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Periodic Review and Small Business Impact Review Report of Findings

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
Date this document prepared	August 18, 2023

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*.

Acronyms and Definitions

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

N/A

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 or 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 prescribe uniform standards for “real estate devoted to open-space use” pursuant to the authority set out in § [58.1-3240](#) and in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No alternatives were considered as part of this periodic review. 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.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
John W. McCarthy	Suggest the minimum acreage standard include parcels enrolled in a designated Rural Historic District	The general standards that establish the minimum acreage requirements are pursuant to Va. Code § 58.1-3233. However, the Department will amend the minimum 2-acre requirement in the regulations to reflect current statutory language allowing for a minimum of one-quarter of an acre.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

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

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

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

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulation is required by Va. Code § 58.1-3230. The agency has not received complaints concerning this regulation. The regulation is not complex. The regulations currently conflict with changes that occurred to the state code. The agency will promulgate amendments to conform to current statutory language. Consideration was given to current conditions of technology, economic conditions and other factors and it was determined that amendments to this regulation are necessary to conform to current statutory language.
