WATAUGA COUNTY
VOLUNTARY FARMLAND PRESERVATION
PROGRAM ORDINANCE

ARTICLE I
TITLE

This program, adopted by the Board of Commissioners of Watauga County, North Carolina, shall be known as the **Watauga County Voluntary Farmland Preservation Program Ordinance**.

ARTICLE II
AUTHORITY

The articles and sections of this program ordinance are adopted pursuant to the authority conferred by N.C. General Statutes 106-735 through 106-743.

ARTICLE III
PURPOSE

The purpose of this program ordinance is to promote the health, safety, rural 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 farming; increase protection from undesirable, non-farm development; and increase the protection of farms from nuisance suits and other negative impacts on properly managed farms.

ARTICLE IV
JURISDICTION

The jurisdiction of the Watauga County Voluntary Farmland Preservation Program Ordinance shall be the unincorporated areas of Watauga County.

ARTICLE V
DEFINITIONS

Advisory Board: The Watauga County Agricultural Advisory Board
Board of Commissioners: The Board of Commissioners of Watauga County, North Carolina
Chairman: Chairman of the Watauga County Agricultural Advisory Board
District: A voluntary agricultural district established under the terms and conditions of this program by the Board of Commissioners

ARTICLE VI
QUALIFICATIONS AND CERTIFICATION OF FARMLAND

Section 600. Requirements

In order for farmland to qualify for participation under the terms of this program, it shall meet the following requirements:

(1) The farmland shall be real property;

(2) The farmland shall be engaged in agriculture (as that word is defined in N.C.G.S. 106-581.1);

(3) The property shall be certified by the Natural Resources Conservation Service of the United States Department of Agriculture, in consultation with the Cooperative Extension office, Watauga County Soil and Water District, and the Farm Service Agency, as being a farm on which at least two-thirds of the land is composed of soils that:

(a) are best suited for providing food, seed, fiber, forage, timber, and horticultural crops, including Christmas trees and ornamentals;

(b) have good soil qualities;

(c) are favorable for all major crops common to the county where the land is located;

(d) have a favorable growing season; and

(e) receive the available moisture needed to produce high yields for an average of eight out of ten years; or

Soils on which at least two-thirds of the land has been actively used in agricultural, horticultural or forestry operations as defined in 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 question qualifies;

(4) The property, if highly erodible land exists on the farm, is managed in accordance with the Natural Resources Conservation Service defined erosion control practices that are addressed to said highly erodible land; and

(5) The property is the subject of a conservation agreement, as defined in 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 watershed and subdivision regulations, or the regulations of any municipality which apply to the farm property. The property owner may voluntarily revoke this conservation agreement by submitting a written request to the board in accordance with Article VIII.

Section 601. Certification

The owner of the farm seeking to qualify his property for participation in the farmland preservation program ordinance shall submit written evidence that the property conforms with the requirements of Section 600 of this program. This written information shall be submitted to the Chairman of the Advisory Board or the designated staff person on forms provided by the board. The certification may be submitted at the same time the owner applies for inclusion in a district.

ARTICLE VII
APPLICATION, APPROVAL AND APPEAL PROCEDURES FOR VOLUNTARY AGRICULTURAL DISTRICTS

Section 700. 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 shall meet the following standards:

(1) The district, when initially established, shall contain a minimum of 25 contiguous acres of qualified farmland, OR, two or more qualified farms which contain a minimum of 25 acres and are located within a mile of each other;

(2) The landowner(s) requesting inclusion in the district shall execute an agreement with the county to sustain agriculture in the district in accordance with Section 600 (5) of this program. Said agreement shall be in a form which is reviewed and approved by the advisory board; and

(3) For each district created under the terms of this program, one of the existing advisory board members shall be assigned to represent the district.

Section 701. Application to Participate

A landowner may apply to participate in the program by making application to the chairman of the advisory board or to 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 of qualifying farmland.

Section 702. Approval Process

Upon review by the staff of the written certification and application submitted by the property owner, the board shall meet within 30 days if possible to approve or disapprove the application. The chairman shall notify the applicants by first class mail of said approval or disapproval of participation in the district.

Section 703. Appeal

If an application is denied by the Agricultural Advisory Board, the petitioner has 30 days to appeal the decision to the Watauga County Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

ARTICLE VIII
REVOCATION AND RENEWAL OF CONSERVATION AGREEMENTS

REVOCATION

By written notice to the board, a landowner of qualifying farmland may revoke the preservation agreement formulated pursuant to Section 600 (5) of this program, or the board may revoke same preservation agreement based on noncompliance by the landowner. Such revocation shall result in loss of qualifying farm status, and consequently, loss of eligibility to participate in a voluntary agricultural district and the benefits thereof. Revocation by a landowner of a preservation agreement and the resulting loss of qualifying farmland status for the purpose of participation in a voluntary agricultural district shall in no way affect the eligibility of the land to be taxed at its present use value as provided in N.C.G.S. 105-277.2 through N.C.G.S. 105-277.6. If a portion of a district is removed for any reason after being established by this program, the remaining qualified farms may remain in the program, provided they meet all other requirements except the minimum area requirements of Section 700 (1).

RENEWAL

Conservation Agreements shall be deemed automatically renewed for an additional term of 10 years, unless either the Advisory Board or the landowner gives written notice to the contrary no later than 30 days prior to the termination date.

The action above does not prevent anyone who is enrolled from withdrawing at a later date by written notice.

ARTICLE IX
AGRICULTURAL ADVISORY BOARD

Section 900. Creation

In accordance with N.C.G.S. 106-739, the Board of Commissioners hereby establishes an Agricultural Advisory Board to implement the provisions of this program ordinance.

Section 901. Appointments and Membership

The Agricultural Advisory Board shall consist of five members appointed by the Watauga County Board of Commissioners.

(1) Requirements

(a) Each board member shall be a county resident and registered to vote in Watauga County.

(b) Four of the five members shall be actively engaged in farming.

(c) The four members actively engaged in farming shall be selected for appointment by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Watauga Soil and Water Conservation District, the Cooperative Extension Service, the Farm Service Agency Committee and the Watauga County Farm Bureau, with an effort to have the broadest geographical representation possible. The fifth member shall have special interest, experience, or education in agriculture and/or rural land preservation.

(2) Tenure. The members are to serve for terms of three years, except that the initial board is to consist of two appointee(s) for a term of one year, two appointees for terms of two years, and one appointee for a term of three years. Thereafter, all appointments are to be for terms of three years, with reappointments permitted. The terms for the initial board members will be determined by lottery.

(3) Vacancies. Any vacancy on the Agricultural Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term following the same procedure as for the initial appointment.

(4) Removal for Cause. Any member of the Agricultural Advisory Board may be removed for cause by the Board of Commissioners upon written charges and after a public hearing.

(5) Funding

(a) *Compensation.* The per meeting compensation of the members of the board shall be fixed by the Board of Commissioners.

(b) *Appropriations for performance of duties.* Funds shall be appropriated by the Board of Commissioners to the Agricultural Advisory Board to perform its duties. A budget request will be presented to the County Commissioners annually.

Section 902. Procedures

The Board shall adopt rules of procedure which are consistent with the enabling legislation and other applicable statutes.

(1) Chairperson. The 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 board. In the absence or disability of the chairperson, the vice-chairperson shall preside and shall have and exercise all the powers of the chairperson so absent or disabled. Additional officers may be elected as needed.

(2) Jurisdiction and Procedures; Supplementary Rules. The jurisdiction and procedures of the board are set out in this article, except that the board may adopt supplementary rules of procedure not inconsistent with this article or with other provisions of law.

(3) Board Year. The board shall use the county fiscal year as its meeting year.

(4) Meetings. Meetings of the board, following such notice as required by this article, shall be held at the call of the chairperson and at such other times as the board in its rules of procedure may specify. A called meeting shall be held at least quarterly. A quorum shall consist of a majority of the members of the board.

(5) Voting. The concurring vote of a majority of the members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or agency, to decide in favor of an applicant, or to pass upon any other matter on which it is required to act under this article.

(6) Records. The 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 immediately filed in the office of the board and shall be a public record.

(7) Administrative Services. The Soil and Water Conservation District office shall serve the agricultural advisory board for recordkeeping, correspondence, application procedures under this article together with such other services the board needs to complete its duties.

Section 903. Duties

The Agricultural Advisory Board shall:

(1) Review and approve applications for qualified farmland and voluntary agricultural districts.

(2) Hold public hearings pursuant to Article X of this program.

(3) Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy or activities within the county and that will affect agricultural districts.

(4) Perform other related tasks or duties assigned by the Board of Commissioners.

ARTICLE X
PUBLIC HEARINGS ON CONDEMNATION OF FARMLAND

Section 1000. 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 until such agency or unit has requested the Agricultural Advisory Board to hold a public hearing on the proposed condemnation. The procedures for such hearings shall be as set forth below.

Section 1001. Procedures

(1) Establish Public Hearing. Upon receipt of a request for a public hearing, the Agricultural Advisory Board shall have 30 days to set a date for a public hearing on the proposed condemnation pursuant to N.C.G.S. 106-740. No formal initiation of condemnation shall be initiated while the proposed condemnation is properly before the board within the time limitations set forth in this section.

(2) Notice of Public Hearing. The board shall run a notice of the public hearing in a newspaper having general circulation in Watauga County at least 10 days prior to the date established for the hearing. The notice shall contain the date, time and place of the hearing and shall provide the name of the agency requesting the hearing and the purpose of the condemnation.

(3) Public Hearing. The board shall conduct the public hearing and receive information and comments from the agency requesting the condemnation action and the citizens of Watauga County. Additionally, the board shall review the following:

(a) Has the need for the project requiring the condemnation been satisfactorily shown by the agency requesting the action?

(b) Has a financial impact analysis been conducted by the agency seeking the action?

(c) Have alternatives been considered to the proposed action that are less disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place?

The board shall invite and allow input by the county Cooperative Extension agent, U.S.D.A. Natural Resources Conservationist, the Farm Service Agency, and may consult with any other individuals, agencies or organizations, public or private, necessary to the board's review of the proposed action.

(4) Findings and Notification. Within 10 days after the public hearing, the board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be conveyed to the decision-making body of the agency proposing acquisition and made available to the public for comment.

ARTICLE XI
LAND USE INCENTIVES TO VOLUNTARY AGRICULTURAL DISTRICT FORMATION

Section 1100. Purpose

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

Section 1101. Public Notification

(1) The Advisory Board, in cooperation with the county, shall take measures as set forth below to provide notification to property owners, residents, and other interested persons in and adjacent to any designated agricultural district with a goal of informing all current and potential residents and property owners in and adjacent to an agricultural district, that farming and agricultural activities may take place in this district any time during the day or night.

(a) Signs identifying approved agricultural districts shall be placed by the farmer upon the property and along the rights-of-way of major roads in a way calculated to reasonably notify the public and ad joiners of the presence of the farm property.

(b) Information identifying approved districts shall be provided to the Register of Deeds office, the Watauga Soil and Water Conservation District, the Cooperative Extension office, the Farm Service Agency, the Watauga County Planning and Inspections Department, and the Watauga County Tax Department.

(c) The following notice shall be displayed in a prominent position in the office of the Register of Deeds and the public access area in the Watauga County Tax Department:

NOTICE TO REAL ESTATE PURCHASERS IN WATAUGA COUNTY
WATAUGA COUNTY AGRICULTURAL DISTRICTS
Watauga County has established agricultural districts to protect and preserve agricultural lands and activities. These districts have been developed and mapped to inform all purchasers of real property that certain agricultural activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, and similar activities may take place in these districts any time during the day or night. Maps and/or information on the location and establishment of these districts can be obtained from the Cooperative Extension office, County Planning and Inspections Department, Natural Resources Conservation Service, the Farm Service Agency office, and the County Tax Department.

(2) 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 or obligations imposed by this ordinance.

(3) No cause of action -- In no event shall any cause of action arise out of the failure of any person, including 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 1102. Expenditure of County Funds for Non-Farm Uses

Prior to expending any monies which would convert land in a voluntary agricultural district to non-farm uses, the county or any other local unit of government shall submit to the Advisory Board detailed information showing that said governmental unit has considered alternatives. Such consideration shall include the criteria listed in Article X, Section 1001 (3), (a) through (c).

Section 1103. No Districts in Designated Growth Corridors

Agricultural districts will not be permitted in 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. Districts located in growth corridors designated after the effective date of this program may expand to include adjoining property purchased by a landowner presently participating in the Watauga County Voluntary Farmland Preservation Program Ordinance. The approval of the Board of Commissioners will be on a case by case basis.

Section 1104. Waiver of Water and Sewer Assessments

(1) Purpose of Section. The purpose of this section is to help mitigate the financial impacts on farmers by some local and state capital investments unused by such farmers.

(2) Procedure. The waiver procedure shall be as follows:

(a) Landowners belonging to voluntary agricultural districts shall not be assessed for, or required to connect to, water and/or sewer systems.

(b) Water and sewer assessments shall be held in abeyance, without interest, for farms inside 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 G.S. 153A-185 et seq. shall conform to the terms of this article with respect to qualifying farms that entered into preservation agreements while such article was in effect.

(f) Nothing in this section is intended to diminish the authority of the county to hold assessments in abeyance under G.S. 153A-201.

ARTICLE XII
NORTH CAROLINA AGENCY NOTIFICATION

Section 1200. Consultation with N.C. Department of Agriculture and Other Agencies

The board may consult with the Cooperative Extension office, the Natural Resources Conservation Service office, the Farm Service Agency office, the N.C. Department of Agriculture, and any other such agency the board deems necessary to properly conduct its business.

Section 1201. Recording the Program Ordinance

An official copy of this program 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, and voluntary agricultural districting information regarding:

(1) Number of landowners enrolled;

(2) Number of acres applied;

(3) Number of acres certified;

(4) Number of acres denied; and

(5) Date certified.

ARTICLE XIII
LEGAL PROVISIONS

Section 1300. Severability, Conflict with Other Ordinances and Statutes, and Amendments

(1) 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.

(2) Conflict with other ordinances and statutes. Whenever the provisions of this ordinance conflict with other ordinances of Watauga 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.

(3) Amendments. This ordinance may be amended from time to time after a public hearing, notice of which will be given in accordance with the Public Meeting Laws, GS 143-318.12, and in consultation with the Agricultural Advisory Board to the Board of Commissioners.

ARTICLE XIV
ENACTMENT

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

ADOPTED this the 16th day of April, 2013.

Nathan A. Miller, Chairman
Watauga County Board of Commissioners

ATTEST:

Anita Fogle, Clerk to the Board

[SEAL]