

**VIRGINIA DEPARTMENT OF TRANSPORTATION**

**OFFICE OF LAND USE**

**INSTRUCTIONAL AND INFORMATIONAL MEMORANDUM**

GENERAL SUBJECT: Land Use Permits	NUMBER: IIM-LU-303
SPECIFIC SUBJECT: Fiber Resource Sharing Process	DATE: October 25, 2022
	SUPERSEDES: N.A.
APPROVED:	Robert W. Hofrichter Director, Office of Land Use Approved <u>October 25, 2022</u>

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EFFECTIVE DATE

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This memorandum applies to the resource sharing process starting November 1, 2022.

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PURPOSE/SCOPE/REQUIREMENTS

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A Resource Sharing Agreement (RSA) is an agreement or Memorandum of Agreement (MOA) between the Virginia Department of Transportation (VDOT) and a utility (generally a Fiber Provider) that describes what use of the limited access right-of-way is being granted to the Provider, where it is located, what VDOT is receiving in return, and for what length of time it is valid. The terms "Agreement" and "MOA" are often used interchangeably to describe the document.

The RSA is not a substitute for a land use permit. All legal, regulatory, environmental, engineering, and surety requirements for a land use permit must be met in accordance with [§ 2.2-1151.1](#) of the Code of Virginia and chapters [24VAC30-21](#) (General Rules and Regulations of the Commonwealth Transportation Board) and [24VAC30-151](#) (Land Use Permit Regulations) of the Virginia Administrative Code. However, the RSA allows for a land use permit to be considered for fiber installations in the Limited Access right-of-way, and it is a component of the permit application.

RSA's are applicable when the proposed location is within the Limited Access right-of-way, the installation is longitudinal (not simply a crossing), and the installation would provide some benefit to VDOT (either at the location of the limited access installation, elsewhere, or just generally). In cases where the proposed work is a replacement in-kind, or maintenance of an existing facility, the original Agreement will be reviewed by the Office of Land Use's Broadband Program Manager to determine whether the work is covered by that Agreement or whether a new Agreement, Agreement amendment, or additional Attachment is needed.

In accordance with 24VAC30-151-740, VDOT may negotiate for Fiber, services, monetary compensation, or a combination of these in return for the use of the Limited Access right-of-way. The term of the Agreement is typically 25 years for the initial term, with the opportunity to extend it for an additional 25-year term.

Either party may cancel a RSA, with the terms of the Agreement covering the requirements of such cancellation. If the utility must be relocated due to a VDOT project, the Fiber owner must absorb the cost of the relocation. If the Fiber owner cancels the Agreement, VDOT may require them to either remove their facilities and restore the right-of-way, sell the facilities to VDOT, or to sign over ownership of the conduit, fibers, and related equipment in the right-of-way to VDOT, depending upon the terms of the Agreement. Sufficient time for each party to allow for a decision and coordination in response to the other's declaration must be set out in the agreement.

The relevant Virginia Administrative Code sections that apply to this process are:

- [24VAC30-21-20](#), General Provisions Concerning Permits, creates the requirement that a land use permit is needed in order for a party to occupy right-of-way and requires relocation or removal of equipment placed in the right-of-way when required by VDOT.
- [24VAC30-151-30](#), Permits and Agreements, establishes the option to enter into Shared Resource Agreements for a utility to use the limited access right-of-way.
- [24VAC30-151-310](#), Utility Installations within Limited Access Highways, outlines the requirements for utility installations on all limited access highways and approval by the VDOT Commissioner of Highways.
- [24VAC30-151-740](#), Exceptions and Provisions to the Payment of Fees and Compensation, establishes the compensation method as either: goods and services, cash, or a combination of these.

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## PROCEDURES

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### The RSA Process

Providers may contact either the local VDOT Land Use section or the state Office of Land Use to initiate a request for permission to install fiber optic cable in the Limited Access right-of-way. Once the request is received by VDOT, it is referred to the Office of Land Use's Broadband Program Manager for processing.

The Broadband Program Manager requests information from the Provider that typically includes a description of the desired facility (number and size of conduits, number of fibers, and similar information), a kmz file showing the route of the proposed installation, the termini locations, and the identification of sections falling within the Limited Access right-of-way, if these are known. If a plan is available, this should also be provided. Any anticipated bridge or other structure attachments should be identified. A checklist of

information needed at this stage by the Broadband Program Manager is included in Appendix A of this IIM.

Once this information is received by the Office of Land Use, the Broadband Program Manager determines whether the request meets the requirements for a RSA. If a RSA will not be needed, the applicant and the local VDOT land use section is notified, and the applicant will work with the local section to obtain a land use permit for the build. If a RSA will be needed, the Broadband Program Manager ensures that all necessary information is in hand, schedules a preliminary meeting if needed, and forwards the project to the following for review and valuation.

- Traffic Operations Technology Division (TOTD)
- Traffic Operations Division (TOD)
- Transportation Systems Strategy Office (TSSO)
- Office of Public-Private Partnerships (P3)
- Local VDOT land use section, District Traffic Operations, and/or District's Designee
- Other Divisions, as needed

This review accomplishes several things. The P3 office determines the value of the Limited Access portion of the proposed installation, or the “give” in terms of the cash value of the Right-of-Way. Concurrent with this valuation, TOTD identifies the needs of the Department, or the “get” and any timing issues or deadlines required for the impacted corridors. The local VDOT staff identify potential issues related to the proposed project, such as known VDOT construction projects or unique right-of-way situations (for example, I-95 through Marine Corps Base Quantico is owned by the federal government and additional authorization would have to be provided for an installation there). Additionally, local VDOT staff working with TOD identify preferred conduit access locations or newly determined local needs.

If the proposed installation does not appear to provide worthwhile benefit to VDOT, it may be returned with a request for more information that may make the installation more suited to VDOT's needs.

The benefits to the Department ("get") shall equal the value of the right-of-way's use ("give"). If the "give" is higher, a fee or services or facilities in other locations shall be requested from the Provider to make up the difference. If the "get" is higher, a reduction in the facilities or services being requested is made. The Broadband Program Manager forwards the Draft Agreement or MOA to the Provider for review. Negotiations may be needed between the two parties to arrive at terms that are mutually agreeable. These negotiable terms can include items such as:

- Construction timeline and penalties for not abiding by the timeline
- Inspection of facility installation and how costs for this inspection is assigned
- Facility disposition if Provider stops work or withdraws from MOA
- Alternative work hours
- Procedure for VDOT requesting fiber connections, timeline for such connections, and penalties for not accomplishing these connections on time

Once both parties agree, the draft is forwarded to the TSSO and P3 for final technical and financial review and the Governance and Legislative Affairs (GALA) Division and Office of the Attorney General for legal review and approval.

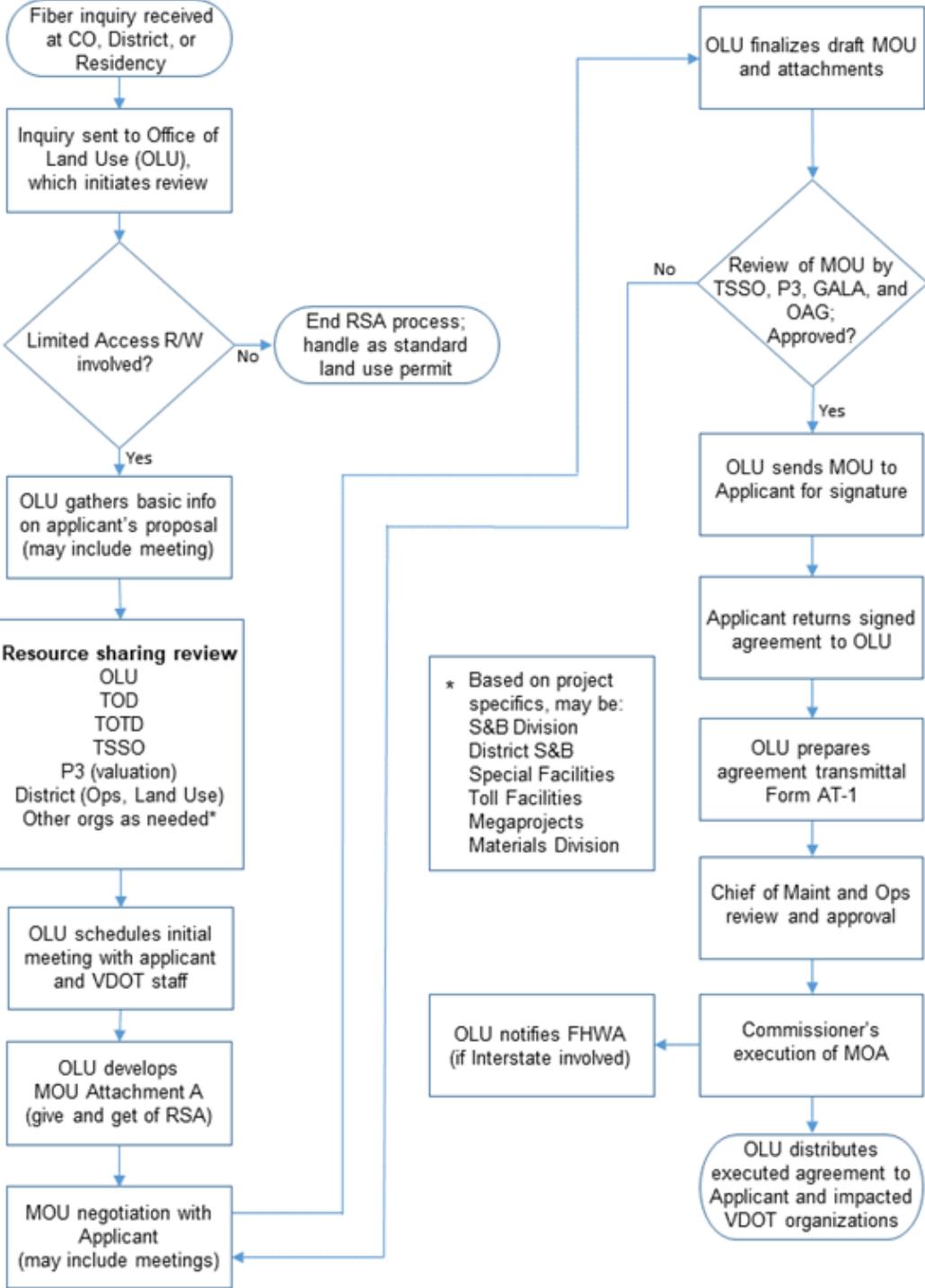
Once the Draft is reviewed and approved by these VDOT offices, the MOA is returned to the Office of Land Use, and then to the Provider, who signs it and then returns the signed original to the Broadband Program Manager. The Agreement package requesting the Commissioner's execution is then prepared by the Broadband Program Manager, to include:

- A. AT-1 Form
- B. Provider executed Agreement with all attachments
- C. OAG approval email
- D. GALA approval email
- E. Transportation Systems Strategy Office approval

The Agreement package is then reviewed and approved by the Chief of Maintenance and Operations, who forwards it to the Commissioner of Highways for execution.

When the Agreement is fully executed, the Office of Land Use distributes the MOA to the Provider, impacted residencies and districts, other VDOT Divisions who may have a need for this information, and, if the agreement involves a segment of Interstate Highway, the Realty Officer of the Virginia Division of FHWA. The agreement is also posted to the DOTi resource sharing page. The process to obtain the land use permit can then be initiated.

### Fiber Optic Resource Sharing Project Process



## The RSA-Related Land Use Permit Process

Once the RSA is executed, Providers shall submit the following to the local VDOT land use section in order to obtain a land use permit. The referenced application forms can be found at <https://www.virginiadot.org/business/bu-landUsePermits.asp>.

- LUP-A Land Use Permit Application or LUP-UT Utility Permit Application
- LUP-SPG Land Use Permit Special Provisions form
- LUP-CS Cash Surety Affidavit (if necessary)
- Copy of executed RSA
- Construction plan (if already approved, include approval confirmation from all appropriate VDOT staff)
- Affidavit indicating compliance with § 2.2-1151.1 of the Code of Virginia. A sample affidavit is available as Appendix B
- A surety in the form of a bond, letter of credit, cash or other VDOT approved method. Surety shall be in an amount sufficient to guarantee satisfactory restoration of right-of-way or for the satisfactory completion of the project

When permitted construction is complete (either entirely or in each permitted segment):

- The permittee must contact the appropriate local VDOT land use section to request final inspection. The local land use staff may ask for additional inspection from the district's Operations staff, especially if fiber has been connected to VDOT equipment.
- The permittee must provide VDOT with a professional engineer's written certification that all construction & right-of-way restoration activities are in accordance with current VDOT standards & specifications.
- and the permittee must provide accurate as-built plans for all build segments. The "as-built" drawings should be submitted to VDOT in ArcGIS (shape file/GIS

layer package/geodatabase) and Google Earth (kmz/kml) formats documenting conduit or aerial cable alignment; cable size (strand count); VDOT strand allocation identification, conduit size, count, and material (if applicable); attachment pole locations (if applicable); junction box locations and sizes (if applicable); splice locations; and slack cable storage locations and lengths. If an ArcGIS format is not available, a kmz/kml file may be provided instead, but this is not preferred. These files are then integrated into OSPInsight by District Operations staff.

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## Frequently Asked Questions

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### 1. Does the Resource Sharing Agreement substitute for a Permit?

The RSA outlines the understanding between VDOT and the Provider. It is not a substitute for a land use permit. A land use permit is a requirement of the General Rules and Regulations of the Commonwealth Transportation Board (24 VAC 30-20), for any work within the Right-of-Way. However, a land use permit cannot be issued for a project involving the Limited Access right-of-way without an executed RSA, unless it is a simple crossing. The Provider must be the Permit applicant.

### 2. What Traffic Control is required for Fiber Optic installation in the Limited Access right-of-way?

Contractors and subcontractors must follow the MUTCD, the Virginia Work Area Protection Manual, and all other work zone safety requirements when installing Fiber. Periodic site inspections will be conducted by the local Permits offices. If those inspections reveal safety or other issues, the local VDOT office's staff should immediately address such issues with the permittee on-site. If the issues are not resolved quickly, the District or Residency's staff may shut down the work. In cases where work is shut down, the State Land Use Permit Manager must be notified immediately.

3. Who is responsible for calling VA811 and VDOT Customer Service Center for utility location?

These notifications are the responsibility of the permittee or their contractor.

4. Who is responsible for environmental coordination on Fiber projects?

The Provider is responsible for ensuring that all environmental requirements are met. It is the permittee's responsibility to obtain any and all necessary permits required by any other government agencies, such as the U.S. Army Corp. of Engineers, Department of Environmental, Quality, Department of Conservation and Recreation, and others.

In accordance with the VDOT Road and Bridge Specification §107.16, all contractors performing regulated land disturbing activities within VDOT right-of-way must have at least one (1) employee that has successfully completed the VDOT Erosion & Sediment Control Contractor Certification training. Training for the VDOT Erosion & Sediment Control Contractor Certification can be obtained from any of the sources listed under "Upcoming Courses to "Erosion and Sediment Control Contractors Certification (ESCCC) classes through Construction Trade organizations" at: <http://www.viriniadot.org/stormwater>.

5. Is a separate RSA needed for every project in the Limited Access right-of-way that a Provider undertakes?

Once a RSA is executed for a single Provider, additions to the network can be incorporated through Attachments to the original Agreement. Requests for additional installations or modifications should be directed to the Office of Land Use Broadband Program Manager.

6. Is a detailed plan needed for Fiber installation?

The project must meet all of the requirements for utility installations contained in the Land Use Permit Regulations, including a plan. The level of detail and information shown on these plans or sketches will typically include:

- The design of the installation (conduit type, fibers, handhole standard, etc.)
- The installation's location with respect to the roadway

- Existing and proposed right-of-way lines
- Depths below (or above) existing and proposed grades
- The location of existing utilities in close proximity
- More detail is required near bridge abutments and overhead sign structures
- Traffic Management Plan, with allowable work hours

7. What surety and fees are associated with Fiber Optic Installations? How do these relate to the RSA?

The RSA may require that the Provider compensate VDOT for the use of the right-of-way either partially or wholly through monetary compensation. This compensation is unrelated to the permit fees, surety, and any inspection fees that may have been negotiated.

The permit fee is calculated per section 24VAC30-151-710 of the Land Use Permit Regulations, unless it is waived in the Agreement. Permits are typically issued for two-mile segments at a time. When work on one section is complete, the local land use section will issue a new permit for the next 2 miles, though multiple permits may be issued for segments, depending upon the capabilities of the permittee. Longer segment lengths can be allowed, depending upon the proven capabilities of the contractor installing the fiber and the local VDOT land use section's capability to provide effective oversight.

A. Fees

For a single use permit, a nonrefundable application fee is charged to offset the cost of reviewing and processing the permit application and inspecting the project work, in accordance with the requirements below:

- i.. The application fee for a single permit is \$100.
- ii. Additive costs are applied as indicated below. The district administrator's designee will determine the total permit fees using the following schedule:

Activity	Fee
Private Entrances	none
Commercial Entrance	\$150 for first entrance \$50 for each additional entrance
Temporary Construction Entrance	\$10 for each entrance
Curb and Gutter	\$10 per 100 linear feet
Tree Trimming (all other activities)	\$10 per acre or 100 feet of frontage
Box Culvert or Bridge	\$5 per linear foot of attachment
Above-ground Structure (including poles, pedestals, fire hydrants, towers, etc.)	\$10 per structure
Pole Attachment	\$10 per structure
Span Guy	\$10 per crossing
Additive Guy and Anchor	\$10 per guy and anchor
Underground Utility - Parallel	\$10 per 100 linear feet
Overhead or Underground Crossing	\$10 per crossing
Excavation Charge (including Test Bores and Emergency Opening)	\$10 per opening

## B. Surety

Two types of surety are needed:

i. The performance surety guarantees the satisfactory performance of the work. The surety is for the amount sufficient to restore the right-of-way in the event the permittee fails to satisfactorily complete the work or to complete the on-right-of-way portion of the project, at the discretion of the local VDOT land use section staff. The surety will be refunded or released upon completion of the work and inspection by VDOT, subject to the provisions of § 2.2-1151.1 of the Code of Virginia. If a permit is cancelled prior to the beginning of work, the surety will be refunded or released.

Should the permittee fail to complete the work to the satisfaction of the district administrator's designee, then all or whatever portion of the surety that is required to complete work covered by the permit or to restore the right-of-way to its original condition shall be retained by VDOT.

- ii. Continuous surety. Permittees installing, operating, and maintaining facilities within the highway right-of-way must secure and maintain a continuous surety. Governmental customers may use a resolution in lieu of a continuous surety. The continuous surety must be in an amount sufficient to restore the right-of-way in the event of damage or failure. The surety remains in full force as long as the work covered by the permit remains within the right-of-way.
8. If there is a construction problem with a RSA project, who should be contacted? In the event of a construction issue, the local VDOT land use section (usually located at the Residency) and the Broadband Program Manager should be notified. If there is a crash in the fiber project's work zone, the local VDOT land use section and the VDOT emergency operations center at 1-800-367-ROAD must be notified. The local VDOT land use section must be notified of any proposed changes to the approved plan.
9. Can either Single Use or District-wide permits be issued for Fiber installations? District-wide permits are only issued for utility connections on non-limited access highways; they would not apply to installations in the Limited Access right-of-way nor for work installing lengthy longitudinal fiber cables. The local VDOT land use section can issue a single use permit for multiple counties in exceptional circumstances; however, two-mile segments are unlikely to need this.

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## REFERENCES

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- Transportation Operations Technology Division's manual for OSPInsight is under development and will be available for VDOT staff.
- Existing Resource Sharing Agreements are available for VDOT staff on DOTi at <https://covgov.sharepoint.com/SITES/VDOT-OPS-COMMUNICATIONS/SitePages/Resource%20Sharing%20Program.aspx>.

- The General Rules and Regulations of the Commonwealth Transportation Board can be found on the Virginia Legislative Information System site, at <https://law.lis.virginia.gov/admincode/title24/agency30/chapter21/>.
- The Land Use Permit Regulations can be found on the Virginia Legislative Information System site, at <https://law.lis.virginia.gov/admincode/title24/agency30/chapter151/>.
- Information on land use permit applications and the various forms associated with such applications can be found out VDOT's external website, at <https://www.virginiadot.org/business/bu-landUsePermits.asp>.
- Information on broadband coordination can be found on VDOT's external website at [https://www.virginiadot.org/info/broadband\\_coordination.asp](https://www.virginiadot.org/info/broadband_coordination.asp).

**Appendix A. Fiber Optic Limited Access Right-of-Way  
Needed Information**

<b>Provider Information</b>
1. Project Name/Provider Name
2. Project location
3. Submission date
4. Name of submitter
5. Contact email
6. Contact phone number
<b>Project Information</b>
7. Narrative description of project (include length of fiber, number and size of conduit, and number of strands)
8. Is any portion of the Project within limited access right-of-way?
9. Are there any structures that are desired to be attached to along the Fiber Route?
10. Are there any water crossings located along the Fiber Route?
11. Are there any railroad crossings located along the Fiber Route?
12. Does the applicant have an existing Resource Sharing Agreement with VDOT?
12. Is the proposed installation an alteration, replacement, or maintenance of an existing Fiber Optic line?
13. A kmz file showing the complete route
14. Project termini are clearly delineated

Appendix B. Affidavit of compliance with § 2.2-1151.1 of the Code of Virginia

**AFFIDAVIT**

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, TO-WIT:

This day personally appeared before me \_\_\_\_\_, acting in [his/her] capacity as [TITLE] of [PERMITTEE] (the "Permittee"), who, after first being duly sworn, deposed and said as follows:

1. Permittee has registered as an operator with the appropriate notification center as defined by Section 56-265.15 of the *Code of Virginia*, as amended.
2. Permittee has notified the commercial and residential developer, owner of commercial, multifamily, or residential real estate, or local government entities with a property interest in any parcel of land located adjacent to the property over which the land use is being requested that application for the permit has been made.
3. Permittee has complied in all respects with the requirements of Section 2.2-1151.1 of the *Code of Virginia*, as amended.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged, subscribed, and sworn to before me, a Notary Public, in and for the Commonwealth of Virginia, City/County of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_  
My registration number: \_\_\_\_\_

\_\_\_\_\_  
Notary Public