



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## **FAST-TRACK RULEMAKING PROCESS**

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **28:2 VA.R. 47-141 September 26, 2011**, refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

The *Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Bill Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Patricia L. West**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

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## December 2011 through January 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
28:8	November 30, 2011	December 19, 2011
28:9	December 13, 2011 ( <b>Tuesday</b> )	January 2, 2012
28:10	December 27, 2011 ( <b>Tuesday</b> )	January 16, 2012
28:11	January 11, 2012	January 30, 2012
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PSYCHOLOGY

#### Agency Decision

Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology.

Statutory Authority: § 54.1-3600 of the Code of Virginia.

Name of Petitioner: James D. Watwood.

Nature of Petitioner's Request: Increase the time limit for romantic or sexual relationships with patients from two years after termination to indefinite when the patient has been a victim of rape, incest, or sexual abuse.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on November 8, 2011, the board carefully considered and thoroughly discussed the petition. Its vote was to deny the petition because the board has already proposed to extend the time limitation on relationships with clients from two to five years, which will provide greater separation between the termination of professional services and any initiation of a personal relationship. Notwithstanding the stated time prohibition, current regulations place the burden on the licensee to demonstrate that there has been no exploitation of a client in the initiation of a relationship after that time has passed. Additionally, the board was concerned that documentation or differing interpretations of sexual abuse, etc. could make enforcement of a permanent prohibition difficult to enforce.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4699, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

VA.R. Doc. No. R11-51; Filed November 28, 2011, 12:42 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 12. HEALTH

Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

VA.R. Doc. No. R11-28; Filed November 29, 2011, 8:27 a.m.

### STATE BOARD OF HEALTH

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-590, Waterworks Regulations**. The purpose of the proposed action is to provide the Virginia Department of Health with the discretionary authority to require certain permitted waterworks owners to post a bond or deposit funds in escrow.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 32.1-12, 32.1-170, and 32.1-174.1 of the Code of Virginia.

Public Comment Deadline: January 18, 2012.

Agency Contact: Cathy Hanchey, Department of Health, Office of Drinking Water, 109 Governor Street, Richmond, VA, telephone (804) 864-7506, or email [cathy.hanchey@vdh.virginia.gov](mailto:cathy.hanchey@vdh.virginia.gov).

VA.R. Doc. No. R12-3036; Filed November 18, 2011, 10:53 a.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending **18VAC90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to respond to a petition for rulemaking from the Virginia Chapter of the National Association of Clinical Nurse Specialists, requesting the board to examine its regulations for the practice of clinical nurse specialists (CNS) for consistency with the consensus model of the National Council of State Boards of Nursing for the Advanced Practice Registered Nurse (APRN) for currency of the CNS role in today's health care environment.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Comment Deadline: January 18, 2012.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300,

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# REGULATIONS

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For information concerning the different types of regulations, see the Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Final Regulation

**Titles of Regulations:** **2VAC5-140. Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia (repealing 2VAC5-140-10 through 2VAC5-140-140).**

**2VAC5-141. Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds into Virginia (adding 2VAC5-141-10 through 2VAC5-141-130).**

Statutory Authority: § 3.2-6002 of the Code of Virginia.

Effective Date: January 18, 2012.

Agency Contact: Dr. Dan Kovich, Staff Veterinarian/Animal Care and Health Policy, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email dan.kovich@vdaacs.virginia.gov.

Summary:

*This regulatory action repeals the current regulation (2VAC5-140) concerning the requirements for entry of agricultural, companion, and other animals into Virginia, and replaces it with a regulatory framework (2VAC5-141) that is consistent with the current status of interstate animal disease control and eradication programs. Substantive changes include the creation of animal identification requirements for certain classes of imported animals, strengthening of tuberculosis testing requirements for cattle, alignment of sheep and goat entry requirements with current scrapie control programs, elimination of certain testing requirements for llamas and alpacas, and provision for free movement of agricultural animals from neighboring states to facilitate marketing. Changes made since the proposed stage clarify definitions and avian entry requirements and modify certain testing and identification requirements for cattle, goats, and sheep. The current regulation has not been amended since 1989.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## CHAPTER 141 HEALTH REQUIREMENTS GOVERNING THE ADMISSION OF AGRICULTURAL ANIMALS, COMPANION ANIMALS, AND OTHER ANIMALS OR BIRDS INTO VIRGINIA

### 2VAC5-141-10. Definitions.

The following words and terms when used in these regulations shall have the following meanings unless the context clearly indicates otherwise:

"Agricultural animals" means livestock and poultry.

"Approved livestock market" means a livestock market [ approved by the United States Department of Agriculture in accordance with 9 CFR 71.20 and ] under inspection by the State Veterinarian.

"Avian" means all domestic and wild members of the class Aves.

"Cats" means all domestic and wild members of the family Felidae.

"Cattle" means all domestic and wild members of the genera bos, bison, and bubalus to include domestic cattle, yak, bison, and water buffalo.

"Certificate of veterinary inspection" means an official health certificate endorsed by a state, federal, or international government.

"Commercial swine" means swine that are continuously managed; are intended for the production of meat or breeding for such purposes; and have adequate facilities and practices to prevent exposure to feral swine, captive feral swine, or other swine that may have been exposed to feral or captive feral swine.

"Companion animal" means any vertebrate animal excluding ornamental fish not otherwise defined herein as avian, cattle, goat, horse, other ruminant, sheep, swine, or primate.

[ "Dairy type" means all cattle of or primarily of a dairy or dual-purpose breed of cattle including but not limited to cattle of the Ayrshire, Brown Swiss, Guernsey, Holstein, Jersey, Milking Shorthorn, or similar breeds to include castrated males of such breeds. ]

"Dairying purposes" means the production of milk or milk products, or the production of breeding stock whose progeny are to be used for the production of milk, milk products, or breeding stock.

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# Regulations

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"Dogs" means all domestic and wild members of the family Canidae.

"Exhibition purposes" means display at a scheduled event. Exhibition purposes shall not include rodeos and similar events where cattle, goats, sheep, and other ruminants are congregated for entertainment purposes.

"Goat" means all domestic and wild members of the genus capra.

"Hatching eggs" means all poultry eggs that are intended to be hatched.

"Horse" means all domestic and wild members of the family Equidae (horses, asses, zebras, and any hybrids of horses, asses, or zebras).

"Noncommercial swine" means all swine not otherwise herein defined as commercial or slaughter swine, including but not limited to wild hogs, feral swine, exhibition swine, or swine kept as pets.

"Other ruminants" means all members of the order Artiodactyla not otherwise defined herein as cattle, goats, sheep, or swine to include camelidae and cervidae [ ~~imported for exhibition purposes~~ ].

"Permit" means an official document issued for and prior to the interstate shipment of certain classes of livestock, poultry, companion animals, and other animals or birds into Virginia. This permit is issued at the discretion of the State Veterinarian.

"Poultry" means all domestic fowl [ , and game birds and ] ratites [ , and game birds ] raised in captivity to include, but not be limited to, chickens, turkeys, ducks, geese, ratites, and game birds such as quail or partridge.

"Primate" means all nonhuman members of the order Primates.

"Region" means any premise, political subdivision of a state, country, or other defined geographic area.

"Sheep" means all domestic and wild members of the genus ovis.

"Slaughter establishment" means a livestock slaughter facility that is under inspection by the USDA or the Virginia Department of Agriculture and Consumer Services.

"Slaughter swine" means all swine brought into Virginia solely for the purpose of slaughter.

"State Veterinarian" means the State Veterinarian of the Commonwealth of Virginia or his designee.

"Swine" means all domestic and wild members of the family Suidae.

"USDA" means the United States Department of Agriculture.

"USDA-approved market" means a livestock market approved by the United States Department of Agriculture where livestock sold only for slaughter purposes can be identified and segregated in accordance with applicable state and federal regulations, and from which no such livestock intended for slaughter may be released except directly to another approved USDA market, or to a recognized slaughter establishment for immediate slaughter.

## **2VAC5-141-20. Certificates of veterinary inspection.**

A. No agricultural animals, companion animals, or any other animals or birds of any species that are affected with or that have been exposed to any infectious or contagious disease shall be imported into Virginia except by special written permit of the State Veterinarian.

B. All agricultural animals, companion animals, or any other animals or birds of any species imported into Virginia, except [ ~~livestock for immediate slaughter~~ as otherwise exempted by this chapter ], shall be accompanied by a certificate of veterinary inspection, that shall be attached to the bill of lading or shall be in the possession of the person in charge of such animals or birds, and a copy of such certificate shall be forwarded promptly to the State Veterinarian.

C. A certificate of veterinary inspection shall be a written record meeting the requirements of Virginia and executed on an approved form of the state of origin. It shall contain the names and street addresses or premise identification numbers of the consignor and consignee, and premises of origin and destination if different. It shall indicate the health status of the animals or birds, and include the dates and results of all required tests.

D. After physical examination of the animal and completion of all required tests, the certificate of veterinary inspection shall be issued within 30 days before the date of entry for cattle, goats, horses, other ruminants, poultry, sheep, and swine.

E. After physical examination of the animal and completion of all required tests, the certificate of veterinary inspection shall be issued within 10 days before the date of entry for avian species not considered poultry, companion animals, and primates.

F. The certificate shall be issued by an accredited veterinarian approved by the animal health official of the state of origin; a veterinarian in the employ of the state of origin; or a veterinarian in the employ of the Veterinary Services Division, Animal and Plant Health Inspection Services, United States Department of Agriculture.

G. All testing required by [ ~~these regulations~~ this chapter ] shall be considered official if conducted by an accredited veterinarian or collected by an accredited veterinarian and conducted by an official animal health laboratory approved

by a state or federal animal health agency as dictated by testing protocol.

## **2VAC5-141-30. Animal identification.**

A. All shipments of poultry and hatching eggs entering Virginia must be accompanied by an approval number issued by the State Veterinarian.

B. Official identification for cattle can be:

1. Ear tag or other permanently affixed device bearing a unique identification number issued by an official state or federal program;

~~[ 2. Ear tag or other permanently affixed device bearing a unique identification number issued by a performance registry, animal identification registry, producer cooperative, or other marketing association provided record of the issuance is available to the State Veterinarian; or~~

2. USDA back tag only for cattle consigned directly to slaughter; or ]

3. Other forms of [ permanent ] identification approved by [ the USDA or ] the State Veterinarian.

C. Official identification for goats and sheep can be:

1. Official ear tags that are approved by the USDA for use in the Scrapie Eradication Program or the Scrapie Flock Certification Program;

2. For goats exempt from identification required by the Scrapie Eradication Program, an ear tag or other affixed device bearing a unique identification number issued by an official state or federal program, [ or a breed, performance, or marketing association that allows the State Veterinarian access to records or a USDA back tag only for such goats consigned directly to slaughter ];

3. Legible official registry tattoo if accompanied by a registration certificate; and

~~4. [ Devices approved by the State Veterinarian that contain a premises identification issued by the state of origin in combination with a unique animal number Other forms of identification approved by the State Veterinarian ].~~

D. Official identification for horses can be:

1. A thorough written or photographic record of the horse's appearance directly noted on or affixed to the official health certificate and endorsed by the issuing veterinarian;

2. Legible breed association tattoo number;

3. Affixed or implanted device bearing a unique identification number issued by a state or federal program, or a breed or performance association that allows the State Veterinarian access to records; and

4. Other forms of identification considered official by the USDA or the State Veterinarian.

E. Official identification for swine can be:

1. Ear tag, ear notch, or tattoo recorded by a purebred registry;

2. Ear tag or other affixed device bearing a unique individual or group identification number issued by an official state or federal program;

3. Official premise identification tattoo including state of origin; and

4. Other forms of identification considered official by the USDA or the State Veterinarian.

## **2VAC5-141-40. Entry by permit only.**

A. When the State Veterinarian is informed of any unusual or serious outbreak of disease among livestock or poultry in any other region that, in his opinion, constitutes a threat to livestock and poultry in Virginia, he shall by proclamation prohibit the entrance of any livestock or poultry that originate either directly or indirectly from that region at his discretion, except by permit. He may also prohibit the entrance of any products as defined in the meat or poultry inspection regulations of the USDA, or in the Virginia Meat and Poultry Products Inspection Act, the Virginia Milk and Cream Law, or any other applicable or related Virginia statutes and regulations, except by permit. Specific classes of animals as listed in [ these regulations this chapter ] also require a permit for entry into Virginia.

B. Agricultural animals, companion animals, or any other animals or birds of any species imported into Virginia for bona fide scientific research by a recognized agricultural institution or institution licensed by the USDA, and for which compliance with the requirements of [ these regulations this chapter ] would be a detriment to the research, may be excused from the [ regulatory ] requirements at the discretion of the State Veterinarian by the issuance of a permit.

C. All requests for permits must be directed to the State Veterinarian in writing and must give all information as he may require.

## **2VAC5-141-50. Common carriers; trucks.**

A. Owners and operators of common carriers, trucks, or other conveyances are forbidden to move any agricultural animals, companion animals, or any other animals or birds of any species into Virginia except in compliance with the provisions set forth in this [ regulation chapter ].

B. All railway cars, trucks, and other conveyances used for transportation of livestock or poultry must be kept in a sanitary condition. The State Veterinarian may require the cleaning and disinfecting of any conveyance at any time to prevent the spread of infectious or contagious diseases.

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# Regulations

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## **2VAC5-141-60. Avian entry requirements.**

A. All entry of birds into Virginia must be in compliance with the testing and all other requirements of the State Veterinarian's Avian Influenza (H5 and H7) Proclamation dated [ ~~December 2009~~ January 18, 2012, unless temporarily superseded by a valid proclamation issued pursuant to § 3.2-6010 of the Code of Virginia, published in the Virginia Register of Regulations, and posted on the Virginia Regulatory Town Hall ]. Certificates of veterinary inspection [ ~~as required~~ or reports issued by a laboratory approved by any state or federal animal health authority ] must be dated in accordance with said proclamation.

B. All birds in commerce not classified as poultry must be accompanied by a health certificate issued within 10 days prior to entry into Virginia. Any poultry in commerce that by its nature is fit only as a pet must be accompanied by an official health certificate issued within 10 days prior to entry into Virginia.

C. Approval numbers required for shipments of poultry and hatching eggs.

1. Each shipper of poultry or hatching eggs shall first secure an approval number from the State Veterinarian. This approval number must appear on each shipment of poultry or hatching eggs shipped into Virginia.

2. Applications for approval numbers must be made on forms provided by the State Veterinarian. Each application shall require the following information on each premises from which the poultry or hatching eggs originate:

- a. The name and address of each premises owner;
- b. The species and the number of birds for each on each premise, or for hatcheries hatching capacity;
- c. For chickens and turkeys, and the parent flock of the hatching eggs of chickens and turkeys, the date of the most recent Pullorum-typhoid test, the total number or the percentage of positive reactions to said test, and the Pullorum-typhoid status attained; and
- d. Any additional information the State Veterinarian may require.

3. Applications, when completed, must be forwarded to the official state agency, the state livestock health official, or other competent and recognized authority of the state of origin for verification, approval, and signature and then forwarded to the State Veterinarian for final approval.

4. Poultry and hatching eggs shall not be shipped into Virginia until final approval has been granted and the [ ~~permit approval number~~ ] is received.

D. Chickens, turkeys, and hatching eggs of chickens and turkeys shall not be imported into Virginia unless originating exclusively from flocks or hatcheries participating in the

National Poultry Improvement Plan (NPIP) or issued a permit and negative to a Pullorum-typhoid test within 30 days prior to entry.

E. Exemptions for hatching eggs and poultry, providing the hatching eggs or poultry remain subject to the State Veterinarian's Avian influenza (H5 and H7) Proclamation dated [ ~~December 2009~~ January 18, 2012, unless temporarily superseded by a valid proclamation issued pursuant to § 3.2-6010 of the Code of Virginia, published in the Virginia Register of Regulations, and posted on the Virginia Regulatory Town Hall ].

1. This [ ~~regulation~~ chapter ] shall not apply to hatching eggs or poultry passing directly through the Commonwealth of Virginia in interstate commerce.

2. This [ ~~regulation~~ chapter ] shall not apply to poultry imported into the Commonwealth of Virginia for immediate slaughter and consigned directly to a poultry processing establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services.

F. Exemptions for birds other than poultry, providing the birds remain subject to the State Veterinarian's Avian Influenza (H5 and H7) Proclamation dated [ ~~December 2009~~ January 18, 2012, unless temporarily superseded by a valid proclamation issued pursuant to § 3.2-6010 of the Code of Virginia, published in the Virginia Register of Regulations, and posted on the Virginia Regulatory Town Hall ].

1. This [ ~~regulation~~ chapter ] shall not apply to birds other than poultry that are passing directly through Virginia to another state in interstate commerce.

2. This [ ~~regulation~~ chapter ] shall not apply to birds other than poultry when the birds are kept properly under control by their owner or custodian when passing through Virginia to another state.

3. This [ ~~regulation~~ chapter ] shall not apply to birds other than poultry brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia except if brought into the Commonwealth with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.

4. This [ ~~regulation~~ chapter ] shall not apply to birds other than poultry brought into Virginia for less than 10 days for the purpose of hunting or legal exhibition with no change of ownership.

G. This [ ~~regulation~~ chapter ] shall not be construed to (i) permit the entry into Virginia of any avian species otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

**2VAC5-141-70. Cattle entry requirements.**

A. All cattle entering Virginia must bear official identification and the official identification number must be noted on the certificate of veterinary inspection. If multiple cattle of similar breed, age and sex are listed on the certificate of veterinary inspection, sequential identification numbers may be summarized. [ This requirement shall not apply to cattle 18 months of age or younger provided such cattle are not of a dairy type and are imported into Virginia for feeding purposes only. ]

B. All cattle [ ~~12~~ 18 ] months of age or older require a negative caudal fold or comparative cervical tuberculin test within 60 days prior to entry into Virginia. This requirement shall not apply to:

1. Cattle consigned directly from an accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection;
2. Cattle that originate from a region considered free of tuberculosis for cattle by the USDA and consigned directly to a slaughter establishment or to a USDA-approved market and from there directly to a slaughter establishment; or
3. Cattle entering Virginia for a period of 10 days or less for exhibition purposes provided they originate from a region considered free of tuberculosis for cattle by the USDA and no change of ownership occurs.

C. All cattle originating from a region not considered free of tuberculosis for cattle by the USDA require a permit and a negative caudal or comparative cervical tuberculin test within 60 days prior to entry into Virginia. This requirement shall not apply to:

1. Cattle consigned directly from an accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection; and
2. Cattle consigned directly to a slaughter establishment.

D. All sexually intact cattle originating from a region not considered free of brucellosis by the USDA require a permit and an individual brucellosis test within 30 days prior to entry into Virginia. Animals allowed entry under a permit will be quarantined on the premises of the consignee until retested at the consignee's expense and found negative to brucellosis no less than 45 days and no more than 120 days after entry as indicated by the permit. This requirement shall not apply to:

1. Cattle consigned directly from a certified brucellosis-free herd provided the certification number and date of the last herd test are listed on the official health certificate; and
2. Cattle consigned directly to a slaughter establishment.

E. Cattle may be imported for immediate slaughter into Virginia without a certificate of veterinary inspection provided they are consigned directly to a slaughter establishment. Official identification for all cattle under this subsection must be listed on the waybill.

F. Cattle from a [ ~~farm of origin in a state adjoining Virginia and from a~~ ] region [ ~~therein~~ ] considered free of tuberculosis and brucellosis for cattle by the USDA may enter Virginia for the purpose of sale at an approved livestock market without a certificate of veterinary inspection and without tuberculosis testing if otherwise required provided:

1. [ ~~The All~~ ] cattle [ offered for sale at the approved livestock market excepting cattle 18 months of age or younger not of a dairy type and intended for feeding purposes ] bear [ ~~required~~ official ] individual identification [ upon entry to the approved livestock market or have such applied at the approved livestock market ]; and
2. The approved livestock market maintains for at least [ ~~two~~ five ] years and makes available to the State Veterinarian a record of the consignor of the cattle, the identification numbers [ as required ] of the cattle he consigns, and the buyer of the cattle.

**2VAC5-141-80. Companion animal entry requirements.**

A. Companion animals must be accompanied by a certificate of veterinary inspection issued within 10 days prior to entry into Virginia.

B. No dog or cat less than eight weeks of age may be imported into Virginia unless accompanied by its dam.

C. Any dog or cat greater than four months of age entering Virginia shall be currently vaccinated for rabies.

D. Exemptions.

1. This [ ~~regulation~~ chapter ] shall not apply to companion animals that are passing directly through Virginia to another state in interstate commerce.
2. This [ ~~regulation~~ chapter ] shall not apply to companion animals that are kept properly under control by their owner or custodian when passing through Virginia to another state.
3. This [ ~~regulation~~ chapter ] shall not apply to companion animals brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia except if brought into the Commonwealth with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.
4. This [ ~~regulation~~ chapter ] shall not apply to companion animals brought into Virginia for less than 10 days for the purpose of hunting or legal exhibition with no change of ownership.

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E. This [ ~~regulation~~ chapter ] shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

## **2 VAC5-141-90. Goat and sheep entry requirements.**

A. All goats and sheep entering Virginia must be officially identified and the official identification number must be noted on the certificate of veterinary inspection. If multiple goats or sheep of similar breed, age, and sex are listed on the certificate of veterinary inspection, sequential identification numbers may be summarized. [ The requirement shall not apply to castrated male goats that are not subject to the Scrapie Eradication Program. ]

### B. Scrapie control.

1. No sheep or goat may be imported into Virginia that does not originate from a scrapie consistent state unless originating from a flock enrolled in the complete monitored or export monitored category of the USDA Scrapie Flock Certification Program.

2. No goat or sheep infected with scrapie, or the offspring of a goat or sheep infected with scrapie, may enter Virginia.

C. All goats and sheep [ ~~12~~ 18 ] months of age or older imported into Virginia for dairying purposes shall be negative to a tuberculosis test within 60 days prior to entry. [ ~~All other goats and sheep originating from a region considered free of tuberculosis for cattle by the USDA may enter Virginia without tuberculosis testing.~~ This requirement shall not apply to:

1. Goats and sheep 18 months of age or older imported into Virginia for dairying purposes consigned directly from an accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection; or

2. Goats and sheep 18 months of age or older intended for dairying purposes entering Virginia for a period of 10 days or less for exhibition purposes provided they originate from a region considered free of tuberculosis for cattle by the USDA and no change of ownership occurs. ]

D. All goats and sheep originating from a region not considered free of tuberculosis for cattle by the USDA shall be negative to a tuberculosis test within 60 days prior to entry unless consigned directly to a livestock slaughter establishment. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

E. All sexually intact goats and sheep originating from a region not considered free of brucellosis for cattle by the USDA shall be negative to a brucellosis test within 30 days

prior to entry unless consigned directly to a livestock slaughter establishment. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

F. Goats and sheep may be imported for immediate slaughter into Virginia without a certificate of veterinary inspection provided they are consigned directly to a livestock slaughter establishment or to a USDA-approved market and from there directly to a livestock slaughter establishment.

G. Goats and sheep from a [ ~~farm of origin in a state adjoining Virginia and from a~~ ] region [ ~~therein~~ ] considered free of tuberculosis and brucellosis for cattle by the USDA may enter Virginia for the purpose of sale at an approved livestock market without a certificate of veterinary inspection and without tuberculosis testing if otherwise required provided:

1. The goats and sheep bear [ any ] required individual identification [ upon entry to the approved livestock market or have such applied at the approved livestock market ]; and

2. The approved livestock market maintains for at least [ ~~two~~ five ] years and makes available to the State Veterinarian a record of the consignor of the goats and sheep, the identification numbers [ as required ] of the goats and sheep he consigns, and the buyer of the goats and sheep.

## **2VAC5-141-100. Horse entry requirements.**

A. All horses entering Virginia must be officially identified, and the official identification must be noted on the official health certificate.

### B. Equine infectious anemia testing.

1. All horses imported into Virginia shall have been officially tested and found negative for equine infectious anemia within the past 12 months and be accompanied by an official certificate stating this information.

2. Horses that originate from infected premises in other states are not eligible for entry into Virginia except by permit at the State Veterinarian's discretion.

3. Foals six months of age or under accompanying a tested negative dam are exempt from testing.

### C. Contagious equine metritis control.

1. No horse over two years of age that either originated in or has passed through premises or a country where contagious equine metritis is known to exist may enter the Commonwealth of Virginia except by permit.

2. Horses that are issued a permit immediately will be placed under quarantine and assigned a testing protocol at the consignee's expense until the State Veterinarian is

satisfied that they pose no danger to the Virginia equine population.

D. Horses may enter Virginia with an official equine interstate event permit issued by another state in lieu of certificate of veterinary inspection provided the permit is not expired.

## **2VAC5-141-110. Other ruminant entry requirements.**

A. All other ruminants entering Virginia must bear an individual identification number, and such identification number must be noted on the certificate of veterinary inspection. Identification can be a tattoo, microchip, ear tag issued by a state or federal entity, or other form of identification approved by the State Veterinarian.

B. All other ruminants originating from a region not considered free of tuberculosis for cattle by the USDA shall be negative to a tuberculosis test within 60 days prior to entry. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

C. All sexually intact other ruminants originating from a region not considered free of brucellosis for cattle by the USDA shall be negative to a brucellosis test within 30 days prior to entry. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

D. This [ ~~regulation~~ chapter ] shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

## **2VAC5-141-120. Swine entry requirements.**

A. All swine entering Virginia must bear an identification number, and the identification number must be noted on the certificate of veterinary inspection.

### B. Commercial swine entry requirements.

1. Commercial swine originating from a herd or region that is considered free from brucellosis and pseudorabies by a federal program or a state program approved by the State Veterinarian may enter Virginia without further testing requirements provided a statement indicating the region is considered free from brucellosis by a federal or state program or verification of herd participation in the federal or state program is indicated on the certificate of veterinary inspection.

2. Sexually intact commercial swine over four months of age not originating from a herd or region considered free of brucellosis by a federal program or a state program approved by the State Veterinarian must be negative to a brucellosis test within 30 days prior to entry into Virginia.

3. Commercial swine not originating from herd or region that is considered free from pseudorabies by a federal program or a state program approved by the State Veterinarian shall be individually tested and negative to a pseudorabies test within 30 days prior to entry into Virginia. Sexually intact swine shall be quarantined at the premises of destination until retested between 30 and 60 days after importation at the consignee's expense.

4. No commercial swine vaccinated for pseudorabies shall be imported into Virginia unless under permit for direct slaughter.

### C. Noncommercial swine entry requirements.

1. Noncommercial swine originating from herds considered free from brucellosis and pseudorabies by a federal program or a state program approved by the State Veterinarian may enter Virginia without further testing requirements provided verification of herd participation in the federal or state program is indicated on the certificate of veterinary inspection and the commercial swine have not had contact with feral swine.

2. Sexually intact noncommercial swine over four months of age not from a herd considered free from brucellosis by a federal program or a state program approved by the State Veterinarian must be negative to a brucellosis test within 30 days prior to entry into Virginia.

3. Noncommercial swine not from a herd considered free from pseudorabies by a federal program or a state program approved by the State Veterinarian shall be negative to a pseudorabies test within 30 days prior to entry into Virginia. Sexually intact swine shall be quarantined at the premises of destination until retested between 30 and 60 days after importation at the consignee's expense.

4. No noncommercial swine vaccinated for pseudorabies shall be imported into Virginia unless under permit at the discretion of the State Veterinarian and subject to any restrictions he deems necessary.

### D. Slaughter swine entry requirements.

1. No slaughter swine known to be infected with or exposed to pseudorabies and no swine vaccinated for pseudorabies may enter Virginia unless:

a. It is shipped directly to a slaughter establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services under permit;

b. It is shipped in a sealed vehicle or individually identified on the permit; and

c. The conveyance transporting the swine into Virginia is cleaned and disinfected after the swine is off-loaded but prior to the conveyance leaving the slaughter establishment.

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2. Any slaughter swine not known to be infected with or exposed to pseudorabies may enter Virginia without a certificate of veterinary inspection, but only if it is accompanied by a waybill, bill of lading, bill of sale, or other document that identifies the swine to the farm of origin and only if it is sent directly to:

a. A slaughter establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services; or

b. A USDA-approved market and from there directly to a recognized slaughter establishment.

E. Commercial swine intended for feeding purposes and not intended for breeding purposes from a farm of origin in a state adjoining Virginia and from a region therein considered free of pseudorabies by a federal or state program approved by the State Veterinarian may enter Virginia without a certificate of veterinary inspection.

## **2VAC5-141-130. Primate entry requirements.**

A. All primates imported into Virginia require a certificate of veterinary inspection issued within 10 days prior to entry.

B. All primates imported into Virginia must be microchipped, and such microchip number must be noted on the certificate of veterinary inspection.

C. The official health certificate shall include a statement attesting to the fact that the veterinarian has carefully examined the oral mucosa of the primate and has found no evidence of disease lesions or inflammatory processes.

### D. Tuberculosis testing requirements.

1. Primates imported into Virginia shall have a negative tuberculosis test performed by an accredited veterinarian within 30 days prior to entry. The official health certificate must indicate the kind and amount of tuberculin used, the date and hour of injection, and the date and hour of reading.

2. Primates that have been associated with a colony where there have been other primates showing response to the tuberculin test shall not be eligible for entry into Virginia unless and until all primates in the colony shall have passed two consecutive tuberculosis tests not less than 30 days apart.

### E. Exceptions.

1. This [ ~~regulation~~ chapter ] shall not apply to primates that are passing directly through Virginia to another state in interstate commerce.

2. This [ ~~regulation~~ chapter ] shall not apply to primates that are kept properly under control by their owner or custodian when passing through Virginia to another state.

3. This [ ~~regulation~~ chapter ] shall not apply to primates brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia, except if brought into the Commonwealth with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.

4. This [ ~~regulation~~ chapter ] shall not apply to primates brought into Virginia for less than 10 days for the purpose of legal exhibition with no change of ownership.

**NOTICE:** The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (2VAC5-141)

[ [Poultry Permit Packet \(eff. 01/11\)](#);

[Application for Approval Number for the Importation of Poultry, Form OVS1201 \(eff. 1/12\)](#). ]

DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-141)

[ [Avian Influenza \(H5 and H7\) Proclamation, eff. December 4, 2009, Department of Agriculture and Consumer Services, State Veterinarian's Office, P.O. Box 1163, Richmond, VA 23218](#);

[Avian Influenza \(H5 and H7\) Proclamation, eff. January 18, 2012, Department of Agriculture and Consumer Services, State Veterinarian's Office, P.O. Box 1163, Richmond, VA 23218](#). ]

VA.R. Doc. No. R09-1891; Filed November 16, 2011, 3:47 p.m.

## **Final Regulation**

**Title of Regulation:** **2VAC5-420. Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law (repealing 2VAC5-420-10 through 2VAC5-420-80).**

**Statutory Authority:** § 59.1-156 of the Code of Virginia.

**Effective Date:** January 18, 2012.

**Agency Contact:** Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email [erin.williams@vdacs.virginia.gov](mailto:erin.williams@vdacs.virginia.gov).

### **Summary:**

*This regulatory action repeals 2VAC5-420, Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law. The regulation prescribes certain requirements for the enforcement of the Virginia Motor Fuels and*

*Lubricating Oils Law (Chapter 12 (§ 59.1-149 et seq.) of Title 59.1 of the Code of Virginia), including specifications for the inspection and testing of motor fuels. Chapter 650 of the 2009 Acts of Assembly amended the Motor Fuels and Lubricating Oils Law by incorporating by reference certain national inspection and testing specifications for motor fuels. Given that the essential elements of the regulation have now been incorporated by reference into the Virginia Motor Fuels and Lubricating Oils Law, the regulation is no longer needed and is repealed.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

VA.R. Doc. No. R10-2120; Filed November 18, 2011, 11:41 a.m.



## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-960. Pertaining to Tautog (amending 4VAC20-960-30, 4VAC20-960-45, 4VAC20-960-47).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: January 1, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

*The amendments establish (i) a commercial minimum size limit for tautog of 15 inches total length, and a closed fishing season from January 18 through March 15 and May 1 through November 12; and (ii) a recreational minimum size limit for tautog of 16 inches total length, a possession limit of three tautog per person, and a closed fishing season from April 16 through September 23.*

**4VAC20-960-30. Minimum size limits.**

A. The minimum size limit of tautog harvested for commercial purposes shall be ~~4~~ 15 inches total length.

B. ~~It shall be unlawful for any person to possess any tautog less than 14 inches total length.~~ The minimum size of tautog harvested for recreational purposes shall be 16 inches total length.

C. It shall be unlawful for any person to ~~sell, trade, or barter, or offer to sell, trade, or barter any tautog less than 14 inches total length~~ possess any tautog smaller than the designated minimum size limit.

D. Total length shall be measured in a straight line from tip of nose to tip of tail.

**4VAC20-960-45. Recreational fishing season and possession limits.**

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than ~~four~~ three tautog. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by ~~four~~ three. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any tautog taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of tautog which exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The recreational fishing season shall be closed from ~~May 4~~ April 16 through ~~June 24~~ September 23.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any tautog during any closed recreational fishing season.

**4VAC20-960-47. Commercial fishing season and possession limits.**

The commercial fishing season shall be closed from January 18 through March 15 and May 1 through November 12, and it shall be unlawful for any person to possess tautog for commercial purposes during this period.

VA.R. Doc. No. R12-3060; Filed December 7, 2011, 10:21 a.m.



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# Regulations

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## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 10VAC5-40. Credit Unions (adding 10VAC5-40-70).

**Statutory Authority:** §§ 6.2-1303 and 12.1-13 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be scheduled upon request.

**Public Comment Deadline:** January 6, 2012.

**Agency Contact:** Werner Paul, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9698, FAX (804) 371-9416, or email [werner.paul@scc.virginia.gov](mailto:werner.paul@scc.virginia.gov).

#### Summary:

*The State Corporation Commission is proposing a regulation to enable state-chartered credit unions that predominantly serve low-income members as defined in 12 CFR 701.34 to obtain a low-income designation. A low-income designated credit union would have the following additional powers to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions that have obtained a low-income designation to: (i) accept nonmember deposits in accordance with 12 CFR 701.32 and 12 CFR 741.204; (ii) accept secondary capital in accordance with 12 CFR 701.34 and 12 CFR 741.204; (iii) participate in the Community Development Revolving Loan Program in accordance with 12 CFR Part 705; (iv) be eligible for an exception to the aggregate loan limit on member business loans in accordance with 12 CFR 723.17 and 12 CFR 723.18; and (v) obtain funds from the Community Development Financial Institutions Fund operated by the United States Department of the Treasury.*

AT RICHMOND, NOVEMBER 28, 2011

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2011-00235

Ex Parte: In re: low-income designated credit unions

#### ORDER TO TAKE NOTICE

Section 6.2-1303 of the Code of Virginia authorizes the State Corporation Commission ("Commission") to adopt such regulations as may be necessary to permit state-chartered credit unions to have powers at least comparable with those of federal credit unions, regardless of any existing statute, regulation, or court decision limiting or denying such powers to state-chartered credit unions. Federal credit unions that predominantly serve low-income members as defined in 12 CFR § 701.34 may obtain a low-income designation. Low-income designated credit unions are eligible under federal law to accept nonmember deposits and secondary capital, participate in the Community Development Revolving Loan Program, and obtain funds from the Community Development Financial Institutions Fund operated by the United States Department of the Treasury. Low-income designated credit unions are also eligible for an exception to the aggregate loan limit on member business loans.

The Commission is informed that certain state-chartered credit unions wish to have the power to obtain a low-income designation so that they can also take advantage of the aforementioned benefits and resources, and the Bureau of Financial Institutions ("Bureau") has submitted to the Commission a proposed parity regulation.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulation should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation is appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before January 6, 2012. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2011-00235. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available on the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulation shall be posted on the Commission's website: <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached proposed regulation, to the Virginia Registrar of

Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall send a copy of this Order, together with a copy of the proposed regulation, to all state-chartered credit unions as well as other interested parties designated by the Bureau.

**10VAC5-40-70. Low-income designated credit unions.**

A. Upon the filing and investigation of a written application, the Commissioner of Financial Institutions (commissioner) shall designate a state-chartered credit union as a low-income credit union if (i) the commissioner finds that a majority of the credit union's members qualify as low-income members as defined in 12 CFR 701.34 and (ii) the National Credit Union Administration concurs with the designation. If the application filed by a credit union is denied, the commissioner shall notify the credit union of the denial and the reasons for the denial.

B. A low-income designated credit union shall have the following additional powers to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions that have obtained a low-income designation pursuant to 12 CFR 701.34 to:

1. Accept nonmember deposits in accordance with 12 CFR 701.32 and 12 CFR 741.204.
2. Accept secondary capital in accordance with 12 CFR 701.34 and 12 CFR 741.204.
3. Participate in the Community Development Revolving Loan Program in accordance with 12 CFR Part 705.
4. Be eligible for an exception to the aggregate loan limit on member business loans in accordance with 12 CFR 723.17 and 12 CFR 723.18.
5. Obtain funds from the Community Development Financial Institutions Fund operated by the United States Department of the Treasury.

Whenever any of the federal regulations referenced in this subsection require a credit union to submit a written request, plan, application, or other documents to the National Credit Union Administration, the credit union shall send a copy of such written request, plan, application, or other documents to the commissioner.

C. The commissioner may at any time, based upon supervisory, legal, or safety and soundness considerations, impose additional terms or conditions upon a low-income designated credit union in conjunction with its exercise of any of the powers enumerated in subsection B of this section.

D. A low-income designated credit union shall submit written reports to the commissioner containing any information that the commissioner may require concerning the credit union's services to low-income members.

E. 1. If the commissioner determines that a low-income designated credit union no longer meets the criteria for the low-income designation, the commissioner shall notify the credit union in writing. The credit union shall, within five years, meet the criteria for the designation or comply with the regulatory requirements applicable to state-chartered credit unions that do not have a low-income designation. The designation shall remain in effect during the five-year period.

2. If a credit union is unable to qualify again for the designation but has secondary capital or nonmember deposits with a maturity beyond the five-year period, the commissioner may extend the time for the credit union to comply with regulatory requirements to allow the credit union to satisfy the terms of any account agreements.

3. Within 60 days of the date of the notice from the commissioner, a credit union may appeal the commissioner's determination that the credit union no longer meets the criteria for a low-income designation to the State Corporation Commission by filing a petition in accordance with its Rules of Practice and Procedure (5VAC5-20).

4. A low-income designation shall be removed by the commissioner with the concurrence of the National Credit Union Administration.

V.A.R. Doc. No. R12-3061; Filed November 28, 2011, 4:32 p.m.



**TITLE 14. INSURANCE**

**STATE CORPORATION COMMISSION**

**Final Regulation**

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: 14VAC5-215. Rules Governing Independent External Review of Final Adverse Utilization Review Decisions (repealing 14VAC5-215-10 through 14VAC5-215-130).

14VAC5-216. Rules Governing Internal Appeal and External Review (amending 14VAC5-216-20, 14VAC5-216-40, 14VAC5-216-70; adding 14VAC5-216-45).

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# Regulations

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Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: January 1, 2012, for 14VAC5-216 and May 16, 2012, for repeal of 14VAC5-215.

Agency Contact: Julie Blauvelt, Senior Insurance Market Examiner, State Corporation Commission, Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9865, FAX (804) 371-9944, or email [julie.blauvelt@scc.virginia.gov](mailto:julie.blauvelt@scc.virginia.gov).

Summary:

*This action repeals 14VAC5-215, which is necessary because pertinent provisions § 38.2-5900 of the Code of Virginia and §§ 38.2-5901 through 38.2-5905 of the Code of Virginia were repealed by the General Assembly in 2011 and the external review process was replaced with a new process found in Chapter 35.1 (§§ 38.2-3556 through 38.2-3571) of Title 38.2 of the Code of Virginia. External review under 14VAC5-215 will not be available after May 15, 2012. Amendments and an added section to 14VAC5-216 are necessary because on June 22, 2011, the federal government issued amendments to its "Rules Relating to Internal Claims and Appeals and External Review Process" (amending 26 CFR Part 54, 29 CFR Part 2590, and 45 CFR Part 147) addressing exhaustion and notice issues. The amendments also added a section to 14VAC5-216 to conform to these federal requirements. The amendments to 4CAC5-216 are required to be effective by January 1, 2012.*

AT RICHMOND, DECEMBER 1, 2011

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2011-00200

Ex Parte: In the matter of Repealing the Rules Governing Independent External Review of Final Adverse Utilization Review Decisions and Amending the Rules Governing Internal Appeal and External Review

## ORDER REPEALING AND ADOPTING RULES

By Order entered herein September 27, 2011 ("Order to Take Notice"), all interested persons were ordered to take notice that subsequent to November 21, 2011, the State Corporation Commission ("Commission") would consider the entry of an order to repeal the "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" at Chapter 215 of Title 14 of the Virginia Administrative Code (14 VAC 5-215-10 through 14 VAC 5-215-130 and Forms) to be effective on May 16, 2012, and amend certain sections in Chapter 216 of Title 14 of the

Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," specifically set forth at 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-70, as well as add a new section at 14 VAC 5-216-45. These amendments were proposed by the Bureau of Insurance ("Bureau"). The Order to Take Notice required that on or before November 21, 2011, any person objecting to the repeal of Chapter 215 or the amendments to Chapter 216 shall have filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the repeal of Chapter 215 and the amendments to Chapter 216 on or before November 21, 2011.

No comments were filed with the Clerk. No request for a hearing was filed with the Clerk.

The Bureau recommends the repeal of Chapter 215 and the adoption of the amendments to Chapter 216 as proposed.

The repeal of Chapter 215 is necessary because pertinent provisions of § 38.2-5900 and §§ 38.2-5901 through 38.2-5905 of the Code of Virginia ("Code") were repealed by the General Assembly in 2011, and the external review process was replaced with a new process found in Chapter 35.1 (§§ 38.2-3556 through 38.2-3571) of the Code. External review under Chapter 215 will not be available after May 15, 2012. Amendments, including a new section in Chapter 216, are necessary because the federal government has issued amendments to its regulations relating to internal appeal and external review, addressing exhaustion and notice issues. The amendments and new section in Chapter 216 conform to the federal requirements. These amendments are required to be effective by January 1, 2012.

NOW THE COMMISSION, having considered the Bureau's recommendation to repeal Chapter 215 effective on May 16, 2012, and amend as well as add a new section to Chapter 216, is of the opinion that Chapter 215 should be repealed effective May 16, 2012, and the amendments to 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-70, as well as a new section at 14 VAC 5-216-45, should be adopted effective January 1, 2012.

Accordingly, IT IS ORDERED THAT:

(1) Chapter 215 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" at 14 VAC 5-215-10 through 14 VAC 5-215-130 and Forms used in the administration of the Chapter, which are attached hereto and made a part hereof, should be, and they are hereby, REPEALED effective on May 16, 2012;

(2) The amendments to certain sections in Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review" specifically

set forth at 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-70, as well as a new section at 14 VAC 5-216-45, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED effective on January 1, 2012;

(3) AN ATTESTED COPY hereof, together with a copy of the repealed Chapter 215 and adopted amendments to Chapter 216 shall be sent by the Clerk of the Commission to Althelia Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the repeal of Chapter 215 and the adopted amendments to Chapter 216 by mailing a copy of this Order, including a clean copy of the repeal of Chapter 215 and the amendments to Chapter 216, to all companies, health maintenance organizations and health service plans licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties;

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the repealed Chapter 215 and adopted amendments to Chapter 216, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations;

(5) The Commission's Division of Information Resources shall make available this Order and the attached repealed Chapter 215 and adopted amendments to Chapter 216 on the Commission's website: <http://www.scc.virginia.gov/case>; and

(6) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (3) above.

### **14VAC5-216-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Adverse benefit determination" in the context of the internal appeals process means (i) a determination by a health carrier or its designee utilization review entity that, based on the information provided, a request for, a benefit under the health carrier's health benefit plan upon application of any utilization review technique does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part, for the requested benefit; (ii) the denial, reduction, or termination of, or failure to provide or make payment in whole or in part for, a benefit based on a determination by a health carrier or its designee utilization review entity of a covered person's eligibility to participate in the health carrier's health benefit plan; (iii) any review determination that denies, reduces, or terminates or

fails to provide or make payment, in whole or in part, for a benefit; (iv) a rescission of coverage determination as defined in § 38.2-3438 of the Code of Virginia; or (v) any decision to deny individual coverage in an initial eligibility determination.

"Adverse determination" in the context of external review means a determination by a health carrier or its designee utilization review entity that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested service or payment for the service is therefore denied, reduced, or terminated.

"Authorized representative" means (i) a person to whom a covered person has given express written consent to represent the covered person; (ii) a person authorized by law to provide substituted consent for a covered person; (iii) a family member of a covered person or the covered person's treating health care professional when the covered person is unable to provide consent; (iv) a health care professional when the covered person's health benefit plan requires that a request for a benefit under the plan be initiated by the health care professional; or (v) in the case of an urgent care internal appeal, a health care professional with knowledge of the covered person's medical condition.

"Clinical peer reviewer" means a practicing health care professional who holds a nonrestricted license in a state, district, or territory of the United States and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under appeal.

"Commission" means the State Corporation Commission.

"Concurrent review" means utilization review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional, or other inpatient or outpatient health care setting.

"Covered person" means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan. For purposes of this chapter with respect to the administration of appeals, references to a covered person include a covered person's authorized representative, if any.

"Emergency services" means those health care services that are rendered after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious

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dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review entity, at the completion of the health carrier's internal appeal process.

"Group health plan" means an employee welfare benefit plan (as defined in the Employee Retirement Income Security Act of 1974 (29 USC § 1002(1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" does not include accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with the laws of the Commonwealth.

"Health carrier" means an entity, subject to the insurance laws and regulations of the Commonwealth or subject to the jurisdiction of the commission, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an accident and sickness insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or a nonstock corporation offering or administering a health services plan, a hospital services plan, or a medical or surgical services plan, or any other entity providing a plan of health insurance, health benefits, or health care services except as excluded under § 38.2-3557 of the Code of Virginia.

"Independent review organization" means an entity that conducts independent external reviews of adverse determinations and final adverse determinations, as well as

alleged violations of 14VAC5-216-30 through 14VAC5-216-70 pertaining to internal appeal.

"PPACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

"Pre-service claim" means a claim for a benefit under a health benefit plan that requires approval of the benefit in whole or in part, in advance of obtaining the service or treatment.

"Post-service claim" means a claim for a benefit under a health benefit plan that is not a pre-service claim, or the service or treatment has been provided to the covered person.

"Self-insured plan" means an "employee welfare benefit plan" that has the meaning set forth in the Employee Retirement Income Security Act of 1974, 29 USC § 1002(1).

"Urgent care appeal" means an appeal for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations (i) could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or (ii) in the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the appeal. An urgent care appeal shall not be available for any post-service claim or retrospective adverse benefit determination.

"Utilization review" means a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.

## **14VAC5-216-40. Minimum appeal requirements.**

A. Each covered person shall be entitled to a full and fair review of an adverse benefit determination. Within 180 days after the date of receipt of a notice of an adverse benefit determination, a covered person may file an appeal with the health carrier. A health carrier may designate a utilization review entity to coordinate the review. For purposes of this chapter, "health carrier" may also mean its designated utilization review entity.

B. The health carrier shall conduct the appeal in a manner to ensure the independence and impartiality of the individuals involved in reviewing the appeal. In ensuring the independence and impartiality of such individuals, the health carrier shall not make decisions regarding hiring, compensation, termination, promotion, or other similar matters based upon the likelihood that an individual will support the denial of benefits.

C. 1. In deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other service is experimental, investigational, or not medically necessary or appropriate, the health carrier shall designate a clinical peer reviewer to review the appeal. The clinical peer reviewer shall not have been involved in any previous adverse benefit determination with respect to the claim.

2. A reviewer of any other type of adverse benefit determination shall be an appropriate person designated by the health carrier. The reviewer of the appeal shall not be the individual who made any previous adverse benefit determination of the subject appeal nor the subordinate of such individual and shall not defer to any prior adverse benefit determination.

D. A full and fair review shall also provide for:

1. The covered person to have an opportunity to submit written comments, documents, records, and other information relating to the appeal for the reviewer or reviewers to consider when reviewing the appeal.

2. Upon request to the health carrier, the covered person to have reasonable access to and free of charge copies of all documents, records, and other information relevant to the covered person's request for benefits ~~(note that any request for diagnosis and treatment codes, in itself, should not be considered to be a request for an internal appeal)~~. This information shall be provided to the covered person as soon as practicable.

3. An appeal process that takes into account all comments, documents, records, and other information submitted by the covered person relating to the appeal, without regard to whether such information was submitted or considered in the initial benefit determination.

4. The identification of medical or vocational experts whose advice was obtained on behalf of the health benefit plan in connection with a covered person's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination.

5. An urgent care appeal process.

6. Prior to issuing a final adverse benefit determination, the health carrier to provide free of charge to the covered person any new or additional evidence relied upon or generated by the health carrier or at the direction of the health carrier, in connection with the internal appeal sufficiently in advance of the date the determination is required to be provided to permit the covered person a reasonable opportunity to respond prior to that date.

E. A health carrier shall notify the covered person of the final benefit determination within a reasonable period of time appropriate to the medical circumstances, but not later than

the timeframes established in subdivisions 1 and 2 of this subsection.

1. If an internal appeal involves a pre-service claim review request, the health carrier shall notify the covered person of its decision within 30 days after receipt of the appeal. A health carrier may provide a second level of internal appeal for group health plans only, provided that a maximum of 15 days is allowed for a benefit determination and notification from each level of the appeal.

2. If an internal appeal involves a post-service claim review request, the health carrier shall notify the covered person of its decision within 60 days after receipt of the appeal. A health carrier may provide a second level of internal appeal for group health plans only, provided that a maximum of 30 days is allowed for a benefit determination and notification from each level of the appeal.

**14VAC5-216-45. Exhaustion.**

A. In addition to the provisions of § 38.2-3560 of the Code of Virginia, the internal appeal process may be deemed exhausted based on a violation of any of the provisions of 14VAC5-216-30 through 14VAC5-216-70. The internal appeal process shall not be deemed exhausted based on a de minimis violation that does not cause, and is not likely to cause, prejudice or harm to the covered person so long as the health carrier demonstrates that the violation was for good cause or due to matters beyond the control of the health carrier and that the violation occurred in the context of an ongoing, good faith exchange of information between the health carrier and the covered person. If the violation is part of a pattern or practice of violations by the health carrier, the violation shall not be considered de minimis.

B. The covered person may request a written explanation of the violation from the health carrier, and the health carrier shall provide the written explanation within 10 days, including a specific description of its basis, if any, for asserting that the violation should not cause the internal appeal process to be deemed exhausted, along with a notification of the right to review this matter by an independent review organization. A review by an independent review organization may be requested by the covered person to the commission to determine if the health carrier has met the standard under this section. The covered person must include, as part of the request for review, the written explanation of the violation by the health carrier. The independent review organization shall have a maximum of 10 days to conduct this review and provide a written response to the covered person, the health carrier, and the commission. If rejected, within five days the health carrier shall provide the covered person with a notice of the opportunity to resubmit and pursue an internal appeal of the claim.

C. The health carrier shall pay the independent review organization costs incurred for this review.

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## 14VAC5-216-70. Notification requirements.

A. A health carrier shall provide a covered person with written or electronic notification of its benefit determination on appeal. The notification of an adverse benefit determination shall be written in easily understandable language and shall set forth the following:

1. Information sufficient to identify the claim involved with respect to the appeal, including the date of service, the health care provider, ~~and~~ the claim amount, and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning. The health carrier may not consider a request for diagnosis or treatment information, in itself, to be a request for internal appeal;
2. The specific reason or reasons for the adverse benefit determination;
3. Reference to the specific plan provisions on which the adverse benefit determination is made;
4. A statement that the covered person is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the covered person's claim for benefits;
5. A statement indicating whether any additional internal appeals are available or whether the covered person has received a final adverse determination. If internal appeals are available, contact information on where to submit the appeal;
6. A statement describing the external review procedures offered by the health carrier and the covered person's right to obtain information about such procedures and the covered person's right to bring a civil action under § 502(a) of ERISA (29 USC § 1001 et seq.), if applicable; and
7. A statement indicating that the covered person has the right to request an external review if the covered person has not received a final benefit determination within the timeframes provided in 14VAC5-216-40 E, unless the covered person requests or agrees to a delay.

B. In the case of a group health plan, the required notification shall also set forth the following:

1. If an internal rule, guideline, protocol, or other similar criterion (collectively "rule") was relied upon in making the adverse benefit determination, either the specific rule or a statement that such rule was relied upon in making the adverse benefit determination and that a copy of the rule will be provided free of charge to the covered person upon request;
2. If the adverse benefit determination is based on a medical necessity or experimental treatment or similar

exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the covered person's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and

3. Include a statement indicating that the covered person may have other voluntary alternative dispute resolution options, such as mediation. The covered person should be referred to the appropriate federal or state agency, his plan administrator, or the health carrier, as appropriate.

C. All notices shall be provided in a culturally and linguistically appropriate manner. The health carrier shall:

1. Provide oral language services, such as a telephone customer hotline, that include answering questions and providing assistance with filing claims, benefit requests, internal appeals, and external review in any applicable non-English language;
2. Provide, upon request, any notice in any applicable non-English language; and
3. Include in the English versions of all notices, a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the health carrier.

With respect to any address in this Commonwealth to which a notice is sent, a non-English language is an applicable non-English language if 10% or more of the population residing in the city or county is literate only in the same non-English language, as determined by the American Community Survey data published by the United States Census Bureau.

~~☞~~ D. Electronic notification shall be in accordance with the provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

VA.R. Doc. No. R12-2990; Filed December 5, 2011, 3:58 p.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

#### Final Regulation

<u>REGISTRAR'S NOTICE:</u> The Commonwealth Transportation Board and the Commissioner of Highways are claiming an exemption from the Administrative Process Act pursuant to the provisions of Chapters 647, 870, and 888 of the 2011 Acts of Assembly.
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Titles of Regulations: 24VAC30-72. Access Management Regulations: Principal Arterials (amending 24VAC30-72-10, 24VAC30-72-40, 24VAC30-72-60, 24VAC30-72-70,

**24VAC30-72-80, 24VAC30-72-110, 24VAC30-72-130, 24VAC30-72-170).**

**24VAC30-73. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (amending 24VAC30-73-10, 24VAC30-73-40, 24VAC30-73-60, 24VAC30-73-70, 24VAC30-73-80, 24VAC30-73-110, 24VAC30-73-130, 24VAC30-73-170).**

**24VAC30-92. Secondary Street Acceptance Requirements (amending 24VAC30-92-10, 24VAC30-92-20, 24VAC30-92-60, 24VAC30-92-70, 24VAC30-92-80, 24VAC30-92-110, 24VAC30-92-120, 24VAC30-92-130, 24VAC30-92-140; repealing 24VAC30-92-50, 24VAC30-92-150).**

**24VAC30-155. Traffic Impact Analysis Regulations (amending 24VAC30-155-10, 24VAC30-155-20, 24VAC30-155-30, 24VAC30-155-40, 24VAC30-155-60, 24VAC30-155-70, 24VAC30-155-80; repealing 24VAC30-155-50, 24VAC30-155-100).**

Statutory Authority: § 33.1-198.1 of the Code of Virginia.

Effective Date: December 31, 2011.

Agency Contact: Robert Hofrichter, Assistant Division Administrator, Transportation & Mobility Planning Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0780, or email robert.hofrichter@vdot.virginia.gov.

**Summary:**

*During the 2011 session of the General Assembly, Chapters 647, 870, and 888, which relate to or impact the content of land development regulations promulgated by the Commonwealth Transportation Board, VDOT, or the Commissioner of Highways were enacted. These regulations include:*

*24VAC30-72 – Access Management Regulations: Principal Arterials*

*24VAC30-73 – Access Management Regulations: Minor Arterials, Collectors, and Local Streets*

*24VAC30-92 – Secondary Street Acceptance Requirements*

*24VAC30-155 – Traffic Impact Analysis Regulations*

*This action includes those regulatory changes made pursuant to Chapters 647, 870, and 888, which will have an effective date of December 31, 2011.*

*In response to Chapter 647, which repealed subsection C of § 15.2-2222.1 of the Code of Virginia, the Traffic Impact Analysis Regulations (TIA) are revised to remove the requirements for VDOT to review subdivision plats, site plans, and plans for development. This legislation did not impact the agency's review of comprehensive plans, comprehensive plan amendments, and rezoning. VDOT made changes to the TIA Regulations pursuant to a*

*specific mandate in the second enactment clause of the legislation.*

*Chapter 870 requires VDOT to:*

*1. Review and adopt any appropriate revisions to the TIA Regulations prior to November 30, 2011;*

*2. Assist the Commonwealth Transportation Board (CTB) to research and make recommendations related to the adoption of revisions to the Secondary Street Acceptance Requirements (SSAR) prior to November 30, 2011; and*

*3. Review and adopt revisions to the Access Management Regulations: Principal Arterials and Access Management Regulations: Minor Arterials, Collectors, and Local Streets by November 11, 2011, concerning their application to entrances for family subdivisions.*

*Chapter 888 also affects the TIA Regulations. This legislation states that VDOT shall complete a "more limited" review of rezoning requests when the proposed use is consistent with the current locality comprehensive plan designation and the comprehensive plan was reviewed previously pertaining to the TIA Regulations. Although VDOT will continue to review comprehensive plans, related amendments, and proposed rezoning requests, it revised the TIA Regulations to reflect this less stringent approach to such reviews.*

*Significant changes made to each of the regulations are described below. Additional minor changes to update references to forms and technical documents to ensure consistency among the regulations examined were also made where necessary.*

*Access Management Regulations: Principal Arterials (24VAC30-72) and Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC 30-73)*

*The amendments add a low volume commercial entrance category to the regulation for entrances associated with land uses that do not generate high traffic volumes, but volumes above those expected from private entrances (driveways serving one to two homes). The lower-cost design standards for private entrances will apply to this new type of entrance, but the entrance will need to meet a stopping sight distance requirement. (See Definitions, 24VAC30-72-80 and 24VAC30-73-80.) For clarity, text in the catchlines and elsewhere in the regulations is amended to clarify how particular provisions are applied to low volume commercial entrances, commercial entrances, and private entrances.*

*As the character of traffic created by family subdivisions does not differ from any other entrances, setting out a specific entrance just for family subdivisions is not logical from a safety standpoint. Family subdivisions generally consist of up to five lots, which can be expected to generate*

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50 trips, and 50 trips is already the established breakpoint for paving eligibility on VDOT secondary highways. Stopping sight distance is the minimum required by the American Association of State Highway and Transportation Officials (AASHTO) national standards at entrances, and a new document, "Trip Generation, 8th Edition, 2008," is added to 24VAC30-72 and 24VAC30-73 to address the revision to family entrance provisions.

### Secondary Street Acceptance Requirements (24VAC30-92):

The amendments removed the "connectivity index" requirement from the Secondary Street Acceptance Requirements because many parties outside of VDOT found the connectivity index confusing and complicated; many also questioned if use of the index actually increased external connectivity. The "area types" classification scheme is eliminated because it was directly tied to connectivity index requirements, which are eliminated, and the requirements associated with pedestrian accommodations are modified based on input received.

For connectivity enhancements, a requirement is incorporated for additional external connection or connections when certain dwelling unit or vehicle per day (VPD) thresholds per network addition are met. Additional external connections are required when the network addition contains over 200 dwelling units or the use generates over 2,000 VPD. With the elimination of the connectivity index, another connectivity standard is necessary to ensure adequate "connectivity for the current and future transportation network."

An amendment to the regulation allows the District Administrator's designee (rather than the District Administrator) to waive or modify certain aspects or requirements relating to multiple connections and/or additional external connections when specific and commonly occurring physical situations exist. Since the original effective date of the Secondary Street Acceptance Requirements in 2009, VDOT has gathered data on the occurrence of regulation exceptions. The majority of exceptions granted relate to required connections. The specific situations listed in the proposed Secondary Street Acceptance Requirements include the majority of situations today that result in approval of exceptions to connectivity requirements. By providing the designee with approval authority, a request seeking approval of an exception will receive the same thorough review, but the time needed for a review should be reduced.

The VDOT review period for waivers and exceptions is reduced from 45 calendar days to 30 calendar days for connectivity exceptions and appeals.

### Traffic Impact Analysis Regulations (24VAC30-155):

Reviews for site plans, subdivision plats, and plans of development are removed due to the repeal of subsection C of § 15.2-2222.1 of the Code of Virginia, which required local submittal of these land development proposals to VDOT for review. The entire section relating to these reviews, 24VAC30-155-50, is removed as a result.

Traffic impact analysis study criteria are reduced in scope for rezoning proposals. The trip generation threshold requiring submittal of a rezoning to VDOT is increased from 100 peak hour trips for residential and 2,500 daily trips for other land uses to a new 5,000 vehicle trips per day threshold for all land uses. The submittal threshold is raised to address/reshift focus to larger developments of a more regional scale.

An amendment is added to allow rezoning applicants to submit a traffic impact analysis study prepared according to locality requirements, provided the locality's requirements have been certified by VDOT as meeting acceptable standards of professional practice. A developer will not have to prepare separate traffic impact studies according to locality requirements and according to VDOT requirements. Once a locality's traffic impact statement requirements have been certified by VDOT, the local study can satisfy both purposes.

An amendment stipulates that rezoning proposal is exempt from the regulations when it (i) involves no changes in the land uses allowed under the current zoning, or (ii) results in lower trip generation than land uses allowed by right (except governmental uses) under the current zoning. This amendment is made to bring the regulation more in line with statutory intent of requiring traffic impact studies in situations that would substantially affect state highways. Applying traffic impact regulations to a rezoning proposal that will generate the same or less traffic than what could occur if the property was developed by-right (uses allowed under the current zoning) would conflict with the legislative intent.

A provision is added requiring VDOT to schedule a meeting with the locality and the developer to discuss the preparation of a traffic impact study on a proposed rezoning within 60 days of receipt of a request for a scoping meeting. The deadline helps assure that the arrangements for a scoping meeting to discuss a rezoning proposal are handled in a timely manner.

An amendment directs VDOT to provide the rezoning applicant the opportunity and time to make modifications to information submitted under the regulations before returning the package to the locality and requiring its formal resubmission. The regulations allow, when possible, revisions to submittals to be accommodated in a manner that does not unnecessarily extend the local development review process.

*The methodology for preparing a traffic impact analysis study is revised. The methodology was evaluated based on three years of experience, utilizing the current methodology, as well as new concepts and best practices in traffic impact analysis.*

## **24VAC30-72-10. Definitions.**

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

~~"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")~~

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" or "median opening" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing and turning traffic.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Entrance, commercial" means any entrance serving land uses that generate more than 50 vehicular trips per day or the trip generation equivalent of more than five individual private residences or lots for individual private residences using the methodology in the Institute of Transportation Engineers Trip Generation, 8th Edition, 2008.

"Entrance, low volume commercial" means any entrance, other than a private entrance, serving five or fewer individual residences or lots for individual residences on a privately owned and maintained road or land uses that generate 50 or fewer vehicular trips per day using the methodology in the Institute of Transportation Engineers Trip Generation, 8th Edition, 2008.

"Entrance, private" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means any at-grade connection with a highway including two highways or an entrance and a highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or in the absence of such signs the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and

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procedures are presented for determining the level of service in the Highway Capacity Manual (see 24VAC30-72-170 I).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that their property abuts upon the limited access highway.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterial" means the functional classification for a major highway intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

~~"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.~~

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Stopping sight distance" means the distance required by a driver of a vehicle, traveling at a given speed, to bring the vehicle to a stop after an object on the highway becomes visible, including the distance traveled during the driver's perception and reaction times and the vehicle braking distance.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highway.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and turn lanes.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; acceleration and deceleration lanes.

"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC § 101).

"VDOT" means the Virginia Department of Transportation, its successor, the Commissioner of Highways, or his designees.

**24VAC30-72-40. Administrative procedures and rules for obtaining ~~commercial and private~~ entrance permits.**

All applications for entrance permits shall be obtained from and submitted to the district administrator's designee for the county in which the work is to be performed. The permit applicant shall submit the permit application form, and the entrance permit, if approved, will be issued in accordance with the applicable administrative rules, requirements, and procedures of this chapter and the Land Use Permit Regulations (see 24VAC30-72-170 G).

**24VAC30-72-60. General provisions governing ~~commercial and private~~ entrances.**

A. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and an entrance permit has been issued. The violation of any provision of this chapter and any condition of approval of an entrance permit shall be subject to the penalties for violations specified in the Land Use Permit Regulations (see 24VAC30-72-170 G).

B. VDOT will permit reasonably convenient access to a parcel of record. VDOT is not obligated to permit the most convenient access, nor is VDOT obligated to approve the permit applicant's preferred entrance location or entrance design. If a parcel is served by more than one road in the systems of state highways, the district administrator's designee shall determine upon which road or roads the proposed entrance or entrances is or are to be constructed.

C. When two or more properties are to be served by the same entrance, the permit applicant shall ensure that there is a recorded agreement between the parties specifying the use and future maintenance of the entrance. A copy of this recorded agreement shall be included in the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property.

D. The district administrator's designee may require the permit applicant to alter any proposed entrance location or design, whether private or commercial, to obtain the best possible operational characteristics, including, but not limited to, sight distance and entrance spacing.

E. Entrance standards established by localities that are stricter than those of VDOT shall govern.

**24VAC30-72-70. Commercial entrance design.**

A. ~~All commercial~~ Low volume commercial entrance design and construction shall comply with the private entrance design standards in Appendix F of the Road Design Manual, 2011 (VDOT) and the stopping sight distance provision in 24VAC30-72-80. Commercial entrance design and construction shall comply with the provisions of this chapter and the standards in the Road Design Manual (see 24VAC30-72-170 A), the Road and Bridge Standards (see 24VAC30-

72-170 C), the Road and Bridge Specifications (see 24VAC30-72-170 B), other VDOT engineering and construction standards as may be appropriate, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.). Ramps for curb sections shall be provided as required in § 15.2-2021 of the Code of Virginia. The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards (see 24VAC30-72-170 C), shall be utilized in the design.

1. In the event an entrance is proposed within the limits of a funded roadway project that will ultimately change a highway, the permit applicant may be required to construct, to the extent possible, entrances compatible with the roadway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" (see 24VAC30-72-170 H).

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards in Appendix F of the Road Design Manual (see 24VAC30-72-170 A).

5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the abutting highway during the peak hours of the abutting highway.

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement

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or a site plan/subdivision plat supplemental traffic analysis submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations (24VAC30-155) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. Mitigation measures that may be considered include but are not limited to:

- a. Construction of auxiliary lanes or turning lanes, or pavement transitions/tapers;
- b. Construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers;
- c. Installation, modification, or removal of traffic signals and related traffic control equipment;
- d. Provisions to limit the traffic generated by the development served by the proposed entrance;
- e. Dedication of additional right-of-way or easement, or both, for future road improvements;
- f. Reconstruction of existing roadway to provide required vertical and horizontal sight distances;
- g. Relocation or consolidation of existing entrances; or
- h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

## **24VAC30-72-80. Minimum sight distance for commercial entrances.**

A. No less than minimum intersection sight distance shall be obtained for ~~any~~ a commercial entrance and no less than minimum stopping sight distance shall be obtained for a low volume commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as

described in Appendix F of the Road Design Manual (see 24VAC30-72-170 A). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices (see 24VAC30-72-170 D) methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

## **24VAC30-72-110. Tenure of commercial entrances.**

A. The tenure of a commercial entrance to any highway is conditional. Reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required at the owner's cost when the district administrator's designee determines after review that one of the conditions listed below exists. If the necessary changes are not made, the entrance may be closed at the direction of the district administrator's designee.

1. Safety - When the entrance has been found to be unsafe for public use in its present condition because of physical degradation of the entrance, increase in motor vehicle traffic, or some other safety-related condition.
2. Use - When traffic in and out of the entrance has changed significantly to require modifications or reconstruction, or both. Such changes may include, but are not limited to, changes in traffic volume or operational characteristics of the traffic.
3. Maintenance - When the entrance becomes unserviceable due to heavy equipment damage or reclamation by natural causes.

B. VDOT will maintain the commercial entrance only within the normal shoulder of the roadway or to the flow line of the gutter pan. The owner shall maintain all other portions of the entrance, including entrance aprons, curb and gutter, culvert and drainage structures.

C. Commercial entrances may also be reviewed by the district administrator's designee when any of the following occur:

1. The property is being considered for rezoning or other local legislative action that involves a change in use of the property.
2. The property is subject to a site plan or subdivision plat review.
3. There is a change in commercial use either by the property owner or by a tenant.
4. Vehicular/pedestrian circulation between adjoining properties becomes available.

These periodic reviews are necessary to provide both the driver and other highway users with a safe and operationally efficient means of travel on state highways.

D. The provisions of this section shall apply to low volume commercial entrances.

#### **24VAC30-72-130. Drainage.**

A. ~~Commercial and private entrances~~ Entrances shall be constructed so as not to impair drainage within the right-of-way and so that surface water shall drain from the roadway.

B. Where deemed necessary by the district administrator's designee, a commercial entrance applicant shall provide copies of a complete drainage layout based on a drainage study by a licensed design professional. This layout shall clearly show how the permit applicant proposes to handle the drainage and run-off from applicant's development.

C. Pipe ends of culverts shall be reviewed independently by the district administrator's designee and grading or treatment at pipe ends shall minimize any hazard the pipe ends or structures may present to an errant vehicle.

#### **24VAC30-72-170. Documents incorporated by reference.**

A. Road Design Manual (~~effective January 1, 2005, revised July 2008~~), 2011.

Note: Appendix F (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

B. 2007 Road and Bridge Specifications (effective July 2008)

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

C. Road and Bridge Standards (effective February 1, 2001)

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

D. The Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (effective December 22, 2003, revised November 2004)

Federal Highway Administration  
Superintendent of Documents  
U.S. Government Printing Office  
P.O. Box 371954  
Pittsburgh, PA 15250-7954

E. A Policy on Geometric Design of Highways and Streets, Fifth Edition, 2004

American Association of State Highway and Transportation Officials (AASHTO)  
444 North Capitol St. N.W., Suite 225  
Washington, D.C. 20001

F. Change of Limited Access Control, 24VAC30-401

VDOT  
1401 E. Broad St.  
Richmond, VA 23219

G. Land Use Permit Regulations, 24VAC30-151

VDOT  
1401 E. Broad St.  
Richmond, VA 23219

H. Policy for Integrating Bicycle and Pedestrian Accommodations, eff. March 18, 2004

VDOT  
1401 E. Broad St.  
Richmond, VA 23219

I. Highway Capacity Manual 2000

Transportation Research Board  
500 Fifth Street, NW  
Washington, DC 20001

J. Traffic Impact Analysis Regulations, 24VAC30-155

VDOT  
1401 E. Broad St.  
Richmond, VA 23219

K. Trip Generation, 8th Edition, 2008

Institute of Transportation Engineers  
1099 14th Street N. W., Suite 300 West  
Washington, DC 20005

#### **24VAC30-73-10. Definitions.**

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median

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openings/crossovers, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

"Collectors" means the functional classification of highways that provide land access service and traffic circulation within residential, commercial, and industrial areas. The collector system distributes trips from principal and minor arterials through the area to the ultimate destination. Conversely, collectors also collect traffic and channel it into the arterial system.

~~"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")~~

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing movements and left and right turning movements.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Entrance, commercial" means any entrance serving land uses that generate more than 50 vehicular trips per day or the trip generation equivalent of more than five individual private residences or lots for individual private residences using the methodology in the Institute of Transportation Engineers Trip Generation, 8th Edition, 2008.

"Entrance, low volume commercial" means any entrance, other than a private entrance, serving five or fewer individual residences or lots for individual residences on a privately owned and maintained road or land uses that generate 50 or fewer vehicular trips per day using the methodology in the Institute of Transportation Engineers Trip Generation 8th Edition, 2008.

"Entrance, private" means an entrance that serves up to two private residences and is used for the exclusive benefit of the

occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic, including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property and to other streets.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means (i) a crossing of two or more highways at grade, (ii) a crossover, or (iii) any at-grade connection with a highway such as a commercial entrance.

"Intersection sight distance" means the sight distance required at an intersection to allow the driver of a stopped vehicle a sufficient view of the intersecting highway to decide when to enter, or cross, the intersecting highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or, in the absence of such signs, the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel

time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual (see 24VAC30-73-170 I).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that those properties abut upon the limited access highway.

"Local streets" means the functional classification for highways that comprise all facilities that are not collectors or arterials. Local streets serve primarily to provide direct access to abutting land and to other streets.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Median opening" means a crossover or a directional opening in a nontraversable median (such as a concrete barrier or raised island) that physically restricts movements to specific turns such as left turns and U-turns.

"Minor arterials" means the functional classification for highways that interconnect with and augment the principal arterial system. Minor arterials distribute traffic to smaller geographic areas providing service between and within communities.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterials" means the functional classification for major highways intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

~~"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or~~

~~fewer trips per day such as cell towers, pump stations, and stormwater management basins.~~

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Roundabout" means a circular intersection with yield control of all entering traffic, right-of-way assigned to traffic within the circular roadway, and channelized approaches and a central island that deflect entering traffic to the right.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highways.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; an acceleration or deceleration lane.

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"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC § 101).

"VDOT" means the Virginia Department of Transportation, its successor, the Commissioner of Highways, or his designees.

## **24VAC30-73-40. Administrative procedures and rules for obtaining ~~commercial and private~~ entrance permits.**

All applications for entrance permits shall be obtained from and submitted to the district administrator's designee for the county in which the work is to be performed. The permit applicant shall submit the permit application form, and the entrance permit, if approved, will be issued in accordance with the applicable administrative rules, requirements and procedures of this chapter and the Land Use Permit Regulations (see 24VAC30-73-170 G).

## **24VAC30-73-60. General provisions governing ~~commercial and private~~ entrances.**

A. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and an entrance permit has been issued. Any person violating any provision of this chapter and any condition of approval of an entrance permit shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided for in § 33.1-198 of the Code of Virginia. Such person shall be civilly liable to the Commonwealth for actual damage sustained by the Commonwealth by reason of his wrongful act.

B. VDOT will permit reasonably convenient access to a parcel of record. VDOT is not obligated to permit the most convenient access, nor is VDOT obligated to approve the permit applicant's preferred entrance location or entrance design. If a parcel is served by more than one road in the systems of state highways, the district administrator's designee shall determine upon which road or roads the proposed entrance or entrances is or are to be constructed.

C. Entrance standards established by localities that are stricter than those of VDOT shall govern.

## **24VAC30-73-70. Commercial entrance design.**

A. ~~All commercial~~ Low volume commercial entrance design and construction shall comply with the private entrance design standards in Appendix F of the Road Design Manual, 2011 (VDOT) and the stopping sight distance provision in 24VAC30-73-80. Commercial entrance design and construction shall comply with the provisions of this chapter and the standards in the Road Design Manual (see 24VAC30-73-170 A), the Road and Bridge Standards (see 24VAC30-73-170 C), the Road and Bridge Specifications (see

24VAC30-73-170 B), other VDOT engineering and construction standards as may be appropriate, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.). Ramps for curb sections shall be provided as required in § 15.2-2021 of the Code of Virginia. The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards (see 24VAC30-73-170 C) shall be utilized in the design.

1. In the event an entrance is proposed within the limits of a funded roadway project that will ultimately change a highway, the permit applicant may be required to construct, to the extent possible, entrances compatible with the roadway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" (see 24VAC30-73-170 H).

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards in Appendix G of the Road Design Manual (see 24VAC30-73-170 A).

5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the abutting highway during the peak hours of the abutting highway or during the peak hours of the generator, whichever is appropriate as determined by the district administrator's designee.

6. The use of a shared entrance between adjacent property owners shall be the preferred method of access.

7. The construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers shall be approved in accordance with the crossover location approval process specified in Appendix G of the Road Design Manual (see 24VAC30-73-170 A).

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement or a site plan/subdivision plat supplemental traffic analysis submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations (see 24VAC30-73-170 J) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. The district administrator's designee will consider what improvements will be needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor. Mitigation measures that may be considered include but are not limited to:

- a. Construction of auxiliary lanes or turning lanes, or pavement transitions/tapers;
- b. Construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers;
- c. Installation, modification, or removal of traffic signals and related traffic control equipment;
- d. Provisions to limit the traffic generated by the development served by the proposed entrance;
- e. Dedication of additional right-of-way or easement, or both, for future road improvements;
- f. Reconstruction of existing roadway to provide required vertical and horizontal sight distances;
- g. Relocation or consolidation of existing entrances; or
- h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

**24VAC30-73-80. Minimum sight distance for commercial entrances.**

A. No less than minimum intersection sight distance shall be obtained for ~~any~~ a commercial entrance and no less than minimum stopping sight distance shall be obtained for a low volume commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as described in Appendix G of the Road Design Manual (see 24VAC30-73-170 A). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices (see 24VAC30-73-170 D) methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

**24VAC30-73-110. Existing commercial entrances.**

A. The tenure of a commercial entrance to any highway is conditional. Reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required at the owner's cost when the district administrator's designee determines after review that one of the conditions listed below exists. If the necessary changes are not made, the entrance may be closed at the direction of the district administrator's designee.

- 1. Safety - When the entrance has been found to be unsafe for public use in its present condition because of physical degradation of the entrance, increase in motor vehicle traffic, or some other safety-related condition.

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2. Use - When traffic in and out of the entrance has changed significantly to require modifications or reconstruction, or both. Such changes may include, but are not limited to, changes in traffic volume or operational characteristics of the traffic.

3. Maintenance - When the entrance becomes unserviceable due to heavy equipment damage or reclamation by natural causes.

B. VDOT will maintain the commercial entrance only within the normal shoulder of the roadway or to the flow line of the gutter pan. The owner shall maintain all other portions of the entrance, including entrance aprons, curb and gutter, culvert and drainage structures.

C. Commercial entrances may also be reviewed by the district administrator's designee, and reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required, when any of the following occur:

1. The property is being considered for rezoning or other local legislative action that involves a change in use of the property.
2. The property is subject to a site plan or subdivision plat review.
3. There is a change in commercial use either by the property owner or by a tenant.
4. Vehicular/pedestrian circulation between adjoining properties becomes available.

These periodic reviews are necessary to provide both the driver and other highway users with a safe and operationally efficient means of travel on state highways.

D. The provisions of this section shall apply to low volume commercial entrances.

## **24VAC30-73-130. Drainage.**

A. ~~Commercial and private entrances~~ Entrances shall be constructed so as not to impair drainage within the right-of-way and so that surface water shall drain from the roadway.

B. Where deemed necessary by the district administrator's designee, a commercial entrance applicant shall provide copies of a complete drainage layout based on a drainage study by a licensed design professional. This layout shall clearly show how the permit applicant proposes to handle the drainage and run-off from applicant's development.

C. Pipe ends of culverts shall be reviewed independently by the district administrator's designee and grading or treatment at pipe ends shall minimize any hazard the pipe ends or structures may present to an errant vehicle.

## **24VAC30-73-170. Documents incorporated by reference.**

A. Road Design Manual (~~effective January 1, 2005, revised October 2009~~), 2011.

Note: Appendices F and G (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

B. 2007 Road and Bridge Specifications (effective July 2008).

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

C. 2008 Road and Bridge Standards (effective June 2009).

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

D. The Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (effective December 22, 2003, revised November 2004).

Federal Highway Administration  
Superintendent of Documents  
U.S. Government Printing Office  
P.O. Box 371954  
Pittsburgh, PA 15250-7954

E. A Policy on Geometric Design of Highways and Streets, Fifth Edition, 2004.

American Association of State Highway and Transportation Officials (AASHTO)  
444 North Capitol St. N.W., Suite 225  
Washington, D.C. 20001

F. Change of Limited Access Control, 24VAC30-401.

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

G. Land Use Permit Regulations, 24VAC30-151.

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

H. Policy for Integrating Bicycle and Pedestrian Accommodations, eff. March 18, 2004.

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

I. Highway Capacity Manual, 2000.

Transportation Research Board  
500 Fifth Street, NW  
Washington, DC 20001

J. Traffic Impact Analysis Regulations, 24VAC30-155.

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

K. Instructional and Informational Memorandum IIM-LD-227.3, eff. May 23, 2007.

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

L. Secondary Street Acceptance Requirements, 24VAC30-92, eff. March 9, 2009.

VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219

M. Trip Generation, 8th Edition, 2008.

Institute of Transportation Engineers  
1099 14th Street N. W., Suite 300 West  
Washington, DC 20005

**24VAC30-92-10. Definitions.**

The following words and terms when used in these regulations shall have the following meanings unless the context clearly indicates otherwise:

"Abandonment" in all its forms means the legislative action reserved for and granted to the local governing body to extinguish the public's right to a roadway under the jurisdiction of the Virginia Department of Transportation pursuant to §§ 33.1-151 and 33.1-155 of the Code of Virginia.

"Accessible route" means a public or private continuous unobstructed, stable, firm and slip-resistant path connecting all accessible elements of a facility (which may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts) that can be approached, entered and used by persons with disabilities. An accessible route shall, to the maximum extent feasible, coincide with the route for the general public.

"ADT" means average daily traffic count (see "projected traffic").

"Alley" means a narrow roadway segment used by motor vehicles for access to the rear side of commercial or

residential land use, or access to auxiliary land uses and that is located within a dedicated public way or public easement.

"Applicable former requirements" means the 2005 Subdivision Street Requirements for developments submitted prior to July 1, 2009, and the 2009 edition of the Secondary Street Acceptance Requirements for developments submitted between July 1, 2009, and January 31, 2012, inclusive.

"Best management practice" or "BMP" means schedules of activities; prohibitions of practices, including both structural and nonstructural practices; maintenance procedures; and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

"Clear zone" means the total border area of a roadway including, if any, parking lanes or planting strips that is sufficiently wide for an errant vehicle to avoid a serious accident. (See the Road Design Manual, 2011 (VDOT) and its Appendix B (1) (the Subdivision Street Design Guide) (see 24VAC30-92-150) for details.)

"Commissioner" means the chief executive officer of the Virginia Department of Transportation or his designee.

~~"Complete development (land)" means the utilization of the available areas in a manner as to realize its highest density for the best potential use based on zoning, pending rezoning, the adopted comprehensive plan of the governing body, or the customary use of similar parcels of land.~~

~~"Complete development (streets)" means the development of a street in full compliance with all applicable provisions of these regulations to the necessary standards of design, construction, and public benefit requirements for the effective and efficient accommodation of all modes of transportation generated by the complete development of the land, both internal and external to the development.~~

"Conceptual sketch" means a drawing of the proposed development showing the location of existing and proposed land uses, any existing and proposed transportation facilities, and any additional information required so that the reviewer can determine the appropriate functional classification of the proposed street or streets and verify if the calculation of the connectivity index, if appropriate standards have been met.

~~"Connectivity index" means the number of street segments divided by the number of intersections. Only street segments and intersections within a network addition as well as any street segment or intersection outside of the network addition connected to street segments within the network addition, or that has been connected or will be connected pursuant to 24VAC30-92-60 C 7 to the network addition through the extension of an existing stub out shall be used to calculate a network addition's connectivity index.~~

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"Cul-de-sac" means a street with only one outlet and having an appropriate turnaround for a safe and convenient reverse traffic movement.

"Dam" means an embankment or structure intended or used to impound, retain, or store water, either as a permanent pond or as a temporary storage facility.

"Department" or "VDOT" means the Virginia Department of Transportation.

"Design speed" means a speed selected for purposes of design and correlation of those features of a street such as curvature, super elevation, and sight distance, upon which the safe operation of vehicles is dependent.

"Developer" means an individual, corporation, local government, or registered partnership engaged in the subdivision, improvement, or renovation of land.

"Discontinuance," in all its forms, means the legislative act of the Commonwealth Transportation Board, pursuant to § 33.1-150 of the Code of Virginia, that determines that a road no longer serves public convenience warranting its maintenance with funds at the disposal of the department.

"District administrator" means the department employee assigned the overall supervision of the departmental operations in one of the Commonwealth's construction districts.

"District administrator's designee" means the department employee or employees designated by the district administrator to oversee the implementation of this regulation.

"Drainage Manual" means the department's Drainage Manual (~~see 24VAC30-92-150~~), 2002.

" Dwelling unit" means a structure or part of a structure containing sleeping, kitchen, and bathroom facilities that is suitable for occupancy as a home or residence by one or more persons.

"Easement" means a grant of a right to use property of an owner for specific or limited purpose.

~~"External street segment" means a street segment within a network addition that connects with the existing public street network.~~

"FAR" means floor area ratio, which is the ratio of the total floor area of a building or buildings on a parcel to the size land area of the parcel where the building or buildings are located.

"Functional classification" means the assigned classification of a roadway based on the roadway's intended purpose of providing priority to through traffic movement and access to adjoining property as determined by the department, based on the federal system of classifying groups of roadways

according to the character of service they are intended to provide.

"Governing body" means the board of supervisors of the county, but may also mean the local governing body of a town or city, if appropriate, in the application of these requirements.

~~"Intersection" means a juncture of three or more street segments, or the terminus of a street segment, such as a cul-de-sac or other dead end. The terminus of a stub out shall not constitute an intersection for the purposes of this chapter. The juncture of a street with only a stub out, and the juncture of a street with only a connection to the end of an existing stub out, shall not constitute an intersection for the purposes of this chapter, unless such stub out is the only facility providing service to one or more lots within the development.~~

"Level of service" means a qualitative measure describing operational conditions within a vehicular traffic stream, and their perception by motorists and passengers. For the purposes of these requirements, the applicable provisions of the Highway Capacity Manual (~~see 24VAC30-92-150~~), 2010 (VDOT) shall serve as the basis for determining "levels of service."

~~"Level terrain" means that condition where highway sight distances, as governed by both horizontal and vertical restrictions, are generally long or could be made so without construction difficulty or major expense.~~

"Locally controlled grade separation structure" means a grade separation structure that does not qualify for maintenance by the department but was established within the right-of-way of a street intended for state maintenance.

"Local official" means the representative of the governing body appointed to serve as its agent in matters relating to subdivisions and land development.

"Multiuse trail" means a facility designed and constructed for the purpose of providing bicycle and pedestrian transportation, located within a dedicated public way and is anticipated to be maintained by an entity other than the department.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are designated under 4VAC50-60-380 ~~A-1~~ as municipal separate storm sewer systems ~~located in census urban areas~~.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and corresponding

regulations and the Virginia Stormwater Management Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Network addition" means a group of interconnected street segments and intersections shown in a plan of development that are connected to the state highway system.

"Parking bay" means an off-street area for parking two or more vehicles that provides access to a public street.

"Parking lane" means an area, generally seven or eight feet in width, adjacent to and parallel with the travel lane of a roadway that is used for parking vehicles.

"Pavement Design Guide" means the Pavement Design Guide for Subdivision and Secondary Roads in Virginia (~~see 24VAC30-92-150~~, 2009 (VDOT)).

"Permit Regulations" means the department's Land Use Permit Regulations (~~see 24VAC30-92-150~~) (24VAC30-151).

"Phased development (streets)" means the method outlined in 24VAC30-92-80 (phased development of streets) whereby the acceptance of certain streets into the secondary system of state highways may be considered before being completely developed in accordance with all applicable requirements (e.g., two lanes of a four-lane facility are considered for acceptance in advance of lanes three and four being finished).

"Plan of development" means any site plat, subdivision plan, preliminary subdivision plat, conceptual subdivision sketch, or other engineered or surveyed drawings depicting proposed development of land and street layout, including plans included with rezoning proposals.

"Plans" means the standard drawings, including profile and roadway typical section, that show the location, character, dimensions, and details for the proposed construction of the street.

"Planting strip" means a section of land between the curb face and the pedestrian accommodation or shared use path.

"Plat" means the schematic representation of the land divided or to be divided.

"Projected traffic" means the number of vehicles, normally expressed in average daily traffic (ADT), forecast to travel over the segment of the street involved.

"Public street" means a street dedicated to public use and available to the public's unrestricted use without regard to the jurisdictional authority responsible for its operation and maintenance.

"Requirements" means the design, construction, public benefit, and related administrative considerations herein prescribed for the acceptance of a street for maintenance by the department as part of the secondary system of state highways.

"Right-of-way" means the land, property, or interest therein, usually in a strip, acquired for or devoted to a public street designated to become part of the secondary system of state highways.

"Roadway" means the portion of the road or street within the limits of construction and all structures, ditches, channels, etc., necessary for the correct drainage thereof.

"Secondary system of state highways" means those public roads, streets, bridges, etc., established by a local governing body pursuant to § 33.1-229 of the Code of Virginia and subsequently accepted by the department for supervision and maintenance under the provisions of Articles 6 (§ 33.1-67 et seq.) and 11 (§ 33.1-150 et seq.) of Chapter 1 of Title 33.1 of the Code of Virginia.

"Shared use path" means a facility that is designed and constructed according to the Road Design Manual (~~see 24VAC30-92-150~~), 2011 (VDOT), for the purpose of providing bicycle and pedestrian transportation.

~~"Smoothed urbanized area boundary" means the modified area boundary of a census urbanized area as determined by the latest U.S. decennial census and modified by appropriate state, regional, and local government officials, and approved by the Federal Highway Administration.~~

~~"Smoothed urban cluster boundary" means the modified area boundary of a census urban cluster as determined by the latest U.S. decennial census and modified by appropriate state, regional and local government officials, and approved by the Federal Highway Administration.~~

"Specifications" means the department's Road and Bridge Specifications (~~see 24VAC30-92-150~~), 2007, revised 2011, including related supplemental specifications and special provisions.

"Standards" means the applicable drawings and related criteria contained in the department's Road and Bridge Standards (~~see 24VAC30-92-150~~), 2008, revised 2011.

"Storm sewer system" means a conveyance or system of conveyances and its appurtenances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains.

"Street" means any roadway that is created as part of a plan of development, other subdivision of land, or is constructed by or at the direction of the local governing body and is a public way for purposes of vehicular traffic, including the entire area within the right-of-way.

~~"Street segment" means (i) a section of roadway or alley that is between two intersections or (ii) a stub out or connection to the end of an existing stub out.~~

"Stub out" means a transportation facility (i) whose right-of-way terminates at a parcel abutting the development, (ii) that consists of a short segment that is intended to serve current

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and future development by providing continuity and connectivity of the public street network, (iii) that based on the spacing between the stub out and other streets or stub outs, and the current terrain there is a reasonable expectation that connection with a future street is possible, and (iv) that is constructed to the property line.

"Subdivision" means the division of a lot, tract, or parcel into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. Any resubdivision of a previously subdivided tract or parcel of land shall also be interpreted as a "subdivision." The division of a lot or parcel permitted by § 15.2-2244 of the Code of Virginia will not be considered a "subdivision" under this definition, provided no new road or street is thereby established. However, any further division of such parcels shall be considered a "subdivision."

"Subdivision Street Design Guide" means Appendix B (1) of the Road Design Manual (~~see 24VAC30-92-150~~), 2011 (VDOT).

"Swale" means a broad depression within which stormwater may drain during inclement weather, but that does not have a defined bed or banks.

"Total maximum daily load" or "TMDL" is a water quality term that means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Traveled way" means the portion of the secondary street designated for the movement of vehicles, exclusive of shoulders, parking areas, turn lanes, etc.

"Tree well" means an opening on a sidewalk, generally abutting the curb, where a tree may be planted.

"VPD" means vehicles per day.

"VPH" means vehicles per hour.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Watercourse" means a defined channel with bed and banks within which water flows, either continuously or periodically.

## **24VAC30-92-20. Applicability, effective date, and transition.**

A. Applicability. This regulation is intended to govern secondary street development and the criteria for acceptance of these streets by the department for subsequent maintenance. The Road Design Manual, 2011 (VDOT) and

its Appendix B (1), the Subdivision Street Design Guide (see 24VAC30-92-150) offer guidance on the design and construction features of secondary street development and set out design parameters deemed appropriate for most land development scenarios. However, the business of land development is fluid and the department, in consultation with the local official, is prepared to consider innovative transportation approaches associated with land development proposals that are consistent with the design and connectivity requirements of this chapter and the Subdivision Street Design Guide (~~see 24VAC30-92-150~~), Appendix B (1) of the Road Design Manual, 2011 (VDOT). However, when not specifically addressed in one of those documents, the relevant requirements of the Road Design Manual (~~see 24VAC30-92-150~~), 2011 (VDOT), standards, specifications, the Pavement Design Guide (see 24VAC30-92-150) for Subdivision and Secondary Roads in Virginia, 2009 (VDOT) and associated instructions shall govern.

These requirements apply to all streets designated to be maintained by the department as part of the secondary system of state highways, except for streets whose construction was funded by state highway construction allocations. The department's review and approval shall apply only to streets proposed for addition to the secondary system of state highways maintained by the department. Any plans submitted for review that contain only streets proposed for maintenance by entities other than the department may be reviewed for general guidance at the discretion of the district administrator but will not be officially approved. However, any such review shall not represent the department's commitment to accept such streets for maintenance irrespective of the quality of the construction of the street or streets.

Any streets proposed to be privately maintained shall have a notation on the plat and impacted deeds that clearly indicates that as a prerequisite for the streets' future acceptance, the streets must be improved to the department's prevailing requirements for acceptance at no cost to the department. All notations made on plats or similar instruments pursuant to this section shall be in accordance with § 33.1-72.2 of the Code of Virginia.

### B. Grandfathering.

1. Streets where the street layout has been proffered pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia prior to ~~March 9, 2009~~ February 1, 2012, ~~shall~~ may, at the discretion of the developer, be considered for acceptance in accordance with the applicable former requirements, provided the requirements of § 15.2-2307 of the Code of Virginia have been met. This grandfathering shall not apply to any streets where the proffered layout may be adjusted, without requiring a significant affirmative governmental zoning action to modify such proffered conditions, to meet the requirements of this chapter, unless a site plan, subdivision plat, or preliminary plat relying on

such proffered street layout has been submitted for approval prior to ~~March 9, 2009~~ February 1, 2012. In such instances the grandfathering ~~shall may, at the discretion of the developer,~~ apply to the applicable site plan, subdivision plat, or preliminary subdivision plat. ~~However, such streets may be considered for acceptance under requirements of this chapter at the discretion of the developer~~ Notwithstanding any other provision of this subsection, the grandfathering provided based upon proffers shall not be lost or adversely impacted due to a modification of the relevant plan or plat so long as no more than 20% (cumulative) of the original street centerline mileage is eliminated, realigned, or added compared to the proffered layout and the modification is not expected to result in an increase in traffic generation.

2. Streets that are part of a recorded plat or final site plan valid pursuant to § 15.2-2261 of the Code of Virginia and approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia prior to ~~July 1, 2009~~ February 1, 2012, shall be considered for acceptance in accordance with the applicable former requirements as long as such plats or plans remain valid under applicable law. However, such streets may be considered for acceptance under requirements of this chapter at the discretion of the developer.

3. Streets that are part of a preliminary subdivision plat valid pursuant to § 15.2-2260 of the Code of Virginia approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia prior to ~~July 1, 2009~~ February 1, 2012, shall be considered for acceptance in accordance with the applicable former requirements for a period of up to five years or such longer period as such preliminary subdivision plat is valid under applicable law, provided the requirements of § 15.2-2260 of the Code of Virginia have been met. Such grandfathering shall apply to construction plans, site plans, and final plats submitted and approved in furtherance of such preliminary subdivision plat for as long as such plans or plats remain valid under applicable law. However, such streets may be considered for acceptance under requirements of this chapter at the discretion of the developer.

4. Streets that are part of a street construction plan approved by the department prior to ~~July 1, 2009~~ February 1, 2012, shall be considered for acceptance in accordance with the applicable former requirements. However, such streets may be considered for acceptance under requirements of this chapter at the discretion of the developer.

5. ~~When the local governing body takes an action that modifies the applicable area types (see 24VAC30-92-50 for further details on area type) within such locality or the applicable area type changes due to adjustments in smoothed urbanized areas, urban cluster boundaries, or~~

~~metropolitan planning organization study area boundaries, the following shall apply for development proposals approved after March 9, 2009.~~

~~a. Streets where the layout was proffered pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia prior to the modification of the applicable area type shall be considered for acceptance in accordance with the requirements of the former area type for a period of up to 10 years, provided the requirements of § 15.2-2307 of the Code of Virginia have been met. This subsection shall not apply to any streets where the proffered layout may be adjusted, without requiring a significant affirmative governmental zoning action to modify such proffered conditions, to meet the requirements of this chapter, unless a site plan, subdivision plat, or preliminary plat relying on such proffered street layout has been submitted for approval prior to March 9, 2009. In such instances the grandfathering shall apply to the applicable site plan, subdivision plat, or preliminary subdivision plat. However, such streets may be considered for acceptance under the modified applicable area type at the discretion of the developer.~~

~~b. Streets that are part of recorded plat or final site plan pursuant to § 15.2-2261 of the Code of Virginia approved prior to the modification of the applicable area type shall be considered for acceptance in accordance with the requirements of the former area type for a period of up to five years or such longer period as such recorded plat or final site plan is valid under applicable law. However, such streets may be considered for acceptance under the modified applicable area type at the discretion of the developer.~~

~~e. Streets that are part of preliminary subdivision plat pursuant to § 15.2-2260 of the Code of Virginia approved prior to the modification of the applicable area type shall be considered for acceptance in accordance with the requirements of the former area type for a period of up to five years or such longer period as such preliminary subdivision plat is valid under applicable law. Such grandfathering shall apply to future construction plans, site plans, and final plats approved in furtherance of such preliminary plat for so long as such plans or plats remain valid under applicable law. However, such streets may be considered for acceptance under the modified applicable area type at the discretion of the developer.~~

~~d. Streets that are part of a street construction plan approved by the department prior to the modification of the applicable area type shall be considered for acceptance in accordance with the requirements of the former area type for a period of up to five years. However, such streets may be considered for acceptance~~

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under the modified applicable area type at the discretion of the developer.

6. ~~5.~~ If requested by the applicable locality, the provisions of this subsection applicable former requirements shall apply if the applicant has submitted at a minimum a conceptual sketch that includes all of the elements required under 24VAC30-92-70 A prior to ~~July 1, 2009~~ February 1, 2012. Subdivisions 1 through ~~5~~ 4 of this subsection shall take precedence over this subdivision in any instances of a conflict.

C. Effective date. All streets proposed for acceptance by the department after ~~March 9, 2009~~ January 1, 2012, shall be considered for acceptance in accordance with this chapter, except as provided for in subsection D of this section and as may be waived by the commissioner pursuant to this chapter.

D. Transition. Prior to ~~July 1, 2009~~ February 1, 2012, the department will consider complete plats and plans developed in accordance with either the applicable former requirements or these requirements. Any plat or plan initially submitted to the department for consideration after ~~June 30, 2009~~ January 31, 2012, however, shall be in accordance with these requirements.

## 24VAC30-92-50. Area type thresholds. (Repealed.)

A. Area type thresholds. There are three area types established for secondary streets in the Commonwealth. Within each area type, streets must meet the applicable design and public benefit requirements to be eligible for acceptance into the secondary system of state highways. For the purposes of this chapter the following area types shall determine the design and public benefit requirements that apply to streets and network additions:

1. Compact Area Type. The Compact Area Type shall apply when any part of a network addition meets one or more of the following criteria:

a. Located within a locally designated urban development area pursuant to § 15.2 2223.1 of the Code of Virginia, or within an area designated by an adopted local comprehensive plan pursuant to § 15.2 2223 of the Code of Virginia as a village, town, or other growth area;

b. Located within a smoothed urbanized area boundary;

c. Located within an area designated by the local government, by ordinance or by the adopted local comprehensive plan pursuant to § 15.2 2223 of the Code of Virginia, to be subject to the Compact Area Type requirements of this chapter provided such area is designated in the adopted local comprehensive plan as an area for compact development with median lot sizes no greater than 1/2 acre;

d. Located within a locally designated transfer of development rights receiving area pursuant to § 15.2 2316.1 of the Code of Virginia; or

e. Located within a smoothed urban cluster boundary.

2. Suburban Area Type. The Suburban Area Type shall apply when any part of a network addition meets one or more of the following criteria and does not meet any of the Compact Area Type criteria:

a. Located outside a smoothed urbanized area boundary but within an official Metropolitan Planning Organization Study Area;

b. Located within a two mile radius of a locally designated urban development area pursuant to § 15.2 2223.1 of the Code of Virginia;

c. Located within a two mile radius of a smoothed urban cluster boundary;

d. Located within a locally designated cluster development pursuant to § 15.2 2286.1 of the Code of Virginia; or

e. Located within an area not subject to the Compact Area Type criteria that is designated by the local government, by ordinance or by the adopted local comprehensive plan pursuant to § 15.2 2223 of the Code of Virginia, to be subject to the Suburban Area Type requirements of this chapter provided such area is designated in the adopted local comprehensive plan as an area for suburban development with median lot sizes no greater than two acres.

3. The Rural Area Type. The Rural Area Type shall apply in all other areas of the Commonwealth.

B. Modifications to the area type thresholds. Area type perimeters shall be consistent with all planning boundaries listed within subsection A of this section, except as may be allowed within this subsection. Where the area type boundaries have been determined by a smoothed urbanized area, smoothed urban cluster, metropolitan planning organization study area, or within two miles of a smoothed urban cluster, and local governing body requests that the current area type designation differ from the above stated planning boundaries, the department will review such amendments related to a modification to the area type. Approval of such modification requests is not assured and will be reviewed on an individual basis. The commissioner, upon receipt of a resolution from the local governing body, for good cause shown may determine that an area type for a specific area within the local jurisdiction should be modified to a different area type or that any of the requirements of 24VAC30-92-60 should be modified to the requirements of a different area type. The commissioner shall consider and review the permissible parcel sizes and uses to ensure that the area is indeed being regulated in such manner that

necessitates a change in area type. The department will notify the local government within 45 calendar days of the commissioner's final decision. Any such modification of area type designations shall cease to apply if the zoning of the area is altered in a manner that is inconsistent with the local government's original request for the modification of the area type and that alters the type and density of land uses permitted.

~~C. Area type designation. At such time as the local governing body or the metropolitan planning organization amend the boundaries of one or more of the planning boundaries listed in subsection A of this section, the department will recognize such amendments and revise the related area type designation accordingly. When such local decision is made, the local governing body or metropolitan planning organization shall provide the department with a copy of any duly adopted ordinance or resolution that affects one of the planning boundary criteria listed in this section and impacts the area type designations within such locality or metropolitan planning organization study boundary based on the thresholds in this section as well as maps that show the affected areas as soon as practicable. Modifications to the area type designations based on any ordinance or resolution duly adopted between January 1 and June 30 of any year by a locality or metropolitan planning organization shall become effective on October 1 of that year. Modifications to the area type designations based on any ordinance or resolution duly adopted between July 1 and December 31 of any year shall become effective on April 1 of the next year.~~

**24VAC30-92-60. Public benefit requirements.**

A. Public benefit. A street or network addition may only be accepted by the department for maintenance as part of the secondary system of state highways if it provides sufficient public benefit to justify perpetual public maintenance as defined by this chapter. A street shall be considered to provide sufficient public benefit if it meets or exceeds the public service, pedestrian accommodation, and connectivity requirements of ~~the applicable area type of~~ this chapter.

B. Public service requirements. In the event the governing body requests the addition of a street or network addition before it meets these public service provisions, the district administrator will review each request on an individual case basis and determine if the acceptance of a street prior to normal service requirements is justified, provided the street or network addition meets all other applicable requirements including the connectivity requirements of this chapter. At the request of the local governing body, subject to approval by the district administrator, the public service requirements may be reduced for individual streets serving state or local economic development projects.

1. Individual streets. For the purpose of these requirements ~~without regard to applicable area type,~~ public service may

include, but is not necessarily limited to, streets meeting one or more of the following situations:

- a. Serves three or more occupied units with a unit being a single-family residence, owner-occupied apartment, owner-occupied residence in a qualifying manufactured home park, a stand-alone business, or single business entity occupying an individual building, or other similar facility. Also, streets serving manufactured home parks may only be considered when the land occupied by the manufactured home is in fee simple ownership by the residents of such manufactured home.
- b. Constitutes a connecting segment between other streets that qualify from the point of public service.
- c. Such street is a stub out.
- d. Serves as access to schools, churches, public sanitary landfills, transfer stations, public recreational facilities, or similar facilities open to public use.
- e. Serves at least 100 vehicles per day generated by an office building, industrial site, or other similar nonresidential land use in advance of the occupancy of three or more such units of varied proprietorship. Any addition under this provision shall be limited to the segment of a street that serves this minimum projected traffic and has been developed in compliance with these requirements.
- f. Constitutes a part of the network of streets envisioned in the transportation plan or element of a locality's comprehensive plan that, at the time of acceptance, serves an active traffic volume of at least 100 vehicles per day.

2. Multifamily, townhouse, and retail shopping complexes. A through street that serves a multifamily building may be considered for maintenance as part of the secondary system of state highways if it is deemed by the department to provide a public service and provided it is well defined and the district administrator's designee determines that it is not a travel way through a parking lot.

Entrance streets and the internal traffic circulation systems of retail shopping complexes qualify only if more than three property owners are served and ~~the street is well defined and separated from the parking areas~~ district administrator's designee determines that it is not a travel way through a parking lot.

3. Network additions. A network addition shall be considered to provide service if each street within the addition meets at least one of the criteria in subdivision 1 of this subsection.

4. Special exceptions. There may be other sets of circumstances that could constitute public service. Consequently, any request for clarification regarding

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unclear situations should be made in writing to the district administrator's designee.

C. Connectivity requirements. All ~~street segments~~ streets in a development as shown in a plan of development shall be considered for acceptance into the secondary system of state highways as one or multiple network additions. However, streets with a functional classification of collector and above may be eligible for acceptance as individual streets.

For the purposes of this subsection, connection shall mean a street connection to adjacent property or a stub out that will allow for future street connection to an adjacent property.

~~If a stub out or stub outs maintained by the department adjoin the property of a development with a network addition or individual street proposed for acceptance into the secondary system of state highways, such network addition or individual street must connect to such stub out or stub outs to be eligible for acceptance into the secondary system of state highways. Local street stub outs generally should not exceed 500 feet in length. The applicant shall post a sign in accordance with the department's standards that indicates that such stub out is a site for a future roadway connection.~~

~~Nothing in this chapter shall be construed as to prohibit a stub out from providing service to lots within a development.~~

The connectivity requirements of this chapter shall not apply to the following: a frontage road or reverse frontage road as defined in the Access Management Regulations: Principal Arterials (see 24VAC30-92-150) (24VAC30-72) or Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC-30-73), streets petitioned for acceptance into the secondary system of state highways through the Rural Addition Program pursuant to §§ 33.1-72.1 and 33.1-72.2 of the Code of Virginia, or streets petitioned for acceptance into the secondary system of state highways through the Commonwealth Transportation Board's Rural Addition Policy provided such streets were constructed prior to ~~March 9, 2009, or streets constructed or improved pursuant to §§ 33.1-221 and 33.1-223 of the Code of Virginia~~ January 1, 2012.

~~1. Compact standard.~~ Stub out connection standard. If a stub out or stub outs maintained by the department adjoin the property of a development with a network addition or individual street proposed for acceptance into the secondary system of state highways, such network addition or individual street must connect to such stub out or stub outs to be eligible for acceptance into the secondary system of state highways. The district administrator may waive this requirement if the existing stub out is of such design as to make such a connection unsafe.

~~2. Multiple connections in multiple directions standard.~~ The streets within a network addition may be accepted into the secondary system of state highways if the network addition meets the following requirements:

~~a. The streets are designed and constructed in compliance with the compact design standards pursuant to this chapter, the Road Design Manual, and the Subdivision Street Design Guide (see 24VAC30-92-150);~~

~~b. The network addition provides sufficient connections in multiple directions and to multiple properties, if applicable, to local and higher order roadways to provide an overall connectivity index of 1.6 or higher. All network additions shall have a minimum of two connections; and~~

~~e. The block layout and other features of the development are designed in such a fashion as to provide reasonably direct pedestrian movement throughout the development and to adjoining property.~~

provides at least two external connections, one of which must be to a publicly maintained highway and the other providing a connection to a different highway or a stub out to an adjoining property. Local street stub outs generally should not exceed 500 feet in length. If a stub out is constructed, the applicant shall post a sign in accordance with the department's standards that indicates that such stub out is a site for a future roadway connection. Nothing in this chapter shall be construed as to prohibit a stub out from providing service to lots within a development. The district administrator's designee shall waive or modify the second required connection of this standard if one or more of the following situations renders the provision of such connection impracticable:

a. The adjoining property is completely built out, its state is such that redevelopment within 20 years is unlikely, and there is no stub out (either constructed or platted) to the property served by the network addition;

b. The adjoining property is zoned for a use whose traffic is incompatible with the development being served by the network addition, providing, however, that in no case shall retail, residential, or office uses be considered incompatible with other retail, residential, or office uses; or

c. 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, such as the presence of conservation easements 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.

~~2. Suburban~~ 3. Additional connections standard. The streets within a network addition Network additions providing direct access to (i) more than 200 dwelling units or (ii) lots whose trip generation is expected to be over

2,000 VPD may be accepted into the secondary system of state highways if the network addition meets the following requirements:

- a. The streets are designed and constructed in compliance with the suburban design standards pursuant to this chapter, the Road Design Manual, and the Subdivision Street Design Guide (see 24VAC30-92-150);
- b. The network addition provides sufficient connections in multiple directions and to multiple properties, if applicable, to local and higher order roadways to provide an overall connectivity index of 1.4 or higher. All network additions shall have a minimum of two connections; and
- e. The block layout and other features of the development are designed in such a fashion as to provide reasonably direct pedestrian movement throughout the development and to adjoining property.

3. Rural standard. The streets within a network addition may be accepted into the secondary system of state highways if the network addition meets the following requirements:

- a. The streets are designed and constructed in compliance with the rural design standards pursuant to this chapter, the Road Design Manual, and the Subdivision Street Design Guide (see 24VAC30-92-150); and
- b. The network addition provides multiple connections to adjacent properties or streets in varying directions.

provides an additional external connection beyond that required under subdivision 2 of this subsection for each additional 200 dwelling units or 2,000 VPD or portion of each over and above the initial 200 dwelling units or 2,000 VPD. For the purposes of this requirement, each external connection of collector facilities that are elements of the county's transportation plan and to which there is no direct lot access provided counts as two external connections. The district administrator's designee shall waive or modify this additional connections standard if one or more of the following situations renders the provision of such connection impracticable:

- a. The adjoining property is completely built out, its state is such that redevelopment within 20 years is unlikely, and there is no stub out (either constructed or platted) to the property served by the network addition;
- b. The adjoining property is zoned for a use whose traffic is incompatible with the development being served by the network addition, providing, however, that in no case shall retail, residential, or office uses be considered incompatible with retail, residential, or office uses;
- c. In developments with a median density of more than eight lots per acre or with a FAR of 0.4 or higher, where

the number of connections provided would be contrary to the public interest; or

d. 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, such as the presence of conservation easements 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.

4. Individual street standard. Streets that are not part of a network addition shall be accepted into the secondary system of state highways upon petition by the local governing body as long as they meet the requirements of the applicable design standard and both termini one terminus of the street are intersections is an intersection with a roadway or roadways that are is part of the existing publicly maintained highway network, subject to the connectivity exceptions of subdivision 5 of this subsection and the other terminus is either an intersection with a roadway that is part of the existing publicly maintained highway network or a stub out to an adjoining property. Streets considered for individual acceptance should be (i) streets that provide a connection between two existing publicly maintained streets; or (ii) streets with a functional classification as collector or higher; (iii) a frontage road or reverse frontage road pursuant to VDOT's Access Management Regulations: Principal Arterials (see 24VAC30-92-150), (iv) streets petitioned for acceptance into the secondary system of state highways through the Rural Addition Program pursuant to §§ 33.1-72.1 and 33.1-72.2 of the Code of Virginia provided such street was constructed prior to March 9, 2009, (v) streets petitioned for acceptance into the secondary system of state highways through the Commonwealth Transportation Board's Rural Addition Policy provided such street was constructed prior to March 9, 2009, or (vi) streets constructed or improved pursuant to §§ 33.1-221 and 33.1-223 of the Code of Virginia.

5. Connectivity exceptions.

a. The connectivity index requirement for a network addition shall be reduced where a portion of the perimeter features one or more of the following constraints: (i) railroad tracks; (ii) limited access highway; (iii) an existing navigable river or a standing body of water with a depth greater than four feet under normal conditions; (iv) terrain grades in excess of 20%; and (v) government owned property with restrictions upon development such as military installations, parks in existence prior to the submission of the development proposal for the network addition, and land under

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~~conservation easements accepted by the Virginia Outdoors Foundation.~~

~~The connectivity index shall be reduced based on the percentage of the perimeter that features one or more constraints. In compact area types, the connectivity index requirement shall be equal to 1.6 minus 0.6 times the ratio of the length of the perimeter that features one or more constraints to the total length of the perimeter. In suburban area types, the connectivity index requirement shall be equal to 1.4 minus 0.4 times the ratio of the length of the perimeter that features one or more constraints to the total length of the perimeter.~~

~~b. The Where the above standards for waiver or modification or both have been met, the connectivity index requirement requirements for a network addition may shall be reduced waived or modified by the district administrator administrator's designee. The developer shall submit any ~~other~~ request for connectivity exceptions waiver or modification to the district administrator's designee with a copy to the local official. The district administrator's designee shall respond to requests for connectivity exceptions within 45 30 calendar days of receipt of a request. For projects where a scoping meeting pursuant to the Traffic Impact Analysis regulations (24VAC30-155) will be held, requests for exceptions and supporting data should be presented and discussed. ~~The district administrator's designee may modify the connectivity index requirements for one or more of the following criteria:~~~~

~~(1) If the locality's comprehensive plan designates adjoining parcels to the proposed development for a land use that is determined by the local official to be incompatible with the land use of the proposed development. If the connectivity index requirement is modified due to incompatible land use, such network additions shall provide stub out or stub outs, as determined by the district administrator's designee based on the size of the development, to allow for future connectivity in the event that the comprehensive plan changes the designation of adjacent parcels to land use that is not incompatible. In no instance shall any retail, office, or residential land use be considered incompatible land use with any proposed retail, office, or residential development.~~

~~(2) Good cause is shown that such requirement cannot be met due to unique characteristics of the parcel being developed such as jurisdictional wetlands or cluster subdivisions developed pursuant to § 15.2-2286.1 of the Code of Virginia.~~

6. In instances where there is potential for conflict between this chapter and the Access Management Regulations: Principal Arterials (see 24VAC30-92-150) (24VAC30-72) or the Access Management Regulations: Minor Arterials,

Collectors, and Local Streets (see 24VAC30-92-150) (24VAC30-73), the following shall apply:

a. For streets with a functional classification of collector where additional connections necessary to meet the connectivity index requirement requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, such spacing standards shall be modified by the district administrator administrator's designee to allow for such connection. Such connection or connections shall be required to meet intersection sight distance standards specified in the Road Design Manual, 2011 (VDOT) (see 24VAC30-92-150).

b. For streets with a functional classification of minor arterial where additional connections necessary to meet the connectivity index requirement requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, the district administrator administrator's designee shall, in consultation with the developer and the local official, either modify the applicable spacing standards to allow for such connection or connections, or modify the connectivity index requirement requirements of this chapter to account for the inability to make such connection. Such connection shall be required to meet intersection sight distance as specified in the Road Design Manual, 2011 (VDOT) (see 24VAC30-92-150).

c. For streets with a functional classification of principal arterial where additional connections necessary to meet the external connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards and cannot otherwise be met through connections to lower order roadways or stub outs, the connectivity index requirement requirements shall be modified by the district administrator administrator's designee to account for the inability to make such connection.

7. Failure to connect. ~~As a local governing body is not required to approve a subdivision plat that does not connect to stub outs in adjacent developments, when~~ If a local government approves a subdivision plat for a new development that does not connect to a stub out or stub outs in an adjacent development and such development's network addition or individual street would meet the applicable requirements of this chapter if it connected to a stub out or stub outs in the adjacent development, the network addition or individual street may or may not be accepted into the secondary system of state highways for maintenance pursuant to the authority granted to the district administrators in accordance with 24VAC30-92-100. ~~In such event the department representative's and the~~

~~commissioner's top priority for expenditure of improvements funds for such locality's six year plan for secondary highways shall be to connect the street or streets in the recently accepted network addition or individual street to the stub out or stub outs in the adjacent developments in addition to safety.~~

**24VAC30-92-70. Administrative procedure.**

A. Conceptual sketch. A conceptual sketch of the development that shows sufficient information for the department to review and concur with the proposed functional classification for each street in the development shall be provided to the district administrator's designee by the local official prior to preparing detailed construction plans for review. Any preliminary or conceptual plat, plan or sketch that conforms to the locality's zoning requirements or subdivision ordinance is acceptable if the information required by this subsection is shown. The submittal should include:

1. The general location and configuration, including the terminus, of each street, and the traffic volume anticipated when the land served is fully developed in accordance with the land uses anticipated.
2. The location, area, and density or floor area ratio (FAR) of each type of proposed land use within the development.
3. The location of any proposed transportation facility including any public transportation facilities as well as bicycle and pedestrian accommodations within the development's boundaries included in the comprehensive plan of the governing body.
4. The proposed functional classification for each street in the development.
5. The connectivity ~~index~~ of the network addition as proposed, if applicable.
6. The location of stub outs on adjoining property and the existing land use of such adjacent property, if applicable, and the location of any proposed stub outs within the network addition, if applicable.
7. Any ~~reductions to waiver or modification of the connectivity requirement requirements or pending requests therefore pursuant to 24VAC30-92-60 C 5-a and approved modifications to the connectivity requirement pursuant to 24VAC30-92-60 C 5 b.~~
8. ~~Any requests for modifications to the connectivity requirement pursuant to 24VAC30-92-60 C 5 b.~~
9. 8. General preliminary information on the type of any ~~stormwater management facilities that are~~ storm sewer system, such as BMP, outfalls, or conveyance channels, that is proposed to be located within the right-of-way as described in 24VAC30-92-120 L 2 and if the project is located in a MS4 regulated area or a TMDL watershed.

~~10.~~ 9. Other available information pertinent to the intended development, including but not limited to any proposed phased development of streets pursuant to 24VAC30-92-80.

B. Conceptual sketch review. The district administrator's designee will review the layout and functional classification of streets shown in the concept sketch and within 45 calendar days notify the local official in writing, as well as the developer, if applicable, of his concurrence or recommendations and whether or not the streets in the proposed network addition meet the connectivity and other requirements of this chapter. This concurrence will be valid as long as the basic concept for the development, including the general street layout and design, as submitted for review, remains unchanged. The district administrator's designee shall also review any unresolved request for modifications to the connectivity ~~index requirement~~ requirements and include his decision in the written notification to the local official and the developer. As part of his review, the district administrator's designee shall review the provision of collector and other higher order streets and if necessary make recommendations for the provision of such streets to address the traffic generated by the development.

C. Plan of development submission. Plats or plans, or both, together with other pertinent data as herein prescribed, shall be submitted to the local official in accordance with the practices of the local government and to the district administrator's designee for all proposed developments whose streets are intended to be added to the secondary system of state highways maintained by the department. The district administrator's designee may, subject to the availability of staff and upon the request of the local official, cooperate in the review of proposed developments to be developed to these standards but not initially intended for addition to the secondary system of state highways maintained by the department. The department may recover the costs for this service in accordance with 24VAC30-92-140.

D. Plan review. Upon receipt of the plats or plans, or both, the district administrator's designee will arrange for the appropriate review to determine compliance with the requirements of this chapter and other applicable VDOT requirements. The general procedure for this review is described in the ~~guidance document~~ Guidance Document for the Commonwealth Transportation Board's Secondary Street Acceptance Requirements (~~see 24VAC30-92-150~~), 2011 (VDOT).

E. Plan approval. The district administrator's designee will advise the appropriate local official and the developer, if applicable, as to the results of the review.

1. If the street development proposed by the plats or plans, or both, is determined to be in compliance with these requirements, the district administrator's designee will provide written confirmation of this finding. This action

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signifies the district administrator's designee's approval of the street layout and design shown on the plats or plans, as submitted. Any subsequent revision, additions, or deletions thereto shall require specific written approval of the district administrator's designee for each such change.

2. If a revision of the submitted plats or plans is determined necessary, the district administrator's designee will list the required changes in a written response to the local official and the developer, if applicable. Upon completion of the specified revisions, the plats or plans will be resubmitted for review and approval by the district administrator's designee.

The department's approval of a street construction plan shall constitute its commitment to accept the street or network addition depicted thereon when all applicable provisions of these requirements are satisfied and the streets have been constructed according to the approved construction plan and supporting specifications. However, during the department's or other approved inspection of construction as specified by this chapter, if a situation is discovered that was not addressed on the approved plan that could, in the opinion of the district administrator's designee, adversely affect public safety or the integrity of either the roadway or the adjacent property, acceptance of the street or network addition shall be deferred until the situation is corrected.

The department's approval of a street construction plan shall expire after a period of five years if construction has not commenced, in which case the subdivision street construction plan shall be resubmitted for subsequent review and approval. This shall not affect the adequacy of the approved concept plan as depicted on a recorded final plat, as provided for under § 15.2-2241 of the Code of Virginia.

Network additions will only be accepted when the entire network addition has been constructed, except in such instances where the constructed portion meets the applicable public benefit requirements of this chapter.

F. Street acceptance. Upon the satisfactory completion of construction of the street or streets in a network addition, the department will advise the local governing body regarding the street or network addition's readiness for acceptance and the local governing body, in consultation with the district administrator's designee, will initiate its acceptance into the secondary system of state highways maintained by the department provided:

1. The developer dedicates the prescribed right-of-way to public use.
2. The street has or streets in the network addition have been constructed in accordance with the applicable specifications, standards and the plats or plans approved by the department.

a. Traffic control markings, signs, and devices have been installed in accordance with VDOT standards, specifications, and practices.

b. Speed limits have been set in accordance with Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia. For any streets with speed limits different from those set out in § 46.2-870 or §§ 46.2-873 through 46.2-875 of the Code of Virginia, traffic engineering investigations supporting such speed limits have been submitted to VDOT.

3. The developer furnishes all required information and data to the district administrator's designee and the local government official pertaining to the development's stormwater management system that are pertinent to the locality's, department's, or other entity's Municipal Separate Storm Sewer System (MS4) permit, if applicable.

4. The street or streets in a network addition provides sufficient public benefit as prescribed in 24VAC30-92-60 and meets the requirements of this chapter.

5. The street or streets in the network addition has been properly maintained since its completion.

6. The developer furnishes the surety and fees in accordance with 24VAC30-92-140.

7. The governing body ~~has~~ or other responsible parties have executed all agreements prescribed by these requirements, unless specifically waived on an individual case basis by the department employee, or his successor or his designee, responsible for overseeing these requirements and the final acceptance of streets as part of the secondary system of state highways maintained by the department.

8. The governing body, by proper resolution, requests the department to accept the street or streets in the network addition for maintenance as part of the secondary system of state highways under its jurisdiction. The resolution shall include the governing body's guarantee of an unrestricted and unencumbered right-of-way as dedicated, plus any necessary easements for fills, drainage, or sight distance.

Upon the department's determination that the requested street or network addition is in compliance with the applicable provisions of these requirements, the governing body will be officially advised of the street or network addition's acceptance into the secondary system of state highways and the effective date of such action. This notification serves as the district administrator's designee's authority to begin maintenance thereon.

## **24VAC30-92-80. Phased development of streets.**

A. Policy. Certain streets that require four or more travel lanes to accommodate the projected traffic may be accepted by the department for maintenance after completion of the

first two lanes to an acceptable, initial phase of construction, upon the request of the governing body. It is recognized that there is a distinction between those streets that benefit the regional transportation network and those that primarily serve the development of land and local traffic, and, therefore, the criteria for phased construction for each situation differs as described in subsection B of this section.

However, in all cases, the right-of-way required for the road at its complete stage of construction shall be dedicated and accepted as part of the initial street acceptance. In addition, the initial phase of construction shall be designed and constructed to facilitate construction of the remaining phase in a manner that will avoid the need to reconstruct the initial two lanes.

Consideration for the acceptance of any street under the provisions of this section shall be limited to the phased development of only the street's roadway. All other applicable requirements, e.g., public benefit, drainage easements, and administrative procedures, shall apply.

## B. Criteria.

1. For streets included in the transportation plan of the locality's comprehensive plan that serve diverse areas of the region or locally, no special agreement or acknowledgement is needed as a prerequisite to acceptance, provided:

- a. The street is part of a transportation corridor that was formally adopted as a part of the locality's comprehensive transportation plan prior to the local governing body's approval of the plat or plan for the development of the adjacent land.
- b. The transportation corridor is a major thoroughfare planned primarily to move through traffic.
- c. When fully developed the street must satisfy the department's functional classification criteria as a major collector or higher.
- d. The street has a projected traffic volume of 8,000 vehicles per day or less for a period of 10 years following the date of the acceptance for maintenance by the department.

2. For all other streets, the local governing body's resolution requesting acceptance of the initial two-lane section must include provisions that acknowledge:

- a. The local governing body agrees that all costs incurred in the street's complete construction, including right-of-way, engineering, utility adjustment, etc., shall be provided from funds other than those derived from state revenue sources administered by the department, except as may be expressly authorized by the department.
- b. The local governing body agrees that it is its responsibility to ensure that the roadway is completed as

needed to accommodate the traffic. However, the locality also acknowledges that a determination that the street needs to be completed to its ultimate section will be made by the district administrator's designee once it is determined that the first two lanes will not sustain an acceptable level of service for the functional classification of the roadway in accordance with the Highway Capacity Manual (see 24VAC30-92-150), 2010 (TRB).

## C. Procedures.

1. Plats or plans, or both, for the street's complete development, in accordance with all applicable provisions of these requirements, shall be submitted for approval.
2. The plats or plans shall also delineate the street's initial development as proposed pursuant to this section. In no case shall this design provide less than one-half of the roadway typical section required by the applicable requirements for the street's complete development.
3. Unless waived by the district administrator's designee, a capacity analysis shall be submitted to document that an acceptable level of service will be maintained for the intended duration of the initial phase of development. In determining an acceptable level of service, the beneficial effect of the proposed street on the overall transportation network will be considered.
4. A determination will be made by the department in consultation with the locality as to whether the street can be approved for phased development and as to which criterion in subsection B of this section applies.
5. Upon the district administrator's designee's determination that the proposal is in compliance with the applicable provisions of this section, the plans may be approved accordingly.
6. Upon completion of the street's initial phase in accordance with approved plans, its compliance with all other applicable provisions of this section, and the inclusion of the appropriate language in the resolution, the street may be accepted for maintenance by the department as part of the secondary system of state highways.

## **24VAC30-92-110. Appeal to ~~district administrator.~~**

The district administrator is authorized to consider and render a ruling on unresolved differences of opinion between the developer and the district administrator's designee that pertain to the interpretation and application of these requirements.

To obtain this review, the developer shall provide the district administrator, the district administrator's designee, and the local official a written request for such action, describing any unresolved issue. After reviewing all pertinent information, the district administrator will advise the developer in writing

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regarding the decision of the appeal, and provide a copy of the decision to the local official and the district administrator's designee. All correspondence requesting an appeal should include copies of all prior correspondence with the local official and department representatives regarding the issue or issues. The district administrator shall advise the developer of the decision on the appeal within ~~45~~ 30 calendar days.

The developer may request a meeting with the district administrator concerning the appeal, and the district administrator shall respond within 10 business days and provide to the developer a date, time, and location for such meeting. After reviewing all pertinent information, the district administrator shall advise the developer in writing regarding the decision on the appeal, and provide a copy of the decision to the district administrator's designee and the local official.

~~The district administrator shall advise the developer of the decision on the unresolved differences of opinion within 45 calendar days. The developer may further appeal the district administrator's decision to the commissioner. All correspondence requesting an appeal should include copies of all prior correspondence with the local official and department representatives regarding the issue or issues. The commissioner shall advise the developer of the decision on the appeal within 30 calendar days.~~

## **24VAC30-92-120. Design and agreement requirements.**

A. General requirements. Most criteria addressing the design of new streets can be found in the Road Design Manual, 2011 (VDOT) and its Appendix B (1), the Subdivision Street Design Guide (~~see 24VAC30-92-150~~). However, the following provisions are provided for guidance, particularly in regard to features that require agreements or formal acknowledgements of the governing body before VDOT's acceptance of the street or streets within a development.

When an agreement is required between the local governing body and the department as a prerequisite to the acceptance of a street, nothing in these requirements shall preclude the local governing body from entering into separate agreements with other entities to fulfill its responsibilities. However, if the provisions are intended to ensure the safety of the public using the street, the department reserves the right to approve the involvement of the other party or parties.

All streets functionally classified as local shall have a design speed equal to the posted speed limit, except for streets functionally classified as local with a projected traffic volume of 400 vehicles per day or less, which may have a design speed less than the posted speed limit.

The department, locality, and developer shall take measures to minimize the impacts of through traffic on streets functionally classified as local and accepted into the secondary system of state highways under these regulations.

Such measures shall include initial street designs that manage motor vehicle speed to match local context.

B. Geometric requirements. Geometric requirements for new streets are established in the Road Design Manual, 2011 (VDOT) and its Appendix B (1), the Subdivision Street Design Guide (~~see 24VAC30-92-150~~). Sufficient off-street parking must be provided by the local governing body in accordance with this chapter if streets in a proposed network addition are constructed in accordance with design requirements for streets with off-street parking.

C. Turn lanes. Left or right turn lanes shall be provided at intersections when the department determines that projected turning movements warrant their installation. These facilities shall be designed in accordance with the Road Design Manual, 2011 (VDOT) and its Appendix B (1), the Subdivision Street Design Guide (~~see 24VAC30-92-150~~) and, if necessary, additional right-of-way shall be provided to accommodate these facilities.

## D. Pavement structure.

1. Pavement design. The pavement structure for new streets shall be in accordance with the Pavement Design Guide (~~see 24VAC30-92-150~~) for Subdivision and Secondary Roads in Virginia, 2009 (VDOT), including any prescribed underdrains. Prior to construction of the pavement sub-base and finish courses, the district administrator's designee shall approve the proposed pavement design.

2. Special pavement surfaces. The district administrator's designee may approve special pavement surfaces, such as the use of stamped pavement. However, if the pavement design is a type not addressed by the Pavement Design Guide (~~see 24VAC30-92-150~~) for Subdivision and Secondary Roads in Virginia, 2009 (VDOT), an agreement shall be provided by the governing body that addresses the future maintenance of such pavement.

3. Pavement additions to existing streets. When an existing VDOT-maintained roadway is to be widened to accommodate additional lanes or the addition of turn lanes, the necessary pavement design shall be obtained from the district administrator's designee and the entire surface of the roadway (old and new portions) may be required to be overlaid and restriped if required by the district administrator's designee. The district administrator's designee shall not require the entire surface of the roadway to be overlaid and restriped when the only pavement addition to the existing roadway was for bicycle lanes unless extenuating circumstances require that the entire surface of the roadway be overlaid and restriped.

## E. Parking.

1. Perpendicular and angle parking along streets is normally prohibited. However, perpendicular and angle

parking along streets may be considered if the features along the street cause the street to readily appear to be a street rather than a travel way through a parking lot.

Street design that anticipates limited or no on-street parking shall be approved when sufficient off-street parking is provided in accordance with this chapter. Street design that anticipates the restriction of on-street parking on one side of the street shall be approved when sufficient off-street parking is provided for buildings on the side of the street where it is anticipated parking will be restricted.

2. For streets designed without on-street parking, a minimum of two off-street parking spaces per dwelling unit shall be provided in proximity of the unit that they are intended to serve. Such spaces, which may be provided in a parking bay, driveway, or garage facilities, shall be provided outside of the street's right-of-way. The district administrator's designee may approve lesser parking requirements for individual developments or classes of developments when evidence is presented to support such an approval such as proximity to transit service or the nature of the development. Entrances to parking bays and garage facilities shall be designed in accordance with the appropriate provisions of the Land Use Permit Regulations (see 24VAC30-92-150) and the Access Management Regulations: Principal Arterials (see 24VAC30-92-150) (24VAC30-72) and Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73).

3. In instances where the local governing body has determined, through adoption of a parking ordinance or other similar ordinance, that lesser parking requirements are sufficient for certain classes of development, such lesser requirements shall govern.

4. The department shall not prohibit roadway design that allows for the provision of on-street parking on any roadway with a functional classification of collector or local where the posted speed limit is 35 miles per hour or less ~~and that is located within a compact or suburban area type.~~

F. Cul-de-sacs and turnarounds. An adequate turnaround facility shall be provided at the end of each cul-de-sac to permit the safe and convenient maneuvering by service vehicles. Various configurations of turnarounds are illustrated in the Subdivision Street Design Guide (~~see 24VAC30-92-150~~) (Appendix B (1) of the Road Design Manual, 2011 (VDOT)); however, alternative configurations may be approved by the district administrator's designee. Additional right-of-way shall be provided as required by the design of the turnaround. Normally, any nontraveled way areas within the turnaround, such as an island, shall be included in the dedicated right-of-way of the facility unless the department and the locality are able to reach an agreement for the maintenance of such nontraveled way areas. Nothing in this

chapter shall prohibit the provision of stormwater management facilities in the nontraveled way areas of a cul-de-sac, provided the requirements of subsection L of this section are met.

For circular turnarounds, a well-defined, identifiable street segment, equal to the normal lot width along the intersected street that serves the cul-de-sac, or 50 feet, whichever is greater, shall extend from the intersected street to the turning area.

G. Curb and gutter. For the purpose of these requirements, the use of curb and gutter is an acceptable roadway design, rather than a requirement. However, when used, curb and gutter shall be designed in accordance with the Road Design Manual and the Subdivision Street Design Guide (~~see 24VAC30-92-150~~) (Appendix B (1) of the Road Design Manual, 2011 (VDOT)) and only one curb and gutter design may be used along the length of a street.

1. Driveway entrance requirements. Without regard to the curb design used, the curb shall incorporate a driveway entrance apron, as illustrated in the Subdivision Street Design Guide (~~see 24VAC30-92-150~~) (Appendix B (1) of the Road Design Manual, 2011 (VDOT)), to provide a smooth transition from the gutter invert or roadway surface onto the driveway.

2. Curb ramps. All streets that incorporate accessible routes for pedestrian use shall, without regard to the curb design used, include curb ramps at intersections for use by persons with disabilities and shall incorporate other applicable provisions of the Americans with Disabilities Act (42 USC § 12101 et seq.).

H. Private entrances. All private entrances shall be designed and constructed in accordance with the Subdivision Street Design Guide (~~see 24VAC30-92-150~~) (Appendix B (1) of the Road Design Manual, 2011 (VDOT)).

I. Pedestrian, bicycle, and shared use path facilities. The Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations," 2004 emphasizes accommodating pedestrian and bicycle traffic. Any street proposed for VDOT acceptance shall accommodate pedestrian and bicycle traffic in accordance with the Commonwealth Transportation Board's policy and this chapter. Pedestrian and bicycle facilities should be generally uniform between intersections and included in the initial construction of the street, prior to VDOT acceptance.

1. Pedestrian accommodation requirements. Pedestrian accommodations shall be provided based upon density of development, the plans for or existence of public schools in the vicinity, the presence of existing pedestrian accommodations, and the operational nature of the fronting street. In all developments with pedestrian accommodations, such accommodations shall connect with existing pedestrian accommodations and allow for

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connection to future pedestrian accommodations to adjacent parcels. If multiple requirements apply to a street, the greater accommodation requirement shall govern. The district administrator's designee may waive or modify these requirements for the provision of pedestrian accommodations in situations when the accommodation exception provisions of the Commonwealth Transportation Board's policy are met.

a. Pedestrian accommodations shall be provided along both sides of the street or provisions made that provide equivalent pedestrian mobility ~~in areas with a median lot size of one half acre or less or a floor area ratio (FAR) of 0.4 or greater~~ for streets with an ADT over 400 that are located in a development with a median lot size of one-quarter acre or smaller or when the ADT for the street is over 8,000.

b. Pedestrian accommodations shall be provided along at least one side of the street or provisions made that provide equivalent pedestrian mobility ~~in areas that have a median lot size between one half acre to two acres~~ for streets with an ADT over 400 that are located in a development with a median lot size between one-quarter acre and one-half acre or when the ADT for the street is between 2,000 and 8,000.

c. Pedestrian accommodations shall be provided along at least one side of the street or provisions made that provide equivalent pedestrian mobility ~~in suburban and compact area types along roadways within one half centerline mile of a public school~~ within one-half street centerline mile of a public school.

d. When connecting to a stub street that has pedestrian accommodations, the new street shall also include pedestrian accommodations.

~~e. Pedestrian accommodations shall be provided along at least one side of, or provisions made that provide equivalent pedestrian mobility along, streets functionally classified as collectors or arterials with two travel lanes not including turn lanes. In no instance shall any sidewalk abut the curb or the edge of a collector or higher order street, unless the sidewalk is at least eight feet wide. In such instances tree wells shall be provided. In instances where it is necessary to retrofit streets with pedestrian accommodations to allow the streets to be accepted into the secondary system of state highways, the pedestrian accommodations less than eight feet wide may abut the curb or the edge of the street.~~

f. e. Pedestrian accommodations shall be provided along both sides of, or provisions made that provide equivalent pedestrian mobility along, streets functionally classified as collectors or arterials with three or more travel lanes. In no instance shall any sidewalk abut the curb or the edge of a collector or higher order street, unless the

sidewalk is at least eight feet wide. In such instances tree wells shall be provided. In instances where it is necessary to retrofit streets with pedestrian accommodations to allow the streets to be accepted into the secondary system of state highways, the pedestrian accommodations less than eight feet wide may abut the curb or the edge of the street.

2. Maintenance of pedestrian and bicycle accommodations. Pedestrian and bicycle facilities are eligible for VDOT acceptance and maintenance based on the criteria of this section. A copy of an agreement or other document showing the proposed maintenance responsibilities of pedestrian and bicycle facilities shall be provided to VDOT for any pedestrian accommodation outside of the VDOT right-of-way that is used to meet the accommodation requirements of this subsection.

a. Compliant facilities. Pedestrian and bicycle facilities, including shared use paths as defined under § 46.2-100 of the Code of Virginia, shall be accepted as part of the street or network addition, unless otherwise requested by the governing body, provided they are located fully within the dedicated right-of-way of the street and they are constructed in accordance with applicable criteria and standards of the department.

(1) Sidewalk criteria. Sidewalks shall be constructed in accordance with the Subdivision Street Design Guide ~~(see 24VAC30-92-150)~~ (Appendix B (1) of the Road Design Manual, 2011 (VDOT)).

(2) Bicycle facility criteria. Bicycle facilities contiguous with the street shall be in accordance with the department's design and construction criteria set forth in the Road Design Manual ~~(see 24VAC30-92-150), 2011.~~

(3) Shared use path criteria. Shared use paths shall be constructed in accordance with the Road Design Manual ~~(see 24VAC30-92-150), 2011~~ and closely follow the vertical alignment of the roadway without meandering on and off the right-of-way.

b. Noncompliant sidewalk, bicycle, and shared use paths. Noncompliant sidewalk, bicycle, and shared use paths that fail to meet requirements of the department's standards for construction, alignment, or placement within the dedicated right-of-way of the street shall be deemed to be noncompliant and not qualify for maintenance unless a design waiver or exemption is granted by the department. Noncompliant sidewalks and shared use paths may be constructed of stabilizer convenient to the applicant. Noncompliant facilities may co-exist within the dedicated right-of-way of the street under a land use permit issued by the district administrator's designee to the local governing body responsible for having established the facility through its subdivision process or other development process.

Such permits will clearly specify the responsibility for maintenance of the facility and related activities to the extent the facility occupies the street's right-of-way. The permit applicant should be an entity that can be reasonably expected to have perpetual maintenance capability.

J. Bridge, drainage, and other grade separation structures. Bridges, drainage, and other grade separation structures shall be designed and constructed in accordance with all applicable department criteria and standards. The district administrator's designee may require special review of the plans and construction inspection.

The department will accept grade separation structures as part of new streets, provided the structure is a drainage structure or is intended to separate the movement of registered motor vehicles. In addition, the department will accept grade separation structures intended to separate pedestrians or bicyclists or any combination thereof from traffic using the roadway, provided:

1. The structure is available for unrestricted public use;
2. The structure is accessible to pedestrian accommodations situated along the street; and
3. The projected traffic volume of the street is (i) not less than 4,000 ~~vph~~ ADT or (ii) if the structure otherwise serves as part of the principal pedestrian access to a school or a mass transit facility including stops and stations and a peak hour traffic volume of 450 ~~vph~~ VPH or greater is projected.

In all other instances, the grade separation structure shall be deemed to be a locally controlled grade separation structure within the right-of-way of the street, in which case the street will only be accepted as part of the secondary system of state highways maintained by the department after the local governing body and the department have executed an agreement acceptable to the department that (i) acknowledges the department has no responsibility or liability due to the presence of the structure and (ii) assures the burden and costs of inspection, maintenance, and future improvements to the structure are provided from sources other than those administered by the department.

In all cases, whether the structure is accepted as an integral part of the roadway for maintenance by the department or it remains a locally controlled structure, the lighting, safety, and security of those using such facilities shall remain a responsibility of local government.

K. Dams. The department will only consider accepting streets for maintenance that traverse dams when all of the following provisions are satisfied. For the purpose of this section, a roadway will be considered to traverse a dam if any part of the fill for the roadway and the fill for the dam overlap or if the area between the two embankments is filled in so that

the downstream face of the dam is obscured or if a closed drainage facility from a dam extends under a roadway fill.

1. Agreements with the governing body. Except as exempt under subdivision 6 of this subsection, the governing body acknowledges by formal agreement the department's liability is limited to the maintenance of the roadway and that the department has no responsibility or liability due to the presence of the dam, the maintenance of which shall remain the responsibility of an owner, other than the department, as established by § 33.1-176 of the Code of Virginia.

2. Design review. An engineer licensed to practice in the Commonwealth of Virginia shall certify that the hydraulic and structural design of any dam, as described below, is in accordance with current national and state engineering practice and that all pertinent provisions of the Subdivision Street Design Guide (~~see 24VAC30-92-150~~) (Appendix B (1) of the Road Design Manual, 2011 (VDOT)) have been considered. Prior to approval of the roadway construction plans, the hydraulic and structural design of a proposed dam shall be reviewed by the department and meet the department's satisfaction if:
  - a. A roadway is considered to traverse a dam; or
  - b. A roadway is located below but sufficiently close to the dam that a catastrophic breach could endanger the roadway or the safety of those using the roadway.

3. Right-of-way requirements. The right-of-way of roads considered to occupy dams shall be recorded either as an easement for public road purposes or as a dedication specifically to the governing body. Right-of-way dedicated in the name of the Commonwealth or any of its agencies is not acceptable if it includes a dam, and roads through such right-of-way will not be accepted as a part of the secondary system of state highways maintained by the department.

4. Supplemental, alternative access. To be considered for VDOT maintenance, roadways that traverse a dam must be supplemented by an appropriate alternative roadway facility for public ingress or egress having suitable provisions that ensure perpetual maintenance.

5. Permits. All applicable federal and state permits associated with dams shall be secured and filed with the locality prior to VDOT's acceptance of any street that traverses a dam.

6. Dams exempt from agreements. The acceptance of roadways that traverse dams shall be exempt from the requirements for an agreement with the governing body, as required by subdivision 1 of this subsection, if all of the following is satisfied:
  - a. The dam is used to create a stormwater detention or retention facility;

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b. The maximum depth of the water retained by the impoundment at its 100-year storm flood elevation is not greater than four feet; and

c. The surface area of the impoundment at full flood is not greater than two acres and is beyond the right-of-way dedicated to public use.

## L. Roadway drainage.

1. Policy and procedures. All drainage facilities shall be designed in accordance with the department's Drainage Manual (~~see 24VAC30-92-150~~), 2002 and supplemental directives or the Subdivision Street Design Guide (~~see 24VAC30-92-150~~) (Appendix B (1) of the Road Design Manual, 2011 (VDOT)) as may be appropriate. All drainage computations supporting a proposed drainage design shall be submitted to the department for review as part of the documents necessary for the approval of a construction plan.

2. Stormwater management. Whereas the department considers matters regarding stormwater management associated with the construction of streets to be under the authority of the local governing body, decisions regarding stormwater management in the construction of streets are deferred to the locality. However, stormwater management, including the construction of detention or retention facilities, or both, is recognized as an available design alternative or BMP for water quantity, quality, or both. Where the developer is required by regulations promulgated by an agency or governmental subdivision other than the department or the developer chooses to use stormwater management facilities in the design of a subdivision or other development, the governing body shall, by formal agreement, and as a prerequisite for the transfer of jurisdiction over the street to the department, acknowledge that the department is not responsible for the operation, maintenance, retrofitting, or liability of the stormwater management facility or facilities associated with the subdivision or the development. Any retrofits required to comply with a TMDL WLA will be the responsibility of the locality. However, in the event the governing body has executed a comprehensive, localitywide agreement with the department addressing these matters, a specific agreement addressing stormwater management controls in the subdivision or development will not be required as a condition for street acceptance.

Stormwater management controls for VDOT projects are to be designed in accordance with the approved VDOT Erosion and Sediment Control and Stormwater Management Program Standards and Specifications, 2010, as annually approved by the Department of Conservation and Recreation (~~see 24VAC30-92-150~~), the Virginia Erosion and Sediment Control Regulations, (4VAC50-30), and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60), and, if

applicable, VDOT's MS4 Program Plan, 2008. While these controls may be necessary whenever a street maintained by the department is widened or relocated, the department does not require them in the development of new streets because such activity is regulated by the local governments. However, developers and counties may find these controls useful in managing land development activity.

Generally devices and treatments intended to mitigate the impact of stormwater shall be placed off of the right-of-way and shall be designed to prevent the backup of water against the roadbed. However, such devices and treatments may be placed within the right-of-way if the department and the local governing body have executed an agreement that (i) acknowledges the department has no responsibility or liability due to the presence of the devices or treatments, or both; (ii) assures the burden and costs of inspection, maintenance, VSMP permit requirements, TMDL WLA requirements, retrofitting or other future improvements to the devices and treatments, or other costs related to the placement of such devices or treatments within the right-of-way are provided from sources other than those administered by the department; (iii) a professional engineer licensed by the Commonwealth or the manufacturer as required by the department, certifies the construction of the facility to plans reviewed by the department; and (iv) ~~a concept~~ design requirements of the facility ~~is~~ are included in the department's Drainage Manual, 2002, the Department of Conservation and Recreation's Stormwater Management Handbook, First Edition, 1999, or supplemental directives (~~see 24VAC30-92-150~~).

Where development activity results in increased runoff to the extent that adjustment of an outfall facility is required, such adjustment shall be at the developer's expense and shall be contained within an appropriate easement.

The department is required to implement the Municipal Separate Storm Sewer System (MS4) permit for facilities located on its right-of-way. To comply with these requirements, the local governing body shall provide to the district administrator's designee all aspects of a proposed development's storm sewer system and associated stormwater management system plan that are pertinent to the locality's or the ~~agency's~~ department's MS4 permit ~~to the district administrator's designee.~~ Additionally, the local governing body shall provide to the district administrator's designee an inventory of all outfalls to waters of the United States, physical interconnections with other stormwater systems, stormwater management devices, or both related to the project that are located within VDOT right-of-way as a condition of street acceptance in accordance with the VDOT MS4 Stormwater Outfall Inventory Manual, 2011. VDOT shall not accept a street for maintenance as part of the secondary system of state highways that are not in

compliance with conditions of the pertinent MS4 permit and VDOT's MS4 Program Plan, 2008, as such conditions existed at the time of the relevant street construction plan's approval. VDOT shall not accept a street for maintenance if there is an illicit discharge to the system, as defined by 4VAC50-60-10 until the illicit discharge is eliminated.

### 3. Drainage easements.

- a. An acceptable easement shall be provided from all drainage outfalls to a natural watercourse, as opposed to a swale.
- b. The department normally accepts and maintains only that portion of a drainage system that falls within the limits of the dedicated right-of-way for a street. The department's responsibility to enter drainage easements outside of the dedicated right-of-way shall be limited to undertaking corrective measures to alleviate problems that may adversely affect the safe operation or integrity of the roadway.
- c. In the event drainage to a natural watercourse is not accomplished or is interrupted, an acceptable agreement from the governing body may be considered as an alternative to providing an easement to a natural watercourse, provided the agreement acknowledges that the department is neither responsible nor liable for drainage from the roadway.

### M. Other design considerations.

1. Guardrail. Guardrail shall be used when required by the district administrator's designee, consistent with the Road Design Manual (~~see 24VAC30-92-150~~), 2011. For placement considerations, see the Subdivision Street Design Guide (~~see 24VAC30-92-150~~) (Appendix B (1) of the Road Design Manual, 2011 (VDOT)).
2. Landscaping and erosion control. All disturbed areas within the dedicated right-of-way and easements of any street shall be restored with vegetation compatible with the surrounding area. Where there is visual evidence of erosion or siltation, acceptance of the street as part of the secondary system of state highways maintained by the department will be postponed until appropriate protective measures, in accordance with VDOT's construction practices, are taken. Except as otherwise approved by the district administrator's designee, planting of trees or shrubs on the right-of-way shall be in accordance with the ~~Subdivision Street Design Guide and the Road Design Manual (see 24VAC30-92-150), 2011 (VDOT) and its Appendix B (1) (the Subdivision Street Design Guide).~~
3. Lighting. Roadway, security, or pedestrian lighting, when required by the governing body or desired by the developer, shall be installed in accordance with the ~~Subdivision Street Design Guide and the Road Design Manual (see 24VAC30-92-150), 2011 (VDOT) and its~~

Appendix B (1) (the Subdivision Street Design Guide). However, VDOT shall not be responsible for the maintenance or replacement of lighting fixtures or the provision of power for lighting.

### 4. Railroad crossings.

- a. Short-arm gates with flashing signals, flashing signals alone, or other protective devices as deemed appropriate by the department shall be provided at any at-grade crossing of an active railroad by a street.
- b. Crossings of railroad right-of-way are subject to the requirements of the railroad. Streets to be accepted by the department for maintenance as part of the secondary system of state highways that cross railroad right-of-way will only be considered if the protective measures outlined under this section have been fully installed and an agreement between the railroad, the developer, and the local governing body has been executed. Prior to execution, such agreements shall be presented to the department for consideration in consultation with the Department of Rail and Public Transportation.

### 5. Utilities. Local governments, the development community, and the utility community are encouraged to coordinate and consolidate their interests as part of the initial development plan.

- a. Underground utilities. The department allows the placement of underground utilities within the dedicated right-of-way of streets, but normally restricts placement to areas outside of the travel lanes. However, if the governing body has established adequate requirements approved by the department for the design, location, and construction of underground utilities within the right-of-way of streets, including provisions that ensure that adequate testing and inspection is performed to minimize future settlement, those requirements shall become the department's requirements and govern provided those requirements exceed the department's requirements.

Manholes shall not be placed in sidewalk, multiuse trail, or shared use path facilities, within five feet of curb ramps or within driveway entrances.

When location of the utilities outside of the pavement area is not practical such as in high density developments incorporating the principles of new urbanism as described in § 15.2-2223.1 of the Code of Virginia, such installations:

- (1) Are acceptable within the shoulders along the street or within the parking area.
- (2) May be acceptable beneath the travel lanes of the street or alley when provisions are made to ensure adequate inspection and compaction tests and:

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(a) Longitudinal installations and manholes are located outside of the normal travel lanes; or

(b) Longitudinal installations and manholes are placed in the center of a travel lane out of the wheel path.

~~However, manholes shall not be placed in sidewalk, multiuse trail, or shared use path facilities within five feet of curb ramps or within driveway entrances.~~

b. Open-cutting of hard-surfaced roadways. The department usually prohibits the open-cutting of hard-surfaced roads except in extenuating circumstances. Therefore, all underground utilities within the right-of-way, as determined necessary by good engineering practice to serve the complete development of adjacent properties, shall be installed during the street's initial construction and prior to the application of its final pavement surface course. This shall include extensions of all necessary cross-street connections or service lines to an appropriate location beyond the pavement and preferably the right-of-way line.

In the event it is necessary to open the street pavement to work on utilities after the surface has been placed, additional compaction tests and paving as necessary to restore the integrity and appearance of the roadway may be required at the discretion of the district administrator's designee.

c. Cross-street conduits. To facilitate the placement of future underground utilities, cross-street conduits are encouraged, with placement of such conduits occurring on each street at intersections.

d. Aboveground utilities. All aboveground utilities shall be installed behind the sidewalk or as close as possible to the limits of the street's right-of-way but shall not encroach on the sidewalk, the shared use path, or any clear zone.

To assure the unencumbered dedication of the right-of-way for street additions, easements or other interests within the platted right-of-way shall be quitclaimed of any prior rights therein. In exchange, a permit may be issued by the department for a utility to occupy the area involved. This permit will be processed by the district administrator's designee upon acceptance of the street into the secondary system of state highways maintained by the department. No inspection fee is required for permits so issued. However, the approval of the permit shall be contingent upon the utility's compliance with applicable provisions of the Land Use Permit Regulations (~~see 24VAC30-92-150~~) (24VAC30-151).

## **24VAC30-92-130. Right-of-way width, spite strips, and encroachments.**

A. Right-of-way width. A clear and unencumbered right-of-way shall be dedicated to public use for any street proposed for addition to the secondary system of state highways

maintained by the department. However, in certain rare extenuating circumstances involving a party beyond the influence of the developer, an easement for transportation purposes may be approved by the district administrator's designee in lieu of dedicated right-of-way. In all other cases, any easement that might interfere with the public's unencumbered use of the street shall be quitclaimed in exchange for a land use permit as outlined in 24VAC30-92-120 M 5.

The width of right-of-way shall be as indicated in the Subdivision Street Design Guide (Appendix B (1) of the Road Design Manual, 2011 (VDOT)) and the Road Design Manual (~~see 24VAC30-92-150~~, 2011 (VDOT)) and shall be sufficient to include all essential elements of the roadway intended to be maintained by the department, including pedestrian, multiuse trail, bicycle, or shared use path facilities and clear zone. However, supplemental easements may be used to accommodate sight distance requirements and slopes for cuts and fills. The right-of-way requirements are defined in the Subdivision Street Design Guide (Appendix B (1) of the Road Design Manual, 2011 (VDOT)) and the Road Design Manual (~~see 24VAC30-92-150~~, 2011 (VDOT)).

When an existing state maintained road is widened, the additional right-of-way should be dedicated as follows:

1. If the existing right-of-way consists of a prescriptive easement, to the degree that the developer controls the land, the right-of-way shall be dedicated to public use from the centerline of the alignment.
2. If the existing right-of-way is dedicated to public use, the additional right-of-way shall be dedicated to public use.
3. If the existing right-of-way is titled in the name of the department or the Commonwealth, the additional right-of-way shall be deeded to the department or to the Commonwealth, consistent with the title of the existing right-of-way.

B. "Spite strips." Plans that include a reserved or "spite" strip that prohibits otherwise lawful vehicular access to a street from the adjacent properties, whether within or outside the subdivision or development, will not be approved.

C. Encroachments within the right-of-way. Recording of a plat causes the fee title interest of areas dedicated to public use to transfer to the local governing body. Therefore, objects installed within the right-of-way for purposes other than transportation may be considered an unlawful encroachment in the right-of-way and prevent the right-of-way from being considered clear and unencumbered.

Posts, walls, signs, or similar ornamental devices that do not interfere with roadway capacity, encroach into a clear zone, or interfere with prescribed sight distance requirements, or are not in conflict with Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 of the Code of Virginia may be permitted within the

right-of-way. However, specific authorization by the district administrator's designee or as authorized under the Land Use Permit Regulations (~~see 24VAC30-92-150~~) (24VAC30-151) is a requisite for these devices or any other encroachment located within the right-of-way. For the purposes of this subsection, mailboxes installed on breakaway posts may occupy the right-of-way without permit. Otherwise, encroachments that do not fall within the clear zone may be allowed within the right-of-way pursuant to a land use permit issued by the district administrator's designee.

**24VAC30-92-140. Surety and fees.**

A. Policy. Except as otherwise provided herein, the developer shall provide surety to guarantee the satisfactory performance of the street, an inspection fee to cover the department's cost of inspecting the new street, and an administrative cost recovery fee to recover the department's costs associated with the review of subdivision or other development plans and the administrative processing of the acceptance of new streets as determined in this section. All surety and fees collected under this section shall be based on the date of the local governing body's request and the aggregate mileage of new streets in that request, rounded up to the next tenth of a mile. In the event of extenuating circumstances beyond the developer's control, the commissioner or his designee may waive all or a portion of any of the surety and fees.

B. Surety. The department reserves the right to inspect, or have inspected, the street proposed for acceptance into the secondary system of state highways at any stage of construction and prior to street acceptance. The developer, contractor, and third-party inspector, if applicable, shall cooperate with the assigned VDOT personnel to provide the access and information necessary to verify that construction of the street is in accordance with the street's approved design and appropriate standards and specifications. A determination by the district administrator's designee that the required cooperation has not been extended shall be grounds for VDOT to refuse to accept the street for maintenance as part of the secondary system of state highways. A determination of noncooperation may be appealed as specified by this chapter (see 24VAC30-92-110).

1. Type of surety and expiration. The developer shall provide surety to guarantee the satisfactory performance of the street. In the event the developer fails to provide surety or any of the fees described in this section within the 30-day period following the local governing body's request for the department to accept the maintenance of a street, the department's or other entity's previous final inspection of the street shall be considered void and a new inspection shall be required. An acceptable surety may be in the form of a performance bond, cash deposit, certified check, irrevocable letter of credit, third-party escrow account, or other form mutually satisfactory to the department and the

developer. Under no circumstances shall the department or any agency of the Commonwealth be named the escrow agent nor shall funds deposited with the department as surety be subject to the payment of interest.

a. Amount of surety. The surety shall be \$3,000 for each tenth of a lane mile, or portion thereof, to be accepted by the department for maintenance as part of the secondary system of state highways. The Commonwealth Transportation Board may adjust the surety on an annual basis based on increases or decreases in the producer price index for highway and street construction materials up to an amount not to exceed \$5,000 for each tenth of a lane mile or portion thereof.

~~The surety shall be waived for streets petitioned for acceptance into the secondary system of state highways through the Rural Addition Program pursuant to §§ 33.1-72.1 and 33.1-72.2 of the Code of Virginia, and streets constructed or approved pursuant to §§ 33.1-221 and 33.1-223 of the Code of Virginia.~~

b. Length of surety. The surety shall guarantee performance of the street for one year from the date of its acceptance into the secondary system of state highways.

2. Alternatives to surety.

a. In jurisdictions where the staff of the governing body administers a comprehensive street construction inspection program that has been approved by the department, the surety shall be waived upon certification by the governing body that the proposed addition has been constructed in accordance with approved plans and specifications.

b. If requested by the developer and subject to availability of departmental personnel or consultants, VDOT may perform the construction inspection equivalent to that required for third-party inspection of any street or streets proposed to be added to the secondary system of state highways. In such cases, the developer shall bear all costs incurred by the department, the surety shall be waived, and no street inspection fee pursuant to subsection D of this section shall be charged.

c. A third-party inspection process shall be acceptable to the department if:

(1) The developer or construction contractor arranges for a firm not otherwise related to the developer or contractor to provide inspection services for the construction of the streets in the development;

(2) Inspection and testing methodology and frequency are accomplished in accordance with VDOT Materials Division's Manual of Instructions, 2011 and the Virginia Department of Transportation Road and Bridge Specifications (~~24VAC30-92-150~~), 2007, revised 2011; and

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(3) A report is submitted to the department summarizing the inspections steps taken, certifying the results of the inspection and testing as accurate, and confirming that the street or streets were built to the approved specifications and pavement design, signed and stamped by a professional engineer licensed to practice as such in the Commonwealth.

## C. Administrative cost recovery fee.

1. Application of the administrative cost recovery fee. To recover a portion of the department's direct costs associated with the review of plans or plans of development, and the administrative processing of the acceptance of new streets, an administrative cost recovery fee shall be required from the developer at the time the streets are accepted by the department. The amount of this cost recovery fee shall be computed at a base rate of \$500 per addition, without regard to street length, plus \$250 per tenth of a centerline mile, or portion thereof.

2. Alternatives to the administrative cost recovery fee. As an alternative to the administrative cost recovery fee, the department may use one of the following approaches to recover its direct costs:

a. For any development, at the developer's request, the department may establish an account for the purpose of tracking these costs and billing the developer not more often than every 30 days;

b. For large, complex, multiuse developments, the department, at its option, may establish an account for the purpose of tracking these costs and billing the developer not more often than every 30 days. However, the cost recovery fee assessed under this provision shall not be greater than two times the prevailing administrative cost recovery fee structure; or

c. If requested to provide plan review for streets that are not intended for maintenance by the department, the department may establish an account for the purpose of tracking these costs and billing the developer not more often than every 30 days.

D. Street inspection fee. To recover a portion of the department's direct costs associated with the inspection of subdivision streets, an inspection fee shall be required from the developer at the time the streets are accepted by the department.

The inspection fee shall be computed at a base rate of \$250 per addition, without regard to street length, plus \$125 per tenth of a centerline mile, or portion thereof.

The street inspection fee shall be reduced by 75% if either a third-party inspection process pursuant to subdivision B 2 c of this section or a local street inspection certification process pursuant to subdivision B 2 a of this section was used.

If requested to provide inspection services for subdivision streets that are not intended for maintenance by the department, the department may establish an account for the purpose of tracking these costs and billing the developer not more often than every 30 days.

## **24VAC30-92-150. Documents incorporated by reference. (Repealed.)**

~~Information pertaining to the availability and cost of any of these publications should be directed to the address indicated below the specific document. Requests for documents available from the department may be obtained from the department at 1401 E. Broad St., Richmond, Virginia 23219; however, department documents may be available over the Internet at [www.virginia-dot.org](http://www.virginia-dot.org).~~

~~The department shall post all nonregulatory documents incorporated into this regulation by reference and under its control on its website. Official regulatory text is maintained by the Virginia Registrar of Regulations in the Virginia Administrative Code. After the effective date of any changes to such incorporated documents under the control of the department, the department shall post the changes for a period of at least 60 days on its website. Any changes to regulations appearing in this list shall be made in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia), or both.~~

~~A. Access Management Regulations: Principal Arterials, 24VAC30-72.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~B. Access Management Regulations: Minor Arterials, Collectors, and Local Streets, 24VAC30-73.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~C. Drainage Manual, 2002.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~D. Guidance Document for the Commonwealth Transportation Board's Secondary Street Acceptance Requirements, 2009.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~E. Highway Capacity Manual, 2000.~~

~~Transportation Research Board  
500 Fifth Street, NW  
Washington, DC 20001~~

~~F. Land Use Permit Regulations, 24VAC30-151.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~G. Materials Division Manual of Instructions, 2006.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~H. Pavement Design Guide for Subdivision and Secondary Roads in Virginia, 2000.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~I. Policy for Integrating Bicycle and Pedestrian Accommodations, 2004. (Note: This policy reference is included in the regulation only for informational purposes and is not considered a regulatory provision. Applicable elements of this policy are stated in the regulation itself.)~~

~~Commonwealth Transportation Board  
1401 E. Broad St.  
Richmond, VA 23219~~

~~J. Road and Bridge Specifications, 2007, revised 2008.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~K. Road and Bridge Standards, 2008.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~L. Road Design Manual, 2008.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~M. Traffic Impact Analysis Regulation, 24VAC30-155.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~N. VDOT Erosion and Sediment Control and Stormwater Management Program Standards and Specifications, 2004.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~O. Virginia Erosion and Sediment Control Regulations, 4VAC50-30.~~

~~Virginia Department of Conservation and Recreation  
Division of Soil and Water Conservation  
203 Governor Street, Suite 302  
Richmond, VA 23219-2094~~

~~P. Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).~~

~~Virginia Department of Conservation and Recreation  
Division of Soil and Water Conservation  
203 Governor Street, Suite 302  
Richmond, VA 23219-2094~~

DOCUMENTS INCORPORATED BY REFERENCE (24VAC30-92)

Information pertaining to the availability and cost of any of these publications should be directed to the address indicated for the specific document. Requests for documents of the Virginia Department of Transportation (VDOT) may be obtained from the department at 1401 E. Broad St., Richmond, Virginia 23219; however, department documents may be available over the Internet at [www.virginiadot.org](http://www.virginiadot.org).

VDOT Drainage Manual, 2002.

VDOT Guidance Document for the Commonwealth Transportation Board's Secondary Street Acceptance Requirements, 2011.

Highway Capacity Manual, 2010, Transportation Research Board, 500 Fifth Street, NW, Washington, DC 20001.

VDOT Materials Division Manual of Instructions, 2011.

VDOT Pavement Design Guide for Subdivision and Secondary Roads in Virginia, 2009.

VDOT Policy for Integrating Bicycle and Pedestrian Accommodations, 2004.

VDOT Road and Bridge Specifications, 2007, revised 2011.

VDOT Road and Bridge Standards, 2008, revised 2011.

VDOT Road Design Manual, 2011.

VDOT Erosion and Sediment Control and Stormwater Management Program Standards and Specifications, 2010.

VDOT MS4 Program Plan, 2008, Location and Design Division.

VDOT MS4 Stormwater Outfall Inventory Manual, 2011, Maintenance Division.

Virginia Stormwater Management Handbook, First Edition, 1999, Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation, Stormwater Management, 203 Governor Street, Suite 206, Richmond, VA 23219-2094.

**24VAC30-155-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Connectivity index" means the number of street segments divided by the number of intersections. Only street segments

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~~and intersections within a network addition as well as any street segment or intersection outside of the network addition that is connected to street segments within the network addition or that has been connected or will be connected pursuant to 24VAC30-92-60 C 7 to the network addition through the extension of an existing stub out shall be used to calculate a network addition's connectivity index.~~

"Floor area ratio" means the ratio of the total floor area of a building or buildings on a parcel to the size of the parcel where the building or buildings are located.

~~"Intersection" means, only for the purposes of calculating connectivity index, a juncture of three or more street segments or the terminus of a street segment such as a cul-de-sac or other dead end. The terminus of a stub out shall not constitute an intersection for the purposes of this chapter. The juncture of a street with only a stub out, and the juncture of a street with only a connection to the end of an existing stub out, shall not constitute an intersection for the purposes of this chapter, unless such stub out is the only facility providing service to one or more lots within the development.~~

"Local traffic impact statement" means a traffic impact statement accepted or prepared by a locality pursuant to its land development approval process and whose requirements regarding content are set out in the locality's ordinances or published policies if such ordinances or policies have been reviewed and certified by VDOT as requiring acceptable standards of preparation and providing sufficient information to determine the current and future impacts of development proposals.

"Locality" means any local government, pursuant to § 15.2-2223 of the Code of Virginia, that must prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction.

"Network addition" means a group of interconnected street segments and intersections shown in a plan of development that is connected to the state highway system and meets the requirements of the Secondary Street Acceptance Requirements (24VAC30-92).

"Pedestrian facility coverage" means the ratio of: (length of pedestrian facilities, such as sidewalks, foot paths, and multiuse trails, along both sides of a roadway) divided by (length of roadway multiplied by two).

"Receipt" means the date on which a proposal or request for a meeting is first in the possession of VDOT or a locality or an agent thereof, as applicable.

"Redevelopment site" means any existing use that generates traffic and is intended to be developed as a different or ~~more~~ dense denser land use.

"Service level" means a measure of the quality, level or comfort of a service calculated using methodologies approved by VDOT.

"Small area plan" means a plan of development for multiple contiguous properties that guides land use, zoning, transportation, urban design, open space, and capital improvements at a high level of detail within an urban development area or for a transit-oriented development that is at least 1/2 square mile in size unless otherwise approved by VDOT due to proximity to existing moderate to high density developments. A small area plan shall include the following: (i) densities of at least four residential units per acre and at least a floor area ratio of 0.4 or some proportional combination thereof; (ii) mixed-use neighborhoods, including mixed housing types and integration of residential, office, and retail development; (iii) reduction of front and side yard building setbacks; and (iv) pedestrian-friendly road design and connectivity of road and pedestrian networks.

"State-controlled highway" means a highway in Virginia that is part of the interstate, primary, or secondary systems of state highways and that is maintained by the state under the direction and supervision of the Commissioner of Highways. Highways for which localities receive maintenance payments pursuant to §§ 33.1-23.5:1 and 33.1-41.1 of the Code of Virginia and highways maintained by VDOT in accordance with §§ 33.1-31, 33.1-32, 33.1-33, and 33.1-68 of the Code of Virginia are not considered state-controlled highways for the purposes of determining whether a specific land development proposal package must be submitted to meet the requirements of this regulation.

~~"Street segment" means (i) a section of roadway or alley that is between two intersections or (ii) a stub out or connection to the end of an existing stub out.~~

~~"Stub out" means a transportation facility (i) whose right-of-way terminates at a parcel abutting the development, (ii) that consists of a short segment that is intended to serve current and future development by providing continuity and connectivity of the public street network, (iii) that based on the spacing between the stub out and other streets or stub outs, and the current terrain there is a reasonable expectation that connection with a future street is possible, and (iv) that is constructed to the property line.~~

"Traffic impact statement" means the document showing how a proposed development will relate to existing and future transportation facilities prepared in accordance with best professional practice and standards that assesses the impact of a proposed development on the transportation system and recommends improvements to lessen or negate those impacts.

"Transit-oriented development" means an area of commercial and residential development at moderate to high densities within 1/2 mile of a station for heavy rail, light rail, commuter rail, or bus rapid transit transportation and includes the following: (i) densities of at least four residential units per acre and at least a floor area ratio of 0.4 or some proportional combination thereof; (ii) mixed-use neighborhoods, including mixed housing types and integration of residential, office, and

retail development; (iii) reduction of front and side yard building setbacks; and (iv) pedestrian-friendly road design and connectivity of road and pedestrian networks.

"Transportation demand management" means a combination of measures that reduce vehicle trip generation and improve transportation system efficiency by altering demand, including but not limited to the following: expanded transit service, employer-provided transit benefits, bicycle and pedestrian investments, ridesharing, staggered work hours, telecommuting, and parking management including parking pricing.

"Urban development area" means an area designated on a local comprehensive plan pursuant to § 15.2-2223.1 of the Code of Virginia that includes the following: (i) densities of at least four residential units per acre and at least a floor area ratio of 0.4 or some proportional combination thereof; (ii) mixed-use neighborhoods, including mixed housing types and integration of residential, office, and retail development; (iii) reduction of front and side yard building setbacks; and (iv) pedestrian-friendly road design and connectivity of road and pedestrian networks.

"VDOT" means the Virginia Department of Transportation, the Commissioner of Highways, or a designee.

"VDOT traffic impact statement" means a traffic impact statement prepared pursuant to 24VAC30-155-60.

**24VAC30-155-20. Authority.**

Section 15.2-2222.1 of the Code of Virginia requires localities to submit comprehensive plans and amendments to comprehensive plans that will substantially affect transportation on state-controlled highways to VDOT in order for the agency to review and provide comments on the impact of the item submitted. This section also requires localities to submit traffic impact statements along with proposed rezonings, ~~site plans, subdivision plats, and subdivision development plans~~ that will substantially affect transportation on state-controlled highways to VDOT for comment by the agency. Chapter 527 of the 2006 Acts of Assembly directs VDOT to promulgate regulations for the implementation of these requirements.

**24VAC30-155-30. Comprehensive plan and comprehensive plan amendment.**

A. Plan and amendment submittal. Prior to adoption of any comprehensive plan pursuant to § 15.2-2223 of the Code of Virginia, any part of a comprehensive plan pursuant to § 15.2-2228 of the Code of Virginia, or any amendment to any comprehensive plan as described in § 15.2-2229 of the Code of Virginia, including small area plans, if required by this section of this chapter, the locality shall submit such plan or amendment to VDOT for review and comment, such submission should take place at least 100 days prior to anticipated final action by the locality. The Virginia

Department of Transportation shall, upon request, provide localities with technical assistance in preparing the transportation plan of the comprehensive plan. The comprehensive plan or comprehensive plan amendment package shall be submitted to VDOT, if it is reasonably anticipated to ~~result in~~ substantially affect transportation on state controlled highways. Substantially affect, for the purposes of comprehensive plans, includes substantial changes or impacts to the existing transportation network. For the purposes of this section, a substantial impact shall be defined as a change that would allow the generation of 5,000 additional vehicle trips per day on state-controlled highways compared to the existing comprehensive plan, assuming the highest density of permissible use in accordance with the Institute of Transportation Engineers Trip Generation Handbook ~~(see 24VAC30-155-100), 8th Edition, 2008~~ or, subject to the approval of VDOT, the regional model as adopted by the local Metropolitan Planning Organization, and substantial ~~changes~~ change shall include those changes that materially alter future transportation infrastructure, travel patterns, or the ability to improve future transportation facilities on state-controlled highways.

B. Required elements. The submission by the locality to VDOT shall contain sufficient information so that VDOT may evaluate the system of new and expanded transportation facilities, outlined in the transportation plan, that are needed to support the current and planned development of the territory covered by the plan. In order to conduct this evaluation, the package submitted to VDOT shall contain the following items:

1. For a comprehensive plan or a transportation plan, the locality shall provide one paper and one electronic copy of the following:
  - a. A cover sheet, containing:
    - (1) Contact information for the locality, and
    - (2) Summary of major changes made to the comprehensive plan or transportation plan;
  - b. The proposed comprehensive plan or transportation plan, and the following elements:
    - (1) Inventory – an inventory (written or graphic) of the existing transportation network, which shall include at a minimum all roadways within the Federal Aid system.
    - (2) Assumptions – planning assumptions shall be detailed, since these assumptions directly influence the demand placed on the transportation system. Population growth, employment growth, location of critical infrastructure such as water and sewer facilities, among others, are examples of planning assumptions that may be addressed.
    - (3) Needs assessment – written or graphic evaluation of the transportation system's current and projected

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performance and conditions. The needs assessment identifies specific deficiencies.

(4) Recommendations – proposed improvements or additions to the transportation infrastructure. Recommendations should be specific so that the need, location and nature of the proposed improvements are clear and understandable. Localities are encouraged to include pedestrian, bicycle, transit, rail and other multimodal recommendations as they deem appropriate. The transportation plan shall include a map showing road and transportation improvements, taking into account the current and future needs of residents in the locality while considering the current and future needs of the planning district within which the locality is situated. Recommended improvements shall include cost estimates as available from VDOT.

2. For an amendment to a comprehensive plan or transportation plan, the locality shall provide one paper and one electronic copy of the following:

a. A cover sheet, containing:

- (1) Contact information for the locality;
  - (2) Summary of proposed amendment or amendments to the comprehensive plan or transportation plan; and
  - (3) Overview of reasoning and purpose for amendments.
- b. Application forms and documentation presented to or prepared by the local jurisdiction,
- c. Associated maps or narratives that depict and detail the amendment under consideration,
- d. Any changes to the planning assumptions associated with the amendment,
- e. Local assessment of the potential impacts the amendment may have on the transportation system, and
- f. Those elements identified in subdivision 1 b of this subsection that VDOT determines are needed in order to review and comment on impacts to state-controlled highways.

C. Small area plans for urban development areas and transit oriented developments. A locality that develops a small area plan for all or a portion of an urban development area or transit-oriented development and corresponding amendments to their comprehensive plan, as described in § 15.2-2229 of the Code of Virginia, that will have a substantial impact effect on the state transportation network pursuant to this section of the regulation, may in lieu of submitting a comprehensive plan amendment package as required under subsection B of this section submit a small area plan package.

The small area plan package submitted by the locality to VDOT shall contain sufficient information and data so that VDOT may determine the location of the area impacted by

the small area plan, its size, its impact on state-controlled highways, and the methodology and assumptions used in the analysis of the impact. Submittal of an incomplete small area plan package shall be considered deficient in meeting the submission requirements of § 15.2-2222.1 of the Code of Virginia and shall be returned to the locality and the applicant, if applicable, identifying the deficiencies noted. A small area plan package submitted to VDOT shall contain the following items:

1. A cover sheet containing:

- a. Contact information for locality;
- b. Small area plan location, highways and transit facilities adjacent to site, and parcel number or numbers;
- c. Proposal summary with development names, size, and proposed zoning;

2. A VDOT traffic impact statement prepared in accordance with 24VAC30-155-60; and

3. A plan of development for the area encompassed by the small area plan.

D. Review process. VDOT may pursuant to § 15.2-2222.1 of the Code of Virginia request a meeting with the locality to discuss the plan or amendment. The request must be made within 30 days of receipt of the proposal. VDOT must provide written comments to the locality within 90 days of the receipt of the plan or plan amendment or by such later deadline as may be agreed to by the parties. VDOT will conduct its review and provide official comments to the locality for inclusion in the official public record of the locality. VDOT shall also make such comments available to the public. Nothing in this section shall prohibit a locality from acting on a comprehensive plan or plan amendment if VDOT's comments on the submission have not been received within the timelines in this section.

E. Concurrent consideration. For the purposes of this regulation, when a related comprehensive plan or comprehensive plan amendment and a rezoning proposal that cover the same geographical area are being considered concurrently by a locality, only a rezoning package as required under 24VAC30-155-40 shall be prepared and provided to VDOT for review.

## **24VAC30-155-40. Rezoning.**

A. Proposal submittal. The locality shall submit a package to VDOT within 10 business days of receipt of a complete application for a rezoning proposal if the proposal substantially affects transportation on state-controlled highways. All trip generation calculations used for the purposes of determining if a proposal meets the criteria shall be based upon the rates or equations published in the Institute of Transportation Engineers Trip Generation (~~see 24VAC30-155-100~~), 8th Edition, 2008, and shall not be reduced through

internal capture rates. For redevelopment sites, trips currently generated by existing development that will be removed may be deducted from the total site trips that are generated by the proposed land use. However, no submission shall be required under this section if the rezoning proposal consists of no changes in allowable land use. Furthermore, no submission shall be required if the rezoning proposal results in lower maximum daily trip generation and no increase in maximum trip generation for AM Peak Hour of the adjacent street, PM Peak Hour of the adjacent street, and Weekend Peak Hour when compared to the hourly trip generation of land uses allowed by right under the current zoning, excepting governmental uses such as schools and libraries.

4. For the purposes of this section, a ~~residential~~ rezoning proposal shall substantially affect transportation on state-controlled highways if it meets or exceeds one or more of the following trip generation criteria:

a. 1. Within a jurisdiction in which VDOT has maintenance responsibility for the secondary highway system, if the proposal generates more than ~~400~~ 5,000 vehicle trips per ~~peak hour of the generator~~ day at the site's connection to a state-controlled highway. For a site that does not have an entrance onto a state-controlled highway, the site's connection is assumed to be wherever the road network that the site connects with attaches to a state-controlled highway. In cases where the site has multiple entrances to highways, volumes on all entrances shall be combined for the purposes of this determination;

b. 2. Within a jurisdiction in which VDOT does not have maintenance responsibility for the local highway system, if the proposal generates more than ~~400~~ 5,000 vehicle trips per ~~peak hour of the generator~~ day and whose nearest property line is within 3,000 feet, measured along public roads or streets, of a connection to a state-controlled highway; or

e. 3. The proposal for residential rezoning generates more than ~~200~~ 400 daily vehicle trips on a state-controlled highway and, once the site generated trips are distributed to the receiving highway, the proposal's vehicle trips on ~~a~~ the highway ~~exceeds~~ exceed the daily traffic volume such highway presently carries. For the purposes of determining whether a proposal must be submitted to VDOT, the traffic carried on the state-controlled highway shall be assumed to be the most recently published amount measured in the last traffic count conducted by VDOT or the locality on that highway. In cases where the site has access to multiple highways, each receiving highway shall be evaluated individually for the purposes of this determination.

~~2. For the purposes of this section, all other rezoning proposals shall substantially affect transportation on state-controlled highways if they meet or exceed one or more of the following trip generation criteria:~~

~~a. Within a jurisdiction in which VDOT has maintenance responsibility for the secondary highway system, if the proposal generates more than 250 vehicle trips per peak hour of the generator or 2,500 vehicle trips per day at the site's connection to a state-controlled highway. For a site that does not have an entrance onto a state-controlled highway, the site's connection is assumed to be wherever the road network that the site connects with attaches to a state-controlled highway. In cases where the site has multiple entrances to highways, volumes on all entrances shall be combined for the purposes of this determination; or~~

~~b. Within a jurisdiction in which VDOT does not have maintenance responsibility for the local highway system, if the proposal generates more than 250 vehicle trips per peak hour of the generator or 2,500 vehicle trips per day and whose nearest property line is within 3,000 feet, measured along public roads or streets, of a connection to a state-controlled highway.~~

B. Required proposal elements. The package submitted by the locality to VDOT shall contain sufficient information and data so that VDOT may determine the location of the rezoning, its size, its ~~impact~~ effect on state-controlled highways, and methodology and assumptions used in the analysis of the ~~impact~~ effect. Submittal of an incomplete package shall be considered deficient in meeting the submission requirements of § 15.2-2222.1 of the Code of Virginia and shall be returned to the locality and the applicant, if applicable, identifying the deficiencies noted. A package submitted to VDOT shall ~~contain~~ consist of one paper copy and one electronic copy and include the following items:

1. A cover sheet containing:

- a. Contact information for locality and developer (or owner) if applicable;
- b. Rezoning location, highways adjacent to site, and parcel number or numbers;
- c. Proposal summary with development name, size, and proposed zoning; and
- d. A statement regarding the proposal's compliance with the comprehensive plan.

2. A local traffic impact statement ~~prepared in accordance with 24VAC30-155-60 or, if the local requirements for traffic statements contained in ordinances or policies have not been certified by VDOT, a VDOT traffic impact statement.~~

3. A concept plan of the proposed development.

C. Rezoning proposals associated with small area plans.

1. A traffic impact statement prepared for a small area plan pursuant to 24VAC30-155-30 C, or initiated for a small

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area plan at the request of a locality prior to February 4, 2010, and that contains substantially the same elements as those of a VDOT traffic impact statement, shall serve as the traffic impact statement required pursuant to this section for any rezoning proposals developed in furtherance of the adopted small area plan and related comprehensive plan amendments provided the following:

a. That the small area plan package is accompanied by a cover letter that includes a statement that the assumptions made in the traffic impact statement prepared for the small area plan remain generally valid.

b. That the following are accurate:

(1) The rezoning proposal is in substantial conformance with the adopted small area plan. A deviation in density must be greater than 10% to be considered no longer in substantial conformance with the adopted small area plan.

(2) The character and volume of the trip generation by the proposed uses are similar to those proposed by the small area plan.

(3) All other assumptions made in the traffic impact statement prepared for the small area plan remain generally valid.

2. In instances where the assumptions made in the traffic impact statement prepared for the small area plan are no longer valid, the traffic impact statement may be updated. If the traffic impact statement is updated, it shall serve as the traffic impact statement required pursuant to this section for any rezoning proposals developed in furtherance of the adopted small area plan and related comprehensive plan amendments.

D. Review process. After formal submission of a rezoning proposal for review, VDOT may, pursuant to § 15.2-2222.1 of the Code of Virginia, request a meeting with the locality and rezoning applicant to discuss potential modifications to the proposal to address any concerns or deficiencies. The request must be made within 45 days of receipt by VDOT of the proposal. VDOT must provide written comments to the locality and the rezoning applicant within 45 days of VDOT's receipt of the proposal if no meeting is scheduled or has been requested or within 120 days of the receipt of the proposal otherwise. VDOT shall not reject or require resubmission if the package has been prepared in accordance with best professional practice and substantially documents the expected impacts of the proposal. If VDOT determines that the package has not been prepared in accordance with best professional practice or fails to substantially document the expected impacts of the proposal, or if the submission is substantially incomplete, VDOT may request of the applicant, in writing or at the above mentioned meeting, modifications to address concerns. If the concerns are not adequately addressed within 30 days of the transmission of such

concerns, VDOT may require resubmission. VDOT shall conduct its review and provide official comments to the locality for inclusion in the official public record. VDOT shall also make such comments available to the public. The department's comments on the proposed rezoning shall be based upon the comprehensive plan, regulations and guidelines of the department, engineering and design considerations, adopted regional or statewide plans, and short and long term traffic impacts on and off site. Nothing in this section shall prohibit a locality from acting on a rezoning proposal if VDOT's comments on the submission have not been received within the timelines in this section.

## **24VAC30-155-50. Subdivision plat, site plan, plan of development. (Repealed.)**

~~A. Proposal submittal. The locality shall submit a package to VDOT within 10 business days of receipt of a complete development proposal if the proposal substantially affects transportation on state controlled highways. All trip generation calculations used for the purposes of determining if a proposal meets these requirements shall be based upon the rates or equations published in the Institute of Transportation Engineers Trip Generation (see 24VAC30-155-100), and shall not be reduced through internal capture rates. For redevelopment sites, trips currently generated by existing development that will be removed may be deducted from the total site trips that are generated by the proposed land use.~~

~~1. For the purposes of this section, a residential development proposal shall substantially affect transportation on state controlled highways if it meets or exceeds one or more of the following trip generation criteria:~~

~~a. Within a jurisdiction in which VDOT has maintenance responsibility for the secondary highway system, if the proposal generates more than 100 vehicle trips per peak hour of the generator at the site's connection to a state-controlled highway. For a site that does not have an entrance onto a state controlled highway, the site's connection is assumed to be wherever the road network that the site connects with attaches to a state-controlled highway. In cases where the site has multiple entrances to highways, volumes on all entrances shall be combined for the purposes of this determination;~~

~~b. Within a jurisdiction in which VDOT does not have maintenance responsibility for the local highway system, if the proposal generates more than 100 vehicle trips per peak hour of the generator and has an entrance that is within 3,000 feet, measured along public roads or streets, of a connection to a state-controlled highway; or~~

~~c. The proposal generates more than 200 daily vehicle trips on a state controlled highway and, once the site-generated trips are distributed to the receiving highway;~~

the proposal's vehicle trips on such highway exceeds the daily traffic volume the highway presently carries. For the purposes of determining whether a proposal must be submitted to VDOT, the traffic carried on the state-controlled highway shall be assumed to be the most recently published amount measured in the last traffic count conducted by VDOT or the locality on that highway. In cases where the site has access to multiple highways, each receiving highway shall be evaluated individually for the purposes of this determination.

2. For the purposes of this section, all other development proposals shall substantially affect transportation on state-controlled highways if they meet or exceed one or more of the following trip generation criteria:

a. Within a jurisdiction in which VDOT has maintenance responsibility for the secondary highway system, if the proposal generates more than 250 vehicle trips per peak hour of the generator or 2,500 vehicle trips per day at the site's connection to a state-controlled highway. For a site that does not have an entrance onto a state-controlled highway, the site's connection is assumed to be wherever the road network that the site connects with attaches to a state-controlled highway. In cases where the site has multiple entrances to highways, volumes on all entrances shall be combined for the purposes of this determination; or

b. Within a jurisdiction in which VDOT does not have maintenance responsibility for the local highway system, if the proposal generates more than 250 vehicle trips per peak hour of the generator or 2,500 vehicle trips per day and has an entrance that is within 3,000 feet, measured along public roads or streets, of a connection to a state-controlled highway.

## B. Required proposal elements:

1. The package submitted by the locality to VDOT shall contain sufficient information and data so that VDOT may determine the location of the development, its size, its impact on state-controlled highways, and methodology and assumptions used in the analysis of the impact. Submittal of an incomplete package shall be considered deficient in meeting the submission requirements of § 15.2-2222.1 of the Code of Virginia and shall be returned to the locality and the applicant, if applicable, identifying the deficiencies noted. A package submitted to VDOT shall contain the following items:

a. A cover sheet containing:

(1) Contact information for locality and developer (or owner);

(2) Development location, highways connected to, and parcel number or numbers; and

(3) Proposal summary with development name and size in acres.

b. A supplemental traffic analysis, as defined in 24VAC30-155-50 C.

e. A concept plan of the proposed development.

C. Supplemental traffic analysis. For the purposes of this subsection, a supplemental traffic analysis will be defined as follows:

1. In cases where a traffic impact statement has been submitted to VDOT in accordance with 24VAC30-155-30 C, that statement shall serve as the supplemental traffic impact analysis for the purposes of this section for any site plan, subdivision plat, or plan of development proposals developed in furtherance of the adopted small area plan and related comprehensive plan amendments provided the following:

a. That such package is accompanied by a cover letter that includes a statement that the assumptions made in the traffic impact statement prepared for the small area plan remain generally valid and a copy of the traffic impact statement is included in the submission.

b. That the following are accurate:

(1) The rezoning site plan is in substantial conformance with the adopted small area plan. A deviation in density must be greater than 10% to be considered no longer in substantial conformance with the adopted small area plan.

(2) The character and volume of the trip generation by the proposed uses are similar to those proposed by the small area plan.

(3) All other assumptions made in the traffic impact statement prepared for the small area plan remain generally valid.

2. In cases where a rezoning traffic impact statement has been submitted to VDOT in accordance with 24VAC30-155-40, if all assumptions made in the traffic impact statement prepared for the rezoning remain valid and if the submission of the subdivision plat, site plan, or plan of development to the locality occurs within two years of the locality's approval of the rezoning proposal, the supplemental traffic analysis shall be a letter that provides VDOT with the following information:

a. A statement that the impacts analyzed in the development's rezoning traffic impact statement have not materially changed nor have the adverse impacts on state-controlled highways increased.

b. The date of the VDOT letter providing the locality comments on the rezoning.

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3. In cases where a rezoning traffic impact statement has been submitted to VDOT in accordance with 24VAC30-155 40, if all assumptions made in the traffic impact statement prepared for the rezoning have not materially changed, the adverse impacts of the proposal on state-controlled highways have not increased and if the submission of the subdivision plat, site plan, or plan of development to the locality occurs more than two years of the locality's approval of the rezoning, the supplemental traffic analysis shall be a letter that provides VDOT with the following information:

- a. A statement that the impacts analyzed in the development's rezoning traffic impact statement have not materially changed nor have the adverse impacts on state-controlled highways increased;
- b. The date of the VDOT letter providing the locality comments on the rezoning;
- c. Documentation supporting the statement that the development's rezoning traffic impact statement is still valid; and
- d. A copy of the original traffic impact statement.

After review of such letter, VDOT may require submission in accordance with subdivision 5 of this subsection.

4. In cases where the small area plan traffic impact statement has not been submitted to VDOT in accordance with 24VAC30 155 30 or the rezoning traffic impact statement has not been submitted to VDOT in accordance with 24VAC30 155 40, the supplemental traffic analysis shall contain the information required for rezoning traffic impact statements with 100 to 499 peak hour trips. If the subdivision plat, site plan, or plan of development will generate less than 100 peak hour trips then the lowest required elements for the rezoning traffic impact statement shall be used.

5. In cases where the small area plan traffic impact statement has been submitted to VDOT in accordance with 24VAC30 155 30 and the conditions analyzed have materially changed such that the adverse impacts of the proposal on state-controlled highways have increased, the rezoning traffic impact statement has been submitted to VDOT in accordance with 24VAC30 155 40 and the conditions analyzed in such traffic impact statement have materially changed such that the adverse impacts of the proposal on state-controlled highways have increased or if required pursuant to subdivision 3 of this subsection, the supplemental traffic analysis shall contain those elements required for rezoning traffic impact statements with 100 to 499 peak hour trips, as determined by VDOT. If the subdivision plat, site plan, or plan of development will generate less than 100 peak hour trips then the lowest

required elements for the rezoning traffic impact statement shall be used.

6. In cases where rezoning occurred after January 1, 2002, but prior to the implementation of this regulation, VDOT, at its discretion, may evaluate traffic impact statements or studies performed as part of the rezoning action. If, in the opinion of VDOT staff with the concurrence of the locality, the traffic impact analysis work that was performed encompasses the major elements of work required by this regulation and the underlying assumptions of the study remain valid the previously prepared study may be deemed to meet the requirements of this regulation. VDOT staff may also, upon request of the submitter, allow a previously prepared study to be updated to incorporate additional areas of analysis or revisions to assumptions to enhance the accuracy of the study and may deem such updated study to encompass the major elements of work required by this regulation.

D. Review process. After formal submission of a subdivision plat, site plan, or plan of development to VDOT for review, VDOT may, pursuant to § 15.2-2222.1 of the Code of Virginia, request a meeting with the locality to discuss potential modifications to the proposal to address any concerns or deficiencies. The request must be made within 30 days of receipt by VDOT of the proposal. The submission of the proposal to VDOT shall toll all times for local review set out in Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia until the locality has received VDOT's final comments. VDOT must provide written comments to the locality within 30 days of VDOT's receipt of the proposal if no meeting is scheduled or within 90 days of the receipt of the proposal otherwise. VDOT will conduct its review and provide official comments to the locality for inclusion in the official public record. VDOT shall also make such comments available to the public. Nothing in this section shall prohibit a locality from acting on a subdivision plat, site plan, or plan of development if VDOT's comments on the submission have not been received within the timelines in this section.

## **24VAC30-155-60. Traffic VDOT traffic impact statement.**

A. A VDOT traffic impact statement (~~HIS~~) (VTIS) assesses the impact of a proposed development on the transportation system and recommends improvements to lessen or negate those impacts. It shall (i) identify any traffic issues associated with access from the site to the existing transportation network, (ii) outline solutions to potential problems, (iii) address the sufficiency of the future transportation network, and (iv) present improvements to be incorporated into the proposed development.

If a ~~HIS~~ VTIS is required, data collection shall be by the locality, developer, or owner, as determined by the locality and the locality shall prepare or have the developer or owner prepare the ~~HIS~~ VTIS. If the locality prepares the ~~HIS~~ VTIS it shall provide a copy of the complete ~~HIS~~ VTIS to the

applicant when one is provided to VDOT. The completed ~~TIS~~ VTIS shall be submitted to VDOT.

The data and analysis contained in the ~~TIS~~ VTIS shall be organized and presented in a manner acceptable to VDOT and consistent with this regulation. ~~Submittal of an incomplete TIS or one prepared using unapproved methodology or assumptions shall be considered deficient in meeting the submission requirements of § 15.2-2222.1 of the Code of Virginia and shall be returned to the locality and the applicant, if applicable, identifying the deficiencies noted by VDOT.~~

**B. Scope of work meeting.**

1. For proposals that generate less than 1,000 vehicle trips per peak hour of the generator representatives of the locality, the applicant, or the locality and the applicant may request a scope of work meeting with VDOT to discuss the required elements of a ~~TIS~~ VTIS for any project and VDOT shall reply to such request within 30 days of its receipt of such a request and provide a date that is no more than 60 days from such receipt, time and location for such a scope of work meeting to both the locality and the applicant, if applicable.
2. For proposals that generate 1,000 or more vehicle trips per peak hour of the generator representatives of the locality and applicant, if applicable, shall hold a scope of work meeting with VDOT to discuss the required elements of a ~~TIS~~ VTIS. Once a locality or applicant has contacted VDOT regarding the scheduling of a scope of work

meeting, VDOT shall reply to both the locality and the applicant, if applicable, within 30 days of such contact and provide a date that is no more than 60 days from such contact, time and location for such a meeting.

At a scope of work meeting pursuant to this section, the locality, the applicant and VDOT shall review the elements, methodology and assumptions to be used in the preparation of the ~~TIS~~ VTIS, and identify any other related local requirements adopted pursuant to law. The results of the initial scoping meeting may be adjusted in accordance with sound professional judgment and the requirements of this regulation if agreed upon by VDOT, the locality, and applicant, if applicable.

**C. Required elements.** The required elements and scope of a ~~TIS~~ VTIS are dependent upon the scale and potential impact of the specific development proposal being addressed by the ~~TIS~~ VTIS as determined by VDOT in its sole discretion.

1. At a minimum, the ~~TIS~~ VTIS shall include the elements shown in the table below. The site generated peak hour trips in the table below shall be based upon the gross vehicle trip generation of the site less internal capture and ~~shall take into account bicycle, pedestrian, and transit mode split reductions, if applicable.~~ When the type of development proposed would indicate significant potential for walking, bike or transit trips either on-site or off-site, the ~~TIS~~ VTIS shall estimate multimodal trips. All distances in the table below shall be measured along roads or streets.

Item	Site Generated Peak Hour Trips			
	<del>Less than 100</del>	<del>100 to 499</del> <u>Less than 500</u>	500 to 999	1,000 or more
Background information				
List of all nonexistent transportation improvements assumed in the analysis	<b>Required</b>	Required	Required	Required
Map of site location, description of the parcel, general terrain features, and location within the jurisdiction and region.	<b>Required</b>	Required	Required	Required
Description of geographic scope/ limits of study area.	<del>Within 1,000 ft of site</del>	Within 2,000 feet of site and any roadway on which 50 or more of the new peak hour vehicle trips generated by the proposal are distributed – not to exceed one mile	Within 2,000 feet of site and any roadway on which 10% or more of the new vehicle trips generated by the proposal are distributed – not to exceed two miles	To be determined by VDOT in consultation with the locality
Plan at an engineering	<b>Required</b>	Required	Required	Required

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scale of the existing and proposed site uses.				
Description and map or diagram of nearby uses, including parcel zoning.	Required	Required	Required	Required
Description and map or diagram of existing roadways.	Required	Required	Required	Required
Description and map or diagram of programmed improvements to roadways, intersections, and other transportation facilities within the study area.	Required	Required	Required	Required
Analysis of Existing Conditions				
Collected daily and peak hour of the generator traffic volumes, tabulated and presented on diagrams with counts provided in an appendix.	Only diagrams required	Required	Required	Required
Analyses for intersections and roadways identified by VDOT. Delay and Level of Service (LOS) are tabulated and LOS is presented on diagrams for each lane group.	Only diagrams required	Required	Required	Required
When the type of development proposed would indicate significant potential for walking, bike or transit trips either on - or off - site, analyses of pedestrian and bicycle facilities, and bus route or routes and segment or segments, tabulated and presented on diagrams, if facilities or routes exist	At frontage, only diagrams required	Within 2,000 feet of site	Within 2,000 feet of site	To be determined by VDOT in consultation with the locality
Speed Study	If requested by VDOT	If requested by VDOT	If requested by VDOT	If requested by VDOT
Crash history near site	If requested by VDOT	If requested by VDOT	If requested by VDOT	If requested by VDOT
Sight distance	If requested by VDOT	If requested by VDOT	If requested by VDOT	If requested by VDOT
Analysis of Future Conditions without				

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Development				
Description of and justification for the method and assumptions used to forecast future traffic volumes.	<del>Optional</del>	Required	Required	Required
Analyses for intersections and roadways as identified by VDOT. Delay and Level of Service (LOS) are tabulated and LOS is presented on diagrams for each lane group.	<del>Optional</del>	Required	Required	Required
When the type of development proposed would indicate significant potential for walking, bike or transit trips either on - or off - site, analyses of pedestrian and bicycle facilities, and bus route or routes and segment or segments tabulated and presented on diagrams, if facilities or routes exist or are planned.	<del>At frontage, only diagrams required</del>	Within 2,000 feet of site	Within 2,000 feet of site	To be determined by VDOT in consultation with the locality at the scope of work meeting
Trip Generation				
Site trip generation, with tabulated data, broken out by analysis year for multi-phase developments, and including justification for deviations from ITE rates, if appropriate.	<del>Required</del>	Required	Required	Required
Description and justification of internal capture reductions for mixed use developments and pass-by trip reductions, if appropriate, including table of calculations used.	<del>Required</del>	Required	Required	Required
Site Traffic Distribution and Assignment				
Description of methodology used to distribute trips, with supporting data.	<del>Required</del>	Required	Required	Required
Description of the	<del>Required</del>	Required	Required	Required

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direction of approach for site generated traffic and diagrams showing the traffic assignment to the road network serving the site for the appropriate time periods.				
Analysis of Future Conditions With Development				
Forecast daily and peak hour of the generator traffic volumes on the highway network in the study area, site entrances and internal roadways, tabulated and presented on diagrams.	<del>Current traffic + site generated traffic</del>	Future background + site generated traffic, at each expected phase and at build - out or six years after start, whichever is later	Future background + site generated traffic, at each expected phase, at build - out, and six years after build - out, which may be extended or reduced by VDOT in consultation with the locality	At a minimum the future background + site generated traffic, at each expected phase, at build - out, and six years after build - out; may be extended by VDOT in consultation with the locality
Analyses for intersections and roadways identified by VDOT. Delay and Level of Service (LOS) are tabulated and LOS presented on diagrams for each lane group.	<del>Only diagrams required</del>	Required	Required	Required
When the type of development proposed would indicate significant potential for walking, bike or transit trips either on - or off - site, analyses of pedestrian and bicycle facilities, and bus route or routes and segment or segments tabulated and presented on diagrams, if facilities or routes exist or are planned.	<del>At frontage, only diagrams required</del>	Within 2,000 feet of site	Within 2,000 feet of site	To be determined by VDOT in consultation with the locality
Recommended Improvements				
Description and diagram of the location, nature, and extent of proposed improvements, with preliminary cost estimates as available from VDOT.	Required	Required	Required	Required
Description of methodology used to calculate the effects of travel demand	<del>Required if TDM proposed</del>	Required if TDM proposed	Required if TDM proposed	Required if TDM proposed

management (TDM) measures, if proposed, with supporting data.				
Analyses for all proposed and modified intersections in the study area under the forecast and site traffic. Delay, and Level of Service (LOS) are tabulated and LOS presented on diagrams for each lane group. For intersections expected to be signalized, MUTCD Signal Warrant analysis or ITE Manual for Traffic Signal Design, as determined by VDOT, presented in tabular form.	Only diagrams required	Required	Required	Required
When the type of development proposed would indicate significant potential for walking, bike or transit trips either on - or off - site, analyses of pedestrian and bicycle facilities, and bus route or routes and segment or segments tabulated and presented on diagrams, if facilities or routes exist or are planned.	At frontage, only diagrams required	Within 2,000 feet of site	Within 2,000 feet of site	To be determined by VDOT in consultation with the locality
Conclusions				
Clear, concise description of the study findings.	Required	Required	Required	Required

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Notwithstanding the geographic scope noted above, the geographic scope of the study noted above may be reduced or enlarged based upon layout of the local transportation network, the geographical size of the development, and the traffic volume on the existing network, as determined by VDOT in consultation with the locality and the applicant, if applicable. Typically, analysis will be conducted for any roadway on which the additional trips generated by the proposal have a materially detrimental impact on traffic conditions. The analysis presented in the ~~TIS~~ VTIS need not include all roadway and roadway segments located within the geographic scope of the study as determined by VDOT.

2. A ~~TIS~~ VTIS for a development proposal that only meets the low volume road submission criterion (~~24VAC30-155-40 A 1 e and 24VAC30-155-50 A 1 e~~) (24VAC30-155-40 A 3) shall, at a minimum, consist of the following elements, unless otherwise directed by VDOT.

a. All elements contained in the Background Information portion of the above table, except the geographic scope/limits of study area is limited to the highway fronting the proposed development and the closest intersection, in each direction if applicable, of that highway with a highway that has an average daily traffic volume higher than the fronting highway.

b. A roadway safety inventory study of the roadway segment or segments between the site entrance to the nearest intersections with the higher traffic volume highways, to include such elements as, but not limited to, speed limit, existing warning signs, pavement and shoulder type, pavement and shoulder width, intersection sight distances, and safe horizontal curve speeds.

c. Daily and peak hour traffic volumes presented on diagrams, with counts provided in an appendix, for the fronting highway at the site, at the highway's intersections with the higher volume highway, and for the higher volume highways at their intersection with the fronting highway.

d. All relevant elements contained in the Trip Generation portion of the above table.

e. Projected daily and peak hour of the generator traffic volumes assuming build-out of the proposal, presented on diagrams for the receiving highway at the site, at the highway's intersection with the higher volume highways, and for the higher volume highways at their intersections with the receiving highway.

f. Delay and level of service analysis for the intersections of the receiving highway with the higher volume highways.

g. A comparison of the existing geometrics of the fronting highway under proposed build-out traffic

conditions with the geometric standards, based upon functional classification and volume, contained in the Road Design Manual (~~see 24VAC30-155-100~~), 2011 (VDOT).

3. A VTIS for a rezoning proposal may be prepared in accordance with the "Less than 500 Site Generated Peak Hour Trips" category in the table in this section, regardless of actual projected trip generation, provided that:

a. The rezoning proposal is in conformance with a locality's adopted comprehensive plan that was reviewed in accordance with 24VAC30-155-30; and

b. The review of the comprehensive plan included the submission to VDOT of a technical evaluation of the traffic impacts for anticipated development based on the future land use policies and map.

D. Methodology and standard assumptions. A ~~TIS~~ VTIS shall be prepared based upon methodology and assumptions noted below or as may be agreed upon by VDOT based upon the results of a scope of work meeting held by VDOT pursuant to this section.

1. Data collection. Preparers shall collect traffic data in accordance with the identified study area. The count data shall include at a minimum, weekday 24-hour counts, and directional turning movement counts during AM and PM peak times of the day. The 24-hour counts shall include vehicle classification counts. With approval of VDOT, data collected by the transportation professional preparer within the last 24 months may be used, likewise for data from the VDOT count program.

The preparer shall monitor traffic operations during data collection to ensure extraneous events such as vehicle crashes or special event traffic do not affect integrity of count data. Preparers collecting data for utilization in traffic impact studies shall normally avoid data collection during the following instances:

a. Holidays or times of the year when the traffic patterns are deemed to be unrepresentative of typical conditions, unless required by VDOT or the locality, or both.

b. Summer months if school or schools in proximity.

c. Fridays and weekends unless required by VDOT or the locality, or both.

d. Other times of the year contingent upon existing adjacent land use activities.

e. During times of inclement weather.

2. Trip generation. Estimates of trip generation by a proposed development shall be prepared using the Institute of Transportation Engineers Trip Generation (~~see 24VAC30-155-100~~), 8th Edition, 2008, unless VDOT agrees to allow the use of alternate trip generation rates

based upon alternate published guides or local trip generation studies. VDOT shall at all times after July 1, 2011, have at least one non-ITE trip generation methodology or alternative rate approved for the use in preparation of small area plan traffic impact statements pursuant to 24VAC30-155-30 C that recognizes the benefits of reduced vehicle trip generation and vehicle miles traveled from developments that meet the criteria for a small area plan pursuant to this regulation. Such alternate methodology or rate can be modified based upon local factors if agreed to at a scoping meeting. Rezoning proposals shall assume the highest vehicle trip generating use allowable under the proposed zoning classification. In determining which trip generation process (equation or rate) may be used, the preparer shall follow the guidance presented in the Trip Generation Handbook, Second Edition – an ITE ~~Proposed~~ Recommended Practice (see ~~24VAC30-155-100~~, 2004, which is summarized here, except rates may be utilized if the criteria for the use of regression equations are not met. Regression equations to calculate trips as a result of development shall be utilized, provided the following is true:

- a. Independent variable falls within range of data; and
- b. Either the data plot has at least 20 points; or
- c.  $R^2$  is greater than 0.75, equation falls within data cluster in plot and standard deviation greater than 110% of weighted average rate.

If the above criteria are not met, then the preparer can use average trip rates, ~~provided at least one of~~ though if the following applies do not apply a rate based upon the study of similar local sites should be considered:

- d. At least three data points exist;
- e. Standard deviation less than 110% of weighted average rate; and
- ~~f.  $R^2$  less than 0.75 or no regression equation provided; or~~
- ~~g. f.~~ Weighted average rate falls within data cluster in plot.

3. Internal capture and pass-by trips.

- a. Internal capture rates consider site trips "captured" within a mixed use development, recognizing that trips from one land use can access another land use within a site development without having to access the adjacent street system. Mixed use developments include a combination of residential and nonresidential uses or a combination of nonresidential uses only. Internal capture allows reduction of site trips from adjacent intersections and roadways. For traffic impact statements prepared for small area plans pursuant to 24VAC30-155-30 C the internal capture rate or rates may be based on the non-ITE trip generation methodology approved by VDOT.

~~Unless For ITE-based methodologies, unless otherwise approved by VDOT, the following internal capture rates should be used if appropriate:~~

- (1) Residential with a mix of nonresidential components - use the smaller of 15% of residential or 15% nonresidential trips generated.
- (2) Residential with office use - use the smaller of 5.0% of residential or 5.0% of office trips generated.
- (3) Residential with retail use - for AM peak hour, use the smaller of 5.0% residential or 5.0% retail trips generated; for PM peak hour, use the smaller of 10% residential or 10% retail trips generated; for 24-hour traffic, use the smaller of 15% residential or 15% retail trips generated.
- (4) Hotel/motel with office use - use 15% of hotel/motel trips, unless the overall volume of the office traffic is more than the overall volume of hotel/motel traffic use in which case use the smaller of 10% of the hotel/motel traffic or the office traffic.
- (5) Multiuse development with more than five million square feet of office and retail - internal capture rate should be determined in consultation with and approval of VDOT.
- (6) Office with retail use – use the smaller of 5.0% office or retail trips generated.

(7) Some combination of the above, if approved by VDOT.

b. Pass-by trip reductions consider site trips drawn from the existing traffic stream on an adjacent street, recognizing that trips drawn to a site would otherwise already traverse the adjacent street regardless of existence of the site. Pass-by trip reductions allow a percentage reduction in the forecast of trips otherwise added to the adjacent street from the proposed development. The reduction applies only to volumes on adjacent streets, not to ingress or egress volumes at entrances serving the proposed site. ~~Unless otherwise approved by VDOT, the following pass-by trip reductions may be used: (1) Shopping center – 25% of trips generated may be considered pass-by. (2) Convenience stores, service stations, fast food restaurants, and similar land uses – 40% of trip generated may be considered pass-by. (3) pass-by rates utilized shall be those reported in Trip Generation Handbook, Second Edition – an ITE Recommended Practice, 2004.~~ For traffic impact statements prepared for small area plans pursuant to 24VAC30-155-30 C, the pass-by trip reductions may be based on the non-ITE trip generation methodology approved by VDOT.

4. Trip distribution. In the absence of more detailed information, trip distribution shall be in accordance with

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logical regional travel patterns as suggested by existing highway directional split and intersection movements or population and destination site distribution and shall recognize the effects of increased street connectivity if such streets meet the requirements of the Secondary Street Acceptance Requirements (~~see 24VAC30-155-100~~) (24VAC30-92). If more detailed information is available from trip origin/destination studies, marketing studies, or regional planning models, this may be used to distribute trips upon approval of VDOT.

5. Planning horizon. In general, the analysis years shall be related to (i) the opening date of the proposed development, (ii) build-out of major phases of a multiyear development, (iii) long-range transportation plans, and (iv) other significant transportation network changes. The preparer should establish the planning horizon in consultation with and subject to the acceptance of VDOT.

6. Background traffic growth. Unless directed by VDOT, geometric growth (or compound growth), based upon historical growth rates, shall generally be used for determining future background traffic levels where extensive traffic-count history is available and capacity constraint is not appropriate. This growth rate replicates "natural growth" and is typical for projecting urban growth. Natural growth of traffic can be adjusted consistent with traffic forecasts associated with previously submitted local land development projects within the study area.

7. Future conditions. For the purpose of the ~~HS~~ VTIS, future conditions shall include background traffic and additional vehicle trips anticipated to be generated by approved but not yet constructed or improved projects.

8. Level of service calculation. Level of service (LOS) analysis for highways shall utilize the techniques described in the Highway Capacity Manual (~~see 24VAC30-155-100~~), 2010 (TRB). Neither the intersection capacity utilization method nor the percentile delay method may be used in the traffic impact calculations of delay and level of service. Preparers shall consult with VDOT on which traffic analysis software package is to be used to conduct the LOS calculations. The results shall be tabulated and displayed graphically, with levels of service provided for each lane group for each peak period. All data used in the calculations must be provided along with the results of the capacity analysis. Any assumptions made that deviate from the programmed defaults must be documented and an explanation provided as to why there was a deviation. Electronic files used for the analysis shall be provided to VDOT as a digital submission (e.g. .hcs, .sy6, .inp, .trf files), along with the printed report. If intersections analyzed are in close proximity to each other so that queuing may be a factor, VDOT may require the inclusion of an analysis with a micro simulation model. Unless actual on-ground

conditions dictate otherwise, preparers should use the following defaults when utilizing the Highway Capacity Software (HCS) or other approved programs when evaluating roadway components:

a. Terrain – choose the appropriate terrain type. Most of the state will be level or rolling, but some areas may qualify for consideration as mountainous.

b. Twelve-foot wide lanes.

c. No parking or bus activity unless field conditions include such parking or bus activity or unless the locality has provided VDOT with a written statement of intent for the services to be provided.

d. Peak hour factor by approach – calculate from collected traffic counts (requires at least a peak hour count in 15-minute increments). However, the use of peak hour factors lower than 0.85 shall only be allowed if based upon the average of more than three peak hour counts. For future conditions analysis, unless specific site conditions can be expected to create extreme peak hour factors, default peak hour factors between 0.92 and 1.00 should be used.

e. Heavy vehicle factor – calculate from collected traffic (classification) counts or obtain from VDOT count publications. For future conditions analysis with development traffic, the existing heavy vehicle factor should be adjusted based upon the nature of the traffic being generated by the development.

f. Area type – noncenter of business district.

The ~~HS~~ VTIS shall identify any existing or proposed bicycle and pedestrian accommodation that would be affected by the proposal. For the purposes of this subsection, a bicycle accommodation is defined as on-street bike lanes, paved shoulders of roadways that are not part of the designated traveled way for vehicles, or exclusive and shared off-street bicycle paths.

For the purposes of this subsection, a pedestrian accommodation is defined as sidewalks, intersection treatments and exclusive or shared off-street trails or paths. If significant potential for bicycle or pedestrian trips exists, the ~~HS~~ VTIS shall include current and future service level analyses at build-out for existing or proposed bicycle and pedestrian accommodations. When the proposal requires or includes improvements or modifications to the roadway, bicycle or pedestrian accommodations, the ~~HS~~ VTIS shall analyze the impacts of such improvements and modifications on bicycle and pedestrian accommodations and service levels, and provide recommendations for mitigation of adverse impacts.

The ~~HS~~ VTIS shall provide analysis for all bus service with routes that have, or will have a station or stop within 2,000 feet of the proposal. The ~~HS~~ VTIS shall evaluate

and discuss potential for increased demand for bus use due to the proposal, addressing whether such increases will result in longer dwell time at stops or increase the need for buses on a route. The quality of service analysis for bus service shall be determined in accordance with the Transit Capacity and Quality of Service Manual (~~see 24VAC30-155-100~~, 2nd Edition, 2003 (TRB)). The ~~HS~~ VTIS shall provide both route and segment quality of service. The ~~HS~~ VTIS may consider the benefits of dedicated bus lanes for more frequent and rapid service. The ~~HS~~ VTIS shall provide recommendations for mitigation of adverse impacts where adverse impacts are expected to the quality of service to bus service. If an analysis of pedestrian quality or level of service is required for calculation of the bus quality of service, the preparer shall use a methodology approved by VDOT.

9. Trip reduction, and pedestrian and bicycle accommodations. When a proposal meets the criteria listed below, the preparer of the ~~HS~~ VTIS may reduce the number of vehicle trips generated by the proposal in the ~~HS~~ VTIS analysis in accordance with this subsection. Notwithstanding the percentages below, the total number of reductions used by a preparer in accordance with this subsection shall ~~never~~ not exceed 500 vehicle trips per peak hour of the generator unless otherwise approved by VDOT. The trip reductions for traffic impact statements prepared for small area plans pursuant to 24VAC30-155-30 C may be based on the non-ITE trip generation methodology approved by VDOT and are not subject to limitations or requirements of this subdivision.

a. Pedestrian accommodations. For the purposes of this subsection, a pedestrian accommodation is defined as a sidewalk, pedestrian path, or multiuse trail. Where a pedestrian service level of A exists, vehicle trips per peak hour of the generator may be reduced by 4.0% for those portions of the development within a 2,000-foot radius of the connections between the proposed development and the adjoining network. Where a pedestrian service level of B exists, vehicle trips per peak hour of the generator may be reduced by 3.0%; where a pedestrian service level of C exists, vehicle trips per peak hour of the generator may be reduced by 1.5% for the portion of the development noted above. These reductions may only be taken if:

- (1) Pedestrian facility coverage in a 2,000-foot radius of the connections to the proposed development is on or along at least 80% of the road network;
- (2) ~~The connectivity index within the 2,000-foot radius is equal to or higher than 1.4~~ pedestrian facilities inside and outside the development provide reasonably direct access to traffic generators; and
- (3) There are at least two of the 10 major land use classifications, as defined in ITE Trip Generation (~~see~~

~~24VAC30-155-100~~, 8th Edition, 2008, within the 2,000-foot radius.

b. Bicycle accommodations. For the purposes of this subsection, a bicycle accommodation is defined as a street with a design speed of 25 MPH or less that carries 400 vehicles per day or less, on-street bike lanes, a pedestrian accommodation, paved shoulders of roadways that are not part of the designated traveled way for vehicles and are at least two feet wide, or exclusive and shared off-street bicycle paths. Where a bicycle service level of A exists, vehicle trips per day may be reduced by 3.0%. Where a bicycle service level of B exists, vehicle trips per day may be reduced by 2.0%. Where a bicycle service level of C exists, vehicle trips per day may be reduced by 1.0%. These reductions may only be taken if:

- (1) Bicycle accommodations within a 2,000-foot radius of the connections to the proposed development exist on or along at least 80% of the road network;
- (2) ~~The connectivity index within the 2,000-foot radius is equal to or higher than 1.4~~ bicycle accommodations inside and outside the development provide reasonably direct access to traffic generators; and
- (3) There are at least two of the 10 major land use classifications as defined in ITE Trip Generation (~~see 24VAC30-155-100~~, 8th Edition, 2008, within the 2,000-foot radius.

10. Modal split and trip reduction. All vehicle trip reductions used in the ~~HS~~ VTIS pursuant to this subsection are subject to the approval of VDOT.

a. If a proposal is located within 1/2 mile along roadways, pedestrian or bicycle accommodations of a transit station, excluding bus stops and stations, reasonable vehicle trip reductions of vehicle trips generated by the proposal may be made with approval of VDOT. The preparer shall submit documentation to justify any such vehicle trip reductions used with the ~~HS~~ VTIS. When a proposal is located more than 1/2 mile but less than two miles from a transit stop, excluding bus stops and stations, with bicycle parking accommodations ~~transit additional bicycle~~ modal split ~~vehicle trip~~ reductions may be utilized. The analysis of capacity of the parking accommodations shall be included in the ~~HS~~ VTIS when such trip reductions are used.

b. If a proposal is located within 1/4 mile along roadways, pedestrian or bicycle accommodations of a bus stop or station where the segment and route service levels are C or higher, reasonable vehicle trip reductions of vehicle trips generated by the proposal may be made with the approval of VDOT. The preparer shall submit documentation to justify any such vehicle trip reductions used with the ~~HS~~ VTIS.

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c. Transit and bus modal split data from similar developments within the geographic scope of the ~~TIS~~ VTIS or one mile of the proposal, whichever is greater, shall be collected if the ~~TIS~~ VTIS vehicle trip reductions are used pursuant to this subsection and similar developments exist within the geographic scope of the ~~TIS~~ VTIS or one mile of the proposal, whichever is greater.

11. Signal warrant analysis. Traffic signal warrant analysis shall be performed in accordance with the procedures set out in the Manual on Uniform Traffic Control Devices (~~see 24VAC30-155-100~~, 2003, revised 2007, or ITE Manual of Traffic Signal Design, 1998, as determined by VDOT.

12. Recommended improvements. Recommendations made in the ~~TIS~~ VTIS for improvements to transportation facilities shall be in accordance with the geometric standards contained within the Road Design Manual (~~see 24VAC30-155-100~~, 2011 (VDOT).

## 24VAC30-155-70. Departmental analysis.

After concluding its review of a proposed comprehensive plan or transportation plan or plan amendment, ~~or rezoning, or site or subdivision plan~~, VDOT shall provide the locality and applicant, if applicable, with a written report detailing its analysis and when appropriate recommending transportation improvements to mitigate any potential adverse impacts on state-controlled highways. VDOT shall provide recommendations for facilitating other modes of transportation including but not limited to transit, bus, bicycle and pedestrian facilities or accommodations where such facilities or accommodations are planned or exist, or where such facilities have a significant potential for use. In addition, VDOT shall provide the locality and the applicant, if applicable, with preliminary recommendations regarding compliance with other VDOT regulations such as the Secondary Street Acceptance Requirements (~~see 24VAC30-155-100~~) (24VAC30-92), the Access Management Regulations: Principal Arterials (~~see 24VAC30-155-100~~) (24VAC30-72), and the Access Management Regulations: Minor Arterials, Collectors, and Local Streets (~~see 24VAC30-155-100~~) (24VAC30-73).

## 24VAC30-155-80. Fees.

A. Locality initiated proposals. No fee shall be charged for review of any comprehensive plan, comprehensive plan amendment, ~~or rezoning proposal, subdivision plat, site plan, or plan of development~~ initiated by a locality or other public agency.

B. Proposals containing a traffic impact statement as described in subdivision C 1 of 24VAC30-155-40. No fee shall be charged for the review of a rezoning submission that properly includes a traffic impact statement submitted under subdivision C 1 of 24VAC30-155-40.

~~C. Proposals containing supplemental traffic analysis as described in subdivisions C 1, 2, and 5 of 24VAC30-155-50. No fee shall be charged for the review of a subdivision plat, site plan, or plan of development submission that properly includes a supplemental traffic analysis submitted under subdivisions C 1, 2, and 5 of 24VAC30-155-50.~~

~~D. C.~~ All other proposals. Any package submitted to a locality by an applicant that will be subject to VDOT review pursuant to this chapter shall include any required payment in a form payable directly to VDOT.

1. For initial or second review of all comprehensive plans, comprehensive plan amendments, and transportation plans submitted to VDOT for review, not initiated on behalf of the locality, there shall be a fee of \$1,000 charged to the applicant. This fee shall be paid upon submission of a plan to VDOT for review.

2. For initial or second review of rezoning proposals, ~~subdivision plats, site plans, or plans of development~~ accompanied by a traffic impact statement ~~or supplemental traffic analysis~~, not initiated on behalf of the locality, there shall be a single fee for both reviews determined by the number of adjusted vehicle trips generated per peak hour, as follows:

<del>Low</del> <u>Submission made due to 24VAC30-155-40 A 3 (low volume road criterion only)</u> -	\$250
<del>Less than 100 vehicles per peak hour</del> -	\$500
<del>100 or more vehicles per peak hour</del> <u>All other submissions</u> -	\$1,000

The fee shall be paid upon submission of a package to VDOT for review.

3. For a third or subsequent submission pursuant to subdivisions 1 or 2 of this subsection, that is requested by VDOT on the basis of the failure of the applicant to address deficiencies previously identified by VDOT, the applicant shall be required to pay an additional fee as though the third or subsequent submission were an initial submission and requiring the fees identified above. An applicant or locality may appeal to the district administrator a determination by VDOT that a submitted package failed to address deficiencies previously identified by VDOT.

## 24VAC30-155-100. Listing of documents incorporated by reference. (Repealed.)

~~Requests for information pertaining to the availability and cost of any of these publications should be directed to the address indicated below the specific document. Requests for documents available from VDOT may be obtained from VDOT's division and representative indicated; however, VDOT documents may be available over the Internet at [www.vdot.virginia.gov](http://www.vdot.virginia.gov).~~

1. Trip Generation (effective November 2003)  
 Institute of Transportation Engineers  
 1099 14th Street NW  
 Suite 300 West  
 Washington, DC 20005
  2. Trip Generation Handbook — an ITE Proposed Recommended Practice (effective 2004)  
 Institute of Transportation Engineers  
 1099 14th Street NW  
 Suite 300 West  
 Washington, DC 20005
  3. Road Design Manual (effective January 1, 2005)  
 VDOT  
 1401 E. Broad Street  
 Richmond, Virginia 23219
  4. Highway Capacity Manual (effective 2000)  
 Transportation Research Board  
 500 Fifth Street NW  
 Washington, DC 20001
  5. Manual on Uniform Traffic Control Devices (effective December 22, 2003)  
 Federal Highway Administration  
 Superintendent of Documents  
 U.S. Government Printing Office  
 P.O. Box 371954  
 Pittsburgh, Pennsylvania 15250
  6. ITE Manual of Traffic Signal Design (effective 1998)  
 Institute of Transportation Engineers  
 1099 14th Street NW  
 Suite 300 West  
 Washington, DC 20005
  7. Transit Capacity and Quality of Service Manual, 2nd Edition (effective 2003)  
 Transportation Research Board of the National Academies  
 Keck Center of the National Academies  
 Transportation Research Board  
 500 Fifth Street, NW  
 Washington, DC 20001
  8. Secondary Street Acceptance Requirements (24VAC30-92)  
 Commonwealth Transportation Board  
 1401 E. Broad Street  
 Richmond, Virginia 23219
  9. Access Management: Principal Arterials (24VAC30-72)  
 VDOT  
 1401 E. Broad Street  
 Richmond, Virginia 23219
  10. Access Management: Minor Arterials, Collectors, and Local Streets (24VAC30-73)  
 VDOT  
 1401 E. Broad Street  
 Richmond, Virginia 23219
- DOCUMENTS INCORPORATED BY REFERENCE (24VAC30-155)
- Requests for information pertaining to the availability and cost of any of these publications should be directed to the address indicated for the specific document. Requests for documents available from VDOT may be obtained from VDOT's division and representative indicated; however, VDOT documents may be available over the Internet at [www.vdot.virginia.gov](http://www.vdot.virginia.gov).
- [Highway Capacity Manual, 2010, Transportation Research Board, 500 Fifth Street NW, Washington, DC 20001.](#)
- [ITE Manual of Traffic Signal Design \(effective 1998\), Institute of Transportation Engineers, 1627 Eye Street, NW, Suite 600, Washington, DC 20006.](#)
- [Manual on Uniform Traffic Control Devices for Streets and Highways, effective 2003, revised 2007, Federal Highway Administration, Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250.](#)
- [Road Design Manual, 2011, VDOT, 1401 E. Broad Street, Richmond, Virginia 23219.](#)
- [Transit Capacity and Quality of Service Manual, 2nd Edition, 2003; Transportation Research Board of the National Academies, Keck Center of the National Academies, Transportation Research Board, 500 Fifth Street, NW, Washington, DC 20001.](#)
- [Trip Generation, 8th Ed., 2008, Institute of Transportation Engineers, 1627 Eye Street, NW, Suite 600, Washington, DC 20006.](#)
- [Trip Generation Handbook, Second Edition – an ITE Recommended Practice, 2004, Institute of Transportation Engineers, 1627 Eye Street, NW, Suite 600, Washington, DC 20006.](#)

VA.R. Doc. No. R12-2999; Filed November 29, 2011, 10:45 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The Commissioner of Highways is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Commissioner of Highways will receive,

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# Regulations

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consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **24VAC30-72. Access Management Regulations: Principal Arterials (amending 24VAC30-72-10, 24VAC30-72-20, 24VAC30-72-40, 24VAC30-72-50, 24VAC30-72-60, 24VAC30-72-70, 24VAC30-72-80, 24VAC30-72-120, 24VAC30-72-150; repealing 24VAC30-72-140, 24VAC30-72-170).**

**24VAC30-73. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (amending 24VAC30-73-10, 24VAC30-73-40, 24VAC30-73-50, 24VAC30-73-70, 24VAC30-73-80, 24VAC30-73-90, 24VAC30-73-120, 24VAC30-73-150; repealing 24VAC30-73-140, 24VAC30-73-170).**

Statutory Authority: § 33.1-198.1 of the Code of Virginia.

Effective Date: January 18, 2012.

Agency Contact: Robert Hofrichter, Assistant Division Administrator, Transportation and Mobility Management Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0780, or email robert.hofrichter@vdot.virginia.gov.

Summary:

*This regulatory action makes technical corrections to Access Management Regulations: Principal Arterials (24VAC30-72) and Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73) to make them consistent with the revisions to the Traffic Impact Analysis Regulations (24VAC30-155) and the Secondary Street Acceptance Requirements (24VAC30-92).*

*In addition, Chapters 104 and 164 of the 2011 Acts of Assembly repealed the statutory provisions addressing regulation of drive-in theaters, making the regulations addressing these entrances obsolete.*

**24VAC30-72-10. Definitions.**

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" or "median opening" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing and turning traffic.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means any at-grade connection with a highway including two highways or an entrance and a highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or in the absence of such signs the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual (~~see 24VAC30-72-170-I~~), 2010 (Transportation Research Board).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that their property abuts upon the limited access highway.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterial" means the functional classification for a major highway intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design

acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Stopping sight distance" means the distance required by a driver of a vehicle, traveling at a given speed, to bring the vehicle to a stop after an object on the highway becomes visible, including the distance traveled during the driver's perception and reaction times and the vehicle braking distance.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highway.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and turn lanes.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; acceleration and deceleration lanes.

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"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC § 101).

"VDOT" means the Virginia Department of Transportation, its successor, the Commissioner of Highways, or his designees.

## **24VAC30-72-20. Authority to regulate entrances to highways.**

A. VDOT's authority to regulate highway entrances and manage access to highways is provided in §§ 33.1-13, 33.1-197, 33.1-198, 33.1-198.1, and 33.1-199 of the Code of Virginia, and its authority to make regulations concerning the use of highways generally is provided in § 33.1-12 (3) of the Code of Virginia. Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions.

B. Where a plan of development with the specific location of an entrance or entrances was proffered pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia prior to July 1, 2008, such entrances shall be exempt from the spacing standards for entrances and intersections in Appendix F of the Road Design Manual (~~see 24VAC30-72-170 A~~), 2011 (VDOT) provided the requirements of § 15.2-2307 of the Code of Virginia have been met. Entrances shown on a subdivision plat, site plan, preliminary subdivision plat that is valid pursuant to §§ 15.2-2260 and 15.2-2261 approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 prior to July 1, 2008, shall be exempt from the spacing standards for entrances and intersections in Appendix F of the Road Design Manual, 2011 (VDOT).

C. The Commonwealth Transportation Board has the authority to designate highways as limited access and to regulate access rights to those facilities as provided in § 33.1-58 of the Code of Virginia. No private or commercial entrances shall be permitted within limited access rights-of-way except as may be provided for by the regulation titled Change of Limited Access Control (24VAC30-401).

D. The VDOT district administrators or their designees are authorized to issue private entrance permits and commercial entrance permits in accordance with the provisions of this chapter.

E. In cases where the provisions and requirements of this chapter conflict with the Land Use Permit Regulations (~~see 24VAC30-72-170 G~~), (24VAC30-151), the provisions and requirements of this chapter shall govern.

## **24VAC30-72-40. Administrative procedures and rules for obtaining commercial and private entrance permits.**

All applications for entrance permits shall be obtained from and submitted to the district administrator's designee for the county in which the work is to be performed. The permit applicant shall submit the permit application form, and the entrance permit, if approved, will be issued in accordance with the applicable administrative rules, requirements, and procedures of this chapter and the Land Use Permit Regulations (~~see 24VAC30-72-170 G~~) (24VAC30-151).

## **24VAC30-72-50. Appeal and exception procedure.**

A. The permit applicant may appeal denial or revocation or conditions imposed by a permit in writing to the district administrator with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

1. All appeals must be received within 30 days of receipt of written notification of denial or revocation or issuance of a permit with contested conditions and must set forth the grounds for the appeal and include copies of all prior correspondence with any local government official and VDOT representatives regarding the issue or issues. The permit applicant may request a meeting with the district administrator concerning the appeal and the district administrator will set a date, time, and location for such meeting.

2. After reviewing all pertinent information, the district administrator will advise the permit applicant in writing regarding the decision on the appeal within 60 days of receipt of the written appeal request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

3. The permit applicant may further appeal the district administrator's decision to the commissioner within 30 days of receipt of written notification of the district administrator's decision. The commissioner will advise the permit applicant in writing regarding the decision on the appeal within 60 days of receipt of the written appeal request, with a copy to the district administrator and the chief administrative officer of the locality where the entrance is proposed.

B. The commissioner may grant an exception to the required sight distance after a traffic engineering investigation has been performed.

1. If a sight distance exception is requested, the permit applicant shall provide such request in writing to the commissioner with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed and shall furnish the commissioner with a traffic engineering investigation report, prepared by a professional engineer. ~~The methodology and format of the report shall be in conformance with requirements set forth in the Manual on Uniform Traffic Control Devices (see 24VAC30-72-170 D).~~ Refer to Instructional and Informational Memorandum IIM-LD-227.5, 2011 (VDOT), for requirements concerning approval of sight distance exceptions.

2. The commissioner will advise the permit applicant in writing regarding the decision on the sight distance exception request within 60 days of receipt of the written exception request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

**24VAC30-72-60. General provisions governing commercial and private entrances.**

A. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and an entrance permit has been issued. The violation of any provision of this chapter and any condition of approval of an entrance permit shall be subject to the penalties for violations specified in the Land Use Permit Regulations (~~see 24VAC30-72-170 G~~) (24VAC30-151).

B. VDOT will permit reasonably convenient access to a parcel of record. VDOT is not obligated to permit the most convenient access, nor is VDOT obligated to approve the permit applicant's preferred entrance location or entrance design. If a parcel is served by more than one road in the systems of state highways, the district administrator's designee shall determine upon which road or roads the proposed entrance or entrances is or are to be constructed.

C. When two or more properties are to be served by the same entrance, the permit applicant shall ensure that there is a recorded agreement between the parties specifying the use and future maintenance of the entrance. A copy of this recorded agreement shall be included in the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property.

D. The district administrator's designee may require the permit applicant to alter any proposed entrance location or design, whether private or commercial, to obtain the best

possible operational characteristics, including, but not limited to, sight distance and entrance spacing.

E. Entrance standards established by localities that are stricter than those of VDOT shall govern.

**24VAC30-72-70. Commercial entrance design.**

A. All commercial entrance design and construction shall comply with the provisions of this chapter and the standards in the Road Design Manual (~~see 24VAC30-72-170 A~~), 2011 (VDOT), the Road and Bridge Standards (~~see 24VAC30-72-170 C~~), 2008, revised 2011 (VDOT), the Road and Bridge Specifications (~~see 24VAC30-72-170 B~~) 2007, revised 2011 (VDOT), other VDOT engineering and construction standards as may be appropriate, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.). Ramps for curb sections shall be provided as required in § 15.2-2021 of the Code of Virginia. The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards (~~see 24VAC30-72-170 C~~), 2008, revised 2011 (VDOT), shall be utilized in the design.

1. In the event an entrance is proposed within the limits of a funded roadway project that will ultimately change a highway, the permit applicant may be required to construct, to the extent possible, entrances compatible with the roadway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" (~~see 24VAC30-72-170 H~~), 2004.

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards in Appendix F of the Road Design Manual (~~see 24VAC30-72-170 A~~), 2011 (VDOT).

5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the

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abutting highway during the peak hours of the abutting highway.

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement or a site plan/subdivision plat supplemental traffic analysis submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations (24VAC30-155) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. Mitigation measures that may be considered include but are not limited to:

- a. Construction of auxiliary lanes or turning lanes, or pavement transitions/tapers;
- b. Construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers;
- c. Installation, modification, or removal of traffic signals and related traffic control equipment;
- d. Provisions to limit the traffic generated by the development served by the proposed entrance;
- e. Dedication of additional right-of-way or easement, or both, for future road improvements;
- f. Reconstruction of existing roadway to provide required vertical and horizontal sight distances;
- g. Relocation or consolidation of existing entrances; or
- h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the

entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

## **24VAC30-72-80. Minimum sight distance for commercial entrances.**

A. No less than minimum intersection sight distance shall be obtained for any commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as described in Appendix F of the Road Design Manual (~~see 24VAC30-72-170-A~~, 2011 (VDOT)). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices (~~see 24VAC30-72-170-D~~) 2003, revised 2007 (FHWA), methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

## **24VAC30-72-120. Commercial entrance access management.**

A. As commercial entrance locations and designs are prepared and reviewed, appropriate access management regulations and standards shall be utilized to ensure the safety, integrity and operational characteristics of the transportation system are maintained. The proposed commercial entrance shall meet the access management standards contained in Appendix F of the Road Design Manual (~~see 24VAC30-72-170-A~~), 2011 (VDOT), and the regulations in this chapter to provide the users of such entrance with a safe means of ingress and egress while minimizing the impact of such ingress and egress on the operation of the highway. As part of any commercial entrance permit review, the district administrator's designee will determine what improvements are needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are

needed, incorporate them accordingly to protect the transportation corridor. If the location of the entrance is within the limits of an access management plan approved by the local government and VDOT, the plan should guide the district administrator's designee in determining the appropriate design and location of the entrance. Access management requirements, in addition to the regulations in this chapter, include but are not limited to:

1. Restricting commercial entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances to the highways shall not be permitted within the functional areas of intersections, roundabouts, railroad grade crossings, interchanges or similar areas with sensitive traffic operations. Only the commissioner may grant an exception to this requirement in accordance with the procedures set forth in 24VAC30-72-50 B.

2. Entrances shared with adjoining properties. To reduce the number of entrances to state highways, the district administrator's designee shall require that shared entrances be created and designed to serve adjoining parcels unless the permit applicant submits compelling evidence that a reasonable agreement cannot be reached with adjoining property owners or that there are physical constraints, including but not limited to topography, environmentally sensitive areas, and hazardous uses, to creating a shared entrance. A copy of the property owners' recorded agreement to share use of and maintain the entrance shall be submitted with the permit application for a shared entrance. The shared entrance shall be identified on any site plan or subdivision plat of the property. A permit applicant shall not be required to follow the procedures for an appeal set forth in 24VAC30-72-50 to receive an exception to the requirements of this subdivision.

3. Spacing of entrances and intersections. The spacing of proposed entrances and intersections shall comply with the spacing standards for entrances and intersections in Appendix F of the Road Design Manual (~~see 24VAC30-72-170 A~~), 2011 (VDOT), except as specified below.

a. On older, established business corridors of a locality within an urban area where existing entrances and intersections did not meet the spacing standards prior to July 1, 2008, spacing for new entrances and intersections may be allowed by the district administrator's designee that is consistent with the established spacing along the highway, provided that reasonable efforts are made to comply with the other access management requirements of this section including restricting entrances within the functional areas of intersections, sharing entrances with and providing vehicular and pedestrian connections between adjoining properties, and physically restricting entrances to right-in or right-out or both movements.

b. Where a developer proposes a development within a designated urban development area as defined in § 15.2-2223.1 of the Code of Virginia and other comparable local designations that fully incorporates principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections, the district administrator's designee may approve spacing standards for entrances and intersections internal to the development that differ from the otherwise applicable spacing standards provided that such entrances and intersections meet the intersection sight distance standards specified in Appendix F of the Road Design Manual (~~see 24VAC30-72-170 A~~), 2011 (VDOT).

c. Where a development's second or additional commercial entrances are necessary for the streets in the development to be eligible for acceptance into the secondary system of state highways and such commercial entrances cannot meet the spacing standards for highways, the district administrator's designee shall waive such state requirements that necessitate second or additional commercial entrances.

4. Vehicular/pedestrian circulation between adjoining properties. To facilitate traffic circulation between adjacent properties, reduce the number of entrances to the highway, and maximize use of new signalized intersections, the permit applicant shall be required to record access easements and to construct vehicular connections (which may include frontage roads or reverse frontage roads) in such a manner that affords safe and efficient future access between the permit applicant's property and the adjoining properties. Where appropriate, the permit applicant also shall construct pedestrian connections to the boundary lines of adjoining undeveloped properties.

a. Such connections shall not be required if there are physical constraints to making such connections between properties including but not limited to topography, environmentally sensitive areas, and hazardous uses.

b. At such time that a commercial entrance permit application is submitted for the adjoining property, a condition of permit issuance shall be to extend such vehicular/pedestrian connections into the proposed development.

c. If a permit applicant cannot or does not wish to comply with this requirement, the permit applicant's entrance

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shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

d. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide a unified access and circulation system between the sites.

5. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below signalized intersection spacing standards in Appendix F of the Road Design Manual (~~see 24VAC30-72-170-A~~, 2011 (VDOT)). If sufficient spacing between adjacent traffic signals is not available, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved.

6. Limiting entrance movements. To preserve the safety and function of certain highways, the district administrator's designee may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

B. A request for an exception from the access management requirements subsection A of this section shall follow the procedures for an appeal set forth in 24VAC30-72-50. In addition such request shall include specific and documented reasons based on a traffic engineering investigation report prepared showing that highway operation and safety will not be adversely impacted by the requested exception.

C. VDOT may work with a locality or localities on access management corridor plans. Such plans may allow for spacing standards that differ from and supersede the spacing standards for entrances and intersections in Appendix F of the Road Design Manual (~~see 24VAC30-72-170-A~~, 2011 (VDOT)), subject to approval by the commissioner.

## **24VAC30-72-140. Drive-in theaters. (Repealed.)**

~~A drive-in theater is a specialized commercial entrance. In addition to the commercial entrance regulations set forth in this part, the conditions set forth in § 33.1-12 (15) of the Code of Virginia shall be satisfied in order to construct entrances to drive-in theaters.~~

## **24VAC30-72-150. Temporary entrances (construction/logging entrances).**

A. Construction of temporary construction or logging entrances upon the systems of state highways shall be authorized in accordance with the provisions in the Land Use

Permit Regulations (~~see 24VAC30-72-170-G~~) (24VAC30-151). The permit applicant must contact the appropriate district administrator's designee to approve the location prior to installing an entrance or utilizing an existing entrance. The district administrator's designee shall also be contacted to arrange and conduct a final inspection prior to closing a temporary construction or logging entrance. In the event that adequate sight distance is not achieved, additional signage that meets the Manual on Uniform Traffic Control Devices standards (~~see 24VAC30-72-170-D~~, 2003, revised 2007, and certified flaggers shall be used to ensure safe ingress and egress.

B. Entrances shall be designed and operated in such a manner as to prevent mud and debris from being tracked from the site onto the highway's paved surface. If debris is tracked onto the highway, it shall be removed by the permittee immediately as directed by the district administrator's designee.

C. The permittee must restore, at the permittee's cost, all disturbed highway rights-of-way, including, but not limited to, ditches, shoulders, roadside and pavement, to their original condition when removing the entrance. All such restorations are subject to approval by the district administrator's designee.

## **24VAC30-72-170. Documents incorporated by reference. (Repealed.)**

~~A. Road Design Manual (effective January 1, 2005, revised July 2008)~~

~~Note: Appendix F (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.~~

~~VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219~~

~~B. 2007 Road and Bridge Specifications (effective July 2008)~~

~~VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219~~

~~C. Road and Bridge Standards (effective February 1, 2001)~~

~~VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219~~

~~D. The Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (effective December 22, 2003, revised November 2004)~~

Federal Highway Administration  
Superintendent of Documents  
U.S. Government Printing Office  
P.O. Box 371954  
Pittsburgh, PA 15250-7954

E. A Policy on Geometric Design of Highways and Streets,  
Fifth Edition, 2004

American Association of State Highway and  
Transportation Officials (AASHTO)  
444 North Capitol St. N.W., Suite 225  
Washington, D.C. 20001

F. Change of Limited Access Control, 24VAC30-401

VDOT  
1401 E. Broad St.  
Richmond, VA 23219

G. Land Use Permit Regulations, 24VAC30-151

VDOT  
1401 E. Broad St.  
Richmond, VA 23219

H. Policy for Integrating Bicycle and Pedestrian  
Accommodations, eff. March 18, 2004

VDOT  
1401 E. Broad St.  
Richmond, VA 23219

I. Highway Capacity Manual 2000

Transportation Research Board  
500 Fifth Street, NW  
Washington, DC 20001

J. Traffic Impact Analysis Regulations, 24VAC30-155

VDOT  
1401 E. Broad St.  
Richmond, VA 23219

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (24VAC30-72)

~~LUP-A - Land Use Permit Application (revised 1/2005).~~

~~LUP-SP - Special Provisions (Notice of Permittee Liability)  
(revised 11/2007).~~

~~LUP-CSB - Corporate Surety Bond (revised 1/2005).~~

~~LUP-LC - Irrevocable Letter of Credit Bank Agreement  
(revised 1/2005).~~

~~LUP-SB - Surety Bond (revised 1/2005).~~

~~[LUP-A - Land Use Permit Application \(rev. 03/10\).](#)~~

~~[LUP-SP - Special Provisions \(Notice of Permittee Liability  
\(rev. 12/10\).](#)~~

~~[LUP-CSB - Corporate Surety Bond \(rev. 03/10\).](#)~~

~~[LUP-LC - Irrevocable Letter of Credit Bank Agreement  
\(rev. 03/10\).](#)~~

~~[LUP-SB - Land Use Surety Bond \(rev. 03/10\).](#)~~

DOCUMENTS INCORPORATED BY REFERENCE  
(24VAC30-72)

Information pertaining to the availability and cost of any of these publications should be directed to the address indicated for the specific document. Requests for documents of the Virginia Department of Transportation (VDOT) may be obtained from the department at 1401 E. Broad St., Richmond, Virginia 23219; however, department documents may be available over the Internet at [www.virginiadot.org](http://www.virginiadot.org).

[VDOT Road Design Manual, 2011.](#)

Note: Appendix F (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.

[VDOT Road and Bridge Specifications, 2007, revised 2011.](#)

[VDOT Road and Bridge Standards, 2008, revised 2011.](#)

[Manual on Uniform Traffic Control Devices for Streets and Highways, 2003, revised 2007, Federal Highway Administration, Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954.](#)

[VDOT Policy for Integrating Bicycle and Pedestrian Accommodations, 2004.](#)

[Highway Capacity Manual, 2010, Transportation Research Board, 500 Fifth Street, NW, Washington, DC 20001.](#)

[Trip Generation, 8th Edition, 2008, Institute of Transportation Engineers, 1099 14th Street, N.W., Suite 300 West, Washington, DC 20005.](#)

[VDOT Instructional and Informational Memorandum IIM-LD-227.5, 2011.](#)

## **24VAC30-73-10. Definitions.**

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings/crossovers, traffic signals, and interchanges for the purpose of providing vehicular access to land development in

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a manner that preserves the safety and efficiency of the transportation system.

"Collectors" means the functional classification of highways that provide land access service and traffic circulation within residential, commercial, and industrial areas. The collector system distributes trips from principal and minor arterials through the area to the ultimate destination. Conversely, collectors also collect traffic and channel it into the arterial system.

"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing movements and left and right turning movements.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic, including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property and to other streets.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means (i) a crossing of two or more highways at grade, (ii) a crossover, or (iii) any at-grade connection with a highway such as a commercial entrance.

"Intersection sight distance" means the sight distance required at an intersection to allow the driver of a stopped vehicle a sufficient view of the intersecting highway to decide when to enter, or cross, the intersecting highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or, in the absence of such signs, the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual (~~see 24VAC30-73-170-1~~), 2010 (Transportation Research Board).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that those properties abut upon the limited access highway.

"Local streets" means the functional classification for highways that comprise all facilities that are not collectors or arterials. Local streets serve primarily to provide direct access to abutting land and to other streets.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Median opening" means a crossover or a directional opening in a nontraversable median (such as a concrete barrier or raised island) that physically restricts movements to specific turns such as left turns and U-turns.

"Minor arterials" means the functional classification for highways that interconnect with and augment the principal arterial system. Minor arterials distribute traffic to smaller geographic areas providing service between and within communities.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterials" means the functional classification for major highways intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes

those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Roundabout" means a circular intersection with yield control of all entering traffic, right-of-way assigned to traffic within the circular roadway, and channelized approaches and a central island that deflect entering traffic to the right.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highways.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; an acceleration or deceleration lane.

"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC § 101).

"VDOT" means the Virginia Department of Transportation, its successor, the Commissioner of Highways, or his designees.

## **24VAC30-73-40. Administrative procedures and rules for obtaining commercial and private entrance permits.**

All applications for entrance permits shall be obtained from and submitted to the district administrator's designee for the county in which the work is to be performed. The permit applicant shall submit the permit application form, and the entrance permit, if approved, will be issued in accordance with the applicable administrative rules, requirements and procedures of this chapter and the Land Use Permit Regulations (see 24VAC30-73-170-G) (24VAC30-151).

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## **24VAC30-73-50. Appeal and sight distance exception procedure.**

A. The permit applicant may appeal denial or revocation or conditions of a permit in writing to the district administrator with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

1. All appeals must be received within 30 calendar days of receipt of written notification of denial or revocation or issuance of a permit with contested conditions and must set forth the grounds for the appeal and include copies of all prior correspondence with any local government official and VDOT representatives regarding the issue or issues. The permit applicant may request a meeting with the district administrator concerning the appeal and the district administrator will set a date, time, and location for such meeting.

2. After reviewing all pertinent information, the district administrator will advise the permit applicant in writing regarding the decision on the appeal within 60 calendar days of receipt of the written appeal request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

3. The permit applicant may further appeal the district administrator's decision to the commissioner within 30 calendar days of receipt of written notification of the district administrator's decision. The commissioner will advise the permit applicant in writing regarding the decision on the appeal within 60 calendar days of receipt of the written appeal request, with a copy to the district administrator and the chief administrative officer of the locality where the entrance is proposed.

B. The commissioner may grant an exception to the required sight distance after a traffic engineering investigation has been performed.

1. If a sight distance exception is requested, the permit applicant shall provide such request in writing to the commissioner with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed and shall furnish the commissioner with a traffic engineering investigation report, prepared by a professional engineer. Refer to Instructional and Informational Memorandum HM LD-227 IIM LD-227.5, 2011 (VDOT), for requirements concerning approval of sight distance exceptions (~~see 24VAC30-73-170 K~~).

2. The commissioner will advise the permit applicant in writing regarding the decision on the sight distance exception request within 60 calendar days of receipt of the written exception request or such longer timeframe jointly

agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

## **24VAC30-73-70. Commercial entrance design.**

A. All commercial entrance design and construction shall comply with the provisions of this chapter and the standards in the Road Design Manual (~~see 24VAC30-73-170 A~~), 2011 (VDOT), the Road and Bridge Standards (~~see 24VAC30-73-170 C~~), 2008, revised 2011, the Road and Bridge Specifications (~~see 24VAC30-73-170 B~~), 2007, revised 2011 (VDOT), other VDOT engineering and construction standards as may be appropriate, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.). Ramps for curb sections shall be provided as required in § 15.2-2021 of the Code of Virginia. The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards (~~see 24VAC30-73-170 C~~), 2008, revised 2011, shall be utilized in the design.

1. In the event an entrance is proposed within the limits of a funded roadway project that will ultimately change a highway, the permit applicant may be required to construct, to the extent possible, entrances compatible with the roadway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" (~~see 24VAC30-73-170 H~~), 2004.

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards in Appendix G F of the Road Design Manual (~~see 24VAC30-73-170 A~~), 2011 (VDOT).

5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the abutting highway during the peak hours of the abutting highway or during the peak hours of the generator,

whichever is appropriate as determined by the district administrator's designee.

6. The use of a shared entrance between adjacent property owners shall be the preferred method of access.

7. The construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers shall be approved in accordance with the crossover location approval process specified in Appendix ~~G~~ F of the Road Design Manual (~~see 24VAC30-73-170-A~~), 2011 (VDOT).

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement or a site plan/subdivision plat supplemental traffic analysis submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations (~~see 24VAC30-73-170-D~~) (24VAC30-155) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. The district administrator's designee will consider what improvements will be needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor. Mitigation measures that may be considered include but are not limited to:

- a. Construction of auxiliary lanes or turning lanes, or pavement transitions/tapers;
- b. Construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers;
- c. Installation, modification, or removal of traffic signals and related traffic control equipment;
- d. Provisions to limit the traffic generated by the development served by the proposed entrance;

e. Dedication of additional right-of-way or easement, or both, for future road improvements;

f. Reconstruction of existing roadway to provide required vertical and horizontal sight distances;

g. Relocation or consolidation of existing entrances; or

h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

#### **24VAC30-73-80. Minimum sight distance for commercial entrances.**

A. No less than minimum intersection sight distance shall be obtained for any commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as described in Appendix ~~G~~ F of the Road Design Manual (~~see 24VAC30-73-170-A~~), 2011 (VDOT). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices (~~see 24VAC30-73-170-D~~), 2003, revised 2007 (FHWA), methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

#### **24VAC30-73-90. Private entrances.**

A. The property owner shall identify the desired location of the private entrance with the assistance of the district administrator's designee. If the minimum intersection sight distance standards specified in Appendix ~~G~~ F of the Road

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Design Manual (~~see 24VAC30-73-170-A~~), 2011 (VDOT), cannot be met, the entrance should be placed at the location with the best possible sight distance as determined by the district administrator's designee. The district administrator's designee may require the property owner to grade slopes, clear brush, remove trees, or conduct other similar efforts, or any combination of these, necessary to provide the safest possible means of ingress and egress that can be reasonably achieved.

B. The property owner shall obtain an entrance permit and, on shoulder and ditch section roads, shall be responsible for installing the private entrance in accordance with VDOT policies and engineering standards. The property owner may request VDOT to perform the stabilization of the shoulder and installation of the entrance pipe. In such cases, VDOT may install the private entrance pipe and will stabilize the shoulder at the property owner's expense. If VDOT installs these portions of the entrance, a cost estimate for the installation will be provided to the property owner; however, VDOT will bill the property owner the actual cost of installation. The property owner shall be responsible for all grading beyond the shoulder.

C. Grading and installation of a driveway from the edge of the pavement to the right-of-way line shall be the responsibility of the property owner.

D. Installation of a private entrance on a curb and gutter street shall be the responsibility of the property owner.

E. Maintenance of private entrances shall be by the owner of the entrance, except that VDOT shall maintain:

1. On shoulder section roadways, that portion of the entrance within the normal shoulder portion of the roadway.
2. On roadways with ditches, the drainage pipe at the entrance.
3. On roadways with curb, gutter, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk. If a sidewalk is not present, to the back of the curb line.
4. On roadways with curb, gutter, and sidewalk not belonging to VDOT, only to the flow line of the gutter pan.
5. On roadways with shoulders, ditches, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk.

## **24VAC30-73-120. Commercial entrance access management.**

A. As commercial entrance locations and designs are prepared and reviewed, appropriate access management regulations and standards shall be utilized to ensure the safety, integrity and operational characteristics of the transportation system are maintained. The proposed

commercial entrance shall meet the access management standards contained in Appendix G F of the Road Design Manual (~~see 24VAC30-73-170-A~~), 2011 (VDOT), and the regulations in this chapter to provide the users of such entrance with a safe means of ingress and egress while minimizing the impact of such ingress and egress on the operation of the highway.

B. A proposed development's compliance with the access management requirements specified below should be considered during the local government and VDOT's review of any rezoning, site plan, or subdivision plat for the development. VDOT's review of a rezoning traffic impact statement and a site plan/subdivision plat supplemental traffic analysis submitted for a development in accordance with the Traffic Impact Analysis Regulations (~~see 24VAC30-73-170-D~~) (24VAC30-155) shall include comments on the development's compliance with the access management requirements specified below.

C. Access management requirements, in addition to other regulations in this chapter, include but are not limited to:

1. Restricting commercial entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances to the highways shall not be permitted within the functional areas of intersections, roundabouts, railroad grade crossings, interchanges or similar areas with sensitive traffic operations. A request for an exception to this requirement submitted according to 24VAC30-73-120 D shall include a traffic engineering investigation report that contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

2. Entrances shared with adjoining properties on minor arterials and collectors. To reduce the number of entrances to state highways, a condition of entrance permit issuance shall be that entrances serve two or more parcels. A street that meets the Secondary Street Acceptance Requirements (~~see 24VAC30-73-170-L~~) (24VAC30-92) will be publicly maintained and shall be the preferred method for shared entrances as such entrances will allow for the future development of a network of publicly maintained streets. Otherwise a shared commercial entrance shall be created and designed to serve adjoining properties. A copy of the property owners' recorded agreement to share use of and maintain the entrance shall be included with the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property. The district administrator's designee is authorized to approve an exception to this requirement upon submittal of a request according to 24VAC30-73-120 D that includes the following:

a. Written evidence that a reasonable agreement to share an entrance cannot be reached with adjoining property owners, or

b. Documentation that there are physical constraints, including but not limited to topography, environmentally sensitive areas, and hazardous uses, to creating a shared entrance.

3. Spacing of entrances and intersections. The spacing of proposed entrances and intersections shall comply with the spacing standards for entrances and intersections in Appendix ~~G F~~ of the Road Design Manual (~~see 24VAC30-73-170-A~~), 2011 (VDOT), except as specified below.

a. Where a plan of development or a condition of development that identifies the specific location of an entrance or entrances was proffered pursuant to §§ 15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia as part of a rezoning approved by the locality prior to October 14, 2009, such entrances shall be exempt from the applicable spacing standards for entrances and intersections, provided the requirements of § 15.2-2307 of the Code of Virginia have been met. Entrances shall be exempt from the applicable spacing standards for entrances and intersections when the location of such entrances are shown on a subdivision plat, site plan, preliminary subdivision plat, or a Secondary Street Acceptance Requirements (~~see 24VAC30-73-170-L~~) (24VAC30-92) conceptual sketch that was submitted by the locality to VDOT for review and received by VDOT prior to October 14, 2009, or is valid pursuant to §§ 15.2-2260 and 15.2-2261 of the Code of Virginia and was approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia prior to October 14, 2009. The district administrator's designee is authorized to exempt such entrances from the spacing standards upon submittal of a request according to 24VAC30-73-120 D that includes documentation of the above criteria.

b. VDOT may work with a locality or localities on access management corridor plans. Such plans may allow for spacing standards that differ from and supersede the applicable spacing standards for entrances and intersections, subject to approval by the district administrator. Such plans may also identify the locations of any physical constraints to creating shared entrances or vehicular/pedestrian connections between adjoining properties (see 24VAC30-73-120 ~~B-2 and B-4~~) C 2 and C 4). If the permit applicant submits a request according to 24VAC30-73-120 D for an exception to the spacing standards and provides documentation that the location of the proposed commercial entrance is within the limits of an access management plan approved by the local government and by VDOT, the plan should guide the district administrator's designee in approving the

exception request and in determining the appropriate location of the entrance.

c. On older, established business corridors of a locality within an urban area where existing entrances and intersections did not meet the spacing standards prior to October 14, 2009, spacing for new entrances and intersections may be allowed by the district administrator's designee that is consistent with the established spacing along the highway, provided that the permit applicant submits a request according to 24VAC30-73-120 D for an exception to the spacing standards that includes evidence that reasonable efforts were made to comply with the other access management requirements of this section including restricting entrances within the functional areas of intersections, sharing entrances with and providing vehicular and pedestrian connections between adjoining properties, and physically restricting entrances to right-in or right-out or both movements.

d. Where a developer proposes a development within a designated urban development area as defined in § 15.2-2223.1 of the Code of Virginia or an area designated in the local comprehensive plan for higher density development that incorporates principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections, the district administrator's designee may approve spacing standards for public street intersections internal to the development that differ from the otherwise applicable spacing standards, provided that the developer submits a request according to 24VAC30-73-120 D for an exception to the spacing standards that includes information on the design of the development and on the conformance of such entrances and intersections with the intersection sight distance standards specified in Appendix ~~G F~~ of the Road Design Manual (~~see 24VAC30-73-170-A~~), 2011 (VDOT).

e. e. Where a development's second or additional commercial entrances are necessary for the streets in the development to be eligible for acceptance into the secondary system of state highways in accordance with the Secondary Street Acceptance Requirements (~~see 24VAC30-73-170-L~~) (24VAC30-92) and such commercial entrances cannot meet the spacing standards for highways, the developer may submit a request

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according to 24VAC30-73-120 D for an exception to the spacing standards that includes information on the design of the development. The following shall apply to the exception request:

(1) For highways with a functional classification as a collector or local street, the district administrator's designee may approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance or entrances. Such commercial entrances shall be required to meet the intersection sight distance standards specified in Appendix G F of the Road Design Manual (~~see 24VAC30-73-170-A~~), 2011 (VDOT).

(2) For highways with a functional classification as a minor arterial, the district administrator's designee shall, in consultation with the developer and the locality within which the development is proposed, either approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance or entrances, or waive such state requirements that necessitate second or additional commercial entrances. If approved, such commercial entrances shall be required to meet the intersection sight distance standards specified in Appendix G F of the Road Design Manual (~~see 24 VAC 30-73-170 A~~), 2011 (VDOT).

f. Where a parcel of record has insufficient frontage on a highway to meet the spacing standards because of the dimensions of the parcel or a physical constraint such as topography or an environmentally sensitive area, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved. A request for an exception to this requirement submitted according to 24VAC30-73-120 D shall include a traffic engineering investigation report that contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

4. Vehicular/pedestrian circulation between adjoining properties. To facilitate traffic circulation between adjacent properties, reduce the number of entrances to the highway, and maximize use of new signalized intersections, the permit applicant shall be required on a highway with a functional classification as a minor arterial highway, and may be required by the district administrator's designee on a highway with a functional classification as a collector, as a condition of permit issuance to record access easements and to construct vehicular connections to the boundaries of the property (which may include frontage roads or reverse frontage roads) in such a manner that affords safe and efficient future access between the permit applicant's property and adjoining undeveloped properties. Where appropriate, the permit applicant also shall construct

pedestrian connections to the boundary lines of adjoining undeveloped properties and adjoining developed properties with sidewalks that abut the property. At such time that a commercial entrance permit application is submitted for the adjoining property, a condition of permit issuance shall be to extend such vehicular/pedestrian connections into the proposed development. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide a unified vehicular and pedestrian access connection and circulation system between the sites.

a. Such connections shall not be required if the permit applicant submits a request for an exception according to 24VAC30-73-120 D and provides documentation that there are physical constraints to making such connections between properties, including but not limited to topography, environmentally sensitive areas, and hazardous uses.

b. If a permit applicant does not wish to comply with this requirement, the permit applicant's entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

5. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below signalized intersection spacing standards in Appendix G F of the Road Design Manual (~~see 24VAC30-73-170-A~~), 2011 (VDOT). If sufficient spacing between adjacent traffic signals is not available, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved. A request for an exception to this requirement submitted according to subsection D of this section shall include a traffic engineering investigation report that (i) evaluates the suitability of the entrance location for design as a roundabout, and (ii) contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

6. Limiting entrance movements. To preserve the safety and function of certain highways, the district administrator's designee may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

D. A request for an exception from the access management requirements in subsection C of this section shall be submitted in writing to the district administrator's designee.

The request shall identify the type of exception, describe the reasons for the request, and include all documentation specified in 24VAC30-73-120 C for the type of exception. After considering all pertinent information including any improvements that will be needed to the entrance or intersection to protect the operational characteristics of the highway, the district administrator's designee will advise the applicant in writing regarding the decision on the exception request within 30 calendar days of receipt of the written exception request, with a copy to the district administrator. The applicant may appeal the decision of the district administrator's designee to the district administrator in accordance with the procedures for an appeal set forth in 24VAC30-73-50.

**24VAC30-73-140. Drive-in theaters. (Repealed.)**

~~A drive in theater is a specialized commercial entrance. In addition to the commercial entrance regulations set forth in this part, the conditions set forth in § 33.1-12 (15) of the Code of Virginia shall be satisfied in order to construct entrances to drive-in theaters.~~

**24VAC30-73-150. Temporary entrances (construction/logging entrances).**

A. Construction of temporary construction or logging entrances upon the systems of state highways shall be authorized in accordance with the provisions in the Land Use Permit Regulations ~~(see 24VAC30-73-170 G)~~ (24VAC30-151). The permit applicant must contact the appropriate district administrator's designee to approve the location prior to installing an entrance or utilizing an existing entrance. The district administrator's designee shall also be contacted to arrange and conduct a final inspection prior to closing a temporary construction or logging entrance. In the event that adequate sight distance is not achieved, additional signage that meets the Manual on Uniform Traffic Control Devices standards ~~(see 24VAC30-73-170 D)~~, 2003, revised 2007 (FHWA), and certified flaggers shall be used to ensure safe ingress and egress.

B. Entrances shall be designed and operated in such a manner as to prevent mud and debris from being tracked from the site onto the highway's paved surface. If debris is tracked onto the highway, it shall be removed by the permittee immediately as directed by the district administrator's designee.

C. The permittee must restore, at the permittee's cost, all disturbed highway rights-of-way, including, but not limited to, ditches, shoulders, and pavement, to their original condition when removing the entrance. All such restorations are subject to approval by the district administrator's designee.

**24VAC30-73-170. Documents incorporated by reference. (Repealed.)**

~~A. Road Design Manual (effective January 1, 2005, revised October 2009).~~

~~Note: Appendices F and G (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.~~

~~VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219~~

~~B. 2007 Road and Bridge Specifications (effective July 2008).~~

~~VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219~~

~~C. 2008 Road and Bridge Standards (effective June 2009).~~

~~VDOT  
1401 E. Broad Street  
Richmond, Virginia 23219~~

~~D. The Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (effective December 22, 2003, revised November 2004).~~

~~Federal Highway Administration  
Superintendent of Documents  
U.S. Government Printing Office  
P.O. Box 371954  
Pittsburgh, PA 15250-7954~~

~~E. A Policy on Geometric Design of Highways and Streets, Fifth Edition, 2004.~~

~~American Association of State Highway and Transportation Officials (AASHTO)  
444 North Capitol St. N.W., Suite 225  
Washington, D.C. 20001~~

~~F. Change of Limited Access Control, 24VAC30-401.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~G. Land Use Permit Regulations, 24VAC30-151.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~H. Policy for Integrating Bicycle and Pedestrian Accommodations, eff. March 18, 2004.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~I. Highway Capacity Manual, 2000.~~

~~Transportation Research Board~~

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# Regulations

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500 Fifth Street, NW  
Washington, DC 20001

~~J. Traffic Impact Analysis Regulations, 24VAC30-155.~~

~~VDOT  
1401 E. Broad St.  
Richmond, VA 23219~~

~~K. Instructional and Informational Memorandum IIM LD-227.3, eff. May 23, 2007.~~

~~VDOT  
1401 E. Broad Street  
Richmond, VA 23219~~

~~L. Secondary Street Acceptance Requirements, 24VAC30-92, eff. March 9, 2009.~~

~~VDOT  
1401 E. Broad Street  
Richmond, VA 23219~~

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (24VAC30-73)

~~LUP-A Land Use Permit Application (revised 1/2005).~~

~~LUP-SP Land Use Permit Special Provisions (Notice of Permittee Liability) (revised 11/2007).~~

~~LUP-CSB Land Use Permit Corporate Surety Bond (revised 1/2005).~~

~~LUP-LC Land Use Permit Irrevocable Letter of Credit Bank Agreement (revised 1/2005).~~

~~LUP-SB Land Use Permit Surety Bond (revised 1/2005).~~

[LUP-A - Land Use Permit Application \(rev. 03/10\).](#)

[LUP-SP - Land Use Permit Special Provisions \(Notice of Permittee Liability\) \(rev. 12/10\).](#)

[LUP-CSB - Corporate Surety Bond \(rev. 03/10\).](#)

[LUP-LC - Letter of Credit Bank Agreement \(rev. 03/10\).](#)

[LUP-SB - Land Use Permit Surety Bond \(rev. 03/10\).](#)

DOCUMENTS INCORPORATED BY REFERENCE  
(24VAC30-73)

Information pertaining to the availability and cost of any of these publications should be directed to the address indicated for the specific document. Requests for documents of the Virginia Department of Transportation (VDOT) may be obtained from the department at 1401 E. Broad St.,

Richmond, Virginia 23219; however, department documents may be available over the Internet at [www.virginiadot.org](http://www.virginiadot.org).

[VDOT Road Design Manual, 2011.](#)

Note: Appendix F (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.

[VDOT Road and Bridge Specifications, 2007, revised 2011.](#)

[VDOT Road and Bridge Standards, 2008, revised 2011.](#)

[Manual on Uniform Traffic Control Devices for Streets and Highways, 2003, revised 2007, Federal Highway Administration, Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954.7.](#)

[VDOT Policy for Integrating Bicycle and Pedestrian Accommodations, 2004.](#)

[Highway Capacity Manual, 2010, Transportation Research Board, 500 Fifth Street, NW, Washington, DC 20001.](#)

[VDOT Instructional and Informational Memorandum IIM-LD-227.5, 2011.](#)

[Trip Generation, 8th Edition, 2008, Institute of Transportation Engineers, 1099 14th Street, N.W., Suite 300 West, Washington, DC 20005.](#)

VA.R. Doc. No. R12-3066; Filed December 8, 2011, 1:31 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 42 (2011)

### **Allocation of a Portion of the Commonwealth's Share of the Calendar Years 2009 and 2010 National Limitation for Qualified School Construction Bonds Under the American Recovery and Reinvestment Act of 2009**

#### Importance of the Issue

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355 (2009)) was enacted on February 17, 2009 ("ARRA"). ARRA added Section 54F to the Internal Revenue Code of 1986, as amended, ("IRC") to provide for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions ("Qualified Projects"). QSCBs were originally designed as taxable bonds providing the QSCB holder with a federal tax credit in lieu of interest. In the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 124 Stat. 71 (2010)), enacted March 18, 2010, Congress provided a direct payment subsidy option whereby an issuer of QSCBs could elect to receive a subsidy payment from the federal government on each interest payment date intended to be equal to the amount of coupon interest payable on such date.

A condition for the valid issuance of QSCBs is the receipt of an allocation of the national limitation under IRC Section 54F(c) sufficient to cover the maximum face amount of the QSCBs to be issued (a "Volume Cap Allocation"). IRC Section 54F created a national limitation of \$11 billion for each of calendar years 2009 and 2010, with a provision allowing carryforwards of any unused limitation amounts to calendar years after 2010. The U.S. Secretary of the Treasury made allocations of the calendar years 2009 and 2010 national limitation amounts to the states and certain "large local education agencies" in accordance with the formulae set forth in IRC Section 54F. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17, dated April 27, 2009), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") is \$191,077,000 (the "2009 Commonwealth Share") and, pursuant to Notice 2010-17 (IRB 2010-14, dated March 17, 2010), the share of the calendar year 2010 national limitation allocated to the Commonwealth is \$172,249,000 (the "2010 Commonwealth Share").

IRC Section 54F(d)(1) provides that the national limitation amount allocated to a state for any calendar year shall be allocated by a "state agency" to qualified issuers within the state. The General Assembly has provided no specific guidance on how such allocations are to be made in Virginia.

Reference is made to Executive Order 34 (2011), issued June 10, 2011 ("Executive Order 34") for the prior applications of the 2009 and 2010 Commonwealth Shares and the determination of the basis on which the below-described allocations are being made. Unless otherwise defined herein, each capitalized term used below has the meaning given it in Executive Order 34.

As of the date of this Executive Order, the amount remaining (the "Carryforward Amount") from the 2009 and 2010 Commonwealth Shares is \$162,151,000.

On March 2, 2011, the Virginia Department of Education ("VDOE") announced the allocation of the entire remaining 2009 and 2010 Commonwealth Shares to fully or partially fund 41 new construction, renovation, and expansion application-based projects in 33 school divisions. Such announcement will be referred to below as the "VDOE Announcement."

On June 28, 2011, the Virginia Public School Authority ("VPSA") issued its first calendar year 2011 QSCBs series with a Volume Cap Allocation made pursuant to the VDOE Announcement and finalized pursuant to Executive Order 34.

VPSA is scheduled to issue the second calendar year 2011 QSCBs series (the "2011-2 QSCBs") by mid-December 2011.

By the terms of the VDOE Announcement, the allocations to the school divisions and projects were deemed to be preliminary until the eligibility of each project for QSCB financing was determined through detailed project review. The VDOE Announcement indicated that prior to the sale of the applicable QSCBs, the final qualifying projects and project issuance amounts would be formally set out in an Executive Order. VDOE has advised me of the qualifying projects and maximum face amounts of QSCBs for each such project proposed to be included in the 2011-2 QSCBs. Such projects and the localities in which they are located will be referred to below respectively as the "Awarded Projects" and the "Awarded Localities." An additional Executive Order is anticipated to be issued prior to each future sale of QSCBs by VPSA.

Accordingly, by virtue of the powers invested in me by Article V of the Constitution of Virginia and § 2.2-103 of the Code of Virginia of 1950, as amended, as Governor of the Commonwealth of Virginia, I hereby provide a Volume Cap Allocation to VPSA pursuant to IRC Section 54F(d)(1) from the Carryforward Amount in an amount sufficient for VPSA to issue QSCBs for the benefit of each of the Awarded Localities listed below in an aggregate face amount up to the respective maximum face amount listed below. Although it is anticipated that the Awarded Localities will participate in VPSA's 2011-2 QSCBs sale, the portion of the Volume Cap Allocation provided for any Awarded Locality will remain in effect and can be used in any VPSA QSCB sale until the expiration date described below. The first priority use of the sale and investment proceeds of such QSCBs (the "Local Available Project Proceeds") shall be to finance qualifying costs of the respective Awarded Projects listed below.

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# Governor

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## The Awarded Localities and Awarded Projects:

Awarded Locality	Awarded Project	Maximum Face Amount
Albemarle County	Addition to Mary Carr Greer Elementary	\$ 2,000,000
Charlotte County	Renovation of Randolph Henry High	1,500,000
City of Chesapeake	Expansion and renovation of Indian River High	5,000,000
Dickenson County	Construction of new consolidated middle/high school	10,000,000
Essex County	Expansion and renovation of Essex High	10,000,000
City of Falls Church	Expansion and renovation of Thomas Jefferson Elementary	3,000,000
Fauquier County	Expansion and renovation of Fauquier High	10,000,000
Frederick County	New pupil transport facility	7,000,000
Gloucester County	Purchase land for new middle school site	500,000
King George County	Renovation of Potomac Elementary	5,000,000
Loudoun County	Construction of new Leesburg-area elementary school	5,000,000
Lunenburg County	Expansion and renovation of Central High	5,000,000
City of Martinsville	Expansion of Martinsville High	10,500,000
Montgomery County	Construction of new Blacksburg High	15,000,000
Richmond County	Conversion and renovation of existing high school building as new Richmond County Intermediate	5,000,000
Rockbridge County	Expansion and renovation of Maury River Middle	7,500,000
Smyth County	Construction of new elementary school and renovation of Smyth-Marion Primary	9,500,000
City of Suffolk	Construction of new elementary school	7,500,000
Williamsburg-James City County	Expansion of Jamestown High	1,000,000
Wise County	Construction of new consolidated high school	15,000,000

An Awarded Locality must give first priority to the application of its Local Available Project Proceeds to complete the scope of work described in the approved project application for its Awarded Project.

VDOE is directed to establish a procedure to ensure that the Local Available Project Proceeds are used to finance public school projects within an Awarded Locality ("Additional Projects") to the extent such proceeds are in excess of the amounts needed to complete the scope of work on the locality's Awarded Project. Such Additional Projects (i) must be projects that will qualify for QSCB financing under the applicable provisions of federal and Virginia law; (ii) must be able to utilize the unspent Local Available Project Proceeds within the three years after the issue date of the respective QSCBs; and (iii) should be evaluated against the following criteria: consolidation projects, projects eliminating overcrowding, projects replacing facilities more than 35 years old, and projects creating school-wide, high-speed computer networks.

Any locality receiving a Volume Cap Allocation under the VDOE Announcement may waive its allocation by notifying VDOE in writing. VDOE is authorized to reallocate any waived Volume Cap Allocations to address emergency situations in any school division arising from: the 5.8 magnitude earthquake that occurred on August 23, 2011; Hurricane Irene; or other bona fide emergency situation significantly affecting the condition of a public school building. Any such reallocation will be effective until the June 30, 2012, expiration date described below. In addition, as approved by VDOE, an Awarded Locality may apply all or a portion of its Local Available Project Proceeds to an alternative school project where the condition of such school has been significantly affected by a bona fide emergency situation. Any project undertaken pursuant to this paragraph shall be a project that will qualify for QSCB financing under federal and Virginia law.

By June 30, 2012, VPSA shall provide to the Superintendent of Public Instruction the completed Internal Revenue Service reporting form (or forms) then in effect for the QSCBs for those QSCBs issued pursuant to the Volume Cap Allocations made to VPSA pursuant to this order. Any portion of such Volume Cap Allocations not used by June 30, 2012 will expire and be deemed waived by the VPSA, and I will direct VDOE to establish procedures for reallocating the waived Volume Cap Allocations.

I hereby authorize the Superintendent of Public Instruction to provide certificates of compliance with IRC Section 54F(c) as may be requested by VPSA.

Effective Date of this Executive Order

This Executive Order shall be effective as of November 22, 2011, without any further act or filing.

Given under my hand and under the Seal of the Commonwealth of Virginia this 22nd day of November, 2011.

/s/ Robert F. McDonnell  
Governor

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# GENERAL NOTICES/ERRATA

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## CEMETERY BOARD

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Cemetery Board is conducting a periodic review of **18VAC47-11, Public Participation Guidelines**, and **18VAC47-20, Cemetery Board Regulations**. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

The comment period begins December 19, 2011, and ends on January 12, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Christine Martine, Executive Director, Cemetery Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 350-7849, or email [cemetery@dpor.virginia.gov](mailto:cemetery@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## FAIR HOUSING BOARD

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Fair Housing Board is conducting a periodic review of **18VAC62-10, Public Participation Guidelines**, and **18VAC62-20, Fair Housing Board Certification Regulations**. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are

necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

The comment period begins December 19, 2011, and ends on January 12, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Christine Martine, Executive Director, Fair Housing Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 350-7849, or email [fhcertainment@dpor.virginia.gov](mailto:fhcertainment@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## REAL ESTATE APPRAISER BOARD

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Real Estate Appraiser Board is conducting a periodic review of **18VAC130-11, Public Participation Guidelines**, and **18VAC130-20, Real Estate Appraiser Board Rules and Regulations**. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

The comment period begins December 19, 2011, and ends on January 12, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Christine Martine, Executive Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400,

Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 350-7849, or email [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## REAL ESTATE BOARD

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Real Estate Board is currently reviewing each of the regulations listed below to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

#### 18VAC135-11, Public Participation Guidelines

#### 18VAC135-20, Virginia Real Estate Board Licensing Regulations

#### 18VAC135-50, Fair Housing Regulations

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Christine Martine, Executive Director, Real Estate Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 350-7849, or email [reboard@dpor.virginia.gov](mailto:reboard@dpor.virginia.gov). Comments must include the commenter's name and address information (physical or email) in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## VIRGINIA WASTE MANAGEMENT BOARD

### Notice of Periodic Review

The Department of Environmental Quality, on behalf of the Virginia Waste Management Board, will conduct a periodic review of **9VAC20-20, Schedule of Fees for Hazardous Waste Facility Site Certification**. The purpose of the review

is to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The department and the board are seeking public comments on the review of any issue relating to the regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulation.

The purpose of these regulations, together with Article 6 (§ 10.1-1433 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, is to provide the minimum funds from a potential hazardous waste facility developer to allow for the thorough and efficient review of an application for a site certification. Section 10.1-1434 B 6 of the Code of Virginia requires that these regulations be promulgated. These regulations are part of a set of four related regulations mandated by Virginia statutes. The four regulations establish a procedure for the siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process. These regulations are designed to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The public comment period begins on December 19, 2011, and ends on January 9, 2012.

Comments should be sent to Gary E. Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4103, FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### Notice of Periodic Review

The Department of Environmental Quality, on behalf of the Virginia Waste Management Board, will conduct a periodic review of **9VAC20-30, Technical Assistance Fund Administrative Procedures**. The purpose of the review is to

determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The department and the board are seeking public comments on the review of any issue relating to the regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulations.

The purpose of these regulations is to establish administrative procedures for localities to use to apply for grants from the technical assistance fund established by Article 6 (§ 10.1-1433 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, and they also provide guidelines for the use of those funds. Sections 10.1-1438 and 10.1-1448 of the Code of Virginia require that these regulations be promulgated. These regulations are part of a set of four related regulations mandated by Virginia statutes. The four regulations establish a procedure for the siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process. These regulations are designed to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered.

The public comment period begins on December 19, 2011, and ends on January 9, 2012.

Comments should be sent to Gary E. Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4103, FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### Notice of Periodic Review

The Department of Environmental Quality, on behalf of the Virginia Waste Management Board, will conduct a periodic review of **9VAC20-40, Administrative Procedures for Hazardous Waste Facility Site Certification**. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The department and the board are seeking public comments on the review of any issue relating to the regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulations.

The purpose of the regulations, together with Article 6 (§ 10.1-1433 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, is to establish administrative procedures for the submission and evaluation of applications for certification of hazardous waste facility sites. Sections 10.1-1433 through 10.1-1447 of the Code of Virginia require that these regulations be promulgated. These regulations are part of a set of four related regulations mandated by Virginia statutes. The four regulations establish a procedure for the siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process. These regulations are designed to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered.

The public comment period begins on December 19, 2011, and ends on January 9, 2012.

Comments should be sent to Gary E. Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4103, FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be

posted on the Town Hall and published in the Virginia Register of Regulations.

## Notice of Periodic Review

The Department of Environmental Quality, on behalf of the Virginia Waste Management Board, will conduct a periodic review of **9VAC20-50, Hazardous Waste Facility Siting Criteria**. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The department and the board are seeking public comments on the review of any issue relating to the regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety, or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (v) the regulations are clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulations.

The purpose of the regulations is to establish criteria for the evaluation of new hazardous waste facility sites that are protective of public health, safety and welfare and the environment and do not erect an unreasonable barrier to the developer's use of the site in terms of cost, procedures, or required physical features. Sections 10.1-1433 through 10.1-1447 of the Code of Virginia require that these regulations be promulgated. These regulations are part of a set of four related regulations mandated by Virginia statutes. The four regulations establish a procedure for the siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process. These regulations are designed to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered.

The public comment period begins on December 19, 2011, and ends on January 9, 2012.

Comments should be sent to Gary E. Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (deliveries can be made to 629 East Main Street, Richmond, VA 23219), telephone (804) 698-4103, FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response

to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

**ERRATA**

**STATE BOARD OF HEALTH**

Title of Regulation: 12VAC5-613. Regulations for Alternative Onsite Sewage Systems (adding 12VAC5-613-10 through 12VAC5-613-210).

Publication: 28:5 VA.R. 458-472 November 7, 2011.

Correction to Final Regulation:

Page 465, 12VAC5-613-90 C 6, change "12VAC5-613-60 D" to "12VAC5-613-60 C"

VA.R. Doc. No. R10-2164; Filed November 30, 2011, 1:45 p.m.