

Chapter 8.5 FARMLAND PRESERVATION¹

ARTICLE I. IN GENERAL

Sec. 8.5-1. Purpose.

The purpose of this chapter 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 decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors. (Amend 11-6-23) (Amend. of 3-7-11)

Sec. 8.5-2. Authority.

This chapter is adopted under the authority and provisions of G.S. 106-735 through 106-743 and 153A-121 thru 153A-122.

(Amend. of 3-7-11)

Sec. 8.5-3. Definitions.

The following are defined for the purposes of this chapter:

Board shall mean the county agricultural advisory board established under state law.

Chairman shall mean the chairman of the county agricultural advisory board.

District shall mean voluntary agricultural district (VAD) as established in this chapter.

Enhanced district shall mean an enhanced voluntary agricultural district (EVAD) as established by this chapter.

Farmer shall mean, for the purposes of this chapter, an individual actively engaged in the operation, production or managing of agricultural land, forestland, or horticultural land as defined in G.S. 105-277.2.

Nuisance shall mean an action that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property.

(Amend. of 3-7-11)

Cross reference(s)—Rules of construction and definitions, § 1-3.

Secs. 8.5-4—8.5-20. Reserved.

¹Editor's note(s)—An amendment adopted Mar. 7, 2011, amended ch. 8.5 in its entirety to read as herein set out. Former ch. 8.5 pertained to the same subject matter and derived from ordinances adopted July 19, 1990; Apr. 6, 1995; Sept. 7, 2004, and an amendment of Aug. 6, 2007.

Cross reference(s)—Administration, Ch. 2; soil erosion and sedimentation, Ch. 18; hazardous, infectious and low-level radioactive waste, § 19-101 et seq.; zoning, Ch. 21.

State law reference(s)—Authority to adopt, G.S. 106-735—106-743.

ARTICLE II. AGRICULTURAL ADVISORY BOARD

Sec. 8.5-21. Created.

A county agricultural advisory board, to consist of five (5) members appointed by the board of commissioners, is hereby established.

(Amend. of 3-7-11)

Sec. 8.5-22. Membership.

- (a) *Requirements.* Each board member shall be a county resident. Three (3) of the five (5) members shall be actively engaged in farming and shall be selected from the names of individuals submitted to the board of commissioners by the soil and water conservation district, the cooperative extension advisory council, the farm service agency or by application to the board of commissioners.
- (b) *Tenure.* The members are to serve for terms of three (3) years, except that the initial board is to consist of one (1) appointee for a term of one (1) year, two (2) appointees for terms of two (2) years, and two (2) appointees for terms of three (3) years. Thereafter, all appointments are to be for a maximum of two (2) three-year terms or until replacement has been appointed.
- (c) *Vacancies.* Any vacancy on the agricultural advisory board is to be filled by the board of commissioners for the remainder of the unexpired term.
- (d) *Removal for cause.* Agricultural advisory board members may be removed by the board of commissioners at any time for failure to attend twenty-five (25) percent or three (3) consecutive meetings within any twelve-month period (excepting excused absence) or for any other good cause related to performance of duties or when no longer actively engaged in farming during tenure for those appointed as a farming representative pursuant to subsection 8.5-22(a).

(Amend. of 3-7-11)

Sec. 8.5-23. Funding.

Funds may be appropriated to the board to perform its duties based on approval by the board of commissioners.

(Amend. of 3-7-11)

Sec. 8.5-24. Procedure.

- (a) *Chairman.* The board is to elect a chairman and vice-chairman each year at its first meeting following the appointment of new members or reappointment of existing members. The chairman shall preside over all regular or special meetings of the board. In the absence or disability of the chairman, the vice-chairman shall preside and shall have and exercise all the powers of the chairman so absent or disabled. Additional officers may be elected as needed.
- (b) *Jurisdiction.* The jurisdiction and procedures of the board are to be as set out herein, except that the board may adopt supplementary rules of procedure not inconsistent with this chapter or with other provisions of law.
- (c) *Board year.* The board will use the county fiscal year as its meeting year.

-
- (d) *Meetings.* Meetings of the board, following such notice as is required by this chapter, shall be held at the call of the chairman and at such other time as the board in its rules of procedure may specify. A called meeting will be held at least every three (3) months.
 - (e) *Majority vote.* The concurring vote of a majority of the members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or agency, to decide in favor of an applicant or to pass upon any other matter on which it is required to act under this chapter.
 - (f) *Records.* The board shall keep minutes of the proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
 - (g) *Administrative.* Both the Rowan soil and water conservation district office and the Rowan cooperative extension will serve the board for recordkeeping, correspondence, application procedures under this chapter and whatever other services the board needs to complete its duties.

(Amend. of 3-7-11; Amend. of 11-19-18)

Sec. 8.5-25. Duties.

The agricultural advisory board shall:

- (1) Review and recommend approval of applications for qualified farmland enrollment in either enhanced or voluntary agricultural districts and make recommendations concerning the establishment and modification of said districts.
- (2) Hold public hearings pursuant to sections 8.5-61 and 8.5-62 of this chapter.
- (3) Advise the board of commissioners on projects, programs or issues affecting the agricultural economy or activities within the county and that will affect agricultural districts.
- (4) Perform other related tasks or duties assigned by the board of commissioners.
- (5) May develop, and maintain if approved, a countywide farmland protection plan as defined in G.S. 106-744(e) for presentation and consideration to the board of commissioners. The board will present a yearly report of activity at a Rowan BOC meeting.

(Amend. of 3-7-11; Amend. of 11-19-18)

Secs. 8.5-26—8.5-40. Reserved.

ARTICLE III. APPLICATION, CERTIFICATION OF QUALIFYING FARMLAND, ENHANCED AND VOLUNTARY AGRICULTURAL DISTRICTS

Sec. 8.5-41. Requirements.

- (a) To secure county certification as qualifying farmland, a farm must be:
 - (1) A minimum of five (5) acres and meets one of the criteria listed in the definition of farmland as defined by G.S. 106-581.1:

§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture," "agricultural," and "farming" refer to all of the following:

-
- (1) The cultivation of soil for production and harvesting of crops, including, but not limited to fruits, vegetables, sod, flowers and ornamental plants.
 - (2) The planting and production of trees and timber.
 - (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
 - (4) Aquaculture as defined in G.S. 106-758.
 - (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
 - (6) When performed on the farm, "agriculture," "agricultural," and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on a farm, and similar activities incident to the operation of a farm.
 - (7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6; 2013-347, s. 2; 2017-108, s. 8.1.)
- (2) Managed, if highly erodible land exists on the farm, in accordance with the Natural Resource Conservation Service defined erosion-control practices that are addressed to such highly erodible land.
 - (3) The subject of a conservation agreement, as defined in G.S. 121-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least ten (10) years, except for the creation of not more than three (3) lots that meet applicable county zoning and subdivision regulations.
- (b) Voluntary agricultural districts. To be included in the voluntary agricultural district, a landowner may apply to the agricultural advisory board.
 - (1) The purpose of voluntary agricultural districts shall be to encourage the economic and financial health of farming areas, to increase protection from nuisance suits, undesired nonfarm development and other negative impacts on participating farms and to increase the identity and pride in the agricultural community and its way of life.
 - (c) Enhanced voluntary agricultural districts (EVAD).
 - (1) The enhanced voluntary agricultural district will provide additional benefits to farmers than the current voluntary agricultural district program.
 - (2) Benefits.
 - a. The benefits applied to property included in a voluntary agricultural district pursuant to this chapter also apply to property included in an enhanced voluntary agricultural district.
 - b. Property participating in the EVAD program may receive up to twenty-five (25) percent of its gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from zoning regulations under G.S. 153A-340(b).
1. A farm sales tax exemption certificate issued by the Department of Revenue.

-
2. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
 3. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
 4. A forest management plan.
 - c. A person who farms land that is subject to an irrevocable conservation agreement pursuant to subsection 8.5-41(c)(3) of this chapter is eligible to receive the higher percentage of cost-share funds for the benefit of that farmland under the agriculture cost share program pursuant to G.S. 143-215.74(b).
 - d. State departments, institutions, or agencies that award grants to farmers are encouraged pursuant to G.S. 106-743.4(c) to give priority consideration to any person who farms land that is subject to an irrevocable conservation agreement per subsection 8.5-41(c)(3) of this chapter.
 - (3) Conservation agreement. The conservation agreement entered into between the agriculture advisory board and the landowner pursuant to G.S. 106-743.1(a)(2) shall be irrevocable for a period of ten (10) years from the date the agreement is executed. Enforcement or revocation contrary to the terms of the conservation agreement may be enforced by the provisions contained in subsections 8.5-45(a) and (b) of this chapter. At the end of its term, a conservation agreement 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 this chapter. The benefits outlined in subsection 8.5-41(c)(2) of this chapter shall be available to the farmland for the duration of the conservation agreement. The applicant will be provided full disclosure of the details and requirements of the program in writing thirty (30) days prior to consideration of the EVAD application by the agricultural advisory board.

(Amend. of 3-7-11; Amend. of 11-19-18)

Sec. 8.5-42. Procedure.

- (a) To apply to the VAD or EVAD as an agricultural district, a landowner for such certification will apply to the agricultural advisory board. Application forms may be obtained from the agricultural advisory board, cooperative extension, soil and water district, farm services agency or natural resource conservation service.
- (b) Upon receipt of an application, the chairman or designee will verify evidence of eligibility of the application.
- (c) If an application is approved or denied by the Agricultural Advisory Board, the applicant will be notified by mail.
- (d) If an application is denied by the agriculture board, the landowner may, within ten (10) days of notification of disapproval of the application, request in writing that the 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 through the appropriate legal process.

(Amend. of 3-7-11; Amend. of 11-19-18)

Sec. 8.5-43. Identification on county records.

Enhanced and voluntary agricultural districts will be marked on county maps displayed for public view in the following county offices:

- (1) Register of deeds.
- (2) Code enforcement.

-
- (3) Tax supervisor.
 - (4) Soil and water conservation district.
 - (5) Agricultural extension.
 - (6) County planning.
 - (7) Any other office deemed necessary by the board.
 - (8) County's GIS website.
 - (9) Farm service agency.

(Amend. of 3-7-11; Amend. of 11-19-18)

Sec. 8.5-44. Public information program.

The county may take such action as it deems appropriate through the agricultural advisory board or other body or individual to encourage the formation of enhanced or voluntary agricultural districts and to further their purposes and objectives, including at a minimum a public information program to reasonably inform landowners of the farmland preservation program.

(Amend. of 3-7-11)

Sec. 8.5-45. Revocation of conservation agreement; procedure.

Revocation by the landowner or the agricultural advisory board shall follow the procedures as prescribed below for the respective district type:

- (a) *Voluntary agricultural district (VAD)*. By providing thirty (30) days advance written notice to the advisory board, a landowner of qualifying farmland within a VAD may request revocation of the conservation agreement or the advisory board may recommend revocation of the same conservation agreement based on noncompliance by the landowner, subject to the same provisions as contained in subsection 8.5-42(d) of this chapter. After review and decision by the Agriculture Advisory Board, such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a VAD. If the ~~board of commissioners~~ Ag Advisory Board, shall revoke this conservation agreement for cause, the landowner shall have the appeal rights set forth in subsection 8.5-42(d) of this chapter. Transfers of land in a VAD due to death of the landowner, sale or gift shall not revoke the conservation agreement unless the land no longer qualifies 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 VAD. Enforcement of the terms of a conservation agreement for land enrolled in a VAD shall be limited to revocation of the conservation agreement and the benefits derived therefrom. A notice of revocation shall be recorded in the county land record system sufficient to provide notice that the land has been withdrawn from the voluntary agricultural district program.
- (b) *Enhanced voluntary agricultural district (EVAD)*. Conservation agreements for land within EVAD are irrevocable for a period of ten (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 board of commissioners may also terminate any benefits to the owner under this program either permanently or during the period of violation, as appropriate. If the board of commissioners shall revoke this conservation agreement for cause, the landowner shall have the appeal rights set forth in subsection 8.5-42(d) of this chapter. The right to terminate program benefits is in addition to any legal rights that the county may have under either this chapter 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. A notice of revocation shall be recorded in the county land record system sufficient to provide notice that the land has been withdrawn from the enhanced voluntary agricultural district program.

(Amend. of 3-7-11; Amend. of 11-19-18)

Secs. 8.5-46—8.5-60. Reserved.

ARTICLE IV. PUBLIC HEARINGS

Sec. 8.5-61. Purpose.

Pursuant to 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 an enhanced or voluntary agricultural district until such agency or unit has requested the local agricultural advisory board to hold a public hearing on the proposed condemnation, this article provides for such hearings.

(Amend. of 3-7-11)

Sec. 8.5-62. Procedure.

- (a) Upon receiving a request, the agricultural advisory board shall publish notice describing the proposed action in the appropriate newspapers of the area 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 thirty (30) days of receipt of the request. (Amend. Of 11-6-23)
- (b) The board will meet to review:
 - (1) If 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.
 - (2) Alternatives to the proposed action that are less impactive and disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place.
- (c) The board will consult with the county agricultural extension agent, U.S.D.A. Natural Resource Conservation Service personnel and planner, and may consult with any other individuals, agencies or organizations, public or private, necessary to the board's review of the proposed action. Land value will not be a factor in the selection between properties under consideration for the proposed action. (Amend. Of 11-6-23)
- (d) Within ten (10) days after the public hearings, the board will make a report containing its findings and recommendations regarding the proposed action. The report will be made available to the public for comment prior to a final public hearing/decision by the board of commissioners. Following the commission's decision, the final report will be conveyed to the decision-making body of the agency proposing acquisition and/or condemnation.
- (e) Pursuant to G.S. 106-740, the county will not permit any formal initiation of condemnation action by local agencies while the proposed condemnation is properly before the advisory board within these time limitations. (Amend 3-7-11)
- (f) Board of Commissioners shall condemn farmland within an Agricultural District only as a last "resort" if is considering condemnation for County purposes. (Amend 11-6-23)

Secs. 8.5-63—8.5-80. Reserved.

ARTICLE V. WAIVER OF WATER AND SEWER ASSESSMENTS

Sec. 8.5-81. Purpose.

The purpose of this article is to help mitigate the financial impacts on farmers of some local and state capital investments unused by such farmers.

(Amend. of 3-7-11)

Sec. 8.5-82. Procedure.

- (a) Landowner(s) belonging to enhanced or voluntary agricultural districts shall not be assessed for or required to connect to water and/or sewer systems.
- (b) Water and sewer assessments will be held in abeyance, without interest, for farms, whether inside or outside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.
- (c) When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
- (d) Statutes of limitation are suspended during the time that any assessment is held in abeyance without interest.
- (e) Assessment procedures followed under G.S. Article 9 of Chapter 153A shall conform to the terms of this chapter with respect to qualifying farms that entered into conservation agreements while such chapter was in effect.
- (f) Nothing in this section is intended to diminish the authority of the county to hold assessments in abeyance under G.S. 153A-201.
- (g) Water and sewer assessments will be conducted through Salisbury Rowan Utilities and the Rowan County Tax Assessor's office.
- (h) 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 chapter shall apply.

(Amend. of 3-7-11)

Sec. 8.5-82.1. Record notice of proximity to farmlands.

N.C.G.S. § 106-741(a) states that "all counties shall require that land records include some form of notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of a poultry, swine, or dairy qualifying farm or within 600 feet of any other qualifying farm or within one-half mile of a voluntary agricultural district."

(Amend. of 11-19-18)

The Rowan County Tax Department/ GIS Mapping shall maintain maps of approved Districts within the Rowan County Geographic Information Mapping System Database as well as an overlay for all tracts located within one-half (½) mile of the property line of any tract enrolled in a voluntary agricultural district

The mapping information shall provide notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one half mile of an agricultural district. This mapping information may be viewed by accessing the Rowan County GIS website.

Developers of major subdivisions, apartment complexes or planned unit developments shall designate on preliminary development plans, the existence of any Agricultural Districts with ½ aerial mile of proposed development.

(Amend 11-6-23)

Secs. 8.5-83—8.5-100. Reserved.

ARTICLE VI. STATE AGENCY NOTIFICATION

Sec. 8.5-101. Purpose.

The advisory board shall consult as much as possible with the state department of agriculture, the state division of soil and water and any other entity the board deems necessary to the proper conduct of its business.

(Amend. of 3-7-11)

Sec. 8.5-102. Procedure.

A record of the ordinance from which this chapter derives shall be recorded with the state commissioner of agriculture's office after adoption. At least once a year the county shall submit a written report to the commissioner of agriculture including the status, progress and activities of the county's farmland preservation program, including voluntary agricultural districting information regarding:

- (1) Number of landowners enrolled.
- (2) Number of acres applied.
- (3) Number of acres certified.
- (4) Number of acres denied.
- (5) Date certified.
- (6) Copies of any amendments to this chapter.

(Amend. of 3-7-11)

Secs. 8.5-103, 8.5-104. Reserved.

ARTICLE VII. LEGAL PROVISIONS

Sec. 8.5-105. Severability.

If any article, section, subsection, clause, phrase, or portion of this chapter 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 chapter.

(Amend. of 3-7-11)