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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Commonwealth Transportation Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	24 VAC 30-151
<b>VAC Chapter title(s)</b>	Land Use Permit Regulations
<b>Action title</b>	Chapter 151 Regulatory Reform and Periodic Review
<b>Date this document prepared</b>	December 12, 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.*

The Land Use Permit Regulations, 24VAC30-151, permit work activities on the right-of-way of state highways for construction, utility installations, entrances, events, and other activities. The Commonwealth Transportation Board (CTB) has undertaken a comprehensive review of 24VAC30-151. The intent of this action is to remove redundant or obsolete language and to achieve regulatory reduction and streamlining in accordance with Governor Youngkin's Executive Order 19.

### 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.*

“CFR” means the Code of Federal Regulations.

“Department” or “VDOT” means the Virginia Department of Transportation.

“DIBR” means Documents Incorporated by Reference.

“U.S.C.” means the United States Code.

## 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.”*

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On June 21, 2023, the CTB approved a Notice of Intended Regulatory Action to review 24VAC30-151 to potentially amend any overly burdensome requirements, remove any obsolete information, and provide more clarity with streamlined regulatory requirements. The CTB conducted a review of its regulations in accordance with Governor Youngkin’s Executive Order 19 (EO 19). As a result of this review, the CTB identified several areas for streamlining within this regulation. The CTB approved the proposed amendments on January 16, 2024.

## 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.*

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The Commonwealth Transportation Board promulgated the Land Use Permit Regulations pursuant to its general authority to make regulations “for the protection of and covering traffic on and for the use of systems of state highways” in § 33.2-210 of the Code of Virginia. Federal law, including 23 U.S.C. 111 and 23 CFR 710.403, requires states to restrict access to and use of certain highway rights-of-way.

Additional 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 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.

Additionally, federal regulations authorize or mandate regulation of the use of highway right-of-way, including 23 CFR Part 645, Subpart B (Accommodation of Utilities).

## 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.*

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The Land Use Permit Regulations set forth the rules that individuals, localities, and other entities must follow to conduct activities other than travel on highway systems that are under VDOT's jurisdiction. These include activities such as installation of utilities, construction of private and commercial entrances, landscaping, the temporary use of the right-of-way, as well as numerous other types of activities. The regulations set forth criteria used by VDOT when determining whether to issue a permit and are intended to preserve the integrity of the highway system and protect the safety of motorists, pedestrians, and highway workers. Land use permits address safety issues such as proper procedures for temporarily closing travel lanes, standards for entrances and access points onto highways, affixing signs and other objects to structures in the right-of-way, and location and protection of utility lines. As such, the Land Use Permit Regulations are necessary for the protection of the health, safety, and welfare of the public traveling on or near public highways.

The proposed regulatory changes are intended to remove redundant or obsolete language, add clarity, and achieve regulatory reduction and streamlining in accordance with EO 19. Several changes will add administrative updates or bring the text in line with current practice. These proposed changes are necessary to protect the public as they ensure the text of the regulation provides the necessary clarity for permittees to understand the requirements of the permit process. The CTB also proposes to remove the Documents Incorporated by Reference (DIBR) and instead reference those documents in the terms of the land use permit secured by regulated entities. These DIBR include standards and specifications with which regulated entities are required to comply. This will ensure the most relevant versions of the documents are being followed by regulated parties, more narrowly tailor requirements to the specific type of permit and associated activity, and ease burdens on permittees in determining applicability.

## 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.*

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In addition to administrative updates, elimination of redundancy, adding clarifying language, and bringing the text in line with current practice, the CTB proposes to remove the DIBR from this regulation and instead include the relevant documents in the terms of the land use permits. Other changes that could be considered substantive include the amendments related to insurance requirements and permittee responsibilities in section 40, the broadening of section 500 to apply to all governmental agencies, the expansion of section 520 to include all commercial filming, and the addition of volunteer mowing or litter pickup to section 620.

## 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.*

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The primary benefit to both the public and the Commonwealth of the removal of the DIBR section is improved clarity for regulated entities, ensuring they are aware of the specific documents relevant to them by including them in the terms of the land use permits. This change will also ensure the most relevant version of each document is clearly specified for compliance. There are no disadvantages to this proposed change, as the permit forms will be updated to correspond to this change and all permit forms are publicly available on VDOT's website.

Amendments to section 40 will require permittees to maintain comprehensive general liability insurance with limits of at least \$1,000,000 per occurrence and \$5,000,000 in the aggregate, or in amounts otherwise required by VDOT stated in the permit, strengthen the indemnification and hold harmless language, and clarify permittee responsibilities for facilities installed within the right-of-way under permit. These changes are intended to protect the Commonwealth by ensuring permittees are adequately covered against liability for personal injury and property damage in connection with all activities undertaken under a permit and by clarifying that the Commonwealth is not liable for costs related to permittee violations and actions. By setting required minimum insurance amounts, some permittees may need to obtain higher levels of coverage than they would otherwise obtain under the current requirements. Furthermore, the movement of language from section 300, which pertains to utility installations, to section 40 for general applicability may require some permittees to take on additional costs to assume full responsibility for damages caused by improperly installed and/or maintained facilities within the right-of-way under permit.

The primary advantage to the public of the proposed changes to sections 500, 520, and 620 is the enhancement of statewide consistency and a reduction in permit processing time, as the requests submitted by the impacted applicants will no longer require approval from the Department's Central Office prior to issuance by the residency.

The other proposed changes to the regulation benefit the public through removing redundant or outdated language or providing additional clarity and are not anticipated to present disadvantages to the public or the Commonwealth.

**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 requirements that are more restrictive than 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 not particularly affected unless they own utilities and want to install new lines within the right-of-way, or if they want to install hydrological study equipment within the right-of-way.

Other Entities Particularly Affected

Affected entities could include utility companies, real estate developers, and those involved in commercial filming or volunteer mowing and litter pick up.

**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.	There are no anticipated costs, savings, fees, or revenues for VDOT 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.	The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.

**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.	The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.

**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.*

<p>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.</p>	<p>All permittees will be impacted by the amendments regarding insurance requirements and permittee responsibilities. Utility companies, real estate developers, and entities involved in commercial filming or volunteer mowing and litter pick up will be affected by other proposed changes.</p>
<p>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:</p> <ul style="list-style-type: none"> <li>a) is independently owned and operated, and;</li> <li>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</li> </ul>	<p>The number of entities that could be affected is unknown at this time.</p>
<p>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:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>Some permittees may need to maintain higher levels of comprehensive general liability insurance under the proposed changes than under the status quo. Costs could possibly accrue to permittees whose activities or violations directly or indirectly result in claims, causes of action, losses, costs, attorney's fees, expenses, and damages if those permittees would have previously sought to recover costs from the Commonwealth and associated entities under the status quo language. Furthermore, some permittees may be required to take on additional costs to assume full responsibility for damages caused by improperly installed facilities within the right-of-way and for continuing maintenance of its facilities placed within the right-of-way under permit due to the new general applicability of this language.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.</p>

**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 identified during a review conducted in accordance with the principles of EO 19. The focus of the review was to reduce overly burdensome requirements, remove any

obsolete information, and provide more clarity with streamlined regulatory requirements. As such, no alternatives to the proposed changes were identified.

### 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.*

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*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 CTB proposes to remove the DIBR from the regulation and instead reference those documents in the terms of the land use permits secured by regulated entities. This will ease the burden on regulated entities, including small businesses, by more narrowly tailoring requirements to the specific type of permit and associated activity and making it easier for permittees to determine applicability of the documents.

Otherwise no alternative regulatory methods are applicable, nor were alternative regulatory methods considered.

### 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.*

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The proposed changes to the Land Use Permit Regulations are largely intended to reduce redundancy and improve clarity of the regulation in alignment with the criteria set out in EO 19 and the ORM procedures. The regulation allows for the protection of public health, safety, and welfare and continues to be needed. The regulation does not overlap or conflict with state or federal law or regulation, and it is not overly complex. It was last reviewed in 2020 and no complaints have been received since the last review. Small business permittees may be affected by the proposed amendments if they take on more liability responsibility or need to obtain higher levels of comprehensive general liability insurance than they would otherwise have obtained under the status quo; however, permittees currently carry this insurance and the

proposed minimums are not anticipated to result in significant changes in costs for permittees, and the liability responsibilities will not disproportionately impact small businesses.

**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.*

No public comments were received during the public comment period following the publication of the previous stage.

**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 or email to Steven Jack, Regulatory Manager, 1401 E. Broad St. Richmond, VA 23219, telephone (804) 786-3885, [steven.jack@vdot.virginia.gov](mailto:steven.jack@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-	New chapter-section	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
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section number	number, if applicable		
151-10	N/A	Section 10 defines the words and terms used in the regulation.	<p>The DIBR reference will be removed from the definition of “Clear zone” to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p> <p>Definitions for “Chief Engineer,” “Permit agreement,” “Shared resource agreement,” and “Wireless support structure agreement” will be added to provide further explanation for terms used in the regulation. The definitions of “Central office permit manager,” “Commercial entrance,” “District administrator,” “Permit,” “Permittee,” “Private entrance,” “Right-of-way,” “Service connections,” “System of state highways,” “Transportation project,” and “VDOT” will be amended to clarify and streamline the definitions. “Manhole” and “Power line” will be removed as these definitions are no longer necessary. Minor formatting or grammatical edits will be made to the definitions of “District administrator’s designee,” “Limited access highway,” and “Non-betterment cost.”</p>
151-20	N/A	This section outlines VDOT’s authority to issue permits for work performed on any real property under the ownership, control, or jurisdiction of VDOT.	<p>Additional Code of Virginia sections will be included in the sentence describing the authority by which the General Rules and Regulations of the Commonwealth Transportation Board (24VAC30-21) are adopted. In addition to work, “non-transportation uses” will be added to the activities for which written permission is required before the activity is allowed or performed on the system of state highways or any right-of-way or real property under the ownership, control, or jurisdiction of VDOT. This change is intended to reflect that some activities which require a permit are not “work,” including parades and races.</p> <p>Formatting and clarifying updates will also be made to this section.</p>
151-30	N/A	This section states when a permit is required and specifies the type of permit	The title of this section will be amended to read, “Types of permits and permit agreements.” The current text of

		<p>required for different activities in the right-of-way.</p>	<p>subsection A will be removed as the provisions are repeated elsewhere in section 30. The numbering for the remaining subsections will be adjusted.</p> <p>Clarity will be added to the subsection on single use permits (currently subsection B, proposed subsection A). Provisions concerning single use permits which were previously found in other subsections of section 30 will now be consolidated into this subsection.</p> <p>The subsection dealing with districtwide permits (currently subsection C, proposed subsection B) will be rewritten to streamline and consolidate the text.</p> <p>Clarifications will be added to the subsection pertaining to prior-rights permits (currently subsection E, proposed subsection D).</p> <p>In the subsection on as-built permits (currently subsection F, proposed subsection E), text will be added stating that "Utility facilities required to be relocated within a right-of-way due to a conflict with a transportation project or other use of the right-of-way by the public or the Commonwealth may be issued an as-built permit upon completion of the project and the mutual agreement between VDOT and the utility for such relocation." This text more accurately reflects the situations for which this type of permit may be issued.</p> <p>In the subsection regarding agreements (currently subsection G, proposed subsection F), the text requiring an agreement for any perpendicular crossing of limited access right-of-way will be removed to correspond with current Department practice. "Median" will be added to the locations for which an agreement will be required for a new longitudinal occupancy, and "occupancy of a VDOT-owned wireless support structure" will be added and "new communication tower or small site facilities installed within the right-of-way, as allowed for in 24VAC30-151-300" removed in subpart 1b for clarity and consistency with the Code of Virginia. Further clarification will be added to</p>
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			<p>subpart 2 regarding shared resource agreements, noting that in exchange for occupancy of limited access right-of-way, utilities provide a combination of goods, facilities, services, or monetary compensation to VDOT. Other streamlining and clarifying edits will be made to this subsection.</p> <p>A new subsection will be added to clarify that no permits shall be required for placement of mailboxes and newspaper boxes in accordance with this regulation.</p> <p>Additional formatting updates will be made, text will be amended to align with other sections, and text that is redundant with other sections of this regulation or the Code of Virginia will be removed.</p>
151-40	N/A	Section 40 describes the general rules, regulations, and requirements for land use permits.	<p>A sentence will be added to subsection A stating, "The terms of every permit include and incorporate by reference this chapter as well as all federal, state, and local requirements applicable to a permittee's activities under the permit." This corresponds to the removal of the DIBR from the regulation. Other clarifications regarding contractors and agents will be included.</p> <p>The responsibility for approving activities within limited access right-of-way prior to permit issuance will be changed from the Commissioner of Highways to the Chief Engineer. This change is to align with 24VAC30-401 and current VDOT practice.</p> <p>In subsection B, the amendments will remove the requirement for single use permits that "consolidation shall not be for a length greater than two miles." This change will enable VDOT to allow a permit to cover more geographic area without requiring a special permit under section 660, which will reduce the complexity of the permit process.</p> <p>Subsection C will be reorganized for improved readability.</p> <p>In subsection F, new text will require permittees to secure and maintain commercial general liability insurance with limits of at least \$1,000,000 per occurrence and \$5,000,000 aggregate,</p>

			<p>or in amounts otherwise required by VDOT as stated in the permit. These amounts are proposed to be specified in the regulation for clarity, as they are generally the amounts VDOT currently requires in permits.</p> <p>New subsections G and H will be added to clarify permittee responsibilities for damages and continuing maintenance. These sections have been moved from section 300, which relates to utility installations, to section 40 to reflect their general applicability to all permits.</p> <p>Strengthened indemnification and hold harmless language will be added to newly numbered subsection I. These changes are intended to protect the Commonwealth by ensuring permittees are adequately covered against liability for personal injury and property damage in connection with all activities undertaken under a permit and by clarifying that the Commonwealth is not liable for costs related to permittee violations and actions.</p> <p>A new subsection (L) will be added requiring all work to be done in accordance with all federal, state and local requirements and the terms of the land use permit. This will be added to correspond to the removal of references to specific DIBR to reflect the inclusion of the relevant manuals and specifications within the terms of the permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p> <p>Newly numbered subsection R will be streamlined to state that the permittee is responsible for any settlement in the backfill or pavement after the completion of work activities under the permit or for any settlement caused by the installed facility.</p> <p>A sentence will be added to newly numbered subsection V to state, "The permittee may not rely upon any act, statement, or failure to act on the part of VDOT with respect to inspection, nor</p>
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			<p>shall the failure of VDOT to fully or properly inspect any work in any way excuse the permittee from any of its duties or obligations under the permit, law or regulation.” Similar language exists in section 70 of the regulation, but the more comprehensive language is proposed to be included here for clarity.</p> <p>Certain requirements which are restated in other regulations and DIBR will be removed. Other streamlining and clarifying edits will be made to this section.</p>
151-50	N/A	This section discusses violations and liability concerns.	The title of this section is proposed to be updated to “Objects in the right-of-way.” Subsections B-D are proposed to be deleted as the text is duplicative of other sections of the regulation.
151-80	N/A	Section 80 sets the standards regarding permit time limits, extensions, and cancellations.	<p>In subsection A, the requirement that the time limit for work to be accomplished under the permit shall not normally be less than six months in duration will be removed to eliminate potential confusion as to the regulatory requirements.</p> <p>Subsection B will be amended to clarify that it applies to single use permits and that permittees must request a time extension prior to the expiration of the permit. Calendar days will be changed to business days to better reflect VDOT’s ability to respond to a request. Redundant text in subsection B will also be removed.</p> <p>Subsection C will be clarified to reflect that a permit may be cancelled if no work has started within 30 days of issuance or such additional time as authorized by the district administrator’s designee.</p>
151-90	N/A	This section describes the hours for work under the authority of a permit and the restrictions for work on holidays.	The list of holidays included in this section will be expanded to all state observed holidays to better reflect holiday traffic patterns. Other clarifications to this section will also be made.
151-110	N/A	This section outlines the conditions that would lead to a permit being revoked or denied.	Flexibility will be added to subsection A to allow permits to be either revoked or suspended upon written finding of a violation. New language will be added to allow for a completed permit to be revoked and the facility or use for which it was issued required to be removed or relocated at the direction of the Commissioner of Highways if the facility

			<p>or use obstructs or interferes with a transportation project or the improvement, maintenance, or operation of a right-of-way. The text will clarify that all costs to remove and/or relocate the facilities or uses or otherwise resulting from the permit revocation shall be incurred and paid by the permittee unless otherwise specifically provided for by law. Additional amendments to this subsection will clarify that suspended permits shall be noted as such and that no work or use shall be allowed under a suspended permit, and that misrepresentations, fraudulent actions, or repeated violations may result in a permanent denial of the right to work within or use the right-of-way. This change is intended to limit impacts to construction schedules, thereby avoiding work orders and associated costs.</p> <p>A new subsection B will be added explaining the unique provisions relating to revocation of districtwide permits. Clarifications to newly numbered subsection C will explain that permits may be denied to any applicant or joint applicant when the applicant or joint applicant, or its contractors or agents, have violated or are in violation of any term of a permit or of any federal, state, or local requirement applicable to work or use under a permit.</p>
151-120	N/A	Section 120 outlines the provisions governing entrances.	This section is proposed to be repealed as the text is duplicative of other sections in this regulation and the Code of Virginia.
151-220	N/A	This section covers commercial use agreements in instances where wider rights-of-way are acquired by VDOT for the development of a highway at such time as adequate funds are available for the construction of the highway.	This section is proposed to be removed as it is no longer VDOT practice to acquire wider rights-of-way than needed at a specific time. In any instance where the situation covered under this section could occur in the future, section 660 relating to special permits would apply.
151-230	N/A	This section covers agricultural use agreements in instances where wider rights-of-way are acquired by VDOT for the development of a highway at such time as adequate funds are available	This section is proposed to be removed as it is no longer VDOT practice to acquire wider rights-of-way than needed at a specific time. In any instance where the situation covered under this section could occur in the future, section 660 relating to special permits would apply.

		for the construction of the highway.	
151-240	N/A	Section 240 deals with the requirements of a VDOT permit for dams for farm ponds within the right-of-way.	Administrative updates will be made to this section.
151-260	N/A	Section 260 sets the requirements for railroad companies which request railroad crossing permits.	Subsection A will be streamlined to state, "VDOT may permit railway crossings." In subsection C, "Construction bond" will be changed to "surety" to correspond to the requirements in other sections of this chapter.
151-270	N/A	Section 270 sets the requirements for non-railroad companies which request railroad crossing permits.	"Performance and indemnifying bond" will be changed to "suitable surety" to correspond to the requirements in other sections of this chapter.  Text that is redundant with the Code of Virginia will be removed and other formatting updates will be made.
151-280	N/A	This section describes the permit process for landowners whose springs, wells or facilities are acquired by VDOT.	This section is proposed to be repealed as it is no longer utilized. In any instance where the situation covered under this section could occur in the future, section 660 relating to special requests would apply.
151-290	N/A	This section describes the allowance for, and requirements related to, public telephone booths.	This section is proposed to be repealed as it is no longer utilized.
151-300	N/A	Section 300 outlines the requirements for utility installations on highway rights-of-way.	Text clarifying permittee responsibilities for damages and continuing maintenance has been moved to section 40 from section 300 to clarify that these requirements apply to all permits.  Additional administrative and streamlining updates will be made to this section.
151-310	N/A	Section 310 sets the requirements for utility installations on all limited access highways.	In subsections A and D, the responsibility for reviewing and approving requests for utility installations within limited access right-of-way and for approving longitudinal utility installations within limited access right-of-way will be changed from the Commissioner of Highways to the Chief Engineer. This change is to align with current VDOT practice. Other clarifying amendments will be added to this section.
151-330	N/A	Section 330 outlines the requirements for overhead utility installations within nonlimited access highways.	A sentence will be removed in subsection D which reads, "Longitudinal pole line installation shall be located on the outer 15 feet of the right of way

			<p>greater than 40 feet in width.”                  “Communications tower” will be changed to “wireless support structure” for consistency with the Code of Virginia. Administrative updates will be made and references to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p>
151-340	N/A	This section describes the requirements for underground utility installations within nonlimited access highways.	Administrative and streamlining updates will be made to this section.
151-350	N/A	Section 350 provides for the installation of communication tower structures and other types of surface mounted or underground utility facilities by a utility company and outlines requirements of the utility company and VDOT.	The title of this section is proposed to be updated to, “Wireless support structures and site installations.” “Communications towers” will be changed to “wireless support structures” in the section title for consistency with the Code of Virginia. Other streamlining and clarifying updates will be made.
151-360	N/A	Section 360 describes the requirements of permittees regarding pipelines.	The requirement for permittees to maintain minimum cover for any underground facility will be clarified to add, “...as established by the VDOT standards and specifications set forth in the terms of the permit or as otherwise required by applicable law, whichever is greater.” The phrase “incorporating the principles of new urbanism” will be removed. The phrase currently relates to high density developments as locations where utilities may be placed under the pavement. The phrase has been removed from the corresponding section of the Code of Virginia, § 15.2-2223.1, and as such should be removed from this regulation. Other clarifying edits will be made to this section.
151-380	N/A	This section outlines the requirements for vents; drains; permanent utility markers; manholes and associated frames and covers, valve boxes, and other castings; and shutoff valves.	The amendments would change “manholes” to “utility access points” in subsections D and E. This will allow for the regulation to better address different types of access points, including manholes and handholes.



151-390	N/A	This section deals with in-place and prior-rights permits for utilities.	A sentence will be added to subsection C stating, "Should VDOT later require the permittee to alter, change, adjust, or relocate any utility, the cost will be the responsibility of the permittee." This sentence will clarify the responsibility of a utility owner that does not have a prior right to be located within the right-of-way and align the section with current VDOT practice. Other clarifying edits will be made to this section.
151-400	N/A	This section describes the permit requirements for facilities relocated in conjunction with a VDOT project.	The amendments will clarify that a permittee must obtain a new permit for facilities directed to be relocated within or to right-of-way in conjunction with a transportation project, and that the relocation must be done in a timely manner and at the permittee's sole expense unless otherwise specifically provided in the Code of Virginia. References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.
151-420	N/A	Section 420 describes the permit requirements for lighting facilities.	<p>Subsection A will be streamlined to remove the distinction between roadway and nonroadway lighting since the requirements imposed by VDOT as a condition of land use permit approval are largely the same for both. The amendments will also clarify that lighting designed to illuminate the pavement or adjacent pedestrian or bicycle facilities is subject to a permit.</p> <p>Subsection B will be amended to remove the references to specific DIBR. Instead, the text will require the design of lighting systems and fixtures to be in accordance with § 2.2-1111 of the Code of Virginia, which sets requirements for lighting design by VDOT and other road agencies.</p> <p>In subsection C, the DIBR reference will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on</p>

			<p>regulated entities to determine the applicability of specific documents. Flexibility will be added to this subsection through the allowance of drawings to be submitted electronically. Applicants will be required to submit photometric calculations and wattage for the fixtures to reflect the prevalence of LED fixtures. "Permittee" will also be updated to "applicant."</p> <p>Amendments in subsection D will allow VDOT to require modification or removal of luminaries if they are determined to provide excessive light trespass into adjacent properties. This will allow VDOT to address citizen complaints about glare from lighting fixtures. Other changes to subsection D correspond to the changes in subsection A to remove the distinction between roadway and nonroadway lighting.</p>
151-430	N/A	This section outlines the requirements for attachments of utilities to bridge structures.	Clarity will be added to subsection A to require approval of the district structure and bridge engineer "in accordance with VDOT specifications." Subsection B will be amended to clarify that the requirements apply to "lines carrying electricity."
151-440	N/A	Section 440 sets the requirement for a permit to be obtained for uses of real property under the ownership, control or jurisdiction of VDOT.	This section is proposed to be repealed in conjunction with the addition of "non-transportation uses" to section 20 to remove redundancy from the regulation.
151-450	N/A	This section outlines the permit requirements for hanging banners or erecting decorations across state highways.	The list of entities which are required to obtain a permit under this section will be expanded to include other individuals and entities to ensure proper permits are obtained for banners and decorations.
151-460	N/A	Section 460 describes the permit requirements for building movements over 16 feet wide.	The amendments streamline the requirement that requests for building movements be approved by the district administrator's designee in the district where the move initiates by removing a duplicative sentence.
151-490	N/A	Section 490 states that a permit is required for construction or reconstruction of roads, bridges or other drainage structures and details the requirements for such a permit.	"Private or commercial entrances" and "other transportation facilities" will be added to the list of items for which a permit is required under this section for clarity.

151-500	N/A	This section allows for the issuance of permits to any governmental state agency to install hydrological study equipment within highway rights-of-way.	The proposed change would remove “state” from the type of governmental agencies covered under this section. Currently, non-state governmental agencies obtain these permits under section 660. This change will eliminate the need for a special permit.
151-520	N/A	Section 520 sets the permit requirements for filming for movies within the highway rights-of-way.	This section would be broadened to apply to all commercial filming as the current restriction to movie filming does not encompass the breadth of possible filming which could present a threat to safety if not conducted under the proper permit.
151-550	N/A	This section establishes the permit requirements regarding the authorized location and removal of roadside memorials.	Formatting and clarifying updates will be made, and text that is redundant or unnecessary will be removed for streamlining purposes.
151-560	N/A	This section outlines the requirements for the placement of mailboxes and newspaper boxes, and states that placement should not interfere with safety, maintenance and use of the roadway.	The amendments propose to change “should” to “shall” regarding the requirement that placement of mailboxes and newspaper boxes not interfere with safety, maintenance and use of the roadway. This strengthened requirement will help prevent safety issues regarding the placement of these boxes within the VDOT right-of-way.
151-570	N/A	Section 570 describes the conditions for placement of certain public service signs within the right-of-way without a permit.	<p>The title of this section will be broadened from “Miscellaneous signs” to “Miscellaneous signs and devices.” A new subsection C will be added stating, “The Commissioner of Highways or his designee may authorize the placement of various automated traffic enforcement devices for the Commonwealth or its political subdivisions as may be allowed by law.” These changes will allow for the placement of automated traffic enforcement devices under this section of the regulation as they are not currently addressed elsewhere.</p> <p>Subsections A(4) and A(5) are proposed to be removed. This text covers VDOT activities for which permits are not needed, and as such, the text is unnecessary.</p> <p>Formatting updates will be made and text that is redundant or unnecessary will be removed for streamlining purposes.</p>
151-580	N/A	Section 580 outlines the requirements for ornamental posts, walls, residential and commercial development	References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits.

		identification signs, or other nontransportation-related elements.	<p>This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p> <p>Text that is redundant or unnecessary will be removed for streamlining purposes.</p>
151-590	N/A	Section 590 discusses permits for outdoor advertising adjacent to the right-of-way.	This section is proposed to be repealed as the requirements are duplicative with those included in Chapter 12 of Title 33.2 of the Code of Virginia, 24VAC30-120, and 24VAC30-200.
151-600	N/A	This section describes the requirements for the installation and maintenance of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses and overpasses within right-of-way, as well as the installation of pedestrian or bicycle facilities within limited access rights-of-way.	<p>References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents. New text will be added to this section requiring VDOT to maintain “facilities that are open for general public use, built in the right-of-way to VDOT standards, and accepted by VDOT for maintenance.”</p> <p>Additionally, the required approval of the installation of pedestrian or bicycle facilities parallel to and within the right-of-way of nonlimited access highways crossing limited access highways by way of an existing bridge or underpass by the Commissioner of Highways will be changed to the Chief Engineer. This will align this section the equivalent change described in section 40.</p>
151-620	N/A	Section 620 discusses the permit requirements for landscaping and roadside management by individuals or organizations. The permit applicant is required to “maintain any altered roadside area in perpetuity.”	<p>The amendments clarify that placement and maintenance of plant materials by individuals or organizations may be allowed under a single use permit and that the permit applicant will be required to maintain any altered roadside area for the duration of the permit instead of in perpetuity. This change addresses potential situations where perpetual maintenance would not be reasonable, such as future construction which removes the landscaping area.</p> <p>A new paragraph will be added to this section to outline the permit and safety requirements for volunteer mowing or litter pickup. This addition will ensure</p>

			<p>volunteer mowing and litter pickup are conducted in accordance with VDOT's safety standards for the protection of the volunteers and the motoring public.</p> <p>References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p>
151-630	N/A	Section 630 sets the permit requirements for school bus shelters, public transit shelters, or ride share stations.	References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents. Other clarifying edits will be made to this section.
151-670	N/A	This section outlines the uses of right-of-way for which a permit shall not be issued.	<p>Examples of signs that are prohibited within the right-of-way will be added. New exceptions for the placement of bike share or other micromobility systems and the installation of electric vehicle charging stations, as may be allowed by law, will be added to reflect the prevalence of and/or future need for these facilities.</p> <p>A new reference to section 350 of this chapter will also be added to the subsection on dwellings to reflect the potential need for support buildings in connection with wireless communication facilities. Clarifications will be added and text that is redundant or unnecessary will be removed for streamlining purposes.</p>
151-690	N/A	This section discusses the permit requirements for discharges made to VDOT right-of-way.	Formatting and clarifying updates will be made to this section.
151-700	N/A	This section outlines the requirements for permit applicants regarding fees, surety, and other compensation.	Formatting and clarifying updates will be made to this section.
151-710	N/A	Section 710 sets the fees for the different types of single-use and district wide permits	For consistency with the Code of Virginia, a sentence will be added to subsection A(1) stating, "Public rights of way use fees may be charged in lieu of

		<p>and outlines the various no-fee permits.</p>	<p>permit fees in certain situations in accordance with law.”</p> <p>Changes will be made to subsection A(3) to specify fees of \$50.00 for permit term extensions for active permits and \$100 for the reinstatement of expired permits. These changes will clarify the existing intent of the regulation and align the text with current VDOT practice.</p> <p>Subsection A(4) will be amended to state that VDOT will retain the entire application fee, including the full additive fee, for permits cancelled prior to the beginning of the permitted activity. This will reduce the burden on VDOT permit and fiscal staff processing the refunds.</p> <p>In subsection B, a provision will be added to allow the central office permit manager to authorize unlimited time extensions at the full cost of the permit fee for each two-year term. This will reduce the paperwork burden on permittees as the paperwork required for a permit extension is less than that for a new permit request.</p> <p>The amendments propose to eliminate the current subsection C on miscellaneous permit fees in conjunction with the addition to subsection A(1).</p> <p>Other clarifications, changes corresponding to edits to other sections, and formatting updates will be made to this section.</p>
151-720	N/A	<p>Section 720 outlines the requirements for performance sureties in subsection A and continuous sureties in subsection B.</p>	<p>The requirement for an applicant for a districtwide permit for utilities to provide a continuous surety in the amount of \$10,000 per county, and for an applicant for a districtwide permit for logging entrances to provide a continuous surety in the amount of \$10,000 per district will be moved from subsection B to subsection A. Additionally, the amendments will clarify that VDOT must be named as an obligee on the bond or a payee for a check, cash, or irrevocable letter of credit for the required performance surety.</p> <p>The heading for subsection B will be updated from “continuous surety” to “structure bond” to better reflect the</p>

			<p>content of the subsection. The sentences from subsection B dealing with continuous surety will be moved to subsection A.</p> <p>Other clarifications and formatting updates will be made to this section.</p>
151-730	N/A	<p>Section 730 describes the required accommodation fees for the use of the right-of-way by a utility.</p>	<p>This section will be updated to reflect that the value of the right-of-way being used to accommodate a utility facility will be used as the basis for determining annual compensation. The specified fees for limited access crossings and limited access longitudinal installation will be removed. The specified fees for wireless communication facility sites will be removed and references to the Code of Virginia and section 740 of this regulation inserted. These changes will align the text with current VDOT practice and eliminate language that could potentially result in the assessment of unnecessary fees.</p> <p>Text that is redundant or unnecessary will be removed for streamlining purposes. Other clarifications and formatting updates will be made to this section.</p>
151-740	N/A	<p>This section sets the exceptions and provisions to the payment of fees and compensation.</p>	<p>A new subsection F will be added to state that, "VDOT may enter into wireless support structure agreements to permit the construction of wireless support structures or wireless facilities' occupancy of the right-of-way, consistent with applicable law." This addition will allow for items included in Chapter 15.1 of Title 56 of the Code of Virginia to be more completely covered by the regulation. Formatting and clarifying updates will also be made to this section.</p>
151-760	N/A	<p>This section lists the DIBR for the regulation.</p>	<p>The DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p>
FORMS	N/A	<p>This section contains the land use permit forms.</p>	<p>The forms included in this section will be updated to reflect the removal of the DIBR from the regulation and the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are</p>

			being followed and ease the burden on regulated entities to determine the applicability of specific documents.
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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