



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda item # 6

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

April 20, 2016

MOTION

**Made By: Mr. Whitworth, Seconded By: Mr. Rosen
Action: Motion Carried, Unanimously**

**Title: Economic Development Access Program
Project Bond Period Moratorium**

WHEREAS, Section 33.2-1509 of the *Code of Virginia* provides for funds to "...be expended by the Board for constructing, reconstructing, maintaining or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed ..." or, "in the event there is no such establishment ..., a locality may guarantee to the Board by bond or other acceptable device that such will occur and, should no establishment or airport acceptable to the Board be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited."; and

WHEREAS, the Commonwealth Transportation Board's policy for the administration of the Economic Development Access Fund establishes the maximum time limit for the bond to be five years beginning on the date of the allocation of the economic development access funds by the Board; and

WHEREAS, pursuant to Section 33.2-1509 of the *Code of Virginia*, the time limits of the bond shall be based on a regular review and consideration by the Board; and

Resolution of the Commonwealth Transportation Board
Economic Development Access Program – Project Bond Period Moratorium
April 20, 2016
Page Two

WHEREAS, it is the sense of this Board that the sustained economic conditions have negatively impacted the ability of all localities within the Commonwealth to attract qualifying types of establishments and investment in order to satisfy this contingency of the allocation; and

WHEREAS, it is the desire of this Board to extend to January 1, 2017 the existing moratorium, established by resolutions of this Board on October 20, 2010, June 20, 2012 and February 19, 2014, to localities where Economic Development Access Program funds have been utilized and the original bonded time period for establishing qualifying capital outlay expired or will expire between July 1, 2010 and July 1, 2016; and

NOW, THEREFORE, BE IT RESOLVED, that the Commonwealth Transportation Board hereby extends, until January 3, 2017, its moratorium on the forfeiture of funds by localities where Economic Development Access funds have been utilized and the bonded time period for establishing qualifying capital outlay will expire July 1, 2016 contingent upon:

1. the extension of the bond or similarly appropriate surety until February 2, 2017. This surety may be released or reduced at an earlier date upon provision of documentation, acceptable to VDOT, of eligible capital outlay by a qualified establishment, or establishments.

BE IT FURTHER RESOLVED, that the time limits of the bond on Economic Development Access projects whose original five year time limit terminates after July 1, 2016 as well as those affected by this action of the Board, pursuant to Section 33.2-1509 of the *Code of Virginia*, shall continue to be subject to regular review and consideration by the Board.

#####

CTB Decision Brief

Economic Development Access Program Project Bond Period Moratorium

Issue: The bonded period for establishing qualifying capital outlay on six projects utilizing the Economic Development Access Program funding currently subject to the Commonwealth Transportation Board's (Board) bond moratorium, will expire July 1, 2016. Each of the localities responsible for these six projects has expressed concern that they will be unable to establish sufficient qualifying capital outlay and provide the appropriate substantiating documentation prior to the current deadline required under the Program as a condition for funding and each has requested additional time to satisfy this contingency. Pursuant to §33.2-1509 of the *Code of Virginia*, any additional time to satisfy the contingency/extension of the moratorium fall under the purview of, and must be granted by, the Board.

Facts: VDOT's Economic Development Access (EDA) Program requires documentation of sufficient capital outlay by qualifying business operations to justify the amount allocated and ultimately expended in completion of the EDA project. Pursuant to § 33.2-1509, of the *Code of Virginia*, which establishes the funding for the Program, in the absence of the establishment of qualifying business operations and the capital outlay documentation, the locality requesting the funding may guarantee to the Board by bond or other acceptable device that such will occur within the time limit of the bond stipulated by the Board. The *Code* further provides that, "the time limits of the bond shall be based on regular review and consideration by the Board." The current time limit for establishing qualifying capital outlay is five years from the date of the project allocation by resolution of the Board, as prescribed by the Board's Economic Development Access Fund Policy and the Program's administrative guidelines. The time limit is also reiterated within the Board's resolution approving each project allocation. In considering the Board's authority to waive the bond, VDOT consulted with the Office of the Attorney General and has been advised that the *Code* specifically requires provision of a bond if a qualified establishment does not exist nor is under firm contract for construction, and that if such does not occur within the time limits of the bond, then the bond must be forfeited if EDA funds expended for the access road are not returned.

In recognition of the economic downturn, the sustained weak economic conditions, and localities' continued difficulty in attracting and establishing qualifying investments, the Board declared, by resolution dated October 20, 2010, a moratorium, until July 1, 2012, on the forfeiture of funds for bonded EDA projects and on two successive occasions, by resolutions dated June 20, 2012 and February 19, 2014, extended this moratorium two additional years each time. These actions have effectively granted additional time for localities to establish qualifying investments on projects with original bonded periods terminating between July 1, 2010 and July 1, 2016. Localities continue to report difficulty in attracting businesses and qualifying capital outlay necessary to satisfy this EDA Program requirement for their bonded projects.

Recommendations: VDOT recommends that the Board grant an extension of the existing moratorium for a period of six months, until January 3, 2017, in effect continuing the reprieve to all localities with projects on which the original bonded period for establishing qualifying

business and investment expired or will expire between July 1, 2010 and July 1, 2016. VDOT recommends that the extension of the moratorium be made contingent upon the provision of acceptable surety by the affected locality that expires no sooner than February 2, 2017 and further that authorization for release or reduction of the surety prior to that date be granted, provided the locality provides documentation acceptable to VDOT demonstrating eligible capital outlay by a qualified establishment or establishments. The surety expiration date of February 2, 2017 will allow approximately 30 days for VDOT to review investment documentation established no later than January 3, 2017 and determine credit for such, as applicable under program administration guidelines. This recommendation results in a six month extension of the current moratorium for localities with projects where the original bonded period for establishing qualifying business and capital investment on EDA projects expired or will expire between July 1, 2010 and July 1, 2016.

Action Required by the CTB: The recommendation requires action by the CTB to extend the moratorium on exercising the option to collect unwarranted expenditures of Economic Development Access program funds. A resolution is provided for formal vote.

Result, if Approved: Localities whose original bonded period for the Economic Development Program funded project expired or will expire between July 1, 2010 and July 1, 2016 will not have to return funds to VDOT during this period and will effectively be granted additional time, until January 3, 2017, to establish qualifying investment on the project.

Public Comments/Reactions: None

**Economic Development Access Program
Projects Recommended for Bond Moratorium 6 month Extension**

Town of West Point – West Point Industrial Park, Phase II

Originally Approved: May 17, 2006	Allocation: \$450,000
Construction Finish Date: August 28, 2008	Charges Against EDA allocation: \$442,171

Investment Documentation needed in the amount of \$2,210,855

The Town of West Point indicated they continue to aggressively market the West Point Industrial Park in hopes of landing a qualified prospect. Unfortunately their efforts combined with commercial real estate firms and the Virginia Economic Development Partnership (VEDP) has not produced a project. In the last 12 months the industrial park property has been included in three proposals by VEDP and the Town has had a small number of telephone inquiries about sites. The uncertain economy and a surplus of existing buildings in the market continue to be their biggest challenges. Looking forward, they hope that natural gas service, which has been extended to West Point, and an improving economy will increase prospect activity in 2016-17.

The Town asks that we recommend a 6 – 12 month extension for their EDA project.

Town of Rocky Mount – Franklin-Rocky Mount Industrial Park

Originally Approved: June 19, 2008	Allocation: \$334,000
Construction Finish Date: October 8, 2009	Charges Against EDA Allocation: \$334,000

Investment Documentation needed in the amount of \$1,670,000

The expansion of the park was completed in 2010. The Town’s industry recruitment efforts were stalled by the recession and their economic focus for 2011 to 2015 was keeping our current businesses and industries functioning.

The Town has had some success in the park. Empire Foods opened in 2010, employing 200 people and leveraging an investment of \$5.5 million. This company abuts the road constructed with EDA funds (but their entrance is not on the road) and they use it for deliveries. They have used the cul-de-sac at the end of the road improvements for temporary refrigerated trailer storage while they upgraded their freezer facilities. In 2015 Home Town Ice purchased an existing but empty facility and had its entrance reconfigured so that the property now only opens on the new road. Home Town Ice is in the midst of investing \$3 million, bringing the property into production. Their investment is also leading to additional warehouse investment by major frozen food vendors. The deliveries for all uses on the site are directly dependent on the road constructed through using the bonded EDA program. At this time no determination has been made regarding the eligibility of these companies)The Town continues to market the property through close association with the Virginia Economic Development Partnership and via VaScan. Several potential industries have entered into negotiations but did result in successful locations. .The prospects which have viewed the remaining property have selected other sites due to the town’s lack of natural gas, issues with rail access, stormwater management, cost concerns, and excessive wastewater treatment needs. The Town is currently in discussion with two prospective businesses and have grading and development plans being considered. VEDP will be asked about the eligibility of the new company, Home Town Ice.

The Town asks that we recommend an extension for their EDA project.

Botetourt County – Center at Greenfield, Phase II

Originally Approved: April 20, 2006	Allocation: \$450,000
Construction Finish Date: April 10, 2008	Charges Against EDA Allocation: \$450,000

Investment Documentation needed in the amount of \$2,250,000

The County confirmed that the March 15, 2016, Governor’s announcement, regarding ELDOR Corporation manufacturing facility locating in Botetourt County would locate in Greenfield and will create 350 jobs along with \$75.2 million in capital expenditures. Grading on the site is planned to start on 3/22. The property is reported to be associated with the EDA bonded project. The construction of the building is planned to begin on June 15 of this year and be complete by August 15, 2017. Production is planned to start in December 2017. Building and inventory value is expected to be over \$75,000,000. A site map will be provided to VDOT so that the eligibility of this manufacturing facility can be confirmed.

Although the County is hopeful that the schedule for the development will result in the investment documentation required on the project by July 1, 2016, the County would like to seek an extension of the agreement to ensure all qualifying requirements can be met within the required time-frame.

The County did indicate that if it had not been for the VDOT investment in this road, the announcement of this business and the new high wage jobs could not have happened.

Shenandoah County – North Shenandoah Industrial and Business Park, Phase II

Originally Approved: December 8, 2010	Allocation: \$650,000
Construction Finish Date: May 30, 2014	Charges Against EDA Allocation: \$650,000*

Investment Documentation needed in the amount of \$470,140

Note: This was a VDOT administered project. The initial cost estimate was \$1,048,000 so prior to advertisement; the locality paid VDOT \$398,000 for its required match & estimated expenditures over the allocated amount. Expenditures totaled \$868,140. If repayment due to lack of investment is necessary, the locality would be requested to return \$470,140.

The County, along with the Town of Strasburg has initiated a comprehensive study of the business park, which is scheduled to be complete by June 2016. It is anticipated that the study will include recommendations for buildout of both lots and their associated infrastructure, as well as marketing and targeting strategies for potential development. Both the County and the Town have been actively marketing the property. The Town of Strasburg has had one call in the past year from an office supply company for a warehouse and the County has received four inquiries. None of these inquires have resulted in a successful location for various reasons.

No businesses have located on the Access Road project at this time. Currently, the Town of Strasburg is constructing a public works facility, with a construction value of \$5 million. However, the public works facility does not meet the program requirements for a qualifying business.

Because VDOT’s road construction was not complete until the summer of 2014 and due to the pending comprehensive study, the County asks we recommend an extension for their EDA project.

Louisa County – Ferncliff Business Park

Originally Approved: July 14, 2010	Allocation: \$650,000
Construction Finish Date: December 2011	Charges Against EDA Allocation: \$628,467

Investment Documentation needed in the amount of \$662,310

The County has been successful in attracting qualifying investment. The initial qualifying investment credit needed was \$3,250,000. The locality did establish Patriot Aluminum as a qualifying industry and were able to justify 80% of their needed qualifying investment credit. Now, the locality needs to document the remaining 20% (\$662,310) to avoid a payback of \$132,462.

The County and the Louisa County IDA have actively marketed this park and it is their goal to target manufacturing/warehousing distribution companies. They are currently constructing new public utilities in the park including water/sewer infrastructure and have just contracted with a local internet service provider to provide up to 10 gigabyte fiber service in the park. They have also begun negotiations with adjoining property owners to acquire additional properties to expand the business park in anticipation of increased interest resulting from the utility improvements and the location near the interstate. The expansion of the park to the east and west will include new road infrastructure ties into the EDA bonded access road. This new infrastructure development and business park expansion will increase opportunities for attracting new, qualifying business prospects. They have had several prospects very interested in the Ferncliff Business Park. Location was primary driver for the prospects, but lack of public water and sewer hindered the establishment of those industries. The Louisa County IDA will soon start to develop speculative mixed use space to attract budding manufacturing and related companies.. They anticipate developing up to 25,000 sq. ft. of new flex space over the next year.

Cavalier Produce is currently building their new 25,000 square feet state-of-the-art fresh produce distribution center in the Ferncliff Business Park. Cavalier distributes fruits and vegetables directly to restaurants and stores in the mid-Atlantic region ranging from West Virginia in to North Carolina and all of Virginia. The new facility will result in a total capital investment of \$5.5million. The company chose the location for its readily available access and proximity to the interstate. The County stated that there is no doubt that without the road in place and use of access funds, Cavalier would not have chosen this location. A second company, Albemarle Limousine Company, has recently purchased two lots in the park for a future development of their own. These two businesses do not appear to be qualifying businesses however VDOT will provide the summary information to VEDP for review.

Scott County – eCorridor Regional Park/Southwest

Originally Approved: May 8, 2008	Allocation: \$300,000
Construction Finish Date: May 27, 2010	Charges Against EDA Allocation: \$300,000

Investment Documentation needed in the amount of \$1,500,000

The county notified VDOT, on 3/30/2016, that NC Virginia, LLC has announced plans to locate its technology based operation on property served by the EDA bonded project. VDOT will coordinate with VEDP to ensure this business operation qualifies and with the County to document investment as that information becomes available. Given that qualifying business and investment has not yet been established, it appears that the project would benefit from a 6 month extension as the current planned dates for construction of the building would be after July 1, 2016.