

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 6, 2008

SUBJECT: Enhanced Agricultural Districting

ATTACHMENTS: Yes

- 1.) Letter to Commissioners
- 2.) Pamphlet on Enhanced Farmland Protection for NC Landowners
- 3.) NC House Bill 607
- 4.) The Agricultural Development and Farmland Preservation Enabling Act.

SUMMARY OF REQUEST:

The members of the Henderson County Agricultural Advisory Board request that the Henderson County Board of Commissioners establish Enhanced Voluntary Agricultural Districts for Henderson County by authorizing the Henderson County Agricultural Advisory Board to develop a draft Enhanced Voluntary Agricultural Districting ordinance for Henderson County, to be presented to the Henderson County Commissioners at a later date.

BOARD ACTION REQUESTED:

Establish Enhanced Voluntary Agricultural Districts for Henderson County.

SUGGESTED MOTION:

I move the Board authorize the Henderson County Agricultural Advisory Board to develop a draft Enhanced Voluntary Agricultural Districting ordinance for Henderson County, to be presented to the Henderson County Commissioners at a later date.



**Joint Resolution Celebrating 100 Years of County Unity in
Recognition of Our Association's Centennial**

WHEREAS, the North Carolina Association of County Commissioners is an advocacy and service organization made up of all one-hundred (100) North Carolina counties; and

WHEREAS, the active participation and engagement of all 100 counties have directed, strengthened and enhanced our Association; and

WHEREAS, the dedication and talents of individual county commissioners and county staff have led our Association's success in advocacy, county-centered services and educational programs; and

WHEREAS, an informal agreement to form our Association was made by a handful of county commissioners who, at the behest of Craven County Commissioner C.E. Foy, met in New Bern in 1908, to discuss county issues of common interest; and

WHEREAS, the first session of our unofficial Association was held at the Atlantic Hotel in Morehead City on August 19, 1908, where C.E. Foy was elected as president; and

WHEREAS, the North Carolina General Assembly passed an act on March 8, 1909 establishing our Association on behalf of counties;

NOW, THEREFORE BE IT RESOLVED, that the North Carolina Association of County Commissioners and each Board of County Commissioners jointly recognize and celebrate "100 Years of County Unity" in tribute to our Association's Centennial.

FURTHER BE IT RESOLVED, that the Association communicate its copy of this joint resolution to each Board of County Commissioners.

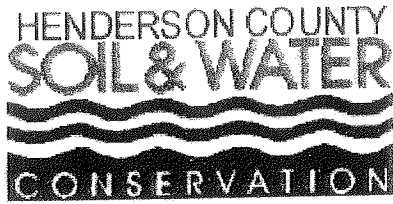
FURTHER BE IT RESOLVED, that the Henderson County Board of County Commissioners communicate its copy of this joint resolution to the North Carolina Association of County Commissioners.

In witness whereof I have hereunto set my hand and caused the seal of the County of Henderson to be affixed.

Adopted this the 20th day of February, 2008.

William L. Moyer, Chairman

Elizabeth W. Corn, Clerk to the Board



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To Henderson County Commissioners:

The members of the Henderson County Agricultural Advisory Board met November 27, 2007 and agreed to request that you, the Henderson County Commissioners, review the attached House Bill 607 of the General Assembly of North Carolina Session 2005, Session Law 2005-390 and establish Enhanced Voluntary Agricultural Districts for Henderson County.

Some of the benefits of Voluntary Agricultural Districts include supporting the community's rural heritage, maintaining scenic views and tourism-based economic activity, and conserving rural lands without added financial burden to local governments.

Enhanced Districts will offer additional benefits over and above Voluntary Districts for farmland when the owner is willing to enter into an irrevocable conservation agreement for at least ten years.

Enclosed is a pamphlet with more information; please let us know if there is additional information that you need.

Best Regards,

A handwritten signature in cursive script that reads "Theron Maybin".

Theron Maybin
Henderson County Agricultural Advisory Board

Public Benefits of Agricultural Districts

In addition to providing direct benefits to landowners, Voluntary Agricultural Districts offer the following advantages for the general public:

- providing a *voluntary* way to support the conservation of rural communities;
- conserving rural lands without adding significant expenses to local government or impacting the tax base;
- supporting each community's rural heritage and economy, and providing local jobs and tax income;
- maintaining scenic views and tourism-based economic activity;
- providing fresh food, flowers, and other local farm products for residents and visitors;
- supporting clean air and water;
- providing wildlife habitat;
- maintaining lower levels of traffic and noise; and
- minimizing the infrastructure burden on county and local government.



For More Information

The exact provisions of each VAD and EVAD ordinance may vary from one county or municipality to the next. North Carolina State University and North Carolina Cooperative Extension maintain a website with links to existing VAD and EVAD ordinances in each participating county and municipality in North Carolina, as well as model ordinances and other related information:

www.cals.ncsu.edu/wq/lpn/modelordinances.htm

For more information or to apply to enroll your land in an agricultural district, please contact your local Soil and Water Conservation District office or your local Cooperative Extension office.

The Southwestern NC Resource Conservation and Development Council and the Bethel Rural Community Organization recognize and thank the North Carolina Agricultural Development and Farmland Preservation Trust Fund for providing funding to develop this brochure.



All photos © Don McGowan.

Enhanced Farmland Protection for North Carolina Landowners

Why is farmland protection important for North Carolina?

- Agriculture and related businesses in North Carolina are worth more than \$68 billion annually, making it North Carolina's #1 industry.
- In recent years, North Carolina has led the nation in the loss of farms. This trend threatens to impact our agricultural heritage in many different ways, from the loss of related income to reduced availability of fresh food, wildlife habitat, and much more.



Voluntary Agricultural Districts

Voluntary agricultural districts (VADs) recognize the importance of agriculture to the economic and social wellbeing of North Carolina by encouraging the voluntary preservation and protection of farmland from non-farm development.

Thanks to the North Carolina General Assembly, North Carolina counties and municipalities now have both a basic VAD program and an enhanced VAD program to protect our farming heritage and our rural economy.

The information in this brochure will help you learn more about these options, what they mean for you, and how you can participate.

Voluntary Agricultural Districts and Enhanced Voluntary Agricultural Districts: A Comparison

	Eligibility	Benefits	Requirements
<p>Voluntary Agricultural Districts (VAD)</p>	<p>Farmland, forestland, and horticultural lands must meet the following criteria:</p> <ul style="list-style-type: none"> the land must be part of the present-use-value taxation program or be determined eligible for present use value; and the land must be managed in accordance with USDA Natural Resources Conservation Service guidelines with respect to highly erodible land. <p>Local governments may also require a minimum acreage and/or a minimum number of farms within a certain area to establish a new district.</p>	<ul style="list-style-type: none"> Increased protection from nuisance lawsuits if notice is provided through computerized county land records systems Public hearings for proposed condemnation of enrolled land Water and sewer assessments may be suspended or waived if the land is in VAD but not connected to the utility in question. Possible signage to publicize the land's enrollment in the program Possible flexibility in city ordinances related to farming operations within a city's planning jurisdiction Greater public awareness of the local agricultural community and increased pride in its way of life. 	<ul style="list-style-type: none"> The land must be subject to a conservation agreement between the landowner and the county or local municipality that prohibits non-farm use or development for a period of at least 10 years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations This agreement may be revoked by the landowner at any time, usually with a short period of advanced notice, such as 30-day notice. Ending the agreement will result in the property no longer qualifying for the VAD program and its benefits
<p>Enhanced Voluntary Agricultural Districts (EVAD)</p>	<p>Same eligibility requirements as VAD.</p> 	<p>Same benefits as VAD, plus:</p> <ul style="list-style-type: none"> Landowners are eligible to receive a higher percentage of cost-share funds under the Agricultural Cost Share Program – as high as 90% assistance. State agencies, departments, and institutions that award grants to farmers are encouraged to give priority consideration to landowners participating in Enhanced Districts. All utility assessments may be suspended or waived if the land is in EVAD but not connected to the utility in question. The farm may receive up to 25% of gross sales from the sale of non-farm products and still maintain its zoning exemption as a bona fide farm. Landowners may experience fewer unsolicited requests from developers to sell the land, due to the 10-year irrevocable conservation agreement. Landowners can stabilize the use of their land while considering longer-term options, such as permanent working land conservation easements. 	<ul style="list-style-type: none"> Same conservation agreement requirements as VAD, except that the agreement cannot be revoked during the term of the agreement. At the end of its initial term of at least 10 years, the EVAD conservation agreement automatically renews for 3 more years unless the landowner provides a time-written notice to the county or municipality (usually a 30-day notice). Ending the agreement will result in the property no longer qualifying for the EVAD program and its benefits. 

Article 61.

Agricultural Development and Preservation of Farmland.

Part 1. General Provisions.

§ 106-735. Short title and purpose.

(a) This Article shall be known as "The Agricultural Development and Farmland Preservation Enabling Act."

(b) The purpose of this Article is to authorize counties and cities to undertake a series of programs to encourage the preservation of qualifying farmland, as defined herein, and to foster the growth, development, and sustainability of family farms. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 2, 9.)

§ 106-736. Agricultural Development/Farmland preservation programs authorized.

(a) A county or a city may by ordinance establish a farmland preservation program under this Article. The ordinance may authorize qualifying farms, as defined in G.S. 106-737, to take advantage of one or more of the benefits authorized by the remaining sections of this Article.

(b) A county or a city may develop programs to promote the growth, development, and sustainability of farming and assist farmers in developing and implementing plans that achieve these goals. For purposes of this Article, the terms "agriculture", "agricultural", and "farming" have the same meaning as set forth in G.S. 106-581.1. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 2, 10.)

Part 2. Voluntary Agricultural Districts.

§ 106-737. Qualifying farmland.

In order for farmland to qualify for inclusion in a voluntary agricultural district or an enhanced voluntary agricultural district under Part 1 or Part 2 of this Article, it must be real property that:

- (1) Is 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;
- (2) Repealed by Session Laws 2005-390, s. 11 effective September 13, 2005.
- (3) Is managed in accordance with the Soil Conservation Service defined erosion control practices that are addressed to highly erodable land; and
- (4) Is 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 10 years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 11.)

§ 106-737.1. Revocation of conservation agreement.

By written notice to the county, the landowner may revoke this conservation agreement. Such revocation shall result in loss of qualifying farm status. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, s. 3.)

§ 106-738. Voluntary agricultural districts.

(a) An ordinance adopted under this Part shall provide:

- (1) For the establishment of voluntary agricultural districts consisting initially of at least the number of contiguous acres of agricultural land, and forestland or horticultural land that is part of a qualifying farm or the number of qualifying farms deemed appropriate by the governing board of the county or city adopting the ordinance;
- (2) For the formation of such districts upon the execution by the owners of the requisite acreage of an agreement to sustain agriculture in the district;
- (3) That the form of this agreement must be reviewed and approved by an agricultural advisory board established under G.S. 106-739 or some other county board or official;
- (4) That each such district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of such agricultural districts shall be to increase identity and pride in the agricultural community and its way of life and to increase protection from nuisance suits and other negative impacts on properly managed farms. The county or city that adopted an ordinance under this Part may take such action as it deems appropriate to encourage the formation of such districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 12.)

§ 106-739. Agricultural advisory board.

An ordinance adopted under this Part or Part 3 of this Article shall provide for the establishment of an agricultural advisory board, organized and appointed as the county or city that adopted the ordinance shall deem appropriate. The county or city that adopted the ordinance may confer upon this advisory board authority to:

- (1) Review and make recommendations concerning the establishment and modification of agricultural districts;
- (2) Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this Part or Part 3 of this Article;

- (3) Hold public hearings on public projects likely to have an impact on agricultural operations, particularly if such projects involve condemnation of all or part of any qualifying farm;
- (4) Advise the governing board of the county or city that adopted the ordinance on projects, programs, or issues affecting the agricultural economy or way of life within the county;
- (5) Perform other related tasks or duties assigned by the governing board of the county or city that adopted the ordinance. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 13.)

§ 106-740. Public hearings on condemnation of farmland.

An ordinance adopted under this Part or Part 3 of this Article 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 under this Part or an enhanced voluntary agricultural district under Part 3 of this Article until such agency has requested the local agricultural advisory board established under G.S. 106-739 to hold a public hearing on the proposed condemnation.

- (1) Following a public hearing held pursuant to this section, the board shall prepare and submit written findings and a recommendation to the decision-making body of the agency proposing acquisition.
- (2) The board designated to hold the hearing shall have 30 days after receiving a request under this section to hold the public hearing and submit its findings and recommendations to the agency.
- (3) The agency may not formally initiate a condemnation action while the proposed condemnation is properly before the advisory board within these time limitations. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 14.)

§ 106-741. Record notice of proximity to farmlands.

(a) Any county that has a computerized land records system may require that such 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.

(b) 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 any ordinance adopted under subsection (a).

(c) 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 voluntary agricultural district as defined in this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, s. 3.)

§ 106-742. Waiver of water and sewer assessments.

(a) A county or a city that has adopted an ordinance under this Part may provide by ordinance that its water and sewer assessments be held in abeyance, with or 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.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

(d) If an ordinance is adopted under this section, then the assessment procedures followed under Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, whichever applies, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance under G.S. 153A-201 or G.S. 160A-237. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 15.)

§ 106-743. Local ordinances.

A county or a city adopting an ordinance under this Part or Part 3 of this Article may consult with the North Carolina Commissioner of Agriculture or his staff before adoption, and shall record the ordinance with the Commissioner's office after adoption. Thereafter, the county or city shall submit to the Commissioner at least once a year, a written report including the status, progress and activities of its farmland preservation program under this Part or Part 3 of this Article. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 16.)

Part 3. Enhanced Voluntary Agricultural Districts.

§ 106-743.1. Enhanced voluntary agricultural districts.

(a) A county or a municipality may adopt an ordinance establishing an enhanced voluntary agricultural district. An ordinance adopted pursuant to this Part shall provide:

- (1) For the establishment of an enhanced voluntary agricultural district that initially consists of at least the number of contiguous acres of agricultural land, and forestland and horticultural land that is part of a qualifying farm under G.S. 106-737 or the number of qualifying farms deemed appropriate by the governing board of the county or city adopting the ordinance.
- (2) For the formation of the enhanced voluntary agricultural district upon the execution of a conservation agreement, as defined in G.S. 121-35, that meets the condition set forth in G.S. 106-743.2 by the landowners of the requisite acreage to sustain agriculture in the enhanced voluntary agricultural district.

(3) That the form of the agreement under subdivision (2) of this subsection be reviewed and approved by an agricultural advisory board established under G.S. 106-739, or other governing board of the county or city that adopted the ordinance.

(4) That each enhanced voluntary agricultural district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of establishing an enhanced voluntary agricultural district is to allow a county or a city to provide additional benefits to farmland beyond that available in a voluntary agricultural district established under Part 2 of this Article, when the owner of the farmland agrees to the condition imposed under G.S. 106-743.2. The county or city that adopted the ordinance may take any action it deems appropriate to encourage the formation of these districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction.

(d) A county or city ordinance adopted pursuant to this Part may be adopted simultaneously with the creation of a voluntary agricultural district pursuant to G.S. 106-738. (2005-390, s. 5.)

§ 106-743.2. Conservation agreements for farmland in enhanced voluntary agricultural districts; limitation.

A conservation agreement entered into between a county or city and a landowner pursuant to G.S. 106-743.1(a)(2) shall be irrevocable for a period of at least 10 years from the date the agreement is executed. At the end of its term, a conservation agreement shall automatically renew for a term of three years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the enhanced voluntary agricultural district. The benefits set forth in this Part shall be available to the farmland that is the subject of the conservation agreement for the duration of the conservation agreement. (2005-390, s. 5.)

§ 106-743.3. Enhanced voluntary agricultural districts entitled to all benefits of voluntary agricultural districts.

The provisions of G.S. 106-739 through G.S. 106-741 and G.S. 106-743 apply to an enhanced voluntary agricultural district under this Part, to an ordinance adopted under this Part, and to any person, entity, or farmland subject to this Part in the same manner as they apply under Part 2 of this Article. (2005-390, s. 5.)

§ 106-743.4. Enhanced voluntary agricultural districts; additional benefits.

(a) Property that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect may receive up to twenty-five percent (25%) 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). For purposes of G.S. 153A-340(b), the production of any nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm that is subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. 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 twenty-five percent (25%) of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

Nothing in this section shall affect the county's authority to zone swine farms pursuant to G.S. 153A-340(b)(3).

(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is 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 for funds to benefit that farmland.

(c) State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to any person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect. (2005-390, s. 5.)

§ 106-743.5. Waiver of utility assessments.

(a) In the ordinance establishing an enhanced voluntary agricultural district under this Part, a county or a city may provide that all assessments for utilities provided by that county or city are held in abeyance, with or without interest, for farmland subject to a conservation agreement under G.S. 106-743.2 that remains in effect until improvements on the farmland property are connected to the utility for which the assessment was made.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance under this section without interest.

(d) If an ordinance is adopted by a county or a city under this section, then the assessment procedures followed under Article 9 of Chapter 153A or Article 10 of Chapter 160A of the General Statutes, respectively, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance under G.S. 153A-201 and G.S. 160A-237. (2005-390, s. 5.)

Part 4. Agricultural Conservation Easements.

§ 106-744. Purchase of agricultural conservation easements; establishment of North Carolina Agricultural Development and Farmland Preservation Trust Fund and Advisory Committee.

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by G.S. 106-737.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

- (1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations;
- (1a) May permit agricultural uses as necessary to promote agricultural development associated with the family farm; and
- (2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Agricultural Development and Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or funding programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families, or monies transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for any of the following:

- (1) The purchase of agricultural conservation easements, including transaction costs.
- (2) Public and private enterprise programs that will promote profitable and sustainable family farms through assistance to farmers in developing and implementing plans for the production of food, fiber, and value-added products, agritourism activities, marketing and sales of agricultural products produced on the farm, and other agriculturally related business activities.
- (3) To fund conservation agreements to bring into or maintain farmland in active production of food, fiber, and other agricultural products.
- (4) The costs of administering the program under this Article, including the cost of staff and staff support.

(c1) The Commissioner shall distribute Trust Fund monies for such purchases, including transaction costs, as follows:

- (1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.
- (2) To counties according to the match requirements under subsection (c2) of this section.

(c2) A county that is a development tier two or three county, as these tiers are defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is a development tier one county, as defined in G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c3) The Commissioner of Agriculture shall adopt rules governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement.

(e) As used in subsection (c2) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

- (1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.
- (2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.
- (3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.
- (4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.
- (5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739.

(g) There is established the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee. The Advisory Committee shall be administratively located within the Department of Agriculture and Consumer Services and shall advise the Commissioner on the prioritization and allocation of funds, the development of criteria for awarding funds, program planning, and other areas where monies from the Trust Fund can be used to promote the growth and development of family farms in North Carolina. The Advisory Committee shall be composed of 19 members as follows:

- (1) The Commissioner of Agriculture or the Commissioner's designee, who shall serve as the Chair of the Advisory Committee.
- (2) The Secretary of Commerce or the Secretary's designee.
- (3) The Secretary of Environment and Natural Resources or the Secretary's designee.
- (4) Three practicing farmers, one appointed by the Governor, one appointed by the President Pro Tempore of the Senate, and one appointed by the Speaker of the House of Representatives.
- (5) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
- (6) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.
- (7) The Executive Director of the North Carolina Rural Economic Development Center, Inc., or the Executive Director's designee.
- (8) The Executive Director of the Conservation Trust for North Carolina or the Executive Director's designee.
- (9) The Executive Director of the North Carolina Farm Transition Network or the Executive Director's designee.
- (10) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
- (11) The Director of the Southeast Regional Office of the American Farmland Trust or the Director's designee.
- (12) The Executive Director of the North Carolina Agribusiness Council or the Executive Director's designee.
- (13) The President of the North Carolina State Grange or the President's designee.
- (14) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
- (15) The President of the North Carolina Black Farmers and Agriculturalists Association or the President's designee.
- (16) The President of the North Carolina Forestry Association or the President's designee.
- (17) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(h) The Advisory Committee shall meet at least quarterly. The Department of Agriculture and Consumer Services shall provide the Advisory Committee with administrative and secretarial staff. Members of the Advisory Committee shall be entitled to per diem pursuant to G.S. 138-5 or G.S. 138-6, as appropriate. The Advisory Committee shall make recommendations to the Commissioner on the distribution of monies from the Trust Fund at least annually. The Commissioner shall take the recommendations of the Advisory Committee into consideration in making decisions on the distribution of monies from the Trust Fund.

(i) The Advisory Committee shall report no later than May 1 of each year to the Joint Legislative Commission on Governmental Operations and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources regarding the activities of the Advisory Committee, the agriculture easements purchased, and agricultural projects funded during the previous year. (1991, c. 734, s. 1; 2000-171, ss. 1, 2; 2005-390, ss. 4, 17; 2006-252, s. 2.12.)

§§ 106-745 through 106-749. Reserved for future codification purposes.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-390
HOUSE BILL 607

AN ACT TO RENAME THE FARMLAND PRESERVATION ENABLING ACT AND FARMLAND PRESERVATION TRUST FUND AS THE AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION ENABLING ACT AND THE AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION TRUST FUND AND TO AMEND THE ACT TO ESTABLISH A CATEGORY OF ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS THAT OFFERS ADDITIONAL BENEFITS FOR FARMLAND WHEN THE OWNER OF THE FARMLAND IS WILLING TO ENTER INTO AN IRREVOCABLE CONSERVATION AGREEMENT FOR AT LEAST TEN YEARS AND TO CREATE AN AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION TRUST FUND ADVISORY COMMITTEE.

Whereas, North Carolina's 53,000 farms provide food, fiber, economic activity, wildlife habitat, natural resource protection, open spaces, cultural heritage, and fiscal savings to the citizens of the State; and

Whereas, a productive and stable agricultural sector is important to farm families, rural communities, local economies, and the State of North Carolina; and

Whereas, the Voluntary Agricultural Districts program is a popular, low-cost, locally driven option that links farmers, elected officials, county staff, and the general public in understanding and supporting the needs of agriculture; and

Whereas, landowners are looking for a wider range of options to help them develop sustainable and profitable farms and pass them along to future generations; and

Whereas, expanding the Farmland Preservation Enabling Act and authorizing counties and cities to establish a new category of agricultural district, an enhanced voluntary agricultural district, will provide counties and cities with a wider range of options to protect farmland from nonfarm development by providing programs within their jurisdictions that promote the growth, sustainability, and profitability of farming operations; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 61 of Chapter 106 of the General Statutes reads as rewritten:

"Article 61.

Agricultural Development and Preservation of Farmland."

SECTION 2. G.S. 106-735 and G.S. 106-736 are recodified as Part 1 of Article 61 of Chapter 106 of the General Statutes, to be entitled "General Provisions".

SECTION 3. G.S. 106-737 through G.S. 106-743 are recodified as Part 2 of Article 61 of Chapter 106 of the General Statutes, to be entitled "Voluntary Agricultural Districts".

SECTION 4. G.S. 106-744 is recodified as Part 4 of Article 61 of Chapter 106 of the General Statutes, to be entitled "Agricultural Conservation Easements".

SECTION 5. Article 61 of Chapter 106 of the General Statutes is amended by adding a new Part to read:

"Part 3. Enhanced Voluntary Agricultural Districts.

"§ 106-743.1. Enhanced voluntary agricultural districts.

(a) A county or a municipality may adopt an ordinance establishing an enhanced voluntary agricultural district. An ordinance adopted pursuant to this Part shall provide:

- (1) For the establishment of an enhanced voluntary agricultural district that initially consists of at least the number of contiguous acres of agricultural land, and forestland and horticultural land that is part of a qualifying farm under G.S. 106-737 or the number of qualifying farms deemed appropriate by the governing board of the county or city adopting the ordinance.
- (2) For the formation of the enhanced voluntary agricultural district upon the execution of a conservation agreement, as defined in G.S. 121-35, that meets the condition set forth in G.S. 106-743.2 by the landowners of the requisite acreage to sustain agriculture in the enhanced voluntary agricultural district.
- (3) That the form of the agreement under subdivision (2) of this subsection be reviewed and approved by an agricultural advisory board established under G.S. 106-739, or other governing board of the county or city that adopted the ordinance.
- (4) That each enhanced voluntary agricultural district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of establishing an enhanced voluntary agricultural district is to allow a county or a city to provide additional benefits to farmland beyond that available in a voluntary agricultural district established under Part 2 of this Article, when the owner of the farmland agrees to the condition imposed under G.S. 106-743.2. The county or city that adopted the ordinance may take any action it deems appropriate to encourage the formation of these districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction.

(d) A county or city ordinance adopted pursuant to this Part may be adopted simultaneously with the creation of a voluntary agricultural district pursuant to G.S. 106-738.

"§ 106-743.2. Conservation agreements for farmland in enhanced voluntary agricultural districts; limitation.

A conservation agreement entered into between a county or city and a landowner pursuant to G.S. 106-743.1(a)(2) shall be irrevocable for a period of at least 10 years from the date the agreement is executed. At the end of its term, a conservation agreement shall automatically renew for a term of three years, unless notice of termination is given in a timely manner by either party as prescribed in the ordinance establishing the enhanced voluntary agricultural district. The benefits set forth in this Part shall be available to the farmland that is the subject of the conservation agreement for the duration of the conservation agreement.

"§ 106-743.3. Enhanced voluntary agricultural districts entitled to all benefits of voluntary agricultural districts.

The provisions of G.S. 106-739 through G.S. 106-741 and G.S. 106-743 apply to an enhanced voluntary agricultural district under this Part, to an ordinance adopted under this Part, and to any person, entity, or farmland subject to this Part in the same manner as they apply under Part 2 of this Article.

"§ 106-743.4. Enhanced voluntary agricultural districts; additional benefits.

(a) Property that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect may receive up to twenty-five percent (25%) 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). For purposes of G.S. 153A-340(b),

the production of any nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm that is subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. 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 twenty-five percent (25%) of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

Nothing in this section shall affect the county's authority to zone swine farms pursuant to G.S. 153A-340(b)(3).

(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is 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 for funds to benefit that farmland.

(c) State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to any person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect.

"§ 106-743.5. Waiver of utility assessments.

(a) In the ordinance establishing an enhanced voluntary agricultural district under this Part, a county or a city may provide that all assessments for utilities provided by that county or city are held in abeyance, with or without interest, for farmland subject to a conservation agreement under G.S. 106-743.2 that remains in effect until improvements on the farmland property are connected to the utility for which the assessment was made.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance under this section without interest.

(d) If an ordinance is adopted by a county or a city under this section, then the assessment procedures followed under Article 9 of Chapter 153A or Article 10 of Chapter 160A of the General Statutes, respectively, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance under G.S. 153A-201 and G.S. 160A-237."

SECTION 6. G.S. 153A-340(b)(2) reads as rewritten:

"(2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 7. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-383.2. Voluntary agricultural districts.

A city may amend the ordinances applicable within its planning jurisdiction to provide flexibility to farming operations that are located within a city or county voluntary agricultural district or enhanced voluntary agricultural district adopted under Article 61 of Chapter 106 of the General Statutes. Amendments to applicable ordinances may include provisions regarding on-farm sales, pick-your-own operations,

road signs, agritourism, and other activities incident to farming. For purposes of this section, the term "farming" shall have the same meaning as set forth in G.S. 106-581.1."

SECTION 8. G.S. 143-215.74(b)(9) reads as rewritten:

"(9) When the applicant is either (i) a limited-resource farmer or farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars (\$100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of Chapter 106 of the General Statutes.

b. Limited-resource farmer. – A farmer with direct and indirect annual gross farm sales that do not exceed one hundred thousand dollars (\$100,000) and with an adjusted household income in each of the previous two years that is at or below the greater of the county median household income, as determined by the United States Department of Housing and Urban Development, or two times the national poverty level based on the federal poverty guidelines established by the United States Department of Health and Human Services and revised each April 1.

c. Materially and substantially participate.

1. In the case of an individual, for the individual, including members of the immediate family of the individual, to provide substantial day-to-day labor and management of the farm, consistent with the practices in the county in which the farm is located.

2. In the case of an entity, for all members of the entity, to participate in the operation of the farm, with some members providing management and some members providing labor and management necessary for day-to-day activities such that if the members did not provide the management and labor, the operation of the farm would be seriously impaired."

SECTION 9. G.S. 106-735, as recodified by Section 2 of this act, reads as rewritten:

"§ 106-735. **Short title and purpose.**

(a) ~~This article~~ Article shall be known as "The Agricultural Development and Farmland Preservation Enabling Act."

(b) The purpose of this Article is to authorize counties and cities to undertake a series of programs to encourage the preservation of farmland-qualifying farmland, as defined herein, and to foster the growth, development, and sustainability of family farms."

SECTION 10. G.S. 106-736, as recodified by Section 2 of this act, reads as rewritten:

"§ 106-736. Agricultural Development/Farmland preservation programs authorized.

(a) A county or a city may by ordinance establish a farmland preservation program under this Article. The ordinance may authorize qualifying farms, as defined in G.S. 106-737, to take advantage of one or more of the benefits authorized by the remaining sections of this Article.

(b) A county or a city may develop programs to promote the growth, development, and sustainability of farming and assist farmers in developing and implementing plans that achieve these goals. For purposes of this Article, the terms "agriculture", "agricultural", and "farming" have the same meaning as set forth in G.S. 106-581.1."

SECTION 11. G.S. 106-737, as recodified by Section 3 of this act, reads as rewritten:

"§ 106-737. Qualifying farmland.

In order for farmland to qualify for inclusion in a voluntary agricultural district or an enhanced voluntary agricultural district under Part 1 or Part 2 of this Article, it must be real property that:

- (1) Is 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;
- (2) ~~Is 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 an average of eight out of 10 years; or 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;~~
- (3) Is managed in accordance with the Soil Conservation Service defined erosion control practices that are addressed to highly erodible land; and
- (4) Is 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 10 years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations."

SECTION 12. G.S. 106-738, as recodified by Section 3 of this act, reads as rewritten:

"§ 106-738. Voluntary agricultural districts.

(a) An ordinance adopted under this ~~Article-Part~~ shall provide:

- (1) For the establishment of voluntary agricultural districts consisting initially of at least the number of contiguous acres of qualifying farmland agricultural land, and forestland or horticultural land that is part of a qualifying farm, or the number of qualifying farms deemed appropriate by the board of county commissioners; governing board of the county or city adopting the ordinance;
- (2) For the formation of such districts upon the execution by the owners of the requisite acreage of an agreement to sustain agriculture in the district;

(3) That the form of this agreement must be reviewed and approved by an agricultural advisory board established under G.S. 106-739 or some other county board or official;

(4) That each such district have a representative on the agricultural advisory board established under G.S. 106-739.

(b) The purpose of such agricultural districts shall be to increase identity and pride in the agricultural community and its way of life and to increase protection from nuisance suits and other negative impacts on properly managed farms. The county or city that adopted an ordinance under this Part may take such action as it deems appropriate to encourage the formation of such districts and to further their purposes and objectives.

(c) A county ordinance adopted pursuant to this Part is effective within the unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective within the corporate limits of the city. A city may amend its ordinances in accordance with G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction."

SECTION 13. G.S. 106-739, as recodified by Section 3 of this act, reads as rewritten:

"§ 106-739. Agricultural advisory board.

An ordinance adopted under this Part or Part 3 of this Article shall provide for the establishment of an agricultural advisory board, organized and appointed as the county or city that adopted the ordinance shall deem appropriate. The county or city that adopted the ordinance may confer upon this advisory board authority to:

- (1) Review and make recommendations concerning the establishment and modification of agricultural districts;
- (2) Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this Part or Part 3 of this Article;
- (3) Hold public hearings on public projects likely to have an impact on agricultural operations, particularly if such projects involve condemnation of all or part of any qualifying farm;
- (4) Advise the governing board of the county commissioners or city that adopted the ordinance on projects, programs, or issues affecting the agricultural economy or way of life within the county;
- (5) Perform other related tasks or duties assigned by the governing board of the county commissioners or city that adopted the ordinance."

SECTION 14. G.S. 106-740, as recodified by Section 3 of this act, reads as rewritten:

"§ 106-740. Public hearings on condemnation of farmland.

An ordinance adopted under this Part or Part 3 of this Article 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 under this Part or an enhanced voluntary agricultural district under Part 3 of this Article until such agency has requested the local agricultural advisory board established under G.S. 106-739 to hold a public hearing on the proposed condemnation.

- (1) Following a public hearing held pursuant to this section, the board shall prepare and submit written findings and a recommendation to the decision-making body of the agency proposing acquisition.
- (2) The board designated to hold the hearing shall have 30 days after receiving a request under this section to hold the public hearing and submit its findings and recommendations to the agency.
- (3) The agency may not formally initiate a condemnation action while the proposed condemnation is properly before the advisory board within these time limitations."

SECTION 15. G.S. 106-742, as recodified by Section 3 of this act, reads as rewritten:

"§ 106-742. Waiver of water and sewer assessments.

(a) A county or a city that has adopted an ordinance under this Part may provide by ordinance that its water and sewer assessments be held in abeyance, with or 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.

(b) The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(c) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

(d) If an ordinance is adopted under this section, then the assessment procedures followed under Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, whichever applies, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.

(e) Nothing in this section is intended to diminish the authority of counties or cities to hold assessments in abeyance under G.S. 153A-201, G.S. 153A-201 or G.S. 160A-237."

SECTION 16. G.S. 106-743, as recodified by Section 3 of this act, reads as rewritten:

"§ 106-743. ~~County~~ Local ordinances.

A county or a city adopting an ordinance under this Part or Part 3 of this Article may consult with the North Carolina Commissioner of Agriculture or his staff before adoption, and shall record the ordinance with the Commissioner's office after adoption. Thereafter, the county or city shall submit to the Commissioner at least once a year, a written report including the status, progress and activities of the county's farmland preservation program under this Part or Part 3 of this Article."

SECTION 17. G.S. 106-744, as recodified by Section 4 of this act, reads as rewritten:

"§ 106-744. ~~Purchase of agricultural conservation easements, easements; establishment of North Carolina Agricultural Development and Farmland Preservation Trust Fund.~~

(a) A county may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined by ~~G.S. 106-737 located within a voluntary agricultural district as defined by G.S. 106-738.~~ G.S. 106-737.

(b) For purposes of this section, "agricultural conservation easement" means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations; ~~and~~

(1a) May permit agricultural uses as necessary to promote agricultural development associated with the family farm; and

(2) Shall be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(c) There is established a "North Carolina Agricultural Development and Farmland Preservation Trust Fund" to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or funding programs that promote the

development and sustainability of farming and assist in the transition of existing farms to new farm families, or monies transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the for any of the following:

- (1) The purchase of agricultural conservation easements, including transaction costs, and costs.
- (2) Public and private enterprise programs that will promote profitable and sustainable family farms through assistance to farmers in developing and implementing plans for the production of food, fiber, and value-added products, agritourism activities, marketing and sales of agricultural products produced on the farm, and other agriculturally related business activities.
- (3) To fund conservation agreements to bring into or maintain farmland in active production of food, fiber, and other agricultural products.
- (4) The costs of administering the program under this Article, including the cost of staff and staff support.

(c1) The Commissioner shall distribute Trust Fund monies for such purchases, including transaction costs, as follows:

- (1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.
- (2) To counties according to the match requirements under subsection ~~(e1)~~ (c2) of this section.

~~(e1)~~(c2) A county that is an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

~~(e2)~~(c3) The Commissioner of Agriculture shall adopt rules governing the use, distribution, investment, and management of Trust Fund monies.

(d) This section shall apply to agricultural conservation easements falling within its terms. This section shall not be construed to make unenforceable any restriction, easement, covenant, or condition that does not comply with the requirements of this section.

This section shall not be construed to invalidate any farmland preservation program.

This section shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain, or otherwise and to use property of any kind for public purposes.

This section shall not be construed to authorize any public entity, agency, or instrumentality to acquire by eminent domain an agricultural conservation easement.

(e) As used in subsection ~~(e1)~~-(c2) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

- (1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.
- (2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.
- (3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.
- (4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall

address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.

- (5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739.

(g) There is established the Agricultural Development and Farmland Preservation Trust Fund Advisory Committee. The Advisory Committee shall be administratively located within the Department of Agriculture and Consumer Services and shall advise the Commissioner on the prioritization and allocation of funds, the development of criteria for awarding funds, program planning, and other areas where monies from the Trust Fund can be used to promote the growth and development of family farms in North Carolina. The Advisory Committee shall be composed of 19 members as follows:

- (1) The Commissioner of Agriculture or the Commissioner's designee, who shall serve as the Chair of the Advisory Committee.
- (2) The Secretary of Commerce or the Secretary's designee.
- (3) The Secretary of Environment and Natural Resources or the Secretary's designee.
- (4) Three practicing farmers, one appointed by the Governor, one appointed by the President Pro Tempore of the Senate, and one appointed by the Speaker of the House of Representatives.
- (5) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
- (6) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.
- (7) The Executive Director of the North Carolina Rural Economic Development Center, Inc., or the Executive Director's designee.
- (8) The Executive Director of the Conservation Trust for North Carolina or the Executive Director's designee.
- (9) The Executive Director of the North Carolina Farm Transition Network or the Executive Director's designee.
- (10) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
- (11) The Director of the Southeast Regional Office of the American Farmland Trust or the Director's designee.
- (12) The Executive Director of the North Carolina Agribusiness Council or the Executive Director's designee.
- (13) The President of the North Carolina State Grange or the President's designee.
- (14) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
- (15) The President of the North Carolina Black Farmers and Agriculturalists Association or the President's designee.
- (16) The President of the North Carolina Forestry Association or the President's designee.
- (17) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.

(h) The Advisory Committee shall meet at least quarterly. The Department of Agriculture and Consumer Services shall provide the Advisory Committee with administrative and secretarial staff. Members of the Advisory Committee shall be entitled to per diem pursuant to G.S. 138-5 or G.S. 138-6, as appropriate. The Advisory Committee shall make recommendations to the Commissioner on the distribution of monies from the Trust Fund at least annually. The Commissioner shall take the recommendations of the Advisory Committee into consideration in making decisions on the distribution of monies from the Trust Fund.

(i) The Advisory Committee shall report no later than May 1 of each year to the Joint Legislative Commission on Governmental Operations and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources regarding the activities of the Advisory Committee, the agriculture easements purchased, and agricultural projects funded during the previous year."

SECTION 18. G.S. 106-581.1 reads as rewritten:

"§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture" and "agricultural" ~~"agriculture", "agricultural", and "farming"~~ shall refer to ~~the~~ 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, ~~the~~ plants.
- (2) The planting and production of trees and ~~timber,~~ timber.
- (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, deer, elk, and other animals for individual and public use, consumption, and marketing. ~~Further, for purposes of this Article, aquaculture is considered a form of agriculture pursuant to~~
- (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 the farm, and similar activities incident to the operation of a farm."

SECTION 19. The first report required pursuant to G.S. 106-744(i), as enacted by Section 19 of this act, is due on or before 1 May 2006.

SECTION 20. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:30 p.m. this 13th day of September, 2005