

December 23, 2008

AGRICULTURAL AND HORTICULTURAL LAND

Purpose. To advise county assessors regarding the determination of whether a parcel of land qualifies as agricultural land and horticultural land, pursuant to Neb. Rev. Stat. §77-1359. The revisions to the statutory language become effective January 1, 2009.

Statutory language. LB 777 amends Neb. Rev. Stat. §77-1359 to read as follows:

77-1359 Agricultural and horticultural land; legislative findings; terms, defined.

The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.

For purposes of sections 77-1359 to 77-1363:

- (1) Agricultural land and horticultural land means a *parcel of land*, excluding any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel, which is *primarily used for agricultural or horticultural* purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land;
- (2) Agricultural or horticultural purposes means ***used for the commercial production of any plant or animal product in a raw or unprocessed state*** that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes include the following uses of land:
 - (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
 - (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production;

- (3) Farm home site means not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road; and
- (4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.
(Emphasis added)

Definitions. The following definitions are provided in an effort to assist assessors in determining whether a parcel qualifies as agricultural and horticultural land:

Agricultural or horticultural purposes shall mean used for commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. (*See*, Title 350, Neb. Admin. Code, Chapter 11, Agricultural or Horticultural Land Special Valuation Regulations).

Building shall mean a structure designed for habitation, shelter, storage, trade, manufacture, religion, business, education and the like. A structure or edifice enclosing a space within its walls, and usually, but not necessarily, covered with a roof. (*See*, Title 350, Neb. Admin. Code, Chapter 10, Real Property Regulations).

Commercial Production shall mean agricultural or horticultural products produced for the primary purpose of obtaining a monetary profit.

Common shall mean belonging equally to, or shared alike by, two or more or all in question.

Conservation and Preservation Easements Act as found in Neb. Rev. Stat. §§76-2,111 through 76-2,118.

Neb. Rev. Stat. §76-2,111. *Terms, defined.* As used in the Conservation and Preservation Easements Act, unless the context otherwise requires:

- (1) Conservation easement shall mean a right, whether or not stated in the form of an easement, restriction, covenant, or condition in any deed, will, agreement, or other instrument executed by or on behalf of the owner of an interest in real property imposing a limitation upon the rights of the owner or an affirmative obligation upon the owner appropriate to the purpose of retaining or protecting the property in its natural, scenic, or open condition, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use, protecting air quality, water quality, or other natural resources, or for such other conservation purpose as may qualify as a charitable contribution under the Internal Revenue Code.

Contiguous shall mean adjoining, in actual contact, touching at a point or along a boundary.

Farm Home Site shall mean not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road. (See, Neb. Rev. Stat. §77-1359(3)).

Farm Site shall mean the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site. (See, Neb. Rev. Stat. §77-1359(4)).

Improvements shall mean any addition made to real property, amounting to more than mere repairs, such as sidewalks, streets, sewers, or utilities. (See, Title 350, Neb. Admin. Code, Chapter 10, Real Property Regulations).

Inhabitable shall mean capable of being lived or resided in.

Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production – See Attachment for examples.

Lying in or adjacent to shall mean lying near, close or contiguous to; adjoining; neighboring.

Management shall mean the act or manner of managing; handling; direction, or control.

Ownership shall mean the legal right of possession; proprietorship.

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section . . . If all or several lots in the same block are owned by the same person and are contained in the same tax district, they may be included in one parcel. (Neb. Rev. Stat. §77-132).

Primarily used means, “for the most part.” It could be determined by area used or other criteria uniformly applied.

Production shall mean the act or process of producing.

Uninhabitable or unimproved farm home site shall mean up to one acre of land where an abandoned farm home is or once was sited. This land shall not be classified as agricultural or horticultural land and shall not include a home site. (See, Title 350, Neb. Admin. Code, Chapter 10, Real Property Regulations).

Wasteland shall mean those land types that cannot be used economically and are not suitable for recreational or agricultural use or production. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks, bluffs, rockland, gravel areas, and saltflats). (See,

Title 350, Neb. Admin. Code, Chapter 14, Agricultural Land and Horticultural Land Assessment Regulations).

Procedure and Implementation. It is important to assess the agricultural and horticultural land class of real property, uniformly and proportionately:

Land that has an agricultural improvement located on it is not to be assessed as agricultural land, but is considered a farm site if it is part of an agricultural parcel. Up to one acre of land with a residential improvement located on it that is a part of the agricultural parcel and adjoins the farm site is statutorily defined as a farm home site and is not to be valued as agricultural land. Land in excess of the one acre, becomes part of the farm site land. The acres included in the farm site land may be measured from aerial photographs or satellite imaging. Land adjoining or included in an agricultural parcel that is used as an intensive use area including, but not limited to, orchards, vineyards or plant nurseries is considered to be agricultural land and is to be assessed at seventy-five percent (75%) of the actual or market value determined for similar properties that are effectively competitive in the minds of buyers and sellers with other comparable property, whether within the same county or not.

The portion of a parcel directly related to a building or structure is to be disregarded when determining whether a parcel qualifies as agricultural land or horticultural land. Upon disregarding the portion directly related to a building or structure, the primary use of the remaining land on the parcel is considered to determine whether it qualifies as agricultural land or horticultural land.

Examples of land which are considered to be primarily used for agricultural or horticultural purposes, and are to be assessed at seventy-five percent (75%) of actual or market value, include, but are not limited to:

- Land on which small grains, row crops, alfalfa, or native or introduced hays are growing;
- Land on which native or introduced grasses are being used for grazing on a full-time or seasonal basis; and,
- Land which contains feedlots, nurseries, orchards, or other areas used for horticultural purposes

Attached is a "Verification Document," which may be used in each county. This verification document is being provided as a guideline for assistance in the counties and is not to be considered a bright line test to determining whether a parcel should be classified as agricultural or horticultural land.

Conclusion. Land that meets the definition of agricultural land or horticultural land is to be valued at seventy-five percent (75%) of its market value for property assessment purposes. That portion of a parcel which is directly related to a building or structure is disregarded when the primary purpose of the remaining land in a parcel is being considered to determine if a parcel qualifies as agricultural land or horticultural land.

APPROVED:

/s

Douglas A. Ewald
Tax Commissioner
December 23, 2008

This is a PDF document from the Nebraska Dept. of Revenue Property Assessment Division's website www.pat.ne.gov.

Attachments

VERIFICATION DOCUMENT
FOR
AGRICULTURAL AND HORTICULTURAL LAND

Owner of Record: _____
Legal Description: _____
Date of Review: _____ Reviewed by: _____

Each county is encouraged to develop criteria to be used in making the determination of the primary use of the remaining acres on a parcel of land including a field review of the property, after the exclusion of all land associated with any buildings and other improvements. Following is a list of the most common uses of land for which the primary use of the land may be agricultural or horticultural including, but not limited to:

- | | |
|--|--|
| <input type="checkbox"/> Growing crops.
<input type="checkbox"/> Type of crop(s) _____
<input type="checkbox"/> Number of acres _____ | <input type="checkbox"/> Wasteland acres _____ |
| <input type="checkbox"/> Grazing, feeding, or breeding of livestock.
<input type="checkbox"/> Type of livestock _____
<input type="checkbox"/> Number of acres _____ | <input type="checkbox"/> Land enrolled in a state or federal program
<input type="checkbox"/> Conservation Reserve Program
<input type="checkbox"/> Cons. Reserve Enhancement Program (CREP)
<input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Intensive use areas (acres)
<input type="checkbox"/> Nursery _____
<input type="checkbox"/> Orchard /Vineyard _____
<input type="checkbox"/> Feedlot _____ | <input type="checkbox"/> Number of program acres _____
Number of acres used for agricultural or horticultural purposes: _____
Number of acres associated with buildings and other improvements: _____
Number of acres in the parcel _____ |

IMPROVEMENTS ON PARCEL

- | | |
|--|--|
| <input type="checkbox"/> Farm home site acre _____
<input type="checkbox"/> Residence/Garage
<input type="checkbox"/> Detached Garage
<input type="checkbox"/> Utility Building | <input type="checkbox"/> Grainary
<input type="checkbox"/> Corn crib
<input type="checkbox"/> Hay storage
<input type="checkbox"/> Loafing shed
<input type="checkbox"/> Confinement building
<input type="checkbox"/> Corrals
<input type="checkbox"/> Working chutes
<input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Farm site acres _____
<input type="checkbox"/> Stable
<input type="checkbox"/> Machine Shed
<input type="checkbox"/> Barn
<input type="checkbox"/> Grain bin(s) | |

DETERMINATION

- The primary use of the remaining land on the parcel after the exclusion of all land associated with all buildings and other improvements is eligible for assessment as agricultural or horticultural land.**
- The remaining land on the parcel after the exclusion of all land associated with all buildings and other improvements is NOT eligible for assessment as agricultural or horticultural land.**

If the property qualifies for special valuation, the assessed value is 75% of the agricultural market value.

Application signed by the landowner, an authorized representative, or guardian, conservator, executor, or administrator of landowner's estate.

Application filed on (Date) _____

Applications received after June 30 will be considered for the following tax year.

Recent market activity indicates an influence on value from other than agricultural or horticultural uses.

Number of acres eligible for Special Valuation _____

DISQUALIFICATION OF LAND FOR SPECIAL VALUATION

Written notification by the taxpayer to remove such special valuation

Taxpayer: _____

Date Rec'd: _____

Sale or transfer to ownership making land exempt from property taxation

Sale or transfer to the state or its political subdivisions.

Grantor: _____

Deed Book/Page Number: _____

Date: _____

Land is no longer agricultural land

Land use is: _____

Verified by: _____

Date of Inspection: _____

Inclusion of land within city, village, or SID.

Boundaries change by: _____

Ordinance number: _____

Effective Date: _____

Excludes Conservation and Preservation Easements Act as approved by the County or City

Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production

Federal or State Programs

- It is recommended that when land has been used either under the wetlands reserve program or the Conservation and Preservation Easements Act the assessor read and understand the allowed practices and the restrictions imposed by the conservation easement to determine whether or not the land is being preserved for agricultural or horticultural purposes or whether it is being preserved in another state such as wildlife habitat or wetlands.
- It is imperative that there is a careful review of the language incorporated in all Conservation Easement Deeds.

The following includes, but is not limited to, a list of examples of federal or state programs referred to in Neb. Rev. Stat. §77-1359(2)(b):

A. Considered agricultural and horticultural

1. Conservation Reserve Program (CRP)

The Conservation Reserve Program (CRP) is a voluntary program for agricultural landowners. Through CRP, annual rental payments and cost-share assistance can be received to establish long-term, resource conserving covers on eligible farmland. The Commodity Credit Corporation (CCC) makes annual rental payments based on the agriculture rental value of the land, and it provides cost-share assistance for up to 50 percent of the participant's costs in establishing approved conservation practices. Participants enroll in CRP contracts for 10 to 15 years. The program is administered by the CCC through the Farm Service Agency (FSA), and program support is provided by Natural Resources Conservation Service, Cooperative State Research and Education Extension Service, state forestry agencies, and local Soil and Water Conservation Districts.

►The conservation reserve program is a voluntary program for which a farm is left fallow for a term of years in return for an annual rental payment. The land may be returned to farming after the contract expires. This would still be considered agricultural and horticultural land.

2. Conservation Reserve Enhancement Program (CREP)

The purpose of the NPRRA CREP is to enhance the water quality and quantity of three major Nebraska watersheds (North Platte, Platte, and Republican River basins) by reducing the amount of nutrients, sediments, and chemical runoff from agriculture sources while increasing wildlife and wetland habitat for birds, migrating waterfowl, and other aquatic organisms. The NRPPA plays a uniquely important water quality function in the United States because of the large number of separate rivers, streams, and lakes of national priority that receive water from Nebraska's watersheds.

The NPRRA CREP targets 100,000 acres (0.22 percent of the State's agricultural land and 2.9 percent of the proposed CREP project area) for the installation and maintenance of selected conservation practices (CPs). In order to maximize benefits, acreage will be split equally between the Republican and Platte River (including the North Platte) basins (50,000 acres each). Land placed under CREP contracts would be retired from crop production and irrigation for 10-15 years. CREP would provide the financial and technical assistance necessary to assist eligible Nebraska farmers and ranchers in establishing CPs that would conserve soil and water; filter nutrients and pesticides; and enhance and restore wildlife habitat respectively.

3. Environmental Quality Incentives Program (EQIP)

EQIP provides technical assistance, cost-share payments, incentive payments, and training to producers who enter into contracts based on an EQIP plan of operations. EQIP offers contracts with a minimum term that ends one year after the implementation of the last scheduled practices and a maximum term of ten years. These contracts provide incentive payments and cost-shares to implement conservation practices. Persons who are engaged in livestock or agricultural production on eligible land may participate in the EQIP program.

EQIP activities are carried out according to an environmental quality incentives program plan of operations developed in conjunction with the producer that identifies the appropriate conservation practice or practices to address the resource concerns. The practices are subject to NRCS technical standards adapted for local conditions. The local conservation district approves the plan. EQIP may cost-share up to seventy-five percent (75%) of the costs of certain conservation practices. Incentive payments may be provided for up to three years to encourage producers to carry out management practices they may not otherwise use without the incentive; however, limited resource producers and beginning farmers and ranchers may be eligible for cost-shares up to ninety percent (90%). Farmers and ranchers may elect to use a certified third-party provider for technical assistance. An individual or entity may not receive, directly or indirectly, cost-share or incentive payments that, in the aggregate, exceed \$450,000 for all EQIP contracts entered during the term of the Farm Bill.

The Republican River Basin EQIP program ("Nebraska Ground and Surface Water Conservation Special Incentive") will be funded to pay irrigators not to irrigate for four

years. Payments of \$50 per acre for three years will be funded through the federal government and the state of Nebraska. Payments from the federal government are \$50 per acre at the end of irrigation seasons in 2005, 2006, and 2007 with no payment in 2008, the fourth year.

Department of Natural Resources (State) will pay \$100 per acre before 2005 irrigation season ends. The total payment over the four years is equal to \$250 per acre.

4. Stewardship Incentive Program

The Stewardship Incentive Program (SIP) provides technical assistance and cost-shared payments to NIPF landowners to help them develop and implement their Forest Stewardship Plans. The SIP provides landowners with assistance in undertaking a variety of forest enhancement and protection activities that might otherwise not be accomplished.

How does the Stewardship Incentive Program work?

Under this program, the Federal Government may reimburse the landowner up to seventy-five percent (75%) of approved expenses, to a maximum of \$10,000/year/landowner, in exchange for an agreement to install and maintain SIP practices for a minimum of 10 years. Practices supported under this program include:

- 1) Forest Stewardship Plan Development
- 2) Reforestation & Afforestation
- 3) Forest & Agroforest Improvement
- 4) Windbreak & Hedgerow Establishment
- 5) Soil & Water Protection Improvement
- 6) Riparian & Wetland Protection & Improvement
- 7) Fisheries Habitat Enhancement
- 8) Wildlife Habitat Enhancement
- 9) Forest Recreation Enhancement

Landowner responsibilities include installing the practice(s) in accordance with standards, excluding non-compatible land uses, protecting and caring for the practice(s) for 10 years following completion, and paying for their share of the cost of installation. This program is administered in cooperation with State forestry and other resource management agencies, and each State determines which of the allowable practices it will fund and at what level, based on local issues and priorities.

Who is eligible For the Stewardship Incentive Program?

The SIP is directly linked to the Forest Stewardship Program. Participation in this program requires that the landowner develop an approved Forest Stewardship Plan. Generally, SIP participants own less than 1,000 acres of forested land, but waivers are available for up to 5,000 acres of forested land.

5. Tree Assistance Program

This program provides assistance to tree, bush and vine owners who have trees, bushes or vines lost by a natural disaster. The statute authorizes payments only for eligible owners who actually replant or rehabilitate eligible trees, bushes and vines and who produce annual crops from trees for commercial purposes.

6. Water Bank Program

The Water Bank Program (WBP) was established by Congress in 1970 for several purposes: to preserve and improve wetlands as habitat for migratory waterfowl and other wildlife, to conserve surface waters, to reduce runoff and soil erosion, to contribute to flood control, to improve water quality, to increase subsurface moisture, and to enhance the natural beauty of the landscape. Landowners with significant migratory waterfowl habitat on their property can enter into a ten-year agreement with the NRCS to manage the land so that habitat values will be maintained or improved. The NRCS makes payments to landowners on an annual, per acre basis to help offset management costs. Agreements are renewable.

How the Water Bank Program works:

NRCS biologists work with landowners to develop a management plan that will be implemented over the life of the agreement. These management programs typically focus on providing nesting, brood-rearing, and wintering habitat for migrating and resident birds, both by planting and by maintaining flooded areas during the appropriate seasons. After the management plan has been worked out, the landowner enters into an agreement with the NRCS, committing to make the habitat improvements and maintain them for ten years.

Landowner payment rates vary by county, but all are made on a per-acre, yearly basis. Lands eligible under this program are specifically defined, but in general they are inland freshwater wetlands, as well as certain adjacent uplands-such as those suitable for nesting-that add substantial habitat value to the wetland. The minimum total area eligible for enrollment is 10 acres, encompassing at least two acres of wetlands. Further, to be eligible

for the WBP, the land must not have changed ownership during the two-year period immediately prior to the start of the proposed agreement. Land accepted into the WBP that meets the requirements of the Conservation Reserve Program (CRP) may be included in the CRP as well.

Agreements are reviewed at the beginning of the fifth year of the contract, at which time payment rates may be adjusted to reflect current land values. Uses of the land under agreement may include hunting and, on a limited basis, vegetation-management practices such as grazing. If the management plan involves activities that require permits, obtaining these is the responsibility of the landowner, with assistance available from NRCS staff.

B. Not considered agricultural and horticultural

● **In August, 2006, the Tax Equalization and Review Commission issued a Decision in *Wetland Renovations, LLC v. Adams County Board of Equalization*, (Case Nos. 05A-083 and 05A-084), in which the Commission ruled that the land encumbered by the Wetlands Reserve Program easement could not be used for agricultural purposes, and therefore CAN NOT be characterized as agricultural and horticultural land as defined in Nebraska law. Therefore such land CAN NOT be valued as agricultural and horticultural land.**

1. Wetlands Reserve Program (WRP)

The Wetlands Reserve Program (WRP) is administered by the Natural Resources Conservation Service (NRCS) in agreement with the Farm Service Agency (FSA) and in consultation with the U.S. Fish and Wildlife Service (FWS) and other cooperating agencies and organizations.

WRP program objectives are to: purchase conservation easements from, or enter into cost-share agreements with, willing owners of eligible land; the duration of a WRP easement is either permanent or 30 years, and restoration cost-share agreement is generally 10 years; help eligible landowners, protect, restore, and enhance the original hydrology, native vegetation, and natural topography of eligible lands, restore and protect the functions and values of wetlands in the agricultural landscape, help achieve the national goal of no net loss of wetlands, and improve the general environment of the country.

► Wetlands reserve program land is land which is voluntarily converted to wetlands and habitat and almost always includes a Conservation Warranty Easement Deed which transfers all farming, grazing, and development rights to a third party for a perpetual term.

2. Conservation Warranty Easement Deed

This deed transfers the right to farm, hay, or graze land that has been enrolled in one of

the conservation programs. The deed transfers these rights for thirty (30) years or “permanently” depending on the landowner’s agreement. The landowner (grantor) reserves the rights to fishing, hunting, egress, ingress, and mineral interests. They also may be granted other limited haying, grazing, or timber harvesting provided it is not inconsistent with the conservation practices on the parcel. The document itself is usually the permanent or thirty (30) year deed through the Commodity Credit Corporation (CCC) or a permanent easement to the Natural Resources Conservation Service (NRCS).