

A Reprint from *Tierra Grande*

WHERE THE WILD THINGS ARE



WILDLIFE MANAGEMENT REAPS PROPERTY TAX SAVINGS

BY JUDON FAMBROUGH



It's a fact — today's rural land buyers are more likely to have hunting and fishing on their minds than cows or cotton. Recreation is the primary motive fueling the rural Texas land market.

Fortunately for recreationally motivated buyers, it is no longer necessary to demonstrate a legitimate farming or ranching practice to get a property tax break on rural land. If the land being purchased is classified as "open space" for appraisal purposes or as qualified timber land, converting it to wildlife management use can maintain that status and the favorable property tax treatment that goes with it.

What is Open Space Appraisal?

Rural landowners can receive substantial tax savings through either an agricultural use appraisal or an open space appraisal. Under agricultural use (better known as 1-d land), the landowner must qualify based on his or her primary occupation and sources of income. For an open space appraisal, the land, not the landowner, must qualify based on its current and past usage. Rural land purchased by urban landowners is more apt to qualify for open space appraisal than agricultural use appraisal.

To qualify for open space appraisal (better known as 1-d-1 land), the land must have been devoted principally to agricultural use or the production of timber or forest products for five of the preceding seven years. The owner must file an application with the chief appraiser of the local appraisal district providing all necessary information before May 1.

Land uses that qualify for open space appraisal fall into five categories: planting and producing crops; raising or keeping livestock or exotic animals; devoting land to floriculture, viticulture and horticulture; producing or harvesting logs and posts for agricultural improvements; and **wildlife management** (Section 23.521, Texas Tax Code). The last category allows recreational landowners to qualify for open space appraisal without actively participating in farming and ranching.

According to the statute, wildlife management status requires the following.

- The land must qualify for open space appraisal when the application for wildlife management is filed. (Effective Jan. 1, 2010, land that qualifies as timber land under the Tax Code is also eligible for wildlife management.)
- The land must be used primarily for the management of one or more indigenous wild animals (targeted or managed species), not farming or ranching.
- The targeted species must be used for human consumption, medicine or recreation.
- The land must be managed "to the degree of intensity typical for the area" and must properly sustain the targeted species.
- In some cases, tracts must be a minimum size if they were a part of a larger qualifying tract the previous year.

At the time the landowner applies for wildlife management status, at least three of the following seven management practices must be in use to sustain a breeding, migrating or wintering population of indigenous wild animals.

Habitat control (habitat management). Using the land to create or promote an environment beneficial to wildlife. This includes any beneficial manipulation of plants, ground cover or shelter for the managed species.

Erosion control. Employing practices that attempt to reduce or keep soil erosion to a minimum for the benefit of wildlife.

Predator control. Engaging in practices designed to manage predators. This is necessary only when the number of predators is harmful to the managed species.

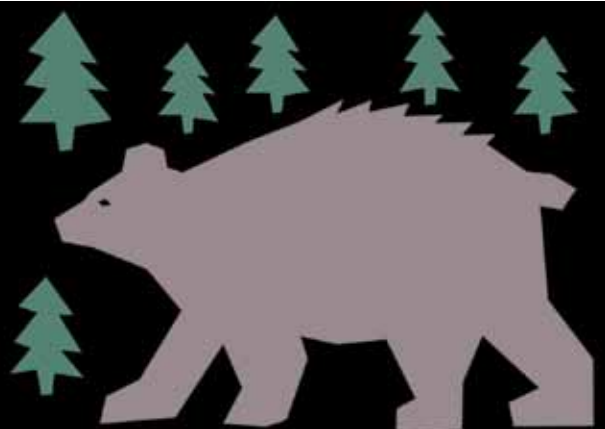
Providing supplemental water. Supplying water in addition to natural water sources.

Providing supplemental food. Supplying food or nutrition in addition to that produced by the land.

Providing shelter. Creating or maintaining vegetation or artificial structures that shelter the targeted species during nesting and breeding and protect them from the weather and predators.

Conducting census counts. Periodically taking surveys and inventories to determine the number, composition and other relevant information about the targeted wildlife population to see if the objectives of the management practices are being met.

Open space appraisal requires the land, not the landowner, to qualify based on current and past usage.





Managed species must be indigenous to the area and present in sufficient numbers to ensure successful breeding.

What Land Qualifies?

The Texas Parks and Wildlife Department (TPWD) and the Texas Comptroller of Public Accounts develop standards for determining when land qualifies for wildlife management. Comptroller Office guidelines clarify some statutory requirements. For example, the statute states that land must qualify for open space appraisal or qualified timber land appraisal before the landowner applies for wildlife management status.

The guidelines, however, state that the land must qualify for open space appraisal or qualified timber land appraisal **the year before** the application is filed.

The targeted species must be indigenous to Texas. The guidelines define indigenous animals as those originating in or naturally migrating through an area and capable of living there naturally. Animals such as hummingbirds or waterfowl that live in an area seasonally qualify. Fish, whether indigenous or not, do not. The species cannot be imported or introduced to an area by man. Exotics, feral hogs and emus are among those that do not qualify.

The mere presence of an indigenous species is not sufficient to qualify land for wildlife management status. There must be a sufficient number of animals, including an adequate breeding population, to ensure a viable group for several generations. Does this rule disqualify land managed for an indigenous species such as bobwhite quail, which are steadily declining in some areas, or black bear, which have practically vanished from Texas?

Beyrl Armstrong, a property tax consultant with Plateau Integrated Land & Wildlife Management, Inc., and a member of the committee that developed the standards for the TPWD, says that managing land for a declining population of northern bobwhite by eliminating predators, improving food sources and providing cover should qualify. This should be true even if the population decreases for reasons beyond the control of the land manager, such as a prolonged drought.

According to Armstrong, "If the habitat exists, there will be a place for the population to recover and sustain itself.

However, if the population decline is due to inappropriate land management practices, then either the plan needs to be changed or a different species targeted."

The statute states the targeted indigenous species must be managed for human food, medicine or recreation. The guidelines provide that the first two (food and medicine) require active management, while the third (recreation) can be either active or passive. Bird watching, hiking, hunting, photography and other hobby-type activities qualify as recreation. The owner's mere enjoyment in owning and managing the land for wildlife fulfills the test.

The statute requires wildlife management to be the primary use of the property. Land devoted to wildlife management may be used for other purposes, but those uses must be subordinate to wildlife management. The chief appraiser gathers and considers all the relevant facts to determine the land's primary use.

What Land Does Not Qualify?

Section 23.56 lists three categories of land that do not qualify for open-space appraisal. These include the following.

First, land located within the corporate limits of a town or city where:

- the city is providing governmental and proprietary services comparable to other parts of the city with similar topography, land utilization and population density,
- the land has not been devoted principally to agricultural use continuously for the preceding five years or
- the land has not been devoted principally to agricultural use or to production of timber or forest products continuously for the preceding five years and is used for wildlife management.

Second, land owned by an individual who is a nonresident alien or by a foreign government that is required to register the ownership or acquisition under federal law.

Third, land owned by a corporation, partnership, trust or other legal entity that is required by federal law to register its ownership or acquisition of the property because nonresident aliens or foreign governments (or any combination thereof) own a majority interest in the entity.

Updated Guidelines

Updated guidelines issued in July 2002 offer additional standards to assist tax appraisers in determining when property qualifies for wildlife management status. Four qualifications were added. These include a written wildlife management plan, implementation of the plan, accomplishment of certain practices annually and dedication of a minimum percentage of the land to wildlife management in some cases.

A written wildlife management plan must be submitted to the chief appraiser on a TPWD-supplied form before May 1. Described activities and practices must be consistent with TPWD recommendations for the region where the property is located. The plan must describe:

- the ownership of the tract and its past and current uses,
- the targeted indigenous animal(s),
- the goals for the property and
- the wildlife and habitat management activities and practices that support the targeted species.

The wildlife management plan must be implemented at the time the application is submitted, and a minimum of three of the seven management practices described earlier must be carried out each year.

A minimum percentage of the acreage within a tract must be dedicated to wildlife management if the tract was part of a larger tract that qualified for either ag use, open space or wildlife management appraisal the prior year. The minimum percentages, which translate into minimum required acreages, vary depending on the location of the tract.

Statewide, the minimum sizes range from 12½ acres in East Texas to 100 acres in the Trans Pecos. The appraisal district board of directors for each county makes the determination of the exact acreage needed within the statutory guidelines.

Plan, Implement, Document

Landowners and chief appraisers alike are perplexed by the statute's requirement that land granted wildlife management status be managed "to the degree of intensity typical for the area." How can this be measured? Because wildlife management is relatively new, there is little data to measure compliance. For this reason, TPWD divided the state into ten ecological areas and developed wildlife management guidelines and practices for each. Landowners may access these regional planning recommendations and other pertinent documents at TPWD's website (www.tpwd.state.tx.us/conserve/private_lands/agricultural_land/).

Armstrong considers these regional guidelines indispensable in preparing a written plan. The guidelines help the landowner select management practices appropriate for the region and applicable to the targeted species.

According to Armstrong, the key factors in getting the application for wildlife management accepted are:

- carefully crafting a plan based on the regional guidelines;
- designating the required minimum number of acres for the area; and
- presenting the plan to the chief appraiser in a timely, orderly fashion.

Once the application is accepted, minimum levels of intensity for each practice outlined in the guidelines are necessary to maintain the land's wildlife management tax status. The



appraisal district requires periodic inspections and reports to document compliance. Reports may include photographs, receipts, aerial pictures, surveys and other data evidencing compliance. Landowners should maintain good communications with the appraisal district and promptly supply all required information.

Tax Neutral Status

Because land must be appraised as open space or qualified timber land before it can be converted to wildlife management use, neither landowners nor appraisal districts achieve any additional tax benefit from the conversion. In this respect, wildlife management status is tax neutral.

Those who benefit from a wildlife management classification are landowners who no longer want to use their land primarily for agriculture or new landowners who have no agricultural intentions or skills. Some ranchers, for example, have discovered they can make more money from deer leases than from cattle. These people are freed from the burden of engaging in farming or ranching for tax purposes only. ➤

Fambrough (judon@recenter.tamu.edu) is a member of the State Bar of Texas and a lawyer with the Real Estate Center at Texas A&M University.



MAYS BUSINESS SCHOOL

Texas A&M University
2115 TAMU
College Station, TX 77843-2115

<http://recenter.tamu.edu>
979-845-2031

Director, Gary W. Maler; **Chief Economist**, Dr. Mark G. Dotzour; **Communications Director**, David S. Jones; **Managing Editor**, Nancy McQuiston; **Associate Editor**, Bryan Pope; **Assistant Editor**, Kammy Baumann; **Art Director**, Robert P. Beals II; **Graphic Designer**, JP Beato III; **Circulation Manager**, Mark Baumann; **Typography**, Real Estate Center.

Advisory Committee

Ronald C. Wakefield, San Antonio, chairman; James Michael Boyd, Houston, vice chairman; Mona R. Bailey, North Richland Hills; Louis A. Cortes, China Grove; Jacquelyn K. Hawkins, Austin; Joe Bob McCart, Amarillo; D. Marc McDougal, Lubbock; Kathleen McKenzie Owen, Pipe Creek; Barbara A. Russell, Denton; and John D. Eckstrum, Conroe, ex-officio representing the Texas Real Estate Commission.

Tierra Grande (ISSN 1070-0234) is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115. Subscriptions are free to Texas real estate licensees. Other subscribers, \$20 per year. Views expressed are those of the authors and do not imply endorsement by the Real Estate Center, Mays Business School or Texas A&M University. The Texas A&M University System serves people of all ages, regardless of socioeconomic level, race, color, sex, religion, disability or national origin.