▪ *In-Person Meeting* ▪

AGENDA

Incentives & Loans Committee

Southwest Virginia Higher Education Center, Grand Hall
1 Partnership Circle, Abingdon, Virginia 24212
Thursday, May 18, 2023
9:00 A.M.

In accordance with §2.2-3708.3 of the Code of Virginia, public access for this meeting is being provided both in person and through electronic communications means. The public may remotely participate in this meeting by utilizing the following meeting link:

https://virginiatobaccocommission.my.webex.com/virginiatobaccocommission.my/j.php?MTID=m3a2aa37e12f81f1e416e45820a6b6fcc

If participating by phone, please dial:
1-408-418-9388 (toll) and enter meeting number: **2634 101 1310** and password: **78883269**

If during the meeting electronic transmission fails, the public may alert the Commission by calling 804-894-9652 or emailing jbutler@revitalizeva.org. If alerted to a transmission failure, the Committee shall recess until public access is restored.

Welcome and Call to Order	*Hon. Danny Marshall, Chair*
Call of the Roll	*Hon. James E. Campos, Acting Executive Director*
Approval of the *1/4/23* Minutes	*(published on website)*
Public Comment	
Extensions & Modifications	*Mr. Jordan Butler, TROF Program Manager*
Review TROF Policy	*Mr. Andy Sorrell, Deputy Director*
Other Business	
Public Comment	
Adjournment	

Incentives & Loans Committee
May 18, 2023

The Incentives and Loans Committee is meeting on May 18, 2023 at 9:00 am to consider multiple requests for performance extensions or other project modifications of existing projects. The following summaries provide staff overview and comment on the projects mentioned above.

Extensions and Modifications

1. Smyth County Economic Development Authority
***Scholle IPN Packaging, Inc.* (#3506)**
Request to Accept Reported Value vs. Assessed Value of Capital Assets and Performance Extension through December 31, 2023

Staff Overview and Comments: This is a Tobacco Region Opportunity Fund (TROF) grant for $195,000 that was awarded to the Smyth County Economic Development Authority (the "EDA") and Scholle IPN Packaging, Inc. (the "Company"). The performance period was December 2018 through December 2021. An administrative extension was granted through December 31, 2022. The performance agreement required the company to employ 42 individuals with an average annual wage of $43,806 and provide new private taxable assets of $10,290,000. The grant is to be disbursed post-performance.

The Company has fully met the employment obligation, delivering 76 jobs, well over the 42 promised. The Company has also greatly surpassed the promised quarterly wages as well as the average annual wage promised. The company has fully earned the portion of the grant devoted to job creation ($97,500).

As noted in the executed performance agreement, the Commission requires "The Company's achievement toward meeting its taxable asset obligation ***shall be based on asset values assessed by the COR for the Locality…***" (*Emphasis added*).

Using the above methodology, the Company has met 29% of the private taxable capital investment obligation by providing capital investment assessed at approximately $ 2.95 million.

As noted in the attached letter (Attachment A), from the Company, and as supported by the EDA, the Company has requested the Commission consider using the original reported costs of Machinery & Tools (M&T) and Personal Property (PP) rather than the assessed values as the locality applies an assessment ratio that significantly reduces the assessed value. As noted above, the performance agreement requires the Commission to utilize assessed values of capital investment as reported by the Commissioner of Revenue in writing. If the Commission were to consider utilizing the original reported costs of the M&T and PP, the Company's total capital investment would be more than $8.6 million (84% of promised). Using reported cost would significantly increase the capital investment delivered from 29% to 84% and allow the Company to earn a greater portion of the grant devoted to capital investment (upon submittal of appropriate receipts and invoices needed to verify reported capital expenditures).

The Commission recently approved several similar requests for acceptance of reported costs vs. assessed costs of capital expenditures (# 3501 & 3550 in fall 2022), staff recommends the request be approved. The EDA has also requested a performance extension for one year to December 31, 2023. Staff supports the performance request as well given because of the progress the Company has so far achieved.

Staff recommends that the performance agreement for TROF project #3506 be modified to permit the acceptance of reported costs (as evidenced by receipts of capital purchases) of M&T and TPP towards the Company's taxable asset obligation as verified in writing by the local Commissioner of Revenue AND that a performance extension be approved through December 31, 2023.

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2. Smyth County Economic Development Authority
***Speyside Bourbon Cooperage, Inc.* (#3451)**
Request for a Performance Extension through June 30, 2023

Staff Overview and Comments: This is a Tobacco Region Opportunity Fund (TROF) grant for $415,000 that was awarded to the Smyth County Economic Development Authority (the "EDA") and Speyside Bourbon Cooperage, Inc. (the "Company"). The performance period was June 2018 through June 2021. An administrative extension was granted through June 30, 2022. The performance agreement required the company to employ 125 individuals with an average annual wage of $30,173 and provide new private taxable assets of $26,000,000. The grant is to be disbursed post-performance.

Based on available data, the Company has nearly met the employment obligation, delivering 108 of the promised 125 jobs. The Company has nearly met the promised level of capital investment, delivering $23,980,907 of $26,000,000 promised.

Given their active hiring, investment and overall performance to date, the Company, with the support of the EDA, is requesting a 5th year extension to include updated employment and expenditure data that will show they have met more or all of their obligations under the grant agreement.

Staff recommends a 5th year performance extension through June 30, 2023.

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3. Russell County Industrial Development Authority
Polycap LLC. (#3507)
Request to Accept Reported Value vs. Assessed Value of Capital Assets

Staff Overview and Comments: This project includes both a Tobacco Region Opportunity Fund (TROF) grant for $140,000 and a $140,000 TROF Loan for $140,000 that was awarded to the Russell County Industrial Development Authority (the "IDA") and Polycap LLC (the "Company"). The performance period was March 2019 through March 2022 and was administrative extended through March 2023. The performance agreement required the Company to employ 44 individuals with an average annual wage of $29,474 and provide new private taxable assets of $7,900,000. The grant and loan were both disbursed pre-performance. The Company has nearly met the employment obligation, delivering 36 of the promised 44 jobs.

As noted in the executed performance agreement, the Commission requires "The Company's achievement toward meeting its taxable asset obligation ***shall be based on asset values assessed the COR for the Locality***..." (*Emphasis added*).

Using the above methodology, the Company has met 47% of the private taxable capital investment obligation by providing capital investment assessed at approximately $3.67 million.

As noted in the attached letter (Attachment B), the IDA has requested the Commission consider using the original reported costs of Machinery & Tools (M&T) and Personal Property (PP) rather than the assessed values as the locality applies an assessment ratio that significantly reduces the assessed value. As noted above, the performance agreement requires the Commission to utilize assessed values of capital investment as reported by the Commissioner of Revenue in writing. If the Commission were to consider utilizing the original reported costs of the M&T and PP, the Company's total capital investment would be $8.368 million (106% of promised). Using reported cost would significantly increase the capital investment delivered from 47% to 106% and allow the Company to earn a greater portion of the grant devoted to capital investment (upon submittal of appropriate receipts and invoices needed to verify reported capital expenditures).

The Commission recently approved several similar requests for acceptance of reported costs vs. assessed costs of capital expenditures (# 3501 & 3550 in fall 2022), staff recommends the request be approved.

Staff recommends that the performance agreements (grant and loan) for TROF project #3507 be modified to permit the acceptance of reported costs (as evidenced by receipts of capital purchases) of M&T and TPP towards the Company's taxable asset obligation as verified in writing by the local Commissioner of Revenue.

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4. Tazewell County Industrial Development Authority
***Blue Wolf Sales and Service* (#3101)**
Request for Acceptance of Capital Investment Outside of Performance Period

Staff Overview and Comments: This is a Tobacco Region Opportunity Fund (TROF) grant for $50,000 that was awarded to the Tazewell County Industrial Development Authority (the "IDA") and Blue Wolf Sales and Service (the "Company"). The performance period was September 2015 through September 2022. The award was disbursed prior to performance, and the Company promised to provide 15 jobs at an average annual salary of $27,435 and a private taxable capital investment of $1,559,000. The performance period was extended several times, and the last extension approved by the Commission was the final extension through September 30, 2022.

Staff has completed the final review of performance and finds that the Company met 67% of their employment promise. In review of the capital investment for the project, staff discovered that a major real estate capital expense occurred in September 2015 which is prior to the start of the performance period. The real estate investment was $1,476,700 and if that is included with the machinery and tools investments, the Company exceeds the capital investment requirement. As noted by the IDA in Attachment C, the IDA requests the Commission consider allowing the Company's real estate investment to be included in the performance period. Without the real estate investment the Company only meets 41% of the capital investment requirement. In speaking with the IDA, it was the intent that the real estate be including as part of the qualifying capital investment. With the inclusion of the real estate investment the Company will have fully met their capital asset obligation and fully earned that portion of the grant ($25,000). The Company earned 67% of the employment portion ($16,666.65) and will have a small unearned portion to repay to the Commission in the amount of $8,333.35. Without the acceptance of real estate, an additional $14,750 would also need to be repaid.

Staff finds it reasonable to permit the inclusion of the real estate investment as part of the performance period and supports this request.

Staff recommends that project #3101 permit the inclusion of real estate purchased on September 23, 2015 in the amount of $1,476,700 be counted towards the taxable capital investment obligation of the project.

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5. Joint Industrial Development Authority of Wythe County
***Blue Star NBR, LLC.* (#3892)**
Request for an Approval Extension and Adjustment of Performance Agreement.

Staff Overview and Comments: This is a Tobacco Region Opportunity Fund (TROF) grant award for $1,022,000 that was awarded in September 2021 to the Joint Industrial Development Authority of Wythe County (the "JIDA") and Blue Star NBR, LLC (the "Company"). The grant was provided in return for the Company providing 1,044 new jobs at a promised average salary of $37,211 and a taxable capital investment of $446 million in Wythe County. The approval letter and draft performance agreement were sent to the JIDA in January 2022 and have not been returned to the Commission for execution. The unexecuted performance agreement, which required disbursement prior to performance, had a three-year performance period beginning September 22, 2021 which is now over halfway through. Because the agreement remains unexecuted, the Commission retains all funds.

As noted in Attachment D, JIDA staff has noted the necessity of the TROF incentive to the project's viability and remain interested in the award. JIDA staff have also previously noted difficulty in arranging the necessary security to secure the performance obligations of the Company that would permit pre-performance disbursement of award funds. As noted in the letter, the Wythe JIDA is requesting that the project's approval be extended to permit a revised performance agreement to be signed and returned to the Commission. JIDA staff also requests that the disbursement be amended to post-performance and that the award date be amended to June 2026 to reflect the current realities of project completion. JIDA staff also requested that a 60 day deadline be set to return the revised signed performance agreement. Should the Commission desire to extend the approval of this project, staff finds the above requests reasonable. No other changes are proposed to the project.

Staff recommends the following approval conditions be considered by the Commission:

- **TROF #3892 award approval be extended to July 20, 2023;**
- **Revised performance agreement prepared including award amended to post-performance disbursement; and**
- **With a revised award date of May 18, 2023 permitting a revised performance period for 3 years from this date – May 18, 2026.**

Tobacco Region Opportunity Fund Policy Discussion

The existing adopted TROF policy is included as Attachment E. Information on the Commission's revenue sharing policy is found in Attachment F. The policy was last revised in November, 2020. Staff requests the Committee review the existing TROF Policy and provide guidance on several key policy items. Staff suggests several starting points:

- Eligibility requirements (see Sections 1 & 2)
- Award amount authorizations (see Section 4)
- Prospect Incentive Fund eligibility (see Section 5)
- Award Types (grant and loan?) (see Section 6)
- Award Disbursements (See Section 7)
- Acknowledgement (plaques?) (See Section 11)
- Revenue Sharing (See Attachment F)

After receiving Committee guidance, staff can revise the TROF Policy and can circulate it among partners for feedback this summer. A final policy can then be presented to the Commission for adoption at the fall 2023 meeting.

Attachment A

Scholle IPN

PART OF SIG

Virginia Tobacco Region Revitalization Commission
Attn: Andy Sorrell, Deputy Director
701 E. Franklin Street, Suite 501
Richmond, VA 23219

RE: Project 3506: Scholle IPN Packaging, Inc – Taxable Investment Calculation

Andy:

Thank you for considering our request to use reported value in place of assessed value in the evaluation of the achievement of our capital investment commitment on the subject project. It is our contention that using assessed value instead of reported value under-represents the investment we committed to and achieved in this project.

In comparing the base year (2018) to the final year of our performance period (2022) on Form 762 M&T – Return Of Machinery & Tools, despite our reported value increasing by $8,646,194, our assessed value only increased by $3,324,177. Though we physically carried out the commitments made through direct capital investment spend, the calculation of assessed value does not reflect that. Because the calculation of assessed value reduces the original cost of the property based on the year in which it is placed in service, using assessed value under-represents our investment in two ways:

1. Because this is a multi-year project and even the most recent year original cost is reduced by a factor, the assessed value does not demonstrate the capital spent by the Company as outlined in our original commitment.
2. The investment planned in our original commitment included a large amount of equipment being relocated from other facilities within the same legal entity. Because they are transfers within the same legal entity, for purposes of completing Form 762 M&T – Return Of Machinery & Tools, the original cost of the property was entered in the original year the property was acquired by the legal entity (not the year in which it was installed in our Chilhowie, VA facility as part of this project). As a result, the calculation of assessed value uses a high factor to reduce the original cost of that transferred equipment and understates the value of that transferred equipment as was outlined in the original commitment.

By using the reported value in place of assessed value in measuring the achievement of our original commitment, it will be consistent with how the original commitment was calculated and provide a fair measurement of how we complied with that commitment. We believe our achievement of the original commitment is further supported by the fact that we exceeded our original employment commitment.

We appreciate your consideration of this request and the support you have shown us to date for our expansion in this region.

Respectfully,

Ricardo Bernardo
Plant Manager – Chilhowie, VA
Scholle IPN Packaging, Inc.

Scholle IPN Packaging, Inc. 200 West North Avenue, Northlake, IL 60164, United States. scholleipn.com

Attachment B

IDA Russell County, VA

Industrial Development Authority of
Russell County, Virginia

May 8, 2023

Mr. Andrew Sorrell
Virginia Tobacco Region Revitalization Commission
701 E. Franklin St., Ste. 501
Richmond, VA 23219

To Whom it May Concern:

The Russell County IDA would like the Commission to consider using the original reported costs of Capital Improvement, Machinery & Tool (M&T) and Personal Property (PP) rather than the assessed values as the County is not expected to re-assess the property with the improvements for another two years. The current County assessment of the property was done prior to any company modifications. Therefore, any letter received by the Commissioner of Revenue in writing would not accurately represent any modifications to the property.

By utilizing the actual costs of the M&T and PP as well as the property improvements to the facility, Polycap's total capital investment would be $8,368,693.14 (106% of promised). Using reported cost would significantly increase the capital investment delivered from 47% to 106% and allow Polycap the ability to earn a greater portion of the grant devoted to capital investment.

We greatly appreciate your consideration in this matter.

Sincerely,

Ernie McFaddin
Executive Director

Attachment C

Tazewell County Industrial Development Authority
TAZEWELL COUNTY, VIRGINIA

197 Main Street * Tazewell, Virginia 24651 * Phone 276-385-1671 * Fax 276-988-4246

Grant Number: #3101

Dear Commissioners:

I have been advised by Commission staff that the primary capital investment made by the Company in the above referenced project actually occurred via conveyance Deed of Trust by and between Mill Dam Investments, LLC and Blue Wolf Sales and Service, Inc. on 26th day of August, 2015 exactly five (5) days or three (3) business days prior to the commencement of the performance period of September, 2015 for the above referenced grant. I would like to thank them for the opportunity to request that this investment nevertheless be considered as a part of the qualifying investment for purposes of determining whether the Company met its obligations pursuant to the grant.

If the more than $1.4m purchase of the Company's facility is included the Company's Investments exceed the total required investment by $ 500,000. It was in fact the intent of the incentives to entice the Company to purchase the facility in Tazewell County, Virginia. The Tazewell County IDA had in fact purchased an Option to purchase the facility to use as a recruitment facility for business expansion in Tazewell County. The Option was very close to expiring in September of 2015. Therefore, it was necessary for the Company to close on the purchase, so as to avoid losing the IDA's investment in the Option, which set the purchase price including a credit paid for by the IDA.

I also ask the Commission to consider that the Company continues to operate in Tazewell County at the facility, employing our residents. Moreover, VEDP counted this investment in the facility when determining that the Company had met the investment requirements of their contemporaneous grant. We understand the performance periods of the two grants were not identical; however, they were both pieces of an incentive package supporting purchase of the facility by the Company.

For these reasons we respectfully request that the Commission consider the Company's expenditure of $1.4m to purchase its facility 5 days prior to the Commencement Date of the grant agreement for the $50,000.00 grant to be included in calculating the investments made by the Company for purposes of determining whether to trigger the claw back provisions of the grant.

Sincerely,

F. K. Hurt

F. Kyle Hurt,
Chairman

Cc: IDA Members

Attachment D

JOINT INDUSTRIAL DEVELOPMENT AUTHORITY
Wythe County, Virginia

May 9, 2023

Mr. Andy Sorrell, Deputy Director
Virginia Tobacco Region Revitalization Commission
701 E. Franklin Street, Suite 501
Richmond, VA 23219

Re: Update on Blue Star Project & TROF agreement #3892

Dear Andy:

Thank you for the opportunity to supply a written update on the Blue Star project in Progress Park and to answer questions for the Commission about the TROF agreement among the company, Wythe County, and the Joint IDA of Wythe County.

First, let me say how appreciative we are for the Commission's support of this significant economic development project. Without such support, the build-out of infrastructure to support it and continued growth would not be possible. The Blue Star project has been held up as an example of multi-organizational collaboration and as a success for not only our region, but for the entire Commonwealth.

Blue Star NBR is nearing the end of its first phase of construction. We toured the site approximately a month ago and Wythe County staff toured last week. The work that has been done on what was raw land not that long ago is amazing. The NBR facility and multiple ancillary structures have all been constructed. Complex systems including mixing, piping, electronic controls, monitoring technology, and more have been installed. Engineered safety solutions have been constructed and the beginning of the campus has taken shape. The structure is truly an imposing feature on the previously flat industrial landscape. Please see the attached photos for a visual.

To answer your direct questions, I offer the following:

First, Wythe County joins us in requesting the grant be paid in arrears (post-performance). This was confirmed this morning by Wythe County Administrator Stephen Bear.

Secondly, the performance period originally projected by this agreement is no longer attainable, largely due to uncontrollable outside factors. Most importantly, the construction timeline has already extended past the halfway point of the three-year period originally imagined. The supply chain residual effects during and post-COVID caused significant delays in equipment and material acquisition and delivery. This ripple effect made the construction process stretch out further than expected.

We acknowledge that this is a notable variation on the original timetable, but due to supply chain disruptions and a longer-than-expected construction period for phase one, Blue Star is not expected to begin hiring until mid-2024 based on current projections. Blue Star itself did not deliberately slow the process, but like many companies, the global pandemic and its effects brought about irregularities in commerce that no one expected.

To address this shift in the timeline, I would request the three-year performance period for job creation and investment attainment start with signing of the agreement, or with a performance date of approximately 6/30/2026.

I would be remiss if I didn't also point out that the TROF funding is being used for the expansion of a wastewater treatment plant by Wythe County. These funds indirectly support Blue Star's project, but they do not fund Blue Star or its activities. The funds are being used to increase our local infrastructure capacity.

I expect to be able to return the revised performance agreement prior to the end of this fiscal year but would request a full sixty days to allow for any potentially necessary board review by Wythe County, the Joint IDA, and Blue Star.

On behalf of the Joint IDA Board of Directors and on behalf of the people of Wythe County, we appreciate your ongoing support of economic development activities in the region. Thanks also for your consideration of the above matters. We look forward to continuing our partnership to maximize the vitality of Virginia's tobacco region.

Sincerely yours,

David Manley,
Executive Director

david.manley@wytheida.org / 276-223-3370

cc: Stephen Bear, Wythe County Administrator
Attachments: Photos of Blue Star site in Wythe County

Photo 1: Three story NBR building under construction in Progress Park, Wythe County

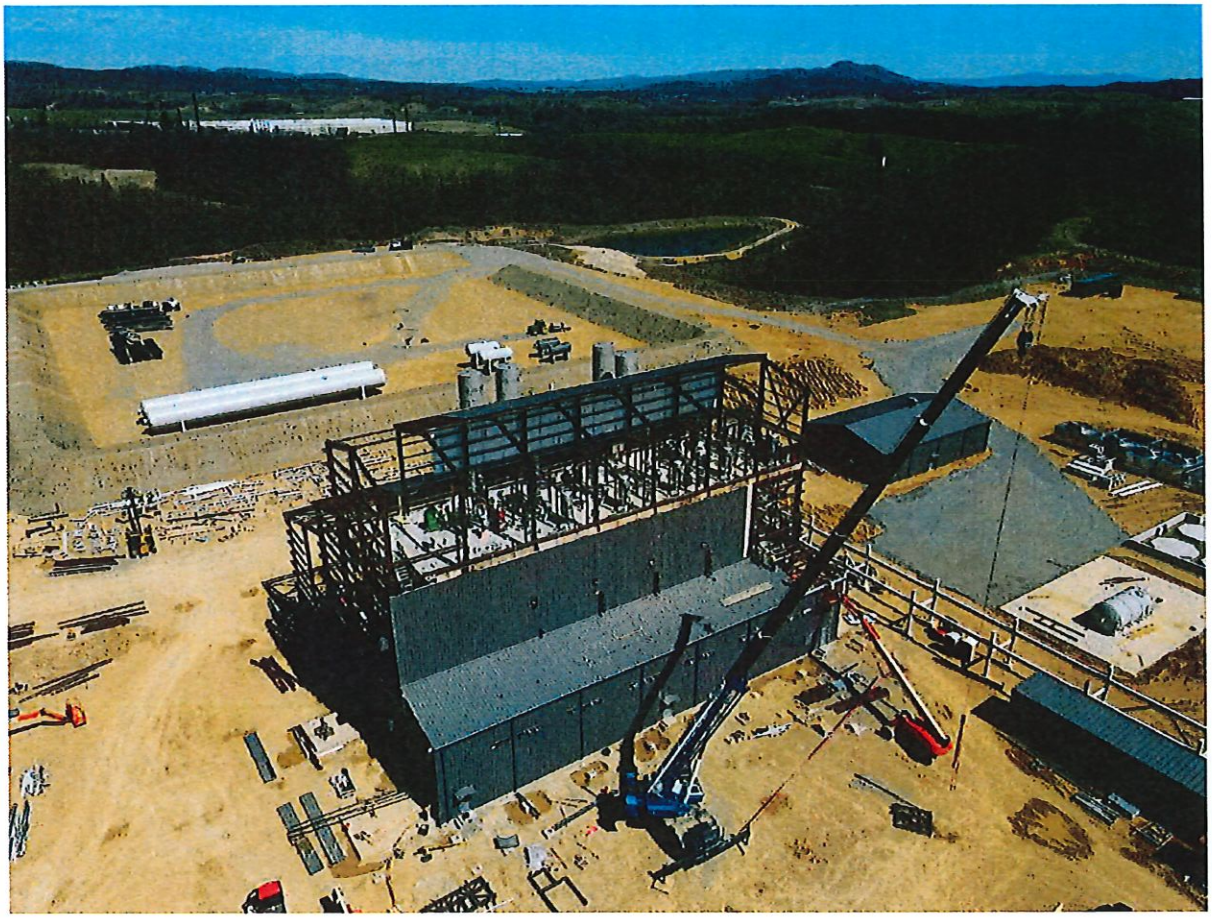


Photo 2: Process building view looking northwest

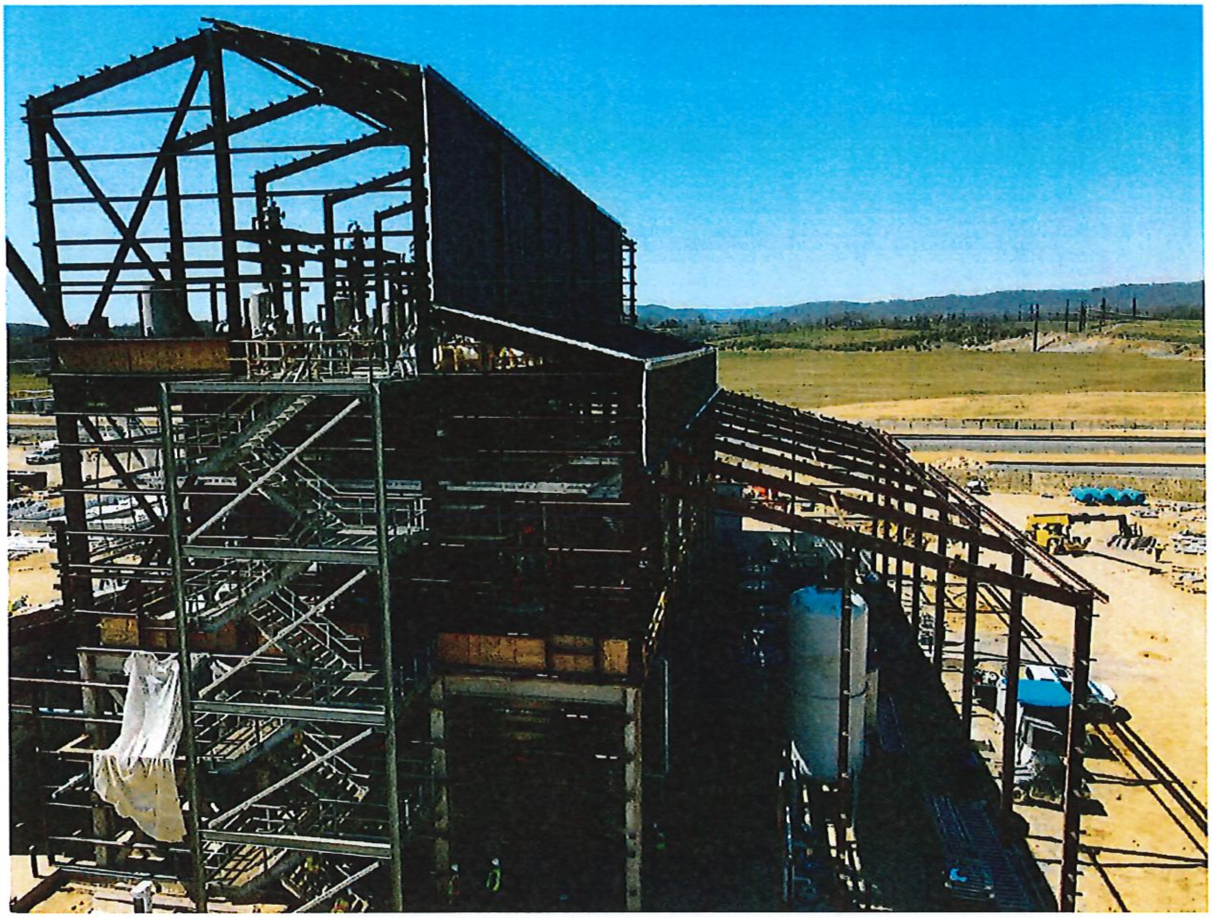


Photo 3: Overhead view of NBR facility

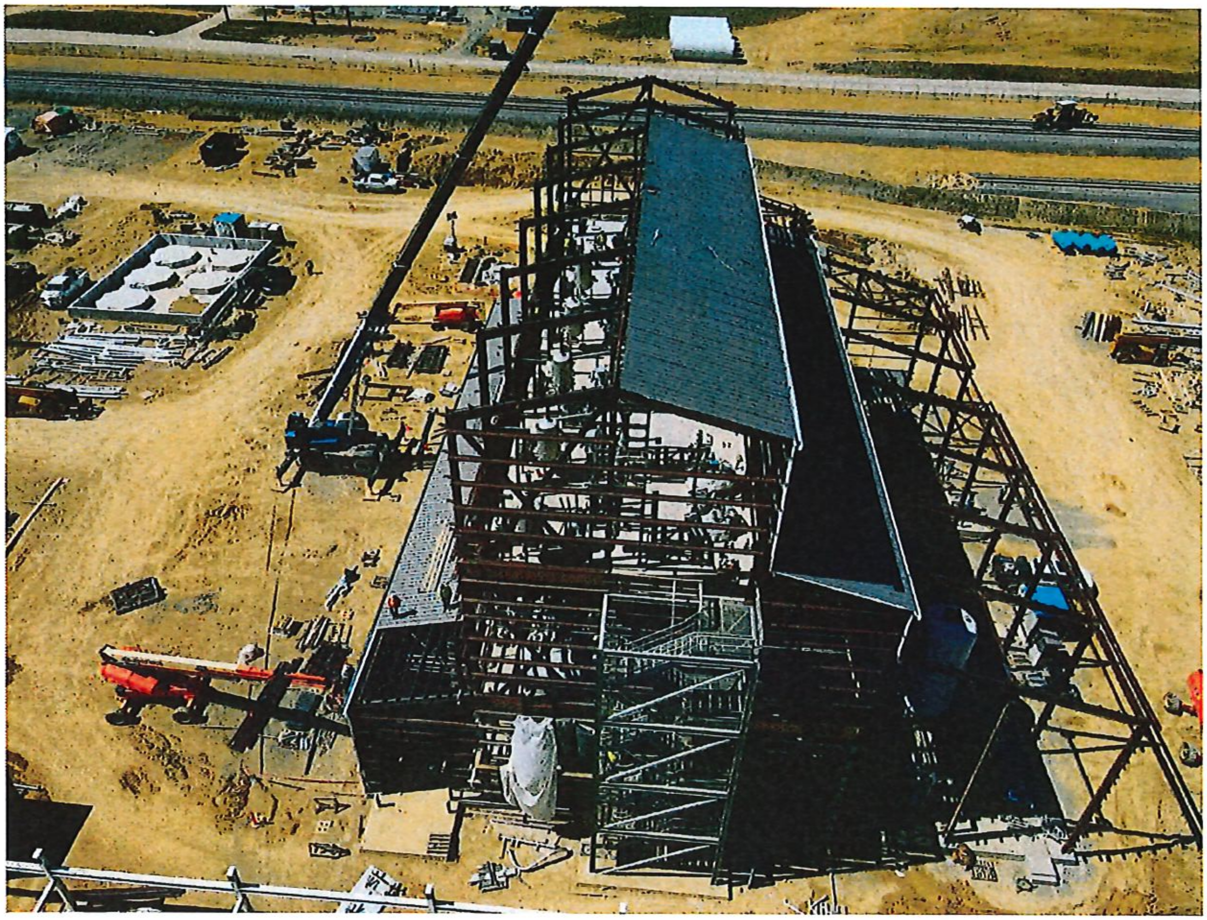
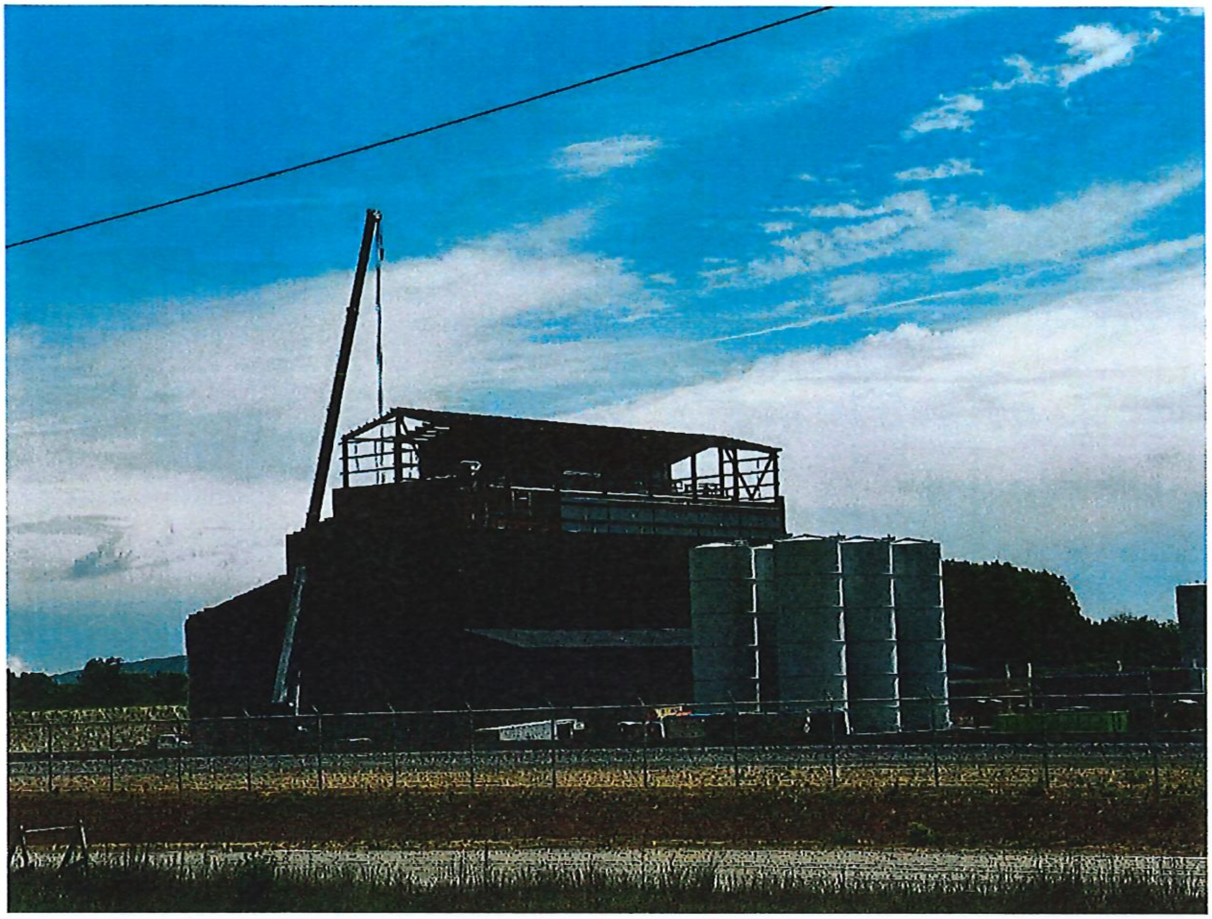


Photo 4: View of NBR plant looking southeast



Attachment E

Virginia Tobacco Region Revitalization Commission

Tobacco Region Opportunity Fund (TROF)

POLICIES & PROCEDURES

Effective November 4, 2020
Last Revised November 4, 2020

Overview

The purpose of the TROF program is to help make localities in the Tobacco Region more attractive to potential business expansion or attraction projects. It accomplishes this goal by providing performance-based monetary grants and loans to localities for the purposes of supporting specific projects.

Projects are evaluated based on job creation, workforce participation rate, community affluence, prevailing community wage, and newly-created taxable assets.

In all circumstances, the Commission favors businesses that are in traded sectors and bring new capital into the Tobacco Region rather than contribute to the velocity of money within the Tobacco Region. In general, this precludes retail and food-service projects, as well as local provision of services and non-competitive projects.

Operational Framework

1. *Eligibility* – Unless otherwise approved by the Commission, TROF projects must meet the following minimum eligibility requirements:
    - Applicants - The Commission accepts TROF applications from localities and other local or regional political subdivisions within the Tobacco Region ("Applicants"). TROF performance agreements are three-party agreements typically among the eligible applicant, its industrial or economic development authority (IDA/EDA), the Company and the Commission.
    - Salary Threshold – Projects must provide an average weighted annual salary above the locality's prevailing average wage (not including benefits).
    - Industry Sector – Projects must be in a traded economic sector (i.e., projects bringing in outside capital and jobs).
    - Minimum Award Amount – Utilizing the project parameters, the TROF incentive estimator shall provide for an award of at least $10,000 (for a grant or a loan).

- Competitive – New projects must be competitive. Expansion projects must demonstrate verifiable competition.
- Matching funds from non-Commission sources - are committed to the project and evidence thereof is satisfactory to the Executive Director.

2. *Application Evaluation* – TROF applications are evaluated and amounts are awarded commensurate with the project's impact on the community and/or region in which the project is locating. Calculation of award amount is based on the following criteria:

    - project competiveness;
    - industry type;
    - provision of a weighted annual average salary above the locality's prevailing wage;
    - number of new or saved jobs; and
    - the amount of private taxable capital investment.

3. *Award Amounts* – The award amount varies based upon the parameters of a project and the availability of Commission funds. Staff uses a TROF incentive estimator that takes into account application variables including location, employment, wages and private taxable investment. Larger incentives are typically available for projects that will provide high numbers of jobs above the prevailing average wage with large amount of private taxable capital investment.

4. *Award Amount Authorizations* - The Commission's Incentives and Loans Committee ("the Committee") reviews all eligible submitted TROF applications regardless of award amounts. Unless the Committee has issues or concerns with an application, the following award authorizations are permitted:

    - TROF grants and loans up to the lesser of either the amount requested by the applicant or the amount calculated by the incentive estimator (or 150% of that amount if a TROF loan), can be approved by the Executive Director for awards up to $1 million.
    - The Committee must approve all TROF grant or loan awards greater than $1 million and up to $3 million.
    - The Full Commission must approve all TROF grant or loan awards over $3 million.
    - The aggregate amount of TROF grant and loan awards made during any fiscal year shall not exceed the sum of:
        i. The amount set forth in the Commission's approved budget for such fiscal year, and
        ii. refunds of prior TROF awards credited to the TROF account without prior approval of the Commission.

5. *Prospect Incentive Funds* - Some very large regionally transformative projects do not fit well within the existing TROF incentive estimator framework. The few projects with

thousands of jobs and hundreds of millions of capital investment simply command greater attention and competition among states than do smaller projects, which is why the Commission created the additional Prospect Incentive Fund (the "Fund"). The threshold to access the Fund be competitive projects that:

- Provide at least 400 full-time new jobs; ***OR***
- Provide a taxable capital investment of at least $250 million dollars.

6. *Type of Awards* - TROF awards are typically composed of a grant and a loan portion. The Commission's incentive formula provides a total possible award amount based on the project variables and half of the total award is offered as a grant and half as a zero-interest loan.

7. *Award Disbursement* – TROF grants may be paid in advance before the company has performed, or paid in arrears after the company has performed at the election of the local applicant. Because the purpose of TROF loans is to provide affordable financing to assist with initial development of the project, loans are only offered prior to performance.

   All TROF awards paid in advance require the local applicant to obtain adequate security to fully cover the amount of award funds if full or partial repayment is necessary.

8. *Performance Periods* – The typical performance period is 36-months from the award date of the project. Performance period extension may be requested prior to the end of the period. The first extension may be approved administratively and subsequent extensions require Commission approval.

9. *Expansions of Existing Facilities -* Expansions of existing facilities may not always be the most competitive projects because the facility already exists and it often makes sense to expand an existing facility than to build a new one. TROF awards shall be reserved for truly competitive projects that are seriously considering other sites outside of Virginia for an expansion.

   Therefore, for facility expansions that otherwise meet TROF parameters, the Commission directs staff to only accept TROF applications for expansion projects that demonstrate a true and verified (from the Company in writing) competition for the project.

10. *Performance Agreements Required -* Unless otherwise approved by the Commission, all TROF grant and loan awards are to be disbursed pursuant to a Performance Agreement among the Applicant, the Commission, and a private entity beneficiary, which the Executive Director is authorized to negotiate and enter into in substantially the same form as *Exhibit A1, for the Grant Agreement – Arrears, Exhibit A2, for the Grant Agreement – Advance, and Exhibit B, for the Loan Agreement*, each attached hereto, provided that such

Performance Agreements shall contain the appropriate grant/loan and performance information for the TROF Grant or Loan as provided in the Commission's incentive formula guidance. The terms of all Performance Agreements are subject to audit and verification by the Commission.

11. *Acknowledgements* -- An acknowledgement of the Commission must appear in any publication, announcement, or significant event related to any project.

12. *Minimum Project Targets* – Both TROF grant and loan awards require a minimum target be met before a company earns any of the awarded amount.

    For TROF grants, the Minimum Investment Target is what is required to be invested by the company before any of the grant is earned. The minimum investment target for TROF grants shall be:
    - $1 million for projects generating $2 million or more in private taxable capital investment, and
    - Half of the private taxable capital investment for projects generating less than $2 million in private taxable capital investment.

    TROF loans are disbursed in advance and repaid, so a slightly different minimum target is used. For TROF loans, the Minimum Project Targets are:
    - Half of the promised capital investment **AND**
    - Half of the promised jobs.

13. *Performance Evaluation* - The Commission utilizes confidential data from the Virginia Employment Commission and local Commissioners of Revenue to verify employment and capital investment. As performance-based grants and loans, the Commission monitors performance and requires repayment if performance targets are not met for projects that receive awards in advance. Projects that choose to receive funds in arrears may receive full or prorated payment at the conclusion of the performance period once the company's actual performance is determined.

14. *Repayment (i.e. "Clawbacks")* - In instances when funds are disbursed in advance and the company does not fully attain its performance obligations, the Commission expects to receive repayment of some or all of the disbursed funds. If the company does not make the Minimum Investment Target of at least $1 million (or half when capital investment is less than $2 million), it must repay the entire grant. If a project meets the minimum investment target, but does not meet its full capital investment and/or job creation targets, it must repay a prorated amount.

    For TROF loans, if the Minimum Project Targets are not met, 5% is added to the remaining loan balance due. If the company refuses or is unable to repay then the local applicant is obligated to make the Commission whole. It is routine to negotiate repayment agreements with localities to avoid negative budget impacts, particularly with smaller or less-affluent localities.

In repayment situations, the Executive Director is authorized to negotiate and enter into repayment agreements with entities seeking to make such repayments in installments over a mutually agreed upon period.

The following remedies shall be employed as deemed appropriate by the Executive Director for all grants or loans under which contractual obligations are owed to the Commission and have not been fulfilled within 60 days after delivery of a written demand notice to all parties to the Performance Agreement and its control affiliates:

- Freeze all disbursements to the grantee and its control affiliates.
- Decline to accept any application for new grants from the grantee or its control affiliates.
- Enter the name of the grantee and its control affiliates into the State debt set-off system.
- Refer the file to counsel for appropriate steps up to and including collection proceedings.

Attachment F

Tobacco Region Revitalization Commission
Revenue Sharing

Frequently Asked Questions

Created and last revised: November 1, 2018

1. Do all Commission grants require a revenue sharing agreement?

No. Only projects that earn new local tax revenue are required to share in revenue generated by the project. Commission grant programs that will have revenue sharing agreements include all Tobacco Region Opportunity Fund (TROF) grants, and certain Southside Economic Development, Southwest Economic Development and Special Projects Grants.

2. Is revenue sharing required on loans?

No, revenue sharing is not required on loans.

3. How much revenue is required to be shared? Is there a cap on the total amount to be shared?

Localities are required to share 5% of all local tax revenue collected that is generated by the grant. This just means that whatever a locality collects from a grant-supported project, you send 5% of it to the Commission. ***No locality can ever lose money as a result of a revenue sharing agreement.***

The total amount (i.e. cap) of local tax revenue provided to the Commission is limited to no more than 105% of the total grant amount. This is not a requirement that a locality must pay 105% - it only is the upper limit on what the Commission could collect.

4. What if the amount of revenue return is so small it will take over 20 years to reach 105% of the grant amount?

After five (5) years, if and when the amount of revenue return is an amount of $50 or less per year after a period of no fewer than three consecutive years (total of eight (8) years from the beginning of the grant), then the locality may request in writing the revenue sharing agreement be terminated at the sole discretion of the Commission.

5. Is the amount of repayment based upon the original or annual assessment of taxable property generated by the grant?

The amount of repayment shall be based on the **annual** assessment ("the Assessment") – which includes all depreciation, assessment factors, and associated local incentive programs tied to taxable assets. The Assessment is as issued to the Company by the local Commissioner of Revenue.

6. **What if the Company appeals their assessment and the assessment is revised?**

At the discretion of the Commission, appeals and subsequent revisions to the assessment by the local Commissioner of Revenue may be taken into consideration.

7. **If the company that benefited from a grant is late on paying their taxes or otherwise fails to make their tax payment, is the locality penalized or otherwise have to share in tax revenue that has not (or will not) be received?**

No. The payment obligation of a locality is contingent upon receipt of tax payments from the Company. If the locality does not (or has not) received revenue, then neither does the Commission since no new tax revenue is being provided to the locality.

8. **When are revenue sharing payments due to the Commission?**

Payments shall be made to the Commission within thirty (30) days of the due date found on the Company's tax assessment. Extensions to this date may be made at the sole discretion of the Commission.

9. **For grants that go towards business expansions, does revenue sharing apply to only the taxes generated by the expansion or to all the taxes generated by the business thereafter?**

Revenue return will apply to all local tax revenue generated by the business after receiving the grant. For business expansions, new revenue is all additional taxes above the tax year prior to the base year of the grant. We believe that local commissioners of the revenue can estimate this amount in good faith and we will accept their estimates so long as they're credible.

10. **What if the grantee is a local Economic Development Authority (EDA) or Industrial Development Authority (IDA)? Since these groups do not collect taxes, how can they share revenue with the Commission?**

EDAs and IDAs do not collect taxes. However localities do and the easiest way meet the revenue sharing requirement is to add the locality to the performance agreement.

11. **How is revenue sharing handled when a project takes place in a regional industrial/ business park?**

Often in regional industrial/ business parks localities have an agreement where one locality will collect tax revenue and then remit an agreed upon portion to the other locality. As long as the Commission receives what equals 5% from each of the localities in which tax revenue is generated, the Commission is flexible on how it is received.