p><i>Should the County review process be shortened – probably through the deletion of the Neighborhood Informational Meeting – for viable SGRC projects, <u>instead of the SGRC project following the normal review process?</u></i></p>	<ul style="list-style-type: none"> ■ Initially, this was identified by developers as a way of raising more interest in participating in a SGRC scheme ■ Streamlining becomes a more viable option IF SGRC SGA design standards are part of the required process 	<ul style="list-style-type: none"> ■ Omitting any part of the review process would raise questions about its validity, and may be perceived as granting development interest "favors" at the expense of residents and business owners ■ Should be considered after the SGRC program has been initiated IF transaction activity is low

☐ = Recommended Course of Action

(Note that when both "For" and "Against" columns are shaded, it signifies that a compromise between the two options has been recommended.)

Program Design Options

Option	For	Against
<p>1. Designate Conservation and Growth Areas by Using Mapped Boundaries</p> <p><i>Should the County have a map that shows boundaries for Conservation Areas and Growth Areas <u>instead of</u> using criteria to judge eligibility?</i></p>	<ul style="list-style-type: none"> ■ Easy to communicate and understand at a glance which properties are Conservation Area, Growth Area, or neither ■ Areas can readily be aligned with existing zoning or other district designations if appropriate ■ Easier to determine and alter to achieve a “critical mass” Growth Areas to stimulate demand 	<ul style="list-style-type: none"> ■ Generalizes some properties that may not be suitable for participation with others that are (not as much detail) ■ May require imposition of additional eligibility criteria to identify more suitable properties
<p>2. Allow Conservation/Growth Area Overlap</p> <p><i>Should the SGRC Program allow overlap in Conservation and Growth Areas <u>instead of</u> having mutually exclusive Conservation and Growth Areas?</i></p>	<ul style="list-style-type: none"> ■ Gives property owners maximum choice and flexibility as to whether to conserve, develop at current zoning densities, or develop at higher densities 	<ul style="list-style-type: none"> ■ Creates a “patchwork” of conserved and more intensely developed properties ■ Not all areas are suited to receiving higher density ■ More complicated to communicate, understand and administer
<p>3. Criteria for Designating or Qualifying Growth Areas</p> <p><i>Should Orange County use existing zoning or other designations to designate Growth Areas, and should criteria (environmentally sensitive, historic sites, already-conserved places, development zones) to exclude properties from a Growth Area?</i></p>	<ul style="list-style-type: none"> ■ a. Use existing plans to guide designation of Growth Area boundaries 	
	<ul style="list-style-type: none"> ■ Builds acceptance for the program when it aligns with already established programs 	<ul style="list-style-type: none"> ■ Requires a more extensive public input process for acceptance of higher density in those areas than proposed in prior programs
	<ul style="list-style-type: none"> ■ b. Use criteria to exclude from Growth Area 	
	<ul style="list-style-type: none"> ■ Avoids confusion as to whether other restrictions on development in these areas take precedence over the SGRC program 	<ul style="list-style-type: none"> ■ Limits amount of land available for Growth Areas

Option	For	Against
<p>4. Adopt Criteria for Selecting or Qualifying Conservation Areas</p> <p><i>Should Orange County use criteria (historic areas / sites, high growth pressure locations, water supply watershed, wetlands, etc.) to identify eligible Conservation Area properties <u>instead of</u> naming the entire unincorporated, non-Growth Area part of the County as an eligible Conservation Area?</i></p>	<ul style="list-style-type: none"> ■ Avoids the possibility of swamping the market with sellers, depressing prices ■ Promotes and recognizes the varying preservation merit of different properties ■ Allows prioritization of larger parcels or parcels with specific environmental merit 	<ul style="list-style-type: none"> ■ Lose the sense of fairness that all are included if the entire county isn't eligible ■ Reduces the size of the "market" of potential easement sellers
<p>5. Define a Minimum Acreage as a Pre-Condition for Eligibility as a Conservation Area</p> <p><i>Should Orange County use minimum acreages of contiguous property to help determine eligible Conservation Areas <u>instead of</u> allowing even very small properties to participate?</i></p>	<ul style="list-style-type: none"> ■ Allows fine-tuning of balance between Conservation Area and Growth Area markets ■ Avoids creating fragmented protected lands and better supports farming & natural resource goals 	<ul style="list-style-type: none"> ■ More complicated to explain and understand than a no-minimum program ■ Could create some frustration among property owners "in" the Conservation Area boundary but not meeting the additional criteria

Option	For	Against
<p>6. Define Conservation Points as a Fixed Ratio to Acreage vs. Other Options</p> <p><i>Should Orange County keep a fixed points-to-acre formula (e.g., two CPs per acre) to calculate Conservation Points <u>instead of</u> applying more complex formulas that respect the specific conditions of the underlying property?</i></p>	<p>a. Fixed Formula</p> <ul style="list-style-type: none"> ■ Sense of fairness that all properties are treated the same 	<ul style="list-style-type: none"> ■ May not result in the most important environmental properties being conserved
	<p>b. Formula that gives more credits to areas with more conservation merit (soils, habitat, historic sites)</p>	
	<ul style="list-style-type: none"> ■ Creates a market advantage for, and thus prioritizes, properties that have environmental merit, or a market disadvantage for those that have little existing development potential 	<ul style="list-style-type: none"> ■ Sense of unfairness that some properties receive preferential treatment
	<p>c. Formula that reduces credits allowed due to existing structures on Conservation Area property</p>	
	<ul style="list-style-type: none"> ■ Contributes to sense of fairness that properties with existing structures do not gain an advantage over those without 	<ul style="list-style-type: none"> ■ Misses the opportunity to provide a participation incentive in the form of extra credits
	<p>d. Provide allowance (by reducing credits) for future additional lots on a portion of the property?</p>	
<p>7. Define Growth Area Credits as a Fixed Ratio to Acreage</p> <p><i>Should Orange County keep a fixed ratio (x CPs = y additional housing units) <u>instead of</u> bonuses based on development suitability or performance criteria (e.g., soils, affordable housing, etc.)?</i></p>	<ul style="list-style-type: none"> ■ As in option 6.c. above, contributes to sense of fairness, but also, gives property owners the flexibility to choose how much of their property to conserve and how much to develop 	<ul style="list-style-type: none"> ■ May reduce the actual amount of land conserved
	<ul style="list-style-type: none"> ■ Sense of fairness that all properties are treated the same ■ Easier to explain and understand 	<ul style="list-style-type: none"> ■ A simple rate won't reflect actual conditions on each Growth Area site that could result in more or less density ■ May limit all Growth Areas to maximum appropriate density increase of the one area least able to absorb more density

Option	For	Against
<p>8. Allow Commercial Development Credits*</p> <p><i>Should Orange County relax restrictions on parking, open space, building height, setbacks, or other requirements to encourage commercial development in Growth Areas <u>instead of</u> only allowing residential-to-residential SGRC transactions?</i></p>	<ul style="list-style-type: none"> ■ Provides a means for potential rural residential density to be converted to urbanizing area commercial development, allowing more density to be absorbed than just relying on residential-to-residential transfers ■ Easier to justify later once the program is established and if/when municipal participation occurs 	<ul style="list-style-type: none"> ■ Existing codes' volume restrictions difficult to calculate and translate into a density bonus ■ Existing codes provide little restriction on commercial development intensity vs. current market demand ■ Open space requirement is most obvious one to be exchanged for Conservation Points, but there's no gain to the County for trading open space needed to keep commercial development livable in urbanizing areas for open space needed to keep rural areas from being developed
<p>9. Formula for Commercial Use of CPs in Growth Areas*</p> <p><i>Should Orange County create a formula that equates CPs to degree or amount of relaxed / lifted restrictions <u>instead of</u> negotiating each commercial project's development intensity bonus?</i></p>	<ul style="list-style-type: none"> ■ Provides certainty to developers that credits translate to a defined degree of change in other restrictions / requirements 	<ul style="list-style-type: none"> ■ Difficult to monetize value of lifting restrictions, as it may change from site to site or project to project

**Note: This applies to Economic Development Districts (EDD) and other, possibly future overlays and zones where commercial development is allowed.*

<p>10. Install Limits on the Density Allowable on a Growth Area Property</p> <p><i>Should Orange County provide density caps on all Growth Area properties <u>instead of</u> allowing the market to dictate densities?</i></p>	<ul style="list-style-type: none"> ■ Keeps intensified development within acceptable limits ■ Provides certainty to adjacent/nearby property owners that density increase allowable has a specified ceiling ■ Provides a way to lessen negative development impacts that can't be mitigated or avoided (whether environmental, or economic or social impacts on nearby properties) 	<ul style="list-style-type: none"> ■ May be viewed as an arbitrary limit, and provides less flexibility for developers whose project's desired density increase is just over the limit ■ Will require re-visiting periodically to ensure limits haven't been eclipsed by market demand ■ A limit would reduce the amount of Conservation Points to be absorbed ■ A limit does not allow the market to operate freely if there is a perceived or real need for a higher density product
<p>11. Apply Additional Development Restrictions or Requirements in Growth Areas</p> <p><i>Should Orange County apply additional site development guidelines such as design guidelines or affordable housing requirements, <u>instead of</u> adhering to current development guidelines and policies for SGRC projects?</i></p>	<p>a. Building Design Guidelines</p>	
	<ul style="list-style-type: none"> ■ Ensures that impacts of intensified development are mitigated (transportation improvements, aesthetics, buffering) ■ Reduces some potential concerns from local residents, businesses about increased density 	<ul style="list-style-type: none"> ■ Decreases the value of credits to developers, may deter developers from using credits
	<p>b. Affordable Housing Requirements</p>	
<ul style="list-style-type: none"> ■ Encourages more affordable housing options for medium- and low-wage families 	<ul style="list-style-type: none"> ■ May incur opposition from existing, nearby residents, businesses about lowering property values ■ May deter participation from developers from monetary and increased local opposition to project 	

E. Sample Conservation Easement Template for SGRC

The following sample should be considered a draft presentation of a conservation easement pending full legal review. This draft was created from the existing Purchase of Development Rights (PDR) conservation easement used by Orange County, as well as research into other easement texts.

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

WARRANTY
DEED OF STRATEGIC GROWTH AND RURAL CONSERVATION PROGRAM (SGRC)
EASEMENT

This Deed of Agricultural Conservation Easement ("Conservation Easement") is granted on this ___ day of _____, 20__, by _____ and _____, [husband and wife,] having an address of _____ Road, _____, NC 27___ (referred to as "Grantors"), to ORANGE COUNTY, NORTH CAROLINA, having an address of Post Office Box 8181, Hillsborough, NC 27278 (referred to as "Grantee").

WHEREAS:

PART I. GRANTOR CONDITIONS

(1) Grantors are the sole owners in fee simple, of certain farm Property, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property"), which consists of approximately ___ acres of land, located in _____ Township, Orange County, North Carolina and identified as that portion of Tract that is not depicted as "_____" on the plat of property titled "Property of _____," prepared by _____, Inc., which plat is recorded at Plat Book __, Page __, Orange County Registry (PIN ___-__-___). The Property includes buildings and other improvements, which are shown on Exhibit B, attached hereto and incorporated herein.

(2) Development rights are transferred from sending sites through the issuance of "Sending Area Credits" pursuant to [cite Orange County code], a process which requires the grant of a conservation easement restricting development on the Sending Site.

(3) SGRC certificates can be freely sold by the sending site landowner to whom they are issued. Receiving site landowners who obtain SGRC certificates may use those certificates to obtain density bonuses or other development incentives pursuant to applicable county regulations.

(4) Pursuant to [cite Orange County code], Grantors submitted an application to obtain a SGRC Sending Area Certificate on _____, (hereinafter "SGRC Certificate Application") for certain real property (hereinafter "Protected Property") owned by Grantors in fee simple and located in _____ Township, Orange County in the State of North Carolina, described in a deed to Grantors, dated _____ and recorded under Orange County Auditor's File No. _____, at Orange County Registry of Deeds. A legal description of the Protected Property is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full.

(5) The SGRC Certificate Application materials submitted by Grantors are on file with the County, in the Land Use Records Management System under File No. _____, and are incorporated herein by reference as if set forth in full. These application materials detailed existing conditions on the Protected Property and stated Grantors' intentions concerning future residential development, if any, to occur on the Protected Property. The Grantors represent that these application materials reflect existing conditions on the Protected Property as of the date this Easement is executed, as well as the Grantors' intentions concerning future residential development, if any, to occur on the Protected Property.

(6) Pursuant to [cite Orange County code], the County issued a SGRC certificate Letter of Intent on _____, a true copy of which is attached hereto as Exhibit C and incorporated herein by reference as if set forth in full. In the letter, the County agreed to issue Grantors _____ SGRC Certificates, to be numbered _____, provided that the Grantors grant a conservation easement on the Protected Property to Orange County in accordance with the requirements of [cite Orange County code].

(7) Consistent with the foregoing requirements, and subject to the specific terms of this Easement contained herein, the Grantors and the County, as Grantee of the Easement, intend and have the common purpose of retaining the Protected Property for agricultural use by placing restrictions on the use of the Protected Property, which shall run with the land and bind the Protected Property in perpetuity.

PART II. CONSERVATION VALUES OF EASEMENT PROPERTY

The Property consists or possesses one or more of the following characteristics that make it suitable for conservation under the Strategic Growth and Resource Conservation Program of Orange County:

(1) The Property contains productive agricultural land. The majority of the soils on the Property have been classified as "prime" or "statewide important" soils by the Natural Resources Conservation Service, United States Department of Agriculture, (also referred to as "NRCS" or "the United States.") It is the primary purpose of this Conservation Easement to protect the agricultural soils and agricultural viability and productivity of the Property.

(2) The Property includes outstanding woodland and/or riparian habitats for a variety of wildlife species of importance to the Grantors, the people of Orange County and the people of North Carolina.

(3) The Property includes perennial waters, namely _____, _____, and _____. Said waters flow into reservoirs that provide a portion of the drinking water supply of the people of Orange County, making the preservation of the property important to the health and welfare of the general public. Portions of the Property are within the _____ Protected Watershed.

(4) The Property includes structure(s) and/or district(s) listed on the National Register of Historic Places (NRHP), including _____, _____, and _____. Said structure(s) and/or district(s) possess historic values that can be appreciated by the people of Orange County and the people of the State of North Carolina. Furthermore, the Property contains outstanding scenic qualities that can be enjoyed by the general public, namely the views along _____ Road (State Road _____) _____.

The resources, including the agricultural value of soils; wetland and water supply provisions; historic property value; and wildlife habitat and scenic resources of the Property to be preserved by this Conservation Easement are collectively referred to as the "conservation values" of the Property.

The specific conservation values of the Property and its current use and state of improvement are described in a Baseline Report ("Report") prepared by the Grantee with the cooperation of the Grantors, and acknowledged by both parties to be accurate as of the date of this Conservation Easement. This Report, attached as Exhibit E, may be used by the Grantee to document any future changes in the use or character of the Property in order to ensure the terms and conditions of this Conservation Easement are fulfilled. The Baseline Report, however, is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use. The Grantors and Grantee have

copies of this Report, and said report will remain on file at the office of the Orange County Planning and Inspections Department.

The Grantors and Grantee agree that the current use of, and improvements to, the Property are consistent with the conservation purposes of this Conservation Easement.

The Grantors intend that the conservation values of the Property be preserved and maintained, and further, Grantors intend to convey to the Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

The conservation purposes of this Conservation Easement are recognized by, and the grant of this Conservation Easement will serve, the following clearly delineated governmental conservation policies:

(1) Sections 1238 H and 1238 I of the Food Security Act of 1985, as amended, which authorizes the Farm and Ranch Lands Protection Program, administered through the United States Department of Agriculture, Natural Resources Conservation Service, which provides funds for the acquisition of Conservation Easements or other interests in prime, unique, or other productive soils for the purpose of limiting conversion to nonagricultural uses of the land;

(2) North Carolina General Statute 139-2 *et seq.*, which provides that “it is hereby declared ...that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people... it is hereby declared to be the policy of the legislature to provide for the conservation of the soil and resources of this State;”

(3) North Carolina General Statute 106-583 *et seq.*, which states that “It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity;”

(4) The Uniform North Carolina Conservation and Historic Preservation Agreements Act, North Carolina General Statute 121-34 *et seq.*, which provides for the enforceability of restrictions, easements, covenants or conditions “appropriate for retaining in land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use;” and which provides for tax assessment of lands subject to such agreements “on the basis of the true value of the land and improvement less any reduction in value caused by the agreement;”

(5) The North Carolina Conservation Tax Credit Program, North Carolina General Statute 105-130.34 and 105-151.12 *et seq.*, which provides for state income tax credits for donations of land that are useful for fish and wildlife conservation and other similar land conservation purposes;

(6) The establishment of the North Carolina Farmland Preservation Trust Fund established in 1986 (N.C.G.S. 106-744(c)) to preserve important farmland in North Carolina;

(7) The special use assessment of farm and forestland as set forth in North Carolina General Statute 105-277.2 *et seq.*; and

(8) The zoning of the Property by Orange County as _____.

(9) the Orange County Board of Commissioners’ goal (adopted June 21, 1999) to identify and coordinate the preservation of the County’s most significant natural areas; and

(10) the Land Use Element of the Orange County Comprehensive Plan (adopted September 2, 1981 as amended) with its goal of conserving and protecting Orange County's significant "Resource Protection Areas" from adverse development impacts, including natural areas, wildlife corridors and lands placed by individual property owners into conservation easements; and

(11) the protection of similar Orange County properties designed to protect conservation and open space values through conservation easements granted to the Grantee and others in the vicinity of the Grantors' Property; and

(12) Article 17 of the North Carolina General Statutes NCGS 113A-24, entitled Conservation, Farmland and Open Space Protection and Coordination, otherwise known as the "Million Acre Initiative," which provides that the State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space and conservation lands in the State are permanently protected by December 31, 2009;

(13) the Clean Water Management Trust Fund, North Carolina General Statute 113-145.1 *et seq.*, which recognizes the importance of protecting riparian buffers in conserving clean surface water; and

(14) the National Historic Preservation Act of 1966 enacted by the National Park Service (Public Law 89-665; 80 STAT.915; 16 U.S.C. 470) which states that, "historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency," and that "the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans." Orange County is a Certified Local Government, actively participating in the identification, evaluation, and protection of historic properties.

PART III. PURPOSE OF THE CONSERVATION EASEMENT

Grantors and Grantee have the common purpose of protecting the above-described conservation values and current condition of the Property and preventing conversion of the Property for any use that diminishes the Conservation Values as stipulated in Part II except as otherwise allowed in this Agreement. The Grantors agree to create and implement a conservation plan (hereinafter the "Conservation Plan") that is developed utilizing the standards and specification of the NRCS field office technical guide and 7 CFR part 12, and is approved by the local Soil and Water Conservation District;

The Grantee is a body politic existing under Chapter 153A of the North Carolina General Statutes, and is qualified to hold Conservation Easements under the applicable laws of the State of North Carolina;

NOW, THEREFORE, for the reasons given and other good and valuable consideration and in consideration of their mutual covenants, terms, conditions and restrictions contained herein, the Grantors hereby grant and convey unto the Grantee a Conservation Easement, of the nature and character and to the extent hereinafter set forth, in respect to the Property as described in Exhibit A;

The terms, conditions and restrictions of the Conservation Easement are as hereinafter set forth:

1. *Grant of Conservation Easement*

Grantors hereby voluntarily grant and convey to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Conservation Easement in the Property, which easement is an immediately vested interest in real property the nature and character described herein. Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantors authorize the Grantee to enforce these covenants in the manner described below.

Grantors hereby voluntarily grant and convey to the Grantee all development rights for the Property, except as otherwise reserved and provided by the terms of this Conservation Easement, that are now or hereafter inherent in the Property. The parties agree that such development rights are terminated and extinguished, and may not be used on or transferred to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

2. *Statement of Purpose*

It is the primary purpose of this Agricultural Conservation Easement to enable the Property to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity. Except as specifically permitted herein, no activity that would impair the actual or potential agricultural use of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Conservation Easement are consistent with the primary purpose stated above, it is within the purpose of this Conservation Easement to also protect those values, and no activity that would significantly impair those values shall be permitted.

[OR]

The purposes of this Conservation Easement are to ensure that the Easement Area will be retained forever predominantly in its [*e.g.*, natural, scenic, forested, and/or open space] condition; to protect native plants, animals, or plant communities on the Easement Area, while allowing traditional uses on the Easement Area that are compatible with and not destructive of the conservation values of the Easement Area such as [selective timber harvesting, grazing and farming of existing pastures and fields and hunting]; and to prevent any use of the Easement Area that will impair or interfere with the conservation values or interests of the Easement Area.

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by Grantee against the Grantors, their representatives, heirs, successors and assigns, lessees, agents, and licensees.

3. *Rights and Responsibilities Retained by Grantors*

Subject to the terms and restrictions hereof, the Grantors reserve to and for themselves and their successors the right to quiet enjoyment of the Property and the right to partake in passive recreation on the Property. The Grantors reserve to and for themselves and their successors all customary rights and privileges of ownership, including the rights to sell, lease, and devise the Property, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to the Grantee, together with any rights not specifically prohibited by or limited by this Conservation Easement, and consistent with this Conservation Easement. Unless otherwise specified below, nothing in this Conservation Easement shall require the Grantors to take any action to restore the condition of the Property after any Act of God or other event over which they had no control. Grantors understand that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.

4. *Right to Farm*

Grantors retain the right to farm, or to permit others to farm the Property, consistent with the conservation values of the Property and in accordance with applicable local, state and federal laws and regulations.

Subject to the terms of this Agricultural Conservation Easement, farming, grazing, horticultural and animal husbandry operations are permitted only if conducted consistent with Best Management Practices promulgated by the State of North Carolina and in conformity with a Conservation Plan as required in Paragraph 9 of this Conservation Easement.

Cattle and other livestock are allowed to exist and to graze on the Property, except within [100] feet of a stream or other water body—the locations of which are identified and marked on Exhibit B, attached hereto and incorporated herein. Exhibit B is a copy of a GIS rendering of the Property, the original of which will be maintained with the Baseline Report at the office of the Orange County Environment and Resource Conservation Department. [If applicable: Fencing intended to keep cattle and other livestock out of the 100-foot stream buffer shall be installed no later than six months after the signing of this Conservation Easement.]

5. *Right to Privacy*

Grantors retain the right to privacy and the right to exclude any member of the public from trespassing on the Property. This Conservation Easement does not create any rights of the public in, on or to the Property.

6. *Right to Use the Property for Customary Rural Enterprises*

Grantors retain the right to use the portion of the Property within the “Farmstead Area” (which contains approximately ____ acres) as identified on Exhibit B, and more particularly described in the Baseline Report, for otherwise lawful and customary rural enterprises, such as, but not limited to, farm machinery repair, sawmills, firewood distribution, or educational programs so long as such activities are consistent with Orange County zoning regulations and permits required by and issued by Orange County under its laws and ordinances, and are conducted in buildings otherwise permitted under this Conservation Easement in a manner that is consistent with the conservation purposes of this Conservation Easement. Conducting customary rural enterprises on any other part of the Property is not permitted without the advance written permission of the Grantee in each instance. Grantee shall not give such permission unless Grantee determines that the proposed use will not diminish or impair the conservation values of the Property.

7. *Procedure to Construct Buildings and Other Improvements*

The Grantors' rights to construct or reconstruct buildings and other improvements are described in subparagraphs (a) through (f) below. Any construction or reconstruction not permitted below is prohibited. Before undertaking any construction or reconstruction that requires advance permission, the Grantors shall notify the Grantee and obtain written permission. All construction or reconstruction is subject to Orange County zoning regulations and must be consistent with permits required by and issued by Orange County under its laws and ordinances for such construction activities.

(a) *Fences* -- Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife or to fence off the perimeter of the Property without any further permission of the Grantee.

(b) *Structures & Improvements* – Structures, improvements and other impervious surfaces located on the Property, including those existing on the date of this Agricultural Conservation Easement, shall not exceed 2 percent of the total area of the Property.

Existing structures, including existing agricultural structures and existing improvements, may be repaired, reasonably enlarged and replaced at their current locations within the “Farmstead Area,” as shown on Exhibit B, without further permission from the Grantee. New buildings, barns, sheds and other structures and improvements to be used primarily for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Property, may be built on the Property without any further permission of the Grantee provided they are located in the “Farmstead Area.”

[if applicable: Existing residential structures and improvements, may be repaired, reasonably enlarged and replaced at their current locations within the “Existing Residential Envelopes,” as shown on Exhibit B, without further permission from the Grantee. New accessory structures and improvements may be built on the Property without any further permission of Grantee provided they are located in the “Existing Residential Envelopes.”]

Structures, improvements and other impervious surfaces located in the “Farmstead Area,” including those existing on the date of this Agricultural Conservation Easement, shall not exceed _____ percent of the total area of the “Farmstead Area” or result in exceeding the total impervious surface limit on the Property of ____ percent. Any new buildings, structures or improvements proposed for locations outside the “Farmstead Area” may be built only with the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time if it determines that the proposed building, structure or improvement would not diminish or impair the conservation values of the Property or otherwise be inconsistent with the purposes of this Conservation Easement.

(c) *Farm Support Housing* -- No more than [one (1)] new single - or multi-family - dwelling to house farm tenants, employees or others engaged in agricultural production on the Property may be built on the Property without any further permission of the Grantee, provided the dwelling is less than 1,000 square feet in floor area and is located within that area identified and marked as the “Farmstead Area” identified on Exhibit B. At the time that construction of such structure is to commence, Grantee shall be notified so that its records can be updated.

(d) *Single-Family Residential Dwellings* – _____ residential dwelling exists on the Property within the Farmstead Area. All appurtenant structures (garage, sheds) shall be contained within the “Farmstead Area.” No new residential dwelling may be built on the Property except for that which is authorized in Paragraph 7(c) of this Conservation Easement.

(e) *Recreational Improvements* - Grantors expressly reserve the right to engage in recreational activities requiring no surface alteration of the land and posing no threat to the conservation values set herein such as hunting, fishing, hiking, bird watching, etc. and to control access of all persons for the purpose of hunting and fishing; provided that these activities do not impact the protection and conservation of any animal habitat or other conservation values of the property. However, under no circumstances shall golf courses or ranges, airstrips or helicopter pads be constructed, placed or permitted to remain on the Property.

(f) *Utility Services and Septic Systems* -- Installation, maintenance, repair, replacement, removal and relocation of electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements permitted herein, and

the right to grant easements over and under the Property for such purposes, is permitted. Grantors shall not permit or grant easements for utility transmission or distribution facilities or systems without the written consent of the Grantee. Maintenance, repair or improvement of a septic system(s) or other underground sanitary system that exists on the Property at the time of this Conservation Easement, or the construction of a septic or other underground sanitary system, for the benefit of any of the improvements permitted herein, is permitted. All other utilities are prohibited on the Property including, but not limited to, cellular communication towers or structures.

8. *Subdivision*

The Property currently consists of one tract / _____ tracts of land. The further subdivision of the Property, including its partition, is prohibited except as may be required by Orange County to enable the construction of the farm support dwelling provided for in Paragraph 7(c). In the event a farm support dwelling is constructed that requires Orange County subdivision approval, the subdivided lot shall, so long as this Conservation Easement is applicable to the Property, remain in the same ownership as the parent parcel from which the farm support dwelling lot is divided. This prohibition applies regardless of how many separately described parcels are contained in the legal description attached as Exhibit A. In any event, all terms, restrictions, and conditions of this Conservation Easement shall apply to any subdivided parcel permitted by the terms of this Conservation Easement, including but not limited to the requirements of agricultural viability of the Property, the restrictions on future development, the impervious surface limits on the Property as described in Paragraph 7(b) of this Conservation Easement, the necessity of a Conservation Plan, and the prohibition on activities that are described in this Conservation Easement. It is understood that notice of this Conservation Easement will be included in any instrument recorded that subdivides, partitions or otherwise divides parcels.

9. *Conservation Practices*

As required by Section 1238 I of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct all agricultural operations on the Property in a manner consistent with a Conservation Plan prepared in consultation with NRCS and approved by the Soil and Water Conservation District. This Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date of execution of this Conservation Easement. The Grantors may, however, develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property, with advance notice to the Grantors, in order to monitor compliance with the Conservation Plan.

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantors to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not comply with the Conservation Plan, NRCS will inform the Grantee of the Grantors' non-compliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan, (b) NRCS has worked with the Grantors to correct such noncompliance, and (c) Grantors have exhausted their appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantors to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantors may be or may become subject.

10. Forest Management

Trees may be removed, cut and otherwise managed to control insects and disease, to prevent personal injury and property damage, to remove non-native species, for pasture restoration, for firewood and other non-commercial uses, including construction of permitted improvements and fences on the Property, so long as it is in accordance with the Conservation Plan referenced in Paragraph 9 of this Conservation Easement and in accordance with a forest management plan prepared by a professional licensed forester approved by Grantee, such approval to not be unreasonably withheld, that is consistent with the above referenced Conservation Plan.

Any other cutting, removal or harvesting of trees, including any commercial harvesting of trees, may be undertaken within the areas identified and marked at "Forest Area" on Exhibit B only if a) the purpose is for clearing land for cultivation or use by livestock, and b) it occurs outside of the stream buffer described in Paragraph 4 of this Conservation Easement, and c) it is in accordance with the Conservation Plan and forest management plan referred to in this Paragraph 10.

Trees may be planted, harvested and removed within the area identified and marked as "Farmstead Area" on Exhibit B without the advance written permission of the Grantee, so long as done in accordance with the Conservation Plan and forest management plan referred to in this Paragraph 10.

11. Mining

There shall be no filling, excavation, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, peat, minerals or other materials; and no change in the topography of the land in any manner except as necessary for the purpose of combating erosion or flooding in accordance with the Conservation Plan and as reasonably necessary for any permitted maintenance, construction or reconstruction on the Property. Disturbed areas for the purpose of removing soil, gravel, rock, peat, minerals or other materials necessary for permitted customary agricultural uses on the Property will be limited to 1 acre in total surface area and will be restored as soon as practicable after the disturbance. Under no circumstances is the drilling for or exploration for hydrocarbons permitted in, on or to the Property.

12. Paving and Road Construction

Construction and maintenance of farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Conservation Easement are permitted. Other than the existing entrance driveways within the Farmstead Area, as indicated on Exhibit B, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, rock, gravel or any other impervious material, without the advance written permission of Grantee. Grantee shall not give such permission unless Grantee determines that the proposed paving, or covering of the soil, or the location of any such road, will not diminish or impair the conservation values of the Property. Any such road covered by any impervious material including rock or gravel is subject to impervious surface requirements in Paragraph 7.

13. Dumping and Trash

Dumping or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or above ground storage tanks or other materials is prohibited. Provided, however, that the storage of agricultural products, byproducts (including the composting of biodegradable material for on-farm use) and agricultural equipment used on the Property is allowable, so long as such storage is done in

accordance with all applicable government laws and regulations and in such a manner so as to not impair the conservation values of the Property.

The land application, storage and placement on the Property of domestic septic effluent and municipal sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with all applicable federal, state and local laws and regulations.

14. Water Rights

Grantors shall retain and reserve the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property. Grantors shall not transfer, encumber, lease, sell or otherwise separate such water rights from title to the Property itself.

15. Natural Resource Restoration and Enhancement Activities

Notwithstanding any terms contained within this Conservation Easement, Grantors may engage or contract others to engage in any activity designed to repair, restore, or otherwise enhance the natural resources found or once present on the Property, that are consistent with the conservation values of this Conservation Easement and subject to the written approval of Grantee and NRCS.

16. Signs

No new signs shall be permitted on the Property except interpretive signs describing activities and conservation values of the Property, signs identifying the owner of the Property and the holder of the Conservation Easement, signs identifying customary rural enterprises on the Property as provided for in Paragraph 6 of this Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Property. All signs permitted on the Property shall conform to applicable Orange County zoning, subdivision and building code regulations.

17. Ongoing Responsibilities of Grantors and Grantee

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on Grantee or the United States, or in any way to affect any existing obligation of the Grantors as owners of the Property. Among other things, this shall apply to:

(a) *Taxes* – The Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantors will reimburse Grantee for the same.

(b) *Upkeep and Maintenance* – The Grantors retain all responsibilities and shall bear all costs and liability of any kind related to the ownership, operation, and upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general/farm business policy or homeowners policy liability insurance coverage. The Grantee and the United States shall have no obligation for the upkeep or maintenance of the Property. Grantors will remain responsible for upkeep, maintenance, and repairs to any impoundments located on the Property.

(c) *Liability and Indemnification* -- Grantors agree to indemnify and hold Grantee and the United States harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or agents of Grantee, in which case liability shall be as provided by law. In addition, Grantors agree to maintain liability insurance covering the Property with the limits as follows: (i) \$300,000 per person for personal injury or death, up to \$300,000 per occurrence; and (ii) \$300,000 per occurrence for property damage; and warrant that Grantee is and

will remain a named insured on Grantors' Property insurance policies covering the Property. Grantors shall provide Grantee with a certificate of insurance coverage on the effective date of this Conservation Easement and within 10 days of each insurance renewal date.

18. Transferability of Development Rights

(a) Development rights properly transferred from a sending site can be applied, pursuant to [cite Orange County code], to "Receiving Sites" where development is encouraged under the SGRC.

(b) Development rights are transferred from sending sites through the issuance of "SGRC certificates" to pursuant to [cite Orange County code], a process which requires the grant of a conservation easement restricting development on the sending site.

(c) SGRC certificates can be freely sold by the sending site landowner to whom they are issued. Receiving site landowners who obtain TDR certificates may use those certificates to obtain density bonuses or other development incentives pursuant to applicable county or city regulations.

(d) Pursuant to [cite Orange County code], Grantors submitted an application to obtain SGRC certificates on _____, owned by Grantors in fee simple and located in Township _____, Orange County in the State of North Carolina, described in a deed to Grantors, dated _____ and recorded at Orange County Registry of Deeds. A legal description of the Property is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full.

(e) The SGRC Certificate Application materials submitted by Grantors are on file with the County, and are incorporated herein by reference as if set forth in full. These application materials detailed existing conditions on the Property and stated Grantors' intentions concerning future residential development, if any, to occur on the Protected Property. The Grantors represent that these application materials reflect existing conditions on the Protected Property as of the date this Easement is executed, as well as the Grantors' intentions concerning future residential development, if any, to occur on the Protected Property.

(f) Pursuant to [cite Orange County code], the County issued a SGRC certificate letter of intent on _____, a true copy of which is attached hereto as Exhibit C and incorporated herein by reference as if set forth in full. In the letter, the County agreed to issue Grantors _____ SGRC Certificates, to be numbered _____, provided that the Grantors grant a conservation easement on the Protected Property to Snohomish County in accordance with the requirements of [cite Orange County code].

(g) Consistent with the foregoing requirements, and subject to the specific terms of this Easement contained herein, the Grantors and the County, as Grantee of the Easement, intend and have the common purpose of retaining the Protected Property for agricultural use by placing restrictions on the use of the Protected Property, which shall run with the land and bind the Protected Property in perpetuity.

19. Enforcement

With reasonable advance notice to the Grantors or with the Grantors' prior verbal consent, Grantee shall have the right to enter the Property for the purpose of inspecting for compliance with the terms of this Conservation Easement. Grantee shall have the right to prevent violations and remedy violations of the terms of this Conservation Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this Conservation Easement. Except when an ongoing, or imminent violation could irreversibly diminish or impair the conservation values of the Property, Grantee shall give the Grantors written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. Grantee may obtain an injunction to stop a violation or a threatened violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Grantors to restore the Property to its condition prior to the violation, as restoration of the property may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Grantors shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including but not

limited to reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time for that violation or any subsequent violations. In any case where a court finds no such violation has occurred, each party shall bear its own costs. In any case where the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party, the court may award a reasonable attorney's fee to the prevailing party as provided by applicable law.

In the event that Grantee fails to enforce any of the terms of this Conservation Easement as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the Conservation Easement through any and all authorities available under federal or State law. In the event that Grantee attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Conservation Easement without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest in this Conservation Easement shall become vested in the UNITED STATES OF AMERICA.

20. *Transfer of Conservation Easement*

Subject to the contingent rights of the United States of America as specified in paragraph 19 and other pertinent paragraphs herein, and with timely written notice to and approval of the United States Department of Agriculture, the Grantee shall have the right to transfer the Easement created by this Deed to any public agency, provided the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Deed.

[OR]

Grantee has the right to transfer, assign, convey, or otherwise to co-hold the Conservation Easement created by this Deed to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under Section 170(h) of the U.S. Internal Revenue Code, as amended and under NCGS 121-34 *et seq.*, provided the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Deed. If Grantee ever ceases to exist or no longer qualify under Section 170(h) of the U.S. Internal Revenue Code, or applicable State law, a court with jurisdiction shall transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed by this Conservation Easement.

21. *Transfer of Property*

The Grantors agree to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which they transfer or divest themselves of any interests, including leasehold interests, in all or a portion of the Property. The Grantors shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein. Failure of Grantors to incorporate by reference the terms of this Conservation Easement in an instrument of transfer or conveyance or to notify Grantee of a transfer or conveyance shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

22. *Amendment of Conservation Easement*

This Conservation Easement may be amended only with the written consent of Grantee and the Grantors. Any such amendment shall be consistent with the Statement of Purposes of this Conservation Easement and with Grantee's Conservation Easement amendment policies, and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded. Grantee shall give notice of any amendment to and secure prior written approval from the United States.

23. *Procedure in the Event of Termination of Conservation Easement*

If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill the conservation purposes of this Conservation Easement, a court with jurisdiction may, at the joint request of both the Grantors and the Grantee and with prior consent of the United States Department of Agriculture as provided herein, terminate or modify the Conservation Easement created by this Deed in accordance with applicable law. If the Conservation Easement is terminated and the Property is sold then as required by Section 1.170A-14(g)(6) of the IRS regulations, Grantee shall be entitled to _____ percent (___%) of the net sale proceeds (equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement), subject to any applicable law which expressly provides for a different disposition of the proceeds. The Grantee and the United States of America shall divide the resulting proceeds in accordance with the percentage of the purchase price of the Conservation Easement that each party contributed. The percentages are ___% for the Grantee and ___% for the United States of America.

All termination related expenses incurred by the Grantors and Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

24. *Procedure in the Event of Condemnation or Eminent Domain*

Grantors and Grantee recognize that the partial sale of this Conservation Easement gives rise to a property right, immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property prior to the restrictions imposed by the Conservation Easement. Accordingly, if any condemnation or eminent domain action shall be taken, on all or part of the Property, by any authorized authority, said authority shall be liable to Grantee for the value of the property right vested in Grantee at the time of the signing of this Conservation Easement. Due to the federal interest in this Deed, the United States must consent to any condemnation action.

If condemnation or a taking by eminent domain of a part of the Property or the entire Property by a public authority renders it impossible to fulfill any of the conservation purposes of this Conservation Easement on all or part of the Property, the Conservation Easement may be terminated or modified accordingly through condemnation proceedings. Grantors and Grantee agree that the Conservation Easement is a currently vested real property right with a value equal to the proportionate value the Conservation Easement has to the unencumbered value of the fee, as of the date of this grant. If the Conservation Easement is terminated or modified and any or all of the Property is sold or taken for public use, then, as required by Section 1.170A-14(g)(6) of the IRS regulations, Grantee shall be entitled to the proportionate value of the Conservation Easement, which has been predetermined at _____ percent (___%) of the Property's unrestricted value, subject to any applicable law which expressly requires for a different disposition of the proceeds.

If this Conservation Easement is terminated or modified by condemnation action or eminent domain, the Grantee and the United States shall share, ___% to Grantee and ___% to the United States, the Grantee's proportional value of the Conservation Easement.

If, however, after the condemnation or eminent domain proceedings, a court of jurisdiction does not include, in the just compensation awarded as a result of the taking, the amount of the Conservation Easement value, then the Grantors shall not be responsible to share any proceeds awarded.

All condemnation-related expenses incurred by the Grantors and Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

25. *Interpretation*

This Conservation Easement shall be interpreted under the laws of the State of North Carolina and the laws of the United States, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

26. *Perpetual Duration; Severability*

The Conservation Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to the Grantors or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Conservation Easement, or any part thereof by court order or judgment shall in no way, affect the validity of any of the other provisions hereof which shall remain in full force and effect.

27. *Merger*

The Parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

28. *Notices*

Any notices required by this Deed shall be in writing and shall be personally delivered or sent by first class mail to the Grantors and the Grantee respectively at the following addresses, unless a party has been notified in writing by the other of a change of address:

To the Grantors:	To the Grantee:	To the NRCS:
_____	Orange County ERCD	State Conservationist
_____	PO Box 8181	4405 Bland Rd., Suite 205
_____, NC 27____	Hillsborough, NC 27278	Raleigh, NC 27609

29. *Grantor's Title Warranty*

The Grantors warrant that they hold fee simple title to the Property, free from all encumbrances, except for those exceptions deemed by the Grantee as acceptable and set further in Exhibit D to this Conservation Easement, and hereby promise to defend the same against all claims that may be made against it.

30. *Subsequent Liens on Property*

No provisions of this Conservation Easement should be construed as impairing the ability of Grantors to use the Property as collateral for subsequent borrowing. Any such liens shall be and remain subordinate to this Conservation Easement.

31. *Subsequent Easements/Restrictions on the Property*

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise diminish or impair the conservation values of the Property is prohibited. Any such easements or restrictions shall be subordinated to this Conservation Easement.

32. *Grantor's Environmental Warranty*

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantors warrant that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantors warrant that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantors further warrant that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and state law.

Moreover, Grantors hereby promise to defend and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Property. Grantors' indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantors with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Grantee or the United States, nor shall Grantee or the United States have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

33. *Entire Agreement*

This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, and understandings or agreements relating to the said easement.

34. *Recording Clause*

The Grantee shall record this instrument and any amendment hereto in timely fashion with the Office of the Register of Deeds of Orange County, North Carolina, and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantors and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTORS:

[Typed Name]

[Typed Name]

Accepted:

GRANTEE:

ORANGE COUNTY, NORTH CAROLINA

By: _____, Chair
Orange County Board of Commissioners

ATTEST:

By: _____, Clerk to the Board of Commissioners

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing Deed of Conservation Easement, and the rights conveyed therein, on behalf of the United States of America.

Authorized Signatory for the NRCS

Acknowledgments

NORTH CAROLINA
COUNTY OF ORANGE

I, _____, a Notary Public of Orange County, North Carolina do hereby certify that _____ and wife _____ personally appeared before me and acknowledged the due execution of the foregoing instrument.

Notary Public

My commission expires:

NORTH CAROLINA
COUNTY OF ORANGE

I, a Notary Public of the County and State aforesaid, certify that Donna S. Baker personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners for Orange County, North Carolina and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Chair of said Board of Commissioners and attested by her as Clerk to said Board of Commissioners.

Witness my hand and notarial seal this the ____ day of _____, 20__.

_____(Seal)
Notary Public

My commission expires:

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT B

PRESENT CONDITION MAP OF THE CONSERVATION EASEMENT

EXHIBIT C

CERTIFICATE OF LETTER OF INTENT TO APPLY FOR CONSERVATION EASEMENT

EXHIBIT D

PERMITTED EXCEPTIONS

- (a) All enforceable easements and rights of way currently depicted in the Orange County Registry; and
- (b) Public Road rights of way affecting the Property; and
- (c) Current Orange County property taxes and any deferred taxes as provided by law.

EXHIBIT E

COPY OF BASELINE REPORT ON PROPERTY

F. Sample Reporting Figures (MS-Excel native format)

Orange County SGRC Program Rural Conservation Area Baseline Report

Control Information

Date of Initial Review: _____ Date of Verification: _____
 Reviewer: _____ Reviewer: _____

Participant Information

Name: _____
 Telephone (Work): _____
 Telephone (Home or Cell): _____
 Address 1: _____
 Address 2: _____
 City / Town: _____
 Zip Code: _____
 Email: _____

Rural Conservation Area Information	Verification Record (Initial and Date each line)	Warnings
-------------------------------------	--	----------

Parcel ID(s): _____ <i>(separate w/commas)</i>	_____	_____
Township: Cedar Grove	_____	_____
Watershed: Little River	_____	_____
Total Acres: 50	_____	_____
In Sending Area: <input checked="" type="radio"/> Yes <input type="radio"/> No	_____	_____
Base Credits: _____	_____	_____
Bonus Credits 0	_____	_____
Wetlands: _____	_____	_____
Historic: _____	_____	_____
Stream: _____	_____	_____
Total Credits: 0	_____	_____

Additional Comments: _____

Participant Review

The information shown is true and correct to the best of my knowledge: _____
 Participant Signature Date

Orange County staff can contact me if a purchaser becomes available and to verify information: _____
 Participant Signature Date

Orange County SGRC Program Rural Conservation Area Participants

Certification Number (yyyy-mm-dd-count)	2007-10-02-1	2008-02-28-1
Participant Name		
Participant Telephone		
Participant Address		
Participant Address Two		
Participant City		
Participant State		
Participant Zip Code		
Parcel(s) ID		
Township		
Watershed		
Base Credits		
Bonus Credits: Wetlands		
Bonus Credits: Historic		
Bonus Credits: Streams		
Total Credits		
Acres Conserved		
Date of Conservation Easement		
Date Development Approved		
Date Credits Extinguished		

Orange County SGRC Program Transaction Report

Transaction Number (yyyy-mm-dd-count)	2008-8-21-1	2009-4-18-1
Purchaser Name	Gerald Lloyd	Richard Pruetz
Purchaser Telephone	919-555-0001	919-555-0002
Purchaser Street	1968 Landmark Lane	1972 Southampton Road
Second Street / Suite	Suite 101	Suite 400
Purchaser City	Hillsborough	Buckingham Township
Purchaser State	NC	PA
Purchaser Zip Code	20001	10001
Receiving Parcel(s) PIN		
Credits Extinguished		
Existing Development Allowed		
SGRC Development Allowed		
Affordable Housing Development Credits		
Total SGRC Development Allowed		
Develoment Units Constructed		
Acres Conserved		
Date of Conservation Easement		
Date CUP Approved		
Date Credits Extinguished		

Orange County SGRC Scorecard

Date Submitted: _____

Submitted To: _____

Description	Current Year		Previous Year		Previous Year	
	Res (units)	Com. (sq ft)	Res (units)	Com. (sq ft)	Res (units)	Com. (sq ft)
Period Covered (mm-yyyy)						
Inquiries About SGRC Program (Year 1 and 2 ONLY)						
Number of SGRC Acres Conserved						
Average Price per Conservation Credit						
Low Price for Conservation Credit						
High Price for Conservation Credit						
Residential Units Constructed Using SGRC Credits						
Commercial Square Footage Constructed Using SGRC Credits						
SGRC Credits Extinguished						
Existing Development Allowed						
SGRC Development Allowed						
Variance (Existing v. SGRC Development)						
Additional Staff Comments:						

G. Summary of Public Engagement Process

During the first phases of the TDR Feasibility Study, seven meetings of a Task Force comprised of varied representatives of the Orange County community were used to gain input. Additional interviews were conducted with developers, farmers, and TDR program managers from other parts of the country. The third and final phase, implementation, also used a steering committee, but this committee was comprised of members of various advisory boards already in place in Orange County. Hence, it was dubbed the Joint Advisory Board, or JAB. Three meetings were scheduled to be held with the JAB.

The following are the key public outreach and coordination efforts that were used during the implementation study.

- *Project Website (4-6 updates)*. As in Phases I / II, the project website continued to be updated, as needed. The website contains relevant information and reports emanating from the planning process, which have been few since the program design (and hence administrative design) considered more options than originally conceived.
- *Public Meetings (1)*. The current scope of services called for one more of these open, drop-in style sessions, in addition to the meetings held at the Planning Board and Board of County Commissioner meetings. The Consultant provided three staff people and produce a presentation, display boards and handouts to facilitate discussion at this session.
- *Working Group Meetings (3)*. There were three meetings of the Joint Advisory Board (JAB) scheduled. The purpose of the JAB was to bring together members of the community that are more directly involved in the process and product of any SGRC Program, and to help provide feedback on very specific issues regarding program and administrative design. This is in contrast to the purpose of the appointed TDR Task Force, which brought together a wider variety of stakeholders to examine a broader range of issues related to TDR feasibility.
- *Newsletter (75 copies)*. The Consultant produced a newsletter to illustrate the program design and purpose, once the report and project were completed in a final draft format. Initial newsletters were distributed at a Public Open House, to steering committee members, elected/appointed officials, etc.
- *Miscellaneous Outreach and Coordination*. The Consultant conducted five additional case studies from other, county-based TDR programs around the country and submitted the summary of findings. The Consultant has interviewed people in the development business in Orange County for their viewpoints on specific program and administrative design issues. Frequent telephone calls coordinating the project occurred throughout the project, typically scheduled on Fridays at 11am.

H. SGRC Education and Marketing Plan

The County of Orange wants its citizens and private development community to participate to have the maximum opportunity to participate in the SGRC Program. Since this Program is relatively new not only to Orange County but to North Carolina, there is a need to ensure that the appropriate level of education and awareness is created in the pool of potential participants. The following are recommended actions that can be undertaken to accomplish these objectives.

Focus Groups. Focus groups are readily defined as the convening of between 5 and 15 people that have similar backgrounds or interests relative to the given topic. The meeting duration is typically between two and four hours, and is facilitated by a staff person. The staff will also need to identify participants and introduce them to the topic in advance of the meeting. The meeting space is usually small with a center table, and handouts are kept to a minimal number of words. Issues are identified during the focus group meeting, and suggestions by staff are responded to by the participant. Two focus groups are recommended: one for potential conservation area participants and one for designated growth area participants. Ideally, these focus groups should convene annually or once every two years to help update the SGRC Program and gain an awareness of the perception that the Program has in the minds of its participants and potential participants.

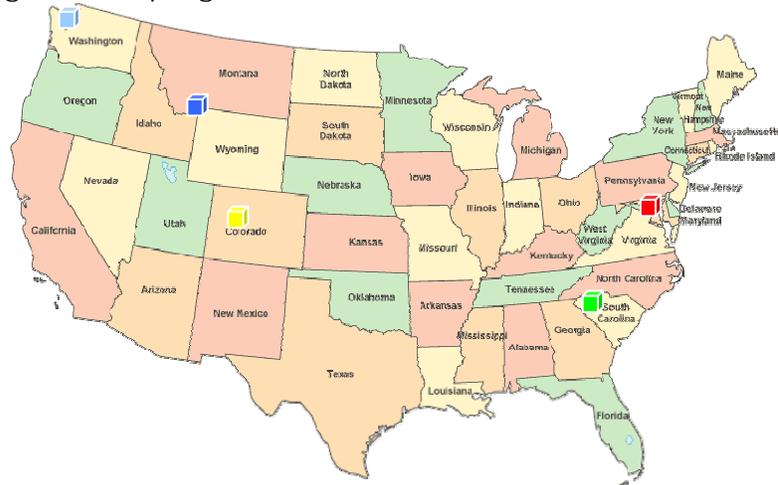
Website. Orange County maintains its own website, a portion of which has been devoted to the SGRC Program. Keeping this portion of the website active is important to the users of the Program, and should be expanded over time to include tracking information as well as any updates to the program or administrative designs. Finally, the lengthy URL for the website could be augmented with an easier-to-remember "mirror" URL address (e.g., "OrangeTDR.org") that forwards the user directly to the correct location of the website files (www.co.orange.nc.us/planning/TDR_files).

Other Mechanisms. Should an additional awareness of the SGRC Program be desired, then the publication of a direct mailer postcard, open house, or public television announcement may be considered.

I. Program Manager Case Studies (Implementation Phase)

The Project Team utilized case studies in the initial feasibility phases of work to help explain key concepts to the Stakeholder Committee and the interested public. During the development of program and administrative design concepts, a second round of case studies was conducted that focused exclusively on county-managed transfer of development right (TDR) programs, especially those that adhered to free-market approaches with limited government intervention between buyers and sellers of development rights. The following five TDR programs are reviewed in this section:

- Island County, WA;
- Gallatin County, MT;
- Pitkin County, CO;
- Greenville County, SC; and
- Talbot County, MD.



The initial selection of which TDR programs to include in the case studies considered a number of general characteristics, which are indicated in the table below. The chart at the right of the table indicates the relative position of Orange County with respect to these indicators (orange line and orange bar).

General Characteristic (2000 data)	Orange County, NC	Island County, WA	Gallatin County, MT	Pitkin County, CO	Greenville County, SC	Talbot County, MD	Comparison
Population	118,227	71,558	67,831	14,872	379,616	33,812	
Labor Force	64,970	34,872	40,064	10,138	197,809	16,883	
Square Miles (Land)	400	208	2606	970	790	269	
Density (Population / Square Miles of Land)	296	343	26	15	480	126	
Growth Rate (1990 - 2000)	26%	19%	34%	18%	19%	11%	
Median Household Income	\$42,750	\$45,557	\$38,235	\$59,629	\$41,313	\$43,829	
College Degree (BA or Higher)	52%	27%	41%	57%	26%	28%	
Drove Alone to Work	70%	74%	71%	51%	82%	79%	

Supplementing these interviews were descriptions of the TDR programs contained in one of two compendiums of TDR program developed by Rick Pruetz, AICP.^{1, 2} Both works by Mr. Pruetz are seminal in terms of explaining the process of developing TDR Programs and providing a compendium of cases of TDR programs in effect across the country.

A number of questions were asked of each of the people that managed or had a strong understanding of the TDR program:

1. Do you have benchmarks for performance of the TDR program? If so, what are they, how easy are they to track, and have you met the benchmarks or raised/lowered them over time?
2. What are TDR credits selling for currently? What degree of density bonus is one credit worth? How are credits awarded in Sending Areas (e.g., one credit per acre, one credit per unit of zoning density, or by a merit-based formula?) What are underlying raw land values (\$/acre) in your RAs? In your SAs?
3. Have you had concerns expressed from property owners living in or near Receiving Areas, and, if so, what steps have been taken to allay concerns of increased densities in Receiving Areas?
4. Have concerns about land prices increasing in Receiving Areas in response to the additional development potential been an issue in your program, and if so, what have you done to mitigate or address the effect?
5. How do you handle highly variable land prices in Sending and Receiving Areas (e.g., proximity to existing urban areas v. rural; areas provided with public water/sewer)? Are there adjustments in credit values that are applied, requirements/recommendations for appraisals? If soils aren't conducive for development (in-ground septic system), then do you adjust the TDR Sending Area credits accordingly? Do you require a "perk" test on soils? Do you increase the value (number of credits) in Sending Areas because some have more intrinsic value to the overall conservation goals of the community (water supply watersheds, historic properties, active farmland)? If you consider environmental factors in your Sending Area calculations, how do you account for streams or other features that influence only a part of a Sending Area in terms of credits generated?
6. Have you encountered any issues with applying conservation easements (e.g., part of a parcel) or enforcement?
7. What measures in terms of pricing structure, program design, or administrative (review) process have you implemented to entice more activity in the TDR program (e.g. streamlined reviews, tax credits for Sending Area participants)?
8. Any additional advice for a new program just starting out?

The following is a brief summary of the highlights of each discussion, preceded by a brief description of the TDR program in each county and case.

¹ Rick Pruetz, AICP, "Saved by Development: Preserving Environmental Areas, Farmland and Historic Landmarks with Transfer of Development Rights." (Burbank, CA: Arje Press, September, 1997).

² Rick Pruetz, AICP, "Beyond Takings and Givings: Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges." (Marina Del Ray, CA: Arje Press, February, 2003).

Island County, Washington. Literally a group of islands in the Puget Sound Region of Washington, Island County discontinued its TDR program in 1995 after 11 years of operation. Low participation rates on the development / receiving side was the primary reason cited, with the result that only 88 acres were preserved. In 1998, the County started another program with significant input from the farming community called the Earned Development Credit (EDC) Program. This program, like TDR, allows farmers (and farmland owners *only*) to create a Farm Management Plan that, when adopted, guarantees that the farm will stay in use according to deed restriction, and that the property owner gets 0.2 EDU credits for every acre preserved. The owner can then sell each EDU credit or, more likely to occur, the owner uses the credit himself to construct on another piece of property elsewhere that he also owns. There are no designated Sending / Receiving Areas, although only areas zoned agricultural can participate (about 80% of the land area of the County).

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Notable Features: Unlike the other examples, the EDU credits can be used for non-residential purposes like churches, country inns, mini-storage facilities, and restaurants, all of which have varying numbers of credits that would be required to develop the particular land use. Like the Orange County SGRC proposal, Island County does not serve as a broker or banker of credits. Unlike the Orange County program, only farmers can participate in generating EDU credits. Strong design guidelines are integral in mitigating density concerns from residents.

Issues: The Island County program does not recognize differing development pressures to adjust its credit ratio, nor does it have established performance benchmarks or a dedicated tracking mechanism. The free market determines the worth of an EDU credit to the seller; however, in all cases thus far, the seller and buyer of credits has been the same person.

Performance:

Years TDR Program in Effect:	TDR in effect 14 years; EDU for 10 years
Number of TDR Credits Created:	160
Acres Conserved:	800

Gallatin County, Montana. The Gallatin area is a gateway into Yellowstone National Park as well as the Bridger Bowl skiing area, both very popular tourist destinations. TDR is used to transfer development rights in only three zoning districts currently, one of which is used primarily to allow higher densities of development closer to popular ski slopes, thereby reducing traffic on local roadways. The main incentive for participating in the program is the high development costs associated with providing roadway access and infrastructure to remote areas within the County. Clustering development is a requirement in two of the three zoning districts, with no more than 10% – 15% of

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available land allowed to be used for development and the remainder preserved through deed restriction. The application of TDRs is handled through the Conditional Use Permit (CUP) process, and at least three of six conditions have to be met: effects on scenic vistas, prime agricultural land, use of woodlands to screen development, minimizing disturbance to natural features, hillside / creekside development, and proximity to existing roads and homes.

Notable Features: In Gallatin County, there is no designated sending or receiving area in the TDR program. Development costs and desirable agglomeration of higher-density residential uses in prime locations are used to drive participation in the TDR program.

Issues: The County is currently discussing modifications to the TDR program to encourage more participation, such as waiving environmental reviews for major subdivisions. The County staff is currently working to expand the program to include more of the County outside of the three zoning districts where TDR is allowed now. A number of improvements, such as accounting for the varying importance of land preservation due to the presence or lack of environmental features and mitigation of receiving area concerns, are being considered for the TDR program. There are no benchmarks or comprehensive tracking mechanism in place now to understand or measure performance.

Performance:

Years TDR Program in Effect:	15
Number of TDR Credits Applied:	Unknown
Acres Conserved:	Approximately 5,000

Pitkin County, Colorado. Home to the extremely popular tourist destinations of Aspen, several ski resorts, and national forests, Pitkin has seen extraordinary development pressures from people wishing to construct large homes in the area. As with Gallatin County,

Montana, the Pitkin County program has a focus on preserving scenic areas, especially those that have had their development potential (and thus value) reduced due to constraints imposed by land use regulations. While TDR credits can be used to create a new development right in the Aspen urban growth boundary, the vast majority of credits are used to allow additional square footage on new or existing homes. In most of the zoning districts where TDR is permitted, house size is limited to 5,000 square feet. A TDR credit is worth an additional 2,500 square feet up to the (typical) maximum of 15,000 square feet. Depending on the underlying zoning district, varying amounts of acreage are required to be preserved in order to generate one credit (10 – 35 acres). Driving the program are (A) the very desirable location of the area; (B) strong zoning and rezoning policies; and (C) the Growth Management Quota System which can be exempted in the presence of a TDR project.

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Notable Features: Like the proposed Orange County SGRC program, Pitkin County does not broker or bank TDR credits, which are traded directly between buyers and sellers. A

one-step special review process for TDR applications is conducted to locate a developable “envelope” on the target property, and to ensure all conditions are met. The Pitkin County program does an outstanding job of tracking the TDR program’s progress on a monthly basis, and uses the following benchmarks in an annual report and assessment to the County Commissioners:

- (1) adequate market / transactions;
- (2) sufficient incentives to create activity in the program;
- (3) are there smooth / efficient provisions in the regulations and process; and
- (4) monthly updates are provided on TDR Certificates Issues; credits extinguished; and acres conserved are recorded.

Issues: The major issue in Pitkin County and the TDR program is the frantic pressure to develop, particularly to develop very large (in excess of 5,000 square feet) homes. This pressure has driven the price of a TDR credit to over \$300,000. The credit is then used to simply add another 2,500 square feet of floor space onto a home, new or existing. The situation has created “instant millionaires”, and has brought into question the transfer credit ratio. However, the TDR program is not blamed for influencing home prices, which are seen to be subject to larger economic forces.

Performance:

Years TDR Program in Effect:	11
Number of TDR Credits Applied:	70
Acres Conserved:	5,358

Greenville County, South Carolina. In 1982 Greenville created a TDR program in response to the high demand for residential development near Paris Mountain, a scenic area in close proximity to downtown. Greenville’s downtown has staged a renaissance in the past decade, and now contains over three million square feet of office space, numerous cultural amenities, and more than 60 restaurants³. TDR was originally created to protect the traffic-carrying capacity of Altamont Road, an approach that determined the amount of development permissible in the Sending Areas to maintain an acceptable level-of-service on the road, and to compensate landowners who saw their land get down-zoned. Eleven principles help shape the TDR program goals, including that each zoning district has its own method for allocating development rights. There are no incentives for the program to succeed.

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Notable Features: Tying the amount of development back to a specific carrying capacity of a piece of public infrastructure (Altamont Road) is novel. The program attempts to compensate landowners who have their properties’ potential development reduced, as well as compensating landowners that have land that is

³ Greenville, SC, USA. 2007 City of Greenville, South Carolina. 29 August 2007. www.greatergreenville.com/development/dtn_map.asp.

compromised by steep slopes and other site constraints. The transfer process is handled almost entirely administratively.

Issues: The TDR program, according to the contact person, has not been a success. The failure is blamed in large measure on the County's inability to consistently track the severance of development rights. Deed modifications have proved to be expensive, and have not been followed-through by county attorneys. The result is that the value of credits, number of acres actually conserved, and amount of transfer activity historically is not known, and the staff does not actively promote the program. Site conditions are not used to adjust transfer ratios, and there are no measures in place to address concerns about increased density in Receiving Areas.

Performance:

Years TDR Program in Effect:	24
Number of TDR Credits Applied:	Approximately 10
Acres Conserved:	Unknown

Talbot County, Maryland. Located in a State that is famous for its purchase of development rights program (the 30-year-old Maryland Agricultural Land Preservation Foundation, or MALPF), Talbot County supplements that effort with its own TDR program. Two district types, both rural conservation districts that together comprise 80% of the land area in the County, offer TDR credits at the rate of one per 20 acres plus three additional dwelling units. Sending areas are typically parks, open space, agricultural, and natural habitat areas. Receiving areas can accept TDR transfers up to one unit per five acres.

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The program is free-market-driven, and land prices have increased in recent years without any influence of TDR. Current discussions about improving the program include requiring benchmarks, better tracking through GIS databases, and program incentives to make TDR more popular and effective. Another change may occur when the County adopts a greenbelt program currently being considered that would designate low-density lands surrounding each town / village; TDR would be used to compensate landowners in the greenbelt areas for down-zoning their properties. The contact noted that the staff feels as if they are still just getting the program really started, even though it has been "on the books" for a decade.

Notable Features: Like some of the other cases, Talbot County's TDR program is free-market-driven, with the County serving in a facilitation, education, and recording capacity. Adjacent Caroline County has changed their position to be more of a broker of TDR credits, and this option is being discussed in Talbot County as well. Receiving Areas were initially assigned to be partitioned among election districts. TDR Receiving Areas / developers are incentivized to cluster developments and can achieve a higher density if they do so.

Issues: The County laments not having gotten the towns involved at the outset, and now wonders what motivation the towns have to participate at this point. The septic capacity of the soils typically limits development to one unit per two acres, which also hinders the TDR program in achieving meaningful density increases in Receiving Areas. In one case, a developer constructed their own private septic system and graywater irrigation system for a 70-unit development. The recent slow-down in the housing market has hurt sales of this development and the participation rates in the TDR program generally.

Performance:

Years TDR Program in Effect:	10
Number of TDR Credits Applied:	75
Acres Conserved:	1,000

Common Findings. Based on the review of these case studies and others, several important findings can be summarized that would affect both program and administrative design aspects of the Orange County SGRC program.

- 1. Create a Tracking Mechanism for Credit Transfers and Program Utilization.** Early benchmarks such as the number of inquiries about the TDR program should be succeeded by performance measures such as the number of credits created / extinguished, number of development units (e.g., homes) created, and acres of land conserved. Pitkin County, Colorado is a standout in this regard, reporting monthly and annually their figures on TDR participation. Greenville County, South Carolina staff cited the lack of an adequate administrative procedure and tracking mechanism as a major flaw with the current program.
- 2. Don't Get Overly Concerned with Inequity Issues.** In all of the cases cited, there was no adjustment for the "quality" of the Sending Area based on the presence or lack of natural, scenic, historic or other features. Most of the contacts when asked the question thought that this would be "a good idea," but none of them were doing it under the current program structure.
- 3. A Non-Broker Role Can Work.** In all of the cases the County had a fairly limited role in credit transactions that did not include acquisition of credits for later extinguishment or sale to development interests. Counties tended towards actions that included program design adjustments, tracking of participation, education, and application of conservation easements, covenants, and deed restrictions to enforce the conservation aspect in Sending Areas.
- 4. Clustering of Development is Important.** Several programs cited that the clustering of development units – the practice of building homes in close proximity to each other and leaving areas of the parcel that have important scenic, environmental, historic, or buffering characteristics undisturbed – was a critical part of the program. Talbot County, Maryland allows a density bonus for clustering in addition to the TDR bonus.
- 5. Land Use Conversions from Residential to Commercial Can be Accomplished.** The Island County, Washington program has assigned a number of credits required to construct a variety of uses that people in the County feel would be beneficial to them from an economic or convenience standpoint, such as "country" inns, restaurants, and so forth.

Glossary of Terms

Conservation Easement, Easement – A conservation easement is a written agreement between a landowner and an organization that restricts the activities that may take place on a property in order to protect the land’s conservation values. Byers and Ponte, “The Conservation Easement Handbook.” 1998.

Conservation Credit, Transfer Credit – Represents the right to sell or purchase one unit of transferable density from a Resource Conservation Area to a Strategic Growth Area.

Purchase of Development Rights – An action or program whereby a landowner sells or donates to a local government or land trust a portion or all of the allowable permissions to construct or physically alter a parcel of land.

Resource Conservation Area – One or more parcels of land that are eligible to sell or donate conservation credits in exchange for limiting the type or density of development that can occur on the parcel(s).

Rural Character – Rural character consists of qualities such as horse farms, lakes, pastures, farms, estates and undisturbed roadsides. Areas contain mature and natural landscape with informal placement of trees and indigenous vegetation is characteristic of the area. Cemeteries and places of historic or architectural significance are preserved and maintained. Fulton County, Georgia

Special Use Permit – A special permit is a discretionary action by the Board of County Commissioners which may modify use, bulk or parking regulations if certain conditions and findings specified in the county zoning regulations are met.

Strategic Growth Area – One or more parcels of land that are eligible to receive one or more transfer credits to construct at a greater density or different type of development than could normally occur on the parcel(s).

Transfer of Development Rights (TDR) – (1) TDR is the exchange of zoning privileges from areas with low population needs, such as farmland, to areas of high population needs, such as downtown areas. (2) TDR is a device by which the development potential of a site is severed from its title and made available for transfer to another location. The owner of a site within a transfer area retains property ownership, but not approval to develop. The owner of a site within a receiving area may purchase transferable development rights, allowing a receptor site to be developed at a greater density. State of California, Office of Planning and Research, *General Plan Guidelines*, 1987. (3) TDR may also represent a single transfer credit.