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Fast-Track Regulation Agency Background Document

Agency name	Department of Conservation and Recreation
Virginia Administrative Code (VAC) Chapter citation(s)	4 VAC5-20
VAC Chapter title(s)	Standards for Classification of Real Estate as Devoted to Open Space Use under the Virginia Land Use Assessment Law
Action title	Fast Track
Date this document prepared	06/10/2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The purpose of this chapter is 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 pressures that force the conversion of real estate to more intensive uses. The regulation is necessary to define and direct standards that shall be applied uniformly throughout the state to determine if real estate is devoted to open-space use.

Following a periodic review, it is the agency's decision to amend the regulations to bring the chapter into conformance with current statutory language, amend incorrect references and correct outdated information.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Statement of Final Agency Action

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.

After a periodic review of the regulations, completed on September 1, 2023, the Department is amending the Standards for Classification of Real Estate as Devoted to Open Space Use under the Virginia Land Use Assessment Law by fast-track action.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

This action is the result of a periodic review of the Standards for Classification of Real Estate as Devoted to Open Space Use under the Virginia Land Use Assessment Law.

This rulemaking is expected to be noncontroversial and, therefore, appropriate for the fast-track rulemaking process because it brings the chapter into conformance with current statutory language, amends incorrect references and corrects outdated information.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

[Va. Code § 10.1-104 \(A\) \(4\)](#) states that the Department shall have the power to prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law.

Va. Code [§ 58.1-3230](#) requires the Director of the Department of Conservation and Recreation to prescribe uniform standards for “real estate devoted to open-space use” pursuant to the authority set out in [§ 58.3240](#) and in accordance with the Administrative Process Act ([§ 2.2-4000](#) et seq.).

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The action is the result of a periodic review. The regulation is being amended to conform with current statutory language and correct outdated information and references.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

There was only one substantive change to 4VAC5-20-10 (A)(2). The general standards that establish the minimum acreage requirements are pursuant to § 58.1-3233 of the Code of Virginia. The change amended the minimum 2-acre requirement to reflect current statutory language allowing for a minimum of one-quarter of an acre.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage to the public and the Commonwealth is that the regulation will be consistent with the current statutory language and provide accurate information and references. There are no disadvantages.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected.

Localities Particularly Affected

No localities are particularly affected.

Other Entities Particularly Affected

No other entities are particularly affected.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	None identified
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None identified
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The primary benefit is that the regulation will be consistent with the current statutory language and provide accurate information and references.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	The changes to this regulation bring the chapter into conformance with current statutory language, amend incorrect references and correct outdated information. No Direct or Indirect costs are associated.
Benefits the regulatory change is designed to produce.	The primary benefit is that the regulation will be consistent with the current statutory language and provide accurate information and references.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	No other entities will be affected.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	No other entities will be affected.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	No costs identified.
Benefits the regulatory change is designed to produce.	

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

No alternatives were considered. In accordance with the authority and responsibility conveyed by §§ 58.1-3230 and 58.1-3240, the Director 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 open-space use.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

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It is the agency’s decision to amend the regulations to bring the chapter into conformance with current statutory language, amend incorrect references and correct outdated information.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Conservation and Recreation is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall website at <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Lisa McGee, 600 E. Maint St, 24th Floor, Richmond, VA 23219, 804-786-4378, FAX: 804-786-6141, lisa.mcgee@dcr.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
4VAC5-20-10		To qualify as an open-space use, real estate must meet the requirements of both this section and the specific standards contained in 4VAC5-30-20 of this chapter. The general standards are as follows:	To qualify as an open-space use, real estate must meet the requirements of both this section and the specific standards contained in 4VAC5-30-20 <u>4VAC5-20-20</u> of this chapter. The general standards are as follows:
4VAC5-20-10 (A)(1)		1. The open-space use of the property must be consistent with the land use plan of the county, city, or town which has been made and adopted officially in accordance with Article 4, Chapter 11, Title 15.1 of the Code of Virginia.	1. The open-space use of the property must be consistent with the land use plan of the county, city, or town which has been made and adopted officially in accordance with Article 4, Chapter 11, Title 15.1 <u>Article 4, Chapter 11, Title 15.2</u> of the Code of Virginia.

<p>4VAC5-20-10 (B)(2)</p>		<p>2. If the governing body of any county, city or town has so prescribed by ordinance, real estate devoted to open space shall consist of a minimum of two acres when the real estate is:</p>	<p>2. If the governing body of any county, city or town has so prescribed by ordinance, real estate devoted to open space shall consist of a minimum of two acres <u>one-quarter of an acre</u> when the real estate is:</p> <p>The general standards that establish the minimum acreage requirements are pursuant to § 58.1-3233 of the Code of Virginia. The change amended the minimum 2-acre requirement to reflect current statutory language allowing for a minimum of one-quarter of an acre.</p>
<p>4VAC5-20-10 (B)(2)(a)</p>		<p>a. Adjacent to a scenic river, a scenic highway, a Virginia byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan, also known as the Virginia Outdoors Plan (the Virginia Outdoors Plan can be obtained from the Department of Conservation and Recreation at 203 Governor Street, Suite 302, Richmond, VA 23219); or</p>	<p>a. Adjacent to a scenic river, a scenic highway, a Virginia byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan, also known as the Virginia Outdoors Plan (the Virginia Outdoors Plan can be obtained from the Department of Conservation and Recreation at 203 Governor Street, Suite 302 <u>600 East Main Street, 24th Floor</u>, Richmond, VA 23219); or</p>
<p>4VAC5-20-10 (C)(1)</p>		<p>1. Within an agricultural, a forestal or an agricultural and forestal district entered into pursuant to Chapter 36 of Title 15.1 of the Code of Virginia;</p>	<p>1. Within an agricultural, a forestal or an agricultural and forestal district entered into pursuant to Chapter 36 <u>43</u> of Title 15.1 <u>15.2</u> of the Code of Virginia;</p>
<p>4VAC5-20-10 (C)(3)</p>		<p>3. Subject to a recorded commitment entered into by the landowner with the governing body in accordance with 4VAC5-30-30 of this chapter.</p>	<p>3. Subject to a recorded commitment entered into by the landowner with the governing body in accordance with 4VAC5-30-30 <u>4VAC5-20-30</u> of this chapter.</p>
<p>4VAC5-20-10 (D)</p>		<p>D. Opinions. In determining whether a property meets the general and specific standards for open-space use, the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation under the provisions of 4VAC5-30-40 of this chapter.</p>	<p>D. Opinions. In determining whether a property meets the general and specific standards for open-space use, the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation under the provisions of 4VAC5-30-40 <u>4VAC5-20-40</u> of this chapter.</p>

<p>4VAC5-20-20 (F)(1)</p>		<p>F. Historic or scenic areas. Lands that are provided or preserved for historic or scenic purposes are: 1. On the Virginia Landmarks Register or the National Register of Historic Places or contributing properties in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places. Information concerning properties on these registers maintained by the Department of Historic Resources can be obtained from the Department of Conservation and Recreation.</p>	<p>F. Historic or scenic areas. Lands that are provided or preserved for historic or scenic purposes are: 1. On the Virginia Landmarks Register or the National Register of Historic Places or contributing properties in an <u>a</u> historic district listed in the Virginia Landmarks Register or the National Register of Historic Places. Information concerning properties on these registers maintained by the Department of Historic Resources can be obtained from the Department of Conservation and Recreation.</p>
<p>4VAC5-20-30</p>		<p>OPEN-SPACE USE AGREEMENT This Agreement, made this..... day of..... 19</p>	<p>OPEN-SPACE USE AGREEMENT This Agreement, made this..... day of..... 19<u>20</u></p>
<p>4VAC5-20-30 (3)(A)</p>		<p>A. That it is in the public interest that the Property should be provided or preserved for [Insert one or more of the following uses: park or recreational purposes; conservation of land; conservation of (Insert description of other natural resource); 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</p>	<p>A. That it is in the public interest that the Property should be provided or preserved for [Insert one or more of the following uses: park or recreational purposes; conservation of land; conservation of (Insert description of other natural resource); an <u>a</u> 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</p>
<p>4VAC5-20-30 (3)(B)</p>		<p>B. That the Property meets the applicable criteria for real estate devoted to open-space use as prescribed in Article 4 (§ 58.1-3229 et</p>	<p>B. That the Property meets the applicable criteria for real estate devoted to open-space use as prescribed in Article 4 (§ 58.1-3229 <u>58.1-3230</u> et seq.) of Chapter 32 of Title 58.1 of the Code of</p>

		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 Recreation; and	Virginia, and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Recreation; and
4VAC5-20-30 (2)(E)		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 buildings, structures and features under this agreement.	E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials which that alters the topography of the Property, except as required in the construction of permissible buildings, structures and features under this agreement.
4VAC5-20-30 (2)(F)		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.	F. There shall be no construction or placement of fences, screens, hedges, walls or other similar barriers which that materially obstruct the public's view of scenic areas of the Property.
4VAC5-20-30 (2)(H)		H. 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. *	H. 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 that adversely affect water quality, level or flow. *
4VAC5-20-30 (2)(K)		K. There shall be no separation or split-off of lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of this 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.	K. There shall be no separation or split-off of lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of this 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 that apply to all or part of the Property.

<p>4VAC5-20-30 (11)</p>		<p>11. This agreement may be terminated in the manner provided in § 15.1-1513 of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.</p>	<p>11. This agreement may be terminated in the manner provided in § 15.1-1513 <u>15.2-4314</u> of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.</p>
<p>4VAC5-20-40 (A)</p>		<p>A. The local assessing officer shall address a letter to the Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, describing the particular use and situation and requesting an opinion as to whether it qualifies as an open space for the purpose of use value taxation. Such letter should be accompanied by exhibits such as land use maps, subdivision plats, open-space deeds or easements, applicable agricultural, forestal, historic district or other ordinances, if any, topographic maps and photographs, sufficient to explain the situation adequately. The director may request additional information if needed.</p>	<p>A. The local assessing officer shall address a letter to the Director, Department of Conservation and Recreation, 203 Governor St., Suite 302 <u>600 East Main Street, 24th Floor</u>, Richmond, VA 23219, describing the particular use and situation and requesting an opinion as to whether it qualifies as an open space for the purpose of use value taxation. Such letter should be accompanied by exhibits such as land use maps, subdivision plats, open-space deeds or easements, applicable agricultural, forestal, historic district or other ordinances, if any, topographic maps and photographs, sufficient to explain the situation adequately. The director may request additional information if needed.</p>