

# Appendix A

## Questions and Answers About 1-d-1 Qualification

The following examples describe practical problems in the qualification of land for agricultural appraisal and should help tax administrators understand the principles behind qualifying land for special appraisal.

### Question 1

**A property owner acquired four contiguous tracts over the years. The tracts are not divided by fences; in fact, they are used together as a single ranch operation. How should the property owner file the application(s) for special appraisal as 1-d-1 land?**

The property owner should file one application covering all four tracts. Even if the tracts appear as individual accounts in the appraisal records and on the appraisal roll, the property owner's use of the tracts together, in a single agricultural operation, means only a single application needs to be filed. Property owners should file a single application if the parcels making up a single agricultural operation are not contiguous.

Both property owners and appraisal districts need to be alert to the possibility that a particular parcel may be used as part of a larger operation. Appraisal districts should inform potential applicants and applicants should point out larger uses to the appraisal district.

### Question 2

**The chief appraiser in an appraisal district established a blanket policy that no parcel smaller than 10 acres in size may qualify for special agricultural appraisal. A property owner has an orchard that has 9.5 acres of pecan trees. May this tract qualify?**

Any policy that establishes arbitrary minimum sizes for acreage is invalid, but a policy of following guidelines that include minimum tract sizes for each land class or subclass, based on the principal uses of the tracts and upon the general intensity of a typical operation in the area, is probably valid.

The chief appraiser cannot fix a totally arbitrary limit on parcel size. Smaller tracts of land that meet the statutory requirements may still qualify. The orchard land could qualify for agricultural appraisal if it is being used to the intensity typical in the area.

There is no minimum or maximum amount of acreage that may qualify for special appraisal (except for bee-keeping). Obviously, tethering a cow, keeping a chicken coop or raising a small pen of goats cannot by itself qualify land as having an agricultural use. There must be a use that is to the degree of intensity typical in the area and a use that is principally...agricultural. In many cases, smaller tracts do not qualify under the statutes.

The chief appraiser must become extremely familiar with agricultural activities in the area. He or she may create guidelines using minimum size restrictions but only if they relate to the proper agricultural economy of land. For example, a chief appraiser may determine that, based on the type of land and soil prevalent within the appraisal district, it takes 22 acres of grazing land to support one animal unit. Persons having less than the minimum acreage under continuous use probably could not qualify for special appraisal. This land should be reviewed carefully before agricultural use appraisal is granted.

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There are many bona fide agricultural pursuits that can take place on small tracts: vineyards, orchards or specialty crops like strawberries, herbs and row vegetables. For these types of products, the minimum agricultural size of the tracts could be quite small. Growing tomatoes and cucumbers in a backyard garden does not mean that the land is a farm. Having a cow and calf penned in a small enclosure does not make the land a ranch.

**Question 3**

**After several years of losing money on failed crops, a property owner decides to place acreage in a federal farm subsidy program. Under the program, the farmer is only permitted to grow cover crops. He or she receives payments for participation in the program. The farmer's land has qualified for 1-d-1 appraisal for several years. Does the land still qualify?**

Yes. Participation in a government program to reduce production does not bar agricultural appraisal under Section 1-d-1.

**Question 4**

**After several years of losing money on failed crops, a property owner decides to let the land lie idle. He or she plants clover on the land but does not participate in any farm subsidy program. The land qualified for 1-d-1 agricultural appraisal in prior years. The normal period for crop rotation for the type of crop and soil is only one year. Now that the land has been taken out of production for a particular crop without joining a governmental program, does the land qualify?**

The tract will lose its qualification and suffer a rollback at the beginning of the second year that the land is idle. A farmer may still receive agricultural appraisal under 1-d-1 for taking the land out of production for an acceptable period to rejuvenate the soil. In this example, the rotation period is one year. By the second year, the land has been out of production for too long. The land is not being used for an agricultural purpose to the degree of intensity typical in the area in that year. For other types of crops, the rotation period could be shorter or longer. The land would qualify until it has been out of production longer than the normal rotation period for that crop. Keeping the land out of production longer than normal causes loss of agricultural use appraisal and triggers the rollback.

**Question 5**

**A landowner has a large unfenced acreage tract where deer and other native wildlife roam and eat natural vegetation. The land is leased for deer hunting, and the property owner receives \$5,000 per year from the leases and \$10,000 per year from mineral interests and Social Security benefits. Does the tract qualify?**

No. Permitting wild deer to eat natural vegetation is not an agricultural use. The property owner cannot show that the land is used for an agricultural activity. The property owner failed to perform any affirmative act that meets the statutory definition of agricultural use.

Had the property owner qualified, however, only the income from the land would be considered. Mineral interests are separately appraised at market value. The income from minerals is not taken into account for purposes of calculating net to land.

**Question 6**

**A property owner has been digging up yaupon bushes that are growing wild on the land and sells the bushes to a retail nursery for use in residential landscaping. Does the land qualify?**

No. If all the property owner does is dig up wild bushes, he or she is not engaged in agriculture. To qualify, a person should be able to point to affirmative acts that indicate growing of nursery stock — tilling soil, propagating plants, trimming and selectively harvesting.

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**Question 7**

**A property owner has a large tract populated by wild quail and pheasant. The property owner does not grow anything or graze cattle but leases the land for hunting purposes. Does the tract qualify?**

No. This land's primary use is for recreational purposes. Wild animals surviving on natural ground cover are not livestock. No agricultural function is being performed on the land.

**Question 8**

**A farmer's land is solely devoted to raising dairy cattle and processing milk. Most of the land is used for grazing cattle, but barns, sheds and other buildings used for milking, storing hay and repairing equipment occupy 10 acres. A pasteurizing and bottling plant occupies four acres. What part, if any, of the buildings or land qualifies for special appraisal?**

The buildings must be appraised separately at their market value because only land receives agricultural appraisal. Land includes appurtenances such as private roads, dams, canals, ditches, stock tanks and other reshaping of the soil.

The land beneath farm outbuildings may receive agricultural appraisal when that area contributes to the production of primary agricultural products on the entire tract. Almost every farm or ranch requires some land for storage of equipment, feed, seed or other necessary items used in the agricultural operation. Without equipment and supplies, there could be no agricultural use anywhere on the tract. The 10 acres used for barns, storage, milking and repair qualify for agricultural appraisal. The four acres used for pasteurizing and bottling milk do not qualify since those activities constitute processing of primary products.

Appraisers should distinguish between the value of the structures and the value of the personal property within them such as milking machines, tractors, etc. Implements of husbandry are not taxed. Any machinery used to process milk, such as the pasteurizing and bottling equipment, is not an implement of husbandry and is taxed at its market value.

**Question 9**

**A property owner maintains a number of beehives over six acres. The honey is sold as a commercial venture. Do the six acres qualify?**

Yes. Land used to raise and keep bees for pollination or for the production of commercial products qualifies as land used for an agricultural purpose. The owner would also have to meet the intensity standards for the particular appraisal district. The land used must not be less than five acres or more than 20 acres.

**Question 10**

**A landowner grows poinsettias on his or her land. By early November of each year, the poinsettias are shipped to markets for sale during the Christmas season. The farmer grows lilies and ferns in a nursery and sells them to local florists all year long. Does this tract qualify?**

Yes. The tract qualifies if it meets the primary use and degree of intensity tests. The cultivation of these plants and other ornamental or flowering plants raised in a nursery qualifies the owner's land for 1-d-1 appraisal as long as the process meets the degree of intensity test. Floriculture is an appropriate agricultural use for 1-d-1 designation.

**Question 11**

**A landowner grows roses in a commercial operation. Some rose bushes are sold wholesale to dealers, and others are sold directly to the public. A blizzard killed all of the rose bushes and eroded some of the land. As a result, as of Jan. 1 there was no actual cultivation of the land, but the property owner replanted in the spring. Does the tract qualify?**

Yes. Growing roses for profit is an appropriate agricultural use if it meets the primary use and degree of intensity tests. It does not matter that there was not actual cultivation on Jan. 1.

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Land can still be devoted principally to agricultural use in a given year even if it is not being actually used for an agricultural purpose on Jan. 1. Based on the rose grower's past use of land, intent to re-establish the rose beds and, most important, an active return to growing rosebushes after the winter is over, land is devoted to floriculture that year.

The chief appraiser must examine available evidence and decide whether land is currently devoted principally to agricultural use.

#### **Question 12**

**A property owner plants grapevines, intending to eventually sell grapes to a domestic winery. Over the course of six years he or she has planted hundreds of acres of vineyards. So far, the owner has not realized any income because the vines were too immature. Does the tract qualify?**

Yes. Many types of operations require more than a year before a crop can be harvested. The question is whether the preparations meet typical degree of intensity tests. Profit is not really relevant as 1-d-1 has no requirement for income and profit; 1-d only requires that the property owner intend to produce income.

#### **Question 13**

**A 70-acre fenced tract is, by deed, a single tract. For the past five years, the property owner cultivated a vegetable garden on three acres and small grains on 17 acres. The remaining 50 acres is used for fishing, swimming and camping by family and friends. Does the tract qualify?**

The 50 acres used for recreational and sporting purposes clearly cannot qualify because there is no current agricultural use. The chief appraiser should deny the application on the 50 acres. In order to determine whether the 20 acres used to grow vegetables and small grains qualifies, the chief appraiser should request information on the specific crops grown, the amounts harvested and the agricultural and management practices employed. This information should enable the chief appraiser to determine whether the 20 acres are worked to the degree of intensity a prudent operator would work them.

The initial burden of proving land's agricultural qualifications rests on the applicant.

#### **Question 14**

**A property owner uses land for the commercial breeding and raising of catfish. The operation includes a series of large fish tanks (man-made ponds) where the different sized fish are kept. Does any or all of this tract qualify for special appraisal?**

Yes. All of the land used primarily for fish production qualifies for agricultural appraisal, assuming it meets the degree of intensity test. The Texas Attorney General has ruled that fish farming qualifies as an agricultural use of land.<sup>301</sup> However, the mere harvesting of fish or shellfish from the natural environment, such as capturing shellfish from saltwater tidelands, does not qualify. The difference is that there must be an actual land-based operation that encloses or domesticates the fish.

The tanks themselves are included in the special appraisal as appurtenances to the land. The ponds are only reshaping of the soil and not improvements affixed to the soil. Their value is included in the land value. Any other kind of structure or fixture — a hatching house, pumping station or other structure — is an improvement and is appraised separately at market value.

#### **Question 15**

**A farmer owns many acres of land upon which grow Christmas trees. The entire tract is devoted to raising the trees to be sold each year for profit. Does the tract qualify?**

Yes. The tract qualifies if it meets the degree of intensity requirements. The Christmas trees qualify as an appropriate agricultural use. The trees are ornamental plants and the statute permits special appraisal of land used for horticulture.

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<sup>301</sup> Op. Tex. Att'y Gen. No. JM-87 (1983)

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**Question 16**

**A farmer grows many acres of Saint Augustine and other lawn grasses that are cut and sold as sod. Does the sod farm qualify for agricultural appraisal?**

Yes, if the tract meets the degree of intensity requirement. Growing sod falls within the definition of an agricultural use as horticulture, i.e., growing ornamental plants.

Sod production may not fit readily into typical classifications like cropland or native pastureland. The economics of sod production, such as the irrigation systems, higher maintenance and labor effort and typically higher per-acre income, may require the chief appraiser to develop a separate class more specific to sod farms.

**Question 17**

**Land is used for growing peaches in a commercial-scale operation. Is the land eligible for productivity appraisal, and how are the peaches or trees listed in the property records?**

Yes, the land may receive productivity appraisal. The trees are part of the land and are included in the agricultural appraisal as appurtenances to land. The peaches are part of the land until harvest when they become personal property. Remember that farm products are exempt when in the hands of the producer.

**Question 18**

**A property owner has a large tract containing a large herd of axis deer. The deer are enclosed by a security fence more than six feet tall. At scheduled times throughout the year, young deer are harvested. The meat and hides are sold to commercial dealers for human use and consumption. The property owner permits recreational hunting when the herd size becomes unmanageable. Does the tract qualify for special use appraisal?**

Yes. All the land associated with the grazing, breeding and harvesting of the axis deer qualifies if it is used to the degree of intensity that is typical of area agricultural operations. The size of the herd, the security fencing and the fact that the ranch is a commercial operation indicate that the land is used to the degree of intensity typical in the area.

Although recreational hunting is permitted to control herd size, the primary use of the ranch is agricultural. The year-round harvesting schedules and the herd management and harvesting procedures that emphasize desirable agricultural products over recreational products are some proof that the primary use is agricultural.

**Question 19**

**Thoroughbred horses are bred and raised on a 500-acre tract of land. The horses graze on 450 acres; 40 acres are used to raise grain to feed the horses; and a stable where the horses and supplies related to them are kept occupies five acres. Another five acres are set aside for training the horses to race and includes a running track. The land is primarily used to breed and raise horses and is used to the degree of intensity typical for the area. May all or part of the land qualify for special use appraisal?**

The 490 acres upon which the horses are bred and grazed and where feed for them is grown qualifies. This land is used directly for raising, breeding and supporting horses — all agricultural uses. The five acres of land holding the stables qualifies because this area is used to support the raising of horses. The five acres of land where the horses are trained for racing does not qualify because it is not an agricultural use of land.

**Question 20**

**A small tract is used to board horses used by their owners for pleasure riding and show competition. The land has a riding ring, and the remaining land is available for pleasure riding. The property owner does not graze the horses on the land. May the land qualify for a special use appraisal?**

None of the land qualifies for 1-d-1 appraisal. The use of this land is for recreational purposes, not agricultural or farm or ranch purposes.

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**Question 21**

**A rancher grazes cattle over a large tract and devotes the majority of time and resources to raising cattle and growing feed for them. During part of the year, the property is leased for hunting wild game and game birds. Although the rancher principally devotes the land to cattle ranching, the income from the hunting leases is substantially greater than the income from cattle ranching. Does the tract qualify for agricultural appraisal?**

Yes, the land qualifies. For 1-d-1, determining the primary use of land usually does not have much to do with measuring or comparing income derived from each use. The property owner's intent and commitment of energy and resources over a period of time are more accurate indicators of the land's primary use.

**Question 22**

**A 40-acre tract of land is categorized as native pasture. A creek runs through the upper right corner of the property, separating five acres from the rest of the property. The livestock are not able to readily access the five acres when the creek is full. How could these five acres be classified?**

With the 35 acres being appraised as native pasture, a chief appraiser could choose to classify the remaining five acres as wasteland. Wasteland is one of the six statutorily listed land categories. Local appraisal districts are free to create additional categories according to the facts of each situation.