



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Virginia Department of Transportation
VAC Chapter Number:	VAC 24-30-150-10 et seq.
Regulation Title:	Land Use Permit Manual
Action Title:	Replace Existing Regulation with Amended Regulation
Date:	January 9, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The *Land Use Permit Manual* 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.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

§ 33.1-12 (3) of the Code of Virginia gives the Commonwealth Transportation Board (CTB) the authority to make regulations concerning the use of the system of state highways. This authority is broadly stated, so there is significant discretion in establishing the criteria, policies, and procedures addressing work performed on state-owned right of way.

The CTB has used this authority to maintain the rights of way along the highways in a manner necessary to preserve the integrity, operational safety, and service of function of the roadway. The permit process allows VDOT to ensure that work performed on its right of way is performed with little or no damage to existing structures or utilities. Commercial and private users benefit from the cooperative system of land management, because a consistent permit program minimizes costs, allows more precise planning to perform the work, ensures fair treatment, and assists in facilitating residential and commercial development.

To accomplish its purpose, the regulation is broad in scope. For example, it addresses general and specific policies concerning placement of utilities (e.g., controlled access rights of way, etc.); installation of drainage pipe, commercial entrance curbing, landscape planting and trimming, miscellaneous permits and special agreements (e.g., agricultural or commercial use).

This regulation does not exceed minimum requirements of the state mandate, as none are specified by the statute.

Furthermore, 24 VAC 30-20-50 of the *General Rules and Regulations of the Commonwealth Transportation Board* provides that

No land use permit shall be issued until the applicant has complied with the restrictions, specifications, and fee requirements set forth in the Land Use Permit Manual (24 VAC 30-150-10 et seq.), where applicable, and pursuant to the Minimum Standards of Entrance to State Highways, (24 VAC 30-71-10 et seq.) when applicable. The manuals referred to are those prepared and published by the board or commissioner and kept on file in the central, district, and resident offices of the department, changes to which must be adopted or ratified by the board.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

VDOT received no public input as a result of the Notice of Periodic Review published in *The Virginia Register*, so no response was prepared. The Maintenance Division plans to consult with other VDOT divisions whose activities are affected by the *Land Use Permit Manual* to ensure consistency of policy and practices in the proposed revision.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

This regulation has the following goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To ensure work done on state-owned right of way is performed safely and in accordance with good engineering principles to preserve the integrity of the road systems.
3. Is the regulation written clearly and understandably?

VDOT believes that the first two goals are being met. VDOT is obligated to ensure that the health and safety of VDOT and non-VDOT workers, pedestrians and motorists using the highways of the Commonwealth are preserved. Establishing a regulation that outlines allowed and prohibited activities and standards for performing work, minimizes the likelihood of liability for property damage, or injury or death from unsafe activities, is essential to the fulfillment of this goal. Furthermore, the benefits of the permit program discussed in the "Basis" section of this report also work to the advantage of the citizens and businesses of the Commonwealth.

Likewise, the regulation allows VDOT to establish policies, procedures, and standards that preserve the Commonwealth's investment in the transportation infrastructure by ensuring that work is performed in accordance with sound civil engineering principles. Otherwise, VDOT might incur significant costs to repair the road system, or replace substandard or unacceptable work.

The final goal will be addressed through the proposed changes anticipated to the regulation, which will improve its readability and usefulness.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

There is no substitute for a regulation that addresses the subject. It is not feasible for VDOT to operate without some type of regulatory framework (including consistent standards and procedures, as well as violations of the regulations and remedial actions) to protect the state highway system for which it has a responsibility to maintain. As stated previously, commercial and private users benefit from the cooperative system of land management, because a consistent permit program minimizes costs, allows more precise planning to perform the work, ensures fair treatment, and assists in facilitating residential and commercial development. Furthermore, protection of the health, safety, and welfare of the public is a legitimate government purpose.

Therefore, VDOT has determined that a regulation is the least burdensome way to achieve its stated purpose.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

VDOT recommends that the *Land Use Permit Manual* be replaced by a totally rewritten regulation through a full-scale Administrative Process Act (APA) action. This recommendation is made for the following reasons:

- the manual has not been revised since 1983; when issued, the regulation combined aspects of both an instructional manual for internal VDOT use, as well as a reference source for permit applicants; VDOT believes that the size of the regulation can be significantly reduced;
- VDOT has issued or revised other regulations since 1983 that reference the *Land Use Permit Manual* (e.g., *Minimum Standards of Entrances to State Highways*, *Vegetation Control Regulations*, etc.); it is desirable that the *Land Use Permit Manual* address subjects in a consistent manner with these other regulations to avoid confusion or error;
- changes in administrative practices or office technology (e.g., computerization and electronic communication) have occurred that could be addressed by a comprehensive revision;
- the fee structure no longer reflects the actual expenses VDOT incurs to administer the permit program; determining a more reasonable fee for various types of permit activities will minimize any subsidization of the program by VDOT, and place costs more directly on the permit applicants.

Substance

Please detail any changes that would be implemented.

At present, based on the results of its preliminary review, the Maintenance Division anticipates the following revisions:

- Reformatting the regulation to eliminate redundant or obsolete text, rewrite the retained text, and rearrange sections to improve readability and comprehension; this step should reduce the size of the regulation significantly (in its current form, it is over 250 pages in length);
- Adding a section to define words and terms used in the regulation;
- Revising the regulation as needed to address treatment of subjects in a consistent manner with other VDOT regulations;
- Provide additional information on topics not addressed in the current regulation (e.g., Hazardous Materials/Waste Issues, Website addresses for forms, contacts, etc.)

If other revisions are suggested by external parties during the APA amendment process, VDOT will address them at the appropriate step in the process.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation has no effect on the family or family stability, nor does it affect any of the factors listed above.