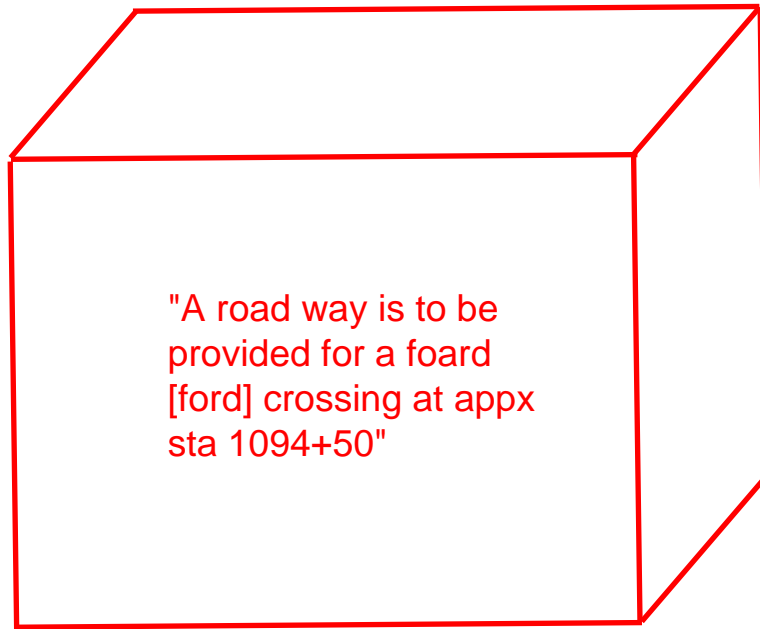


# Permits

"A road way is to be  
provided for a foard  
[ford] crossing at appx  
sta 1094+50"



RIVER.WAT

(Rough draft. I can't find a  
copy of the final letter.)

Anthony O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150  
November 11, 1991

Mr. Joe Hassell  
Virginia Water Control Board  
4900 Cox Road  
Richmond, Virginia 23060  
{804} 527-5072

Note; Good Guy  
Nationwide permit #14  
for minor road crossing

or  
Post Office Box 11143  
Richmond, Virginia 23230  
{804} 527-5200

Dear Mr. Hassell:

Several years ago I purchased a 139 acre farm in Highland County, Virginia, on US Route 220 approximately 11 1/2 miles south of Monterey, 2 1/2 miles south of Mustoe, and split by US 220 and the Jackson River. It is shown on the enclosed topographical map. As a possible aid in identification it is shown on the VDOT plat "From 0.663 miles north of Bath County Line to 2.310 miles south of Vanderpool", Sheet Number 13. At present I have no way to get to the eastern half of my property by vehicle because of the Jackson River.

May I have your permission to construct a ford across the Jackson River in order to get to this eastern half? The site I have in mind is south of the concrete culvert and adjacent to the trout farm. It is presently marked by blue surveyor's tape.

Thank you.

Yours truly,

Anthony O'Connell

R10 & R. MRC.

(Rough draft. I can't find a  
copy of the final letter.)

Anthony O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150  
{703} 971-2855  
November 27, 1991

Ms. Jennifer McCarthy  
Virginia Marine Resource  
Post Office Box 756  
2600 Washington Avenue  
Newport News, Virginia 2  
{804} 247-2276

Reference: Ford Across Jackson River

Dear Ms. McCarthy:

It was a pleasure to talk with you the other day.



# COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen  
Governor

Robert E. Martínez  
Secretary of Transportation

December 15, 1994

Mr. Anthony O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150

Dear Mr. O'Connell:

Thank you for your recent letter concerning access to the eastern portion of your farm.

It appears that damages were paid to the previous property owner for removal of the entrance to the property east of the river. I am asking Department of Transportation's State Right of Way Engineer S. A. Waymack to research this matter and respond to you within the next two weeks.

A land use permit can be issued to you for access to the property east of the river. Construction of the entrance would be your responsibility.

With kind regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Martínez".

Robert E. Martínez

REM/ow

cc: Mr. David R. Gehr  
Mr. S. A. Waymack



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, 23219

DAVID R. GEHR  
COMMISSIONER

STUART A. WAYMACK  
STATE RIGHT OF WAY ENGINEER

January 5, 1995

Route 220  
Highland County

Mr. Anthony O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150

There was no attached copy  
of an option agreement

Dear Mr. O'Connell:

Transportation Secretary Robert E. Martínez asked me to investigate the matter outlined in your November 25, 1994, letter and advise you of my findings.

The deed you provided indicated that the Hiners conveyed the necessary right of way to construct what is now known as Route 220 on October 21, 1935. As shown in the last paragraph, the Hiners agreed to a monetary compensation in lieu of damages to the residue. This is further documented by the attached copy of the option agreement, which confirms that the consideration included all damages to the residue including loss of the entrance.

In reviewing Section 33.1-199 of the Code of Virginia, we found it was enacted into law on March 12, 1938. Obviously, since this statute did not exist in 1935, it is not applicable to the acquisition of the Hiner property. It is our view that landowners do have a right to voluntarily waive various provisions concerning their property. Therefore--since the previous landowner agreed to give up the original entrance--you, as a successor in title, did not obtain a right to require that an entrance be constructed.

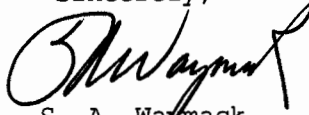
While the river is a physical barrier to your construction of an entrance, the Virginia Department of Transportation's (VDOT's) ownership of the river and both banks should not be a legal obstacle. As Secretary Martínez indicated, VDOT can issue a land use permit to you to construct an entrance across the highway right of way. The actual construction of the entrance would be your responsibility and VDOT would only need to review the plans with regard to safety and other aspects provided for in the permit.

It appears that VDOT does have some excess right of way through this property. If you are interested in acquiring some of this right of way, we need to know what portion you would like so it can be reviewed by all of our affected divisions. To pursue the repurchase of any of this property, mark the area on a print of the attached plan and return it to me. Please remember that you do not need to own the river or the banks in order to be able to construct an entrance to your property.

Letter to Mr. Anthony O'Connell  
Page 2  
January 5, 1995

I hope this clears up any issues regarding the original right of way acquisition and your options for constructing an entrance to your property. Should you wish to pursue the construction of an entrance, the permit requirements should be coordinated through our residency office in Verona.

Sincerely,



S. A. Wasmack  
State Right of Way Engineer

RRB:efs

Attachment

cc: The Honorable Robert E. Martínez  
Mr. David R. Gehr  
bc: Mr. J. S. Hodge  
Mr. J. J. Beall, Jr.  
Mr. R. L. Moore  
Mr. J. R. VanLear



Anthony O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150  
(707) 971-2855  
March 16, 1995

Mr. J. R. VanLear  
Virginia Department of Transportation  
Post Office Box 940  
Verona, Virginia 24482  
(703) 248-9320

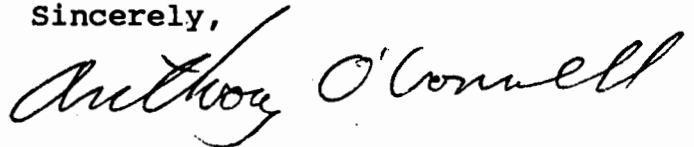
Dear Mr. VanLear:

Pursuant to our telephone conversation yesterday, I am writing to ask if I may get permission to grade both sides of the Jackson River, on your Right of Way, in the approximate area shown in blue, on the attached plat.

The purpose of the grading is to ford the river at that point. No work would be done in the river. I understand that if I do no work in the river, all those agencies responsible for the river, such as the Corp of Engineer's, the Marine Resources, the Soil and Water Conservation, etc., are not involved. I am asking permission to work only on the banks of the river, and only for permission for which VDOT is authorized to give me.

If there is any other information you might find helpful, please let me know.

Sincerely,



Anthony O'Connell

Enclosure: Plat

Copy: Mr. Robert Marshall



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

P.O. BOX 940  
VERONA, 24482-0940

DAVID R. GEHR  
COMMISSIONER

JERRY R. VANLEAR  
RESIDENT ENGINEER  
TEL (703) 248-9320  
FAX (703) 248-9333

March 30, 1995

Subject: Route 220  
Highland County

Mr. Anthony O'Connell  
6541 Franconia Road  
Springfield, VA 22150

Mr. O'Connell:

I received your letter requesting to perform work on the State right of way along Route 220 in Highland County. While I do not believe there will be any problem issuing you a permit for a private entrance at the location you indicated, there are a few issues that I need to review before I can issue the permit.

In reviewing the location, I believe there are some brush and trees that must be removed in order to insure the proper sight distance. This brush and trees are on the State right of way, so there will likely be no problem with permitting you to do this. Additionally, you indicated you wanted to perform some grading on the State right of way so you could ford the river.

While you did indicate you would not be doing any work in the river, I have asked the District Environmental Section to review your request to insure the Department is in compliance with all appropriate laws of the State by permitting you do perform this work.

I had hoped to have an answer for you by this time, but this is not the case. Hopefully, I will be able to give you some feedback in the near future. In the meantime, if you have any questions, please give me a call.

Sincerely,

Handwritten signature of Jerry R. VanLear in black ink.  
Jerry R. VanLear  
Resident Engineer

cc: Mr. Robert W. Jones  
Mr. Robert L. Marshall, Jr.



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF TRANSPORTATION

P.O. BOX 940  
VERONA, 24482-0940

DAVID R. GEHR  
COMMISSIONER

JERRY R. VANLEAR  
RESIDENT ENGINEER  
TEL (703) 248-9320  
FAX (703) 248-9333

April 7, 1995

Subject: Route 220  
Highland County

Mr. Anthony O'Connell  
6541 Franconia Road  
Springfield, VA 22150

Mr. O'Connell:

I have reviewed the location you noted in your letter dated March 16, 1995. While the issuance of a private entrance permit is not, in and of itself, unusual, the location you identified did offer some interesting considerations.

You indicated you will only be involved with grading the river bank for the purpose to ford the Jackson River. I asked the District Environmental Manager to accompany me on my review. We observed the river and I do not understand how you plan to ford the river without doing any work in the river to shape the bottom for a crossing. However, I also recognize this is your concern, but I did want to mention it to you because any work done in the river will require you to consult with Virginia Marine Resources Commission (VMRC) or the Corps of Engineers (Corps).

Contacts are as follows:

Mr. Chris Frye  
Virginia Marine Resources Commission  
Environmental Division  
P. O. Box 756  
Newport News, VA 23607  
(804) 247-8028

Mr. Jim Brogdon  
U. S. Army Corps of Engineers  
Western Virginia Field Office  
HCR 32, Box 101-A  
Staunton, VA 24401  
(703) 886-4221


The Department of Transportation owns the land on which the Jackson River is located at this point. However, the VMRC indicated they "control" the river bottom. Further, the Corps has indicated they wish to participate in permitting any work done in the river because the river is designated as

a trout stream in this area. The Corps did indicate they would consult with the Virginia Department of Game and Inland Fisheries if necessary; you will not have to initiate this contact yourself.

Please contact Mr. Robert L. Marshall, Jr., Area Superintendent, for the location the private entrance permit will be issued. I believe there are several trees along the river bank that you will need to cut in order to obtain sufficient sight distance. The entrance permit should include all work on the right of way.

.I hope this provides you the information you needed. Please let me know if I can be of further assistance.

Sincerely,

  
Jerry R. VanLear  
Resident Engineer

cc: Mr. Robert W. Jones  
Mr. Robert L. Marshall, Jr.  
Mr. Chris Frye - VMRC



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, 23219-1939

DAVID R. GEHR  
COMMISSIONER

STUART A. WAYMACK  
STATE RIGHT OF WAY ENGINEER

May 17, 1995

Route 220  
Project 724-F  
Highland County

Mr. Anthony O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150

Dear Mr. O'Connell:

SUBJECT: Former Property of Terry Henkle, Parcel 010 and  
D. H. A. & H. T. Hiner, Parcel 011

Reference is made to your letters of March 16 and May 12, 1995, and your telephone conversation of May 12 with Mr. Art Taylor regarding your request to purchase surplus Virginia Department of Transportation's (VDOT'S) right of way on Route 220 in Highland County.

We have reviewed your request and have determined that the area indicated on the drawing attached to your May 12 letter is not available. Since VDOT constructed the channel change in this area we have a responsibility for any future maintenance that may be needed. Prior to our preliminary field review we thought there may have been more land than we needed beyond the river's bank on the east side. This was found not to be the case.

Your approach through an entrance permit would appear to be the most logical way to access the property.

Thank you for your interest in our property.

Sincerely,

A handwritten signature in cursive script that reads "S. A. Waymack".

S. A. Waymack  
State Right of Way Engineer

AHT, III: jc

Anthony O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150  
June 3, 1995

Stuart A. Waymack  
State Right Of Way Engineer  
Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219-1939

Re: Route 220 Project 724-F-Highland County  
Former Property of DHA and HT Hiner, Parcel 011

Dear Mr. Waymack:

Thank you for your letter of May 17, 1995, concerning my inquiries regarding the crossing of the Jackson River to State Route 220.

I have a new question. I plan to build my home on this property I have been trying to access. To do this, there needs to be a private driveway for the house that would cross the Jackson River to connect to the pavement of Route 220. The driveway would be located generally in the area shown in yellow on the enclosed plat. In reading the Code of Virginia, Section 33.1-197 states that VDOT is required to permit the crossing of its right-of-way to the paved road for a private home. I also note that Section 33.1-198, covering commercial and subdivision entrances, states that such connections shall be permitted for commercial projects under certain conditions and at the expense of the developer. Section 33.1-197 concerning private driveways makes no reference to the connection across the shoulder/right-of-way being at the homeowner's expense, which leads me to conclude that the law requires that VDOT construct a connection across the unimproved portion of the right-of-way.

My questions thus are:

1. Am I correct that VDOT must permit me to cross the right-of-way (including the river) for a driveway for my home?
2. Am I correct that Section 33.1-197 requires VDOT to construct such connection?
3. If it is VDOT's position that the crossing must be permitted, but at my expense, what regulations, if any, apply? If I must have plans for the crossing approved, which agencies must approve them and what is their jurisdiction?

I appreciate very much your response to my earlier inquiries and your patience with my requests. I would like to thank the VDOT personnel in Monterey for the numerous times they have come to discuss my access problems, and for their consistently valuable help and expertise. I look forward to hearing from you.

Sincerely,

*Anthony M. O'Connell*

Anthony M. O'Connell

Enclosure: Plat

Copies: Mr. Robert L. Marshall, Superintendent  
Mr. Jerry VanLear, Resident Engineer



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, 23219-1939

DAVID R. GEHR  
COMMISSIONER

STUART A. WAYMACK  
STATE RIGHT OF WAY ENGINEER

June 19, 1995

Route 220 - Highland County

Mr. Anthony O'Connell  
6541 Franconia Road  
Springfield, Virginia 22150

Dear Mr. O'Connell:

I have received your June 3 letter and will try to answer the additional questions you have raised concerning access to your property.

Section 33.1-197 makes the Virginia Department of Transportation (VDOT) responsible for ensuring that any private road connected to the highway system is done in a safe manner. Having the responsibility to make decisions regarding the safe entry of the private road to the public road in no way implies an obligation on VDOT to construct or pay for the construction of a private driveway. Any differences between this statute and other statutes does not change that fact.

You are correct that VDOT must review and determine if a permit can be issued for you to have a driveway to your property at whatever location you propose. Our residency office will work with you and provide any safety concerns they may have regarding the location and any alternate sites available. If your proposed location meets VDOT's criteria, then the Department would be in a position to issue a permit for that portion of the work proposed within the right of way.

As indicated above, the answer to question 2. is that Section 33.1-197 of the Code of Virginia does not require or provide for VDOT to construct private driveways.

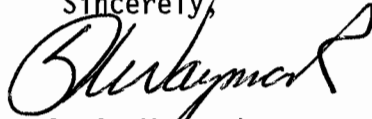
Your question 3. deals with other agencies that may have jurisdiction on the work you propose. VDOT's responsibility is to the traveling public and to ensure from our agency's standpoint that the proposed work can be constructed safely. Because your proposal involves crossing the Jackson River, the agencies responsible for the rivers may wish to review your proposed method of constructing the entrance. Mr. Jerry VanLear in his April 7, 1995, letter advised of contact persons for the Virginia Marine Resource Commission and the U.S. Army Corps of Engineers. These agencies will have to advise you on the information necessary for you to secure their permits to work within the river itself.



Mr. Anthony O'Connell  
Page 2  
June 19, 1995

I realize the involvement of other agencies further complicates your objective to have access to the property across the river. However, state and federal laws now require much greater control of this process.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Waymack". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

S. A. Waymack  
State Right of Way Engineer

RRB:efs  
cc: Mr. Jerry VanLear



## COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, 23219

DAVID R. GEHR  
COMMISSIONER

September 5, 1996

Route 220 - Highland County

The Honorable Malfourd W. Trumbo  
Member, Virginia Senate  
P. O. Box 44  
Fincastle, Virginia 24090

*B*  
Dear Senator ~~Trumbo~~:

This is in response to your recent letter concerning Mr. Anthony M. O'Connell's request for assistance in obtaining an entrance to his property located in Highland County. From the information submitted by Mr. O'Connell, you are aware that the Virginia Department of Transportation (VDOT) has thoroughly reviewed this issue in order to resolve the situation.

Originally, VDOT acquired property from the Hiner family in 1935 for the construction of improvements to what is now known as Route 220—including the relocation of the river in this area. Subsequently, Mr. O'Connell acquired the remaining property in 1989 and has focused on the entrance that was affected by VDOT's construction and acquisition in 1935. The Hiners were compensated for the total impact to the property—including payment for damages to their remaining lands.

VDOT has determined that this agency does not have any legal or moral obligation to construct an entrance as requested by Mr. O'Connell. This has been explained to him through numerous letters—as has VDOT's willingness to issue a land use permit (in accordance with our policy) so that he can construct a private driveway.

Hopefully, this information will be helpful in responding to your constituent.

Very truly yours,

A handwritten signature in black ink that reads "Dave".

David R. Gehr  
Commissioner



# COMMONWEALTH of VIRGINIA

James S. Gilmore, III  
Attorney General

Office of the Attorney General  
Richmond 23219

900 East Main Street  
Richmond, Virginia 23219  
804 - 786 - 2071  
804 - 371 - 8946 TDD

September 20, 1996

Mr. Anthony M. O'Connell  
216 Governor's Lane, Apt. 12  
Harrisonburg, Virginia 22801

Re: Route 220; Highland County

Dear Mr. O'Connell:

You have apparently written to a number of legislators, state and federal, about the problem that you have in Highland County due to the Department of Highway's acquisition of property in 1935 that has left the Jackson River between your property and Route 220. Senator Robb and Delegate Flora Crittenden forwarded your letters to the Attorney General asking that he write you directly. The Attorney General asked me to respond. I have responded directly for the Attorney General to State Senators Potts, Stolle and Delegate Forbes.

You told Delegate Crittenden that your "goal is to obtain a binding completion date for the bridge by the Highway Department or a clear opinion that the landowner is responsible." You asked Senator Robb "for an independent ruling that leaves no room for ambiguity or confusion".

Section 33.1-199 was enacted in 1938, three years after the Department of Highways purchased the property from your predecessor in title. As a consequence that statute has no relevance to your issue.

The Department of Highways purchased the property that has led to the situation that you face in 1935. Any breach of that bargain with your predecessor in title would have had to be litigated long before now.

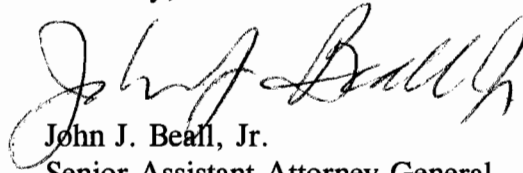
With respect to § 33.1-197, the Department of Transportation, successor to the Department of Highways, routinely grants **entrance permits**, subject to being satisfied that the safety of the users of such entrance and those on the main highway will not be compromised by the placement and utilization of the entrance. Construction of the entrance, however, is the responsibility of the landowner, including such items as curb and gutter or deceleration or acceleration lanes. The Attorney General in April 1975 was asked for an opinion whether a

Mr. Anthony M. O'Connell  
September 20, 1996  
Page 2

landowner can be required by the Department of Highways "to construct at his own expense, a turn-off or deceleration lane on the public right of way." It was the opinion of the Attorney General, then and it still is today, that the inherent police power that the Department possesses would permit the Department to require the landowner to construct those features. I enclose a copy of that opinion to then Delegate D. French Slaughter. While that opinion directly addressed § 33.1-198 (commercial entrances) the reasoning is equally applicable to § 33.1-197 (private entrances). Thus, the Department of Transportation has no responsibility under the entrance permit statutes to construct the bridge that apparently is necessary to reach Route 220 from your property.

I hope that this is responsive to your inquiries to Senator Robb and Delegate Crittenden.

Sincerely,



John J. Beall, Jr.  
Senior Assistant Attorney General

56/157 (jjb: Itoconel.rob)

c: The Honorable Charles S. Robb  
The Honorable Flora D. Crittenden



# COMMONWEALTH of VIRGINIA

James S. Gilmore, III  
Attorney General

Office of the Attorney General  
Richmond 23219

September 20, 1996

900 East Main Street  
Richmond, Virginia 23219  
804 - 786 - 2071  
804 - 371 - 8946 TDD

The Honorable H. Russell Potts, Jr.  
Member, Senate of Virginia  
118 South Cameron Street  
Winchester, Virginia 22601

*Re: Anthony M. O'Connell  
Virginia Department of Transportation  
Route 220; Highland County*

Dear Senator Potts:

The Attorney General asked me to respond to your recent letter you sent containing a packet of material that Mr. O'Connell, your constituent, had sent to you.

Mr. O'Connell has sent a similar package of material to a number of legislators, state and federal. I enclose the response that the Department of Transportation gave to Senator Trumbo. I also enclose a copy of the response that Senator Kevin Miller gave to Mr. O'Connell.

I have reviewed the material that you furnished. Mr. O'Connell's initial approach to the Department of Transportation sought to invoke § 33.1-199 in order to have the entrance that the Department acquired in 1935 replaced. That statute did not come into existence until 1938, so that statute cannot be used to require the Department to replace the entrance.

It appears, as well, that the Department and Mr. O'Connell's predecessor in title reached an agreement in 1935, which would bind all of Mr. Hiner's successors in title. With the passage of time any breach of that agreement made with Mr. Hiner cannot be enforced legally.

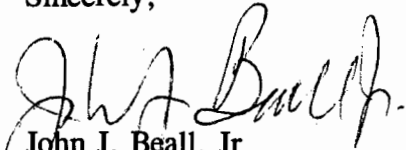
The second approach to the Department involves Mr. O'Connell seeking an entrance **permit**. The Department routinely grants those permits. The permittees then do the work required by the permit. I share with you a copy of an Official Opinion dated April 8, 1975 that opines that a landowner can be required to pay for items that are installed on the right-of-way pertaining to an entrance. With respect to working in or crossing the Jackson River, which the Commonwealth owns, the Department of Transportation has no jurisdiction over it, so

The Honorable H. Russell Potts, Jr.  
September 20, 1996  
Page 2

Mr. O'Connell was advised to deal with the Virginia Marine Resource Commission and the Corps of Engineers. It appears to me that the Department of Transportation has handled this matter in accordance with its policies and the law.

In sum, the Attorney General is not in a position to assist Mr. O'Connell. I hope that this is responsive to your letter.

Sincerely,



John J. Beall, Jr.  
Senior Assistant Attorney General

56/157 (jjb: ltoconel.pot)

**Enclosures**



# COMMONWEALTH of VIRGINIA

James S. Gllmore, III  
Attorney General

Office of the Attorney General  
Richmond 23219

September 20, 1996

900 East Main Street  
Richmond, Virginia 23219  
804 - 786 - 2071  
804 - 371 - 8946 TDD

The Honorable Kenneth W. Stolle  
Member, Senate of Virginia  
780 Lynnhaven Parkway, Suite 200  
Virginia Beach, Virginia 23452

*Re: Anthony M. O'Connell*

Dear Senator Stolle:

The Attorney General asked me to respond to your recent letter in this matter. I do not believe an official ruling is necessary.

I have reviewed the material that you furnished. Mr. O'Connell's initial approach to the Department of Transportation sought to invoke § 33.1-199 in order to have the entrance that the Department acquired in 1935 replaced. That statute did not come into existence until 1938, so that statute cannot be used to require the Department to replace the entrance.

It appears, as well, that the Department and Mr. O'Connell's predecessor in title reached an agreement in 1935, which would bind all of Mr. Hiner's successors in title. With the passage of time any breach of that agreement made with Mr. Hiner cannot be enforced legally.

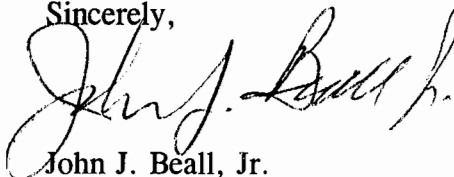
The second approach to the Department involves Mr. O'Connell seeking an entrance permit. The Department routinely grants those permits. The permittees then do the work required by the **permit**. I share with you a copy of an Official Opinion dated April 8, 1975 that opines that a landowner can be required to pay for items that are installed on the right-of-way pertaining to an entrance. With respect to working in or crossing the Jackson River, which the Commonwealth owns, the Department of Transportation has no jurisdiction over it, so Mr. O'Connell was advised to deal with the Virginia Marine Resource Commission and the Corps of Engineers. It appears to me that the Department of Transportation has handled this matter in accordance with its policies and the law.

With respect to any problem obtaining the entrance permit, the Department's Land Use Permit Manual provides a mechanism to appeal the Resident Engineer's denial of the permit, which the material that you furnished does not indicate has happened yet.

There is no requirement that the Department pay for the work done on the Department's right of way to construct a private entrance. Routinely, such permits are granted and when the entrance is constructed, curb and gutter are required as well as additional paving. I share with you an Official Opinion of the Attorney General dated April 8, 1975 which speaks to the issue of requiring persons to implement the entrance standards at his own expense. The opinion's conclusion is that such a requirement constitutes a valid exercise of the police power.

I hope that this is responsive to your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Beall, Jr.", written in dark ink.

John J. Beall, Jr.  
Senior Assistant Attorney General

56/157 (jjb: ltoconel.sto)





# COMMONWEALTH of VIRGINIA

James S. Gilmore, III  
Attorney General

Office of the Attorney General  
Richmond 23219

900 East Main Street  
Richmond, Virginia 23219  
804 - 786 - 2071  
804 - 371 - 8946 TDD

September 23, 1996

The Honorable Jay Katzen  
Member, House of Delegates  
Post Office Box 3004  
Warrenton, Virginia 22186

RE: Anthony M. O'Connell  
Virginia Department of Transportation  
Route 220; Highland County

Dear Delegate Katzen:

The Attorney General asked me to respond to your recent letter regarding this matter.

Mr. O'Connell has sent a similar package of material to a number of legislators, state and federal. I enclose the response that the Department of Transportation gave to Senator Trumbo. I also enclose a copy of the response that Senator Kevin Miller gave to Mr. O'Connell.

I have reviewed the material that you furnished. Mr. O'Connell's initial approach to the Department of Transportation sought to invoke § 33.1-199 in order to have the entrance that the Department acquired in 1935 replaced. That statute did not come into existence until 1938, so that statute cannot be used to require the Department to replace the entrance.

It appears, as well, that the Department and Mr. O'Connell's predecessor in title reached an agreement in 1935, which would bind all of Mr. Hiner's successors in title. With the passage of time any action on that agreement made with Mr. Hiner by the Department cannot be maintained.


The second approach to the Department involves Mr. O'Connell seeking an entrance **permit**. The Department routinely grants those **permits**. The permittees then do the work required by the permit. I share with you a copy of an Official Opinion dated April 8, 1975 that opines that a landowner can be required to pay for items that are installed on the right-of-way pertaining to an entrance. With respect to working in or crossing the Jackson River, which the Commonwealth owns, the Department of Transportation has no jurisdiction over it, so Mr. O'Connell was advised to deal with the Virginia Marine Resource Commission and the Corps

The Honorable Jay Katzen  
September 23, 1996  
Page 2

of Engineers. It appears to me that the Department of Transportation has handled this matter in accordance with its policies and the law.

In sum, the Attorney General is not in a position to assist Mr. O'Connell. I hope that this is responsive to your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Beall, Jr.", written in black ink.

John J. Beall, Jr.  
Senior Assistant Attorney General

56/157 (jjb: katzen)

**Enclosures**

### Start of Mr. Beall's enclosures

I believe the following six pages were included with Mr. Beall's letters of September 20, 1996, to Senator Potts and to Senator Stolle, and in his letter of September 23, 1996, to Delegate Katzen, as enclosures. To reduce file size and to try to keep it simple, they are only included once.

# COMMONWEALTH OF VIRGINIA



KEVIN G. MILLER  
26TH SENATORIAL DISTRICT  
CITY OF HARRISONBURG, CULPEPER, PAGE,  
AND RAPPAHANNOCK COUNTIES AND PART OF  
FAUQUIER, ROCKINGHAM, AND STAFFORD COUNTIES  
2 SOUTH MAIN STREET  
SUITE 608  
HARRISONBURG, VIRGINIA 22801

COMMITTEE ASSIGNMENTS  
PRIVILEGES AND ELECTIONS, CHAIRMAN  
FINANCE  
TRANSPORTATION  
RULES

## SENATE

September 3, 1996

Mr. Anthony M. O'Connell  
216 Governors Lane, Apt. 12  
Harrisonburg, VA 22801

Dear Mr. O'Connell:

Thank you for the letter and package of documents relating to your property adjacent to Highway 220.

In reviewing your inquiries and the responses you received, it certainly appears to me that the responses by VDOT officials have been made in a prompt and courteous manner. It also appears that the responses have been thorough and accurate.

I am not a lawyer, but even if I were, I do not feel it would be appropriate for an individual legislator to take a position on an issue such as this.

Also, I can find no specific point of law at issue upon which a question to the attorney general could be propounded in a request for an official ruling.

Confident that the final resolution of your efforts will be fair to you, and to all Virginia Taxpayers, I am

Sincerely yours,

Kevin G. Miller  
State Senator

Copy to: Honorable Robert E. Martinez, Secretary of Transportation  
David R. Gehr, Commissioner - VDOT



## COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, 23219

DAVID R. GEHR  
COMMISSIONER

September 5, 1996

Route 220 - Highland County

The Honorable Malfourd W. Trumbo  
Member, Virginia Senate  
P. O. Box 44  
Fincastle, Virginia 24090

*Bo*  
Dear Senator Trumbo:

This is in response to your recent letter concerning Mr. Anthony M. O'Connell's request for assistance in obtaining an entrance to his property located in Highland County. From the information submitted by Mr. O'Connell, you are aware that the Virginia Department of Transportation (VDOT) has thoroughly reviewed this issue in order to resolve the situation.

Originally, VDOT acquired property from the Hiner family in 1935 for the construction of improvements to what is now known as Route 220—including the relocation of the river in this area. Subsequently, Mr. O'Connell acquired the remaining property in 1989 and has focused on the entrance that was affected by VDOT's construction and acquisition in 1935. The Hiners were compensated for the total impact to the property—including payment for damages to their remaining lands.

VDOT has determined that this agency does not have any legal or moral obligation to construct an entrance as requested by Mr. O'Connell. This has been explained to him through numerous letters—as has VDOT's willingness to issue a land use permit (in accordance with our policy) so that he can construct a private driveway.

Hopefully, this information will be helpful in responding to your constituent.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dave".

David R. Gehr  
Commissioner

Commonwealth Transportation Board the cost of such oiling. This section does apply to any highway which is a part of the State Highway System or the secondary system of state highways. (Code 1950, § 33-112; 1970, c. 322.)

**§ 33.1-197. Connections over shoulders of highways for intersecting private roads.** — The Commonwealth Transportation Commissioner shall permit, at places where private roads leading to and from private homes intersect improved highways, suitable connections from such points of intersection, over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, so as to provide for the users of such private roads safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways. (Code 1950, § 33-116; 1970, c. 322.)

**§ 33.1-198. Connections over shoulders of highways for intersecting commercial establishment entrances.** — The Commonwealth Transportation Commissioner shall permit, at places where commercial establishment entrances are desired to intersect improved highways, suitable connections from such points of intersection over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, so as to provide for the users of such entrances safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways; provided, however, that any person desiring such an entrance shall first be required to obtain a permit therefor from the Commonwealth Transportation Commissioner and shall provide the entrance at his expense and construct or have constructed the same, including such safety structures as are required by the Commonwealth Transportation Commissioner, pursuant to "Minimum Standards of Entrances to State Highways" on file in the Department of Transportation, Richmond, Virginia, and in the office of the Highway District Engineer and Resident Engineers.

All commercial entrances whether or not constructed under this section shall be maintained by the owner of the premises at all times in a manner satisfactory to the Commonwealth Transportation Commissioner.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$5 nor more than \$100 for each offense. Following a conviction and fifteen days for correction, each day during which the violation continues shall constitute a separate and distinct offense and be punishable as such. Such person shall be civilly liable to the Commonwealth for actual damage sustained by the Commonwealth by reason of his wrongful act. (Code 1950, § 33-116.1; 1956, c. 91; 1966, c. 378; 1970, c. 322.)

**§ 33.1-199. Replacing entrances destroyed by Commissioner.** — The Commonwealth Transportation Commissioner shall replace any entrance destroyed by him in the repair or construction of his highways and replace any such entrance and leave any such entrance in the same condition as it was prior to such repair or improvement. (Code 1950, § 33-117; 1970, c. 322.)

**§ 33.1-200. Paying for damages sustained to personal property by reason of work projects, etc.** — The Commonwealth Transportation Commissioner is authorized and empowered, in his discretion, to pay and settle claims and demands against the Commonwealth arising as a result of damages sustained to personal property by reason of work projects or the operation of state-owned or operated equipment when engaged in the construction, reconstruction or maintenance of the State Highway System, unless said claims or

**OPINIONS**  
**OF THE**  
**ATTORNEY GENERAL**  
**AND**  
**REPORT**  
**TO THE**  
**GOVERNOR OF VIRGINIA**



*From July 1, 1974 to June 30, 1975*

COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supplies  
Richmond  
1975

present ones do not. I believe that these applicable sections need no explanation.

In closing, I reiterate that your inquiry involves a factual determination which must be made within the legal parameters set out above.

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**HIGHWAYS—Commercial Entrances—Authority of Highway Commissioner to require landowner to construct right turn lane at own expense.**

April 8, 1975

THE HONORABLE D. FRENCH SLAUGHTER, JR.  
Member, House of Delegates

This is in response to your recent inquiry as to whether the Highway Department can require a landowner to construct, at his own expense, a turn-off or deceleration lane on the public right of way. As I understand it, the situation prompting your request involves an entrance from a highway onto private commercial property. You further indicate that §§ 33.1-12(3) and 33.1-198 of the Code of Virginia (1950), as amended, have been cited as authority for such requirement.

The general rule is that an abutting property owner has the right of ingress and egress to a public street, limited by the police power of the State to reasonably control the use of streets so as to promote the public health, safety, and welfare. *Highway Commissioner v. Easley*, 215 Va. 197, 207 S.E.2d 870 (1974); *Azalea Corp. v. City of Richmond*, 201 Va. 636, 112 S.E.2d 862 (1960); *Wood v. City of Richmond*, 148 Va. 400, 138 S.E. 560 (1927). Under § 33.1-198 of the Code, the State Highway and Transportation Commissioner has been delegated the responsibility to issue permits for connections over shoulders of highways for intersecting commercial establishment entrances. That section provides:

“ . . . any person desiring such an entrance shall first be required to obtain a permit therefor from the State Highway Commissioner and shall provide the entrance at his expense and construct or have constructed the same, including such safety structures as are required by the State Highway Commissioner, pursuant to ‘Minimum Standards of Entrances to State Highways’ . . . ”

The manual of standards, as incorporated in this statute, has been duly adopted by the State Highway and Transportation Commission, pursuant to § 33.1-12(3) of the Code and provides at pages 14 and 15 that:

“The highway engineer shall require a right turn lane at any commercial entrance if, upon consideration of the nature of the commercial establishment, its potential growth and/or change, its present and future anticipated traffic volume, and the present and anticipated traffic volume along the state highway(s) affected by the entrance, such lane is desirable and reasonably appropriate to prevent the reduction of safe traveling conditions or the reduction of the traffic or to prevent the backing up of vehicles along the main traveled way of a State highway.”

Pursuant to this authority the Highway and Transportation Commissioner may require construction of a right turn lane where a commercial entrance intersects with the right-of-way of a public highway.

Implicit in your inquiry is the additional question as to whether the legislature can constitutionally require a landowner to implement the minimum standards at his own expense. Although I can find no case law directly applicable to this point, it is my opinion that such requirement



constitutes a valid exercise of the police power. I base this conclusion upon a ruling of the Virginia Supreme Court in the analogous situation presented in *Sanitation Commission v. Craft*, 196 Va. 1140, 87 S.E.2d 153 (1955), in which it was held that the sanitation commission's requirement that a landowner connect with a public water system at his own expense was constitutional.

In summary, it is my opinion that § 33.1-12(3) of the Code provides adequate authority for the enactment of minimum standards and that § 33.1-198 of the Code is correctly interpreted to require that, in appropriate circumstances, a landowner construct a right turn lane for a commercial entrance at his own expense.

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**HIGHWAYS—County, Through Use of Its Police Powers, May Abandon or Impose Restrictions on Road to Protect Its Property.**

**BOARDS OF SUPERVISORS—Authority—Cannot on its own motion barricade road; Department of Highways has jurisdiction over secondary system of State Highways.**

**HIGHWAYS—Secondary System—Control, supervision and management vested in Department of Highways.**

April 1, 1975

THE HONORABLE FORD C. QUILLEN  
Member, House of Delegates

This is in response to your recent letter wherein you inquire as to whether a county can (1) on its own barricade a road that is within the Secondary System of State Highways or (2), in the alternative, request that the road be removed from the System and then barricaded.

According to your letter and additional information and plats supplied by Bruce K. Robinette, Director, Lenowisco Planning District Commission, the road in question, State Secondary Route 677, runs to an abandoned strip mine leased by Wise County as a sanitary landfill. The last house on this road is located about one-half mile from the terminus of the road. Beyond the house, the road serves two family cemeteries, the landfill in question, and land owned by a landowner who is in agreement with the road closure.

You further advise that at present the County of Wise is unable economically to control recurring malicious vandalism within the landfill area, and such vandalism is serious enough to endanger the continued operation of the landfill. The county represents that it could control the vandalism if it were to erect gates, with lights, across the road beyond the last house served thereby. These gates would be open from 8:00 a.m. until 4:30 p.m. on weekdays, and until 12:00 noon on Saturdays. The caretaker of the landfill would be available to admit those wanting to visit the cemeteries on weekends and holidays.

In answer to your first question, § 33.1-69 of the Code of Virginia (1950), as amended, vests the control, supervision, management and jurisdiction of the Secondary System of State Highways in the Department of Highways and Transportation, and specifically precludes governing bodies from exercising any of these powers. See Opinion to the Honorable W. Roy Smith, Member, House of Delegates, dated February 27, 1964, and found in Report of the Attorney General (1963-1964) at 9 and the case of *Ord v. Fugate*, 207 Va. 752, 152 S.E.2d 54 (1967). The Board of Supervisors, having no control over the road in question, may not, on its own motion, barricade the road.

In answer to your second question, as you are aware, the State Highway and Transportation Commission does not have the power to abandon secondary roads since this power is granted to the counties under § 33.1-151 of

End of Mr. Beall's enclosures



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF TRANSPORTATION

1401 EAST BROAD STREET  
RICHMOND, 23219

DAVID R. GEHR  
COMMISSIONER

November 3, 1997

The Honorable Charles J. Colgan  
Member, Virginia State Senate  
P. O. Box 1650  
Manassas, Virginia 20108-1650

*Chuck*  
Dear Senator Colgan:

This is in reply to your letter dated October 17, 1997 regarding correspondence you received from Mr. Anthony M. O'Connell concerning access to his property in Highland County.

Mr. O'Connell has previously written two U.S. Senators, Congressman Bob Goodlatte, State Senators Malfourd Trumbo, H. Russell Potts, Jr., Kevin G. Miller, Kenneth W. Stolle, and Delegates J. Randy Forbes and Flora Davis Crittenden, as well as the Governor and the Department of Transportation. These individuals either responded directly to Mr. O'Connell or referred the matter to the Attorney General for response.

Mr. O'Connell had previously contacted the local Resident Engineer, Jerry R. VanLear, for a permit. The Department routinely grants permits of this type. The permittee then performs the work required by the permit. One aspect of Mr. O'Connell's request for a permit concerned fording the Jackson River, which the Commonwealth owns, over which the Department of Transportation has no jurisdiction. Therefore, Mr. O'Connell was advised to deal with the Virginia Marine Resources Commission and the Corps of Engineers. From my viewpoint, it appears the Department of Transportation has handled this matter in accordance with its policies and the law.

I believe this current issue has moved into the legal arena and the Attorney General's Office has already provided Mr. O'Connell with their opinion concerning his views. I do not know of any additional issues identified by Mr. O'Connell for which the Department of Transportation has authority.

If I can be of further assistance, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dave".

David R. Gehr  
Commissioner



# COMMONWEALTH of VIRGINIA

Office of the Lieutenant Governor  
Richmond 23219

John H. Hager  
Lieutenant Governor

(804) 786-2078  
FAX: (804) 786-7514  
TTY/TDD: 1-800-828-1120  
America Online: LtGovHager

March 11, 1998

Mr. Anthony M. O'Connell  
216 Governor's Lane, Apt. 12  
Harrisonburg, Virginia 22801

Dear Mr. O'Connell

My staff and I have examined the packet of information you sent relating to access to your property on the Jackson River in Highland County. I confess that we are at a loss to understand what it is, exactly, that you want me to do.

If you want the state to construct a crossing at its expense, I believe the absence of any such obligation by the state has been addressed in several letters. In S. A. Waymack's letter of Jan. 5, 1995, for instance, he points out that Section 33.1-199 was enacted three years after the acquisition of the Hiner property and is, therefore, not applicable.

If you want to construct a crossing of the Jackson River at your own expense, I see that the process for gaining such approval has been laid out in Jerry R. VanLear's letter of April 7, 1995.

The legal issue seems to me to have been clearly expressed in Mr. Waymack's aforementioned letter when he writes: "Therefore – since the previous landowner agreed to give up the original entrance – you, as a successor in title, did not obtain a right to require that an entrance be constructed."

I gather from your lengthy correspondence that you disagree with this interpretation. Therefore, it seems to me your next step would be to hire an attorney. I wish you well in your attempt to reach a favorable solution to this issue.

Yours very truly,

A handwritten signature in black ink that reads "John Hager". The signature is stylized with a large, sweeping initial "J".  
John H. Hager

JHH/rw



# COMMONWEALTH of VIRGINIA

Office of the Governor

James S. Gilmore, III  
Governor

October 5, 1998

Shirley J. Ybarra  
Secretary of Transportation

Mr. Anthony M. O'Connell  
Apartment 12  
216 Governor's Lane  
Harrisonburg, Virginia 22801

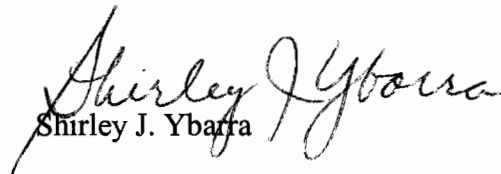
Dear Mr. O'Connell:

Governor Gilmore has again asked that I review the concern raised in your latest letter dated September 17 and respond directly to you.

The correspondence you provided, as well as the Virginia Department of Transportation's (VDOT's) file, continues to support VDOT's previous determination. The state has no legal or moral obligation to provide an entrance to property your family acquired in the late 1980s.

Should you wish to pursue an entrance permit, VDOT will continue to work you.

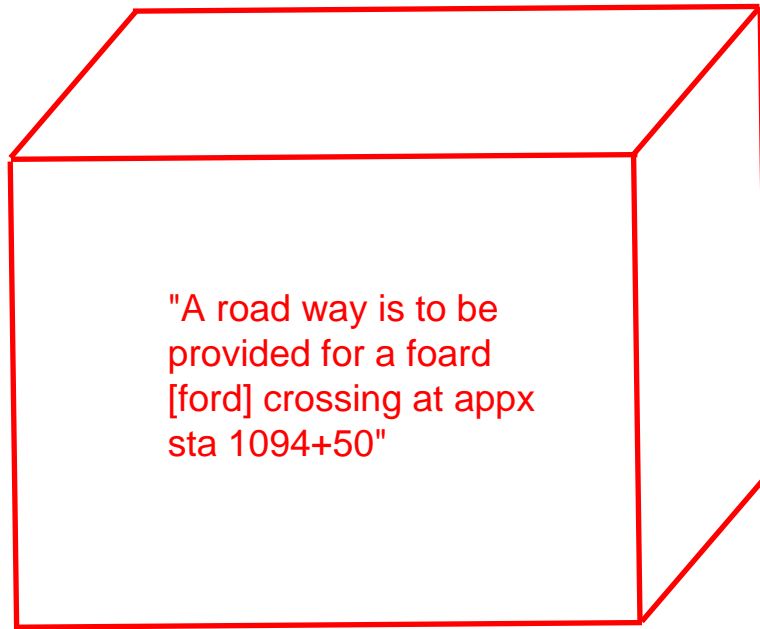
Sincerely,

  
Shirley J. Ybarra

SJY/smm

cc: Mr. David R. Gehr





"A road way is to be provided for a foard [ford] crossing at appx sta 1094+50"