

**LINCOLN COUNTY
ENHANCED AGRICULTURAL DISTRICT ORDINANCE**

**ARTICLE I
TITLE**

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

**ARTICLE II
POLICY & PURPOSE**

The Lincoln County Board of Commissioners recognizes the critical need for proper management of environmental issues as Lincoln County faces growth in the coming years. It is the policy of Lincoln County to conserve, protect, and encourage the development, improvement and preservation of its agriculture land and forestland for the production of food, fiber and other products. When other land uses extend into agricultural and forest areas, agricultural and forestry operations often become the subject of nuisance suits. It is the purpose of this Ordinance to reduce potential nuisance suits by providing advance notice to surrounding landowners of the presence of enhanced agricultural districts and to encourage the preservation and protection of farmland from non-farm development, recognizing the importance of agriculture to the economic and cultural life of the county.

**ARTICLE III
AUTHORITY**

The articles and sections of this ordinance are adopted pursuant to authority conferred by the N.C.G.S. Sections 106-735 through 106-744 and Chapter 153A.

**ARTICLE IV
DEFINITIONS**

The following are defined for purposes of this ordinance:

Agricultural District Advisory Board: Lincoln County Agricultural District Advisory Board.

Chairperson: Chairperson of the Lincoln County Agricultural District Advisory Board.

District: Enhanced Agricultural District as established by this ordinance.

Board of Commissioners: Lincoln County Board of Commissioners.

Conservation Agreement: Agreement between agricultural operation (landowner) and Lincoln County prohibiting non-farm use.

ARTICLE V
AGRICULTURAL ADVISORY BOARD

A. Creation

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

B. Membership

The Agricultural District Advisory Board shall consist of no less than 7 members appointed by the Board of Commissioners.

C. Membership Requirements

1. Each Advisory Board member shall be a Lincoln County resident. 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.
2. At least 5 of the 7 members shall be actively engaged in farming.
3. The members actively engaged in farming, as well as other members, shall be selected for appointment by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Lincoln Natural Resources Committee, the Soil and Water Conservation District Board of Supervisors, the County Office of the North Carolina Cooperative Extension Service, the USDA Farm Service Agency County Committee, nonprofit agricultural organizations, conservation organizations, agribusiness, and the public at large.

D. Tenure

The initial board is to consist of 2 appointees for terms of one year; 2 appointees for terms of two years; and 3 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 Agricultural District Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term.

F. Removal

Any member of the Agricultural District Advisory Board may be removed for cause by the Board of Commissioners subsequent to written charges being presented to the member and after consultation with the Agricultural District Advisory Board.

G. Funding

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

H. Agricultural District Advisory Board Procedure

1. Chairperson

The Agricultural District 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 Agricultural 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. Jurisdiction

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

3. Agricultural District Advisory Board Year

The Agricultural District Advisory Board shall use the Lincoln County fiscal year as its meeting year.

4. Meetings

Meetings of the Agricultural District Advisory Board shall be held at the call of the chairperson and at such other times as the Agricultural District Advisory Board may specify in its rules of procedure or upon the request of at least a majority of the Agricultural District 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 Agricultural District Advisory Board members. Meeting dates and times shall be posted as far in advance as possible at 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 Agricultural District Advisory Board Membership. All meetings shall be open to the public. A quorum of the Agricultural District Advisory Board must be present to conduct business.

5. Majority Vote

The concurring vote of a majority of the members of the Agricultural District Advisory Board present shall be necessary to decide in favor of an applicant; or to pass upon any other matter on which it is required to act under this ordinance. To reverse any order, requirement, decision or determination of the Agricultural District Advisory Board the concurring vote of a majority of all members of the Agricultural District Advisory Board shall be necessary.

6. Records

The Agricultural District Advisory Board shall keep minutes of the proceedings showing the vote of each member on 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 Agricultural District Advisory Board and shall be a public record.

7. Administrative

The Soil and Water Conservation District will serve the Agricultural District Advisory Board for record keeping, correspondence, application procedures under this ordinance, and whatever services the Board needs to complete its duties.

I. Duties

The Agricultural District Advisory Board shall:

1. Review and approve applications for qualified farmland and enhanced agricultural districts and make recommendations concerning the establishment and modification of agricultural districts;
2. Conduct public hearings on public projects likely to have an impact on agricultural operations, particularly if such projects involve condemnation of all or part of any qualifying farm;
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. Review and make recommendations concerning proposed amendments to this ordinance;
5. Develop a county-wide farmland protection plan as defined in N.C.G.S. §106-744 (e) (1) for presentation to the Board of Commissioners;
6. Study additional methods of farmland conservation and make recommendations to the Board of Commissioners; and perform other agricultural related tasks or duties assigned by the Board of Commissioners.

**ARTICLE VI
CREATION OF ENHANCED AGRICULTURAL DISTRICTS**

A. Implementation

In order to implement the purposes stated in Article II, this program provides for the creation of enhanced agricultural districts that meet the following standards:

1. The District shall contain one or more qualified farms that contain a total of not less than 50 acres.
2. If a District consists of more than one qualifying farm, each farm must be within one mile of at least one other qualifying farm within the District.

B. Encourage Formation

The county may take such action as it deems appropriate through the Agricultural District Advisory Board or other entities or individuals to encourage the formation of the 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. Withdrawal

Enhanced Agricultural Districts require an irrevocable agricultural term easement between the Agricultural Advisory Board and the agriculture producer that cannot be revoked for ten (10) years.

D. Display

The Districts shall be designated on county GIS mapping system and marked on county maps displayed for public view in the following county offices:

1. Register of Deeds
2. Building & Land Development
3. Tax mapping
4. Soil and Water Conservation District/NRCS
5. Cooperative Extension

**ARTICLE VII
CERTIFICATION AND QUALIFICATION OF FARMLAND**

Requirements

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

1. Be participating in the farm present-use-value taxation program established by N.C.G.S. §105-277.2 through §105-277.7;
2. Be certified by the Natural Resources Conservation Service (formerly the Soil Conservation Service) of the United States Department of Agriculture as being a farm on which:
 - A. At least two-thirds of the land is composed of soils that:
 1. Are best suited for providing food, seed, fiber, forage, timber, forestry products, horticultural crops and oil seed crops;
 2. Have good soil qualities;
 3. Are favorable for all major crops common to the county where the land is located;
 4. Have a favorable growing season; and
 5. Receive the available moisture needed to produce high yields for an average of eight out of ten years.

OR

- B. At least two thirds of the land has been actively used in agricultural, horticultural or forestry operations as defined by N.C.G.S. §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.
3. Be managed in accordance with the Natural Resources Conservation Service defined erosion-control practices that are addressed to highly-erodible land if highly erodible land exist on the farm; and
4. 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.

**ARTICLE VIII
APPLICATION, APPROVAL, AND APPEAL PROCEDURE**

A. Application Procedure

1. A landowner may apply to participate in the program by making application to the chairperson of the Agricultural District Advisory Board or a designated staff person. The application shall be on forms provided by the Agricultural District Advisory Board. The application to participate in a district may be filed with the certification for qualifying farmland.
2. Subject to approval of the application, the landowner shall execute a conservation agreement per Article VII. Paragraph 4.

B. Approval Process

1. Upon submission of the application to the Agricultural District Advisory Board, the Agricultural District Advisory Board shall meet within sixty (60) 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 agricultural 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 Agricultural District Advisory Board prior to the date set for the Agricultural District Advisory Board vote on the application.
 - a. The Lincoln County tax assessor;
 - b. The Lincoln Soil and Water Conservation District office; and
 - c. The Natural Resources Conservation Service.

The offices shall evaluate, complete and return their copies to the chairman within 30 days of receipt.

C. Appeal

If the Agricultural District Advisory Board denies an application, the petitioner shall have thirty (30) days 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 OF CONSERVATION AGREEMENT**

An Agricultural easement entered into between a county or city and landowner shall be irrevocable for a period of ten (10) years from the date the agreement is executed. At the end of its term, an agricultural easement shall automatically renew for a term of three (3) years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the enhanced agricultural program. The benefits set forth in this Part shall be available to the farmland that is the subject of the agricultural easement for the duration of the agricultural easement.

ARTICLE X 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 Agricultural District Advisory Board to hold a public hearing on the proposed condemnation, this ordinance provides for such hearings.

B. Procedure

1. Upon receiving a request, the Agricultural District Advisory Board shall publish notice describing the proposed action in the appropriate newspapers of Lincoln County 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 thirty (30) days of receipt of the request.
2. The Agricultural District 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. Land value will not be a factor in the selection between properties under consideration for the proposed action.

4. Within ten (10) days after the hearing, the Agricultural District 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. 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 Agricultural District Advisory Board within these time limitations.
6. Prior to initiating condemnation proceedings which would convert land in a District to non-farm uses: the county or any other local unit of government shall submit to the Agricultural District Advisory Board a statement that the governmental unit has considered alternatives to condemning farm land in the district.

ARTICLE XI PUBLIC NOTIFICATION

A. Purpose

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

B. Procedure

1. Upon certification of qualifying farmland and designation of real property as a District, the Agricultural District Advisory Board, in cooperation with the county, shall provide notification to property owners, residents and other interested persons in and adjacent to any designated agricultural district. The purpose of such notification is to inform all 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 operations, livestock operations, forestry operations including logging and similar activities.

Types of Notification

- a. Signs identifying approved agricultural districts shall be placed along the rights-of-way of major roads.
- b. Maps identifying approved districts shall be provided to the Register of

Deeds, the Soil and Water Conservation Office, the Cooperative Extension Office, Building & Land Development and Tax Mapping.

- c. The following notice shall be available for public inspections in the Register of Deeds Office:

**NOTICE TO REAL ESTATE PURCHASERS IN LINCOLN COUNTY
OF ENHANCED AGRICULTURAL DISTRICTS FOR FARMLAND
CONSERVATION**

Lincoln County has established enhanced agricultural districts for farmland conservation 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 activities including, but not limited to, pesticide spraying, manure spreading, machinery operations, livestock operations, forestry operations including logging and similar activities may take place 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 Soil & Water Conservation District Office/NRCS, Register of Deeds, Cooperative Extension Service, Building & Land Development and Tax Mapping.

2. 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 ordinance.

3. 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 enhanced agricultural district as defined in this ordinance.

**ARTICLE XII
SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW**

Developers of subdivisions or planned unit developments shall designate on preliminary development plans, the existence of the Districts located within one-half aerial mile of the proposed development.

**ARTICLE XIII
BUILDING PERMIT REGISTRATION**

A. Signed Registration

Lincoln County shall require persons applying for a building permit to sign the following statement, which shall be maintained at the office of the Agricultural District Advisory Board: “I have reviewed the most current Lincoln County Agricultural Districting Map found in the Register of Deeds office. I understand that activities such as pesticide spraying, manure spreading, machinery operation, livestock operations, logging and other common farming and forestry activities may occur at any time in these areas.”

**ARTICLE XIV
WAIVER OF SEWER ASSESSMENTS**

Pre-existing agricultural districts that exist before a new sewer district is established will be exempt from sewer assessment.

**ARTICLE XV
COUNSULTATION AUTHORITY**

The Agricultural District Advisory Board may consult with the Lincoln Natural Resources Committee, North Carolina Cooperative Extension Service, Lincoln Soil And Water Conservation District, Natural Resources Conservation Service Office, North Carolina Department of Agriculture & Consumer Services and with any other individual, agency, or organization the Agricultural District 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 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 the North Carolina Cooperative Extension Service, 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 applied;
3. Number of acres certified;

4. Number of acres denied;
5. Date certified;

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 Lincoln 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.

C. Amendments

After notification and in consultation with the Agricultural District Advisory Board this ordinance may be amended from time to time by the Board of Commissioners.

**ARTICLE XVIII
ENACTMENT**

The Lincoln County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this ordinance.

Adopted this the 15th day of October, 2007.

Motion for adoption by Commissioner Carlton and seconded by n/a.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Thomas R. Anderson
Chairperson

ATTEST:

Amy J. Atkins
Clerk to Board of Commissioners

Approved as to form:

James E. Johnson
County Attorney