

**ORANGE COUNTY  
VOLUNTARY FARMLAND PRESERVATION PROGRAM  
ORDINANCE**

**Section I - ENACTMENT**

Pursuant to the authority conferred by the Farmland Preservation Enabling Act, Article 61 of Chapter 106 of the North Carolina General Statutes, Section 106-735 et seq., and for the purpose of promoting the health, safety, morals, and general welfare of the county, the Board of Commissioners of Orange County, North Carolina, hereby adopts this ordinance, which shall be known as the Voluntary Farmland Preservation Program Ordinance of Orange County, North Carolina.

**Section II - PURPOSE**

The purpose of this ordinance is to encourage the voluntary preservation and protection of farmland from non-farm development, recognizing the importance of agriculture to the economic and cultural life of the county.

**Section III - DEFINITIONS**

*(amended 4/17/00)*

For the purposes of this ordinance, the following terms shall have the following definitions:

<u>Board:</u>	Orange County Agricultural Preservation Board
<u>Chair:</u>	Chair of the Orange County Agricultural Preservation Board
<u>District:</u>	Voluntary Agricultural District

**Section IV - AGRICULTURAL PRESERVATION BOARD**

*(amended 4/17/00)*

**A. CREATION**

An Orange County Agricultural Preservation Board, consisting of seven (7) initial members appointed by the Board of County Commissioners, is hereby established. Thereafter, the Agricultural Preservation Board shall consist of up to seven (7) at-large members plus one member for each District created and existing under this Ordinance, all appointed by the Board of County Commissioners. Additional appointments may be made to satisfy the requirements of Section IV.B.1.b. of this ordinance.

**B. MEMBERSHIP**

1. Requirements
  - a. Each Board member shall be a resident of Orange County.

- b. Each District existing pursuant to this ordinance shall be represented on the Board by a person owning farmland in the district. The Board of County Commissioners shall appoint the District representatives and shall make its selection of a representative from each District from among those owning farmland in the District.
- c. The remaining members of the Board shall be appointed at-large by the Board of County Commissioners to represent a broad range of agricultural interests.

## 2. Tenure

Each member shall serve a term of three (3) years, except that the initial Board is to consist of two (2) appointees for terms of two (2) years, two (2) appointees for terms of three (3) years, and three (3) appointees for terms of four (4) years. Thereafter, all appointments are to be for terms of three (3) years, with reappointments permitted. Notwithstanding the term limits contained in this section, District representatives may be appointed and re-appointed as necessary to insure that each District is represented as provided in Section B.1.b of this Ordinance.

## 3. Vacancies

Any vacancy on the Board is to be filled for the remainder of the unexpired term.

## C. PROCEDURE

The Board shall develop procedures for the conduct of its meetings, which procedures shall be consistent with Robert's Rules of Order.

## D. DUTIES

The Board shall have the authority to:

1. Review and approve the form of the agreement to sustain agriculture required in Section V of this ordinance;
2. Review and approve applications for qualifying farmland certification and make recommendations concerning the establishment and modification of agricultural districts;
3. Review and make recommendations concerning proposed amendments to this ordinance;
4. Hold public hearings pursuant to Section VII of this ordinance;
5. Hold joint public hearings with the Orange County Board of Commissioners on public projects likely to have an impact on agricultural operations within Orange County;
6. Advise the Board of County Commissioners on projects, programs or issues affecting the agricultural economy or activities within the county and that will affect agricultural districts;
7. Study additional methods of farmland preservation and make recommendations to the Orange County Board of Commissioners; and
8. Perform other related tasks or duties assigned by the Orange County Board of County Commissioners.

## **Section V - APPLICATION AND CERTIFICATION OF QUALIFYING FARMLAND AND VOLUNTARY AGRICULTURAL DISTRICTS**

*(amended 4/17/00)*

### **A. PURPOSE**

The purpose of voluntary agricultural districts is 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.

### **B. REQUIREMENTS FOR INCLUSION IN A VOLUNTARY AGRICULTURAL DISTRICT**

1. An agricultural district shall initially consist of:
  - a. At least 80 contiguous acres (rounded to the nearest whole acre) of certified qualifying farmland; or  
*(Amended 9/22/92 and 5/24/93)*
  - b. At least two or more certified qualifying farms, contiguous to each other, which will create a district of not less than 80 acres (rounded to the nearest whole acre).  
*(Amended 9/22/92 and 5/24/93)*

In addition, small tracts or lots, when surrounded by or adjacent to certified qualifying farms, may be added to and thereby included in an existing or proposed voluntary agricultural district. *(Amended 2/22/93)*

2. The owners of the qualifying farmland must execute an agreement with Orange County to sustain agriculture in the District.
3. Qualifying farmland may be added to existing districts upon execution by the owner of an agreement to sustain agriculture.
4. In the event that one or more participants in the District withdraw and the acreage in the District becomes less than the minimum acreage required or results in the remaining land being non-contiguous, a voluntary agricultural district will continue to exist so long as there is one qualifying farm.

### **C. CERTIFICATION AS QUALIFYING FARMLAND**

1. To secure certification as qualifying farmland, a farm must:
  - a. Be participating in the farm present use-value taxation program established by the N.C. General Statutes, Sections 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 the N.C. General Statutes, Sections 105-277.3.
  - b. Be certified by the Natural Resources 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:
    - (1) Are best suited for providing food, seed, fiber, forage, timber, and oil seed crops;
    - (2) Have good soil qualities;

- (3) Are favorable for all major crops common to Orange County;
- (4) Have a favorable growing season; and
- (5) Receive the available moisture needed to produce high yields for an average of eight (8) out of ten (10) years;

**OR**

be one on which at least two-thirds of the land has been actively used in agricultural, horticultural or forestry operations as defined in the N.C. General Statutes, Section 105-277.2 (1,2, and 3), during each of the five (5) previous years, measured from the date on which the determination must be made as to whether the land in question qualifies.

- c. Be managed, if highly erodible land exists on the farm, in accordance with the Natural Resources Conservation Service defined erosion-control practices as specified in the 1985 Food Security Act.
- d. Be the subject of a conservation agreement, as provided in Article 4 of Chapter 121 of the N.C. General Statutes, between Orange County and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten (10) years, except for the creation of not more than three (3) lots that meet applicable Orange County zoning and subdivision regulations.

**D. APPLICATION AND CERTIFICATION PROCEDURES**

A farmland owner may apply for either certification as qualifying farmland or for qualifying farmland certification and designation as a voluntary agricultural district. For a farmland owner to receive the benefits provided by this ordinance, the farm must be certified as qualifying farmland by the Agricultural Preservation Board and designated as a voluntary agricultural district by the Board of County Commissioners.

- 1. Applications for qualifying farmland certification and for voluntary agricultural district designation shall be made to the Orange County Environment and Resource Conservation Department on forms provided by that department.
- 2. The Environment and Resource Conservation Department shall review each application for completeness. When complete, the application shall be forwarded to:
  - a. The Orange County Tax Supervisor's Office; and
  - b. The local office of the Natural Resources Conservation Service of the United States Department of Agriculture.

Within 30 days of receiving an application, the above offices shall evaluate the application for compliance with the requirements of Section V.D.2. above and return their findings to the Environment and Resource Conservation Department. The Environment and Resource Conservation Department shall present the application for consideration at the first meeting of the Agricultural Preservation Board, following receipt of the findings of the above offices.

- 3. Within 60 days of receipt of the findings of the Orange County Tax Supervisor and Natural Resources Conservation Service offices, the Board will render a decision regarding the application of qualifying farmland status, and, if applicable, prepare a recommendation to the Board of County Commissioners regarding the establishment of a voluntary agricultural

district. The Chair will notify the applicant by mail of the Board's decision as to whether the real property for which certification is sought satisfies the criteria established in Section V and has been certified as qualifying farmland. If application was also sought for designation as a voluntary agricultural district, the Chair will notify the applicant of the Board's recommendation concerning such designation.

4. Upon receipt of the recommendation of the Board, the Board of County Commissioners may consider an application for establishment of a voluntary agricultural district. In deciding whether to establish a district, the Board of County Commissioners shall consider the findings of the Orange County Tax Supervisor and Natural Resources Conservation Service offices as well as the recommendation of the Board.
  5. Upon approval by the Board of County Commissioners, the establishment of a voluntary agricultural district shall become effective upon recordation of a conservation agreement, prepared in accordance with Section V.C.(1)(d), executed by the landowner and the County, and recorded in the Orange County Register of Deeds as provided in the N.C. General Statutes, Section 121-41.
  6. Upon recordation of a conservation easement, the Environment and Resource Conservation Department will notify the Orange County Tax Supervisor of the voluntary agricultural district established. The location of said district will be marked on the Orange County tax maps.
- E.** The County may take such action as it deems appropriate through the Agricultural Preservation Board or other body or individual to encourage the formation of voluntary agricultural districts and to further their purposes and objectives, including, at a minimum, a public information program to reasonably inform landowners of the farmland preservation program.

## **Section VI- REVOCATION OF CONSERVATION AGREEMENT**

By written notice to the Board of County Commissioners, a landowner of qualifying farmland may revoke the conservation agreement formulated pursuant to Section V of this ordinance. Such revocation shall result in loss of qualifying status, and consequently, loss of eligibility to participate in a voluntary agricultural district and benefits thereof. Upon revocation of a conservation agreement, written notice of the revocation shall be recorded in the Orange County Register of Deeds as provided in the N.C. General Statutes, Section 121-41.

## **Section VII - PUBLIC HEARINGS**

*(amended 4/17/00)*

### **A. PURPOSE**

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 Orange County Agricultural Preservation Board to hold a public hearing on the proposed condemnation.

### **B. PROCEDURE**

1. Upon receiving a request, the Agricultural Preservation Board shall publish notice describing the proposed action in a newspaper having general circulation in the area within seven (7) 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 30 days of receipt of the request.

2. The Board will, in making its findings and recommendations following the public hearing, consider such factors as:
  - 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. Alternatives to the proposed action that have less impact and are less disruptive to the agricultural activities and farm land base of the voluntary agricultural district within which the proposed action is to take place.
3. The Board will consult with the Orange County Cooperative Extension Service, the local U.S.D.A. Natural Resources Conservation Service office, and the Orange County Environment and Resource Conservation Department, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Board's review of the proposed action.
4. Within 30 days after the request for public hearing, the Board will make a report to the decision-making body of the proposed condemnor, which report shall contain the Board's findings and recommendations regarding the proposed action.
5. Pursuant to N.C. General Statutes, Section 106-740, the proposed condemnor shall not formally initiate a condemnation action while the proposed condemnation is properly before the advisory board within these time limitation.

### **Section VIII - RECORD NOTICE OF PROXIMITY TO FARMLANDS**

#### **A. PURPOSE**

The purpose of this section is to help prevent potential conflicts from occurring between qualifying farms and non-farm landowners regarding acceptable and responsible farming operations and practices, and to minimize the incidence of nuisance suits against owners of qualifying farmland.

#### **B. PROCEDURE**

Upon certification of qualifying farmland and designation of real property as a voluntary agricultural district, the Orange County Land Records System shall be changed to include a 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 voluntary agricultural district.

- C. 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 B above.
- D. 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 ordinance.

### **Section IX - WAIVER OF WATER AND SEWER ASSESSMENTS**

- A. Landowner(s) belonging to voluntary agricultural districts shall not be assessed for or required to connect to Orange County water and/or sewer systems.

- B. Water and sewer assessments will be held in abeyance, 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.
- C. When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
- D. Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.
- E. Assessment procedures followed under Article 9 of Chapter 153A of the N.C. General Statutes shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.
- F. Nothing in this section is intended to diminish the authority of the County to hold assessments in abeyance under N.C. General Statutes, Section 153A-201.

### **Section X - LAND-USE INCENTIVES TO VOLUNTARY AGRICULTURAL DISTRICT FORMATION**

#### **A. PURPOSE**

The purpose of this section is to help meet the needs of agriculture as an industry in Orange County and prevent conflicts between voluntary agricultural district participants and non-farm landowners in proximity to districts.

#### **B. PROCEDURE**

Land-use planning decisions and ordinances affecting parcels of land adjacent to any district shall take into account the existence of such district and the purpose of this ordinance.

### **Section XI - NORTH CAROLINA AGENCY NOTIFICATION**

- A. The Board may consult with the North Carolina Commissioner of Agriculture, the North Carolina Division of Soil and Water, and any other entity the Boards deems necessary to the proper conduct of its business.
- B. A copy of this ordinance shall be recorded with the North Carolina Commissioner of Agriculture's Office after adoption. At least once a year, the County shall submit a written report to the Commissioner of Agriculture including the status, progress, and activities of the County's farmland preservation program, which report may include voluntary agricultural districting information regarding:
  1. Number of landowners involved in the program;
  2. Number of acres for which qualifying farmland certification has been applied for;
  3. Number of acres certified as qualifying farmland;
  4. Number of acres denied certification as qualifying farmland; and
  5. Number of districts in Orange County.

- C. Copies of the reports cited in Section XI.B. above may be sent to the Orange County Board of Commissioners and any other entities the Board deems appropriate.

## **Section XII - PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS**

As provided in the N.C. General Statutes, Section 106-744, Orange County may, with the voluntary consent of landowners, acquire by purchase agricultural conservation easements over qualifying farmland as defined in Section V.D. of this ordinance and located within a voluntary agricultural district as defined in Section V.C. of this ordinance.

This ordinance shall be effective from and after April 1, 1992.

Duly adopted by the Board of Commissioners of the County of Orange, North Carolina, this 24th day of March, 1992.

Revised 9/22/92; 5/24/93; 4/17/00.