ALL ABOUT AGRICULTURE

STATUTORY REFERENCES

Agricultural land is defined in Colorado statutes as follows:

Definitions

(1.6)(a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(I) (A) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) shall not include two acres or less of land on which a residential improvement is located unless the improvement is integral to an agricultural operation conducted on such land. "Agricultural land" also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resource conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

(B) A residential improvement shall be deemed to be "integral to an agricultural operation" for purposes of sub-paragraph (A) of this subparagraph (I) if an individual occupying the residential improvement either regularly conducts, supervises, or administers material aspects of the agricultural operation or is the spouse or a parent, grandparent, sibling, or child of the individual.

(II) A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land.

(III) A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. "Agricultural land" under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or nonagricultural residential purposes.

(IV) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated ground water granted in accordance with article 90 of title 37, C.R.S., for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land;

(V) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that has been reclassified from agricultural land to a classification other than agricultural land and that met the definition of agricultural land as set forth in subparagraphs (I) to (IV) of this paragraph (a) during the three years before the year of assessment. For purposes of this subparagraph (V), the parcel of land need not have been classified or eligible for classification as agricultural land during the ten years preceding the year of assessment as required by subparagraph (I) of this paragraph (a).

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), all other agricultural property that does not meet the definition set forth in paragraph (a) of this subsection (1.6) shall be classified as all other property and shall be valued using appropriate consideration of the three approaches to appraisal based on its actual use on the assessment date.

(II) On and after January 1, 2015, "All other agricultural property" includes greenhouse and nursery production areas used to grow food products, agricultural products, or horticultural stock for wholesale purposes only that originate above the ground.

(c) An assessor must determine, based on sufficient evidence, that a parcel of land does not qualify as agricultural land, as defined in subparagraph (IV) of paragraph (a) of this subsection (1.6), before land may be changed from agricultural land to any other classification.

(d) Notwithstanding any other provision of law to the contrary, property that is used solely for the cultivation of medical marijuana shall not be classified as agricultural land.

§ 39-1-102, C.R.S.

Definitions relating to § 39-1-102(1.6)(a)(I), C.R.S.

(1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture. Effective July 1, 2013, "agriculture" includes silviculture.

(3.5) "Farm" means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

(13.5) "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

§ 39-1-102, C.R.S.

STATUTORY CRITERIA

Agricultural land may be used by the owner of the land or a lessee. The following section outlines pertinent statutory criteria to consider when determining whether or not land qualifies as agricultural. For additional information, see sections 39-1-102 (1.6)(a)(I) through (V) and 39-1-102(1.6)(b), C.R.S..

ZONING

Colorado statute § 39-1-102(1.6)(a)(I), C.R.S., states that land may qualify as agricultural whether located in an incorporated or unincorporated area and regardless of the uses for which the land is zoned.

CURRENT USE

Agricultural classification requires land to be used as a farm or ranch during a three-year period. § 39-1-102(1.6)(a)(I), C.R.S.

- The land must be used the previous two years, and
- Must presently be used as a farm or ranch.
- Property beginning the Ag use must wait until the third year to receive the agricultural classification.

LAND USED AS A FARM

Section 39-1-102(3.5), C.R.S., defines a farm as land that is used to produce agricultural products that originate from the productivity of the land in order to derive a profit.

- The land must produce agricultural products
- The products must be grown in the soil
- The primary purpose of the activity is to obtain a monetary profit
- A full cycle of agricultural farming activity includes planting, growing, harvesting and selling the agricultural product.

AGRICULTURAL AND LIVESTOCK PRODUCTS

Section 39-1-102(1.1), C.R.S., defines agricultural products for farming and ranching to be plant or animal products in a raw or unprocessed state regardless of the use of the product after its sale and regardless of the entity that purchases the product.

- The products must be unprocessed
- Products must be derived from the science and art of agriculture
- "Agriculture" means farming, ranching, animal husbandry, and horticulture.
- Effective July 1, 2013, silviculture will be included in the meaning of "Agriculture." "Silviculture" is defined as the branch of forestry that is concerned with the cultivation of trees.

LAND USED AS A RANCH

Section 39-1-102(13.5), C.R.S., defines a ranch as a parcel of land used for grazing livestock for a profit. When determining a ranch classification, the following two-prong test is considered.

- The land must be grazed by livestock
- The use of the grazing animals is to obtain a monetary profit

Definitions and Use of Livestock

Part of the statutory definition of a ranch, under § 39-1-102(13.5), C.R.S., includes the definition of livestock, "...livestock means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit."

The determination of whether animals are domestic or not is important to the understanding of the definition of grazing livestock. Domestic animals are defined in the Webster's Eleventh New Collegiate Dictionary as: "Any of various animals (as the horse, sheep) domesticated by man so as to live and breed in a tame condition."

In addition to the requirement of grazing, the manner in which the livestock are used is crucial to the designation of the land as agricultural. The statutes require the animals to be used for food for human or animal consumption, breeding, draft, or profit. Animals which are not used for these purposes do not meet the definition of a ranch, regardless of whether the land owner makes a profit from the grazing of such animals or not.

Use

The following criteria should be considered in classifying the grazing animals as qualifying the land as a ranch.

1. The animals can be bought and sold. A Brand Inspection Certificate or a bill of sale is provided when transferring ownership of the animal.
2. The animals are not the property of the state of Colorado. All wildlife (undomesticated animals) are the property of the state and permission is required of the state to own and confine these species which are typically found in the wild.
3. Veterinary and other services are provided for the health of the animals.
4. The animals are confined to the property and shelter may be provided.
5. The animals are intended to serve humans in some capacity as food for animal or human consumption, for draft, for breeding for resale, or used for profit as in selling the animal's coat.
6. The animals are identifiable by brands, tags, or tattoos.

Satisfying the majority of the above criteria provides a strong case for qualifying the grazing animals. However, undue emphasis should not be placed on any one criterion when determining whether animals meet the definition of livestock.

The landowner need not own the livestock to qualify as a ranch. However, the owner of the livestock must be engaged in an agricultural endeavor from the raising of the livestock. For example, a landowner who leases his land for the grazing and boarding of pleasure horses owns land that does not qualify as a ranch. Since the horses are not being used for food for human or animal consumption, breeding, draft or profit, the horses are not livestock under the statutory definition.

Land leased to the owner of horses being raised for breeding or sale would qualify as a ranch, assuming the rest of the statutory conditions are met.

Additional agricultural definitions are also found in Colorado statutes.

CONTINUITY

Section 39-1-102(1.6)(a)(I), C.R.S., requires agricultural land must continue to have actual agricultural use to maintain the classification.

- The use must not be interrupted
- Failure of a parcel to meet the agricultural land definition for one year is the required basis for reclassifying agricultural property to a classification other than agriculture.

LAND UNDER IMPROVEMENTS

Agricultural land may include land under improvements located on the parcel. Section 39-1-102(1.6)(a)(I)(A), C.R.S.

- Includes land underlying residential improvements and the residence if they are integral to the farming or ranching operation.
- Does not include up to two acres of land if the residential improvement is NOT integral to the agricultural operation.
- Includes land underlying other improvements if:
  (1) improvements are an integral part of the farm or ranch operation
  (2) improvements and area dedicated to improvements are typically used as ancillary part of the operation.

Section 39-1-102(1.6)(a)(I)(B), C.R.S., states a residential improvement is considered integral if an individual occupying the residential improvement regularly:

- Conducts, supervises, or administers material aspects of the agricultural operation or;
- Is the spouse or a parent, grandparent, sibling, or child of the individual who regularly conducts, supervises, or administers material aspects of the agricultural operation.

It is important to note that the law does not require the property owner to return the questionnaire. Failure of the taxpayer to supply information requested cannot be the sole reason for reclassifying the property. In addition, the questionnaire must state that failure on the part of the property owner to supply such information will not be used as the sole reason for reclassifying the property in question. Refer to § 39-1-103(5)(c), C.R.S.

The classification of the parcels should be based on the current use in conjunction with consideration of the additional criteria listed below.

PHYSICAL REVIEW

Before the classification of a parcel is determined or changed, a physical inspection should be conducted to substantiate the use as agricultural. The following is an example of items to scrutinize when conducting a physical review of land requesting an agricultural designation.

1. Grazing livestock or recent evidence of grazing activity.
2. Preparation/planting/harvesting/selling crops.
3. Topography and physical geology of the land.
4. Accessibility.
5. Farm/ranch outbuildings.
6. Agricultural machinery and equipment.
7. Fence. (Not crucial)
8. Livestock water.
9. Irrigation ditches/canals.
10. Evidence of soil conservation practices.

TAXPAYER DOCUMENTATION

The following includes documentation the assessor can reasonably request, along with the agricultural land classification questionnaire, for further analysis of parcels requesting an agricultural designation. However, failure of the taxpayer to supply information requested cannot be the sole reason for denying the agricultural designation.

- IRS Form 1040F (or equivalent).
- Leases.
- Receipts for services rendered and items purchased relevant to the agricultural operation.
- Brand inspection certificates.
- Enrollment documents from Federal Agricultural programs.
- Ownership of irrigation water shares.
- Sales invoices of Agricultural products or livestock sold.

SPECIAL DESIGNATION ISSUES

PLEASURE HORSES

Rural tracts that graze pleasure horses do not qualify as agricultural because the animals do not qualify as livestock used for food, breeding, draft, or profit. This would apply to parcels that board pleasure horses for profit. The use of the animal must be to derive a profit.

1. The land must be grazed, **AND**
2. The owners of the livestock must use the livestock for food for human or animal consumption, breeding, draft or profit.

Important Contacts for Agricultural Operations

Farm Service Agency
Simla Service Center
504 Washington ST
Simla, CO 80835
719-541-2358

Website Colorado Department of Agriculture
https://www.colorado.gov/agmain

Obtain a copy of Colorado Agricultural Statistics, published by the Colorado Department of Agriculture. The report is available on the internet at: www.nass.usda.gov/co

Local County Contact
Elbert County Assessor's Office
PO Box 26
Kiowa, CO 80117
303-621-3103
Bart.chambers@elbertcounty-co.gov