

A REVIEW OF THE PROPOSED CHEROKEE COUNTY FARMLAND
PRESERVATION PROGRAM ORDINANCE

The proposed ordinance establishes many benefits for participating farmers and other county residents. These benefits include:

- The program preserves and maintains agricultural areas within the county;
- The program informs non-farming neighbors and potential land purchasers that the participating farm may emit noise, dust, and smells (this feature may help avoid conflicts between neighbors and potential nuisance claims);
- The program gives the farming community a better voice in Cherokee County Commissioners decisions affecting farmland;
- Farmer participation in the program is voluntary and the farmer may terminate his/her participation at any time;
- The program requires the Cherokee County Commissioners to use farmland "as a last resort" if they are attempting to condemn county lands;
- The program would provide greenspace and natural resources as the county's population and development expands.

The ordinance document contains several references to North Carolina Statutes. An understanding of the significance of these statutes is very important as you decide whether to join the program.

NCGS 106-735 through 106-743 provide the authority to the Cherokee County Commissioners to implement a Farmland Preservation Program and establishes criteria for the program.

NCGS 105-277.2 through 105-277.7 establish the present-use value taxation program for qualifying farmland.

NCGS 121-35 allows parties to enter into Conservation Agreements. The statute permits either party to enforce the agreement and the parties can determine the expiration of the agreement, which under this ordinance would be a ten year period. In addition, the Cherokee County Farmland Preservation Ordinance specifically allows the farmer to revoke the agreement at any time.

**CHEROKEE COUNTY
FARMLAND PRESERVATION PROGRAM**

**ARTICLE I
TITLE**

This program, adopted by the Board of Commissioners of Cherokee County, North Carolina, shall be known as the Cherokee County Farmland Preservation Program.

**ARTICLE II
AUTHORITY**

The articles and sections of this program are adopted pursuant to the authority conferred by N. C. General Statutes 106-735 through 106-743.

**ARTICLE III
PURPOSE**

The purpose of this program is to promote the health, safety, rural agricultural values, and general welfare of the county, and more specifically, increase identity and pride in the agricultural community and its way of life; encourage the economic and financial health of farming; increase protection from undesirable, non-farm development; and increase the protection of farms from nuisance suits and other negative impacts on properly managed farms.

**ARTICLE IV
JURISDICTION**

The jurisdiction of the Cherokee County Farmland Preservation Program shall be the unincorporated areas of Cherokee County.

**ARTICLE V
DEFINITIONS**

Advisory Board: The Cherokee County Agricultural Advisory Board.

Board of Commissioners: The Board of Commissioners of Cherokee County, North Carolina.

Chairman: Chairman of the Cherokee County Agricultural Advisory Board.

District: A voluntary agricultural district established under the terms and conditions of this program by the Board of Commissioners.

ARTICLE VI
QUALIFICATIONS AND CERTIFICATION OF FARMLAND

Section 600. Requirements

In order for farmland to qualify for participation under the terms of this program, it shall meet the following requirements:

- (1) The farmland shall be real property.
- (2) The farm property shall be participating in the farm present-use-value taxation program established by G. S. 105-277.2 through 105.277.7, or is otherwise determined by the county to meet all the qualifications of this program set forth in G. S. 105-277.3.
- (3) The property is certified by the Natural Resources Conservation Service of the United States Department of Agriculture, in consultation with the Cooperative Extension Service and the Farm Service Agency, as being a farm on which at least two-thirds of the land is composed of soils that:
 - (a) are best suited for providing food, seed, fiber, forage, timber, and horticultural crops, including Christmas trees and ornamentals;
 - (b) have good soil qualities;
 - (c) are favorable for all major crops common to the county where the land is located;
 - (d) have a favorable growing season; and
 - (e) receive the available moisture needed to produce high yields for an average of eight out of ten years.

OR

Soils on which at least two-thirds of the land has been actively used in agricultural, horticultural or forestry operations as defined in G. S. 105-277.2 (1,2,3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies.

- (4) The property, if highly erodible land exists on the farm, is managed in accordance with the Natural Resources Conservation Service defined erosion control practices that are addressed to said highly erodible land.
- (5) The property is the subject of a conservation agreement, as defined in G. S. 121-35, between the county and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten years, except for the creation of not more than three lots that meet applicable county watershed and subdivision regulations, or the regulations of any municipality which apply to the farm property. The property owner may at any time voluntarily revoke this conservation agreement by submitting a written request to the Advisory Board in accordance with Article VIII.

Section 601. Certification

The owner of the farm seeking to qualify his property for participation in the farmland preservation program shall submit written evidence that the property conforms with the requirements of Section 600 of this program. This written information shall be submitted to the Chairman of the Advisory Board or the designated staff person on forms provided by the board. The certification may be submitted at the same time the owner applies for inclusion in a district.

ARTICLE VII APPLICATION, APPROVAL AND APPEAL PROCEDURES FOR VOLUNTARY AGRICULTURAL DISTRICTS

Section 700. Creation of Voluntary Agricultural Districts

In order to implement the purposes stated in Article III, this program provides for the creation of voluntary agricultural districts which meet the following standards:

- (1) The district, when initially established, shall contain a minimum of 20 contiguous acres of qualified farmland, OR, two or more qualified farms which contain a minimum of 20 acres and are located within a mile of each other.
- (2) The landowner(s) requesting inclusion in the district shall execute an agreement with the county to sustain agriculture in the district in accordance with Section 600(5) of this program. Said agreement shall be in a form which is re-

viewed and approved by the Advisory Board.

- (3) For each district created under the terms of this program, one of the existing advisory board members shall be assigned to represent the district.

Section 701. Application to Participate

(1) A landowner may apply to participate in the program by making application to the chairman of the Advisory Board or a designated staff person. The application shall be on forms provided by the Advisory Board. The application to participate in a district may be filed with the certification for qualifying farmland.

Section 702. Approval Process

Upon review by the staff of the written certification and application submitted by the property owner, the Advisory Board shall meet within 90 days to approve or disapprove the application. The chairman shall notify the applicants by first class mail of said approval or disapproval of participation in the district.

Section 703. Appeal

If an application is denied by the Agricultural Advisory Board, the petitioner has 30 days to appeal the decision to the Cherokee County Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

ARTICLE VIII REVOCATION OF CONSERVATION AGREEMENTS

By written notice to the Advisory Board, a landowner of qualifying farmland may revoke the preservation agreement formulated pursuant to Section 600(5) of this program, or the Advisory Board may revoke same preservation agreement based on noncompliance by the landowner. Such revocation shall result in loss of qualifying farm status, and consequently, loss of eligibility to participate in a voluntary agricultural district and benefits thereof. If a portion of a district is removed for any reason after being established by this program, the remaining qualified farms may remain in the program, provided they meet all other requirements except the minimum area requirements of Section 700(1).

ARTICLE IX
AGRICULTURAL ADVISORY BOARD

Section 900. Creation

In accordance with N. C. G. S. 106-739, the Board of Commissioners hereby establishes an Agricultural Advisory Board to implement the provisions of this program.

Section 901. Appointments and Membership

The Agricultural Advisory Board shall consist of 5 members approved by the Cherokee County Board of Commissioners.

(1) Requirements

- (a) Each board member shall be a Cherokee County resident.
- (b) All members shall be actively engaged in farming.
- (c) The 5 members actively engaged in farming shall be selected for approval by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Soil and Water Conservation District, the Cooperative Extension Service, Farm Service Agency Committee and the Cherokee County Farm Bureau, with an effort to have the broadest geographical representation possible.

(2) Tenure

The members are to serve for terms of three years, except that the initial board is to consist of 1 appointee(s) for a term of one year, 2 appointees for terms of two years, and 2 appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointments permitted.

(3) Vacancies

Any vacancy on the Agricultural Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term, from the names of individuals submitted to the Board of Commissioners by the Soil and Water Conservation District, the Cooperative Extension Service, the Farm Service Agency Committee and the Cherokee County Farm Bureau.

(4) Removal for Cause

Any member of the Agricultural Advisory Board may be removed for cause by the Board of Commissioners upon written charges brought by the Advisory Board and after a public hearing.

Section 902. Procedures

The Advisory Board shall adopt rules of procedure which are consistent with the enabling legislation and other applicable statutes.

Section 903. Duties

The Agricultural Advisory Board shall:

- (1) Review and approve applications for qualified farmland and voluntary agricultural districts.
- (2) Hold public meetings pursuant to Article X of this program.
- (3) Advise the Board of Commissioners on projects, programs or issues affecting the agricultural economy or activities within the county and that will affect agricultural districts.
- (4) Perform other related tasks or duties assigned by the Board of Commissioners.

ARTICLE X
PUBLIC HEARINGS ON CONDEMNATION OF FARMLAND

Section 1000. Purpose

Pursuant to N. C. G. S. 106-740, which provides that no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed condemnation. This section provides the procedures for such hearings.

Section 1001. Procedures

- (1) Establish Public Hearing. Upon receipt of a request for a public hearing, the Agricultural Advisory Board shall have 30 days to set a date for a public hearing on the proposed condemnation pursuant to N. C. G. S. 106-740. No formal initiation of condemnation shall be initiated while the proposed condemnation is properly before the board within the time limitations set forth in this section.
- (2) Notice of Public Hearing. The Advisory Board shall run a notice of the public hearing in a newspaper having general circulation in Cherokee County at least 10 days prior to the date established for the hearing. The notice shall contain the date, time and place of the hearing and shall provide the name of the agency requesting the hearing and the purpose of the condemnation.
- (3) Public Hearing. The Advisory Board shall conduct the public hearing and receive information and comments from the agency requesting the condemnation action and the citizens of Cherokee County. In addition, the board shall review the following:
 - (a) Has the need for the project requiring the condemnation been satisfactorily established by the agency requesting the action?
 - (b) Has a financial impact analysis been conducted by the agency seeking the action?
 - (c) Have alternatives been considered to the proposed action that are less disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place?

The Advisory Board shall consult with the county Cooperative Extension Agent, USDA/Natural Resources Conservation Service, Cherokee County Farm Bureau, the Farm Service Agency, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Advisory Board's review of the proposed action.

- (4) Findings and Notification. Within 10 days after the public hearing, the Advisory Board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be conveyed to the decision-making body of the agency proposing acquisition and made available to the public for comment.

ARTICLE XI
LAND USE INCENTIVES TO VOLUNTARY
AGRICULTURAL DISTRICT FORMATION

Section 1100. Purpose

The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between voluntary agricultural district participants and non-farm landowners in proximity to districts.

Section 1101. Procedure for Notification

The Advisory Board, in cooperation with the county, shall provide notification to property owners, residents, and other interested persons in and adjacent to any designated agricultural district. The purpose of such notification is to inform all current and potential residents and property owners in and adjacent to an agricultural district, that farming and agricultural activities may take place in this district any time during the day or night. These activities may include, but are not limited to the following: pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, and similar activities.

(1) Types of Notification

- (a) Signs identifying approved agricultural districts shall be placed along the rights-of-way of major roads.
- (b) Maps identifying approved districts shall be provided to the Register of Deeds office, the Natural Resources Conservation Service office, the Cooperative Extension Service office, the Farm Service Agency office and the Inspections Department.

- (c) The following notice shall be made available to everyone recording a deed or plat with the Register of Deeds:

NOTICE TO REAL ESTATE PURCHASERS IN CHEROKEE COUNTY/CHEROKEE COUNTY AGRICULTURAL DISTRICTS
Cherokee County has established agricultural districts to protect and preserve agricultural lands and activities. These districts have been developed and mapped by the county to inform all purchasers of real property that certain agricultural activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, and similar activities may take place in these districts any time during the day or night. Maps and information on the location and establishment of these districts can be obtained from the Cooperative Extension office and the Register of Deeds office.

Section 1102. Expenditure of County Funds for Non-Farm Uses

Prior to expending any monies which would convert land in a voluntary agricultural district to non-farm uses, the county or any other local unit of government shall submit to the Advisory Board that said governmental unit has considered alternatives. Such consideration shall include the criteria listed in Article X, Section 1001(3), (a) through (c).

Section 1103. No Districts in Designated Growth Corridors

Agricultural districts will not be permitted in designated growth corridors, as delineated on the official county planning map. Districts located in growth corridors designated after the effective date of this program may remain, but shall not be expanded within the growth corridor area.

ARTICLE XII
NORTH CAROLINA AGENCY NOTIFICATION

Section 1200. Consultation with N. C. Dept. of Agriculture and Other Agencies

The Advisory Board shall consult to the degree possible with the Cooperative Extension Service, Natural Resources Conservation Service, Farm Service Agency, N. C. Dept. of Agriculture, Cherokee County Farm Bureau and any other such agency the Advisory Board deems necessary to properly conduct its business.

Section 1201. Recording the Program

An official copy of this program shall be recorded with the North Carolina Commissioner of Agriculture's office after adoption. At least once a year, the county shall submit a written report to the Commissioner of Agriculture, including the status, progress and activities of the county's farmland preservation program, and voluntary agricultural districting information regarding:

- (1) Number of landowners enrolled
- (2) Number of acres applied
- (3) Number of acres certified
- (4) Number of acres denied
- (5) Date certified

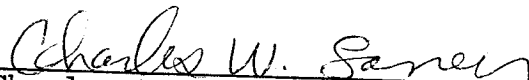
ARTICLE XIII
ENACTMENT

The Cherokee County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this program.

Adopted this the 5th day of December, 1995.

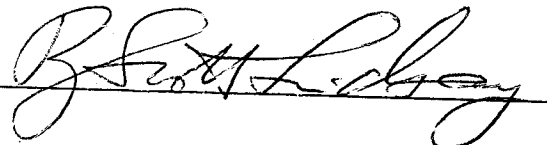
Motion for adoption by Charles Laney,

and seconded by George Postell.

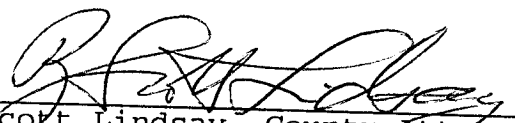


Charles Laney, Chairman
Cherokee Co. Brd. of Commissioners

Attest:


_____, Clerk

Approved as to form:



Scott Lindsay, County Attorney

APPLICATION FOR
AGRICULTURAL DISTRICT FOR FARMLAND PRESERVATION
CHEROKEE COUNTY, N.C.

Name: _____

Address: _____

Town: _____ State: _____ Zip Code: _____

Phone Number: _____ Location: _____

Qualifying Requirements and Information Required

To qualify as **farmland**, a farm must generate gross farm income of \$1,000 per year from silviculture (20 acres), or agriculture (10 acres) or horticulture (5 acres), and/or have a certified forest management plan on a minimum of 20 acres.

To be qualified as an **agricultural district**, one or more farms totaling 20 acres in size within a one mile radius of each other.

Horticultural land: _____ Acres Wood land: _____ Acres

Crop land (row crops, hay and pasture): _____ Acres

Is land approved for Land Use Valuation Program? Yes (attach copy) No
List Map Number _____ List Tract Number _____ List Pin Number _____

Do you have a Natural Resource Conservation Plan on file with NRCS for this farm?
 Yes (attach copy) No

If applying under Silviculture, do you have a Woodland Management Plan on file with the NC Forest Service for this farm? Yes (attach copy) No

Both the NRC plan and the Woodland plan must be attached if the tract includes both.

From CFSA, attach copy of aerial photo and certification of cropland and pasture acreage.

This application is for (select one)

agricultural _____ horticultural _____ forestland _____

If the applicant is an individual or partnership, does the applicant or one of the partners reside on the property? yes ___ no ___

If the answer to the above question is no, how long has the property been owned by the applicant or a qualifying relative? _____

If the applicant is a corporation, how long has the property been owned by the corporation or by one or more of its principal stockholders? _____

If the applicant is a corporation, list the names, shares of ownership and principal occupations of all stockholders. (You may use back of sheet also)

Name	No. of Shares	Occupation
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If the applicant is a corporation, state whether its principal activity is
agricultural ___ horticultural ___ forestry ___ other ___ (specify) _____

(This section to be completed by the Agricultural Advisory Board)

Verification of Eligibility for Membership in the Farmland Preservation Program

Date application received: _____

District: _____

Acreage: _____

Map No: _____

Tract No: _____

Pin No: _____

Date Approved for Land Use Valuation Program: _____

Natural Resource Conservation Plan on file with SCS: _____

Woodland Management Plan on file with FS: _____

Date Approved: _____

Date Approval Letter Sent: _____

Remarks: _____

Preservation Agreement

I (we) the undersigned declare that this and any attachments herto have been examined by me (us) and to the best of my (our) knowledge and believe are true and correct. In addition, I (we) also understand that the agricultural, horticultural, or forest tract(s) covered by this application must continue to be actively engaged in the commercial production of agricultural, horticultural, or forest products, and must continue to meet this minimum income requirement to remain eligible for participation in the Farmland Preservation Program. Further, I (we) the landowner hereby agree(s) that if this tract is accepted into the Cherokee County Agricultural Districts program that the tract will not be converted to non-farm or development use for a period of at least 10 years (except for the creation of immediate family home sites) and to practice natural resource conservation on my (our) land.

NOTE: This Preservation Agreement may be revoked by written notice to the Cherokee County Agricultural Advisory Board.

Signature for Preservation Agreement: _____

Date: _____

**What restrictions will be placed
on my farm if I join the program?**

The Farmland Preservation Program members will be the subject of a conservation agreement between the County and the landowner that prohibits non-farm use or development of that land for a period of at least 10 years. The conservation agreement, however, will allow the development for immediate family homes on participating farms included in a District.

**What happens if I want to remove
all or part of my land from the
program?**

A landowner in the Farmland Preservation Program may remove all or a portion of his/her land from the Farmland Preservation Program by giving written notice to the Agricultural Advisory Board. This revocation will result in loss of eligibility for the parcel to participate in a voluntary agricultural district as well as loss of associated benefits. If a portion of the land is removed from the program, the remaining land must meet the program conditions and qualifications for the farm to continue in the program.

**FARMLAND
PRESERVATION
PROGRAM**

**CHEROKEE COUNTY
NORTH CAROLINA**

IN COOPERATION WITH:

**CHEROKEE CO. NORTH CAROLINA
BOARD OF COMMISSIONERS**

**CHEROKEE NATURAL RESOURCES
CONSERVATION DISTRICT**

**NORTH CAROLINA
COOPERATIVE EXTENSION
SERVICE**

**CHEROKEE COUNTY AGRICULTURAL
ADVISORY BOARD**

**CHEROKEE COUNTY
AGRICULTURAL COMMUNITY**

What is the Farmland Preservation Program?

The purpose of the Farmland Preservation Program is to encourage the voluntary preservation and protection of farmland from non-farm development. This is in recognition of the importance of agriculture to the economic and cultural life of the country.

The General Assembly of the State of North Carolina authorized counties to undertake a series of programs to encourage the preservation of farmland. This statutory authority is found in Chapter 106, Article 61 of the North Carolina General Statutes.

The ordinance provides for the creation of an Agricultural Advisory Board to administer this program. The Board will review and approve applications for qualifying farmland as well as establishing voluntary agricultural districts.

Who are the members of this Agricultural Advisory Board?

The Board is composed of five County residents. Three of the board members are required to be actively engaged in farming. Members are selected from a list of names submitted to the County Commissioners. Assistance is provided by the Clay County Natural Resource Conservation District, Cooperative Extension Service and the USDA.

Requirements

To be qualified as farm land, a farm must generate gross farm income of \$1,000 per year from agriculture, horticulture, silviculture, aquaculture and/or have a certified forest management plan on a minimum of 20 acres.

An agricultural district will consist of at least 40 acres of qualifying farmland, individually or separately owned, which are located within one mile of each other. Participating landowners will sign an agreement to sustain, encourage and promote agriculture. A complete list of requirements is available from the agencies on the back of this brochure.

What will joining the Farmland Preservation Program do for me?

As part of the Farmland Preservation Program, public hearings will be required on a proposed condemnation by state or local public agencies. Landowners in certified districts will not be required to connect to water and/or sewer systems or be assessed water and sewer charges until that property is connected to such services.

This program will help increase the identity and pride in the agricultural community and its way of life. Members of Farmland Preservation will have increased protection from nuisance suits and other negative impacts on participating farms. Maps designating participating farms that form Agricultural Districts will be posted in appropriate county offices.

For more information please contact:

Cherokee Natural Resource Conservation District
115 Peachtree St.
Murphy, NC 28906
837-6928

North Carolina Cooperative Extension Service
115 Peachtree St.
Murphy, NC 28904
837-2210

Consolidated Farm Service Agency
P.O. Box 335
Hayesville, NC 28904
389-6301

Agricultural Advisory Board:

Keith Wood, Chairman

Mae Clay

Tim Davis

Tommy McGuire

Randolph Shields