

**Chapter 45**  
**Farmland Preservation**  
**Article I - General Provisions**

[HISTORY: Adopted by the Board of Commissioners of Henderson County. Amended 12-18-1991; 11-18-1998; 9-6-2012]

**§ 45-1. Purpose; Statutory Authority; Title.**

- A. The purpose of this Chapter is to encourage the voluntary preservation and protection of farmland from nonfarm development, recognizing the importance of agriculture to the economic and cultural life of the County.
- B. Pursuant to authority conferred by [N.C.G.S. 106. Article 61](#) 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."

**§ 45-2. Definitions.**

The following terms are defined for purposes of this Chapter:

- (1) Board - The Henderson County Agricultural Advisory Board.
- (2) Board of Commissioners - The Henderson County Board of Commissioners.
- (3) Chairman - The Chairman of the Agricultural Advisory Board.
- (4) District - A voluntary agricultural district.

**Article II- Agricultural Advisory Board**

**§ 45-3. Establishment.**

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

**§ 45-4. Residency Requirements; Qualifications; Terms; Vacancies; Removal.**

- A. Each Board member shall be a resident of Henderson County.
- B. 3 of the 5 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.
- C. All members are to serve for terms of 4 years, except that the initial Board is to consist of 1 appointee for a term of 2 years; 2 appointees for terms of 3 years and 2 appointees for terms of 4 years. Thereafter, all appointments are to be for terms of 4 years, with reappointments permitted.
- D. Any vacancy on the Agricultural Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term.
- E. Any member of the Agricultural Advisory Board may be removed with or without cause by the Board of Commissioners.

**§ 45-5. Officers; Bylaws; Fiscal Year; Meetings; Records; Support Services.**

- A. 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 bylaws, and such bylaws or amendments thereto must be approved by the Henderson County Board of Commissioners.

- B. 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.
- C. 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.
- D. The Henderson County Agricultural Advisory Board shall contract with the Soil and Water Conservation District office to serve the Board for recordkeeping, correspondence and application procedures under this Chapter and whatever other services the Board needs to complete its duties.

**§ 45-6. Powers and Duties.**

- A. The Agricultural Advisory Board shall:
  - (1) Review and approve applications for qualified farmland and voluntary agricultural districts and make recommendations concerning the establishment and modification of agricultural districts.
  - (2) Hold public hearings pursuant to Article VI of this Chapter.
  - (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.
  - (4) Perform other related tasks or duties assigned by the Board of Commissioners.
- B. 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 the total land area.

**Article III – Reserved for Future Codification**

**§ 45-7 through 45-11 (Reserved)**

**Article IV - Certification for Qualifying Farmland**

**§ 45-12. Requirements.**

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

- A. Be participating in the farm present-use-value taxation program established by [N.C.G.S. Chapter 105, Article 12](#).
- B. Be certified by the Natural Resources Conservation Service of the United States Department of Agriculture as being a farm on which at least 2/3 of the land is composed of soils that have been actively used in agricultural, horticultural or forestry operations as defined in [N.C.G.S. 105-277.2](#), (1), (2) or (3), during each of the 5 previous years or are farms that 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.
  - (5) Receive the available moisture needed to produce high yields for an average of 8 out of 10 years.

- C. Be managed, if highly erodible land exists on the farm, in accordance with Natural Resources Conservation Service defined erosion-control practices that are addressed to said highly erodible land.
- D. Be the subject of a preservation agreement, as defined in [N.C.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 10 years, except for the creation of not more than 3 lots that meet applicable County zoning and subdivision regulations.

**§ 45-13. Application.**

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

**Article V - Revocation of Preservation Agreement**

**§ 45-14. Notice.**

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

**Article VI - Public Hearings**

**§ 45-15. 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 article provides for such hearings. This Chapter 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.

**§ 45-16. Procedure.**

- A. Upon receiving a request for condemnation, the Agricultural Advisory Board shall, within 2 days, publish a notice in a 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.
- B. The Board will meet to review:
  - (1) 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
  - (2) 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.
- C. The Board will consult with the County Cooperative Extension Service, United States Department of Agriculture Natural Resources 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.
- D. Within 10 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.

- E. 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 VII - Special Requirements**

### **§ 45-17. Purpose.**

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

### **§ 45-18. Districts Not Permitted In County Growth Areas.**

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 Chapter.

### **§ 45-19. Consultation with Other Agencies.**

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.

### **§ 45-20. Filing with Commissioner Of Agriculture; Reports.**

- A. A copy of this Chapter 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's office indicating the status, progress and activities of the County's farmland preservation program, including 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 each agricultural district was certified.
- B. Copies of the reports cited in Subsection A will be sent to:
- (1) North Carolina Commissioner of Agriculture.
  - (2) North Carolina Department of Transportation.
  - (3) North Carolina Department of Commerce.
  - (4) Hendersonville Chamber of Commerce.
  - (5) Any other entities the Board deems appropriate.

### **§ 45-21. Records; Notice of Proximity to District.**

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 1/2 mile of a poultry, swine or dairy qualifying farm or within 600 feet of any other qualifying farm or within 1/2 mile of a voluntary agricultural district.

## **Article VIII – Agricultural Districts** **Part One - Voluntary Agricultural Districts**

### **§ 45-25. Purpose.**

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

**§ 45-26. Application Procedure.**

- A. An agricultural district shall initially consist of one or more qualifying farms which collectively consist (or, in the case of one farm only, individually consists) of at least 50 acres of qualifying farmland lying (if more than one farm) within one mile of each other. An agricultural district may be enlarged by adding qualifying farms subsequent to initial formation so long as such qualifying farms are within one mile of any farm in such district.
- B. An agreement to sustain, encourage and promote agriculture must be executed by each applicant in the district and submitted to the Agricultural Advisory Board for approval.
- C. Landowners may apply to participate in existing districts and are encouraged to do so.
- D. 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.
- E. Upon receipt of an application, the Chairman will forward copies immediately to the Henderson County Assessor's office and the Henderson County Soil and Water Conservation District office for evaluation pursuant to Article IV. Said offices shall evaluate, complete and return their copies to the Chairman within 30 days of receipt.
- F. Within 30 days of receipt of respective reports from the County 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.
- G. 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.

**§ 45-27. Maps; Public Notice.**

- A. Voluntary agricultural districts will be marked on official maps maintained by the Land Records Office of the Henderson County Tax Assessor, displayed for public view in the following County locations:
  - (1) Register of Deeds.
  - (2) Soil and Water Conservation.
  - (3) Henderson County Tax Assessor's offices.
  - (4) Official Henderson County electronic land records.
  - (5) Any other office deemed necessary or advisable by the Board of Commissioners.
- B. The following notice, of a size and form suitable for posting, shall be posted in the office of the Register of Deeds, and any other office or agency the Advisory Board deems necessary:

*Henderson 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 and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, and other common farming activities may occur 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 North Carolina Cooperative Extension Service office, the office of the Register of Deeds, the County Planning office, the Land Records Section of the Tax Assessor's Office, or the Natural Resources Conservation Service office.*

**§ 45-28. Land Development; Notice to Purchasers.**

- A. Developers of major subdivisions (as that term is used in the Henderson County Land Development Code) or planned unit developments shall designate on preliminary development plans the existence of voluntary agricultural districts within 1/2 mile of the proposed development.
- B. In addition, developers shall comply with all applicable provisions of the Henderson County Land Development Code, including but limited to those regarding Farmland Preservation Districts.
- C. As used in this Article, unless the context clearly indicates otherwise the terms “voluntary agricultural district” and “enhanced agricultural district” shall have the same meaning as the term “Farmland Preservation District” as used in the Henderson County Land Development Code.

**§ 45-29. Public information program.**

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. Official Henderson County electronic land records shall indicate the boundary of the area within 1/2 mile of a voluntary agriculture district, and shall further indicate any setbacks from such district required by the Land Development Code.

**§ 45-30. Qualifying Farmland**

As used in this Article, “qualifying farmland” must:

- A. Be managed, if highly erodible land exists on the farm, in accordance with the Natural Resources Conservation Service defined erosion-control practices that are addressed to said highly-erodible land; and
- B. Be located in the unincorporated area of Henderson County; and
- C. Either:
  - (1) Be participating in the farm present-use-value taxation program established by [N.C.G.S. Chapter 105, Article 12](#), or is otherwise determined by the county to meet all the qualifications of this program set forth in [N. C.G.S. 105-277.3](#); or
  - (2) Both:
    - a. Be engaged in “agriculture” as that term is defined in [N.C.G.S. §106-581.1](#); and,
    - b. Provide to its owner gross revenue from its use in “agriculture” of at least \$2,000. per acre in the year prior to application (or, as an alternative, an average of at least \$2,000. per acre for the 5 years prior to application).

**§ 45-31. Through 45-39. (Reserved)**

**Article VIII – Agricultural Districts  
Part Two - Enhanced Voluntary Agricultural Districts**

**§ 45-40. Purpose**

The purpose of Enhanced Voluntary Agricultural Districts is to provide, pursuant to [N.C.G.S. §106-743.1 et seq.](#), all the benefits to the County of Voluntary Agricultural Districts under Part 1 of this Article, with additional benefits to the County and to its farmland beyond that available in a voluntary agricultural district established under Part 2 of this Article, when the owner of the farmland agrees to the condition imposed hereunder.

- A. Enhanced Voluntary Agricultural Districts must meet all the requirements of Part 1 of this Article.
- B. Landowners who desire inclusion of their land in an Enhanced Voluntary Agricultural District must not only meet all the requirements of Part 1 of this

Article, but must also enter into an irrevocable agricultural easement and conservation agreement (pursuant to [N.C.G.S. §121-35](#)) for a term of 10 years with Henderson County through its Agricultural Advisory Board, as specified below. Such easement shall contain a provision that at its expiration the easement automatically renews for subsequent 3 year periods unless either party gives the other written notice prior to such expiration to Henderson County and its Agricultural Advisory Board.

- C. The form of the agreement required under A., above, shall be approved by the Henderson County Agricultural Advisory Board, and shall meet the requirements of [N.C.G.S. §106-743.2](#).

#### **§ 45-42. Membership on Agricultural Advisory Board**

Enhanced Voluntary Agricultural Districts established within the County shall be entitled to a representative on the Henderson County Agricultural Advisory Board, pursuant to [N.C.G.S. §106-743.1\(a\) \(4\)](#).

#### **§ 45-43. Benefits**

- A. The benefits set forth in this Part shall be available to the farmland that is the subject of the conservation agreement for the duration of the easement and conservation agreement and for so long as the benefits of such agreement have not been withdrawn under the provisions of this Part due to non-compliance with the terms of such easement and conservation agreement.
- B. Property that is subject to a conservation agreement under [N.C.G.S. 106-743.2](#) that remains in effect may receive up to 25 percent of its gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from zoning regulations under [N.C.G.S. 153A-340\(b\)](#). For purposes of [N.C.G.S. 153A-340\(b\)](#), the production of any nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm that is subject to a conservation agreement under [N.C.G.S. 106-743.2](#) is a bona fide farm purpose. 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 25 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. Nothing in this section shall affect the county's authority to zone swine farms pursuant to [N.C.G.S. §153A-340\(b\) \(3\)](#).
- C. Pursuant to [N.C.G.S. 106-743.4 \(b\)](#), a person who farms land that is subject to a conservation agreement under [N.C. G. S. §106-743.2](#) that remains in effect is eligible under [N.C.G.S. Chapter 160](#), Article 72 to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to [N.C.G.S Chapter 143, Article 21, Part 9](#), for funds to benefit that farmland.
- D. All assessments for utilities provided by Henderson County are held in abeyance, without interest, for farmland subject to a conservation agreement under [N.C.G.S. §106-743.2](#) that remains in effect until improvements on the farmland property are connected to the utility for which the assessment was made. When the period of abeyance ends, such assessment is payable in accordance with the terms of the assessment resolution. Pursuant to [N.C.G.S. §106-743.5\(c\)](#), statutes of limitations are suspended during the time that any assessment is held in abeyance under this section without interest.

#### **§ 45-44. Notice**

Enhanced voluntary agricultural districts shall be marked on County maps listed in [§45-27](#).

#### **§ 45-45. Education**

The Henderson County Agricultural Advisory Board shall 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 agricultural district program.

**§ 45-46. Through 45-49. (Reserved)**

**Article VIII – Agricultural District  
Part Three – Procedures**

**§ 45-50. Procedures**

The Henderson County Agricultural Advisory Board shall adopt procedures, based upon the model procedures promulgated by North Carolina State University College of Agriculture & Life Sciences, for both voluntary and enhanced voluntary agriculture districts for the following:

- A. Application
- B. Approval of Agriculture Easement and Conservation Agreement terms. Such agreement to sustain, encourage, and promote agriculture must be executed by the landowner and recorded with the Advisory Board and with the Henderson County Register of Deeds. Permitted uses for the land subject to such Easement and Conservation Agreement include agriculture, horticulture, forestry, and outdoor recreation. The Easement and Conservation Agreement for the Enhanced Voluntary Agricultural District shall be binding upon all successors in interest to the landowner according to its terms, except for successors in interest resulting from the exercise of rights under a security interest or lien that preceded the Easement and Conservation Agreement.
- C. Enforcement, including methods for determining compliance and for revocation by the County for non-compliance.

**§ 45-51. Condemnation of Qualifying Farmland**

- A. Pursuant to [N.C.G.S. §106-740](#), Henderson County may not formally initiate any action to condemn any interest in qualifying farmland within a District until it has requested the Henderson County Advisory Board to hold a public hearing on the proposed condemnation.
- B. Procedure
  - (1) Upon receiving a request, the Henderson County Advisory Board shall publish notice describing the proposed action in the newspaper of record within Henderson County within 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 10 days of receipt of the request.
  - (2) The Advisory Board shall meet to review:
    - a. 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
    - b. 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 Advisory Board shall consult with the County Agricultural Extension Agent, the Natural Resources Conservation Service District Conservationist, and any other individuals, agencies, or organizations deemed by the Advisory Board to be necessary for its review of the proposed action.
  - (4) Within 5 days after the hearing, the Advisory 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 10 days allowed for public comment on the report of the Advisory Board.
- (6) After the 10 day period for public comment has expired, the Advisory 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 30 days. If the agency agrees to an extension, the agency and the Advisory Board shall mutually agree upon a schedule to be set forth in writing and made available to the public.
- (8) Pursuant to [N.C.G.S. §106-740](#), the Board of Commissioners may not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the Advisory Board.

**§ 45-52.Through 45-75. (Reserved)**