

executed ordinance

**HENDERSON COUNTY**  
**VOLUNTARY FARMLAND**  
**PRESERVATION ORDINANCE**

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HENDERSON COUNTY VOLUNTARY  
FARMLAND PRESERVATION PROGRAM ORDINANCE

Article I. Purpose

The purpose of this ordinance is to encourage the voluntary preservation and protection of farmland from non-farm development, recognizing the importance of agriculture to the economic and cultural life of the County.

Article II. Enactment

Pursuant to authority conferred by North Carolina General Statute 106-735 through 106-743, and for the purpose of promoting the health, safety, morals and general welfare of Henderson County, the Board of Commissioners of Henderson County, North Carolina does enact the following sections, which shall be known as the VOLUNTARY FARMLAND PRESERVATION PROGRAM ORDINANCE of Henderson County, North Carolina.

Article III. Definitions

The following terms are defined for purposes of this ordinance:

Board : Henderson County Agricultural Advisory Board  
Board of Commissioners : Henderson County Board of Commissioners  
Chairman : Chairman of the Agricultural Advisory Board  
District : Voluntary agricultural district

Article IV. Agricultural Advisory Board

Section 401. CREATION

A County Agricultural Advisory Board, to consist of five (5) members appointed by the Board of Commissioners, is hereby established.

Section 402. MEMBERSHIP

(402.1) Each Board member shall be a resident of Henderson County

(402.2) Three of the five members should be actively engaged in farming and they may be selected for appointment by the Board of Commissioners from a list of possible candidates submitted to the Board of Commissioners by: the Henderson County Soil and Water Conservation District, the Cooperative Extension Advisory Council and the Agricultural Stabilization Conservation Service Committee. Appointments should be made with an effort to have the broadest geographical representation possible.

(402.3) All members are to serve for terms of four years, except that the initial Board is to consist of one appointee for a term of two years; two appointees for terms of three years, and two appointees for terms of four years. Thereafter, all appointments are to be for terms of four years, with reappointments permitted.

(402.4) Any vacancy on the Agricultural Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term.

(402.5) Any member of the Agricultural Advisory Board may be removed with or without cause by the Board of Commissioners.

#### Section 403. PROCEDURE

(403.1) The Board is to elect a chairman and vice-chairman each year at its first meeting of the fiscal year. The Chairman shall preside over all regular or special meetings of the Board. The Board shall adopt its own by-laws and such by-laws or amendments thereto must be approved by the Henderson County Board of Commissioners.

(403.2) The Board will use the county fiscal year as its meeting year. Meetings of the Board shall be publicized and conducted in accordance with provisions of the North Carolina Open Meetings Law. Such meetings shall be held at the call of the Chairman and at such other times as the Board in its rules of procedure may specify.

(403.3) The Board shall keep minutes of the proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. The Board shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(403.4) The Henderson County Agricultural Advisory Board shall contract with the Soil and Water Conservation District Office to serve the Board for record keeping, correspondence, application procedures under this ordinance and whatever other services the Board needs to complete its duties.

Section 404. DUTIES

The Agricultural Advisory Board shall:

(404.1) Review and approve applications for qualified farmland and voluntary agricultural districts and make recommendations concerning the establishment and modification of agricultural districts;

(404.2) Hold public hearings pursuant to Article VIII of this ordinance;

(404.3) Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy or activities within the county that will affect agricultural districts;

(404.4) Perform other related tasks or duties assigned by the Board of Commissioners.

(404.5) Each district shall be assigned to a member of the Board who shall monitor and represent that district in all business conducted by the Board. Individual members will represent those districts closest to them geographically. No member will represent more than 30% of the total number of districts in the County or 30% of total land area.

Article V. Application for Voluntary Agricultural Districts

Section 501. PURPOSE

The purpose of voluntary agricultural districts formed by landowners shall be to encourage the economic and financial well being of farming areas, to increase protection from nuisance suits, undesirable non-farm development and other negative impacts on participating farms, and to increase the identity and pride in the agricultural community and its way of life.

Section 502. PROCEDURE

(502.1) An agricultural district shall initially consist of at least 200 or more contiguous acres or more of qualifying farmland, or at least five (5) qualifying farms, which collectively will create a district with each said farm lying within one mile of any another such farm. An agricultural district may be enlarged by adding qualifying farms subsequent to initial formation.

(502.2) An agreement to sustain, encourage and promote agriculture must be executed by each applicant in the district and submitted to the Agricultural Board for approval.

(502.3) Landowners may apply to participate in existing districts and are encouraged to do so.

(502.4) To secure County certification as an agricultural district a landowner for such designation will apply to the Chairman of the Agricultural Advisory Board. Application forms may be obtained from the Chairman, at the Soil and Water Conservation District Office or at the office of the Henderson County Planning Department.

(502.5) Upon receipt of an application, the Chairman will forward copies immediately to:

- (a) The Henderson County Tax Assessors Office and,
- (b) The Henderson County Soil and Water Conservation District Office for their evaluation pursuant to Article VI. The said offices shall evaluate, complete and return their copies to the Chairman within 30 days of receipt.

(502.6) Within 30 days of receipt of respective reports from the County Tax Assessor and the Soil and Water Conservation District Office, the Board will meet and render a decision regarding the application. The chairman will notify the applicant by mail of the Board's decision.

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

#### Section 503. PUBLIC NOTICE

Voluntary agricultural districts will be marked on official maps maintained by the Henderson County Soil and Water Conservation District Office and displayed for public view in the following county offices:

- (a) Registrar of Deeds
- (b) Code Enforcement
- (c) Tax Supervisor
- (d) Soil and Water Conservation District
- (e) Cooperative Extension
- (f) Land Records Office
- (g) Any other office deemed necessary by the Board of Commissioners

Section 504. SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW

Developers of major subdivisions or planned unit developments shall designate on preliminary development plans, the existence of voluntary agricultural districts within one half mile of the proposed development.

Section 505. PUBLIC INFORMATION

The County may take such action as it deems appropriate through the Agricultural Advisory Board or other body or individual to encourage the formation of voluntary agricultural districts and to further their purposes and objectives, including a public information program to reasonably inform landowners of the farmland preservation program.

Article VI. Certification for Qualifying Farmland

Section 601. REQUIREMENTS

To secure County certification as qualifying farmland, a farm must:

(601.1) be participating in the farm present-use-value taxation program established by G.S. 105-277.2 through 105-277.7 or be otherwise qualified by the County to meet all the requirements of this program set forth in G.S. 105-277.3; and

(601.2) be certified by the Soil Conservation Service of the United States Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that:

(a) have 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, or are farms that:

(b) meet all the following:

- (1) are best suited for providing food, seed, fiber forage, timber, and oil seed crops,
- (2) have good soil qualities,
- (3) are favorable for all major crops common to the county where the land is located,
- (4) have a favorable growing season, and
- (5) receive the available moisture needed to produce high yields for an average of 8 out of 10 years; and

(601.3) be managed, if highly erodible land exists on the farm, in accordance with Soil Conservation Service defined erosion-control practices that are addressed to said highly erodible land; and,

(601.4) be the subject of a preservation 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 (10), except for the creation of not more than three lots that meet applicable County zoning and subdivision regulations.

## Section 602. APPLICATION

A landowner may apply to the Chairman for such certification at the same time he applies for approval as a agricultural district.

## Article VII. Revocation of Preservation Agreement

By written notice to the Board, a landowner of qualifying farmland may revoke the preservation agreement formulated pursuant to Article V of this ordinance, or the Board may revoke same preservation agreement based on non-compliance by the landowner. Such revocation shall result in loss of eligibility to participate in a voluntary agricultural district.

## Article VIII. PUBLIC HEARINGS

### Section 801. 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 local agricultural advisory board to hold a public hearing on the proposed condemnation, this section provides for such hearings. This ordinance shall not be interpreted or construed to limit the County's authority to acquire land within or outside a voluntary agricultural district for a public purpose, whether by purchase or condemnation.

### Section 802. PROCEDURE

(802.1) Upon receiving a request for condemnation, the Agricultural Advisory Board shall, within two (2) days, publish a notice in newspaper having general circulation in Henderson County, describing the proposed condemnation.

The notice shall state the time, date, and location of the public hearing on the proposed condemnation. Such hearing shall be held within 14 days of receipt of the request.

(802.2) The Board will meet to review:

- (a) if the need for the condemnation has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency involved; and
- (b) alternatives to the proposed condemnation that are less disruptive and of less impact to the agricultural activities and farm land base of the voluntary agricultural district within which the condemnation action is to take place.

(802.3) The Board will consult with the County Cooperative Extension Service, U.S.D.A. Soil Conservation Service, and may consult with any other individuals, agencies, or organizations, public or private, necessary to the Board's review of the proposed condemnation.

(802.4) Within ten days after the public hearings, the Board will make a report containing its findings and recommendations regarding the proposed condemnation. The report will be made available to the public for comment prior to its being conveyed to the decision-making body of the agency proposing condemnation.

(802.5) Pursuant to N.C.G.S. 106-740, the County will not, within its scope of authority, permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the advisory board within these time limitations.

## Article IX. SPECIAL REQUIREMENTS

### Section 900. PURPOSE

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

### Section 901. PROCEDURE

(901.1) Voluntary agricultural districts will not be permitted in designated county growth areas, as delineated in the most recently adopted County Land Use Plan, such plan being adopted after the effective date of this ordinance.

(901.2) The Board shall consult as much as possible with the North Carolina Department of Agriculture, the North Carolina Division of Soil and Water Conservation and any other entity the Board deems necessary to the proper conduct of its business.

(901.3) A copy of this ordinance 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 Office indicating the status, progress and activities of the County's farmland preservation program, including voluntary agricultural districting information regarding:

- (a) Number of landowners enrolled
- (b) Number of acres applied
- (c) Number of acres certified
- (d) Number of acres denied
- (e) Date each agricultural district was certified

(901.4) Copies of the reports cited in Section 901.3 of this Ordinance will be sent to:

- (a) N.C. Commissioner of Agriculture
- (b) N.C. Department of Transportation
- (c) N.C. Department of Commerce
- (d) Hendersonville Chamber of Commerce
- (e) Any other entities the Board deems appropriate


(901.5) At such time as Henderson County has a computerized land records system, it shall be required that such records include some form of notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of a poultry, swine, or dairy qualifying farm or within 600 feet of any other qualifying farm or within one-half mile of a voluntary agricultural district.


Article X. Effective Date.

This ordinance shall be effective from the date of its passage, this the 18th day of December, 1991.

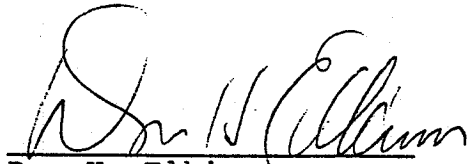
ATTEST:

HENDERSON COUNTY BOARD OF  
COMMISSIONERS

  
Avalina Merrill,  
Acting Clerk

  
J. Michael Edney, Chairman

APPROVED AS TO FORM:

  
Don H. Elkins,  
County Attorney

**HENDERSON COUNTY, NORTH CAROLINA  
AGRICULTURAL ADVISORY BOARD**

**ARTICLE I. GOVERNANCE AUTHORITY**

The Henderson County Agricultural Advisory Board (hereinafter "Advisory Board") shall be governed by the terms of Sections 106-735 through 106-743 of the General Statutes of North Carolina, and by the terms of the Henderson County, North Carolina, Farmland Preservation Program Ordinance enacted by the Board of Commissioners of Henderson County (hereinafter "Board of Commissioners") on the 18th day of December, 1991, and any amendments thereto. All Advisory Board members shall thoroughly familiarize themselves with the provisions of the Statute and Ordinance.

**ARTICLE II. MEMBERSHIP**

- A. Composition of Board - The Advisory Board shall consist of five members. Each member must be appointed by the Henderson County Board of Commissioners. Each member must be a resident of Henderson County.
- B. Active Participation in Farming - Three (3) of the five (5) members must be actively engaged in farming and may be appointed from a list submitted by the Henderson County Soil and Water Conservation District, the Cooperative Extension Advisory Counsel and the Agricultural Stabilization Conservation Service Committee.
- C. Term of Service - The term of service for members of the first Advisory Board formed pursuant to the Henderson County Farmland Preservation Ordinance shall be as stated in such ordinance. For every subsequent Advisory Board member the term of service shall be four years. Where a member is removed, resigns or is otherwise unable to continue serving on the Advisory Board, any person appointed by the Board of Commissioners to replace the exiting member shall serve the remainder of the exiting member's term of service. Any member of the Advisory Board may be reappointed to subsequent terms of service.
- D. Removal - Any member may be removed by the Board of Commissioners with or without cause. The Advisory Board may request to the Board of Commissioners that a member be removed for inefficiency, neglect of duty, or malfeasance in office. The membership of any Advisory Board member who is absent from three (3) consecutive meetings shall be automatically terminated, unless such absence is excused by the entire Advisory Board for good and sufficient cause.

### ARTICLE III. OFFICERS

- A. Election of Officers - The Advisory Board shall organize and elect a Chairman, and Vice-Chairman annually at the first meeting of the fiscal year. The meeting year shall be the County's fiscal year. These officers shall be eligible for re-election.
- B. Chairman - The Chairman shall preside at all meetings and public hearings of the Advisory Board; shall decide on all matters of order and procedure; and shall appoint any committees found necessary to investigate those matters before the Advisory Board or to perform any of its duties.
- C. Vice-Chairman - The Vice-Chairman shall assume the duties of the Chairman in his absence.
- D. Administrative Assistance - The Advisory Board shall contract with the Soil and Water Conservation District Office to serve the Advisory Board for record keeping, correspondence, application procedures and whatever other services the Board needs to complete its duties.

### ARTICLE IV. MEETINGS

- A. Regular Meetings - Regular meetings of the Advisory Board shall be held monthly on the fourth Wednesday of the month at twelve o'clock (12:00 p.m.) noon in the offices of the Henderson County Soil and Water Conservation District. The regular meeting time or place may be changed in accordance with Paragraph H, below. The Chairman shall have the authority to change the meeting time or place for a particular meeting, where necessary. All meetings shall be publicized in accordance with the North Carolina Open Meetings Law.
- B. Special Meetings - Special meetings of the Advisory Board may be called at any time by the Chairman, provided that at least a forty-eight (48) hours notice is given to each member.
- C. Quorum - A quorum shall consist of three (3) members.
- D. Conduct of Meetings - All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) Determination of a quorum; (b) Approval of the minutes; (c) Discussion/adjustment of agenda; (d) Public hearings; (e) Reports of committees; (f) Old business; (g) New business; (h) Adjournment.
- E. Length of Meetings - The meetings of the Advisory Board shall be limited to two hour duration unless extended by

- a majority vote of the Board for a specified time period.
- F. Minutes of Meeting - Minutes shall be kept for each meeting. The minutes shall reflect the vote of each member upon each question or if absent or failing to vote, noting such fact.
- G. Vote - The vote of the majority of those members present shall be sufficient to decide matters before the Advisory Board, provided a quorum is present.
- H. Change of By-Laws - The regular meeting time or place may be changed by an affirmative vote of the majority of the Advisory Board members present, assuming a quorum is present. Any other changes or amendments to the Bylaws must be approved by the Henderson County Board of Commissioners.
- I. Cancellation of Meetings - Whenever there is no business for the Advisory Board, the Chairman may dispense with a regular meeting by giving notice to all members not less than forty-eight (48) hours prior to that time set for the meetings.

#### ARTICLE V. DUTIES OF THE ADVISORY BOARD

Duties of the Advisory Board shall be carried out in accordance with the policies and procedures as set forth in the Henderson County Voluntary Farmland Preservation Ordinance and the North Carolina General Statutes Sections 106-735-106-744.

- A. Annual Report - The Advisory Board shall prepare an annual written report for the Board of Commissioners indicating the status, progress and activities of the County's farmland preservation program, including voluntary agricultural districting information regarding:
- (a) Numbers of landowners enrolled
  - (b) Number of acres applied
  - (c) Number of acres certified
  - (d) Number of acres denied
  - (e) Date each agricultural district was certified

The purpose of this annual report will be to assist the Board of Commissioners in the preparation of the annual report for the Commissioner of Agriculture Office as indicated in Section 901.3 of the Henderson County Farmland Preservation Ordinance.

- B. Other Duties - Pursuant to the Henderson County Farmland Preservation Ordinance, Section 404 entitled "Duties",

the Advisory Board shall:

- (a) Review and approve applications for qualified farmland and voluntary agricultural districts and make recommendations concerning the establishment and modification of agricultural districts;
- (b) Hold public hearings pursuant to Article VIII of the Henderson County Farmland Preservation Ordinance.
- (c) Perform other related tasks or duties assigned by the Board of Commissioners.
- (d) Each district shall be assigned to a member of the Board who shall monitor and represent that district in all business conducted by the Advisory Board. Individual members will represent those districts closest to them geographically. No member will represent more than thirty percent (30%) of the total number of districts in the County or thirty percent (30%) of the total land area.

#### ARTICLE VI. RECORDS

- A. The Advisory Board shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Advisory Board.
- B. The Advisory Board shall keep and maintain a minute book in the office of the Advisory Board. Such minute book shall contain the minutes from every meeting or public hearing conducted by the Advisory Board.
- C. All records and minutes of the Advisory Board shall be public record.

The above By-Laws have been duly adopted by the Henderson County, North Carolina Agricultural Advisory Board.

This the 28th day of October, 1992.

Donald Ward  
Chairman of Advisory Board

Sharon Maslen  
Vice-Chairman of Advisory Bd.

APPROVED:

Attest:

THE HENDERSON COUNTY  
BOARD OF COMMISSIONERS

*Elizabeth W. Corn*  
Clerk to the Board

COPY

*J. Michael Edney*  
J. Michael Edney, Chairman,  
Henderson County Board of  
Commissioners