

**VOLUNTARY FARMLAND PRESERVATION
PROGRAM ORDINANCE**

OF

MCDOWELL COUNTY, NORTH CAROLINA

**ARTICLE I.
TITLE**

An ordinance of the Board of County Commissioners of MCDOWELL COUNTY, NORTH CAROLINA, entitled, "**VOLUNTARY FARMLAND PRESERVATION PROGRAM ORDINANCE.**"

**ARTICLE II.
AUTHORITY**

The articles and sections of this program are adopted pursuant to authority conferred by the N.C.G.S. Sections 106-735 through 106-744 and Chapter 153A.

**ARTICLE III.
PURPOSE**

The purpose of this ordinance is to promote agricultural values and 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; increase protection from non-farm development and other negative impacts on properly managed farms and to increase the protection of farms from nuisance suits.

**ARTICLE IV.
DEFINITIONS**

The following are defined for purposes of this ordinance:

Advisory Board: McDowell County Agricultural Advisory Board.

Chairman: Chairman of the McDowell County Agricultural Advisory Board.

District: Voluntary Agricultural District as established by this ordinance.

Board of Commissioners: McDowell County Board of Commissioners.

ARTICLE V. AGRICULTURAL ADVISORY BOARD

A. Creation

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

B. Membership

The Advisory Board shall consist of seven (7) members appointed by the Board of Commissioners. The County Extension Director of the NC Cooperative Extension Service; County Executive Director of the USDA- Farm Service Agency and District Conservationist of the USDA-Natural Resources Conservation Service shall serve as advisors to the board.

C. Membership Requirements

1. Each Advisory Board member shall be a McDowell County resident.
2. For each district created under the terms of this program, one of the existing advisory board members shall be assigned to represent the district.
3. At least five (5) of the seven (7) members shall be actively engaged in production agriculture.
4. One of the members shall be the President of the McDowell County Farm Bureau or his designee.
5. The members actively engaged in production agriculture, 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, the Cooperative Extension Service, the USDA-Farm Service Agency committee, and the McDowell County Farm Bureau with an effort to have the broadest geographical representation possible.

D. Tenure

The initial board is to consist of two (2) appointees for terms of one year; two (2) appointees for terms of two years; and three (3) appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointments 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. Vacancies should be filled based on the requirements set forth in ARTICLE V, Section C of this ordinance.

F. Removal for Cause

Any member of the Advisory Board may be removed for cause by the Board of Commissioners subsequent to written charges being presented to the member and in consultation with the Advisory Board.

G. Funding

Funding, if any, shall be fixed by the Board of Commissioners and funds shall be appropriated to the Advisory Board to perform its duties.

H. Advisory Board Procedure

1. Chairman and Vice Chairman

The Advisory Board shall 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 Advisory Board. In the absence or disability of the chairman, the vice-chairman shall preside and shall exercise all the powers of the chairman. Additional officers may be elected as needed.

2. Jurisdiction

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 McDowell County fiscal year as its meeting year.

4. Meetings

Meetings of the Advisory Board shall be held at the call of the chairman and at such other times as the Advisory Board may specify in its rules of procedure. Meetings shall be held at least once each year. Notice of any meetings to the members shall be in writing, unless otherwise agreed to by all Advisory Board members. All meetings shall be open to the public.

5. Majority Vote

The concurring vote of a majority of the members of the Advisory Board shall be necessary to: reverse any order, requirement, decision, or determination of the Advisory Board; to decide in favor of an applicant; or to pass upon any other matter on which it is required to act under this ordinance. Members must be present at a meeting in order to vote.

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 and shall be a public record.

I. Duties

The Advisory Board shall:

1. Review and approve applications for qualified farmland and voluntary agricultural districts and make recommendations concerning the establishment and modification of agricultural districts;
2. Conduct public hearings;
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. Review and make recommendations concerning proposed amendments to this ordinance;
5. Study additional methods of farmland preservation and make recommendations to the Board of Commissioners; and,
6. Perform other agricultural related tasks or duties assigned by the Board of Commissioners.

**ARTICLE VI.
CREATION OF VOLUNTARY AGRICULTURAL DISTRICTS**

A. Implementation

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:

1. The District, when initially established, shall contain a minimum of 10 contiguous acres of qualified farmland; OR the District shall contain two qualified farms which contain a minimum of 10 acres and are located within a mile of each other.
2. Qualifying farmland may be included in an existing voluntary agricultural district. A landowner may apply for such inclusion at the same time he/she applies for qualifying farmland certification. The Advisory Boards will make the decision to create a new district or to include farmland in an existing district.

B. Encourage Formation

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 to further their purposes and objectives, including the implementation of a public information program to reasonably inform landowners of the farmland preservation program.

C. Display

The Districts shall be marked on county maps displayed for public view in the following county offices:

1. Register of Deeds
2. County Land Records
- 3.. With any other office deemed necessary by the Advisory Board.

D. Withdrawal

In the event that one of 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.

ARTICLE VII. CERTIFICATION AND QUALIFICATION OF FARMLAND

A. Requirements

1. To secure county certification as qualifying farmland, a farm must:
 - a. Be participating in the farm present-use-value taxation program established by N.C.G.S. 105-277.2 through N.C.G.S. 105-277.7 or is otherwise determined by the county, or its agents to meet all the qualifications of this program set forth in N.C.G.S. 105-277.3:
 - b. Have been actively used in agricultural, horticultural or forestry operations as defined by N.C.G.S. 105-277.2 (1,2,3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in questions qualifies;

OR

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:

- i. are best suited for providing food, seed, fiber, forage, timber, forestry products, horticultural crops and oil seed crops;
- ii. have good soil qualities;
- iii. are favorable for all major crops common to the county where the land is located;
- iv. have a favorable growing season and,
- v. receive the available moisture needed to produce high yields for an average of eight out of ten years:

c. 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;

d. 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.

ARTICLE VIII. APPLICATION, APPROVAL, AND APPEAL PROCEDURE

A. Application Procedure

1. A landowner may apply to participate in the program by making application to the chairman of the Advisory Board or a designated staff person. The application shall be on forms provided by the Advisory Board. The application to participate in a district may be filed with the certification for qualifying farmland.

2. An agreement to sustain, encourage and promote agriculture must be executed by the landowner and recorded with the Advisory Board.

B. Approval process

1. Upon submission of the application to the Advisory Board, the Advisory Board shall meet within 60 days to approve or disapprove the application. The chairman shall notify the applicant by first class mail of approval or disapproval of participation in the district.

2. Upon receipt of an application, the chairman will forward copies immediately to:

a. The McDowell County tax assessor's office; and

b. The McDowell County Soil and Water Conservation District and the Natural Resources Conservation Service office. The offices shall evaluate, complete and return their copies to the chairman within 30 days of receipt.

C. Appeal

If an application is denied by the Advisory Board, the petitioner has 30 days 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 OF PRESERVATION AGREEMENT

By written notice to the Advisory Board, a landowner of qualifying farmland may revoke the Preservation Agreement or the Advisory Board may revoke the same Preservation Agreement based on non-compliance by the landowner, subject to the same provisions as contained in Article VIII for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a District. Absent noncompliance by the landowner, neither

the Advisory Board nor the Board of Commissioners shall revoke any preservation agreements prior to its expiration.

ARTICLE X. PUBLIC HEARINGS

A. Purpose

Pursuant to N.C.G.S 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 District until such agency or unit has requested the Advisory Board to hold a public hearing on the proposed condemnation, this ordinance provides for such a hearing.

B. Procedure

1. Upon receiving such request, the Advisory Board shall publish a notice describing the proposed action in the appropriate newspapers of McDowell 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 30 days of receipt of the request.

2. The Advisory Board shall meet to review:

a. if 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.

b. 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 NC Cooperative Extension Service County Extension Director, USDA-Natural Resources Conservation Service District Conservationist, the McDowell County Farm Bureau, and may consult with any other individuals, agencies, or organizations deemed by the Advisory Board to be necessary for its review of the proposed action. Land value will not be a factor in the selection between properties under consideration for the proposed action.

4. Within 10 days after the public hearings, 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 for comment prior to its being conveyed to the decision-making body of the agency proposing the acquisition.

5. Pursuant to N.C.G.S. 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 within these time limitations.

6. Prior to initiation of condemnation proceedings which would convert land in a District to non-farm uses, the county or any other local unit of government shall submit to the Advisory Board a statement that the governmental unit has considered alternatives to condemning farmland in the District.

ARTICLE XI. PUBLIC NOTICE

A. Procedure

1. When McDowell County computerizes its County Land Records System the following requirements outlined in this section shall be implemented and enforced. Upon certification of qualifying farmland and designation of real property as a District, the McDowell 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 aerial mile of a voluntary agricultural district.

2. The following notice shall be made available to everyone recording a deed or plat with the Register of Deeds office or applying for a building permit with the Building Inspections office:

“McDowell 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 Building Inspection office, or the Natural Resources Conservation Service office.”

B. Limit of Liability

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 of obligations imposed by this ordinance.

C. 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 in this ordinance.

ARTICLE XII. SUBDIVISION ORDINANCE AND ZONING ORDINANCE REVIEW

Developers of subdivisions or planned unit developments shall designate on preliminary development plans, the existence of the Districts within one-half aerial mile of the proposed development.

ARTICLE XIII. WAIVER OF WATER AND SEWER ASSESSMENTS

A. No Assessment

A landowner belonging to a District shall not be assessed for or required to connect McDowell County water and/or sewer systems.

B. Abeyance

Water and sewer assessments will be held in abeyance, without interest, for farms, whether inside or outside of a District, until improvements on such property are connected to the water or sewer 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.

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.

ARTICLE XIV. CONSULTATION AUTHORITY

The Advisory Board may consult with the Cooperative Extension office, the Natural Resources Conservation Service office, the North Carolina Department of Agriculture, the McDowell County Farm Bureau, the North Carolina Farm Bureau, and any other such agency the Advisory Board deems necessary to properly conduct its business.

ARTICLE XV. NORTH CAROLINA AGENCY NOTIFICATION

A. Record Annually with the Department of Agriculture

A record 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 concerning the status, progress and activities of the county's Farmland Preservation Program, including District information regarding:

1. Number of landowners enrolled;
2. Number of acres applied;
3. Number of acres certified;

4. Number of acres denied;
5. Date certified.

ARTICLE XVI. LEGAL PROVISIONS

A. Severability

If any article, section, subsection, clause, phrase or portion of this ordinance is for any reason invalid or unconstitutional as determined by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

B. Conflict with other Ordinances and Statutes

Whenever the provisions of this ordinance conflict with other ordinances of McDowell 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 after notification and in consultation with the Advisory Board.

ARTICLE XVII. ENACTMENT

The McDowell County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this ordinance.

Adopted this the 11th day of August, 2003.

MCDOWELL COUNTY

Andrew K. Webb, Chairman
McDowell County Board of Commissioners

ATTEST:

Carrie Padgett, Clerk to the Board