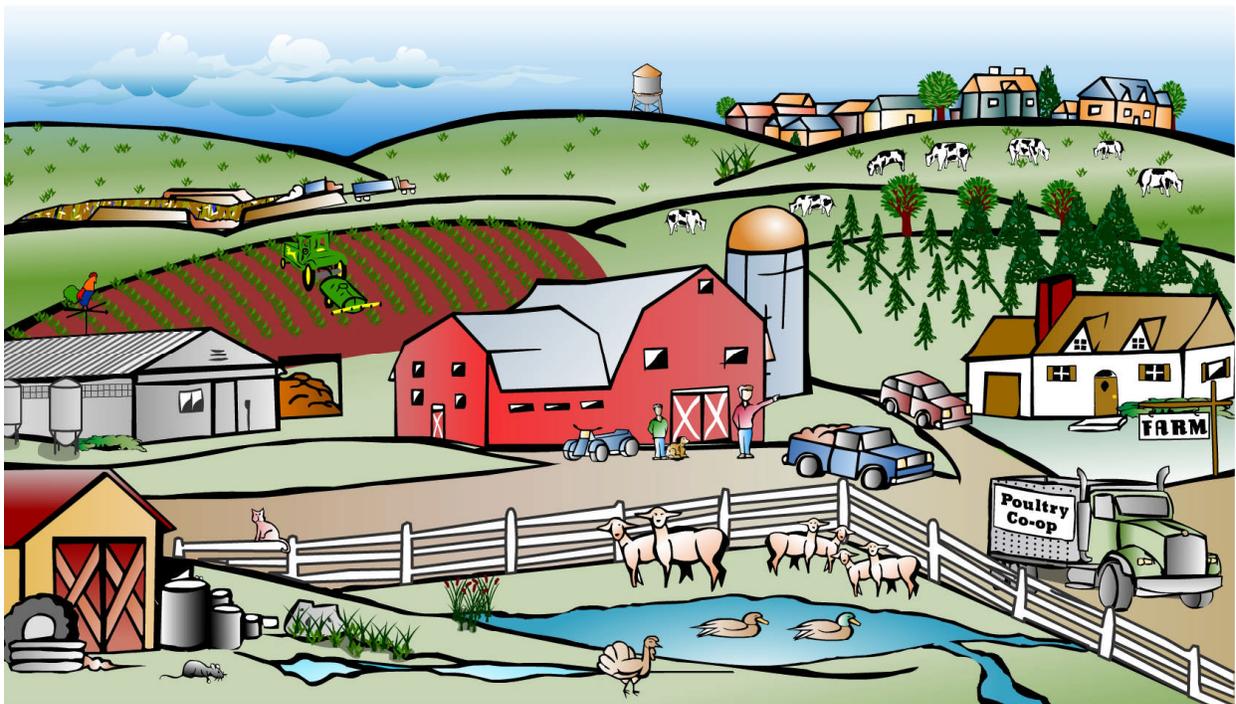


# Guidelines For Qualifying Farm & Ranch Lands For Productivity Appraisal



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# I. Introduction

Open Space Land Valuation, as authorized by Article VIII, Section 1-d-1 of the Texas Constitution, allows qualifying lands to be appraised (and taxed) according to the lands capability to produce agricultural products. These properties will be assigned both a market value and a productivity value by the appraisal district.

The Constitution permits special agricultural appraisal only if land and its owner meet specific requirements defining farm and ranch use. Land won't qualify simply because it is rural or has some connection with agriculture. Neither will it qualify because it is open land that has no other possible use. The law does not guarantee a tax break for everyone who makes a living from the land. Casual uses such as home vegetable gardens do not really constitute agriculture.

Section 23.51 of the Property Tax Code sets the standards for determining whether land qualifies:

*“Qualified open-space land means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area.”*

To qualify his land for agricultural appraisal, the property owner must show the chief appraiser that his land meets the Sec. 23.51 standard. To do so, the property owner must apply for the appraisal. The owner must give the chief appraiser all the information he needs to determine whether the land qualifies. The property owner must also inform the chief appraiser of any changes in the status of his land.

Land may qualify for the special valuation if it is used for:

- Farming and/or ranching,
- Timberland management and production, or
- Wildlife management.

This set of guidelines speaks specifically to the considerations for farming and/or ranching agricultural uses. Guidelines for Timberland Management and Guidelines for Wildlife Management speak to the considerations for open space land valuation for these two types of agricultural productivity valuation.

## **“Ag Value”**

Open Space Land Valuation has come to be referred to as “ag value” by the general public and, by necessity during communication with the general public, by CAD personnel.

In these guidelines, the word “agricultural appraisal” refers to the special valuation that land that is used for farming and/or ranching purposes may receive if it meets the qualification requirements.

# II. Eligibility Requirements

## **(A) Eligible Property**

Agricultural appraisal applies only to land and its potential for agricultural production. Man-made alterations of, or additions to, the land 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.

Land must be of an adequate size to support a typically prudent agricultural operation as determined by the Ag Advisory Board in the **Freestone County Agricultural Intensity Standards** attached in *Addendum 1*.

Smaller sized properties will not generally qualify for the special use valuation. Consideration will be given to these tracts if any one of the following conditions are met:

- Smaller contiguous tracts will be considered when all of the following are true:
  1. The agricultural use and operator of both parcels are the same,
  2. There is no physical barrier such as a fence or road that separates the parcels, and

3. The aggregate acreage meets the minimum size requirements; or,

- Smaller tracts of intensive agricultural operation such as plant nurseries or vegetable truck farms.

Appraisers should be aware that exceptions may arise that call for special consideration and evaluation of size requirements on an individual basis.

Agricultural appraisal does not apply to:

- **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 agricultural 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.

### ***(B) Ineligible Land***

- Land that is located inside the city limits is ineligible for qualification as open-space land ***unless the land has been devoted principally to agriculture use for the preceding five years.***
- Land that is owned by a nonresident alien, foreign government, corporation, partnership, trust, or other legal entity is ineligible for qualification as open-space or timber land unless the treaty between the United States and a foreign government includes a non-discrimination clause. PTC Sections 23.56 & 23.77 (and notes).

## **III. Types of Agricultural Use**

### ***(A) Valid Agricultural Uses***

Section 23.51(2), Property Tax Code, defines the term “agricultural use” as including the following activities:

- Cultivating the soil.
- Producing crops for human food, animal feed, or planting seed or for the production of fibers.
- Floriculture-Floriculture is the cultivation and management of ornamental and flowering plants.
- Viticulture-Viticulture is the cultivation of grapes.
- Horticulture-Horticulture is the cultivation of fruits, vegetables, flowers, herbs, or other plants.
- Raising or keeping livestock. “Livestock” means a domesticated animal that derives its primary nourishment from vegetation, supplemented as necessary with commercial feed. Livestock includes meat or dairy cattle, horses, goats, swine, poultry, and sheep. Wild animals are not livestock.
- Beekeeping (with minimum acreage requirements)
- Raising exotic game for commercial use. Exotic game means a cloven-hoofed ruminant mammal that is not native to Texas and is not “livestock.” Raising such game may qualify, but must meet the primary use test discussed on page 10.

- Participation in a government program and normal crop rotation. Land left idle to participate in a government program is used for agriculture. Land left idle for crop rotation qualifies until it is left idle for longer than the crop rotation period typical for the crop in the area.

This list is not exhaustive. Production of any commercially valuable livestock, fish, or poultry product probably constitutes agricultural use as well. For example, the Texas Attorney General has ruled that agriculture includes the term “mariculture” and that land used to produce fish and other forms of aquatic life can qualify for an agricultural appraisal. Op. Tex. Att’y Gen. No. JM-87 (1983).

Land used to harvest wood for building uses may qualify in specific circumstances. To qualify, the land must be adjacent to qualified 1-d-1 land owned by the same person. Also, the wood must be used only to build or repair fences or agricultural improvements on the adjacent property.

### ***(B) Invalid Agricultural Uses***

Some agriculture-related activities that do not qualify land for agricultural appraisal are:

- **Harvesting native plants or wildlife**-Harvesting shrubs that grow wild on the land—mountain laurel, yaupon, etc.—or harvesting or hunting native wild animals such as deer or turkey will not qualify land.
- **Processing plants or animals**- Activities that take place after the crop or animal has been raised and harvested do not qualify land for special appraisal. Activities such as pasteurizing and bottling milk; fermenting grapes and bottling wine; or slaughtering, dressing, and packing meat will not qualify land for agricultural appraisal.

## **IV. Qualification Requirements**

To qualify for agricultural appraisal, landowners must meet each of the following eligibility requirements:

- The land must be currently devoted to a qualifying agricultural use to the degree of intensity that is typical in the area,
- The qualifying agricultural use must be the primary use of the property,
- The land must have been used principally for agriculture or timber production for any five of the preceding seven years, and
- The property owner must file a valid application form.

Additionally, applicants must be aware that:

- Agricultural appraisal applies to the land and not to other property that may be connected with the land.
- Land owned by a foreigner is ineligible for agricultural appraisal;
- Land inside city limits has more stringent qualification requirements and may be ineligible; and,
- Land used as an ecological laboratory may qualify for agricultural appraisal.
- A “rollback” tax may be assessed against the property when the property’s use is changed.

### ***(A) Current Use***

Land must be currently used for a qualifying agricultural purpose on January 1 to be considered for the special valuation. In the event that agricultural use is not evident on January 1, the chief appraiser should grant productivity valuation if the owner can show evidence that he intends to put the land into agricultural use and that agriculture will be the primary use for the bulk of the calendar year covered by the application.

### ***(B) Primary Use***

According to the statute, land must be devoted principally to an agricultural use. If the land is used for more than one purpose, the most important or primary use must be agriculture.

Other uses do not prevent land from qualifying if the primary use is agriculture. For example, land used primarily to graze cattle could also be leased for hunting. Leasing land for deer hunting is compatible with a primary use of land for grazing cattle.

The appraiser must determine which use is primary. If one of these other uses replaces agriculture as the primary use of land, then the land is no longer principally devoted to agricultural use and cannot qualify for agricultural appraisal.

The primary use test is particularly important for the keeping of exotic game, fish, and horses since only production for food or other commercially valuable products qualifies.

- **An exotic game ranch** devoted solely to hunting could never qualify for agricultural appraisal because hunting is a recreational use. Many game ranches also offer recreational hunting as a way of earning income and managing a herd of breeding stock.

A ranch that produces exotic game products and conducts recreational hunts may or may not qualify for special appraisal. Qualification in such a case depends on which use is primary.

- **Commercial fish production** differs from keeping game fish for purely sporting or recreational purposes. This difference is not necessarily related to the scale of the operation, nor is it related to any intent to produce income or make a profit. Raising fish is a qualified agricultural land use when all the elements of a bulk harvest are present. Taking fish by individual line is clearly a recreational activity.
- Land used primarily to **raise or keep horses** qualifies for agricultural appraisal; however, land used primarily to train, show, or race horses, to ride horses for recreation, or to keep or use horses in some manner that is not strictly incidental to breeding or raising horses does not qualify.

Land used to raise or keep horses primarily used to assist ranchers in herding livestock will qualify for agricultural appraisal.

## **(C) Historical Use**

The five out of seven years' use requirement is self-explanatory. Use principally for agriculture in any five of these seven years qualifies land for agricultural appraisal.

A property owner can also point to a history of timber production in meeting the five-year test. Land used primarily for either timber or agricultural production during any five of the previous seven years may qualify and as long as agriculture was the principal use in the preceding years, the land qualifies even if that use did not meet the degree of intensity requirement in all or some of those years.

## **(D) Intensity Use**

Land must be used to the degree of intensity test measures whether the land is being farmed or ranched to the extent typical for agricultural operations in the county. The previous section described whether a particular use was primarily "agricultural." To receive a productivity appraisal, however, the land must also be used for an agricultural purpose to the degree of intensity typical in the area. This test is intended to exclude land on which token agricultural use occurs in an effort to obtain tax relief.

Relying upon the assistance and recommendations of the Freestone Agricultural Advisory Board, the chief appraiser sets the standards according to local agricultural practices. Because of the variety of soil types, climatic conditions, and crops in a state as large as Texas, no single statutory definition could cover all possible uses. A copy of the most recently adopted **Agricultural Intensity Standards for Freestone County** is attached as *Addendum 1*.

## **(E) Ecological Laboratories**

Land used principally as an ecological laboratory by colleges or universities may qualify for agricultural appraisal. The property owner must follow the same application procedures required to qualify other 1-d-1 land. The land must be principally used as an ecological laboratory. In determining use, appraisers should

apply the same principles they use to identify the primary use of agricultural land. Landowners wishing to apply for the special valuation under this section must file a form designed for ecological laboratories instead of the general open space land valuation application.

## ***(F) Qualification Limitations***

Even if land meets all the preceding conditions, two situations may block approval of an application. These situations are discussed in detail below.

### **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 the criteria applicable to all land and 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 agricultural use continuously for the preceding five years.

### **Land Owned by a Non-Resident Alien or Foreign Government**

Some kinds of foreign ownership disqualify land. If the property owner is a non-resident alien (a non-U.S. citizen who does not reside in the U.S.), the land can't qualify.

Similarly, a corporation can't qualify its land if non-resident aliens, foreign governments, or both control the corporation. These owners are required by federal law to report ownership or transfers of agricultural land. Sec. 23.56(2) and (3), Property Tax Code, bars these owners from qualifying.

## **V. Application for Open Space Productivity Appraisal**

Property owners must timely file an application for Open Space Land Valuation with the appraisal district.

Forms are available:

- At appraisal district office
- From the district's website [www.freestonecad.org](http://www.freestonecad.org), or
- From the State Comptroller's website [www.window.state.tx.us/taxinfo/taxforms/02-forms.html](http://www.window.state.tx.us/taxinfo/taxforms/02-forms.html)

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.

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.

***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.***

### ***(A) 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.

### ***(B) 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 productivity value. If the chief appraiser extended the deadline for that property owner, this penalty does not apply.

The chief appraiser must note the imposition of the penalty in the appraisal records. The property owner must be given written notice of the penalty and an explanation for its imposition. 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.

### ***(C) 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.

## **VI. 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.

### ***(A) 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. Information and/or documentation may include the following:

- Sworn statements from lessors of subject property, owners of surrounding properties, or other person's knowledge of ag use. Statements should describe how the property has been used and the period of time used. Statements should be notarized.
- Invoices for feed, veterinarian services, seed, fertilizer, etc.,
- Receipts for sale of livestock, hay or farm products,
- Income tax return showing farm income (Schedule F),
- Current active lease.

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.

### ***(B) 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 from the chief appraiser will include a reason for denial and procedures for protesting to the appraisal review board.

## **VII. 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.

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.

## **VIII. Change of Use**

When land that has been receiving special valuation is taken out of 1-d-1 agricultural use, the law provides that a rollback tax be assessed. The rollback tax equals the difference between the taxes the owner actually paid in the five years preceding the change in use and the taxes the owner would have paid on his property's market value.

Technically, the tax is a new, additional tax imposed by law on the date the change of use occurs. It has its own delinquency date, and it does not exist until the event that triggers the rollback occurs. Selling the

property does not trigger a rollback, nor does the cessation of use always trigger the rollback. Additionally, a property owner may begin using a part of the property for a residence without triggering a rollback. However, property cannot be deeded to someone else for the construction of a residence without the property being subject to a rollback. If the property owner diverts only part of a property to a non-agricultural use, the rollback tax only applies to the changed portion. Property sold or condemned for right of way is not subject to rollback.

Once the Chief Appraiser determines that a change of use has occurred, he must notify the property owner of the decision to rollback the taxes on the property by sending a Change of Use Determination Notice.

The tax payer has the right to challenge the chief appraiser's determination by filing a protest with the Appraisal Review Board. The taxpayer has thirty days from the date of the determination notice to file a protest with the ARB.