

## Monitoring Report: Construction (Policy 2.10)

**Monitoring Period: FY 2023 (Oct 1<sup>st</sup> 2022-Sept 30<sup>th</sup> 2023)**

**Service Committee Meeting Review Date: Oct 3<sup>rd</sup> 2023**

**Board of Directors Meeting Review Date: Oct 19<sup>th</sup> 2023**

<b>INFORMATION TYPE</b>
Monitoring
<b>RECOMMENDED ACTION(S)</b>
<p>That the Board review this monitoring report and consider accepting it as:</p> <ul style="list-style-type: none"> <li>(A) a reasonable interpretation for <b>all</b> policy items and that the evidence demonstrates compliance with the interpretations.</li> <li>(B) a reasonable interpretation for all policy items and that the evidence demonstrates compliance with the interpretations, except for the CEO’s stated non-compliance with item(s) x .x, which the Board acknowledges and accepts the proposed dates for compliance.is making reasonable progress towards compliance.</li> <li>(C)               <ol style="list-style-type: none"> <li>1. For policy items x.x.x – there is evidence of compliance with a reasonable interpretation</li> <li>2. For policy items x.x.x – the interpretation is not reasonable</li> <li>3. For policy items x.x.x – the interpretation is reasonable, but the evidence does not demonstrate compliance</li> <li>4. For policy items x.x.x – the Board acknowledges and accepts the CEO’s stated non-compliance and the proposed dates for compliance</li> </ol> </li> </ul>
<b>PRIOR RELEVANT BOARD ACTIONS &amp; POLICIES</b>
<p>Monitoring Reports are a key Policy Governance tool to assess organizational/CEO performance in achieving Ends (1.0) within Executive Limitations (2.0). A Policy-Governance-consistent Monitoring Process is:</p> <ol style="list-style-type: none"> <li>1. CEO sends Monitoring Report to all board members</li> <li>2. At Board meeting, board accepts Monitoring Report through majority vote (or if not acceptable, determines next steps)</li> </ol>

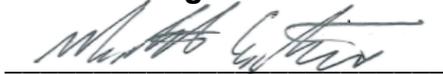
**ISSUE SUMMARY**

TheRide’s Board of Directors establish policies that define what methods are unacceptable to use to achieve expected results, called Executive Limitations. This monitoring report provides the CEO’s interpretations of those policies, evidence of achievement, and an assertion on compliance with the Board’s written goals. As with other monitoring reports, the Board decides whether the interpretations are reasonable, and the evidence is convincing.

Per Appendix A of the Board Policy Manual, this report was scheduled for monitoring in October and was submitted in October. The monitoring period is Fiscal Year 2023 which ranges from 1<sup>st</sup> October 2022 to 30<sup>th</sup> September 2023.

I certify that the information is true and complete, and I request that the Board accept this as indicating an acceptable level of compliance.

**CEO’s Signature**



**Date**

9/25/2023

**ATTACHMENTS**

- 1. Monitoring report for Construction (Policy 2.10)

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 Fully Compliant    
  Partially Compliant    
  Non-Compliant

## Preliminary CEO Interpretations and Evidence

### **POLICY 2.10**

The CEO shall not allow construction of a new building or facility or major renovation that is inconsistent with industry standards and grantor expectations, environmentally irresponsible, risks financial jeopardy, or is not aligned with achievement of the Board’s Ends. Further, without limiting the scope of the above by the following list, the CEO shall not:

**Degree of Compliance: Compliant**

#### **Interpretation**

I define key terms as follows:

1. A new **“building”** is an edifice or structure with walls and a roof which remains in one place and is intended to be permanent. This does not include structures such as bus shelters or temporary storage structures.
2. A new **“facility”** is a significant piece of infrastructure that remains in one place (e.g., a bus terminal platform, a park n ride lot, a storage yard, a rail line, roads, power lines, sewers, etc.) and is intended to be permanent. A building can be a part of a larger facility. Due to their ubiquity and small scale, bus stops, pads, shelters and benches, and adjoining sidewalks are excluded.
3. A **“major renovation”** is a significant, permanent change to an existing building or facility that 1) changes the exterior dimensions, or 2) fundamentally changes the function of part or all of a building or facility. This does not include maintenance activities, repairs or routine upgrades, replacement of worn-out elements, or renovations of interior spaces, etc. (e.g., roof replacement, remodeling offices). Such projects are addressed through annual facility maintenance budgets and are not reported on under this policy. Any individual maintenance project costing more than \$250,000 will be identified individually in an annual budget proposal to increase transparency.

#### Measure/Standards & Achievement

Compliance with this policy will be demonstrated when

- A. Lower-level policies are compliant.
- B. In the case of construction, close out letters, Triennial reviews or any other official correspondence from the Federal Transit Administration (FTA) verifies that their expectations with respect to industry standards, environmental responsibility, construction, and grantor expectations have been met.

#### Rationale

These interpretations are reasonable because:

- A. The Board has interpreted “financial risk” and “alignment with Ends achievement” in the lower-level policies below.
- B. The FTA will mostly likely be the primary grantor for most major construction and capital projects, 2) the FTA’s expectations will be laws and regulations that are either

legal requirements or conditions of receiving federal funding and will have to be met anyway, 3) the FTA promulgates a great deal of information about standards that can be understood in advance and followed, and 4) the FTA will provide outside verification as to whether their expectations were met.

**Evidence**

**Source of Data:** AAATA planning records

**Date of Data Review:** 9/19/23 as verified by DCEO, Planning and Innovation

**Data:**

- A. All lower-level policies are compliant
- B. There was no qualifying construction in the monitoring period.

**POLICY 2.10.1**

Proceed with funding applications, detailed architecture or engineering, procurement of construction services, or real-estate transactions for a construction or major renovation project.

**Degree of Compliance: Compliant**

**Interpretation**

Measure/Standards & Achievement

Compliance with this policy will be demonstrated when the minutes from the meeting date at which formal Board approval (annual budget or amendment) for *implementation* activities was granted before contracts are signed initiating implementation activities.

I interpret this policy to mean that Board approval must be secured *before* the CEO can proceed with work related to the *implementation* of a construction project, including applying for funding to pay for implementation activities. In the context of this policy “**construction**” is narrowly interpreted to cover activities related to *implementation* of a physical project and does *not* include the *planning or exploratory* work needed for the development of such projects which are delegated to the CEO. *Implementation* activities include:

- Applying for competitive grants or earmarks directly connected with implementation of a project,
- Hiring anyone to finalize plans/designs/engineering,
- Hiring anyone to provide demolition, earthwork, utility relocation, paving, or construction services, and
- The purchase, disposal or long-term encumbrance of land property,

Rationale

The distinction between *implementation* activities and *exploratory/planning* work is reasonable because:

1. This policy exists to exert Board control over large *final commitments* (financial or political) by the agency. The implementation activities defined above addresses those concerns. Exploratory or planning work (e.g., conceptual/preliminary planning, legal investigations, consultant studies, site evaluation, regulatory reviews, real estate queries, soil testing, and some precursor engineering work) is not a commitment and the Board still retains final authority.
2. Development of projects is a Means and generally delegated to the CEO and their professional staff (policy 4.3.3).
3. This policy does not tell staff how to conduct planning, but only what sort of information the Board expects the CEO to produce before construction will be approved.
4. Exploratory work is often necessary for the CEO to decide whether a project is even viable and worth pursuing.
5. If a project is worth pursuing, the CEO may not be able to provide the information required by the Board in policy 2.10.1 without preliminary work beforehand. For example, exploratory studies may be necessary to develop preliminary cost estimates.
6. It is not possible for a public sector agency to investigate potential construction projects without effective public expectations to some degree. Such expectations need to be managed by staff. The existence of such expectations, although sometimes a political concern, is not a justification for Board control over planning activities.
7. Large studies will likely require Board authorization through the annual budget process, providing another means of Board oversight.

Further, the use of meeting minutes and document dates is reasonable because board meeting minutes are the official documentation of board decisions, and the dates will document the sequence in which actions occurred.

### Evidence

**Source of Data:** Board meeting minutes and CEO correspondence with RTA

**Date of Data Review:** 9/22/23 as verified by the Corporate Strategy & Performance Officer

**Data:**

- A. There was no qualifying construction during the monitoring period and none of the construction implementation activities, including requesting of grants for construction purposes occurred in FY 23.
- B. One funding opportunity was pursued during the period. A review of draft meeting minutes for September 21, 2023 found that the CEO was granted approval by the Board to participate in a regional grant proposal that could win funds for bus stop and queue jumper construction. A letter of support to the RTA was sent the following day.

**POLICY 2.10.1.1**

Request authorization to proceed with a project prior to providing information that demonstrates that such construction is fiscally responsible and aligned with achievement of the board’s Ends, and without providing data that supports an informed decision by the board – including but not limited to clearly articulated information about the following:

- A. Definition of the project’s purpose and goals.
- B. Definition of the project’s key elements and rationale for their inclusion.
- C. Definition of the project’s strategic context, and contribution to advancing the board’s Ends or other policies.
- D. Explanation of the project’s priority relative to other capital needs.
- E. Estimates of the capital cost, ongoing operating and maintenance costs, and expected useful life associated with the project.
- F. Explanation of anticipated funding sources and financing mechanisms.
- G. Definition of risks associated with the project.
- H. Project timeline.
- I. Public involvement process.

**Degree of Compliance: Compliant**

**Interpretation**

Measure/Standards & Achievement

Compliance with this policy will be demonstrated when the minutes of the Board meeting record that a CEO’s request for Board approval of an element of implementation of a construction project comes in the form of a proposal that answers the questions identified for each of the elements interpreted below:

1. **Scope** – What is the nature of the project? What are the most important elements?
2. **Alignment with Ends & Rationale** – Description of how the project will advance specific goals identified by the Board
3. **Public Involvement** – How has the public been engaged in the development of the proposal thus far? How will the public be engaged going forward?
4. **Priority** – Why is this project being prioritized ahead of other projects? How would this project affect the 10-Year Capital Plan?
5. **Fiscal responsibility** –
  - a. What are the anticipated capital and operating costs during the life of the project?
  - b. How will the capital and operating costs of the project be paid for during the lifespan of the project? What assumptions are made regarding outside grant funding, funding from the Capital Reserve, or local millage funds?
  - c. How would the approval of this project impact the agency’s ability to maintain existing services and infrastructure, or afford other projects?
6. **Timeline** – What are the expected dates of major milestones such as construction, opening/initiation, operating lifespan, decommissioning?

7. **Risks** – What social, environmental, financial, operational, or other risks have been identified? Are there ways to mitigate risks?

**Rationale**

This interpretation is reasonable because minutes are the official record of the Board’s meetings and identify when a request is made. The elements of the proposal address all of the items specified by the Board in its policy.

**Evidence**

**Source of Data:** AAATA Planning Documents

**Date of Data Review:** 9/22/23 as verified by Corporate Strategy & Performance Officer.

**Data:**

During the monitoring period, there was one request for authorization on September 21, 2023. A review of the board packet item 7.3 found that the above information was provided. A review of minutes found no other requests for authorization during the monitoring period.

**POLICY 2.10.1.2**

Request authorization to proceed with a project without incorporating it into an annual budget or a budget amendment.

**Degree of Compliance: Compliant**

**Interpretation**

Measure/Standards & Achievement

Compliance with this policy will be demonstrated when meeting minutes demonstrate that all requests to fund *implementation* activities were identified to the Board as part of the budget process, either the regular budget-approval or through a mid-year budget amendment.

Rationale

This interpretation is reasonable because minutes are the official record of the Board’s meetings and identify if and when a request is made, and whether it was approved.

**Evidence**

**Source of Data:** AAATA Planning Documents

**Date of Data Review:** 9/19/23 as verified by DCEO, Finance and Administration

**Data:** There were no qualifying construction projects in the monitoring period.

**POLICY 2.10.2**

Expend funds on a construction project prior to having confirmed funding for that stage

**Degree of Compliance: Compliant**

**Interpretation**

Measure/Standards & Achievement

Compliance will be demonstrated when dates for the initial written notice-to-proceed orders and first invoices occur *after* confirmation that funding is available, such as Board approval of a budget or written confirmation from an outside funder (e.g., notice of award or full funding grant agreement from the FTA).

Rationale

This is reasonable because each stage of a project can have an initiation point with an initial notice-to proceed order that is always in writing with a date, and dated invoices precede expenditures. Only the initial dates are warranted because there could be hundreds of subsequent invoices for various stages, but none could occur without the initial notice-to-proceed. Funding confirmations come from the Board vote, or state or federal government and should not be considered final until written notice is received

**Evidence**

**Source of Data:** AAATA budget records

**Date of Data Review:** 9/19/23 as verified by DCEO, Finance and Administration

There were no qualifying construction projects during the monitoring period and therefore no expenditures.

**POLICY 2.10.3**

Proceed with construction that does not minimize inconvenience to the travelling public and those businesses and residences directly impacted to the extent that is reasonably practicable.

**Degree of Compliance: Compliant**

**Interpretation**

Measure/Standards & Achievement

Compliance will be demonstrated when

- A. Policy 2.10.3.1 and 2.10.3.2 are compliant
- B. Construction projects include a plan to minimize or mitigate public inconvenience that is deemed reasonable by the CEO and in the context of the project.

Rationale

- A. Compliance of this policy is dependent on compliance of its sub policies
- B. Construction projects almost always cause some level of disruption, vary in scale and impact, and therefore need to be developed in context. The requirement for a plan allows for this context while ensuring the issue is addressed beforehand.

**Evidence**

**Source of Data:** AAATA Planning documents

**Date of Data Review:** 9/19/23 as verified by DCEO, Planning and Innovation

**Data:**

- A. Lower-level policies are compliant
- B. There were no qualifying construction projects during the monitoring period.

**POLICY 2.10.3.1**

Proceed without providing timely and accurate information to the travelling public, residents and business owners.

**Degree of Compliance: Compliant**

**Interpretation**

Measure/Standards & Achievement

Compliance with this policy will be demonstrated when review of public notices about foreseeable construction-related disruptions (e.g., closures, changes to services, etc.) confirms that notices were provided at least 7 days before activities begin, or blanket notices about uncertain timing are provided at least 14 days in advance. Public notice includes, at a minimum: media releases, website and social media notices, hardcopy notices where applicable, attempts to information nearby residents and property owners.

Rationale

These time periods are reasonable because they allow the public to make alternate arrangements, and construction timelines can sometimes need to change to keep a project progressing on schedule or on budget. Additionally, public notices are our standard means of informing the public and are recognized as official. Finally, non-construction information is addressed under policy 2.1.2.

**Evidence**

**Source of Data:** AAATA Planning documents  
**Date of Data Review:** 9/19/23 as verified by DCEO, Planning and Innovation  
**Data:**  
 There was no construction project during the monitoring period and therefore no information was provided.

**POLICY 2.10.3.2**

Proceed with construction project or changes to the project that could be foreseen to create significant resistance from the traveling public and external stakeholders because they had not had the opportunity for consultation.

**Degree of Compliance: Compliant**

**Interpretation**

I interpret this policy to apply to the logistics and impacts of direct construction activities (i.e., closures, site prep, demolition, earthworks, excavation, utility changes, paving, construction, etc.), not preceding decisions about project need, scope, cost, location, etc., covered under 2.7.5.5 (general public consultation requirement). The policy does not require construction to stop due to resistance, only that there were reasonable opportunities for input beforehand.

Measure/Standards & Achievement

Compliance with this policy will be demonstrated when reasonable consultation opportunities are provided prior to finalizing construction plans and are publicized beforehand. Consultation includes providing information on anticipated construction activities and plans, opportunities to provide feedback and identify concerns, efforts to mitigate impacts, and notice of final decision. Depending on the project context, this could include posted notices, website information, or public meetings.

Rationale

This interpretation is reasonable because it recognizes that construction is inherently disruptive and can cause resistance, requires consultation, attempts at mitigation before construction begins, and calls for communication with the public beforehand.

**Evidence**

**Source of Data:** AAATA Planning documents  
**Date of Data Review:** 9/19/23 as verified by DCEO, Planning and Innovation  
**Data:**  
 There was no construction project during the monitoring period and no consultation was required or provided.

**POLICY 2.10.4**

Allow the board to be unaware of political, residents’ and businesses’ issues related to the proposed construction.

**Degree of Compliance: Compliant**

**Interpretation**

Measure/Standards & Achievement

Compliance will be demonstrated when a review of board meeting materials and//or agency email communications finds that all significant known concerns with construction activities have been shared with the board.

Rationale

Sharing such information with the Board during meetings, or by email if time sensitive, is a reasonable way to meet the Board’s expectations.

**Evidence**

**Source of Data:** AAATA Planning documents

**Date of Data Review:** 9/19/2023 as verified by DCEO, Planning and Innovation

**Data:**

No new construction projects were proposed to the public in FY23 and therefore no concerns to share.

**POLICY 2.10.5**

Allow the board to be without regular reports on the project’s implementation, including but not limited to:

- A. Changes to the anticipated cost of the project.
- B. Changes to the elements/scope of the project.
- C. Changes to scheduled completion, delays or impacts to timelines.
- D. Timely notice of possible cost overruns and planned action to reduce impact.

**Degree of Compliance: Compliant**

**Interpretation**

Measure/Standards & Achievement

Compliance with this policy will be demonstrated when the Board receives at least monthly updates on construction projects which address the details outlined in items A-D above, which would be compared with assumptions created at the beginning of the project and shared with the Board.

Rationale

This interpretation is reasonable because items A-D are self-explanatory and monthly updates can be provided at board meetings.

**Evidence**

**Source of Data:** AAATA Planning documents  
**Date of Data Review:** 9/19/2023 as verified by DCEO, Planning and Innovation  
**Data:**  
 There was no construction project during the monitoring period.

**CEO Notes**

Suggest considering whether 2.10.4 should be a part of 2.10.5.

## Policy Trendlines

Policy	FY22	FY23	FY 24
2.10	Cannot be determined	Policy is not compliant	Policy is compliant
2.10.1	Policy is not compliant	Policy is not compliant	Policy is compliant
2.10.1.1	Cannot be determined	Policy is not compliant	Policy is compliant
2.10.1.2	Cannot be determined	Policy is not compliant	Policy is compliant
2.10.2	Cannot be determined	Policy is compliant	Policy is compliant
2.10.3	Cannot be determined	Policy is compliant	Policy is compliant
2.10.3.1	Cannot be determined	Policy is compliant	Policy is compliant
2.10.3.2	Cannot be determined	Policy is compliant	Policy is compliant
2.10.4	Cannot be determined	Policy is compliant	Policy is compliant
2.10.5	Cannot be determined	Policy is compliant	Policy is compliant

LEGEND	
Policy is not compliant	Policy is not compliant
Policy is partially compliant	Policy is partially compliant
Policy is compliant	Policy is compliant
Cannot be determined	Cannot be determined

## Guidance on Determining “Reasonableness” of CEO Interpretations

### Are the interpretations reasonable?

An interpretation is reasonable if the following are provided,

1. a measure or standard,
2. a defensible rationale for the measure or standard,
3. a level of achievement necessary to achieve compliance and
4. a rationale for the level of achievement.

### Is evidence verifiable?

Evidence is verifiable if there is

1. actual measurement/data,
2. the source of data and
3. the date when data was collected is provided.

## Board's Conclusion on Monitoring Report

### Board's conclusion after monitoring the report.

Following the Board's review and discussion with the CEO, the Board finds that the CEO:

- (A) a reasonable interpretation for **all** policy items and that the evidence demonstrates compliance with the interpretations.
- (B) a reasonable interpretation for all policy items and that the evidence demonstrates compliance with the interpretations, except for the CEO's stated non-compliance with item(s) x .x, which the Board acknowledges and accepts the proposed dates for compliance.is making reasonable progress towards compliance.
- (C)
  1. For policy items x.x.x – there is evidence of compliance with a reasonable interpretation
  2. For policy items x.x.x – the interpretation is not reasonable
  3. For policy items x.x.x – the interpretation is reasonable, but the evidence does not demonstrate compliance
  4. For policy items x.x.x – the Board acknowledges and accepts the CEO's stated non-compliance and the proposed dates for compliance

## Board Notes: (If Applicable)

**The Board accepted the monitoring report for Construction (2.10) as (A) Compliant.**