OPEN SPACE USE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 200_, between Kennedy, Mary Ellen hereinafter called the "Owner", and the County of Fauquier, a political subdivision of the Commonwealth of Virginia, hereinafter called the "County", recites and provides as follows:

RECITALS

1. The Owner is the owner of certain real estate, described below, hereinafter called the "Property"; and

2. The County is the local governing body having real estate tax jurisdiction over the Property; and

3. The County has determined:

   A. That it is in the public interest that the Property should be provided or preserved for one or more of the following uses: park or recreational purposes; conservation of land; conservation of other natural resources; an historic area; a scenic area; assisting in the shaping of the character, direction and timing of community development; or other use which serves the public interest by the preservation of open-space land as provided in the land-use plan; and

   B. That the Property meets the applicable criteria for real estate devoted to open space use as prescribed in Article 4 (Section 58.1-3229 *et seq.*) of Chapter 32 of Title 58.1 of the Code of Virginia, and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Historic Resources; and

C. That the provisions of this Agreement meet the requirements and standards prescribed under Section 58.1-3233 of the Code of Virginia for recorded commitments by landowners not to change an open space use to a non-qualifying use; and

4. The Owner is willing to make a written recorded commitment to preserve and protect the open space uses of the Property during the term of this Agreement in order for the Property to be taxed on the basis of a use assessment and the Owner has submitted an application for such taxation to the assessing officer of the County pursuant to Section 58.1-3234 of the Code of Virginia and Section 8-10 of the Fauquier County Code.

5. The County is willing to extend the tax for the Property on the basis of a use assessment commencing with the next succeeding tax year and continuing for the term of this Agreement, in consideration of the Owner's commitment to preserve and protect the open space uses of the Property, and on the condition that the Owner's application is satisfactory and that all other requirements of Article 4, Chapter 32, Title 58.1 of the Code of Virginia and Section 8-11 of the Fauquier County Code are complied with.

NOW THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, the parties hereby covenant and agree as follows:

1. This Agreement shall apply to all of the following described real estate: see Attachment "A".

2. The Owner agrees that during the term of this Agreement:

   A. There shall be no change in the use or uses of the Property that exist as of the date of this Agreement to any use that would not qualify as an open space use.

   B. There shall be no display of billboards, signs or other advertisements on the property, except to (i) state solely the name of the Owner and

the address of the Property; (ii) advertise the sale or lease of the Property; (iii) advertise the sale of goods or services produced pursuant to the permitted use of the Property; or (iv) provide warnings. No sign shall exceed four feet by four feet (4' x 4').

C. There shall be no construction, placement or maintenance of any structure on the Property unless such structure is either:

1. on the Property as of the date of this Agreement; or

2. related to and compatible with the open space uses of the property which this Agreement is intended to protect or provide for.

D. There shall be no accumulations of trash, garbage, ashes, waste, junk, abandoned property or other unsightly or offensive material on the Property.

E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials which alters the topography of the Property, except as required in the construction of permissible building structures and features under this Agreement.

F. There shall be no construction or placement of fences, screens, hedges, walls, or other similar barriers which materially obstruct the public's view of scenic areas of the Property.

G. There shall be no removal or destruction of trees, shrubs, plants and other vegetation, except that the Owner may:

1. engage in agricultural, horticultural or silvicultural activities, provided that there shall be no cutting of trees, other than selective cutting and salvage of dead or dying trees, within 100 feet of a scenic river, a scenic highway, a Virginia By-Way or public property listed in the approved State Comprehensive Outdoor Recreation Plan (Virginia Outdoors Plan); and

2. remove vegetation which constitutes a safety, a health, or an ecological hazard.

H. On areas of the property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall be no alteration or manipulation of natural water courses, shores, marshes, swamps, wetlands or other water bodies, nor any activities or uses which adversely affect water quality, level or flow.

I. On areas of the Property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall be no operation of dune buggies, all-terrain vehicles, motorcycles, motorbikes, snowmobiles or other motor vehicles, except to the extent necessary to inspect, protect or preserve the area.

J. There shall be no industrial or commercial activities conducted on the Property, except for the continuation of agricultural, horticultural or silvicultural activities, or activities that are conducted in a residence or an associated outbuilding such as a garage, smokehouse, small shop or similar structure which is permitted on the property.

K. There shall be no separation or split-off lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of the Agreement only as the same entire parcel that is the subject of this Agreement; provided, however, that the Owner may grant to a public body or bodies open space, conservation or historic preservation easements which apply to all or part of the Property.

3. This Agreement shall be effective upon acceptance by the County, provided, however, that the real estate tax for the property shall not be extended on the basis of its use value until the next succeeding tax year following timely application by the Owner for use assessment and taxation in accordance with the Fauquier County Code. Thereafter, this

Agreement shall remain in effect for a term of eight (8) consecutive years.

4. Nothing contained herein shall be construed as giving to the public a right to enter upon or to use the Property or any portion thereof, except as the Owner may otherwise allow, consistent with the provisions of this Agreement.

5. The County shall have the right at all reasonable times to enter the Property to determine whether the Owner is complying with the provisions of this Agreement.

6. Nothing in this Agreement shall be construed to create in the public or any member thereof a right to maintain a suit for any damages against the Owner for any violation of this Agreement.

7. Nothing in the Agreement shall be construed to permit the Owner to conduct any activity or to build or maintain any improvement which is otherwise prohibited by law.

8. If any provision of this Agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby.

9. The provisions of this Agreement shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.

10. Words of one gender used herein shall include the other gender, and words in the singular shall include words in the plural, whatever the sense requires.

11. This Agreement may be terminated in the manner provided in Section 15.1-1513 of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

12. Upon termination of this Agreement, the Property shall thereafter be assessed and taxed at its fair market value, regardless of its actual use, unless the County determines otherwise in accordance with applicable law.

13. Upon execution of this Agreement, it shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Fauquier County, Virginia, at the Owner's expense.

14. **NOTICE: WHEN THE OPEN SPACE USE OR USES BY WHICH THE PROPERTY QUALIFIED FOR ASSESSMENT AND TAXATION ON THE BASIS OF USE CHANGES TO A NON-QUALIFYING USE OR USES, OR WHEN THE ZONING FOR THE PROPERTY CHANGES TO A MORE INTENSIVE USE AT THE REQUEST OF THE OWNER, THE PROPERTY, OR SUCH PORTION OF THE PROPERTY WHICH NO LONGER QUALIFIES SHALL BE SUBJECT TO ROLL-BACK TAXES IN ACCORDANCE WITH SECTION 58.1-3237 OF THE CODE OF VIRGINIA. THE OWNER SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS AND LIABILITIES OF SAID CODE SECTION.**

ATTACHMENT "A"

ALL THAT CERTAIN LOT OR PARCEL OF LAND, TOGETHER WITH THE IMPOROVEMENTS THEREON AND THE APPURTENANCES THEREUNTO BELONGING, LYING AND BEING SITUATED IN FAUQUIER COUNTY AND LOUDOUN COUNTY, VIRGINIA NEAR PARIS AND ON THE ROD LEADING FROM UPPERVILLE TO PARIS, STATE ROUTE #50, SAID FARM BEING KNOWN AS "EDGE HILL", CONTANING 288 ACRES, MORE OR LESS, WITH 152 ACRES, MORE OR LESS, BEING SITUATE IN LOUDOUN COUNTY, VIRGINIA AND 135 ACRES, MORE OR LESS, IN FAUQUIER COUNTY.

AND BEING THE SAME PROPERTY ACQUIRED BY THE OWNER HEREIN BY THAT CERTAIN DEED AND RECORDED IN DEED BOOK 656, AT PAGE 737 AMONG THE LAND RECORDS OF FAUQUIER COUNTY, VIRGINIA.

WITNESS the following Signatures and Seals

Mary Ellen Kennedy (SEAL)
OWNER

COUNTY OF FAUQUIER, a political
subdivision of the Commonwealth of Virginia

BY _____ (SEAL)
CHAIRMAN
Fauquier County Board of Supervisors

STATE OF VIRGINIA
COUNTY OF FAUQUIER, to wit:

The foregoing was acknowledged before me, a Notary Public in and for the State and County aforesaid, this 4 day of April, 2003, by: Mary Ellen Kennedy, Owner.

Cathy Rice
NOTARY PUBLIC

My Commission Expires:
10-31-05

STATE OF VIRGINIA
COUNTY OF FAUQUIER, to wit:

The foregoing was acknowledged before me, a Notary Public in and for the State and County aforesaid, this___ day of _____, 200__, by: _____, Chairman, Fauquier County Board of Supervisors

_____
NOTARY PUBLIC

My Commission Expires:
_____

FAUQUIER COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
THIRD FLOOR — COURT AND OFFICE BUILDING
40 CULPEPER STREET
WARRENTON, VIRGINIA 20186
(540) 347-8660
FAX (540) 341-3444

PLANNING
(540) 347-8703
COUNTY ENGINEER
COUNTY SOIL SCIENTIST
(540) 347-8660

ZONING ADMINISTRATION
(540) 347-8789
BUILDING
AND ZONING PERMITS
(540) 347-8646
(540) 347-8647
(540) 347-8674
FAX (540) 347-2043

MEMORANDUM

TO: Ross W. D'Urso, Commissioner of the Revenue

THROUGH: Frederick P.D. Carr, Director of Community Development

FROM: Kristen Slawter, Planner KS

RE: Community Development Review of 2003 Open Space Land Use Commitments.
Applicants: Kennedy, Mary Ellen

DATE: March 17, 2003

As requested in the January 23, 2003 tasking memo from your office, the Department of Community Development has completed its review of the above referenced application for conformance with the Comprehensive Plan and other rural conservation policies.

Staff used a uniform evaluation methodology that was originally developed in 1995 to review this application. This form outlines the use of the subject and adjacent properties, provides a description of the property, indicated if the property appears to meet certain criteria established under Virginia Land Use Assessment law, and provides a final determination pf a *positive* or *negative* rating.

Community Development staff has determined that the above referenced property has a positive rating regarding its consistency with the Fauquier County Comprehensive Plan and the referenced open space standards.

Please contact this office should you have any questions about this evaluation.

COMMUNITY DEVELOPMENT REVIEW OF 2003 OPEN SPACE LAND USE ASSESSMENT APPLICATIONS

Property Owner	Kennedy, Mary Ellen
Parcel I.D. No. (PIN)	6044-19-8335-000
Location	10298 John Mosby Highway
Acreage	135.88
Magisterial District	Marshall

Property Description / Use:

Current Zoning:	RA+RC	**Comprehensive Plan Designated Land Use:**	Rural Agriculture, Rural Conservatio

Adjacent Property Zoning / Current Land Use

North	N/A	Loudoun County
South	RA	Rural Agriculture
East	RA	Rural Agriculture
West	RC+RA	Rural Conservation + Rural Agriculture

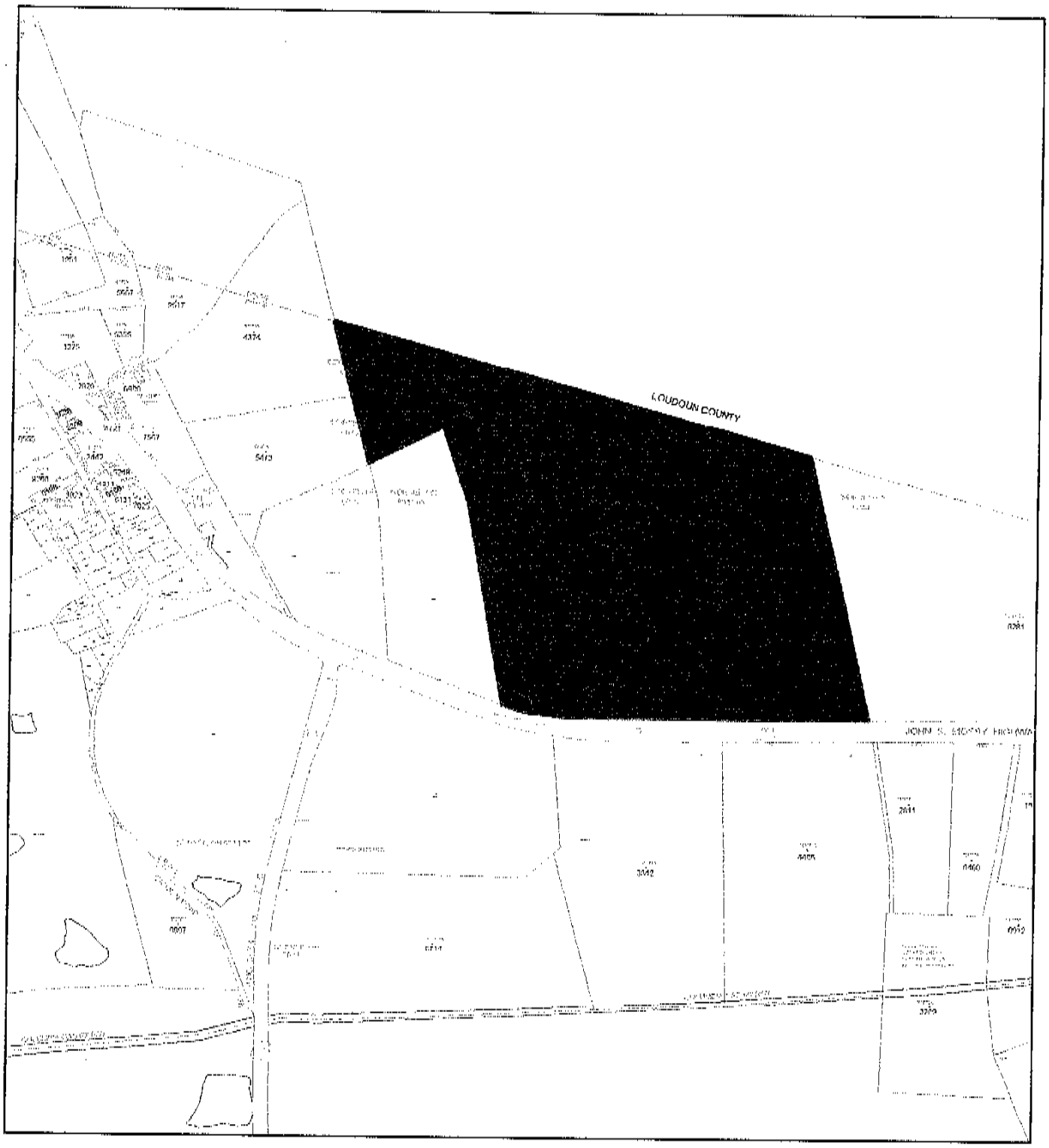
The applicant has filed for land use assessment under the open space category. To qualify, real estate must be consistent with the land use plan, consist of a minimum of 25 acres, and satisfy one of the following specific criteria: park/recreation purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction and timing of community development or for the public interest. The applicant's parcel, as it pertains to these conditions, follows below.

General Standards	**Meets Criteria**	
• *Consistency with land use plan*	(Y)	N
• *Minimum acreage*	(Y)	N
• *Recorded commitment (e.g. agricultural and/or forestal district, open space easement, open space land use assessment)*	Y	(N)
Specific Standards		
• *park/ recreation purposes*	Y	(N)
• *conservation of land or other natural resources*	(Y)	N
• *floodways*	Y	(N)
• *historic or scenic purposes*	(Y)	N
• *assisting in the shaping of the character, direction and timing of community development or for the public interest*	(Y)	N

Additional Comments:

Community Development Determination (Positive or Negative)	Positive

Site Visit Date: March 14, 2003 ***Report Date:*** March 17, 2003



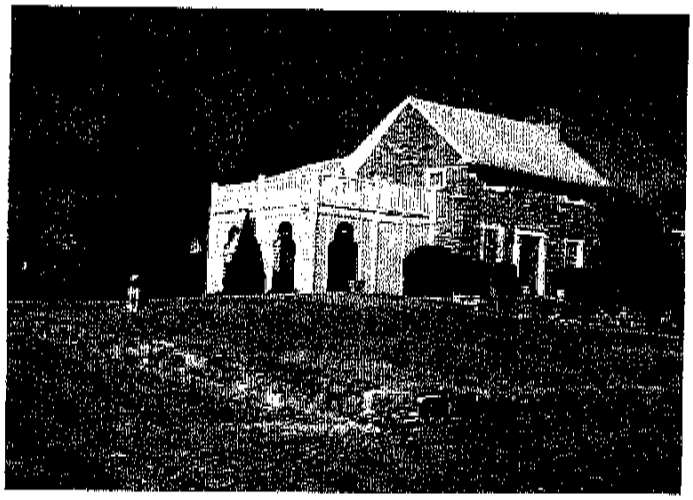
PIN=6044-19-8335
NAME=KENNEDY, MARY ELLEN
ADDR=10298 JOHN MOSBY HWY
CITYST=UPPERVILLE, VA
ZIP=20184
FMVLAND=1179000
DEFER=189700
BLDG=444500
TAXVAL=1433800
ACREAGE=136.88
BKPG=177/1889
SUBDIV=No data
E911=No data
SVCDIST=No data
ZONE=RAyRC
DATE=No data
SALE=No data

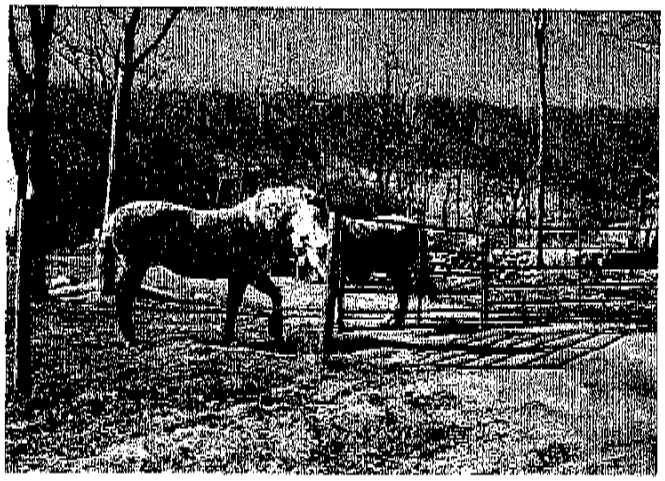
1 Inch = 1023.669 Feet.
Date Printed : 01/24/2003

Fauquier County
Geographic Information System

This map does not meet surveying accuracy standards.

Photographs of Kennedy Property
PIN 6044-19-8335-000
March 14, 2003





COMMONWEALTH OF VIRGINIA

COUNTY OF FAUQUIER

POST OFFICE BOX 149
WARRENTON, VIRGINIA 20188-0149
FAX (540) 341-3647
commish@fauquiercounty.gov

ROSS W. D'URSO, CCR
COMMISSIONER OF THE REVENUE

REAL ESTATE (540) 347-8614
TAX RELIEF FOR THE ELDERLY (540) 347-8783
LAND USE (540) 347-8783
STATE INCOME TAX (540) 347-8617
PERSONAL PROPERTY (540) 347-8620
BUSINESS LICENSE (540) 347-8798
MAIN (540) 347-8622

TASKING MEMO

Date: **January 28, 2003**

To: Frederick Carr, Director, Department of Community Development

From: Lisa G. Jenkins, Real Estate Tech I

Subject: Written Committments by Landowners to preserve Open-space Land Use

Task: Verify if property is consistent with the land use plan of the county and the standards for real estate devoted to Open-space use under the Virginia Land Use Assessment Law.

Property: PIN(S) 6044-19-8335-000 ACREAGE (S) 135.88

Assessed in Name(s) of: Kennedy, Mary Ellen
Edgehill Farm
10298 John Mosby Hwy
Upperville, VA 20184

Due Date: February 24, 2003

Attachments:
1) Copy of Application/Revalidation for Land Use
2) GIS map of parcel

Recommendation:

___This property is planned for rural agricultural uses and is consistent with the County's Land Use Plan.

___This property does not conform to the general and specific standards for the following reasons:

COMMENTS:

2003 FAUQUIER COUNTY REVALIDATION OF LAND USE ASSESSMENT 2003

RETURN TO
ROSS W. D'URSO, Commissioner of the Revenue
Fauquier County Courthouse & Office Building
40 Culpeper St., P.O. Box 149
Warrenton, Virginia 20186-0149

TELEPHONE (540) 347-8783

FILING DATE Property owners must submit this form between September 1 and November 1, 2002

DATE SUBMITTED 9/4/ SEP 5 2002

NAME OF FARM (IF ANY) Edgehill Farm

PROPERTY OWNER
7311702
KENNEDY, MARY ELLEN
EDGEHILL FARM
10298 JOHN MOSBY HWY
UPPERVILLE, VA 20184

135.8800 ACRES 6044-19-8335-000

SEE REVERSE SIDE FOR 2003 STANDARDS AND REQUIREMENTS FOR FILING THIS FORM.

PERIODIC ON SITE INSPECTIONS WILL BE MADE TO VERIFY AGRICULTURE/HORTICULTURE USE.

HAS there been ANY change in SIZE or USE of your property since last year's application? ☐ YES ☒ NO
If answer is YES a new LAND USE Application must be submitted. Please notify this office at once.

ALL APPROPRIATE SPACES IN THIS SECTION OF THE FORM MUST BE FILLED IN

NUMBER OF ACRES #3 agreement

AGRICULTURE	HORTICULTURE	FOREST	NON QUALIFYING	OPEN-SPACE
				applying open space use agreement

TO QUALIFY FOR AGRICULTURE list below number of animals and number of months the animals were on the property during the past year (September 1, 2001 -August 31, 2002) AND/OR list kind of crops and average yield per acre. If you are not farming this parcel yourself, you must request a **FARMING HISTORY AFFIDAVIT** from the Commissioner's office. That form is to be completed by the person actually farming the parcel. **IMPORTANT: ENCLOSE FEDERAL 1040F OR SEE BACK OF FORM FOR OPTIONS.**

ANIMALS			CROPS		
KIND	COUNT	NO. OF MONTHS	KIND	NO. OF ACRES	AVERAGE YIELD

TENANT HOUSES ON FARM OCCUPIED BY PERSON(S)

EMPLOYED FULL TIME ON FARM		EMPLOYED PART TIME ON FARM		**NOT** EMPLOYED ON FARM	
NO. OF HOUSES	ACRES	NO. OF HOUSES	ACRES	NO. OF HOUSES	ACRES

AGRICULTURE AND HORTICULTURAL STANDARDS

I (we) the undersigned certify that the real estate is being used in a planned program of soil management and soil conservation practices which is intended to:
– Reduce or prevent soil erosion by best management practices such as terracing, cover cropping, strip cropping, no-till planting, sodding waterways, diversions, water impoundments, and other best management practices which prevent soil erosion and improve water quality.
– Maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of agricultural crops or as recommended by soil tests.
– 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.

OWNER'S AFFIDAVIT

I (we) the undersigned certify that all land for which use taxation is requested meets all requirements of the uniform standards prescribed by the Commissioner of Agriculture and consumer services, and the Director of the Department of Conservation and Historic Resources.
I (we) declare under penalties of law that this application and any attachments hereto have been examined by me and to the best of my knowledge are true and correct.
I (we) do hereby grant permission to the Soil Conservation Service to provide information on Land Capability Classes to the proper authorities for the purpose of administering the land use ordinance.

ASSISTANCE TO LANDOWNERS

Soil management and soil conservation planning services to landowners are available free of charge from the John Marshall Soil and Water Conservation District. Fauquier County encourages applicants for land use assessment to become a cooperator with the John Marshall Soil and Water Conservation District. Planning Services are available at

98 Alexandria Pike, Suite 31
Warrenton, Virginia 20186-2849
Telephone (540) 347-3120

AT LEAST ONE OWNER MUST SIGN. IF CORPORATION, GIVE CORPORATE NAME AND TITLE.

OWNER'S SIGNATURE M. E. F. Kennedy

OWNER'S SIGNATURE OR CORPORATE NAME AND TITLE

OWNER'S TELEPHONE NUMBER (540) 592-3000 OR 540-592-7022

Title 58-1.3238 PENALTIES–Any person failing to report properly any change in use of property for which an application for use value taxation had been filed shall be liable for such taxes, in such amounts and at such times as if he had complied herewith and assessments had been properly made, and he, shall be liable for such penalties and interest thereon as may be provided by ordinance. Any person making a material misstatement of fact in any such application shall be liable for all such taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction together with interest and penalties thereon, and he shall be further assessed with an additional penalty of one hundred per centum of such unpaid taxes.