

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Culture and History TITLE NUMBER: 82

CITE AUTHORITY: 29-1-5

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

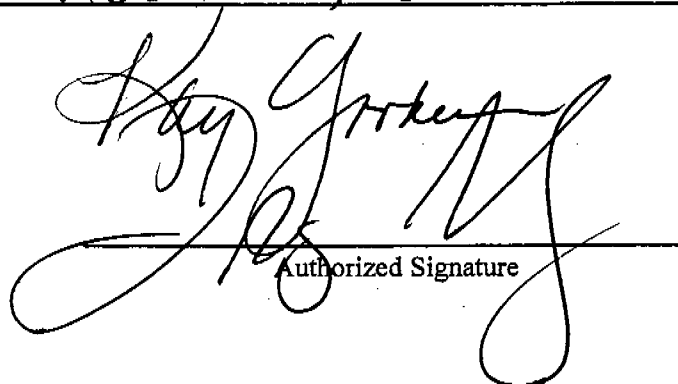
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

TITLE OF RULE BEING PROPOSED: WV Historic Preservation Community Designation

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS November 21, 2005


Authorized Signature

\$4.00

**TITLE 82
PROCEDURAL RULE
DIVISION OF CULTURE AND HISTORY**

**SERIES 11
WEST VIRGINIA CERTIFIED HISTORIC PRESERVATION COMMUNITY
DESIGNATION**

§82-11-1. General

- 1.1. Scope. - This Procedural Rule provides the administrative procedures and requirements for application by a city, town, county or other civil jurisdiction for designation as a "Certified Historic Preservation Community" under West Virginia Archives and History Commission, West Virginia Certified Historic Preservation Community Program
- 1.2. Authority. - W. Va. Code §29-1-5
- 1.3. Filing Date. -
- 1.4. Effective Date. -

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§82-11-2. Definitions

- 2.1. "Commission" means West Virginia Archives and History Commission established by W. Va. Code §29-1-5.
- 2.2. "Director of Historic Preservation Section and Staff" as established by W. Va. Code §29-1-8.
- 2.3. "Preservation community" means that city, town, county or other civil jurisdiction making application to the program.
- 2.4. "required attachments" means letters of support, resolutions of governing authorities, and other documentation of fulfillment of qualification under Eligibility Requirements §82-11-3 (below).

§82-11-3. Eligibility Requirements.

Organizations eligible for review must be able to meet the following requirements by the application deadline:

3.1. An applicant must be one of the following:

3.1.1 An agency of municipal government, county government, or other civil jurisdiction.

3.1.2 A not-for profit, tax-exempt West Virginia corporation as defined in 501(c)(3) and 501 (c)(4) of the Federal Internal Revenue Code of 1954 and as designated in compliance with §170 of that code at the time of application and prior to the release of funds.

3.2. An applicant must submit:

3.2.1A completed and signed Certified Historic Preservation Community Designation Program Application Form, including any required attachments.

§82-11-4. Application Review and Evaluation.

4.1 Applications for the West Virginia Certified Historic Preservation Community Designation will be reviewed by the Director of the Historic Preservation Section and staff at the West Virginia Division of Culture and History. All applications will be forwarded to the Commission. Applications receiving a successful review will be recommended for designation as a Certified Historic Preservation Community.

4.2 The applications and recommendations of the Director of Historic Preservation Section will be reviewed, approved, amended, or rejected by a quorum of the Commission.

4.3 A Certified Historic Preservation Community will be required to (a) have supported (within the last three years) an historic preservation project that promotes heritage tourism or otherwise fosters economic vitality (the project must have involved a public-private partnership between government entities and at least one civic association, non-profit organization, or business enterprise); and (b) have adopted

(within the last three years) a resolution indicating its commitment to the preservation of its heritage assets.

- 4.4 The community will be evaluated and required to meet at least three of the criteria below, including at least one from each category:

Category 1: Discovering Heritage through Historic Places

- a. An ongoing, publicly available inventory of historic places.
- b. An active community supported museum, or interpretive facility archive, or local history records collection (public or private).
- c. Active citizen volunteer involvement, such as a docent or guide program for interpretation of local history and culture, or volunteer participation in improving the condition of heritage assets within the community.
- d. Ongoing opportunities for children to learn about local heritage in the schools, either through established curriculum or a special outreach program.

Category 2: Protecting Historic Resources

- a. An active historic landmark commission, created by the local governmental entity through an ordinance, charged with leading historic preservation activities within the community.
- b. An adopted community-wide historic preservation plan that is being implemented.
- c. An historic preservation review ordinance and volunteer or professional staff to implement it.

Category 3: Promoting Historic Assets

- a. An active local heritage tourism program or participation in a regional program, with such promotional material as a walking/driving trail or itinerary, map of historic resources, etc.
- b. A regularly scheduled heritage observation or event.
- c. An historic preservation awards or recognition program.

- 4.5 Applications are available at, and shall be submitted to, the Director of the Historic Preservation Section at the West Virginia Division of Culture and History.
- 4.6 Deadlines for submittal of completed applications shall be 60 days before any scheduled meeting of the WV Archives and History Commission.

§82-11-5. Appeals.

- 5.1. General. Any applicant denied the Certified Historic Preservation Community Designation under the provisions of this rule may appeal to the Commission by writing to the Director of Historic Preservation, requesting that the application be reconsidered. The letter of appeal must be received no later than sixty days after notice of denial.
- 5.2. Limited Consideration. Appeals will be considered only if the applicant can document specific examples that demonstrate that the application was misinterpreted or improperly reviewed.
- 5.3. Appeal Process. The Director of Historic Preservation will review the letter of appeal and submit it with the original application to the Commission for consideration at their next regular meeting. The Commission will review the appeal and act on it during that meeting. The Director of Historic Preservation shall notify the applicant within ten days of the decision of the Commission.
- 5.4. New Materials and New Requests. If an applicant appeals a denial and submits new material or adds new purposes to the project which is the subject of the appeal, the request will be treated as a new application. New applications will be reviewed in the next regularly scheduled Commission meeting.

§82-11-6. Entitlements of the Designation as a West Virginia Certified Historic Preservation Community.

- 6.1. A community approved by the Commission to receive the designation of Certified Historic Preservation Community will be eligible to display banners, signs and other promotional devices to announce the designation.
- 6.2. The design and content of the banners, signs and other promotional devices will be approved by the WV Division of Culture and History and will include the logo of the Division.
- 6.3. The cost of the banners, signs or other promotional devices will be borne by the community receiving the designation and not by the WV Division of Culture and History or funds under the discretion of the WV Archives and History Commission, unless such funds are dedicated.

§82-11-7. Evaluation and Decertification

- 7.1. Certified Historic Preservation communities may be evaluated by the WV Archives and History Commission at any time after the effective date of certification.
- 7.2. If the evaluation conducted finds that the Certified Historic Preservation Community no longer meets the previously stated criteria, or if actions by the community have not supported the criteria, the Commission may choose to de-certify the community, which would remove all entitlements previously received as a Certified Historic Preservation Community. Upon the decision of the Commission, the Director of the Historic Preservation Section will notify the Certified Historic Preservation of its decertification, within fourteen days of the Commission's decision.
- 7.3. A Certified Historic Preservation Community which has been decertified may submit a new application. The application will be reviewed as stated in section §82-11-4.

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 82 SERIES 11**

West Virginia Certified Historic Preservation Community Designation

This Procedural Rule provides the administrative procedures and requirements for application by a city, town, county or other civil jurisdiction for designation as a “Certified Historic Preservation Community” under the West Virginia Archives and History Commission’s West Virginia Certified Historic Preservation Community Program.

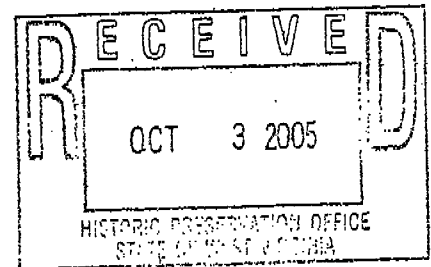
The purpose of the designation is to recognize communities that have realized the benefits of historic preservation, promoted preservation projects and issues, and have tangible evidence of their efforts. This designation will be offered to towns, cities, counties that can qualify by application, satisfaction of eligibility and review criteria and documentation that the governing body of the community, city or county, has adopted a resolution indicating recognition of the importance of the historic preservation to economic development, educational quality, and civic involvement.

To: Susan Pierce, Director
Historic Preservation Section

From: Fredrick H. Armstrong, Secretary
Archives & History Commission

Date: 29 September 2005

F.H. Armstrong



Re: Questions and comments regarding draft of Title 82 Procedural Rule. Series 11 "West Virginia Certified Historic Preservation Community Designation"

1 In the section on "Definitions"

- A. the phrase "civil jurisdiction" is used in a definition and it is used elsewhere in the proposed rule without benefit of definition.
- B. the term "Director of Historic Preservation Section and Staff" should be defined and used in text the same way as "Commission"
- C. the term "heritage tourism" is used without benefit of a definition
- D. the terms should be presented in alpha order

2 In section on Eligibility Requirements:

- A. this is a program to provide a designation or recognition why the reference to "a grant applicant"?
- B. this section states there is an "application deadline" but none is given and it appears to be none, open year round with commission to decide recommendations of director at any meeting
- C. the requirements appear to be listed in 3.1.1 and 3.1.2 but elsewhere it allows for a "civil jurisdiction"
- D. the program requires the submission of a completed and signed application form, with required attachments, but the proposed draft rule fails to provide a copy of the proposed draft form or a list of the required attachments
- E. fails to state where application is to be submitted

3 In section on Application and Evaluation:

- A. 4.1 states director will review applications, which will be forwarded to commission and those receiving a "successful review" recommended. But, 4.2 states that it is "the recommendations of the director" that will be reviewed, approved, amended or rejected."

B Is the commission making a decision on all applications or only those recommended by the director? And, what is meant by statement that the commission may "amend" the application, or is it the recommendation of the director?

C 4.3 appears to describe eligibility requirements a municipal or county government, not-for-profit or whatever must meet to be considered for this designation but none of these are listed or included in section 3.

4. In section on Appeals:

A as noted above in 4.1, if commission is only acting on those applicants recommended by director, it is not an appeal of commission action but of director.

B in 5.2 stated the documentation to appeal an application that was "misrepresented?" Would it not be better stated "misinterpreted?"

C 5.3 further clarifies that the commission is not making its decision on the application but rather the director's recommendation

D 5.4 clarifies that the application process is open year-round and therefore what is the application deadline or deadlines?

5. Section 6 on Entitlements:

A reference to "Commission" cited previously now becomes WV Archives and History Commission and strays from definition provided

B 6.1 refers to "designation of Certified Preservation Community Preservation Community," is incomplete in title referenced

C 6.3 appears to close the door totally to any funding from the agency or thru the commission. Was this the intent of the commission?

6. Section 7:

A 7.1 shortens and corrupts term for designation and commission

B 7.2 describes the de-certification procedure for which there does not appear to be an appeal process. If there is such for denied recommendation or application, should there not be the same for a decertification?

Responses to:

Questions and comments regarding draft of Title 82 Procedural Rule. Series 11 "West Virginia Certified Historic Preservation Community Designation" forms Fred Armstrong, September 29, 2005.

- 1.A Added to 1.1
- 1.B Title is defined in Code 29-1-8, and referred to in 2.2. Can be added if required.
- 1.C Can be added if required.
- 1.D Corrected

- 2.A Removed "grant"
- 2.B Addressed now in 4.6
- 2.C Added "civil jurisdiction"
- 2.D It is our understanding the actual application does not need to be submitted at this time.
- 2.E Addressed now in 4.5

- 3.A&B Added "All applications will be forwarded to the Commission."
As written, the Director shall make recommendations, but the Commission makes the final decisions.
- 3.B They are listed in 3.1.

- 4.A No, as stated they "appeal to the Commission"
- 4.B Changed
- 4.C No, as stated "The Commission will review the appeal and act on it during that meeting."
- 4.D Addressed now in 4.6

- 5.A Corrected
- 5.B Corrected
- 5.C Added "...unless such funds are dedicated.

- 6.A Changed to "at any time after the effective date of certification."
- 6.B 7.3 Gives communities the opportunity to re-apply, rather than appeal.