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CHAPTER X.

ABANDONMENT AND DISCONTINUANCE OF HIGHWAYS AND ROADS.

**Drafting note: Articles 10 through 13 in Chapter 1 of existing Title 33.1 related to abandonment and discontinuance of highways and roads are relocated as a separate chapter, comprised of four articles. Throughout this chapter references to "local road authorities" have been stricken as obsolete and the accompanying references to "local governing bodies" are retained as current. References to "roads" in the primary or secondary state highway systems are updated to "highways" in keeping with changes made throughout this title. References to "public landings" are retained in a few specific instances where notice to the Department of Game and Inland Fisheries is required, otherwise such references are retained as "landings" so that they can be private or public. References to crossings refer to "rail crossings," "railway crossings," or "railroad crossings," so each crossing is now labeled as a "railroad crossing" for consistency and so that future expansion of light rail does not exclude conventional railroads. In existing Title 33.1, "roads," "public landings," and "crossings" are abandoned or discontinued. Therefore, in proposed Title 33.2, "highways," "roads," "public landings," and "railroad crossings" are abandoned or discontinued. These entities are discontinued as part of a Department-maintained highway system or abandoned as public highways, public landings, or public railroad crossings.**

Article ~~10~~ 1.

Abandonment and Discontinuance of ~~Roads~~ Highways in Primary State Highway System.

**Drafting note: Article 10 of Chapter 1 of existing Title 33.1 is relocated as Article 1 of this new chapter and a section providing chapter definitions is added.**

§ 33.2-XXX. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Abandonment" means that the public's right to use a public highway, public landing, or public crossing has been extinguished.

28 "Discontinuance" means that the Board has determined that a highway, landing, or  
29 crossing no longer serves the public convenience warranting its maintenance at public expense;  
30 it divests the Department from maintenance responsibilities. Discontinuance does not render a  
31 highway, landing, or crossing unavailable for public use.

32 **Drafting note: Definitions are taken from the meanings attributed to these words**  
33 **by this proposed chapter.**

34 § ~~33.1-144~~ 33.2-XXX. Discontinuance of ~~road~~ highway or ~~railway~~ railroad crossing as  
35 part of ~~State Highway System~~ primary state highway system.

36 In any case in which a section of a ~~road~~ highway is deemed by the Commissioner of  
37 Highways no longer necessary for the uses of the ~~State Highway System~~ primary state highway  
38 system, or when, in ~~heretofore or hereafter~~ laying out, constructing, or maintaining sections of  
39 ~~roads~~ highways in the ~~State Highway System~~ primary state highway system, a part of a ~~road~~  
40 highway has been or is straightened or the location of a part ~~thereof of it is~~ altered and a section  
41 of the ~~road~~ highway is deemed by the Commissioner of Highways no longer necessary for the  
42 uses of the ~~State Highway System or primary state highway system~~, the Commissioner of  
43 Highways, by and with the approval of the Board, may discontinue such section of the highway  
44 as a part of the primary state highway system. In addition, in any case in which an existing  
45 crossing by such ~~road~~ highway of the lines of a ~~railway~~ railroad company, or a crossing by the  
46 lines of a ~~railway~~ railroad company of such ~~road~~ highway is deemed by the Commissioner of  
47 Highways no longer necessary as a part of the ~~State Highway System~~ primary state highway  
48 system, the Commissioner of Highways, by and with the approval of the ~~Commonwealth~~  
49 ~~Transportation~~ Board, may discontinue such crossing as a part of the ~~State Highway System~~ the  
50 section of the road no longer deemed necessary for the uses of the State Highway System, or  
51 such crossing by the road of the lines of a railway company, or crossing by the lines of the  
52 railway company of the road, as the case may be, but discontinuance primary state highway  
53 system. Discontinuance under this section ~~shall~~ does not ~~operate as~~ constitute an abandonment

54 of such ~~road~~ highway as a public ~~road~~ highway or such crossing as a public crossing unless the  
55 procedure ~~thereon~~ conforms to § ~~33.1-145~~ 33.2-XXX.

56 The opening of the new section of ~~road~~ highway by the Commissioner of Highways and  
57 the entry by the ~~Commonwealth Transportation~~ Board upon its minutes of its approval of the  
58 discontinuance of the section of the ~~road~~ highway or the railroad crossing, ~~as the case may be,~~  
59 ~~and its approval thereof~~, shall be sufficient to constitute such discontinuance.

60 **Drafting note: Technical changes are made, including updating terminology for**  
61 **"road" to "highway" and for "State Highway System" to "primary state highway**  
62 **system."**

63 § ~~33.1-145~~ 33.2-XXX. Abandonment of ~~road~~ highway or railroad crossing in the  
64 primary state highway system; procedure.

65 A. The Commissioner of Highways either on his own motion or ~~on~~ upon petition of any  
66 interested landowner may ~~also~~ cause any section of a ~~road~~ highway of the ~~State Highway~~  
67 System primary state highway system, or any crossing by such ~~road~~ highway of the lines of a  
68 railway railroad company, or crossing by the lines of a ~~railway~~ railroad company of such ~~road~~  
69 highway, to be abandoned altogether as a public ~~road~~ highway or as a public crossing, ~~as the~~  
70 ~~case may be~~, by complying substantially with the ~~following~~ procedure: provided in this section.

71 B. The Commissioner of Highways or any interested landowner may file application  
72 with the ~~Commonwealth Transportation~~ Board, setting out the section of the ~~road~~ highway or  
73 the railroad crossing sought to be abandoned as a public ~~road~~ highway or public railroad  
74 crossing. The ~~Commonwealth Transportation~~ Board, ~~upon the filing of such application~~, shall  
75 give notice ~~thereof by (a) of the filing of the application (i) by~~ posting a notice of such  
76 application at least three days before the first day of a regular term of the circuit court, at the  
77 front door of the courthouse of the county in which the section of the ~~road~~ highway or railroad  
78 crossing sought to be abandoned as a public ~~road~~ highway or public railroad crossing is located,  
79 or ~~if it be~~ the section of the highway or the railroad crossing is located partly in two or more  
80 counties, at the front door of the courthouse of each ~~of such counties~~ county, or ~~(b) (ii) by~~

81 ~~publication publishing a notice of such application~~ in two or more issues of ~~some a~~ newspaper  
82 published in the county, or one of ~~them, and the counties in which the section of the highway or~~  
83 ~~the crossing is located. The Board~~ shall also ~~mail send~~ by registered mail a notice of the  
84 application to the ~~board of supervisors or other~~ governing body of the county or counties. If  
85 such ~~road highway~~ or ~~railroad~~ crossing ~~be is~~ in a town ~~with a population~~ of 3,500 ~~population~~ or  
86 less, ~~the Board shall give~~ notice ~~shall be given~~ to the governing body of the town in the same  
87 manner as notice is required to be given to the governing body of the county in which the town  
88 is located.

89 ~~Upon petition of C. If~~ one or more landowners in the county or counties affected by such  
90 proposed abandonment, or ~~of the board of supervisors or other~~ governing body of ~~either of such~~  
91 ~~counties, or upon petition of the governing body of any such a county or~~ town in which the ~~road~~  
92 ~~highway~~ or ~~railroad~~ crossing is located, ~~filed files a petition~~ with the ~~Commonwealth~~  
93 ~~Transportation~~ Board within ~~thirty 30~~ days after notice is posted or published and mailed as  
94 ~~aforesaid, but not thereafter provided in this section,~~ the ~~Commonwealth Transportation~~ Board  
95 ~~or a representative thereof~~ shall hold a public hearing in ~~the county or~~ one of the counties for ~~the~~  
96 consideration of the application and shall give notice of the time and place of the hearing by  
97 ~~publishing such information in~~ at least two ~~publications thereof issues~~ in ~~some a~~ newspaper  
98 ~~published having general circulation~~ in the county, or one of ~~them, or having general circulation~~  
99 ~~therein the counties~~ and ~~also mail by mailing~~ notice of the hearing to the ~~board of supervisors or~~  
100 ~~other~~ governing body of the county or counties, and ~~if applicable~~ to the ~~town council governing~~  
101 ~~body~~ of the town, in which the ~~road highway or railroad crossing~~ is located.

102 ~~D. If a petition be for a public hearing is~~ not filed ~~as aforesaid for a public hearing as~~  
103 ~~provided in this section,~~ or if after a public hearing is held ~~a majority of~~ the ~~Commonwealth~~  
104 ~~Transportation~~ Board, ~~or a majority thereof,~~ is satisfied that no public necessity exists for the  
105 continuance of the section of ~~road highway~~ as a public ~~road, highway~~ or the ~~railroad~~ crossing as  
106 a public ~~railroad~~ crossing, or that the welfare of the public would be served best by abandoning  
107 the section of ~~road highway~~ or the ~~railroad~~ crossing, as a public ~~road highway~~ or ~~public railroad~~

108 crossing, ~~it the Board~~ shall ~~enter~~ (i) within four months ~~next after the thirty days of the 30-day~~  
109 ~~period~~ during which notice was posted where no petition for a public hearing was filed, or (ii)  
110 within four months ~~next~~ after the public hearing ~~enter~~ an order on its minutes abandoning the  
111 section of ~~road highway~~ as a public ~~road highway~~ or the ~~railroad~~ crossing as a public ~~railroad~~  
112 crossing, and ~~thereupon with that order~~ the section of ~~road highway~~ shall cease to be a public  
113 ~~road highway~~, unless ~~taken over by~~ the ~~board of supervisors or other local~~ governing body ~~or~~  
114 ~~local road authorities takes control~~ as ~~hereinafter~~ provided ~~in this article~~, or the ~~railroad~~ crossing  
115 shall cease to be a public ~~railroad~~ crossing; ~~or if. If~~ the Board ~~be is~~ not so satisfied, it shall enter  
116 ~~an order dismissing the application~~ within the ~~specified applicable~~ four months ~~an order~~  
117 ~~dismissing the application provided in this subsection.~~

118 E. In considering the abandonment of any section of ~~road highway~~ under the provisions  
119 of this section, due consideration shall be given to the historic value, if any, of such ~~road~~  
120 ~~highway~~.

121 **Drafting note: The language is updated and technical changes are made.**  
122 **References to "the Commonwealth Transportation Board or its representative" are**  
123 **updated to remove the reference to a "representative" because reference to agencies or**  
124 **Secretaries are understood to have actions carried out by designees or representatives.**

125 ~~§ 33.1-145.1 33.2-XXX.~~ Grade crossing closing and safety.

126 A. It is the public policy of the Commonwealth ~~of Virginia~~ to enhance public safety by  
127 establishing safe ~~highway/rail highway-rail~~ grade crossings; ~~to~~ consolidate and close unsafe,  
128 unnecessary, or redundant crossings; ~~and~~ to limit the establishment of new crossings. The  
129 ~~Commonwealth Transportation~~ Board has the authority to close public ~~highway/rail highway-~~  
130 ~~rail~~ grade crossings on ~~the system all systems~~ of ~~state~~ highways for which it has responsibility.

131 B. The Commissioner ~~of Highways~~ on his own motion or by request of any interested  
132 landowner, railroad corporation, ~~county board of supervisors~~, or ~~other local~~ governing body may  
133 petition the ~~Commonwealth Transportation~~ Board to close ~~the highway/rail a highway-rail~~ grade  
134 crossing as a public ~~road crossing~~.

135 ~~The C. Prior to petitioning the Board to close a highway-rail grade crossing, the~~  
136 Commissioner of Highways shall, ~~prior to petitioning the Commonwealth Transportation Board,~~  
137 conduct a traffic engineering study to determine the validity of closing the crossing. The traffic  
138 engineering study shall consider all factors, including ~~but not be limited to:~~ (i) the number of  
139 freight and passenger trains passing the crossing and their timetable speeds, (ii) the distance to  
140 an alternate crossing, (iii) the availability of alternate access, (iv) the crossing's accident history  
141 during the five-year period immediately prior to the study, (v) the number of vehicles per day  
142 using the crossing, (vi) the posted speed limit at the crossing, (vii) the type of warning devices  
143 present at the crossing, (viii) the alignment of the roadway and railroad and their angle of  
144 intersection, (ix) the number of trucks per day carrying hazardous materials through the  
145 crossing, (x) the number of vehicles per day carrying passengers for hire through the crossing,  
146 (xi) the number of school buses per day using the crossing, and (xii) the use of the crossing by  
147 emergency vehicles.

148 D. The results of the traffic engineering study shall be made public in accordance with  
149 the procedures set forth in § ~~33.1-145~~ 33.2-XXX. The Commissioner of Highways shall present  
150 his findings and recommendations to the ~~Commonwealth Transportation Board,~~ and the Board  
151 shall decide what actions to ~~be taken~~ take regarding the ~~crossing(s)~~ railroad crossing at issue.

152 **Drafting note: Technical changes are made, including removing the phrase "but**  
153 **not be limited to" based on § 1-218, which states: "'Includes' means includes, but not**  
154 **limited to." A reference to closing a "crossing" as a "public road" in subsection B is**  
155 **changed to closing the "crossing" as a "public crossing" since it is unlikely that a crossing**  
156 **is closed as a road.**

157 § ~~33.1-146~~ 33.2-XXX. Effect of ~~such~~ abandonment.

158 In the case of ~~the~~ abandonment of ~~any a~~ section of ~~road highway~~ or ~~any a~~ railroad  
159 crossing ~~under the provisions of this article as a that is~~ part of the ~~State Highway System~~  
160 primary state highway system under the provisions of this article, such section of ~~road highway~~  
161 or such railroad crossing shall not thereafter be a public ~~road highway~~ or public railroad

162 crossing ~~as the case may be~~, unless conveyed to the county or town and subject to the authority  
163 of the ~~board of supervisors or other local~~ governing body ~~or other local road authorities, or town~~  
164 ~~council, as provided by law~~. In the case of proceedings for ~~the~~ abandonment of any section of  
165 road highway, not including a railroad crossing situated less than one and one-half miles from  
166 another public crossing over the same railroad, as a public road highway; under the provisions  
167 of this article, the ~~board of supervisors or other local~~ governing body ~~or the local road~~  
168 ~~authorities, as the case may be~~, insofar as such section of road highway is located within the  
169 county of such ~~board of supervisors or local road authorities, governing body~~, shall have  
170 authority to take over such section of road highway, not including the railroad crossing, and  
171 maintain it as a public ~~road, as provided by law; provided, however~~ highway. However, the  
172 ~~board of supervisors or other local~~ governing body ~~or local road authorities, as the case may be~~,  
173 ~~shall have entered is required to enter upon its minutes~~ an order or resolution to that effect ~~upon~~  
174 ~~its minutes~~ and ~~shall have given to give~~ notice thereof to the Commissioner of Highways within  
175 thirty 30 days from the posting or publishing and ~~the~~ mailing of the notice of the application for  
176 the abandonment of such section of road highway as a public ~~road, highway~~ as ~~hereinbefore~~  
177 provided in this article.

178 **Drafting note: Technical changes.**

179 § ~~33.1-147 33.2-XXX~~. Appeal to circuit court.

180 A. Any one or more of the ~~petitioners landowners who filed a petition, or the board of~~  
181 ~~supervisors, or other~~ governing body of any county or ~~town council of the~~ town in which the  
182 section of road highway or the railroad crossing is wholly or partly located, or the  
183 Commissioner of Highways may within thirty 30 days from the entry of the order by the  
184 ~~Commonwealth Transportation~~ Board, ~~but not afterwards~~, appeal from the order to the circuit  
185 court of the county in which the section of road highway or the railroad crossing, or the major  
186 portion thereof, sought to be abandoned; under § ~~33.1-145, 33.2-XXX~~ is located. ~~Where~~ If the  
187 ~~Commonwealth Transportation~~ Board fails to enter an order pursuant to § ~~33.1-145 33.2-XXX~~,  
188 such person or persons named in this section ~~shall~~ may appeal to the appropriate circuit court

189 within ~~thirty~~ 30 days from such ~~nonentry, but not afterwards, have a right of appeal to the~~  
190 ~~appropriate circuit court failure~~. Such ~~appeals~~ appeal shall be ~~by petition~~ filed by petition in the  
191 clerk's office of such court, setting out the order appealed from or the cause appealed from  
192 where no order was entered and the grounds of such appeal. Upon the filing of such petition, the  
193 clerk of the circuit court shall docket the appeal, giving it a preferred status, ~~and if~~. If the appeal  
194 ~~be is~~ by any of the landowners who filed a petition with the ~~Commonwealth Transportation~~  
195 Board for a public hearing ~~shall have~~, notice of such appeal shall be served upon the attorney for  
196 the Commonwealth and the Commissioner of Highways, ~~and if~~. If the appeal ~~be is~~ by the ~~board~~  
197 ~~of supervisors or other local~~ governing body or the Commissioner of Highways, notice ~~thereof~~  
198 of such appeal shall be served upon the landowners who filed petition with the ~~Commonwealth~~  
199 ~~Transportation~~ Board for a public hearing. No such appeal shall be tried by the court within ~~ten~~  
200 10 days after notice is given, as ~~hereinabove~~ provided, in this section unless such notice ~~be is~~  
201 waived. The circuit court shall hear the matter de novo with further right of appeal as provided  
202 by ~~the general~~ law. Upon the hearing of the appeal, the court shall ascertain and by its order  
203 determine whether public necessity exists for the continuance of the section of ~~road highway~~ or  
204 the railroad crossing as a public ~~road highway~~ or public railroad crossing; or whether the  
205 welfare of the public will be served best by abandoning the section of the ~~road highway~~ or the  
206 ~~said railroad~~ crossing as a public ~~road highway~~ or public railroad crossing and shall enter its  
207 order accordingly. The clerk of the court shall certify a copy of the order of the court to the  
208 ~~Commonwealth Transportation~~ Board.

209 B. Upon any such appeal, if it ~~shall appear~~ appears to the court that by the abandonment  
210 of such section of ~~road highway~~ or such railroad crossing as a public ~~road highway~~ or public  
211 railroad crossing any party to such appeal would be deprived of access to a public ~~road highway~~,  
212 the court may cause the ~~railway railroad~~ company ~~and or~~ the ~~board of supervisors or other local~~  
213 governing body, ~~or either~~, to be made parties to the proceedings, if not already parties, and may  
214 enter such orders as seem ~~to it~~ just and proper for keeping open such section of ~~road highway~~ or

215 such railroad crossing for the benefit of such party or parties ~~as would by such abandonment be~~  
216 ~~deprived of access to a public road.~~

217 C. The provisions of this section shall not apply to any discontinuance of a portion of the  
218 ~~State Highway System~~ primary state highway system under § ~~33.1-144~~ 33.2-XXX.

219 **Drafting note: Technical changes.**

220 § ~~33.1-148~~ 33.2-XXX. Alternative procedure for abandonment of old ~~road~~ highway or  
221 railroad crossing to extent of alteration.

222 The Commissioner of Highways may declare any ~~road~~ highway in the ~~State Highway~~  
223 ~~System~~ primary state highway system or any ~~road~~ highway in the ~~State Highway System~~  
224 primary state highway system containing a ~~railway~~ highway-rail grade crossing  
225 abandoned when (i) it has been or is altered and a new ~~road, which~~ highway that serves the same  
226 ~~citizens users~~ as the old, ~~road~~ highway is constructed ~~in lieu thereof as a replacement~~ and  
227 approved by the Commissioner of Highways or (ii) the Chief Engineer of the Department ~~of~~  
228 ~~Transportation~~ recommends that it is appropriate in connection with the completion of a  
229 construction or maintenance project. The old ~~road and/or the~~ highway or the public crossing  
230 may be abandoned to the extent of such alteration, but no further, by the entry by the  
231 Commissioner of Highways of such abandonment upon the records of the Department ~~of~~  
232 ~~Transportation~~.

233 **Drafting note: Technical changes.**

234 § ~~33.1-149~~ 33.2-XXX. Conveying sections of ~~roads~~ highways or other property no  
235 longer necessary.

236 A. Whenever a ~~road~~ highway or a ~~portion thereof~~ section of a highway has been  
237 abandoned in accordance with the provisions of § ~~33.1-145~~ 33.2-XXX or ~~33.1-148~~ 33.2-XXX  
238 and is deemed by the Commissioner of Highways no longer necessary for the uses of the ~~State~~  
239 ~~Highway System~~ primary state highway system, the Commissioner of Highways shall so certify  
240 in writing and ~~is authorized to may~~ execute, in the name of the Commonwealth, a deed or deeds  
241 conveying such section or sections of ~~road~~ highway, either for ~~a~~ consideration or in exchange

242 for other lands that may be necessary for the uses of the ~~State Highway System~~ primary state  
243 highway system. ~~But before~~ Before any such deed either for the sale or exchange of land is  
244 executed conveying any section of a highway ~~upon or~~ along which any person ~~or persons reside~~  
245 resides, ~~notice shall be given by~~ the Commissioner of Highways shall give notice to the  
246 governing ~~body~~ bodies of the county and town and to the owner or owners of the land upon  
247 which such person ~~or persons reside~~ resides of the intention to convey the section of ~~road~~  
248 highway and if, If after a reasonable notice of such intention, any such landowner or local  
249 governing body so requests, a hearing shall be ordered by the Commissioner of Highways as  
250 ~~now provided by law in this article~~. If, upon such hearing, it is ~~made to appear~~ determined that  
251 such section of ~~road~~ highway should be left open for the reasonable convenience of such  
252 landowner or the public, then such section of ~~road~~ highway shall not be conveyed. ~~But no~~ No  
253 such hearing shall be held if such ~~road~~ highway was abandoned under § ~~33.1-145~~ 33.2-XXX.

254 B. When real estate acquired incidental to the construction, reconstruction, alteration,  
255 maintenance, and repair of the ~~State Highway System~~ which primary state highway system that  
256 does not constitute a section of the public ~~road~~, highway is deemed by the Commissioner of  
257 Highways no longer necessary for the uses of the ~~State Highway System~~ primary state highway  
258 system, the Commissioner of Highways shall so certify in writing and ~~is authorized to~~ may  
259 execute, in the name of the Commonwealth, a deed or deeds conveying such real estate, interest  
260 therein, or any portion thereof, either for ~~a~~ consideration or in exchange for other lands that may  
261 be necessary for the uses of the ~~State Highway System~~ primary state highway system.

262 C. Upon petition of a local governing body, the ~~Commonwealth Transportation~~ Board  
263 may transfer real estate acquired incidental to the construction, reconstruction, alteration,  
264 maintenance, or repair of the ~~State Highway System~~ which primary state highway system that  
265 constitutes a section of public ~~road~~, highway to the local governing body, and upon such  
266 transfer, such section of ~~road~~ highway shall cease being a part of the ~~State Highway System~~  
267 primary state highway system.

268 **Drafting note: Technical changes.**

269 Article ~~11~~ 2.

270 Abandonment and Discontinuance of ~~Roads~~ Highways in Secondary State Highway System.

271 **Drafting note: Article 11 of existing Chapter 1 of Title 33.1 is relocated to this**  
272 **proposed Chapter XXX as Article 2.**

273 § ~~33.1-150~~ 33.2-XXX. Discontinuance of ~~road~~ highway, ~~public~~ landing, or ~~railway~~  
274 railroad crossing as part of secondary state highway system; procedures.

275 A. For the purposes of this article, "landing" means a place on a river or other navigable  
276 body of water for loading or unloading goods or for the reception and delivery of travelers; the  
277 terminus of a highway on a river or other navigable body of water for loading or unloading  
278 goods or for the reception and delivery of travelers; or a place for loading or unloading  
279 watercraft, but not a harbor for watercraft.

280 ~~On~~ B. Upon petition of the governing body of any county in which a ~~road~~ highway,  
281 ~~public~~ landing, or railroad crossing is located or upon petition of the ~~town council~~ governing  
282 body of a town ~~having with~~ a population of 3,500 or less, or on its own motion, the Board may  
283 discontinue any ~~road~~ highway, ~~public~~ landing, or railroad crossing in the secondary state  
284 highway system as a part thereof in any case in which the Board deems such ~~road~~ highway,  
285 ~~public~~ landing, or railroad crossing not required for public convenience. If the Board on its own  
286 motion desires to discontinue any such ~~road~~ highway, ~~public~~ landing, or railroad crossing,  
287 ~~notice the Board~~ shall ~~be given~~ give notice to the affected governing body ~~of the county and~~  
288 ~~town~~ at least ~~thirty~~ 30 days prior to ~~any such~~ discontinuance ~~of a road or crossing under this~~  
289 ~~section~~. In addition, in cases where only a ~~road~~ highway or ~~public~~ landing or the maintenance  
290 thereof is to be discontinued, the Board shall give notice of such intention ~~shall be given~~ to the  
291 public; at least ~~thirty~~ 30 days prior to such action by ~~one publication~~ publishing such notice in at  
292 least one issue in a newspaper having general circulation in the county in which the affected  
293 road highway or landing is situated and, where practicable, by a registered letter to each  
294 landowner whose property abuts the section of ~~road~~ highway or ~~public~~ landing to be  
295 discontinued; ~~for~~. For the purposes of this section, the ~~representative of the~~ Board ~~charged with~~

296 ~~giving notice~~ may, where practicable, rely upon the tax records of the county to determine the  
297 names and addresses of such owners. These additional notice provisions shall not be required in  
298 cases where the section of ~~road highway~~ to be discontinued has been replaced by a new ~~road~~  
299 ~~highway~~ serving the same ~~citizens users~~. If the governing body of any county or town requests a  
300 hearing, or upon petition of any landowner whose property abuts a ~~road highway~~ or ~~public~~  
301 ~~landing which that~~ is to be discontinued, the Board, ~~or a representative thereof~~, shall hold a  
302 hearing in the county in which the ~~road highway, public~~ landing, or ~~railroad~~ crossing is located  
303 in order to ascertain whether or not such ~~road highway, public~~ landing, or ~~railroad~~ crossing  
304 should be discontinued. From the finding of the Board, an appeal shall lie to the circuit court of  
305 the county in which such ~~road highway, public~~ landing, or ~~railroad~~ crossing is located and the  
306 procedure thereon shall conform to the procedure prescribed in § ~~33.1-147 33.2-XXX~~. The  
307 jurisdiction and procedure for abandonment of ~~roads highways~~ and ~~public~~ landings discontinued  
308 as parts of the secondary ~~state highway~~ system in accordance with this article shall remain in the  
309 local ~~road authorities governing bodies~~.

310 ~~B. C.~~ In cases where the Chief Engineer of the Department ~~of Transportation~~  
311 recommends that it is appropriate in connection with the completion of a construction or  
312 maintenance project to discontinue any ~~road highway, public~~ landing, or ~~railroad~~ crossing in the  
313 secondary ~~state highway~~ system, the Commissioner of Highways may discontinue such ~~road~~  
314 ~~highway, public~~ landing, or ~~railroad~~ crossing as he deems proper. The entry by the  
315 Commissioner ~~of Highways~~ upon the records of the Department ~~of Transportation~~ of the  
316 discontinuance shall be sufficient to constitute such discontinuance.

317 **Drafting note: Technical changes. The definition of "landing" is moved here from**  
318 **existing § 33.1-151 in order to be set out at the beginning of the article to which the**  
319 **definition applies. The definition has been updated for consistency and the term**  
320 **"watercraft" has been substituted for "boats." References to "the Commonwealth**  
321 **Transportation Board or its representative" are updated to remove the reference to a**

322 "representative" because reference to agencies or Secretaries are understood to have  
323 actions carried out by designees or representatives.

324 § ~~33.1-151~~ 33.2-XXX. Abandonment of ~~road~~ highway, landing, or railroad crossing;  
325 procedure.

326 A. The governing body of any county on its own motion or upon petition of any  
327 interested landowner may cause any section of the secondary state highway system ~~of highways,~~  
328 or any crossing by the ~~road~~ highway of the lines of a ~~railway~~ railroad company, or crossing by  
329 the lines of a ~~railway~~ railroad company of the ~~road~~ highway, deemed by it to be no longer  
330 necessary for the uses of the secondary state highway system ~~of highways,~~ to be abandoned  
331 altogether as a public ~~road~~ highway, a public landing, or ~~as a public~~ railroad crossing, ~~as the~~  
332 ~~case may be,~~ by complying substantially with the ~~following~~ procedure: provided in this section.

333 B. The governing body of the county shall give notice of its intention to abandon any  
334 such ~~road~~ highway, landing, or railroad crossing ~~by (a) (i) by~~ posting a notice of such  
335 ~~application~~ intention at least three days before the first day of a regular term of the circuit court,  
336 at the front door of the courthouse of the county in which the section of the ~~road~~ highway,  
337 landing, or railroad crossing sought to be abandoned as a public ~~road~~ highway, public landing,  
338 or public railroad crossing is located, or ~~(b) (ii) by~~ posting notice in at least three places on and  
339 along the ~~road~~ highway, landing, or railroad crossing sought to be abandoned for at least ~~thirty~~  
340 30 days, and, in either case, by ~~publication~~ publishing notice of its intention in two or more  
341 issues of ~~some a~~ newspaper having general circulation in the county, ~~and the.~~ In addition, the  
342 governing body of the county shall ~~also~~ give notice of its intention to abandon such ~~road~~  
343 highway, landing, or railroad crossing to the ~~Commonwealth Transportation~~ Board or the  
344 Commissioner ~~thereof of Highways~~. In any case in which the ~~road~~ highway, landing, or railroad  
345 crossing proposed to be abandoned lies in two or more counties, the governing bodies ~~concerned~~  
346 of such counties shall not abandon such ~~road~~ highway, landing, or railroad crossing unless and  
347 until ~~the all affected~~ governing bodies ~~of the other county or counties in which such road,~~  
348 ~~landing, or crossing is located~~ agree ~~thereto; the.~~ The procedure in such cases shall conform

349 mutatis mutandis to the procedure prescribed for the abandonment of a ~~road~~ highway, landing,  
350 or railroad crossing located entirely within a county.

351 When the governing body of ~~the a~~ county gives notice of intention to abandon ~~any such~~  
352 a public landing, the governing body shall also give such notice to the Department of Game and  
353 Inland Fisheries.

354 ~~Upon petition of C. If~~ one or more landowners in the county whose property abuts ~~on~~ the  
355 ~~road~~ highway, landing, or railroad crossing proposed to be abandoned, or, if only a section of a  
356 ~~road~~ highway, landing, or railroad crossing is proposed to be abandoned, whose property abuts  
357 ~~on~~ such section ~~of the road, landing, or crossing,~~ or ~~of~~ the ~~Commonwealth Transportation~~ Board  
358 or ~~of~~ the Department of Game and Inland Fisheries, in the case of a public landing, ~~filed~~ files a  
359 petition with the governing body of the county within ~~thirty~~ 30 days after notice is posted and  
360 published as ~~aforesaid but not thereafter provided in this section,~~ the governing body of the  
361 county shall hold a public hearing on the proposed abandonment and shall give notice of the  
362 time and place of the hearing by publishing such information in at least two ~~publications thereof~~  
363 issues in ~~some a~~ newspaper having general circulation in the county and shall also give notice  
364 ~~thereof~~ to the ~~Commonwealth Transportation~~ Board or, if a public landing is sought to be  
365 abandoned, to the Department of Game and Inland Fisheries.

366 D. If a petition ~~be for a public hearing is~~ not filed ~~as aforesaid for a public hearing as~~  
367 provided in this section, or if after a public hearing is held, the governing body of the county is  
368 satisfied that no public necessity exists for the continuance of the section of the secondary ~~road~~  
369 highway as a public ~~road, highway~~ or the railroad crossing as a public railroad crossing, or the  
370 landing as a public landing, or that the safety and welfare of the public would be served best by  
371 abandoning the section of ~~road~~ highway, the landing, or the railroad crossing, as a public ~~road~~  
372 highway, public landing, or public railroad crossing, ~~it the governing body of the county~~ shall  
373 enter (i) within four months ~~next after the thirty days of the 30-day period~~ during which notice  
374 was posted where no petition for a public hearing was filed, or (ii) within four months ~~next~~ after  
375 the public hearing enter an order on its minutes abandoning the section of ~~road~~ highway as a

376 public ~~road~~ highway, or the landing as a public landing, or the railroad crossing as a public  
377 railroad crossing ~~as the case may be~~, and ~~thereupon with that order~~ the section of ~~road~~ highway  
378 shall cease to be a public ~~road~~ highway, ~~or~~ a public landing, or a public railroad crossing, ~~as the~~  
379 ~~case may be, or if. If~~ the governing body ~~be is~~ not so satisfied, it shall dismiss the application  
380 within the ~~specified applicable~~ four months provided in this subsection.

381 E. A finding by the governing body of a county that a section of the secondary state  
382 highway system ~~of highways~~ is no longer necessary for the uses of the secondary state highway  
383 system may be made if the following conditions exist:

384 A.1. The ~~road~~ highway is located within a residence district as ~~the latter is~~ defined in §  
385 46.2-100;

386 B.2. The residence district is located within a county having a density of population  
387 exceeding 1,000 per square mile;

388 C.3. Continued operation of the section of ~~road~~ highway in question constitutes a threat  
389 to the public safety and welfare; and,

390 D.4. Alternate routes for use after abandonment of the ~~road~~ highway are readily  
391 available.

392 F. In considering the abandonment of any section of ~~road~~ highway under the provisions  
393 of this section, due consideration shall be given to the historic value, if any, of such ~~road~~  
394 highway.

395 G. Any order of abandonment issued in compliance with this section shall give rise in  
396 subsequent proceedings, if any, to a presumption of adequate justification for the abandonment.

397 ~~For the purposes of §§ 33.1-150 through 33.1-154, "landing" shall mean a place on a~~  
398 ~~river or other navigable body of water for loading or unloading goods, or for the reception and~~  
399 ~~delivery of passengers; the terminus of a road on a river or other navigable water, for the use of~~  
400 ~~travelers and the loading and unloading of goods; a place for loading or unloading boats, but not~~  
401 ~~a harbor for them.~~

402 ~~However, no H. No~~ public landing shall be abandoned unless the Department of Game  
403 and Inland Fisheries shall, by resolution, concur in such abandonment.

404 **Drafting note: Technical changes. The definition of "landing" found in this section**  
405 **is moved to the beginning of the section replacing existing § 33.1-150, the first of the**  
406 **consecutive sections to which the definition applies.**

407 § ~~33.1-152~~ 33.2-XXX. Appeal to circuit court.

408 Any one or more of the landowners whose property abuts ~~on~~ the ~~road~~ highway, landing,  
409 or railroad crossing proposed to be abandoned, or, if only a section of a ~~road~~ highway, landing,  
410 or railroad crossing is proposed to be abandoned, whose property abuts ~~on~~ such section of the  
411 ~~road~~ highway, landing, or railroad crossing, and who petitioned for a public hearing under §  
412 ~~33.1-151~~, 33.2-XXX or the Commissioner of Highways, or, if a public landing is ~~involved~~  
413 ~~proposed to be abandoned~~, the Director of the Department of Game and Inland Fisheries, may  
414 within ~~thirty~~ 30 days from the entry of the order by the governing body, ~~but not afterwards, of~~  
415 the county appeal from the order to the circuit court of the county in which the section of ~~road~~  
416 highway, the public landing, or the railroad crossing sought to be abandoned under § 33.2-XXX  
417 [§ 33.1-151] is located. Where the governing body of the county fails to enter an order pursuant  
418 to § ~~33.1-151~~ 33.2-XXX, such person or persons named in this section shall within ~~thirty~~ 30  
419 days from such ~~nonentry, but not afterwards, failure~~ have a right of appeal to the appropriate  
420 circuit court. Such ~~appeals~~ appeal shall be ~~by petition~~ filed by petition in the clerk's office of  
421 such court, setting out the order appealed from or the cause appealed from where no order was  
422 entered and the grounds of such appeal. Upon the filing of such petition, the clerk of the circuit  
423 court shall docket the appeal, giving it a preferred status, and if the appeal ~~be is~~ by any of the  
424 landowners who filed a petition with the governing body of the county for a public hearing ~~shall~~  
425 ~~have~~, notice of such appeal shall be served upon each member of the governing body of the  
426 county pursuant to § 8.01-300 and either the Commissioner of Highways or the Director of the  
427 Department of Game and Inland Fisheries, as applicable, and if the appeal ~~be is~~ by either the  
428 Commissioner of Highways or the Director of the Department of Game and Inland Fisheries,

429 notice ~~thereof of such appeal~~ shall be served upon the governing body of the county and the  
430 landowners who filed petition with the governing body of the county for a public hearing. No  
431 such appeal shall be tried by the court within ~~ten 10~~ days after notice is given, as ~~hereinabove~~  
432 provided, in this section unless such notice ~~be is~~ waived. The circuit court shall decide the  
433 appeal based upon the record and upon such other evidence as may be presented by the parties.  
434 Upon the hearing of the appeal, the court shall ascertain and by its order determine whether  
435 adequate justification exists for the decision of the governing body of the county that public  
436 necessity exists for the continuance of the section of ~~road highway, public~~ landing, or the  
437 railroad crossing as a public ~~road highway~~, public landing, or public railroad crossing; or ~~that~~  
438 whether the welfare of the public will be served best by abandoning the section of the ~~road~~  
439 highway, public landing, or the ~~said railroad~~ crossing as a public ~~road highway, public landing,~~  
440 or public railroad crossing and shall enter its order accordingly.

441       Upon any such appeal, if it ~~shall appear~~ appears to the court that by the abandonment of  
442 such section of ~~road highway, public~~ landing, or ~~such railroad~~ crossing as a public ~~road~~  
443 highway, public landing, or public railroad crossing any party to such appeal would be deprived  
444 of access to a public ~~road highway~~, the court may cause the ~~railway railroad~~ company and the  
445 governing body of the county, or either, to be made parties to the proceedings, if not already  
446 parties, and may enter such orders as seem ~~to it~~ just and proper for keeping open such section of  
447 road highway, public landing, or ~~such railroad~~ crossing for the benefit of such party or parties ~~as~~  
448 ~~would by such abandonment be deprived of access to a public road.~~

449       **Drafting note: Technical changes.**

450       § ~~33.1-152.1 33.2-XXX~~. Permissible uses by counties of certain discontinued secondary  
451 ~~system~~ highways.

452       Whenever a secondary ~~system~~ highway is discontinued under § ~~33.1-150 33.2-XXX~~, the  
453 highway shall continue to be available for use by the public as a road highway, unless it has  
454 been abandoned pursuant to this ~~title chapter~~ or its use has been modified by an ordinance  
455 adopted pursuant to this section. The ~~county~~ governing body of the county may by ordinance

456 provide for use of a discontinued highway for any of the following purposes: (i) hiking or  
457 bicycle trails and paths or other nonvehicular transportation and recreation—~~purposes~~; (ii)  
458 greenway corridors for resource protection and biodiversity enhancement, with or without  
459 public ingress and egress; and (iii) access to historic, cultural, and educational sites.

460 **Drafting note: Technical changes.**

461 ~~§ 33.1-153. Effect of abandonment.~~

462 ~~In case of the abandonment of any section of road, public landing, or any crossing under~~  
463 ~~the provisions of this article as a part of the secondary system of highways, such section of road,~~  
464 ~~public landing, or such crossing, shall not remain a public road, public landing, or crossing.~~

465 **Drafting note: This section is deleted as unnecessary and repetitive of the intentions**  
466 **of this chapter.**

467 ~~§ 33.1-155~~ 33.2-XXX. Alternative procedure for abandonment of old ~~road~~ highway or  
468 crossing to extent of alteration.

469 The Commissioner of Highways may declare any ~~road~~ highway in the secondary state  
470 highway system or any ~~road~~ highway in the secondary state highway system containing a  
471 ~~railway~~ highway highway-rail grade crossing abandoned when (i) it has been or is altered and a  
472 new ~~road~~ which highway that serves the same ~~citizens~~ users as the old ~~road~~ highway is  
473 constructed ~~in lieu thereof as a replacement~~ and approved by the Commissioner of Highways or  
474 (ii) the Chief Engineer of the Department ~~of Transportation~~ recommends that it is appropriate in  
475 connection with the completion of a construction or maintenance project. The old ~~road and/or~~  
476 highway or the public crossing may be abandoned to the extent of such alteration, but no  
477 further, by the entry by the Commissioner of Highways of such abandonment upon the records  
478 of the Department ~~of Transportation~~.

479 **Drafting note: Technical changes are made. This section is relocated before existing**  
480 **§ 33.1-154 to mirror the order of the previous article and because § 33.1-154 refers to §**  
481 **33.1-155.**

482 § ~~33.1-154~~ 33.2-XXX. Conveying sections of ~~roads~~ highways, ~~public~~ landings, or other  
483 property no longer necessary.

484 A. Whenever a secondary ~~road~~ highway or ~~public~~ landing has been abandoned in  
485 accordance with the provisions of § ~~33.1-151~~ 33.2-XXX or ~~33.1-152~~ 33.2-XXX or in  
486 accordance with § ~~33.1-155~~, 33.2-XXX and its use is no longer deemed necessary by the  
487 Commissioner of Highways, the Commissioner of Highways shall so certify in writing to the  
488 governing body of the county in which such ~~road~~ highway or ~~public~~ landing is located, ~~such~~  
489 ~~facts~~, and the governing body of the county or the Commissioner of Highways shall ~~thereupon~~  
490 ~~then~~ be authorized to execute, in the name of the Commonwealth or the county, ~~as the case may~~  
491 ~~be~~, a deed or deeds conveying such section or sections, of highway or ~~public~~ such landing,  
492 either for ~~a~~ consideration or in exchange for other lands that may be necessary for the uses of  
493 the secondary state highway system. ~~But before~~ Before any such deed either for the sale or  
494 exchange of land is executed conveying any section of a ~~road~~ highway or ~~public~~ landing ~~upon or~~  
495 along which any person ~~or persons reside~~ resides, notice shall be given by the Commissioner of  
496 Highways or the governing body of the county, ~~as the case may be~~, and to the owner or owners  
497 of the land upon which such person ~~or persons reside~~ resides of the intention to convey the  
498 section of ~~road~~ highway or ~~public~~ the landing and if, after a reasonable notice of such intention,  
499 any such landowner so requests, a hearing shall be ordered by the Commissioner of Highways  
500 or governing body, ~~as the case may be~~, of the county ~~as now~~ provided ~~by law in this article~~. If,  
501 upon such hearing, it is ~~made to appear determined~~ that such section of ~~road~~ highway or ~~public~~  
502 landing should be kept open for the reasonable convenience of such landowner, or the public,  
503 then such section of ~~road~~ highway or ~~public~~ landing shall not be conveyed.

504 Any such conveyance by the governing body of a county shall not be subject to § 15.2-  
505 1800.

506 B. When real estate ~~heretofore or hereafter~~ acquired by the Commonwealth incidental to  
507 the construction, reconstruction, alteration, maintenance, and repair of the secondary state  
508 highway system ~~of state highways which~~ does not constitute a section of ~~the a~~ public ~~road~~

509 ~~highway and~~ is deemed by the Commissioner of Highways no longer necessary for the uses of  
510 the secondary state highway system ~~of state highways~~, the Commissioner of Highways shall so  
511 certify in writing and is authorized to execute, in the name of the Commonwealth, a deed or  
512 deeds conveying such real estate, interest therein, or any portion thereof, either for ~~a~~  
513 consideration or in exchange for other lands that may be necessary for the uses of the secondary  
514 state highway system ~~of state highways~~.

515 C. Upon petition of a local governing body, the ~~Commonwealth Transportation~~ Board  
516 may transfer real estate acquired incidental to the construction, reconstruction, alteration,  
517 maintenance, or repair of the ~~Secondary System of State Highways which secondary state~~  
518 highway system that constitutes a section of public ~~road, highway~~ to the local governing body,  
519 and upon such transfer, such section of ~~road highway~~ shall cease being a part of the ~~Secondary~~  
520 System of State Highways secondary state highway system.

521 Any such conveyance shall ~~have the be subject to~~ approval of the Board by resolution  
522 and recorded in the minutes ~~of a meeting~~ of the Board.

523 **Drafting note: Technical changes.**

524 Article ~~12 3~~.

525 Abandonment of Roads Not in Primary or Secondary State Highway System ~~or Secondary~~  
526 System.

527 **Drafting note: Article 12 of existing Chapter 1 of Title 33.1 is relocated to this**  
528 **proposed Chapter XXX as Article 3. The use of the term "road" is retained here since**  
529 **these are not in a highway system.**

530 § ~~33.1-156 33.2-XXX~~. Application of article County roads not part of primary or  
531 secondary state highway system; "road" defined definitions.

532 A. The provisions of this article shall apply mutatis mutandis to county roads maintained  
533 by a county and not part of the secondary state highway system, and to roads dedicated to ~~the~~  
534 public use but ~~which that~~ are not ~~parts part~~ of the ~~State Highway System, primary~~ or ~~the~~  
535 secondary state highway system.

536 ~~The term "road" shall include~~ B. For the purposes of this article:  
537 "Governing body" means the governing body of a county.  
538 "Road" includes streets and alleys ~~in case of dedication~~ dedicated to ~~the~~ public use and  
539 ~~shall likewise include an any~~ existing crossing by the lines of a ~~railway~~ railroad company of  
540 such road and a railroad crossing by such road of the lines of a ~~railway~~ railroad company.

541 **Drafting note: The definition of "governing body" is relocated to this section from**  
542 **existing § 33.1-157 for the purposes of this article and technical changes are made.**

543 ~~§ 33.1-157~~ 33.2-XXX. Abandonment of certain roads and ~~railway~~ railroad crossings by  
544 governing body ~~of county~~.

545 A. When a section of a road not in the secondary state highway system, ~~or an existing~~  
546 ~~crossing by such road of the lines of a railroad company or a crossing by the lines of a railroad~~  
547 ~~company of such road~~, is deemed by the governing body of the county, ~~hereinafter in this article~~  
548 ~~referred to as governing body, in which it is located to be~~ no longer necessary for public use, ~~or~~  
549 ~~an existing crossing by such road of the lines of a railway company, or a crossing by the lines of~~  
550 ~~a railway company of such road, is deemed by such governing body no longer necessary for~~  
551 ~~public use~~, the governing body ~~by proceeding as hereinafter prescribed~~ may abandon ~~the such~~  
552 ~~section of the road no longer deemed necessary for public use~~, or such crossing ~~by the road of~~  
553 ~~the lines of a railway company, or crossing by the lines of the railway company of the road, as~~  
554 ~~the case may be by proceeding as prescribed in this article.~~

555 B. In considering the abandonment of any section of road under the provisions of this  
556 section, due consideration shall be given to the historic value, if any, of such road.

557 **Drafting note: Technical changes.**

558 ~~§ 33.1-158~~ 33.2-XXX. Notice of proposed abandonment.

559 In the case of a proposed abandonment of a road ~~referred to in this article~~ not part of the  
560 primary or secondary state highway system, the governing body shall give at least ~~thirty~~ 30  
561 days' notice of its intention ~~so~~ to do so by posting notice at the front door of the courthouse, by  
562 posting notices on at least three places along and ~~on~~ visible from the road proposed to be

563 abandoned, and by ~~publication of intention so to do~~ publishing notice in at least ~~twice~~ two issues  
564 in a newspaper having general circulation in the county. All such notices shall state the time and  
565 place at which the governing body will meet to consider the abandonment of such road.

566 **Drafting note: Technical changes.**

567 § ~~33.1-159~~ 33.2-XXX. Petition for abandonment.

568 Any person desiring to have ~~any such a~~ road abandoned may petition the governing body  
569 ~~therefor and shall file with it and in the clerk's office of the county to abandon such road by~~  
570 filing the petition and a reasonably accurate plat and description of the section proposed to be  
571 abandoned with the governing body and in the clerk's office of the county. The governing body  
572 may ~~then~~ proceed to have such road abandoned as ~~above~~ provided in this article, but the  
573 expenses ~~thereof~~ shall be borne by the petitioner.

574 **Drafting note: Technical changes.**

575 § ~~33.1-160~~ 33.2-XXX. Petition for public hearing on proposed abandonment.

576 ~~Upon petition of~~ If one or more landowners ~~in the county~~ affected by ~~such a~~ proposed  
577 abandonment ~~filed~~ files a petition for a public hearing with the governing body within ~~thirty~~ 30  
578 days after notice is posted and published, ~~as aforesaid, but not thereafter~~, the governing body  
579 shall hold a public hearing in the county for the consideration of the ~~proposal~~ proposed  
580 abandonment.

581 **Drafting note: Technical changes.**

582 § ~~33.1-161~~ 33.2-XXX. Action of governing body.

583 If a petition ~~be for a public hearing is~~ not filed ~~as aforesaid for a public hearing as~~  
584 provided in § 33.2-XXX [preceding section], or if after a public hearing is held, the governing  
585 body is satisfied that no public necessity exists for the continuance of the section of road as a  
586 public road, or the railroad crossing as a public railroad crossing, or that the welfare of the  
587 public would be served best by abandoning the section of road or the railroad crossing, as a  
588 public road or public railroad crossing, ~~it~~ the governing body shall ~~enter~~ (i) within four months  
589 ~~next after the thirty days of the 30-day period~~ during which notice was posted where no petition

590 for a public hearing was filed, or (ii) within four months ~~next~~ after the public hearing enter an  
591 order on its minutes abandoning the section of road as a public road or the railroad crossing as a  
592 public railroad crossing, and ~~thereupon with that order~~ the section of road shall cease to be a  
593 public road ~~or if~~. If the governing body be is not so satisfied, it shall enter an order dismissing  
594 the application within the ~~specified applicable~~ four months ~~an order dismissing the application~~  
595 provided in this section.

596 **Drafting note: Technical changes.**

597 § ~~33.1-162~~ 33.2-XXX. Appeal to circuit court.

598 Any one or more of the ~~petitioners~~ landowners who filed a petition or the governing  
599 body, may within ~~thirty~~ 30 days from the entry of the ~~action order~~ of the governing body on the  
600 proposal ~~but not afterwards, may~~ appeal from the action of the governing body to the circuit  
601 court of the county. Where the governing body fails to enter an order pursuant to § ~~33.1-161~~  
602 33.2-XXX, such person or persons named in this section shall within ~~thirty~~ 30 days from such  
603 ~~nonentry, but not afterwards, failure~~ have a right of appeal to the appropriate circuit court. Such  
604 ~~appeals appeal~~ shall be ~~by petition~~ filed by petition in the clerk's office of such court, setting out  
605 the action or inaction appealed from and the grounds for appeal. Upon the filing of such  
606 petition, the clerk of the circuit court shall docket the appeal, giving it a preferred status, and if  
607 the appeal be is by any of the landowners who filed a petition with the governing body for a  
608 public hearing ~~shall have~~, notice of such appeal shall be served upon the attorney for the  
609 Commonwealth and the governing body. No such appeal shall be tried by the court within ~~ten~~  
610 10 days after notice is given, as ~~hereinabove~~ provided, in this section unless such notice be is  
611 waived. The circuit court shall hear the matter de novo with further right of appeal as provided  
612 by ~~the general~~ law. The court may appoint viewers to make such investigation and findings as  
613 the court requires of them. Upon the hearing of the appeal, the court shall ascertain and by its  
614 order determine whether public necessity exists for the continuance of the section of road or the  
615 railroad crossing as a public road or public railroad crossing, or whether the welfare of the

616 public will be served best by abandoning the section of the road or the railroad crossing as a  
617 public road or public railroad crossing and shall enter its order accordingly.

618 Upon any such appeal, if it ~~shall appear~~ appears to the court that by the abandonment of  
619 such section of road or such railroad crossing as a public road or public railroad crossing any  
620 party to such appeal would be deprived of access to a public road, the court may cause the  
621 railway\_railroad company and the governing body, or either, to be made parties to the  
622 proceedings, if not already parties, and may enter such orders as seem ~~to it~~ just and proper for  
623 keeping open such section of road or such railroad crossing for the benefit of such party or  
624 parties ~~as would by such abandonment be deprived of access to a public road.~~

625 **Drafting note: Technical changes.**

626 § ~~33.1-163~~ 33.2-XXX. Effect of abandonment.

627 In the case of the abandonment of any section of road or any railroad crossing under the  
628 provisions of this article, such section of road or such crossing shall cease to be a public road or  
629 public railroad crossing ~~as the case may be~~. However, any such abandonment shall be subject to  
630 the rights of owners of any public utility installations ~~which~~ that have been previously erected  
631 therein.

632 **Drafting note: Technical changes.**

633 § ~~33.1-163.1~~ 33.2-XXX. Recordation of order of abandonment of roads, highways, or  
634 ~~rail~~ railroad crossings by counties.

635 A certified copy of ~~any an~~ order of abandonment of ~~any a~~ road, highway, or ~~rail~~ railroad  
636 crossing by ~~any a~~ county adopted pursuant to Article ~~11~~ (~~§ 33.1-150 et seq.~~) or ~~12~~ (~~§ 33.1-156 et~~  
637 ~~seq.) of this chapter~~ 2 (§ 33.2-XXX et seq.) or this article shall be recorded and indexed in the  
638 deed book in the name of the county as grantor; ~~or~~ where record title to the underlying fee is not  
639 known; shall be recorded in the office of the clerk of court in the county where such road,  
640 highway, or ~~rail~~ railroad crossing is located in the name of the county entering such order.

641 **Drafting note: Technical changes.**

642           § ~~33.1-164~~ 33.2-XXX. Alternative procedure for abandonment of old road or crossing to  
643 extent of alteration.

644           When any road or any road containing a ~~railway-highway~~ highway-rail grade crossing  
645 has been or is altered and a new road, ~~which that~~ serves the same ~~citizens~~ users as the old road,  
646 is constructed ~~in lieu thereof~~ as a replacement and approved by the governing body, the old road  
647 ~~and/or the or~~ public crossing may be abandoned to the extent of such alteration, but no further,  
648 by a resolution of the ~~board of supervisors or other~~ governing body ~~of the county~~, declaring the  
649 old road ~~and/or the or~~ public crossing abandoned.

650           **Drafting note: Technical changes.**

651           § ~~33.1-165~~ 33.2-XXX. Conveying sections of roads or other property no longer  
652 necessary.

653           When any road abandoned as ~~above~~ provided in this article is deemed by the governing  
654 body no longer necessary for the public use, ~~it the governing body~~ shall so certify ~~such facts~~  
655 ~~upon in~~ its minutes and ~~it~~ may authorize the sale and conveyance in the name of the county of a  
656 deed or deeds conveying such sections, either for ~~a~~ consideration or in exchange for other lands  
657 that may be necessary for the uses of the county. ~~But~~ However, before any such deed either for  
658 the sale or exchange of land is executed conveying any section of a road ~~upon or~~ along which  
659 any person ~~or persons reside~~ resides, the governing body shall give notice ~~shall be given by the~~  
660 ~~governing body~~ to the owner or owners of the land upon which such person ~~or persons reside~~  
661 resides of the intention to convey the section of road and if, after a reasonable notice of such  
662 intention, any such landowner so requests, the governing body shall order a hearing ~~shall be~~  
663 ~~ordered by the governing body~~. If, upon such hearing, it is ~~made to appear~~ determined that such  
664 section of road should be kept open for the reasonable convenience of such landowner, or the  
665 public, then such section of road shall not be conveyed. The action of the governing body under  
666 this section shall not be subject to § 15.2-1800.

667           **Drafting note: Technical changes.**

668           § ~~33.1-166~~. ~~Certain abandonments validated.~~

669 ~~All abandonments of roads sought to be effected before July 1, 1950, are hereby~~  
670 ~~validated notwithstanding any defects or deficiencies in the proceedings provided the rights of~~  
671 ~~third parties have not intervened.~~

672 **Drafting note: This section is proposed to be removed because it is obsolete.**

673 § ~~33.1-166.1~~ 33.2-XXX. Alternative method of abandoning roads.

674 As an alternative to the procedure for abandonment prescribed by ~~§§ 33.1-157 through~~  
675 ~~33.1-164~~ this article, a road may be abandoned in accordance with the procedure for vacations  
676 in subdivision 2 of § 15.2-2272. All abandonments of roads sought to be effected according to  
677 subsection (b) of former § 15.1-482 before July 1, 1990, are hereby validated notwithstanding  
678 any defects or deficiencies in the proceeding, provided that property rights ~~which that~~ have  
679 vested subsequent to the attempted abandonment are not impaired by such validation. The  
680 manner of reversion shall not be affected by this section.

681 **Drafting note: Technical changes.**

682 § ~~33.1-167~~ 33.2-XXX. Chapter 20 of Title 15.2 not affected ~~by Articles 10, 11 or 12.~~

683 ~~None of the provisions~~ No provision of ~~Articles 10 (§ 33.1-144 et seq.), 11 Article 1 (§~~  
684 ~~33.1-150~~ 33.2-XXX et seq.) ~~and 12 (§ 33.1-156 et seq.) of this chapter or 2 (§ 33.2-XXX et~~  
685 ~~seq.) or this article~~ shall affect the provisions of Chapter 20 (§ 15.2-2000 et seq.) of Title 15.2 ~~of~~  
686 ~~this Code.~~

687 **Drafting note: Technical changes.**

688 Article ~~13~~ 4.

689 Abandonment of ~~Roads~~ Highways for Flooding Secondary Highways in Connection with  
690 Municipal Water Supply Projects.

691 **Drafting note: Article 13 of existing Chapter 1 of Title 33.1 is relocated to this**  
692 **proposed Chapter XXX as Article 4.**

693 § ~~33.1-168~~ 33.2-XXX. Abandonment of ~~road~~ highway in area to be flooded ~~for purpose~~  
694 ~~of in connection with~~ municipal water supply projects.

695 ~~Whenever any~~ When a city or town ~~which that~~ owns and operates a waterworks system  
696 ~~for the purpose of supplying such that supplies the~~ city or town and its inhabitants with water  
697 finds it necessary to ~~enlarge increase~~ its water supply, ~~for the accomplishment of which it is~~  
698 ~~necessary to impound such that it requires impounding~~ the water of a stream ~~without outside~~ the  
699 corporate limits of such city or town, by means of a dam erected in such stream, and the  
700 impounding of the water thereof would result in the overflow, or flooding, of a section or  
701 sections of a ~~road highway~~ or ~~roads highways~~ within the secondary state highway system ~~of~~  
702 ~~state highways, thereby necessitating that necessitates~~ the alteration and relocation of the ~~road~~  
703 highway or ~~roads highways~~ and the ~~council governing body~~ of the city or town ~~shall~~ by  
704 ordinance ~~declare declares~~ (i) such necessity and (ii) that it is the intention of such city or town  
705 to comply with the requirements of this article, ~~as hereinafter set forth, the road then the~~  
706 highway proposed to be flooded may be discontinued and abandoned but only after the city or  
707 town has complied with the provisions and requirements of ~~§§ 33.1-169 through 33.1-174 this~~  
708 article.

709 **Drafting note: Technical changes.**

710 § ~~33.1-169~~ 33.2-XXX. Procedure to secure ~~such~~ abandonment of highways to be flooded  
711 in connection with municipal water supply projects.

712 ~~Such A~~ A city or town subject to the provisions of this article shall certify to the ~~board of~~  
713 ~~supervisors or other~~ governing body of the county ~~in within~~ which the ~~road highway~~, or the  
714 greater part thereof, lies a copy of the ordinance adopted by ~~its council the city or town~~ as  
715 ~~aforsaid, and the board of supervisors or other provided in this article. The~~ governing body of  
716 the county, upon receipt ~~of the same~~, shall within ~~thirty 30~~ days (i) consider the ~~question of the~~  
717 reasonableness of the action contemplated by the city or town ordinance ~~and shall~~, (ii) propose  
718 and publish ~~as required by law~~ an ordinance approving or disapproving the action contemplated  
719 by the city or town, and ~~shall~~ (iii) conduct a hearing thereon. In the event that, after such  
720 hearing, the ~~board of supervisors or other~~ governing body of the county disapproves the  
721 proposed flooding, discontinuance, and abandonment of the ~~road highway~~, the city or town shall

722 have, ~~as of the~~ right, ~~to~~ an appeal to the circuit court of the county where the question of the  
723 reasonableness of the proposed flooding and abandonment shall be heard de novo by the circuit  
724 court, or the judge thereof in vacation, and judgment shall be rendered according to its decision.  
725 From the judgment a writ of error will lie, in the discretion of the Supreme Court of Virginia, ~~as~~  
726 ~~in other cases at law.~~

727 **Drafting note: Technical changes.**

728 § ~~33.1-170~~ 33.2-XXX. Plans for relocation of ~~such highway~~ highways in connection  
729 with municipal water supply projects.

730 ~~When and if~~ If there ~~shall be~~ is a final approval of the abandonment of the ~~road~~ highway  
731 by the ~~board of supervisors or other~~ governing body of the county or by the court, ~~as the case~~  
732 ~~may be~~, the city or town shall, solely at its own expense, submit to the Commissioner of  
733 Highways plans and specifications for a proposed relocation of the highway, containing such  
734 information and facts as a location, elevations, and other matters ~~as~~ the Commissioner of  
735 Highways may require. The Commissioner of Highways shall have the power to change, alter,  
736 and amend the plans ~~so as~~ in order to conform to the ~~Commissioner's~~ views of the  
737 Commissioner of Highways as to the location, width, and type of construction of such ~~road~~  
738 highway to be built on the new location, provided, ~~however~~, that the new ~~road shall be so~~  
739 highway is located such that it will not be flooded by the water to be impounded, and provided  
740 further, that the Commissioner of Highways may not require a more expensive type or character  
741 of ~~road~~ highway than the one to be abandoned. The Commissioner of Highways shall ~~either~~  
742 approve such plans and specifications either as proposed by the city or town or as ~~so~~-amended  
743 by the Commissioner of Highways.

744 **Drafting note: Technical changes.**

745 § ~~33.1-171~~ 33.2-XXX. Acquisition of lands for ~~such~~ relocation.

746 Upon the approval of ~~such~~ plans and specifications by the Commissioner of Highways,  
747 the city or town shall, solely at its own expense ~~acquire, and~~ in the name of the Commonwealth  
748 ~~of Virginia~~, acquire either by purchase or condemnation, the right-of-way necessary to construct

749 the highway on the new location as shown by the plans approved by the Commissioner ~~and, in~~  
750 of Highways. In the event of condemnation, the proceedings shall be instituted in the name of  
751 the city or town and shall ~~in all respects~~ conform to the proceedings ~~which that~~ would be  
752 applicable if they had been instituted by the Commissioner of Highways, ~~but.~~ However, when  
753 the award has been paid, the title to the lands acquired in the proceedings shall, ~~when the award~~  
754 ~~of the commissioners has been paid,~~ vest in the Commonwealth ~~of Virginia~~ in the same manner  
755 as if the Commissioner of Highways had instituted and conducted the proceedings and had paid  
756 ~~the amount of~~ the award.

757 **Drafting note: Technical changes are made. The reference to "the award of the**  
758 **commissioners" which is granted in the event of condemnation is changed simply to "the**  
759 **award" because the award can also be made by a jury.**

760 § ~~33.1-172~~ 33.2-XXX. Costs of relocation.

761 ~~Such~~ The city or town shall pay out of its own funds all costs incident to all surveys,  
762 plans, specifications, blueprints, or other matters relating to the relocation of the highway and  
763 the entire cost of acquiring, by purchase or by condemnation, the right-of-way ~~aforsaid~~.

764 **Drafting note: Technical changes.**

765 § ~~33.1-173~~ 33.2-XXX. Construction of relocated ~~road~~ highway.

766 Upon the acquisition of ~~the a~~ right-of-way as ~~hereinabove~~ provided in this article, the  
767 city or town shall grade ~~the same such right-of-way~~ and construct ~~thereon~~ the highway required,  
768 in accordance with the plans and specifications approved by the Commissioner, ~~as aforesaid, the~~  
769 ~~road or highway thereby required~~.

770 **Drafting note: Technical changes.**

771 § ~~33.1-174~~ 33.2-XXX. Approval or disapproval of ~~such~~ construction.

772 When ~~such road or a~~ highway ~~shall have been is~~ completed, the city or town shall notify  
773 the Commissioner of Highways, who shall promptly cause an inspection ~~thereof~~ to be made by  
774 the Department ~~of Transportation~~. If the Department approves the ~~same~~ highway construction,  
775 the Commissioner of Highways shall notify the city or town, in writing, of such fact. If the

776 Department disapproves the ~~same~~ highway construction, it shall notify the city or town,  
777 specifying the Department's objections and recommendations for remedying or removing them,  
778 and the city or town shall promptly carry out such recommendations.

779 **Drafting note: Technical changes.**

780 § ~~33.1-175~~ 33.2-XXX. New ~~road~~ highway part of secondary state highway system;  
781 former ~~road~~ highway to vest in ~~municipality~~ city or town.

782 When the city or town ~~shall have~~ has been notified by the Commissioner of Highways of  
783 final approval of the construction of the ~~road or~~ highway, ~~the same~~ such highway shall  
784 immediately become a part of the secondary state highway system ~~of state highways~~, and the  
785 public shall be vested with the same rights of travel ~~thereover~~ on such highway as it possesses  
786 with respect to the other highways in the system. ~~And thereupon and~~ the part of the ~~road or~~  
787 highway ~~which~~ that it is proposed to flood shall be deemed to be abandoned, and all public  
788 rights therein shall vest in the city or town.

789 **Drafting note: Technical changes.**

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