ALAN WILSON
ATTORNEY GENERAL

July 2, 2012

The Honorable Wayne Welch
Dorchester County Assessor
201 Johnston Street
St. George, South Carolina 29477

Dear Mr. Welch:

You have inquired whether a particular parcel meets the requirements for an agricultural use classification for the purposes of *ad valorem* taxation. You have described the parcel as follows:

> The property in question is a 201.71 acre parcel owned by [an] LLC.[1] 65 acres of this tract is pasture and stables. Horses are boarded and trained here. No animals are raised for sale. Approximately 71 acres is wooded and used for horseback riding and nature trails. 55 acres is lakes and marsh. 10 acres consists of roads and riding trails. There is no evidence that this property is actively engaged in growing trees for commercial use. The main use of this property is that of a commercial use riding and boarding stable.

As an initial matter, it is important to note that this Office does not engage in the investigation of factual matters. Thus, for the purposes of this opinion only, we must assume the facts you have presented are accurate and complete. If there are relevant facts not mentioned in your description, our prediction as to the result might change.

Analysis

"Agricultural real property" is defined by section 12-43-230(a) of the South Carolina Code (2000 & Supp. 2011) in relevant part as follows:

> [A]ny tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture.

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[1] For information regarding the classification of property owned by LLCs, we refer you to section 12-2-25 of the South Carolina Code (2000 & Supp. 2011) and to the recent decision of our state Supreme Court in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011).

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The Department of Revenue has developed regulations that require consideration of several non-exclusive factors when determining whether land has been put to a bona fide agricultural use. 27 S.C. Code Ann. Regs. 117-1780.1 (Supp. 2011).[2] However, your description of the property does not include sufficient detail to allow us to engage in a meaningful independent analysis of these factors. Thus, we must confine our opinion to an application of the plain language of section 12-43-230(a) to the facts as you have presented them.[3]

Pasture and stables

You have described sixty-five acres of the parcel as "pasture and stables." You state that horses are boarded there but are not "raised for sale." The plain language of section 12-43-230(a) includes land used to feed or manage livestock. "Livestock" means "[d]omestic animals, such as cattle or horses, raised for home use or for profit, esp[ecially] on a farm." *The American Heritage College Dictionary* 794 (3d ed. 1997) (emphasis added). Thus, if the pasture area is used to feed or manage domesticated horses, this would be an agricultural use within the meaning of section 12-43-230(a) even if the horses are not raised for sale. Following the same definition of "livestock," the boarding of horses likely would constitute the management of livestock, which would place the portion of the property put to such use within the plain language of section 12-43-230(a). This interpretation finds further support in the fact that section 12-43-230(a) makes the feeding or management of livestock disjunctive from the breeding or production of the same. *Id.* (defining agricultural real property to include "any tract of real property which is used to . . . feed, breed or manage livestock, or to produce . . . animals useful to man" (emphasis added)). Accordingly, the grammar of the sentence suggests animals need not be sold for profit in order for their feeding and management to constitute an agricultural use.[4]

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[2] "The following factors shall be considered by county assessors in determining whether" property has been committed to a "bona fide" agricultural use:

1. The nature of the terrain
2. The density of the marketable product (timber, etc.) on the land
3. The past usage of the land
4. The economic merchantability of the agricultural product
5. The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof
6. The business or occupation of the landowner or lessee, however, the fact that the tract may have been purchased for investment purposes does not disqualify it if actually used for agricultural purposes

[3] Additional requirements for agricultural classification are set forth in section 12-43-232 of the South Carolina Code (2000 & Supp. 2011). According to your description, the acreage requirement of section 12-43-232(2) is satisfied, making it unnecessary to satisfy or rely upon the other subsections of that statute. *See id.* ("For tracts not used to grow timber . . . the tract must be ten acres or more.").

[4] This conclusion should not be read to suggest that every pasture and stable in South Carolina qualifies for an agricultural use classification. Rather, our conclusion must be read in the context of an

In addition, though not binding precedent, at least three decisions of the South Carolina Tax Commission support our interpretation. First, the Commission has treated a pasture for horses as an agricultural use. S.C. Tax Comm'n Decision 88-55 (Mar. 16, 1988), *available at* 1988 WL 409342. Second, the Commission has found property used to "board and train thoroughbred race horses" was used "for the management of livestock" within the meaning of section 12-43-230(a). S.C. Tax Comm'n P-D-415 (Mar. 26, 1984), *available at* 1984 WL 185033. Finally, the Commission has found property used as a "training and exhibition facility" for horses and to "stable horses during [an] annual . . . competition" was "committed . . . to the management of livestock," and therefore, entitled to an agricultural use classification. S.C. Tax Comm'n P-D-527 (Apr. 5, 1985), *available at* 1985 WL 192772. While—as discussed below in footnote 6—section 12-43-233 of the South Carolina Code (Supp. 2011) now calls the Commission's conclusions regarding the training and exhibition of horses into question, we have found no reason to discredit the Commission's interpretation as to the proper classification of property used as a pasture or stable.

For these reasons, it is our opinion that a court likely would find the sixty-five acres of pasture and stables to be agricultural real property.

Remaining acreage

Where a single parcel is used for more than one purpose, its proper classification will depend upon the application of several rules. First, "[i]n the event at least fifty percent of a real property tract shall qualify as 'agricultural real property[,'] the entire tract shall be so classified, provided no other business for profit is being operated thereon." S.C. Code Ann. § 12-43-230(a). If a portion of a tract is committed to a business for profit and <u>not</u> to agricultural purposes, that portion will not be granted the special use classification. *See id.* On the other hand, if a single portion of the tract is "committed to more than one use . . . the agricultural activity use must comprise the most significant use of the property in order for it to be classified as agricultural real property." 27 S.C. Code Ann. Regs. 117-1780.1. Our Supreme Court has clarified the application of these rules as follows:

> [I]f a farmer uses eighty percent of his land for agricultural purposes and twenty percent for vacant land, his entire tract would qualify for agricultural use provided no other business for profit is operated on the twenty percent vacant land. If the twenty percent vacant land were used for business for profit, the entire tract would not qualify but only

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area consisting of ten acres or more the most significant use of which is as a pasture and stable. Incidental housing of domestic horses for private use on land devoted mainly to some other purpose might lead to a different result. *See generally* S.C. Code Ann § 12-43-232 (imposing additional requirements for the agricultural use classification); *cf. Abercrombie v. Adkins*, Docket No. 96-ALJ-17-0315-CC (S.C. Admin. Law Ct. Sept. 26, 1996), *available at* 1996 WL 909528 (applying the requirements of section 12-43-232 to deny agricultural use classification for property used to house two horses and to grow vegetables for personal use); *Smith v. Bishop*, Docket No. 96-ALJ-17-0003-CC (S.C. Admin. Law Ct. June 6, 1996), *available at* 1996 WL 909295 (finding a "personal vegetable garden" located on property that contained the taxpayer's residence did not constitute a bona fide agricultural use).

> the eighty percent actually used agriculturally.

Jasper County Tax Assessor v. Westvaco Corp., 305 S.C. 346, 348, 409 S.E.2d 333, 334 (1991) (emphasis omitted) (interpreting a previous version of the relevant authorities).

Here, the sixty-five acres of pasture and stables would not constitute fifty percent of the tract as you have described it. Therefore, the pasture and stables would not suffice to bring the remaining acreage within the agricultural use classification.[5] Accordingly, we turn to the actual use of that remaining acreage.

You have described the remainder of the parcel as riding and nature trails through various terrain, along with lakes and marsh. You have not specified any particular use of the lakes and marsh. The riding and nature trails appear to have been committed to "agritourism," as that term is defined by section 12-43-233 of the South Carolina Code. Examples of agritourism include "horseback riding, horseback sporting events and training for horseback sporting events, cross-country trails . . . dude ranches, trail rides . . . nature-based attractions, and ecological-based attractions." *Id.* Pursuant to section 12-43-233:

> [U]ses of tracts of agricultural real property for "agritourism" purposes is [sic] deemed an agricultural use of the property to the extent agritourism is not the primary reason any tract is classified as agricultural real property but is supplemental and incidental to the primary purposes of the tract's use for agriculture, grazing, horticulture, forestry, dairying, and mariculture. These supplemental and incidental agritourism uses are not an "other business for profit" for purposes of section 12-43-230(a).

Thus, it appears agritourism is not alone sufficient to create an agricultural use classification for property that would not otherwise qualify under section 12-43-230(a).[6]

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[5] If, contrary to your assertions, a court were to find the wooded area of the property qualified as timberland, the existence of trails through that area would not destroy the agricultural use classification—as discussed below. A combination of the seventy-one acres of timberland and the sixty-five acres of pasture and stables would bring the portion of the tract committed to agricultural purposes above the fifty percent threshold established by section 12-43-230(a), thereby qualifying the entire tract as agricultural real property.

[6] *See also* 27 S.C. Code Ann. Regs. 117-1780.1 (stating that recreation, hunting clubs and fishing clubs are not agricultural uses). By defining agritourism to include "horseback sporting events and training for horseback sporting events," section 12-43-233 suggests the training and exhibition of horses is not within the main definition of agricultural use found in section 12-43-230(a). Thus, prior decisions of the Tax Commission that treated such training and exhibition as an example of the management of livestock appear, at a minimum, to have been superseded. However, nothing in section 12-43-233 suggests the boarding of horses does not remain a valid example of the management of livestock within the meaning of section 12-43-230(a).

Conclusion

Relying on the accuracy and completeness of the facts you have submitted to us, it is our opinion that a court likely would find the sixty-five acres of pasture and stables qualify for the agricultural use classification. Much of the remainder of the tract appears to be used for agritourism, as that term is defined in section 12-43-233 of the South Carolina Code. We interpret section 12-43-233 to mean that agritourism is not alone sufficient to bring property within the agricultural use classification. Therefore, based on your description, it does not appear the remainder of the parcel would qualify as agricultural real property.

Very truly yours,

Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General