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Proposed Regulation Agency Background Document

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-92
VAC Chapter title(s)	Secondary Street Acceptance Requirements
Action title	Revision of the Secondary Street Acceptance Requirements (24 VAC 30-92) pursuant to Chapter 425 of the 2022 Acts of Assembly.
Date this document prepared	January 29, 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.

Chapter 425 of the 2022 Acts of Assembly directed the Virginia Department of Transportation (VDOT) to convene a stakeholder advisory group (SAG) 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 SSAR contain flexibility related to its connectivity elements. VDOT established the SAG, which was composed of representatives from the development industry, local governments, environmental advocacy organizations, and VDOT. The advisory group's recommendations were presented to the CTB, and the CTB directed VDOT to implement those changes.

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.

“CTB” means the Commonwealth Transportation Board.

“SAG” means the Stakeholder Advisory Group.

“SSAR” means the Secondary Street Acceptance Requirements.

“VDOT” means the 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.”

Chapter 425 of the 2022 Acts of Assembly required that the regulatory provisions of the SSAR contain flexibility related to its connectivity elements.

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.

Chapter 382 of the 2007 Acts of Assembly 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, the CTB 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 wishes to have VDOT assume maintenance of those streets, the design and construction of those streets must meet the SSAR.

Chapter 425 of the 2022 Acts of Assembly directed 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

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 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 and support more economic activity and better transportations systems. The SSAR 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 required by Chapter 425 of the 2022 Acts of Assembly, the recommendations of the SAG regarding connectivity flexibility were presented to the CTB, and the CTB directed VDOT to implement those changes.

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.

1. 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.

2. Change to 24VAC30-92-60 (C.2.c and C.3.a.iv) 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.

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.a.v: 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.b: 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.

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.

Chapter 425 of the 2022 Acts of Assembly required VDOT to convene a SAG for the purpose of developing and providing recommended amendments to add flexibility to the connectivity provisions of the SSAR, and for those recommendations to then be presented to the CTB for approval. The SAG was composed of representatives from the development industry, local government (including emergency services), environmental advocacy organizations, and VDOT, and met five times from September 2022 to February 2023 to finalize recommendations. CTB directed VDOT to implement the changes recommended by the SAG.

The proposed regulatory changes are intended to provide VDOT the ability to make connectivity exceptions in a broader range of circumstances than the current regulation allows. The recommendations address challenges faced by developers and localities while preserving the public health, safety, and welfare as currently protected by the SSAR. VDOT does not anticipate any negative impacts to overall connectivity from the changes.

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 by the regulatory changes.

Localities Particularly Affected

Localities are affected by the proposed amendments. The regulatory changes allow for a locality-led process that provides flexibility to achieve local planning goals.

Other Entities Particularly Affected

The development industry is affected by the proposed amendments. The proposed changes add flexibility for developers to meet the SSAR connectivity requirements.

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.	The cost to VDOT of the proposed amendments in terms of staff time and effort is expected to be negligible. There are no anticipated savings, fees, or revenues resulting from the regulatory change.
<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.	There are no anticipated costs, savings, fees, or revenues for other state agencies resulting from this regulatory action.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	As directed by Chapter 425 of the 2022 Acts of Assembly, the intent of the changes is to add flexibility to the regulation’s connectivity requirements to limit the number of connections to adjacent property or highway networks, as deemed appropriate.

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.	There are no anticipated costs, savings, fees, or revenues for localities resulting from this regulatory action.
Benefits the regulatory change is designed to produce.	As directed by Chapter 425 of the 2022 Acts of Assembly, the intent of the changes is to add

	flexibility to the regulation’s connectivity requirements to limit the number of connections to adjacent property or highway networks, as deemed appropriate.
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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.	The development industry is affected by this regulation. The proposed changes add flexibility for developers to meet the SSAR connectivity requirements.
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.	The number of entities, including small businesses, affected by the proposed changes cannot be estimated.
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 for entities affected by the regulatory changes are anticipated.
Benefits the regulatory change is designed to produce.	As directed by Chapter 425 of the 2022 Acts of Assembly, the intent of the changes is to add flexibility to the regulation’s connectivity requirements to limit the number of connections to adjacent property or highway networks, as deemed appropriate. This may allow developers to avoid some costs or make an additional lot available for sale in limited circumstances.

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.

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.

The proposed regulatory changes were developed through consensus of the SAG, which was comprised of representatives from the development industry, local governments, environmental advocacy groups, and VDOT as required by Chapter 425 of the 2022 Acts of Assembly. The group met five times between September 2022 and February 2023 to develop the recommended amendments. While there was discussion of many different paths for achieving the required regulatory flexibility, the majority of SAG members ultimately voted in support of the recommendations. The proposed regulatory changes are not overly complex, costly, or burdensome for small businesses.

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.

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.

The SAG discussed many different paths for achieving the goals of Chapter 425 of the 2022 Acts of Assembly, and the majority of SAG members ultimately voted in support of the recommendations. The proposed changes impose no new compliance or reporting requirements, schedules or deadlines, design or operational standards, or other requirements on small businesses.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, 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.

N/A

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response

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.

The CTB 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, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of 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 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. 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 this stage of this regulatory action.

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 the existing VAC Chapter(s) and the proposed regulation. If the 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
92-10	N/A	This section defines the words and terms used in the regulation.	This amendment adds new definition for “Underground Utility Trunk Easement,” which corresponds with the addition of the defined term to 24VAC30-92-60(C)(2)(c) and (C)(3)(a)(iv) as a qualifying condition for a connectivity exception. This was recommended by the SAG due to difficulties frequently encountered by developers in obtaining quitclaims or subordination of rights agreements for the placement of public streets over existing underground transmission lines.
92-60 (C)(2)(c) and (C)(3)(d)	92-60 (C)(2)(c) and (C)(3)(a)(iv)	These two subsections describe the connectivity requirements for the multiple connections in multiple directions and additional connections standards. The specific subparagraphs describe the factors outside the control of the developer which could qualify for an exemption from the requirements.	<p>The insertion of “including but not limited to” in place of “such as” is intended to clarify that the list of qualifying conditions are examples rather than the extent of possible conditions that may provide for a connectivity exemption. This was noted as a source of confusion by the SAG.</p> <p>The addition of “underground utility trunk easement” to the list of qualifying conditions, which corresponds with the addition of the defined term to section 10, is recommended by the SAG due to difficulties frequently encountered by developers in obtaining quitclaims or subordination of rights agreements for the placement of public streets over existing underground transmission lines.</p>
92-60 (C)(2) and (C)(3)	92-60 (C)(2)(d) and 92-60 (C)(3)(a)(v)	24VAC30-92-60(C) describes the connectivity requirements for secondary streets, with paragraph (2) relating to the multiple connections in multiple directions standard and paragraph (3) to the additional connections standard.	The addition of these subparagraphs would add extra flexibility regarding to the splitting of multi-phased developments into network additions that may differ from those additions originally planned. This would allow for changes in phasing as driven by market forces while still preserving ultimate connectivity.
92-60 (C)(3)	92-60 (C)(3)(b)	24VAC30-92-60(C)(3) describes the connectivity requirements for the additional connections standard.	This recommendation adds a subparagraph providing for a locality-led process which provides flexibility to achieve local planning goals. It adds vegetation preservation (open space and trees) and required work outside of property under the developer’s control as explicit factors for consideration of an exception from the additional connections standard. These changes

			are intended to add flexibility to the exception process.
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage