

**REPORT OF THE
VIRGINIA DEPARTMENT OF TRANSPORTATION AND THE
VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP**

**ELIGIBILITY OF BUSINESSES
FOR INDUSTRIAL ACCESS
ROAD FUNDING**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 19

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**

November 10, 1998

The Honorable James S. Gilmore, III
Members, Virginia General Assembly

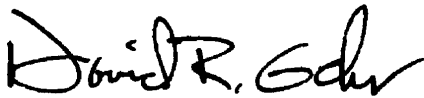
Dear Governor Gilmore and General Assembly Members:

As requested in Item 523 H of the 1998 Appropriation Act, the Department of Transportation and the Virginia Economic Development Partnership have jointly conducted a study concerning the statutory authority of § 33.1-221 of the Code of Virginia to determine the eligibility of businesses for industrial access road funding.

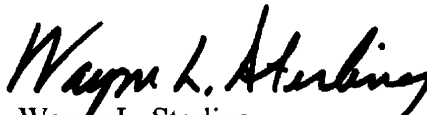
We are pleased to present the findings of this study which indicate that the program is providing the Commonwealth's localities a valuable resource for economic development and can continue to do so with existing statutory authority.

As always, let me know if you have questions.

Very truly yours,



David R. Gehr
Commissioner
Virginia Department of Transportation



Wayne L. Sterling
Executive Director
Virginia Economic Development Partnership

Enclosure

Preface

The Virginia Department of Transportation was asked by the 1998 General Assembly through Item 523 H. of the 1998 Appropriations Act to study, in conjunction with the Virginia Economic Development Partnership, whether to broaden the statutory authority for determining the types of businesses that are eligible for access road funding.

This report was prepared by the Secondary Roads Division of the Virginia Department of Transportation, which administers the Industrial Access Roads program for the Commonwealth Transportation Board. It contains the findings and recommendations developed through joint research and discussions with the Virginia Economic Development Partnership.

Table of Contents

PREFACE	1
TABLE OF CONTENTS	3
EXECUTIVE SUMMARY	5
INTRODUCTION	7
BACKGROUND	7
STATUTE	8
POLICY	10
ELIGIBILITY ISSUES	11
RECOMMENDATION	14
APPENDIX A: Chapter 464, Item 523 H., 1998 Acts of Assembly	15
APPENDIX B: H 404, 1956 Acts of Assembly	17
APPENDIX C: Industrial Access Policy of the Commonwealth Transportation Board	19

Executive Summary

The 1998 General Assembly requested through Item 523 H. of the 1998 Appropriations Act that the Department of Transportation, in conjunction with the Virginia Economic Development Partnership, study whether to broaden the statutory authority of § 33.1-221 of the Code of Virginia to include additional “establishments” that could qualify for industrial access road funding. The two agencies reviewed historical data, assessed current economic development trends and discussed whether modification of existing eligibility criteria would increase the effectiveness of the Industrial Access Roads program.

The program has been in existence since 1956. It was established by the General Assembly so that counties, cities and towns could assist new or expanding industries in obtaining access to their sites, without expending substantial portions of the localities’ regular highway funds. The program is administered by the Commonwealth Transportation Board, in consultation with the Virginia Economic Development Partnership and the Virginia Department of Business Assistance. Administration is carried out under the provisions of § 33.1-221 of the Code of Virginia and the policies of the Commonwealth Transportation Board. Eligibility of the industry is one of the principal considerations in the allocation of funds.

Neither the 1956 legislation nor any of its subsequent amendments prohibits the use of industrial access road funds for any specific type of business. The general intent of the program can be inferred from the statute’s charge that the Transportation Board expend the funds for access roads to “...industrial sites on which manufacturing, processing or other establishments will be built under firm contract or are already constructed...”

The policy of the Commonwealth Transportation Board has been developed through years of experience. Its historical perspective is based on the concept that basic, manufacturing establishments are the most practical objectives of the program because they represent permanence, they add to the Commonwealth’s tax base and they are employment multipliers. The Board has attempted to direct a limited fund source to its most effective use.

Consultation with the Commonwealth’s economic development agencies has been an integral part of the Transportation Board’s process for determination of an establishment’s eligibility for access funding. The flexibility afforded by both the statute and the Board’s policy allows funding for virtually any establishment that is found to be consistent with the intent of the Industrial Access Roads program.

The flow of access project allocations under the existing eligibility criteria is sufficient to exhaust the program’s annual appropriation. No change in the statutory authority of § 33.1-221, Code of Virginia, regarding eligibility of establishments for industrial access road funding is recommended.

I. Introduction

The Industrial Access Roads program has been in existence since 1956, when the General Assembly enacted H 404 to provide a revolving fund set aside from the funds allocated for highway purposes (see Appendix B). This revolving fund was designated for use in providing access to industrial sites, the cost of which had formerly been borne by the industries or by the counties from their regular highway allocations. The State Highway Commission was given the authority to expend the access fund and to replenish it each year.

Industrial access funds may be used to construct a new road to a site that has no access to the public road system. They may also be used to improve an existing road if it is not adequate to accommodate the traffic to be generated by a new industry or an existing industry undergoing substantial expansion.

Since its inception the Industrial Access Roads program has been used in every region of the Commonwealth as an economic development incentive. Millions of dollars have been provided for hundreds of projects to serve industries that have contributed new employment and private capital investment.

As the program has evolved the Commonwealth Transportation Board and its predecessors have, of necessity, developed policies and procedures for its administration. One of the basic considerations is eligibility of a business enterprise for access funding. Although most applications involve companies that can easily be classified as manufacturing or processing, there have been instances in which the nature of a business has been cause for denial of funding. The study requested by the General Assembly is intended to produce a recommendation as to whether the statutory authority for determining which businesses should receive access road funding should be broadened.

II. Background

Before 1956, there was no dedicated source of highway funds to construct access roads to new industries. Requests for such assistance had come to the attention of the Virginia Highway Commission several times in the years before the access program was established, but no action was taken. In response to one such request the Highway Commission stated in May, 1946, that it did not have the resources to serve existing traffic and recommended that an industry locating in Virginia contribute substantially to the cost of new roads and bridges needed to access its site. Further, the Commission recommended that the county in which the industry proposed to locate contribute to the cost of any such new road from tax revenues or from its secondary funds.

During the next nine years, the Highway Commission was approached numerous times by localities and industries seeking funds for construction of new roads. The Commission steadfastly maintained that it had no funds available for such uses and eventually cited its 1946 statement as a policy: if a new road was needed, the industry should be required to fund its construction, and any cost not covered by industry or private contributions would have to be paid from the county's general fund or from its regular highway allocations.

In 1954, the Commission made formal provisions for the use of highway funds to construct new access roads, requiring that the roads first be established as part of the Secondary System and that the use of the funds be approved by the Commissioner. In 1955, the Commission made further provisions to assist counties with participating in access road financing. The amount needed by a county would be advanced in excess of its regular allocation of highway funds, but that county's regular allocation would then be reduced in the following three years until the entire amount was repaid.

The Commission's insistence on the use of secondary funds for industrial access roads apparently caused such concern among the counties that they petitioned the General Assembly for relief. The 1956 Acts of Assembly contained a section which established a revolving fund for access roads to industrial sites. Funding for the access program was set aside from the total available to the Commission. It was limited to one percent of the total or one million dollars, whichever was the lesser.

III. Statute

The Industrial Access Roads Program is administered under the authority of § 33.1-221 of the Code of Virginia, shown below. This section has been amended several times to expand its applicability to towns and cities, to allow the "bonded" provision whereby an access road may be constructed before an industry is committed to locate on a site, and to include airports. Technical amendments have also been made to reflect re-numbering of the section and the Highway Commission's designation as the Commonwealth Transportation Board. No change has been made, however, in the description of the industrial development objectives initially stated.

Highlighted areas indicate language that was included in the original 1956 legislation. Italicized areas have been added by amendment.

§ 33.1-221. Funds for access roads to industrial sites and airports; construction, maintenance, etc., of such roads.

A. Notwithstanding any other provision of law, there shall be appropriated to the Commonwealth Transportation Board funds derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other state revenue allocated for highway purposes, which shall be used by the Board for the purposes hereinafter specified, after deducting the costs of administration before any of such funds are distributed and allocated for any road or street purposes.

Such funds shall be expended by the Board for constructing, reconstructing, maintaining or improving access roads within counties, cities and towns to ~~industrial sites on which manufacturing, processing or other establishments~~ will be built under firm contract or are already constructed and to licensed, public-use airports; in the event there is no such establishment or airport already constructed or for which the construction is under firm contract, a county, city, or town 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. Towns which receive highway maintenance payments under § 33.1-41.1 shall be considered separately from the counties in which they are located when receiving allocations of funds for access roads.

B. In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the Board shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the airport or the ~~industrial establishment~~ *within the total industrial area*. In any *industrial park* or airport, the total volume of traffic to be generated shall be taken into consideration in regard to the overall cost thereof. No such access road shall be constructed or improved on a privately owned ~~plant site~~.

C. Any access road constructed or improved under this section shall constitute a part of the secondary system of state highways or the road system of the locality in which it is located and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such system.

The General Assembly now wishes to consider whether to broaden the statutory authority for determining the eligibility of businesses for access road funding.

IV. Policy

Administration of the Industrial Access Roads program is delegated to the Commonwealth Transportation Board. After more than forty years of experience with a variety of proposals for access road funding, the policy for administering the program remains consistent in its orientation toward establishments that involve manufacturing or processing.

From time to time the policy has been expanded to provide clarification of the Transportation Board's position on an issue, to set forth funding limitations, or to reflect a statutory change. The policy that originated as a four-paragraph resolution by the Highway Commission in 1956 now contains only twelve provisions, with one addendum. Its purpose is to provide a consistent and equitable basis for making the program's funds available to localities as an economic development resource. The policy is contained in Appendix C.

In May 1956, the Highway Commission received a report on the use of the newly-authorized industrial access road funds. The report contained a list of five projects which had been initiated with regular secondary funds before the General Assembly's action. It was recommended and approved that industrial access funds be allocated for a portion of the cost of each. Two other requests were on the list, and they were both considered ineligible and not recommended for funding. The first was a loading facility for a wood yard, and the second involved an otherwise eligible industry that had been in operation for approximately two years. This indicates that the Commission had already begun to formulate criteria for program eligibility – one activity did not meet the test as a manufacturing or processing establishment and the other was an existing industry.

The current policy addresses the types of businesses eligible for access funding in three of its provisions. The first policy item states that, "The use of industrial access funds shall be limited to the purpose of providing adequate access to new or substantially expanding manufacturing, processing, and industrial facilities, or other establishments." This is essentially a reiteration of the language in § 33.1-221 of the Code of Virginia.

Paragraph 3 of the policy specifically excludes certain uses considered more appropriately a function of other public sectors or of speculative private development. "Industrial access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, government installations, or similar facilities, whether public or private. (Access roads to publicly owned airports, while provided for in Section 33.1-221, are funded and administered separately)." This restriction was initiated in 1962, when increasing numbers of applications for the funds began to consume the program's entire annual budget. Because there were enough projects requested for businesses that were clearly of a manufacturing or processing nature, the Highway Commission thought it appropriate to specify certain uses as ineligible. The initial list included only "hospitals, libraries,

armories, and other public or semipublic facilities.” It was amended in 1964 to also include airports, schools, amusement facilities and government installations. Office buildings, shopping centers and apartment buildings were added to the ineligible list in 1980. Finally, in 1986, churches, hotels and motels appeared, and the modifier “speculative” was attached to office buildings. In each instance, correspondence and instructional memoranda indicate that funding requests were exceeding the balance available and the program’s administrators were attempting to direct its resources toward the manufacturing and processing sector.

The last of the eligibility references in the current policy relates to consultation with the Commonwealth’s economic development agencies in determining whether to allocate funds for a proposed project. “The Commonwealth Transportation Board will consult and work closely with the Governor’s Department of Economic Development [now the Virginia Economic Development Partnership and the Virginia Department of Business Assistance] in determining the use of industrial access funds and may rely on the recommendations of this Department in making decisions as to the allocation of these funds. In making its recommendations to this Board, the Department of Economic Development will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia. The determination by the Department of Economic Development that the subject establishment impacts the economic growth of the Commonwealth to such an extent that an allocation should be made regardless of the manufacturing or distributive classification will be given considerable weight by this Board.”

Since the program’s beginning the expertise of the state-level economic development staff has been an invaluable resource in determinations of eligibility. In every application process, the Department of Transportation consults the Virginia Economic Development Partnership or the Department of Business Assistance for confirmation of industry eligibility, even in cases where the answer is obvious. This long-standing practice sustains a cooperative inter-agency effort to promote economic growth. It also provides a direct channel for requesting timely assistance in providing the incentive value of an access road when Virginia is competing with other states for a prospective industry.

V. Eligibility Issues

When framing its policy for administering the new industrial access program in 1956, the Highway Commission realized that demand would be high and that the enabling legislation was vague in some respects. The first adopted policy established limitations on the amount of funds available to any one county in a fiscal year. Only two months later the policy was expanded. To emphasize and support what it perceived as the intent of the program, the Commission addressed eligibility by restricting the fund to new industries or those expanding within the state. It further denied funding for

construction of roads to potential industrial sites. No consideration was given at that time to the nature of the businesses that might apply for assistance.

In subsequent years, applications have been submitted by a wide variety of business interests. Most have involved industries that were unquestionably of a manufacturing or processing nature. Some could not clearly be classified as such, but have been deemed eligible after submitting additional information. Others have been denied funding because they involved activities whose contribution to the economy was not considered appropriate to the intent of the program. The Commonwealth Transportation Board excluded certain uses by policy only after extensive deliberation and consultation with the development community.

The underlying principle in establishing eligibility criteria for industrial access funding is the economic theory that manufacturing and processing industries involve private investment in substantial taxable capital assets, can be assumed to represent a long-term commitment to remain in operation because of their investment in infrastructure, provide "basic" employment in significant numbers, and stimulate additional economic development in the retail and service sectors. They are, therefore, considered more valuable to the state's economy and a more appropriate target for the limited access funds available.

Appeals of ineligibility decisions have stimulated discussions and evaluations of the industrial access program's intent. The prevailing conclusion has been that manufacturing and processing should remain the primary focus. As a result of a recommendation by the Virginia Department of Economic Development in 1986, the concept of "basic" employment was used to expand eligibility to include certain distribution facilities with at least 50% of their business outside Virginia. On occasion, businesses whose nature did not fit the institutional concept of "industry" have been provided access road funding when the Commonwealth Transportation Board and economic development interests have reached a consensus agreement that the allocation would produce a net benefit to the state's economy. A task force appointed by Secretary of Transportation Robert E. Martínez in 1994 discussed many aspects of the industrial access program but did not recommend any expansion of its eligibility criteria.

The Code of Virginia was amended and corresponding policy changes were adopted in 1978 to allow the use of industrial access funds to construct roads under the "bonded" concept. This process is used most often to provide access to new or expanding industrial parks, where industries have not yet committed to locate. It was conceived as a way to assist localities in attracting new industry by advance placement of infrastructure.

The locality may guarantee by bond that the site will be occupied by an eligible industry within three years of the allocation of funds. If this does not occur, the locality must reimburse the cost of the access road. To avoid repayment, an eligible industry must be constructed or under contract, in the same manner as a "regular" access project. The bonded process is more speculative in nature, is subject to fluctuations in the

economy, and can be perceived as a negative reflection on the locality if development does not occur. In FY 1996-97, eleven of eighteen industrial access allocations were made for bonded projects. In FY 1997-98, allocations were made for twenty projects, of which fourteen were bonded.

Unlike “regular” projects in which the industry’s eligibility is established before the allocation of access funds, a bonded project involves risking the locality’s public funds on anticipated development. Obtaining a commitment from a business to locate on a site served by a bonded project is often the culmination of a long, intensive effort by local authorities. A subsequent determination that the business is not eligible and will not relieve the locality of its obligation for the access road may partially or fully negate the expected economic benefit to the community. Appeals for reconsideration or for exceptions to policy have created adversarial situations between local governments and the access program’s administrators.

A significant consideration in the access program’s administration is the funding limitation imposed by the Appropriations Act. In past years, any unexpended balance in the program was allowed to carry forward and accumulate. The annual appropriation was as much as \$5 million until FY 1991-92, when it was reduced to \$4 million. During the 1980’s, recession reduced the demand for funds because there was less industrial development. A considerable balance accrued to the fund over a period of years. As the economy recovered, allocations began to exceed the annual appropriation and portions of the accrued balance were used to fund the excess.

Increasing development also affected the Rail Industrial Access program, which provides access tracks for rail-oriented industries and is administered by the Department of Rail and Public Transportation. The rail program had been unable to assist a number of eligible applicants because its funds were depleted in the first months of each fiscal year. The task force studying all of the state’s access programs in 1994 recommended that funding for rail, airport and road access be combined so that all could draw upon the total amount. The 1995 Appropriations Act provided a total of \$5.5 million for the three programs, and the same amount has been approved in succeeding years.

An assessment of transportation funding resources in 1997 identified the accumulated balance in the industrial access program for potential use in other programs. The reserve funds were subsequently distributed among transportation uses with immediate needs. Further, the Appropriations Act was amended in 1998 to preclude the accumulation of any unused balance from year to year: “Any balance in the Industrial, Airport and Rail Access program at the end of each fiscal year that exceeds an amount equal to the annual appropriation shall be available in the next fiscal year for allocation to other transportation programs.” In the last several years, allocations to rail and road access projects have exceeded the \$5.5 million available in the appropriation, with the excess covered by unexpended funds from completed projects and reimbursements from unsuccessful bonded projects. Continued demand at this level will eventually cause the fund to be depleted before all projects can be financed, without any expansion of eligibility criteria.

It has been pointed out by the Virginia Economic Development Partnership that other development incentives such as the Governor's Opportunity Fund and the Work Force Services training program use similar criteria for eligibility and that consistency in all programs is desirable.

Finally, although new technologies and employment opportunities are constantly being introduced to the economy of the state, there has been no discernible demand for access funding for a business type that has not already been considered eligible.

VI. Recommendation

It is recommended that no change be made in the statutory authority for administration of the Industrial Access Roads program. The language in § 33.1-221 does not expressly prohibit the use of access funds for any type of establishment. The policy of the Commonwealth Transportation Board does exclude certain specific uses that have been determined inappropriate for support from public funds. The remaining provisions of the policy are sufficiently broad, however, to allow discretion in the eligibility determination, or even to permit an exception to established practice if warranted in an individual situation.

The Department of Transportation, the Virginia Economic Development Partnership and the Virginia Department of Business Assistance have a close working relationship and a mutual desire to promote economic growth in the Commonwealth. As the nature of industry has changed over the 42-year life of the Industrial Access Roads program, the agencies have agreed upon modifications in the eligibility criteria that support the intent of the program without limiting its use to heavy manufacturing activities. Under these conditions, there is sufficient flexibility in interpreting the eligibility of proposed projects to obligate all of the current annual appropriation.

Appendix A

1998 Virginia Acts of Assembly (H30) Chapter 464, Item 523 H.

The Department of Transportation, in conjunction with the Virginia Economic Development Partnership, shall study whether to broaden the statutory authority of §33.1-221, Code of Virginia, to include additional “establishments” that could qualify for access road funding. Any recommendations to broaden the definition of qualifying “establishment” shall be mutually agreed upon by both the Department of Transportation and the Partnership. The findings and recommendations of this study shall be reported to the 1999 General Assembly.

Appendix B

Acts of Assembly - 1956 Session

H404: "An act to provide for the creation from funds available to the State Highway Commission of a revolving fund for the construction of certain access roads; to authorize the expenditure of such funds and to provide how such access roads shall be maintained."

Be it enacted by the General Assembly of Virginia:

1. (a) Notwithstanding any other provision of law, from the funds available to the State Highway Commission derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other State revenue allocated for highway purposes, and after the costs of administration but before any of such funds are distributed and allocated for any road or street purposes, the Commission shall initially set aside the equivalent of one per cent of such fund not to exceed one million dollars.

This fund shall be expended by the Commission for constructing, reconstructing, maintaining or improving access roads to industrial sites on which manufacturing, processing or other establishments will be built under firm contract or are already constructed. At the close of each succeeding fiscal year the Commission shall replenish this fund to the extent it deems necessary to carry out the purpose intended provided the balance in the fund plus the replenishment does not exceed the aforesaid one per cent or one million dollars, whichever is the lesser.

(b) In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the Commission shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the industrial establishment. No such access road shall be constructed or improved on a privately owned plant site

(c) Any access road constructed or improved under this act shall constitute a part of the secondary system of State highways and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such secondary system.

Section number 33.136.1 was assigned by the Virginia Code Commission, the 1956 act having assigned no number.

Appendix C

INDUSTRIAL ACCESS POLICY of the COMMONWEALTH TRANSPORTATION BOARD

Moved by Mr. Smalley, seconded by Mr. Musselwhite, that

WHEREAS, The General Assembly has from time to time amended Section 33.1-221, of the Code of Virginia (1950), relating to the fund for the construction of industrial access roads within the counties, cities, and towns of the Commonwealth; and

WHEREAS, it is the sense of this Board that the present policy should be revised and restated to be more compatible with present conditions.

NOW, THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board hereby adopts the following policy to govern the use of industrial access funds pursuant to Section 33.1-221, as amended, of the Code of Virginia (1950):

1. The use of industrial access funds shall be limited to the purpose of providing adequate access to new or substantially expanding manufacturing, processing, and industrial facilities, or other establishments.
2. Industrial access funds shall not be used for the acquisition of rights of way or adjustment of utilities. These funds are to be used only for the actual construction and engineering of a road facility adequate to serve the traffic generated by the new or expanding establishments.
3. Industrial access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, government installations, or similar facilities, whether public or private. (Access roads to publicly owned airports, while provided for in Section 33.1-221, are funded and administered separately).
4. No cost incurred prior to this Board's approval of an allocation from the industrial access funds may be reimbursed by such funds. Industrial access funds shall be authorized only after certification that the manufacturing, processing, or other establishment will be built under firm contract, or is already constructed, or upon presentation of acceptable surety in accordance with paragraph (a) of Section 33.1-221, as amended, of the Code of Virginia (1950).

5. Industrial access funds shall not be used to construct or improve roads on a privately owned plant site. Nor shall the construction of a new access road to serve any industrial site on a parcel of land which abuts a road constituting a part of the systems of state highways or the road system of the locality in which it is located be eligible for industrial access funds, unless the existing road is a limited access highway and no other access exists. Further, where the existing road is part of the road system of the locality in which it is located, or the secondary system of state highways, industrial access funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by the new or expanding industrial facility. Funds must be provided from other sources to address any current road inadequacies.

6. Not more than \$300,000 of unmatched industrial access funds may be allocated in any fiscal year for use in any county, city or town which receives highway maintenance payments under Section 33.1-41.1, Code of Virginia. A town whose streets are maintained under either Section 33.1-79 or 33.1-82, Code of Virginia, shall be considered as part of the county in which it is located. The maximum eligibility of unmatched funds shall be limited to 10% of the capital outlay of the designated industry or industries. The unmatched eligibility may be supplemented with additional industrial access funds, in which case the supplemental access funds shall not be more than \$150,000, to be matched dollar-for-dollar from funds other than those administered by this Board. The supplemental industrial access funds over and above the unmatched eligibility shall be limited to 5% of the capital outlay of the designated industry or industries. Such supplemental funds shall be considered only if the total estimated cost of eligible items for the individual access improvement exceeds \$300,000.

7. Eligible items of construction and engineering shall be limited to those which are essential to providing an adequate facility to serve the anticipated traffic. Items such as storm sewers, curb and gutter, and extra pavement width will not normally be eligible. However additional pavement width may be eligible where necessary to qualify the road facility in a city or town for maintenance payments under Section 33.1-41.1, as amended, of the Code of Virginia.

8. It is the intent of the Board that industrial access funds not be anticipated from year to year. Unused eligibility cannot be allowed to accumulate and be carried forward from one fiscal year to another.

9. The Commonwealth Transportation Board will consult and work closely with the Governor's Department of Economic Development in determining the use of industrial access funds and may rely on the recommendations of this Department in making decisions as to the allocation of these funds. In making its recommendations to this Board, the Department of Economic Development will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia. The determination by the Department of Economic Development that the subject establishment impacts the economic growth of the Commonwealth to such an extent that an allocation should be

made regardless of the manufacturing or distributive classification will be given considerable weight by this Board.

10. Prior to the formal request for the use of industrial access funds to provide access to new or expanding industries, the location of the access road shall be submitted for approval of the engineers of the Virginia Department of Transportation. The engineers shall take into consideration the cost of the facility as it relates to the location and as it relates to the possibility of the future extensions of the road to serve other possible industrial establishments, as well as the future development of the area traversed.

11. Prior to this Board's allocation of funds for such construction or road improvements to an industry proposing to locate or expand in a county, city, or town, the governing body shall by resolution request the access funds and shall be responsible for the preliminary negotiations with the industries and others interested. Transportation engineers will be available for consultation with the governing bodies and others, and may prepare surveys, plans, engineering studies, and cost estimates.

12. The Commonwealth Transportation Commissioner, through the Deputy Commissioner, is directed to establish administrative procedures to assure the provisions of this policy are adhered to and complied with.

BE IT FURTHER RESOLVED, that the above policy shall become effective immediately, and all policies heretofore adopted by this Board governing the use of industrial access funds rescinded simultaneously.

MOTION CARRIED.
March 16, 1989

POLICY ADDENDUM

Moved by Mr. Smalley, seconded by Mr. Bacon, that

WHEREAS, the General Assembly has enacted, and it has from time to time amended, Section 33.1-221 of the Code of Virginia (1950), to provide a fund to be used for the construction of industrial access roads within the counties, cities, and towns of the Commonwealth to industrial sites on which manufacturing, processing or other establishments will be built under firm contract or are already constructed; and

WHEREAS, the above-noted statute further provides that in the event that there is no such establishment already constructed or under firm contract, a county, city, or town may guarantee to the commonwealth Transportation Board by bond or other acceptable device that such will occur and, should no establishment acceptable to the Board be constructed within the time limits of the bond, such bond shall be forfeited; and

WHEREAS, this Board has adopted, and from time to time has revised and restated a policy to govern the use of industrial access funds pursuant to Section 33.1-221, as amended, Code of Virginia (1950); and

WHEREAS, the above-noted policy of this Board does not address the question of time limits for bonds, leaving this matter instead to be determined in administrative procedures; and

WHEREAS, it is now the established procedure to have a maximum time limit of two years from the date of this Board's allocation of funds for bonds; and

WHEREAS, following several years of experience with said two-year limit, there have been suggestions from counties, cities, and towns that the time limit should be expanded by six months or a year;

NOW, THEREFORE BE IT RESOLVED, that it is the sense of this Board that the maximum time limit for a bond be three years from the date of this Board's initial allocation of funds to an industrial access project, and the bond shall be forfeited unless one or more establishments acceptable to the Board shall have been constructed within the time limit of the bond.

BE IT FURTHER RESOLVED, that said maximum three year time limit shall be applicable to bonded industrial access allocations approved by this Board after January 31, 1991, upon request of a county, city, or town.

MOTION CARRIED
January 17, 1991