

REGULATORY REVIEW CHECKLIST

To accompany Preliminary Determination Package

Agency *Va. Dept. of Transportation (Commonwealth Transportation Board)*

Regulation title *24 VAC 30-20-10 et seq. General Rules & Regulations of the Commonwealth Transportation Board*

Purpose of the regulation *To list the policies, procedures, and manuals governing the issuance of land use permits and conditions for various types of activities performed on VDOT-owned or -controlled right of way.*

Summary of items attached:

- Item 1: An explanation of the specific reason for the proposed regulation.
- Item 2: A statement identifying the source of the agency legal authority to promulgate the contemplated regulations and a statement as to whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate. **(Be sure to attach a copy of all cited legal provisions).**
- Item 3:** A statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety, or welfare of citizens or for the efficient and economical performance of an important governmental function.
- Item 4:** A statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered (to the extent known), and the reasoning by which the agency has rejected any of the alternatives considered.
- Item 5:** A statement describing the likely impact of the proposed regulation on family formation, stability, and autonomy. If adverse impacts are anticipated, include a discussion of steps to be taken which will minimize the impacts.

David R. Gehr

Signature of Agency head

2/11/97

Date forwarded to
DPB and Secretary

**REGULATORY REVIEW PACKAGE
ITEMS TO ACCOMPANY
PRELIMINARY DETERMINATION PACKAGE**

Item 1: *The General Rules & Regulations of The Commonwealth Transportation Board* (24 VAC 30-20-10 et seq., referred to afterward as the *General Rules*) were enacted by the Commonwealth Transportation Board (CTB), then known as the State Highway and Transportation Commission, to become effective on November 1, 1974. *The General Rules* specify that VDOT's *Land Use Permit Manual* (24 VAC 30-150-10 et seq.) and the *Minimum Standards of Entrances to State Highways* (24 VAC 30-70-10 et seq.) shall address specific policies and procedures commercial, private, and governmental applicants must follow when seeking to perform work within the limits of VDOT-owned or -controlled right of way.

A Notice of Intended Regulatory Action was published to amend the *Land Use Permit Manual* in accordance with the Administrative Process Act in February of 1994 (copy enclosed). To date, VDOT has not submitted an official draft of the proposed *Land Use Permit Manual* to the Department of Planning & Budget so that an economic impact analysis can be performed, as required by statute. Upon completion of an official draft, a copy will be forwarded to the appropriate officials for review. The regulation *Minimum Standards of Entrances to State Highways* has completed the public hearing stage of the APA promulgation process, and a final version is being prepared for publication.

VDOT is preparing a Pre-Notice of Intent of Regulatory Action documentation package (Pre-NOIRA) to promulgate the proposed *Utility Accommodation Policy* as well. If these actions proceed to completion, all APA regulations concerning utility-related activities occurring within VDOT-owned or -controlled right of way will be updated or promulgated together.

Item 2: The *General Rules* were adopted under the authority granted the CTB by § 33.1- 12 (3) of the Code of Virginia (copy enclosed), and is not mandated by any state or federal law. The regulation was reviewed in conjunction with Executive Order (15) 94, which directed that agencies perform a Comprehensive Assessment (copy enclosed) on the regulations subject to Article 2 of the Administrative Process Act (APA), and determine whether they should be retained, amended, or eliminated. As part of the requirements of the Order, the Office of the Attorney General (OAG) was directed to verify the statutory authority of each Article 2 regulation. By letter dated November 17, 1994 (copy enclosed), the OAG verified the CTB's statutory authority concerning this regulation, directing that the title be revised.

Item 3: At the time of the Comprehensive Assessment (copy enclosed), VDOT determined that the *General Rules* should be retained as written. However, the Virginia Department of Transportation now proposes to amend the *General Rules* in view of ongoing efforts to amend the *Land Use Permit Manual* (effective since 1983, and itself subject to Article 2 requirements of the APA), and enact a separate policy expressly addressing utility accommodations. VDOT believes that these actions are essential for the efficient and economical performance of an important governmental function.

These current and proposed regulations overlap in scope, and it would be desirable to ensure that all three regulations accurately address new or altered requirements and changes in processing permits. The passage of the Telecommunications Act of 1996 (47 USC 151 et seq.), the development of VDOT's Intelligent Highway System (ITS), and continuing innovation in the utility industry make a comprehensive effort of this nature appropriate.

Furthermore, prudent, non-discriminatory regulation of access and use of highway rights of way also serve an economic interest vital to the Commonwealth. By ensuring that ongoing technological innovations are appropriately recognized and VDOT's policies concerning land use consider the current requirements of applicants, commercial and residential development may be facilitated.

Item 4: VDOT is not aware of any alternatives which are less burdensome and less intrusive to achieve the essential purpose of this regulation. The highway rights of way are under the jurisdiction of the CTB, and regulating access and use of such property is the only way to ensure competing interests of safety, economic development, and functional performance of the highway are simultaneously satisfied.

The General Rules concern activities taking place within VDOT's rights of way (or, in the cases of entrances, those extending from adjacent property to VDOT's property) and do not limit the rights of anyone engaged in activities outside these limits. The only alternative to having a regulation of this type would be to not issue permits, and adopt a simple statement that the person or business performing the work is liable for any damages arising from the work on VDOT's rights of way.

This alternative would be simple, but poses significant limits to VDOT's ability to preserve the safety and integrity of the transportation system. It is in VDOT's best interest to ensure that work performed within its rights of way is performed by experienced professionals who are aware of and follow the procedures and specifications VDOT has established. Having no restrictions would limit VDOT's statutory obligations concerning the integrity of the road system, and impede VDOT's efforts in identifying the extent and responsibility of damages, including the recovery of repair costs. Furthermore, lawfully placed traffic signs, signals, or markers could be removed or relocated, leading to loss of life or damage to public or private property.

Item 5: This policy is not likely to have any impact on family formation, stability, and autonomy.