

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 2 September 2008

SUBJECT: Enhanced Agricultural Districts

ATTACHMENT(S): Draft revisions to Chapter 92 of Henderson County Code

SUMMARY OF REQUEST:

The Henderson County Agricultural Advisory Board has unanimously recommended that this Board adopt the attachment, which would provide for “Enhanced Voluntary Agricultural Districts” in Henderson County, and which also changes slightly the criteria for inclusion in the existing Voluntary Agricultural Districts.

Enhanced Agricultural Districts are those in which the farm owners (meeting certain criteria) have agreed to restrict their property to agricultural uses for a period of ten years. In return, they receive certain benefits, primarily a higher percentage of cost-share funds from government sources. Under this ordinance, membership in regular voluntary agricultural districts is required to be eligible for membership in an enhanced district.

The revisions to the regular agricultural districts lower the acreage/number of farms required to make up a district from the current 200 contiguous acres or 5 farms within a mile to 100 contiguous acres or 3 farms within a mile.

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Adoption of the amendments to Chapter 92 of the Henderson County Code.

If the Board is so inclined, the following motion is suggested:

I move that the Board adopt the proposed amendments to Chapter 92 of the Henderson County Code.

Modifications to:

CHAPTER 92. FARMLAND PRESERVATION

ARTICLE III Voluntary Agricultural Districts, including sections 92-7 through 92.11, is deleted. In its place, a new Article III is inserted, as follows:

ARTICLE III. [RESERVED.]

§§ 92-7 through 92-11. [RESERVED.]

A new Article VIII is adopted, as follows:

ARTICLE VIII Agricultural Districts

Part One. Voluntary Agricultural Districts

§ 92-25. Purpose.

The purpose of voluntary agricultural districts shall be to encourage the economic and financial well-being of farming areas, to increase protection from nuisance suits, undesirable nonfarm development and other negative impacts on participating farms and to increase the identity and pride in the agricultural community and its way of life.

§ 92-26. Application procedure.

- A. An agricultural district shall initially consist of at least 100 or more contiguous acres of qualifying farmland or at least three qualifying farms, which collectively will create a district with each said farm lying within one mile of any other such farm. An agricultural district may be enlarged by adding qualifying farms subsequent to initial formation.
- B. An agreement to sustain, encourage and promote agriculture must be executed by each applicant in the district and submitted to the Agricultural Advisory Board for approval.
- C. Landowners may apply to participate in existing districts and are encouraged to do so.
- D. To secure County certification as an agricultural district, a landowner, for such designation, will apply to the Chairman of the Agricultural Advisory Board. Application forms may be obtained from the Chairman at the Soil and Water Conservation District office or at the office of the Henderson County Planning Department.

E. Upon receipt of an application, the Chairman will forward copies immediately to the Henderson County Assessor's office and the Henderson County Soil and Water Conservation District office for evaluation pursuant to Article IV. Said offices shall evaluate, complete and return their copies to the Chairman within 30 days of receipt.

F. Within 30 days of receipt of respective reports from the County Assessor and the Soil and Water Conservation District office, the Board will meet and render a decision regarding the application. The Chairman will notify the applicant by mail of the Board's decision.

G. If the application is denied by the Agricultural Advisory Board, the petitioner has 30 days to appeal the decision to the Henderson County Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

§ 92-27. Maps; public notice.

A. Voluntary agricultural districts will be marked on official maps maintained by the Land Records Office of the Henderson County Tax Assessor, displayed for public view in the following County locations:

1. Register of Deeds.
2. Soil and Water Conservation.
3. Henderson County Tax Assessor's offices.
4. Official Henderson County electronic land records.
5. Any other office deemed necessary or advisable by the Board of

Commissioners.

B. The following notice, of a size and form suitable for posting, shall be posted in the office of the Register of Deeds, and any other office or agency the Advisory Board deems necessary:

Henderson County has established agricultural districts to protect and preserve agricultural lands and activities. These districts have been developed and mapped by the county to inform all purchasers of real property that certain agricultural and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, and other common farming activities may occur in these districts any time during the day or night. Maps and information on the location and establishment of these districts can be obtained from the North Carolina Cooperative Extension Service office, the office of the Register of Deeds, the County Planning office, the Land Records Section of the Tax Assessor's Office, or the Natural Resources Conservation Service office.

§ 92-28. Land Development; notice to purchasers.

A. Developers of major subdivisions (as that term is used in the Henderson County Land Development Code) or planned unit developments shall designate on preliminary

development plans the existence of voluntary agricultural districts within 1/2 mile of the proposed development.

B. In addition, developers shall comply with all applicable provisions of the Henderson County Land Development Code, including but limited to those regarding Farmland Preservation Districts.

C. As used in this Article, unless the context clearly indicates otherwise the terms "voluntary agricultural district" and "enhanced agricultural district" shall have the same meaning as the term "Farmland Preservation District" as used in the Henderson County Land Development Code.

§ 92-29. Public information program.

The County may take such action as it deems appropriate through the Agricultural Advisory Board or other body or individual to encourage the formation of voluntary agricultural districts and to further their purposes and objectives, including a public information program to reasonably inform landowners of the farmland preservation program. Official Henderson County electronic land records shall indicate the boundary of the area within ½ mile of an voluntary agriculture district, and shall further indicate any setbacks from such district required by the Land Development Code.

§ 92-30 Qualifying Farmland

As used in this Article, "qualifying farmland" must:

1. Be participating in the farm present-use-value taxation program established by N.C. Gen. Stat. §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 N.C. Gen. Stat. §105-277.3 ;
2. Be managed, if highly erodible land exists on the farm, in accordance with the Natural Resources Conservation Service defined erosion-control practices that are addressed to said highly-erodible land; and
3. Be located in the unincorporated area of Henderson County.

§ 92-31 through 92-39. [RESERVED.]

Part Two. Enhanced Voluntary Agricultural Districts

§ 92-40. Purpose

The purposed of Enhanced Voluntary Agricultural Districts is to provide, pursuant to N.C. Gen. Stat. §106-743.1 *et seq.*, all the benefits to the County of Voluntary Agricultural Districts under Part One of this Article, with additional benefits to the County and to its 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 hereunder.

§ 92-41. Requirements

A. Enhanced Voluntary Agricultural Districts must meet all the requirements of Part One of this Article.

B. Landowners who desire inclusion of their land in an Enhanced Voluntary Agricultural District must not only meet all the requirements of Part One of this Article, but must also enter into an irrevocable agricultural easement and conservation agreement (pursuant to N.C. Gen. Stat. §121-35) for a term of ten years with Henderson County through its Agricultural Advisory Board, as specified below. Such easement shall contain a provision that at its expiration the easement automatically renews for subsequent three-year periods unless either party gives the other written notice prior to such expiration to Henderson County and its Agricultural Advisory Board.

B. The form of the agreement required under A., above, shall be approved by the Henderson County Agricultural Advisory Board, and shall meet the requirements of N.C. Gen. Stat. §106-743.2.

§ 92-42. Membership on Agricultural Advisory Board

Enhanced Voluntary Agricultural Districts established within the County shall be entitled to a representative on the Henderson County Agricultural Advisory Board, pursuant to N.C. Gen. Stat. §106-743.1(a)(4).

§ 92-43. Benefits

A. 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 easement and conservation agreement and for so long as the benefits of such agreement have not been withdrawn under the provisions of this Part due to non-compliance with the terms of such easement and conservation agreement.

B. 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 N.C. Gen. Stat. §153A-340(b)(3).

C. Pursuant to N.C. Gen. Stat. §106-743.4(b), a person who farms land that is subject to a conservation agreement under N.C. Gen. Stat. §106-743.2 that remains in effect is eligible under N.C. Gen. Stat. §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.

D. All assessments for utilities provided by Henderson County are held in abeyance, without interest, for farmland subject to a conservation agreement under N.C. Gen. Stat. §106-743.2 that remains in effect until improvements on the farmland property are connected to the utility for which the assessment was made. When the period of abeyance ends, such assessment is payable in accordance with the terms of the assessment resolution. Pursuant to N.C. Gen. Stat. §106-743.5(c), statutes of limitations are suspended during the time that any assessment is held in abeyance under this section without interest.

§ 92-44. Notice

Enhanced voluntary agricultural districts shall be marked on County maps listed in §92-27.

§ 92-45. Education

The Henderson County Agricultural Advisory Board shall encourage the formation of the Districts and Enhanced Districts and to further their purposes and objectives, including the implementation of a public information program to reasonably inform landowners of the agricultural district program.

§ 92-46 through 92-49. [Reserved.]

Part Three. Procedures

§92-50. Procedures

The Henderson County Agricultural Advisory Board shall adopt procedures, based upon the model procedures promulgated by North Carolina State University College of Agriculture & Life Sciences, for both voluntary and enhanced voluntary agriculture districts for the following:

- A. Application
- B. Approval of Agriculture Easement and Conservation Agreement terms. Such agreement to sustain, encourage, and promote agriculture must be executed by the landowner and recorded with the Advisory Board and with the Henderson County Register of Deeds. Permitted uses for the land subject to such Easement and Conservation Agreement include agriculture, horticulture, forestry, and outdoor recreation. The Easement and Conservation Agreement for the Enhanced Voluntary Agricultural District shall be binding upon all successors in interest to the landowner according to

its terms, except for successors in interest resulting from the exercise of rights under a security interest or lien that preceded the Easement and Conservation Agreement.

- C. Enforcement, including methods for determining compliance and for revocation by the County for non-compliance.

§ 92-51. Condemnation of Qualifying Farmland

A. Pursuant to N.C.G.S. §106-740, Henderson County may not formally initiate any action to condemn any interest in qualifying farmland within a District until it has requested the Henderson County Advisory Board to hold a public hearing on the proposed condemnation.

B. Procedure

1. Upon receiving a request, the Henderson County Advisory Board shall publish notice describing the proposed action in the newspaper of record within Henderson County within five (5) business days of the request, and will in the same notice notify the public of a public hearing on the proposed condemnation, to be held within ten (10) days of receipt of the request.

2. The Advisory Board shall meet to review:

a. Whether the need for the project has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency involved; and

b. Whether there are alternatives to the proposed action that have less impact and are less disruptive to the agricultural activities of the District within which the proposed action is to take place.

3. The Advisory Board shall consult with the County Agricultural Extension Agent, the Natural Resources Conservation Service District Conservationist, and any other individuals, agencies, or organizations deemed by the Advisory Board to be necessary for its review of the proposed action.

4. Within five (5) days after the hearing, the Advisory Board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be made available to the public prior to its being conveyed to the decision-making body of the agency proposing the acquisition.

5. There will be a period of ten (10) days allowed for public comment on the report of the Advisory Board.

6. After the ten (10) day period for public comment has expired, the Advisory Board shall submit a final report containing all of its findings and recommendations regarding the proposed action to the decision making body of the agency proposing the acquisition.

7. The total time period, from the day that a request for a hearing has been received to the day that a final report is issued to the decision making body of the agency proposing the acquisition, shall not exceed thirty (30) days. If the agency agrees to an extension, the agency and the Advisory Board shall mutually agree upon a schedule to be set forth in writing and made available to the public.

8. Pursuant to N.C. Gen. Stat. §106-740, the Board of Commissioners may not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the Advisory Board.

The Henderson County Board of Commissioners hereby adopts and enacts the preceding this the _____ day of September, 2008.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
WILLIAM MOYER, Chairman

ATTEST:

Clerk to Board of Commissioners

Approved as to form:

County Attorney