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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Transportation (Commonwealth Transportation Board)
<b>Virginia Administrative Code (VAC) citation</b>	24 VAC 30-91
<b>Regulation title</b>	Subdivision Street Requirements
<b>Action title</b>	Comprehensive Amendments under APA
<b>Document preparation date</b>	March 26, 2004

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This regulation sets forth the requirements applicable to all subdivision streets in the Commonwealth that are designated to become part of the secondary system of state highways, including procedures for approval and criteria used to consider the acceptance of new streets for maintenance as part of the secondary system. (Note: This regulation does not apply to the counties of Arlington or Henrico, but may apply in the independent cities or towns of more than 3,500 population, pursuant to §33.1-41.1, Code of Virginia.)

VDOT proposes the following regulatory changes, which are discussed in further detail in the "Substance" section of this document:

- Clarify text to improve comprehension and usefulness;
- Update obsolete titles and work unit names;
- Move geometric standards from the regulatory requirements to a new section of the Road Design Manual;
- Update the list of documents incorporated by reference; and
- Address impact of technical issues (definition of roles, design processes, right of way, sidewalks, flexibility of standards, traffic calming, utilities, etc.) on the regulation.
- Update amounts for surety and maintenance fees; and
- Provide mechanism under which VDOT can recovery of administrative costs associated with new street development.

Due to the extensive nature of the changes proposed, VDOT has abandoned its initial approach to amend the existing regulation in favor of repealing the existing regulation and replacing it with a totally new regulation under the same title. This approach will be simpler to implement administratively.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

No federal statutes pertain to the regulation. Title 33.1 of the Code of Virginia contains many statutory references to the secondary system and the authority to issue regulations. VDOT, the Commissioner and the Commonwealth Transportation Board (CTB) are granted "control, supervision, management, and jurisdiction" over the secondary system of state highways by § 33.1-69. Furthermore, the CTB has general authority to make regulations concerning the use of the state highway system pursuant to § 33.1-12. § 33.1-229 gives the Commissioner discretionary authority over the expenditure of state funds for the secondary system. Finally, persons desiring to connect new streets to any highway system under VDOT jurisdiction must obtain permits from VDOT for a commercial entrance pursuant to § 33.1-198, because subdivision streets, when they intersect with existing roads in the state system of highways, are considered commercial entrances.

The Office of the Attorney General (OAG) affirmed these statutory references in correspondence to VDOT in 1995, when the regulation last underwent a full-scale Administrative Process Act (APA) amendment. The most recent certification letter from the OAG prepared in conjunction with these revisions (dated January 5, 2004) reaffirms these references. More generally, Section 15.2-2240 of the Code of Virginia requires each locality to enact an ordinance to ensure that land is subdivided and developed in an orderly manner. The Catalog of State & Federal Mandates on Local Governments includes the Subdivision Street Requirements as a mandate (STO.VDOT009). In September of 1999, pursuant to the requirements of Executive Memorandum 1-98, the Secretary of Transportation submitted a recommendation to the Commission on Local Government that the mandate be retained. This regulation does not exceed the specific minimum requirements of any federal or state mandate.

Statutory text for the Code sections reference above can be accessed via the following website:

<http://leg1.state.va.us/000/src.htm>

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The *Subdivision Street Requirements* are generally updated every five to seven years. The last amendments became effective January 1, 1996. VDOT believes that revisions to the regulation are essential to maintain the integrity of the State Highway System by ensuring an accurate and current regulation that provides for the construction of safe and durable streets and ancillary facilities within that system. The regulation will continue the ability of the private sector to develop tracts of land and construct related roads that complement existing and future road systems, traffic patterns, and land use. The provision of an adequate transportation system is one of the most important functions of government in providing for the safety and welfare of citizens. Within the Commonwealth, public highways continue to play the principal role in this function.

Today, ever-increasing competition between states for new economic development dictates that Virginia continue to provide an efficient highway system, including quality means of access to connect new homes and businesses to the existing highway systems. Further, to promote improved quality of life for the citizens and the effective movement of people, goods, and services, a durable highway system is essential. The provision of a safe and adequate means of access to residential, commercial, industrial and mixed-use developments is an essential quality of life element that Virginians expect and demand. These principles apply to both existing, as well as new streets and roads.

Accordingly, it is imperative that any new transportation facility be designed and constructed to adequately and safely accommodate the anticipated type and volume of traffic, consistent with the land use served. Since the projected resources of the Transportation Trust Fund will be required to finance needed improvements to the existing transportation facilities, the cost of new roads required to serve subdivisions and other similar types of speculative development must be provided from private sources and be sufficient to meet the anticipated transportation needs of the Commonwealth. VDOT believes that the revisions to the regulation will make it more useful in meeting the goals of local government and ensuring a safe and adequate means of access is provided as part of local land development activities.

These alternatives are intended to improve the regulation while continuing to meet the principal goals of:

- Serving as a reference resource for parties involved in the planning, design, development, and regulation of residential, commercial, and industrial subdivisions
- Establishing the minimum criteria for the addition of subdivision streets as a part of Virginia's secondary system of state highways.
- Protecting the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.
- Providing a clearly written and understandable regulation.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

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The provisions of the replacement regulation have been consolidated from their location in the existing regulation and clarified with design guidance removed from the regulation and incorporated as part of the Department's Road Design Manual (Appendix B). Greater flexibility has been provided for VDOT to accept pedestrian and bicycle facilities desired by localities. Surety and maintenance fee provisions have been revised for the first time since at least 1990 and will better reflect current construction and maintenance costs. Additionally, an administrative cost recovery fee is proposed to recover costs VDOT sustains in services required to ensure quality streets are built; such as reviewing subdivision plans, providing inspection to ensure quality construction and processing the acceptance of these streets into the secondary system for maintenance. These services are provided by VDOT as a cooperative service to local governments, most of which do not have the manpower, expertise, and desire to manage the development and construction of new roads. The Office of the Attorney General has reviewed the revisions, and affirmed that the CTB has the authority to make these changes.

## Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

Issues include the following:

- 1) The primary advantage to the public from the replacement regulation is the emphasis on providing an up-to-date and more flexible regulatory resource for local governments, developers, and others to use. The Subdivision Street Requirements replacement regulation removes design criteria from the regulation and makes them a part of the Department's Road Design Manual (Appendix B), which appendix will become effective with the implementation of the revised Subdivision Street Requirements

In addition, these changes will provide a more comprehensive approach to the development of new streets and will allow greater traffic volumes to use the narrower street widths, which results in an overall reduction of standards with the potential to lower the cost of development of many streets. Additional guidance is provided to clarify and broaden development and acceptance issues related to streetscaping, the placement of utilities within public rights of way, the acceptance of certain pedestrian tunnels, and the acceptance of sidewalk and bicycle facilities as integral parts of new streets. The minimum service criteria governing eligibility for the acceptance of streets is clarified. Additionally, definitions used to administer the regulation have been revised, consistent with changes within the Department, and new ones added (e. g., "parking bays") to provide greater clarity or technical information to the user.

The only disadvantage to the public is in getting acclimated to the replacement regulation. However, since the contents of the replacement regulation were developed in concert with stakeholder input and the active involvement of local government officials and representatives of the land development industry, during and after the NOIRA period, VDOT believes that the revisions will be acceptable. Updating VDOT's maintenance fees and surety and providing for the recovery of VDOT's administrative costs may be considered a disadvantage since this will be an additional cost to the developer. However, reduced construction costs may offset those increases.

- 2) The primary advantage to VDOT and the Commonwealth is essentially the same as that to the public – the replacement regulation provides an up-to-date and clarified resource concerning the

development of quality street systems for users, including VDOT personnel. VDOT will be able to perform its mission with greater efficiency and effectiveness, while addressing the concerns of stakeholders and the land development industry.

Other advantages to VDOT include an update of the surety and fees to help offset VDOT’s costs. The only disadvantage to the agency or the Commonwealth is in the time and expense to VDOT to implement the changes, through a combination of training and printing the replacement regulation, etc.

- 3) Any pertinent matters of interest to the regulated community, government officials, and the public will be addressed as a result of the promulgation of the final replacement regulation and the repeal of the existing one through the Administrative Process Act.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	\$50,000 derived from general administrative funds of the department with annual administrative costs of approximately \$20,000 per year.
<b>Projected cost of the regulation on localities</b>	Minimal, if any, to most counties.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	All parties involved in the development land that includes the creation of new subdivision streets.
<b>Agency’s best estimate of the number of such entities that will be affected</b>	500 (+). It potentially includes all counties, cities, and towns, plus developers, their engineering firms and road builders.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	Minimal. The regulation itself is provided at no cost and its impact on construction should be no greater (and may be less for certain roads) than the current provisions. Overall, the cost difference for developing new streets between the old and new provisions will be minimal.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

VDOT does not believe there is a viable alternative to promulgating a replacement regulation and repealing the old one, and that this action is the least burdensome or intrusive alternative to meet the essential purpose of the regulation. The General Assembly clearly intended that VDOT, the Commissioner and the Commonwealth Transportation Board (CTB) have authority over secondary highways, since they are granted "control, supervision, management, and jurisdiction" over the secondary

system of state highways by § 33.1-69. Furthermore, the CTB has authority to make regulations with regard to use of the state highway system pursuant to § 33.1-12.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

The revisions were based largely on Stakeholder Comments collected in the spring of 2003 and the advice of a committee of local government and land development industry officials. The stakeholder comments that helped VDOT prepare the pending revisions are accessible from the following website address:

<http://www.virginiadot.org/projects/ssr-rev.asp>

**Impact on family**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

This regulation is not expected to have any detrimental effect on family or family stability. To the contrary, the regulation is expected to promote motorist and pedestrian safety within subdivisions and will relieve homeowners associations of the burden of having to maintain the streets they rely upon to access their homes and places of business; which the Department believes are important factors that help to preserve family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

In developing these changes for the replacement regulation, VDOT conducted surveys of all counties that participate in the secondary system of state highways and each residency office serving those counties. An advisory committee was formed of local government officials and representatives of the development community to get their perspectives. Finally five public stakeholder meetings were conducted in the Spring of 2003 to allow localities, the development community and others that wished to comment an opportunity to share their perspectives and recommendations and to provide written comments to VDOT by letter, fax, email, and via the agency's web site during a 30 day public comment period.

That information was shared with the advisory committee, which then assisted VDOT in developing the proposed revisions and the forthcoming Appendix B of the Road Design Manual.

<i>Existing Section</i>	<i>Title</i>
24 VAC 30-90-10	Definitions.

***Section Revision Narrative***

Changes include the addition, deletion, or correction of VDOT staff titles to correspond with the agency's re-organization efforts, re-defining certain phrases to more accurately describe what is intended by the word or phrase, and the introduction of new words or phrases corresponding to other changes in the regulation, and renumbered as 24 VAC 30-91-10 in replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-20	<b><i>Title</i></b> Applicability.	<b><i>New Title</i></b> Applicability.
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***Section Revision Narrative***

The provision has been broadened to reflect changes in the Code of Virginia and to more explicitly describe the purpose of the regulation, and renumbered as 24 VAC 30-91-20 in replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-30	<b><i>Title</i></b> Continuity of public street system.	<b><i>New Title</i></b>
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***Section Revision Narrative***

The provision has been re-enacted in its entirety and renumbered as 24 VAC 30-91-30 in replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-40	<b><i>Title</i></b> Large-lot-size subdivisions.	<b><i>New Title</i></b>
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***Section Revision Narrative***

The provision has been re-enacted in its entirety and renumbered as 24 VAC 30-91-40 in replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-50	<b><i>Title</i></b> Service requirements.
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***Section Revision Narrative***

Although minimal changes are made in this section, the provisions have been restated to more accurately explain their intent, and renumbered as 24 VAC 30-91-50 in replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-60	<b><i>Title</i></b> Administrative procedures.
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***Section Revision Narrative***

Provisions have been restated to be more complete and to more accurately state the procedures involved with the establishment of new streets and the steps involved with their development, and renumbered as 24 VAC 30-91-60 in replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-70	<b><i>Title</i></b> Discretionary authority.
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***Section Revision Narrative***

Minor rewording. Renumbered as 24 VAC 30-91-70 in replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-80	<b><i>Title</i></b> Effect of legislation
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***Section Revision Narrative***

Repealed. This provision was felt to be superfluous.

<b><i>Section</i></b> 24 VAC 30-90-90	<b><i>Title</i></b> Entrance permits.
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***Section Revision Narrative***

Reworded for clarification. Renumbered as 24 VAC 30-91-80 in replacement regulation.





***Section Revision Narrative***

The section has been reworded to clarify issues associated with right of way, including issues involving utilities, and encroachments that might be placed within the right of way but which are not appropriately maintained at public expense. Department acceptance of the maintenance of certain tunnel crossings have been clarified. Renumbered as 24 VAC 30-91-150 in the replacement regulation.

***Section***                      ***Title***  
 24 VAC 30-90-160      Surety and fees.

***Section Revision Narrative***

Surety and fees have not been adjusted for more than 15 years. The provisions have been restated to more accurately represent their purpose and adjusted to more accurately represent current cost factors. In addition, an administrative cost recovery fee has been introduced which will recover a portion of the costs experienced by the Department for services extended to developers and local government in the development of new streets and allow that fee to be adjusted periodically based on the agency's cost experience. Renumbered as 24 VAC 30-91-160 in the replacement regulation.

***Section***                      ***Title***    ***New Title***  
 24 VAC 30-90-170      Sidewalk.    Pedestrian and Bicycle facilities

***Section Revision Narrative***

The section is completely rewritten to resolve misinterpretation issues and to more accurately reflect the department's position and commitment to providing adequate pedestrian and bicycle facilities when they are included as part of new subdivision streets if adequately constructed. Renumbered as 24 VAC 30-91-170 in the replacement regulation.

***Section***                      ***Title***  
 24 VAC 30-90-180      Intersections.

***Section Revision Narrative***

Repealed. The section has been moved to the Road Design Manual.

***Section***                      ***Title***  
 24 VAC 30-90-190      Guardrail.

***Section Revision Narrative***

Simplified. The change neither imposes new requirements on developers or relieves them of installing guardrail when appropriate. Renumbered as 24 VAC 30-91-180 in the replacement regulation.

***Section***                      ***Title***  
 24 VAC 30-90-200      Curb and gutter.

***Section Revision Narrative***

Significantly revised, former provisions have been relocated to the Road Design Manual but new provisions more clearly explain the needs associated with curb and gutter at driveways and as warranted under provisions of the Americans with Disabilities Act. Renumbered as 24 VAC 30-91-190 in the replacement regulation.

***Section***                      ***Title***  
 24 VAC 30-90-210      Turn lanes.

***Section Revision Narrative***

Repealed. The section has been moved to the Road Design Manual.

***Section***                      ***Title***  
 24 VAC 30-90-220      Neotraditional developments.

***Section Revision Narrative***

The provision is restated in its entirety. The concept of neotraditional development is elusive and is associated with what might be considered a complete, nearly self-contained town concept that provides a relatively small compact community that is pedestrian friendly in which the residents work where they live. It is characterized by narrow streets which must by necessity still accommodate the widths of modern public transportation (school and transit) and emergency services (police, fire, rescue) vehicles as well as service vehicles such as

trash and delivery trucks. Renumbered as 24 VAC 30-91-200 in the replacement regulation.

Provisions have been introduced in Appendix B of the Road Design Manual that should allow developer and local government efforts to achieve development using the neotraditional development concept while providing transportation facilities that meet the demands of modern vehicle movements.

**Section** 24 VAC 30-90-230 **Title** Concentric design.

**Section Revision Narrative**  
Repealed. The section has been moved to the Road Design Manual.

**Section** 24 VAC 30-90-240 **Title** Cul-de-sacs and turnarounds.

**Section Revision Narrative**  
Repealed. The section has been moved to the Road Design Manual.

**Section** 24 VAC 30-90-250 **Title** Dams.

**Section Revision Narrative**  
Repealed. The section has been moved to 24 VAC 30-90-130.

**Section** 24 VAC 30-90-260 **Title** Railroad crossing.

**Section Revision Narrative**  
Restated in its entirety to more clearly detail the involvement of others associated with rail crossings. Renumbered as 24 VAC 30-91-210 in the replacement regulation.

**Section** 24 VAC 30-90-270 **Title** Private entrances.

**Section Revision Narrative**  
Minor clarifications are made. Renumbered as 24 VAC 30-91-220 in the replacement regulation.

**Section** 24 VAC 30-90-280 **Title** Parking.

**Section Revision Narrative**  
Minor revisions made to state circumstances under which angular or perpendicular parking might be accommodated without compromising the safety of those using the roadway proper. Renumbered as 24 VAC 30-91-230 in the replacement regulation.

**Section** 24 VAC 30-90-290 **Title** Landscaping.

**Section Revision Narrative**  
Minor clarifications are made and previous references have been included in the Road Design Manual. Renumbered as 24 VAC 30-91-240 in the replacement regulation.

**Section** 24 VAC 30-90-300 **Title** Encroachments and extrinsic structures.

**Section Revision Narrative**  
Repealed. The former section is rewritten and included under the right of way section, 24 VAC 30-90-150.

**Section** 24 VAC 30-90-310 **Title** Lighting.

***Section Revision Narrative***

Minor corrections. Renumbered as 24 VAC 30-91-250 in the replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-320	<b><i>Title</i></b> Noise abatement.	<b><i>New Title</i></b>
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***Section Revision Narrative***

The provision has been re-enacted in its entirety and renumbered as 24 VAC 30-91-260 in replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-330	<b><i>Title</i></b> Effective date and transition.
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***Section Revision Narrative***

Reworded to provide greater flexibility during the transition period from the current regulation to the new. Renumbered as 24 VAC 30-91-270 in the replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-340	<b><i>Title</i></b> Subdivision street plan review procedure.	<b><i>New Title</i></b> Subdivision street development, plan review and acceptance.
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***Section Revision Narrative***

The section has been expanded significantly to explain the partnership role between counties and VDOT. The section includes detailed flow charts explaining the role of developers, the counties, and the department for each major phase of the development process, including the post development phase. Renumbered as 24 VAC 30-91-280 in the replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-350	<b><i>Title</i></b> Offices of the Virginia Department of Transportation.
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***Section Revision Narrative***

Revisions reflect name changes as the result of legislation. Renumbered as 24 VAC 30-91-290 in the replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-360	<b><i>Title</i></b> Listing of documents (publications) incorporated by reference.
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***Section Revision Narrative***

The listing has been significantly reduced, primarily because design matters have been moved to the Road Design Manual, which remains incorporated by reference. Renumbered as 24 VAC 30-91-300 in the replacement regulation.

<b><i>Section</i></b> 24 VAC 30-90-370	<b><i>Title</i></b> Acceptable curb and gutter designs.
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***Section Revision Narrative***

Repealed, with portions relocated to 24 VAC 30-90-200 and Appendix B of the Road Design Manual.

<b><i>Section</i></b> 24 VAC 30-90-380	<b><i>Title</i></b> Table 1 - Geometric Design Guide for Subdivisions Streets Functionally Classified as Local.
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***Section Revision Narrative***

Repealed and relocated with major revisions to Appendix B of the Road Design Manual. Changes compress the range of roadway widths by allowing certain widths to accommodate greater volumes of traffic. Although the least roadway widths have not been reduced, allowing established widths to accommodate greater volumes of traffic has the effect of reducing overall development costs. In addition, greater flexibility in regard to vertical controls create additional flexibility has been included. Although permissible in the past, criteria for one-way streets has also been introduced for the first time.