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MEMORANDUM

TO: Jo Anne P. Maxwell  
Director, Governance and Legislative Affairs Division

FROM: Christian A. Parrish  
Senior Assistant Attorney General

DATE: December 30, 2024

SUBJECT: Proposed Amendments and Periodic Review of Land Use Permit Regulations,  
24 VAC 30-151

In my capacity as legal counsel for the Virginia Department of Transportation (VDOT) and the Commonwealth Transportation Board, it is my legal opinion that the Land Use Permit Regulations does not appear, on its face, to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor does it appear to conflict with federal or state law currently in effect.

Virginia Code § 33.2-210 provides that the Commonwealth Transportation Board has the power and duty to make regulations that are not in conflict with the laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations. Further, Federal law, including 23 U.S.C. 111 and 23 CFR 710.203, requires states to restrict access to and use of certain highway rights-of-way.

Additional Virginia Code sections authorize certain sections or aspects of the Land Use Permit Regulations. Section 33.2-118 authorizes the Department to issue permits for mobile food vending in certain parking areas. Section 33.2-216 requires the CTB to “establish regulations regarding size, distance from the roadway, and other safety concerns to govern the installation, maintenance, and removal of roadside memorials, plaques, and other devices placed within the right-of-way that commemorate the memory of persons killed in vehicle crashes within the right-of-way of any state highway.” Sections 33.2-240, 33.2-241, and 33.2-245 of the Code of Virginia authorize the Department and the CTB to regulate access to and entrances onto the state highway system. Section 33.2-1208 authorizes the Department to issue permits to allow outdoor advertising structures, in accordance with 23 U.S.C. 131. Section 46.2-1149 authorizes the Department to issue permits for use of the highways by certain oversize or overweight loaders or haulers.

Virginia Code § 2.2-1151.1 authorizes the Department to issue permits for “(i) a person providing utility service solely for his own agricultural or residential use, provided that the utilities are located on property owned by the person, or (ii) the owner of a private residence or business for water or sewer service to cross the Department's right-of-way when no viable alternative exists to provide potable water or to transfer sewer effluent to a qualified drain field.” Several additional sections of the Code of Virginia authorize the CTB and the Department to regulate the access to and use of the highway right-of-way by various utilities, including §§ 56-458 and 56-484.28.

This memorandum addresses legal matters only and is not intended as a comment for or against the merits of the proposed regulations.