

ARTICLE III. VOLUNTARY AGRICULTURAL DISTRICT AND ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS

Sec. 15-57. **Title.**

An ordinance of the Board of County Commissioners of Guilford County, NORTH CAROLINA, entitled, "VOLUNTARY AGRICULTURAL DISTRICT AND ENHANCED VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE."
(Draft 8-12-2010)

Sec. 15-58. **Authority.**

This article is adopted pursuant to authority conferred by G.S. 106-735 through 106-743 and other applicable law.

Sec. 15-59. **Purpose.**

The purpose of this article is to promote the preservation of farmland in Guilford County so that development and growth will be accompanied by protection of farms from non-farm development and other negative impacts on properly managed farms, recognizing the importance of agriculture to the economic and cultural life of the county.

Sec. 15-60. **Definitions.**

The following are defined for purposes of this article:

Board: means the Guilford County Agricultural District Advisory Board.

Board of Commissioners: the Guilford County Board of Commissioners.

Chair: means the Chairman or Chairwoman of the Guilford County Agricultural District Advisory Board.

District: means a Voluntary Agricultural District.

Enhanced District: means an Enhanced Voluntary Agricultural District.

Sec. 15-61. **Agricultural district advisory board.**

- (a) *Creation.* The Board of Commissioners hereby establishes the Guilford County Agricultural District Advisory Board to implement the provisions of this article.
- (b) *Membership.* The board shall consist of seven members appointed by the board of commissioners.
- (c) *Membership requirements.*

- (1) Each member shall be a Guilford County resident.
 - (2) At least five of the seven members shall be actively engaged in farming or own qualifying farmland in Guilford County.
 - (3) The members actively engaged in farming shall be selected for appointment from the names of individuals submitted by the Soil and Water Conservation District, the Natural Resources Conservation Service, the Cooperative Extension Service, the Farm Service Agency, and the Guilford County Farm Bureau with an effort to have the broadest geographical representation possible.
 - (4) One member shall be a non-farm member, and one member shall also be a Guilford County Commissioner who shall serve as a voting Ex officio member.
- (d) *Tenure.* The initial board is to consist of three members for terms of one year; two members for terms of two years; and two members for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointment permitted for a maximum of two consecutive terms. Members shall serve at the pleasure of the board of commissioners.
- (e) *Vacancies.* Any vacancy on the board is to be filled by the board of commissioners for the remainder of the unexpired term.
- (f) *Funding.* The compensation of the members of the advisory board shall be fixed and amended by the board of commissioners and funds shall be appropriated to the Board to perform its duties.
- (g) *Board procedure.*
- (1) *Board year.* The board shall use the Guilford County fiscal year as its meeting year.
 - (2) *Chair.* The board shall elect a chair and vice-chair each year at its first meeting of the year. The chair shall preside over all regular or special meetings of the board. In the absence or disability of the chair, the vice-chair shall preside and shall exercise all the powers of the chair. Additional officers may be elected as needed.
 - (3) *Jurisdiction.* The board may adopt rules of procedure not inconsistent with this article or with other provisions of law.
 - (4) *Meetings.* Meetings of the board shall be held at least annually and otherwise at the call of the chair and at such other times as the board may specify in its rules of procedure. Notice of all meetings shall be made to the members in writing, unless otherwise agreed to by all board members.
 - (5) *Majority vote.* The concurring vote of a majority of the members of the board shall be necessary to pass upon any matter on which it may act under this article.
 - (6) *Records.* 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.

(h) *Powers and duties.*

The Board shall:

- (1) Review and make recommendations concerning the establishment and modification of Districts and Enhanced Districts.
- (2) Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this ordinance.
- (3) Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy or way of life within the county, especially those affecting Districts and Enhanced Districts.
- (4) Prepare a draft of the report required by G.S. 106-743 giving the status, progress and activities of the county's farmland preservation program.
- (5) Develop, and maintain if approved, a countywide farmland protection plan as defined in G.S. 106-744 (e) for presentation to the Board of Commissioners.
- (6) Assign a member to represent each district as required by G.S. 106-738(4).
- (7) Perform other related tasks or duties assigned by the Board of Commissioners or applicable law.

Sec. 15-62. Creation of voluntary agricultural districts and enhanced voluntary agricultural districts.

(a) *Implementation.* In order to implement the purpose stated in section 15-59, this program provides for the creation of districts and Enhanced Districts that meet one of the following standards:

- (1) The District or Enhanced District shall contain a minimum of 20 contiguous acres of qualified forestland, 10 contiguous acres of qualified farmland or 5 contiguous acres of qualified horticultural land;

(b) *Encourage formation.* The county may take such action, as it deems appropriate, to encourage the formation of the districts and enhanced districts and to further their purposes and objectives, including the implementation of a public information program to reasonably inform landowners of the location of districts and enhanced districts.

(c) *Display.* The districts and enhanced districts shall be marked on county maps, which may be displayed for public view in county offices including, but not limited to, the offices of the planning department and the register of deeds, and by the following:

- a. Signs identifying approved agricultural districts and enhanced districts shall be placed along the rights-of-way of major roads and other prominent places, with permission of the landowner.
- b. Maps identifying approved districts and enhanced districts shall be made available to the public on the Guilford County GIS data viewer.
- c. Records Notification – Upon certification of qualifying farmland and designation of real property with the Guilford County Register of Deeds as a District or Enhanced

District, the above notice shall be posted as a property record on the Guilford County website for every parcel of land within one mile of the District or Enhanced District.

(d) *Withdrawal.* In the event that one or more participants in the district withdraws or loses eligibility to participate and the district no longer meets the standards of this article, the district will continue to exist so long as there is one qualifying farm.

Sec. 15-63. Certification and qualification of farmland.

In order for farmland to qualify under this article, it must be real property that:

(a) Is managed in accordance with the Natural Resources Conservation Service's defined erosion control practices that are addressed to highly erodible land; and

(b) 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 nonfarm 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 zoning and subdivision regulations.

(c) Property is not eligible to enroll in a District or Enhanced District if it is within a municipal government boundary, unless that property is located within a municipal's jurisdiction that either (i) has authorized its own District or Enhanced District program via municipal ordinance, or (ii) that municipality has a memorandum of understanding with the existing Board which allows the Board to accept applications for properties within that municipality's boundary.

Sec. 15-64 Public recording of conservation agreements.

(a) *Conservation agreement.* Except as provided in subsection (c) of this section, conservation agreements shall be recorded in the office of the Register of Deeds in the same manner as deeds are now recorded.

(b) Releases or terminations of such agreements shall be recorded in the same waiver. Releases or terminations, or the recording entry, shall appropriately identify by date, parties and book and pages of recording, the agreement which is the subject of the release or termination.

(c) A conservation agreement entered into for the purpose of enrolling real property in a voluntary agricultural district pursuant to G.S. 106-737(4) is not required to be recorded unless such conservation agreement is irrevocable as provided pursuant to G.S. 106-743.2.

Sec. 15-65. Revocation and renewal of conservation agreement.

(a) *Renewal of conservation agreement*

(1) *Districts.* Any conservation agreement, valid in Guilford County as of December 31, 2010, for land within a District shall be automatically renewed unless the landowner provides 30 day written notice to the Board of intent not to renew. Absent noncompliance by the landowner, neither the Board nor the Board of Commissioners shall fail to renew any conservation agreement unless this Ordinance or its authorizing legislation has been repealed.

Any conservation agreement which expired by its terms prior to the enactment of this provision shall be replaced by the new consent agreement filed in the Register of Deeds.

(2) *Enhanced Districts.* A Conservation Agreement for the Enhanced District shall be deemed automatically renewed for an additional term of 3 years, unless either the Advisory Board or the landowner gives written notice to the contrary prior to the termination date of the Conservation Agreement. At the end of each 3 year term the Conservation Agreement shall automatically renew for an additional 3 year term unless notice of termination is given. The staff serving the Board shall send a notification letter to any landowner enrolled in an Enhanced District thirty (30) days prior to the day his agreement is terminating. The letter shall describe the renewal provisions as well as the necessary steps to negate the renewal at the landowner's discretion.

(b) *Revocation of conservation agreement*

(1) *Districts.* By written notice to the county, a landowner of qualifying farmland may revoke a conservation agreement; or the board may recommend the revocation of a conservation agreement, based on non-compliance by the landowner, to the board of county commissioners for their action. Revocation shall result in the loss of eligibility to participate in a district.

(2) *Enhanced Districts.* The conservation agreement for the Enhanced District shall be binding upon all successors in interest to the landowner, except for successors in interest resulting from the exercise of rights under a security interest or lien that preceded the conservation agreement, or by condemnation.

Sec. 15-66. Application and approval procedure.

(a) *Application procedure.* A landowner may apply to participate in either a District or Enhanced District by making application to the chair or a designated staff person. The application shall be on forms provided by the board.

(b) *Approval process.*

(1) Upon receipt of an application, the chair will forward copies to the following agencies for their prompt evaluation and response:

a. The Guilford County Soil & Water District office in Guilford County

(2) Upon receipt of the response from the Guilford County Soil & Water District, the Board shall meet within 30 days to consider the application. The Chair shall endeavor to notify the applicant by first-class mail of its recommendation within 15 days.

(3) The recommendation shall then be acted upon at a meeting of the Board of Commissioners, whose decision shall be final.

Sec. 15-67. Public notice.

(a) *Procedure.* Upon approval of a District or Enhanced District, appropriate maps shall be updated so that a person wishing to ascertain the proximity of a particular tract to a District or Enhanced District may do so. The Board, in cooperation with Guilford County, shall provide notification to property owners,

residents, and other interested persons within one mile and adjacent to any designated agricultural district, as set out in Section 15-62. The purpose of such notification is to inform 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, truck, tractor operations, livestock operations, sawing, and similar activities.

(b) *Limit of liability.* In no event shall the county or any of its officers, employees, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by this article.

(c) *No cause of action.* In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary agricultural district as defined in this article.

Sec. 15-68. Public hearings for condemnation of Districts and Enhanced Districts.

No state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within an Enhanced District until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed condemnation. This provision ensures that the condemning agency or unit considers the impact of its actions upon agriculture, forestry, and/or horticultural prior to taking action that is not reversible. This provision is not intended to, and does not prohibit the condemning agency or unit from taking action that is authorized by law.

(1) Upon receiving a request, the Board shall publish notice, through sufficiently adequate mediums, within five (5) business days of the request, and will in the same notice notify the public of a public hearing on the proposed condemnation, to be held within ten (10) days of receipt of the request.

(2) The Board shall meet to review (i) whether the need for the project 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 (ii) whether there are alternatives to the proposed action that have less impact and are less disruptive to the agricultural activities of the District within which the proposed action is to take place.

(3) The Board shall consult with designees from Cooperative Extension, Natural Resources Conservation Service, Soil & Water District, and any other individuals, agencies, or organizations deemed by the Board to be necessary for its review of the proposed action.

(4) Within five (5) days after the hearing, the Board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be made available to the public prior to its being conveyed to the decision-making body of the agency proposing the acquisition.

(5) There will be a period of ten (10) days allowed for public comment on the report of the Board.

(6) After the ten (10) day period for public comment has expired, the Board shall submit a final report containing all of its findings and recommendations regarding the proposed action to the decision making body of the agency proposing the acquisition.

(7) The total time period, from the day that a request for a hearing has been received to the day that a final report is issued to the decision making body of the agency proposing the acquisition, shall not

exceed thirty (30) days. If the agency agrees to an extension, the agency and the Board shall mutually agree upon a schedule to be set forth in writing and made available to the public.

Sec. 15-69. Waiver of water and sewer assessments and other enrollment benefits.

(a) *No requirement to connect.* No requirement to connect to Guilford County water and/or sewer systems shall be imposed upon qualifying farms inside a district.

(b) *Abeyance.* Water and sewer assessments will be held in abeyance, without interest, for qualifying farms, inside a district and enhanced district, until improvements on such property are connected to the water or sewer system for which the assessment was made.

(c) *Termination of abeyance.* When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(d) *Suspension of statute of limitations.* Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

(e) *Other statutory abeyance procedures.* Nothing in this section is intended to diminish the authority of the County to hold assessments in abeyance under G.S. 153A-201 or other applicable law.

(f) *Conflict with water and/or sewer system construction and improvements grants.* To the extent that this section conflicts with the terms of federal, state, or other grants under which county utility systems are constructed this section shall not apply. This section shall not apply to utilities that are not owned by the County unless the County has entered into an agreement with the entity(ies) owning the utilities and that agreement provides that this Ordinance shall apply.

(g) *Additional benefits for Enhanced Districts*

(1) *Sale of non-farm products.* Landowners participating in Enhanced Districts may receive up to twenty-five percent of gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from county zoning regulations under G.S. 153A-340(b). A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed twenty-five percent of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

(2) *Agricultural cost share program.* Landowners participating in Enhanced Districts are eligible under G.S. 143-215.74 (b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes to benefit that farmland.

(3) *Priority consideration.* State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in Enhanced Districts.

(4) *No requirement to connect.* A landowner enrolled in an Enhanced District shall not be required to connect to any other Guilford County government operated utility systems.

Sec. 15-70.

North Carolina agency notification.

(a) *Adoption.* Upon adoption of this ordinance and any subsequent amendment, the county shall record this article with the North Carolina Commissioner of Agriculture.

(b) *Annual report.* The Board of County Commissioners shall make an annual report to the North Carolina Commissioner of Agriculture as specified in G.S. 106-743.

Sec. 15-71.

Legal provisions.

(a) *Severability.* If any article, section, subsection, clause, phrase or portion of this article is for any reason invalid or unconstitutional as determined by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article.

(b) *Conflict with other ordinances and statutes.* Whenever the provisions of this article conflict with other ordinances of Guilford County, this article shall govern to the extent allowed by law. Whenever the provisions of any federal or state statute require more restrictive provisions than are required by this article, the provisions of such statute shall govern.

(c) *Amendments.* This article may be amended from time to time by the Board of Commissioners in consultation with the advisory board.

I HEREBY CERTIFY THAT
THE FOREGOING WAS ADOPTED BY
THE BOARD OF COUNTY COMMISSIONERS
OF GUILFORD COUNTY
ON August 25, 2011
BY Cristal Mann
DEPUTY CLERK TO BOARD