



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Forestry
Virginia Administrative Code (VAC) citation	4 VAC 10-20
Regulation title	Standards for Classification of Real Estate as Devoted to Forest Use Under the Virginia Land Use Assessment Law
Action title	Updating the Standards for Classification of Real Estate as Devoted to Forest Use Under the Virginia Land Use Assessment Law
Date this document prepared	May 20, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed amendments to the existing regulation will modify the definitions for the words “tree” and “stocking” under the section D – definitions. The definitions for “diameter at breast height” and “basal area” will be added as new terms under section D – definitions. Finally, an amendment will be made to table 1 to correct two mistakes.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Department of Forestry completed the required periodic review of 4 VAC 10-20, *Standards for Classification of Real Estate as Devoted to Forest Use Under the Virginia Land Use Assessment Law*,

and held a public comment period from April 23, 2012 to May 25, 2012. No comments were received during the comment period.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Under the authority of § 58.1-3230 et seq. of the Code of Virginia, the State Forester has adopted these Standards for Classification of Real Estate As Devoted to Forest Use under the Special Assessment for Land Preservation..

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Standards for Classification of Real Estate As Devoted to Forest Use under the Special Assessment for Land Preservation were developed 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/lessen the pressures which force the conversion of real estate to more intensive uses.

According to the specific authority and responsibility conveyed by §§ 58.1-3230, 58.1-3233 and 58.1-3240, the State Forester is directed to provide a statement of the standards which shall be applied uniformly throughout the state to determine if real estate is devoted to forest use. After holding public hearings, pursuant to the Administrative Process Act (§~~9-6.14.1~~ 2.2-4000 et. seq.

of the Code of Virginia) the statement shall be sent to the commissioner of the revenue and the duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia.

The justification for amending 4 VAC 10-20 is to insure the regulations' language is current and descriptive of the current times.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The regulations are written to provide guidance from the State Forester to each commissioner of revenue and the duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia. During the periodic review of these regulations, the Department of Forestry received zero comments. During the review of these regulations by members of the Board of Forestry, the Department of Forestry received only suggestions for improvement that were unanimously approved by the membership. No controversy has been documented regarding these regulations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

Redefined the definition of tree and stocking. Added the definitions of "diameter at breast height" and basal area. Corrected two errors in Table 1.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

There are no identified issues associated with this regulatory action to the public, the agency or the Commonwealth, or to the regulated community.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Not applicable.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The regulation is intended to serve as a guide to localities who adopt ordinances which provide different tax real estate schedules that recognize forest land use. The State Forester is required to provide specific standards for localities to develop their ordinances. Below is relevant section from the Code of Virginia §58.1-3230 and §58.1-3240. The regulations meet this requirement of the Code of Virginia. The standards created by the regulations are in conformance with long – standing practices in forestry and agency operations. The minimum standards are necessary for localities to establish clear and transparent ordinances and also serve as a basis for citizens to assess decisions made by localities. The Code of Virginia requires that standards shall be uniformly applied by localities who initiate land use tax ordinances prescribed by this statute.

"Real estate devoted to forest use" shall mean land, including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240 and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to forest use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240. Real property that has been designated as devoted to forest use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or is otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in

determining whether the property, including the portion where the utility lines are located, is devoted to forest use. In determining whether real property is devoted to forest use, zoning designations and special use permits for the property shall not be the sole considerations.

§ 58.1-3240. Duties of Director of the Department of Conservation and Recreation, the State Forester and the Commissioner of Agriculture and Consumer Services; remedy of person aggrieved by action or nonaction of Director, State Forester or Commissioner.

The Director of the Department of Conservation and Recreation, the State Forester, and the Commissioner of Agriculture and Consumer Services shall provide, after holding public hearings, to the commissioner of the revenue or duly appointed assessor of each locality adopting an ordinance pursuant to this article, a statement of the standards referred to in § [58.1-3230](#) and subdivision 1 of § [58.1-3233](#), which shall be applied uniformly throughout the Commonwealth in determining whether real estate is devoted to agricultural use, horticultural use, forest use or open-space use for the purposes of this article and the procedure to be followed by such official to obtain the opinion referenced in subdivision 1 of § [58.1-3233](#). Upon the refusal of the Commissioner of Agriculture and Consumer Services, the State Forester or the Director of the Department of Conservation and Recreation to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth in the statements filed pursuant to this section, the party aggrieved may seek relief in the circuit court of the county or city wherein the real estate in question is located, and in the event that the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this article.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulations are provided to provide clarity and guidance for localities who establish an incentive land use tax rate to landowners who maintain their land in forest use. Regulations on forest land use classification are created as a result of the Code of Virginia. The regulations identify the standards that are to be used by localities who establish land use tax rates based on forest classification. No regulatory methods are considered because the regulations only provide minimum standards for future local ordinances. As such, these regulations do not require a flexibility analysis. Instead, the standards used in the regulation should be the primary consideration. The reviews and analysis to date have provided the most current thinking of acceptable forest land use classification standards. The subsequent public review process will attempt to achieve ideas on those standards in common use and widely accepted.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Not applicable
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	Not applicable
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Localities who adopt land use tax ordinances recognizing forest land as a land use classification.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Only localities who adopt land use tax ordinances. The Code of Virginia does not require localities to adopt land use taxation ordinances, but instead leave it optional for localities.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	Not applicable
Beneficial impact the regulation is designed to produce.	Guidance to localities for consideration of land use policy for forest classification.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

These standards were reviewed and recommended by professional Foresters, Board of Forestry members, and forestry related professionals. No alternatives have been offered.

Periodic review/small business impact review result

If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.

If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response

A periodic review was conducted as required by executive order. This fast – track regulation is not a result of the periodic review. During the periodic review term, no one provided a comment. All suggestions to date came forth through the agency’s request to forestry professionals and Board of Forestry members. The review and changes to the standards recommended in this regulation are relevant to the industry and necessary as they are required by the Code of Virginia.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on families as described above. Once localities adopt land use taxation ordinances, families and individuals who forest land may benefit from lower real estate tax rate, and may continue to keep lands in forests for longer periods of time.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
D. 1.		Tree. A tree is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.	<p>Tree. A tree is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products. <u>A living, woody perennial plant, six inches or larger in diameter, of a species presently or prospectively suitable for commercial industrial wood products with a well-defined stem or stems carrying a more or less definite crown.</u></p> <p>Change will create clarity and comply with current forestry science.</p>
D. 2.		Stocking. Stocking is the number of trees three inches and larger in diameter breast high (d.b.h.- a point on the tree trunk outside bark 4 ½ feet from ground level) required to equal a total basal area (b.a – is the area in square feet of a cross section of a tree at d.b.h) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in Table 1.	<p>Stocking. Stocking is the number of trees three inches and larger in diameter at breast high (d.b.h.- a point on the tree trunk outside bark 4 ½ feet from ground level) required to equal a total basal area (b.a. is the area in square feet of a cross section of a tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in Table 1</p> <p>Change will create clarity.</p>
	D. 3.		<u>Diameter at Breast High (DBH). The diameter of the stem of a tree measured</u>

			<i>at breast height (4.5 ft. or 1.37 m).</i>																																																									
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	Table 1	<p>Table 1 Minimum Number of Trees Required Per Acre to Determine 30 Square Feet of Tree Basal Area of <i>or</i> 40% <u>Normal</u> stocking for Classification as Forest Land.</p> <table border="1"> <thead> <tr> <th>D.B.H. Range</th> <th>D.B.H. in 2" Classes</th> <th>Basal Area Per Tree</th> <th>Per Acre</th> <th>Per 1/5 Acre</th> <th>Per 1/10 Acre</th> </tr> </thead> <tbody> <tr> <td>up to 2.9"</td> <td>Seedlings</td> <td></td> <td>400</td> <td>80</td> <td>40</td> </tr> <tr> <td>3.0-4.9"</td> <td>4</td> <td>0.0873</td> <td>400 <u>343</u></td> <td>80 <u>69</u></td> <td>40 <u>34</u></td> </tr> <tr> <td>5.0-6.9"</td> <td>6</td> <td>0.1964</td> <td>153</td> <td>31</td> <td>15</td> </tr> <tr> <td>7.0-8.9"</td> <td>8</td> <td>0.3491</td> <td>86</td> <td>17</td> <td>9</td> </tr> <tr> <td>9.0-10.9"</td> <td>10</td> <td>0.5454</td> <td>55</td> <td>11</td> <td>6</td> </tr> <tr> <td>11.0-12.9"</td> <td>12</td> <td>0.7854</td> <td>38</td> <td>8</td> <td>4</td> </tr> <tr> <td>13.0-14.9"</td> <td>14</td> <td>0.0690 <u>1.069</u></td> <td>28</td> <td>6</td> <td>3</td> </tr> <tr> <td>15.0+</td> <td>16+</td> <td>1.3963</td> <td>21</td> <td>4</td> <td>2</td> </tr> </tbody> </table>					D.B.H. Range	D.B.H. in 2" Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre	up to 2.9"	Seedlings		400	80	40	3.0-4.9"	4	0.0873	400 <u>343</u>	80 <u>69</u>	40 <u>34</u>	5.0-6.9"	6	0.1964	153	31	15	7.0-8.9"	8	0.3491	86	17	9	9.0-10.9"	10	0.5454	55	11	6	11.0-12.9"	12	0.7854	38	8	4	13.0-14.9"	14	0.0690 <u>1.069</u>	28	6	3	15.0+	16+	1.3963	21	4	2
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If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here