

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

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2009 JUN 23 PM 2:54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Board of Trustees of the Outdoor Heritage Conservation Fund TITLE NUMBER: 205

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code§5B-2G-(60); W.Va. Code§29A-33-1

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Rules of the Outdoor Heritage Conservation Fund

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 24 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

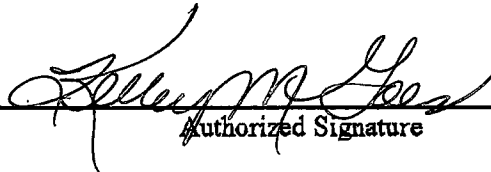
Division of Forestry

State Headquarters

1900 Kanawha Blvd., East

Charleston, WV 25305-0180

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title:

Rules of the Outdoor Heritage Conservation Fund

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

Board of Trustees of the Outdoor Heritage Conservation Fund

Address:

c/o Division of Forestry
1900 Kanawha Blvd., East

Charleston, WV 25305-0180

Phone Number:

(304) 558-3446

Email: C. Randy.Dye@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This measure will have no impact on the costs and revenues of state government. The Outdoor Heritage Conservation Fund is a new fund supported by the dedication of a portion of an increase in existing recording fees.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

Rule Title:

Rules of the Outdoor Heritage Conservation Fund

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

With passage of the Voluntary Rural and Outdoor Heritage Conservation Act, the Legislature amended W.Va. Code §59-1-10 to increase certain recording fees and dedicate a portion of said increase to the Outdoor Heritage Conservation Fund (OHCF). The revenue received by the OHCF will fund the activities of the OHCF Board, which are expected to constitute approximately \$12,000 in travel and miscellaneous reimbursements. The remainder of the annual revenue, projected to be \$819,000, will be used to acquire interests in land for conservation purposes and to steward interests in land for conservation purposes.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: June 23, 2009

Signature of Agency Head or Authorized Representative

William M. Goetz

SUMMARY OF TITLE 250, SERIES 1 LEGISLATIVE RULE

The proposed rule establishes procedures and guidelines to be used by the Board of Trustees ("the Board") of the Outdoor Heritage Conservation Fund ("the Fund") in the administration of its purposes and programs. The Fund was established as an ongoing funding source to conserve unique and important wildlife habitat, natural areas, forests, working lands, lands for hunting, fishing and recreation and other lands important to West Virginians.

The proposed procedures and guidelines govern the Fund's purpose of distributing funds through a competitive grant application process for the purchase of interests in land for conservation purposes and for stewardship purposes. Specifically, the rules set forth competitive grant application qualifications and requirements and the process for review and awarding of grants. The rules also govern the distribution of statutorily set levels of revenue from the Fund to the Division of Natural Resources for that agency's conservation purposes and govern the Board's acquisition, acceptance, holding, and transfer of interests in land for conservation purposes. In addition, the rules establish the process for the Board to direct the issuance of West Virginia Economic Development Authority bonds to fund the purchase of interests in real property.

205 C.S.R. 1

**RULES AND PROCEDURES FOR FUNDING FROM OUTDOOR HERITAGE CONSERVATION
FUND FOR LAND CONSERVATION AND STEWARDSHIP PURPOSES
STATEMENT OF CIRCUMSTANCES**

With passage of the Voluntary Rural and Outdoor Heritage Conservation Act, W.Va. Code §5B-2G-1 *et seq.*, the West Virginia State Legislature established the Outdoor Heritage Conservation Fund as an ongoing funding source to conserve unique and important wildlife habitat, natural areas, forests, working lands, lands for hunting, fishing and recreation and other lands important to West Virginians. The Fund is governed by a Board of Trustees established within the Department of Commerce.

In addition, the Legislature authorized in W.Va. Code §5B-2G-6(f), the power of the Board to, on behalf of the Fund, propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of the Code of West Virginia to carry out the Funds purposes and programs. The rules were to specifically include the qualifications and procedures relating to the awarding of grants.

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**TITLE 205
LEGISLATIVE RULE
BOARD OF TRUSTEES OF OUTDOOR HERITAGE CONSERVATION FUND**

**SERIES 1
RULES ON PROCEDURES AND GUIDELINES OF
THE OPERATION AND PROGRAM OF THE
OUTDOOR HERITAGE CONSERVATION FUND**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§205.1.1. General.

1.1 Scope – This legislative rule establishes guidelines and procedures to be used by the Board of Trustees for the Outdoor Heritage Conservation Fund in the administration of its purposes and programs, including but not limited to: the distribution of funds from the Outdoor Heritage Conservation Fund through the competitive grant application process and, where permissible, other means; the issuance of West Virginia Economic Development Authority bonds; and the acquisition, acceptance, holding, and transfer of interests in real property for conservation purposes.

1.2 Authority – W. Va. Code §5B-2G-6(f)

1.3 Filing Date –

1.4 Effective Date –

§205-1-2. Definitions.

2.1. “Applicant” means an eligible grant recipient, as defined in W.Va. Code §5B-2G-7(d) and in 2.8 of this rule, that has submitted an Application to the Board.

2.2. “Application” means a written request for a grant by one or more Eligible Grant Recipients submitted to the Board in a form and manner to be prescribed by the Board.

2.3. “Board” means the board of trustees of the Outdoor Heritage Conservation Fund, as defined in W.Va. Code §5B-2G-7(a).

2.4. “Board Chair” means the chairperson of the board of trustees of the Outdoor Heritage Conservation Fund.

2.5 “Conservation purpose” means the conservation of land for outdoor recreation by the public, for conservation of natural plant and wildlife habitat or similar ecosystem, for conservation of forestland and other open spaces, for conservation of land of historical or cultural significance, or as further defined under conservation criteria pursuant to W. Va. Code §5B-2G-9(d), as defined in W.Va. Code W.Va. Code §5B-2G-7(c).

2.6 "Donation" means funds, assets, and services, which include, but are not limited to, the provision of cash, grants, real property, real property interests, facilities, and in-kind contributions such as labor, equipment, and materials contributed to the project.

2.7. “Donations of interests in real property” means a voluntary transfer of title and possession of real property interests, to include both fee and less-than-fee interests of real

property, including but not limited to conservation easements, at less than fair market value, including without consideration.

2.8 “Eligible grant recipient” means Division of Natural Resources; Division of Forestry; or a charitable corporation, charitable association or charitable trust registered with the Secretary of State, exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, and that has as a primary part of its mission to acquire interests in real property for conservation purposes, as further defined in W.Va. Code §5B-2G-7(d).

2.9. “Fund” means the West Virginia Outdoor Heritage Conservation Fund, as defined in W.Va. Code §5B-2G-7(e).

2.10. “Fund staff” means the individual or individuals charged by the Board with management and administrative duties pertaining to the Fund, including but not limited to grant procedures and Board matters, and serving in such capacity at the will and pleasure of the Board.

2.11. “Grant agreement” means the agreement that describes terms and conditions of a Grant Award that is binding on the grant recipient and on the Fund and that must be signed before the grant award is made to the grant recipient.

2.12. “Grant award” means monies from the Fund awarded to a recipient pursuant to a Grant Agreement.

2.13. “Grant period” means the time period from the date that the Grant Agreement is executed by the Board through the ending date listed in the Grant Agreement, and any extensions granted by the Board.

2.14. “Phased project” means a project which has been approved for a grant by the Board and will be completed in stages over more than one grant cycle. A phased project is generally characterized as a unified project which, as a result of numerous interests and/or owners in real property, or funding limitations, causes the project to be difficult to complete during a single grant cycle of the Fund and instead is developed as part of two or more grant cycles.

2.15. “Stewardship” means the necessary monitoring, maintenance, and enforcement of interests in real property for conservation purposes, as defined in W.Va. Code §5B-2G-7(g).

§205-1-3. Board of Trustees.

3.1 Pursuant to W.Va. Code §5B-2G-4, the Board is charged with governing and administering the Fund, including developing an annual budget, authorizing the statutory allocation of Fund monies to the Division of Natural Resources, and the distribution of grants. The annual budget shall include allowable disbursements associated with the costs for staffing, administration, and technical and legal duties of the Fund, and costs associated with land conservation and stewardship by the Board and/or grant recipients.

3.2. Pursuant to W.Va. Code §5B-2G-4(a), the Board shall elect a chair, vice-chair, secretary, treasurer, and other officers as necessary from among the nine appointed members. The Board shall determine the term and duties for each office consistent with the provisions of W.Va. Code 5B-2G-4(b).

3.3. Pursuant to W.V. Code §5B-2G-4(a) and (d), a majority of the members of the Board serving at any one time constitutes a quorum for the transaction of business. A Board member shall recuse himself or herself from a particular matter in which he or she has a conflict of interest upon his or her own motion with approval of the Board or for good cause shown upon a motion of a party. A recused member shall excuse himself or herself from participating in the discussion and decision-making process by physically removing himself or herself from the room during that period, fully disclose his or her interest, and recuse himself or herself from voting on the issue.

3.4 Pursuant to W.Va. Code §5B-2G-4(e), each member of the Board shall receive expense reimbursement from the Fund for actual reasonable and necessary expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid for similar reimbursement to members of the Legislature.

3.5. All Board meetings shall be held in accordance with the Open Governmental Proceedings Act as set forth in W.Va. Code §§6-9A-1 to 12.

3.6. The Board may establish advisory committees comprised of non-Board members for specified purposes, provided that non-Board members do not have the power to vote on Board decisions.

3.7 Fund documents shall be housed within the Division of Forestry until an office of the Fund is established. When an office of the Fund is established, documents shall be housed in the Fund office.

3.8. Pursuant to W.Va. Code §5B-2G-5(b), the Board may enter into contracts and execute all instruments necessary and appropriate to carry out the purposes of the Fund.

3.9. Pursuant to W.Va. Code §5B-2G-8(a)(3)(A), the Board may hire Fund staff to carry out powers and duties associated with the Fund and may expend Fund monies for costs associated with staffing, administration, and technical and legal duties of the Fund. In addition, the Board may request assistance and avail itself of the services of Department of Commerce employees or independent contractors as it deems necessary.

3.10. Pursuant to W. Va. Code §5B-2G-5(c), the Board has the authority to purchase, acquire and hold interests in real property for conservation purposes, which includes, but is not limited to, holding real property interests acquired by another entity with monies from the Fund.

3.11. Pursuant to W.Va. Code §5B-2G-6(e), the Board shall prepare and file electronically with the Governor's office and with the Legislature by the thirty-first day of August of each year a report that accounts for Fund receipts and disbursements of all grants approved and all acquisition of interests in real property obtained with monies from the Fund during the current year.

§205-1-4. Availability of Grants.

4.1. In accordance with W. Va. Code §5B-2G-9, Applicants may apply for grants to acquire interests in real property for conservation purposes, including costs incidental to acquisition, such as survey and appraisal expenses. In accordance with W. Va. Code §5B-2G-9, Applicants may apply for grants for stewardship of interests in real property for conservation purposes. Applicants may also apply for phased project grants.

4.2. Pursuant to W. Va. Code §5B-2G-6(d)(1), Fund monies made available to the Division of Natural Resources for acquisition of real property for conservation purposes are subject to the approval of the Board.

4.3 The Board shall announce its intention to award grants and the dates by which applications for such grants must be received by providing public notice in the State Register for at least sixty days before the application deadline. The notice shall include, at a minimum, the application deadline, information on how Applicants may obtain application forms, application requirements, and any limitations of grant amounts.

4.4. Grants allocated under this rule are dependent upon the availability of funds. In the event that those funds are reduced or otherwise diminished, the Board is authorized to adjust the amount of Grant Awards prior to execution of the Grant Agreement.

§205-1-5. Competitive Grant Applications and Process.

5.1. The Board shall establish one or more competitive grant application cycles for each fiscal year. The Division of Natural Resources may submit requests for its allocation of Fund monies pursuant to W.Va. Code §5B-2G-6(d)(1) at any time.

5.2 The competitive grant application process shall commence with the submission of a grant Application on an application form approved by the Board and made publicly available not later than when the Board first issues public notice pursuant to section 4.3 of this rule.

5.3. In furtherance of the information required pursuant to W. Va. Code §5B-2G-9 and elsewhere in this rule, the application form shall request, at a minimum, the following information:

5.3.1. The type of acquisition (e.g., fee simple, conservation easement, other) or stewardship;

5.3.2. Landowner's address and contact information;

5.3.3. Applicant's address, contact information and authorized agent;

5.3.4. General information about the property, including a legal description;

5.3.5. Information about the property supplied by the landowner to the Applicant, including ownership interests, liens, mortgages and encumbrances, except for stewardship grants;

5.3.6 Information demonstrating how, if at all, the interest in real property satisfies the conservation criteria pursuant to W.Va. Code §5B-2G-9(d); and

5.3.7. Information demonstrating how, if at all, the financial criteria pursuant to W. Va. Code §5B-2G-9 are satisfied.

5.3.8 A statement of intended stewardship activities,

5.3.9 A statement of expected restrictions and reserved rights for grants to acquire conservation easements,

5.3.10 A statement of any conflicts of interest by the Applicant or the landowner.

5.4. Pursuant to W. Va. Code §5B-2G-9(a), all grant Applications submitted to the Board must include written consent from the owner of the interest in real property identified in the Application. The Applicant may be the owner of the interest in real property when the grant Application is for a grant to fund stewardship.

5.5. If the Applicant is applying for a grant to acquire interests in real property, the Applicant also must demonstrate as part of the Application its plan to secure additional resources to complete the project and its plan to secure resources for stewardship of the interests in real property.

5.6. Grant Applications for the acquisition of interests in real property shall include a statement of the conservation purpose for which the interest in real property is being acquired. Grant applications for stewardship funding shall include a statement of the conservation purpose of the interests in real property to be stewarded.

5.7. Eligible Grant Recipients may submit joint applications to the Board. If the Division of Natural Resources submits a joint application, then the Grant Award may be allocated from the Fund monies allocated to the Division pursuant to W.Va. Code §58-2G-6(d)(1).

5.8. During any phase of the application process, the Board may request such additional information as it determines to be necessary to evaluate any Application, including, but not limited to, financial, budgetary, and background information related to the Application, to the Applicant or to any partners to the Application.

5.9. As part of the grant Application, the Board shall establish policies regarding matching funds, assets and/or services to be required of Applicants.

§205-1-6. Review, Evaluation, and Award.

6.1. The Board shall review, evaluate, rank, and prioritize Applications that are procedurally adequate for grants based on the conservation and financial criteria contained in W. Va. Code §5B-2G-9(d) and (e) and additional information as outlined elsewhere in this rule.

6.2 The system used to rank Applications, and any amendments to that system, shall be approved by the Board.

6.3. The Board reserves the right to deny or to defer consideration of any Application on the basis of an incomplete Application or an Application that fails to conform to the appropriate rules and guidelines. The Board further reserves the right to reject the amount of funding sought; direct an Applicant to seek funding from alternative funding sources; request that the Applicant revise an application to a lower or higher level of funding; and to award more or less than the full amount requested in the Application.

6.4. At its discretion, the Board may establish additional criteria and application guidelines relating to phased projects and stewardship grants.

6.5. The Board may consider grant Applications for interests in real property that encompass an area in West Virginia and a contiguous area in another state, but may award a grant only for project costs attributable to interests in real property located in West Virginia.

6.6. The Board may authorize advisory committees or the Fund staff to assist the Board in evaluating and prioritizing grant Applications. However, the Board shall make all Grant Award decisions.

6.7. The Board shall notify applicants of the approval, denial, or modification to their Application within thirty days of Board action.

§205-1-7. Grant Awards.

7.1. Grants awarded by the Board shall not be funded until a Grant Agreement between the Board and the grant recipient is fully executed by the Chair, or a duly authorized Board designee, and the grant recipient.

7.2. Pursuant to W.Va. Code §12-4-14, prior to awarding grants, the Board shall take reasonable actions to verify that the applicant is not barred from receiving state grants, and the Board shall notify the Legislative Auditor of grant awards to be disbursed within thirty days of making the grant awards or authorizing the disbursement of funds, whichever is later.

7.3. The Board shall develop a Grant Agreement that includes, but is not limited to, the following provisions:

7.3.1 The amount of the Grant Award,

7.3.2 The purpose of the Grant Award,

7.3.3 All eligible expenditures under the Grant Award,

7.3.4 Schedule for disbursement of monies from the Fund,

7.3.5 The Grant Period,

7.3.6 The project details,

7.3.7 A statement that the Applicant shall not assign, or transfer any of the rights, duties, or obligations of the Grant Agreement without prior written approval of the Board,

7.3.8 A statement that the Applicant shall submit annual reports for a period to be determined by the Board after the date of the Grant Award,

7.3.9 A statement that the Applicant shall submit a stewardship plan in a form and manner prescribed by the Board,

7.3.10 A statement that the Applicant agrees to allow the Board to review and inspect its records pertaining to the Grant Award and this Agreement, and the project funded by the Grant Award,

7.3.11 A statement of how monies for stewardship grants will be maintained and managed by the Applicant and a statement that the Applicant will demonstrate maintenance and management of such monies in a manner prescribed by the Board,

7.3.12 A statement that the Applicant shall not, without Board approval, sell, give, devise, or otherwise convey or encumber interests in real property acquired in whole or in part with Fund monies,

7.3.13 A statement that the Applicant and partners indemnify and hold harmless the State of West Virginia and the Board for any liability arising from the Grant Agreement,

7.3.14 A sworn statement from an authorized representative that the Applicant has filed all reports for state grants received as required under W.Va. Code §12.4.14,

7.3.15 A statement that the information provided in the Application and in the project details of the Grant Agreement are true and correct.

7.4 Grant recipients shall make requests for revisions to Grant Agreements in a form and manner to be prescribed by the Board. The Board may, at its discretion, approve revisions to Grant Agreements.

7.5 The Board shall establish acquisition procedures and requirements for the acquisition of interests in real property acquired with Grant Awards, including, but not be limited to: an independent appraisal requirement; due diligence guidelines; a Grant Agreement provision in accordance with W.Va. Code 5B-2G-9(g) that any real property interest acquired using Fund grant(s) shall revert to the Fund in the event that the interest is not being utilized strictly for conservation purposes; a Grant Agreement provision for the reversion to the Fund of grant monies used to purchase an interest in real property in the event that the interest is extinguished or condemned; and closing and escrow instructions.

7.5.1 Appraisals shall be performed by qualified and competent state certified general real estate appraisers licensed by the State of West Virginia. Appraisals shall establish fair market value. No award of grant funds, except stewardship grants, may be made without such appraisal. No award of grant funds may be made to acquire an interest in real property in excess of the appraised fair market value. The contents of the appraisal are confidential prior to the Grant Award. The Board, or a duly authorized Board designee, has the authority to review and accept appraisals of interests in real property to be acquired with grant funds.

7.6 Pursuant to W.Va. Code §12-4-14, within two years of the end of the grant recipient's fiscal year in which the grant was awarded, recipients shall provide the Board with a written report prepared by an independent certified public accountant of the disbursement of the grant award for grant awards of \$50,000 or more, or a sworn statement or audit of expenditures for grant awards in an amount of less than \$50,000, and a copy of the final deed transferring interests in real property to the grant recipient, if applicable.

7.7 Grant recipients shall not, without Board approval, sell, give, devise, or otherwise convey or encumber interests in real property acquired in whole or in part with Fund monies.

§205-1-8. Stewardship Reporting Requirements.

8.1 Grant recipients shall submit annual reports for a period to be determined by the Board after the date of the acquisition of interests in real property or the date of the Grant

Agreement for stewardship Grant Awards. The report shall include, but not be limited to, details of the grant recipient's stewardship activities.

8.2 Failure to comply with these stewardship requirements may disqualify grant recipients from receiving future grant funding.

§205-1-9. Audit and Compliance.

9.1. The Board reserves the right to review and/or audit a grant recipient's and/or any partner to the Application's records, including stewardship records, financial statements, and supporting records, relating to the Grant Award and Agreement, and the project funded by the Grant Award. Records, including financial statements and supporting records, must be retained by the grant recipient and/or by any partner to the Application pursuant to state and federal requirements, except for stewardship records which must be maintained by the grant recipient for a period to be determined by the Board.

9.2. The Board may terminate any Grant Agreement or disqualify a grant recipient from receiving future grant funding upon discovery of any violation of the terms of the Grant Agreement, these rules, or state or federal law by the recipient or by any partner to the grant Application.

9.3 Pursuant to W.Va. Code §5B-2G-9(g), the Board may transfer title of the interest in real property where it determines that a grant recipient is dissolved or ceases to exist as an entity or if the interests in real property are not being utilized strictly for conservation purposes. Such determination must be made by the Board after providing the grant recipient notice and opportunity for hearing before the Board.

§205-1-10. Fund Acquisition, Acceptance, Holding and Transfer of Real Property Interests.

10.1. The Board may, on behalf of the Fund and pursuant to W.Va. Code §5B-2G-5(c) and (d), purchase, acquire, accept, hold and/or transfer interests in real property for conservation purposes, including but not limited to donations of interests in real property and the sale of interests in real property.

10.2. The Fund, through the Board, may co-sign conservation easement agreements with other public agencies and private organizations.

10.3. To achieve conservation purposes of land in fee, the Board may, on behalf of the Fund, transfer interests in land to an Eligible Grant Recipient.

§205-1-11. Issuance of Revenue Bonds by West Virginia Economic Development Authority.

11.1. Pursuant to W.Va. Code §5B-2G-5(g) and 8(b), the Fund may request the West Virginia Economic Development Authority to issue revenue bonds, the proceeds of which shall be allocated to and expended for the Fund by the Economic Development Authority at the direction of the Board for purposes consistent with the conservation and financial criteria set forth in the code.

11.2. The Board shall direct the Economic Development Authority to issue bonds by a resolution approved by the Board. Likewise, the Board shall certify that projects receiving bond proceeds serve a public purpose and meet the criteria established by W.Va. Code §5B-2G-9(d).