

Co. Work

RESOLUTION

RESOLUTION AUTHORIZING THE ADOPTION OF THE "VOLUNTARY AGRICULTURAL DISTRICT & ENHANCED VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE" AND THE REVOCATION OF THE PRIOR ORDINANCE KNOWN AS THE "AVERY COUNTY FARMLAND PRESERVATION PROGRAM"

Harrison & Poore

WHEREAS the County of Avery, North Carolina, enacted in 1992 an ordinance known as the "Avery County Farmland Preservation Program;" and

WHEREAS significant changes and legislation have developed since the adoption of the "Avery County Farmland Preservation Program;" and

WHEREAS the County of Avery desires to rescind the ordinance adopted in 1992 and known as the "Avery County Farmland Preservation Program;" and

WHEREAS the County of Avery desires to replace said ordinance with the "Voluntary Agricultural District & Enhanced Voluntary Agricultural District Ordinance;" and

WHEREAS, this ordinance was voted on and approved by the Board of County Commissioners on 2 June 2008; and

WHEREAS, a second vote was made of this ordinance on 16 June 2008;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners for Avery County, North Carolina, meeting in regular session on the 16th day of June, 2008, hereby rescinds that ordinance adopted in 1992 known as the "Avery County Farmland Preservation Program," and adopts the Avery County Voluntary Agricultural District & Enhanced Voluntary Agricultural District Ordinance.

This resolution is effective upon its adoption this the 16th day of June, 2008.

The motion to adopt this resolution was made by Commissioner Scott Heath, seconded by Commissioner Phyllis Forbes, and passed by a vote of 3 to 0.

Attest: Cindy Furbyfill
Cindy Furbyfill, Clerk
Board of Commissioners

Kenny R. Poteat
Kenny Poteat, Chair
Board of Commissioners



AVERY COUNTY
VOLUNTARY AGRICULTURAL DISTRICT &
ENHANCED VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE

ARTICLE I
TITLE

This Ordinance, adopted by the Board of County Commissioners of Avery County, North Carolina, shall be known as the "VOLUNTARY AGRICULTURAL DISTRICT & ENHANCED VOLUNTARY AGRICULTURAL DISTRICT ORDINANCE" or the "Avery County Farmland Preservation Program".

ARTICLE II
AUTHORITY

The articles and sections of this Ordinance are adopted pursuant to authority conferred by the North Carolina General Statutes sections 106-735 through 106-744 and Chapter 153A.

ARTICLE III
PURPOSE

The purpose of this Ordinance is to encourage the preservation of qualifying farmland as defined herein; to foster the growth, development, and sustainability of family farms and farming, promote agricultural values and the general welfare of the county and more specifically, increase identity and pride in the agricultural community and its way of life; encourage the economic and financial health of agriculture, horticulture and forestry; and increase protection from non-farm development and other negative impacts on properly managed farms.

ARTICLE IV
DEFINITIONS

The following are defined for purposes of this Ordinance:

<u>Advisory Board:</u>	The Avery County Agricultural Advisory Board.
<u>Board of Commissioners:</u>	The Avery County Board of Commissioners.
<u>Chairperson:</u>	Chairperson of the Avery County Agricultural Advisory Board.
<u>District:</u>	Voluntary Agricultural District as established by this ordinance.
<u>Enhanced District:</u>	Enhanced Voluntary Agricultural District as established by this ordinance.

ARTICLE V
AGRICULTURAL ADVISORY BOARD

A. Creation

The Board of Commissioners shall establish an Agricultural Advisory Board to implement the provisions of this program.

B. Membership

The Advisory Board shall consist of no less than nine members appointed by the Board of Commissioners.

C. Membership Requirements

1. Each Advisory Board member, except those serving in an *ex officio* capacity, shall be an Avery County resident or landowner.
2. At least 6 of the members shall be actively engaged in farming, horticulture and/or forestry. Of the members actively engaged in farming, horticulture and/or forestry there shall be at least one such member from each agricultural district or enhanced agricultural district in Avery County. This determination shall be made without reference to *ex officio* members.
3. The members actively engaged in farming, horticulture and/or forestry as well as other members, shall be selected for appointment by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Soil and Water Conservation District Board of Supervisors, the County Office of North Carolina Cooperative Extension, the U.S. Farm Service Agency County Committee, nonprofit agricultural organizations, conservation organizations, agribusiness, horticultural businesses, forestry businesses, and the public at large.
4. Additional members may be appointed to the Board in an *ex officio* capacity from the Soil and Water Conservation District Board, North Carolina Cooperative Extension, the U.S. Farm Service Agency, or other agencies, as deemed necessary by the Board of Commissioners. Members serving in an *ex officio* capacity shall neither vote nor count toward quorum requirements.

D. Tenure

The initial board is to consist of three appointees for terms of one year; three appointees for terms of two years; and three appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointment permitted.

E. Vacancies

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

F. Removal

Any member of the Advisory Board may be removed by the Board of Commissioners upon a two-thirds vote of the Commissioners. No cause for removal shall be required.

G. Funding

The *per diem* compensation, if any, of the members of the Advisory Board may be fixed by the Board of Commissioners and funds may be appropriated to the Advisory Board to perform its duties.

H. Advisory Board Procedure

1. Chairperson

The Advisory Board shall elect a chairperson and vice-chairperson each year at its first meeting of the fiscal year. The chairperson shall preside over all regular or special meetings of the Advisory Board. In the absence or disability of the chairperson, the vice-chairperson shall preside and shall exercise all the powers of the chairperson. Additional officers may be elected as needed.

2. Determination of Procedure

The Advisory Board may adopt rules of procedure not inconsistent with this Ordinance or with other provisions of State law.

3. Advisory Board Year

The Advisory Board shall use the Avery County fiscal year as its meeting year.

4. Meetings

Meetings of the Advisory Board shall be held at the call of the chairperson and at such other times as the Advisory Board may specify in its rules of procedure or upon the request of at least a majority of the Advisory Board Membership. A meeting shall be held at least annually and notice of any meetings to the members shall be in writing, unless otherwise agreed to by all Advisory Board members. Meeting dates and times shall be posted as far in advance as possible on the door of the meeting site and by advertisement in local newspapers or by other means of public dissemination of the meeting dates as may be agreed upon by at least a majority of the Advisory Board Membership. All meetings shall be open to the public.

5. Majority Vote and Quorum Requirements

All issues shall be decided by a majority vote of the members of the Advisory Board present, except as otherwise stated herein. A quorum is defined as at least two-thirds of the members in attendance. No business may be conducted by the Advisory Board without a quorum present.

6. Records

The Advisory 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, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Advisory Board, or its designee, and shall be a public record.

7. Administrative

The Advisory Board may contract with the North Carolina Cooperative Extension, Avery County Cooperative Center's office to serve the Board for record keeping, correspondence, application procedures under this, and whatever services the Board needs to complete its duties.

I. Duties

The Advisory Board shall:

1. Review and approve or disapprove applications of land owners for enrollment in voluntary agriculture districts or enhanced voluntary agriculture districts.
2. Review and make recommendations concerning the establishment and modification of agricultural districts.
3. Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under Chapter 106 Article 61 of the North Carolina General Statutes and the establishment and modification of agricultural districts;

4. Conduct public hearings on public projects likely to have an impact on agriculture operations, particularly if such projects involve condemnation of all or part of any qualifying farm ;
5. Advise the Avery County Board of County Commissioners on projects, programs, or issues affecting the agricultural economy or way of life within the County, and agricultural, horticultural or forestry activities within the county that will affect agricultural districts;
6. Develop and draft a countywide farmland protection plan as defined in N.C.G.S. §106-744 (e) for presentation to the Avery County Board of County Commissioners;
7. Study additional methods for promoting and enhancing farming, horticultural, forestry and the attendant land base in the County, and of protection for farming, horticulture, forestry, and the attendant land base, and make recommendations to the Board of County Commissioners; and
8. Perform such other agricultural, horticultural, and forestry-related tasks or duties as assigned by the Board of County Commissioners.

**ARTICLE VI
CREATION OF VOLUNTARY AGRICULTURAL DISTRICTS
AND ENHANCED VOLUNTARY AGRICULTURAL DISTRICTS**

A. Regions. Avery County is hereby divided into five Agricultural Regions as follows:

1. Newland Region
2. Elk Park Region
3. Altamont Region
4. Grandfather Region
5. Toe River Region

B. Creation of Voluntary Agricultural Districts

In order to implement the purposes stated in Article III, this program provides for the creation of Voluntary Agricultural Districts which meet the following standards:

- a. The District, when initially established, shall contain a minimum of five (5) acres of horticultural land, ten (10) acres of agricultural land, or twenty (20) acres of forestry land that is part of a qualifying farm.
- b. The District shall contain one or more qualified farms within areas designated by the Agricultural Advisory Board.
- c. Each qualifying farm shall be included in one of the above Regions, and for each Region created under the terms of this program, one of the existing Advisory Board members shall be assigned to represent such Region and the qualifying farms therein.
- d. The land owner(s) requesting inclusion in such District shall execute an agreement with the County to sustain agriculture in the District in accordance with this ordinance. Said agreement shall be in a form which is reviewed and approved by the Agricultural Advisory Board.
- e. The initial Agricultural Regions are as follows:

1. Newland Region
2. Elk Park Region
3. Altamont Region
4. Grandfather Region
5. Toe River Region

f. The division lines for such regions shall be promulgated by the Agricultural Advisory Board.

C. Creation of Enhanced Voluntary Agricultural Districts

In order to implement the purposes stated in Article III, this program provides for the creation of enhanced Voluntary Agricultural Districts which meet the following standards:

- a. The District, when initially established, shall contain a minimum of five (5) acres of horticultural land, ten (10) acres of agricultural land, or twenty (20) acres of forestry land that is part of a qualifying farm.
- b. The District shall contain one or more qualified farms within areas designated by the Agricultural Advisory Board.
- c. Each qualifying farm shall be included in one of the above Regions, and for each Region created under the terms of this program, one of the existing Advisory Board members shall be assigned to represent such Region and the qualifying farms therein.
- d. The land owner(s) requesting inclusion in such District shall execute an agreement with the County to sustain agriculture in the District in accordance with this ordinance. Said agreement shall be in a form which is reviewed and approved by the Agricultural Advisory Board.
- e. The initial Agricultural Regions are as follows:

1. Newland Region
2. Elk Park Region
3. Altamont Region
4. Grandfather Region
5. Toe River Region

f. The division lines for such regions shall be promulgated by the Agricultural Advisory Board.

All land enrolled in a region, defined in section A, above, shall be part of a single district, whether enrolled in the Voluntary Agriculture District or the Enhanced Voluntary District. If a single farm has acreage in two or more regions, the farm shall participate in the district where the largest acreage is found. All land in a region as defined in section A, above, shall be treated as a single district whether enrolled in the District or the Enhanced District.

D. Education

The county may take such action as it deems appropriate through the Advisory Board or other entities or individuals to 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.

E. Addition and Withdrawal

1. Qualifying farmland in a region with an existing district shall be added to the district as herein provided.
2. In the event that one or more participants in the District or Enhanced District withdraw and the acreage in the District or Enhanced District becomes less than the minimum acreage required or results in the remaining land being noncontiguous, a District or Enhanced District will continue to exist so long as there is one qualifying farm.

ARTICLE VII
CERTIFICATION AND QUALIFICATION OF FARMLAND

A. To secure county certification as qualifying farmland in a Voluntary Agricultural District, a farm must:

1. Be participating in the farm present-use-value taxation program established by N.C.G.S. §105-277.2 through §105-277.7, or is otherwise determined by the county to meet all the qualifications of this program set forth in G.S. 105-277.3 ;
2. 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 the subject of a conservation agreement, as defined in N.C.G.S. §121-35, between the county and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations.

B. To secure county certification as qualifying farmland in an Enhanced Voluntary Agricultural District a farm must:

1. Meet all requirements of a farm in a Voluntary Agricultural District as set forth above; and
2. Be the subject of a conservation agreement, as defined in N.C.G.S. §106-743.2 and §121-35, between the county and the land owner, with such agreement being irrevocable for a period of at least ten (10) years from the date of execution of the agreement. At the end of its term, such conservation agreement shall automatically renew for a term of three (3) years, unless notice of termination is given in a timely manner by either party by giving ninety (90) days written notice via certified mail to the other party.

C. Certification – The owner of a farm seeking to qualify his property for participation in the farmland preservation program shall submit written evidence that the property conforms with the requirements of paragraph A. or paragraph B. above. This written information shall be submitted to the chairman of the Advisory Board, or the designated staff person, on forms provided by the Board. This certification may be submitted at the same time the owner applies for inclusion in a district.

ARTICLE VIII
APPLICATION, APPROVAL, AND APPEAL PROCEDURE

A. Application Procedure

1. A landowner may apply to participate in either the Voluntary Agricultural District or the Enhanced Voluntary Agricultural District program by making application to the chairperson of the Advisory Board or a designated staff person, and must designate the application as for either Voluntary Agricultural District status or Enhanced District status. The application shall be on forms provided by the Advisory Board. The application to participate in a district may be filed with the application for certification of qualifying farmland.
2. A Conservation Agreement (required by N.C.G.S. §106-737 and defined in N.C.G.S. §121-35), suited to district type (Voluntary Agricultural District or Enhanced Voluntary Agricultural District), as designated by the landowner, to sustain, encourage, and promote agriculture must be executed by the landowner and filed with the Advisory Board, which shall record the original Agreement with the Avery County Registrar of Deeds. Permitted uses include agriculture, horticulture and forestry uses. Further, such conservation agreements may include provisions requiring that any disputes between the county and the landowner be resolved through arbitration or mediation, and, in the event of litigation, that the prevailing party be awarded costs, including reasonable attorney fees. The Conservation Agreement for the Enhanced Voluntary Agricultural District shall be binding upon all successors in interest to the landowner.

B. Approval Process

1. Upon submission of the application to the Advisory Board, the Advisory Board shall meet within ninety (90) days to approve or disapprove the application. The chairperson shall notify the applicant by first class mail of approval or disapproval of participation in the district.
2. Upon receipt of an application, the chairperson will forward copies immediately to the following offices which shall be asked to provide comments, if any, to the Advisory Board prior to the date set for the Advisory Board vote on the application:
 - a. The Avery County Tax Assessor;
 - b. The Avery County Soil and Water Conservation District office;
 - c. The N.C. Cooperative Extension, Avery County Center: and
 - d. The Natural Resources Conservation Service.

C. Appeal

If an application is denied by the Advisory Board, the landowner may, within ten (10) days of notification of disapproval of the application, request in writing that the Advisory Board reconsider its decision. The request for reconsideration shall state the reason(s) therefore. Upon either an initial denial, if no request for reconsideration was made, or denial after reconsideration, the landowner shall have thirty (30) days from the date of notification to appeal the decision to the Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

ARTICLE IX
 REVOCATION, ENFORCEMENT AND RENEWAL OF CONSERVATION AGREEMENTS

A. Revocation and Enforcement

1. Voluntary Agricultural District. By providing 30 days advance written notice to the Agricultural Advisory Board, a landowner of qualifying farmland within a Voluntary Agricultural District may revoke the Conservation Agreement. The County, acting through the Agricultural Advisory Board may revoke or the Advisory Board may revoke the same Conservation Agreement based on noncompliance by the landowner, subject to the same provisions as contained in Article VIII(C) for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in the Farmland Preservation Program. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall revoke any Conservation Agreement prior to its expiration.

If the Advisory Board shall revoke this Conservation Agreement for cause, the landowner shall have the appeal rights set forth in Article VIII(C). Transfers of land in a Voluntary Agricultural District due to death of the landowner, sale, or gift, shall not revoke the Conservation Agreement unless the land no longer qualifies for the present-use-value taxation program or, in the event that there are water or sewer assessments held in abeyance, the new owner(s) fails to agree in writing to accept liability for those assessments in the event that the land is withdrawn either voluntarily or involuntarily from the district. Enforcement of the terms of a Conservation Agreement for land enrolled in a Voluntary Agricultural District shall be limited to revocation of the Conservation Agreement and the benefits derived therefrom.

2. Voluntary Enhanced Agricultural District. Conservation Agreements for land within Enhanced Districts are IRREVOCABLE for a period of 10 years. Enforcement of the terms of the Conservation Agreement may be through an action for injunctive relief and/or damages in any court of competent jurisdiction. The County may also terminate any benefits to the landowner under this program either permanently or during the period of violation, as appropriate. If the Advisory Board shall revoke this Conservation Agreement for cause, the landowner shall have the appeal rights set forth in Article VIII(C). The right to terminate program benefits is in addition to any legal rights that the County may have under either this Ordinance or the terms of the applicable Conservation Agreement. The County may seek costs of the action including reasonable attorney fees if such a provision is incorporated into the Conservation Agreement.

B. Renewal

1. Voluntary Agricultural District. A Conservation Agreements for land within a Voluntary Agricultural District shall be automatically renewed unless the landowner provides 30 day written notice to the Advisory Board of intent not to renew. Absent noncompliance by the landowner, neither the Advisory Board nor the Board of Commissioners shall fail to renew any Conservation Agreement unless this Ordinance or its authorizing legislation has been repealed.
2. Enhanced Voluntary Agricultural District. A Conservation Agreement for the Enhanced Voluntary Agricultural District shall be deemed automatically renewed for an additional term of 3 years, unless either the Advisory Board or the landowner provides 30 day written notice to the contrary prior to the termination date of the Conservation Agreement. At the end of each 3 year term the Conservation Agreement shall automatically renew for an additional 3 year term unless notice of termination is given.

ARTICLE X
WAIVER OF WATER, SEWER, OR UTILITY ASSESSMENTS

A. No Connection Required

1. The landowner belonging to the Voluntary Agricultural District or Enhanced Voluntary Agricultural District shall not be required to connect to Avery County water and/or sewer systems.
2. A landowner belonging to an Enhanced Voluntary Agricultural District shall not be required to connect to Avery County utility systems.

B. Abeysance of Assessments

1. Water and sewer assessments shall be held in abeyance without interest for qualifying farms/landowners, until improvements on such property are connected to the water or sewer system for which the assessment was made.
2. Utility assessment shall be held in abeyance , without interest for farms in an Enhanced Voluntary Agricultural District, until improvements on such property are connected to the utility system for which the assessment was made.

C. Termination of Abeyance

When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

D. Suspension of Statute of Limitations

Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest. The landowner may be required to sign an acknowledgement (that may be incorporated into the Conservation Agreement) of the abeyance of the statute of limitations upon collecting water and sewer assessments, or other utility assessments.

E. Other Statutory Abeyance Procedures

Nothing in this section is intended to diminish the authority of the County to hold assessments in abeyance under N.C.G.S. §153A-201, or other applicable law.

F. Conflict with Water and/or Sewer System Construction and Improvements Grants

To the extent that this section conflicts with the terms of federal, state, or other grants under which county utility systems are constructed this section shall not apply. This section shall not apply to utilities that are not owned by the County unless the County has entered into an agreement with the entity(ies) owning the utilities and that agreement provides that this Ordinance shall apply.

ARTICLE XI
ADDITIONAL ENHANCED AGRICULTURAL DISTRICT BENEFITS

Land enrolled in the Enhanced Voluntary Agricultural District program is entitled to all of the benefits available under the Voluntary Agricultural District program, and to the following additional benefits:

A. Sale of Non-farm Products

Landowners participating in Enhanced Districts may receive up to twenty-five percent of gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from county zoning regulations under N.C.G.S. §153A-340(b). 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 of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

B. Agricultural Cost Share Program

Landowners participating in Enhanced Districts are eligible under N.C.G.S. §143-215.74(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes for funds to benefit that farmland.

C. Priority Consideration

State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in Enhanced Districts.

D. Utility Assessment Waiver

As provided in Article X above, waiver of all county utility assessments in addition to waiver of water and sewer assessments is available to all participants in Enhanced Districts.

ARTICLE XII
PUBLIC HEARINGS

A. Purpose

Pursuant to N.C.G.S. §106-740, 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 or an Enhanced Voluntary Agricultural District, until such agency has requested the Agricultural Advisory Board to hold a public hearing on the proposed condemnation.

B. Procedure

1. Upon receiving a request to condemn any interest in qualifying farmland, the Agricultural Advisory Board shall send a publication notice of public hearing describing the proposed action in the appropriate newspapers and/or media of Avery County within seven (7) days of the receipt of such request. The Agricultural Advisory Board shall strive to hold the public hearing within ten (10) days of the receipt of such request.
2. The Advisory Board shall consider:
 - 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 may consult with the County Agricultural Extension Agents, the Natural Resources Conservation Service District Conservationist, and any another individuals, agencies, or organizations deemed by the Advisory Board to be necessary for a determination of the proposed action.
4. Within fourteen (14) days after the public 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. The total time period, from the day that a request for a hearing has been received to the day that the 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.
6. Pursuant to NCGS §106-740, the Board of Commissioners shall not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the Advisory Board.

**ARTICLE XIII
NOTIFICATION**

A. Record Notice of Proximity to Agricultural District

1. Procedure

Upon Certification of qualifying farmland and designation of real property as a District, the title to that qualifying farmland real property shall be designated in the Avery County Computerized Land Records System. Such designation shall include some form of notice reasonably calculated to alert a person researching the title of a particular tract of land that such tract is located within one-half aerial mile of an agricultural district.

2. Limit of Liability

In no event shall the County or any of its officers, employees, agents, or members of the Advisory Board, 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 Article 13(A)(1).

3. No Cause of Action

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 herein, or Enhanced Voluntary Agricultural District as defined in this Ordinance.

B. Signage

Signs identifying approved Agricultural Districts shall be placed along the rights-of-way of major roads that pass through or next to those districts as may be deemed appropriate by the Advisory Board, or its administrative agent for the county's agricultural district program. There shall also be signage posted at the farm gate of each qualifying farm. Placement of signage shall be coordinated with the North Carolina Department of Transportation.

C. Maps

Maps identifying approved agricultural districts shall be provided to the following agencies or offices:

1. Planning Department
2. Register of Deeds;
3. The Natural Resources Conservation Service;
4. The NC Cooperative Extension, Avery County Center;
5. The Avery County Soil and Water Conservation District; and
6. Any other such agency or office the Advisory Board deems appropriate, including maps denoting the location of agricultural districts within the Avery County planning jurisdiction.

D. Posting of Notice

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:

Avery 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, horticultural, agri-tourism, 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, and participating farms located within these districts, can be obtained from the North Carolina Cooperative Extension Service office, the office of the Register of Deeds, the County Planning office, or the Natural Resources Conservation Service office.

ARTICLE XIV
SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW

Developers of major subdivisions or planned unit developments shall designate on preliminary development plans, the existence of the Districts within 3 aerial mile(s) of the proposed development.

ARTICLE XV
COUNTY LAND-USE PLANNING

A. Duty of the Advisory Board

It shall be the duty of the Advisory Board to advise the Board of Commissioners or the agency or office to which the Board of Commissioners delegate authority to oversee county land use planning, on the status, progress, and activities of the county's agricultural district program and to also coordinate the formation and maintenance of agricultural districts with the county's land use planning activities and the county's land use plan if one currently exists at the time this is enacted or when one is formed.

B. Growth Corridors

At such time as the county might establish designated growth corridors, agricultural districts shall not be permitted in the designated growth corridors, as delineated on the official county planning map without the approval of the Board of Commissioners. Districts located in growth corridors designated after the effective date of this program may remain, but shall not be expanded within the growth corridor area without the approval of the Board of Commissioners.

ARTICLE XVI
CONSULTATION AUTHORITY

The Advisory Board may consult with North Carolina Cooperative Extension, the Avery County Soil and Water Conservation Service, the Natural Resources Conservation Service, the North Carolina Department of Agriculture and Consumer Services, and with any other individual, agency, or organization the Advisory Board deems necessary to properly conduct its business.

ARTICLE XVII
NORTH CAROLINA AGENCY NOTIFICATION

Annually Report to the North Carolina Department of Agriculture and Consumer Services

A copy of this shall be sent to the Office of the North Carolina Commissioner of Agriculture and Consumer Services, the Board of Commissioners, the County Office of North Carolina Cooperative Extension, and the Soil and Water Conservation District office after adoption. At least annually the county shall submit a written report to the Commissioner of Agriculture and Consumer Services on the county's agricultural district program, including the following information:

1. Number of landowners enrolled;
2. Number of acres enrolled;
3. Number of acres certified during the reporting period;
4. Number of acres denied during the reporting period;
5. Number of acres for which applications are pending;
6. Copies of any amendments to this Ordinance; and
7. Any other information the Advisory Board deems useful.

ARTICLE XVIII
LEGAL PROVISIONS

A. Severability

If any article, section, subsection, clause, phrase, or portion of this 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 .

B. Conflict with other ordinances and statutes

Whenever the provisions of this Ordinance conflict with other ordinances of Avery County, this Ordinance shall govern. Whenever the provisions of any federal or state statute require more restrictive provisions than are required by this Ordinance, the provisions of such statute shall govern.

C. Amendments

This Ordinance may be amended from time to time by the Board of Commissioners upon reasonable advanced notice and review by the Agriculture Advisory Board.

ARTICLE XIX
JURISDICTION

The jurisdiction of this Ordinance shall be in the unincorporated areas of Avery County, and this Ordinance may be adopted by the incorporated areas of Avery County as such areas choose.

ARTICLE XX
ENACTMENT

The Avery County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this Ordinance.

Adopted this the 16 day of June, 2008.

Motion for adoption by Phyllis Forbes and seconded by Scott Heath.

AVERY COUNTY BOARD OF COMMISSIONERS

Kenny K. Polent
Chairperson



Cindy Teubert
Clerk to Board of Commissioners

Approved as to form:

Markus P...
County Attorney