

Red Text = Proposed Amendments

Chapter 45 - Farmland Preservation

Article I – General Provisions

45-1. Purpose; Statutory Authority; Title.

A. The purpose of this Chapter is to encourage the voluntary preservation and protection of farmland from nonfarm development, recognizing the importance of agriculture to the economic and cultural life of the County.

B. Pursuant to authority conferred by Article 61 of Chapter 106 of the North Carolina General Statutes, and for the purpose of promoting the health, safety, morals and general welfare of Henderson County, the Board of Commissioners of Henderson County, North Carolina, does enact the following sections, which shall be known as the "Voluntary Farmland Preservation Program Ordinance of Henderson County, North Carolina."

Article II – Agricultural Advisory Board

45-2. Definitions

The following terms are defined for purposes of this Chapter:

Agricultural Conservation Easement (sometimes herein “ACE” or “Conservation Easement”) shall have the meaning defined in N.C Gen. Stat. §106-744 and to the extent not inconsistent with N.C. Gen. Stat. §106-744 generally means a written agreement between a landowner and a qualified nonprofit organization or public agency under which:

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

There shall be no limitations stated or interpreted to prevent a landowner from conducting agricultural activities, including, but not limited to, the production of crops, forestry products, horticultural crops or products, tillage, livestock, and livestock products. Associated uses allowable are sales and processing necessary and customarily incidental to the agricultural activities on-site, which are in keeping with the purpose of the program.

Board or Advisory Board. The Henderson County Agricultural Advisory Board.

Board of Commissioners. The Henderson County Board of Commissioners.

Chairman. The Chairman of the Agricultural Advisory Board.

Enhanced Voluntary Agricultural District (“EVAD”) shall have the meaning defined in N.C Gen. Stat. §106-743.1.

District. A voluntary agricultural district.

Farmland Preservation Coordinator means a Henderson County employee in the Henderson County Soil and Water Conservation District office who administers the Agricultural Preservation Program and supports the Agricultural Advisory Board.

Voluntary Agricultural District (“VAD”) shall have the meaning defined in N.C. Gen. Stat. §106-738.

45-3. Establishment

A County Agricultural Advisory Board, consisting of 9 members appointed by the Board of Commissioners, is hereby established.

45-4. Residency Requirements; Qualifications; Terms; Vacancies; Removal.

- A. Each Board member shall be a resident of Henderson County and shall be selected in accordance with N.C. Gen. Stat. §106-739.
- B. The Board shall consist of a total of nine (9) members. The membership shall consist of five (5) members actively engaged in agriculture (as defined by NC § 106-581.1.), one (1) realtor, one (1) financial advisor, and two (2) at-large members with some form of related knowledge. The Board of Commissioners shall appoint the members, which may be selected from a list of possible candidates submitted to the Clerk to the Board of Commissioners by the Henderson County Soil and Water Conservation District, North Carolina Cooperative Extension, and the Henderson County Center for the USDA Farm Service Agency. Appointments should be made with an effort to have the broadest geographical representation possible.
- C. All members are to serve for terms of three (3) years and no more than two (2) consecutive terms.
- D. Any vacancy on the Agricultural Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term.
- E. Any member of the Agricultural Advisory Board may be removed with or without cause by the Board of Commissioners.
- F. Each member of the Board shall receive ethics training annually through Henderson County, the School of Government, the Henderson County Soil and Water Conservation District, or the North Carolina Soil and Water Conservation Commission.

45-5. Officer, Bylaws; Fiscal Year; Meetings; Recordings; Support Services.

- A. The Board is to elect a Chairman and Vice Chairman each year at its first meeting of the fiscal year. The Chairman shall preside over all regular or special meetings of the Board. The Board shall adopt its own bylaws, and such bylaws or amendments thereto must be approved by the Henderson County Board of Commissioners.
- B. The Board will use the County fiscal year as its meeting year. Meetings of the Board shall be publicized and conducted in accordance with provisions of the North Carolina Open Meetings Law. Such meetings shall be held at the call of the Chairman and at such other times as the Board in its rules of procedure may specify.
- C. The Board shall keep minutes of the proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. The Board 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.
- D. The Henderson County Agricultural Advisory Board shall contract with the Soil and Water Conservation District office to serve the Board for recordkeeping, correspondence and application procedures under this Chapter and whatever other services the Board needs to complete its duties.

45-6. Powers and Duties.

- A. The Agricultural Advisory Board shall:
 1. Review and approve applications for qualified farmland, voluntary agricultural districts, enhanced voluntary agricultural districts, and agricultural conservation easements and make recommendations concerning the establishment and modification of agricultural districts, subject to the appeal of such decisions to the Board of Commissioners pursuant to N.C. Gen. Stat. 106-739(a)(1).
 2. Hold public hearings pursuant to Article VI of this Chapter.
 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. Execute agreements with landowners necessary for enrollment of land in a voluntary agricultural district.
 5. Perform other related tasks or duties assigned by the Board of Commissioners.
- B. Each district shall be assigned to a member of the Board who shall monitor and represent that district in all business conducted by the Board. Individual members will represent those districts closest to them geographically. No member will represent more than 30% of the total number of districts in the County or 30% of the total land area.
- C. Each member shall state if there is a conflict of interest with any application the Agricultural Advisory Board reviews. If a Board member is submitting an application and requesting federal, state, or local funding, that member shall not participate in reviewing or approving any application for the same cycle as the Agricultural Advisory Board is considering their application.

Article III – Voluntary Agricultural Districts

45-7. Purpose

The purpose of voluntary agricultural districts formed by landowners shall be to encourage the economic and financial well-being of farming areas, decrease the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors, 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

45-8. Application Procedure

- A. An agricultural district shall initially consist of at least 50 or more contiguous acres of qualifying farmland or at least 5 qualifying farms, which collectively will create a district with Page 3 of 13Chapter 45 - Farmland Preservation Published on Henderson County North Carolina (<https://www.hendersoncountync.gov>) 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.

45-9. Maps; Public Notice.

Voluntary agricultural districts will be marked on official maps maintained by the Henderson County Soil and Water Conservation District office and displayed for public view in the following County offices:

- A. Registrar of Deeds.
- B. Code Enforcement.
- C. Tax Collector.
- D. Soil and Water Conservation District.
- E. Cooperative Extension.
- F. Land Records.
- G. Any other office deemed necessary by the Board of Commissioners.

45-10. Major Subdivisions and Planned Unit Developments.

Developers of major subdivisions or planned unit developments shall designate on preliminary development plans the existence of voluntary agricultural districts within 1/2 mile of the proposed development.

45-11. 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.

Article IV – Certification for Qualifying Farmland

45-12. Requirements.

To secure County certification as qualifying farmland, a farm must meet the requirements of N.C. Gen. Stat. §106-737 as the same may be amended. 45-13. Application A landowner may apply to the Chairman for such certification at the same time he applies for approval as an agricultural district.

45-13. Application.

A landowner may apply to the Chairman for such certification at the same time he applies for approval as an agricultural district.

Article V – Revocation of Preservation Agreement

45-14. Notice.

Expand By written notice to the Board, a landowner of qualifying farmland may revoke the preservation agreement formulated pursuant to Article III of this Chapter, or the Board may revoke the same preservation agreement based on noncompliance by the landowner. Such revocation shall result in loss of eligibility to participate in a voluntary agricultural district

Article VI - Public Hearings

45-15. Purpose.

Pursuant to N.C. Gen. Stat. §106-740, which provides that no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district until such agency or unit has requested the local Agricultural Advisory Board to hold a public hearing on the proposed condemnation, this article provides for such hearings. This Chapter shall not be interpreted or construed to limit the County's authority to acquire land within or outside a voluntary agricultural district for a public purpose, whether by purchase or condemnation

45-16. Procedure.

- A. Upon receiving a request for condemnation, the Agricultural Advisory Board shall, within 2 days, publish a notice in a newspaper having general circulation in Henderson County describing the proposed condemnation. The notice shall state the time, date and location of the public hearing on the proposed condemnation. Such hearing shall be held within 14 days of receipt of the request.
- B. The Board will meet to review:
 1. If the need for the condemnation 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
 2. Alternatives to the proposed condemnation that are less disruptive and of less impact to the agricultural activities and farm land base of the voluntary agricultural district within which the condemnation action is to take place.
- C. The Board will consult with the County Cooperative Extension Service, United States Department of Agriculture Natural Resources Conservation Service, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Board's review of the proposed condemnation.
- D. Within 10 days after the public hearings, the Board will make a report containing its findings and recommendations regarding the proposed condemnation. The report will be made available to the public for comment prior to its being conveyed to the decision making body of the agency proposing condemnation.
- E. Pursuant to N.C.Gen. Stat. §106-740 , the County will not, within its scope of authority, permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the Advisory Board within these time limitations.

Article VII - Special Requirements

45-17 Purpose.

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

45-18. Districts Not Permitted In County Growth Areas.

Voluntary agricultural districts will not be permitted in designated County growth areas, as delineated in the most recently adopted County Land Use Plan, such plan being adopted after the effective date of this Chapter.

45-19. Consultation with Other Agencies.

The Board shall consult as much as possible with the North Carolina Department of Agriculture, the North Carolina Division of Soil and Water Conservation and any other entity the Board deems necessary to the proper conduct of its business.

45-20. Filing with Commissioner Of Agriculture; Reports.

A. A copy of this Chapter 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's office indicating the status, progress and activities of the County's farmland preservation program, including voluntary agricultural districting information regarding:

1. Number of landowners, acres and farms enrolled.
2. Number of acres applied.
3. Number of acres certified.
4. Number of acres denied.
5. Date each agricultural district was certified.

B. Copies of the reports cited in Subsection A will be sent to:

1. North Carolina Commissioner of Agriculture.
2. North Carolina Department of Transportation.
3. North Carolina Department of Commerce.
4. Hendersonville Chamber of Commerce.
5. Any other entities the Board deems appropriate.

45-21. Records; Notice of Proximity to District.

At such time as Henderson County has a computerized land records system, it shall be required 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 1/2 mile of the property line of any tract of land enrolled in a voluntary agricultural district.

Article VIII – Agricultural Districts

Part One – Voluntary Agricultural Districts

45-25. Purpose.

Expand The purpose of voluntary agricultural districts shall be as stated in N.C. Gen. Stat. §106-738(b).

45-26. Application Procedure.

- A. An agricultural district shall initially consist of at least 100 or more contiguous acres of qualifying farmland or at least 3 qualifying farms, which collectively will create a district with each said farm lying within 1 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.

45-27. 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.*

45-28. 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.

45-29. 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 1/2 mile of a voluntary agriculture district, and shall further indicate any setbacks from such district required by the Land Development Code.

45-30. Qualifying Farmland

As used in this Article, qualifying farmland must:

- A. 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
- B. Be located in the unincorporated area of Henderson County; and
- C. Either:
 - 1. Be participating in the farm present-use-value taxation program established by N.C. Gen. Stat. Chapter 105, Article 12, 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; or,
 - 2. Both:
 - a. Be engaged in "agriculture" as that term is defined in [N.C. Gen. Stat. §106-581.1](#); and,
 - b. Qualify as a "bona fide farm" under N.C. Gen. Stat. §160D-903(a).

Part Two – Enhanced Voluntary Agricultural Districts

45-40. 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 1 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.

- A. Enhanced Voluntary Agricultural Districts must meet all the requirements of Part1 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 1 of this Article, but must also enter into an irrevocable agricultural easement and conservation agreement (pursuant to N.C.G.S. §121-35) for a term of 10 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 3 year periods unless either party gives the other written notice prior to such expiration to Henderson County and its Agricultural Advisory Board.
- C. 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.G.S. §106-743.2 .

45-41. Reserved .

45-42. (Deleted pursuant to N.C. Session Law 2021-78.)

45-43. 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 N.C. Gen. Stat. §106-743.2 that remains in effect may receive up to 25 percent 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 N.C. Gen. Stat. §153A-340(b). For

purposes of N.C. Gen. Stat. §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 N.C. Gen. Stat. §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 25 percent of its gross sales.

- 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 under N.C.G.S. Chapter 160 that remains in effect is eligible , Article 72 to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to N.C.G.S Chapter 143, Article 21, Part 9 , 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.

45-44. Notice

Enhanced voluntary agricultural districts shall be marked on County maps listed in § 45-27.

45-45. 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.

45-46. Through 45-49. (Reserved)

Part Three – Procedures

45-50. 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.

45-51. Condemnation of Qualifying Farmland

- A. Pursuant to N.C. Gen. Stat. §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

- a. 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 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 10 days of receipt of the request.
- b. 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.
- c. 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.
- d. Within 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.
- e. There will be a period of 10 days allowed for public comment on the report of the Advisory Board.
- f. After the 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.
- g. 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 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.
- h. Pursuant to N.C. Gen. Stat. §106-740, no State or local agency may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district or an enhanced voluntary agricultural district until such agency has requested a public hearing.

45-52. Through 45-75. (Reserved)

Article IX

45-76. State Agency Notification and Consultation

- A. The Agricultural Advisory Board, or its designee, may consult with the North Carolina Cooperative Extension, the Henderson County Soil and Water Conservation District office, the Natural Resources Conservation Service office, the North Carolina Department of Agriculture and Consumer Services, and with any other individual, agency, or organization the Board, or its designee, deems necessary to the proper conduct of its business.
- B. A copy of this ordinance shall be sent to the Office of the North Carolina Commissioner of Agriculture and Consumer Services, the North Carolina Cooperative Extension, and the Henderson County Soil and Water Conservation District office after adoption. The Henderson County Soil and Water Conservation District office is responsible for any required reporting.

Article X

45-77. County Land Use Planning

- A. It shall be the duty of the Agricultural Advisory Board to advise the Board of Commissioners, and any other agency or office to which the Board of Commissioners delegates authority to oversee County land use planning, on the status, progress, and activities of the County's Voluntary Agricultural District program and Enhanced Voluntary Agricultural District program and also to coordinate the formation and maintenance of the VAD, EVAD, and agricultural conservation easements with the County's land use planning activities, the County's Comprehensive Plan, and the County's Agricultural Preservation Plan.

45-78 through 45-85. Reserved

Article XI

- A. Purpose. Preserving the County's agricultural lands in a manner that directs and accommodates growth and development is a high priority for the residents of the County. To this end, the County establishes the following goals:
 - 1. To permanently protect and conserve those land in the County best suited for agricultural uses;
 - 2. To identify and harmonize policies of government at all levels which may conflict with the goal of protection of farmland;
 - 3. To reduce land use conflicts between agricultural and other land uses; and
 - 4. To promote agriculture as an integral part of the County's economy.
- B. The Henderson Soil and Water Conservation District staff and the Farmland Preservation Coordinator shall make recommendations to the Agricultural Advisory Board on the selection of properties for the purchase and/or donation of agricultural conservation easements. Subject to the availability of local, state, and federal funding, the Henderson County Soil and Water Conservation District may acquire or support the acquisition of agricultural conservation easements consistent with this ordinance and may seek assistance from any appropriate nonprofit organization.

45-87. Purchase or Seeking Funding for Agricultural Conservation Easements

- A. General. Subject to the availability of funds, the County may purchase or may facilitate the purchase of agricultural conservation easements for agricultural and/or forestry lands. All applications for the purchase of agricultural conservation easements will be evaluated based upon an agricultural preservation ranking system. Applications may be ranked based on various site factors determined by the Henderson County Soil and Water Conservation District staff and Farmland Preservation Coordinator. Agricultural conservation easements may be purchased in accordance with the ranking of agricultural properties and the availability of funding.
- B. Description. The purchase of agricultural conservation easements is legally binding, restricting the owner and future owners to agricultural and/or forestry use of the land. The agricultural conservation easements will be held by either Henderson County, the Henderson County Soil and Water Conservation District, or in public trust by a qualified nonprofit organization. Agricultural conservation easements will be in perpetuity and in compliance with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state laws.
- C. Authority. Henderson County may apply for grant funding for its agricultural preservation program. The County may enter into cooperative agreements with a qualified nonprofit organization, the United States Department of Agriculture Natural Resource Conservation Service (USDA NRCS), the North

Carolina Department of Agriculture and Consumer Sciences Agricultural Development & Farmland Preservation Trust Fund (NCDA&CS, ADFPTF) or other agencies to facilitate the agricultural conservation easement purchase.

- D. Minimum eligibility criteria. There is no minimum acreage eligibility requirement to apply. Grant funding sources may have minimum acreage criteria.
- E. Application procedure. An application must be submitted to the Henderson County Soil and Water Conservation District staff, Farmland Preservation Coordinator, or its designee. Applications will be accepted year-round and will be reviewed and ranked for funding during two annual reviews held six months apart.
- F. Review and ranking of applications. The Henderson County Soil and Water Conservation District staff and the Farmland Preservation Coordinator are responsible for developing and maintaining a system to rank and evaluate projects fairly and impartially. The agricultural preservation ranking system will be used to rank and prioritize applications received from landowners seeking the purchase of an agricultural conservation easement. The Farmland Preservation Coordinator, in coordination with the Henderson County Soil and Water Conservation District staff, will rank each application and present it to the Agricultural Advisory Board for approval.

45-88 Donation of Agricultural Conservation Easements

- A. General. Henderson County may accept a voluntary donation of agricultural conservation easements or work with partners to facilitate these donations.
- B. Description. The donation of agricultural conservation easements is legally binding, restricting the owner and future owners to agricultural and/or forestry use of the land. The agricultural conservation easements will be held by either Henderson County, the Henderson County Soil and Water Conservation District, or in public trust by a qualified nonprofit organization. Agricultural conservation easements will be in perpetuity and in compliance with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state laws.
- C. Minimum eligibility criteria. There is no minimum acreage eligibility requirement to apply.
- D. Application procedure. Upon contact by a landowner, a meeting will be set with the Henderson County Soil and Water Conservation District staff and the Farmland Preservation Coordinator, or its designee, to discuss the donation of an agricultural conservation easement.
- E. Funding. Any application that is seeking funding shall be ranked in accordance of 45-87.

45-89 Baseline Documentation and Monitoring

- A. Baseline documentation purpose. This policy establishes the procedure for the collection, compilation, and storage of baseline documentation for agricultural conservation easements managed by Henderson County, the Henderson County Soil and Water Conservation District, or a qualified nonprofit organization. The County must have baseline documentation for all properties it protects. This information establishes the condition of a property at the time of easement acquisition or donation, allowing comparisons with findings during subsequent monitoring events.
- B. Baseline data collection. The volume and specificity of the information included in the baseline documentation report may vary depending on the terms of the easement and the property's conservation objectives. Henderson County's policy is that the Henderson County Soil and Water Conservation District staff, the Farmland Preservation Coordinator, or their designee will collect baseline data.
- C. Baseline data collected during a site visit will generally include:
 - 1. Boundary photos, photos of special features, and photos of structures and other improvements and or human modifications
 - 2. Data and locations on a map of each photo, special feature, structure, and other improvements (Global Positioning System (GPS) is preferred);

3. Other natural resource information documenting the conservation values of the site, such as soil maps, land cover data, natural community descriptions, ecological data, and other relevant agricultural or forestry information.
- D. A copy of the baseline documentation report shall be kept on file with the easement grantee and must be reviewed by the landowner prior to closing.
- E. Monitoring purpose. To protect conservation values and maintain safety on its fee simple properties, the Henderson County Soil and Water Conservation District staff, the Farmland Preservation Coordinator, or its designee will conduct regular monitoring and maintain detailed records of inspections, problems on the property, and actions taken to address such issues.
 - a. Monitoring personnel. The easement holder is responsible for overall monitoring supervision, which will be coordinated with the Henderson County Soil and Water Conservation District staff and the Farmland Preservation Coordinator.
 - b. Monitoring procedure. Comprehensive monitoring shall be performed at least annually, with additional monitoring visits and reports to be generated as needed. Property owners will be notified prior to the scheduled monitoring visit.

45-90. Miscellaneous

- A. Severability. If any section, subsection, clause, phrase, or portion of this Article is for any reason found invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article.
- B. Conflict with other ordinances and statutes. Whenever the provisions of this Article conflict with other ordinances of Henderson County, the provisions of those other ordinances shall govern. Whenever the provisions of any federal or state statute conflict with this Article, the provisions of such federal or state statute shall govern. The sole remedy for a land use not complying with this Article shall result in a civil action and removal of the non-qualifying land from the Henderson County Voluntary Agricultural District or Enhanced Agricultural District program. Recreational use of land that does not interfere with agricultural uses as defined in N.C. Gen. Stat. §106-581.1 shall not be considered non-compliant with this Article unless otherwise stated in the agricultural conservation agreement.
- C. Amendments. This ordinance and its articles shall be amended by the Board of Commissioners.

45-91 through 45-99. Reserved.