



Clarke County Planning Department
101 Chalmers Court, Suite B
Berryville, Virginia 22611
(540) 955-5132

TO: Board of Supervisors

FROM: Jeremy F. Camp, Senior Planner / Zoning Administrator

SUBJECT: PUBLIC HEARING
Agricultural & Forestal District (AFD) 6-Year Review

DATE: January 3, 2022

At the December 21, 2021 Board of Supervisors meeting a public hearing was scheduled for the review of the AFD. Below is a summary of this agenda item with a recommendation by Staff.

The Clarke County Agricultural & Forestal District (AFD) is a voluntary program authorized by state and local law for the purpose of promoting agriculture. Property owners that apply and qualify for membership to the program receive certain benefits and restrictions during the district term. The district term in Clarke County is 6 years.

In accordance with certain procedural requirements, the AFD can be continued for an additional 6 years if authorized by the Board of Supervisors prior to the expiration of the district. As part of the renewal process, the district is reviewed by the Agricultural & Forestal District Advisory Committee and the Planning Commission. During this renewal process, property owners may elect to withdraw from the district, or may apply to be added to the district.

On October 27, 2021, the Clarke County Agricultural & Forestal District Advisory Committee approved a motion to recommend renewal of Clarke County Agricultural and Forestal District for a period of 6 years with no changes except for the removal of the parcels referenced below. The Planning Commission provided the same recommendation during a public hearing held on December 3, 2021.

These parcels were requested by the property owners for removal during the review process. A map of these parcels is provided in the attached powerpoint presentation document.

- 27-A-18 Knowles Partnership LC
- 27-A-6 L Seven Farm, LC
- 27-A-7 “
- 27-A-8 “
- 27-A-8B “
- 27-A-8C “
- 13-A-70 Westwood Farm, Incorporated
- 13-A-58 “
- 13-3-1 “
- 13-3-3 “
- 7-A-122 JC Hardesty Family, LLC
- 7-A-129B “
- 21-A-40 CH Schutte Inc *(added December 28, 2021)*

During the advisory committee's review there were three meetings held. Notices were sent to property owners within the AFD, as well as property owners that were in the land use tax program. Pursuant to Chapter 48 of the Code of Clarke County, and Chapter 43 of the Code of Virginia, and in addition to the advisory committee, the Planning Commission held several meetings, including a public hearing.

Staff will present the AFD to the Board at the January 18, 2022 public hearing. Based on recommendations from the AFD Advisory Committee and Planning Commission, Staff recommends that the Board renew the district for 6 years with no changes except for removal of the parcels requested by the property owners for removal.

Attachments:

- 1) Information Flyer on the Clarke County Agricultural & Forestal District
- 2) Powerpoint document
- 3) Chapter 43, Virginia Code
- 4) Chapter 48, Clarke County Code

CLARKE COUNTY

Agricultural and Forestal District (AFD) Program Information Flyer



WHAT IS THE AFD?

The Agricultural and Forestal District (AFD) is a voluntary program that places benefits and restrictions on land. The intent of the AFD is to protect the rural character of the community by preserving agricultural, forestal, and open space land and by providing safeguards against the adoption of local ordinances that unreasonably restrict farm structures, farming, or forestry practices unless the restrictions are directly related to health, safety, and welfare. The District was established in 1980 for a six-year term that has been renewed several times, most recently in 2016. The County is currently undergoing a renewal review of the District and is inviting landowners to apply to add new land to the District. County landowners to date have enrolled approximately 37,051 acres in the AFD program.

The AFD program provides certain benefits to landowners including automatic qualification for the Land Use Assessment Program. For landowners already in Land Use, participation in the AFD program ensures that land use valuation will continue for the District term even if the Land Use Assessment Program is discontinued. District membership also offers special protections against eminent domain actions. Acquisition of land for power lines, roadways, and other infrastructure within a District is subject to a special public review process. Also, the expenditure of public funds for non-farm related purposes in a District is subject to a special review process.

FREQUENTLY ASKED QUESTIONS

Who can join the Agricultural and Forestal District? Any landowner in the Agricultural Open Space Conservation (AOC) Zoning District (most properties west of the Shenandoah River) who has either 5 acres of unimproved land or 6 acres of land that contains a dwelling and any landowner in the Forestal Open Space Conservation (FOC) Zoning District (most properties east of the Shenandoah River) who has either 20 acres of unimproved land or 21 acres of land that contains a dwelling.

How do you apply for inclusion into the District? Contact the Clarke County Planning Department and ask to be included. There is a simple application form to fill out and the County will do the rest. Property owners wishing to include their land in the District may do so at the time of renewing the District or annually. Although the State allows localities to charge an application fee, Clarke County has chosen not to charge a fee.

Do you have to include all of my properties? No, however it is important to provide detailed property information on the application form to ensure that the properties desired to be included are accurately noted.

Is acceptance into the District automatic? No. Each application must be reviewed by County Staff, the AFD Advisory Committee, Planning Commission, and Board of Supervisors for compliance with program requirements. Both the Planning Commission and Board of Supervisors are required by State law to hold public hearings on all new applications. This process can take approximately 4-5 months to complete.

CLARKE COUNTY

Agricultural and Forestal District (AFD) Program

Information Flyer



What do I have to do if I want my property to remain in the District? Those who are already in the District and wish to remain in the District are not required to take any action.

Suppose I want to withdraw my property from the District? During the District review process, current District landowners may withdraw their properties at their discretion by providing written notice to the County. However, during the District term there are limited options for requesting land to be withdrawn. This includes death of the property owner or financial hardship approaching confiscation.

Are there restrictions placed on land in an Agricultural and Forestal District? Yes. Although a property owner can continue to use the land as they always have and can sell it at any time during their inclusion in the district, the property owner agrees not to do more than a one lot subdivision or to reduce the area of their property by boundary line adjustment during the District term. There are also limitations on certain special uses that may be applied for that would conflict with the character and purpose of the District. It is recommended that potential applicants discuss these restrictions with County Staff to determine whether they may conflict with the applicant's future plans for the properties.

Do I have to be in an AFD in order to farm my land, have livestock, etc? No. The Zoning Ordinance governs the uses of your property. Enrollment in an Agricultural and Forestal District provides some additional right-to-farm protections beyond what the Zoning may allow.

If I sell my property do I need to inform the new owner about the AFD? Yes. Agricultural and Forestal Districts run with the land. Selling or transferring ownership does not remove this encumbrance. It is very important that the new owner understand they are bound to the same restrictions and will receive the same benefits of all property in the District. Many new buyers think they can create a subdivision and then learn they cannot due to restrictions imposed by inclusion in the District. They may incur expensive subdivision costs with no chance of completing the division until the District term expires.

Does being in the District automatically reduce my taxes? No. Clarke County has a Land Use Assessment Program (LUAP) that provides for the deferral of real estate taxes on properties that qualify for agricultural, horticultural, forestry, or open space uses. Any status change to a parcel enrolled in the LUAP is subject to rollback taxes, penalties, and interest. Contact Commissioner of the Revenue's office at 540-955-5108 for further information on the Land Use Program.

Am I required to be in an AFD to qualify for the Land Use Assessment Program? No. The Land Use Assessment Program is a separate program from the Agricultural and Forestal District Program. A landowner must apply for the Land Use Assessment Program and must meet certain qualifying criteria that can be explained by the Office of the Commissioner of Revenue at 540-955-5108.

For more information contact:

Jeremy Camp, Senior Planner/Zoning Administrator / 540-955-5132 / jcamp@clarkecounty.gov
Clarke County Department of Planning - 101 Chalmers Court, Suite B, Berryville, VA 22611



Clarke County Agricultural & Forestal District *6-year Renewal*

January 18, 2022 Public Hearing

Agricultural & Forestal District: What is it?

A voluntary program authorized by state and local law that offers landowners certain benefits and restrictions that are intended to promote agriculture.

Legal Authority

- Virginia:
Agricultural & Forestal Districts Act (1977)
Virginia Code 15.2-4300
- Clarke County:
Clarke County Code, Chapter 48 (1992)

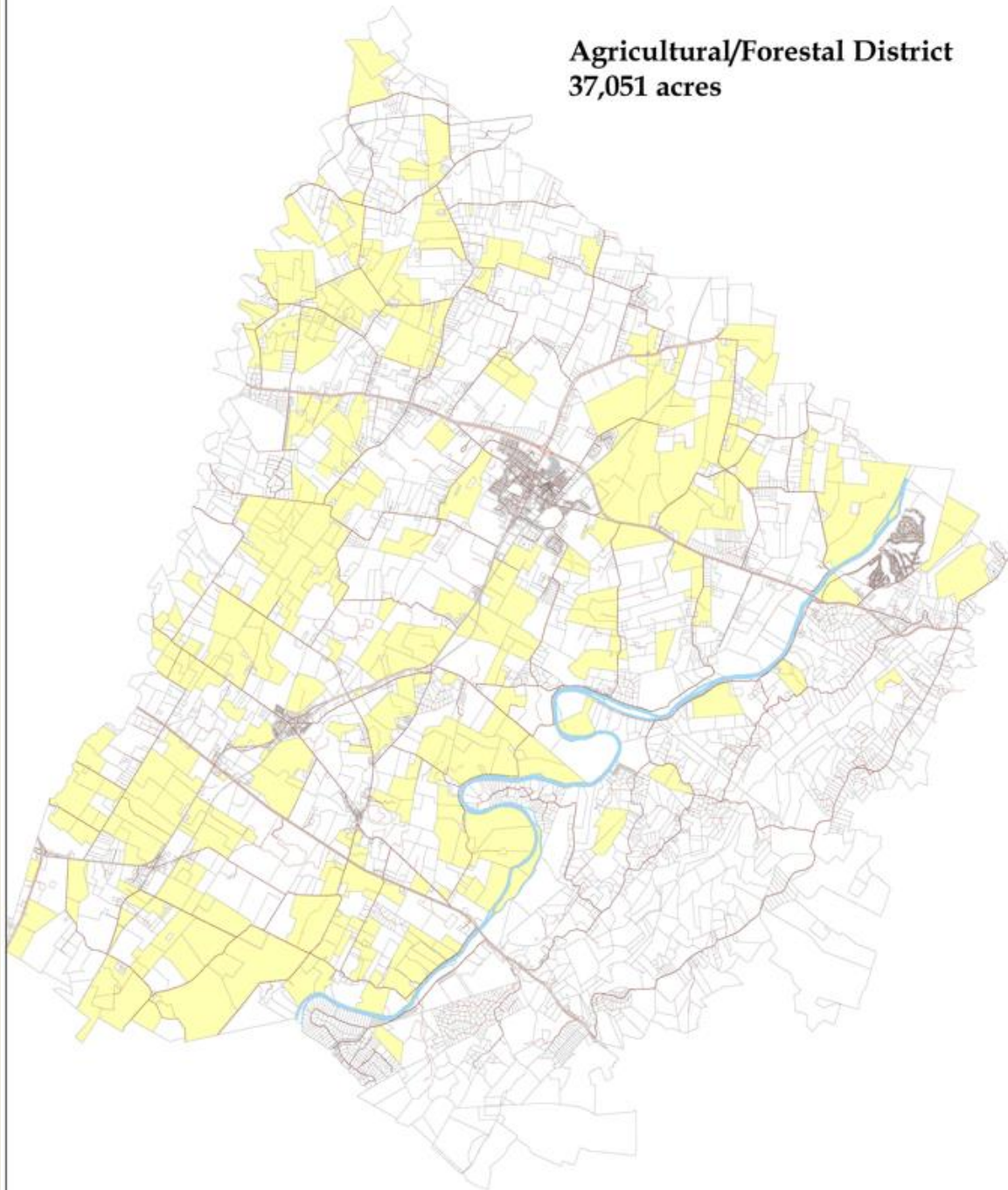
Purposes

- ❖ “to conserve and protect and to encourage the development and improvement of the Commonwealth’s agricultural and forestal lands for the production of food and other agricultural products.”
- ❖ “to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes.”
- ❖ “to provide a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal lands as a viable segment of the Commonwealth’s economy and as an economic and environmental resource of major importance.”

Background

- **The County's first Agricultural District was established in 1980 for a six-year term and has been renewed several times (7).**
- **The district was last renewed on March 2016 for a six-year term. Included a change in the program name to the "Clarke County Agricultural & Forestal District" to recognize inclusion of silviculture properties in the District.**
- **Approximately 37,000 acres are currently included in the District (not to be confused with 27,000 acres in conservation easement)**

Agricultural/Forestral District
37,051 acres



District Benefits

- ❖ **Land in the District automatically qualifies for the Land Use Assessment program upon application instead of waiting 5 years.**
 - The Land Use Assessment Program reduces real estate taxes for agricultural uses. Must still comply with reporting a agricultural activity to the Commissioner of Revenue.

- ❖ **Land in the District is guaranteed inclusion into the Land Use Program during the AFD 6-year term.**
 - In other words, if the program is canceled, owners of land in the AFD would continue at least until the end of the 6-year period. Must still comply with reporting a agricultural activity to the Commissioner of Revenue.

- ❖ **District inclusion also adds a safeguard against eminent domain or laws that restrict agriculture.**
 - A special review process is required.

District Restrictions

- ❖ **Parcels in the District may not be withdrawn prior to the completion of the six-year term unless:**
 - Financial hardship approaching confiscation of property
 - Death of the landowner of record

- ❖ **Only one lot may be subdivided during each District term.**
 - Boundary line adjustments are allowed, but limitations apply to adjusting acreage with non-district parcels.

- ❖ **Rezoning is restricted except for the AOC or FOC Districts.**

- ❖ **Special use permits are restricted unless for the following uses:**
 - Livestock auction markets
 - Small-scale processing of specialty fruits and vegetables
 - Veterinary services, animal hospitals, and breeding kennels*

Criteria for New Applications

- **AOC Zoned land (west of Shenandoah River) – minimum 5 acres without a dwelling or 6 acres with a dwelling**
- **FOC Zoned land (east of the Shenandoah River) – minimum of 20 acres without a dwelling or 21 acres with a dwelling**
- **The County uses the Land Evaluation and Site Assessment (LESA) system to determine whether to include properties for agricultural, forestal, or open space use.**
- **The following LESA scores are required to qualify for inclusion in the District:**
 - **Composite LESA score of 72 or higher for parcels less than 40 acres**
 - **Composite LESA score of 68 or higher for parcels 40-129.99 acres**
 - **Composite LESA score of 64 or higher for parcels 130 acres or greater**

Criteria for New Applications (cont.)






- **Farms with a composite LESA score of lower than 60 shall be excluded unless they are adjacent to and operated contiguously with farming units with qualifying LESA scores and which are owned by one or more individuals who also own the qualifying farming unit.**
- **Parcels cannot be included in the corporate limits of the Towns of Berryville or Boyce.**

Criteria for New Applications (cont.)

- **Parcels can qualify for District inclusion as Open Space:**
 - **Cannot contain any commercial use except those allowed as a principal use or structure by the County Zoning Ordinance (e.g., farm winery, home occupation)**
 - **Parcel shall be at least 5 acres in size – exception may be granted if parcel is adjacent to a conservation easement, historical easement, or is considered to be environmentally sensitive**
 - **Parcel shall have at least one unused dwelling unit right (DUR)**
 - **DURs shall not be transferred or used to construct a dwelling during the term of the District**

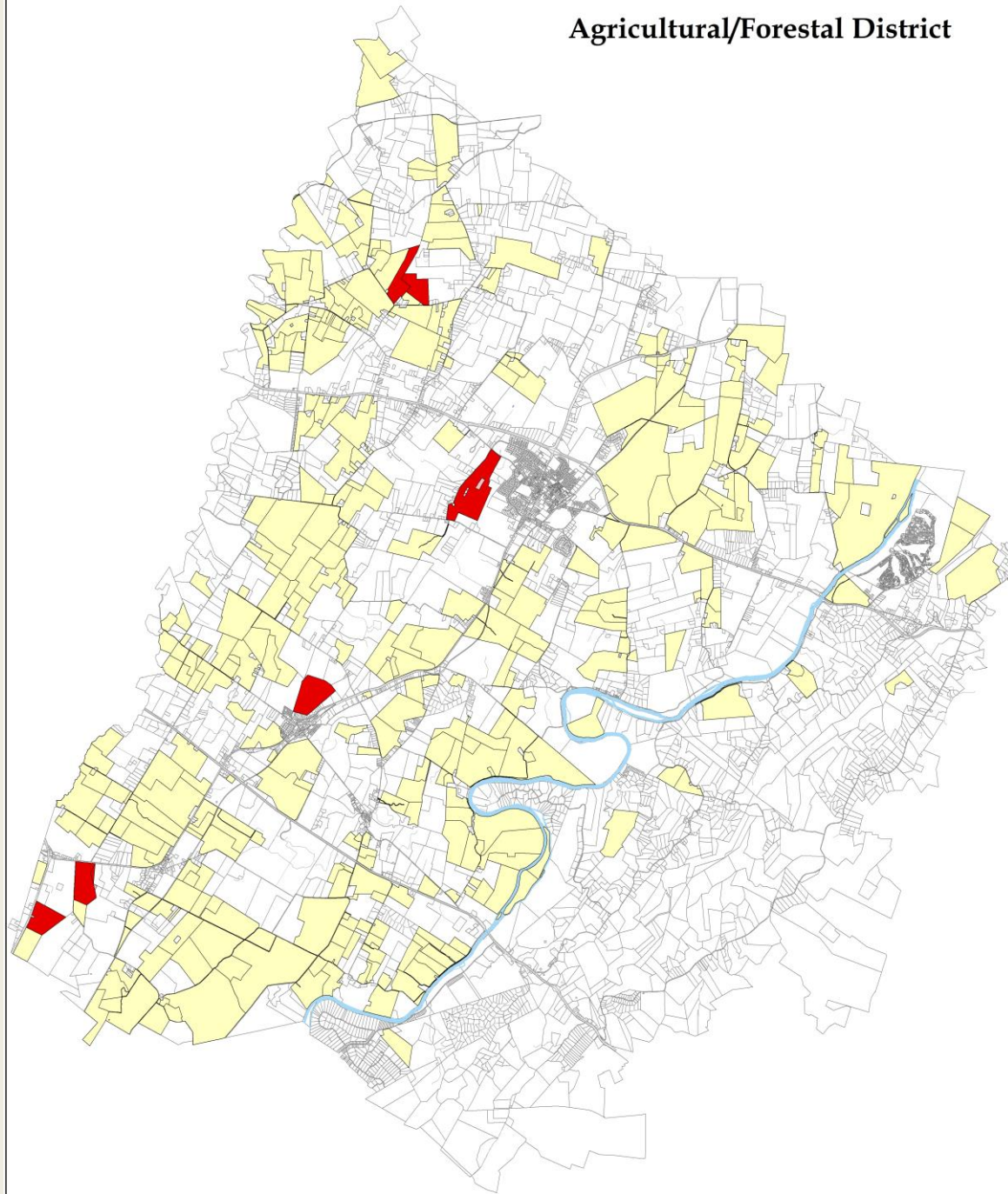
Withdraw Requests

- ❖ **Five property owners have requested that their properties be withdrawn from the AFD . This includes the following parcels**
 - **7-A-122 (JC Hardesty Family , LLC)**
 - **7-A-129B (JC Hardesty Family, LLC)**
 - **27-A-18 (Knowles Partnership, LC)**
 - **27-A-6 (L Seven Farm, LC)**
 - **27-A-7 (L Seven Farm, LC)**
 - **27-A-8 (L Seven Farm, LC)**
 - **27-A-8C (L Seven Farm, LC)**
 - **27-A-8B (L Seven Farm, LC)**
 - **13-A-70 (Westwood Farm, Incorporated)**
 - **13-A-58 (Westwood Farm, Incorporated)**
 - **13-3-1 (Westwood Farm, Incorporated)**
 - **13-3-3 (Westwood Farm, Incorporated)**
 - **21-A-40 (Schutte CH Inc)**

-  Parcels requesting removal from AFD (973.8 acres)
-  Agr. & For. District (37,051 acres in 2016)
-  Shenandoah River
-  Parcel Boundary
-  Roads

Withdraw Requests

Agricultural/Forestal District



District Review Process Timeline

- ~~• Board of Supervisors Initiates Review August 2021~~
- ~~• Advisory Committee Kick-off Meeting September 14, 2021~~
- ~~• Advisory Committee Public Meeting October 14, 2021~~
- ~~• Advisory Committee Final Meeting October 28, 2021~~
- ~~• Planning Commission Work Session November 2021~~
- ~~• Planning Commission Public Hearing December 3, 2021~~
- ~~• Board of Supervisors Meeting December 21, 2021~~
- Board of Supervisors Public Hearing January 18, 2022**
- Expiration of current District March 16, 2022**



Chapter 43. Agricultural and Forestal Districts Act

§ 15.2-4300. Short title

This chapter shall be known and may be cited as the "Agricultural and Forestal Districts Act."

1977, c. 681, § 15.1-1506; 1997, c. 587.

§ 15.2-4301. Declaration of policy findings and purpose

It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth's agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes. It is the purpose of this chapter to provide a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.

1977, c. 681, § 15.1-1507; 1987, c. 552; 1997, c. 587.

§ 15.2-4302. Definitions

As used in this chapter, 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 local governing body 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" includes, but is 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.

1977, c. 681, § 15.1-1508; 1979, c. 377; 1981, c. 54; 1987, c. 552; 1997, c. 587; 2011, cc. [344](#), [355](#).

§ 15.2-4303. Power of localities to enact ordinances; application form and fees; maps; sample form

A. Each locality shall have the authority to promulgate forms and to enact ordinances to effectuate this chapter. The locality may charge a reasonable fee for each application submitted pursuant to this chapter; such fee shall not exceed \$500 or the costs of processing and reviewing an application, whichever is less.

B. The locality 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 § [15.2-4309](#);
5. The period before first review proposed by the applicant pursuant to § [15.2-4309](#); and
6. The date of application, date of final action by the local governing body and whether approved, modified or rejected.

C. The application form shall be accompanied by maps or aerial photographs, or both, prescribed by the locality 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 locality.

D. 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 local planning commission or local governing body shall make affidavit that such mailing has been made and file such affidavit with the papers in the case.

1977, c. 681, § 15.1-1509; 1978, c. 604; 1979, c. 377; 1984, c. 20; 1987, c. 552; 1997, c. 587; 2005, c. [667](#); 2011, cc. [344](#), [355](#).

§ 15.2-4304. Agricultural and forestal districts advisory committee

A. Upon receipt of the first agricultural and forestal districts application, the local governing body shall establish an advisory committee which shall consist of four landowners who are engaged in agricultural or forestal production, four other landowners of the locality, the commissioner of revenue or the local government's chief property assessment officer, and a

member of the local governing body. The members of the committee shall be appointed by and serve at the pleasure of the local governing body. The advisory committee shall elect a chairman and a vice-chairman and elect or appoint a secretary who need not be a member of the committee. The advisory committee shall serve without pay but the locality may reimburse each member for actual and necessary expenses incurred in the performance of his duties. Any expenditures of the committee shall be within the amounts appropriated for such purpose by the local governing body. The committee shall advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.

B. The local governing body may designate the planning commission to act for and in lieu of an agricultural and forestal districts advisory committee if the membership of the planning commission includes at least four landowners who are engaged in agricultural or forestal production.

1977, c. 681, § 15.1-1510; 1987, c. 552; 1989, c. 52; 1997, c. 587; 2011, cc. [344](#), [355](#).

§ 15.2-4305. Application for creation of district in one or more localities; size and location of parcels

On or before November 1 of each year or any other annual date selected by the locality, any owner or owners of land may submit an application to the locality for the creation of a district or addition of land to an existing district within the locality. Each district shall have a core of no less than 200 acres in one 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 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 mile of the boundary of the core, or (iii) if the local governing body 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. No land shall be included in any district without the signature on the application, or the written approval of all owners thereof. A district may be located in more than one locality, provided that (i) separate application is made to each locality involved, (ii) each local governing body approves the district, and (iii) the district meets the size requirements of this section. In the event that one of the local governing bodies disapproves the creation of a district within its boundaries, the creation of the district within the adjacent localities' boundaries shall not be affected, provided that the district otherwise meets the requirements set out in this chapter. In no event shall the act of creating a single district located in two localities pursuant to this subsection be construed to create two districts.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 1998, c. [833](#); 2011, cc. [344](#), [355](#).

§ 15.2-4306. Criteria for evaluating application

Land being considered for inclusion in a district may be evaluated by the advisory committee and the planning commission through the Virginia Land Evaluation and Site Assessment (LESA) System or, if one has been developed, a local LESA System. The following factors should be considered by the local planning commission and the advisory committee, and at any public hearing at which an application that has been filed pursuant to § [15.2-4303](#) is being considered:

1. The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
2. 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;
3. The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
4. Local developmental patterns and needs;
5. The comprehensive plan and, if applicable, the zoning regulations;
6. The environmental benefits of retaining the lands in the district for agricultural and forestal uses; and
7. 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.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587.

§ 15.2-4307. Review of application; notice; hearing

Upon the 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 local planning commission, which 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 local governing body; (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 local 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 local governing body, at any time before the public hearing the local governing body 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 local governing body, at any time before the local governing body acts pursuant to § 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 local governing body including but not limited to the potential effect of the district and proposed modifications upon the locality's planning policies and objectives.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 1998, c. 833; 2011, cc. 344, 355.

§ 15.2-4308. Repealed

Repealed by Acts 2011, cc. 344 and 355, cl. 2.

§ 15.2-4309. Hearing; creation of district; conditions; notice

A. The local governing body, after receiving the report of the local planning commission and the advisory committee, shall hold a public hearing 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.

B. The governing body may require, as a condition to creation of the district, that any parcel in the district shall not, without the prior approval of the governing body, 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. Local governing bodies 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 divisions of parcels for such family members, unless the governing body finds that such use in the particular case would be incompatible with farming or forestry in the district. To further the purposes of this chapter and to promote agriculture and forestry and the creation of districts, the local governing body 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. 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 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 years but not more than ten 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.

C. The local governing body shall act to adopt or reject the application, or any modification of it, no later than 180 days from (i) November 1 or (ii) the other date selected by the locality as provided in § 15.2-4305. Upon the adoption of an ordinance creating a district or adding land to an existing district, the local governing body 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 local governing body 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.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 1998, c. 833; 2011, cc. 344, 355.

§ 15.2-4310. Additions to a district

Additional parcels of land may be added to an existing district at any time by following the process and application deadlines prescribed for the creation of a new district.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 2011, cc. 344, 355.

§ 15.2-4311. Review of districts

The local governing body may complete a review of any district created under this section, together with additions to such district, no less than four years but no more than ten years after the date of its creation and every four to ten years thereafter. If the local governing body determines that a review is necessary, it shall begin such review at least ninety days before the expiration date of the period established when the district was created. In conducting such review, the local governing body shall ask for the recommendations of the local advisory committee and the planning commission in order to determine whether to terminate, modify or continue the district. When each district is reviewed, land within the district may be withdrawn at the owner's discretion by filing a written notice with the local governing body at any time before it acts to continue, modify or terminate the district. The local planning commission or the advisory committee 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. The notice shall state the time and place for the meeting; that the district is being reviewed by the local governing body; that the local governing body may continue, modify, or terminate the district; and that land may be withdrawn from the district at the owner's discretion by filing a written notice with the local governing body at any time before it acts to continue, modify or terminate the district. The local governing body shall hold a public hearing as provided by law. The governing body 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 weeks prior to adoption of the ordinance continuing the district. Unless the district is modified or terminated by the local governing body, 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 local governing body determines that a review is unnecessary, it shall set the year in which the next review shall occur.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587.

§ 15.2-4312. Effects of districts

A. Land lying within a district and used in agricultural or forestal production shall automatically qualify for an agricultural or forestal use-value assessment pursuant to Article 4 (§ 58.1-3229 et

seq.) of Chapter 32 of Title 58.1, 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.

B. No local government shall exercise any of its powers to enact local laws or ordinances within a district in a manner which would unreasonably restrict or regulate farm structures or farming and forestry practices in contravention of the purposes of this chapter unless such restrictions or regulations bear a direct relationship to public health and safety. The comprehensive plan and zoning and subdivision ordinances shall be applicable within said districts, to the extent that such ordinances are not in conflict with the conditions to creation or continuation of the district set forth in the ordinance creating or continuing the district or the purposes of this chapter. Nothing in this chapter shall affect the authority of the locality to regulate the processing or retail sales of agricultural or forestal products, or structures therefor, in accordance with the local comprehensive plan or any local ordinances. Local ordinances, comprehensive plans, land use planning decisions, administrative decisions and procedures affecting parcels of land adjacent to any district shall take into account the existence of such district and the purposes of this chapter.

C. It shall be the policy of all agencies of the Commonwealth to encourage the maintenance of farming and forestry in districts and all administrative regulations and procedures of such agencies shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans or other funding.

D. No special district for sewer, water or electricity or for nonfarm or nonforest drainage may impose benefit assessments or special tax levies on the basis of frontage, acreage or value on land used for primarily agricultural or forestal production within a district, except a lot not exceeding one-half acre surrounding any dwelling or nonfarm structure located on such land. However, such benefit assessment or special ad valorem levies may continue if imposed prior to the formation of the district.

1977, c. 681, § 15.1-1512; 1979, c. 377; 1987, c. 552; 1997, c. 587.

§ 15.2-4313. Proposals as to land acquisition or construction within 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 farm or forestry operation within the district is in excess of one acre or that the total proposed acquisition within the district is in excess of ten 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 nonfarm structures, shall at least ninety days prior to such action notify the local governing body 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 local governing body 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 nonfarm structures are to be constructed;
4. An evaluation of anticipated short-term and long-term adverse impacts on agricultural and forestal operations within the district and how such impacts are 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 local governing body.

B. Upon receipt of a notice filed pursuant to subsection A, the local governing body, in consultation with the local 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 impacts 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 local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection.

C. If the local governing body 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 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 local governing body 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 local governing body shall issue a final order on the proposed action. Unless the local governing body, by an affirmative vote of a majority of all the members elected to it, 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 local governing body, 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.

1977, c. 681, § 15.1-1512; 1979, c. 377; 1987, c. 552; 1997, c. 587; 1998, c. [833](#); 2000, c. [1069](#).

§ 15.2-4314. Withdrawal of land from a district; termination of a district

A. At any time after the creation of a district within any locality, 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. 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. Land proposed to be withdrawn may be reevaluated through the Virginia or local Land Evaluation and Site Assessment (LESA) System. 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 serving the territory wherein the district is located. 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 § 15.2-4307 or § 15.2-4311.

B. Upon termination of a district or withdrawal or removal of any land from a district created pursuant to this chapter, land that is no longer part of a district shall be subject to and liable for roll-back taxes as are provided in § 58.1-3237. Sale or gift of a portion of land in a district to a member of the immediate family as defined in § 15.2-2244 shall not in and of itself constitute a withdrawal or removal of any of the land from a district.

C. 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 subsection B of § 15.2-4312.

D. 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 local governing body and the local commissioner of the revenue within two years of the date of death of the owner.

E. Upon termination or modification of a district, or upon withdrawal or removal of any parcel of land from a district, the local governing body shall submit a copy of the ordinance or notice of withdrawal to the local 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 local governing body shall delete the identification of such parcel from the zoning map, where applicable.

F. 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 § 15.2-4311 of this chapter.

1977, c. 681, § 15.1-1513; 1979, c. 377; 1985, c. 13; 1987, c. 552; 1997, c. 587; 2000, c. 521; 2011, cc. 344, 355.

Chapter 48 Agricultural and Forestal District

[HISTORY: Adopted by the Board of Supervisors of Clarke County 3-17-1992. Amendments noted where applicable.]

General References State Code 15.2-4300 thru 4314

§ 48-1. Renewal. The Clarke County Agricultural and Forestal District is modified and renewed in accordance with the provisions of § 15.2-4300 Agricultural and Forestal Districts Act of the Code of Virginia §15.2 –4300 thru 4314

- A. Only lands currently zoned Agricultural-Open Space-Conservation (AOC) and Forestal Open-Space Conservation (FOC) shall be included in the District.
- B. Land situated within incorporated town limits shall not be included in the District.

§ 48-2. Addition of lands to District.
[Amended 98-03-17]

- A. Addition of lands to the District:
 - (1) At the time of District review. Qualifying lands may be added to the District at the time of District review in accordance with the procedures set forth in the Agricultural and Forestal Districts Act of the Code of Virginia (§15.2-4300 thru 4314).
 - (2) During the District term. Qualifying lands may be added to the District during the District term in accordance with the procedures set forth in the Agricultural and Forestal Districts Act of the Code of Virginia (§15.2-4300 thru 4314). Applications to add qualifying lands to the District during the District term shall be considered on an annual basis subject to procedures established by the Board of Supervisors.
- B. Qualifying lands. The Land Evaluation and Site Assessment (LESA) System shall be employed as the dominant decision-making tool as to the qualification for land the District as follows except for land considered as open space. Though referred to generically as LESA, there are two separate scoring systems -- one for agricultural parcels and another for forestal parcels. The difference in the two systems is the indicator species used to classify productive soils.
 - (1) Parcels having a composite LESA score of 72 or higher for parcels less than 40 acres, a LESA score of 68 or higher for parcels between 40 and 129.99 acres or a LESA score of 64 or higher for parcels 130 acres or greater shall qualify for inclusion

in the District.

- (2) Parcels having a composite LESA score of lower than 60 shall not be qualified for inclusion in the District unless they qualify as described in Subsection D below.
- C. Other qualifying lands. Tracts which are adjacent to and operated contiguously with farming or forestry properties qualifying as in Subsection B(1) above and which are owned by one or more individuals who also own the qualifying farming property, shall be qualified for inclusion provided that the adjacent tract does not lie within the corporate limits of Berryville or Boyce.
- D. Qualifying open space lands. Parcels proposing to be included in the District as open space shall meet the following criteria:
- 1) The parcel shall not contain any commercial use except that which is allowed as a Principal Use and/or Structures by the County Zoning Ordinance.
 - 2) The parcel shall consist of a minimum of 5 acres.
 - a. The Board may make an exception to 5 acre minimum upon recommendations from the Advisory Committee and Planning Commission if the parcel is adjacent to a perpetual conservation easement, historical easement and/or is considered an environmentally sensitive area as determined by the County Natural Resource Planner or a County approved environmental or historical professional.
 - 3) The parcel shall contain at least one unused dwelling unit right.
 - 4) The parcel shall not use or transfer the dwelling unit right(s) during the term of the District.

§ 48-3. Term of District.

The term of the Clarke County Agricultural and Forestal District shall be 6 years.

§ 48-4. Effects on land use.

A. Within the District.

- (1) Subdivisions. A minor subdivision that creates no more than one additional lot shall be permitted for any parcel within the District during the term of the District except for property requesting inclusion to the District as open space. Requirements for open space is set forth in Section 48-2 (E) of

this code.

(2) Boundary Line Adjustments:

(a) Involving District parcels. Boundary line adjustments between parcels within the district shall be permitted.

(b) Involving District and non-district parcels. Boundary line adjustments between parcels where one of the parcels is not in the District shall be permitted if the parcel in the District is receiving land. If the District parcel is transferring land either with or without a dwelling unit right then the District parcel shall be limited to only one such boundary line adjustment during the term of the District and such boundary line adjustment shall be in lieu of the District parcel's subdivision right as set forth in Chapter 48-4 (A)(1).

(3) Rezoning. No parcel within the District shall be rezoned to other than an Agricultural-Open Space-Conservation (AOC) and/or Forestal Open-Space Conservation (FOC) zoning category.

(4) Special use permits.

(a) A special use permit shall not be granted for any parcel within the District other than special use permits for livestock auction markets, small-scale processing of specialty fruits and vegetables, and veterinary services, animal hospitals and breeding kennels.

(b) All other principal uses and structures and accessory uses and structures, as set forth in the Schedule of District Regulations, AOC and FOC District, of Chapter 188, Zoning, shall be permitted by right of parcels within the District.

B. Adjacent to the District. The establishment and existence of the District shall not subject any adjacent tracts to restrictions and/or regulations other than those already applicable through Chapter 188, Zoning, and Chapter 161, Subdivision of Land, and other land use ordinances and plans in effect. The LESA System shall be employed as a primary tool in the decision making process with respect to proposed rezonings and other proposed changes in land use for tracts adjacent to the District, including evaluating any applications for including additional lands in the District.

§ 48-5. Withdrawal from District.
[Amended 98-03-17]

- A. During the term of the District, withdrawals for good and reasonable cause shall be permitted as follows:
- (1) For financial hardship approaching confiscation of property, such hardship to be documented in writing. In the case where a portion of the enrolled land is proposed to be subdivided and would not meet criteria for enrollment in the District, all minor subdivisions (1 or 2 lots) will be withdrawn during the Clarke County Agricultural and Forestal District regular renewal period. For all major subdivisions (3 or more lots), those proposed lots not meeting the District requirements for inclusion into the Agricultural and Forestal District, must be withdrawn from the District prior to subdivision approval by the approving authority.
 - (2) Upon death of a landowner of record, no less than an entire tract of record as it existed on the date of renewal of the District may be withdrawn.
- B. At the end of the term. At the expiration of the term, but prior to renewal, each landowner shall be allowed to withdraw from the district, for any reason, upon written application stating such reasons.

§ 48-6. Notification to prospective purchaser.

The owner of property in the District is advised to notify a prospective purchaser of the property that the property is located in the District.

§ 48-7. List of parcels

The Clarke County Agricultural and Forestal District shall include the list of parcels, a copy of which is on file in the County Planning Department.

Amendments Chapter 48

1992-03-17

Adopted by the Board of Supervisors of Clarke County

1998-03-17

§ 48-2. Addition of lands to District. Remove 2-C-(3); Add to § 48-5-A-(1) subdivision requirements.

2004-03-16

Clarke County Agricultural renamed Clarke County Agricultural and Forestal District and add FOC throughout Chapter.

2010-03-16

County Code amended to include open space category with criteria for acceptance, criteria for boundary line adjustments and formal renaming of District from Agricultural District to Agricultural and Forestal District.

2016-02-16

Chapter amended throughout technical edits for clarity and consistency purposes; §48-1 Renewal add District; §48-2 Addition of lands to District, §48-4 Effects on land use, §48-6 Notification to prospective purchaser CC-2016-01