

**NASH COUNTY
VOLUNTARY AGRICULTURAL DISTRICT &
ENHANCED VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE**

**ARTICLE I
TITLE**

An ordinance of the Board of County Commissioners of NASH COUNTY, NORTH CAROLINA, entitled, "**VOLUNTARY AGRICULTURAL DISTRICT & ENHANCED VOLUNTARY DISTRICT ORDINANCE.**"

**ARTICLE II
AUTHORITY**

The articles and sections of this Ordinance are adopted pursuant to authority conferred by the North Carolina General Statutes sections 106-735 through 106-744 and Chapter 153A.

**ARTICLE III
PURPOSE**

The purpose of this Ordinance is to promote agricultural values and the 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 agriculture, horticulture and forestry; and increase protection from non-farm development and other negative impacts on properly managed farms.

**ARTICLE IV
DEFINITIONS**

The following are defined for purposes of this Ordinance:

Advisory Board: Nash County Agricultural Advisory Board.

Chairperson: Chairperson of the Nash County Agricultural Advisory Board.

District: Voluntary Agricultural District as established by this ordinance.

Enhanced District: Enhanced Voluntary Agricultural District as established by this ordinance.

Board of Commissioners: Nash County Board of Commissioners.

**ARTICLE V
AGRICULTURAL ADVISORY BOARD**

A. Creation

The Board of Commissioners shall establish an Agricultural Advisory Board to implement the provisions of this program.

B. Membership

The Advisory Board shall consist of no less than seven (7) members appointed by the Board of Commissioners with an effort to seek the broadest geographic and agricultural commodity representation as possible.

C. Membership Requirements

1. Each Advisory Board member shall be a Nash County resident and landowner.
2. A majority of the members shall be actively engaged in farming, horticulture and/or forestry.
3. The members shall be selected for appointment by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Soil and Water Conservation District Board of Supervisors, the County Office of North Carolina Cooperative Extension, the U.S. Farm Service Agency County Committee, nonprofit agricultural organizations, conservation organizations, agribusiness, horticultural businesses, forestry businesses, and the public at large.
4. Additional members may be appointed to the Board in an *ex officio* capacity from the Nash County Office of North Carolina Cooperative Extension, the U.S.D.A. Farm Service Agency, the Nash County Office of the Natural Resource Conservation Service or other agencies, as deemed necessary by the Board of Commissioners. Members serving in an *ex officio* capacity shall neither vote nor count toward quorum requirements.

D. Tenure

The initial board is to consist of two appointees for terms of one year; two appointees for terms of two years; and three appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointment permitted up to three terms.

E. Vacancies

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

F. Removal

Any member of the Advisory Board may be removed by the Board of Commissioners upon a majority vote of the Commissioners. No cause for removal shall be required.

G. Funding

The *per diem* compensation, if any, of the members of the Advisory Board may be fixed by the Board of Commissioners and funds may be appropriated to the Advisory Board to perform its duties.

H. Advisory Board Procedure

1. Chairperson

The Advisory Board shall elect a chairperson and vice-chairperson each year at its first meeting of the fiscal year. The chairperson shall preside over all regular or special meetings of the Advisory Board. In the absence or disability of the chairperson, the vice-chairperson shall preside and shall exercise all the powers of the chairperson. Additional officers may be elected as needed.

2. Determination of Procedure

The Advisory Board may adopt rules of procedure not inconsistent with this Ordinance or with other provisions of State law.

3. Advisory Board Year

The Advisory Board shall use the Nash County fiscal year as its meeting year.

4. Meetings

Meetings of the Advisory Board shall be held at the call of the chairperson and at such other times as the Advisory Board may specify in its rules of procedure or upon the request of at least a majority of the Advisory Board

Membership. A meeting shall be held at least annually and notice of any meetings to the members shall be in writing, unless otherwise agreed to by all Advisory Board members. Meeting dates and times shall be posted as far in advance as possible on the door of the meeting site and by posting on the Nash County website or by other means of public dissemination of the meeting dates as may be agreed upon by at least a majority of the Advisory Board Membership. All meetings shall be open to the public.

5. Majority Vote and Quorum Requirements

All issues shall be decided by a majority vote of the members of the Advisory Board present. A quorum is defined as at least a majority of the appointed members. No business may be conducted by the Advisory Board without a quorum present.

6. Records

The Advisory 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, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Advisory Board, or its designee, and shall be a public record.

7. Administrative

The Advisory Board shall be staffed by the Nash County Cooperative Extension Agency and serve the Board for record keeping, correspondence, application procedures under this ordinance, and whatever services the Board needs to complete its duties.

I. Duties

The Advisory Board shall:

1. Review and approve or disapprove applications of landowners for enrollment qualified farmland, horticultural land, or forestland in either voluntary agricultural districts or enhanced voluntary agricultural districts;
2. Make recommendations concerning the establishment and modification of agricultural districts;
3. Conduct public hearings;

4. Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy and agricultural, horticultural or forestry activities within the county that will affect agricultural districts;
5. Review and make recommendations concerning proposed amendments to this ordinance;
6. Develop a draft countywide farmland protection plan as defined in N.C.G.S. §106-744 (e) for presentation to the Board of Commissioners if requested;
7. Study additional methods of protection for farming, horticulture, forestry, and the attendant land base, and make recommendations to the Board of Commissioners; and
8. Perform other agricultural, horticultural, and forestry-related tasks or duties assigned by the Board of Commissioners.

**ARTICLE VI
CREATION OF VOLUNTARY AGRICULTURAL DISTRICTS
AND ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS**

A. Implementation

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 or Enhanced District shall contain a minimum of qualifying contiguous acres of agricultural land; forestland or horticultural lands; or
2. Consist of at least two or more certified qualifying tracts which are one mile or less from each other and containing not less than the minimum acreage in the aggregate.

Land shall be treated as a single district whether enrolled in the District or the Enhanced District.

B. Education

The county may take such action as it deems appropriate through the Advisory Board or other entities or individuals 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 agricultural district program.

C. Addition and Withdrawal

1. Qualifying farmland in a region with an existing district shall be added to the district as herein provided.
2. In the event that one or more tracts in the District or Enhanced District withdraw and the acreage in the District or Enhanced District becomes less than the minimum acreage required or results in the remaining land being noncontiguous, a voluntary agricultural district will continue to exist so long as there is one qualifying farm in accordance with Article VII of this ordinance.
3. Requests for additions or withdrawals shall be accompanied by applicable application and recording fees.

**ARTICLE VII
CERTIFICATION AND QUALIFICATION OF FARMLAND**

Requirements

To secure county certification as qualifying farmland in either a Voluntary Agricultural District or Enhanced Voluntary Agricultural District, a farm must:

1. Be engaged in agriculture as that word is defined in N.C.G.S. 106-581.1;
2. 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
3. Be the subject of a conservation agreement, as defined in N.C.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 zoning

and subdivision regulations. These lots are no longer part of agricultural district and therefore are ineligible for benefits of the program.

4. Be located (1) in the unincorporated area of Nash County; or (2) within a municipal extraterritorial jurisdiction (ETJ); or (3) within the incorporated area of a municipality that has an Interlocal Agreement allowing Nash County to administer the program in that jurisdiction.
5. Be certified by the Nash County Office of NRCS of the USDA as being a farm that has been actively used in agricultural, horticultural or forestry operations as defined by NCGS 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.

ARTICLE VIII APPLICATION, APPROVAL, AND APPEAL PROCEDURE

A. Application Procedure

1. A landowner may apply to participate in either the Agricultural District or the Enhanced Agricultural District program by making application to the chairperson of the Advisory Board or a designated staff person, and must designate the application as for either Voluntary Agricultural District status or Enhanced District status. The application shall be on forms provided by the Advisory Board and accompanied by application and recording fees as set forth by the Nash County Board of Commissioners.
2. A conservation agreement (required by N.C.G.S. §106-737 and defined in N.C.G.S. §121-35) suited to district type (Voluntary Agricultural District or Enhanced Voluntary Agricultural District) designated by the landowner to sustain, encourage, and promote agriculture must be executed by the landowner and recorded with the Advisory Board, which shall record a certified copy of Enhanced Voluntary Agriculture District Conservation Agreement with the Nash County Registrar of Deeds. Permitted uses include agriculture, horticulture, forestry, and outdoor recreation. Conservation agreements for the Enhanced Agricultural District program may, at the election of the parties, include provisions requiring that any disputes between the county and the landowner be resolved through arbitration or mediation, and, in the event of litigation, that the prevailing party be awarded costs, including reasonable attorney fees. The Conservation Agreement for the Enhanced Voluntary Agricultural 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.

B. Approval Process

1. The deadline for submission of applications to the Advisory Board shall be the fifth day of each quarter (January 5, April 5, July 5, and October 5). The Advisory Board shall meet within ninety (90) days to approve or disapprove the application. The chairperson shall notify the applicant by first class mail of approval or disapproval of participation in the district.
2. Upon receipt of an application, the chairperson will forward copies immediately to the following offices, which shall be asked to provide comments, if any, to the Advisory Board prior to the date set for the Advisory Board vote on the application:
 - a. The Nash County Tax Administrator;
 - B. The Nash Soil and Water Conservation District office;
 - c. The Nash County Office of N.C. Cooperative Extension;
 - d. The Natural Resources Conservation Service;
 - e. The Nash County Planning Department.

C. Appeal

If an application is denied by the Advisory Board, the landowner may, within ten (10) days of the receipt of notification of disapproval of the application, request in writing that the Advisory Board reconsider its decision. The request for reconsideration shall state the reason(s) therefore. Upon either an initial denial, if no request for reconsideration was made, or denial after reconsideration, the landowner shall have thirty (30) days from the date of notification to appeal the decision to the Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

**ARTICLE IX
REVOCATION, ENFORCEMENT AND RENEWAL OF CONSERVATION
AGREEMENTS**

A. Revocation and Enforcement

1. District. By providing 30 days advance written notice to the Advisory Board, a landowner of qualifying farmland within a Voluntary Agricultural District may revoke the Conservation Agreement or the Advisory Board may revoke the same Conservation Agreement based on noncompliance by the landowner, subject to the same provisions as contained in Article VIII(C) for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a district. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall revoke any Conservation Agreement prior to its expiration. If the Advisory Board shall revoke this Conservation Agreement for cause, the landowner shall have the appeal rights set forth in Article VIII(C). Transfers of land in a Voluntary Agricultural District due to death of the landowner, sale or gift shall not revoke the Conservation Agreement unless the land no longer qualifies for the present-use-value taxation program and/or the land is withdrawn either voluntarily or involuntarily from the district. Enforcement of the terms of a Conservation Agreement for land enrolled in a Voluntary Agricultural District shall be limited to revocation of the Conservation Agreement and the benefits derived there from.

2. Enhanced District. Conservation Agreements for land within Enhanced Districts are IRREVOCABLE for a period of 10 years. Enforcement of the terms of the Conservation Agreement may be through an action for injunctive relief and/or damages in any court of competent jurisdiction. The County may also terminate any benefits to the owner under this program either permanently or during the period of violation, as appropriate. If the Advisory Board shall revoke this Conservation Agreement for cause, the landowner shall have the appeal rights set forth in Article VIII(C). The right to terminate program benefits is in addition to any legal rights that the County may have under either this Ordinance or the terms of the applicable Conservation Agreement. The County may seek costs of the action including reasonable attorney fees if such a provision is incorporated into the Conservation Agreement.

B. Renewal

1. District. A Conservation Agreement for land within a Voluntary Agricultural District shall be automatically renewed unless the landowner provides 30 day written notice to the Advisory Board of intent not to renew. Absent noncompliance by the landowner, neither the Advisory Board nor the Board

of Commissioners shall fail to renew any Conservation Agreement unless this Ordinance or its authorizing legislation has been repealed.

2. Enhanced District. A Conservation Agreement for the Enhanced Voluntary Agricultural 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 a 30-day notice of termination is given.

ARTICLE X WAIVER OF WATER AND SEWER OR ALL UTILITY ASSESSMENTS

A. No Connection Required

1. A landowner belonging to the District shall not be required to connect to Nash County water and/or sewer systems.
2. A landowner belonging to an Enhanced District shall not be required to connect to Nash County utility systems.

B. Abeyance

1. Water and sewer assessments shall be held in abeyance, without interest, for farms in a District, until improvements on such property are connected to the water or sewer system for which the assessment was made.
2. Utility assessments shall be held in abeyance, without interest, for farms in an Enhanced District, until improvements on such property are connected to the utility 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. The landowner may be required to sign an acknowledgement (that may be incorporated into the Conservation Agreement) of

the abeyance of the statute of limitations upon collecting water and sewer assessments, or other utility assessments.

E. Other Statutory Abeyance Procedures

Nothing in this section is intended to diminish the authority of the County to hold assessments in abeyance under N.C.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.

**ARTICLE XI
ADDITIONAL ENHANCED AGRICULTURAL DISTRICT BENEFITS**

Land enrolled in the Enhanced Voluntary Agricultural District program is entitled to all of the benefits available under the Voluntary Agricultural District program, and to the following additional benefits:

A. 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 N.C.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. The standards necessary for proof of compliance shall be set forth in the Nash County Unified Development Ordinance.

B. Agricultural Cost Share Program

Landowners participating in Enhanced Districts are eligible under N.C.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 for funds to benefit that farmland.

C. Priority Consideration

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

**ARTICLE XII
PUBLIC HEARINGS**

A. Purpose

Pursuant to N.C.G.S. §106-740, no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a District until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed condemnation.

B. Procedure

1. Upon receiving a request, the Advisory Board shall publish notice describing the proposed action on the Nash County website within ten (10) 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 fifteen (15) 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 five (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 via the Nash County

website 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 Advisory Board.
6. After the ten (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 forty-five (45) 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 shall not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the Advisory Board.

ARTICLE XIII NOTIFICATION

A Record Notice of Proximity to Voluntary Agricultural District

1. Procedure

A. Mapping

Nash County shall provide locations of all approved and current Voluntary Agricultural Districts and Enhanced Voluntary Agricultural Districts on the Nash County GIS (Geographic Information System) website. A separate layer indicating the location of the districts, ownership information, properties within ½ mile and other pertinent data will be available for public view. In addition, maps indicating the Voluntary and Enhanced Voluntary Ag Districts shall be posted in the Nash County Register of Deeds, Cooperative Extension Agency, Soil and Water Department and Planning Department. The postings shall also contain a statement explaining potential agricultural activities as provided in Article XIV – Section B.

B. Signage

Approved signs identifying agricultural district membership may be placed along major roads that pass through or are next to those districts. Members of the Agricultural District may place approved signs on their individual farms denoting their Agricultural District membership. Placement of signage shall be coordinated with the North Carolina Department of Transportation and the Nash County Planning Department.

ARTICLE XIV COUNTY LAND-USE PLANNING

A. Duty of the Advisory Board

It shall be the duty of the Advisory Board to advise the Board of Commissioners or the agency or office to which the Board of Commissioners delegate authority to oversee county land use planning, on the status, progress, and activities of the county's agricultural district program and to also coordinate the formation and maintenance of agricultural districts with the county's land use planning activities and the county's land use plan if one currently exists at the time this is enacted or when one is formed.

B. Posting of Notice

The following notice along with a map of the Voluntary Agricultural Districts and properties within ½ mile of those districts; shall be posted in the office of the Register of Deeds and other Nash County farm or land-development related offices:

Nash County is proud of its agricultural heritage and encourages the sustainability of its agricultural and forestry industries. Please be aware that agricultural activities continue to occur in and near agricultural districts. Agricultural activities sometimes produce noise, dust, odors, and require the movement of slow-moving farm vehicles on public roads. The locations of Nash County's agricultural districts may be viewed by visiting the Nash County GIS (Geographic Information System) website at <http://gis.co.nash.nc.us/connectgis/nash/>.

C. Growth Corridors

At such time as the county might establish designated growth corridors, agricultural districts shall not be permitted in the designated growth corridors, as delineated on the official county planning map without the approval of the Board of Commissioners. 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 without the approval of the Board of Commissioners.

**ARTICLE XV
CONSULTATION AUTHORITY**

The Advisory Board may consult with North Carolina Cooperative Extension, the Natural Resources Conservation Service, the North Carolina Department of Agriculture and Consumer Services, and with any other individual, agency, or organization the Advisory Board deems necessary to properly conduct its business.

**ARTICLE XVI
NORTH CAROLINA AGENCY NOTIFICATION**

Annual Report to the North Carolina Department of Agriculture and Consumer Services. Upon adoption, a copy of this ordinance shall be sent to the Office of the North Carolina Commissioner of Agriculture and Consumer Services, the Board of Commissioners, the County Office of North Carolina Cooperative Extension, and the Soil and Water Conservation District office. At least annually the county shall submit a written report to the Commissioner of Agriculture and Consumer Services on the county's agricultural district program, including the following information:

1. Number of landowners enrolled;
2. Number of acres enrolled;
3. Number of acres certified during the reporting period;
4. Number of acres denied during the reporting period;
5. Number of acres for which applications are pending;
6. Copies of any amendments to the this Ordinance; and
7. Any other information the Advisory Board deems useful.

**ARTICLE XVII
LEGAL PROVISIONS**

A. Severability If any article, section, subsection, clause, phrase, or portion of this ordinance is for any reason found invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

B. Conflict with other ordinances and statutes

Whenever the provisions of this Ordinance conflict with other ordinances of Nash County, the most restrictive Ordinance shall govern. Whenever the provisions of any federal or state statute require more restrictive provisions than are required by this Ordinance, the provisions of such statute shall govern.

C. Amendments

This Ordinance may be amended from time to time by the Board of Commissioners.

*Originally adopted by Nash County Board of Commissioners
August 2009, effective January 1, 2010*

Amended November 2011, effective November 2011

ARTICLE XVIII

ENACTMENT

The Nash County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this Ordinance.

Adopted this the _____ day of _____, 20____, with an effective date of _____, 20____. Upon motion for adoption by _____ seconded by _____.

NASH COUNTY BOARD OF COMMISSIONERS

Robbie B. Davis, Chairman

ATTEST:

Wayne Moore, Clerk to Board of Commissioners

Approved as to form:

Vince Durham, County Attorney