

**ALAMANCE COUNTY  
FARMLAND PRESERVATION ORDINANCE**

**ARTICLE I  
AUTHORITY**

In accordance with the authority conferred by Chapter 153A of the North Carolina General Statutes and North Carolina General Statutes §§106-735 through 744 (the Agricultural Development and Farmland Preservation Enabling Act), and §§121-34 through 42 (the Conservation and Historic Preservation Agreements Act), and for the purpose of promoting the health, safety, and general welfare of the county, the Board of Commissioners of Alamance County, North Carolina, do enact this ordinance, which shall be known as the “Alamance County Farmland Preservation Program.”

**ARTICLE II  
PURPOSE**

The purpose of this ordinance is to promote the best use of land to protect natural resources and to protect farmland based upon those resources by offering a variety of arrangements that may be entered into on a voluntary basis between landowners and the County of Alamance. Within the provisions of this ordinance, the County may acquire property in one of the following ways: purchase of development rights, bargain sale of development rights, or the donation of fee-simple title or development rights. The conveyance methods mentioned above offer unique benefits, thereby enabling landowners applying for consideration in the program to choose the program that is best suited for the property interests sought to be conveyed by the conservation agreement.

**ARTICLE III  
GOALS**

The goals of this ordinance are to promote and encourage the preservation of farmland in the rural portions of the county, where agricultural uses predominate, by means which are voluntary, rather than regulatory. The preservation of farmland will promote and enhance agriculture as an important industry, which contributes to the maintenance of a diverse and healthy local economy. In addition, the preservation of farmland will achieve the following goals:

- (a) Preservation of farmland, forestland, and horticultural land;
- (b) Establishment and preservation of open-space;
- (c) Conservation of water resources and environmentally sensitive lands, such as wetlands;
- (d) Management of the character of development and growth;
- (e) Promotion of economic development

- (f) Improvement of the quality of life for the inhabitants of the county by making a more attractive place to live.

#### **ARTICLE IV APPLICABILITY**

Participation in the County Land Preservation Program shall be voluntary and available for all qualifying lands in the county, except those owned or held by the United States of America, the State of North Carolina, or any agent thereof.

#### **ARTICLE V DEFINITIONS**

- (a) Board. The Alamance Board of County Commissioners.
- (b) Committee. The Alamance County Voluntary Agriculture District Committee.
- (c) County. Alamance County - A body corporate and politic existing under the laws of North Carolina.
- (d) Comprehensive Land Use Plans. Any plans developed and adopted by the County which establish long-term goals and projects that the County will pursue over a designated period of time in an effort to control the development and to shape the character of the community.
- (e) Conservation Agreement. A right, whether stated in the form of a restriction, easement, covenant, condition, or otherwise, that is conveyed through a deed, will or any other instrument executed by or on behalf of the owner of land to the County for the purposes mentioned under this ordinance. This right may be stated in the form of a negative restriction, executed on behalf of the owner of land, whether appurtenant or in gross, and acquired by the County for the purpose of preserving the natural character of the land in accordance with the goals outlined under this ordinance and consistent with the Conservation and Historic Preservation Agreements Act.
- (f) Development Rights. The right to construct a building or structure, to improve land, or to extract minerals expressly reserved for the owner or interest holder of real property.
- (g) Dwelling. A building or structure that may be used a place of residence.
- (h) Holder. The County acquiring the property or property rights from the owner.
- (i) Owner. The owner(s) of the freehold interest of property located within the jurisdiction of the County.

- (j) Program. The Farmland Preservation Program.

## **ARTICLE VI Program Administration**

(a) Committee

The Existing Voluntary Agriculture District Committee as appointed by the County Commissioners will administer this program on behalf of the Alamance County Board of Commissioners.

(b) Membership

See Voluntary Agriculture District Program Ordinance for Committee requirements. Seven members appointed by the Alamance County Commissioners representing county agriculture with the broadest geographical representation possible.

(c) Powers & Duties

The Committee shall have the powers and duties necessary to:

1. Review and approve the eligibility requirements and ranking criteria of the program on an annual basis and in doing so, shall recommend any amendments to the Board of Commissioners.
2. Review all applications submitted by landowners wishing to participate in the preservation program.
3. Rank all applications and make recommendations to the Board of County Commissioners as to which applicants and lands shall be eligible for participation in the program.
4. Manage and review the program annually to ensure consistency with any Comprehensive Land Use Plans and report to the Board any deviations.
5. Promote the program by working alongside county officials by providing educational materials to the public and holding informational meetings as needed.

(d) Advisors

From time to time, the Committee may find it beneficial to consult with the following agencies and organizations:

1. The North Carolina Association of County Commissioners
2. The N.C. Department of Environmental and Natural Resources
3. The North Carolina Association of County Attorneys
4. The Alamance County Soil & Water Conservation District (SWCD) Office
5. The North Carolina Cooperative Extension
6. The Alamance County Planning Department
7. The Alamance County tax assessor
8. The Alamance County Register of Deeds
9. USDA Natural Resources Conservation Service
10. USDA Farm Service Agency
11. Carolina Farm Credit

12. The North Carolina Farm Bureau
13. Any other organizations or agencies the Committee deems appropriate.

(e) Meetings

All meetings shall be scheduled well in advance and notice to members shall be in writing, unless otherwise agreed to by all Committee members. Meeting dates and times shall be posted as far in advance as possible on the door of the meeting site or by advertisement in local newspapers or by other means of public dissemination as agreed upon by a majority of Committee membership. All meetings shall be open to the public and recorded.

(f) Majority Vote

All votes shall be determined on a “majority rule” basis.

(g) Procedure

The Committee shall establish, in writing, its own rules of procedure. It may select an existing guide such as **Robert’s Rules of Order**. A quorum shall consist of majority of voting members. No business may be conducted without a quorum of the voting members present.

(j) Records

The Committee 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 official actions, all of which shall be a public record. The Committee may contract with either the Soil and Water Conservation District office, the Planning Department or the Cooperative Extension Service for record keeping, correspondence, application procedures, or any other services the Committee needs to complete its duties pursuant to this ordinance.

## ARTICLE VII APPLICATION PROCEDURE

- (a) In order to be considered for participation in the land preservation program, the owner must file an application with the Alamance County Soil and Water Conservation SWCD Office. Application forms may be obtained from these Departments: Cooperative Extension, Alamance SWCD, and the Alamance County Planning Dept.
- (b) After the Alamance SWCD reviews the application for completeness, it shall be ranked according to a system adopted by the Committee in order to prioritize lands that are best-suited and aligned with the preservation goals of this ordinance and to promote the efficient use of available resources that have been allocated to the program.

- (c) The Committee shall have (90) days after receiving the application to decide whether the property is eligible for participation in the program. The committee shall have the right to refuse any property that it considers not to contribute to the goals of this program. If the Committee finds that the property is eligible, it shall submit a favorable report to the Board.
- (d) The owner of land shall be notified promptly of the Committee's decision regarding whether the property is eligible and will be recommended to the Board. If the owner's application is denied by the Committee, the landowner may, within fifteen (15) days of receipt of the decision, request reconsideration by the Committee, stating the reasons therefore. An appeal may be made to the Board within (30) days of receipt of either the original decision, if no request for reconsideration is made, or the decision after reconsideration.
- (e) Upon approval by the Board, the owner shall develop a conservation agreement with the **County**. The agreements will differ depending on what type of land interest the County will be acquiring. (I.e. purchase development right, or donation of a conservation easement). The conservation agreement shall become effective once the mutually agreed upon terms of the conservation agreement are recorded in a form prescribed by the County Register of Deeds.
- (f) The submission of an application shall not be deemed to constitute a binding contractual offer to convey any interest in the owner's property, but shall be revocable at will by the County or owner prior to execution of a conservation agreement between the County and owner.

**ARTICLE VIII  
APPLICATION CRITERIA**

- (a) The following standards are hereby adopted as requirements for consideration of applications to participate in the program. Owners of land desiring to participate in the program must meet all of the following criteria in order for their property to be eligible for consideration.
  - 1. The property must be located in Alamance County.
  - 2. The proposed terms of the conservation agreement must be consistent with any Comprehensive Land Use Plans of the County;
  - 3. The proposed use of the property subject to the specific restrictions within the conservation agreement must be in conformance with the minimum standards of the applicable North Carolina General Statutes.
- (b) Any application that fails to meet any of the above requirements will not be considered for participation in the program.

**ARTICLE IX  
RESTRICTIONS ON USE OF PROPERTY UNDER THE PROGRAM**

By entering into the land preservation program, whether through purchase of development rights, bargain sale, or the donation of fee simple title or development rights, the owner and the County

as the interest holder, must adhere to any restrictions or limitations adopted by the Committee. Any use of land governed by this ordinance shall at a minimum be consistent with the standards and restrictions as set forth under the Conservation and Historic Preservation Agreements Act, and, for agricultural, forest and horticultural land, the Agricultural Development and Farmland Preservation Enabling Act.

## **ARTICLE X ACQUISITION OF PROPERTY**

(A) Pursuant to the provisions of this ordinance, the County is hereby authorized to acquire the following property interests from participating landowners in furtherance of a conservation agreement:

### **1. Purchase of Development Rights**

- a. Purpose. If the owner and County desire to restrict only development rights, a conservation easement restricting the owners' right to develop the land may be purchased by the County. The covenant not to develop shall run with the land, and the County, as the purchaser of this interest, shall have the right to enforce the terms of the easement.
- b. Effect. Such a covenant shall run with the land in perpetuity or for a minimum term of 30 years, as mutually agreed upon by the owner and County.
- c. Terms and Conditions.
  - i. The purchase of development rights shall conform to the conservation easement provisions under the Conservation and Historic Preservation Agreements Act, and, for agricultural, forest and horticultural land, the Agricultural Development and Farmland Preservation Enabling Act.
  - ii. By placing a conservation easement on the property, the owner must adhere to the prohibitions and restrictions on the use of the land as provided under section IX of this ordinance.
  - iii. The County as the easement holder under this conveyance, reserves the right to enforce any of the provisions within this section and if necessary, may do so by obtaining an injunction. If any non-conforming use of the property continues, the benefits offered under this program may be immediately terminated or refunded at the discretion of the Board.
- d. Termination
  - i. If at least 30 years has passed since the perpetual conservation agreement was recorded, and it is no longer feasible to restrict the development rights for the parcel of land held under the conservation easement, where holding the property subject to the easement would no longer facilitate the goals of this ordinance, then the owner shall have the right to petition for severability of the agreement with the County. Upon the

discretion and approval by the Board, the agreement may be extinguished in one of the following ways:

1. Like Kind Exchange

The current owner of the property would convey to the County another parcel of property in exchange for the termination of the current easement. In order for an exchange to occur, the conveyance of new property must at a minimum: equal the fair market value and acreage of the current easement, meet all of the requirements provided under this ordinance, and must enhance the land preservation program. Like kind exchanges are preferred over repurchases.

2. Repurchase Agreement

If a like-kind exchange cannot be made, the owner may request from the Board authorization to repurchase the property interests that the County holds under the easement. If the request is approved by the Board, the repurchase price shall be determined based on an appraisal conducted in accordance with section X(b) of this ordinance. If the repurchase price is approved by the Board and accepted by the owner, the conservation agreement shall terminate upon full-payment to the County. Funds repaid will be used for future Farmland Preservation Purchases under this ordinance.

Transfer of Interests. Nothing herein shall prevent the owner of the property from transferring the remaining fee interest in the property by sale, will, gift or other means

**2. Bargain Sale**

- a. Purpose. If land cannot be donated directly, the bargain sale, also known as a charitable sale, enables an owner of land to sell their property for a price that is well below the market value. While the incentive for an owner to relinquish property rights to the County under such a sale is usually a charitable deduction against income on federal and state income tax returns; neither the County nor its employees may make such a representation. Through a bargain sale, an owner has the option of transferring specific property rights (i.e., the development rights), or transferring a fee simple interest in the property to the County.
- b. Effect. The County, as the purchaser, will become the new owner of the property interests conveyed from the sale. A deed evidencing either a conservation easement or a fee interest shall be properly

recorded. Like the sale of any other property interest, the bargain sale shall be legally binding upon the owner.

c. Terms and Conditions.

- i. While the County is empowered under this Ordinance to negotiate terms of a bargain sale such that the owner will be eligible for a tax deductible donation under current federal and state tax law and regulations; responsibility for compliance with those laws and regulations shall be solely the responsibility of the owner. The County shall not assume any liability for the failure of the expected tax benefits to be realized although it may take all feasible steps necessary to facilitate such tax treatment.
- ii. The owner must adhere to the prohibitions and restrictions on the use of the land as provided under section IX of this Ordinance as well as more specific restrictions incorporated into any applicable conservation easement, if any.
- iii. Enforcement may be through an action for injunctive relief and/or damages as appropriate. The County may also terminate any benefits to the owner under this Program either permanently or during the period of violation, as appropriate. 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 easement.

d. Termination.

- i. If at least 30 years has passed since a perpetual conservation easement was recorded, and it is no longer feasible to restrict the development rights for the parcel of land held under the conservation easement, where holding the property subject to the easement would no longer facilitate the goals of this Ordinance, then the owner shall have the right to petition the County for termination of the conservation easement. Upon the sole discretion and approval by the Board, the agreement may be extinguished in one of the following ways:

1. Like Kind Exchange

The current owner of the property would convey to the County another parcel of property in exchange for the termination of the current easement. In order for an exchange to occur, the conveyance of new property must at a minimum: equal the fair market value and acreage of the current easement, meet all of the requirements provided under this Ordinance, and must enhance the Program beyond that of the current easement. Like kind exchanges are preferred over repurchases.



## 2. Repurchase Agreement

If a like kind exchange cannot be made, the owner may request from the Board authorization to repurchase the property interests that the County holds under the easement. If the request is approved by the Board, the repurchase price shall be determined based on an appraisal conducted in accordance with section X(b) of this Ordinance. If the repurchase price is approved by the Board and accepted by the owner, the conservation agreement shall terminate upon full payment to the County.

Transfer of Interests.

Nothing herein shall prevent the owner of the property from transferring the remaining fee interest in the property by sale, will, gift or other means.

## 3. **Donation of Fee Simple Title or Development Rights.**

- a. Purpose. An owner may make a voluntary donation or devise of either a fee simple interest or a conservation easement (the development rights). While the incentive for an owner to relinquish property rights to the County under such a donation is usually a charitable deduction against income on federal and state income tax returns; neither the County nor its employees may make such a representation. Through a donation, an owner has the option of transferring specific property rights (i.e., the development rights), or transferring a fee simple interest in the property to the County.
- b. Effect. The County, as the donee, will become the new owner of the property interests conveyed from the donation. A deed evidencing either a conservation easement or a fee interest shall be properly recorded. Like the donation of any other property interest, the it shall be legally binding upon the owner.
- c. Terms and Conditions.
  - i. While the County is empowered under this Ordinance to negotiate terms of a donation such that the owner will be eligible for a tax-deductible donation under current federal and state tax law and regulations; responsibility for compliance with those laws and regulations shall be solely the responsibility of the owner. The County shall not assume any liability for the failure of the expected tax benefits to be realized although it may take all feasible steps necessary to facilitate such tax treatment.
  - ii. The owner must adhere to the prohibitions and restrictions on the use of the land as provided under section IX of this ordinance as well as more specific restrictions incorporated into any applicable conservation easement, if any.
  - iii. Donated land must meet the goals of this ordinance.

iv. Enforcement may be through an action for injunctive relief and/or damages as appropriate. The County may also terminate any benefits to the owner under this program either permanently or during the period of violation, as appropriate. 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 easement.

(d) Termination.

i. If at least 30 years has passed since a perpetual conservation easement was recorded, and it is no longer feasible to restrict the development rights for the parcel of land held under the conservation easement, and holding the property subject to the easement would no longer facilitate the goals of this Ordinance, then the owner shall have the right to petition the County for termination of the conservation easement. Upon the sole discretion and approval by the Board, the agreement may be extinguished in one of the following ways:

1. Like Kind Exchange

The current owner of the property would convey to the County another parcel of property in exchange for the termination of the current easement. In order for an exchange to occur, the conveyance of new property must at a minimum: equal the fair market value and acreage of the current easement, meet all of the requirements provided under this Ordinance, and must enhance the land protection Program beyond that of the current easement. Like kind exchanges are preferred over repurchases.

2. Repurchase Agreement

If a like kind exchange cannot be made, the owner may request from the Council authorization to repurchase the property interests that the County holds under the easement. If the request is approved by the Board, the repurchase price shall be determined based on an appraisal conducted in accordance with section X(b) of this Ordinance. If the repurchase price is approved by the Board and accepted by the owner, the conservation agreement shall terminate upon full payment to the County.

#### Transfer of Interests.

Nothing herein shall prevent the owner of the property from transferring the remaining fee interest in the property by sale, will, gift or other means.

#### **4. Option Contract**

- a. Purpose. The County may wish to purchase an option on eligible property as a way of ensuring that the property is not developed and as a way of reserving the right to purchase the land in fee or its development rights at a later date. In order to acquire an option, the County pays a premium for the option to buy an asset within a specified period at an agreed-upon price.
- b. Effect. Upon exercise of the option within the specified time period, the property interest as outlined in the contract, shall immediately vest in the County.
- c. Terms and Conditions.
  - i. The option may be granted for as long a period as mutually agreed upon by the owner and County.
  - ii. If the County does not exercise the option, the seller is entitled to keep the payment for the option. If the County decides to exercise the option, the fee shall be applied toward the purchase price.
  - iii. The option is a legally binding instrument and shall be recorded pursuant to the provisions under this ordinance.

#### **5. Right of First Refusal**

- a. Purpose. A right of first refusal may be purchased by the County as a way of eventually acquiring property from an owner that is not currently able to convey the property or property interests. Thus, if the property is highly attractive for participation in the land preservation program, the County may wish to acquire the right of first refusal in order to reserve the option of later purchasing or leasing the property.
- b. Effect. Pursuant to the right of first refusal agreement, the owner of property is obligated to give the County the first opportunity to purchase the property before it is offered for sale to others.
- c. Terms and Conditions.
  - i. The County, in order to exercise the right of first refusal must notify the owner in writing of intent to exercise the right.
  - ii. Upon exercise of the right of first refusal, the terms of the agreements shall control.

#### **6. Installment Sale**

- a. Purpose. The long-term installment land contract or installment sale is a conservation agreement to transfer land ownership or property interests in exchange for a down payment and a series

of principal and interest payments over a specified period of time. If permitted by law, the County may structure the installment sale agreement as an instrument in the nature of a municipal tax-exempt bond. It shall be the responsibility of the County to ensure that all applicable provisions of the Internal Revenue Code applicable to such instruments are met.

- b. Effect. Transfer of ownership of the property or specified property interest pursuant to the agreement is conditional upon payment of the last installment.
- c. Terms and Conditions.
  - i. Before the transfer of legal title to the property, the County shall have the use, possession, and control of the property and shall bear all responsibilities associated with ownership, even though the seller retains legal title.
  - ii. Upon completion of payments, the conveyance of title shall immediately vest in the County.
  - iii. No prepayments of amount due shall be permitted unless specifically authorized by the installment sale agreement or unless later agreed upon in writing by the County and the owner.

#### (B) Appraisals

1. Each landowner, whose application is accepted by the Board for participation in the program, shall have their property appraised by a licensed appraiser. The Board, at its discretion, may bear all costs associated with obtaining all the appraisals.
2. Two appraisals shall be required for all present and future acquisitions of development rights. One appraisal shall reflect the value of the property at its current highest and best use. The other appraisal shall be for the value of the property at its highest and best use subject to the restrictions provided under the conservation agreement.
3. The County is not obligated under any provisions of this section to accept the appraised values obtained by the owner.

#### (C) Acceptance

The Board, in accordance with the appraised values, shall submit a purchase price offer to the owner for participation in the program for any of the above conveyances. The owner shall have 30 days to accept the Board's offer. If an agreement is reached, a contract to convey shall be signed promptly by the owner and the Board.

#### (D) Closing & Recordation

1. All required legal documents shall be delivered to the County attorney for review before the property is officially accepted into the program. Upon reviewing all legal documents, which may include titles, deeds, surveys, environmental assessments, baseline studies and appraisals, the attorney shall

make a final recommendation to the Board. After Board approval, the closing shall be scheduled.

2. At the closing, the owner will execute full warranty documents conveying the agreed upon property interests to the County.
3. The Board shall have the authority to bear any or all closing costs.
4. All contracts and agreements governing the acquisition of property under this ordinance shall be promptly recorded in accordance with the standards of the Alamance County Register of Deeds.

## **ARTICLE XI CONSERVATION AGREEMENT MONITORING**

Monitoring of the Conservation Agreement will be performed at least annually by the Alamance Soil and Water Conservation District office to ensure compliance with the recorded agreement.

## **ARTICLE XII LEGAL PROVISIONS**

a) Severability

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

b) Eminent Domain

1. The County shall neither, to the extent practicable, use land owned in fee under this program for a purpose inconsistent with the goals of this program, nor take land, for a use inconsistent with this ordinance, by eminent domain, purchase or other means if the county already controls the development rights pursuant to this ordinance. Should the county determine that there is no feasible alternative to using land participating in this program, the county shall hold a public hearing solely to address this issue, and if the county should go ahead with the incompatible use, it shall pay the fair market value of the land or its interest in development rights, plus 20% as an approximation of transactional costs, into an escrow account solely for use in acquiring other property suitable to the goals of this program.
2. Should land participating in this program be subject to eminent domain by another agency, the funds that the county receives shall be placed in an escrow account for use in acquiring other property suitable to the goals of this Program.

c) Conflict with other Ordinances and Statutes

Whenever the provisions of this ordinance conflict with other ordinances of Alamance 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. Nothing in this

Ordinance shall be construed as a limitation upon the County's authority to acquire land for public purposes other than those set forth in this Ordinance.

d) Amendments

The Board of Commissioners shall have the authority to amend this ordinance at any time.

**ARTICLE XIII  
ENACTMENT**

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

Adopted this the 20th day of November, 2006.

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The foregoing ordinance was adopted by the Board of Commissioners for the County of Alamance during regular session on November 20, 2006. See Minute Book No. 38, Page 88.