

**ALLEGHANY COUNTY
VOLUNTARY FARMLAND PRESERVATION
PROGRAM ORDINANCE**

**ARTICLE I
TITLE**

This ordinance, adopted by the Board of Commissioners of Alleghany County, North Carolina, shall be known as the **Alleghany County Voluntary Farmland Preservation Program**.

**ARTICLE II
AUTHORITY**

The articles and sections of this program are adopted pursuant to the authority conferred by Article 61 of Chapter 106 of the North Carolina General Statutes.

**ARTICLE III
PURPOSE**

The purpose of this program is to promote the health, safety, rural agricultural values, and 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 farming; increase protection from undesirable, non-farm development; and increase the protection of farms from nuisance suits and other negative impacts on properly managed farms.

**ARTICLE IV
JURISDICTION**

The jurisdiction of the Alleghany County Voluntary Farmland Preservation Program Ordinance shall be the unincorporated areas of Alleghany County, which are not included in the extraterritorial jurisdiction of the Town of Sparta, North Carolina.

**ARTICLE V
DEFINITIONS**

Advisory Board: The Alleghany County Agricultural Advisory Board (hereafter Advisory Board).

Board of Commissioners: The Board of County Commissioners of Alleghany County, North Carolina.

Chairman: Chairman of the Alleghany County Agricultural Advisory Board.

District: A voluntary Agricultural District established under the terms and conditions of this program by the Board of Commissioners (hereafter District or Districts).

ARTICLE VI QUALIFICATIONS AND CERTIFICATION OF FARMLAND

Section 600, Requirements

In order for farmland to qualify for participation under the terms of this program, it shall meet the following requirements:

- (1) The farmland shall be Alleghany County real property;
- (2) The farm property shall be participating in the farm present-use-value taxation program established by G.S. 105-277.2 through 105-277.7, or otherwise determined by the County to meet all the qualifications of this program set forth in G.S. 105-277.3;
- (3) The property shall be certified by the Natural Resources Conservation Service of the United States Department of Agriculture, in consultation with the Cooperative Extension office and the Farm Service Agency, as being a farm on which at least two-thirds of the land is composed of soils that:
 - (a) are best suited for providing food, seed, fiber, forage, timber, and horticultural crops, including Christmas trees and ornamentals;
 - (b) have good soil qualities;
 - (c) are favorable for all major crops common to the County where the land is located;
 - (d) have a favorable growing season; and
 - (e) receive the available moisture needed to produce high yields for an average of eight out of ten years;

OR

Soils on which at least two-thirds of the land has been actively used in agricultural, horticultural or forestry operations as defined in G.S. 105-277.2 (1), (2) and (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;

- (4) The property shall be managed in accordance with the Natural Resources Conservation Service defined erosion control practices that are addressed to highly erodible land; and
- (5) The property shall be the subject of a Conservation Agreement, as defined in 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 watershed and subdivision regulations. The property owner may voluntarily revoke this conservation agreement by submitting a written request to the Board of Commissioners in accordance with Article VIII.

Section 601. Certification

The owner of the farm seeking to qualify his property for participation in the farmland preservation program shall submit written evidence, or certification, that the property conforms to the requirements of Section 600 of this program. This written information shall be submitted to the Chairman of the Advisory Board, or the designated staff person, on forms provided by the Advisory Board. The certification may be submitted at the same time the owner applies for inclusion in a District. This form may be obtained from the Allegheny Soil and Water Conservation District office.

ARTICLE VII **APPLICATION, APPROVAL AND APPEAL PROCEDURES FOR VOLUNTARY AGRICULTURAL DISTRICTS**

Section 700. Creation of Voluntary Agricultural Districts

In order to implement the purposes stated in Article III, this program provides for the creation of Voluntary Agricultural Districts, which shall meet the following standards:

- (1) The District, when initially established, shall contain a minimum of 20 contiguous acres of qualified farmland, OR, two or more qualified farms which each contain a minimum of 10 acres and are located within a mile of each other;
- (2) The landowner(s) requesting inclusion in the District shall execute an agreement with the County to sustain agriculture in the District in accordance with Section 600 (5) of this program. Said agreement shall be in a form which is reviewed and approved by the Advisory Board; and
- (3) For each District created under the terms of this program, one of the existing Advisory Board members shall be assigned to represent the District.
- (4) The District is created to accomplish the Purpose statement set forth in Article III, above.

Section 701. Application to Participate

A landowner wishing to participate in the District may do so by making application to the chairman of the Advisory Board or to a designated staff person. The application shall be on forms provided by the advisory board. The application to participate in a district shall be filed with the certification of qualifying farmland.

Section 702. Approval Process

Upon review by the Allegheny Soil and Water Conservation District and/or NRCS staff of the written certification and application submitted by the property owner, the Advisory Board shall meet within 90 days if possible to approve or disapprove the application. The chairman of the Advisory Board shall notify the applicant(s) in writing of said approval or disapproval of participation in the district within 2 weeks of said meeting.

Section 703. Appeal

If the Advisory Board denies an application, the petitioner has 30 days to appeal the decision to the Allegheny County Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

ARTICLE VIII REVOCATION OF CONSERVATION AGREEMENTS

By written notice to the Advisory Board, a landowner of qualifying farmland may revoke the Preservation Agreement formulated pursuant to Section 600 (5) of this program, or the Advisory Board may revoke same Preservation Agreement based on noncompliance by the landowner. Such revocation shall result in loss of qualifying farm status, and consequently, loss of eligibility to participate in a District and the benefits thereof. Revocation by the Advisory Board of a Preservation Agreement may be appealed by the landowner to the Allegheny County Board of Commissioners within 30 days of notice of revocation. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final. Revocation by a landowner of a Preservation Agreement and the resulting loss of qualifying farmland status for the purpose of participation in a District shall in no way affect the eligibility of the land to be taxed at its present use value as provided in N.C.G.S. 105-277.2 through N.C.G.S. 105-277.6. If a portion of a District is removed for any reason after being established by this program, the remaining qualified farms may remain in the District, provided they meet all other requirements except the minimum area requirements of Section 700 (1).

ARTICLE IX AGRICULTURAL ADVISORY BOARD

Section 900. Creation

In accordance with N.C.G.S. 106-739, the Board of Commissioners hereby establishes an Agricultural Advisory Board to implement the provisions of this program.

Section 901. Appointments and Membership

The Advisory Board shall consist of 9 members appointed by the Alleghany County Board of Commissioners.

- (1) Requirements
 - (a) Each Advisory Board member shall be an Alleghany County resident or landowner.
 - (b) Five of the nine members shall be actively engaged in farming.
 - (c) At least one member shall have special interest, experience, or education in agriculture and/or rural land preservation.
 - (d) At least one of the Advisory Board members actively engaged in farming shall be nominated by the Alleghany County Soil and Water Conservation District Board of Supervisors.
 - (e) The members shall be selected for appointment by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Alleghany Soil and Water Conservation District, the Natural Resources Conservation Service, the Cooperative Extension Service, the Farm Service Agency Committee and the Alleghany County Farm Bureau with an effort to have the broadest geographical representation possible. (Efforts shall be made to have one member appointed from each of the voting precincts.)
- (2) Tenure. The members are to serve for terms of three years, except that the initial board is to consist of three appointees for a term of one year, three appointees for a term of two years, and three appointees for a term of three years. Thereafter, all appointments are to be for terms of three years, with reappointment permitted. The terms for the initial board members will be determined by lottery.
- (3) Vacancies. Any vacancy on the Agricultural Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term following the same procedure as for the initial appointment.
- (4) Removal. The Board of Commissioners may remove any member of the Agricultural Advisory Board upon a two-thirds vote of the Commissioners. No

cause for removal shall be required.

- (5) Attendance . Member attendance of the Advisory Board Meetings is very important. Unexcused absence of at least 50% of the meetings in a one-year period constitutes automatic dismissal.
- (6) Funding
 - (a) *Compensation*. The Board of Commissioners shall fix the per diem compensation, if any, of the Advisory Board.
 - (b) *Appropriations for performance of duties*. Funds may be appropriated by the Board of Commissioners to the Advisory Board to perform its duties. A budget request will be presented to the County Commissioners annually.

Section 902. Procedures

The Advisory Board shall adopt rules of procedure, which are consistent with the enabling legislation and other applicable statutes.

- (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 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 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, following such notice as required by this article, shall be held at the call of the chairperson and at such other times as the board in its rules of procedure may specify. A called meeting shall be held at least quarterly. A quorum shall consist of a majority of the members of the Advisory Board. All meetings shall be open to the public.
- (5) Voting. All issues shall be decided by a majority vote of the members of the Advisory Board, except as otherwise stated herein.

- (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, 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 Services. The Alleghany Soil and Water Conservation District office shall serve the Advisory Board for record keeping, correspondence, and application procedures under this article together with such other services the Board needs to complete its duties.

Section 903. Duties

The Advisory Board shall:

- (1) Review and approve applications for qualified farmland and Districts.
- (2) Hold public hearings pursuant to Article X of this program.
- (3) Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy or activities within the County that will affect Agricultural Districts.
- (4) Perform other related tasks or duties assigned by the Board of Commissioners.

ARTICLE X PUBLIC HEARINGS ON CONDEMNATION OF FARMLAND

Section 1000. Purpose

Pursuant to N.C.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 District until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed condemnation. The procedures for such hearings shall be as set forth below.

Section 1001. Procedures

- (1) Establish Public Hearing. Upon receipt of a request for a public hearing, the Advisory Board shall have 30 days to schedule and conduct a public hearing on the proposed condemnation pursuant to N.C.G.S. 106-740. No formal initiation of condemnation shall occur while the proposed condemnation is properly before the Advisory Board within the time limitations set forth in this section.
- (2) Notice of Public Hearing. The Advisory Board shall run a notice of the public hearing in a newspaper having general circulation in Alleghany County at least 10

days prior to the date established for the hearing. The notice shall contain the date, time and place of the hearing and shall provide the name of the agency requesting the hearing and the purpose of the condemnation.

- (3) Public Hearing. The Advisory Board shall conduct the public hearing and receive information and comments from the agency requesting the condemnation action and the citizens of Allegheny County. Additionally, the Advisory Board shall review the following:
- (a) Has the need for the project requiring the condemnation been satisfactorily shown by the agency requesting the action?
 - (b) Has a financial impact analysis been conducted by the agency seeking the action?
 - (c) Have alternatives been considered to the proposed action that are less disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place?

The Advisory Board shall invite and allow input by the county Cooperative Extension agent, USDA Natural Resources Conservationist, the Farm Service Agency, and Planning Board and may consult with any other individuals, agencies or organizations, public or private, necessary to the board's review of the proposed action. The Advisory Board may, if circumstances require, recess the public hearing for a reasonable time in order to fulfill its purpose. A recess shall not exceed 7 days and not more than 2 recesses shall be granted.

- (4) Findings and Notification. Within 10 days after the public hearing, the Advisory Board shall make a written report containing its findings and recommendations regarding the proposed action. The report shall be conveyed to the decision-making body of the agency proposing acquisition and made available to the public for comment.

ARTICLE XI LAND USE INCENTIVES TO VOLUNTARY AGRICULTURAL DISTRICT FORMATION

Section 1100. Purpose

The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between District participants and non-farm landowners in close proximity to Districts.

Section 1101. Public Notification

- (1) The Advisory Board, in cooperation with the County, shall take measures as set forth below to provide notification to property owners, residents, and other interested persons in and adjacent to any designated Agricultural District with a goal of informing all current and potential residents and property owners in and adjacent to a District, that farming and agricultural activities may take place in this district any time during the day or night.
 - (a) Signs identifying approved Districts shall be placed upon the property and along the rights-of-way of major roads in a way calculated to reasonably notify the public and adjoining owners of the presence of the farm property.
 - (b) Information identifying approved Districts shall be provided to the Alleghany County Register of Deeds office, the Alleghany Soil and Water Conservation District, the Cooperative Extension office, the Farm Service Agency, the Alleghany County Planning Department, and the Alleghany County Tax Department.
 - (c) The following notice shall be displayed in a prominent position in the office of the Alleghany County Register of Deeds and the public access area in the Alleghany County Tax Department:

NOTICE TO REAL ESTATE PURCHASERS IN ALLEGHANY COUNTY
AGRICULTURAL DISTRICTS

Alleghany County has established Agricultural Districts to protect and preserve agricultural lands and activities. These Districts have been developed and mapped to inform all purchasers of real property that certain agricultural activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, hunting and similar activities may take place in these districts any time during the day or night. Maps and/or information on the location and establishment of these districts can be obtained from the Alleghany Soil and Water Conservation District office.

- (2) Limit of liability -- In no event shall the County or any of its officers, employees, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by this ordinance.
- (3) No cause of action -- In no event shall any cause of action arise out of the failure of any person, including a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary Agricultural District as defined in this ordinance.

Section 1102. No Districts in Designated Growth Corridors

Agricultural Districts will not be permitted in designated growth corridors, as delineated

on the official County planning map without the approval of the Board of Commissioners. Existing Districts located in new 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. Districts located in growth corridors designated after the effective date of this program may expand to include adjoining property purchased by a landowner presently participating in the Alleghany County Voluntary Farmland Preservation Program Ordinance, subject to the approval of the Board of Commissioners.

Section 1103. Waiver of Water and Sewer Assessments

- (1) Purpose of Section. The purpose of this section is to help mitigate the financial impacts on farmers by some local and state capital investments unused by farmers.
- (2) Procedure. The waiver procedure shall be as follows:
 - (a) Landowners belonging to voluntary agricultural districts shall not be assessed for, or required to connect to, water and/or sewer systems.
 - (b) 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.
 - (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 limitations are suspended during the time that any assessment is held in abeyance without interest.
 - (e) Assessment procedures followed under G.S. 153A-185 et seq. shall conform to the terms of this article with respect to qualifying farms that entered into preservation agreements while such article 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.

ARTICLE XII NORTH CAROLINA AGENCY NOTIFICATION

Section 1200. Consultation with N.C. Department of Agriculture and Other Agencies

The Advisory Board may consult with the Cooperative Extension office, the Natural Resources Conservation Service office, the Farm Service Agency office, the N.C. Department of Agriculture, and any other such agency it deems necessary to properly conduct its business.

Section 1201. Recording the Program Ordinance

A certified copy of this program 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, and 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; and
- (5) Date of certification.

ARTICLE XIII
LEGAL PROVISIONS

Section 1300. Severability, Conflict with Other Ordinances and Statutes, and Amendments

- (1) Severability. If any article, section, subsection, clause, phrase or portion of this ordinance is for any reason invalid or unconstitutional as determined by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.
- (2) Conflict with other ordinances and statutes. Whenever the provisions of this ordinance conflict with other ordinances of Alleghany County, the most restrictive ordinance shall govern. Whenever the provisions of any federal or state statute require more restrictive provisions than are required by this ordinance, the provisions of such statute shall govern.
- (3) Amendments. This ordinance may be amended from time to time after a public hearing, notice of which shall be sent to participants by first class mail 30 days prior to the hearing, and in consultation with the Agricultural Advisory Board to the Board of Commissioners.

ARTICLE XIV
ENACTMENT

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

Adopted this the 18th day of August, 2003.

ATTEST:

ALLEGHANY BOARD OF COMMISSIONERS:

(sig: Karen Evans)
Karen Evans
Clerk to the Board
(County Seal)

(sig: Eldon Edwards)
Eldon Edwards, Chair

(sig: J. Warren Taylor)
Warren Taylor, Vice-Chair

(sig: Graylen Blevins)
Graylen Blevins, Member

(Sandy Carter)
Sandy Carter, Member

(sig: Patrick N. Woodie)
Patrick Woodie, Member

FILED in ALLEGHANY County, NC
on Aug. 20, 2003 at 10:21:57 AM
by. Elizabeth R. Roupe
Register of Deeds
(sig: J. Kirby Duncan)