



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 3

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 4, 2023

MOTION

Made By: Mr. Stant **Seconded By:** Mr. Laird

Action: Motion Carried, Unanimously

Title: Authorization of Proposed Amendments to Secondary Street Acceptance Requirements Pursuant to Chapter 425 of the 2022 Acts of Assembly

WHEREAS, Chapter 425 of the 2022 Acts of Assembly amended §33.2-334 to require that the regulatory provisions for the Secondary Street Acceptance Requirements (SSAR) include flexibility to limit the number of connections to adjacent property or highway networks as deemed appropriate; and

WHEREAS, Chapter 425 further directed the Virginia Department of Transportation (VDOT) to convene a stakeholder advisory group, no later than January 1, 2023, for the purpose of developing amendments to the SSAR and recommending these amendments to the Commonwealth Transportation Board; and

WHEREAS, the SSAR regulations are used to determine the conditions and standards that must be met before streets constructed by developers, localities, and entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT; and

WHEREAS, the purpose of these and other provisions in the regulation is to improve the effectiveness of the overall regional and local transportation network; reduce reliance on arterial roadways for local trips; provide direct and alternative routes for emergency service providers; reduce subdivision street widths, where appropriate; and recover VDOT's costs related to street acceptance; and

WHEREAS, VDOT convened a diverse stakeholder advisory group, as required by Chapter 425, and the stakeholder advisory group's draft amendments to the connectivity provisions of the SSAR were approved at the Commonwealth Transportation Board's June 21, 2023, action meeting; and

WHEREAS, pursuant to the resolution titled *Authorization of Amendments to Secondary Street Acceptance Requirements Pursuant to Chapter 425 of the 2022 Acts of Assembly* approved at the Board's June 21, 2023, action meeting, VDOT filed the approved draft amendments and the Notice of Intended Regulatory Action (NOIRA) Agency Background Document on the Virginia Regulatory Town Hall to initiate the process of amending the SSAR, with no comments received during the 30-day public comment period held in conjunction with publication of the NOIRA in the *Virginia Register of Regulations*.

WHEREAS, pursuant to the Administrative Process Act (section 2.2-4000 *et seq* of the *Code of Virginia*), the proposed amendments to the regulation, which contain no substantive changes since the NOIRA phase, must now be posted on the Virginia Regulatory Town Hall pursuant to the proposed stage of the regulatory process and published in the *Virginia Register of Regulations* for a public comment period of 60 days, before the amended regulation may be finalized and become effective.

NOW, THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board hereby approves the proposed amendments to the Secondary Street Acceptance Requirements (24 VAC 30-92), attached hereto (see Attachment A).

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board directs the Commissioner of Highways or his designees to take all necessary actions to promulgate the amended regulation, filing the necessary forms, including the Proposed Regulation Agency Background Document (see Attachment B), as may be required by the Virginia Administrative Process Act.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board authorizes and directs the Commissioner of Highways or his designees to complete the regulatory process for these regulations, and to bring the Final amendments/regulation to the Board for approval only if public comments are received or substantive changes are suggested to the proposed amendments attached hereto.

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CTB Decision Brief

Authorization of Proposed Amendments to Secondary Street Acceptance Requirements Pursuant to Chapter 425 of the 2022 Acts of Assembly

Issue: Chapter 425 of the 2022 Acts of Assembly directed the Commonwealth Transportation Board (CTB) to amend the connectivity elements of 24 VAC 30-92, the Secondary Street Acceptance Requirements (SSAR), to include additional flexibility to limit the number of connections to adjacent property or highway networks as deemed appropriate. Chapter 425 also required the Virginia Department of Transportation (VDOT) to convene a stakeholder advisory group for the purpose of developing and providing recommended amendments to the CTB with regard to the connectivity provisions of the SSAR.

In June 2023, the CTB authorized VDOT to file a Notice of Intended Regulatory Action (NOIRA) regarding suggested amendments to the SSAR pursuant to Chapter 425. The NOIRA was filed and the NOIRA stage for the SSAR amendments has been completed, with no public comments submitted. VDOT is now seeking approval from the CTB to move forward with the Proposed and Final stages of the regulatory process for amendment of the SSAR.

Facts: Chapter 382 of the 2007 Acts of Assembly created § 33.1-70.3 (now § 33.2-334) of the *Code of Virginia*, which required the CTB to develop the SSAR to set out the conditions and standards that must be met before streets constructed by developers, localities, and entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT.

Section 33.2-334 requires that the SSAR regulations “include (i) requirements to ensure the connectivity of highway and pedestrian networks with the existing and future transportation network, provided that such provisions shall include flexibility to limit the number of connections to adjacent property or highway networks as deemed appropriate; (ii) provisions to minimize stormwater runoff and impervious surface area; and (iii) provisions for performance bonding of new secondary highways and associated cost recovery fees.”

VDOT established the stakeholder advisory group as required by Chapter 425 of the 2022 Acts of Assembly, and this group met five times between September 2022 and February 2023. The group developed suggested amendments to the connectivity provisions of the SSAR, which were approved by the CTB at its June 21, 2023 action meeting pursuant to the resolution titled *Authorization of Amendments to Secondary Street Acceptance Requirements Pursuant to Chapter 425 of the 2022 Acts of Assembly*.

The CTB directed VDOT to file the NOIRA stage of the regulatory process on the Virginia Regulatory Town Hall to initiate the process of amending the SSAR. VDOT filed the NOIRA on Town Hall in July and it was published in the *Virginia Register of Regulations* in August, with no comments received during the 30-day public comment period held in conjunction with publication in the *Register*.

VDOT is now seeking approval from the CTB to move forward with the proposed amendments to the SSAR (set forth in Attachment A) to include completion of the Proposed stage of the regulatory process, which will entail submission to Town Hall and/or publication in the *Virginia Register of Regulations*, the proposed regulatory amendments and necessary forms, including the

Decision Brief

Authorization of Proposed Amendments to Secondary Street Acceptance Requirements Pursuant to Chapter 425 of the 2022 Acts of Assembly

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Proposed Regulation Agency Background Document (see Attachment B) and a 60-day public comment period. VDOT also seeks authorization from the CTB to complete the Final stage of the regulatory process, (which will entail a final 30-day comment period), in order to finalize the amendments to the SSAR, provided no public comments are received or substantive amendments to the regulations are proposed between the Proposed and Final Stages.

Recommendations: It is recommended that the SSAR be revised in accordance with the proposed amendments reflected in Attachment A.

Action Required by CTB: The CTB will be presented with a resolution and the corresponding proposed regulatory amendments for a formal vote.

Result, if Approved: VDOT will advance the connectivity changes through the regulatory process by filing the Proposed stage. VDOT will also file the Final stage upon conclusion of the Proposed stage if no public comments are received or substantive changes are made to the proposed amendments.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: Significant stakeholder participation was enabled through the stakeholder advisory group, which was comprised of representatives from the development industry, local governments, environmental advocacy groups, and VDOT. No comments were received during the 30-day public comment period held in conjunction with publication of the NOIRA in the *Virginia Register of Regulations*. Additional public comment periods will be held for 60 days during the Proposed stage and 30 days during the Final stage of the regulatory process.

Project 7622 - NOIRA**Department of Transportation****Amendment due to Ch. 425 of the 2022 Acts of Assembly**

Chapter 92

Secondary Street Acceptance Requirements

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 §§ 33.2-909 and 33.2-912 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").

"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) for details.)

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

"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 connectivity standards have been met.

"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 § 33.2-908 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, 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.

"FAR" means floor area ratio, which is the ratio of the total floor area of a building or buildings on a

parcel to the 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.

"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, 2010 (TRB) shall serve as the basis for determining "levels of service."

"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 9VAC25-870-380 as municipal separate storm sewer systems.

"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, 2009 (VDOT).

"Permit Regulations" means the department's Land Use Permit Regulations (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 § 33.2-705 of the Code of Virginia and subsequently accepted by the department for supervision and maintenance under the provisions of Article 3 (§ 33.2-324 et seq.) of Chapter 3 and Article 2 (§ 33.2-908 et seq.) of Chapter 9 of Title 33.2 of the Code of Virginia.

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

"Specifications" means the department's Road and Bridge Specifications, 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, 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.

"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.

"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, 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.

"Underground Utility Trunk Easement" means an easement for the accommodation of a utility which has an existing underground utility trunk or transmission line (cable, pipeline, or similar facility); such lines are not used for distribution of the utility's services to individual customers, but rather for long distance carrying or transmission purposes.

"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.

24VAC30-92-60. 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 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, 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 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 unclear situations should be made in writing to the district administrator's designee.

C. Connectivity requirements. All 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 an adjacent property or a stub out that will allow for future street connection to an adjacent property.

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 (24VAC-30-73), streets petitioned for acceptance into the secondary system of state highways through the Rural Addition Program pursuant to §§ 33.2-335 and 33.2-336 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 January 1, 2012.

1. 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 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, including but not limited to such as the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted.
- d. The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is

under construction.

3. Additional connections standard. 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 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.

a. 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:

aj. 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;

bj. 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;

cj. 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

dj. There is no reasonable connection possible to adjoining property or adjacent highways due to a factor outside the control of the developer of the network addition, including but not limited to such as the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted.

v. The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is

under construction.

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

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 one terminus of the street is an intersection with a roadway that is part of the existing publicly maintained highway network 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.

5. Connectivity exceptions.

Where the above standards for waiver or modification have been met, the connectivity requirements for a network addition shall be waived or modified by the district administrator's designee. The developer shall submit any request for connectivity 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 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.

6. In instances where there is potential for conflict between this chapter and the Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73), the following shall apply:

a. For streets with a functional classification of collector where additional connections necessary to meet the 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, such spacing standards shall be modified by the district 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).

b. For streets with a functional classification of minor arterial where additional connections necessary to meet the 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 district 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 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).

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 requirements shall be modified by the district administrator's designee to account for the inability to make such connection.

7. Failure to connect. 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.



townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-92
VAC Chapter title(s)	Secondary Street Acceptance Requirements
Action title	Revision of the Secondary Street Acceptance Requirements (24 VAC 30-92) pursuant to Chapter 425 of the 2022 Acts of Assembly.
Date this document prepared	██████, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

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

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“CTB” means the Commonwealth Transportation Board.

“SAG” means the Stakeholder Advisory Group.

“SSAR” means the Secondary Street Acceptance Requirements.

“VDOT” means the Virginia Department of Transportation.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Chapter 425 of the 2022 Acts of Assembly required that the regulatory provisions of the SSAR contain flexibility related to its connectivity elements.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

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

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

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

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

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

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

1. Add definition to 24VAC30-92-10:
 - "Underground Utility Trunk Easement" means an easement for the accommodation of a utility which has an existing underground utility trunk or transmission line (cable, pipeline, or similar facility); such lines are not used for distribution of the utility's services to individual customers, but rather for long distance carrying or transmission purposes.
2. Change to 24VAC30-92-60 (C.2.c and C.3.a.iv) related to exceptions to Multiple Connections and Additional Connections requirements:
 - There is no reasonable connection possible to adjoining property or adjacent highways due to a factor outside the control of the developer of the network addition, ~~such as including but not limited to~~ the presence of conservation easements not put in place by the developer of the network addition, underground utility trunk easement not put in place by the developer of the network addition, water features such as rivers or lakes, jurisdictional wetlands, grades in excess of 15% whose total elevation change is greater than five feet, limited access highways, railroads, or government property to which access is restricted.
3. Change to 24VAC30-92-60 (C.2 and C.3) by adding new exception to Multiple Connections and Additional Connections requirements:
 - Add new subpart C.2.d and C.3.a.v: The network addition was constructed in accordance with an overall plan of development approved by the department and the locality as meeting all the requirements of this chapter, and the additional phase of the development allowing the network addition to meet connectivity is under construction.
4. Addition to 24VAC30-92-60 (C.3) which adds new exceptions to Additional Connection requirements:
 - Add new subpart C.3.b: The district administrator's designee may also waive or modify this additional connections standard if, in the written opinion of the applicant and locality's Chief Executive or designee, the provision of such connection is impracticable or unwarranted due to (i) topographic constraints; (ii) incompatibility with existing adjoining development; (iii) the adjoining property is completely built out as envisioned in the locality's comprehensive plan with no expectation of redevelopment in the next 20 years and there is no stub out (either constructed or platted) to the property served by the network addition; (iv) the connection would impact the developer's ability to comply with any local ordinances related to the preservation of open space or trees during the land development process, after a good faith effort to comply with connectivity

requirements and local ordinances; (v) the connection would require work outside the right of way (existing or proposed) or easements on an adjoining property outside of the control of the developer; or (vi) other factors as determined by the applicant and locality’s Chief Executive or designee. The district administrator’s designee shall respond to requests for such connectivity exceptions within 30 calendar days of receipt of a completed VDOT request form.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

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

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

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the regulatory changes.

Localities Particularly Affected

Localities are affected by the proposed amendments. The regulatory changes allow for a locality-led process that provides flexibility to achieve local planning goals.

Other Entities Particularly Affected

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

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.	The cost to VDOT of the proposed amendments in terms of staff time and effort is expected to be negligible. There are no anticipated savings, fees, or revenues resulting from the regulatory change.
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no anticipated costs, savings, fees, or revenues for other state agencies resulting from this regulatory action.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	As directed by Chapter 425 of the 2022 Acts of Assembly, the intent of the changes is to add flexibility to the regulation's connectivity requirements to limit the number of connections to adjacent property or highway networks, as deemed appropriate.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no anticipated costs, savings, fees, or revenues for localities resulting from this regulatory action.
Benefits the regulatory change is designed to produce.	As directed by Chapter 425 of the 2022 Acts of Assembly, the intent of the changes is to add

	flexibility to the regulation’s connectivity requirements to limit the number of connections to adjacent property or highway networks, as deemed appropriate.
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Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The development industry is affected by this regulation. The proposed changes add flexibility for developers to meet the SSAR connectivity requirements.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The number of entities, including small businesses, affected by the proposed changes cannot be estimated.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	No costs for entities affected by the regulatory changes are anticipated.
Benefits the regulatory change is designed to produce.	As directed by Chapter 425 of the 2022 Acts of Assembly, the intent of the changes is to add flexibility to the regulation’s connectivity requirements to limit the number of connections to adjacent property or highway networks, as deemed appropriate. This may allow developers to avoid some costs or make an additional lot available for sale in limited circumstances.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

The proposed regulatory changes were developed through consensus of the SAG, which was comprised of representatives from the development industry, local governments, environmental advocacy groups, and VDOT as required by Chapter 425 of the 2022 Acts of Assembly. The group met five times between September 2022 and February 2023 to develop the recommended amendments. While there was discussion of many different paths for achieving the required regulatory flexibility, the majority of SAG members ultimately voted in support of the recommendations. The proposed regulatory changes are not overly complex, costly, or burdensome for small businesses.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

The SAG discussed many different paths for achieving the goals of Chapter 425 of the 2022 Acts of Assembly, and the majority of SAG members ultimately voted in support of the recommendations. The proposed changes impose no new compliance or reporting requirements, schedules or deadlines, design or operational standards, or other requirements on small businesses.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

N/A

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The CTB is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Jo Anne Maxwell, Agency Regulatory Coordinator, 1401 E. Broad St. Richmond, VA 23219, telephone (804) 786-1830, fax (804) 225-4700, JoAnne.Maxwell@VDOT.Virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
92-10	N/A	This section defines the words and terms used in the regulation.	This amendment adds new definition for “Underground Utility Trunk Easement,” which corresponds with the addition of the defined term to 24VAC30-92-60(C)(2)(c) and (C)(3)(a)(iv) as a qualifying condition for a connectivity exception. This was recommended by the SAG due to difficulties frequently encountered by developers in obtaining quitclaims or subordination of rights agreements for the placement of public streets over existing underground transmission lines.
92-60 (C)(2)(c) and (C)(3)(d)	92-60 (C)(2)(c) and (C)(3)(a)(iv)	These two subsections describe the connectivity requirements for the multiple connections in multiple directions and additional connections standards. The specific subparagraphs describe the factors outside the control of the developer which could qualify for an exemption from the requirements.	<p>The insertion of “including but not limited to” in place of “such as” is intended to clarify that the list of qualifying conditions are examples rather than the extent of possible conditions that may provide for a connectivity exemption. This was noted as a source of confusion by the SAG.</p> <p>The addition of “underground utility trunk easement” to the list of qualifying conditions, which corresponds with the addition of the defined term to section 10, is recommended by the SAG due to difficulties frequently encountered by developers in obtaining quitclaims or subordination of rights agreements for the placement of public streets over existing underground transmission lines.</p>
92-60 (C)(2) and (C)(3)	92-60 (C)(2)(d) and 92-60 (C)(3)(a)(v)	24VAC30-92-60(C) describes the connectivity requirements for secondary streets, with paragraph (2) relating to the multiple connections in multiple directions standard and paragraph (3) to the additional connections standard.	The addition of these subparagraphs would add extra flexibility regarding to the splitting of multi-phased developments into network additions that may differ from those additions originally planned. This would allow for changes in phasing as driven by market forces while still preserving ultimate connectivity.
92-60 (C)(3)	92-60 (C)(3)(b)	24VAC30-92-60(C)(3) describes the connectivity requirements for the additional connections standard.	This recommendation adds a subparagraph providing for a locality-led process which provides flexibility to achieve local planning goals. It adds vegetation preservation (open space and trees) and required work outside of property under the developer’s control as explicit factors for consideration of an exception from the additional connections standard. These changes

			are intended to add flexibility to the exception process.
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage