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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Commonwealth Transportation Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	24 VAC 30-92
<b>VAC Chapter title(s)</b>	Secondary Street Acceptance Requirements
<b>Action title</b>	Revision of the Secondary Street Acceptance Requirements (24 VAC 30-92) pursuant to Chapter 425 of the 2022 Acts of Assembly.
<b>Date this document prepared</b>	May 24, 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*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

Chapter 425 of the 2022 Acts of Assembly (HB275) directed the Virginia Department of Transportation (VDOT) to convene a stakeholder advisory group for the purpose of developing and providing recommended amendments to the Secondary Street Acceptance Requirements (SSAR) of the Commonwealth Transportation Board (CTB). This mandate required that the regulatory provisions of the SSARs shall contain flexibility related to its connectivity elements. VDOT established the stakeholder advisory group, which was composed of representatives from the development industry, local governments, environmental advocacy organizations, and VDOT. The advisory group provided recommendations to the CTB and the CTB directed VDOT to implement those changes.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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CTB - Commonwealth Transportation Board  
SSAR - Secondary Street Acceptance Requirements  
VDOT – Virginia Department of Transportation

## 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.”*

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Chapter 425 of the 2022 Acts of Assembly (HB275)

## 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.*

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Chapter 382 of the 2007 Acts of Assembly (SB1181) added § 33.1-70.3 (now § 33.2-334) to the Code of Virginia. The legislation required the Commonwealth Transportation Board to develop Secondary Street Acceptance Requirements, promulgated by regulation, to determine the conditions and standards that must be met before streets constructed by developers, localities and entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT.

Section 33.2-326 of the Code of Virginia vests in VDOT the control, supervision, management and jurisdiction over the secondary system of highways. Further, VDOT is authorized by §33.2-334 to set standards for the acceptance of streets into the secondary system of highways. Although § 33.2-705 grants authority to localities to establish highways, including subdivision streets on land being developed, if the locality or private developer wish to have VDOT assume maintenance of those streets, the design and construction of those streets must meet VDOT’s standards. The design-related provisions of the SSAR are part of the department’s Road Design Manual (Appendix B of that Manual).

Chapter 425 of the 2022 Acts of Assembly (HB275) directed the VDOT to convene a stakeholder advisory group for the purpose of developing and providing recommended amendments to add flexibility to the connectivity provisions of the SSAR.

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

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The SSAR promotes public health, safety, and welfare as well as accepting only qualified roads into the state's highway systems. The regulation is needed to reduce long-term traffic congestion, support and promote more economic activity and better transportation systems.

The regulation includes provisions for the connectivity of highway and pedestrian networks with existing and future transportation networks if the streets are intended to be taken into the state secondary highway system. As mandated by Chapter 425, the connectivity provisions are required to include flexibility to limit the number of such connections to adjacent property or highway networks, as deemed appropriate.

## Substance

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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1. Change to 24VAC30-92-60 (C.2.c and C.3.d) related to exceptions to Multiple Connections and Additional Connections requirements:
  - There is no reasonable connection possible to adjoining property or adjacent highways due to a factor outside the control of the developer of the network addition, such as including but not limited to the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted.
2. Add definition to 24VAC30-92-10:
  - “Underground Utility Trunk Easement” means an easement for the accommodation of a utility which has an existing underground utility trunk or transmission line (cable, pipeline, or similar facility); such lines are not used for distribution of the utility’s services to individual customers, but rather for long distance carrying or transmission purposes.
3. Change to 24VAC30-92-60 (C.2 and C.3) by adding new exception to Multiple Connections and Additional Connections requirements:
  - Add new subpart C.2.d and C.3.e: The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the

development allowing the network addition to meet connectivity is under construction.

4. Addition to 24VAC30-92-60 (C.3) which adds new exceptions to Additional Connection requirements:

- Add new subpart C.3.f: The district administrator’s designee may also waive or modify this additional connections standard if, in the written opinion of the applicant and locality’s Chief Executive or designee, the provision of such connection is impracticable or unwarranted due to (i) topographic constraints; (ii) incompatibility with existing adjoining development; (iii) the adjoining property is completely built out as envisioned in the locality’s comprehensive plan with no expectation of redevelopment in the next 20 years and there is no stub out (either constructed or platted) to the property served by the network addition; (iv) the connection would impact the developer’s ability to comply with any local ordinances related to the preservation of open space or trees during the land development process, after a good faith effort to comply with connectivity requirements and local ordinances; (v) the connection would require work outside the right of way (existing or proposed) or easements on an adjoining property outside of the control of the developer; or (vi) other factors as determined by the applicant and locality’s Chief Executive or designee. The district administrator’s designee shall respond to requests for such connectivity exceptions within 30 calendar days of receipt of a completed VDOT request form.

### 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.*

The proposed regulatory changes were developed through consensus of the stakeholder advisory group, which was comprised of representatives from the development industry, local governments, environmental advocacy groups, and VDOT as required by Chapter 425. The group met five times between September 2022 and February 2023 to develop the recommended amendments. The proposed regulatory changes are not overly complex, costly, or burdensome for small businesses.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as*

*necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."*

This NOIRA is not being used to announce a periodic review or a small business impact review.

## 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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

VDOT is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Jo Anne Maxwell, Agency Regulatory Coordinator, 1401 E. Broad St. Richmond, VA 23219, telephone (804) 786-1830, fax (804) 225-4700, [JoAnne.Maxwell@VDOT.Virginia.gov](mailto:JoAnne.Maxwell@VDOT.Virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.