

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

READING FILE

July 22, 2008

FOR YOUR INFORMATION

1. Joint Exercise of Powers Agreement for the Colonial Community Criminal Justice Board
For Agenda Item No. F-4, Approval of Revisions to the Joint Exercise of Powers Agreement for the Colonial Community Criminal Justice Board
2. FY 2009 Community Services Performance Contract
For Agenda Item No. F-5, Authorization of Execution of a Contract between the County of James City and the Colonial Services Board for the Delivery of Mental Health, Mental Retardation, and Substance Abuse Services
3. Right-of-Way Agreement
For Agenda Item No. G-2, Right-of-Way Agreement – Dominion Virginia Power – Freedom Park
4. Sentara Williamsburg Regional Medical Center Certificate of Public Need Request No. VA-7596 Add General Acute Care Beds Executive Summary and Project Justification and Identification of Community Need
For Agenda Item No. H-1, Support for the Williamsburg Regional Medical Center Certification of Public Need (COPN) Application
5. Consideration of Use of Non-Native Plants within Resource Protection Area (RPA Native Plant Task Force)
6. New Water Conservation Rebates Begin August 1, 2008
7. Draft Secondary Road Acceptance Requirements

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JOINT EXERCISE OF POWERS AGREEMENT
FOR THE
COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD
~~FOR COLONIAL COMMUNITY CORRECTIONS~~

The Colonial Community Criminal Justice Board (the "Board"), created July 1, 1995,
There is hereby ~~created~~ *re-ordained* by the Counties of Charles City, James City, New Kent, and York, and the Cities of Poquoson and Williamsburg (the "Participating Jurisdictions") ~~the Colonial Community Criminal Justice Board for Colonial Community Corrections (the "Board"), which~~ *and* shall exist under and be subject to the terms and conditions of this Agreement.

Section I. Duration

- A. The Board and this Agreement shall exist in perpetuity, unless dissolved at any time by agreement of the Participating Jurisdictions. In the event the governing body of any Participating Jurisdiction desires to withdraw from the Board, it may do so provided it notifies the other Participating Jurisdictions and the Director of the Department of Criminal Justice Services of its intention to withdraw from the Board at the beginning of any calendar quarter, by adoption of an ordinance or resolution by its governing body. Such withdrawal shall be effective as of the last day of the quarter in which such notice is given, *in accordance with §9.1-179, Code of Va. (all future section reference shall be to the Code of Va, as amended.)*

Section II. Purpose

The purposes for which the Board is created are *set forth as follows*, ~~as specified in §53.1-180 §9.1-173, Code of Va as follows:~~

- A. ~~To enable the Participating Jurisdictions to develop, establish and maintain community-based corrections programs to provide the judicial system with sentencing alternatives for certain misdemeanants or persons convicted of nonviolent felonies, as defined in Section 19.2-316.1, Code of Va, for which the Court may impose a jail sentence and who may require less than institutional custody:~~ To allow the Participating Jurisdictions greater flexibility and involvement in responding to the problem of crime in their communities;
- B. To provide more effective protection of society and to promote efficiency and economy in the delivery of correctional services;
- C. To provide increased opportunities for offenders to make restitution to victims of crimes through financial reimbursement or community service;
- D. To permit the Participating Jurisdictions to operate and utilize local community-based probation programs and services specifically designed to meet the rehabilitative needs of selected offenders; and
- E. To provide appropriate postsentencing alternatives in localities for certain offenders with the goal of reducing the incidence of repeat offenders.

Section III. Funding

- A. As specified in ~~§53.1-185.2.A §9.1-182.A, Code of Va,~~ the Participating Jurisdictions shall be required to establish ~~community corrections~~ a *local community-based probation program hereunder* ~~under Article 2, Chapter 5, Title 53.1 of the Code of Va,~~ only to the extent such programs are funded by the Commonwealth through the general appropriation act.
- B. ~~As specified in Section 53.1-183, Code of Va, in the event that one Participating Jurisdiction appropriates funds to a particular program, any other Participating Jurisdiction shall be considered to be participating in the program if such locality also appropriates funds to the program. As specified in Section 53.1-185.2.B 9.1-182.B, Code of Va, the Department of Criminal Justice Services shall periodically review the program established hereunder~~ *under Article 2, Chapter 5, Title 53.1 of the Code of Va, to determine compliance with the submitted plan and operating*

standards. If the Department of Criminal Justice Services determines that the program is not in substantial compliance with the submitted plan or standards, the Department of Criminal Justice Services may suspend all or any of the portion of financial aid made available to the locality hereunder for the purposes of Article 2, Chapter 5, Title 53.1 of the Code of Va until there is compliance.

- C. *As specified in ~~§53.1-185.2.C~~ §9.1-182.C, Code of Va, state funding shall be used for the provision of services and operation of programs and facilities but shall not be used for capital expenditures. ~~The Board shall not own real estate.~~*
- D. *As specified in ~~§53.1-185.2.E~~ §9.1-182.E, Code of Va, any supervision or intervention fees collected from participants in Board programs shall be retained by the Board, and utilized for program expansion, and development or to supplant local costs of program operation. ~~The Board's fiscal agent shall keep records of the collected fees. Such fees shall be in addition to those imposed pursuant to Section 53.1-150, Code of Va by local programs established hereunder under Article 2, Chapter 5, Title 53.1 of the Code of Va shall be retained by the locality serving as fiscal agent and shall be utilized solely for program expansion and program development, or to supplant local costs of the program operation. Any program collecting such fees shall keep records of the collected fees, report the amounts to the locality serving as fiscal agent and make all records available to the Board. Such fees shall be in addition to any other imposed on a defendant or offender as a condition of a deferred proceeding, conviction or sentencing by a court as required by general law.~~*
- E. *As specified in ~~Section 53.1-185.3~~ §9.1-183, Code of Va the ~~Board governing bodies of the Participating Jurisdictions~~ City Council or Board of Supervisors shall select a participating city or county, with its consent, to act as administrator and fiscal agent for the funds awarded for the purposes of implementing a ~~community corrections program~~ the local pretrial services or community-based probation program on behalf of the Participating Jurisdictions. The participating city or county acting as the administrator and the fiscal agent hereunder shall ~~pursuant to section may~~ be reimbursed for the actual costs associated with the implementation of the local pretrial services or community-based probation*

program, including fiscal administration, accounting, payroll services, financial reporting, and auditing. Any costs must be approved by the Board and reimbursed from those funds received for the operation of the local community-based probation program, and may not exceed one percent of those funds received in any fiscal year.

Section IV. Organization and Composition

- A. ~~The Board shall consist of a total of twelve (12) members. Three each shall be appointed by York and James City Counties, two each by the cities of Williamsburg and Poquoson, and one each by the Counties of New Kent and Charles City. As required by §53.1-183 §9.1-178, Code of Va, appointments to the Board shall be made by each local governing body. In cases of multijurisdictional participation, unless otherwise agreed upon, each participating city or county of the six participating cities or counties shall have an equal number of appointments. Boards shall be composed of the number of members established by resolution or ordinance of each participating jurisdiction. The Board shall include, at a minimum, appointees as required by §53.1-183, Code of Va consist of up to twenty-four (24) members, of which four (4) will be appointed by each local governing body provided that the total appointees must include those appointees required by §53.1-183 §9.1-178. It is anticipated that some appointees by local governing bodies will be residents of other jurisdictions, so that the required membership will be met and, further, that members whose expertise is important to the Board may be appointed to the Board. All such appointments will be made by resolution.~~
- B. A chair of the Board shall be elected at a regular meeting of the Board by a majority vote of the members present, if a quorum is present. A quorum shall consist of at least ~~seven (7)~~ *one-half of the total number of* members of the Board. ~~The term of office for the chair of the Board shall be for one year. The same member may be elected and serve as chair for no more than three consecutive terms.~~

- C. The Board may make such rules of procedure as it shall deem necessary and proper for the conduct of its business not inconsistent with this Agreement and shall hold meetings quarterly or as needed. Meetings shall be conducted in conformance with the Virginia Freedom of Information Act.
- D. The Board shall be responsible to the Participating Jurisdictions.
- E. There shall be no limitation upon the number of terms for which a member of the Board may be appointed. Members shall serve three-year terms. Members appointed to fill vacancies shall serve the remainder of the term they are filling.

Section V. Responsibilities of the Board

As specified in ~~§53.1-185~~ §9.1-180, ~~Code of Va~~, the Board shall have the responsibility to:

1. ~~Provide for the purchase, Advise on the~~ development and operation of ~~community local pretrial services and community-based probation programs and services and facilities pursuant to §19.2-152.2 and §53.1-182.1~~ §9.1-176 for use by the courts in diverting offenders from local correctional facility placements;
2. Assist community agencies and organizations in establishing and modifying programs and services for offenders on the basis of an objective assessment of the community's needs and resources;
3. Evaluate and monitor community programs, services and facilities to determine their impact on offenders;
4. Develop and amend the *Criminal Justice Plan* ~~required by §53.1-82.1, Code of Va~~, in accordance with standards and guidelines set forth by the Department of Criminal Justice Services *and oversee the development and amendment of the community-based corrections plan as required by §53.1-82.1* for approval by the governing bodies of the Participating Jurisdictions; ~~and~~
5. *Review the submission of all criminal justice grants regardless of the source of funding;*

6. *Facilitate local involvement and flexibility in responding to the problem of crime in their communities; and*
7. *Do all things necessary or convenient to carry out the responsibilities expressly given ~~it by law in Article 2, Chapter 5, Title 53.1~~ Article 9, Chapter 1, Title 9.1 of the Code of Va.*

Section VI. Amendment

This Agreement may be amended by written amendment executed by the Participating Jurisdictions.

Section VII. Miscellaneous

This Agreement shall be effective upon the execution of it by the city managers and county administrators of all of the Participating Jurisdictions following authorization by their respective city councils and boards of supervisors. This Agreement may be executed in more than one counterpart and with separate signature pages, each of which shall constitute a part of and be deemed to be an original.

IN WITNESS WHEREOF, the Participating Jurisdictions have caused this Agreement to be executed and attested by their duly authorized officials.

COUNTY OF JAMES CITY

BY: _____

COUNTY ADMINISTRATOR

COUNTY OF YORK

BY: _____

COUNTY ADMINISTRATOR

CITY OF POQUOSON

BY: _____

CITY MANAGER

COUNTY OF NEW KENT

BY: _____

COUNTY ADMINISTRATOR

CITY OF WILLIAMSBURG

BY: _____

CITY MANAGER

COUNTY OF CHARLES CITY

BY: _____

COUNTY ADMINISTRATOR

FY 2009 Community Services Performance Contract

1. Contract Purpose

- a. Title 37.2 of the *Code of Virginia* establishes the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (the Department) to ensure delivery of publicly funded services and supports to individuals with mental illnesses, intellectual disabilities (previously identified as mental retardation), or substance use disorders and authorizes the Department to fund community mental health, mental retardation, and substance abuse services. In this contract, intellectual disabilities refer to the conditions individuals have; mental retardation refers to the services that address those disabilities.
- b. Sections 37.2-500 through 37.2-511 of the *Code of Virginia* require cities and counties to establish community services boards for the purpose of providing local public mental health, mental retardation, and substance abuse services; § 37.2-600 through § 37.2-614 authorize certain cities or counties to establish behavioral health authorities that plan and provide those same local public services. In this contract, the community services board, local government department with a policy-advisory community services board, or behavioral health authority named on page 18 of this contract will be referred to as the Board or CSB.
- c. Section 37.2-500 or 37.2-601 of the *Code of Virginia* states that, in order to provide comprehensive mental health, mental retardation, and substance abuse services within a continuum of care, the Board shall function as the single point of entry into publicly funded mental health, mental retardation, and substance abuse services. The Board fulfills this function in accordance with State Board Policy 1035 for any person who is located in the Board's service area and needs mental health, mental retardation, or substance abuse services.
- d. Sections 37.2-508 and 37.2-608 of the *Code of Virginia* establish this contract as the primary accountability and funding mechanism between the Department and the Board.
- e. The Board is applying for the assistance provided under Chapter 5 or 6 of Title 37.2 of the *Code of Virginia* by submitting this performance contract to the Department in accordance with § 37.2-508 or § 37.2-608 of the *Code of Virginia*.
- f. This contract establishes requirements and responsibilities for the Board and the Department that are not established through other means, such as statute or regulation. The General Requirements Document, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference, includes or incorporates by reference ongoing statutory, regulatory, policy, and other requirements that are not expected to change frequently.
- g. The Department and the Board enter into this performance contract for the purpose of funding services provided directly or contractually by the Board in a manner that ensures accountability to the Department and quality of care for consumers and implements the vision, articulated in State Board Policy 1036, of a consumer-driven system of services and supports that promotes self-determination, empowerment, recovery, resilience, health, and the highest possible level of consumer participation in all aspects of community life, including work, school, family, and other meaningful relationships; and the Board and the Department agree as follows.

2. **Relationship:** The Department functions as the state authority for the public mental health, mental retardation, and substance abuse services system; and the Board functions as the local authority for that system. The relationship between and the roles and responsibilities of the Department and the Board are described more specifically in the current Partnership Agreement between the parties, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference. This contract shall not be construed to establish any employer-employee or principal-agent relationship between employees of the Board or its board of directors and the Department.

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3. Contract Term: This contract shall be in effect for a term of one year, commencing on July 1, 2008 and ending on June 30, 2009.

4. Scope of Services

- a. Services:** Exhibit A of this contract includes all mental health, mental retardation, and substance abuse services provided or contracted by the Board that are supported by the resources described in section 5 of this contract. Services and certain terms used in this contract are defined in the current Core Services Taxonomy, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference.
- b. Expenses for Services:** The Board shall provide to the extent practicable those services that are funded within the revenues and expenses set forth in Exhibit A and documented in the Board's financial management system. The Board shall distribute its administrative and management expenses across some or all of the three program areas on a basis that is in accordance with Uniform Cost Report principles, is auditable, and satisfies Generally Accepted Accounting Principles.
- c. Continuity of Care:** In order to partially fulfill its responsibility in § 37.2-500 or 37.2-601 of the *Code of Virginia* and State Board Policy 1035 to function as the single point of entry into publicly funded services in its service area, the Board shall follow the *Continuity of Care Procedures*, included in the current General Requirements Document as Appendix A.

1.) Coordination of Mental Retardation Waiver Services: The Board shall provide case management services to consumers who are receiving services under the Medicaid Mental Retardation Home and Community-Based Waiver (MR Waiver). In its capacity as the case manager for these consumers and in order to receive payment for services from the Department of Medical Assistance Services (DMAS), the Board shall develop individual service authorization requests (ISARs) for Waiver services and submit them to the Department for preauthorization, pursuant to the current DMAS/ DMHMRSAS Interagency Agreement (November, 2007), under which the Department preauthorizes ISARs as a delegated function from the DMAS. As part of its specific case management responsibilities for individuals receiving MR Waiver services, the Board shall coordinate and monitor the delivery of all services to its consumers, including monitoring the receipt of services in a consumer's ISAR that are provided by independent vendors, who are reimbursed directly by the DMAS, to the extent that the Board is not prohibited from doing so by such vendors (reference the DMAS *Mental Retardation Community Services Manual*, Chapters II and IV).

The Board may raise issues regarding its efforts to coordinate and monitor services provided by independent vendors to the applicable funding or licensing authority, for example the Department, the DMAS, or the Virginia Department of Social Services. In fulfilling this service coordination responsibility, the Board shall not restrict or seek to influence the consumer's choice among qualified service providers. This prohibition is not intended to restrict the ability of Board case managers to make recommendations, based on their professional judgment, to consumers regarding those available service options that best meet the terms of the consumers' ISPs and allow for the most effective coordination of services. This section does not, nor shall it be construed to, make the Board legally liable for the actions of independent vendors of MR Waiver services who are reimbursed directly by the DMAS.

2.) Linkages with Health Care: When it arranges for the care and treatment of its consumers in hospitals, inpatient psychiatric facilities, or psychiatric units of hospitals, the Board shall assure its staff's cooperation with those hospitals, inpatient psychiatric facilities, or psychiatric units of hospitals, especially emergency rooms and emergency room physicians, in order to promote continuity of care for those consumers.

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3.) Coordination with Local Psychiatric Hospitals: When the Board performed the preadmission screening and referral to the Board is likely upon the discharge of an involuntarily admitted individual, the Board shall coordinate or, if it pays for the service, approve a consumer's admission to and continued stay in a psychiatric unit or hospital and collaborate with that unit or hospital to assure appropriate treatment and discharge planning in the least restrictive setting and to avoid the use of these facilities when the service is no longer needed.

4.) Access to Services: The Board shall not require a consumer to receive case management services in order to receive other services that it provides, directly or contractually, unless it is permitted to do so by applicable regulations or the person is an adult with a serious mental illness, a child with or at risk of serious emotional disturbance, or an individual with an intellectual disability or a substance use disorder, the person is receiving more than one other service from the Board, or a licensed clinician employed or contracted by the Board determines that case management services are clinically necessary for that consumer.

5.) PACT Criteria: If the Board receives state general or federal funds for a Program of Assertive Community Treatment (PACT), it shall satisfy the following criteria:

- a.) Meet PACT state hospital bed use targets.
- b.) Prioritize providing services to consumers with serious mental illnesses who are frequent recipients of inpatient services or are homeless.
- c.) Achieve and maintain a caseload of 80 consumers after two years from the date of initial funding by the Department.
- d.) Participate in technical assistance provided by the Department.

If the Board receives state general or federal funds for a new PACT during the term of this contract or in the fiscal year immediately preceding that term, it also shall satisfy the following conditions:

- a.) Procure individual team training and technical assistance quarterly.
- b.) Meet bimonthly with other PACT programs (the network of CSB PACTs).

d. Populations Served: The Board shall provide needed services to adults with serious mental illnesses, children with or at risk of serious emotional disturbance, and individuals with intellectual disabilities, substance dependence, or substance abuse to the greatest extent possible within the resources available to it for this purpose. In accordance with § 37.2-508 or § 37.2-608 of the *Code of Virginia*, the Board shall report the unduplicated numbers of adults with serious mental illnesses, children with or at risk of serious emotional disturbance, and individuals with intellectual disabilities, substance dependence, or substance abuse that it serves during the term of this contract. These populations are defined in the current Core Services Taxonomy.

5. Resources: Exhibit A of this contract includes the following resources: state general funds and federal funds appropriated by the General Assembly and allocated by the Department to the Board; balances of unexpended or unencumbered state general and federal funds retained by the Board and used in this contract to support services; local matching funds required by § 37.2-509 or § 37.2-611 of the *Code of Virginia* to receive allocations of state general funds; Medicaid Targeted Case Management, State Plan Option, and Mental Retardation Home and Community-Based Waiver fees and any other fees, as required by § 37.2-504 or § 37.2-605 of the *Code of Virginia*; and any other revenues associated with or generated by the services shown in Exhibit A. The Board may choose to include only the minimum 10 percent local matching funds in the contract, rather than all local matching funds.

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- a. **Allocations of State General and Federal Funds:** The Department shall inform the Board of its allocations of state general and federal funds in a letter of notification. The Department may adjust allocation amounts during the term of this contract. The Commissioner or his designee shall communicate all adjustments to the Board in writing. Allocations of state general and federal funds shall be based on state and federal statutory and regulatory requirements, provisions of the current Appropriation Act, State Board policies, and previous allocation amounts. Allocations shall not be based on numbers of adults with serious mental illnesses, children with or at risk of serious emotional disturbance, or individuals with mental retardation, substance dependence, or substance abuse who receive services from the Board.
- b. **Conditions on the Use of Resources:** The Department can attach service requirements or specific conditions that it establishes for the use of funds, separate from those established by other authorities, for example, applicable statutory or regulatory requirements such as licensing or human rights regulations or federal anti-discrimination requirements, only to the state general and federal funds that it allocates to the Board and to the 10 percent local matching funds that are required to obtain the Board's state general fund allocations.

6. Board Responsibilities

- a. **State Hospital Bed Utilization:** In accordance with § 37.2-508 or § 37.2-608 of the *Code of Virginia*, the Board shall identify or develop jointly with the Department mechanisms, such as the Discharge Protocols, Extraordinary Barriers to Discharge lists, and reinvestment, restructuring, or system transformation projects and activities, and employ these mechanisms collaboratively with state hospitals that serve it to manage the utilization of state hospital beds. Utilization will be measured by bed days received by consumers for whom the Board is the case management board.
- b. **Quality of Care**
 - 1.) **Clinical Consultation:** The Board may request the Department to provide professional consultations for clinically complex or difficult or medically complicated cases within the resources available for this purpose in the Department or its facilities and as permitted under 45 CFR § 164.506 (c) (1) when consumers or their authorized representatives have requested second opinions and with valid authorizations that comply with the Human Rights Regulations and the HIPAA Privacy Rule or when staff of the Board request such consultations for its consumers in the community, if the Board is not able to provide those second opinions or obtain this consultation within its resources.
 - 2.) **Quality Improvement and Risk Management:** The Board shall, to the extent possible, develop and implement quality improvement processes that utilize consumer outcome measures, provider performance measures, and other data or participate in its local government's quality improvement processes to improve services, ensure that services are provided in accordance with current acceptable professional practice, and enable the ongoing review of all major areas of the Board's responsibilities under this contract.

The Board shall, to the extent practicable, develop, implement, and maintain, itself or in affiliation with other Boards, a quality improvement plan incorporating Board provider performance measures, consumer outcome measures, and human rights information. The Board shall, to the extent practicable, develop, implement, and maintain, itself or in affiliation with other Boards, a risk management plan or the Board shall participate in a local government's risk management plan. The Board shall work with the Department through the System Leadership Council to identify how the Board will address quality improvement activities.

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The Board shall implement, in collaboration with other Boards in its region, the state hospitals and training centers serving its region, and private providers participating as signatories in the regional partnership, regional utilization management procedures and practices that reflect the Regional Utilization Management Guidance document, adopted by the System Leadership Council on January 10, 2007, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference.

- 3.) **Continuous Quality Improvement Process:** The Board shall address and report on the performance expectations and goals in Exhibit B of this contract as part of the Continuous Quality Improvement Process supported by the Department and the Board.
- 4.) **Consumer Outcome and Board Provider Performance Measures**
 - a.) **Measures:** Pursuant to § 37.2-508 or § 37.2-608 of the *Code of Virginia*, the Board shall report the consumer outcome, Board provider performance, consumer satisfaction, and consumer and family member participation and involvement measures in Exhibit C of this contract to the Department. These reporting requirements are contingent on the Department supplying any necessary specifications and software to the Board in time for the Board to make needed changes in its information systems.
 - b.) **Individual Board Performance Measures:** The Department may negotiate specific, time-limited measures with the Board to address identified performance concerns or issues. When negotiated, such measures will be included as Exhibit D of this contract.
 - c.) **Consumer Satisfaction Survey:** Pursuant to § 37.2-508 or § 37.2-608 of the *Code of Virginia*, the Board shall participate in an assessment of consumer satisfaction in accordance with Exhibit C of this contract.
 - d.) **Substance Abuse Youth Surveys:** The Board shall work closely with community-based prevention planning groups, schools, and local governments to support and enable the administration of the Virginia Community Youth Survey and the Virginia Youth Tobacco Survey, which are mandated by federal funding sources and are necessary for continuation of federal block grant funding.
 - e.) **Prevention Services Participants and Program Evaluations:** The Board shall evaluate a minimum of 20 percent of participants in evidence-based prevention programs using program-specific instruments, which are evaluation instruments and processes developed by the program developer for that program. The Board shall conduct program-specific evaluations of all federal Substance Abuse Prevention and Treatment grant-supported prevention programs as agreed in the grant contract with the Department. The Board shall use community-level abstinence data from regional community youth survey data for alcohol, tobacco, and other drug use, perceptions of harm and disapproval, and other indicator data, including archival data listed in the National Outcome Measures, for outcome evaluation of environmental strategies and community-based processes.
 - f.) **Recovery Orientation:** The Board shall develop and implement a plan for assessing and increasing its recovery orientation over time, initially for adults with serious mental illnesses, in accordance with Exhibit C and Section 5, Advancing the Vision, of the Partnership Agreement.
- 5.) **Program and Service Reviews:** The Department may conduct or contract for reviews of programs or services provided or contracted by the Board under this contract to examine their quality or performance at any time as part of its monitoring and review responsibilities or in response to concerns or issues that come to its attention, as permitted under 45 CFR § 164.512 (a), (d), and (k) (6) (ii) and as part of its health

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oversight functions under § 32.1-127.1:03 (D) (6) and § 37.2-508 or § 37.2-608 of the *Code of Virginia* or with a valid authorization by the consumer or his authorized representative that complies with the Human Rights Regulations and the HIPAA Privacy Rule.

- 6.) Response to Complaints:** The Board shall implement procedures to respond to complaints from consumers, family members, advocates, or other stakeholders as expeditiously as possible in a manner that seeks to achieve a satisfactory resolution and advises the complainant of any decision and the reason for it. The Board shall acknowledge complaints that the Department refers to it within five days of receipt and provide follow up commentary on them to the Department within 10 days of receipt.

c. Reporting Requirements

- 1.) Board Responsibilities:** For purposes of reporting to the Department, the Board shall comply with State Board Policy 1037 and:

- a.) provide monthly Community Consumer Submission (CCS) extracts that report individual consumer characteristic and service data to the Department, as required by § 37.2-508 or § 37.2-608 of the *Code of Virginia*, the federal Substance Abuse and Mental Health Services Administration, and Part C of Title XIX of the Public Health Services Act - Block Grants, § 1943 (a) (3) and § 1971 and § 1949, as amended by Public Law 106-310, and as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (a) (1) and (d) and under §32.1-127.1:03.D (6) of the *Code of Virginia*, and as defined in the current CCS Extract Specifications and Design Specifications (including the current Business Rules), which, by agreement of the parties, are hereby incorporated into and made a part of this contract by reference;
- b.) follow the current Core Services Taxonomy and CCS Extract Specifications and Design Specifications (including the current Business Rules) when responding to reporting requirements established by the Department;
- c.) complete the National Survey of Substance Abuse Treatment Services (N-SSATS), formerly the Uniform Facility Data Set (UFDS), annually that is used to compile and update the National Directory of Drug and Alcohol Abuse Treatment Programs and the on-line Substance Abuse Treatment Facility Locator;
- d.) report Inventory of Mental Health Organizations information and data in accordance with federal requests to the greatest extent possible;
- e.) report KIT Prevention System data on all substance abuse prevention services provided by the Board, including services that are supported by the Substance Abuse Prevention and Treatment (SAPT) Block Grant allocation, LINK prevention and education services funded with the 20 percent SAPT set aside, and prevention services funded by other grants KIT Prevention System and reported under substance abuse in CARS-ACCESS, and enter KIT Prevention System data on goals, objectives, and programs approved by the community prevention planning coalition by June 15;
- f.) supply information to the Department's Forensics Information Management System for consumers adjudicated not guilty by reason of insanity (NGRI), as required under § 37.2-508 or § 37.2-608 of the *Code of Virginia* and as permitted under 45 CFR §§ 164.506 (c) (1) and (3), 164.512 (d), and 164.512 (k) (6) (ii); and
- g.) report data and information required by the current Appropriation Act.

- 2.) Routine Reporting Requirements:** The Board shall account for all services, revenues, expenses, and costs accurately and submit reports to the Department in a timely manner using current CARS-ACCESS, CCS, or other software provided by the Department. All reports shall be provided in the form and format prescribed by the

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Department. The Board shall provide the following information and meet the following reporting requirements:

- a.) types, amounts, and service capacities of services provided; costs for services provided; and numbers of consumers served by core service and revenues received by source and amount and expenses paid by program area and for services available outside of a program area, reported mid-year and at the end of the fiscal year through CARS-ACCESS, and types and amounts of services provided to each consumer, reported monthly through the current CCS;
- b.) demographic characteristics of individual consumers through the current CCS;
- c.) numbers of adults with serious mental illnesses, children with serious emotional disturbance, children at risk of serious emotional disturbance, and individuals with intellectual disabilities, substance dependence, or substance abuse through the current CCS;
- d.) performance expectations and goals and consumer outcome and Board provider performance measures in Exhibits B and C;
- e.) community waiting list information for the Comprehensive State Plan that is required by § 37.2-315 of the *Code of Virginia*, as permitted under § 32.1-127.1:03 (D) (6) of the *Code of Virginia* and 45 CFR § 164.512 (d) and (k) (6) (ii) (when required);
- f.) State Facility Discharge Waiting List Data Base reports using ACCESS software supplied by the Department;
- g.) Federal Balance Report (October 31);
- h.) Total numbers of consumers served for the Discharge Assistance Project, Mental Health Child and Adolescent Services Initiative, MR Waiver Services, and other Consumer Designation (900) Codes through CARS-ACCESS (mid-year and at the end of the fiscal year) and the current CCS;
- i.) PATH reports (mid-year and at the end of the fiscal year);
- j.) Uniform Cost Report information through CARS-ACCESS (annually) and
- k.) other reporting requirements in the current CCS Extract or Design Specifications.

3.) Subsequent Reporting Requirements: In accordance with State Board Policy 1037, the Board shall work with the Department to ensure that current data and reporting requirements are consistent with each other and the current Core Services Taxonomy, the current CCS, and the Treatment Episode Data Set (TEDS) and other federal reporting requirements. The Board also shall work with the Department in planning and developing any additional reporting or documentation requirements beyond those identified in this contract, such as the federal mental health and substance abuse National Outcomes Measures (NOMS) when they become effective, to ensure that such requirements are consistent with the current Core Services Taxonomy, the current CCS, and TEDS and other federal reporting requirements.

4.) Streamlining Reporting Requirements: The Board shall work with the Department through the VACSB Data Management Committee to review existing reporting requirements outside of the current CCS to determine if they are still necessary and, if they are, to streamline those reporting requirements as much as possible.

d. Discharge Assistance Project (DAP)

1.) Board Responsibilities: If it participates in any DAP funded by the Department, the Board shall manage, account for, and report DAP funds allocated to it as a restricted fund. The Board shall be responsible for ensuring the effective utilization of those funds, without submitting individualized services plans (ISPs) to the Department for

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approval or preauthorization. The Board shall submit all DAP ISPs to the Department for information purposes and shall inform the Department whenever a consumer is admitted to or discharged from a DAP-funded placement.

- 2.) **Department Review:** The Board agrees to participate in any utilization review or utilization management activities conducted by the Department involving services provided under the DAP. Protected health information may be disclosed as permitted under 45 CFR §§ 164.506 (c) (1), (3), and (4) and 164.512 (k) (6) (ii).
- 3.) **Procedures:** The Board shall adhere to the DAP Procedures in the General Requirements Document if it participates in any DAP funded by the Department.

e. Individualized Services

- 1.) **Board Responsibilities:** If it participates in any individualized services, except the DAP, funded by the Department (e.g., the MH Child and Adolescent Services Initiative), the Board shall manage, account for, and report such individualized services funds allocated to it as a restricted fund. The Board shall be responsible for ensuring the effective utilization of those funds, without submitting individualized services plans to the Department for preauthorization or approval.
- 2.) **Department Review:** The Board agrees to participate in any utilization review or utilization management activities conducted by the Department involving services provided as individualized services. Protected health information may be disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii).
- 3.) **Procedures:** The Board shall develop and maintain individualized services plans (ISPs), which shall be subject to review by the Department, for such individualized services; but the Board shall not be required to submit these ISPs to the Department for information purposes or for prior review or approval.

- f. **Compliance Requirements:** The Board shall comply with all applicable federal, state, and local laws and regulations, including those contained or referenced in the General Requirements Document and in Exhibit F of this contract, as they affect the operation of this contract. Any substantive change in the General Requirements Document, except changes in statutory, regulatory, policy, or other requirements or in other documents incorporated by reference in it, which changes are made in accordance with processes or procedures associated with those statutes, regulations, policies, or other requirements or documents, shall constitute an amendment of this contract, made in accordance with applicable provisions of the Partnership Agreement, that requires a new contract signature page, signed by both parties.

If any laws or regulations that become effective after the execution date of this contract substantially change the nature and conditions of this contract, they shall be binding upon the parties, but the parties retain the right to exercise any remedies available to them by law or other provisions of this contract. The Board shall comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder by their compliance dates, except where the HIPAA requirements and applicable state law or regulations are contrary, and state statutes or regulations are more stringent, as defined in 45 CFR § 160.202, than the related HIPAA requirements.

The Board shall follow the procedures and satisfy the requirements in the Performance Contract Process and the Administrative Performance Standards, contained in Exhibits E and I respectively of this contract. The Board shall document its compliance with §§ 37.2-501, 37.2-504, and 37.2-508 or §§ 37.2-602, 37.2-605, and 37.2-608 of the *Code of Virginia* in Exhibits G and H of this contract.

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- g. Regional Programs:** The Board shall manage or participate in the management of, account for, and report on regional programs in accordance with the Regional Program Principles in Exhibit J of this contract and the Regional Program Procedures in Appendix D of the General Requirements Document. The Board agrees to participate in any utilization review or utilization management activities conducted by the Department involving services provided through a regional program. Protected health information may be disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii).
- h. Joint Agreements:** If the Board enters into a joint agreement pursuant to § 37.2-512 or § 37.2-615 of the *Code of Virginia*, the Board shall describe the agreement in Exhibit K of this contract and shall attach a copy of the joint agreement to that Exhibit.

7. Department Responsibilities

- a. Funding:** The Department shall disburse the state general funds displayed in Exhibit A, subject to the Board's compliance with the provisions of this contract, prospectively on a semi-monthly basis to the Board. Payments may be revised to reflect funding adjustments. The Department shall disburse federal grant funds that it receives to the Board in accordance with the requirements of the applicable federal grant and, wherever possible, prospectively on a semi-monthly basis. The Department shall make these payments in accordance with Exhibit E of this contract.
- b. State Facility Services**

 - 1.) The Department shall make state facility services available, if appropriate, through its state hospitals and training centers, when individuals located in the Board's service area meet the admission criteria for these services.
 - 2.) The Department shall track, monitor, and report on the Board's utilization of state hospital beds and provide data to the Board about consumers from its service area who are served in state hospitals as permitted under 45 CFR §§ 164.506 (c) (1), (2), and (4) and 164.512 (k) (6) (ii). The Department shall post state hospital bed utilization by the Board for all types of beds (adult, geriatric, child and adolescent, and forensic) on its Internet web site for information purposes.
 - 3.) The Department shall manage its state hospitals and training centers in accordance with State Board Policy 1035 to support service linkages with the Board, including adherence to the applicable provisions of the *Continuity of Care Procedures*, attached to the General Requirements Document as Appendix A, and the *Discharge Planning Protocols*. The Department shall assure that its state hospitals and training centers use teleconferencing technology to the extent practicable and whenever possible to facilitate the Board's participation in treatment planning activities and the Board's fulfillment of its discharge planning responsibilities for its consumers in state hospitals and training centers.
 - 4.) The Department shall involve the Board, as applicable and to the greatest extent possible, in collaborative planning activities regarding the future role and structure of state hospitals and training centers.
 - 5.) **Recovery Orientation:** Each state hospital shall develop and implement a plan for assessing and increasing its recovery orientation over time, initially for adults with serious mental illnesses, in accordance with Section 5, *Advancing the Vision*, of the Partnership Agreement.
- c. Quality of Care**

 - 1.) The Department with participation from the Board shall identify consumer outcome, Board provider performance, consumer satisfaction, and consumer and family member participation and involvement measures and emergency services and case

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management services performance expectations and goals for inclusion in this contract, pursuant to § 37.2-508 or § 37.2-608 of the *Code of Virginia*, and shall collect information about these measures and performance expectations and goals and work with the Board to use them as part of the Continuous Quality Improvement Process described in Exhibit B to improve services.

- 2.) The Department may provide professional consultations to the Board upon request for clinically complex or difficult or medically complicated cases within the resources available for this purpose in the Department or its facilities and as permitted under 45 CFR § 164.506 (c) (1) when consumers or their authorized representatives have requested second opinions and with valid authorizations that comply with the Human Rights Regulations and the HIPAA Privacy Rule or when staff of the Board request such consultations for its consumers in the community, if the Board is not able to provide those second opinions or obtain this consultation within its resources.
- 3.) The Department shall work with the Board, the state hospitals and training centers serving it, and private providers participating as signatories in the regional partnership, to implement regional utilization management procedures and practices that reflect the Regional Utilization Management Guidance document, adopted by the System Leadership Council on January 10, 2007, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference.
- 4.) **Recovery Orientation:** The Department shall develop and implement a plan for assessing and increasing its recovery orientation over time, initially for adults with serious mental illnesses, in accordance with Exhibit C and Section 5, Advancing the Vision, of the Partnership Agreement. It shall work with the Board through the Virginia Association of Community Services Boards to identify one or more standardized instruments for the Board, the Department, and state hospitals to use periodically to assess their consumer orientation; work with the Board within the resources available to support the Board's efforts to assess and increase its consumer orientation over time; and review and provide feedback to the Board on its efforts in this area.

d. Reporting Requirements

- 1.) In accordance with State Board Policy 1037, the Department shall work with representatives of Boards, including the Virginia Association of Community Services Boards' Data Management Committee (DMC), to ensure that current data and reporting requirements are consistent with each other and with the current Core Services Taxonomy, the current Community Consumer Submission (CCS), and TEDS and other federal reporting requirements. The Department also shall work with representatives of Boards, including the DMC, in planning and developing any additional reporting or documentation requirements beyond those identified in this contract, such as the federal mental health and substance abuse National Outcomes Measures (NOMS) when they become effective, to ensure that such requirements are consistent with the current Core Services Taxonomy, the current CCS, and TEDS and other federal reporting requirements.
- 2.) The Department shall collaborate with representatives of the Boards, including the DMC, in the implementation and modification of the current Community Consumer Submission (CCS), which reports individual consumer characteristic and service data that is required under § 37.2-508 or § 37.2-608 of the *Code of Virginia*, the federal Substance Abuse and Mental Health Services Administration, and Part C of Title XIX of the Public Health Services Act – Block Grants, §1943 (a) (3) and § 1971 and § 1949, as amended by Public Law 106-310, to the Department and is defined in the current CCS Extract Specifications and Design Specifications (including the current Business Rules). The Department will receive and use individual consumer characteristic and service data disclosed by the Board through the CCS as permitted under 45 CFR §§ 164.506

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(c) (1) and (3) and 164.512 (a) (1) and under § 32.1-127.1:03.D (6) of the *Code of Virginia* and shall implement procedures to protect the confidentiality of this information pursuant to § 37.2-504 or § 37.2-605 of the *Code of Virginia* and HIPAA.

- 3.) The Department shall work with representatives of the Boards, including the DMC, to reduce the number of data elements required whenever this is possible.
- 4.) The Department shall ensure that all surveys and requests for data have been reviewed for cost effectiveness and developed through a joint Department and Board process. The Department shall comply with the Procedures for Approving CSB Surveys, Questionnaires, and Data Collection Instruments and Establishing Reporting Requirements, issued by Commissioner Reinhard on November 9, 2007.
- 5.) The Department shall work with representatives of the Boards, including the DMC, to review existing reporting requirements outside of the current CCS to determine if they are still necessary and, if they are, to streamline those reporting requirements as much as possible.

e. Discharge Assistance Project

- 1.) **Department Responsibilities:** If the Board participates in any DAP funded by the Department, the Department shall fund and monitor the DAP as a restricted fund. The Department agrees that the Board shall be responsible for ensuring the effective utilization of those funds, without submitting individualized services plans to the Department for preauthorization or approval.
- 2.) **Department Review:** The Department may conduct utilization review or utilization management activities involving services provided by the Board under the DAP. If such activities involve the disclosure of protected health information, the information may be used and disclosed as permitted under 45 CFR §§ 164.506 (c) (1), (3), and (4) and 164.512 (k) (6) (ii).
- 3.) **Procedures:** The Department shall adhere to the DAP Procedures in the General Requirements Document. If the Board's participation in the DAP causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.2-509 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the DAP funds, as authorized by that *Code* section and State Board Policy 4010.

f. Individualized Services

- 1.) **Department Responsibilities:** If the Board participates in any individualized services, except DAP, funded by the Department (e.g., the MH Child and Adolescent Services Initiative), the Department shall fund and monitor those services as a restricted fund. The Department agrees that the Board shall be responsible for ensuring the effective utilization of those funds, without submitting individualized services plans to the Department for preauthorization, approval, or information.
- 2.) **Department Review:** The Department may conduct utilization review or utilization management activities involving services provided by the Board as individualized services. If such activities involve the disclosure of protected health information, the information may be used and disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii).

- g. **Compliance Requirements:** The Department shall comply with all applicable state and federal statutes and regulations, including those contained or referenced in the General Requirements Document and in Exhibit F of this contract, as they affect the operation of this contract. Any substantive change in the General Requirements Document, except changes in statutory, regulatory, policy, or other requirements or in other documents incorporated by reference in it, which changes are made in accordance with processes or procedures

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associated with those statutes, regulations, policies, or other requirements or documents, shall constitute an amendment of this contract, made in accordance with applicable provisions of the Partnership Agreement, that requires a new contract signature page, signed by both parties.

If any laws or regulations that become effective after the execution date of this contract substantially change the nature and conditions of this contract, they shall be binding upon the parties, but the parties retain the right to exercise any remedies available to them by law or other provisions of this contract. The Department and its state hospitals and training centers shall comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder by their compliance dates, except where the HIPAA requirements and applicable state law or regulations are contrary, and state statutes or regulations are more stringent, as defined in 45 CFR § 160.202, than the related HIPAA requirements.

If the Board's receipt of state facility reinvestment project funds causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.2-509 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the state facility reinvestment project funds, as authorized by that *Code* section and State Board Policy 4010.

- h. Communication:** The Department shall provide technical assistance and written notification regarding changes in funding source requirements, such as regulations, policies, procedures, and interpretations, to the extent that those changes are known to the Department. The Department shall resolve, to the extent practicable, inconsistencies in state agency requirements that affect requirements in this contract. The Department shall respond in a timely manner to written correspondence from the Board that requests information or a response.
- i. Regional Programs:** The Department may conduct utilization review or utilization management activities involving services provided by the Board through a regional program. If such activities involve the disclosure of protected health information, the information may be used and disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii). If the Board's participation in a regional program, as defined in the Regional Program Principles in Exhibit J of this contract and the Regional Program Procedures in Appendix D of the General Requirements Document, causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.2-509 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the funds for that regional program, as authorized by that *Code* section and State Board Policy 4010.

- 8. Subcontracting:** The Board may subcontract any of the requirements in this contract. The Board shall remain fully and solely responsible and accountable for meeting all of its obligations and duties under this contract, including all services, terms, and conditions, without regard to its subcontracting arrangements. Subcontracting must comply with applicable statutes, regulations, and guidelines, including the Virginia Public Procurement Act. All subcontracted activities shall be formalized in written contracts between the Board and subcontractors. The Board agrees to provide copies of such contracts or other documents to the Department upon request. The Board shall satisfy the subcontracting provisions in the General Requirements Document.

9. Terms and Conditions

- a. Availability of Funds:** The Department and the Board shall be bound by the provisions of this contract only to the extent of the funds available or that may hereafter become available for the purposes of the contract.

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- b. Compliance:** The Department may utilize a variety of remedies, including requiring a corrective action plan, delaying payments, and terminating the contract, to assure Board compliance with this contract. Specific remedies, described in Exhibit I of this contract, may be taken if the Board fails to satisfy the reporting requirements in this contract.
- c. Disputes:** Resolution of disputes arising from Department contract compliance review and performance management efforts or from actions by the Board related to this contract may be pursued through the dispute resolution process in section 9.f, which may be used to appeal only the following conditions:
- 1.) reduction or withdrawal of state general or federal funds, unless funds for this activity are withdrawn by action of the General Assembly or federal government, or adjustment of allocations or payments pursuant to section 5 of this contract;
 - 2.) termination or suspension of the performance contract, unless funding is no longer available;
 - 3.) refusal to negotiate or execute a contract modification;
 - 4.) disputes arising over interpretation or precedence of terms, conditions, or scope of the performance contract;
 - 5.) determination that an expenditure is not allowable under this contract; and
 - 6.) determination that the performance contract is void.
- d. Termination**
- 1.) The Department may terminate this contract immediately, in whole or in part, at any time during the contract period if funds for this activity are withdrawn or not appropriated by the General Assembly or are not provided by the federal government. In this situation, the obligations of the Department and the Board under this contract shall cease immediately. The Board and the Department shall make all reasonable efforts to ameliorate any negative consequences or effects of contract termination on consumers and Board staff.
 - 2.) The Board may terminate this contract immediately, in whole or in part, at any time during the contract period if funds for this activity are withdrawn or not appropriated by its local government(s) or other funding sources. In this situation, the obligations of the Board and the Department under this contract shall cease immediately. The Board and the Department shall make all reasonable efforts to ameliorate any negative consequences or effects of contract termination on consumers and Board staff.
 - 3.) In accordance with § 37.2-508 or § 37.2-608 of the *Code of Virginia*, the Department may terminate all or a portion of this contract, after unsuccessful use of the remediation process described in section 9.e and after affording the Board an adequate opportunity to use the dispute resolution process described in section 9.f of this contract. A written notice specifying the cause must be delivered to the Board's board chairman and executive director at least 75 days prior to the date of actual termination of the contract. In the event of contract termination under these circumstances, only payment for allowable services rendered by the Board shall be made by the Department.
- e. Remediation Process:** The remediation process mentioned in § 37.2-508 or § 37.2-608 of the *Code of Virginia* is an informal procedure that shall be used by the Department and the Board to address a particular situation or condition identified by the Department or the Board that may, if unresolved, result in termination of the contract, in accordance with the provisions of section 9.d of this contract. The details of this remediation process shall be developed by the parties and added as an exhibit of this contract. This exhibit shall describe the situation or condition and include the performance measures that shall document a satisfactory resolution of the situation or condition.

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- f. **Dispute Resolution Process:** Disputes arising from any of the conditions in section 9.c of this contract shall be resolved using the following process.
- 1.) Within 15 days of the Board's identification or receipt of a disputable action taken by the Department or of the Department's identification or receipt of a disputable action taken by the Board, the party seeking resolution of the dispute shall submit a written notice to the Department's Director of Community Contracting, stating its desire to use the dispute resolution process. The written notice must describe the condition, nature, and details of the dispute and the relief sought by the party.
 - 2.) The Director of Community Contracting shall review the written notice and determine if the dispute falls within the conditions listed in section 9.c. If it does not, the Director of Community Contracting shall notify the party in writing within seven days of receipt of the written notice that the dispute is not subject to this dispute resolution process. The party may appeal this determination to the Commissioner in writing within seven days of its receipt of the Director's written notification.
 - 3.) If the dispute falls within the conditions listed in section 9.c, the Director of Community Contracting shall notify the party within seven days of receipt of the written notice that a panel will be appointed within 15 days to conduct an administrative hearing.
 - 4.) Within 15 days of notification to the party, a panel of three or five disinterested individuals shall be appointed to hear the dispute. The Board shall appoint one or two members; the Commissioner shall appoint one or two members; and the appointed members shall appoint the third or fifth member. Each panel member will be informed of the nature of the dispute and be required to sign a statement indicating that he has no interest in the dispute. Any person with an interest in the dispute shall be relieved of panel responsibilities and another person shall be selected as a panel member.
 - 5.) The Director of Community Contracting will contact the parties by telephone and arrange for a panel hearing at a mutually convenient time, date, and place. The panel hearing shall be scheduled not more than 15 days after the appointment of panel members. Confirmation of the time, date, and place of the hearing will be communicated to all parties at least seven days in advance of the hearing.
 - 6.) The panel members shall elect a chairman and the chairman shall convene the panel. The party requesting the panel hearing shall present evidence first, followed by the presentation of the other party. The burden shall be on the party requesting the panel hearing to establish that the disputed decision or action was incorrect and to present the basis in law, regulation, or policy for its assertion. The panel may hear rebuttal evidence after the initial presentations by the Board and the Department. The panel may question either party in order to obtain a clear understanding of the facts.
 - 7.) Subject to provisions of the Freedom of Information Act, the panel shall convene in closed session at the end of the hearing and shall issue written recommended findings of fact within seven days of the hearing. The recommended findings of fact shall be submitted to the Commissioner for a final decision.
 - 8.) The findings of fact shall be final and conclusive and shall not be set aside by the Commissioner unless they are (1) fraudulent, arbitrary, or capricious; (2) so grossly erroneous as to imply bad faith; (3) in the case of termination of the contract due to failure to perform, the criteria for performance measurement are found to be erroneous, arbitrary, or capricious; or (4) not within the Board's purview.
 - 9.) The final decision shall be sent by certified mail to both parties no later than 60 days after receipt of the written notice from the party invoking the dispute resolution process.
 - 10.) Multiple appeal notices shall be handled independently and sequentially so that an initial appeal will not be delayed by a second appeal.

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11.) The Board or the Department may seek judicial review of the final decision as provided in § 2.2-4365 of the *Code of Virginia* in the Circuit Court for the City of Richmond within 30 days of receipt of the final decision.

- g. Contract Amendment:** This contract, including all exhibits and incorporated documents, constitutes the entire agreement between the Department and the Board. The services identified in Exhibit A of this contract may be revised in accordance with the performance contract revision instructions, contained in Exhibit E of this contract. Other provisions of this contract may be amended only by mutual agreement of the parties, in writing and signed by the parties hereto.
- h. Liability:** The Board shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance of this contract. The Board shall obtain and maintain sufficient liability insurance to cover claims for bodily injury and property damage and suitable administrative or directors and officers liability insurance. These responsibilities may be discharged by means of a proper and sufficient self-insurance program operated by the state or a city or county government. The Board shall provide a copy of any such policy or program to the Department upon request. This contract is not intended to, and does not, create by implication or otherwise any basis for any claim or cause of action by a person or entity not a party to this contract, arising out of any claimed violation of any provision of this contract, nor does it create any claim or right on behalf of any individual to services or benefits from the Board or the Department.
- i. Severability:** Each paragraph and provision of this contract is severable from the entire contract, and the remaining provisions shall nevertheless remain in full force and effect if any provision is declared invalid or unenforceable.

10. Areas for Future Resolution: On an ongoing basis, the Board and the Department agree to work together to identify and resolve barriers and policy and procedural issues that interfere with the most effective and efficient delivery of public services. This section identifies issues and topics that the Board and the Department agree to work on collaboratively during the term of this contract in order to resolve them during that period or later, if necessary. Issues and topics may be added at any time by mutual agreement through amendment of this contract. The Board or representatives of the Board and the Department will establish work groups where appropriate to address these issues and topics. The Department and the Board also may address issues and topics through the System Leadership Council and the System Operations Team, which are described in the Partnership Agreement.

- a. Evidence-Based or Best Clinical Practices:** Identify evidence-based practices or best clinical practices that will improve the quality of mental health, mental retardation, or substance abuse services and address the service needs of individuals with co-occurring disorders and develop strategies for the implementation of these practices to the extent practicable.
- b. Mental Health and Substance Abuse Services Performance Expectations and Goals:** Develop the second phase of performance expectations and goals that will address service quality issues for emergency services and case management services and expand this continuous quality improvement approach to other services provided by the Board, including preadmission screening and discharge planning, to local, regional, and statewide utilization management, and to state facility operations.
- c. Data Quality and Use:** Through the Moving Forward Work Group, the VACSB Data Management Committee, and similar mechanisms, work collaboratively to (i) monitor and increase the timeliness and quality of data submitted through the current Community Consumer Submission in accordance with the current CCS Extract Specifications and Design Specifications (including the current Business Rules); (ii) address current and future

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data and information needs, including communicating more effectively about the volume of services provided and how these services affect the lives of individual consumers; (iii) achieve the values and benefits of interoperability or the ability to reliably exchange information without error, in a secure fashion, with different information technology systems, software applications, and networks in various settings; to exchange this information with its clinical or operational meaning preserved and unaltered; and to do so in the course of the process of service delivery to promote the continuity of that process and (iv) plan for the implementation of electronic Health Information Exchange and Electronic Health Records by July 1, 2012 to improve the quality and accessibility of services and streamline and reduce reporting and documentation requirements.

- d. **Co-Occurring Disorder Treatment Performance Expectations and Goals:** As part of the continuous quality improvement process described in Exhibit B, develop co-occurring disorder treatment performance expectations, goals, and benchmarks in areas such as Board self-assessment, consumer screening and assessment, service integration, and reporting, for possible inclusion in the FY 2010 performance contract. As part of this activity, reference or develop CCS data elements and Core Services Taxonomy definitions that identify consumers with co-occurring disorders and services that treat those disorders.
- e. **Regional Management Structures or Processes for Consumers Moving Among Regions or Providers:** Through the Regional Utilization Management/Continuous Quality Improvement (RUM/CQI) Work Group, develop clear regional management structures or processes to deal with consumers transferring between private providers participating as signatories in regional partnerships and Boards or state facilities within a region or across regions or consumers transferring from Boards or state facilities in one region to Boards or state facilities in another region. The structures or processes should focus on behavioral rather than diagnostic criteria, individuals and their unique situations rather than population groupings, shared responsibilities and joint ownership, and problem solving. The structures or processes should be as consistent as possible among regions, while allowing variations needed to accommodate particular or unique circumstances in regions. The RUM/CQI Work Group shall develop these structures or processes for consideration and possible adoption in FY 2010 and, where appropriate, inclusion in the FY 2010 contract.
- f. **Discharge Planning Protocols and Continuity of Care Procedures:** Through the RUM/CQI Work Group or a separate group established for this purpose, revise the current Discharge Planning Protocols, Continuity of Care Procedures, and Procedures for Continuity of Care Between Community Services Boards and State Psychiatric Facilities (February 3, 1997), integrating or combining them to the greatest extent possible, in time for the revised document(s) to be included in or incorporated by reference into the FY 2010 performance contract. The revised document(s) shall be consistent with applicable *Code of Virginia* requirements and with the regional structures or processes developed pursuant to section 10.e of this contract and also shall include admission protocols or procedures. The revised document(s) or the regional structures or processes also shall address a process for resolving disagreements or problems among Boards and state facilities which they cannot resolve locally.

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11. Signatures: In witness thereof, the Department and the Board have caused this performance contract to be executed by the following duly authorized officials.

**Virginia Department of Mental Health,
Mental Retardation and Substance
Abuse Services**

Colonial Services Board

Board

By: _____

By: Jodi Mincemoyer

Name: James S. Reinhard, M.D.
Title: Commissioner

Name: Jodi Mincemoyer
Title: Chairman of the Board

Date: _____

Date: 6/18/08

By: David A. Coe

Name: David A. Coe
Title: Executive Director

Date: 6/18/08

Exhibit A
Colonial

Consolidated Budget				
Revenue Source	Mental Health	Mental Retardation	Substance Abuse	TOTAL
State Funds	2,020,832	413,316	1,022,989	3,457,137
State Restricted Funds	1,054,571	0	249,499	1,304,070
Local Matching Funds	757,390	777,982	434,061	1,969,433
Total Fees	1,861,154	3,193,050	118,410	5,172,614
Transfer Fees (To)/From	0	0	0	0
Federal Funds	48,565	0	447,571	496,136
Other Funds	473,289	980,698	235,913	1,689,900
State Retained Earnings	0	0	0	0
Federal Retained Earnings	0		0	0
Other Retained Earnings	0	0	0	0
Subtotal Funds	6,215,801	5,365,046	2,508,443	14,089,290
State Funds One-Time	0			0
State Restricted Funds One-Time		0		0
Federal Funds One-Time	0		0	0
Subtotal One -Time Funds	0	0	0	0
TOTAL ALL FUNDS	6,215,801	5,365,046	2,508,443	14,089,290
Cost for MH/MR/SA	6,042,014	5,594,377	1,360,909	12,997,300
Cost for Services Available Outside of a Program Area				1,091,990
Total Cost				14,089,290

Local Match Computation	
Total State Restricted and State Funds	4,761,207
Total Local Matching Funds	1,969,433
Total State and Local Funds	6,730,640
Total Local Match %	29.26%

Administration Expenses	
Total Admin. Expenses	1,671,012
Total Expenses	14,089,290
% Administration	11.86%

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*Colonial
Financial Comments*

<i>Comment1</i>	Part C amount of \$ 406,732 included in MR Other Funds - Part C
<i>Comment2</i>	
<i>Comment3</i>	
<i>Comment4</i>	
<i>Comment5</i>	
<i>Comment6</i>	
<i>Comment7</i>	
<i>Comment8</i>	
<i>Comment9</i>	
<i>Comment10</i>	
<i>Comment11</i>	
<i>Comment12</i>	
<i>Comment13</i>	
<i>Comment14</i>	
<i>Comment15</i>	
<i>Comment16</i>	
<i>Comment17</i>	
<i>Comment18</i>	
<i>Comment19</i>	
<i>Comment20</i>	
<i>Comment21</i>	
<i>Comment22</i>	
<i>Comment23</i>	
<i>Comment24</i>	
<i>Comment25</i>	

FY 2009 Community Services Performance Contract Financial Summary

Mental Health
Colonial

Revenue Source	<u>Revenue</u>
<u>Fees</u>	
MH Medicaid Fees	1,475,056
MH Fees: Other	<u>386,098</u>
Total MH Fees	1,861,154
MH Transfer Fees (To)/From	0
MH Net Fees	<u>1,861,154</u>
<u>Restricted Funds</u>	
Federal	
MH FBG SED C & A	35,311
MH FBG SMI	13,254
MH FBG PACT	0
MH FBG Geriatrics	0
MH FBG Consumer Services	0
MH Fed PATH	0
MH Other Federal - DMHMRSAS	0
MH Other Federal - CSB	0
Total Federal Restricted MH Funds	<u>48,565</u>
State	
MH Acute Care (Fiscal Agent)	0
MH Transfer In/(Out) Acute Care	69,395
MH Net Acute Care	<u>69,395</u>
MH Regional DAP (Fiscal Agent)	0
MH Transfer In/(Out) Regional DAP	141,721
MH Net Regional DAP	<u>141,721</u>
MH Facility Reinvestment (Fiscal Agent)	0
MH Transfer In/(Out) Facility Reinvestment	0
MH Net Facility Reinvestment	<u>0</u>
MH Regional DAD/Wintex (Fiscal Agent)	0
MH Transfer In/(Out) Regional DAD/Wintex	0
MH Net Regional DAD/Wintex	<u>0</u>
MH Crisis Stabilization (Fiscal Agent)	0
MH Transfer In/(Out) Crisis Stabilization	0
MH Net Crisis Stabilization	<u>0</u>
MH Recovery (Fiscal Agent)	0
MH Transfer In/(Out) Recovery	0
MH Net Recovery	<u>0</u>
MH Transformation (Fiscal Agent)	0
MH Transfer In/(Out) Transformation	572,486
MH Net Transformation	<u>572,486</u>
MH DAD/Wintex	0
MH PACT	0
MH Discharge Assistance (DAP)	83,504

FY 2009 Community Services Performance Contract Financial Summary

Mental Health
Colonial

Revenue Source	<u>Revenue</u>
MH Child & Adolescent Services Initiative	77,465
MH Pharmacy (Blue Ridge)	0
MH Demo Proj-System of Care (Child)	0
MH Juvenile Detention	110,000
MH Jail Diversion/Service	0
MH Geriatrics	0
MH Civil Commitment Law Reforms	0
	<hr/>
Total State Restricted MH Funds	1,054,571
<u>Other Funds</u>	
MH Other Funds	473,289
MH Federal Retained Earnings	0
MH State Retained Earnings	0
MH State Retained Earnings - Regional Prog	0
MH Other Retained Earnings	0
	<hr/>
Total Other MH Funds	473,289
<u>State Funds</u>	
MH State General Funds	1,995,832
MH State Regional Deaf Services	0
MH State NGRJ	0
MH State Children's Services	25,000
	<hr/>
Total State MH Funds	2,020,832
<u>Local Matching Funds</u>	
MH In-Kind	0
MH Contributions	0
MH Local Other	0
MH Local Government	757,390
	<hr/>
Total Local MH Funds	757,390
Total MH Revenue	6,215,801
<u>MH One Time Funds</u>	
MH FBG SWVMH Board	0
MH FBG SMI	0
MH FBG SED C & A	0
MH FBG Consumer Services	0
MH Fed Emergency Preparedness and Response	0
MH Fed SERG	0
MH State General Funds	0
	<hr/>
Total One Time MH Funds	0
Total All MH Revenue	6,215,801

FY 2009 Community Services Performance Contract Financial Summary

Mental Retardation

Colonial

Revenue Sources	Revenue
<u>Fees</u>	
MR Medicaid Fees	2,736,521
MR Medicaid ICF/MR	0
MR Fees: Other	456,529
MR Fees: Part C	0
Total MR Fees	3,193,050
MR Transfer Fees (To)/From	0
MR Net Fees	3,193,050
<u>Restricted Funds</u>	
Federal	
MR Other Federal - DMHMRSAS	0
MR Other Federal - CSB	0
Total Federal Restricted MR Funds	0
State	
MR Facility Reinvestment (Fiscal Agent)	0
MR Transfer In/(Out) Facility Reinvestment	0
MR Net Facility Reinvestment	0
MR Transformation	0
Total State Restricted MR Funds	0
<u>Other Funds</u>	
MR Workshop Sales	300,000
MR Other Funds	273,966
MR Other Funds - Part C	406,732
MR State Retained Earnings	0
MR Other Retained Earnings	0
Total Other MR Funds	980,698
<u>State Funds</u>	
MR State General Funds	396,935
MR OBRA	16,381
MR Family Support	0
MR Children's Family Support	0
Total State MR Funds	413,316

FY 2009 Community Services Performance Contract Financial Summary

Mental Retardation

Colonial

Revenue Sources	Revenue
<u>Local Matching Funds</u>	
MR In-Kind	0
MR Contributions	0
MR Local Other	0
MR Local Government	777,982
Total Local MR Funds	<u>777,982</u>
Total MR Revenue	5,365,046
<u>MR One Time Funds</u>	
MR Waiver-Start Up	0
Total One Time MR Funds	<u>0</u>
Total ALL MR Revenue	5,365,046

FY 2009 Community Services Performance Contract Financial Summary

Substance Abuse

Colonial

Revenue Sources	Revenue
<u>Fees</u>	
SA Medicaid Fees	0
SA Fees: Other	118,410
Total SA Fees	118,410
SA Transfer Fees (To)/From	0
SA Net Fees	118,410
<u>Restricted Funds</u>	
Federal	
SA FBG Alcohol/Drug Trmt	117,951
SA FBG Women	159,253
SA FBG Prevention-Women	0
SA FBG SARPOS	17,436
SA FBG Facility Diversion	10,491
SA FBG Jail Services	0
SA FBG Crisis Intervention	0
SA FBG Prevention	123,658
SA FBG Co-Occurring	18,782
SA FBG Prev-Strengthening Families	0
SA FBG New Directions	0
SA Fed VASIP/COSIG (Fiscal Agent)	0
SA Fed Transfer In/(Out) VASIP/COSIG	0
SA Net VASIP/COSIG	0
SA Fed Project REMOTE	0
SA Fed Project TREAT	0
SA Other Federal - DMHMRSAS	0
SA Other Federal - CSB	0
Total Federal Restricted SA Funds	447,571
State	
SA Facility Reinvestment (Fiscal Agent)	0
SA Transfer In/(Out) Facility Reinvestment	0
SA Net Facility Reinvestment	0
SA Facility Diversion	16,378
SA Women	0
SA Crisis Stabilization	0
SA MAT	0
SA Transformation	0
SA SARPOS	33,121
SA Recovery	200,000
SA HIV/AIDS	0
Total State Restricted SA Funds	249,499

FY 2009 Community Services Performance Contract Financial Summary

Substance Abuse

Colonial

Revenue Sources	Revenue
<u>Other Funds</u>	
SA Other Funds	235,913
SA Federal Retained Earnings	0
SA State Retained Earnings	0
SA State Retained Earnings-Regional Prog	0
SA Other Retained Earnings	0
Total Other SA Funds	235,913
<u>State Funds</u>	
SA State General Funds	954,256
SA Region V Residential	68,733
SA Postpartum - Women	0
SA Jail Services/Juv Detention	0
Total State SA Funds	1,022,989
<u>Local Matching Funds</u>	
SA In-Kind	0
SA Contributions	0
SA Local Other	0
SA Local Government	434,061
Total Local SA Funds	434,061
Total SA Revenue	2,508,443
<u>SA One Time Funds</u>	
SA FBG Alcohol/Drug Trmt	0
SA FBG Women	0
SA FBG Prevention	0
Total One Time SA Funds	0
Total ALL SA Revenue	2,508,443

FY 2009 Community Services Performance Contract

Local Government Tax Appropriations

Colonial

City/County	Tax Appropriation
Poquoson City	137,343
Williamsburg City	245,860
York County	731,434
James City County	854,796
Total Local Government Tax Funds:	1,969,433

FY 2009 Community Services Performance Contract

Supplemental Information

Reconciliation of Financial Report and Utilization Data (Core Services) Expenses

	Colonial				
	MH	MR	SA	Services Outside Prog. Area	Total
Financial Report Revenue	6,215,801	5,365,046	2,508,443	0	14,089,290
Utilization Data Expenses	6,042,014	5,594,377	1,360,909	1,091,990	14,089,290
Difference	173,787	-229,331	1,147,534	-1,091,990	0

Difference results from

Other 0

Explanation of Other:

**FY 2009 Community Services Performance Contract
CSB 100 Mental Health Services
Colonial**

Report for Form 11

Core Services Code / or Consumer Designation Code

	Consumers Served	Costs
310 Outpatient Services	1700	\$2,793,390
320 Case Management Services	477	\$1,082,374
420 Ambulatory Crisis Stabilization Services	25	\$80,000
425 Rehabilitation/Habilitation	85	\$465,307
460 Individual Supported Employment	30	\$138,390
551 Supervised Residential Services	18	\$643,507
581 Supportive Residential Services	70	\$630,136
610 Prevention Services	[REDACTED]	\$208,910
910 Discharge Assistance Project (DAP)	13	[REDACTED]
915 MH Child and Adolescent Services Initiative	8	[REDACTED]
916 MH Services for C&A in Juvenile Detention Centers	135	[REDACTED]
	Total Costs	\$6,042,014

FY 2009 Community Services Performance Contract
CSB 200 Mental Retardation Services
Colonial

Report for Form 21

Core Services Code / or Consumer Designation Code

	Consumers Served	Costs
320 Case Management Services	236	\$861,982
425 Rehabilitation/Habilitation	52	\$1,823,947
430 Sheltered Employment	14	\$295,188
460 Individual Supported Employment	10	\$163,500
551 Supervised Residential Services	16	\$1,660,027
610 Prevention Services	[REDACTED]	\$181,299
625 Infant and Toddler Intervention Services	40	\$608,434
920 Medicaid Mental Retardation HCB Waiver Services	48	[REDACTED]
	Total Costs	\$5,594,377

**FY 2009 Community Services Performance Contract
CSB 300 Substance Abuse Services
Colonial**

Report for Form 31

Core Services Code / or Consumer Designation Code

	Consumers Served	Costs
310 Outpatient Services	800	\$1,142,379
551 Supervised Residential Services	7	\$81,217
610 Prevention Services		\$137,313
	Total Costs	\$1,360,909

**FY 2009 Community Services Performance Contract
CSB 400 Services Available Outside of a Program Area
Colonial**

Report for Form 01

Core Services Code

	Consumers Served	Costs
100 Emergency Services	950	\$758,514
318 Motivational Treatment Services	175	\$47,975
720 Assessment and Evaluation Services	60	\$40,630
730 Consumer Run Services	50	\$244,871
	Total Costs	\$1,091,990

FY 2009 Community Services Performance Contract Supplement
Table 1: Board of Directors Membership Characteristics

Name of CSB:	Colonial				
Total Appointments:	15	Vacancies:	0	Filled Appointments:	15
Number of Consumers:	0	Number of Family Members:	5		

FY 2009 Community Services Performance Contract

Exhibit D: CSB Board of Directors Membership List

Colonial

Name	Address	Phone Number	Start Date	End Date	Term No.
Edith Chutkow	154 Ridings Cove Williamsburg, VA 23185	(757) 229-6164	7/1/2006	6/30/2009	1
Barbara Burge	3531 Big Bethel Road Yorktown, VA 23693	(757) 766-7717	7/1/2005	6/30/2008	1
Mary Clark	107 Rich Road Yorktown, VA 23693	(757) 867-8151	7/1/2002	6/30/2008	2
Victoria Diggs	500 City Hall Ave Poquoson, VA 23662	(757) 868-3000	7/1/2001	6/30/2008	2
June Hagee	27 Whittaker's Mill Williamsburg, VA 23185	(757) 220-2565	7/1/2001	6/30/2010	3
Diana Hutchens	5249 Olde Towne Road Williamsburg, VA 23188	(757) 259-3124	7/1/2004	6/30/2010	2
Patricia Kline	118 Ware Road Williamsburg, VA 23185	(757) 229-4661	7/1/2006	6/30/2009	1
John McDonald	105 Holdsworth Road Williamsburg, VA 23185	(757) 220-3569	7/1/2003	6/30/2009	2
Jodi Mincemoyer	225 Virginia Ave Williamsburg, VA 23185	(757) 221-4002	7/1/2002	6/30/2008	2
Carol Mitchell	4 East Sandy Point Road Poquoson, VA 23662	(757) 868-0362	7/1/2006	6/30/2009	1
Morris Randall, Sr.	120 Indian Summer Lane Williamsburg, VA 23188	(757) 565-1253	7/1/2007	6/30/2010	1
Raymond Schmidt	106 Allen Harris Drive Yorktown, VA 23692	(757) 890-0956	7/1/2006	6/30/2009	1
Minnie Sippio	224 Ballard St Yorktown, VA 23690	(757) 291-6186	7/1/2006	6/30/2009	1
Joanne Smith	203 Percussion Road Williamsburg, VA 23185	(757) 259-0636	7/1/2003	6/30/2009	2
Donald Willis	105 Blue Heron Court Yorktown, VA 23692	(757) 877-2931	7/1/2006	6/30/2009	1

Management Position Title

Beginning

Ending

Salary Cost

(FTE)

Management Position Title	Beginning	Ending	Salary Cost	(FTE)
Administrative/Finance Director	\$70,171.00	\$122,365.00	\$116,114.00	24.00
Clinical Services Director	\$70,171.00	\$122,365.00	\$92,855.00	2.00
Community Support Director	\$70,171.00	\$122,365.00	\$96,570.00	26.00
Executive Director			\$135,200.00	1.00
Human Resource Manager	\$46,656.00	\$95,070.00	\$92,014.00	33.00
Medical/Psychiatric Services Director	\$135,958.00	\$228,600.00	\$225,502.00	9.00
Quality Assurance Director	\$70,171.00	\$122,365.00	\$114,792.00	27.00
Residential Services Director	\$70,171.00	\$122,365.00	\$106,103.00	0.00

REPORT DATE

Report Date 6/24/2008

AP-7

FY 2009 Community Services Performance Contract Supplement
Colonial

Table 2: Board Management Salary Costs

Explanations for Table 2a						

Table 2b: Community Service Board Employees

1.	2.	3.	4.	5.	6.	7.
No. of FTE CSB Employees	MH	MR	SA	Srv Outside Pgm	ADMIN	TOTAL
Consumer Service FTEs	69.74	65.04	14.89	13.63		163.30
Peer Staff Service FTEs	0.50	0.00	0.00	0.00		0.50
Support Staff FTEs	13.13	12.15	2.78	2.55	9.00	39.61
TOTAL FTE CSB Employees	83.37	77.19	17.67	16.18	9.00	203.41

CUSTOMER
COPY



Right of Way Agreement

THIS RIGHT OF WAY AGREEMENT, is made and entered into as of this ____ day of _____, _____, by and between

JAMES CITY COUNTY

("GRANTOR") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business in Virginia as Dominion Virginia Power, with its principal office in Richmond, Virginia ("GRANTEE").

WITNESSETH:

1. That for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, **GRANTOR** grants and conveys unto **GRANTEE**, its successors and assigns, the perpetual right, privilege and easement over, under, through, upon and across the property described herein, for the purpose of transmitting and distributing electric power by one or more circuits; for its own internal telephone and other internal communication purposes directly related to or incidental to the generation, distribution, and transmission of electricity, including the wires and facilities of any other public service company in aid of or to effectuate such internal telephone or other internal communication purposes; and for lighting purposes; including but not limited to the right:

1.2 to construct, operate and maintain a pole line including, without limitation, all wires, poles, attachments, ground connections one or more lighting supports and lighting fixtures as **GRANTEE** may from time to time deem advisable, equipment, accessories and appurtenances desirable in connection therewith, including the right to increase or decrease the number of wires; the width of said easement shall extend thirty (30) feet in width across the lands of **GRANTOR**.

Initials: _____

This Document Prepared by Virginia Electric and Power Company and should be returned to:
Dominion Virginia Power, 1601 Hamilton Avenue Portsmouth VA 23707.

(Page 1 of 5 Pages)
DVPIDNo(s). 28-08-0033
Tax Map No. 3010100009

Right of Way Agreement

2. The easement granted herein shall extend across the lands of **GRANTOR** situated in JAMES CITY COUNTY, Virginia, as more fully described on Plat(s) Numbered 28-08-0033, attached to and made a part of this Right of Way Agreement; the location of the boundaries of said easement being shown in broken lines on said Plat(s), reference being made thereto for a more particular description thereof.

3. All facilities constructed hereunder shall remain the property of **GRANTEE**. **GRANTEE** shall have the right to inspect, reconstruct, remove, repair, improve, relocate on the easement, and make such changes, alterations, substitutions, additions to or extensions of its facilities as **GRANTEE** may from time to time deem advisable.

4. **GRANTEE** shall have the right to keep the easement clear of all buildings, structures, trees, roots, undergrowth and other obstructions which would interfere with its exercise of the rights granted hereunder, including, without limitation, the right to trim, top, retrim, retop, cut and keep clear any trees or brush inside and outside the boundaries of the easement that may endanger the safe and proper operation of its facilities. All trees and limbs cut by **GRANTEE** shall remain the property of **GRANTOR**.

5. For the purpose of exercising the right granted herein, **GRANTEE** shall have the right of ingress to and egress from this easement over such private roads as may now or hereafter exist on the property of **GRANTOR**. The right, however, is reserved to **GRANTOR** to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, **GRANTEE** shall have such right of ingress and egress over the lands of **GRANTOR** adjacent to the easement. **GRANTEE** shall exercise such rights in such manner as shall occasion the least practicable damage and inconvenience to **GRANTOR**.

6. **GRANTEE** shall repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement (subject, however, to **GRANTEE's** rights set forth in Paragraph 4 of this Right of Way Agreement) and (b) outside the boundaries of the easement and shall repair or pay **GRANTOR**, at **GRANTEE's** option, for other damage done to **GRANTOR's** property inside the boundaries of the easement (subject, however, to **GRANTEE's** rights set forth in Paragraph 4 of this Right of Way Agreement) and outside the boundaries of the easement caused by **GRANTEE** in the process of the construction, inspection, and maintenance of **GRANTEE's** facilities, or in the exercise of its right of ingress and egress; provided **GRANTOR** gives written notice thereof to **GRANTEE** within sixty (60) days after such damage occurs.

Initials: _____

(Page 2 of 5 Pages)

DVPIDNo(s). 28-08-0033

Right of Way Agreement

7. **GRANTOR**, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby granted, provided such use does not interfere with **GRANTEE'S** exercise of any of its rights hereunder. **GRANTOR** shall not have the right to construct any building, structure, or other above ground obstruction on the easement; provided, however, **GRANTOR** may construct on the easement fences, landscaping (subject, however, to **GRANTEE'S** rights in Paragraph 4 of this Right of Way Agreement), paving, sidewalks, curbing, gutters, street signs, and below ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs, and below ground obstructions do not interfere with **GRANTEE'S** exercise of any of its rights granted hereunder. In the event such use does interfere with **GRANTEE'S** exercise of any of its rights granted hereunder, **GRANTEE** may, in its reasonable discretion, relocate such of its facilities as may be practicable to a new site designated by **GRANTOR** and acceptable to **GRANTEE**. In the event any such facilities are so relocated, **GRANTOR** shall reimburse **GRANTEE** for the cost thereof and convey to **GRANTEE** an equivalent easement at the new site.

8. **GRANTEE'S** right to assign or transfer its rights, privileges and easements, as granted herein, shall be strictly limited to the assignment or transfer of such rights, privileges and easements to any business which lawfully assumes any or all of **GRANTEE'S** obligations as a public service company or such other obligations as may be related to or incidental to **GRANTEE'S** stated business purpose as a public service company; and any such business to which such rights, privileges and easements may be assigned shall be bound by all of the terms, conditions and restrictions set forth herein.

9. If there is an Exhibit A attached hereto, then the easement granted hereby shall additionally be subject to all terms and conditions contained therein provided said Exhibit A is executed by **GRANTOR** contemporaneously herewith and is recorded with and as a part of this Right of Way Agreement.

10. Whenever the context of this Right of Way Agreement so requires, the singular number shall mean the plural and the plural the singular.

Initials: _____

(Page 3 of 5 Pages)

DVPIDNo(s). 28-08-0033



Right of Way Agreement

11. **GRANTOR** covenants that it is seised of and has the right to convey this easement and the rights and privileges granted hereunder; that **GRANTEE** shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement, rights and privileges; and that **GRANTOR** shall execute such further assurances thereof as may be reasonably required.

12. The individual executing this Right of Way Agreement on behalf of **GRANTOR** warrants that **GRANTOR** is a corporation duly organized and existing under the laws of the state hereinabove mentioned and that he or she has been duly authorized to execute this easement on behalf of said corporation.

NOTICE TO LANDOWNER: You are conveying rights to a public service corporation. A public service corporation may have the right to obtain some or all of these rights through exercise of eminent domain. To the extent that any of the rights being conveyed are not subject to eminent domain, you have the right to choose not to convey those rights and you could not be compelled to do so. You have the right to negotiate compensation for any rights that you are voluntarily conveying.

IN WITNESS WHEREOF, **GRANTOR** has caused its corporate name to be signed hereto by its authorized officer or agent, described below, on the date first above written.

Corporate Name: JAMES CITY COUNTY

By: Sanford B. Wanner

Its: County Administrator

State of Virginia

City/County of James City

The foregoing instrument was acknowledged before me this ___ day of _____, _____

by Sanford B. Wanner, County Administrator
(Name of officer or agent) (Title of officer or agent)

of JAMES CITY COUNTY, a Virginia
(Name of corporation) (State of incorporation)

corporation, on behalf of the corporation.

Notary Public (Print Name)

Notary Public (Signature)

Virginia Notary Reg. No. _____ My Commission Expires: _____.

**Sentara Williamsburg Regional Medical Center
Certificate of Public Need Request No. VA-7596
Add General Acute Care Beds
EXECUTIVE SUMMARY**

Sentara Williamsburg Regional Medical Center (SWRMC), a not-for-profit local healthcare provider, seeks Certificate of Public Need approval to add six beds. The application was filed June 30, 2008 for consideration in the August review cycle.

SWRMC is licensed for 145 beds, including 106 med/surg beds, 17 obstetric, 16 intensive care, and 6 medical rehabilitation. This project would increase the licensed bed capacity to 151 beds. In 2006, charity care at SWRMC was 2.2% of gross patient revenue.

SWRMC opened in August 2006, as the replacement hospital for Sentara Williamsburg Community Hospital (it is five miles from the old site). Its primary service area is the Upper Peninsula: the City of Williamsburg, James City County, and upper York County. The hospital also serves the counties of Gloucester, Mathews, Middlesex, New Kent, Charles City, King William, and King & Queen. Located on the York County, James City County border, it is easily accessible via Interstate 64 and Route 199 and Williamsburg Area Transit.

In 2007, average hospital occupancy was around 60%. Average occupancy of the medical/surgical beds was around 67%. The hospital admitted around 7,500 patients in 2007. More than 2/3 came from Williamsburg/James City County/upper York County.

The project involves the addition of a 6th floor to the building (we have no additional expansion on existing nursing units). The hospital was constructed with the capacity for future growth. The addition includes a 6-bed medical/surgical unit, public waiting and associated space, elevator core and convenience stair, and the required exit corridors outside of the unit. The construction cost is estimated at \$8,359,059. Total capital costs (including construction) are estimated at \$11,251,069. The addition would be ready for patients in January 2011.

Although SWRMC does not believe additional hospital beds are needed in the Williamsburg area at this time, it offers this application as a lower cost alternative to the State Health Commissioner if she feels beds are needed. A 6-bed unit serves any additional need without over-supplying the area with beds.

Since we serve such a large number of citizens from James City County we would very much like to have a Resolution of Support for our growth and expansion plans for the future.

SECTION IV PROJECT JUSTIFICATION AND IDENTIFICATION OF COMMUNITY NEED

- A. Please provide a comprehensive narrative description of the proposed project. Sentara Williamsburg Regional Medical Center (SWRMC) is a full-service acute care hospital that has been serving the Williamsburg area for over 45 years. SWRMC, the replacement facility for Sentara Williamsburg Community Hospital, opened in August 2006 in Upper York County. The hospital is located on the border with James City County, and is about five miles from the old hospital site. The rationale and design of the relocated hospital were documented in COPN Application No. VA-6732, approved in November 2002 (COPN No. VA-3706).

SWRMC serves the Greater Williamsburg area, composed of the City of Williamsburg, James City County, and Upper York County, also known as the hospital's Primary Service Area. In addition, the Secondary Service Area includes Gloucester, Mathews, Middlesex, Charles City, King and Queen, New Kent and King William Counties. The estimated 2007 population of the Primary Service Area, according to the localities, is less than 90,000 residents: James City County: 62,056¹, Upper York County: 11,130², Williamsburg: 13,330³.

The inpatient capacity includes medical/surgical, intensive care, obstetric, and inpatient rehabilitation beds. The hospital also provides emergency care (29 treatment areas), cardiac catheterization, radiology including CT and MRI, laboratory services, inpatient and outpatient surgical services (5 operating rooms), mobile PET/CT and many other services and programs expected in a community hospital.

In addition, the hospital connects to the Geddy Outpatient Center, which provides outpatient surgery (3 operating rooms), outpatient diagnostic and therapeutic services, women's imaging, and CT and MRI service.

SWRMC is licensed for 145 beds: 106 medical/surgical, 16 intensive care, 17 obstetric, and 6 rehabilitation (opened April 30, 2007). In 2007, the average occupancy of the hospital was 59.6%; the average occupancy of the medical/surgical beds was 67.1%.

This application proposes the addition of six medical/surgical beds to the hospital. This addition would involve the construction of a 6th floor. SWRMC is sized and designed to allow it to grow and change with the needs of the community. The healthcare needs of Williamsburg area residents are well

¹ <http://www.jccc.gov/environmental/facts.html>

² York County, Virginia: A Statistical Profile: A Summary of Demographic and Economic Data, March 1, 2007, page 5

³ The City of Williamsburg, Virginia's Colonial Capital Community Profile, page 8.

served by the hospital and the hospital is well positioned to meet future needs in a cost-effective manner.

B. Identification of Community Need

1. Describe the geographic boundaries of the facility's primary service area. (Note: Primary service area may be considered to be geographic area from which 75% of patients are expected to originate.)

The Primary Service Area is the Greater Williamsburg area, considered to be the City of Williamsburg, James City County, and Upper York County. The Secondary Service Area is composed of New Kent County, Gloucester County, King William County, King and Queen County, Charles City County, Mathews County, and Middlesex County.

2. Provide patient origin, discharge diagnosis or utilization data appropriate for the type of project being proposed.

2007 SWRMC patient origin:

Locality	Patients	Percent
Williamsburg/James City County/Upper York County	5,135	68.5%
New Kent County	432	5.8%
Gloucester County	273	3.6%
King William County (including West Point)	264	3.5%
Charles City County	101	1.3%
King & Queen County	84	1.1%
Mathews County	54	0.7%
Middlesex County	51	0.7%
Total Primary and Secondary Service Area	6,394	85.2%
Lower Peninsula (Newport News, Hampton, Poquoson, Lower York County)	494	6.6%
Other	613	8.2%
TOTAL	7,501	100.0%

Source: Internal.

See Attachment IV.B. for patient origin by ZIP code.

- C. 1. Is (are) the services(s) to be offered presently being offered by any other existing facility(ies) in the Health Planning Region?

Yes.

2. If yes,

- a. Identify the facility(ies)

The Health Planning Region includes 20 acute care hospitals which offer medical/surgical services. Within Planning District 21, in addition to SWRMC, there is Riverside Regional Medical Center, Sentara CarePlex Hospital, Bon Secours Mary Immaculate Hospital, as well as the Hampton Roads Specialty Hospital (long term acute care). The Region also includes Rappahannock General Hospital, Riverside Tappahannock Hospital, Riverside Walter Reed Hospital, Shore Memorial Hospital, Sentara Norfolk General Hospital, Sentara Leigh Hospital, Sentara Bayside Hospital, Sentara

Virginia Beach General Hospital, Sentara Obici Hospital, Chesapeake General Hospital, Bon Secours DePaul Medical Center, Bon Secours Maryview Medical Center, Southampton Memorial Hospital, Lake Taylor Hospital (long term acute care), and the Hospital for Extended Recovery (long term acute care). In addition to these general acute care hospitals which offer medical/surgical services, there are two psychiatric acute care facilities: Riverside Peninsula Behavioral Health Center in PD 21 and Virginia Beach Psychiatric Institute.

- b. Discuss the extent to which the facility(ies) satisfy(ies) the current demand for the services(s).

Based on VHI 2006 data, the average medical/surgical/pediatric occupancy for Planning District 21 was 49.6%, indicating the facilities are adequately satisfying the current demand in the area.

- c. Discuss the extent to which the facility(ies) will satisfy(ies) the demand for services in five years.

The existing facilities are well located within the planning district. Sentara Williamsburg Regional Medical Center is equipped to meet future needs of the Greater Williamsburg area in an effective and efficient manner through the addition of a small number of beds.

- D. Discuss how the project will fill an unmet need in the delivery of health care in the service area including, where applicable, geographic barriers to access. Sentara Williamsburg Regional Medical Center, which opened in August 2006, was designed with future expansion in mind. In addition, the site was selected to ensure timely access for all residents of the Greater Williamsburg area. This project will enable the hospital to meet future needs in a cost-effective manner.
- E. Discuss the consistency of the proposed project with applicable Regional Health Plan, State Health Plan, State Medical Facilities Plan, or other plans promulgated by State Agencies.

12VAC 5-240-20. Accessibility.

Acute care inpatient facility beds should be within 30 minutes driving time, under normal conditions, of 90% of the population of a planning district.

Acute care inpatient beds in the Greater Williamsburg area/Upper Peninsula are available within 30 minutes driving time for all of the area's residents.

12VAC5-240-30. Availability.

A. Need for new service.

1.No new acute inpatient care beds should be approved in any planning district unless the resulting number of licensed and approved beds in a planning district does not exceed the number of beds projected to be needed, for each inpatient bed category, for that planning district for the fifth planning horizon year.

Pursuant to the methodology for determining public need as set forth in Section 12VAC5-240-30.D., there will be an oversupply of 362 general medical/surgical and pediatric beds in the Planning District in 2012.

2. Notwithstanding the need for new acute inpatient care beds above, no proposals to increase the general medical/surgical and pediatric bed capacity in a planning district should be approved unless the average annual occupancy, based on the number of licensed beds in the planning district where the project is proposed, is at least 85% for the relevant reporting period.

Based on VHI 2006 data, the average medical/surgical/pediatric occupancy for Planning District 21 was 49.6%.

3. Notwithstanding the need for new acute inpatient beds above, no proposals to increase the intensive bed capacity in a nonrural area should be approved unless: (i) the average annual occupancy rate, based on the number of licensed beds in the nonrural area where the project is proposed, is at least 65% for the relevant reporting period; or (ii) for hospitals in rural areas, the number of beds projected to be needed to provide 99% probability that adequate bed capacity will exist for all unscheduled admissions, exceeds the number of licensed beds projected for the fifth planning horizon year.

Not applicable. This application is not for intensive care bed capacity.

B. Off-site replacement of existing service.

Not applicable. This application is not for off-site replacement of existing service.

C. Alternative need for the conversion of underutilized licensed bed capacity.

Not applicable. This application is not for the conversion of underutilized licensed bed capacity.

D. Computation of the need for general medical/surgical and pediatric beds.

D.2.a.(1)	Medical/surgical and pediatric inpatient days for the past three years for all acute care inpatient facilities in the planning district (2004-2006)	430,027
D.2.a.(2)	Sum the planning district projected population for the same three-year period as reported by the VEC	1,402,999
D.2.a.(3)	Divide the sum of the general medical/surgical and pediatric unit inpatient days by the sum of the population and express the resulting rate in days per 1,000 population	306.5
D.2.a.(4)	Multiply the days per 1,000 population rate by the projected population for the planning district (expressed in 1,000s) for the fifth planning horizon year (2012 population =483,453)	149,069.3
D.2.b.(1)	Divide the result in D.2.a.(4) by 365	408.4
D.2.b.(2)	Divide the quotient obtained by 0.85 in planning districts in which 50% or more of the population resides in nonrural areas =	480.5

	Number of beds needed	
D.2.c.(1)	Determine the number of licensed and approved medical/surgical and pediatric beds	842
D.2.c.(2)	Subtract the number of beds identified in subdivision 2a above from the number of beds needed as determined in subdivision 2b(2) of this subsection = Number of beds which may be needed	-362

Note: Includes Hampton Roads Specialty Hospital (opened 2006) inpatient days and beds.

Note: Current and projected population from Claritas.

Note: D.2.c.(1) includes 30 recently-approved medical/surgical beds at Sentara CarePlex Hospital.

E.Computation of need for distinct pediatric units.

Not applicable. This application is not for a distinct pediatric unit.

F.Computation of need for intensive care beds.

Not applicable. This application is not for intensive care beds.

12VAC5-240-40. Continuity; system coordination for intensive care beds.

Not applicable. This application is not for intensive care beds.

12VAC5-240-50.Cost.

A.Use of underutilized beds.

1.For proposals that have a capital cost of \$1 million or more, preference shall be given to applications which proposed to expand intensive care or pediatric beds through the conversion of existing underutilized general medical/surgical beds, or to the expansion of general medical/surgical beds through the conversion of underutilized specialty beds.

Not applicable. This application is to add general acute care beds.

2.No hospital should relocate beds to a new location if underutilized beds (less than 85% average annual occupancy for medical/surgical and pediatric beds and less than 65% average annual occupancy for intensive care beds) are available within ten miles of the proposed site of the applicant hospital.

Not applicable. This application is to add beds to an existing facility. The average annual occupancy for medical/surgical beds at SWRMC is 67.1%.

B.Reasonable construction cost.

1.The cost per square foot of new construction as well as renovation to the existing facility should be consistent with state and regional costs for similar facilities and patient units.

According to a recent Advisory Board Daily Briefing headline, "Construction costs soaring across the care continuum." Nonetheless, Sentara keeps its construction costs reasonable.

2.Preference will be given to those proposals which identify the major source of capital as accumulated reserves.

The project will be funded from accumulated reserves.

C. Operating cost and charges.

1. The applicant should demonstrate that projected operating costs and charge structure will be comparable or less than similar facilities operating in the same planning district.

The additional beds at SWRMC will have the same costs and charges as the existing beds at SWCH. Per the most current Virginia Health Information Industry Report, SWRMC has the lowest charge per adjusted admission in the planning district.

2. For projects involving an off-site replacement of beds, the applicant should, in addition to the above standard, demonstrate that the operating costs and charge structure of the proposed facility shall be comparable to, or less than continued operations at the existing facility.

Not applicable. This application is not for the off-site replacement of beds.

3. Preference should be given to those facilities which have consistently demonstrated the highest levels of charity care as a percent of total patient revenues as reported to the Virginia Health Services Cost Review Council. **In 2006, charity care at SWRMC was 2.2% of gross patient revenue.**

12VAC5-240-60. Quality; accreditation and compliance with chapters.

A. The applicant should provide assurances that the proposed facility or units will be designed, staffed, and operated in compliance with applicable state licensure chapters.

The additional beds will be designed, staffed, and operated in compliance with applicable state licensure chapters, as is the rest of the hospital.

B. The applicant should agree to apply for accreditation with the Joint Commission on Accreditation of Healthcare Organizations or other appropriate accreditation organization.

The additional beds will be included in the hospital's Joint Commission (formerly known as JCAHO) survey process.

F. Show how the method and assumptions used in determining the need for additional beds, new services or deletion of service in the proposed project's service area.

SWRMC utilizes Sg2 and Health Care Advisory Board planning tools to develop market projections for the service area. These tools incorporate local demographics and shifting technologies. The resulting projections are then reviewed based on knowledge of local physician practice patterns and other information.

G. Coordination and Affiliation with Other Facilities.

Describe any existing or proposed formal agreements or affiliations to share personnel, facilities, services or equipment. (Attach copies of any formal agreements with another health or medical care facility.)

SWRMC is a subsidiary of Sentara Healthcare.

H. Attach copies of the following documents:

1. A map of the service area indicating:
 - a. Location of the proposed project.
 - b. Location of other existing medical facilities (by name, type, hospital, nursing home, outpatient clinic, etc.) and number of beds in each inpatient facility).

See Attachment IV.H.1.

2. Any material which indicates community and professional support for this project; i.e. letter of endorsement from physicians, community organizations, local government, Chamber of Commerce, medical society, etc.

To be submitted with the completeness replies.

3. Letters to other area facilities advising of the scope of the proposed project.

See Attachment IV.H.3.

MEMORANDUM

DATE: July 22, 2008

TO: The Board of Supervisors

FROM: Patrick Menichino, Compliance Specialist
Scott J. Thomas, Environmental Director

SUBJECT: Consideration of Use of Non-Native Plants within Resource Protection Area (RPA Native Plant Task Force)

Over a period of years, Division staff has organized and participated in public outreach programs and environmental workshops in an effort to provide the community with up to date information and guidance on environmental issues. One such workshop, Chesapeake Bay Workshop, has been conducted yearly and attracts a diverse group of attendees including homeowners, contractors, landscapers, landscape designers, real estate agents, plant growers, horticulturists, as well as representatives from the Virginia Cooperative Extension office and other local government agencies.

During these meetings a reoccurring concern expressed by the attendees was for the Division to allow for more flexibility in the selection of plant material for use within buffers. A common problem described by the attendees indicated a real problem with the commercial availability of the native plants required by the Division for use within buffers. Homeowners also expressed a desire to have plant material that would be more attractive without compromising the water quality function of the buffer.

To respond to this concern, Division staff along with the Virginia Cooperative Extension solicited for volunteers to serve on a committee to discuss the use of native plants and non-native plants within buffers. A committee was eventually formed and meetings were held to explore the issues. Attached is a list of those committee members.

During its review of the issues, the committee determined that the local availability of native plant material was a very real problem. They also determined that the use of "cultivars" of native plants and non-native plants, under specific guidance and conditions, would be an acceptable substitute for native plants. The committee then reviewed available plant material and developed a list of plants that were; adaptable to local conditions, were non-invasive, and would provide the water quality function desired within buffers. To ensure that the use of alternate plant material would not substantially degrade buffers, the committee created specific guidance and conditions to be made part of its recommendations.

In addition, the County's Chesapeake Bay Preservation Ordinance doesn't require the use of only native plant material within buffers. Staff has forwarded the plant list and guidance documents to Chesapeake Bay Local Assistance.

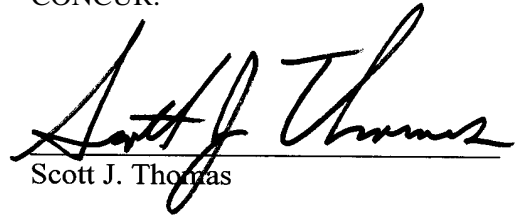
Staff believes that the recommendations of the committee address the issues and concerns raised by the public, while protecting the water quality function of the buffers. Staff is prepared to assist the Board by providing any additional information the Board may request.

July 22, 2008

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Patrick Menichino

CONCUR:



Scott J. Thomas

SJT/PM/tlc
NonNativPlnts_mem

Attachments

2008 – Native Plant List Task Force Representatives

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Adopted Task Force Standards to be applied to Ornamental Plantings

On March 25, 2008 the Native Plant Advisory Committee recommended the following standards be adopted to allow for the use of non-native plant material.

- Canopy trees shall be native species only.
- The committee has developed a short list of acceptable non-native substitutions for understory trees, shrubs and ground cover.
- Planting plans submitted for approval must have a natural design and should not replicate a garden design.
- Within RPA buffers, non-natives can only be installed within the landward 50' buffer component. Only native species plants are to be installed within the seaward 50' RPA component.
- Within the landward 50' RPA component, up to 25% of the proposed plant material may be non-native in each level (understory trees, shrubs and groundcover).
- Within Conservation Easements, up to 25% of the proposed plant material may be non-native in each level (understory trees, shrubs and groundcover), non-natives may be used only along the outer edge of the easement (first 25 feet) and along tails within the easement.
- The criterion developed by the committee shall be applied to Riparian Buffers, Conservation Easements, Pond buffers and other regulated areas.
- Plant material size shall be; trees 1- 1 ½ inch caliper and 6'-7' in height, and shrubs 3-5 gal container size and 18" minimum diameter or height.

**RPA Task Force
Ornamental Plant List
May 2008**

Deciduous Trees

- *Varieties under 40'*

Kousa Dogwood - (*Cornus kousa*)

Height: 20 – 30'

Site Requirements: Sun to partial shade; well drained soil

Comments: Early summer flowers and bright red fruit make this shrub-like tree an interesting specimen. Fruit can be a litter problem if near walks, patios or driveways. Rich red fall color.

Japanese Snowbell - (*Styrax japonicus*)

Height: 20' -30'

Site Requirements: Sun to partial shade; moist, well drained soil but tolerates clay

Flowering/Leaf: occurs in late April-early May. Fruit is a drooping, grayish-green in color, attractive through August. Bark is smooth gray-brown and smooth.

Comments: A very pest free tree.

Crapemyrtle – (*Lagerstroemia indica* – various cultivars)

Height: 6' to 30' , Growth Rate: Rapid

Site Requirements: sun; moist, well drained soil.

Flowers; white, pink, red, purple flowers July to fall on new growth

Leaf: yellow, orange, red fall color; white flowered trees produce yellow fall color

Comments: Smooth to exfoliating bark

Chinese pistache – (*Pistacia chinensis*)

Height: 25' to 35' .

Site Requirements: Part shade to full sun; prefers moist, well drained soil but tolerates a wide range of soils (poor, dry).

Flower/Fall Color: Spring red flowers; excellent red, yellow, or orange fall color

Comments: Drought tolerant; easy to transplant; modest exfoliating bark

Golden Rain Tree – (*Koelreuteria paniculata*)

Height: 20 to 40'

Site Requirements: Sun; range of soil types

Flower: Panicle of Yellow flowers in summer

Comments: Tolerates drought, heat, wind and air pollution

Magnolia – (Deciduous *Magnolia* species: Southern Magnolia (*M. grandiflora*), Star Magnolia (*M. stellata*), Saucer Magnolia (*M. x soulangiana*))

Height: 12 – 50'

Growth Rate: The growth rate of magnolias depends on the species

Site Requirements: Plant in full sun or partial shade. The ideal soil for most magnolias is rich, porous, acidic (pH 5.0 to 6.5) and well-drained. Most tolerate moderate drought and some tolerate wet soils.

Comments: Most Magnolias are pest free

Winter King Hawthorn (*Crataegus viridis*)

Height: small ornamental tree maturing at 15' tall

Site Recommendations: full sun to partial sun
prefers moist, well-drained soils in full sun, but is tolerant of poor soils, various soil pHs, soil compaction, drought, and heat

Evergreen Trees

Japanese cedar (*Cryptomeria japonica*)

Height: 50' to 60'

Site Requirements: Sun to light, high shade; rich deep, well drained soil but will thrive in a range of soil types

Leaf: Awl shaped, bright to blue-green foliage; smooth to the touch; bronze tones in winter, especially if exposed to wind,

Flower/Fruit: Small terminal cones

Comments: Easy to grow; good screening tree; low growing cultivars available

Giant Arbovitae; Western Red Cedar - (*Thuja plicata*)

Height: 50 to 80'

Site: Requirements: Sun to partial shade; moist well drained soil but does well in clay; needs protection from wind

Leaf: Rich green graceful foliage with white marks underneath

Comments: recommended replacement for Leyland Cypress

Holly, Nellie Stevens and assorted varieties (*Ilex*)

Height: 15 – 30"

Site Requirements: Sun to partial shade, range of soil types except wet

Comments: Drought tolerant

Deodar cedar (*Cedrus deodora*)

Height: 40 to 70'

Site Requirements: Sun to partial shade; well drained, some what dry site

Comments: Good substitute for white pine

Magnolia; Little gem, Southern magnolia other assorted evergreen varieties (Magnolia)

Height: 20 – 80'

Site Requirements: Sun to partial shade; flowers bloom from April to June well drained soil; tolerates high moisture Flower/Fruit: 8 to 12" fragrant, creamy white flowers in summer

Comments: Good screening plant

Deciduous Shrubs

Forsythia (*Forsythia x intermedia*)

Height: 8 to 10' grows at a rapid rate and is long-lived

Site Requirement: tolerates almost any soil condition. Plant in full sun for maximum flowering

Flower: Profuse early spring flower usually profuse, open before the leaves emerge on the plant.

Rose "Knock-Out" Varieties

Height 4 feet tall, 3 feet wide

Site Requirement: Full sun

Bloom Time: Spring to frost.

Comments: Knock Out was first introduced in 2000 and hailed a "breakthrough shrub rose" by the All-American Rose Selections because of its exceptional disease resistance and hardiness.

Viburnum (*Assorted varieties*)

Height: range in height from 2' to 30'

Site Requirements: Sun to shade grows well when planted in moist, rich and slightly acidic soil

Comments: excellent hedge or screen plants

Weigela (*Weigela florida*)

Height: 6 to 10 feet

Site Requirements: Sun to light shade; prefers well-drained soil but tolerates a range of soil types

Flower/Fruit: White, pink, red trumpet-shaped flowers in late spring

Evergreen Shrubs

Glossy abelia (*Abelia x grandiflora*)

Height: 3 to 6 feet

Site Requirements: Sun to partial shade; prefers moist, well-drained site but tolerates clay, damp, or dry soil

Flower/Fruit: White, funnel-shaped flowers from early summer to frost; develops a light purple-pink tinge; free flowering; slightly fragrant

Comments: Drought tolerant; hardy; flowers on new growth; easy to grow

Leatherleaf mahonia (*Mahonia bealei*)

Height: 4 to 8 feet

Site Requirements: Partial shade; prefers moist, well-drained, acidic soil but tolerates heavy clay; avoid harsh winds

Flower/Fruit: 3 to 6" raceme of bright yellow flowers in winter; fragrant; bright blue fruit in summer

Comments: Drought tolerant; good with contemporary designs; color will bleach out if grown in full sun; flowers attract bees; fruit attracts birds

Juniper Assorted varieties (*Juniperus*)

Heights: There are many species of Juniper, ranging from low-growing ground covers, to shrubs

Site Requirements: Full sun; moist, well-drained soil is best, but tolerates dry sites; tolerates alkaline soil.

Comments: there are numerous cultivars available and they vary widely in their characteristics.

Cherry laurel and other assorted varieties (*Prunus laurocerasus* 'Otto Luken')

Height: 3 to 4 feet

Site Requirements: Sun to shade; moist, well-drained soil enriched with organic matter

Chindo viburnum (*Viburnum awabuki* 'Chindo')

Height: 10 to 15 feet

Site Requirements: Sun to partial shade; range of soil types except wet

Comments: Drought tolerant; good for hedges

Laurustinus viburnum (*Viburnum tinus*)

Height: 6 to 12 feet

Site Requirements: Sun to partial shade; prefers moist, well-drained soil

Flower/Fruit: white flowers in late winter to early spring; fragrant; metallic blue-black to black fruit

Comments: Tolerates coastal conditions; drought tolerant

Ornamental Grasses

Fountain Grass (*Pennisetum alopecuroides*)

Height: 3 – 5'

Comments: Attractive 5 – 7' flowers persist on plant from summer through fall

Sedge (*Carex conica*)

Height: 15 to 18"

Light Requirements: Sun; best grown in light shade in south

Soil/Moisture: Well drained soil

Purple Muhly Grass (*Muhlenbergia capillaris*):

Height: 2 – 3'

Requirements: Full sun, very adaptable

Comments: Clouds of tiny flowers form a pinkish-purple haze appearing in October and fading to tan through the winter. Extremely drought tolerant once established.

MEMORANDUM

DATE: July 22, 2008
TO: The Board of Supervisors
FROM: Catherine "Beth" Davis, Environmental Education Coordinator
SUBJECT: New Water Conservation Rebates Begin August 1, 2008

To reinforce water conservation efforts, the James City Service Authority (JCSA) initiated the Rain Sensor Rebate Program on July 28, 2005, and the Rain Barrel Rebate Program on January 1, 2008. Per Water Conservation Committee recommendation, the JCSA will be announcing additional rebate programs on August 1, 2008, for Water Smart landscapes; cisterns; 'on demand' hot water recirculators; and high-efficiency toilet, washing machine, and dishwasher replacements.

- Water Smart Landscape Rebate
A qualifying water customer must hire a certified landscape designer, have the contractor install a landscape system according to JCSA's water conservation guidelines, and submit a detailed aerial landscape and an irrigation plan. The JCSA will refund up to \$300 if the landscape rebate requirements are fulfilled with the hiring of a Virginia Society Landscape Designer, or \$500 if the landscape rebate requirements are fulfilled with the hiring of a WaterSense partnering landscape irrigation professional.
- Rain Cistern Rebate
A qualifying water customer must purchase and install a rain cistern of 1,000 gallons or more. The JCSA will refund half of the JCSA Lawn Irrigation System Fee, not exceeding the cost of the rain cistern, if the customer remains connected to JCSA water for irrigation. JCSA will refund all of the JCSA Lawn Irrigation System Fee, not exceeding the cost of the rain cistern, if not connecting to or if disconnecting from JCSA water for irrigation.
- 'On Demand' Hot Water Recirculator Rebate
A qualifying residential water customer must purchase and install an 'on demand' hot water recirculator. An 'on demand' recirculator is activated as needed by a household to pull hot water from the water heater while simultaneously sending cooled-off water from the hot water lines back to the water heater. In addition to having the convenience of near-instantaneous hot water, the system conserves water and uses little energy. The JCSA will refund up to \$100, not exceeding the cost of one 'on demand' hot water recirculator.
- WaterSense High-Efficiency Toilet Rebate
A qualifying residential water customer must purchase and install one or more WaterSense high-efficiency (max. 1.28 gallons per flush) toilets for replacement. The JCSA will refund the purchase price up to \$75 per toilet.
- Energy Star High-Efficiency Washing Machine Rebate
A qualifying residential water customer must purchase and install an Energy Star washing machine for replacement. The JCSA will refund up to \$150, not exceeding the cost of one Energy Star qualified high-efficiency washing machine.

New Water Conservation Rebates Begin August 1, 2008

July 22, 2008

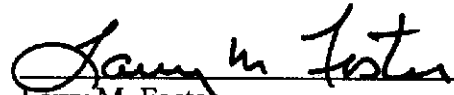
Page 2

- Energy Star High-Efficiency Dishwasher Rebate
A qualifying residential water customer must purchase and install an Energy Star dishwasher for replacement. The JCSA will refund up to \$100, not exceeding the cost of one Energy Star dishwasher.



Beth Davis

CONCUR:



Larry M. Foster

BD/nb

WtrCRebates_mem

Attachment

MEMORANDUM

DATE: July 22, 2008
TO: The Board of Supervisors
FROM: Luke Vinciguerra, Planner
SUBJECT: Draft Secondary Road Acceptance Requirements

This memorandum is for informational purposes only. The Virginia Department of Transportation (VDOT) recently held a public comment period prior to finalizing revisions to its proposed secondary street acceptance requirements. The proposed requirements, which are intended to replace the current secondary street requirements, will govern secondary street construction and the criteria for VDOT's acceptance of streets for subsequent maintenance. Both the proposed legislation and staff's review comments are attached for your information.

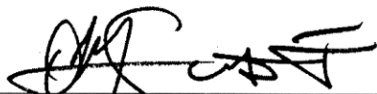
As stated in the proposed draft legislation, new streets will be expected to provide sufficient public benefits such as pedestrian accommodations and assurances for future interconnectivity to adjacent development before being accepted into the State system. Under the current regulations, engineers often design subdivisions to have one or more ingress/egress provided by an adjacent collector or arterial road without connections to adjacent development. Though this may provide residents with a perceived sense of safety and enhanced feel of community, it restricts traffic generated from the subdivision to one road. The effect of one subdivision on an arterial road may be negligible; however, the cumulative effect of all the subdivisions can quickly bring the road to capacity. A goal of the proposed legislation is to connect subdivisions, creating a web of interconnected roads adjacent to major collector and arterial roads. Drivers will then have more options as to where they can enter an adjacent collector road, which collector or arterial they can take, or the need to drive on a higher capacity road entirely. The result is reduced traffic and congestion.

The staff comments outline concerns and considerations for further revision. For instance, the additional requirements may result in increased requests for private roads as developers may find it harder to meet VDOT standards. The Subdivision Ordinance prohibits private streets except where permitted by the Zoning Ordinance, generally townhouse and condominium subdivisions with Planning Commission approval. It is a Board policy to not encourage the creation of private streets systems in future planned unit developments and planned residential communities. Overall, staff has not found any inconsistencies between the draft legislation, Board adopted policies, the Subdivision and Zoning Ordinances, or the Comprehensive Plans transportation goals and supports its adoption.

A representative from VDOT will be available at the Board meeting on July 22, 2008, to answer any questions about the legislation.

Luke Vinciguerra

CONCUR:



O. Marvin Sowers, Jr.

LV/tlc
RdAcceptReq_mem

Attachments:

1. Draft legislation
2. Staff's comments to the Commonwealth Transportation Board

SECONDARY STREET ACCEPTANCE REQUIREMENTS

CHAPTER 92

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 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 which is located within a dedicated public way.

"Clear zone" means the total border area of a roadway including, if any, parking lanes or shared use path that is sufficiently wide for an errant vehicle to avoid a serious accident. (See the Road Design Manual and the Subdivision Street Design Guide (see list of documents incorporated by reference) for details.)

SECONDARY STREET ACCEPTANCE REQUIREMENTS

"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 subdivision 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.

"Connectivity Index" means the number of links divided by the number of nodes. Only links and nodes within a network addition shall be used to calculate a network addition's connectivity index.

"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.

SECONDARY STREET ACCEPTANCE REQUIREMENTS

"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, or registered partnership engaged in the subdivision of land.

"Director of the Asset Management Division" means the department employee, his successor or his designee, responsible for overseeing all programs administered by the Asset Management Division, including these requirements and the final acceptance of streets as part of the secondary system of state highways maintained by the department.

"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 nine 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 list of documents incorporated by reference).

"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.

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

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

"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 the juncture of two or more streets at which point there are three or more links.

"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 list of documents incorporated by reference) 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.

"Link" means (i) a segment of roadway, alley or rear lane that is between two nodes or (ii) a stub out or connection to an existing stub out.

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"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.

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

"Network Addition" means a group of interconnected links and nodes shown in a plan of development.

"Node" means an intersection of three or more links, or the terminus of a link, such as a cul-de-sac or other dead end. The terminus of a stub out shall not constitute a node for the purposes of this chapter. The intersection of a street with only a stub out, and the intersection of a street with only a connection with an existing stub out shall not constitute a node for the purposes of this chapter, unless such stub out provides service to lots within the development.

"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 list of documents incorporated by reference).

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"Permit Manual" means the department's Land Use Permit Manual (see list of documents incorporated by reference).

"Phased development (streets)" means the method outlined in 24VAC30-92-80 (Phased development of subdivision streets) whereby the acceptance of certain subdivision 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 plat, 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.

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"Requirements" means the design, construction, public benefit, and related administrative considerations herein prescribed for the acceptance of a subdivision 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 list of documents incorporated by reference), for the purpose of providing bicycle and pedestrian transportation.

"Specifications" means the department's Road and Bridge Specifications (see list of documents incorporated by reference), including related supplemental specifications and special provisions.

"Smoothed Urbanized Area Boundary" means the modified area boundary of 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.

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“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.

"Standards" means the applicable drawings and related criteria contained in the department's Road and Bridge Standards (see list of documents incorporated by reference).

“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 at least the end of the radius of the intersection with the adjoining street and the right of way is graded and dedicated 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."

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"Street" means any street segment 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. .

"Subdivision Street Design Guide" means Appendix B of the Road Design Manual (see list of documents incorporated by reference).

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

"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.

"Watercourse" means a definite channel with bed and banks within which water flows, either continuously or in season.

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 and the Subdivision Street Design Guide (see list of documents incorporated by reference) offers guidance on the design and construction features of secondary street development and set out design parameters deemed appropriate for most land development

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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 list of documents incorporated by reference). However, when not specifically addressed in one of those documents, the relevant requirements of the Road Design Manual (see list of documents incorporated by reference), standards, specifications, Pavement Design Guide (see list of documents incorporated by reference) 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. 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.

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B. Vesting and 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 the effective date of this regulation shall 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 subdivision shall not apply to any streets where the proffered layout may be adjusted, without requiring a significant affirmative governmental act to modify such proffered conditions, to the meet the requirements of this chapter. However, such streets may be considered for acceptance under requirements of this chapter at the discretion of the developer.
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 the effective date of this regulation 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.
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 the effective date of this regulation shall be considered for acceptance in accordance with the applicable former requirements for a period of up to five years, provided the requirements of § 15.2-2260 of the Code of

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Virginia have been met. 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 the effective date of this regulation 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 within such locality, the following shall apply.
 - 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. However, such streets may be considered for acceptance under requirements of this chapter 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. However, such streets may be considered for acceptance under requirements of this chapter at the discretion of the developer.

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- c. 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. However, such streets may be considered for acceptance under requirements of this chapter 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 under requirements of this chapter at the discretion of the developer.

C. Effective date. All streets proposed for acceptance by the department after Month XX, 200X, shall be considered for acceptance in accordance with these provisions, except as may be waived by the commissioner pursuant to this chapter.

D. Transition. Prior to Month ZZ, 200Z, the department will allow the design of streets developed in accordance with either the former requirements or these requirements. Any street design initially submitted to the department for consideration after Month YY, 200Y, however, shall be in accordance with these requirements.

24VAC30-92-30. Local subdivision ordinances.

Exemptions or variances in local ordinances. Any requirements of ordinances adopted by the governing body which are not in conflict with these provisions shall become the department's

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requirements in that locality and govern. The department does not recognize any provision of an ordinance adopted by the governing body that exempts the development of streets from these requirements. Consequently, any street proposed for addition to the secondary system of state highways maintained by the department shall comply with applicable requirements as herein provided or the local ordinance, when such provisions are not in conflict with this chapter.

24VAC30-92-40. Continuity of public street system.

The continuity of a publicly maintained street system is a prerequisite to the addition of any street or network addition into the secondary system of state highways.

A street or network addition may only be accepted into the secondary system of state highways for state maintenance if it is the continuation of the network of public streets whose maintenance has been officially accepted by the department or, if appropriate, a city, town or county, and such street or network addition meets the requirements of this chapter.

24VAC30-92-50. Area Type Thresholds.

The local governing body or metropolitan planning organization shall provide the department with a copy of any duly adopted ordinance or resolution that modifies the area type designations within such locality based on the thresholds in this section as well as maps which 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 July 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 January 1 of the next year.

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- 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;
 - 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:

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- 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, to be subject to the Suburban Area Type requirements of this chapter.
3. The Rural Area Type. The Rural Area Type shall apply in all other areas of the Commonwealth.
 4. Exceptions to the Area Type thresholds.

Streets located within an area subject to the Suburban criteria may be considered for acceptance into the secondary system of state highways under the Compact Area Type standards. Streets located within an area subject to the Rural Area Type criteria may be considered for acceptance into the secondary system of state highways under the Compact Area Type or Suburban Area Type standards.

The commissioner, based upon a resolution from the local governing body, for good cause shown may determine that an area type for a specific area within the local

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jurisdiction should be modified to a different area type or that any of the requirements of 24 VAC 30-92-60 and 24 VAC 30-92-90 of this chapter 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. Any such modification shall cease to apply if the zoning of the area is modified.

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. However, prior to deferring acceptance based solely on service requirements, the district administrator shall confer with the Director of the Asset Management Division. At the request of the local governing body, subject to approval by

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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 of varied proprietorship 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. However, streets providing service in settings similar to an apartment building setting will only be considered for acceptance if the street is well defined and the district administrator's designee determines that it is not a travel way through a parking lot. 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 link 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.

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- 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. Apartment and retail shopping complexes. A through street that serves a shopping center or rental apartment 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. However, internal streets in these complexes do not normally qualify for addition to the system because their operation and maintenance are considered to be a responsibility of the owner, who stands to profit, rather than the tenant or customer.
- a. However, a street that serves as the principal access to rental apartment buildings may be considered to provide public service if unrestricted public use is permitted and maintenance continuity is practical.

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- b. Entrance streets and the internal traffic circulation systems of shopping centers and apartment complexes qualify only if more than three property owners are served and the street is separated from the parking areas.
 3. Network additions. A network addition shall be considered to provide service if (i) 70 percent of the lots served by the network are developed, including construction of the principal structure to serve the designated land use of such lots and (ii) 70 percent of the links with more than five lots with frontage along such links have at least three occupied lots of varied ownership.
 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. The district administrator's designee should then consult the Director of the Asset Management Division for resolution.
- C. Connectivity requirements. All street segments in a development as shown in a plan of development shall be considered for acceptance into the secondary system of state highways as one network addition. However, streets with a functional classification of collector and above, may be eligible for acceptance as individual streets. Streets originally constructed as part of development that would have been considered for acceptance into the secondary system of state highways as a network addition, which have not been considered for acceptance into the secondary system of state highways, may only be considered for acceptance as a network addition. However, streets with a

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functional classification of collector and above, may be eligible for acceptance as individual streets.

If the right of way for a stub-out or stub-outs maintained by the department adjoins 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. In instances where the existing stub-out or stub-outs are not constructed to the property line, the developer of the adjoining property shall be responsible for constructing the missing portion of such stub-out or stub-outs.

Nothing in this chapter shall be construed as to prohibit stub-outs from providing service to lots within a development. In such instances the developer shall post a sign provided by the department which indicates that such stub-out is a site for a future roadway connection.

For the purposes of calculating the connectivity index of network additions, external links and stub-outs of roadway (i) with a federal functional classification of collector or above or (ii) identified on the local transportation plan as a roadway with a functional classification of collector or above shall count as two links. In all instances, the department must concur with the functional classification.

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 24VAC30-72), streets petitioned for acceptance into the

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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 constructed or approved pursuant to §§ 33.1-221 and 33.1-223 of the Code of Virginia.

1. Compact 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 list of documents incorporated by reference);
- b. The overall connectivity index of the network addition is 1.6 or higher;
- c. 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; and,
- d. The network addition contains at least one external connection and contains an additional external connection and provides a stub-out for every 50 links or fraction thereof. A network addition may provide an additional external connection or connections in lieu of the required stub-out or stub-outs.

2. Suburban 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:

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- 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 list of documents incorporated by reference);
 - b. The overall connectivity index of the network addition is 1.4 or higher;
 - c. 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; and,
 - d. The network addition contains at least one external connection and contains an additional external connection and provides a stub-out for every 50 links or fraction thereof. A network addition may provide an additional external connection instead of the required stub-out.
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 list of documents incorporated by reference); and,
- b. The network addition contains at least one external connection as well as an additional external connection and provides a stub-out for every 50 links or fraction thereof. A network addition may provide an additional external connection instead of the required stub-out.

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Individual streets may only be accepted into the secondary system of state highways if such streets provide continuity and connectivity with the existing highway network.

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 of the street are intersections with a roadway or roadways that are part of the existing publicly maintained highway network, subject to the connectivity exceptions of subdivision 5 of this subsection. Streets considered for individual acceptance generally should be (i) streets that provide a connection between two existing publicly maintained streets, (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 list of documents incorporated by reference), (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, or (v) streets constructed or approved pursuant to §§ 33.1-221 and 33.1-223 of the Code of Virginia.

5. Connectivity Exceptions. The developer shall submit any request for connectivity exceptions to the district administrator's designee with a copy to the local official. The district administrator's designee shall respond within 45 days of receipt of a request.

a.) 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

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- with the land use of the proposed development the district administrator's designee may, at the request of the local official, reduce the external connectivity requirements. If the external connectivity requirements are reduced 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 the external connectivity requirements to be met 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 commercial or residential land use be considered incompatible land use with any proposed commercial or residential development.
- b.) The connectivity requirements of this chapter may be reduced by the district administrator's designee in certain circumstances where physical impedance such as terrain or a limited access highway effectively precludes meeting the applicable connectivity requirements.
- c.) The external connectivity requirements of this chapter may be reduced by the district administrator's designee in his sole determination, if adjacent existing development effectively precludes meeting the external connectivity requirements. In such instances the network addition shall provide a 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.
- d.) The connectivity requirements of this chapter may be reduced by the district administrator's designee in his sole determination, if the parcel shape is such that it

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effectively precludes meeting the external connectivity requirements. The district administrator's designee shall not make such a determination unless the developer presents evidence of reasonable efforts to acquire necessary easements or property to provide external connections to meet the external connectivity requirements. In such instances the network addition shall contain a 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.

6. In instances where a conflict exists between this chapter and the Access Management Regulations: Principal Arterials (see list of documents incorporated by reference), the following shall apply.
 - i. For streets with a functional classification of collector where external connections necessary to meet the external connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards, such standards shall be modified by the district administrator to allow for such connection. Such external connection or connections shall be required to meet intersection sight distance standards specified in the Road Design Manual (see list of documents incorporated by reference).
 - ii. For streets with a functional classification of minor arterial where external connections necessary to meet the connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards the district administrator shall, in consultation with the developer and the local official, either

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modify the applicable spacing standards to allow for such connection or connections, or reduce the external connectivity requirements of this chapter.

Such external connection shall be required to meet intersection sight distance as specified in the Road Design Manual (see list of documents incorporated by reference).

- iii. For streets with a functional classification of principal arterial where external connections necessary to meet the external connectivity requirements of this chapter cannot be accommodated within the applicable spacing standards such external connectivity requirements shall be reduced.

24VAC30-92-70. Administrative procedure.

A. Conceptual sketch. A preliminary plan 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 department will not consider any requirements of a locality's subdivision ordinance that are in conflict with the requirements of this chapter. 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.

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2. The location and area of each type of permitted 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, if applicable, and the location of any proposed stub-outs within the network addition.
7. Other available information pertinent to the intended development, including but not limited to any proposed phased development of streets pursuant to 24VAC30-92-80.

The district administrator's designee will review the layout and functional classification of streets shown in the concept plan and 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 approval or 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. If the street layout is modified so that the network addition no longer meets the connectivity requirements of this chapter, this approval or concurrence is void and the conceptual plan, plat or sketch must be reviewed again to obtain the department's approval or concurrence. As part of his review, the district administrator's designee shall review the provision of collector and other higher order

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streets and if necessary make recommendations for the provision of such streets to address the traffic generated by the development.

B. Plan 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.

C. 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 24VAC30-92-150.

D. 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 signifies the district administrator's designee's approval of the street layout and design shown on the plats or plans, as submitted. Any subsequent

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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 as prescribed in 24VAC30-92-150.

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.

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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.

E. 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 or streets in the network addition has been constructed in accordance with the applicable specifications, standards and the plats or plans approved by the department.
3. 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.
4. The street or streets in the network addition has been properly maintained since its completion.
5. The developer furnishes the surety and fees in accordance with 24VAC30-92-140.
6. The governing body has executed all agreements prescribed by these requirements, unless specifically waived on an individual case basis by the Director of the Asset Management Division.
7. 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

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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

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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.

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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 or his 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 list of documents incorporated by reference).

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.

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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.

24VAC30-92-90. Connections to or work within streets maintained by the department.

A. Connections to streets maintained by the department. A land use permit issued by the department is required for new connections of any kind to existing streets maintained by the department. Due to the wide variation in prevailing conditions, each location shall be evaluated individually to determine exact requirements. Therefore, it is incumbent upon the developer or his designee to apply for a land use permit at the appropriate time to ensure the desired completion of the development. Such application shall be made to the district administrator's designee and shall be consistent with the approved plats or plans for the subdivision or the document reviewed for the connection of a street that is to remain privately maintained. In no instance where the proposed connection to the existing streets maintained by the department involves a stub-out shall a land use permit be unreasonably withheld.

B. Relocations, adjustments, and improvement of streets maintained by the department. All work performed within the existing right-of-way of streets maintained by the department, including pavement widening, the addition of turn lanes, realignments and relocations of existing streets, shall be coordinated with and approved by the department as follows:

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1. All such work shall be accomplished pursuant to a land use permit issued by the department after the required right-of-way has been dedicated to public use or as otherwise required by the department.

2. All work, including the relocation, adjustment, and improvement of existing streets under VDOT jurisdiction shall be subject to the department's direction rather than these requirements. Such work should include overlaying and restriping the old and new portions of the roadway as may be required by the district administrator's designee.

3. The relocation of streets maintained by the department shall only be accomplished with the consent of the local governing body.

4. Traffic, both vehicular and pedestrian, should be maintained on streets under the department's jurisdiction until the new portion has been accepted by the department for maintenance unless the department authorizes a closure of the road to traffic.

5. No street or roadway maintained by the department and actively used by the public shall be abandoned or vacated unless a new street serving the same citizens has been constructed and accepted for maintenance by the department.

6. Streets previously discontinued exist as public ways under the jurisdiction of the local governing body and should be abandoned or vacated prior to the development of land within the public way.

24VAC30-92-100. Discretionary authority.

The department's district administrator's designees are authorized considerable discretionary authority regarding the design of subdivision streets functionally classified as "local." The

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department's district administrators are authorized considerable discretion regarding the design of secondary streets functionally classified as "collector" or above. The commissioner is authorized discretionary authority regarding the safety features, structural integrity, or traffic capacities prescribed by these requirements.

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 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 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.

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The district administrator shall advise the developer of the decision on the unresolved differences of opinion within 45 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 and the Subdivision Street Design Guide (see list of documents incorporated by reference). 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 street designs that manage motor vehicle speed to match local context.

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B. Geometric requirements. Geometric requirements for new streets are established the Road Design Manual and the Subdivision Street Design Guide (see list of documents incorporated by reference). 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 and the Subdivision Street Design Guide (see list of documents incorporated by reference) 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 list of documents incorporated by reference), 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 (list of documents incorporated by reference), an agreement shall be provided by the governing body that addresses the future maintenance of such pavement.

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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 re-striped 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 re-striped 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 re-striped.

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 which they are intended to serve. Such spaces, which may be provided in a parking bay or garage facilities, shall be provided outside of the street's right of way. The district administrator's designee may approve lesser

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parking requirements for individual developments or classes of developments when evidence is presented to support such an approval such as proximity to transit service and type of development. Entrances to parking bays and garage facilities shall be designed in accordance with the appropriate provisions of the Land Use Permit Manual and the Access Management Regulations: Principal Arterials (see list of documents incorporated by reference).

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 anyway roadway with a functional classification of collector or local where the posted speed limit is 35 mph or less and which 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 list of documents incorporated by reference); 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

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nontraveled way areas of a cul-de-sac, provided the requirements of subdivision 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 requisite. However, when used, curb and gutter shall be designed in accordance with the Road Design Manual and the Subdivision Street Design Guide (see list of documents incorporated by reference) 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 list of documents incorporated by reference), 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 U.S.C. § 12101 et seq.).

H. Private entrances. All private entrances shall be designed and constructed in accordance with the Subdivision Street Design Guide (see list of documents incorporated by reference).

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I. Pedestrian, bicycle, and shared use path facilities. The Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" 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 included in the initial construction of the street, prior to VDOT acceptance. These facilities are eligible for VDOT acceptance based on the criteria of this section.

1. 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.

a. Sidewalk criteria. Sidewalks shall be constructed in accordance with the Subdivision Street Design Guide (see list of documents incorporated by reference).

b. 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 list of documents incorporated by reference).

c. Shared use path criteria. Shared use paths shall be constructed in accordance with the Road Design Manual (see list of documents incorporated by reference) and closely follow the vertical alignment of the roadway without meandering on and off the right-of-way.

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2. 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 the street shall be deemed to be noncompliant and not qualify for maintenance unless a design waiver or exemption is granted by the department. However, such 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 has perpetual maintenance capability. Noncompliant sidewalks and shared use paths may be constructed of stabilizer convenient to the applicant.

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;

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2. The structure is accessible to pedestrian accommodations situated along the street; and

3. The projected traffic volume of the street is not less than 4000 vpd or, if the structure otherwise serves as part of the principal pedestrian access to a school, a peak hour traffic volume of 450 vph 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 responsibility for 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 occupy dams when all of the following provisions are satisfied. For the purpose of this section, a roadway will be considered to occupy 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.

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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 §33.1-76 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 list of documents incorporated by reference) 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 occupy 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.

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4. Supplemental, alternative access. To be considered for VDOT maintenance, roadways that occupy 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 occupies a dam.

6. Dams exempt from agreements. The acceptance of roadways that occupy 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;

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 list of documents incorporated by reference) and supplemental directives or the Subdivision Street Design Guide (see list of documents incorporated by reference). 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.

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2. Stormwater management. Whereas the department considers matters regarding stormwater management associated with the construction of new 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. 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, or liability of the stormwater management facility or facilities associated with the subdivision or the development. However, in the event the governing body has executed a comprehensive, locality-wide 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, as annually approved by the Department of Conservation and Recreation (see list of documents incorporated by reference), the Virginia Erosion and Sediment Control Regulations, 4VAC50-30, and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60). While these controls may be necessary whenever a street

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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, and future improvements to the devices or treatments, or both, are provided from sources other than those administered by the department; (iii) a professional engineer licensed by the Commonwealth certifies the construction of the facility to plans reviewed by the department; and (iv) a concept of the facility is included in the department's Drainage Manual, the Department of Conservation and Recreation's Stormwater Handbook, or supplemental directives (see list of documents incorporated by reference).

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.

3. Drainage easements.

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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 list of documents incorporated by reference. For placement considerations, see the Subdivision Street Design Guide (see list of documents incorporated by reference).

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.

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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 list of documents incorporated by reference).

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 list of documents incorporated by reference). 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.

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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 unless those requirements conflict with a requirement of the department.

When location of the utilities outside of the pavement area is not practical, 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:

(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, multi-use 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

SECONDARY STREET ACCEPTANCE REQUIREMENTS

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 Manual (see list of documents incorporated by reference).

N. Pedestrian accommodations.

SECONDARY STREET ACCEPTANCE REQUIREMENTS1. Compact area type.

Sidewalks are required along both sides of the street. In no instance shall any sidewalk be constructed directly next to the 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. Planting strips are required unless the sidewalk abuts the curb or the edge of the street. Planting strips should be at least three feet in width.

2. Suburban Area Type.

A network addition or street is determined to provide pedestrian accommodations if (i) sidewalks are provided along both sides of the street or (ii) a combination of sidewalks and multi-use trails or shared-use paths which, as a system, provide reasonable access to all properties in the development is constructed and which provides connectivity of pedestrian accommodations that is equivalent to having sidewalks on both sides of the street. Such multi-use trails shall have trail stubs to allow for future connection with other multi-use trails both existing and proposed.

A network addition or street where all lot sizes are at least two (2) acres is determined to provide pedestrian accommodations if (i) sidewalks are provided along one side of the street or (ii) one or more multi-use trails or shared-use paths which, as a system, provide reasonable access to all properties in the development is constructed and which provides connectivity of pedestrian accommodations that is equivalent to having sidewalks on one side of the street. Such multi-use trails shall have trail stub-outs to allow for future connection with other multi-use trails both

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existing and proposed.

Sidewalks or other pedestrian accommodation shall be provided along both sides of any street classified as collector or above. In no instance shall any sidewalk abut the curb or the edge of the street, unless the sidewalk is at least 8 feet wide. In such instances tree wells shall be provided.

An agreement for maintenance with the locality shall be provided to VDOT for any multi-use trail outside of the VDOT right of way. 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.

The district administrator, in consultation with the local official, may modify the sidewalk, multi-use trail, or shared-use path requirements when the developer proposes to provide alternative sidewalk, multi-use trail, shared-use path, or other pedestrian accommodations that provide equivalent connectivity to those required by this section. Equivalent connectivity shall mean the alternative accommodations provide connectivity to properties within and outside the development similar to the connectivity that would have been provided by the sidewalk, multi-use trail, or shared-use path requirements.

Where sidewalks are constructed, planting strips are required unless the sidewalk abuts the curb or the edge of the street. Planting strips should be at least three feet in width.

3. Rural Area Type.

A network addition or street is determined to provide pedestrian accommodations and

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connectivity if (i) sidewalks are provided along one side of the street or (ii) one or more multi-use trails or shared-use paths which, as a system, provide reasonable access to all properties in the development is constructed and which provides connectivity of pedestrian accommodations that is equivalent to having sidewalks on one side of the street. Such multi-use trails shall have trail stub-outs to allow for future connection with other multi-use trails both existing and proposed.

Streets with a projected ADT of 200 vehicles or less are exempted from the pedestrian accommodation requirements.

Sidewalks or other pedestrian accommodations shall be provided along both sides of any street classified as collector or above. In no instances shall any sidewalk abut the curb or the edge of the street, unless the sidewalk is at least eight feet wide and tree wells are provided.

An agreement for maintenance with the locality shall be provided to VDOT for any multi-use trail outside of the VDOT right of way. 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.

The district administrator, in consultation with the local official, may modify the required sidewalk or multi-use trail requirements when the developer proposes to provide alternative sidewalk, multi-use trail, shared-use path, or other pedestrian accommodations that provide equivalent connectivity to those required by this section. Equivalent connectivity shall mean the

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alternative accommodations provide connectivity to properties within the development and outside the development similar to the connectivity that sidewalks would have provided.

Where sidewalks are constructed planting strips are required unless the sidewalk abuts the curb or the edge of the street. Planting strips shall be at least three feet in width.

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 and the Road Design Manual (see list of documents incorporated by reference) and shall be sufficient to include all essential elements of the roadway intended to be maintained by the department, including pedestrian, multi-use 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 and the Road Design Manual (see list of documents incorporated by reference).

When an existing state maintained road is widened, the additional right-of-way should be dedicated as follows:

SECONDARY STREET ACCEPTANCE REQUIREMENTS

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 or encroach into a clear zone or interfere with prescribed sight distance requirements 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 Manual (see list of documents incorporated by reference) is a requisite for these devices or any other encroachment located within the right-

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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

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refuse to accept the street for maintenance as part of the secondary system of state highways. A determination of non-cooperation 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 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 lane mile or portion thereof.

The surety 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

SECONDARY STREET ACCEPTANCE REQUIREMENTS

Virginia, and streets constructed or approved pursuant to §§ 33.1-221 and 33.1-223 of the Code of Virginia shall be waived.

b. Length of Surety. The surety shall guarantee performance of the street for three years from the date of its acceptance into the secondary system of state highways When a third party inspection process acceptable to the department in accordance with this chapter is used, the surety shall guarantee performance for one year.

c. Third Party Inspection Process. 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 and the Virginia Department of Transportation Road and Bridge Specifications (see documents incorporated by reference); and,
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.

2. Alternatives to surety.

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a. In jurisdictions where the staff of the governing body administers a comprehensive subdivision 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. 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 center lane, without regard to street length, plus \$250 per tenth of center lane 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:

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a. For any subdivision, 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, multi-use 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 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 lane, without regard to street length, plus \$125 per tenth of lane mile, or portion thereof.

The street inspection fee shall be reduced by 75 percent if either a third party inspection process pursuant to subdivision B1C of this section or a local street inspection certification process pursuant to subdivision B2A 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. Subdivision street development, plan review, and acceptance.

SECONDARY STREET ACCEPTANCE REQUIREMENTS

The locality-state partnership governing VDOT acceptance of new streets for maintenance. Section 33.1-229 of the Code of Virginia (a Byrd Act provision) creates the authority under which local governments establish new roads as part of the secondary system of state highways. Sections 15.2-2240 and 15.2-2241 of the Code of Virginia establish the authority of local subdivision ordinances and the authority of counties to set the standards for new streets within their territories.

VDOT's participation in the development and acceptance of streets for maintenance is a cooperative commitment of the Commonwealth Transportation Board.

VDOT's concurrence with or approval of a construction plan represents VDOT's commitment to accept the network addition or streets shown on the plan when satisfactorily constructed and all other requirements governing the department's acceptance of streets are satisfied, including the governing body's request for the acceptance of or transfer of the maintenance and operational jurisdiction over the street, as outlined in these requirements.

Pursuant to these principles:

1. Local government controls land development activity and establishes new streets, the relocation of existing streets, and the criteria governing the development of such streets.
2. VDOT establishes the minimum standards that must be satisfied for new subdivision streets to be considered for maintenance by the department as part of the secondary system of state highways under its jurisdiction.

Within each locality, VDOT is represented by a resident engineer or comparable designee.

B. Street development and acceptance of maintenance process.

SECONDARY STREET ACCEPTANCE REQUIREMENTS

1. Concept and construction plan approval phase. The proposed construction plan shall be considered incomplete in the absence of a preliminary pavement design based on the Pavement Design Guide (see list of documents incorporated by reference) and the presumed values therein.
2. Construction phase. Upon approval of the construction plan and prior to construction, the resident engineer should advise the developer regarding inspection of the construction phases and the scheduling of those inspections. VDOT approval of each of the following phases of construction is recommended.
 - a. Installation of any enclosed drainage system before it is covered.
 - b. Installation of any enclosed utility placements within the right-of-way before being covered.
 - c. Construction of the cuts and fills, including field density tests, before placement of roadbed base materials.
 - d. A final pavement design, based on actual soil characteristics and certified tests, completed and approved before the pavement structure is placed.
 - e. Placement of base materials, including stone depths, consistent with the approved pavement design, prior to placement of the paving course or courses, followed by field density and moisture tests and the placement of a paving course as soon as possible.
 - f. Construction of pavement, including depth and density, upon completion as part of the final inspection.
3. Street acceptance process. In the absence of any other formal acceptance, the governing body's resolution requesting the department to accept a street for maintenance as part of the secondary

SECONDARY STREET ACCEPTANCE REQUIREMENTS

system of state highways completes the dedication and is deemed to constitute the governing body's acceptance of the street.

4. Post acceptance phase.

Listing of documents (publications) incorporated by reference.

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's division indicated at 1401 E. Broad St., Richmond, Virginia 23219; however, department documents may be available over the Internet at www.Virginiadot.org.

The department shall post all documents incorporated into this regulation by reference and under its control on its website. 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.) or the Virginia Register Act (§2.2-4100 et seq.).

Drainage Manual, 2002, VDOT Location and Design Division.

Land Use Permit Manual,(24 VAC 30-150), 1983, VDOT Asset Management Division..

Pavement Design Guide for Subdivision and Secondary Roads in Virginia, 2000, VDOT Materials Division.

Road and Bridge Specifications, effective 2008, VDOT Construction Division.

SECONDARY STREET ACCEPTANCE REQUIREMENTS

Road Design Manual, 2005, VDOT Location and Design Division.

Subdivision Street Design Guide (Appendix B: Road Design Manual, 2005), VDOT Location and Design Division.

Road and Bridge Standards, 2001, VDOT Location and Design Division.

Standard Specifications for Highway Bridges, 1996, American Association of State Highway and Transportation Officials (AASHTO).

VDOT Modifications to document above, (date) VDOT Structure and Bridge Division.

Virginia Erosion and Sediment Control Handbook, 1992, Division of Soil and Water

Conservation with The Virginia Erosion and Sediment Control Law and Regulations, (date),

Division of Soil and Water Conservation.

Highway Capacity Manual, 2000, Transportation Research Board.

VDOT Erosion and Sediment Control and Stormwater Management Program Standards and Specifications, 2004., VDOT Location and Design Division

Policy for Integrating Bicycle and Pedestrian Accommodations, 2004, Commonwealth

Transportation Board, 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.

Access Management Regulation: Principal Arterials (24 VAC 30-72), 2008, VDOT Asset Management Division.

Design Standards for Entrance/Intersection Access Management (Appendix F of the Road

Design Manual, 2008, VDOT Location and Design Division.

SECONDARY STREET ACCEPTANCE REQUIREMENTS

Traffic Impact Analysis Regulation (24 VAC 30-151), 2007, VDOT Asset Management

Division.

Manual of Instructions, (date), VDOT Materials Division.



DEVELOPMENT MANAGEMENT

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June 30, 2008

SSAR Public Comments
c/o VDOT Policy Office
1401 East Broad Street
Richmond, VA 23219

Dear Mr. Homer:

Many of James City County's collector and arterial roads are rapidly reaching or have exceeded capacity. Interconnectivity helps alleviate the congestion caused by additional growth and is a logical option to the continued costly expansion of major roads. County staff supports the proposed Secondary Streets acceptance standards legislation and offers the following comments:

Ramifications of private roads. With the additional burden placed on developers from the proposed legislation, it is staff's opinion that the legislation would encourage developers to make their roads in subdivisions private. County staff acknowledges that it is the municipality's discretion to require private roads meet VDOT standards or to be publicly maintained. However, without proper safeguards in place the County and the State may face increased requests from homeowners' associations for roads to be taken over by VDOT as private roads need to be repaired.

Adjacent properties already developed. The County's Comprehensive Plan supports interconnectivity. However, experience has shown that if adjacent properties are already developed the chances of achieving interconnectivity are significantly reduced. In many instances to meet the requirements, the developer would either have to design the road layout the same way as if the adjacent properties were not developed (i.e., reserving right-of-way to the edge of the property for connections that may never occur) or use the other option of having multiple entrances off of the VDOT maintained road. Forcing the developer to adhere to the interconnectivity guidelines even though connectivity couldn't ever occur wouldn't be advantageous and could hinder the creativity of the plan. It could also force the developer to use the multiple ingress/egress provision off of the adjacent VDOT road contrary to the good access management practices.

Land use designation map. The proposed legislation would require local governments to adhere to a VDOT determined map designating land as rural, suburban or urban that determines what standards need to be met. The municipalities by resolution could increase the requirements from suburban to urban, but cannot reduce from suburban to rural. This may cause problems when the County's Land Use map differs from the state's. Staff recommends using the County's adopted land use map to determine if the rural, suburban or urban standards should be met, or by giving the local government the option by resolution to assign the different classifications.

Paving to the property line. Under the proposed legislation, the developer would not have to pave the subdivision roads to the property line. Without such a requirement, if and when the adjacent property develops there is no way to ensure the subdivision roads will ever connect. Staff would suggest the addition of a paving requirement and posting signage notifying the public of the future connection so there are no surprises to residents when interconnectivity with adjacent properties becomes available.

Preventing unrealistic plans for interconnectivity. Care will need to be taken to avoid situations or to provide for State/County agency authority to deny plans where a developer may meet all the requirements of the proposed legislation, but the layout could never achieve interconnectivity. This could be because of topographical problems or because the developer just doesn't want to do it.

Encouraging interconnectivity versus more entrances. The proposed legislation requires future connections to adjacent property or an increased number of entrances to the property. There may be instances when a clear connection can be made between subdivisions; however, the developer may choose to increase the number of entrances to the development instead of making the connection as that may be the most expedient option. Staff recommends giving VDOT the authority to require the connections between subdivisions versus more entrances from the adjacent road to avoid excess intersections and impacts on main roads. In many instances existing roads are already over capacity or have sight distance issues, and increasing entrances wouldn't be in the broader public's interest.

Should you wish to discuss any of these discussion points further, please don't hesitate to contact the Planning office at (757)253-6685.

Sincerely,



William C. Porter.
Acting Development Manager