

**ORDINANCE O2015-01
NELSON COUNTY BOARD OF SUPERVISORS
THE REPEAL OF SECTIONS 9-150 THROUGH 9-154
AND SECTIONS 9-200 THROUGH 9-207 OF ARTICLE V,
AGRICULTURAL AND FORESTAL DISTRICTS
OF THE CODE OF NELSON COUNTY VIRGINIA, AND
THE ENACTMENT OF REPLACEMENT SECTIONS AS FOLLOWS:**

BE IT HEREBY ORDAINED, that the Nelson County Board of Supervisors does hereby repeal Sections 9-150 through Sections 9-154 and Sections 9-200 through Sections 9-207 of Article V, Agricultural and Forestal Districts of the Code of Nelson County, Virginia and re-enacts replacement Sections 9-150 through 9-154 and 9-200 through 9-207 as follows:

ARTICLE V. - AGRICULTURAL AND FORESTAL DISTRICTS

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Secs. 9-208—9-210. - Reserved.

DIVISION 1. - GENERALLY

Sec. 9-150. - Purpose and intent.

- (a) The policy of the county is to conserve, protect, and encourage the development and improvement of its agricultural and forestal lands for the production of food and other agricultural or forestal products. It is also the policy of the county to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for improvement of air quality, watershed protection, wildlife habitat, and aesthetic benefits for residents and visitors.

- (b) It is the purpose and intent of this chapter to provide a means for a mutual undertaking by landowners and the County to protect and enhance agricultural and forestal land as a viable segment of the economy, and as an important economic and environmental resource.
- (c) This ordinance enables the use of Agricultural and Forestal Districts as one of four tools itemized in the Nelson County Comprehensive Plan that should be utilized for land use planning.

State law reference— Va. Code § 15.2-4301

Sec. 9-151. - Definitions.

As used in this article, unless the context requires a different meaning:

Advisory committee means the agricultural and forestal districts advisory committee.

Agricultural products means crops, livestock and livestock products, including but not limited to: field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

Agricultural production means the production for commercial purposes of crops, livestock and livestock products, and includes the processing or retail sales by the producer of crops, livestock or livestock products which are produced on the parcel or in the district.

Agriculturally and forestally significant land means land that has recently or historically produced agricultural and forestal products, is suitable for agricultural or forestal production or is considered appropriate to be retained for agricultural and forestal production as determined by such factors as soil quality, topography, climate, markets, farm structures, and other relevant factors.

Application means the set of items a landowner or landowners must submit to the board of supervisors when applying for the creation of a district or an addition to an existing district.

District means an agricultural, forestal, or agricultural and forestal district.

Forestal production means the production for commercial purposes of forestal products and includes the processing or retail sales, by the producer, of forestal products which are produced on the parcel or in the district. *Forestal products* include, but are not limited to, saw timber, pulpwood, posts, firewood, Christmas trees and other tree and wood products for sale or for farm use.

Landowner or owner of land means any person holding a fee simple interest in property but does not mean the holder of an easement.

Program administrator means the local governing body or local official appointed by the local governing body to administer the agricultural and forestal districts program.

State law reference— Va. Code §15.2-4302.

Sec. 9-152. - Districts may be created, modified, renewed, continued and terminated.

The board of supervisors may create, modify, renew, continue and terminate agricultural and forestal districts and authorize the withdrawal therefrom, as provided in Chapter 43 of Title 15.2 of the Code of Virginia. The board of supervisors may promulgate application forms and may charge a reasonable fee for each application submitted pursuant to this chapter.

State law reference— Va. Code § 15.2-4303.

Sec. 9-153. - Application forms, maps, and required notice.

The program administrator shall prescribe *application forms* for districts that include but need not be limited to the following information:

1. The general location of the district;
2. The total acreage in the district or acreage to be added to an existing district;
3. The name, address, and signature of each landowner applying for creation of a district or an addition to an existing district and the acreage each owner owns within the district or addition;
4. The conditions proposed by the applicant pursuant to Virginia Code § 15.2-4309;
5. The period before first review proposed by the applicant pursuant to Virginia Code § 15.2-4309; and
6. The date of application, date of final action by the local governing body and whether approved, modified or rejected.

The application form shall be accompanied by *maps or aerial photographs*, or both, that clearly show the boundaries of the proposed district and each addition and boundaries of properties owned by each applicant, and any other features as prescribed by the board of supervisors. For each *notice* required by this chapter to be sent to a landowner, notice shall be sent by first-class mail to the last known address of such owner as shown on the application hereunder or on the current real estate tax assessment books or maps. A representative of the planning commission shall make affidavit that such mailing has been made and file such affidavit with the papers in the case.

State law reference— Va. Code § 15.2-4303.

Sec. 9-154. - Advisory committee established; powers and duties.

An advisory committee is hereby established, as provided herein:

- (1) The committee shall consist of ten (10) members appointed by the board of supervisors. The committee shall be comprised of four (4) landowners who are engaged in agricultural or forestal production, four (4) other landowners of the county, the commissioner of revenue, and one (1) member of the board of supervisors.
- (2) The members of the committee shall serve at the pleasure of the board of supervisors.
- (3) The members of the committee shall serve without pay, but the board of supervisors may, at its discretion, reimburse each member for actual and necessary expenses incurred in the performance of his duties.
- (4) The committee shall elect a chairman, vice-chairman and secretary at the first meeting of the committee each calendar year. The secretary need not be a member of the committee.
- (5) The committee shall advise the planning commission and the board of supervisors on matters that it considers pursuant to this article, and shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within a district and the relation of those resources to the county.
- (6) The committee shall advise the planning commission and the board of supervisors on matters pertaining to the rural areas of the county which may affect agriculture or forestry.

State law reference— Va. Code § 15.2-4304.

Secs. 9-155—9-199. - Reserved.

DIVISION 2. – PROCEDURE

Sec. 9-200. - Minimum size and location of district.

Each agricultural and forestal district shall have a core of no less than two hundred (200) acres in one (1) parcel or in contiguous parcels. A parcel not part of the core may be included in a district (i) if the nearest boundary of the parcel is within one (1) mile of the boundary of the core, (ii) if it is contiguous to a parcel in the district, the nearest boundary of which is within one (1) mile of the core, or (iii) if the board of supervisors finds, in consultation with the advisory committee or planning commission, that the parcel not part of the core or within one mile of the boundary of the core contains agriculturally and forestally significant land. The land included in such a district may be located in more than one (1) locality provided that the requirements of Virginia Code §15.2-4305 for such districts are satisfied. All included tracts shall be shown as separate parcels in the county real estate records.

State law reference— Va. Code §15.2-4305.

Sec. 9-201. - Creation of district.

Each agricultural and forestal district shall be created as provided herein:

- (1) *Application.* On or before June first of each year, an owner or owners of land may submit an application to the planning department for the creation of a district. An application shall be signed by each owner of land to be included within the district. Parcels of land owned by sole owners, co-owners, partnerships, trusts or corporations shall be eligible for inclusion in a district so long as all involved owners sign the application indicating their desire that the parcel be included in the district.
- (2) *Initiation of application review.* Upon receipt of an application for a district or for an addition to an existing district, the program administrator shall refer such application to the advisory committee. The *advisory committee* shall review and make recommendations concerning the application or modification thereof to the planning commission.

The *planning commission* shall:

1. Notify, by first-class mail, adjacent property owners, as shown on the maps of the locality used for tax assessment purposes, and where applicable, any political subdivision whose territory encompasses or is part of the district, of the application. The notice shall contain (i) a statement that an application for a district has been filed with the program administrator pursuant to this chapter; (ii) a statement that the application will be on file open to public inspection in the office of the clerk of the board of supervisors; (iii) where applicable a statement that any political subdivision whose territory encompasses or is part of the district may propose a modification which must be filed with the planning commission within thirty days of the date of the notice; (iv) a statement that any owner of additional qualifying land may join the application within thirty days from the date of the notice or, with the consent of the board of supervisors, at any time before the public hearing the board of supervisors must hold on the application; (v) a statement that any owner who joined in the application may withdraw his land, in whole or in part, by written notice filed with the board of supervisors, at any time before the board of supervisors acts, pursuant to Virginia Code § 15.2-4309; and (vi) a statement that additional qualifying lands may be added to an already created district at any time upon separate application pursuant to this chapter;
2. Hold a public hearing as prescribed by law; and
3. Report its recommendations to the board of supervisors including but not limited to the potential effect of the district and proposed modifications upon county planning policies and objectives.

(3) *Evaluation criteria.* The following factors should be considered by the planning commission and the advisory committee, and at any public hearing at which an application is being considered:

- a. The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
- b. The presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production;
- c. The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
- d. Local developmental patterns and needs;
- e. The comprehensive plan and, if applicable, zoning regulations;
- f. The environmental benefits of retaining the lands in the district for agricultural and forestal uses; and
- g. Any other matter which may be relevant.

In judging the agricultural and forestal significance of land, any relevant agricultural or forestal maps may be considered, as well as soil, climate, topography, other natural factors, markets for agricultural and forestal products, the extent and nature of farm structures, the present status of agriculture and forestry, anticipated trends in agricultural economic conditions and such other factors as may be relevant.

(4) *Hearing by board of supervisors.* After receiving the reports of the planning commission and the advisory committee, the board of supervisors shall hold a public hearing on the application as provided by law, and, after such public hearing, may by ordinance create the district or add land to an existing district as applied for, or with any modifications it deems appropriate.

- a. The ordinance shall be adopted pursuant to the conditions and procedures provided in Virginia Code § 15.2-4309, and shall be subject to section 9-202(1). Virginia Code § 15.2-4309 provides, in part:

Any conditions to creation of the district and the period before the review of the district shall be described, either in the application or in a notice sent by first-class mail to all landowners in the district and published in a newspaper having a general circulation within the district at least two (2) weeks prior to adoption of the ordinance creating the district. The ordinance shall state any conditions to creation of the district and shall prescribe the period before the first review of the district, which shall be no less than four (4) years but not more than ten (10) years from the date of its creation. In prescribing the period before the first review, the local governing body shall

consider the period proposed in the application. The ordinance shall remain in effect at least until such time as the district is to be reviewed. In the event of annexation by a city or town of any land within a district, the district shall continue until the time prescribed for review.

- b. The board of supervisors shall act to either adopt the ordinance creating the district, with or without modification, or reject the application, no later than one hundred eighty (180) days from the date by which the application was received.
- c. Upon the adoption of an ordinance creating a district or adding land to an existing district, the board of supervisors shall submit a copy of the ordinance with maps to the local commissioner of the revenue, and the state forester, and the commissioner of agriculture and consumer services for information purposes. The commissioner of the revenue shall identify the parcels of land in the district in the land book and on the tax map, and the board of supervisors shall identify such parcels on the zoning map, where applicable and shall designate the districts on the official comprehensive plan map each time the comprehensive plan map is updated.

State law reference— Va. Code §§15.2-4303 through 15.2-4309.

Sec. 9-202. - Effect of district creation.

The land within an agricultural and forestal district shall be subject to the following upon the creation of the district.

(1) *Prohibition of development to more intensive use.*

- a. The board of supervisors may require, as a condition to creation of the district, that any parcel in the district shall not, without the prior approval of the board, be developed to any more intensive use or to certain more intensive uses, other than uses resulting in more intensive agricultural or forestal production, during the period which the parcel remains within the district. The board of supervisors shall not prohibit as a more intensive use, construction and placement of dwellings for persons who earn a substantial part of their livelihood from a farm or forestry operation on the same property, or for members of the immediate family of the owner, or for one (1) dwelling unit for the purpose of a guest cottage, or divisions of parcels for such family members, unless the board finds that such use in the particular case would be incompatible with farming or forestry in the district.
- b. To further the purposes of this chapter and to promote agriculture and forestry and the creation of districts, the board of supervisors may adopt programs offering incentives to landowners to impose land use and conservation restrictions on their land within the district. Programs offering such incentives shall not be permitted unless authorized by law.

(2) *Applicability of comprehensive plan and zoning and subdivision ordinances.* The comprehensive plan and the zoning and subdivision ordinances shall apply within each district to the extent that the ordinances do not conflict with conditions of creation or continuation of the district, or the purposes of this article and Chapter 43 of Title 15.2 of the Code of Virginia.

(3) *Limitation on restricting or regulating certain agricultural and forestal farm activities.* The county shall not unreasonably restrict or regulate by ordinance farm structures or agricultural and forestal practices in a manner which is contrary to the purposes of this article and Chapter 43 of Title 15.2 of the Code of Virginia unless such restriction or regulation is directly related to public health and safety. The county may regulate the processing or retail sales of agricultural or forestal products, or structures therefore, in accordance with the comprehensive plan and any county ordinances.

(4) *Consideration of district in taking certain actions.* The county shall take into account the existence of a district and the purposes of this article and Chapter 43 of Title 15.2 of the Code of Virginia in its comprehensive plan, ordinances, land use planning decisions, and administrative decisions and procedures affecting parcels of land adjacent to the district.

(5) *Availability of land use-value assessment.* Land within a district and used for agricultural or forestal production shall automatically qualify for an agricultural or forestal use-value assessment pursuant to Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia (§58.1-3229 et seq.), if the requirements for such assessment contained therein are satisfied. Any ordinance adopted pursuant to § 15.2-4303 shall extend such use-value assessment and taxation to eligible real property within such district whether or not a local ordinance pursuant to § 58.1-3231 has been adopted.

(6) *Review of proposals by agencies of the Commonwealth, political subdivisions and public service corporations to acquire land in district.*

- a. Any agency of the Commonwealth or any political subdivision which intends to acquire land or any interest therein other than by gift, devise, bequest or grant, or any public service corporation which intends to: (i) acquire land or any interest therein for public utility facilities not subject to approval by the state corporation commission, provided that the proposed acquisition from any one (1) farm or forestry operation within the district is in excess of one (1) acre or that the total proposed acquisition within the district is in excess of ten (10) acres or (ii) advance a grant, loan, interest subsidy or other funds within a district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures, shall at least ninety (90) days prior to such action notify the board of supervisors and all of the owners of land within the district. Notice to landowners shall be sent by first-class or registered mail and shall state that further information on the proposed action is on file with the local governing body. Notice to the board of supervisors shall be filed in the form of a report containing the following information:

1. A detailed description of the proposed action, including a proposed construction schedule;

2. All the reasons for the proposed action;
 3. A map indicating the land proposed to be acquired or on which the proposed dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures are to be constructed;
 4. An evaluation of anticipated short-term and long-term adverse impact on agricultural and forestal operations within the district and how such impact is proposed to be minimized;
 5. An evaluation of alternatives which would not require action within the district; and
 6. Any other relevant information required by the board of supervisors.
- b. Upon receipt of a notice filed pursuant to subsection a., the board of supervisors, in consultation with the planning commission and the advisory committee, shall review the proposed action and make written findings as to (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impact on agricultural and forestal resources within the district. If requested to do so by any owner of land that will be directly affected by the proposed action of the agency, corporation, or political subdivision, the director of the department of conservation and recreation, or his designee, may advise the board of supervisors on the issues listed in clauses (i), (ii) and (iii) of this subsection.
- c. If the board of supervisors finds that the proposed action might have an unreasonably adverse effect upon either state or local policy, it shall (i) issue an order within ninety days from the date the notice was filed directing the agency, corporation or political subdivision not to take the proposed action for a period of one hundred fifty (150) days from the date the notice was filed and (ii) hold a public hearing, as prescribed by law, concerning the proposed action. The hearing shall be held where the board of supervisors usually meets or at a place otherwise easily accessible to the district. The locality shall publish notice in a newspaper having a general circulation within the district, and mail individual notice of the hearing to the political subdivisions whose territory encompasses or is part of the district, and the agency, corporation or political subdivision proposing to take the action. Before the conclusion of the 150-day period, the board of supervisors shall issue a final order on the proposed action. Unless the board of supervisors, by an affirmative vote of a majority of all the members, determines that the proposed action is necessary to provide service to the public in the most economic and

practical manner and will not have an unreasonably adverse effect upon state or local policy, the order shall prohibit the agency, corporation or political subdivision from proceeding with the proposed action. If the agency, corporation or political subdivision is aggrieved by the final order of the board of supervisors, an appeal shall lie to the circuit court having jurisdiction of the territory wherein a majority of the land affected by the acquisition is located. However, if such public service corporation is regulated by the state corporation commission, an appeal shall be to the state corporation commission.

(7) *Parcel created by division remains in district.* A parcel created from the permitted division of land within a district shall continue to be enrolled in the district.

State law reference— Va. Code §§15.2-4309, 15.2-4312, 15.2-4313.

Sec. 9-203. - Addition of land to district.

One (1) or more parcels may be added to an existing agricultural and forestal district. The procedure for adding such parcels shall be as provided for the creation of a new district. Such additions shall be reviewed at the time previously established for the review of the district to which they are added.

State law reference— Va. Code §15.2-4310.

Sec. 9-204. - Review of district; continuation, modification or termination.

Each agricultural and forestal district may be reviewed as provided herein:

- (1) *Review period.* Each district may be reviewed within the period set forth in the ordinance creating the district, which period shall not be less than four (4) years nor more than ten (10) years from the date of its creation, and may thereafter be reviewed within each such subsequent period.
- (2) *Initiation of district review.* If the board of supervisors determines that a review is necessary, it shall begin such review at least ninety (90) days before the expiration date of the period established when the district was created. In conducting such review, the board of supervisors shall ask for the recommendations of the advisory committee and the planning commission in order to determine whether to terminate, modify or continue the district. When a district is reviewed, land within the district may be withdrawn at the owner's discretion by filing a written notice with the Board of Supervisors at any time before it acts to continue, modify or terminate the district.
- (3) *Advisory committee review.* Upon referral of the district by the board of supervisors, the advisory committee shall review the district and report to the planning commission its recommendations as to whether to terminate, modify or continue the district.

- (4) *Planning commission review.* Upon receipt of the report of the advisory committee on a district, the planning commission shall schedule as part of the review a public meeting with the owners of land within the district, and shall send by first-class mail a written notice of the meeting and review to all such owners. Notice of the public meeting shall be provided to the owners of the land within the district as required by Virginia Code § 15.2-4311. The planning commission shall report to the board of supervisors its recommendations, together with the advisory committee's recommendations, as whether to terminate, modify or continue the district.
- (5) *Hearing by board of supervisors.* After receiving the reports of the planning commission and the advisory committee, the board of supervisors shall hold a public hearing on the district as provided by law.
- (6) *Action on review.* After the public hearing, the board of supervisors may stipulate conditions to continuation of the district and may establish a period before the next review of the district, which may be different from the conditions or period established when the district was created. Any such different conditions or period shall be described in a notice sent by first class mail to all owners of land within the district and published in a newspaper having a general circulation within the district at least two (2) weeks prior to adoption of the ordinance continuing the district. Unless the district is modified or terminated by the board of supervisors, the district shall continue as originally constituted, with the same conditions and period before the next review as that established when the district was created. If the board of supervisors determines that a review is unnecessary, it shall set the year in which the next review shall occur.
- (7) *Effect of failure to complete review by review date.* A district shall not terminate by the failure of the board of supervisors to take action pursuant to paragraph (6) by the review date set forth in the section of this chapter pertaining to the district.

State law reference— Va. Code §15.2-4311.

Sec. 9-205. - Withdrawal of land from district.

- (1) At any time after the creation of a district, any owner of land lying in such district may file with the program administrator a written request to withdraw all or part of his land from the district for good and reasonable cause.
 - a. *Procedure.* The program administrator shall refer the request to the advisory committee for its recommendation. The advisory committee shall make recommendations concerning the request to withdraw to the local planning commission, which shall hold a public hearing and make recommendations to the local governing body. The landowner seeking to withdraw land from a district, if denied favorable action by the governing body, shall have an immediate right of appeal de novo to the circuit court. This section shall in no way affect the ability of an owner to withdraw an application for a proposed

district or withdraw from a district pursuant to clause (v) of subdivision 1 of § 9-201 (2) or § 9-204 (2).

b. Criteria for Review.

1. The proposed new land use will not have a significant adverse impact on agricultural or forestal operations on land within the district;
 2. The proposed new land use is consistent with the comprehensive plan;
 3. The proposed land use is consistent with the public interest of the county in that it promotes the health, safety, or general welfare of the county rather than only the proprietary interest of the owner; and,
 4. The proposed land use was not anticipated by the owner at the time the land was placed in the district and there has been a change in circumstances since that time,
- (2) Upon termination of a district or withdrawal or removal of any land from a district created pursuant to this Article, land that is no longer part of a district shall be subject to and liable for roll-back taxes as are provided in Virginia Code § 58.1-3237. Sale or gift of a portion of land in a district to a member of the immediate family as defined in Virginia Code § 15.2-2244 shall not in and of itself constitute a withdrawal or removal of any of the land from a district.
- (3) Upon termination of a district or upon withdrawal or removal of any land from a district, land that is no longer part of a district shall be subject to those local laws and ordinances prohibited by the provisions of § 9-202.
- (4) Upon the death of a property owner, any heir at law, devisee, surviving cotenant or personal representative of a sole owner of any fee simple interest in land lying within a district shall, as a matter of right, be entitled to withdraw such land from such district upon the inheritance or descent of such land provided that such heir at law, devisee, surviving cotenant or personal representative files written notice of withdrawal with the Board of Supervisors and the commissioner of the revenue within two years of the date of death of the owner.
- (5) Upon termination or modification of a district, or upon withdrawal or removal of any parcel of land from a district, the Board of Supervisors shall submit a copy of the ordinance or notice of withdrawal to the commissioner of revenue, the State Forester, and the State Commissioner of Agriculture and Consumer Services for information purposes. The commissioner of revenue shall delete the identification of such parcel from the land book and the tax map, and the Board of Supervisors shall delete the identification of such parcel from the zoning map, where applicable.
- (6) The withdrawal or removal of any parcel of land from a lawfully constituted district shall not in itself serve to terminate the existence of the district. The district shall continue in

effect and be subject to review as to whether it should be terminated, modified or continued pursuant to § 9-204.

State law reference—Va. Code § 15.2-4314

Sec. 9-206. - Fees.

The following fees for actions related to an agricultural and forestal district are hereby established. The fees shall be paid at the time the application is filed, and shall be in the form of cash or of a check payable to the "County of Nelson." A fee shall not be charged for the addition of land to a district or for the review of a district.

- (1) Application to create a district pursuant to section 9-201: Three hundred dollars (\$300.00) or the costs of processing and reviewing the application, including notice publication costs, whichever is less.
- (2) Requests to withdraw land from a district pursuant to section 9-205: Three hundred dollars (\$300.00) or the costs of processing and reviewing the application, including notice publication costs, whichever is less.

State law reference — Va. Code §15.2-4303.

Sec. 9-207. - Mailing of notices.

For each notice required by this chapter to be sent to the landowner, notice shall be sent by first-class mail to the last known address of such owner as shown on the application or on the current real estate tax assessment books or maps. A representative of the planning commission or the board of supervisors shall make affidavit that such mailing has been made and file such affidavit with the papers in the proceeding.

State law reference— Va. Code §15.2-4307.

Secs. 9-208—9-210. - Reserved.

BE IT FURTHER ORDAINED, that this Ordinance becomes effective upon adoption.

Adopted: _____, 2015

Attest: _____, Clerk
Nelson County Board of Supervisors