

Board of Commissioners

Johnny Riddle, Chair
Jill Austin, Vice-Chair
Mark Ledford
John Stallings
Jeff Whitson

Nathan R. Bennett
County Manager

Donny J. Laws
County Attorney

J. Jason Robinson
Clerk to the Board

110 Town Square
Courthouse Room 11
Burnsville, NC 28714
828-682-3971
828-682-4301 Fax

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

**ARTICLE I
TITLE**

An ordinance of the Board of County Commissioners of YANCEY COUNTY, NORTH CAROLINA, entitled, "VOLUNTARY AGRICULTURAL DISTRICT & ENHANCED VOLUNTARY DISTRICT ORDINANCE" or the "YANCEY COUNTY FARMLAND PRESERVATION PROGRAM ACT"

**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: The Yancey County Agricultural Advisory Board.

Chairperson: Chairperson of the Yancey 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: The Yancey 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 nine members appointed by the Board of Commissioners.

C. Membership Requirements

1. Each Advisory Board member, except those serving in an *ex officio* capacity, shall be a Yancey County resident or Yancey County landowner.
2. At least eight of the members shall be actively engaged in farming, horticulture and/or forestry. Of the members actively engaged in farming, horticulture and/or forestry there shall be at least one such member from each agricultural district or enhanced agricultural district in Yancey County. This determination shall be made without reference to *ex officio* members.
3. The members actively engaged in farming, horticulture and/or forestry as well as other members, shall be selected for appointment by the Board of Commissioners.
4. Additional members may be appointed to the Board in an *ex officio* capacity 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 three appointees for terms of one year; three 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.

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 Yancey 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 advertisement in local newspapers 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, except as otherwise stated herein. A quorum is defined as at least two-thirds of the members in attendance. 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 may contract with the North Carolina Cooperative Extension, Yancey County Cooperative Center's office to serve the Board for record keeping, correspondence, application procedures under this, 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;
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. Regions

Yancey County is hereby divided into eight regions as defined below:

1. Burnsville District
2. West Yancey District
3. Double Island District
4. Pensacola District
5. South Toe District
6. Egypt-Ramseytown District
7. Newdale District
8. Clearmont District

The geographical and jurisdictional boundaries of the foregoing eight regions shall coincide with the geographical and jurisdictional boundaries of the Yancey County Fire Service Districts as shown and delineated on the attached map incorporated herein as Addendum "A" as if set forth fully herein.

B. 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 5 horticulture, 10 agriculture, or 20 forestry contiguous acres of qualified farmland; or
2. The District or Enhanced District shall contain one or more qualified farms within areas designated by the Advisory Board.

All land enrolled in a region, defined in section A, above, shall be part of a single district, whether enrolled in the District or the Enhanced District. If a single farm has acreage in two or more regions, the farm shall participate in the district where the largest acreage is found. All land in a region as defined in section A, above, shall be treated as a single district whether enrolled in the District or the Enhanced District.

C. 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.

D. 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 participants 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 District or Enhanced District will continue to exist so long as there is one qualifying farm.

**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 real property that is engaged in agriculture as 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.
4. Be located in the unincorporated area of Yancey County.

**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. The

application to participate in a district may be filed with the application for certification of qualifying farmland.

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 filed with the Advisory Board, which shall then record the conservation easement with the Yancey County Registrar of Deeds. Permitted uses include agriculture, horticulture, and forestry. 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. Upon submission of the application to the Advisory Board, 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 Yancey County tax assessor;
 - b. The Yancey County Soil and Water Conservation District office;
 - c. The N.C. Cooperative Extension, Yancey County Center; and
 - d. The Natural Resources Conservation Service.

C. Appeal

If an application is denied by the Advisory Board, the landowner may, within ten (10) days 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 or, in the event that there are water or sewer assessments held in abeyance, the new owner(s) fails to agree in writing to accept liability for those assessments in the event that 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 therefrom.

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. Conservation Agreements for land within a Voluntary Agricultural District shall be automatically renewed for a period of 10 years 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 provides 30 day 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.

**ARTICLE X
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. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

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 XI
PUBLIC HEARINGS**

A. 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 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 in the appropriate newspapers and/or media of Yancey County within flat seven (7) 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 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 seven (7) 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 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 thirty (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 shall not permit any formal initiation of

condemnation by local agencies while the proposed condemnation is properly before the Advisory Board.

ARTICLE XII NOTIFICATION

A. Signage

Signs identifying approved agricultural districts shall be placed along the rights-of-way of major roads that pass through or next to those districts as may be deemed appropriate by the Advisory Board, or its administrative agent for the county's agricultural district program. There shall also be signage posted at the farm gate of each qualifying farm. Placement of signage shall be coordinated with the North Carolina Department of Transportation.

B. Maps

Maps identifying approved agricultural districts shall be provided to the following agencies or offices:

1. Planning Department
2. Register of Deeds;
3. The Natural Resources Conservation Service;
4. The NC Cooperative Extension, Yancey County Center;
5. The Yancey County Soil and Water Conservation District; and
6. Any other such agency or office the Advisory Board deems appropriate, including maps denoting the location of agricultural districts within the Yancey County planning jurisdiction.

ARTICLE XIII SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW

Developers of major subdivisions or planned unit developments shall designate on preliminary development plans, the existence of the Districts within 3 aerial mile(s) of the proposed development.

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, 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:

Yancey 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, horticultural, agri-tourism, 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, and participating farms located within these districts, can be obtained from the North Carolina Cooperative Extension Service office, the office of the Register of Deeds, the County Planning office, or the Natural Resources Conservation Service office.

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 Yancey County Soil and Water Conservation Service, 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**

Annually Report to the North Carolina Department of Agriculture and Consumer Services

A copy of this 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 after adoption. 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 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 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 Yancey County, this 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. This Ordinance may be amended from time to time by the Board of Commissioners upon reasonable advanced notice and review by the Agriculture Advisory Board.

**ARTICLE XVIII
ENACTMENT**

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

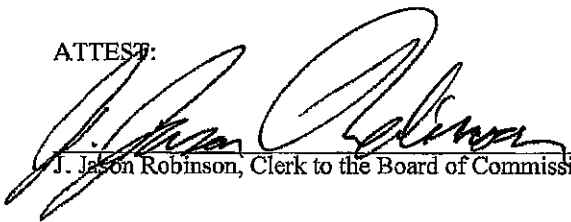
Adopted this the 13th day of February 2017.

Motion for adoption by Commissioner Stallings and seconded by Commissioner Ledford.

YANCEY COUNTY BOARD OF
COMMISSIONERS


Hon. Johnny Riddle, Chairman

ATTEST:


J. Jason Robinson, Clerk to the Board of Commissioners

Approved as to form:


Donny J. Lewis, County Attorney

