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Regulatory
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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Transportation (Commonwealth Transportation Board)
Virginia Administrative Code (VAC) citation	24 VAC 30-121
Regulation title	Comprehensive Roadside Management Program
Action title	Promulgation of Comprehensive Roadside Mgt. Program in Response to Legislative Mandate
Document preparation date	January 11, 2005 – revised March 28, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This regulation is being developed to comply with §33.1-223.2:9 of the Code of Virginia passed by the 2004 session of the Virginia General Assembly (SB 260/Chapter 679). The regulation addresses the current lack of a consistent, formal approach to roadside management. It sets forth the requirements applicable to all individuals or community groups that wish to work through local governments to landscape portions of highway rights-of-way. This regulation includes procedures for approval and criteria used to evaluate each proposal, and is intended to serve as a reference resource for parties involved in the planning, design, development, and maintenance of corridors and gateways into localities.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), 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.

These regulations are being promulgated under authority granted by §33.1-223.2:9 of the Code of Virginia. No federal statutes pertain to the landscape installation or maintenance sections of this regulation. The Federal Highway Administration has issued an interim memorandum establishing policy for the use of acknowledgement signs on highway right-of-way. The policy (see http://mutcd.fhwa.dot.gov/res-memorandum_highway_row.htm) allows these signs on highway rights-of-way, forbids advertising signs on the highway rights of way, and restricts the placement of acknowledgement signs and messages from certain high-risk areas.

23 U. S. C. §131 regulates the placement of signs visible from federal-aid highways. Title 33.1, Chapter 7, Article 1, §33.1-351 *et seq.* of the Code of Virginia and 24 VAC 30-120-10 *et seq.* (*Rules And Regulations Controlling Outdoor Advertising and Directional and Other Signs And Notices*) regulates the placement of signs visible from public highways in the Commonwealth. Title 33.1, Chapter 7, Article 1, §§33.1-371.1 and 33.1-371.2 and 24 VAC 30-200-10 *et seq.* (*Vegetation Control Regulations On State Rights-Of-Way*) regulate tree trimming and removal within state rights-of-way. VDOT, the Commissioner and the Commonwealth Transportation Board (CTB) are granted "control, supervision, management, and jurisdiction" over the 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 (3), and has exercised that authority through the regulations referenced above.

This regulation does not exceed the specific minimum requirements of any federal or state mandate. The regulation defines what can be done under this program, requires all participants to process activities through their respective local governments, and have local governments secure a land use permit under that authority.

Statutory text for the Code sections referenced 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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

This regulation is being developed to comply with §33.1-223.2:9 of the Code of Virginia passed by the 2004 session of the Virginia General Assembly (SB 260/Chapter 679). The regulation sets forth the requirements applicable to all individuals or community groups that wish to work through local governments to landscape portions of highway rights-of-way.

The *Comprehensive Roadside Management Program* regulation creates a new program. Therefore, VDOT is exploring alternatives to make the regulation as useful as possible for individuals, community groups, or local governments in meeting the goals of ensuring a safe and aesthetically pleasing environment. These alternatives are intended to improve the current situation of no guidance while meeting the principal goals of:

- Serving as a reference resource for parties involved in the planning, design, development, and maintenance of corridors and gateways into localities.
- 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. (More detail about these changes is requested in the "Detail of changes" section.)

The regulation establishes the basic requirements applicants must follow, including compliance with an existing comprehensive regulation, the Land Use Permit Manual (LUPM). The LUPM sets forth the policies and procedures that VDOT uses to issue permits on behalf of the Commonwealth Transportation Board (CTB) to perform work on state-owned property under its jurisdiction along the system of state highways. Typically, this work includes activities such as installation of utilities, cable television services, fiber optic lines, or installation of driveway pipe. It is intended to protect the safety of VDOT and non-VDOT workers, motorists, and pedestrians, minimize the likelihood of property damage, as well as to preserve the integrity of the state highway system.

The regulation also provides for a maintenance agreement and a resolution from the local government authority, the latter of which requires a public hearing be held. These requirements ensure that there is formal consensus as to the appropriateness of the project, as well as a means to care for the landscaping once it is installed.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the public is in having a consistent framework to instruct them in the policies and procedures VDOT will use in accepting and using donations of funds or plant materials for landscaping; the specifications involving in the design, installation, and maintenance of acknowledgement signs; and specific maintenance issues on state-owned rights of way. VDOT has consulted with civic associations, garden clubs, local officials, and participants in an earlier pilot program on landscaping to develop regulations that fulfill the purpose of the legislative mandate, accommodate the needs and desires of the regulated parties, and preserve VDOT’s interests in maintaining an safe, attractive, and convenient transportation network.

The experience of the city of Lynchburg should also be considered. The city sponsored a fund-raising initiative to implement its small-scale roadside improvement program, resulting in approximately twice the funds raised than were estimated to support the program. If this happens again, VDOT will incur a financial benefit from having this program underwritten from private sources.

VDOT does not believe there are any disadvantages to the public, because both public- and private-sector interests will be served by having the regulation in place to provide consistent guidance in these matters. Given the fact that the General Assembly mandated promulgation of these regulations, there is clearly a perception that they will serve a pressing public need.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>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</p>	<p>VDOT’s funds come primarily from the Transportation Trust Fund (a non-general fund), comprised of the Highway Maintenance and Operating Fund (HMO) and the Transportation Trust Fund (TTF). The HMO is derived from a mixture of state and federal revenue sources (fuel and hauling permit fees, tolls, road taxes, special-purpose federal funds, etc.), and is spent on administrative and support services (such as computer and physical plant services), highway system maintenance, and specialized activities undertaken by other state agencies (Departments of State Police, Rail and Public Transportation, Motor Vehicles, Old Dominion University, etc.).</p> <p>The Transportation Trust Fund is established by statute (§ 33.1-23.03:1), and is comprised of</p>
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	<p>funds designated by the General Assembly. Revenues from this fund are spent on highways and other transportation modes, and specialized transportation programs and matching funds.</p> <p>The fee structure for permits is included in the “Land Use Permit Manual” (24 VAC 30-150-10 et seq.), which is being revised under the Administrative Process Act. Permit fees vary, depending on the type of work involved; there is a \$40 minimum charge plus whatever additive charges are appropriate. An example of costs for the current and new miscellaneous permits for Land Use Permits addressed by this regulation is attached at this end of this discussion.</p> <p>VDOT spends approximately \$14 million annually administering land use permits (approximately 200 employees statewide). For the most recent fiscal year completed, approximately 14,000 permits were processed, yielding approximately \$650,000 in fees, less adjustments. This regulation will use the same forms, requirements, and personnel as that of other asset management activities related to land use permit review, so these costs can be absorbed by current operations. Since this is a new regulation, precise figures on increased permits resulting from this action cannot be provided.</p> <p>Other costs include expenses to print copies of the regulation, forms, etc., as well as training programs for field personnel who will administer the regulation, but these are anticipated to be negligible. The regulation will be printed in-house, so there will be no outside printing costs.</p>
<p>Projected cost of the regulation on localities</p>	<p>Funding will largely come from private sources. Costs to localities should be minimal, as public hearings and approvals required by the regulation are routinely held as part of general operations of the locality.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Any business or individual in the Commonwealth interested in contributing to a</p>

	local government roadside management project is potentially eligible to implement projects under this regulation.
Agency’s best estimate of the number of such entities that will be affected	All local governments in the Commonwealth are potentially eligible to implement projects under this regulation, at their discretion. Additionally, businesses, civic groups, communities, or individuals may also choose to participate.
Projected cost of the regulation for affected individuals, businesses, or other entities	Excluding the sums specified for contributions toward landscaping referenced in 24 VAC 30-121-C, costs to individuals, businesses, or other entities will depend on whatever contribution the permittee elects to make toward a roadside management project. For example, the city of Lynchburg has established a small-scale, low-maintenance road improvement program similar to that of this regulation. Based on its experience, costs per acre should be approximately \$200 per year, for maintenance, including equipment and personnel. Higher levels of maintenance could result in higher costs, depending on the type of landscaping, aesthetics, etc.

Comparison of current and proposed permit fees from the Land Use Permit Manual:

	Current	Proposed
Application fee	\$40	\$100
Example:		

Miscellaneous permit - Landscaping 500’ along roadway

Existing fee structure – \$40 base fee = \$40

Proposed fee structure = \$100 base fee + \$50 (5*10 for lin. ft of frontage)= 150

Cost based on residency information

1. Plan review at residency and district roadside management section – 2 reviews @ 1 hour each – total 2 hours
2. Permit processing and follow-up 2 hours
3. Inspection – 3 inspections @ 1 hour each = 3 hours
4. Total time = 7 hours * \$30 per hours = \$210

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.

There is currently no program to address individual, community group, or local government roadside improvement initiatives on state maintained rights-of-way. The Virginia General Assembly recognized the need for a comprehensive program to allow individuals, businesses, community groups, or local governments to improve the appearance or safety, or both, of state maintained roadsides for community pride, economic development, and tourism. The General Assembly also recognized the need for a comprehensive program to allow acknowledgement signage to encourage and enable alternative funding sources, greater participation and corresponding greater improvements to roadsides. The limited resources of the Transportation Trust Fund are needed for transportation improvements and the maintenance and management of existing transportation facilities as driven by safety needs and asset performance and longevity. Therefore, VDOT concurs with the General Assembly that there is no viable alternative to having a regulation governing the placement of landscape materials and acknowledgement signage within state maintained right-of-way, thereby ensuring the integrity and safety of the existing systems of highways and roads and guiding the prudent decisions deemed necessary to protect against the haphazard placement of plant material and signage.

Public comment

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

VDOT was assisted by an ad hoc committee comprised of representative from the following groups:

- Virginia Association of Counties;
- Virginia Municipal League;
- Virginia Tourism;
- Scenic Virginia; and
- The Garden Club of Virginia.

In addition, technical input was provided by landscape architects, VDOT operational staff, and others. A public hearing was held on July 26, 2004, to collect additional public input on the regulatory content. One e-mail was received from the Great Falls Trail Blazers expressing support the construction of trails within the right of way by private citizens, organizations and localities in partnership with VDOT. The correspondence also requested that:

- any policy put in place by these regulations not impede the construction of trails within the right of way and not increase the cost of those trails;
- the policy defer landscaping in those areas where trails are planned to the time the construction of the trail takes place; and

- the policy promote and facilitate the installation of landscaping and other amenities with the trail as this often makes the trail more attractive and increases support for non-motorized facilities by members of the community.

Finally, VDOT received feedback from the Commonwealth Transportation Board in July of 2004 concerning the content of the regulation.

Family impact

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

There is no negative impact to the factors listed.

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.

Since this is a new regulation promulgated in response to a legislative mandate, no existing regulation is being changed. As mentioned in the “Substance” section, this regulation:

- Section 10: Establishes a purpose for the regulation;
- Section 20: Defines eligibility criteria for participation by local governments, partnerships, civic organizations, businesses, etc., and describes specifications and terms for acknowledgement signs;
- Section 20: Sets financial contribution levels based on where the sign is to be located; and
- Section 30: Establishes compliance with the Land Use Permit Manual (24 VAC 30-150-10 et seq.), including application requirements and other conditions related to design, site location, etc. for acknowledgement signs and structures, responsibility in case of damage, etc.