

Virginia Administrative Code

Title 2. Agriculture

Agency 5. Department of Agriculture and Consumer Services

Chapter 20. Standards for Classification of Real Estate As Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law

2VAC5-20-10. Preamble Qualifications.

~~The Commissioner of Agriculture and Consumer Services adopts these Standards for Classification of Real Estate As Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law to:~~

- ~~1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.~~
- ~~2. Conserve natural resources in forms that will prevent erosion.~~
- ~~3. Protect adequate and safe water supplies.~~
- ~~4. Preserve scenic natural beauties and open spaces.~~
- ~~5. Promote proper land use planning and the orderly development of real estate for the accommodation of an expanding population.~~
- ~~6. Promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses.~~

The real estate must meet all of the following standards in this chapter to qualify for agricultural or for horticultural use.

2VAC5-20-20. Previous and Current Use, and; Exceptions.

A. Previous use. The real estate sought to be qualified must have been devoted, for at least five consecutive years previous, to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to:

1. Aquaculture
2. Forage crops
3. Commercial sod and seed
4. Grains and feed crops

5. Tobacco, cotton, and peanuts
6. Dairy animals and dairy products
7. Poultry and poultry products
8. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of any or all such animals
9. Bees and apiary products
10. Commercial game animals or birds
11. Trees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the State Forester, if less than 20 acres, and produced incidental to other farm operations
12. Fruits and nuts
13. Vegetables
14. Nursery products and floral products.

If a tract of real estate is converted from nonproduction to agricultural or horticultural production, the tract may qualify without a five year history of agricultural or horticultural use only if the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant.

A. Current use. The applicant shall certify that the real estate sought to be qualified must currently be devoted to meet one or more of the following requirements:

1. Be devoted to the bona fide production for sale of plants or animals that are useful to man;
2. Be devoted, or to the bona fide production for sale of plant or animal products that are useful to man and that are made on the real estate from plants or animals produced on the real estate;
3. Be ~~or~~ devoted to the bona fide production for sale of fruit of all kinds, including grapes, nuts, and berries;
4. Be devoted to the bona fide production for sale of vegetables;
5. Be devoted to the bona fide production for sale of nursery or floral products;
6. Be devoted to the bona fide production for sale of plants or products directly produced on such real estate from fruits, vegetables, nursery or floral products, or plants produced on such real estate; or
7. Be devoted to and meet the requirements and qualifications for payments or other compensation pursuant to a soil and water conservation program under an agreement with an agency of the state or federal government.

~~another qualifying use including, but not limited to, the items in subsection A of this section;~~
except that ~~B. No~~ real estate devoted to the production of trees or timber products may qualify unless:

~~15.1.~~ ____ The real estate is less than 20 acres;

~~16.2.~~ ____ The real estate meets the technical standards prescribed by the State Forester, ~~and~~
and

~~17.3.~~ ____ The real estate is producing tree or timber products incidental to other farm operations.

C. Exceptions.

~~18.4.~~ ____ Conversions by farm operator -- nonqualifying real estate. If a tract of real estate is converted from other uses or nonproduction to agricultural or horticultural production, the tract may qualify without the applicant demonstrating that such tract meets at least one of the requirements in subdivisions (A)(1) through (A)(6) of this section ~~the five-year history of agricultural or horticultural use~~ when the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant, regardless of location.

~~19.5.~~ ____ Conversions by farm operator -- qualifying real estate. If a tract of real estate is converted from a qualifying use (forestry or open space) to agricultural or horticultural production, the tract may qualify without the applicant demonstrating that such tract meets at least one of the requirements in subdivisions (A)(1) through (A)(6) of this section ~~the five-year history of agricultural or horticultural use~~.

20. Government action. If a tract of real estate which has previously qualified for agricultural use taxation is not devoted to agricultural or horticultural production because of governmental actions, the tract or portions shall be considered productive for that period of time.

21. Crops that require more than two years. The tract of real estate may qualify without ~~the five-year history of agricultural or horticultural use~~ if the tract of real estate is devoted to the production of any agricultural or horticultural crop that requires more than two years from initial planting until commercially feasible harvesting, and the locality in which the tract of real estate is located has waived with respect to such real estate ~~the five-year history of agricultural or horticultural use requirement~~.

2VAC5-20-30. Conservation of Land Resources; Management and Production.

A. Conservation of land resources. The applicant shall certify that the real estate is being used in a planned program of practices that:

1. With respect to real estate devoted to a use that disturbs the soil or that affects water quality, is intended to (in the case of soil) reduce or prevent soil erosion and (in the case of

water) improve water quality by best management practices such as terracing, cover cropping, strip cropping, no-till planting, sodding waterways, diversions, water impoundments, and other best management practices, to the extent that best management practices exist for that use of the real estate.

2. With respect to real estate devoted to crops grown in the soil, is intended to maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of such crops or as recommended by soil tests.

3. Is intended to control brush, woody growth, and noxious weeds on row crops, hay, and pasture by the use of herbicides, biological controls, cultivation, mowing, or other normal cultural practices.

B. Management and production. The applicant shall certify that the real estate is being used in a planned program of management and production that corresponds with the demonstration of at least one of the requirements in subdivisions (A):(1): through (A):(6): of and production for sale of plants or animals (or plant or animal products useful to man), which include, but are not limited to, field crops, livestock, livestock products, poultry, poultry products, dairy, dairy products, aquaculture products, and horticultural products; or that the real estate is being used for any other thing that is a qualifying use pursuant to 2VAC5-20-Section 20 of this chapter.

~~B.~~

C. Field crop production shall be primarily for commercial uses, and the average crop yield per acre on each crop grown on the real estate ~~during the immediate three years previous,~~ shall be equal to at least one-half of the county (city) average for the past three years; except that the local government may prescribe lesser requirements when unusual circumstances prevail and such requirements are not realistic.

Livestock, dairy, poultry, or aquaculture production shall be primarily for commercial sale of livestock, dairy, poultry, and aquaculture products. Livestock, dairy and poultry shall have a minimum of 12 animal unit-months of commercial livestock or poultry per five acres of open land in the previous year. One animal unit to be one cow, one horse, five sheep, five swine, 100 chickens, 66 turkeys, or 100 other fowl. (An animal unit-month means one mature cow or the equivalent on five acres of land for one month; therefore, 12 animal unit-months means the maintenance of one mature cow or the equivalent on each five acres for 12 months, or any combination of mature cows or the equivalent and months that would equal 12 animal unit-months such as three mature cows or the equivalent for four months, four mature cows or the equivalent for three months, two mature cows or the equivalent for six months, etc.).

Horticultural production includes nursery, greenhouse, cut flowers, plant materials, orchards, vineyards, and small fruit products.

~~Timber production, in addition to crop, livestock, dairy, poultry, aquaculture, and horticultural production on the real estate must meet the standards prescribed by the Department of Forestry for forest areas and will be assessed at use value for forestry purposes.~~

2VAC5-20-40. Certification Procedures.

A. Documentation. The commissioner of revenue or the local assessing officer may require the applicant to document what the applicant must certify pursuant to 2VAC5-20-Sections 20 and 30 of this chapter. The commissioner of revenue or local assessing officer may find one of the following documents useful in making his determination:

1. The assigned USDA/Farm Service Agency farm number and evidence of participating in a federal farm program;
2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land;
3. A Conservation Farm Management Plan prepared by a professional; or
4. Documentation demonstrating that the real estate sought to be qualified currently has gross sales of averaging more than \$1,000 annually over the previous three years generated by one of the requirements in subdivisions (A)-(1) through (A)-(6) of 2VAC5-20-Section 20 of this chapter;
5. Documentation demonstrating that the real estate sought to be qualified currently is devoted to the bona fide production for sale of one of the requirements in subdivisions (A)-(1) through (A)-(6) of 2VAC5-20-Section 20 of this chapter; or
- 4.6. Documentation demonstrating that the real estate sought to be qualified currently is devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil or water conservation program under an agreement with a federal government or state government agency.

~~B.~~

~~C.B.~~ Interpretation of standards. In cases of uncertainty on the part of the commissioner of revenue or the local assessing officer, the law authorizes him to request an opinion from the Commissioner of Agriculture and Consumer Services as to whether a particular property meets the criteria for agricultural or horticultural classification. The procedure for obtaining such an opinion is as follows:

1. The commissioner of revenue or the local assessing officer shall address a letter to the Commissioner, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, Virginia 23218, describing the use and situation, and requesting an opinion of whether the real estate qualifies as agricultural or horticultural real estate for the purpose of use-value taxation. The letter should include the following:

- a. Owner's name and address.

b. Operator's name and address.

c. Total number of acres, acres in crops, acres in pastures, acres in a federal or state soil or water conservation programs (~~Farm Service Agency, Natural Resources Conservation Service, Virginia Department of Conservation and Recreation programs~~), and acres in forest.

d. If more than one tract of real estate, the number of acres in each tract and whether the tracts are contiguous.

e. A copy of the application for land use assessment taxation.

f. ~~In any case involving a question about the applicability of the exception to the five-year history of agricultural or horticultural use requirement contained in 2VAC5-20-20 C 4 (relating to real estate devoted to the production of an agricultural or horticultural crop that requires more than two years from initial planting until commercially feasible harvesting), a statement as to whether the locality has waived with respect to such real estate, the five-year history of agricultural or horticultural use requirement.~~

2. The commissioner may request additional information, if needed, directly from the applicant; or he may hold a hearing at which the applicant and others may present additional information.

3. The commissioner will issue an opinion as soon as possible after all necessary information has been received.