

VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE

ARTICLE I TITLE

An ordinance of the Board of County Commissioners of MADISON COUNTY, NORTH CAROLINA, entitled, **MADISON COUNTY FARMLAND PRESERVATION 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: Madison County Agricultural Advisory Board.

Chairperson: Chairperson of the Madison County Agricultural Advisory Board.

District: Voluntary Agricultural District as established by this Ordinance.

Board of Commissioners: Madison 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. [Reference to, or inclusion of, all relevant provisions of a county's policies and procedures for advisory boards should be done wherever necessary in sections A through H. of this Article. Section I. is pursuant to N.C.G.S. § 106-739.]

B. Membership

The Advisory Board shall consist of no less than five members appointed by the Board of Commissioners representing the following 5 regions of Madison County.

1. Spring Creek and Hot Springs
2. Big Pine, Little Pine and Sandy Mush
3. Big Laurel and Little Laurel
4. Marshall
5. Mars Hill, Beech Glen, and Upper Laurel

C. Membership Requirements

1. Each Advisory Board member, except those serving in an *ex officio* capacity, shall be a Madison County resident or landowner.
2. At least 5 of the members shall be actively engaged in agriculture as defined in N.C.G.S. § 106-581.1. Of the members actively engaged in agriculture as defined in N.C.G.S. § 106-581.1, there shall be at least one such member from each Voluntary Agricultural District in Madison County. This determination shall be made without reference to *ex officio* members.
3. The members actively engaged in agriculture as defined in N.C.G.S. § 106-581.1, 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 Soil and Water Conservation District Board of Supervisors, the County Office of North Carolina Cooperative Extension, and the U.S. Farm Service Agency County Committee.
4. Additional members may be appointed to the Ag Advisory Board in an *ex officio* capacity from the Soil and Water Conservation District Board of Supervisors, the County Office of North Carolina Cooperative Extension, the U.S. Farm Service Agency, 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 members are to serve for terms of three years, except that the initial Advisory Board is to consist of three appointees for a term of one year, three appointees for terms of two years and three appointees for terms of three years. Therefore, 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 two-thirds 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.

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 Madison 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 quarterly. Meeting notice is posted at the public notice board at the Madison County Court House a week before the board meeting. Meeting notice to board members will be mailed out no later than one week before the board meeting with agenda and previous board meeting minutes. 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. The Advisory Board 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. All records are public records open to the public.

7. Administrative

The Advisory Board ~~may contract with~~ **appoints** the Madison County Soil and Water Conservation District office to serve the Board for record keeping, correspondence, application procedures under this Ordinance, and any other services the Board needs to complete its duties.

I. Duties

The Advisory Board shall:

1. Review applications of landowners for enrollment of qualified farm land, horticultural land, or forestland into a District for compliance with this Ordinance;

2. Make recommendations concerning the establishment and modification of 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 Districts;
5. Review and make recommendations concerning proposed amendments to this Ordinance;
6. Develop and maintain a countywide farmland protection plan as defined in N.C.G.S. § 106-744 (e);
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 related tasks or duties assigned by the Board of Commissioners.

**ARTICLE VI
CERTIFICATION AND QUALIFICATION OF FARMLAND**

A. Requirements

To secure county certification as qualifying farmland in a 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;
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; and
4. Be located in the unincorporated area of Madison County, unless there is an agreement with a municipality through which the county is authorized to exercise the authority of the municipality on its behalf.

**ARTICLE VII
APPLICATION, REVIEW, AND APPEAL**

A. Application Procedure

1. A landowner, or landowners, may apply to participate in the Voluntary Agricultural District program by making an application for certification of qualifying farmland to be included in a District to the chairperson of the Advisory Board or designated administrative staff. The application shall be on forms provided by the Advisory Board.
2. A Conservation Agreement, required by N.C.G.S. § 106-737 and defined in N.C.G.S. § 121-35, to sustain, encourage, and promote agriculture must be executed by the landowner(s) with the Advisory Board.
3. Managed, if highly erodible land exists on the farm, in accordance with natural resources conservation service defined erosion-control practice that are addressed to the highly-erodible land.

4. Located in the unincorporated area of Madison County, unless a municipality of the county has been formally granted by Madison County.
5. A district or enhanced district shall consist of at least 50 contiguous acres of qualifying farmland or two or more qualifying farms consisting of a total of at least 50 acres and lying within one mile of each other.

B. Review Process

1. 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 to review the application:
 - a. The Madison County Tax office;
 - b. The Madison County Planning Department.
2. Decision by the Advisory Board; notification of applicant. Within 90 days of receipt of the evaluations, the Advisory board shall meet and render a decision regarding the application. The chairperson of the Board shall notify the applicant by first class mail of a application compliance or non-compliance, and the reason(s) therefore, within 15 days of the determination.
3. Appeal upon denial. If application is denied by Advisory Board, the applicant has 30 days to appeal the decision to the Madison County Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

C. Encouragement of districts:

The County may take such actions as it deems appropriate through Advisory Board or other body or individual to encourage the formation of districts and to further their purposes and objectives.

**ARTICLE VIII
REVOCATION, TRANSFER, RENEWAL, AND ENFORCEMENT OF CONSERVATION AGREEMENTS**

A. Revocation

By providing 30 days advance written notice to the Advisory Board, a landowner of qualifying farmland within a District may revoke the Conservation Agreement or the Advisory Board may revoke the same Conservation Agreement based on noncompliance by the landowner with the provisions of Article VII, 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).

B. Transfer

Transfers of land in a District due to death of the landowner, sale, or gift shall not revoke the Conservation Agreement, if all new landowner(s) affirm the Conservation Agreement and affirm, on a supplemental application, updated information demonstrating that the enrolled land still qualifies for enrollment under Article VII of this Ordinance.

In the event that there are water or sewer assessments held in abeyance by this Ordinance, and where the new owner(s) fail(s) to agree in writing to accept liability for those assessments when land is withdrawn either voluntarily or involuntarily from the District, the Conservation Agreement shall be revoked. Revocation shall be undertaken pursuant to the provisions of Section A of this Article.

C. Renewal

A Conservation Agreement for land within a Voluntary Agricultural District, which continues to qualify under all provisions of Article VII, in order to renew the conservation agreement for an additional 10 year term the landowner needs to resubmit another application.

D. Enforcement

Enforcement of the terms of a Conservation Agreement for land enrolled in a District shall be limited to revocation of the Conservation Agreement and the benefits derived therefrom. Revocation shall be undertaken pursuant to the provisions of Section A of this Article.

**ARTICLE IX
WAIVER OF WATER AND SEWER ASSESSMENTS**

A. No Connection Required

A landowner belonging to a District shall not be required to connect to Madison County water and/or sewer systems.

B. Abeyance

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.

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 shall be required to sign an acknowledgment, which shall 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 X
PUBLIC HEARINGS**

A. Purpose

N.C.G.S. § 106-740 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 a agency or unit has requested that the Advisory Board hold a public hearing on the proposed condemnation. This provision ensures that the condemning agency or unit considers the impact of its actions upon agricultural, forested land, or horticultural land prior to taking action that is not reversible. This provision is not intended to, and does not prohibit, the condemning agency or unit from taking action authorized by law.

B. Procedure

1. Upon receiving a request, the Advisory Board shall publish notice describing the proposed action in the appropriate newspapers of Madison 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 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 Cooperative Extension Service office, the Soil and Water Conservation District office, the Natural Resources Conservation Service, 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 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 within five (5) days.
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 condemning agency may not formally initiate a condemnation action while the proposed condemnation is properly before the Advisory Board within these time limitations.

**ARTICLE XI
NOTIFICATION**

A. Signage

Signs identifying parcels enrolled in an agricultural district may be placed on enrolled parcels at the discretion of the owners. Signs shall not be placed along the right-of-way of any state or county maintained road.

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

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

**ARTICLE XII
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 Voluntary Agricultural District program and to also coordinate the formation and maintenance of Districts with the county's land use planning activities and the county's land use plan.

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:

Madison County has established 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 agricultural, horticultural, and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, burning, and other common agricultural, horticultural, and forestry 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 Soil and Water Conservation District office, the office of the Register of Deeds, the County Planning office USDA Farm Service Agency, or the USDA Natural Resources Conservation Service office.

C. Growth Corridors

At such time as the county might establish designated growth corridors, Districts shall not be permitted in those 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 XIV
CONSULTATION AUTHORITY**

The Advisory Board may consult with North Carolina Cooperative Extension office, the Soil and Water Conservation District office, the Natural Resources Conservation Service, USDA Farm Service Agency 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

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 North Carolina Cooperative Extension office, USDA Farm Service Agency and the Soil and Water Conservation District office after a adoption. At least annually, the county shall submit a written report to the Commissioner of Agriculture and Consumer Services on the county's Voluntary Agricultural District program, including the following information:

1. Number of farms enrolled;
2. Number of acres enrolled;
3. Number of acres certified during the reporting period;
4. Number of acres not certified during the reporting period;
5. Number of acres for which applications are pending;
6. Municipalities with which Memorandums of Understanding have been signed;
7. Municipalities with which Memorandums of Understanding are no longer in effect;
8. Municipalities that have adopted this Ordinance for the purpose of the county enforcing this Ordinance within their corporate boundaries;
9. Copies of any amendments to this Ordinance or Memorandums of Understanding signed with municipalities; and
10. 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 Madison County, the provisions of those other ordinances shall govern. Whenever the provisions of any federal or state statute conflict with this Ordinance, the provisions of such federal or state statute shall govern. The sole remedy for a land use not complying with this Ordinance shall be revocation of the Conservation Agreement and removal of the non-qualifying land from the Madison County Voluntary Agricultural District Program. Recreational use of land that does not interfere with agricultural uses as defined in N.C.G.S. § 106-581.1 shall not be considered non-compliant with this Ordinance.

C. Amendments

This Ordinance may be amended from time to time by the Board of Commissioners with recommended changes presented by the Ag Advisory Board with guidance from Madison County Soil and Water Conservation District.

ARTICLE XVIII
ENACTMENT

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

Adopted this the 3rd day of August, 2021

Motion for a doption by Commissioner Gentry and seconded by Commissioner Wechtel

COUNTY BOARD OF COMMISSIONERS

Mark Saulson
Chairperson

ATTEST:

[Signature]
Clerk to Board of Commissioners

Approved as to form:

[Signature]
County Attorney