

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE NUMBER: 205

TITLE OF RULE BEING AMENDED: _____

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


Authorized Signature

**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**

§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 that has submitted an Application to 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.

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).

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,

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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 and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 [Public Law 99-514, 26 U.S.C. §501(c)(3)] or other federal state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural, forest, recreational, or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property, as defined in section three, article twelve, chapter twenty of this code, and that has as a primary part of its mission to acquire interests in real property for conservation purposes.

2.9. "Fund" means the West Virginia Outdoor Heritage Conservation Fund.

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 grant 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.

§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, distributing grants, and incurring costs as necessary to carry out the purposes and the programs of the Fund. The annual budget shall include allowable disbursements associated with the costs for staffing, administration, and technical and legal duties of the Fund, costs associated with land conservation and stewardship by the Board and/or grant recipients, and other costs as necessary to carry out the purposes and programs of the Fund.

3.2. 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 for each office consistent with the provisions of W.Va. Code 5B-2G-4(b).

3.3. 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. 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. The Board may enter into contracts and execute all instruments necessary and appropriate to carry out the purposes of the Fund.

3.9. 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. 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. 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. 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. 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 at any time.

5.2 The competitive grant application process shall commence with the submission of a grant Application, requirements of which shall be made publicly available not later than when the Board first issues public notice pursuant to section 4.3 of this rule.

5.3. The Application shall include, 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. For grant Applicants seeking to acquire an interest in real property, information about the property supplied by the landowner to the Applicant, including ownership interests, liens, mortgages and encumbrances;

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. All grant Applications submitted to the Board must include written consent from the owner of the interest in real property identified in the Application, unless the Application is for

the stewardship of an interest in real property currently held by the Applicant. In addition, the Application shall contain an affirmation that the notice requirement of W.Va. Code §5B-2G-9(a) has been met.

5.5. If the grant Application is for a grant to acquire interests in real property, the Applicant also must demonstrate as part of the Application a 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. The Board may establish Application guidelines regarding phased projects; stewardship grants; and matching funds, assets, and services.

5.8. 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).

5.9. 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.

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

6.1. Applications for grants shall first be reviewed to determine if they meet the application deadline, are complete, and conform to the appropriate rules and guidelines. Applications that meet these requirements shall be reviewed, evaluated, ranked, and prioritized 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. 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.

6.5. Pursuant to W.Va. Code §12-4-14, the Board shall take reasonable actions to verify that the Applicant is not barred from receiving state grants.

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. Grant monies awarded by the Board shall not be disbursed 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, the Legislative Auditor shall be provided with the requisite notice within thirty days of making the grant awards or authorizing the disbursement of funds, whichever is later.

7.3. The Grant Agreement must include, 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, pursuant to 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,

7.3.14 A statement providing for the reversion to the Fund of grant monies used to purchase an interest in real property in the event that the interest is being extinguished or condemned,

7.3.15 A statement, pursuant to W.Va. Code §12-4-14, that within two years of the end of the grant recipient's first 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,

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

7.3.17 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,

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

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

7.5 Applicants shall follow Board-approved 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; 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 for the purchase of an interest in real property 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 Board, or a duly authorized Board designee, has the authority to review and accept or reject appraisals of interests in real property to be acquired with grant funds.

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 the records of a grant recipient and/or of any partner to an Application. Records subject to a review or audit include stewardship records, financial statements, and supporting records that relate 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. Stewardship records must also be maintained by the grant recipient and/or by any partner to the Application 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 grant recipient or by any partner to the grant Application.

9.3 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, purchase, acquire, accept, hold and/or transfer interests in real property for conservation purposes. The Board may, on behalf of the Fund, accept and transfer interests in real property donated to benefit the Fund but not donated for conservation purposes, as long as the proceeds from such a transfer are used to support the purposes and programs of the Fund

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, 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. 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).