



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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**4 VAC 5-20 Standards for Classification of Real Estate as Devoted to Open Space Use  
Under the Virginia Land Use Assessment Law  
Department of Conservation and Recreation  
Town Hall Action/Stage: 6456 / 10316  
August 16, 2024**

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

Pursuant to a 2023 periodic review of this regulation,<sup>2</sup> the Department of Conservation and Recreation (DCR) proposes to update: 1) references to the Code of Virginia and sections of the regulation, and 2) the minimum acreage required to be considered as open space.

### **Background**

This regulation establishes standards to classify real estate as devoted to open space use under the Virginia Land Use Assessment Law. Following a periodic review of this regulation, DCR identified incorrect references to the Code of Virginia and sections of the regulation. DCR also identified that the standard for minimum acreage was outdated as it did not reflect amendments made by Chapter 475 of the 2002 Acts of the General Assembly; accordingly, the minimum acreage for open space would be reduced from two acres to one quarter of an acre.<sup>3</sup>

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> <https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2366>

<sup>3</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?021+ful+CHAP0475&021+ful+CHAP0475>

The proposed action would correct the incorrect references and the outdated minimum acreage standard to comport with the law.

### **Estimated Benefits and Costs**

The proposed changes to this regulation would correct erroneous and outdated text and as such is expected to eliminate potential confusion that may be created by the current text. No other economic effect is expected.

### **Businesses and Other Entities Affected**

This regulation applies to property owners that wish to designate their land as open-use in localities that adopted an ordinance for the Land-Use Assessment Program with the Open-Space Category. DCR does not have data on the number of applications as this is addressed by each locality individually. No landowner appears to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>4</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>5</sup> As noted above, the proposal would correct incorrect text and as such does not indicate an adverse impact on any entity.

### **Small Businesses<sup>6</sup> Affected:<sup>7</sup>**

The proposed amendments do not adversely affect small businesses.

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<sup>4</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

<sup>5</sup> Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>6</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

<sup>7</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a

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### **Localities<sup>8</sup> Affected<sup>9</sup>**

This regulation does not apply to all localities. It only applies to localities that adopted an ordinance for a land-use assessment program with the open-space category. Currently, there are 46 counties and 10 cities that adopted such an ordinance: the cities of Alexandria, Buena Vista, Chesapeake, Fredericksburg, Harrisonburg, Lynchburg, Petersburg, Portsmouth, Radford, Virginia Beach; and the counties of Albemarle, Alleghany, Amelia, Amherst, Augusta, Botetourt, Campbell, Caroline, Chesterfield, Clarke, Cumberland, Essex, Fauquier, Fluvanna, Franklin, Frederick, Giles, Greene, Hanover, Henrico, King George, King William, Loudoun, Louisa, Madison, Middlesex, New Kent, Northumberland, Nottoway, Page, Pittsylvania, Powhatan, Prince George, Prince William, Richmond, Roanoke, Rockbridge, Rockingham, Shenandoah, Smyth, Southampton, Spotsylvania, Tazewell, Warren, Washington, and Westmoreland.

No adverse impact on these participating localities is indicated.

### **Projected Impact on Employment**

No impact on employment is expected.

### **Effects on the Use and Value of Private Property**

No impact on the use and value of private property nor on real estate development costs is expected.

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proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>8</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>9</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.