

**HENDERSON COUNTY
NORTH CAROLINA**

Before the Board of Commissioners

BOARD OF COMMISSIONERS ENACTMENT 2024-_____

WHEREAS, the Henderson County Board of Commissioners has enacted both voluntary and enhanced voluntary agricultural districts as defined herein, such enactments now comprising Chapter 45 of the Henderson County Code; and

WHEREAS, since such enactments the North Carolina legislature has expanded the County's statutory authority to adopt more comprehensive farmland protection measures; and

WHEREAS, the County desires, by and through this ordinance, to expand its existing farmland preservation program to include agricultural conservation easements.

NOW, BE IT THEREFORE ORDAINED as follows:

There is hereafter added and or amendments to Chapter 45 of the Henderson County Code, "Farmland Preservation", the following:

ARTICLE II

45-2. Definitions

Amend current definition Section 45-2 (1) to the following:

1. Board or Advisory Board – The Henderson County Agricultural Advisory Board,

In addition to those terms defined in Section 45-2 Definitions, the following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agricultural Conservation Easement (sometimes herein "ACE") shall have the meaning defined in N.C. Gen. Stat. §106-744(b).

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.

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

Conservation Agreement means conservation agreement as same is defined in N.C. Gen. Stat. §121-35(1). It is a right, whether or not stated in the form of a restriction, reservation, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
- Removal or destruction of trees, shrubs or other vegetation;
- Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other mineral substance in such manner as to affect the surface;
- Surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation; or
- Other acts or uses detrimental to such retention of land or water areas.

None of the above limitations should be interpreted to prevent a landowner from conducting agricultural activities, including, but not limited to, the production of crops, forestry products, horticultural crops or products, 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.

Conservation Easement, for the purposes of this ordinance shall have the meaning as Agricultural Conservation Easement as set forth 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.

45-3. Establishment

Amend current Section 45-3 to the following:

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

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

Amend current Section 45-4 (B) and (C), and add (F) to the following:

B. The Board shall consist of a total of nine (9) members. The membership shall consist of five (5) members actively engaged in farming (crop production, silviculture, or horticulture), 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 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.

F. Each member of the Board shall receive ethical 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.

45-6. Powers and Duties

Amend current Section 45-6 (A) (1) to include agricultural conservation easements, and add (C) to the following:

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).

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 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

45-86. Agricultural Conservation Easement Program

A. Purpose. Preserving the County's agricultural land 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 to 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 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 of 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.

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.

1. 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.
2. Monitoring procedure. Comprehensive monitoring shall be performed at least annually, with additional monitoring visits and reports to be generated as needed.

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 conservation agreement.

C. Amendments. This ordinance and its articles shall be amended by the Board of Commissioners.

45-91 through 45-99. Reserved.

Adopted this the ____ day of _____, 2024.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
Rebecca McCall, Chair

ATTEST:

Denisa Lauffer, Clerk to the Board of Commissioners

Approved as to form:

Charles Russell Burrell, County Attorney