

Qualifying Timberland for Productivity Appraisal

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Background

In this manual, the word “timber” refers to standing trees that are grown to produce commercial wood products, such as sawtimber, pulpwood, poles, and chips. “Timberland” refers to forestland that is capable of producing commercial wood crops.

Timberland in Texas varies in many ways. A pine plantation may have trees just over a year old, while another pine plantation may have much older and taller trees. Hardwoods may be the only timber on one tract, while other tracts may have pine trees or a mixture of hardwoods and pine. In addition, soil productivity—a key determinant of timber growth—often varies dramatically from one timber tract to another, even within the same county.

The degree of intensity with which timber producers manage the land also differs. Some owners practice custodial care, which means the owner does nothing to manage the land, while other owners manage their land intensively. Timber plantations are usually managed intensively. However, some plantation land may require little management for a few years, then need sophisticated, intensive management for several years. For example, a timber plantation that is between thinning activities and prescribed burning may need little management, but final harvest and preparation for replanting require intensive management.

These variations among timber tracts and timber growing operations make determining eligibility for timber productivity appraisal a challenge for a chief appraiser. The chief appraiser must be familiar with timber activities in the immediate area and the forest region of which the appraisal district is a part.

A valuable source of information about timber activity and timberland use in the area is the “agricultural appraisal advisory board.” The Tax Code, [Section 6.12](#), requires the chief appraiser to appoint, with the advice and consent of the appraisal district’s board of directors, an agricultural appraisal advisory board consisting of three or more members as determined by the board of directors. The law requires that one of the members must be a representative of the county agricultural stabilization and conservation service. The other members must own land in the district that qualifies for productivity appraisal and must have been residents of the district for at least five years. The function of this board is to advise the chief appraiser on the valuation and use of land qualified for productivity appraisal, including agricultural land and timberland.

If chief appraisers plan to seek the advisory board’s advice on timber characteristics and timber management activities within their respective appraisal districts, they should appoint individuals who are knowledgeable about the area’s timber.

Eligibility Requirements for Timber Productivity Appraisal

The Texas Constitution permits timber productivity appraisal only if the property and its owner meet specific requirements defining timber use. Land will not qualify simply because it has timber standing on it. In addition, timberland that is used principally for aesthetic or recreational purposes will not qualify.

The Tax Code, [Section 23.72](#), sets the standards for determining whether land qualifies:

“Land qualifies for appraisal . . . if it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area with intent to produce income and has been devoted principally to production of timber or forest products or to agricultural use that would qualify the land for appraisal . . . for five of the preceding seven years.”

To qualify land for timber productivity appraisal, a property owner must show the chief appraiser that the land meets the Tax Code, Section 23.72, standard. To do so, the property owner must apply for the appraisal and give the chief appraiser the information necessary to determine if the land qualifies. The owner also must notify the chief appraiser of any changes in the land’s status.

To qualify for timber productivity appraisal, landowners must meet each of the following six eligibility requirements.

- The land must be currently and actively devoted to timber production.
- The land must be used principally for timber production.
- The land must be devoted to timber production to the degree of intensity generally accepted for the area.
- The owner must have an intent to produce income.
- The land must have been dedicated principally to agriculture or timber production for any five of the preceding seven years.
- The property owner must file a timely and valid application form.

The first five requirements are discussed in detail in the “Eligibility Requirements” section. The sixth requirement, that the owner file a timely and valid application form, is discussed in the “Application for Timber Productivity Appraisal” section.

Timber in Transition

In 1997, the Legislature added [Section 23.59](#) to the Tax Code and allowed for timber in transition. These are tracts that had been appraised as open-space land under Subchapter D, Chapter 23 of the Tax Code for at least five preceding years and are converting from an agricultural use to timber. The owner can elect for the land to continue to be appraised as open-space agricultural land for 15 years by submitting a new application for agricultural appraisal and indicating the conversion to timberland.

The land qualified as timber in transition will be appraised as if it were still in the same category of agricultural use that it was immediately before conversion to timber. The election will remain in effect until the end of the tax year in which the 15th anniversary of conversion occurs. During this period, the land must continue to qualify as timberland. The qualifications for timberland are discussed below. In the 16th and subsequent years and as long as the land continues to qualify as timberland, the land will be appraised as timber and its value will be determined based on the methodology set out in this Manual.

As an example, a tract of land in Polk County qualified as open-space agricultural land in 1995. The land's soil is Diboll-Keltys, which has a site index of 80. (See discussion of [site index](#).) The land was classified as Native Pasture I until March 2003 when the owner began site preparation for conversion to a pine plantation. At that time, the owner submitted a new application for 1-d-1 Open Space Agricultural Appraisal and indicated the land was being converted from native pastureland to timber. As long as the land continues to qualify as timber, the tract will be appraised as if it were still Native Pasture I through the 2018 tax year. Beginning on January 1, 2019, the tract will be appraised as timber and classified as Pine II (See discussion of [forest type and soil classification](#)).

Timber Appraisal Applies to the Land

Timber appraisal applies only to land and its potential for growing timber. It does not apply to improvements on land or to minerals.

- **Improvements.** Buildings and structures such as barns, sheds, or other outbuildings must be appraised separately at market value. Fences, however, are appurtenances and are not appraised separately. Land beneath outbuildings and other improvements related to timber use qualify for the special appraisal because the owner uses it in the timber producing operation.
- **Minerals.** Oil, gas, or any hard mineral must be appraised separately at market value.
- **Harvested and Standing timber.** Harvested timber in the owner's hands and located on January 1 of a tax year on the real property where it was produced and any standing timber is exempt from property tax.^[1]

Some man-made alterations of, or additions to, timberland are appraised as part of the land. These appurtenances to the land—canals, water wells, roads, stock tanks, and other similar reshaping of the soil—are included in the value of the land and are not separately appraised.

Eligibility Requirements

Current and Active Devotion to Timber Use

Under the Tax Code, Section 23.72, land must be “currently and actively devoted to timber use” to qualify for timber productivity appraisal. Unlike other types of property, the land may not have visible physical characteristics of qualification on January 1, but may still qualify. If timber use is not evident on January 1, the chief appraiser should investigate further to see if the owner can show that the land will be devoted to active timber production for the calendar year for which he or she is applying, by reason of other indications or evidence of current and active devotion.

Determining if the owner is currently and actively devoting land to timber production is often a difficult and complicated task. Consider the following situations.

- The chief appraiser may not be able to see signs of activity when a timber operation is young, even though the owner may have spent a great deal of time, money, and effort to start the operation and is currently and actively devoting the land to timber use.

- A chief appraiser may not be able to see any management activity at the time of inspection if the owner has not harvested for some time.
- The chief appraiser may not be able to find evidence of active devotion if the size of the tract means that management activities take place away from the roads that give the chief appraiser access to the land.

However, the absence of visible physical timber activities on the land does not mean that the land is not currently and actively devoted to timber production. The chief appraiser should look for other indications of current and active devotion. The following are some indications of current, active devotion.

- **Timber activity records.** Is the owner able to produce records showing timber management activity? Some records that indicate timber management activity are documents showing timber has been harvested, canceled checks for services, contracts of sale, and land leases.
- **Forest Management Plan.** The owner operates under a current, written forest management plan. A forest management plan must be developed for the present time. An outdated plan is of no use as a management document. The plan also should be in writing and signed by the individual who prepared it.

However, the existence of a current management plan does not always mean the owner is following the plan. The owner should be able to show that he or she is using or intends to use the plan for timber production.

Knowledgeable timberland owners may prepare their own plans. If the owner of a marginal tract cannot afford a privately developed forest management plan, is on a waiting list to have a plan developed by a public agency, or lacks the expertise to develop his or her own plan, the chief appraiser should look for other evidence of current and active devotion.

- **Timber cost-sharing programs.** The owner receives Texas Reforestation Foundation (TRe), Environmental Quality Incentive Program (EQIP), Conservation Reserve Program (CRP) or Forest Land Enhancement Program (FLEP) cost sharing funds for reforestation and timber stand improvement. The Texas Forest Service coordinates the federal EQIP, CRP, and FLEP programs. TRe is a privately funded cost-sharing program administered jointly by the Texas Forest Service and the Texas Forest Association.
- **Efforts to sell timber.** The owner has letters or other documents showing efforts to sell the timber.
- **Salvage activity.** The owner has documentation showing that he or she has attempted to salvage damaged or dead timber that continues to have value.
- **Certified tree farm.** A certified tree farm is privately owned, protected, and managed timberland. Timberland must meet standards adopted by the American Forest Foundation for certification. Standards include management for sustainable forests and timely reforestation with desirable species. A certified tree farm is inspected by professional foresters before it may qualify for the program and is periodically re-inspected. Most certified tree farms are easily recognized by the green diamond-shaped "TREE FARM" marker placed in front of the property.
- **Memberships in associations.** The owner is a member of one of the following: the Texas Forestry Association; a county or local timber growers association; or a county or local timberland owners association.
- **Assistance programs.** Does the owner participate in a forest industry landowner assistance program? Many firms in the forest products and the pulp and paper industry have entered into agreements with private timberland owners to manage their timber in exchange for first chance to buy the timber when it is ready to harvest.
- **Participation in forestry extension activities.** The owner participates in forestry extension activities. The Texas Cooperative Extension offers periodic programs for timberland owners. They also offer on-line courses through their Cooperative Extension Curriculum Project.
- **Consulting foresters.** Has the owner contracted with or hired a private consulting forester to help manage his or her timber? What were the results of this collaboration? Is the owner operating on the written advice of a consulting forester?

Timber Production Must be the Land's Primary Use

Land that is currently and actively devoted to timber production will not qualify for productivity appraisal unless timber

production is the land's primary use. If the owner uses the land for more than one purpose, the principal use must be growing timber. Although the distinction between "currently and active devotion" and "primary use" may be subtle, there is a difference between the two criteria.

While timber production must be the primary use of the land, other compatible uses do not prevent land from qualifying if timber production remains the primary use. For example, an owner may use land principally to grow timber and lease it for hunting. However, if hunting activities are the primary use of the land, and the timber is used to create an environment for wildlife production, then the land would not qualify for timber productivity appraisal.

The chief appraiser must determine all the uses to which the owner puts the land and decide which use is the primary one. If any use is incompatible with timber production, or if it replaces timber production as the primary use of land, the land is not principally devoted to timberland use and cannot qualify for timber productivity appraisal.

Situations Where Timber Production may not be the Land's Primary Use.

The primary use test is particularly important for timberland because the kind of intensive management required to grow agricultural crops is not necessary to grow timber. This less visible management activity can make determining the land's primary use a difficult job.

The following situations are intended to illustrate situations in which timber production may not be the land's primary use, although the land appears to be currently and actively devoted to timber production. In these or comparable situations, the chief appraiser should use the situation as a trigger for further, careful investigation of the application.

- **Presence of deer-proof fences on the property.** Although this is not always the case, the existence of deer-proof fences around the property may indicate that the property is being used for wildlife management. The chief appraiser must then determine if the owner's principal use is timber production, hunting or wildlife management.
- **Presence of stock or wildlife ponds on the property.** Ponds are not normally necessary for the conduct of timber management activities or timber harvesting. The existence of ponds may trigger further investigation of the land's primary use.
- **Land being readied or held for development.** Some timber harvests may indicate that the land is being prepared for housing development rather than used principally to grow timber. (These are commonly referred to as "real estate cuts.") While a sign offering land for development or one indicating it is zoned for industrial or residential use might be an indication that land is being used principally for development, it is not conclusive and the chief appraiser should seek additional evidence.
- **Presence of homes, vacation facilities, retreats, and recreational facilities on the property.** The existence of dwellings and recreational facilities, such as retreats, camps, lodges, and similar facilities, may indicate that the timberland is being used to provide an aesthetic environment for these facilities. If this is indeed the case, timber production may not be the land's primary.

Primary Use Guidelines

A chief appraiser may establish a policy to follow reasonable and carefully developed guidelines for determining primary use. Establishing guidelines requires the chief appraiser to become familiar with timber activity in the area. The chief appraiser may also rely on the expertise of the agricultural appraisal advisory board in establishing primary use guidelines.

Guidelines, however, should serve only as a trigger for more investigation—they should not be arbitrarily or automatically applied. For example, a chief appraiser whose guidelines require a management plan should not automatically deny timber appraisal to an owner who does not have a plan. A property owner with no forest management plan may actually be managing the land more actively and intensely than other owners who have management plans. This land should qualify for productivity appraisal if its use meets all other eligibility qualification requirements. Instead, the chief appraiser should use the lack of a plan as a trigger to investigate the application more closely.

Guidelines that are applied arbitrarily or by rote can produce incorrect results. An application for timber productivity appraisal should not be denied outright because the chief appraiser discovers deer-proof fences, wildlife ponds, dwellings or recreational facilities on the property. The presence of these structures is an indication, not proof, that timber production may not be the land's primary use. In these situations, the chief appraiser should carefully investigate the land's primary use.

Degree of Intensity

To qualify for productivity appraisal, timberland must be used to the degree of intensity generally accepted for prudent timber growers in the area. The degree of intensity test is intended to exclude from productivity appraisal land on which token timber activity occurs simply to get tax relief.

The law doesn't set degree of intensity standards. The chief appraiser must develop standards after carefully investigating the area's typical timber operations performed by prudent landowners. After thoroughly studying the area, the chief appraiser should set minimum degree of intensity standards. The chief appraiser may also rely on the expertise of the agricultural appraisal advisory board in determining the typical degree of intensity for the prudent timber grower.

To set degree of intensity standards, the chief appraiser should analyze the major types of timber operations in the area. This analysis should break down the typical steps in producing timber and attempt to specify how much time, labor, equipment, etc., is typical for each type of timber operation. The sources listed in Appendix A may help the chief appraiser determine how much of these items are typically used.

Degree of intensity standards will vary from one timber growing area and operation to another. In general, there are three different levels of management intensity: custodial, minimal, and intensive.

Custodial management is "hands-off" management. The only activities the owner conducts are payment of property taxes and occasional visits to the site. However, it is highly unlikely that a timber property that shows no indication of management activity for two or more decades is being actively devoted to timber production.

Minimal management may fall anywhere between custodial management and intensive management. The owner may undertake some activities, such as periodic thinning, regular site visits, or maintenance of an access road.

Intensive management can involve many activities, including careful soil preparation for replanting, regular thinning and/or prescribed burning to reduce competing vegetation, removal of undesirable trees, following a program to check for and control insects and disease, prompt actions to control insects and disease, and building and maintaining roads to the site.

Large timber plantations owned by corporations may receive intensive management; small operations owned by individuals may receive custodial management. The chief appraiser's degree of intensity standards should recognize these different levels of management activity and differences among timber operations.

In most cases, property owners must prove that they are following the common production steps for their type of operation and using typical amounts of labor, management, and investment. However, a timber growing operation is not disqualified simply because it differs from the typical operation in some respects. Appraisers should not, for example, disqualify a custodial timber operation because many comparably sized operations are more management intensive. Nor should an owner who is clearly meeting the degree of intensity test be disqualified because the operation has some element of the degree of intensity test missing. The total effort finally determines whether a given timber growing operation qualifies, not the level of each separate "input."

The degree of intensity test applies to the year of the appraisal only—it does not apply to the historical use (time period) requirement. Land used principally for timber for five of the preceding seven years may qualify although it was not used to the typical degree of intensity during those years. The chief appraiser should not apply minimum degree of intensity standards arbitrarily—they are a trigger for a more careful review of the application. For example, if the minimum standards require regular thinning of competing vegetation, the application should not be denied simply because the land is not thinned regularly. The chief appraiser should instead carefully review the application and inspect the property to determine if the land qualifies.

Intent to Produce Income

The owner must use the land with an intent to produce income. Like the degree of intensity test, this test excludes those owners who aren't producing timber and who are trying to use productivity appraisal to avoid paying property taxes on the land's market value.²¹ Whether the owner has an intent to produce income is a fact question for the chief appraiser to decide.

To qualify, the owner is not required to prove that the land has produced income in the current year. Timberland does not produce income regularly because the time between harvests is long. At the time of qualification, however, the owner must show evidence of an intent to produce income.

Land that does not produce income (in this context, income means net income) during the time in which a prudent manager would have produced income may not qualify. Further, an owner probably has no real intent to produce income if he or she has had no expenses directly related to the timber operation within the last two decades.

The chief appraiser may use expense receipts, canceled checks, or current accounts of expenses, labor, and revenues to determine if the owner has expenses directly related to timber production. An owner seeking to produce income usually will keep these types of records.

Some examples of evidence of intent to produce income are:

- Receipt of revenues through sale of timber;
- Letters or other documents showing that the owner has attempted to sell the timber;
- A contract of sale;
- Receipts, canceled checks, and other evidence that the owner has had expenses or income related to the timberland's use;
- Investments in improvements to enhance the value of the existing timber;
- Purchase of easements to allow loggers access to land-locked tracts;
- Investments in substantial amounts of reforestation or smaller amounts if other parts of the tract are already in commercial timber;
- Attempts to salvage timber that has value but that is damaged or dead;
- Using a consulting forester to help manage the land;
- Hiring someone to conduct a timber sale; and
- Seeking recommendations of a public forester before making a timber sale.

Historical Use Requirement

Land used primarily for either timber or agricultural production during any five of the previous seven years may qualify for timber productivity appraisal. A landowner may point to a history of agricultural use that would qualify the land for productivity appraisal in meeting this requirement. As long as either timber or agriculture was the principal use in the preceding years, the land qualifies although that use may not have met the degree of intensity requirement in all or some of those years. This historical use requirement attaches to the land. It is not a requirement for the landowner to show a history of timber production activities.

Application for Timber Productivity Appraisal

The Tax Code, Section 23.75(b), requires the comptroller to prescribe the [application form](#) for timber productivity appraisal. The comptroller's application form has been adopted by State Comptroller Property Tax Rule 9.402 (relating to Special Use Application Forms) and is available from the comptroller's Property Tax Division and through the agency Web site.

The appraisal district may copy the comptroller's form and offer it to local property owners. An appraisal district may use a form that substantially complies with the comptroller's form.

If the initial application is valid but does not contain all the information the district needs to rule on an application, the chief appraiser may require the applicant to give additional information. This procedure is described later in this section.

Where the district offers its own form, the applicant may choose between the comptroller application form and the district's form. An applicant may not be denied the appraisal because he or she chooses to use the comptroller form. The applicant must completely provide all information requested by the comptroller form.

Property owners must file applications with the chief appraiser in the appraisal district where the land is located. Taxpayers whose land is appraised by more than one appraisal district must file an application in each district.

The law requires chief appraisers to share appraisal information on properties within overlapping areas. Chief appraisers are also required to coordinate appraisal records and appraisal activities relating to properties in overlapping areas by written agreement. Appraisal districts must send a comptroller [prescribed advisory notice](#) to affected property owners informing them that required reports and other documents must be filed with or sent to each appraisal district. This advisory notice must also inform affected property owners that they should consider sending any other document relating to the property to each appraisal district.

A property owner may file a single application form covering all tracts within an appraisal district. Owners need not file a separate form for each tract as long as they provide sufficient information to show that all tracts qualify under the law.

The chief appraiser should encourage owners to file a single form if they are managing several tracts as a unit. The chief appraiser must view the entire timber growing operation as a unit—not with respect to the activities on each individual parcel. The single application form notifies the appraisal district of the operation's unity.

Filing Deadline

An application must be postmarked or filed no later than midnight, April 30. For good cause and only on the property owner's request, the chief appraiser may extend the filing deadline in individual cases for not more than 60 days. The property owner must request an extension before the filing deadline.

The Tax Code does not define "good cause." However, it is commonly something the applicant cannot control. Illness or injury or an inability to transact normal business for a period that effectively prevents filing on time is usually good cause. Each appraisal district should prescribe its good cause requirements.

Late Application

A property owner who misses the deadline may file a late application until the appraisal review board approves records for that year (usually about July 20). However, there is a penalty for late application. An application filed after April 30 is subject to a penalty equal to 10% of the difference between the tax if imposed at market value and the tax imposed at the timber productivity value. If the chief appraiser extended the deadline for that property owner, this penalty does not apply.

Chief appraisers must note imposition of the penalty in the appraisal records. They also must send the property owner written notice of the penalty and explain the reasons. The tax assessor adds the penalty amount to the tax bill and collects the penalty along with the annual tax payment.

A lien attaches to the property until the penalty is paid. If the penalty remains unpaid on February 1 of the following year (or a later delinquency date if tax bills are mailed late), penalty and interest on the penalty amount accrue as if it were a delinquent tax.

Failure to File the Application Form

If a person does not file a valid application before the appraisal review board approves the appraisal roll, the land is ineligible for productivity appraisal in that tax year.

One Time Application

Once the application is filed and approved, the land continues to receive productivity appraisal every year without a new application unless the ownership changes, the land's eligibility changes, or the chief appraiser requires a new application. The chief appraiser may require a new application if he or she has good cause to believe that the land's eligibility for productivity has ended. If the chief appraiser requires a new application, the property owner must meet the deadlines that apply to a new applicant. To better inform the taxpayer, the chief appraiser may wish to state in writing the reason for a new application.

Notification of Changes in Eligibility by Landowner

If the land's eligibility ends or its ownership changes, the property owner must notify the appraisal office in writing before the next May 1. New owners are not eligible for timberland productivity appraisal unless they apply. If the owner fails to do so, one or more penalties will apply.

If the land remains under the same ownership and the owner fails to inform the appraisal district that the land is no longer eligible for productivity appraisal, either because the land is no longer in timber use or because the degree of intensity has fallen below that typical for the area, the property owner must pay a penalty equal to 10% of the difference between the taxes imposed under the timber use and the taxes that would have been imposed under the new use. This penalty applies for each year the property received the incorrect appraisal, but for no more than five years.

If the property erroneously receives productivity appraisal because a new owner failed to file an application or other reason, the chief appraiser must calculate the difference between the land's market value and its productivity value. The owner must pay taxes and penalties on the difference between these values for the time that the land erroneously received productivity appraisal, plus a 10% penalty on these taxes. This additional tax and penalty may not cover a time period exceeding five years. In the year the chief appraiser discovers the change, the chief appraiser should add this value to the appraisal roll as property omitted in a prior year.

For example, if a timber producer reduces the scale of the operation and timber is no longer the land's principal use, the land will not be eligible for productivity appraisal. If the landowner fails to notify the appraisal district and, therefore, receives productivity appraisal, the land is back assessed. For each year in question (not to exceed five years), the owner must pay the difference between the taxes based on productivity appraisal and the taxes based on market value, plus a 10% penalty on that difference. Because the land has not been taken completely out of timber use, it is not subject to rollback taxes. Rollback taxes are only imposed when land is no longer used for timber or agricultural purposes. Rollback procedures are discussed in detail in Chapter III.

When a penalty is imposed, the chief appraiser must notify the property owner. This notice must explain the procedures for protesting the penalty. The chief appraiser notes the imposition of the penalty in the appraisal records, and the tax assessor adds the amount of the penalty to the property's annual tax bill.

Chief Appraiser's Action

The chief appraiser must review each application and decide whether to:

- approve it and grant productivity appraisal;
- disapprove it and ask for more information; or
- deny the application.

The chief appraiser must determine the validity of all timely filed applications before turning all appraisal records over to the district's appraisal review board. The deadline is May 15 or as soon afterward as is practicable.

The chief appraiser usually gives the appraisal records to the appraisal review board (ARB) by May 15. Property owners who were denied productivity appraisal may file a protest with the ARB. In addition, taxing unit officials who believe productivity appraisal was erroneously granted to any property owner may seek to remove that grant by filing a challenge with the ARB.

The chief appraiser must rule on all late-filed applications before the appraisal review board approves the records for the year. The chief appraiser must notify the applicant in writing within five days of an application's denial. This notice must explain the procedures for protest.

Additional Information

The chief appraiser may request additional information. If the initial application form is valid but the chief appraiser does not have all the information needed to determine if the land qualifies, the chief appraiser may request additional information. The chief appraiser may request only additional information that is necessary to determine if the land qualifies for productivity appraisal.

In determining whether an application is valid, the chief appraiser should take care to consider the application as a whole. If the chief appraiser determines that the omission of a piece of information on the original application was a mistake, the chief appraiser may, at his or her discretion, either: (1) extend the filing deadline for 60 days; or (2) send a form requesting additional information.

Information contained in income statements and income tax returns, land lease rates, and lease agreements is not necessary to determine whether the land qualifies—other less invasive evidence of qualification exists. If the chief appraiser asks an owner for this type of information, the request should clearly state that the owner is not required to give the information to qualify for productivity appraisal. Laws related to confidential information must be observed.

The applicant must provide additional information within 30 days after the date of the request or the application will be denied.

If there is good cause, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days.

Denial of Application

If a chief appraiser denies an application, a notice of the denial must be delivered to the applicant within five days. This notice must be sent by certified mail (See [Section 1.07\(d\)](#), Tax Code). The notice must explain the procedures for protesting to the appraisal review board. To better inform the taxpayer, the chief appraiser may wish to explain the reasons for denying the application.

Ineligibility for Timber Productivity Appraisal

Even if land meets all the preceding conditions, some situations may block approval of an application.

Land Located Within the Boundaries of a City or Town

Land within the boundaries of a city often will not qualify. Land located within an incorporated city or town must meet all the criteria for productivity appraisal and, in addition, must meet one of the following:

- the city must not provide the land with general services comparable to those provided in other parts of the municipality having similar features and population; or
- the land must have been devoted principally to production of timber or forest products continuously for the preceding five years.

Land Owned by a Non-Resident Alien or Foreign Government

Tax Code, Section 23.77(2) and (3), provide that some kinds of foreign ownership make the land ineligible for productivity appraisal. Under the law, if the property owner is a non-resident alien (a non-United States citizen who does not reside in the United States), the land can't qualify. Similarly, the law states that a corporation can't qualify its land if a non-resident alien, a foreign government, or both control the corporation.

The Texas Supreme Court has held, however, that Tax Code, Section 23.56(3), barring foreign corporate and governmental ownership from qualifying land for agricultural appraisal, unconstitutionally violates the Texas Constitution's guarantee of equal protection.^[3] Although the Court's opinion did not address the ineligibility of non-resident aliens (Tax Code, 23.56 (2)), its reasons for holding subsection (3) of that statute unconstitutional also applies to the non-resident's eligibility for timber productivity appraisal.

The *HL Farms* case did not address timber appraisal, but the law making productivity appraisal unavailable to foreign owners is identical to the agricultural appraisal law. Tax Code, Section 23.77(2) and (3), is identical to Tax Code, Section 23.56(2) and (3). Because of the similarity between the agricultural appraisal and the timber appraisal sections, a court is likely to hold that *HL Farms* applies to timberland. Therefore, a chief appraiser should seek the advice of an attorney if the appraiser is confronted with an application for timber appraisal submitted by a foreign owner.

1978 Value

When the Texas Legislature adopted timber productivity appraisal, the law was written to create a minimum taxable value on timberland. Tax Code, Section 23.78, provides that the minimum taxable value of qualified timberland is the market value assigned to the land by the taxing unit in 1978. The purpose of this statute was to ensure that a taxing unit with a large amount of timberland would not suffer a serious decrease in its tax base after implementation of productivity appraisal. This means that timberland qualified for productivity appraisal will not be taxed on its productivity value if that value is less than the 1978 value.

The Tax Code requires a unit's tax assessor to compare the total productivity value for the parcel with the unit's 1978 value for the parcel. If the total productivity value is less than the total 1978 value, the unit's assessor must substitute the 1978 value for the entire parcel.

If the nature of the parcel has changed, the assessor must use historical value to reconstruct what the entire parcel's value would have been in 1978. For example, if a parcel includes more land in the current year than it did in 1978, the assessor may not substitute a 1978 per acre average for the new acreage. Instead, a unit's assessor must use historical data to determine what the 1978 value for the entire tract would have been for the unit.

A unit that did not exist in 1978, or that did not levy an ad valorem tax in 1978, may not substitute a 1978 value for the land's productivity value. The law permits only substitution of the 1978 value "for the unit." A unit that did not exist or that had no property tax in 1978 has no market value to substitute for the productivity value.

The tax assessor must determine or reconstruct a 1978 value for each unit for which the assessor collects taxes. Each unit's 1978 value must be applied separately from that of other units. The law does not provide for an average 1978 value that is applied for all units that had a 1978 value. Nor does it provide for a historical reconstruction that combines the taxing units having a value in 1978.

(For a discussion of Section 23.78 and its application, see: *Temple-Eastex, Inc. v. Spurger Independent School District*, 720 S.W. 2d 607, Tex. App. – Beaumont 1986, no writ.)

Wildlife Management Use

In 1995, the Legislature amended the Tax Code to include wildlife management as an agricultural use that could qualify land for open space agricultural appraisal. This change does not apply to timberlands. Timberland owners interested in converting from timberland to wildlife management must first qualify for 1-d-1 open space appraisal. While timber production is included as an activity that can satisfy the historical use requirement needed to qualify for open space appraisal, the land must be devoted principally to an agricultural use in order to qualify for open space appraisal. Once land receives 1-d-1 open space appraisal, the use can be changed to wildlife management the following year.⁴¹

Land on Which 1-d-1 Appraisal is Waived

An owner may waive his right to productivity appraisal. By barring the land from receiving productivity appraisal, the waiver insures that a taxing unit may depend on a certain level of tax revenue. This certainty may be critical to the survival of small taxing units or those that are in debt.

A waiver is effective for 25 years. Land may not qualify for productivity appraisal for the duration of the waiver. A change in ownership does not revoke the waiver. An owner may file a waiver on land that does not qualify for productivity appraisal. A waiver may be filed with some or all the units that tax the property.

A waiver filed before May 1 becomes effective when it is filed. For good cause, the chief appraiser may extend the May 1 deadline for 60 days. These waivers become effective the year following the filing year.

To revoke a waiver, the owner must file an application for revocation with the governing body of each taxing unit where the waiver is effective. The unit's governing body must vote to approve the revocation and make a finding the unit's debt obligations will not be affected.

Freestone Central Appraisal District Intensity Standards For Timber Lands

The Texas Constitution permits timber productivity appraisal only if the property and its owner meet specific requirements defining timber-use. Land will not qualify simply because it has timber standing on it. In addition, timberland that is used principally for aesthetic or recreational purposes will not qualify.

Freestone County has a soil classification of Soil Type 3 and therefore is not considered to be an area conducive to the production of timber.

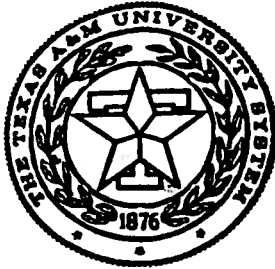
The following are types of timber classes according to the PTD's Manual for the Appraisal of Timberland.

Trees should be planted with 10' between rows and 4' spacing between trees.

Pine Straw should be harvested every 4 to 5 years

Thinning and culling in 8 to 12 years.

Forest Type	Definition & Comments
Pine	Includes all forested areas in which the trees are predominately evergreens (green throughout the year and do not lose their leaves.). Pine and other softwoods make up more than 2/3 of the trees
Hardwood	Includes all forested areas with a predominance of deciduous trees (trees which lose their leaves at the end of the frost-free season). Deciduous trees make up more than 2/3 of the trees.
Mixed	Includes all forested areas where both evergreen and deciduous trees are growing and neither predominates. Either evergreen or deciduous trees each make up more than 1/3 of the trees.



TEXAS AGRICULTURAL EXTENSION SERVICE

TYPICAL FOREST MANAGEMENT PRACTICES FOR TIMBER MANAGEMENT

By

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Sources:

- ◆ Texas Forest Service, "Timberland Management Cost Study," January 29, 1998
- ◆ "Forest Landowners Manual", 31st Edition, April 1997
- ◆ Unpublished information from forest industry tour, April 1997

Assumptions:

1. Tract size: 160 acres
2. Rotation: 35 years
3. Sales at age 15, 25 and 35
4. Landowner makes 4 trips per year to property. 250 miles r.t. @\$0.28 per mile

Management Practices:

Cost/Acre/yr.

◆ Establishment (Site preparation, planting, weed control, consultant)	\$178.53*
◆ Fertilizing at establishment	59.07*
◆ Fertilizing at mid-rotation	54.95*
◆ Consultant:	
@15 year sale	36.48*
@25 year sale	65.53*
@35 year sale	143.80*
◆ Post-sale Inventory	
@16 years	7.25*
@ 26 years	6.54*
◆ Management Plan @16 years	5.29*
◆ Property visits (4/yr)	1.75
◆ Educational Expenses (Memberships, seminars, etc.)	2.81
◆ Annual Accounting Costs	0.25
◆ Fire Protection	1.32
◆ Herbicide Release @ 16years	59.34*
◆ Pruning @16 years	106.25*
◆ Road Maintenance (0.875 miles)	3.66
◆ Property tax (varies by county and by timber class)	

* Costs in indicated years incurred only

TYPICAL FOREST MANAGEMENT ACTIVITIES

- 1. Site preparation and planting**
- 2. Boundary line maintenance**
- 3. Weed control**
- 4. Fire prevention**
- 5. Replanting**
- 6. Fertilizing (optional)**
- 7. Rodent control (optional)**
- 8. Pre-Commercial thinning**
- 9. Sale preparation and administration**
- 10. Management plan preparation**
- 11. Pruning (optional)**
- 12. Accounting and Tax preparation (Income & Estate)**
- 13. Education**
- 14. Farm visits**

INDICATORS OF FOREST MANAGEMENT

Timber harvests

Thinnings

Application of herbicides

Tree marking paint

Plantations

Seed tree management

All age management

Pruning

Forest management plans

Tree Farm membership and signs

Membership in Texas Forestry Association, County landowner association, Forest Landowners

Fire lanes built and maintained

Boundaries maintained by cleaning, planting wildlife food strips, etc.

Participation in forest management education programs

Management Costs by Ownership and Region — The final requirement of the timberland management cost study is to develop an average of costs over the past five years (1992-1996). A cost deflation of 2.50 percent was used to arrive at previous year's cost.

The final average timberland management cost by region, 1992-1996, was as follows:

Forest Type	Productivity Class			
	I	II	III	IV
Northeast				
Pine	43.54	34.65	30.95	16.58
Mixed	26.21	20.57	16.19	5.58
Hardwood	16.96	14.46	8.53	4.12
Southeast				
Pine	43.07	38.06	28.45	19.32
Mixed	25.19	21.97	19.83	5.74
Hardwood	18.94	16.57	8.56	4.05

A summary of the management costs by type and productivity class and region for each year 1992-1996 is shown on the attached table *Summary of Weighted Management Costs Discounted Back From 1996*.