

WAKE COUNTY
FARMLAND PRESERVATION PROGRAM
ORDINANCE

WHEREAS, on December 5, 2016, the Wake County Board of Commissioners enacted an ordinance entitled, "WAKE COUNTY VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE:" and

WHEREAS, the North Carolina legislature has expanded the County's statutory authority to adopt more comprehensive farmland protection measures; and

WHEREAS, the County desires, by and through this ordinance, to expand its existing farmland preservation program.

ARTICLE I
TITLE

An ordinance of the Board of County Commissioners of WAKE COUNTY, NORTH CAROLINA, entitled: WAKE COUNTY FARMLAND PRESERVATION PROGRAM ORDINANCE."

ARTICLE II
AUTHORITY AND PURPOSE

This Article is adopted pursuant to authority conferred by the North Carolina General Statutes ("NCGS") §§ 106-735 through 106-744 and Chapter 153A.

The purpose of this Article is to repeal and replace the "WAKE COUNTY VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE" and to expand the County's farmland preservation program. It also serves to promote agricultural values and the general welfare of Wake County, and more specifically: to increase identity and pride in the agricultural community and its way of life; to encourage the economic and financial health of agriculture, horticulture and forestry; and to decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors, and other negative impacts on properly managed farms.

ARTICLE III
DEFINITIONS

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advisory Board means the County Agricultural Advisory Board created pursuant to NCGS §106-739 to carry out the duties set forth in Article IV of this ordinance.

Agricultural Conservation Easement (sometimes herein "ACE") shall have the meaning defined in NCGS §106-744(b).

Chairperson means chairperson of the Advisory Board.

Farmland Preservation Coordinator means Wake Soil and Water Staff person who supports the Agricultural Advisory Board.

Voluntary Agricultural District ("VAD"), shall have the meaning defined in NCGS §106-738.

Enhanced Voluntary Agricultural District ("EVAD") shall have the meaning defined in NCGS §106-743.1.

Board of Commissioners means the Wake County Board of Commissioners.

Conservation Agreement means conservation agreement as same is defined in NCGS §121-35(1).

Conservation Easement, for the purposes of this ordinance shall have the meaning as Agricultural Conservation Easement as set forth in NCGS §106-744, and to the extent not inconsistent with NCGS §106-744 generally means a written agreement between a landowner and a qualified conservation organization or public agency under which:

- The landowner agrees to keep the land available for agriculture and/or forestry and restrict subdivision or non-farm development and other uses that are incompatible with commercial agriculture and forestry; and
- The conservation organization or public agency is responsible for monitoring the easement to ensure the terms of the easement are met.

ARTICLE IV AGRICULTURAL ADVISORY BOARD

(a) **Creation.** A County Agricultural Advisory Board, to consist of seven members appointed by the Board of Commissioners, is hereby established to implement the provisions of this Article.

(b) **Membership**

(1) **Requirements.** Requirements for membership shall be as follows:

- a. Each Advisory Board member shall be a Wake County resident.
- b. The majority of members shall be actively engaged in agriculture as defined in NCGS §106-581.1. Diversity of agricultural production will be considered when appointing Board members. This determination shall be made without reference to *ex officio* members.
- c. 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 Wake County Office of the North Carolina Cooperative Extension Service, United States Natural Resource Conservation Service and United States Farm Service Agency Committee.
- d. Additional members may be appointed to the Advisory Board in an *ex officio* capacity from the Soil and Water Conservation District Board of Supervisors, the Wake County Office of North Carolina Cooperative Extension, USDA Natural Resource Conservation Service and United States Farm Service Agency, Triangle Land Conservancy 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.

- (2) Tenure. Members are to serve for terms of two years with a maximum service of three consecutive terms (six years) or a total of five terms (ten years) in any one appointed position.
- (3) Vacancies. Any vacancy on the Advisory Board is to be filled by the Board of Commissioners.
 - a. Removal. Any member of the Advisory Board may be removed by a majority vote of the Board of Commissioners. No cause for removal shall be required.

(c) Funding

- (1) Compensation. The per diem compensation, if any, of the members of the Advisory Board shall be fixed by the Board of Commissioners.
- (2) Appropriations for performance of duties. Funds may be appropriated by the Board of Commissioners to the Advisory Board to perform its duties. The Board of Commissioners may provide operating funds to Wake County Soil and Water Conservation District assisting the Advisory Board's needs.

(d) 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 have and exercise all the powers of the chairperson so absent or disabled. Additional officers may be elected as needed.
- (2) Jurisdiction and procedures; supplementary rules. The jurisdiction and procedures of the Advisory Board are set out in this Article, except that the Advisory Board may adopt supplementary rules of procedure not inconsistent with this Article or with other provisions of law.
- (3) Advisory Board year. The Advisory Board shall use the 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 in its rules of procedure may specify. A called meeting shall be held at least every three months. Meeting dates and times shall be posted no less than one week before the meeting by giving notice by an electronic mail or a mailed notification to each Advisory Board member, and by posting a copy of the notice on the principal bulletin board of the Advisory Board or at the door of its usual meeting room or on the building in an area accessible to the public. All meetings shall be open to the public.
- (5) Voting. The concurring vote of a majority of the members of the Advisory 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 Article.
- (6) Duty to Vote. Once a meeting has been convened, every member, including the chairperson, must vote unless excused by a majority vote of those members present. A member who wishes to be excused from voting shall so inform the chairperson, who shall take a vote of the remaining members. The Advisory Board may excuse a member from voting, but only upon questions involving his/her own financial interest or his/her official conduct or on matters on which the member is prohibited from voting under NCGS §14-234. Refusal to vote (without just cause) shall be recorded as an affirmative vote.

- (7) Records. The Advisory Board, or its designee, 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 Soil and Water Conservation District Office and shall be a public record.
- (8) Administrative services. The Advisory Board shall contract with the Soil and Water Conservation District office to serve the Advisory Board for recordkeeping, correspondence, application procedures under this Article and whatever other services the Advisory Board needs to complete its duties. The Farmland Preservation Coordinator will fulfill these and other appointed program duties.

(e) Duties

In accordance with the statutory duties set forth under G.S. § 106-739, the Advisory Board shall:

- (1) Review and approve or deny applications of landowners for enrollment of qualified farmland, horticultural land, or forestland in either VAD or EVAD
- (2) Make recommendations concerning the establishment and modification of VAD or EVAD or conservation easements;
- (3) Conduct public hearings on condemnations for qualifying farms in accordance with Article VIII of this ordinance;
- (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 VAD and EVAD and conservation easements;
- (5) Review and make recommendations concerning proposed amendments to this Article;
- (6) Develop and maintain a Countywide farmland protection plan as defined in 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;
- (8) Perform other agricultural, horticultural, and forestry-related tasks or duties assigned by the Board of Commissioners; and
- (9) Develop methodology for prioritization.

ARTICLE V CONSERVATION AGREEMENTS FOR VAD AND EVAD

For purposes of this program, "conservation agreement" is defined as a right, whether or not stated in the form of a restriction, reservation, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all of the following:

- (1) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground;
- (2) Dumping or placing soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
- (3) Removal or destruction of trees, shrubs or other vegetation;
- (4) Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other mineral substance in such manner as to affect the surface;
- (5) Surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition;
- (6) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation; or
- (7) Other acts or uses detrimental to such retention of land or water areas.

None of the above limitations should be interpreted to prevent a landowner from conducting agricultural activities, including, but not limited to, the production of crops, forestry products, horticultural specialties, livestock, and livestock products. Associated uses allowable are sales and processing necessary and customarily incidental to the agricultural activities on-site which are in keeping with the purpose of the program.

ARTICLE VI APPLICATION AND CERTIFICATION QUALIFYING FARMLAND IN A VAD OR EVAD

- (a) Requirements. To be eligible for certification the following requirements must be satisfied:
 - (1) Certification as qualifying farmland. To secure Wake County certification as a qualifying farmland ("Farm"), a Farm must be:
 - a. Real property that is used for bona fide farm purposes as that term is defined in G.S. 106-743.4(a) and GS 160D-903.
 - b. If highly erodible land exists on the Farm, it shall be managed in accordance with the Natural Resources Conservation Service erosion-control practices for highly erodible land.
 - c. The subject of a conservation agreement (VAD/EVAD) in accordance with NCGS §106-737 and NCGS §106-743.3 and as defined in G.S. 121-35 and Article V herein, between Wake County Soil and Water Conservation District and the owner of such land that prohibits nonfarm 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 and municipal zoning and subdivision regulations. The form of the conservation agreement shall be approved by the agricultural advisory board created under G.S. 106-739.
 - d. Located in the unincorporated area of Wake County, unless a municipality of the County has by resolution requested that this Article be applicable within that municipality and such request has been formally granted by Wake County.

- (2) A landowner, or landowners, may apply for certification of qualifying farmland for inclusion in either the Voluntary Agricultural District or the Enhanced Voluntary Agricultural District program. Such application must designate whether the application is for Voluntary Agricultural District status or Enhanced Voluntary Agricultural District status. The application shall be on forms provided by the Advisory Board or Farmland Preservation Coordinator.
 - a. A Conservation Agreement, as required by NCGS §106-737 and NCGS §106-743.3, and defined in NCGS §121-35, suited to district type (Voluntary Agricultural District or Enhanced Voluntary Agricultural District) designated by the landowner(s) to sustain, encourage, and promote agriculture, must be executed by the landowner(s) and be reviewed and approved by the Advisory Board. The Conservation Agreement for the Enhanced Voluntary Agricultural District must be recorded with the Wake County Register of Deeds as required pursuant to NCGS §121-41.
 - b. Requirements to participate are as follows:
 1. A VAD or EVAD shall consist of at least 5, 10, 20 acres engaged in horticulture, agriculture, or forestry, respectively or 5, 10, 20 contiguous acres of qualifying farmland owned by the identical deeded owner(s).
 2. An agreement to sustain, encourage and promote agriculture must be executed by the landowners in the VAD or EVAD with the County and EVAD shall be recorded therein.
 - c. Review Process:
 1. To secure Wake County certification as a qualifying farm, and if so desired by the applicant, as a VAD or EVAD, a landowner for such certification will apply to the Advisory Board. Application forms may be obtained from the Advisory Board or Farmland Preservation Coordinator.
 - i. Upon receipt of an application, the Farmland Preservation Coordinator will evaluate the application for eligibility.
- (3) Decision by the Advisory Board; notification of applicant. Within 120 days of receipt of the evaluations, the Advisory Board shall meet and render a decision regarding the application. The chairperson or designee shall notify the applicant by mail if the real property for which certification is sought satisfies the criteria established in subsection (a) of this section and if the land has been certified as qualifying farmland, and also as a VAD or EVAD, if application was so sought.
- (4) Appeal upon denial. If the application is denied by the Advisory Board, the applicant has 30 days to appeal the decision to the Board of Commissioners. Such appeal shall be presented in writing to the Clerk to the Board of Commissioners. The decision of the Board of Commissioners is final.
- (5) VAD or EVAD; marking on maps; public display. VAD or EVAD shall be marked on Wake County maps which shall be available for public inspection in the following County offices:
 - b. Wake County Register of Deeds;
 - c. Wake County Planning Department
 - d. Wake County Soil and Water Conservation District; and

- e. Any other office deemed necessary by the Advisory Board.
- (b) Encouragement of VAD or EVAD. The County may take such action as it deems appropriate through the Advisory Board or other body or individual to encourage the formation of VAD or EVAD and to further their purposes and objectives, including at a minimum a public information program to reasonably inform landowners of the farmland preservation program.

ARTICLE VII
REVOCATION, RENEWAL AND TRANSFER OF QUALIFYING FARMLAND IN A VAD OR EVAD

- (a) Transfer.
 - (1) Transfers of land in a Voluntary Agricultural 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 VI(a). In the event that there are water or sewer assessments held in abeyance by this Article, 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 VAD, the conservation agreement shall be revoked. Revocation shall be undertaken pursuant to the provisions of this Article.
 - (2) Transfers of land in an Enhanced Voluntary Agricultural District due to death of the landowner(s), sale, or gift shall not revoke the conservation agreement. 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) Renewal.
 - (1) VAD. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall fail to renew any conservation agreement for an additional ten years unless this Article or its authorizing legislation has been repealed.
 - (2) EVAD. A conservation agreement for the enhanced district shall be deemed automatically renewed for an additional term of three years in perpetuity, unless either the Advisory Board or the landowner gives written notice to the contrary prior to the termination date of the conservation agreement term.
- (c) Revocation.
 - (1) VAD. By providing 30 days' advance written notice to the Advisory Board, a majority percent of landowners of qualifying farmland within a VAD 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 subsection Article VI(a) for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a VAD. 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 the conservation agreement for cause, the landowner shall have the appeal rights set forth in subsection Article VI(a).

- (2) EVAD. Conservation agreements for land within enhanced districts are irrevocable for a period of ten years. Enforcement of the terms of the conservation agreement may be through an action for injunctive relief and/or damages in the General Courts of Justice for Wake County, North Carolina. 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 the conservation agreement for cause, the landowner shall have the appeal rights set forth in subsection Article VI(a). The right to terminate program benefits is in addition to any legal rights that the County may have under either this Article 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 with Wake County Register of Deeds sufficient to provide notice that the land has been withdrawn from the Enhanced Voluntary Agricultural District program.

ARTICLE VIII PUBLIC HEARINGS REGARDING CONDEMNATION

- (a) Purpose. Pursuant to G.S. 106-740, no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a VAD or EVAD until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed condemnation, this subsection provides for such hearings.
- (b) Procedure. The hearing procedure shall be as follows:
- (1) Time period. The total time period from the day that the request for a hearing has been received to the day that a final report is issued to the decision-making body or the agency proposing the condemnation, shall not exceed 30 days. Five days prior to holding a public meeting, the Advisory Board must publish notice of said public hearing in a newspaper of general circulation where the VAD or EVAD is located and post a copy of the notice by any electronic means. 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.
- (2) Review. The Advisory Board shall meet to review:
- 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; and
 - Whether there are alternatives to the proposed action that have less impact and are less destructive to the agricultural activities of the VAD or EVAD within which the proposed action is to take place.
- (3) Consultation. The Advisory Board shall consult with the Wake County Soil and Water Conservation District, Wake County Cooperative Extension Service, USDA Natural Resources Conservation Service, and may consult with any other individuals, agencies, or organizations, public or private, necessary to the Advisory 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.
- (4) Report of findings. After a public 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 decision-making body of the agency proposing acquisition and the general public.

- (5) Formal initiation of condemnation. Pursuant to G.S. 106-740, no State or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district under this Part or an enhanced voluntary agricultural district until such agency has requested the Advisory Board to hold a public hearing on the proposed condemnation.

ARTICLE IX NOTICE OF PROXIMITY

- (a) Purpose. The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between VAD or EVAD participants and nonfarm landowners within one-half mile of the property line of any tract of land enrolled in a proximity VAD or EVAD.
- (b) VAD or EVAD established. The County has established VAD or EVAD for farmland preservation to protect and preserve agricultural lands and activities. These VAD or EVAD 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, sawing, and similar activities may take place in these VAD or EVAD any time during the day or night. Maps and information on the location and establishment of these VAD or EVAD can be obtained from the Wake County Soil and Water Conservation office.
- (c) Notification generally. The 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 VAD or EVAD any time during the day or night. These activities may include, but are not limited to pesticide spraying, manure spreading, machinery operations, livestock operations, sawing, and similar activities.
- (d) Limit of liability. In no event shall the County or any of its officers, employees, members of the Advisory Board, 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 Article.
- (e) 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 VAD or EVAD as defined in this Article.
- (f) Types of notification. Notification shall be provided as follows:
 - (1) Signs identifying approved VAD or EVAD may be placed along major roads, however, signs shall not be placed within the right-of-way of any state-maintained road.
 - (2) Maps identifying approved VAD or EVAD shall be provided to Wake County offices including: the Register of Deeds, Planning Department, the Soil and Water Conservation District office, and any other office or agency the Advisory Board deems necessary.
 - (3) The following notice, of a size and form suitable for posting, shall be posted and available for

public inspections in the Wake County Register of Deeds' office, and any other office or agency the Advisory Board deems necessary:

- (4) Geographic information system. Voluntary and Enhanced Voluntary Agricultural Districts shall be mapped in the County geographic information system with a one-half mile buffer from the property line.

ARTICLE X STATE AGENCY NOTIFICATION AND CONSULTATION

- (a) The Advisory Board, or its designee, may consult with the North Carolina Cooperative Extension office, the Soil and Water Conservation District office, the Natural Resources Conservation Service office, the North Carolina Department of Agriculture and Consumer Services, and with any other individual, agency, or organization the Advisory Board, or its designee, deems necessary to the proper conduct of its business.
- (b) A copy of this Article shall be sent to the Office of the North Carolina Commissioner of Agriculture and Consumer Services, the North Carolina Cooperative Extension office, and the Soil and Water Conservation District office after adoption. At least once a year the County shall submit a written report to the commissioner of agriculture and consumer services, including the status, progress and activities of the County's farmland preservation program, including VAD or EVAD information regarding:
 - (1) Number of landowners 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 Article for the purpose of the County enforcing this Article within their corporate boundaries;
 - (9) Copies of any amendments to this Article or memorandums of understanding signed with municipalities; and
 - (10) Any other information the Advisory Board deems useful.
- (c) Copies of the reports cited in subsection (b) of this section will be sent to:
 - (1) State department of transportation;

- (2) Secretary, state department of commerce;
- (3) Any other entities the Advisory Board, or its designee, deems appropriate.

ARTICLE XI ADDITIONAL BENEFITS FOR EVAD

- (a) Land enrolled in the EVAD program is entitled to all of the benefits available under the VAD program, and to the following additional benefits:
 - (1) Sale of nonfarm products. Landowners participating in EVAD may receive up to 25 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 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 25 percent of its gross sales.
 - (2) Agricultural cost share program. Landowners participating in EVAD are eligible under 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 to benefit that farmland.
 - (3) Priority consideration. State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in EVAD.

ARTICLE XII COUNTY LAND USE PLANNING

- (a) Duty of 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 delegates authority to oversee County land use planning, on the status, progress, and activities of the County's Voluntary Agricultural District program and Enhanced Voluntary Agricultural District program and to also coordinate the formation and maintenance of VAD and EVAD with the County's land use planning activities and the County's land use plan.

ARTICLE XIII AGRICULTURAL CONSERVATION EASEMENT PROGRAM

- (a) Purpose. The preservation of the County's best agricultural land in a manner that directs and accommodates growth and development is a high priority to the residents of the County. To this end the County establishes the following goals:
 - (1) To permanently protect and conserve those soils in the County best suited to agricultural uses;
 - (2) To identify and harmonize policies of government at all levels which may conflict with the goal

of protection of farmland;

- (3) To reduce land use conflicts between agricultural and other land uses; and
 - (4) To promote agriculture as an integral part of the County's economy.
- (b) Duties and responsibilities of the Advisory Board. The Advisory Board and Farmland Preservation Coordinator shall administer the Agricultural Conservation Easement Program within the farmland preservation program. The Wake Soil and Water Conservation District shall make recommendations to the Advisory Board on the selection of properties for purchase and/or donation of conservation easements. Subject to the availability of state and federal grant funding, the Wake Soil and Water Conservation District, with assistance from a private nonprofit conservation organization, may acquire or support the acquisition of agricultural conservation easements consistent with this ordinance.

ARTICLE XIV PURCHASE OF CONSERVATION EASEMENTS

- (a) General. Subject to the availability of funds, the Wake Soil and Water Conservation District may facilitate the purchase of conservation easements in agricultural and/or forestry lands. All applications for the purchase of conservation easements will be evaluated based upon a farmland preservation ranking system approved by the board. Applications will be ranked based upon various site factors. Conservation easements may be purchased in accordance with the ranking of farm properties and the availability of funding.
- (b) Description. The purchase of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or forestry use of the land. The conservation easements will be held in public trust by a qualified conservation organization. Conservation easements will be in perpetuity and in compliance with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state tax laws.
- (c) Authority. Wake County Soil and Water Conservation District acts as a department of Wake County. Wake County gives Soil and Water Conservation District the authority to apply for grant funding on behalf of the County. Wake County gives the Soil and Water Conservation District director and designated staff signature authority on conservation easement applications and allows Soil and Water Conservation District to use Wake County's tax ID and DUNS number to apply for conservation easement grant funding on behalf of Wake County. Wake County gives the Wake County Soil and Water District authority to enter into cooperative agreements with the Triangle Land Conservancy (TLC), United States Department of Agriculture Natural Resource Conservation Service (USDA NRCS), North Carolina Department of Agriculture and Consumer Sciences Agricultural Development & Farmland Preservation Trust Fund (NCDA&CS ADFP) or other agencies to facilitate easement purchase.
- (d) Minimum eligibility criteria. The agricultural and/or forestry land must be at least ten acres in size or contiguous to a ten-acre tract for which a perpetual conservation easement exists and be in agricultural and/or forestry use.
- (e) Application procedure. An application must be submitted to the Advisory Board or its designee.
- (f) Review and ranking of application. The applications will be ranked by the Farmland Preservation Coordinator or their designee. The Farmland Preservation Coordinator will rank each of the applications using a farmland preservation ranking system adopted by the Agricultural Advisory Board. After the

application has been ranked, the Farmland Preservation Coordinator will prioritize applications and make recommendations to the Advisory Board.

ARTICLE XV DONATION OF CONSERVATION EASEMENTS

- (a) General. The Wake Soil and Water Conservation District may accept a voluntary donation of conservation easements or work with partners to facilitate these donations
- (b) Description. The donation of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or forestry use of the land. The conservation easements will be held in public trust by a qualified conservation organization. Conservation easements will be in perpetuity and in compliance with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state tax laws.
- (c) Minimum eligibility criteria. The agricultural and/or forestry land must be at least ten acres in size or contiguous to a ten-acre tract for which a perpetual conservation easement exists and be in agricultural and/or forestry use.
- (d) Application procedure. Guidance documents for donating conservation easements are housed at the Soil and Water Conservation District office. Upon contact by a landowner, a meeting will be set with the Farmland Preservation Coordinator and a member of the Advisory Board, or its designee, to discuss donation of conservation easements.
- (e) Review and ranking of applications. The applications will be ranked by the Farmland Preservation Coordinator or their designee. The Farmland Preservation Coordinator will rank each of the applications using the soil and site assessment criteria in the farmland preservation ranking system. After the application has been ranked, the Farmland Preservation Coordinator will prioritize applications and make recommendations to the Advisory Board.

ARTICLE XVI BASELINE DOCUMENTATION AND MONITORING

- (a) Baseline documentation purpose. This policy establishes the procedure for the collection, compilation, and storage of baseline documentation for conservation easements managed by Wake County Soil and Water Conservation District. The Soil and Water Conservation District must have baseline documentation for all properties it protects. This information establishes the condition of a property at the time of acquisition, allowing comparisons with findings during subsequent monitoring events. Such information is also required by the IRS for landowners seeking a federal income tax deduction for conservation easement donations. The Soil and Water Conservation District, or their designee, will collect this information for the conservation easement donor. Baseline documentation is important in defending conservation properties from threats, including conservation easement violations. The baseline documentation may be relied upon during litigation to establish the condition of a property prior to a conservation easement violation. The Soil and Water Conservation District, or their designee, will collect and store all baseline documentation for conservation easements in a manner that maximizes effectiveness for enforcement purposes.

- (1) Baseline data collection. The volume and specificity of the information included in the baseline documentation report may vary depending on the terms of the easement and the conservation objectives for the property. It is the Soil and Water Conservation District's policy that baseline data will be collected by staff, or their designee.

Baseline data collected during a site visit will generally include:

- a. Boundary photos, photos of special features, and photos of structures and other improvements and or human modifications
 - b. Global Positioning System (GPS) data and locations on a map of each photo, special feature, structure, and other improvements;
 - c. Other natural resource information documenting the conservation values of the site such as soil maps, land cover data, natural community descriptions, ecological data, and other relevant agricultural or forestry information.
- (2) A copy of the baseline documentation report shall be kept on file with the easement grantee and must be reviewed by the landowner prior to closing.
- (b) Monitoring purpose. To protect conservation values and maintain safety on its fee simple properties, Soil and Water Conservation District or their designee will conduct regular monitoring and maintain detailed records of inspections, problems on the property and actions taken to address such problems.
- (1) Monitoring personnel. Overall supervision of monitoring is the responsibility of the grantee but will be coordinated with the Farmland Preservation Coordinator
 - (2) Monitoring procedure. Comprehensive monitoring shall be performed at least annually, with additional monitoring visits and reports to be generated as needed.

ARTICLE XVII FARMLAND PRESERVATION RANKING SYSTEM

The farmland preservation ranking system will be used to rank, or prioritize, applications received from landowners seeking sale or donation of their conservation easements. The system can be used for evaluating conversion impact. Site and soil assessment criteria shall be maintained by the Advisory Board. The advisory board is responsible for developing and adopting a system to rank and evaluate projects.

ARTICLE XVIII LEGAL PROVISIONS

- (a) Severability. If any section, subsection, clause, phrase, or portion of this Article 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 Article.
- (b) Conflict with other ordinances and statutes. Whenever the provisions of this Article conflict with other

ordinances of Wake County, the provisions of those other ordinances shall govern. Whenever the provisions of any federal or state statute conflict with this Article, the provisions of such federal or state statute shall govern. The sole remedy for a land use not complying with this Article shall be revocation of the conservation agreement and removal of the non-qualifying land from the Wake County Voluntary Agricultural District program. Recreational use of land that does not interfere with agricultural uses as defined in NCGS §106-581.1 shall not be considered non-compliant with this Article.

(c) Amendments. This Article may be amended by the Board of Commissioners.

ARTICLE XIX ENACTMENT

The Wake County Board of commissioners hereby adopts and enacts the preceding articles and sections of this Ordinance.

Adopted this the 28th day of June, 2022.

Motions for adoption by Comm West and seconded by Cesar Adonze



WAKE COUNTY BOARD OF COMMISSIONERS

Cesar Adonze
Chairperson

ATTEST:

Therese G. Ford
Clerk to the Board of Commissioners

Approved as to form:

Steve Hannon
County Attorney