



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

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Agenda item # 7

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 4, 2024

MOTION

Made By: Ms. Sellers, Seconded By: Mr. Good

Action: Motion Carried, Unanimously

Title: Policy Index Review and Archive of Delegations of Authority

WHEREAS, in August 2017, the then-Secretary of Transportation, Aubrey L. Layne, directed that the Commonwealth Transportation Board (CTB) Policy Index be reevaluated to identify obsolete or redundant policies and actions to be repealed, and to identify for retention those policies and actions that reflect current operating needs and statutory responsibilities (i.e., are currently in effect/valid); and

WHEREAS, from 2017 to 2022, the Policy Index was reevaluated and policies/actions that were identified as obsolete due to passage of time, statutory transfer of responsibilities or other statutory changes, or explicit CTB repeal/rescission were presented to the CTB for repeal and removed from the Policy Index and archived, and other policies/actions identified as still relevant and valid were presented to the CTB for retention/affirmation; and

WHEREAS, at its September 21, 2022, action meeting, (pursuant to the resolution entitled *Continued Action on Content of Commonwealth Transportation Board Policy Index*) the CTB directed the Virginia Department of Transportation (VDOT) to continue to regularly review all policies set out in the Policy Index for purposes of determining whether they remain valid or are obsolete and should be presented to the CTB for disposition at a future action meeting; and

WHEREAS, at its September 21, 2022, action meeting, the CTB also directed VDOT to maintain and update the Policy Index, in consultation with the Department of Rail and Public Transportation (DRPT), as necessary, to ensure that its content reflects an inventory of current policies and actions by adding new policies and actions as they are adopted by the CTB and

repealing and archiving those policies and actions that are repealed or explicitly superseded by subsequent actions of the CTB; and

WHEREAS, VDOT has performed further research on policies and actions set out in the Policy Index and prepared a list consisting of those policies and actions identified as obsolete or unnecessary/redundant and that warrant repeal, as outlined in the table below and fully detailed in Attachment A; and

Resolution	Passage Date	Why Repeal?
Rules and Regulations for the Administration of Parking Lots and Environs	July 18, 1974	Subsequent amendments are reflected in a more recent/retained policy dated 6/20/2018.
Waysides and Rest Areas	July 18, 1974	Subsequent amendments are reflected in a more recent/retained policy dated 2/19/1987.
Adoption of Rules and Regulations Governing the Prequalification of Prospective Bidders, January 1, 1983 Edition	March 17, 1983	Rules and Regulations were repealed in 2021 at the direction of the Board. Applicable Code section provides independent authority for VDOT to serve as the responsible entity for establishing the prequalification process. Procedures documenting the process do not rise to the level of warranting a CTB policy.
Policy on Placing Utility Facilities Underground	May 9, 1996	The statutory authority and corresponding regulation were repealed.
Repeal of Existing <i>State Noise Abatement Policy</i> (24VAC 30-80) and Approval of Updated <i>State Noise Abatement Policy</i>	June 15, 2011	VDOT will continue to follow the Highway Traffic Noise Guidance Manual as approved by FHWA and which is consistent with federal law. Substantive provisions of the Policy are redundant with the Code of Virginia. The related procedures/process set out in the Manual do not rise to the level of warranting a CTB policy.
High Volume Unpaved Road Program Policy Modification	March 21, 2018	The Program no longer exists as the applicable Code section was amended to remove the relevant/authorizing provisions.

WHEREAS, the Delegations Chapter of the Policy Index contains delegations of authority and authorizations from the CTB to individual CTB members or VDOT or DRPT staff, and these delegations or authorizations do not typically contain language addressing expiration of the authority granted therein; and

WHEREAS, the Delegations Chapter of the Policy Index has never undergone a formal review, and after an initial review, VDOT has identified many delegations which represent authorizations or actions which are fully satisfied or are obsolete.

NOW, THEREFORE, BE IT RESOLVED, that the CTB hereby repeals the policies/actions outlined in the table above and fully detailed in Attachment A.

BE IT FURTHER RESOLVED, that the CTB hereby directs VDOT to take all actions necessary to document this action by removing from the CTB Policy Index and adding to the electronic archive those policies and actions repealed herein.

BE IT FURTHER RESOLVED, that the CTB hereby directs VDOT to continue to regularly review all policies set out in the Policy Index to determine whether they remain valid or are obsolete and should be presented to the CTB for disposition at a future action meeting.

BE IT FURTHER RESOLVED, that the CTB directs and authorizes VDOT and DRPT to, on an ongoing basis, remove and archive delegations of authority and authorizations contained in the Policy Index that have been determined to be fully satisfied or are obsolete, exercising due care in documenting the reason for removing and archiving the delegations and authorizations.

BE IT FURTHER RESOLVED, that the CTB directs VDOT to maintain and update the CTB Policy Index, in consultation with DRPT, as necessary, to ensure that its content reflects an inventory of current policies and actions by adding new policies and actions as they are adopted by the CTB and removing and archiving those policies and actions that are explicitly repealed or superseded by subsequent actions of the CTB.

BE IT FURTHER RESOLVED, that the repeal of any policy or action or the removal of any delegation of authority or authorization from the Policy Index pursuant to this action shall in no way affect the validity of any actions taken pursuant to the policy, action, delegation, or authorization prior to its repeal or removal hereunder.

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CTB Decision Brief

Policy Index Review and Archive of Delegations of Authority

Issue: Commonwealth Transportation Board (CTB) approval and action is required to implement proposed revisions to the content of the CTB Policy Index so that it contains only those policies that are currently in effect/valid and to repeal and archive policies that are no longer in effect/valid. Additionally, CTB approval and action is required to authorize VDOT and DRPT to, on an ongoing basis, remove and archive delegations of authority and authorizations contained in the Policy Index that have been determined to be fully satisfied or are obsolete.

Facts: At an August 2017 CTB Retreat, the then-Secretary of Transportation, Aubrey L. Layne, directed that the CTB Policy Index be reevaluated to identify obsolete or redundant policies and actions to be repealed, and to identify, for retention, those policies and actions that reflect current operating needs and statutory responsibilities (are currently in effect/valid). From 2017 to 2022, the Policy Index was reevaluated and policies/actions that were identified as obsolete due to passage of time, statutory transfer of responsibilities or other statutory changes, or explicit CTB repeal/rescission were presented to the CTB for repeal and removed from the Policy Index and archived, and other policies/actions identified as still relevant and valid were presented to the CTB for retention/affirmation.

At its September 21, 2022, action meeting, (pursuant to the resolution entitled *Continued Action on Content of Commonwealth Transportation Board Policy Index*) the CTB directed the Virginia Department of Transportation (VDOT) to continue to regularly review all policies set out in the Policy Index for purposes of determining whether they remain valid or are obsolete and should be presented to the CTB for disposition at a future action meeting. At the same meeting, the CTB also directed VDOT to maintain and update the Policy Index, in consultation with the Department of Rail and Public Transportation (DRPT), as necessary, to ensure that its content reflects an inventory of current policies and actions by adding new policies and actions as they are adopted by the CTB and repealing and archiving those policies and actions that are repealed or explicitly superseded by subsequent actions of the CTB.

In 2024, VDOT performed further research on a number of policies and actions set out in the Policy Index and prepared a list consisting of those policies and actions identified as obsolete or unnecessary/redundant and that warrant repeal, as outlined in the table below and fully detailed in Attachment A. These policies and actions were presented to the CTB at its October 2024 workshop meeting.

Resolution	Passage Date	Why Repeal?
Rules and Regulations for the Administration of Parking Lots and Environs	July 18, 1974	Subsequent amendments are reflected in a more recent/retained policy dated 6/20/2018.
Waysides and Rest Areas	July 18, 1974	Subsequent amendments are reflected in a more recent/retained policy dated 2/19/1987.
Adoption of Rules and Regulations Governing the Prequalification of Prospective Bidders, January 1, 1983 Edition	March 17, 1983	Rules and Regulations were repealed in 2021 at the direction of the Board. Applicable Code section provides independent authority for VDOT to serve as the responsible entity for establishing the prequalification process. Procedures documenting the process do not rise to the level of warranting a CTB policy.
Policy on Placing Utility Facilities Underground	May 9, 1996	The statutory authority and corresponding regulation were repealed.
Repeal of Existing <i>State Noise Abatement Policy</i> (24VAC 30-80) and Approval of Updated <i>State Noise Abatement Policy</i>	June 15, 2011	VDOT will continue to follow the Highway Traffic Noise Guidance Manual as approved by FHWA and which is consistent with federal law. Substantive provisions of the Policy are redundant with the Code of Virginia. The related procedures/process set out in the Manual do not rise to the level of warranting a CTB policy.
High Volume Unpaved Road Program Policy Modification	March 21, 2018	The Program no longer exists as the applicable Code section was amended to remove the relevant/authorizing provisions.

Additionally, the Delegations Chapter of the Policy Index contains delegations of authority and authorizations from the CTB to individual CTB members or VDOT or DRPT staff. These delegations or authorizations do not typically contain language addressing expiration of the authority granted therein. The Delegations Chapter of the Policy Index has never previously undergone a formal review; however, after an initial review, VDOT staff identified many delegations which represent authorizations or actions which are fully satisfied or are obsolete. Since these delegations of authority are Board actions, the Board will be requested to authorize VDOT and DRPT staff, on an ongoing basis, to remove and archive delegations in the Policy Index that have been determined to be fully satisfied. These delegations will remain accessible on the

public-facing CTB website and will be added to the VDOT Governance & Legislative Affairs Division internal digital archive. Staff will exercise due care in documenting the reason for removing and archiving the delegations.

Recommendations: VDOT recommends that the policies/actions outlined in the table above and fully detailed in Attachment A be repealed. VDOT also recommends that the CTB direct and authorize VDOT and DRPT to, on an ongoing basis, remove and archive delegations of authority contained in the Policy Index that have been determined to be fully satisfied or are obsolete, exercising due care in documenting the reason for removing and archiving the delegations. It is also recommended that the CTB clarify that the repeal of any policy/action or the removal of any delegation of authority from the Policy Index in no way affects the validity of actions taken pursuant to the policy/action or delegation prior to its repeal or removal.

Action Required by CTB: A resolution will be provided for the CTB's consideration (i) to repeal the policies and actions listed by title and date in the table above and Attachment A and direct VDOT to take all actions necessary to document the action, (ii) to direct VDOT to continue to regularly review all policies set out in the Policy Index for purposes of determining whether they remain valid or are obsolete, (iii) direct and authorize VDOT and DRPT to, on an ongoing basis, remove and archive delegations of authority contained in the Policy Index that have been determined to be fully satisfied or are obsolete, exercising due care in documenting the reason for removing and archiving the delegations, and (iv) to direct VDOT to maintain and update the CTB Policy Index, in consultation with DRPT, as necessary, to ensure that its content reflects an inventory of current policies and actions by adding new policies and actions as they are adopted by the CTB and repealing and archiving those policies and actions that are explicitly repealed or superseded by subsequent actions of the CTB. The resolution will also clarify that the repeal of any policy or action or the removal of any delegation of authority or authorization from the Policy Index pursuant to this action shall in no way affect the validity of any actions taken pursuant to the policy, action, delegation, or authorization prior to its repeal or removal.

Result, if Approved: The Policy Index will be revised according to the action taken by the CTB, with repealed policies and actions and removed delegations of authority and authorizations being archived electronically.

Options: Approve, Deny, or Defer

Public Comments/ Reaction: N/A

Policies to be Rescinded

Rules and Regulations for the Administration of Parking Lots and Environs Approved: 7/18/1974

WHEREAS, pursuant to § 9-6.1 et seq. of the Code of Virginia (1950), as amended, a public hearing was conducted July 8, 1974 at 3:30 p.m. in the Highway and Transportation Department auditorium, Richmond, Virginia, to present to revisions to the Rules and Regulations of the Commission for the Administration of Parking Lots and Environs; and

WHEREAS, no interested citizen other than representatives of the Department appeared to offer oral statements, objections or amendments; and

WHEREAS, no written statements, objections or amendments were received by the Department within 5 days as set out in the public notice.

NOW, THEREFORE, BE IT RESOLVED, that the Rules and Regulations of the Commission for the Administration of Parking Lots and Environs as published and as presented at the public hearing are hereby adopted to be effective November 1, 1974.

Commented [GALA1]: OLU/Maintenance/TMPD: Subsequent amendments are reflected in more recent/retained CTB policy dated 6/20/2018.

Waysides and Rest Areas Approved: 7/18/1974

WHEREAS, pursuant to Section 9-6.1 et seq of the Code of Virginia (1950) as amended, a public hearing was conducted July 8, 1974 at 2:00 p.m. in the Highway and Transportation Department auditorium, Richmond, Virginia, to present the revisions to the Rules and Regulations of the Commission for the Administration of Waysides and Rest Areas; and

WHEREAS, no interested citizen other than representatives of the Department appeared to offer oral statements, objections or amendments; and

WHEREAS, no written statements, objections or amendments were received by the Department within 5 days as set out in the public notice.

NOW THEREFORE, BE IT RESOLVED, that the Rules and Regulations of the Commission for the Administration of Waysides and Rest Areas as published and as presented at the public hearing are hereby adopted to be effective November 1, 1974.

Commented [GALA2]: OLU/Maintenance/TMPD: Subsequent amendments are reflected in more recent/retained CTB policy dated 2/19/1987.

Adoption of Rules and Regulations Governing the Prequalification of Prospective Bidders, January 1, 1983 Edition Approved: 3/17/1983

Motion was made by Mr. Vaughan, seconded by Mr. Brydges, that the Commission adopt the Rules and Regulations Governing the Prequalification of Prospective Bidders as revised in the January 1, 1983, edition, governing prequalification of bidders after January 1, 1983.

Commented [GALA3]: Construction Division: Rules and Regulations were repealed at the direction of the Board in 2021 which had the effect of overriding this 1983 action. Further, section 2.2-4317 of the Code of Virginia requires that "Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body." This provides independent authority for VDOT to serve as the responsible entity for establishing the prequalification process, and the VDOT procedures developed to document the process do not rise to the level of warranting a CTB policy on the matter.

Policy on Placing Utility Facilities Underground

Approved: 5/9/1996

WHEREAS, the Commonwealth Transportation Board at its April 15, 1993 meeting adopted a Policy on Placing Utility Facilities Underground in connection with projects constructed in accordance with Section 33.1-44 of the Code of Virginia, which primarily consists of the urban system of highways; and

WHEREAS, the Policy authorizes the Department to reimburse utility companies fifty (50) percent of the additional cost to place the utility facilities underground, from any locality's urban allocation, where the locality elects to have utility facilities placed underground and provided certain other criteria are met; and

WHEREAS, the Board determined that it was in the public's interest, in many urban areas, to place utility facilities underground in connection with transportation improvement projects in order to enhance the safety, economic and environmental impact of the project on the community; and

WHEREAS, the Commonwealth Transportation Board, in adopting a Policy on the urban system, determined that since the urban system funds were allocated to the individual localities, rather than on a statewide basis, the localities should be allowed the option of electing to place utility facilities underground in connection with transportation projects; and

WHEREAS, the Board, on September 16, 1993, modified the Policy to include the urban county of Arlington County; and

WHEREAS, the current Policy provides a cap on the maximum reimbursement by the Department at \$3,000,000 for any single project and, in certain localities, this cap has made it financially impractical for the localities to carry out a plan for undergrounding utility facilities.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby modifies Section 7.00 of the Policy on Placing Utility Facilities Underground, adopted on April 15, 1993, by raising the maximum reimbursement to utility companies from project funds for any Part B cost to \$5,000,000 on any projects.

Repeal of Existing State Noise Abatement Policy (24VAC 30-80) and Approval of Updated State Noise Abatement Policy

Approved: 6/15/2011

WHEREAS, in response to a perceived need for a single policy covering noise abatement, VDOT developed such a policy for consideration by the Commonwealth Transportation Board in 1988; and

WHEREAS, the Board approved the existing *State Noise Abatement Policy* (24VAC30- 80) at its August 8, 1988, meeting, to become effective January 4, 1989; and

WHEREAS, the Board approved revisions to the policy based on experience gained from application of the policy over many years, plus input from citizens and elected officials, at its November 21, 1996, meeting, to become effective January 1, 1997; and

WHEREAS, the Federal Highway Administration (FHWA) published a proposal in the Federal Register on September 17, 2009, to make revisions to its *Procedures for Abatement of Highway Traffic Noise and Construction Noise*, and solicited input from state DOTs in further development of a final rule, which was published in the *Federal Register* on July 13, 2010; and

Commented [GALA4]: ROW: This policy was adopted based on authority in Section 33.1-44 (recodified as § 33.2-348) of the Code of Virginia, which related to the CTB's authority to fund construction and improvement projects for the urban system of state highways and specifically provided limited funding for four localities relating to undergrounding utilities. Section 33.2-348 was repealed, effective July 1, 2016. The policy had been filed as an APA-exempt regulation, based upon the statute, and while the regulation was repealed, effective October 14, 2021 in conjunction with the repeal of § 33.2-348, the corresponding CTB policy was never formally rescinded.

Commented [GALA5]: Environmental: The current noise abatement program is based on federal requirements and to the extent there are changes or modifications to the program, they are designed to facilitate administration of the Noise Abatement Program and not change substantive requirements. Repeal of this Policy would be without substantive effect on the program as there is virtually no provision in this 2011 action that rises to the level of a policy. The substantive provisions of the Policy re quiet pavement and vegetative visual screening are redundant with Va. Code §33.2-276. The Policy was repealed as a regulation in 2011 and thus repeal of the 2011 action/Policy would also remove obsolete language relating to the Policy's status as a regulation. Finally, the *Highway Traffic Noise Impact Analysis Guidance Manual* has been further evaluated and determined to not meet the definition of a guidance document and repeal of this Policy action would ratify that determination. VDOT will continue to follow the Highway Traffic Noise Guidance Manual as approved by FHWA in accord with federal requirements. Per the Manual: "Highway traffic noise impact analysis, abatement procedures, criteria, coordination requirements, and reporting guidance contained herein are based on Title 23 of the Code of Federal Regulations, Part 772, the Federal Highway Administration's (FHWA) Procedures for Abatement of Highway Traffic Noise and Construction Noise, (23 CFR 772), which is included as Appendix C of this document. All transportation improvement projects developed in accordance with the Virginia Department of Transportation's (VDOT) guidelines shall conform to the mandates and guidance of FHWA"

Attachment A

WHEREAS, VDOT determined that the existing policy was obsolete due to the new rule, as well as changed business conditions since the policy was last amended; and

WHEREAS, an updated policy with detailed implementation procedures prepared in a separate guidance manual (the *Highway Traffic Noise Impact Analysis Guidance Manual*) was developed; and

WHEREAS, the FHWA gave formal approval to VDOT's updated *State Noise Abatement Policy* and *Highway Traffic Noise Impact Analysis Guidance Manual* by correspondence dated March 15, 2011.

NOW THEREFORE BE IT RESOLVED, that the Commonwealth Transportation Board hereby repeals the existing *State Noise Abatement Policy* (24VAC 30-80), and approves the following VDOT policy to govern the analysis of highway traffic noise:

STATE NOISE ABATEMENT POLICY

I. Policy.

The Federal Highway Administration (FHWA) regulates highway traffic noise impact analysis, abatement procedures, criteria, coordination requirements, and reporting guidance in Title 23 Code of Federal Regulations, Part 772 (23 CFR 772) and published guidance. All transportation improvement projects developed in conformance with the Virginia Department of Transportation's guidelines shall be in conformance with those federal highway traffic noise impact analysis and abatement procedures and guidance mandated by FHWA.

Whenever the Commonwealth Transportation Board or the Department plan for or undertake any highway construction or improvement project and such project includes or may include the requirement for the mitigation of traffic noise impacts, first consideration should be given to the use of noise reducing design and low noise pavement materials and techniques in lieu of construction of noise walls or sound barriers. Vegetative screening, such as the planting of appropriate conifers, in such a design would be utilized to act as a visual screen if visual screening is required.

II. Administration of State Noise Abatement Policy.

The Commonwealth Transportation Commissioner or his designee, on behalf of the Commonwealth Transportation Board, is authorized to issue administrative procedures and additional guidance as may be necessary to implement this policy.

The Chief Engineer, on behalf of the Commonwealth Transportation Board, is authorized to make the final determination on all noise abatement related issues and will consult with the FHWA when those determinations involve federal regulation, policy and guidance.

The Chief Engineer will brief the Commonwealth Transportation Board members on all proposed changes to the Highway Traffic Noise Impact Analysis Guidance Manual.

BE IT FURTHER RESOLVED, under authority granted by § 33.1-12 (7) of the Code of Virginia, that the Commonwealth Transportation Board also hereby approves the *Highway Traffic Noise Impact Analysis Guidance Manual*, which the Office of the Attorney General has determined meets the criteria to be classified as a "Guidance Document" under § 2.2-4001 of the Administrative Process Act.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board hereby directs VDOT to submit the regulatory action to comply with the regulatory and Guidance Document submission

Attachment A

requirements established by the *Code of Virginia*, Executive Order No. 14 (2010), and the State Registrar of Regulations, as appropriate, so that the action shall become effective on July 13, 2011.

High Volume Unpaved Road Program Policy Modification
Approved: 3/21/2018

WHEREAS, on June 18, 2014, the Commonwealth Transportation Board (the Board) established a policy and selection criteria for providing supplemental funding for High Volume Unpaved Roads, defined as unpaved roads carrying more than 500 vehicles per day; and

WHEREAS, it is recognized that there is a reduced number of high volume unpaved roads and the demand for the program has diminished since the program's inception; and

WHEREAS, the existing policy does not allow for flexibility to modify the annual allocations to the program; and

WHEREAS, the Board recognizes the need to adjust the existing policy so that annual allocations to the program may be adjusted commensurate to program needs;

NOW, THEREFORE BE IT RESOLVED, the Board adopts the following modified policy and criteria governing the selection of high volume (more than 500 vehicles per day) unpaved road projects for funding pursuant to §33.2-358(C):

1. The Board will set aside up to 10% of the CTB formula set-aside for paving unpaved roads carrying more than 50 vehicles per day [which equates to 0.5% of the total CTB formula set-aside pursuant to §33.2-358(C)] to fund projects on unpaved roads that carry more than 500 vehicles per day.
2. VDOT will solicit applications from counties on an annual basis to provide supplemental funding for providing a hard-surface on such unpaved roads.
3. The maximum request permitted under the program will be \$500,000 per locality, per fiscal year.
4. Projects will be prioritized for funding based on a technical score that considers traffic volume, project readiness, local funding, safety, and access to community facilities.
5. Once projects have been identified and prioritized in accordance with the foregoing process, the project list will be presented to the full Board for its consideration and approval.
6. The Commissioner of Highways is directed to establish administrative procedures to ensure adherence to and compliance with the provisions of this policy and legislative directive.

NOW, THEREFORE BE IT ALSO RESOLVED, any excess balance in the High Volume Unpaved Roads Program may be released so that the allocations may be redistributed to Counties with unpaved roads carrying more than 50 vehicles per day, in accordance with §33.2-358 and that the maximum request permitted under the program be increased to \$500,000 per locality, per year.

Commented [GALA6]: IID: The High Volume Unpaved Road Program no longer exists. The previous requirements from § 33.2-358(C) as outlined in the resolution sunsetted in 2020 and in accordance with the changes to the Code of Virginia, the program expired after the 2020 allocations.