

CLAY COUNTY VOLUNTARY
FARMLAND PRESERVATION ORDINANCE

Section X-1. PURPOSE

The purpose of this ordinance is to encourage the voluntary preservation and protection of farmland from non-farm development, recognizing the importance of agriculture to the economic and cultural life of the county.

Section X-2. ENACTMENT

An Ordinance of the Board of County Commissioners of CLAY COUNTY, NORTH CAROLINA, entitled "VOLUNTARY FARMLAND PRESERVATION ORDINANCE."

In pursuant to authority conferred by N. C. G. S. 106-735 through 106.743, and for the purpose of promoting the health, safety, morals and general welfare of the County, the Board of Commissioners of Clay County, North Carolina, does enact the following sections, which shall be known as the Voluntary Farmland Preservation Programs Ordinance of Clay County, North Carolina.

Section X-3. DEFINITIONS

GLOSSARY: The following are defined for purposes of this ordinance:

Board: County Agricultural Advisor Board

Chairman: Chairman of the Agricultural Advisory Board

District: Voluntary Agricultural District

Section X-4. AGRICULTURAL ADVISORY BOARD

A. CREATION

A County Agricultural Advisory Board, to consist of five members appointed by the Board of County Commissioners, is hereby established.

B. MEMBERSHIP

1. Requirements

- a. Each board member shall be a county resident.
- b. Three of the five members shall be actively engaged in farming.
- c. The three members actively engaged in farming shall be selected for appointment by the Board of County Commissioners from the names of individuals submitted to the Board of County Commissioners by the Soil and Water Conservation District, the Cooperative Extension Service and the Agricultural Stabilization Conservation Service Committee, with an effort to have the broadest geographical representation possible.

2. Tenure. The members are to serve for terms of three years, except that the initial board is to consist of one appointee for a term of one year; two appointees for terms of two years and two appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointments permitted.

3. Vacancies. Any vacancy on the Agricultural Advisory Board is to be filled by the Board of County Commissioners for the remainder of the unexpired term.

4. Removal for Cause. Any member of the Agricultural Advisory Board may be removed for cause by the Board of County Commissioners upon written charges and after a public hearing.

C. FUNDING

1. The per diem compensation of the members of the Board shall be fixed by the Board of County Commissioners.
2. Funds shall be appropriated to the Board to perform its duties.

D. PROCEDURE

1. Chairman. The Board shall elect a chairman and vice-chairman each year at its first meeting of the fiscal year. 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.
2. Jurisdiction. The jurisdiction and procedures of the Board are to be set out herein, except that the Board may adopt supplementary rules of procedure not inconsistent with this ordinance or with other provisions of law.
3. Board Year. The Board shall use the county fiscal year as its meeting year.
4. Meeting. Meetings of the Board, following such notice as required

by this ordinance, shall be held at the call of the chairman and at such other times as the Board in its rules of procedure may specify. A called meeting shall be held at least every two months.

5. 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 ordinance.
6. 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.
7. Administrative. The Clay County Agricultural Advisory Board may contract with the Soil and Water Conservation District Office to serve the board for record keeping, correspondence, application procedures under this ordinance and whatever other services the Board needs to complete its duties.

E. DUTIES

The Agricultural Advisory Board shall:

1. Review and approve applications for qualified farmland and voluntary agricultural districts and make recommendations concerning the establishment and modification of agricultural districts;
2. Hold public hearings pursuant to Section X-7 of this ordinance;
3. Advise the Board of County 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 County Commissioners.
5. Each district shall be assigned to a member of the Board who will monitor compliance and represent that district in all business conducted by the Board. In so far as possible, individual members will represent those districts closest to them geographically. In so far as possible, no member will represent more than 25% of the total number of districts in the County or 25% of total land area.

Section X-5. APPLICATION AND CERTIFICATION OF QUALIFYING FARMLAND AND VOLUNTARY AGRICULTURAL DISTRICTS

A. REQUIREMENTS

1. To secure county certification as qualifying farmland, a farm must:
 - a. be participating in the farm present-use-value taxation program established by G.S. 105-277.2 through 105-277.7 or is otherwise determined by the county to meet all the qualifications of this program set forth in G.S. 105-277.3;
 - b. be certified by the Soil Conservation Service of the United States Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that:
 - i. are best suited for providing food, seed, fiber, forage, timber, and oil seed crops,
 - ii. have good soil qualities,
 - iii. are favorable for all major crops common to the county where the land is located,
 - iv. have a favorable growing season, and
 - v. receive the available moisture needed to produce high yields for an average of eight out of ten year;

OR has been actively used in agricultural, horticultural or forestry operations as defined in 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;
 - c. be managed, if highly erodible land exists on the farm, in accordance with the Soil Conservation Service defined erosion control practices that are addressed to said highly-erodible land;
2. To form or be included in a voluntary agricultural district, a landowner may apply to the chairman for such inclusion at the same time he applies for qualifying farmland certification, or at any time subsequent to receiving qualifying farmland certification.
 - a. The purpose of voluntary agricultural districts formed by landowners shall be to encourage the economic and financial health of farming areas, to increase protection from nuisance suits, undesired non-farm development and other negative impacts on participating farms and to increase the identity and pride in the agricultural community and its way of life.

b. Requirements to participate:

- i. An agricultural district shall consist of: at least 40 contiguous acres or more of qualifying farmland

OR

two or more qualifying farms consisting of a total of at least 40 acres and lying within one mile of each other.

- ii. An agreement to sustain, encourage and promote agriculture must be executed by the landowners in the district with the County and recorded therein.

c. Landowners may apply to participate in existing districts and are encourage to do so.

1. To secure county certification as a qualifying farm, and if so desired by the applicant, as an agricultural district, a landowner for such certification will apply to the chairman of the Agricultural Advisory Board. Application forms may be obtained from the chairman.
 2. Upon receipt of an application, the chairman will forward copies immediately to:
 - a. County tax assessor office
 - b. Clay County Soil and Water Conservation District and the Soil Conservation Services Office. The said offices shall evaluate, complete and return their copies to the chairman within 30 days of receipt. The evaluation by the Soil and Water Conservation District and Soil Conservation Service may be made jointly.
 3. Within 45 days of receipt of the evaluations, the Board shall meet and render a decision regarding the application. The chairman shall notify the applicant by mail if the real property for which certification is sought satisfies the criteria established in Section X-4 and if the land has been certified as qualifying farmland, and also as a voluntary agricultural district, if application was so sought.
 4. Appeal. If the application is denied by the Agriculture Advisory Board, the petitioner has 30 days to appeal the decision to the Clay County Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of County Commissioners is final.
- B. Voluntary agricultural districts shall be marked on county maps "which shall be available for public inspection in the following county offices":

1. Register of Deeds

2. Building Inspector
 3. Soil and Water Conservation District
 4. Cooperative Extension Service
 5. Agricultural Stabilization Conservation Service
 6. Land Records Division of the Tax Assessor's Office
 7. Any other office deemed necessary by the Board
- C. 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 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.

Section X-6. REVOCATION OF PRESERVATION AGREEMENT

By written notice to the board, a landowner of qualifying farmland may revoke the preservation agreement formulated pursuant to Section X-5 of this ordinance, or the Board may revoke same preservation agreement based on non-compliance by the landowner. Such revocation shall result in loss of qualifying farm status, and consequently, loss of eligibility to participate in a voluntary agricultural district and benefits thereof.

Section X-7. PUBLIC HEARINGS

A. PURPOSE

Pursuant to N.C.G.S. 106-740, which states that the county in enacting a Farmland Preservation Ordinance may provide that 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 until such agency or unit has requested the local agricultural advisory board to hold a public hearing on the proposed condemnation, this section provides for such hearings.

B. PROCEDURE

1. Upon receiving a request, the Agricultural Advisory Board shall publish notice describing the proposed action in the appropriate newspapers of the area within two working 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 14 days of receipt of the request.
2. The Board shall meet to review:
 - a. 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;
- b. alternatives to the proposed action that are less impactful and disruptive to the agricultural activities and farm land base of the voluntary agricultural district within which the proposed action is to take place.
3. The Board shall consult with the county agricultural extension agent, U.S.D.A. Soil Conservation Service District Conservationist, ASCS, and may consult with any other individuals, agencies or organizations, public or private, necessary to the board's review or the proposed action. Land value will not be a factor in the selection between properties under consideration for the proposed action.
 4. Within 10 days after the public hearings, the Board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be made available to the public for comment prior to its being conveyed to the decision-making body of the agency proposing acquisition.
 5. Pursuant to N.C.G.S. 106-740, the county shall not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the advisory board within these time limitations.

Section X-8. WAIVER OF WATER AND SEWER ASSESSMENT

A. PURPOSE

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

B. PROCEDURE

1. Landowner(s) belonging to voluntary agricultural districts shall not be assessed for, or required to connect to water and/or sewer systems.
2. Water and sewer assessments shall be held in abeyance, without interest, for farms inside a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.
3. When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
4. Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

5. Assessment procedures followed under Article 9 of Chapter 153A shall conform to the terms of this ordinance with respect of qualifying farms that entered into preservation agreements while such ordinance was in effect.
6. Nothing in this section is intended to diminish the authority of the county to hold assessments in abeyance under G.S. 153A-201.

Section X-9. LAND-USE INCENTIVES TO
VOLUNTARY AGRICULTURAL DISTRICT FORMATION

A. PURPOSE

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

B. PROCEDURE

1. The Agricultural 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, sawing and other activities pursuant to maintaining and management of the farm.

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, Code Enforcement, the Soil and Water Conservation Office, the Cooperative Extension Service, and the Land Records Office.
- c. The following notice shall be available for public inspections in the Register of Deeds Office:

NOTICE TO REAL ESTATE PURCHASERS IN CLAY COUNTY VOLUNTARY
AGRICULTURAL DISTRICTS FOR FARMLAND PRESERVATION

Clay County has established voluntary agricultural districts for farmland PRESERVATION 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 operation, sawing, and similar activities may take place in these districts any time during the day or night. Maps and information can be location and establishment of these districts can be obtained from the Clay County Planning Office.

2. Voluntary agricultural districts will not be permitted in designed county growth areas, as delineated on the official county planning map as of the date this ordinance is adopted.

Section X-10. NORTH CAROLINA AGENCY NOTIFICATION

- A. The Board shall consult as much as possible with the North Carolina Division of Soil and Water and any other entity the Board deems necessary to the proper conduct on its business.
- B. A record of this ordinance shall be recorded with the North Carolina 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
- C. Copies of the reports cited in Section X-10, B. will be sent to:
 1. N.C. Department of Transportation
 2. Secretary, N.C. Department of Commerce
 3. Asheville Area Chamber of Commerce
 4. any other entities the board deems appropriate.

READ AND APPROVED BY A VOTE OF 3 FOR AND 0 AGAINST
THIS THE 1st DAY OF MARCH, 1993.

READ AND APPROVED BY A VOTE OF 3 FOR AND 0 AGAINST
THIS THE 5 DAY OF ~~MARCH~~, 1993.

ADOPTED this the 5 day of ~~March~~, 1993.

ATTEST

CLAY COUNTY BOARD OF COMMISSIONERS

Donna M. Crowell
DONNA CROWELL, CLERK TO THE
BOARD

by: Howard Walker
Howard Walker, Chairman

APPROVED AS TO FORM

Noland Smith
NOLAND SMITH, COUNTY ATTORNEY