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## Final Regulation Agency Background Document

<b>Agency name</b>	Commonwealth Transportation Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	24 VAC 30-92
<b>VAC Chapter title(s)</b>	Secondary Street Acceptance Requirements
<b>Action title</b>	Revision of the Secondary Street Acceptance Requirements (24 VAC 30-92) pursuant to Chapter 425 of the 2022 Acts of Assembly.
<b>Date this document prepared</b>	September 9, 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.*

Chapter 425 of the 2022 Acts of Assembly directed the Virginia Department of Transportation (VDOT) to convene a stakeholder advisory group (SAG) for the purpose of developing and providing recommended amendments to the Secondary Street Acceptance Requirements (SSAR) of the Commonwealth Transportation Board (CTB). This mandate required that the regulatory provisions of the SSAR contain flexibility related to its connectivity elements. VDOT established the SAG, which was composed of representatives from the development industry, local governments, environmental advocacy organizations, and VDOT. The advisory group's recommendations were presented to the CTB, and the CTB directed VDOT to implement those changes.

### 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.*

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- “CTB” means the Commonwealth Transportation Board.
- “SAG” means the Stakeholder Advisory Group.
- “SSAR” means the Secondary Street Acceptance Requirements.
- “VDOT” means the Virginia Department of Transportation.

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On December 4, 2023, the CTB approved amendments to 24VAC30-92, Secondary Street Acceptance Requirements.

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to previously reported information.

### 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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Chapter 382 of the 2007 Acts of Assembly added § 33.1-70.3 (now § 33.2-334) to the Code of Virginia. The legislation required the Commonwealth Transportation Board to develop Secondary Street Acceptance Requirements, promulgated by regulation, to determine the conditions and standards that must be met before streets constructed by developers, localities and entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT.

Section 33.2-326 of the Code of Virginia vests in VDOT the control, supervision, management and jurisdiction over the secondary system of highways. Further, the CTB is authorized by §33.2-334 to set standards for the acceptance of streets into the secondary system of highways. Although § 33.2-705 grants authority to localities to establish highways, including subdivision streets on land being developed,

if the locality wishes to have VDOT assume maintenance of those streets, the design and construction of those streets must meet the SSAR.

Chapter 425 of the 2022 Acts of Assembly directed VDOT to convene a stakeholder advisory group for the purpose of developing and providing recommended amendments to add flexibility to the connectivity provisions of the SSAR.

## 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.*

The SSAR promotes public health, safety, and welfare as well as accepting only qualified roads into the state's highway systems. The regulation is needed to reduce long-term traffic congestion and support more economic activity and better transportation systems. The SSAR includes provisions for the connectivity of highway and pedestrian networks with existing and future transportation networks if the streets are intended to be taken into the state secondary highway system. As required by Chapter 425 of the 2022 Acts of Assembly, the recommendations of the SAG regarding connectivity flexibility were presented to the CTB, and the CTB directed VDOT to implement those changes.

## 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.*

1. Add definition to 24VAC30-92-10:
  - "Underground utility trunk easement" means an easement for the accommodation of an existing underground utility trunk line; specifically, those lines used to carry utilities, such as power, fuel, information, or water, from central facilities to smaller distribution networks but not used for distribution of the utility's services to individual customers.
2. Change to 24VAC30-92-60 (C.2.c and C.3.a(4)) related to exceptions to Multiple Connections and Additional Connections requirements:
  - There is no reasonable connection possible to adjoining property or adjacent highways due to a factor outside the control of the developer of the network addition, including the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted.
3. Change to 24VAC30-92-60 (C.2 and C.3) by adding new exception to Multiple Connections and Additional Connections requirements:
  - Add new subpart C.2.d and C.3.a(5): The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is under construction.
4. Addition to 24VAC30-92-60 (C.3) which adds new exceptions to Additional Connection requirements:

- Add new subpart C.3.b: The district administrator's designee may also waive or modify this additional connections standard if, in the written opinion of the applicant and locality's chief executive or designee, the provision of such connection is impracticable or unwarranted for any of the following reasons: (i) there are topographic constraints; (ii) the provision is incompatible with an existing adjoining development; (iii) the adjoining property is completely built out as envisioned in the locality's comprehensive plan with no expectation of redevelopment in the next 20 years and there is no stub out (either constructed or platted) to the property served by the network addition; (iv) the connection would impact the developer's ability to comply with any local ordinances related to the preservation of open space or trees during the land development process, after a good faith effort to comply with connectivity requirements and local ordinances; (v) the connection would require work outside the right-of-way (existing or proposed) or easements on an adjoining property outside of the control of the developer; or (vi) other factors as determined by the applicant and locality's chief executive or designee. The district administrator's designee shall respond to requests for such connectivity exceptions within 30 calendar days of receipt of a completed VDOT request form.

### 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.*

Chapter 425 of the 2022 Acts of Assembly required VDOT to convene a SAG for the purpose of developing and providing recommended amendments to add flexibility to the connectivity provisions of the SSAR, and for those recommendations to then be presented to the CTB for approval. The SAG was composed of representatives from the development industry, local government (including emergency services), environmental advocacy organizations, and VDOT, and met five times from September 2022 to February 2023 to finalize recommendations. The CTB directed VDOT to implement the changes recommended by the SAG.

The proposed regulatory changes are intended to provide VDOT the ability to make connectivity exceptions in a broader range of circumstances than the current regulation allows. The recommendations address challenges faced by developers and localities while preserving the public health, safety, and welfare as currently protected by the SSAR. VDOT does not anticipate any negative impacts to overall connectivity from the changes.

### Requirements More Restrictive than Federal

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no applicable federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, 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 affected by the proposed amendments. The regulatory changes allow for a locality-led process that provides flexibility to achieve local planning goals.

Other Entities Particularly Affected

The development industry is affected by the proposed amendments. The proposed changes add flexibility for developers to meet the SSAR connectivity requirements.

**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.

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

No changes have been made to the text since the previous stage was published in the Virginia Register of Regulations.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-	New chapter-	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
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section number	section number, if applicable		
92-10	N/A	This section defines the words and terms used in the regulation.	This amendment adds new definition for “Underground Utility Trunk Easement,” which corresponds to the addition of the defined term to 24VAC30-92-60C.2.c and -60C.3.a(4) as a qualifying condition for a connectivity exception. This was recommended by the SAG due to difficulties frequently encountered by developers in obtaining quitclaims or subordination of rights agreements for the placement of public streets over existing underground transmission lines. Other minor clarifying changes have been made to this section.
92-60 C.2.c and C.3.d	92-60 C.2.c and C.3.a(4)	These two subsections describe the connectivity requirements for the multiple connections in multiple directions and additional connections standards. The specific subparagraphs describe the factors outside the control of the developer which could qualify for an exemption from the requirements.	<p>The insertion of “including” in place of “such as” is intended to clarify that the list of qualifying conditions are examples rather than the extent of possible conditions that may provide for a connectivity exemption. This was noted as a source of confusion by the SAG.</p> <p>The addition of “underground utility trunk easement” to the list of qualifying conditions, which corresponds to the addition of the defined term to section 10, is recommended by the SAG due to difficulties frequently encountered by developers in obtaining quitclaims or subordination of rights agreements for the placement of public streets over existing underground transmission lines.</p>
92-60 C.2 and C.3	92-60 C.2.d and 92-60 C.3.a(5)	24VAC30-92-60C describes the connectivity requirements for secondary streets, with paragraph 2 relating to the multiple connections in multiple directions standard and paragraph 3 relating to the additional connections standard.	The addition of these subparagraphs would add extra flexibility regarding the splitting of multi-phased developments into network additions that may differ from those additions originally planned. This would allow for changes in phasing as driven by market forces while still preserving ultimate connectivity.
92-60 C.3	92-60 C.3.b	24VAC30-92-60C.3 describes the connectivity requirements for the additional connections standard.	This new subparagraph provides for a locality-led process which provides flexibility to achieve local planning goals. It adds vegetation preservation (open space and trees) and required work outside of property under the developer’s control as explicit factors for consideration of an exception from

			the additional connections standard. These changes are intended to add flexibility to the exception process.
N/A	FORMS	N/A	The "Secondary Street Acceptance Requirements Exception, Waiver, Modification Request Form" will be added to the regulation.