

**AGENDA FOR THURSDAY, NOVEMBER 05, 2009**

Y/ N/ NA

**APPOINTMENTS:**

- 1. 9:30 a.m. - Pledge of Allegiance  
Approval of Minutes  
Approval of Purchase Orders  
Approval of Accounts Payable
- 2. 9:40 a.m. - Public Comment
- 3. 9:45 a.m. - Bonding and Activity Report
- 4. 10:00 a.m. - Jefferson County Emergency Services Agency Appointment  
Interviews/Action
- 5. 10:15 a.m. - Kirk Davis - Update on all Projects Current and Past
- 6. 10:45 a.m. - Stephanie Grove - Legal Update and Report
- 7. 11:00 a.m. - Jennifer S. Maghan - County Clerk's Report
- 8. 1:30 p.m. - County Commission Workshop - Roger Goodwin - Flood Plain  
Management Ordinance Rewrite mandated by the Federal  
Emergency Management Agency
- 9. 2:30 p.m. - County Commission Workshop - Discussion of Table Games  
Funding

**OLD BUSINESS:**

- 10. Legislative Issues
- 11. Report on Federal Stimulus Funds - Discussion
- 12. Mark Schiavone - Director of Capital Planning and Management - Budget Update
- 13. Recovery Zone Bond Resources - Resolution Designating the Jurisdiction of the  
County as a Recovery Zone and Authorizing Documents in Connection with such  
Designation

## **NEW BUSINESS:**

- 14. Discussion and Vote to Suspend County Commission Meeting for Weeks in Which There is a Holiday Beginning with the Veteran's Day Holiday of 2009 (PN)
- 15. Set Meeting Date for the Week of Thanksgiving
- 16. Set Meeting Date for the Week of Christmas
- 17. Workshop Topics for Remainder of the Year (LW)
- 18. Targeted, Limited Audit of County Finances - Discussion (JS)
- 19. Approval of Resolution, Agreement and Grant Contract - Community Partnership Grant Program - Morgan's Grove Park
- 20. County Administrator Reports
- 21. County Commission Reports

## **INFORMATION:**

- 22. Reminder of Zoning Referendum on November 9, 2009.
- 23. Reminder County Offices closed on Wednesday November 11, 2009 - Veteran's Day.
- 24. Reminder of Canvass on Friday, November 13, 2009 beginning at 9:30 a.m.
- 25. Notice received of Arts and Humanities Alliance of Jefferson County has awarded Grants to Children's Theatre and Happy Retreat on October 26, 2009.
- 26. Notice received of Swine Flu School Planning Workshop November 19-20, 2009.
- 27. Invitation received from Jefferson Council on Aging for Veteran's Day Pancake Breakfast on Friday, November 6, 2009.
- 28. Correspondence received from Labor and Employment concerning Federal Legislation-Collective Bargaining.
- 29. Invitation received from County Commissioners' Association of West Virginia to attend 10 regional meetings from November 2-December 4, 2009.
- 30. Notice received from Office of Transportation Services, Loudoun County, Virginia of

public hearing on October 29, 2009 regarding Revised Countywide Transportation Plan.

- 31. Notice received from John Bricker, State Conservationist, of completion of the Lower Shenandoah River Watershed Assessment.
- 32. Board of Health meeting Agenda received.
- 33. E911 fees received.
- 34. Weekly settlement report received for the Charles Town Races from the West Virginia Lottery.
- 35. Oath Received from Jennifer S. Maghan, Clerk of the Commission for Shawwna Molina to the office of Eastern Panhandle Transportation Authority.
- 36. West Virginia Ethics Reported received.
- 37. Invitation from City of Ranson to attend the American Planning Association Audio/Web Conference November 18, 2009 from 4 p.m.-5 p.m.

**CORRESPONDENCE:**

- 38. Correspondence received by Gil Garcia concerning the Planning and Zoning agenda.

*At all times the County Commission reserves the right to rearrange agenda times because of time constraints and to accommodate the Commission schedule or the public.*

NOTICE OF INTENT TO APPOINT

The Jefferson County Commission proposes to name persons to serve on the following Authorities, Boards, Commissions, or Committees on Thursday, November 5, 2009, or as soon thereafter as the Commission may decide:

**Jefferson County Emergency Services Agency Board - Three 3 year terms ending November 2, 2012**

Persons who may be interested in the above listed agency should submit a letter of interest and a resume or statement of qualifications to the Jefferson County Commission, P.O. Box 250, Charles Town, WV 25414, prior to the proposed date of appointment.

Additional information regarding these appointments may be obtained by calling the Commission Office at (304) 728-3284.

**Jefferson County Emergency Service Agency Board**  
**Updated: October 2009**

Name	Address	Magisterial District	Affiliation	Notes
Toni Milbourne	PO Box 586 Harpers Ferry, WV 25425	Harpers Ferry	Citizen	
James E. Watson	PO Box 101, Charles Town, WV 25414 304-725-2570; 304-725-2514	Charles Town	Fire & Rescue Assc.	
Ed Smith, Ops Manager	116 East Washington St. Charles Town, WV 25414 304-728-3287	Charles Town		
R. Fred Collins	336 Ashley Drive Shepherdstown, WV 25443	Shepherdstown	Citizen	
Todd L. Will, II	1890 Meyerstown Rd. Charles Town, WV 25414	Kabietown	Fire	
Brian Eddy	118 Shannon Lane Kearneysville, WV 25430	Middleway	Current member	
R.M. Pete Kelley	P.O. Box 1257 Shepherdstown, WV 25443	Shepherdstown	Current member	Up for reappoint 11/09 Left message re: Comm. Interviews on 11/5
Michael T. Mills	P.O. Box 1074 Harpers Ferry, WV 25425	Harpers Ferry	Current member	Up for reappoint 11/09 Left message re: Comm. Interviews on 11/5
Brenda Engle	50 Westhall Drive Charles Town, WV 25414	Kabietown	Current member	
Michael Alvarez	3775 Kabietown Rd. Charles Town, WV 25414	Kabietown	Current member	
Paul Rosa	P.O. Box 1350 Harpers Ferry, WV 25425	Charles Town	Current member	
Brendan Soemnecken	PO Box 542 Harpers Ferry, WV 25425 304-261-8178	Harpers Ferry	Interested applicant	Left message re: Comm. Interviews on 11/05

**JEFFERSON COUNTY AMBULANCE AUTHORITY - 2007 Board Member Attendance\***

	January	February	March	April	May	June	July	August	September	October	November	December
Alvarez, Mike	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Davidson, Candy	YES	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES
Donohue, Dave	NO	NO	NO	NO	YES	YES	NO	NO	NO	RESIGNED	RESIGNED	YES
Eddy, Brian										NEW MEMBER 11/07	YES	YES
Engle, Brenda	YES	YES	YES	NO	YES	YES	YES	YES	YES	NEW MEMBER 11/07	YES	YES
Engle, Donnie	NO	NO	NO	YES	NO	YES	YES	YES	YES	NO	YES	YES
Good, Jeff	YES	NO	NO	NO	YES	YES	YES	YES	NO	NO	YES	YES
Hunsucker, Debra	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Jones, Robert	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES
Kelley, Pete	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES
Mills, Mike	NO	YES	YES	NO	NO	YES	YES	YES	YES	NO	YES	YES
Rosa, Paul	NO	YES	NO	NO	NO	NO	YES	YES	YES	YES	YES	YES
Smith, Ed	YES	YES	YES	YES	NO	NO	YES	YES	YES	YES	YES	YES

**JEFFERSON COUNTY AMBULANCE AUTHORITY - 2008 Board Member Attendance\***

	January	February	March	April	May	June	July	August	September	October	November	December
Alvarez, Mike	YES	NO	YES	YES	No Meeting	YES	YES	YES	No Meeting	YES	YES	YES
Eddy, Brian	YES	NO	YES	YES	No Meeting	YES	NO	YES	No Meeting	NO	NO	NO
Engle, Brenda	YES	YES	YES	YES	No Meeting	NO	NO	YES	No Meeting	YES	YES	YES
Engle, Donnie	YES	YES	YES	YES	No Meeting	NO	NO	YES	No Meeting	YES	YES	YES
Good, Jeff	YES	NO	NO	YES	No Meeting	YES	YES	YES	No Meeting	YES	YES	YES
Hunsucker, Debra	YES	NO	YES	NO	No Meeting	YES	YES	NO	No Meeting	NO	NO	NO
Jones, Robert	NO	NO	NO	NO	No Meeting	NO	NO	NO	No Meeting	NO	NO	NO
Kelley, Pete	YES	YES	YES	NO	No Meeting	YES	NO	YES	No Meeting	YES	YES	YES
Mills, Mike	YES	YES	NO	YES	No Meeting	YES	NO	YES	No Meeting	YES	YES	YES
Rosa, Paul	YES	YES	YES	YES	No Meeting	NO	YES	YES	No Meeting	YES	YES	YES
Smith, Ed	YES	YES	YES	YES	No Meeting	YES	YES	YES	No Meeting	YES	YES	YES

**JEFFERSON COUNTY EMERGENCY SERVICES AGENCY - 2009 Board Member Attendance**

	January	February	March	April	May	June	July	August	September	October	November	December
Alvarez, Mike	YES	YES	YES	YES	NO	YES	NO	NO	YES	NO	NO	NO
Collins, Fred	YES	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO
Eddy, Brian	YES	YES	NO	YES	YES	YES	NO	NO	NO	NO	NO	NO
Engle, Brenda	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Good, Jeff	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Hunsucker, Debra	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Jones, Robert	NO	YES	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
Kelley, Pete	NO	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
Mannuel, Dale	N/A	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Millbourne, Toni	N/A	N/A	YES	NO	NO	YES	YES	YES	YES	NO	NO	NO
Mills, Mike	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES
Rosa, Paul	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Watson, Jay	N/A	YES	YES	YES	NO	NO	YES	YES	YES	YES	YES	YES
Whit, Todd	N/A	YES	YES	YES	YES	YES	NO	NO	NO	NO	NO	NO
Smith, Ed	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES

\*This information does not reflect attendance at any of the special committee meetings.

Brendan Soennecken  
PO Box 542  
Harpers Ferry, WV 25425  
(304)261-8178

President Dale Manuel  
Jefferson County Commission  
PO Box 250  
Charles Town, WV 25414

**RECEIVED**

OCT 28 2009

October 25, 2009

**Jefferson County Commission**

Dear Mr. Manuel,

In reference to the "Notice of Intent to Appoint" listed on the Commission's website, I would like to be considered as a candidate for appointment to the Jefferson County Emergency Services Agency Board. I have lived in Jefferson County for a number of years and reside currently with my wife and son at 401 Fillmore Street in the Harpers Ferry Magisterial District. While I have until now been unaffiliated with any Jefferson County fire company, I believe that my background in disaster relief and emergency services, as well as my volunteer service to the town of Harpers Ferry, have equipped me to contribute effectively to the Emergency Services Agency.

Since moving to Harpers Ferry, I have served in a number of positions in the community. In 2006 I was appointed to the Planning Commission, volunteering my time there until I was elected to the Harpers Ferry Town Council in 2007. While I chose not to run for reelection in 2009, I continue to serve as the town building inspector on an as-needed basis. Through my work with the town I have learned to appreciate the challenges facing communities throughout Jefferson County. At the same time I have also learned to recognize the resources and talent present in our communities, assets we can draw on as we address challenges going forward. As part of the Emergency Services Agency Board, I will work hard to foster understanding and create unified community based approaches to problem solving and planning.

For the past three years I have been employed as a Firefighter and Emergency Medical Technician with Loudoun County, Virginia. Through my job I have seen first-hand the challenges and benefits of working in a combination volunteer/career fire department. I have also been able to gain insight into the complexity of managing emergency services, particularly when adapting to rapid growth. If appointed, I believe my experience in the fire service will allow me to better anticipate and serve the public safety needs of the people of Jefferson County.

Please find my included resume which highlights some of my other professional and academic experience which I feel also enhance my ability to effectively serve Jefferson County as part of the Emergency Services Agency Board. Thank you for your time and consideration.

Sincerely,

  
Brendan Soennecken

## BRENDAN T. SOENNECKEN

PO Box 542  
Harpers Ferry, WV  
25425 USA

Tel: (304)261-8178  
E-mail: soennecken@gmail.com

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### PROFESSIONAL EXPERIENCE

**Loudoun County Department of Fire & Rescue, Virginia, USA**                      **January 2007- Present**

**Firefighter/Emergency Medical Technician**

Working as part of a crew of five firefighters to staff a fire station and respond to emergency incidents. Engaging in patient care, emergency scene stabilization, and fire suppression activities. Communicating with the public through education events and community outreach programs.

**Corporation of Harpers Ferry, West Virginia, USA**                                      **July 2007- Present**

**Building Inspector**

Conducting inspections of all property improvements made within the nationally recognized historic district. Certifying compliance with building guidelines and ordinances. Writing and issuing all inspection reports, certificates, citations, and stop-work orders when necessary.

**Corporation of Harpers Ferry, West Virginia, USA**                                      **July 2007-July 2009**

**Councilman (elected office)**

Communicating with citizens and negotiating compromise within the community. Implementing development goals in a socially responsible manner. Designing projects and legislation to foster cooperation between residents, businesses, and the U.S. Department of Interior. Overseeing town business in a transparent manner while ensuring the sustainability of community resources.

**Carrot Cottage Industries, Harpers Ferry, West Virginia**                                      **June 2005 - December 2008**

**Self-employed/Carpenter/Restorer**

Working in historic property restoration. Providing project assistance, skilled labor, expertise and management of residential carpentry work and restoration activities, from conceptualization through to completion.

**IDEPIX LLC, Ardmore, Pennsylvania**    **October 2002 - June 2003**

**Marketing and Sales Consultant**

Designed, wrote, and edited Web and print materials for marketing multimedia and corporate communications products. Introduced proprietary communications products and strategies to executives of target companies using multimedia, Web-based, and print presentations.

**Accomplishments**

- Expanded company strategy, sales resources, and product applications to include making services available to the non-profit sector.
- Established relations and conducted meetings and product presentations with potential investors and partners.

## INTERNATIONAL EXPERIENCE

### Partnership for Academic Development, Afghanistan

January - June 2002

#### **Program Manager**

Established and managed the organization's in-country offices, resources and staff. Conducted community and regional level project research and planning. Established close working partnerships with other organizations and agencies for purposes of resource sharing.

#### **Accomplishments**

- Procured facilities, equipment, and supplies necessary for country offices.
- Successfully completed program description projects and project funding proposals that ensured funding by outside donors, government agencies, and partnering organizations.
- Maintained high-level communications with Afghan, United Nations and international agency officials to ensure accountability, transparency, and safety for all activities.
- Responsible for budgets and the allocation of resources for all projects and operations.
- Hired and trained a team of five Afghan nationals to help manage facilities and logistics.
- Cooperated with the UN and other agencies on remote-area medical assessments.
- Partnered with the Czech based People in Need Foundation on a needs assessment and direct aid distribution to 2,172 families in the earthquake-devastated district of Nahrin.
- Assisted with village health clinics hosted by U.S.-based Northwest Medical Teams.
- Implemented and supervised numerous projects that included giving aid to: a veterinary hospital, returning female medical students, private language schools, the University of Balkh, nutrition programs and medical clinics.

### Balkans Freedom Trust, Gjakova, Kosovo

August - December 2001

#### **Project Coordinator (internship)**

Conducted needs assessments and wrote related project proposals. Researched grants and funding sources for education projects. Presented projects to donors and partner organizations.

#### **Accomplishments**

- Successfully wrote a grant proposal that received matched funding for a community education project targeting more than 100 students.

### Organization for Security and Cooperation in Europe, Knin, Croatia

March - May 2001

#### **Legal Assistant (internship)**

Wrote and submitted organizational activity summaries and weekly status reports.

#### **Accomplishments**

- Conducted quantitative and qualitative field research on post-war housing stock culminating in a dissertation successfully submitted as part of an M.A. degree.
- Interviewed Croatian government officials and chief officers of international agencies regarding sensitive legal issues dealing with social responsibility, government transparency and human rights.

## EDUCATION

The University of York, York, United Kingdom  
M.A. Political Science, Post-war Recovery Studies

The Pennsylvania State University, State College, Pennsylvania  
B.A. International Politics (With High Distinction GPA 3.84)

University of Colorado, Boulder, Colorado  
PhD Candidate, Political Geography

## SKILL SET

### Language

- English (native speaker, U.S.)
- German (fluent/native speaker)

### Communications

#### Publications

- Soennecken, B. (2005), "The Geopolitics of Post-War Recovery". In C. Flint (ed.) *The Geography of War and Peace: From Death Camps to Diplomats* (pp. 415-436). New York, NY: Oxford University Press
- *Field Visit to Croatia* in the Post-war Reconstruction and Development Unit "Revival", P.6, Issue 15, August 2001

#### Public Speaking

- Session Chair: "War and Conflict" Association of American Geographers 2005 Annual Conference.
- *Graduate Teaching Assistant*: University of Colorado; Teaching 75 students three times a week and also teaching larger classes on specialty topics.

### Information Technology

Microsoft Office  
Introductory GIS/ARC and GIS/MAP/Catalogue  
Database, archival and Web research

## VOLUNTEER WORK and ASSOCIATIONS

- Shop Steward: International Association of Firefighters Local 3756, 2007 - Present
- Committee Member: Firefighter Benevolence Fund, 2008 - Present
- Board Member: Harpers Ferry Youth Program, 2008 - Present
- Planning Commissioner: Corporation of Harpers Ferry, 2006/2007
- Member: Association of American Geographers, 2004/2005
- Research Intern: ActionAid USA Washington, D.C., May - June 2004
- Grant Writer: Grenada Save the Children Development Agency, Grenada, Sept. 2002

Michael Mills  
P.O. Box 1074  
Harpers Ferry, WV 25425

RECEIVED

OCT 22 2009

JEFFERSON COUNTY COMMISSION

October 12, 2009

Attn: Dale Manuel  
The County Commission of Jefferson County  
P.O. Box 250  
Charles Town, WV 25414

Dear Commissioner Manuel,

I am in receipt of your letter from Sandra McDonald, concerning the pending expiration of my term on the Jefferson County Emergency Services Agency Board (JCESA Board).

The purpose of this letter is to advise you of my willingness to serve another term on the JCESA Board. As you are aware there are many changes in progress related to emergency services in Jefferson County, and many more changes to come. I believe that my experience and skills will add value as we move forward.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Michael Mills  
H304-535-3126

cc: Sandra McDonald

P. O. Box 1257

October 5, 2009

Shepherdstown, WV 25443

Phone 304-876-3409 Cell 304-268-2884

Jefferson County Commission

P. O. Box 250

124 E. Washington Street

Charlestown, WV 25414

Attn: Commissioner Dale Manuel, President

Dear Sir:

By this letter, I am requesting to be reappointed to the Jefferson County Emergency Service Agency Board. At present, I am functioning as president of the board which includes the supervision of the operations, as the supervisor of the operations manager. Other responsibilities include being on the building committee that directs the building of our new Operations Center. This includes weekly meetings with the contractor, architect and county representatives. These meetings will continue until completion, estimated to be in January 2010.

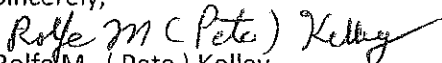
As a licensed health care provider (ESARN) by the WV Board of Nursing and the WV Department of Health, I serve on the Quality Assurance Committee. We function under the direction of Dr. Robert Jones MD, the county medical director. The committee reviews the care provided by the county EMS personnel as it relates to the applicable protocols.

I am on the selection committee to find a replacement for our retiring operations manager. I have extensive knowledge relating to fire operations, business management and the state EMS programs.

Attached is a chart showing my attendance to the board meetings which demonstrates my level of commitment to the program.

Thank you for your consideration.

Sincerely,

  
Rolfe M. (Pete) Kelley

CC: Commissioners Frances Morgan, Patsy Noland, Jim Surkamp, and Lyn Widmyer

RECEIVED

OCT 13 2009

JEFFERSON COUNTY COMMISSION

Commission Office Use Only

# 5

Date on Agenda: 11/5/09

Appt Time or New Business: 10:15

### AGENDA REQUEST FORM

Name: Kirk Davis

Department or Entity: Capital Projects Manager

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1<sup>st</sup> Choice: November 5th

Date Requested – 2<sup>nd</sup> Choice: \_\_\_\_\_

If a specific date is needed, please provide reason for specific date:

Subject: **Appointment**

Please provide the County Commission with a description of your request or presentation, including any background information: **Project Recap Update on all projects current and past**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **No action needed**

Attachments: **see attached**

Commission Office Use Only

Date on Agenda: 11/5/09

Appt Time or New Business: 1:30

**AGENDA REQUEST FORM**

Name: Roger Goodwin

Department or Entity: Department of Engineering

Estimation of amount of time needed for appointment: 1 Hour

Date Requested – 1<sup>st</sup> Choice: October 29, 2009

Date Requested – 2<sup>nd</sup> Choice: November 5, 2009

If a specific date is needed, please provide reason for specific date: **Time is of the essence due to FEMA requirements.**

**Subject: Flood Plain Management Ordinance rewrite mandated by the Federal Emergency Management Agency (FEMA).**

Please provide the County Commission with a description of your request or presentation, including any background information: **I will be presenting the new Flood Plain Management Ordinance and outlining the specific changes required by FEMA in order to maintain the County's favorable rating with the National Flood Insurance Program (NFIP).**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **I move the revised Flood Plain Management Ordinance be adopted for enactment effective December 18, 2009.**

Attachments: **Draft Revised Flood Plain Management Ordinance**

\_\_\_\_\_ (Jefferson County, West Virginia)  
**FLOODPLAIN ORDINANCE**

 **DRAFT**  
10/28/2009

AN ORDINANCE ESTABLISHING A FLOODPLAIN AREA AND REQUIRING ALL CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, OR RELOCATION OF ANY BUILDING OR STRUCTURE, AND PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOODPLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the County Commission of Jefferson County, as follows:

**ARTICLE I - GENERAL PROVISIONS**

Section 1.1 Authority

- A. The provisions of this ordinance have been prepared with the intention of meeting the requirements of THE NATIONAL FLOOD INSURANCE ACT OF 1968 (42 U.S.C. 4001 et seq.) AMENDED BY THE CONGRESS OF THE UNITED STATES THROUGH THE 15<sup>TH</sup>.OF FEBRUARY, 1975 (PUBLIC LAW 91-152),
- B. Authority to adopt, administer and enforce this Ordinance is vested in the community pursuant to WEST VIRGINIA STATE CODES 7-1-3v, 7-1-3n and 7-1-3kk and WEST VIRGINIA STATE CODE 8A-4-2, 8A-5-7, 8A-7-2

Section 1.2 Effective Date

This Ordinance was originally established by action of the County Commission of Jefferson County on November 20, 1975, and took effect on the 20<sup>th</sup> day of December, 1975. It was amended and/or revised in October, 1980 and July, 1986, revised and re-enacted in March 1987, and amended on July 15, 1993 and December 10, 1998. This amended Ordinance shall take effect upon the date of its adoption by the County Commission of Jefferson County.

Section 1.3 Intent

The intent of this ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.

- C. Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal, in cooperation with the County Sanitarian, and to protect natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

#### Section 1.4 Abrogation and Greater Restrictions

This ordinance supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

#### Section 1.5 Applicability

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any land development or subdivision of land, or the new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within the Floodplain Areas of Jefferson County; unless the development is processed and approved by the Jefferson County Planning Commission under the land development ordinances (Subdivision and Zoning) of Jefferson County, and/or an Improvement Location Permit (ILP) application is submitted and approved under the Building Code Enforcement Ordinance and an Improvement Location Permit is obtained from the Departments of Planning, Zoning, and/or Engineering.

Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this Ordinance and the community's need to minimize the hazards and damage resulting from flooding.

## **ARTICLE II - INTERPRETATIONS AND DEFINITIONS**

### **Section 2.1 Interpretations**

A. For the purpose of this ordinance, the following interpretations shall apply:

1. Words used in the present tense include the future tense
2. The singular includes the plural.
3. The plural includes the singular.
4. The word “person” includes a corporation, unincorporated association or partnership, as well as an individual.
5. The Term “shall” or “will” is always mandatory.
6. The word “building” or “structure” shall be construed as if followed by the phrase “or part thereof”.
7. The word “Ordinance” shall refer to the Jefferson County Floodplain Ordinance.

### **Section 2.2 Definitions**

Unless specifically defined below, words and phrases used in this ordinance shall be interpreted so as to give this ordinance it’s most reasonable application.

#### **Appurtenant Structure**

A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank or detached garages.

#### **Base Flood**

The flood, which has been selected to serve as the basis upon which the floodplain management provisions of this and other ordinances have been prepared; for purposes of this ordinance, the one-hundred (100) year flood.

#### **Base Flood Elevation**

The water surface elevation of the base flood in relation to the datum specified on the community’s Flood Insurance Rate Map. For the purpose of this ordinance, the one-hundred (100) year flood or 1% annual chance flood.

#### **Basement**

Any area of the building having its floor sub-grade (below ground level) on all sides.

### Critical Facility

Any facility in which even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a floodplain if at all possible. If a critical facility must be located in a floodplain, it should be provided a higher level of protection so that it can continue to function and provide services during a flood event.

### Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

### Flood

A general and temporary inundation of normally dry land areas.

### Flood Insurance Rate Map (FIRM)

The official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration has delineated both the areas of special flood hazard areas and the risk premium zones applicable to the community.

### Flood Insurance Study

The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.

### Floodplain

- (1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

### Floodplain Administrator

The Chief County Engineer or his/her designated agent/employee, shall be the Floodplain Administrator. The Floodplain Administrator may also be identified as the Floodplain Manager.

### Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

### Flood Proofing

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

### Freeboard

A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.

### Historic Structure

Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;  
or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) By an approved state program as determined by the Secretary of the Interior;  
or,
  - (2) Directly by the Secretary of Interior in states without approved programs.

### Land Altering Activity (see "Development")

### Lowest Floor

The lowest floor of the lowest enclosed area (including basement). However, an unfinished enclosure constructed with flood resistant materials - as defined in FEMA Technical Bulletin 2-93 (FIA-TB-2) - and usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

### Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

### New Construction

Structures for which the Start of Construction as herein defined commenced on or after the 20<sup>th</sup> day of December, 1975 (date of original floodplain regulations) and including any subsequent improvements to such structures.

### One-Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

### Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

### Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

### Recreational Vehicle

A vehicle which is:

- (a) built on a single chassis; and
- (b) 400 square feet or less when measured at the largest horizontal projection; and
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

### Special Flood Hazard Area

The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and Flood Insurance Rate Maps as Zone A, AE, AO, A1-30, and A99. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.

### Start of Construction

The date the permit was issued, including permits for substantial improvement or repair of substantial damage, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

### State Coordinating Office

The West Virginia Division of Homeland Security and Emergency Management.

### Stream

As defined in WV State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

### Structure

A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

### Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."

### Substantial Improvement

Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty-percent (50%) of the market value of the structure before the Start of Construction of the improvement. This term includes structures which have incurred “substantial damage” as defined herein, regardless of the actual repair work performed. The term does not, however, include:

- a) Any project for improvement of a structure to correct an existing violation of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- b) Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

### Violation

The failure of any building, structure, or development or other land altering activity, to be fully compliant with all requirements of this ordinance. A building, structure, development or other land altering activity without the required permits and approvals, or without the elevation certificate and other certifications, or without other evidence of compliance required by this ordinance, is presumed to be in violation until such time as that documentation is provided.

## **ARTICLE III - ESTABLISHMENT OF THE FLOODPLAIN AREA**

### **Section 3.1 Identification**

- A. The identified floodplain area shall be those areas of Jefferson County which are subject to the one-hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for Jefferson County, West Virginia by the Federal Emergency Management Agency (FEMA) dated the 18<sup>th</sup> day of December, 2009, or the most recent revision thereof.
- B. The identified floodplain area shall also be those areas of Jefferson County which have been identified as flood hazard areas by the County Commission of Jefferson County by use of historic or other technical data and shown on the Jefferson County "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

### **Section 3.2 Descriptions of Floodplain Areas**

The identified floodplain shall consist of the following four specific areas:

- A. The Floodway area (F1) shall be those areas identified as such in the FIS and as shown on the Flood Insurance Rate Map (FIRM). The term shall also include floodway areas identified in other studies for the approximated area discussed in Section D below.
- B. The Floodway Fringe area (F2) shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area. These areas are shown on the FIRM.
- C. The AE Area without Floodway (F3) shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
- D. The Approximated area (F4) shall be those areas identified as Zone A on the FIRM included in the FIS prepared by FEMA, and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal or State sources, or other source acceptable to the Floodplain Administrator, shall be used when available. Where other acceptable information is not available, the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. When Hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the technical methods used reflect currently accepted technical concepts and methodology. A summary of the study and the findings along with the detailed study, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

### Section 3.3 Changes in Designation of Area

- A. The delineation of the identified floodplain area may be revised, by the County Commission of Jefferson County upon recommendation by the Floodplain Administrator, where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission, or other qualified agency or qualified individual, documents the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency (FEMA).
- B. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practical, but not later than six months after the date such information becomes available, the community shall notify the NFIP Administrator of the changes by submitting technical or scientific data.
- C. The County Commission of Jefferson County, upon recommendation by the Floodplain Administrator, may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical information such as flood of record, historic high water marks and/or topographic data.

### Section 3.4 Boundary Disputes

Should a dispute arise concerning the identification of any flood prone area, an initial determination shall be made by the Floodplain Administrator; and any party aggrieved by this decision may appeal to the County Commission of Jefferson County. The burden of proof shall be on the appellant/applicant.

## ARTICLE IV - UTILIZATION OF THE FLOODPLAIN AREA

### Section 4.1 Floodway (F1)

- A. Within any floodway area (F1), no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.

### Section 4.2 Floodway Fringe (F2) and Approximated Floodplain (F4)

- A. In the Floodway Fringe (F2) and Approximated Floodplain (F4), any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

### Section 4.3 AE area without floodway (F3)

- A. Within any AE area without floodway, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway area where determined.

### Section 4.4 Alteration or relocation of a stream

- A. Whenever a developer/person intends to alter or relocate a stream within the Floodplain Area, the developer/person shall notify in writing, via certified mail, the Jefferson County Floodplain Administrator, the State Coordinating Office, any adjacent communities/municipalities, and any adjacent property owners, of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Insurance Administration. In addition, the developer/person shall provide copies of all permits required by other agencies, to the Jefferson County Floodplain Administrator.
- B. The developer shall also assure the Jefferson County Floodplain Administrator in writing that the carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. When Hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the technical methods used reflect currently accepted technical concepts and methodology. A summary of the study and the findings along with the detailed study, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

- C. The Floodplain Administrator may require the use of certain “best practice” techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- D. All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- E. The developer is required to provide the community a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the responsibility of the applicant to transfer this agreement to the new owner when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.
- F. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

## ARTICLE V - CRITERIA FOR BUILDING CONSTRUCTION APPROVAL

### Section 5.1 General

Improvement Location Permits are required in order to determine whether all new building construction or substantial improvements are:

- A. Reasonably safe from flooding.
- B. Located in an identified Floodway, Floodplain, or other flood hazard area.
- C. Are located in accordance with Zoning ordinance, Subdivision ordinance, and Floodplain ordinance building setbacks.
- D. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- E. Constructed by methods and practices that minimize flood damage.
- F. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- G. Approved by County Health Department for Well, Septic and other permits.

### Section 5.2 Basic Permit Information

At a minimum, the Improvement Location Permit (ILP) shall include the following:

- A. Name and address of applicant
- B. Name and address of owner of land on which the proposed development/construction is to occur.
- C. Name and address of contractor performing the work.
- D. A description of site location sufficient to locate the project.
- E. A sketch plan of the site showing the exact size and location of the proposed building construction as well as any existing buildings or structures on the site.

### Section 5.3 Elevated, Flood Proofed, & Flood Resistant Construction Information

Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area:

A. Elevated Structures:

For structures to be elevated three feet above the Base Flood Elevation, provide the following:

1. A plan showing the size of the proposed structure and its relation to the lot boundary and where it is to be constructed on the lot.
2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer or Surveyor on a FEMA Elevation Certificate.
3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator or Building Official, a Registered Professional Engineer or Architect shall prepare these plans.
4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to three feet above the Base Flood Elevation at the building site.

B. Flood Proofed Structures:

For structures (nonresidential structures only) to be dry flood proofed to three feet above the Base Flood Elevation, provide the following:

1. Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer, and showing the size of the proposed structure and its relation to the lot boundary and where it is to be constructed on the lot.
2. A determination of elevations (elevation certificate) of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a Registered Professional Engineer or Surveyor.
3. A Flood Proofing Certificate (e.g., FEMA 81-65, as revised by FEMA) shall be prepared by the Registered Professional Engineer who prepared the plans in item (1) above, stating the structure in question, together with associated utility and sanitary facilities, is designed so that:
  - (i) Below an elevation equal to the Base Flood Elevation plus three feet, the structure is water tight with walls substantially impermeable to the passage of water; and
  - (ii) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

C. Flood Resistant Construction:

For appurtenant structures, and those fully enclosed areas of elevated structures that are located below the Base Flood Elevation (BFE), which are used solely for parking of vehicles and/or as storage area, which is to be constructed of flood resistant materials, provide the following:

1. Plans showing details of all flood resistant materials and flood resistant construction, prepared by a Registered Professional Engineer or Architect, and showing the size of the proposed structure and its relation to the lot boundary and where it is to be constructed on the lot. The plans shall show that:
  - (i) Flood resistant materials, as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2), are used in the construction of the structure from the lowest structural element to three feet above the Base Flood Elevation; and that all utilities are located at least three feet above the Base Flood Elevation; and
  - (ii) Confirm that hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement shall be certified by a Registered Professional Engineer or Architect, or meet or exceed the following minimum criteria:
    - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
    - b) The bottom of all openings shall be no higher than one foot above grade.
    - c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
2. A post-construction elevation report or certificate, based on finished construction, prepared by a licensed Professional Surveyor. The report/certificate shall certify that the structure and appurtenant utilities are:
  - (i) Constructed with flood resistant materials, as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2), from the lowest structural element to three feet above the Base Flood Elevation; and that all utilities are located at least three feet above the Base Flood Elevation; and
  - (ii) Confirm that hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters, or meet or exceed the following minimum criteria:
    - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

- b) The bottom of all openings shall be no higher than one foot above grade.
- c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

**ARTICLE VI - CRITERIA FOR PRELIMINARY PLAT AND SITE PLAN APPROVAL**

**Section 6.1 General**

**A. Preliminary Plat:**

The owner or developer of any proposed residential, commercial, or manufactured home subdivision shall submit and process a Preliminary Plat in accordance with Jefferson County land development ordinances.

**B. Site Plan:**

The owner or developer of any proposed manufactured home (rental unit) park or other commercial (for profit & non-profit), institutional, or industrial type land development project, shall submit and process a Site Plan in accordance with Jefferson County land development ordinances.

**Section 6.2 Basic Preliminary Plat and Site Plan Information**

At a minimum, the Preliminary Plat or Site Plan shall include the following information:

- A. Name of registered professional engineer, licensed professional surveyor or other qualified person responsible for providing the information required in this section.
- B. A map showing the location of the proposed subdivision and/or land development with respect to the county's floodplain areas, the proposed lot sites, and areas to be graded/filled.
- C. It is required that all subdivision proposals and manufactured home (rental unit) parks or other commercial (for profit & non-profit), institutional or industrial type development projects, or any other new development proposed to take place either fully or partially within the approximated floodplain (F4), and which are greater than Ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data and shall delineate a floodway. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the base flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.
- D. Where the subdivision and/or development project lie partially or completely in the floodplain areas, the preliminary plat or site plan shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) feet and identify accurately the boundaries of the floodplain areas.

**Section 6.3 – Restrictions to Subdivision of Land in Floodplain Areas.**

Subdivision of land in the floodplain area shall result in lots that include a buildable portion outside of the identified flood hazard area. The size of the buildable area shall be in accordance with the requirements of the Zoning and Subdivision Ordinances. All lots shall have a minimum building setback of 25' horizontal from the limits of the flood hazard area, or 2' vertical above the Base Flood Elevation, whichever is greater in the horizontal distance from the limits of the flood hazard area. All new structures must be sited on the portion of the subdivided lot that is located outside of the identified flood hazard area. No subdivision streets shall be located within the floodplain; however, a street may cross the floodplain for the purpose of gaining access to the other side of the stream provided it complies with all other local, State, and Federal design and permitting requirements.

**Section 6.4 – Restrictions to the Development of Land in Floodplain Areas.**

The development of any proposed manufactured home (rental unit) park or other commercial (for profit & non-profit), institutional, or industrial type development project shall result in a buildable area outside of the identified flood hazard area. The size of the buildable area shall be in accordance with the requirements of the Zoning and Subdivision Ordinances. The buildable area shall have a minimum building setback of 25' horizontal from the limits of the flood hazard area, or 2' vertical above the Base Flood Elevation, whichever is greater in the horizontal distance from the limits of the flood hazard area. All new building structures shall be sited on the buildable area located outside of the identified flood hazard area.

## ARTICLE VII - SPECIFIC REQUIREMENTS

### Section 7.1 Design and Construction Standards

In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision of land, manufactured home parks, new construction, construction of substantial improvements, and the repair of substantial damage to existing structures, occurring in the Floodplain Area:

#### A. Basements and Lowest Floors

1. Residential Structures: All new residential construction, relocation, and substantial improvements, including repair of substantial damage of residential structures, shall have the lowest floor, including basement, ductwork and utilities, elevated to three feet above the Base Flood Elevation.
2. Non-Residential Structures: All new non-residential construction, relocation, substantial improvements, including repair of substantial damage of non-residential structures, shall have the lowest floor, including basement, ductwork and utilities, elevated to three feet above the Base Flood Elevation; or, the structure, along with associated utility and sanitary facilities, is designed so that:
  - (i) Below an elevation equal to the Base Flood Elevation plus three feet, the structure is water tight with walls substantially impermeable to the passage of water; and
  - (ii) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.
3. Fully Enclosed Areas Below the Base Flood Elevation

For all new construction, relocation, substantial improvements, and repair of substantial damage, with fully enclosed areas below the lowest floor that are used solely for parking of vehicles, building access, or for storage (including crawl spaces) in an area other than a basement, and which are subject to flooding, shall be designed and constructed as follows:

- (i) Flood resistant materials, as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2), are used in the construction of the structure from the lowest structural element to three feet above the Base Flood Elevation; and that all utilities are located at least three feet above the Base Flood Elevation; and
- (ii) Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement

shall be certified by a Registered Professional Engineer or Architect, or meet or exceed the following minimum criteria:

- a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b) The bottom of all openings shall be no higher than one foot above grade.
- c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

A Non-conversion Agreement shall be signed by the applicant whenever the community determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:

- (i) “The area below Base Flood Elevation shall not be converted for use other than for parking, building access, or for allowable storage as detailed in this ordinance”; and
- (ii) “The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 9.3 of this ordinance.”

#### B. Manufactured Home Placement

Certain unique characteristics of manufactured homes installed in flood hazard areas pose an elevated risk of substantial damage to property. Thus –

1. Manufactured homes to be placed or substantially improved within flood hazard areas shall be installed in accordance with the following standards:
  - a. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated three feet above the Base Flood Elevation.
  - b. Elevation shall be on reinforced piers on a permanent foundation, or shall use foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in flood hazard areas.

- c. All manufactured homes shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10b as authorized by West Virginia Code § 21-9-4. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors may not be adequate to satisfy flood specific anchoring requirements. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- d. Permanently attached rigid skirts and perimeter wall skirts of brick or block must have openings; this type of skirting can collapse during floods and compromise supporting piers. The openings must be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
  - (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - (ii) The bottom of all openings shall be no higher than one foot above grade.
  - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- e. Any additions to a manufactured home shall be similarly anchored and vented.

C. Recreational Vehicle Placement

1. Recreational vehicles placed within any floodplain area shall:

- a. Be on site for fewer than 180 consecutive days; or
- b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its fully functioning wheels or jacking system, and is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions; or
- c. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.

D. Placement of Fill Material

No fill shall be permitted in the floodway.

Placement of fill in other areas of the floodplain is restricted to functional purposes such as elevating a structure. Fill shall only be permitted in the same permit with the related

structure or other functional purpose. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. No fill shall be permitted in the identified flood hazard area unless compensatory storage is provided immediately adjacent to the site. All fill placed in the floodplain area shall meet or exceed the following standards:

1. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. Jefferson County may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, Hydrologic and hydraulic analyses shall be undertaken only by professional engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator. During permit review the community shall consider the following issues that have the potential to cause adverse impact to adjacent properties:
  - a. Unacceptable increases in flood heights.
  - b. Blocking drainage from adjacent property.
  - c. Deflection of floodwaters onto adjacent existing structures.
  - d. Increases to stream velocity initiating or exacerbating erosion problems.
  - e. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, Karst topography, stream blockages, and steep topography adjacent to the channel.
2. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
3. Filled site must be contoured to drain properly (avoid ponding)
4. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential structure.
5. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted and no trash or woody debris shall be buried on site.
6. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.

7. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
8. Fill site and fill must be protected from erosion.
9. All applicants placing fill in a special flood hazard area must obtain a Conditional Letter of Map Revision (CLOMR) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant must convert the CLOMR to a Letter of Map Revision based on Fill (LOMR-F) before a certificate of compliance can be issued.
10. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

E. Placement of Buildings & Structures

1. All buildings and structures shall be constructed or placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.

F. Anchoring

1. All buildings and structures and other development, including stream crossings, shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement; thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
2. All air ducts, large pipes, swimming pools, and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

G. Building & Structures Flood Hazard Area Setback

Buildings and structures shall be set back a minimum of 25' horizontal from the limits of the flood hazard area, or 2' vertical above the Base Flood Elevation, whichever is greater in the horizontal distance from the limits of the flood hazard area.

The Floodplain Administrator may consider an appeal to the Flood Hazard Area setback requirement if the applicant demonstrates that it is impossible or impractical to allow any development without encroachment into the Flood Hazard area. When the flood hazard area is the only reasonable alternative, the applicant shall demonstrate that the encroachment is the minimum necessary to accomplish the project.

#### H. Storage of Materials in the Flood Hazard Area

1. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal, or plant life, shall be stored below the Base Flood Elevation.

#### I. Utility and Facility Requirements

1. All new or replacement potable water systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the system.
2. All new or replacement sanitary sewage disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems, and discharges from the systems into the floodwaters.
3. Onsite waste water disposal plants/systems shall be located to avoid impairment to them or contamination from them during flooding.
4. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.

#### J. Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard.

## **ARTICLE VIII - ADMINISTRATION**

### **Designation of Floodplain Administrator**

The Chief County Engineer is hereby appointed as Floodplain Administrator to administer this ordinance.

### **Section 8.1 Building Permits and Subdivision & Site Plan Approvals Required**

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within the floodplain area, unless an Improvement Location Permit is obtained. In addition, where land, which is either partially or fully in the regulatory floodplain, is to be subdivided, utilized for a manufactured home park or subdivision, or otherwise developed, a subdivision plat and/or site plan shall be submitted, processed, and approved under the land development ordinances of Jefferson County prior to any development

### **Section 8.2 Approval of Permits and Plans**

All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with local, State and Federal laws and regulations. The owner/contractor/developer shall be responsible for obtaining all necessary permits and approvals from all other governmental agencies and for providing copies to the appropriate reviewing agency of Jefferson County, for their records.

### **Section 8.3 Application Procedures**

Application for an Improvement Location Permit (building permit) and/or a subdivision or site plan approval shall be made in writing on the forms and in the format prescribed by Jefferson County, and shall include all information stipulated under Article V of this ordinance.

### **Section 8.4 Changes**

After the issuance of an Improvement Location Permit (building permit), no changes shall be made to the permit application, permit, building plans, specifications, or any other documents submitted with the application, without the consent of the Floodplain Administrator.

After approval of a Preliminary Plat and/or Site Plan by the Planning Commission, no changes shall be made to the application, or any of the plans and specifications, or any other documents submitted with the application, without the consent of the Floodplain Administrator.

### Section 8.5 Permit Placards

Any permit placard issued in the administration of this ordinance shall be prominently displayed on the premises by the owner during the time period from when construction is started until construction is complete.

### Section 8.6 Start of Construction

Work authorized under this ordinance, shall begin within 180 calendar days from the date the permit/approval is issued. Otherwise, the permit/approval shall expire unless a time extension is requested in writing by the owner and the time extension is granted in writing by the Floodplain Administrator. Each time extension shall not be for more than a 180 calendar day period.

This section shall not supersede more stringent requirements under other applicable ordinances.

### Section 8.7 Inspections and Revocations

During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work authorized under this ordinance is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.

In the event the Floodplain Administrator discovers that the work authorized under this ordinance does not comply with the permit application or any applicable laws and ordinances, or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the permit and issue a "Notice of Violation".

### Section 8.8 Fees

Fees, based on the prevailing fee schedule approved by the County Commission of Jefferson County, may be assessed to defray the costs of administering this ordinance.

## ARTICLE IX – APPEALS, ENFORCEMENT AND PENALTIES

### Section 9.1 Appeals

1. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the County Commission of Jefferson County, which shall be known as the Appeals Authority. Such appeal shall be filed with the County Commission in writing, within thirty (30) days after notification of the decision by the floodplain administrator. Upon receipt of such appeal, the Appeals Authority shall set a time and place, not less than fifteen (15) nor more than sixty (60) days from receipt of the written appeal request, for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final in all cases.

### Section 9.2 Appeal Review Criteria

- A. All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board. All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
1. Affirmative decisions shall only be issued by the Appeals Board upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
  2. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
  3. An affirmative decision may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
  4. The Appeals Board shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (5) of this section; and
  5. The Appeals Board shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biannual report to the Federal Insurance Administration.

6. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

### Section 9.3 Enforcement

#### A. Authority

The governing body, Floodplain Administrator, Ordinance Compliance Officer, or any authorized employee or agent may enforce this ordinance in the manner provided for in this section and by applicable law.

#### B. Procedure

1. Upon learning of a potential violation of this ordinance, the Ordinance Compliance Officer or staff shall investigate to determine whether a violation has occurred.
2. When it appears after investigation that a violation of this ordinance has occurred, the Ordinance Compliance Officer shall notify the violator by means of written violation notice. The violation notice shall specify the nature of the violation and request that the violation cease within fifteen (15) days from the date appearing on the notice. Failure to terminate the violation within this time period shall be cause for the Ordinance Compliance Officer, governing body, or authorized employee or agent to:
  - a) Seek an injunction in the Circuit Court of Jefferson County to restrain the violator from continuing the violation, including but not limited to requests for the removal of structures or land uses from the property involved; and
  - b) Seek a misdemeanor conviction in magistrate court or circuit court.

### Section 9.4 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator, or any other authorized employee of the community, shall be guilty of an offense and, upon conviction, pay a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00), plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with this Ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the County Commission of Jefferson County to be a public nuisance and abatable as such.

## **ARTICLE X – GOVERNMENT ACTIONS**

### **Section 10.1 – Municipal Annexation**

- A. The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program.
- B. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- C. All plats or maps of annexation shall show the floodplain boundaries, Base Flood Elevation and location of the floodway where determined.
- D. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Insurance Administration in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.
- E. NFIP participating communities must notify the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. A copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.

### **Section 10.2 – Permits for Government Entities.**

- A. Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance must provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

## ARTICLE XI - SEVERABILITY AND MUNICIPAL LIABILITY

### Section 11.1 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect and for this purpose the provisions of this ordinance are hereby declared to be severable.

### Section 11.2 Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the County Commission of Jefferson County, or by any official or employee thereof, of the practicability or safety of the proposed use, and shall create no liability upon the County Commission of Jefferson County or by any official or employee thereof.

The Floodplain Administrator or employee or agent charged with the enforcement and administration of this Ordinance, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this Ordinance or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee or agent because of an act performed by that officer or employee or agent in the lawful discharge of duties and under the provisions of this Ordinance shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The Floodplain Administrator or any employee or agent shall not be liable for the cost of any action, suit, or proceeding that is instituted in pursuance of the provisions of this code.

**ARTICLE XII - ENACTMENT**

This Floodplain Ordinance is hereby enacted and ordained this

\_\_\_\_ day of \_\_\_\_\_, 2009, effective immediately.

By: \_\_\_\_\_

Dale Manuel, President  
County Commission of Jefferson County

Attest:

\_\_\_\_\_

Jennifer Maghan, County Clerk

Rec'd 10/29/09 [Signature]

# AGREEMENT

Purchase Order # \_\_\_\_\_ WVFIMS Account # \_\_\_\_\_

TEAM Vendor # \_\_\_\_\_ WVFIMS Vendor # \_\_\_\_\_

I, Jefferson County, agree to perform the

(Name and address)

following services for WVDHSEM at Jefferson County

(Location)

Update Ordinance and Administrative Procedures, create/modify Permitting Forms as outlined in

(Detailed description of services to be performed)

attached work plan dated October 29, 2009, which is hereby made a part of this agreement

Date (s) of Service: from 10/01/09 to 12/15/09

The rate of pay shall be as invoiced per \_\_\_\_\_

not to exceed \$20,000.00 for the entire term of the contract.

**NOTE: Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by the State and is the sole responsibility of the vendor. The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.**

Please check the appropriate line below:

- I am **not** currently a full-time employee of the State of West Virginia;
- I **am** currently a full-time employee of the State of West Virginia (complete certification below).

It is hereby certified that the services to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by Not Applicable (above named vendor) from the State of West Virginia for full-time employment during the current fiscal year will be Not Applicable.

The vendor serves as: Not Applicable with the title of: Not Applicable

(Position)

certified by: Not Applicable

(Supervisor's Signature)

### APPROVED BY:

Agency WVDHSEM

Vendor Jefferson County

(Authorized Signature of Agency)

(Vendor's Signature)

(Title)

(Social Security or FEIN)

(Date)

(Date)

**Jefferson County**  
**FIRM Map Modification - Work Plan**

October 1, 2009

1. By 10/31/09 develop staff recommendations to improve County Floodplain ordinance administration and enforcement by adapting the WV Model Floodplain Ordinance as appropriate to county needs and flood conditions. Reimburse County CRS coordinator for any costs needed to incorporate CRS initiatives into the updates to the County Floodplain Ordinance.
2. By 11/30/09 develop written administrative procedures for any complex issues (i.e. Approximate A zone permitting, Stream alterations and crossings, placement of fill and Substantial Improvement/substantial damage) samples provided by state may be helpful for this effort.
3. By 12/1/09 develop written enforcement procedures coordinating between building code and floodplain ordinance. Differentiate between enforcement of ongoing and completed development.
4. By 12/15/09 develop or modify any permit forms necessary for administering the ordinance, sample forms provided may prove helpful.
  - a. Assist with presentation of new proposed floodplain ordinance updates to planning/county commission; discuss differences between old and new ordinances.
  - b. Attend Commission meetings during ordinance review/adoption procedures to answer common questions, record less common questions for later response. Obtain copies of the signed ordinance and Commission minutes.
  - c. Review floodplain ordinance upon adoption, assure all requirements were met by completing the ordinance crosswalk (checklist) provided by the state. Transmit copies of all materials to State NFIP coordinating office.
5. By 12/15/09 help any Jefferson County Municipals desiring assistance with any of the above for their Municipal Floodplain Ordinances.

**Sandy McDonald**

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**From:** "F. Mark Schiavone" <mschiavone@jeffersoncountywv.org>  
**To:** "Sandy Slusher-McDonald" <sandy@jeffersoncountywv.org>  
**Sent:** Friday, October 30, 2009 4:48 PM  
**Subject:** Hotel Occupancy Tax

Sandy,

As we discussed earlier the Commission deferred by a week a decision on whether to keep or modify the funding formula for disbursement of the Hotel Occupancy Tax. I'm attending national meetings next week and will not be here. The current distribution is (6/12 or 50%) to Visitor's Center; (5/12 or 41.6% to Parks & Recreation); (1/24 or 4.2%) each to Historic Landmarks Commission and Arts & Humanities for a total of 12/12 or 100% of the tax.

I had asked them whether to maintain this ratio in the event that the HOT revenue exceeds the budgeted \$400,000 (we may actually exceed this toward the forth quarter of FY 2010). If they intend to maintain this ratio they need not do anything. Staff was asking for clarification on this issue but without action, the original formula as outlined above will be maintained.

Have a great weekend!

F. Mark Schiavone  
Director and Impact Fee Coordinator  
Department of Capital Planning and Management  
Jefferson County Government  
114 E. Washington Street  
Charles Town, WV 25414  
(304) 728-3331 (general)  
(304) 728-3337 (direct)  
(304) 886-3810 (mobile)  
(304) 724-2178 (fax)

Commission Office Use Only

Date on Agenda:

10-29-09

Appt Time or New Business:

## AGENDA REQUEST FORM

Name: F. Mark Schiavone

Department or Entity: DCPM

Estimation of amount of time needed for appointment: 10

Date Requested – 1<sup>st</sup> Choice: 29 Oct 2009

Date Requested – 2<sup>nd</sup> Choice: 12 Nov 2009

If a specific date is needed, please provide reason for specific date: Please do not defer this appointment to 05 November 2009. I'll be attending the National Impact Fee Roundtable meetings in Phoenix, AZ.

Subject: Budget Update

**Please provide the County Commission with a description of your request or presentation, including any background information:** 1. Update Commission on activity regarding setup of HRA accounts.

2. Seek guidance from Commission regarding revenues from Hotel Occupancy Tax that exceed budgeted amounts. Specifically, once Arts & Humanities and Historic Landmarks Commission receives their budgeted amount, do we continue disbursing excess revenue to them or shift excess revenue to Visitors Center and Parks & Recreation Commission?

**Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):** Move to continue disbursement of Hotel Occupancy Tax in the ratio as set forth during budget deliberations of 18 March 2009 even if the disbursements exceed budgeted amounts. Alternative motion: move to suspend allocation of hotel occupancy tax revenues once Arts & Humanities and Historic Landmarks Commission receive budgeted revenue and to continue disbursement of any remaining hotel occupancy tax revenue in a 50% ratio to the visitors center and to the parks & recreation commission..

**Attachments:** Revenue report for September 2009

FY 2010 Budget - Revenues Through September 2009

Account	Description	Est Revenue 08	Actual YTD 08	Est Revenue	Actual YTD 09	Status
001-299-00-002	UNENCUMBERED BALANCE BUDG	2,947,517		3,329,554		
001-301-TT-000	PUBLIC UTILITIES	300,836	47,184	330,098	2,250	
001-301-TT-001	AD VALOREM TAXES-CURRENT	8,864,886	4,289,637	9,224,957	4,459,495	Increase
001-301-TT-002	AD VALOREM TAXES-1ST YEAR	300,000	159,576	300,000	139,959	
001-301-TT-003	AD VALOREM TAXES-2ND YEAR	10,000	2,998	10,000	1,258	
001-301-TT-004	AD VALOREM TAXES-3RD YEAR	1,000	2,052	1,000	133	
001-301-TT-005	AD VALOREM TAXES-4TH & PY	1,000	965	1,000	212	
001-301-TT-006	SUPPLEMENTAL TAXES	100,000	38,463	100,000	43,672	
001-301-TT-007	SURPLUS	2,000		2,000		
001-301-TT-008	DELINQ & NONENTERED LAND					
001-301-TT-009	REDEMPTION FRM ST AUDITOR					
001-301-TT-010	ASSRVAL					
001-301-TT-099	TAX DISCOUNTS	(200,000)	(102,543)	(211,973)	(107,817)	
001-302-TT-000	TAX PENALTIES&INT/PUB FEE	150,000	43,906	150,000	46,843	
001-303-OT-000	DOG TAX					
001-304-OT-000	PROPERTY TRANSFER TAX	550,000	164,282	630,000	130,892	Decrease
001-306-OT-000	GAS/OIL SEVERANCE TAX	5,700		5,700		
001-307-OT-000	HORSE RACING TAX	30,000	5,704	30,000	5,914	
001-308-OT-000	WINE AND LIQUOR TAX	40,000	1,776	40,000	3,297	
001-309-OT-000	HOTEL OCCUPANCY TAX	470,000	123,198	400,000	158,867	Increase
001-311-OT-000	PAYMENT IN LIEU - LOCAL					
001-312-OT-000	SYNTHETIC FUEL TAX	40,000	43,478			
001-317-LP-000	LICENSE - DECAL FEES	100		100	24	
001-318-LP-000	BUILDING PERMIT FEES	350,000	115,834	420,000	16,000	Decrease
001-319-LP-000	MISC PERMITS					
001-322-IG-000	FEDERAL GOVERNMENT GRANTS				55,500	
001-322-IG-001	REIM:MARTINSBURG DRUG GRT		994			
001-322-IG-002	REIM:O/T AND CAPP f/FOCUS					
001-322-IG-003	REIM:SHEPHERDSTOWN DUI GT					
001-322-IG-004	REIM: DUI GRANT f/STATE					
001-322-IG-005	FOCUS GRANT - AC					
001-322-IG-006	AED EQUIPMENT - AMB AUTH					
001-322-IG-007	REIM:PROJ IMPACT-FEMA GRT					
001-322-IG-008	PUB ED:WAL-MART GRANT					
001-323-IG-000	STATE GOVERNMENT GRANTS		31,912		13,274	
001-324-IG-000	OTHER GRANTS					
001-324-IG-001	QUAD ST PREP GRANT					
001-325-IG-000	FEDERAL PAYMENT IN LIEU	16,000		16,000		
001-327-CS-000	CHARGES FOR SERVICES					
001-329-CS-000	SHERIFF'S SERVICE PROCESS	15,000	4,250	15,000	6,276	
001-330-CS-000	SHERIFF'S EARNING	10,000	2,881	10,000	3,535	
001-330-CS-001	SHERIFF EARN - ARREST M/C	7,500	2,595	7,500	3,309	
001-330-CS-002	SHERIFF EARN - CIRC CT					
001-330-CS-003	SHERIFF EARN - WORTH CK					
001-331-CS-000	COUNTY CLERK'S EARNINGS	167,800	43,397	169,040	53,326	
001-331-CS-001	CO CLK-VOTER REGISTR FEES					
001-331-CS-002	CO CLK PRESERVATION FUND	2,200	390	1,000	404	
001-332-CS-000	CIRCUIT CLERK'S EARNINGS	60,000	16,625	60,000	17,877	
001-333-CS-000	PROSECUTING ATTY EARNINGS	1,000	362	1,000	228	
001-334-CS-000	ACCIDENT REPORTS	5,000	1,310	5,000	1,080	
001-335-CS-000	MOTOR VEHICLE LICENSE FEE					
001-336-CS-000	MAP SALES	5,000	1,217	4,000	1,264	
001-340-CS-000	RENT - MAGISTRATE COURT	45,000	11,250	45,000	11,250	
001-340-CS-001	RENT - COUNTY FARM HOUSE	1,200	400	1,200	200	
001-340-CS-002	RENT - COUNTY FARM LAND	774		774	194	
001-340-CS-003	RENT - FAMILY COURT	9,444		9,444		
001-340-CS-004	RENT:MASON BLDG-ALLSTATE					
001-340-CS-005	RENT:MASON BLDG-CORR OFFC		1,704			
001-345-CS-000	EMERGENCY SERVICE FEES					
001-346-CS-000	EMG COMM - 911 FEE	1,100,000	474,784	1,296,000	169,420	Decrease
001-346-CS-001	EMG COMMUNICATIONS- SIGNS		1,090		290	
001-348-CS-000	FRANCHISE AGREEMENTS	275,000	82,687	275,000	82,265	
001-350-CS-000	IRP FEES-INTNATL REG PGM	7,500	2,865	7,500	2,770	

FY 2010 Budget - Revenues Through September 2009

Account	Description	Est Revenue 08	Actual YTD 08	Est Revenue	Actual YTD 09	Status
001-351-CS-000	JAIL FEES					
001-361-FF-000	FINES, FEES & COURT COSTS					
001-362-CS-000	JAIL FEES	425,000	220,029	425,000	188,957	Decrease
001-365-II-000	INTEREST EARNED	71,000	18,530	102,200	15,434	
001-365-II-001	INTEREST EARNED-CO CLERK	6,000	1,395	4,200	562	
001-365-II-002	INTEREST EARNED-CIR CLERK	12,000	1,549	8,400	741	
001-365-II-003	INTEREST EARNED-TAX DMV					
001-365-II-004	INT EARNED TAX OFF-ST FEE	4,500	590	3,150	148	
001-365-II-005	INTEREST EARND-RACING TAX	500	184	350	67	
001-365-II-006	INTEREST EARNED-VIDEO LOT	12,000	7,952	8,400	4,177	
001-366-MM-000	MISCELLANEOUS REVENUE	1,200	7	1,200	6	
001-367-MM-000	SHERIFF'S COMMISSION	15,000	12,492	15,000	12,654	
001-368-MM-000	CONFISCATED PROPERTY					
001-369-MM-000	COMMISSIONS/VEND MACHINE					
001-370-OT-000	TABLE GAMES		9,812	16,000	7,742	
001-372-MM-000	FILING FEES					
001-373-OT-000	VIDEO LOTTERY	4,600,000	1,554,647	4,280,000	1,503,966	Decrease
001-373-OT-001	LOCAL VIDEO LOTTERY	100,000	31,289	100,000	32,337	
001-374-MM-000	PLANNING COMMISSN REVENUE					
001-375-MM-000	SALE OF MATERIALS					
001-380-MM-000	TRANS FROM OTHER ENTITIES					
001-381-MM-000	CHARGES TO OTHER ENTITIES					
001-382-MM-000	REIMBURSEMENTS	60,000	59,695	60,000	69,054	
001-382-MM-001	REIM:CIRCUIT CLK V/COUNTY		3,725		4,383	
001-385-MM-000	GAIN/LOSS SALE-FIX ASSETS					
001-388-TR-000	CONTR/TRANS FROM OTH FUND					
001-392-TR-000	CONCEALED WEAP FUND REIMB					
001-394-TR-000	GEN SCH FUND REIMB					
001-395-TR-000	MAG CT FUND REIMB					
001-396-TR-000	W/C FUND REIMBURSEMENT					
001-399-TR-000	TRANS/ASSR VAL FUND					
<b>Totals</b>		<b>20,998,657</b>	<b>7,539,117</b>	<b>21,699,794</b>	<b>7,163,687</b>	<b>Decrease</b>

**Recovery Zone Bond Resources - Resolution Designating the Jurisdiction of the County as a  
Recovery Zone and Authorizing Documents in Connection with such Designation -  
Discussion/Action**

## Recovery Zone Bond Resources-Use Them or Lose Them

Spurred by the economic turmoil going on now for more than a year, Congress and the President enacted the American Recovery and Reinvestment Act (ARRA) last February creating a number of temporary programs designed to assist revenue-strapped public and private borrowers that include states, counties, cities, private businesses, developers, and others.

Two of these programs, all of which expire at the end of next year, are administered by the counties and authorize borrowers to issue what are known as Recovery Zone Bonds in order to borrow money on a federally-subsidized and discounted basis up to a certain predetermined limit. This allocation cap or limit is based on a federal formula for each county's unemployment numbers from the end of 2007 to the end of 2008. The result is that many, but not all, of West Virginia's 55 counties received enough allocation to utilize these discounted bonds for economic development projects. On the bright side, it is worth mentioning that the counties that received little or no allocation were also counties that did not experience the heavier job losses that counties with more allocation experienced.

Nevertheless, there is a major catch to be resolved, a significant misunderstanding to be clarified, and a few legitimate concerns to be cleared up before our state, local governmental entities and private borrowers can begin taking advantage of the \$225 million in ARRA discounted bond issuing authority.

Let's start with the major catch. Here it is: current West Virginia law does not permit counties to re-allocate Recovery Zone Bond resources to other governmental entities within their jurisdiction such as cities and public service districts. This means that West Virginia cities, public service districts and other eligible public entities, which collectively make up the majority of borrowers in the state with adequate revenue streams to utilize these programs, are unable to do so without legislative action. There was an attempt back in August to enact enabling legislation allowing counties to re-allocate these resources to other public entities in their jurisdiction and to also provide for a mechanism to recapture and redirect waived or unused allocation. But to date, this legislation is still in need of passage.

Now let's turn to the misunderstanding I spoke of earlier and make clear a very important distinction. While it is true that the counties need enabling legislation to re-allocate these Recovery Zone Bond resources to other public borrowers within their jurisdiction, the IRS has stated that counties do not require enabling legislation if the county uses these resources for a county project. Moreover, the counties do not require enabling legislation if they are a conduit issuer whereby they issue bonds on behalf of a business or developer and lend the proceeds to this borrower.

Finally, let's address a few concerns that have been raised regarding Recovery Zone Bonds. First, it has been suggested that there may be an overall lack of interest in these resources. My own personal experience regarding this issue is quite to the contrary. I have been contacted by many public and private borrowers who have expressed significant interest in learning how to access these resources

and my colleagues have received similar interest from potential borrowers as well.

A second concern stems from the fact that borrowers could end up using these resources without sufficient debt capacity to pay back their debt obligations. This is a legitimate concern and I would respond by stating that a significant amount of due diligence and risk assessment is carried out in the underwriting process well before any decision to issue bonds is made. This thorough examination of a potential borrower's cash flow and debt capacity prior to making financing decisions has historically resulted default rates on tax-exempt municipal bonds of less than 1%.

A third concern floating around is that these programs have created winners and losers, the result of which is that counties with no allocation, or too little allocation to finance a project, are left out of the process. However, remember that these seemingly left out counties also lost fewer jobs than the counties with higher allocations. Moreover, if a special session were to be called and the enabling legislation is passed, then all counties, as well as the public entities within the counties, would all be eligible to pursue waived or unused allocation.

So let's recap the issues. On the one hand, counties can use Recovery Zone Bond resources immediately without enabling legislation for their own projects or projects that counties sponsor through conduit bond issuance on behalf of private borrowers. On the other hand, counties cannot re-allocate these resources to cities, public service districts, and other public borrowers in their jurisdiction without enabling legislation. The end result is that, without state legislative action, the majority of West Virginia's public borrowers will lose out on an enormous and rare opportunity to cost-effectively finance dozens of much-needed economic development projects around the state and take full advantage of \$225 million in Recovery Zone Bond resources.

The County Commissioners of \_\_\_\_\_, West Virginia, in regular session in its offices at \_\_\_\_\_, West Virginia \_\_\_\_\_, at \_\_\_\_\_ .m. on \_\_\_\_\_, 2009, with the following members present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Commissioner \_\_\_\_\_ moved the adoption of the following resolution, and Commissioner \_\_\_\_\_ seconded the motion.

A RESOLUTION DESIGNATING THE JURISDICTION OF THE COUNTY AS A RECOVERY ZONE AND AUTHORIZING DOCUMENTS IN CONNECTION WITH SUCH DESIGNATION.

WHEREAS, on February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (the Recovery Act); and

WHEREAS, the Recovery Act provides for the issuance of Recovery Zone Bonds within a "recovery zone";

WHEREAS, counties may designate areas in the county that have significant poverty, significant unemployment, significant home foreclosure, or general distress as a "recovery zone"; and

WHEREAS, there is **[significant poverty, significant unemployment, significant home foreclosure, and general distress]** throughout the County; and

NOW, THEREFORE, BE IT RESOLVED by this County Commission of the County of \_\_\_\_\_, West Virginia, that:

SECTION 1. That this Board, as the legislative authority of the County, for purposes of Section 1400U-1(b) of the Internal Revenue Code of 1986, as amended, hereby designates the County of \_\_\_\_\_, West Virginia as a "recovery zone".

SECTION 2. **[This Board hereby finds there is significant poverty, significant unemployment, a significant rate of home foreclosures, general distress] in the County.**

SECTION 3. That any County Commissioner and the County Clerk be and hereby are authorized to execute and deliver on behalf of the County any certificates, documents and instruments in connection with the designation of the County as a "recovery zone" as may be required, necessary or appropriate, including, without limitation, transcript certificates. Such documents shall be subject to such changes, insertions and omissions as may be approved by this Board, which approval shall be conclusively evidenced by the execution thereof by the proper officer of this County.

SECTION 4. That the provisions of this Resolution are hereby declared to be severable and, if any section, phrase or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Resolution.

SECTION 5. It is found and determined that all normal actions of this County Commission concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Commission, and that all deliberations of this Commission and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law, including Chapter 6, Article 9A of the West Virginia Code titled Open Governmental Proceedings, as well as the rules of this Commission in accordance therewith.

SECTION 6. This Resolution shall be effective from and after its adoption.

A roll call being had upon the question of the passage of the foregoing resolution, the vote thereon resulted as follows:

_____	_____
_____	_____
_____	_____

The foregoing is a true and correct copy of a resolution adopted by the County Commission of \_\_\_\_\_, West Virginia, on \_\_\_\_\_, 2009.

Dated: \_\_\_\_\_, 2009

\_\_\_\_\_  
Clerk, \_\_\_\_\_ County Commission  
\_\_\_\_\_  
County, West Virginia

## **County eligible for new bonds**

Berkeley could access the most recovery money of any in W.Va.

By John McVey / Journal staff writer

*POSTED: June 24, 2009*

MARTINSBURG - Berkeley County stands to get the most of any county in West Virginia from two new bond programs established through the American Recovery and Reinvestment Act, because the amounts allocated to counties is based on employment declines in 2008.

Berkeley County had the greatest employment decline in 2008 of West Virginia's 55 counties, according to the U.S. Bureau of Labor Statistics.

Berkeley County could access more than \$30.6 million in loans through the two Recovery Zone bond programs - about \$12.3 million in RZ Economic Development bonds and about \$18.4 million in RZ Facility bonds, according to the U.S. Department of the Treasury's Web site at [www.ustreas.gov](http://www.ustreas.gov).

"These bonds will make more investment capital possible for West Virginia's local economies, and they will help local governments get the financing they need for key economic development projects, including public infrastructure development," U.S. Sen. Jay Rockefeller, D-W.Va., said in a news release.

However, according to the Bureau of Labor Statistics Web site, the unemployment rate for West Virginia in 2008 ranged from a low of 4.1 percent in January to a high of 4.5 percent in December. The average monthly unemployment rate was 4.27 percent.

Matt Turner, communications director for Gov. Joe Manchin, said West Virginia's unemployment lags about a year behind other states.

"We didn't see a dramatic unemployment increase in 2008," he said Tuesday in a telephone interview. "That was one of our good years."

It was not until 2009 that unemployment in West Virginia began to rise. The rate was 5.2 percent for January, 6 percent for February, 6.8 percent for March, 7.7 percent for April and the preliminary rate for May is 8.6 percent, which is exactly double the rate for May 2008, according to the BLS site.

Counties, municipalities and other public entities, such as public service districts, development authorities, transit authorities, etc., are eligible for RZ Economic Development bonds, explained Robert Steptoe, an associate with Crews and Associates Inc. in Morgantown.

Private, for-profit businesses are eligible for the RZ Facility bonds, he said in a recent telephone interview.

In West Virginia, all the bonds in both categories would be issued by the county government, he said, because there are no cities in the state with populations of 100,000 or more people.

Crews and Associates Inc. is an investment banking firm that has done business with counties, municipalities and public entities throughout the tri-county.

"It's a pretty innovative way to jump start the economy - to get us back on track," Steptoe said, describing the RZ bonds program.

County commissions would designate recovery zones through a simple resolution, he said.

"It is left to (the county commissions') own discretion to site recovery zones," Steptoe said. "But it has to be a zone where there has been a loss of jobs, foreclosures or ... economic distress."

An entire county could be designated a recovery zone or parts of a county, he said. The RZ Economic Development bonds can be used by governmental entities for public, capital projects and for job training and education.

The Internal Revenue Service has defined what private sector activities are eligible for the RZ Facility bonds, Steptoe said, which include construction of office buildings, research parks, shopping centers, warehouses, manufacturing plants and resorts and hotels.

Gambling facilities, liquor stores, golf courses and residential developments are not eligible for the bonds, Steptoe said.

The RZ Economic Development bonds would be taxable and offered at a conventional interest rate, he said. However, the county issuing the bonds can apply to the Treasury Department for a direct-payment subsidy for 45 percent of the interest.

The RZ Facilities bonds would be tax exempt and would be issued at a lower interest rate, he said.

"The tax exempt bond market was hit hard by the economy," Steptoe said. "This idea is to expand the market for tax exempt bonds."

The Raleigh Street Extension and Meridian Pointe development in Martinsburg are perfect examples of projects that would qualify for both bond programs, he said.

The Raleigh Street Extension will be between West Race Street and Edwin Miller Boulevard.

Meridian Pointe and Meridian Pointe North is a mixed-use development near the future intersection of Raleigh Street and Edwin Miller Boulevard.

The development makes up a tax increment financing district. The additional real property tax revenues generated by the development will go toward funding the Raleigh Street Extension.

Martinsburg City Manager Mark Baldwin said during a telephone interview Monday that the city would have to evaluate the programs, regarding timing and method of payment.

"Even if we have bonds available to us, do we have a project ready to go?" he asked rhetorically. "And we would need a revenue source to pay for the bonds."

Any RZ Economic Development bond Martinsburg or the developers of Meridian Pointe might want to pursue would have to go through the Berkeley County Commission.

"We have no specific details at this time (about the bonds), but it would be the next area we'll be exploring," Deborah Hammond, Berkeley County administrator, said in a telephone interview Tuesday.

The state allocations were released by the Treasury Department on June 12.

The total amount allocated for West Virginia is \$90 million in RZ Economic Development bonds and \$135 million in RZ Facility bonds, according to the Treasury Department's Web site.

Jefferson County is eligible for a little more than \$7 million in RZ Economic Development bonds and about \$10.5 million in RZ Facility bonds.

Those are the fourth highest amounts allocated to the state's counties.

Cabell County is eligible for the second most and Kanawha County is eligible for the third most.

Morgan County stands to access about \$1.9 million in RZ Economic Development bonds and about \$2.8 million in RZ Facility bonds.

Ten West Virginia counties are not eligible for any bond money, according to the Treasury Web site, because there was no decline in employment in those counties during the 2008 calendar year.

The bonds must close by Dec. 31, 2010, Steptoe said.

Area	Recovery Zone		
	Residual	Economic Development Bond	Recovery Zone Facility Bond
West Virginia		90,000,000	135,000,000
Barbour County, WV		0	0
Berkeley County, WV		12,246,000	18,368,000
Boone County, WV		723,000	1,084,000
Braxton County, WV		233,000	349,000
Brooke County, WV		1,213,000	1,820,000
Cabell County, WV		9,101,000	13,651,000
Calhoun County, WV		0	0
Clay County, WV		262,000	394,000
Doddridge County, WV		307,000	460,000
Fayette County, WV		0	0
Gilmer County, WV		1,010,000	1,515,000
Grant County, WV		366,000	550,000
Greenbrier County, WV		3,194,000	4,791,000
Hampshire County, WV		2,966,000	4,449,000
Hancock County, WV		1,599,000	2,399,000
Hardy County, WV		2,718,000	4,078,000
Harrison County, WV		3,372,000	5,058,000
Jackson County, WV		1,436,000	2,154,000
Jefferson County, WV		7,022,000	10,532,000
Kanawha County, WV		7,086,000	10,628,000
Lewis County, WV		0	0
Lincoln County, WV		609,000	914,000
Logan County, WV		0	0
McDowell County, WV		0	0
Marion County, WV		421,000	631,000
Marshall County, WV		1,471,000	2,206,000
Mason County, WV		2,273,000	3,409,000
Mercer County, WV		1,000,000	1,500,000
Mineral County, WV		1,649,000	2,473,000
Mingo County, WV		0	0
Monongalia County, WV		0	0
Monroe County, WV		644,000	966,000
Morgan County, WV		1,877,000	2,815,000
Nicholas County, WV		0	0
Ohio County, WV		2,114,000	3,171,000
Pendleton County, WV		614,000	921,000
Pleasants County, WV		366,000	550,000
Pocahontas County, WV		574,000	862,000
Preston County, WV		0	0
Putnam County, WV		2,119,000	3,179,000
Raleigh County, WV		1,679,000	2,518,000
Randolph County, WV		3,030,000	4,545,000
Ritchie County, WV		1,203,000	1,805,000
Roane County, WV		604,000	906,000
Summers County, WV		416,000	624,000
Taylor County, WV		758,000	1,136,000
Tucker County, WV		975,000	1,463,000
Tyler County, WV		728,000	1,092,000
Upshur County, WV		357,000	535,000
Wayne County, WV		3,521,000	5,281,000
Webster County, WV		262,000	394,000

**Part III – Administrative, Procedural, and Miscellaneous**

**Recovery Zone Bond Volume Cap Allocations**

**Notice 2009-50**

**SECTION 1. PURPOSE**

This notice provides guidance regarding the maximum face amount of recovery zone economic development bonds (“Recovery Zone Economic Development Bonds”) and recovery zone facility bonds (“Recovery Zone Facility Bonds”) (together, “Recovery Zone Bonds”), that may be issued by each State and counties and large municipalities within each State before January 1, 2011 under §§ 1400U-2 and 1400U-3, respectively, of the Internal Revenue Code (“Code”), as provided in § 1400U-1 of the Code. As applicable to §§ 1400U-1 through 1400U-3, § 103(c)(2) provides that the term “State” includes the District of Columbia and any possession of the United States. This notice also provides certain interim guidance for Recovery Zone Bonds. In general, Recovery Zone Bonds provide tax incentives for State and local governmental borrowing at lower borrowing costs to promote job creation and economic recovery that is targeted to areas particularly affected by employment declines.

**SECTION 2. BACKGROUND**

**.01 INTRODUCTION**

Section 1401 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”), added §§ 1400U-1

through 1400U-3 to the Code authorizing State and local governments to issue Recovery Zone Bonds. Section 1400U-1 imposes a national bond volume limitation (“volume cap”) of \$10 billion for Recovery Zone Economic Development Bonds and \$15 billion for Recovery Zone Facility Bonds. The volume cap for Recovery Zone Bonds is allocated among the States and counties and large municipalities within the States based on relative declines in employment in 2008.

In general, Recovery Zone Economic Development Bonds may be used to finance certain “qualified economic development purposes” and Recovery Zone Facility Bonds may be used to finance certain “recovery zone property,” both as described further herein, generally for use within designated “recovery zones,” as described below. Section 1400U-1(b) provides that, for purposes of §§ 1400U-1 through 1400U-3, the term “recovery zone” means: (1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990; and (3) any area for which a designation as an empowerment zone or renewal community is in effect as of the effective date of ARRA, which effective date is February 17, 2009.

#### .02 BACKGROUND ON BUILD AMERICA BONDS

Section 1531 of ARRA added § 54AA to the Code, authorizing State and local governments, at their option, to issue two general types of Build America Bonds (“Build America Bonds”) as taxable governmental bonds with Federal subsidies for a portion of their borrowing costs. Section 54AA(d) of the Code defines the term “Build America

Bond” generally to mean any taxable State or local governmental bond (excluding a private activity bond under § 141) that meets the following requirements: (1) the interest on such bond would (but for § 54AA) be excludable from gross income under § 103; (2) the bond is issued before January 1, 2011; and (3) the issuer makes an irrevocable election to have § 54AA apply. The Federal subsidies for a portion of the borrowing costs on Build America Bonds take the form of either tax credits provided to holders of the bonds or refundable tax credits paid to State and local governmental issuers of the bonds. Build America Bonds have different levels of Federal subsidies and different program requirements with respect to uses of proceeds depending on the particular type of Build America Bond.

The first type of Build America Bond provides a Federal subsidy through Federal tax credits to investors in the bonds in an amount equal to 35 percent of the total coupon interest payable by the issuer on taxable governmental bonds (net of the tax credit), which represents a Federal subsidy to the State or local governmental issuer equal to approximately 25 percent of the total return to the investor (including the coupon interest paid by the issuer and the tax credit). This type of Build America Bond will be referred to in this Notice as “Build America Bonds (Tax Credit).” This type of Build America Bond generally may be used to finance any governmental purpose for which tax-exempt governmental bonds (excluding private activity bonds under § 141) could be issued under § 103 (“tax-exempt governmental bonds”) and must comply with all requirements applicable to the issuance of tax-exempt governmental bonds.

The second type of Build America Bond provides a Federal subsidy through a refundable tax credit paid to State or local governmental issuers by the Treasury

Department and the Internal Revenue Service (“IRS”) in an amount equal to 35 percent of the total coupon interest payable to investors in these taxable bonds. This type of Build America Bond will be referred to in this Notice as “Build America Bonds (Direct Payment).” This type of Build America Bond generally may be used to finance only capital expenditures and certain issuance costs and reasonably required reserve funds.

Recovery Zone Economic Development Bonds under § 1400U-2 represent a third type of Build America Bond. Recovery Zone Economic Development Bonds are comparable to Build America Bonds (Direct Payment), except that they provide for a deeper Federal subsidy through a refundable tax credit paid to State or local governmental issuers in an amount equal to 45 percent (rather than 35 percent) of the total coupon interest payable to investors in these taxable bonds and they have different program requirements regarding eligible uses of proceeds for qualified economic development purposes within recovery zones, as described further herein.

For additional information regarding Build America Bonds generally, see § 54AA and the initial implementation guidance on Build America Bonds set forth in Notice 2009-26, 2009-16 I.R.B 833 (April 20, 2009).

### **SECTION 3. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS**

#### **.01 RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS TREATED AS QUALIFIED BONDS UNDER § 6431**

Section 1400U-2(a) provides that a Recovery Zone Economic Development Bond shall be treated as a “qualified bond” for purposes of § 6431 (relating to the refundable credit for qualified bonds allowed and payable to the issuer in the case of Build America Bonds (Direct Payment)). Section 1400U-2(a) further provides that, for

purposes of § 6431(b) (relating to the amount of the refundable credit allowed and payable to the issuer of qualified bonds), the amount of the refundable credit shall be 45 percent of the coupon interest payable on the bonds rather than 35 percent of such interest as is the case with Build America Bonds (Direct Payment). In determining the amount of coupon interest payable on the bonds for purposes of calculating the refundable credit, original issue discount is not treated as a payment of interest. See H.R. Conf. Rep. 111-16, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. (February 12, 2009).

#### .02 DEFINITION OF RECOVERY ZONE ECONOMIC DEVELOPMENT BOND

Section 1400U-2(b)(1) defines the term “Recovery Zone Economic Development Bond” to mean any bond that is issued as part of an issue that meets the following requirements: (1) the bond is a Build America Bond (as defined in § 54AA(d)); (2) the bond is issued before January 1, 2011; (3) 100 percent of the excess of (i) the available project proceeds (as defined in § 54A to mean sale proceeds of such issue less not more than 2 percent of such proceeds used to pay issuance costs, plus investment proceeds thereon), over (ii) the amounts in a reasonably required reserve (within the meaning of § 150(a)(3)) with respect to such issue, are to be used for one or more qualified economic development purposes, and (4) the issuer designates such bond for purposes of § 1400U-2.

#### .03 DEFINITION OF QUALIFIED ECONOMIC DEVELOPMENT PURPOSE

Section 1400U-2(c) defines the term “qualified economic development purpose” for purposes of § 1400U-2 to mean any expenditures for purposes of promoting development or other economic activity in a recovery zone, including (1) capital expenditures paid or incurred with respect to property located in the recovery zone, (2)

expenditures for public infrastructure and construction of public facilities, and (3) expenditures for job training and educational programs. This broad definition of qualified economic development purpose includes capital expenditures (as defined in § 1.150-1(b) of the Income Tax Regulations) and working capital expenditures to promote development or other economic activity in a recovery zone. For this purpose, an eligible financing of qualified expenditures includes a reimbursement of those expenditures under the reimbursement rules contained in § 1.150-2. By contrast, Recovery Zone Economic Development Bonds generally may not be issued to refinance expenditures in “refunding issues” (as defined in § 1.150-1). Further, for this purpose, Recovery Zone Economic Development Bonds may be used to reimburse otherwise-eligible expenditures under § 1.150-2 that were paid or incurred after the effective date of ARRA and that were financed originally with temporary short-term financing issued after the effective date of ARRA, and such reimbursement will not be treated as a refunding issue under §§ 1.150-1(d) or 1.150-2(g).

#### .04 CERTAIN OTHER APPLICABLE RULES

Section 6431(c) provides that for purposes of applying the arbitrage investment restrictions under § 148, the yield on a qualified bond (including, for this purpose, a Recovery Zone Economic Development Bond), shall be reduced by the refundable credit allowed under § 6431. Section 6431(d) provides that, for purposes of § 6431, “interest payment date” means each date on which interest is payable by the issuer under the terms of the bond. Section 54AA(d)(2)(A) provides that, for purposes of the restrictions against Federal guarantees of tax-exempt bonds under § 149(b), a Build America Bond (including, for this purpose, a Recovery Zone Economic Development

Bond) shall not be treated as federally guaranteed by reason of the refundable credit allowed under § 6431. Section 54AA(d)(2)(C) provides that a bond (including, for this purpose, a Recovery Zone Economic Development Bond) shall not be treated as a Build America Bond under § 54AA(d)(1) if the issue price has more than a *de minimis* amount (determined under rules similar to the rules of § 1273(a)(3)) of premium over the stated principal amount of the bond.

#### **SECTION 4. RECOVERY ZONE FACILITY BONDS**

##### **.01 RECOVERY ZONE FACILITY BONDS TREATED AS EXEMPT FACILITY BONDS**

Section 103(a) provides that, except as otherwise provided in § 103(b), interest on State or local bonds is excludable from gross income for Federal income tax purposes. Under § 103(b), interest on a State and local bond that is a “private activity bond” under § 141(a) generally is not excludable from gross income unless the bond meets the requirements for a qualified private activity bond under § 141(e). Section 141(e) provides that an “exempt facility bond” under § 142 is one type of qualified private activity bond that may be issued with interest thereon excludable from gross income under § 103(a). Section 1400U-3(a) provides that, for purposes of §§ 141 through 150, the term “exempt facility bond” includes any Recovery Zone Facility Bond. Section 1400U-3(b) defines the term “Recovery Zone Facility Bond” to mean any bond issued as part of an issue if: (A) 95 percent or more of the net proceeds (as defined in § 150(a)(3)) of such issue are to be used for recovery zone property; (B) such bond is issued before January 1, 2011; and (C) the issuer designates such bond for purposes of § 1400U-3.

## .02 RECOVERY ZONE PROPERTY

Section 1400U-3(c)(1) defines the term "recovery zone property" to mean any property to which § 168 (relating to the accelerated cost recovery system) applies (or would apply but for § 179 (relating to electing to expense certain depreciable business assets)) if: (A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in § 179(d)(2)) by the taxpayer after the date on which the designation of the recovery zone took effect; (B) the original use of which in the recovery zone commences with the taxpayer; and (C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business (as defined in § 1400U-3(c)(2)) by the taxpayer in the recovery zone. For purposes of § 1400U-3(c)(1), which provides that the term "recovery zone property" means, in part, any property to which § 168 applies (or would apply but for § 179), any property of a character generally subject to the allowance for depreciation under § 168 (or that would be generally subject to such allowance but for § 179) will be treated as "recovery zone property," without regard to whether the particular property is owned by any State or local governmental entity that is not subject to Federal income taxation, provided that such property otherwise meets the requirements under § 1400U-3(c)(1).

## .03 USE OF RECOVERY ZONE PROPERTY IN QUALIFIED BUSINESSES

Section 1400U-3(c)(1)(C) requires that substantially all of the use of recovery zone property involve the active conduct of a qualified business (as defined in § 1400U-3(c)(2)) by the taxpayer in the recovery zone. Section 1400U-3(c)(2) defines the term "qualified business" to mean any trade or business except that (A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if

the property is not residential rental property (as defined in § 168(e)(2)), and (B) such term shall not include any trade or business consisting of the operation of any facility described in § 144(c)(6)(B) (relating to the prohibition on the use of proceeds of a qualified redevelopment bond for any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises).

#### .04 OTHER APPLICABLE RULES

Section 1400U-3(c)(3) provides that rules similar to rules of § 1397D(a)(2) and (b) (relating to substantial renovations and sale-leasebacks) shall apply for purposes of § 1400U-3(c). Section 1400U-3(d) provides that § 146 (relating to the private activity bond volume cap) and § 147(d) (relating to limitations on acquisition of existing property) shall not apply to any Recovery Zone Facility Bond. Except as otherwise provided in this Notice or in future administrative or regulatory guidance, rules applicable to exempt facility bonds under § 142 apply to Recovery Zone Facility Bonds.

### **SECTION 5. INTERIM GUIDANCE AND RELIANCE**

#### 01. IN GENERAL

Pending the promulgation and effective date of future administrative or regulatory guidance, taxpayers may rely on the interim guidance provided in this Notice.

#### 02. REASONABLY REQUIRED RESERVE OR REPLACEMENT FUND

Section 1400U-2(b)(1)(A) requires that 100 percent of the excess of (i) the available project proceeds (as defined in § 54A to mean sale proceeds of such issue less not more than 2 percent of such proceeds used to pay issuance costs, plus

investment proceeds thereon), over (ii) the amounts in a reasonable required reserve (within the meaning of § 150(a)(3)) for an issue of Recovery Zone Economic Development Bonds be used for qualified economic development purposes. Section 1400U-3(b)(1)(a) requires that 95 percent or more of the “net proceeds” (as defined in § 150(a)(3)) of an issue of Recovery Zone Facility Bonds be used for recovery zone property. Section 150(a)(3) defines the term “net proceeds” to mean, with respect to any issue, the proceeds of such issue reduced by amounts in a “reasonably required reserve or replacement fund.” For these purposes, § 148(d) provides rules for a reasonably required reserve or replacement fund.

Section 148(d)(1) generally provides that a bond shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of the issue of which such bond is a part may be invested in higher yielding investments which are part of a reasonably required reserve or replacement fund. The amount of such proceeds shall not exceed 10 percent of the proceeds of such issue unless the issuer establishes to the satisfaction of the Secretary that a higher amount is necessary. Section 148(d)(2) provides that a bond issued as part of an issue shall be treated as an arbitrage bond if the amount of the proceeds from the sale of such issue which is part of any reserve or replacement fund exceeds 10 percent of the proceeds of the issue (or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary). Section 1.148-2(f) of the Income Tax Regulations provides additional rules regarding reasonably required reserve or replacement funds.

### .03 INFORMATION REPORTING FOR RECOVERY ZONE BONDS

(i) Recovery Zone Economic Development Bonds. For information relating to information reporting and direct payments of refundable credits to issuers of Recovery Zone Economic Development Bonds, rules similar to those applicable for information reporting and payment of credit to issuers of qualified bonds under § 6431 shall apply. See Notice 2009-26, 2009-16 I.R.B. 833 (April 20, 2009).

(ii) Recovery Zone Facility Bonds. The information reporting requirement for tax-exempt bonds under § 149(e) applies to Recovery Zone Facility Bonds under § 1400U-3(a). Information reporting returns for Recovery Zone Facility Bonds are required to be submitted at the same time and in the same manner as those required under § 149(e) for exempt facility bonds on such forms as shall be prescribed by the IRS for such purpose. Pending further guidance from the IRS regarding the applicable forms to be used for such information reporting for Recovery Zone Facility Bonds, in the case of an issue of Recovery Zone Facility Bonds, the issuer must submit to the IRS an information return on Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*, at the same time and in the same manner as required under § 149(e), with modifications as described below. Issuers of Recovery Zone Facility Bonds should complete Part II of Form 8038 by checking the box on Line 11q (Other), writing "Recovery Zone Facility Bonds" in the space provided for the bond description, and entering the issue price of the Recovery Zone Facility Bonds in the Issue Price column. For purposes of this notice, the term "issue" has the meaning used for tax-exempt bond purposes in § 1.150-1(c).

#### .04 ELIGIBLE ISSUERS IN GENERAL AND ALLOCATIONS OF VOLUME CAP TO ULTIMATE BENEFICIARIES

Eligible issuers of Recovery Zone Bonds include States, political subdivisions as defined for purposes of § 103, and entities empowered to issue bonds on behalf of any such entity under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for purposes of § 103 and § 1.103-1(b) of the Income Tax Regulations. Further, eligible issuers include otherwise-eligible issuers in conduit financing issues (as defined in § 1.150-1(b)). An eligible issuer may issue Recovery Zone Bonds based on a volume cap allocation received by the eligible issuer itself or by a conduit borrower or other ultimate beneficiary of the issue of the bonds. In all events, the eligible costs for qualified economic development purposes or recovery zone property, as applicable, financed with the proceeds of an issue of Recovery Zone Bonds under §§ 1400U-2 or 1400U-3, respectively, must relate to any such purpose or property that is located within, or attributable to, both the jurisdiction of the issuer of the bonds and the jurisdiction of the entity authorized to allocate volume cap to an issue of bonds for the financing of such purpose or property.

Entities authorized to allocate volume cap to ultimate beneficiaries consist of States (with respect to allocations waived or deemed waived by any county or large municipality), counties, and large municipalities (as defined in § 1400U-1(a)(3)(B)) that receive volume cap allocations under § 1400U-1(a)(3)(A). Such States, counties, and large municipalities may use such volume cap themselves for eligible costs or may allocate such volume cap received to ultimate beneficiaries in any reasonable manner as they shall determine in good faith in their discretion for use for eligible costs for qualified economic development purposes or recovery zone property, as applicable. In

the event that a county or large municipality that receives an allocation of volume cap under § 1400U-1(a)(3)(A) of Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds does not possess substantial taxing, eminent domain, and police powers, any entity the jurisdiction of which includes such county or large municipality may issue bonds and designate such bonds as Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds, as applicable, on behalf of, and for the benefit of, such county or municipality, subject to the applicable volume cap limitations for those Recovery Zone Bonds allocated to such county or large municipality. In such case, the proceeds of an issue of Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds under §§ 1400U-2 or 1400U-3, respectively, must be allocated to eligible costs for qualified economic development purposes or recovery zone property, as applicable, that is located within, or attributable to, both the jurisdiction of the issuer of the bonds and the jurisdiction of the county or large municipality that received the volume cap allocation under § 1400U-1(a)(3)(A). Thus, for example, a county or large municipality that received a volume cap allocation under § 1400U-1(a)(3)(A) may issue bonds and designate them as Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds, as applicable, for use of that volume cap by an ultimate beneficiary (including such county or large municipality itself or another entity) or another eligible issuer may issue bonds and designate them as Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds, as applicable, for use of that volume cap by an ultimate beneficiary (including such county or municipality or another entity), based on an allocation by such county or large municipality of that volume cap to an ultimate beneficiary. In all events,

the proceeds of the issue must be used to finance eligible costs for qualified economic development purposes or recovery zone property, as applicable, that is located within, or attributable to, both the jurisdiction of the issuer of the bonds and the jurisdiction of the county or large municipality authorized to allocate volume cap to an ultimate beneficiary of the issue of Recovery Zone Bonds for the financing of those purposes or property.

#### 05. WAIVERS OF VOLUME CAP ALLOCATIONS

Section 1400U-1(a)(3)(A) provides that a county or large municipality may waive any portion of a volume cap allocation received for Recovery Zone Bonds. Upon any such waiver, the State in which such county or large municipality is located shall be authorized to reallocate the waived volume cap in any reasonable manner as it shall determine in good faith in its discretion.

#### 06. DESIGNATIONS OF RECOVERY ZONES

As further described in Section 2.01 of this Notice, § 1400U-1(b) requires, in part, that issuers “designate” eligible recovery zones based on certain specified criteria. For this purpose, any State, county, or large municipality that receives a volume cap allocation for Recovery Zone Bonds may make these designations of recovery zones in any reasonable manner as it shall determine in good faith in its discretion.

### **SECTION 6. ALLOCATIONS OF RECOVERY ZONE BOND VOLUME CAP**

#### 01. VOLUME CAP DESIGNATIONS IN GENERAL

Sections 1400U-2(b)(2) and 1400U-3(b)(2) provide generally that the maximum face amount of the applicable type of Recovery Zone Bonds designated for issuance by an issuer cannot exceed the amounts of volume cap for the applicable Recovery Zone

Bonds allocated to such issuer under § 1400U-1. For this purpose, these designations, including associated determinations of qualified economic development purposes, may be made by an issuer in any reasonable manner as it shall determine in good faith in its discretion, taking into account the special rules for eligible issuers under Section 5.04 of this Notice.

## .02 VOLUME CAP ALLOCATIONS IN GENERAL

Section 1400U-1(a)(1)(A) provides that, subject to § 1400U-1(a)(1)(B) (relating to minimum allocations), generally, the Secretary shall allocate the \$10 billion national volume cap for Recovery Zone Economic Development Bonds and the \$15 billion national volume cap for Recovery Zone Facility Bonds among the States in the proportion that each State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States. Section 1400U-1(a)(1)(B) provides that the Secretary shall adjust the allocations under § 1400U-1(a)(1)(A) for any calendar year for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the national volume cap for Recovery Zone Economic Development Bonds and 0.9 percent of the national volume cap for Recovery Zone Facility Bonds.

Section 1400U-1(a)(2) provides that for purposes of § 1400U-1(a), the term "2008 State employment decline" means, with respect to any State, the excess (if any) of (A) the number of individuals employed in such State determined for December 2007, over (B) the number of individuals employed in such State determined for December 2008. The volume cap allocations provided pursuant to this Notice are based on Local Area Unemployment Statistics ("LAUS") data for December 2007 and December 2008

released by the United States Bureau of Labor Statistics. See generally

<http://www.bls.gov/lau/home.htm>.

Section 1400U-1(a)(3)(A) provides generally that each State with respect to which an allocation is made under 1400U-1(a)(1) is required, without discretion, to reallocate such allocation among the counties and large municipalities in such State in the proportion that each county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State. For purposes of § 1400U-1(a)(3)(A), the term "large municipality" means a municipality with a population of more than 100,000. For purposes of determining the local employment decline under § 1400U-1(a)(3), the employment decline of any county or large municipality is determined in the same manner as the determination of the State employment decline under 1400U-1(a)(2), except that in the case of a municipality any portion of which is in a county, such portion is treated as part of such municipality and not as part of such county.

### .03. STATE ALLOCATIONS OF RECOVERY ZONE BOND VOLUME CAP

Pursuant to § 1400U-1(a), the \$10 billion national volume cap for Recovery Zone Economic Development Bonds and the \$15 billion national volume cap for Recovery Zone Facility Bonds under §§ 1400U-2 and 1400U-3, respectively, are allocated among the States as follows:

<b>State</b>	<b>Recovery Zone Economic Development Bond Allocations (in dollars)</b>	<b>Recovery Zone Facility Bond Allocations (in dollars)</b>
Alabama	244,676,000	367,014,000
Alaska	90,000,000	135,000,000
Arizona	90,000,000	135,000,000
Arkansas	90,000,000	135,000,000

<b>State</b>	<b>Recovery Zone Economic Development Bond Allocations (in dollars)</b>	<b>Recovery Zone Facility Bond Allocations (in dollars)</b>
California	806,225,000	1,209,338,000
Colorado	99,018,000	148,527,000
Connecticut	90,000,000	135,000,000
Delaware	90,000,000	135,000,000
District of Columbia	90,000,000	135,000,000
Florida	538,485,000	807,727,000
Georgia	355,785,000	533,677,000
Hawaii	90,000,000	135,000,000
Idaho	90,000,000	135,000,000
Illinois	666,972,000	1,000,457,000
Indiana	313,081,000	469,621,000
Iowa	90,000,000	135,000,000
Kansas	90,000,000	135,000,000
Kentucky	97,120,000	145,681,000
Louisiana	90,000,000	135,000,000
Maine	90,000,000	135,000,000
Maryland	208,860,000	313,291,000
Massachusetts	222,676,000	334,013,000
Michigan	773,050,000	1,159,575,000
Minnesota	132,154,000	198,231,000
Mississippi	90,000,000	135,000,000
Missouri	229,143,000	343,715,000
Montana	90,000,000	135,000,000
Nebraska	90,000,000	135,000,000
Nevada	90,000,000	135,000,000
New Hampshire	90,000,000	135,000,000
New Jersey	251,104,000	376,655,000
New Mexico	90,000,000	135,000,000
New York	370,098,000	555,147,000
North Carolina	418,154,000	627,231,000
North Dakota	90,000,000	135,000,000
Ohio	422,637,000	633,955,000
Oklahoma	90,000,000	135,000,000
Oregon	103,450,000	155,175,000
Pennsylvania	154,008,000	231,012,000
Rhode Island	100,882,000	151,322,000
South Carolina	115,041,000	172,562,000
South Dakota	90,000,000	135,000,000
Tennessee	231,417,000	347,126,000
Texas	90,000,000	135,000,000
Utah	90,000,000	135,000,000
Vermont	90,000,000	135,000,000
Virginia	104,396,000	156,595,000
Washington	90,000,000	135,000,000
West Virginia	90,000,000	135,000,000
Wisconsin	158,811,000	238,217,000
Wyoming	90,000,000	135,000,000

<b>State</b>	<b>Recovery Zone Economic Development Bond Allocations (in dollars)</b>	<b>Recovery Zone Facility Bond Allocations (in dollars)</b>
American Samoa	90,000,000	135,000,000
Guam	90,000,000	135,000,000
Northern Marianas	90,000,000	135,000,000
Puerto Rico	92,757,000	139,136,000
US Virgin Islands	90,000,000	135,000,000
Total	10,000,000,000	15,000,000,000

**.04. LOCAL SUBALLOCATIONS OF RECOVERY ZONE BOND VOLUME CAP AMONG COUNTIES AND LARGE MUNICIPALITIES**

The Treasury Department and the IRS recognize that the required local suballocations of the national volume cap for Recovery Zone Bonds among counties and large municipalities impose administrative burdens for the States and involve mandatory local suballocations without State discretion. Accordingly, the Treasury Department and the IRS undertook to determine these required local suballocations. For purposes of these local suballocations among counties and large municipalities, certain county-equivalent entities (including independent cities that are not otherwise located within counties, parishes, boroughs, and similar entities) are treated as counties in the same manner that the Bureau of Labor Statistics treats such entities as county-equivalent entities in its employment data. This undertaking to provide local suballocations is intended to facilitate prompt availability of Recovery Zone Bonds as a source for State and local governmental borrowing at lower borrowing costs to promote job creation and economic recovery in areas particularly affected by employment declines.

Pursuant to § 1400U-1(a)(3), the State volume caps of the \$10 billion national volume cap for Recovery Zone Economic Development Bonds and the \$15 billion

national volume cap for Recovery Zone Facility Bonds under §§ 1400U-2 and 1400U-3, respectively, are reallocated locally among the counties and large municipalities within the States (except that no such local reallocations are being provided for the Possessions of the United States (see Section 6.05 of this Notice below)) in a document regarding the Recovery Zone Bond volume cap allocations being posted on the IRS's website at the following web address: <http://www.irs.gov/taxexemptbond/index.html> under the heading in the index entitled "IRS Releases Guidance on ARRA Bond Provisions," to be available on the same date that this Notice is released publicly. Stated differently, these local suballocations will be accessible by going to the IRS website at <http://www.irs.gov>, then clicking on the heading "Tax-exempt Bond Community" in the top right corner, then clicking on the heading in the index entitled "IRS Releases Guidance on ARRA Bond Provisions," and then clicking on the subheading regarding the Recovery Zone Bond volume cap allocations, starting on the same date that this Notice is released publicly.

#### **05. SPECIAL RULES FOR VOLUME CAP ALLOCATIONS RECEIVED BY THE POSSESSIONS**

In recognition of the disparate local governmental organizational structures and disparate availability of employment data for the Possessions of the United States, the Possessions may allocate locally, reallocate locally, or use directly their respective State allocations of volume cap for Recovery Zone Bonds in any reasonable manner as they may determine in good faith in their discretion.

#### **SECTION 7. EFFECTIVE DATE OF VOLUME CAP ALLOCATIONS**

The allocations of national volume cap for Recovery Zone Bonds in Section 6 of this Notice are effective for bonds issued on or after February 17, 2009.

**SECTION 8. DRAFTING INFORMATION**

The principal authors of this notice are Zoran Stojanovic and Timothy L. Jones of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Mr. Stojanovic or Mr. Jones on (202) 622-3980 (not a toll-free call).

Commission Office Use Only

# 14

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

Name: Patsy Noland

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1<sup>st</sup> Choice: November 5, 2009

Date Requested – 2<sup>nd</sup> Choice: \_\_\_\_\_

If a specific date is needed, please provide reason for specific date: **I want to get it on the agenda for consideration prior to the Veterans' Day Holiday.**

Subject: **Discussion and vote to suspend county commission meeting for weeks in which there is a holiday beginning with the Veterans' Day Holiday of 2009.**

Please provide the County Commission with a description of your request or presentation, including any background information:

Remaining holidays in 2009: Veterans' Day – November 11; Thanksgiving Day and Friday after – November 25 & 26; Christmas Eve – Afternoon only of December 24; Christmas Day – December 25, 2009.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

I move to suspend county commission meetings for weeks in which there is a holiday.

Attachments:

new Business

## JEFFERSON COUNTY COMMISSION HOLIDAY SCHEDULE 2009

NEW YEAR'S DAY	THURSDAY, JANUARY 1, 2009
MARTIN LUTHER KING'S BIRTHDAY	MONDAY, JANUARY 19, 2009
PRESIDENT'S DAY	MONDAY, FEBRUARY 16, 2009
MEMORIAL DAY	MONDAY, MAY 25, 2009
WEST VIRGINIA DAY	FRIDAY, JUNE 19, 2009
INDEPENDENCE DAY	FRIDAY, JULY 3, 2009
LABOR DAY	MONDAY, SEPTEMBER 7, 2009
COLUMBUS DAY	MONDAY, OCTOBER 12, 2009
VETERAN'S DAY	WEDNESDAY, NOVEMBER 11, 2009
THANKSGIVING	THURSDAY, NOVEMBER 26, 2009 FRIDAY, NOVEMBER 27, 2009
CHRISTMAS	THURSDAY, DECEMBER 24, 2009 - CLOSE AT NOON FRIDAY, DECEMBER 25, 2009
NEW YEAR'S EVE	THURSDAY, DECEMBER 31, 2009 - CLOSE AT NOON

IN ADDITION TO THE DAYS LISTED ABOVE, THE COMMISSION WILL OBSERVE AS HOLIDAYS, ANY NATIONAL, STATE OR OTHER ELECTION DAY THROUGHOUT THE COUNTY, AND ALL DAYS WHICH MAY BE APPOINTED OR RECOMMENDED BY THE GOVERNOR, OF THIS STATE, OR THE PRESIDENT OF THE UNITED STATES, AS DAYS OF THANKSGIVING, OR FOR THE GENERAL CESSATION OF BUSINESS, ANY DAY OR PART THEREOF DESIGNATED BY THE GOVERNOR AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE, FOR STATE EMPLOYEES STATEWIDE MAY ALSO BE TIME OFF FOR COUNTY EMPLOYEES IF THE COUNTY COMMISSION ELECTS TO DESIGNATE THE DAY OR PART THEREOF AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE FOR COUNTY EMPLOYEES. ANY ENTIRE OR PART STATE WIDE DAY OFF DESIGNATED BY THE GOVERNOR MAY, FOR ALL COURTS, BE TREATED AS IF IT WERE A LEGAL HOLIDAY, AS PROVIDE FOR IN 2-2-1 OF THE WEST VIRGINIA CODE, AS AMENDED.

DATE: December 11, 2008

\_\_\_\_\_  
PRESIDENT, JEFFERSON COUNTY COMMISSION

## JEFFERSON COUNTY COMMISSION HOLIDAY SCHEDULE 2009

NEW YEAR'S DAY	THURSDAY, JANUARY 1, 2009
MARTIN LUTHER KING'S BIRTHDAY	MONDAY, JANUARY 19, 2009
PRESIDENT'S DAY	MONDAY, FEBRUARY 16, 2009
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LABOR DAY	MONDAY, SEPTEMBER 7, 2009
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IN ADDITION TO THE DAYS LISTED ABOVE, THE COMMISSION WILL OBSERVE AS HOLIDAYS, ANY NATIONAL, STATE OR OTHER ELECTION DAY THROUGHOUT THE COUNTY, AND ALL DAYS WHICH MAY BE APPOINTED OR RECOMMENDED BY THE GOVERNOR, OF THIS STATE, OR THE PRESIDENT OF THE UNITED STATES, AS DAYS OF THANKSGIVING, OR FOR THE GENERAL CESSATION OF BUSINESS, ANY DAY OR PART THEREOF DESIGNATED BY THE GOVERNOR AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE, FOR STATE EMPLOYEES STATEWIDE MAY ALSO BE TIME OFF FOR COUNTY EMPLOYEES IF THE COUNTY COMMISSION ELECTS TO DESIGNATE THE DAY OR PART THEREOF AS TIME OFF, WITHOUT CHARGE AGAINST ACCRUED ANNUAL LEAVE FOR COUNTY EMPLOYEES. ANY ENTIRE OR PART STATE WIDE DAY OFF DESIGNATED BY THE GOVERNOR MAY, FOR ALL COURTS, BE TREATED AS IF IT WERE A LEGAL HOLIDAY, AS PROVIDE FOR IN 2-2-1 OF THE WEST VIRGINIA CODE, AS AMENDED.

DATE: December 11, 2008

\_\_\_\_\_  
PRESIDENT, JEFFERSON COUNTY COMMISSION

# November 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7 Special Election Zoning Referendum
8	9	10	11 Veteran's Day Holiday	12 Commission Meeting	13 Commission - Board of Canvassers	14
15	16	17	18	19 Commission Meeting	20	21
22	23	24	25	26 Thanksgiving Holiday	27 Thanksgiving Holiday	28
29	30					

# December 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3 Commission Meeting	4	5 Special Election Table Games
6	7	8	9	10 Commission Meeting	11 Commission - Board of Canvassers	12
13	14	15	16	17 Commission Meeting	18	19
20	21	22	23	24 ½ day Holiday	25 Holiday	26
27	28	29	30	31 ½ day Holiday	January 1 <sup>st</sup> 2010 Holiday	

**Laura Kuhn**

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**From:** "Sandy McDonald" <sandy@jeffersoncountywv.org>  
**To:** "Laura Kuhn" <laura@jeffersoncountywv.org>  
**Sent:** Thursday, October 29, 2009 9:01 AM  
**Subject:** Fw: Agenda Item: November 5

----- Original Message -----

**From:** Lyn Widmyer  
**To:** Sandy Slusher McDonald  
**Sent:** Thursday, October 29, 2009 8:35 AM  
**Subject:** Agenda Item: November 5

WORKSHOP TOPICS FOR REMAINDER OF YEAR

We have seven regularly scheduled meetings left in 2009. I would like to discuss what topics will be addressed. At present the following items, approved by the Commission, need to be scheduled:

1. Review amended Personnel Policies (legal staff stated review would begin in October/November)
2. Allocate \$200,000-plus to staff salary increases
3. Discuss work programs, projected budgets with department haads
4. Discuss Commission priorities for upcoming quarter
5. Arrange interview schedule of County Administrator applicants

WORKSHOP DATES:	WORKSHOP TOPIC:	WORKSHOP PARTICIPANTS
October 29		
November 5		
November 12		
November 19		
Dec. 3		
Dec. 10		
Dec. 17		
Jan. 7		

**TOPICS TO BE ADDRESSED:**

Personnel Policies (order suggested by Legal Staff):

- Leave Policy
- Harassment Policy
- Employee Evaluation
- Possible Grievance Process
- General Employee Policies

Finalize Salary Adjustments/Distribution

Discuss work programs, projected budgets with department heads prior to budget

Discuss Commission priorities for upcoming quarter

Interviews of County Administrator applicants

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To: Elected Officials/Department Heads

From: Jefferson County Commission

DRAFT

Date: September 1, 2009

Re: Work Plans for Fiscal Year 2011

The County Commission will be conducting a series of work sessions with each elected official and department head beginning October 2009, concerning your department's work plan for the upcoming fiscal year that begins July 1, 2011. In that respect, the Commission would like for each of you to develop a work plan for your office to discuss at these work sessions. This will be an annual process that the Commission will begin this year as a precursor to the annual budget process in February and March. In subsequent years, the Commission would like to complete this process in the first quarter of each fiscal year (July-September).

The typical work plan begins with a short description or summary of the plan, an introduction or background of the department, activities for the fiscal year (goals and objectives), the resources needed to complete or achieve the activities i.e., personnel, supplies, capital and the rationale for the requested resources. Finally, what results you expect and what value or value added will be received by the taxpayer for these services. All of this, of course, culminates in the budget request from your department.

We realize this is something new and a lot to ask of each of you. However, with funding and revenues becoming more constrained each year, the Commission has determined that every program or plan must be fiscally justified and that the funding and priority process must begin much earlier in the budget planning year.

We ask that you provide the plan for your department(s) to the Commission office not later than (9/30-dept heads, 10/5). Thank you for your support and cooperation in this most important project.

AGENDA ITEMS – FIRST MEETING IN NOVEMBER

11 18

- ① Targeted, Limited Audit of County Finances - Discussion (JS)

② That all monitoring equipment within County buildings be under the sole control of the County Sheriff and only persons in his employ shall monitor these systems, that the Sheriff make a report to the Commission regarding resource support from the Commission to effect this policy. (JS)

# JEFFERSON COUNTY COMMISSION CHARLES TOWN, WV

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## *RESOLUTION*

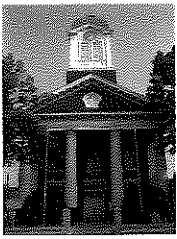
**WHEREAS,** The Jefferson County Commission has agreed to assist in the project to install new surface material at the Morgan's Grove Park Playground in cooperation with the Shepherdstown Men's Club and the Jefferson County Parks and Recreation with funds partially through and made available through the Governor's Community Participation Grant Program and the West Virginia Development Office. The amount of the Community Participation Grant is \$2,000.

**NOW, THEREFORE BE IT RESOLVED,** that the Jefferson County Commission does hereby accept the conditions of the contract between the West Virginia Development Office and the Jefferson County Commission and does hereby authorize the signatures of the President of the Commission.

\_\_\_\_\_  
DALE MANUEL  
PRESIDENT  
JEFFERSON COUNTY COMMISSION



DATED: \_\_\_\_\_



# THE COUNTY COMMISSION OF JEFFERSON COUNTY

P.O. Box 250  
124 East Washington Street  
Charles Town, WV 25414



Phone: 304/728-3284

www.jeffersoncountywv.org

Fax: 304/725-7916

Letter of Agreement  
Community Partnership Grant  
between the  
Jefferson County Commission  
and the  
Morgan's Grove Park

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the Jefferson County Commission and the Morgan's Grove Park its officers, agents, and representatives.

WITNESS THAT:

WHEREAS, the Jefferson County Commission has promised and agreed to act as funding agency to assist Morgan's Grove Park to perform specific tasks through funding from the Governor's Community Participation Grant Program.

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. The Jefferson County Commission will serve as funding agency for the Morgan's Grove Park.
2. The Morgan's Grove Park agrees to abide by the terms and conditions of the Governor's Community Participation Grant Program Contract between the West Virginia Development Office and the Jefferson County Commission as contained herein. (attached)
3. This agreement shall be signed by the authorized officers, agents or representatives of the Morgan's Grove Park and the President of the Jefferson County Commission.

JEFFERSON COUNTY COMMISSION



\_\_\_\_\_  
President

MORGAN'S GROVE PARK

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**GOVERNOR'S COMMUNITY PARTICIPATION  
GRANT PROGRAM CONTRACT**

**between the**

**WEST VIRGINIA DEVELOPMENT OFFICE**

**and the**

**JEFFERSON COUNTY COMMISSION**

**THIS AGREEMENT**, entered into this 1st day of July, 2008, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the Jefferson County Commission and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT:**

**WHEREAS**, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Governor's Community Participation Grant program.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee**. The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services**. The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to install new surface material at the Morgan's Grove Park Playground in cooperation with the Shepherdstown Men's Club and Jefferson County Parks and Recreation.
3. **Personnel**. The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.
4. **Time Performance**. The Grantee will commence its duties under this Contract on July 1, 2008, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 2010. The completion date of this contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Governor's Community Participation Grant program. If no such agreement exists, the Grantee shall not receive payment for services rendered or work performed relative to this grant after June 30, 2010.
5. **Compensation**. In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$2,000. This amount constitutes complete compensation for all services rendered. In

no instance shall the agreed upon compensation exceed \$2,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee. Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

8. **Sub-Grantees and Reversion of Property.** The Grantee may administer funds on behalf of sub-grantees, provided that such a sub-grantee is certified as a nonprofit organization by the United States Internal Revenue Service and the West Virginia Secretary of State's Office. Should such a sub-grantee cease to exist, all commodities or supplies purchased with funds provided under the auspices of this Contract by or for the sub-grantee shall become the property of the Grantee.

9. **Competitive Bid Procedures.** Competitive bidding shall be pursued in all instances. The Grantee must follow the more stringent of either state or local purchasing regulations. The West Virginia Purchasing Division requirements, at a minimum, are as follows: Commodities and services expected to cost \$2,500 or less require no bids, however, competition is encouraged. Purchases between \$2,500.01 and \$5,000 require three verbal bids to be documented on a verbal bid quotation summary. Purchases \$5,000.01 to \$25,000 require three written bids.

**The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of over \$25,000. Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$25,000 shall be cause for termination of this agreement under the provisions of Paragraph 28.** These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

10. **Project Wage Rates.** Every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work which involves the employment of any contractor and/or subcontractor necessary for the undertaking and completion of this project, regardless of the source of funds utilized to pay such contract, must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. **This law applies to all construction contracts, regardless of cost.**

**The receipt and utilization of funds procured under this agreement mandate that all construction contracts necessary for the undertaking and completion of this project, regardless of the source of funds**

utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.

Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bid documents. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

11. **Construction.** The Grantee shall procure construction contracts in accordance with West Virginia Code §5-22-1. **The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.**

**Further, the receipt and utilization of funds procured under this agreement mandate that ALL CONSTRUCTION CONTRACTS NECESSARY FOR THE UNDERTAKING AND COMPLETION OF THIS PROJECT, regardless of the source of funds utilized to pay such construction contracts, must comply with the provisions of West Virginia Code § 21-5A.**

The term construction shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions West Virginia Code §59-3. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area once a week for two successive weeks preceding the final bid date.

Any contracts under this agreement must comply with the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A. This law applies to all construction contracts, regardless of cost. The Grantee shall note this requirement in the advertisement for bids and print these wage rates on all bidding blanks.

The Grantee shall designate the time and place for opening such construction bids in accordance with West Virginia Code §5-22-2.

12. **Bonding.** The Grantee shall secure bonding in accordance with West Virginia Code §5-22-1. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: provided, that the state and its subdivisions may reject all bids and solicit new bids.

In the procurement of contracts or subcontracts for construction of less than \$100,000, the Grantee shall follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds, provided that the Grantee's and State's interests are adequately protected and that such contracts can be executed in a timely manner.

**In the procurement of contracts or subcontracts for construction that exceed \$100,000, the Grantee shall obtain the following:**

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. This bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid that the bidder will, upon acceptance of the bid, execute the contractual documents as may be required with the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. This performance bond shall be executed by the successful contractor in connection with the contract to secure fulfillment of the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. This payment bond shall be executed in connection with a contract to assure payment is required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

13. **Architecture and Engineering**. The Grantee shall procure architectural or engineering services in accordance with of the West Virginia Code §5G. In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the Grantee shall publish a Class II legal ad in compliance with West Virginia Code §59-3. In the procurement of services for projects estimated to cost less than \$250,000, the Grantee shall conduct discussions with three or more professional firms.

14. **Design-Build**. The Grantee shall procure design-build projects in accordance with West Virginia Code §5-22A-1. This applies solely to building projects. Highways, water, sewer, and all other public works projects are specifically prohibited from using the design-build method.

15. **Environmental and Historical Assessment**. The Grantee shall comply with all applicable federal, state and local environmental and historical preservation laws and regulations. The Grantee acknowledges this requirement and certifies that the project will be in compliance with such laws and regulations.

16. **Equal Employment Opportunity**. With respect to employment in carrying out the program objectives, the Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap.

17. **Facilities Accessible to the Handicapped**. The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A11/1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

18. **Facilities Operation**. The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

19. **Interest of Members of WVDEVO and Others**. No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

20. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

21. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

22. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the West Virginia State Auditor's Office, Chief Inspection Division, or its designated representative in accordance with West Virginia Code §6-9-7. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance West Virginia Code §12-4-14, if the grantee is not audited by the West Virginia State Auditor's Office and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars (\$15,000) may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

23. **Reporting.** The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

24. **Fiscal Management.** The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

25. **Political Activity.** No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

26. **Repayment.** The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

27. **Resolution of Disputes.** Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Director of the Community Development Division or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.

28. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

29. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

30. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

31. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the President of the Jefferson County Commission upon authorization of the Jefferson County Commission by adoption and passage of a resolution, motion or similar official action.

**IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.**

**STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE**

\_\_\_\_\_  
**Kelley M. Goes, Executive Director**

**JEFFERSON COUNTY COMMISSION**

By: \_\_\_\_\_  
**Dale Manuel, President**

Federal Employee Identification Number

\_\_\_\_\_  
55-6000333  
F.E.I.N.

## Timeline for Zoning Ordinance Special Election

Aug 14	Absentee ballot applications accepted. Notification is sent to Executive Committees for number of Poll Workers	§3-3-2 §3-3-5 §3-1-29c
Aug 24 (approx)	Attorney gives proposed order for calling election to appropriate person to be placed on the agenda for the governing body's meeting on/before Aug 28	§6-9A-3
Aug 28 (approx)	The governing body adopts an order set out as required by law for submitting the question to the voters at a regular or special election on Nov 7, 2009	§11-8-16 §13-1-4
Aug 31 (approx)	Copies of the order calling the election are delivered to the County Clerk, the voter registration office, and the ballot commissioners.	§3-1-23
Aug 28 (approx)	The county clerk determines the number of absentee ballots needed for ordering purposes.	§3-3-2 §3-3-11
Sept 1 (approx)	Governing body contracts for ballot printing with an authorized printer.	§3-1-21a §3-4A-11
Sept 1 (approx)	Governing body begins to inform public about upcoming election through news releases and general announcements	§11-8-17
Sept 8 (approx)	The County Clerk orders and furnishes all election supplies to precincts.	§3-1-22 §11-8-17
Aug 28	Last day for Executive Committees to submit list of nominees for poll clerks and election commissioners.	§3-1-30 §3-4A-14
Sept 18	Last day for governing body to appoint eligible persons duly nominated by parties as election officials.	§3-1-30
Sept 25	Last day for the printer to deliver absentee ballots and other supplies necessary for absentee voting to the clerk.	§3-1-21 §3-3-2
Sept 25	First day to mail absentee ballots.	§3-3-2 §3-3-5
Oct 9-Oct 30	Absentee ballots mailed to voters making proper written application to clerk and qualified to vote absentee by mail. Ballot must be mailed within 24 hours of receiving application.	§3-3-1 §3-3-2 §3-1-21
Oct 6	Poll clerk training 9:30am	
Oct 8	Poll commissioner training 5:30pm	
Oct 13	Last day for printer to deliver all packages of official and sample ballots to the county clerk.	§3-1-42
Oct 12-Oct 16	First publication of the sample ballot as a Class I-0 legal advertisement.	§3-6-3 §59-3-2
Oct 13	Supply clerk training 9:30am	
Oct 19	Last day to register to vote.	§3-2-6
Oct 16-Nov 4	Early voting period	§3-3-3
Oct 21	Poll commissioner training 9:30am	

Oct 22	Poll Clerk training 5:30pm	
Oct 26- Oct 30	Notice of election published as a Class II-0 legal advertisement.	§11-8-17 §13-1-8
Oct 28	Supply clerk training 5:30pm	
Oct 30	Last day to attend training session for election officials	§3-1-46
Oct 30	Last day for the county clerk to notify county commission that ballots are ready for use	§3-4A-13
Nov 2	Last day for inspection of the voting devices and ballots.	§3-4A-13
Nov 2- Nov 6	Notice of election published as a Class II-0 legal advertisement on the last day of publication before election day.	§3-6-3 §11-8-17
Nov 2-Nov 7	Voter hospitalized on election day and unable to vote in person at the polls may request emergency absentee ballot by noon on election day.	§3-3-1 §3-3-2 §3-3-5c
Oct 30	Last day application for absentee ballot by mail may be accepted.	§3-3-2 §3-3-5
Nov 4	Last day of early voting.	§3-3-3
Nov 5	Makeup training 6:30pm	
Nov 6	Supply Clerks pick up ballots and election supplies	§3-1-24 §3-4A-13
Nov 7	<b>ELECTION DAY</b>	
Nov 9	Ballots without US postmark may be accepted if received through the US Postal Service	
Nov 13	Canvass starts	

#25

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OCT 28 2009



Jefferson County Commission

News for release Oct. 26, 2009.

For more information, contact Ron Widmyer at 304-725-4326.

AHA Awards Grants for Children's Theater, Happy Retreat

The Arts and Humanities Alliance of Jefferson County has awarded a \$2,000 grant to the By Golly Theater Troupe organized by Shepherdstown artist Lisa Lafferty for the writing, production and performance of original, community-developed children's stage plays, including instruction to children. AHA has also awarded a \$2,000 grant to the Friends of Happy Retreat to prepare a business plan to use Happy Retreat as a community cultural center.

The By Golly Theater Troupe, which includes both children and adults in acting and production roles, plans to produce one or two plays for children per year, with some performances possibly in county schools. The troupe's most recent production, "Fish Tales," was staged Aug. 22 at The Folly near Shepherdstown.

Happy Retreat is the home in Charles Town built by town founder Charles Washington, youngest brother of Pres. George Washington. A group of local preservation-minded citizens has formed the Friends of Happy Retreat, a non-profit organization dedicated to acquiring, preserving and utilizing the property for public benefit.

AHA Community Grant recipients must be residents of or operate from facilities within Jefferson County. Projects must demonstrate positive community impact through the arts and humanities. Grant criteria and other details can be found at <http://www.ahajc.org/CommunityGrant.htm>.

The mission of AHA, a volunteer, non-profit organization, is to preserve the rich history and culture of Jefferson County and to encourage creative opportunity for all its citizens.

XXX

Photo caption: Paul Pritchard (left), president of the Arts and Humanities Alliance of Jefferson County, presents a grant check Oct. 19 to Nelson Parkinson, acting president of the Friends of Happy Retreat, while AHA Treasurer Kathryn Skinner (far right) presents a grant check to Shepherdstown artist Lisa Lafferty representing the By Golly Theater Group.

## Swine Flu School Planning Workshop

November 19-20, 2009 Chicago

Dear Colleague:

H1N1 is widespread and impacting schools around the world. Vaccine issues, fear, and lack of collaboration present unique barriers to school and communities. Education continues to be our best weapon against H1N1.

The Swine Flu School Planning Workshop will be held in Chicago on November 19-20, 2009.

This is a unique gathering of experts spotlighting the **comprehensive school health** approach to dealing with H1N1. National leaders from the organizations representing school nurses, school social workers, school counselors, school resource officers, school boards, school psychologists, teachers, parents, school health associations, as well as others, will be presenting their unique perspectives for a comprehensive and balanced plan for prevention, preparedness, response and recovery for H1N1.

For more information, please contact Virginia Blanco at 202-536-5000 or [Virginia.Blanco@New-Fields.com](mailto:Virginia.Blanco@New-Fields.com) or by downloading our registration packet at:

[www.new-fields.com/sfspw/brochure.pdf](http://www.new-fields.com/sfspw/brochure.pdf)

I hope to see you in Chicago.

Sincerely Yours,  
Virginia Blanco, Project Manager  
H1N1 Task Force  
[Virginia.Blanco@New-Fields.com](mailto:Virginia.Blanco@New-Fields.com)

Swine Flu School Planning Workshop  
1101 Pennsylvania Avenue, NW, Sixth Floor South, Washington, DC 20004  
Phone (202) 536-5000 Fax (202) 280-1239 [www.New-Fields.com](http://www.New-Fields.com)

If you have received this fax from us in error or no longer wish to receive future fax correspondence from our company call us toll free (877) 485-2242 and follow the prompts.

RECEIVED  
01/16/09  
Jefferson County Commission

Jefferson County Council on Aging's 1st Annual:

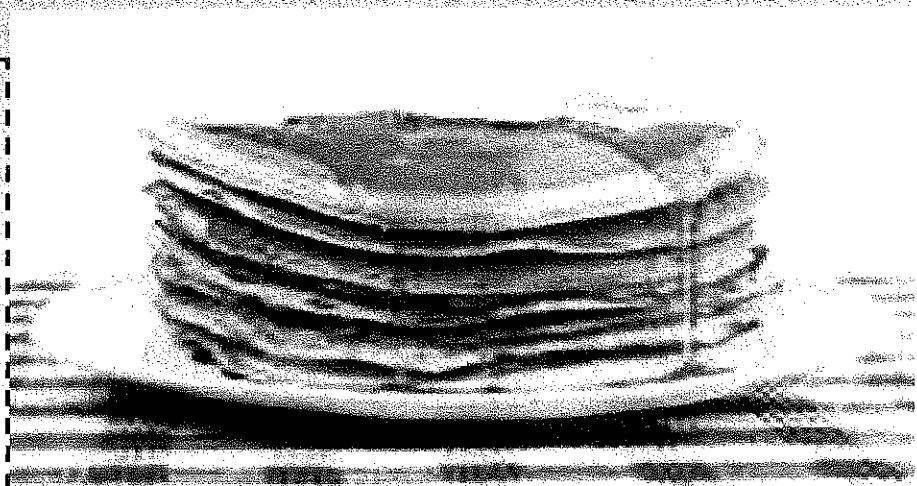
# Veteran's Day Pancake Breakfast

\$2.00  
(60 &  
over)

Friday, November 6,  
2009  
7am-9am

\$3.00  
(59 &  
under)

- Pancakes
- Sausage
- Fried Potatoes
- Biscuits
- Gravy



Carry-Out Available

All Proceeds will go to the support and improvement of Jefferson County Council on Aging and their services to Older Americans in Jefferson County.

**FOR MORE INFORMATION, CALL OR STOP BY:**  
**103 WEST 5TH AVENUE,**  
**RANSON, WV 25438**  
**(304) 724-7111**

To: All County Commissioners & Staff  
From: Vivian Parsons  
Re: Federal Legislation - Collective Bargaining

Hi folks,

FYI...One more issue to add to your plate! I have had a couple of calls about a **federal bill regarding collective bargaining for public safety employees**. I emailed NACo with my concerns and asked for more info. Below you will find the response I received and attached is a fact sheet on HR. 413/S.1611 for your review. I have also been made aware of a seminar co-hosted by the WV Municipal League and Clemans, Nelson & Associates on this issue to be held on November 3, 2009 at Days Inn, Flatwoods, WV. You can go to the following website for more information or to register for the seminar.  
[www.clemansnelson.com](http://www.clemansnelson.com)

Vivian

-----Original Message-----

**From:** Deseree Gardner  
**Date:** 10/27/2009 2:34:11 PM  
**To:** [vivian@rapidnet.com](mailto:vivian@rapidnet.com)  
**Cc:** Edwin Rosado  
**Subject:** RE: HR 413/S.1611

Vivian,

The Public Safety Employer-Employee Cooperation Act of 2009 (H.R. 413/S.1611) mandates that state and local governments enter into collective bargaining agreements with their public safety employees. This legislation provides minimum collective bargaining standards for state and local police, firefighters and emergency medical technicians personnel. Under H.R. 413, the Federal Labor Relations Authority would develop regulations and minimum criteria for state and local governments. While a majority of states currently provide collective bargaining for public safety employees, agreements vary from state to state and even county to county within a state. The FLRA would review each states collective bargaining agreement to determine if it complies with the FLRA regulations. Those states that fail to meet the FLRA criteria would have to change their laws to come into compliance, or they would be subject to regulation of collective bargaining agreements by the FLRA.

The only exemption provided in H.R. 413/S.1611 would permit states to exempt political jurisdictions with populations of less than 5,000 or fewer than 25 full time employees within the state.

NACo opposes this legislation as an unfunded mandate on local governments that is overly burdensome. While NACo does not oppose collective bargaining in general, it maintains that such decisions should be made by states and localities based upon local conditions and circumstances without federal interference. NACo has joined with the National League of Cities, the National Sheriffs' Association, the International Association of Chiefs of Police, International Public Management Association-Human Resources and other organizations to oppose this legislation.

The collective bargaining bill has bipartisan support in the House and currently has 163

cosponsors. The likelihood of passage if the bill comes to the floor is high. I have attached a fact sheet on HR. 413/S.1611 for your review. Please feel free to contact me with additional questions or concerns.

Deseree  
Deseree Gardner  
Associate Legislative Director  
Labor and Employment  
NACo  
(202) 942-4204  
(202) 942-4281  
dgardner@naco.org



# Fact Sheet

## **Mandatory Collective Bargaining for Public Safety Employees**

**Issue:** The Public Safety Employer-Employee Cooperation Act of 2009, (H.R. 413), legislation mandating state and local governments enter into collective bargaining agreements with all public safety employees.

**NACo policy:** NACo opposes this legislation as an unfunded mandate on local governments that is overly burdensome. While NACo does not oppose collective bargaining in general, it maintains that such decisions should be made by states and localities based upon local conditions and circumstances without federal interference.

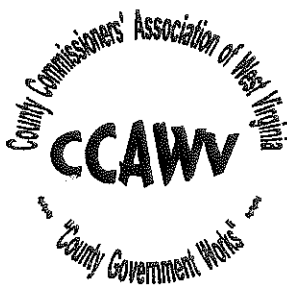
**Action needed:** Contact your Senators and ask them to oppose passage of the Public Safety Employer-Employee Act of 2009.

**Background:** The House has introduced the Public Safety Employer-Employee Cooperation Act of 2009 (H.R. 413), legislation mandating that state and local governments enter into collective bargaining agreements with their public safety employees. This legislation provides minimum collective bargaining standards for state and local police, firefighters and emergency medical technicians personnel.

Under H.R. 413, the Federal Labor Relations Authority would develop regulations and criteria for state and local governments to permit public safety employees to form, join unions, and bargain over salaries, terms and conditions of employment. While a majority of states currently provide collective bargaining for public safety employees, agreements vary from state to state and even county to county within a state. The Federal Labor Relations Authority (FLRA) would review each state's collective bargaining agreement to determine if it complies with the FLRA regulations. Those states that fail to meet the FLRA criteria would have to change their laws to come into compliance, or they would be subject to regulation of collective bargaining agreements by the FLRA. All states may be impacted including those with collective bargaining agreements, because the legislation provides no exemption for these states.

This legislation potentially has serious fiscal and administrative implications on counties because no funding is provided for state or local implementation. States could exempt political jurisdictions with populations of less than 5,000 or fewer than 25 full-time employees within the state. NACo has joined with the National League of Cities, the National Sheriffs' Association, the International Association of Chiefs of Police, International Public Management Association - Human Resources and other organizations to oppose this legislation.

For further information, contact: Deseree Gardner 202/942-4204 or [dgardner@naco.org](mailto:dgardner@naco.org)



#29

# County Commissioners' Association of West Virginia

2309 Washington Street, East  
Charleston, West Virginia 25311

E-mail [vivian@ccawv.org](mailto:vivian@ccawv.org) (304) 345-4639 Fax (304) 346-3512

**RECEIVED**

OCT 23 2009

Jefferson County Commission

October 16, 2009

Dear County Commissioners, Administrators, & Staff:

Plans are underway for this year's 10 regional meetings to be held across the state during the next few weeks. These meetings will be informal, round table type meetings, with 5-7 counties invited to each one. We will discuss the legislative priorities adopted by the County Commissioners' Association's Legislative Committee and Board of Directors on September 28, 2009 in Ohio County, WV.

Along with the legislative agenda, we will discuss other concerns, problems or ideas you may have. Sometimes the best solutions are just next door! The meetings will be small in number to encourage everyone's participation. Light refreshments will be provided.

**I ask that you call your legislators and invite them to join us in these informal meetings.** A personal invitation from you is better received than an invitation from this office. You are their constituents, and your needs and concerns are important to them. I will follow up with a reminder to all legislators.

I have enclosed a list of the 10 regional meetings, date, time and location of each. Please take a moment to fill out the registration form below to let us know which meeting you can attend. (If for some reason you can not make your county's scheduled meeting, feel free to join us at one of the other meetings that works better for you.) I need to let the host counties know approximately how many to expect. **Please call (304)345-4639 or fax (304)346-3512 your response as soon as possible. Don't forget to invite your legislators!**

---

Name-Title	County
I will attend Regional Meeting # _____	Location _____
Day Phone _____	
I have contacted the following legislators who will attend: _____	

---

**Vivian Parsons, Executive Director**  
visit our web site [www.polsci.wvu.edu/ccawv](http://www.polsci.wvu.edu/ccawv)

# Schedule for CCAW Legislative Roundtable Meetings – 2009

\*Meetings are listed in order by date

Host County/Contact	Date, Time & Location*	Regions/ Invited Counties
<b>Host:</b> Nicholas County Commission Contact: Patti Neff (304) 872-7830	<u>November 2, 2009</u> 1:00 pm - 3:00 pm Nicholas County Courthouse 700 Main Street, Suite 1, Summersville, WV	<u>Region 3</u> Webster, Fayette, Clay, Nicholas, Greenbrier & Braxton
<b>Host:</b> Monongalia County Commission Contact: Diane DeMedici (304) 291-7257	<u>November 3, 2009</u> 2:00 pm - 4:00 pm Monongalia County Courthouse 243 High Street, Morgantown, WV	<u>Region 8</u> Monongalia, Harrison, Preston, Marion & Taylor
<b>Host:</b> Mineral County Commission Contact: Mike Bland (304) 788-5921	<u>November 5, 2009</u> 1:00 pm - 3:00 pm Mineral County Courthouse Jury Room - 2nd Floor 150 Armstrong Street, Keyser, WV	<u>Region 5</u> Mineral, Grant, Hampshire, Hardy, Pendleton, Randolph & Pocahontas
<b>Host:</b> Berkeley County Commission Contact: Deborah Hammond (304) 264-1923	<u>November 6, 2009</u> 2:00 pm - 4:00 pm Berkeley County Judicial Center 380 W. South Street Martinsburg, WV 25401	<u>Region 6</u> Berkeley, Morgan & Jefferson
<b>Host:</b> Mason County Contact: John Gerlach (304) 675-1110	<u>November 9, 2009</u> 1:00 pm - 3:00 pm Annex Auditorium 200 Sixth St., Point Pleasant, WV	<u>Region 9</u> Mason, Roane, Putnam, Kanawha & Jackson
<b>Host:</b> Logan County Commission Contact: Rocky Adkins (304) 792-8626	<u>November 13, 2009</u> 12:00 pm - 3:00 pm (Lunch Provided) Chief Logan State Park 10th Street, Logan, WV	<u>Region 4</u> Logan, Wayne, Mingo, Cabell, Lincoln & Boone
<b>Host:</b> Mercer County Commission Contact: Vicky Reed (304) 487-8306	<u>November 16, 2009</u> 12:00 - 3:00 pm (Lunch Provided) Ryan's Steakhouse 195 Greasy Ridge Rd, Princeton, WV 24740	<u>Region 7</u> Mercer, Raleigh, Summers, Monroe, Wyoming & McDowell
<b>Host:</b> Upshur County Commission Contact: Willie Parker (304) 472-0535	<u>December 1, 2009</u> 1:00 pm - 3:00 pm Upshur Courthouse 35 West Main St, Rm 302, Buckhannon, WV	<u>Region 1</u> Upshur, Gilmer, Barbour, Lewis & Tucker
<b>Host:</b> Hancock County Commission Contact: Danny Greathouse (304) 564-4059	<u>December 3, 2009</u> 6:00 pm - 8:00 pm Mountaineer Racetrack Mountaineer Circle, Route 2, Chester, WV	<u>Region 10</u> Hancock, Marshall, Brooke, Ohio & Wetzel
<b>Host:</b> Ritchie County Commission Contact: Lavada Williamson 1-866-493-8949	<u>December 4, 2009</u> 1:00 pm - 3:00 pm Ritchie County 4-H Grounds 4-H Camp Road State Route 16 south towards Harrisville, WV	<u>Region 2</u> Ritchie, Doddridge, Calhoun, Wirt, Pleasants, Wood & Tyler

\*Meetings are listed in order by date



Loudoun County, Virginia

[www.loudoun.gov](http://www.loudoun.gov)

Office of Transportation Services – MSC #69

1 Harrison Street, S.E., 4th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

Telephone (703) 737-8624 • Fax (703) 737-8513

October 23, 2009

Leslie D. Smith, County Administrator  
Jefferson County, West Virginia  
PO Box 250  
Charles Town, WV 25414-0250

Dear Ms. Smith:

As part of the legal notice requirements contained in Section 15.2-2204 (Amended) of the Code of Virginia, the following regulations must be addressed relating to notification of adjacent counties and municipalities:

“When a proposed comprehensive plan or amendment thereto, a proposed change in zoning map classification, or an application for special exception or variance involves any parcel of land located within one-half mile of a boundary of an adjoining county or municipality of the Commonwealth, then, in addition to the advertising and written notification as above required, written notice shall also be given by the local commission, or its representative, at least ten days before the hearing to the chief administrative officer, or his designee, of such adjoining county or municipality.”

Therefore, in accordance with the above regulations, this is to inform you that the Loudoun County Planning Commission will hold a public hearing on Comprehensive Plan Amendment, CPAM 2005-0009, Countywide Transportation Plan Update.

The draft CPAM, amends all chapters and appendices of the Revised Countywide Transportation Plan which was adopted on July 23, 2001. Proposed amendments include updates and revisions to both the CTP text and maps including significant changes to the Route 50, Route 267, Route 7, and Route 28 corridors and recommendations for HOV lanes, limited access, and additional transit facilities.

The public hearing will take place at the County Government Center, 1 Harrison Street, S.E., Leesburg, Virginia on **Thursday, October 29, 2009, at 6:00 p.m.** Written comments can be provided to the Loudoun County Planning Commission, c/o Loudoun County Office of Transportation Services, 1 Harrison St., S.E., 4th Floor, P.O. Box 7000, Leesburg, Virginia, 20177-7000.

The draft policy language and maps are available for review in the Loudoun County Office of Transportation Services and online at [www.loudouncountyp.com/documents.htm](http://www.loudouncountyp.com/documents.htm).

Should you have any questions, please do not hesitate to contact me at (703) 737-8624.

Sincerely,

*Andrew G. Beacher*  
Andrew Beacher, PE, Project Manager  
CPAM 2005-0009, Countywide Transportation Plan Update

**RECEIVED**

OCT 26 2009

Jefferson County Commission

#31

United States Department of Agriculture



Natural Resources Conservation Service  
1606 Santa Rosa Road, Suite 209  
Richmond, VA 23229-5014

Telephone: 804-287-1691  
Fax: 804-287-1737

October 16, 2009

Ms. Sandy Slusher McDonald  
Acting County Administrator  
Jefferson County Government Center  
P.O. Box 250  
Charles Town, WV 25414

Dear Ms. Slusher McDonald:

The Lower Shenandoah River Watershed Assessment has been completed and submitted to our national headquarters as a final report. This document provides some excellent data and information that is a tremendous reference for this watershed. We are very pleased with this quality planning effort.

Watershed assessments were completed earlier for the South Fork Shenandoah River Watershed and the North Fork Shenandoah River Watershed. With completion of this Lower Shenandoah Watershed Assessment, we now have completed assessments on the entire Shenandoah River Watershed in Virginia and West Virginia.

Enclosed is a hard copy of the final report for your reference and use as needed. Additional copies of the report can be downloaded from the Virginia NRCS website.

If you have any questions, please call Wade Biddix, Assistant State Conservationist for Programs, at (804) 287-1675.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bricker".

JOHN A. BRICKER  
State Conservationist

Enclosure

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OCT 23 2009

Jefferson County Commission

*Helping People Help the Land*

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# Lower Shenandoah River Watershed Assessment Virginia and West Virginia

September 2009



Rapid watershed assessments provide initial estimates of where conservation investments would best address the concerns of landowners, conservation districts, and other community organizations and stakeholders. These assessments help landowners and local leaders set priorities and determine the best actions to achieve their goals.

U.S. Department of Agriculture  
Natural Resources Conservation Service  
Morgantown, West Virginia  
Richmond, Virginia

**Lower Shenandoah River  
Watershed Assessment  
Virginia and West Virginia**

Clarke, Frederick, and Warren Counties, Virginia and  
Jefferson County, West Virginia

**Abstract**

This watershed assessment involved the collection of data and information for the purpose of developing a watershed profile, including a description of the natural resource conditions and trends, issues, concerns and problems along with recommendations for local action. The information will assist decision makers to make informed decisions and facilitate the timely implementation of various conservation programs.

**Authority**

Prepared under the authority of the Conservation Technical Assistance Program, Soil Conservation and Domestic Allotment Act of 1935, as amended, Public Law 74-46, 16 U.S.C. (590a-f and 590q), 7 CFR Part 610 (CFDA 10.902).

**Prepared By:**

USDA – Natural Resources Conservation Service

**In Cooperation With:**

Eastern Panhandle Conservation District, WV  
Lord Fairfax Soil and Water Conservation District, VA  
Shenandoah Resource Conservation and Development Council, VA  
Potomac Headwaters Resource Conservation and Development Council, WV

**For further information, please contact:**

JOHN A. BRICKER  
State Conservationist  
USDA – NRCS  
Culpeper Building, Suite 209  
1606 Santa Rosa Road  
Richmond, Virginia 23229-5014  
Telephone: (804) 287-1691

KEVIN WICKEY  
State Conservationist  
USDA – NRCS  
1550 Earl Core Road, Suite 200  
Morgantown, WV 26505  
Telephone: (304) 284-7540

# TABLE OF CONTENTS

	<u>Page</u>
List of Figures .....	iv
List of Tables .....	vi
<b>EXECUTIVE SUMMARY</b> .....	viii
<b>PURPOSE</b> .....	1
<b>INTRODUCTION</b> .....	1
<b>PHYSICAL DESCRIPTION</b> .....	4
General Location and Description .....	4
Land Cover .....	4
Climate and Precipitation .....	5
Geology .....	6
Effects of Karst Topography.....	9
Soils .....	10
Elevation and Slope Ranges .....	12
Erosion Potential .....	13
Wetlands and Hydric Soils .....	14
Prime and Statewide Important Farmland .....	15
Surface Water Flows .....	18
Ground Water Resources .....	19
Water Withdrawals .....	20
Irrigation .....	21
Flooding Concerns .....	21
Threatened and Endangered Species .....	22
Fish and Wildlife .....	24
Coldwater Trout Streams .....	26
Subwatershed Descriptions .....	27
<b>RESOURCE CONDITIONS AND TRENDS</b> .....	35
Development .....	35
Land Cover Changes .....	42
Forest Resources .....	44
Impaired Streams.....	44
Wastewater Discharges.....	45
TMDL Studies and Implementation Plans.....	45
Shenandoah River Fish Kills .....	48
Citizen Monitoring .....	49

## TABLE OF CONTENTS (cont.)

	<u>Page</u>
Animal Numbers and Distribution in the Watershed .....	50
Agricultural Pollutant Loadings.....	52
<b>SOCIO-ECONOMIC DATA .....</b>	<b>54</b>
Introduction.....	54
Population and Demographics.....	55
Education.....	57
Employment.....	58
Income.....	59
2007 Agricultural Census Data.....	61
Cropland Harvested for Livestock and Pastureland.....	66
Cropland.....	67
Status of Bee Colonies and Honey Production.....	68
Farmer Profile.....	70
<b>STAKEHOLDERS: ISSUES, CONCERNS AND OPPORTUNITIES .....</b>	<b>72</b>
Natural Resource Considerations and Strategy Options.....	78
<b>CONSERVATION ACTIVITIES IN THE WATERSHED .....</b>	<b>80</b>
Conservation Organizations .....	80
Conservation Lands .....	82
Conservation Practice Installation .....	83
<b>CURRENT AND FUTURE CONDITIONS .....</b>	<b>84</b>
<b>SUMMARY .....</b>	<b>87</b>
<b>CONCLUSIONS .....</b>	<b>89</b>
<b>RECOMMENDATIONS .....</b>	<b>91</b>
<b>REFERENCES .....</b>	<b>93</b>
<b>REPORT AUTHORS, CONTRIBUTORS and REVIEWERS .....</b>	<b>97</b>
<b>APPENDICES</b>	
Appendix A: Map Sources .....	A-1
Appendix B: Sociological/Community Considerations and Strategy Options .....	B-1

## List Of Figures

<u>Figure</u>	<u>Page</u>
1 – Location of Lower Shenandoah River Watershed.....	2
2 – Watershed Map with 10-digit Subwatershed Boundaries .....	3
3 – 2001 Land Cover Data .....	4
4 – Average Annual Precipitation Ranges .....	5
5 – Geology .....	7
6 – Sinkholes and Caves .....	8
7 – Ground Water to Surface Water Connection.....	9
8 – STATSGO Soil Map Units .....	11
9 – Elevation (10m Data).....	12
10 – Slope Ranges (10m Data).....	12
11 – Soil Erosion Potential .....	13
12 – Hydric Soils and NWI Wetlands .....	14
13 – Prime Farmland and Important Farmland by Percent of Watershed .....	15
14 – Prime and Statewide Important Farmland.....	15
15 – Common Resource Areas.....	17
16 – USGS Surface and Ground Water Monitoring Sites .....	19
17 – Floodway Zones .....	21
18 – Representative Virginia Sample Sites for Threatened and Endangered Species ...	23
19 – Madison Cave Isopod, <u>Antrolana lira</u> .....	23
20 – Bailey’s EcoRegions .....	25
21 – Tier 1 Species Habitat in Virginia.....	25
22 – Coldwater Trout Streams .....	26
23 – Horse on Overgrazed Pasture.....	28
24 – Crooked Run-Shenandoah River Subwatershed - Land Use and Features.....	29
25 – Long Marsh Run-Shenandoah River - Land Use and Features .....	31
26 – Typical Farm in the Watershed .....	33
27 – Bullskin Run-Shenandoah River – Land Use and Features .....	34
28 – Occupancy Permits Issued .....	37
29 –Occupancy Permits Issued by Type and Year for Jefferson County, West Virginia .....	38
30 – New Residential Housing Units 1998-2008 for Warren County, Virginia .....	40
31 – New Residential Housing Units 1998-2008 for Front Royal, Virginia .....	40
32 – New Residential Housing Units 1998-2008 for Front Royal and Warren County, Virginia .....	41
<hr/>	
33 – Land Cover in 1992 and 2001 by NLCD Data Classes .....	42
34 – Impaired Streams, Monitoring Stations, and National Pollution Discharge Elimination System (NPDES) Discharge Points .....	46
35 – Smallmouth Bass with Lesions.....	49
36 – Dairy Cow on Pasture.....	50
37 – 12-Digit Hydrologic Units within the Watershed .....	51
38 – Agricultural Nitrogen Load Ranking .....	53

## List Of Figures (cont.)

<u>Figure</u>	<u>Page</u>
39 – Agricultural Phosphorus Load Ranking .....	53
40 – Agricultural Sediment Load Ranking.....	53
41 – NPS Impaired Rivers Ranking.....	53
42 – Percent of Each Locality Contained within the Lower Shenandoah Watershed.....	54
43 – Percent of the Watershed Contained within each County.....	55
44 – Percent White and Percent Minorities, by County.....	57
45 – Median Household Income .....	59
46 – Median Family Income .....	60
47 – Per Capita Income.....	60
48 – Changes in the Number of Farms from 1987 to 2007 .....	62
49 – Changes in the Acreage of Land in Farms from 1987 to 2007 .....	62
50 – Changes in the Average Farm Size from 1987 to 2007 .....	63
51 – Market Value of Agricultural Products Sold – average/farm .....	64
52 – Grazed Woodlands as a Percent of Total Private Woodlands .....	67
53 – Honey Bee.....	69
54 – Comparison of Number of Male and Female Operators.....	71
55 – Primary Occupation of Principal Operator.....	71
56 – A Recently Established Riparian Forested Buffer.....	79
57 – Conservation Lands.....	82
58 – Locations of State BMPs.....	83
59 – Locations of NRCS BMPs and Conservation Applications.....	83
60 – Agricultural and Residential Land Use in the Valley.....	88

## List of Tables

<u>Table</u>	<u>Page</u>
1 – Lower Shenandoah River Hydrologic Units .....	1
2 – Numbers of Observed Sinkholes and Known Caves .....	6
3 – Prime and Important Farmland in the Agricultural Land .....	15
4 – Miles of Perennial and Intermittent Streams by Subwatershed .....	18
5 – Major Surface & Ground Water Withdrawals, 1997-2007.....	20
6 – Threatened and Endangered Species at Selected Points in Watershed.....	22
7 – Building Permits Issued by Type and Year for Clarke County, VA.....	35
8 – Certificates of Occupancy Permits Issued by Type and Year for Clarke County, Virginia.....	35
9 – Well Drilling and Septic System Permits Issued by Year for Clarke County, Virginia.....	36
10 – Building Permits Issued by Type and Year for Frederick County, Virginia.....	36
11 – Building Permits Issued by Type and Year for Jefferson County, West Virginia...	37
12 – Occupancy Permits Issued by Type and Year for Jefferson County, West Virginia.....	38
13 – Building Permits Issued by Type and Year in Warren County, Virginia.....	39
14 – Certificates of Occupancy Permits Issued by Type and Year for Warren County, Virginia.....	39
15 – Land Use Changes in Watershed by Percent Change .....	43
16 – Increase in Urban Acres, 1992 to 2001.....	43
17 – Land Converted from Non-Urban Uses to Urban and Other Uses, 1992 to 2001...	43
18 – Forest Land Acreage by Subwatershed, 1992 & 2001.....	44
19 – Lower Shenandoah River Impaired Stream Segments by Miles and Impairments..	47
20 – Area and Percent of Area of each County/Locality within the Watershed .....	54
21 – Population and Age .....	56
22 – Population of Cities and Towns .....	56
23 – Education Attainment.....	57
24 – Labor Force, Employment, Unemployment and Poverty .....	58
25 – General Farm Statistics .....	61
26 – Farm Size and Market Value of Production .....	64
27 – Types and Numbers of Farming Operations .....	65
28 – Cattle and Horse Operations .....	65
29 – Inventory of Cropland and Pastureland .....	66
30 – Grazed and Total Woodland Acres on Farms .....	66
31 – Cropland Farms and Acreage .....	67
32 – Status of Bee Colonies and Honey Production .....	69
33 – Farmer Profile .....	70
34 – Consolidated Resource Concerns and Opportunities Related to Water Quality as Expressed in Public Input .....	73
35 – Current Conditions - Best Management Practices Installed, Estimated Acres Benefited and Costs .....	85

## List Of Tables (cont.)

<u>Table</u>	<u>Page</u>
36 – Future Conditions - Best Management Practices to be Installed, Estimated Acres Benefited and Costs .....	86
37 – Ranking of Subwatersheds .....	92

## EXECUTIVE SUMMARY

The Lower Shenandoah River Watershed is a dominantly agricultural region in the northwestern part of Virginia and eastern West Virginia. Parts of five Virginia counties and part of one West Virginia county are located in this 225,415 acre watershed.<sup>1</sup> The three 10-digit subwatersheds were used as a basis for inventory and evaluation of the local resource concerns. The primary agricultural activities are livestock production, particularly unconfined beef cattle, and hay and row crop production. There are about 7,500 horses in the watershed. Approximately 92% of the agricultural land is considered to be Prime or Important farmland. In 2001, woodland covered nearly 40% of the watershed.

The primary concerns that have been identified in the watershed are the decline in water quality, the loss of agricultural land to urbanization, the projected inability to meet the future water quantity demand, and the perception that farming is the primary source of water quality impairments.

There are 632 miles of perennial and intermittent streams in the watershed. Of these, 134.5 miles fail to meet their designated uses due to fecal coliform bacteria, dissolved oxygen, PCBs, mercury in fish tissue or benthic macroinvertebrate impairments. Twenty-three TMDL studies have been done or are planned in the watershed. Since this watershed contributes to the drainage of the Chesapeake Bay, Virginia and West Virginia have developed Tributary Strategy Reports to guide implementation of urban and agricultural water quality practices. The presence of 730 known sinkholes in the agricultural land contributes to the potential for pollution of the surface and ground water.

Between 1992 and 2001, over 20,000 acres were developed for urban use. Most of this growth is occurring in the Crooked Run and Bullskin Run subwatersheds. Increased surface water flows have resulted from the increase in impervious surfaces. However, the demand for water is expected to exceed the available supply by 2025. Ground water resources are already declining.

Many of the farmers in the watershed are willing to work with the USDA Natural Resources Conservation Service (NRCS), Soil and Water Conservation Districts, Cooperative Extension, and other conservation partners to install conservation practices on their land. However, it would take an estimated \$18 million to achieve the water quality improvements needed for the Chesapeake Bay that are associated with agricultural activities. The landowner share would be approximately \$4.6 million. Additional money would be required to assist with installation of the urban BMPs that also need to be installed.

Resources should be targeted to provide the level of technical and financial assistance services needed to get accelerated implementation of conservation practices on the land. Based on the number of impaired stream miles and other criteria, priority should be first given to the Crooked Run-Shenandoah River subwatershed, and then to the Bullskin Run-Shenandoah River subwatershed. The Long Marsh Run-Shenandoah River subwatershed was in the best overall condition of the three watersheds. The first priority for practice installation should be buffers to exclude livestock from perennial streams and open sinkholes.

---

<sup>1</sup> Almost all (99.985%) of the watershed lies within Clarke, Frederick, and Warren counties, Virginia, and Jefferson County, West Virginia. Less than two tenths of one percent (339.3 acres of 225,415 total acres) of the watershed lies within Fauquier and Loudoun counties, Virginia. This watershed assessment will not include these counties.

#32

# Jefferson County Health Department

ROBERT E. JONES, M.D.  
HEALTH OFFICER



1948 WILTSHIRE ROAD, SUITE 1  
KEARNEYSVILLE, WV 25430  
ENVIRONMENTAL: (304) 728-8415  
FAX: (304) 728-3314  
MEDICAL: (304) 728-8416  
FAX: (304) 728-3319

## JEFFERSON COUNTY BOARD OF HEALTH MEETING AGENDA

November 6, 2009

1PM

### ■ PRIORITY BUSINESS

- Payment of bills and review of financial report

### ■ NEW BUSINESS

- Dave Hammer, Esq.
- Audit report, Lisa Thornburg, CPA

# RECEIVED

OCT 23 2009

### ■ STAFF REPORTS

- **Health Officer, Jones**
  - Monthly Report
- **Administration, Jones**
  - Monthly Report
- **Medical, Torlone**
  - Monthly Report
- **Environmental, Zaleski**
  - Monthly Report

Jefferson County Commission

### Members of the Board of Health:

- Robert M. Johnson, Chairman
- Joseph Osterman, Vice-Chairman
- Rosamond Burns, Member
- Willis Nowell, Member
- Mark Shields, Member
- Jim Surkamp, County Commission

### Term Expires:

- 06-30-10
- 06-30-11
- 06-30-14
- 06-30-13
- 06-30-10
- ex officio

**Jefferson County Board of Health Meeting  
October 9, 2009**

**Attendees:**

Dr. Robert Johnson, Chairman  
Joseph Osterman, Vice-Chairman  
Mark Shields, Member; by phone  
Willis Nowell, Member  
Rosamond Burns, Member

Amy Jones, MSN, Administrator  
Dr. Robert Jones, PHO  
Darren Torlone, LPN  
Bill Zaleski, Sanitarian II  
Jim Surkamp, County Commission

**Call to Order:**

Dr. Johnson called the meeting to order at 1PM.

**Priority Business:**

No changes or corrections made to minutes.

Motion made by Mr. Osterman to approve financial report, seconded by Mrs. Burns, motion carried.

**Staff Reports:**

**Health Officer:**

Dr. Jones gave a completed monthly activity report, discussion followed.

**Administration:**

Ms. Jones gave a completed monthly activity report, discussion followed.

Ms. Jones requested that the second checking account for tax purposes be closed and the tax payment be electronically withdrawn from the current general fund checking account. Motion made by Mr. Osterman to close the second account, seconded by Mr. Shields, motion carried.

**Medical:**

Ms. Torlone gave a completed monthly activity report, discussion followed.

**Environmental:**

Mr. Zaleski gave the monthly environmental activity reports, discussion followed

**Adjournment:**

The meeting adjourned to reopen November 6, 2009 at 1PM.

Respectfully submitted,

---

Dr. Robert Johnson, DDS, MPH  
Chairman, Board of Health

#23



FEIN: 470807040  
 Reporting Period: 09/01/2009 to 09/30/2009  
 Amount: 220.40

Level 3 Communications LLC  
 Level 3 Communications LLC  
 c/o Tax Partners, L.L.C.  
 3100 Cumberland Boulevard, Suite 900  
 Atlanta, GA 30339



Drawer: Returns  
 Company: Level 3 Communications LLC  
 Entity ID: 001219  
 Entity Name: Level 3 Communications LLC  
 Return Code: WV\_JEFF\_E9  
 Return Description: West Virginia, Jefferson County E911  
 Due Date: 20  
 Year: 2009  
 Month: 09  
 Sequence Number: 1  
 Indexed Time: 10/6/2009 7:09:00 AM  
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 Printed Time: 10/19/2009 2:03:25 PM

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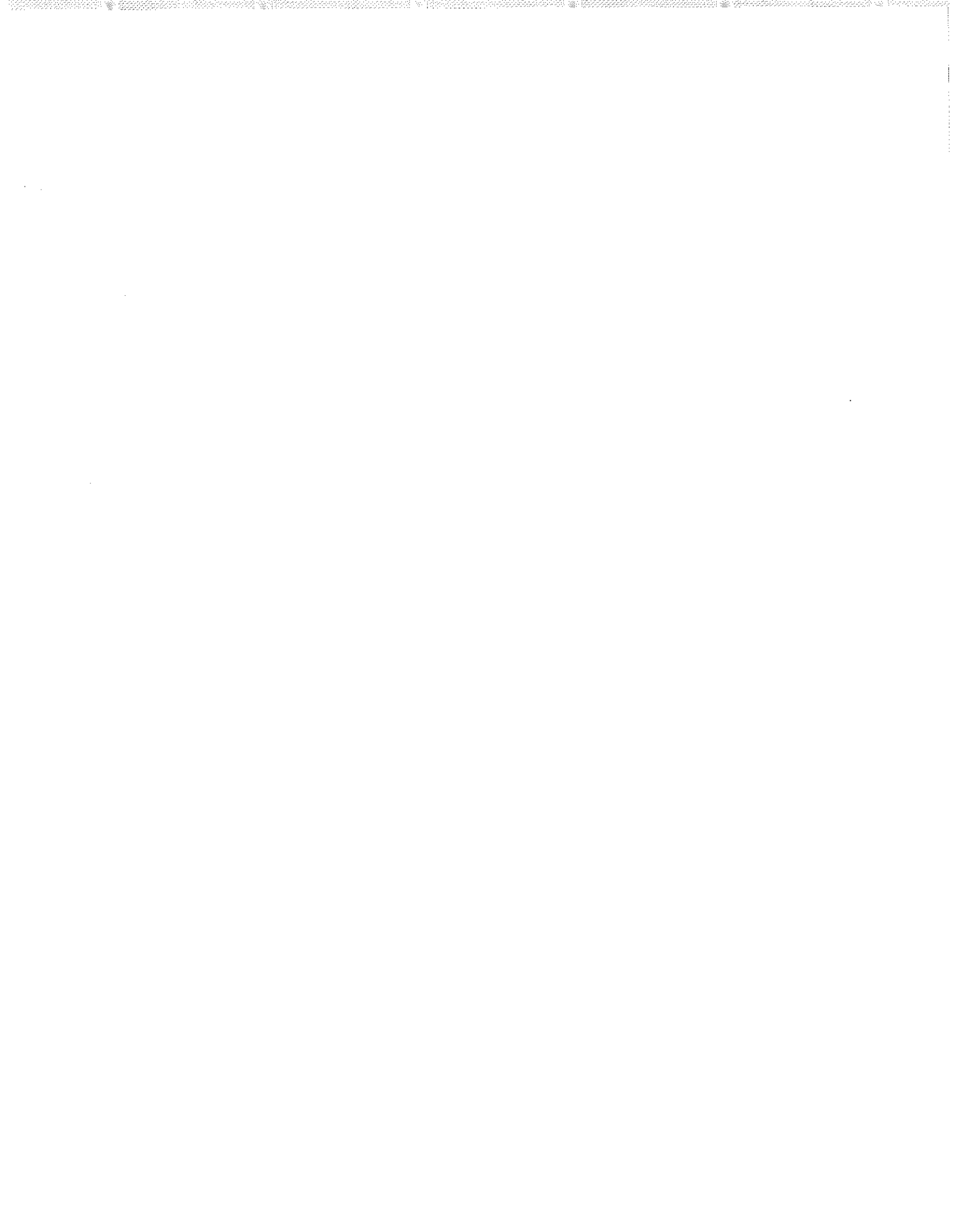
220.40

TO JEFFERSON COUNTY COMMISSION  
 P.O. Box 250  
 Charlestown, WV 25414

*Sandra Mithersbough*  
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c/o Tax Partners, L.L.C.  
 3100 Cumberland Boulevard, Suite 900  
 Atlanta, GA 30339



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 Entity Name: 8x8, Inc.  
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 Year: 2009  
 Month: 09  
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116.00

TO JEFFERSON COUNTY COMMISSION  
 P.O. Box 250  
 Charlestown, WV 25414

*Sandra Muthersboyle*  
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ACN Communications Services, Inc. ME

c/o Tax Partners, L.L.C.  
3100 Cumberland Boulevard, Suite 900  
Atlanta, GA 30339



0000000000

Drawer: Returns  
Company: ACN Communications Services, Inc. ME  
Entity ID: 017364  
Entity Name: ACN Communication Services, Inc.  
Return Code: WV\_JEFF\_E9  
Return Description: West Virginia, Jefferson County E911  
Due Date: 20  
Year: 2009  
Month: 09  
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Atlanta, GA 30339  
(877) 829-4141

WACHOVIA, NA  
64-022/610

0002124733

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43.50

TO JEFFERSON COUNTY COMMISSION  
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Charlestown, WV 25414

*Sandra Muthersbaugh*  
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 AT&T Communications of West Virginia  
 c/o Tax Partners, L.L.C.  
 3100 Cumberland Boulevard, Suite 900  
 Atlanta, GA 30339



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 Company: AT&T IXCs & Alascom, M.E.  
 Entity ID: 001402  
 Entity Name: AT&T Communications of West Virginia  
 Return Code: WV\_JEFF\_E9  
 Return Description: West Virginia, Jefferson County E911  
 Due Date: 20  
 Year: 2009  
 Month: 09  
 Sequence Number: 1  
 Indexed Time: 10/9/2009 1:58:00 PM  
 Printed By: LANSEL  
 Printed Time: 10/18/2009 11:19:24 AM

0000563270

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

AT&T Communications of West Virginia  
 C/O TAX PARTNERS, L.L.C.  
 3100 Cumberland Boulevard, Suite 900  
 Atlanta, GA 30339  
 (877) 829-4141

WACHOVIA, NA  
 64-022/610

0000563270

VOID AFTER 120 DAYS FROM DATE 10/18/2009

PAY Seventy Eight and 30/100\*\*\*\*\*

78.30

TO JEFFERSON COUNTY COMMISSION  
 P.O. Box 250  
 Charlestown, WV 25414

*Sandra Mithersbough*  
 TWO SIGNATURES REQUIRED IF \$250,000 OR

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ORIGINAL WATERMARK - HOLD AT AN ANGLE TO VIEW

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WV LOTTERY  
 WEST VIRGINIA LOTTERY  
 First Benchmark  
 Charles Town  
 County / City Split  
 Fiscal Year 2009

# 34

Charles Town  
 1999 Net Terminal Revenue \$ 45,603.174  
 Benchmark Goal @ 2% \$ 912,063.48

DATE	2% OF ADJ. NET REVENUE	TO JEFFERSON COUNTY	TO FIVE CITIES	BOLIVAR 12.42%	CHARLES TOWN 34.56%	HARPERS FERRY 3.65%	RANSON 35.06%	SHEPHERDS TOWN 14.29%
4 days ending: 7/1/09- 7/4/09	\$ 128,262.42	\$ 128,262.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Week ending:								
07/11/09	\$ 168,815.08	\$ 168,815.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/18/09	\$ 160,652.98	\$ 160,652.98	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/25/09	\$ 158,869.08	\$ 158,869.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/01/09	\$ 174,493.08	\$ 174,493.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/08/09	\$ 155,848.74	\$ 138,408.80	\$ 17,437.94	\$ 2,185.79	\$ 6,026.55	\$ 636.48	\$ 6,117.24	\$ 2,491.88
08/15/09	\$ 162,444.28	\$ 81,222.14	\$ 81,222.14	\$ 10,067.79	\$ 28,070.37	\$ 2,984.61	\$ 28,492.73	\$ 11,606.64
08/22/09	\$ 152,520.62	\$ 76,260.31	\$ 76,260.31	\$ 9,471.53	\$ 26,355.58	\$ 2,783.50	\$ 26,752.12	\$ 10,697.60
08/29/09	\$ 160,945.84	\$ 80,472.92	\$ 80,472.92	\$ 9,994.74	\$ 27,811.44	\$ 2,937.26	\$ 28,229.90	\$ 11,499.58
09/05/09	\$ 161,596.30	\$ 80,798.15	\$ 80,798.15	\$ 10,035.13	\$ 27,923.84	\$ 2,949.13	\$ 28,343.89	\$ 11,546.06
09/12/09	\$ 172,573.84	\$ 86,286.92	\$ 86,286.92	\$ 10,716.84	\$ 29,820.76	\$ 3,149.47	\$ 30,269.45	\$ 12,330.40
09/19/09	\$ 140,020.30	\$ 70,010.15	\$ 70,010.15	\$ 8,695.26	\$ 24,195.51	\$ 2,555.37	\$ 24,559.56	\$ 10,004.45
09/26/09	\$ 138,633.74	\$ 69,316.87	\$ 69,316.87	\$ 8,609.16	\$ 23,955.91	\$ 2,530.07	\$ 24,316.35	\$ 9,905.38
10/03/09	\$ 144,572.08	\$ 72,286.04	\$ 72,286.04	\$ 8,977.93	\$ 24,982.06	\$ 2,638.44	\$ 25,367.93	\$ 10,329.68
10/10/09	\$ 139,301.26	\$ 69,650.63	\$ 69,650.63	\$ 8,650.61	\$ 24,071.25	\$ 2,542.25	\$ 24,433.44	\$ 9,953.08
10/17/09	\$ 147,120.42	\$ 73,580.21	\$ 73,580.21	\$ 9,136.18	\$ 25,422.41	\$ 2,664.95	\$ 25,804.92	\$ 10,511.75
10/24/09	\$ 135,163.32	\$ 67,581.66	\$ 67,581.66	\$ 8,393.64	\$ 23,356.22	\$ 2,466.73	\$ 23,707.65	\$ 8,657.42
<b>Subtotal</b>	<b>\$ 2,601,831.38</b>	<b>\$ 1,756,947.44</b>	<b>\$ 844,863.94</b>	<b>\$ 104,934.60</b>	<b>\$ 291,991.88</b>	<b>\$ 30,636.26</b>	<b>\$ 296,385.26</b>	<b>\$ 120,733.92</b>

Benchmark Goal @ 2% \$ 912,063.48

Remainder until 1% / 1% Split \$ -

**WEST VIRGINIA LOTTERY  
WEEKLY SETTLEMENT FOR CHARLES TOWN**

Week Ending Date	Week Ending
	October 24, 2009
	FY10
<b>To be Deposited on:</b>	<b>October 30, 2009</b>
<b>Amount Played</b>	<b>73,003,962.45</b>
<b>Amount Won</b>	<b>65,651,809.53</b>
<b>Amount Promo</b>	<b>265,632.00</b>
<b>MWAP Contribution</b>	<b><u>46,764.36</u></b>
<b>Adjusted Gross Terminal Revenue</b>	<b><u>7,039,756.56</u></b>
<b>Administrative Costs @ 4%</b>	<b>201,781.05</b>
<b>Excess Lottery Fund @ 4%</b>	<b><u>79,609.22</u></b>
<b>Net Terminal Revenue</b>	<b><u>6,758,166.29</u></b>
<b>Surcharge @ 10%</b>	<b>0.00</b>
<b>State Share Excess @ 58%</b>	<b>0.00</b>
<b>Track Share of Capital Reinvestment @ 42%</b>	<b>0.00</b>
<i>Track Share of Capital Reinvestment @ 42% - 88%</i>	\$ -
<i>Track Share of Capital Reinvestment @ 42% - 4%</i>	\$ -
<b>Adjusted Net Terminal Revenue</b>	<b><u>6,758,166.29</u></b>
<b>Racetrack @ 46.50% / 42%</b>	<b>3,142,547.32</b>
<b>Lottery Fund @ 30% / 0%</b>	<b>2,027,449.91</b>
<b>Excess Lottery Fund @ 0% / 41%</b>	<b>0.00</b>
<b>Race Track Purses @ 7% / 14% / 8%</b>	<b>946,143.26</b>
<b>Workers' Compensation Debt Reduction @ 7%</b>	<b>0.00</b>
<b>Employee Pension Fund @ 1% / .5%</b>	<b>67,581.66</b>
<b>Greyhound Development @ .75%</b>	<b>50,686.25</b>
<b>Thoroughbred Development @ .75%</b>	<b>50,686.25</b>
<b>Racing Commission @ 1%</b>	<b>67,581.66</b>
<b>County/Municipality @ 2%</b>	<b>135,163.32</b>
<b>3% Funds:</b>	
<b>Tourism Promotion Fund @ 1.375%</b>	<b>92,924.79</b>
<b>Development Office Promotion Fund @ .375%</b>	<b>25,343.12</b>
<b>Research Challenge Fund @ .5%</b>	<b>33,790.83</b>
<b>Capitol Renovation and Improvement Fund @ .6875%</b>	<b>46,462.39</b>
<b>2004 Capitol Complex Parking Garage Fund @ .0625%</b>	<b>4,223.85</b>
<b>1% Funds:</b>	
<b>State Capitol Complex Parking Garage @ 1%</b>	<b>0.00</b>
<b>Cultural Facilities and Capitol Resources @ .5%</b>	<b>33,790.83</b>
<b>Capitol Dome and Capitol Improvements @ .5% / 1%</b>	<b><u>33,790.83</u></b>
	<b><u>6,758,166.29</u></b>

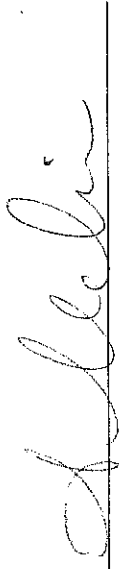
# State of West Virginia,

COUNTY OF JEFFERSON

I, **Shawna Molina**, do solemnly swear or affirm that I will support the Constitution of the United States and the Constitution of the State of West Virginia.

I, **Shawna Molina**, do solemnly swear or affirm that I will faithfully discharge and perform the duties of a member of the office of Eastern Panhandle Transportation Authority of Jefferson County to the best of my skill and judgment, and according to law. So help me God.

Signed



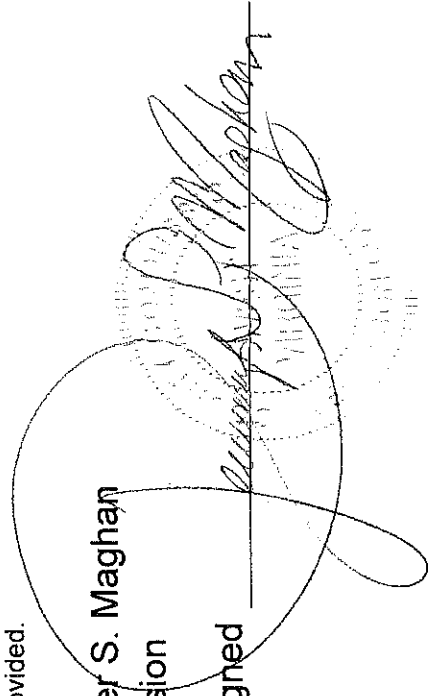
The above oath was taken and subscribed on this 28<sup>th</sup> day of October, 2009 at the Jefferson County Court House, 100 East Washington Street, Charles Town, West Virginia.

## WV Constitution Article IV, Section 5. Oath or affirmation to support the constitution.

Every person elected or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall make oath or affirmation that he will support the constitution of the United States and the constitution of this state, and that he will faithfully discharge the duties of his said office to the best of his skill and judgment; and no other oath, declaration, or test shall be required as a qualification, unless herein otherwise provided.

Oath administered by Jennifer S. Maghan  
Clerk of the County Commission

Signed



# Ethics Reporter

## Since the Last Reporter

Since the September edition of the **REPORTER**, the West Virginia Ethics Commission has published one Advisory Opinion interpreting provisions of the West Virginia Governmental Ethics Act.

At its October 1 meeting, the West Virginia Ethics Commission approved an opinion relating to the permissibility of a state agency receiving discounted hotel rates from an entity regulated by the agency for the benefit of its employees while traveling on official business.

### ADVISORY OPINION REPORT

**Advisory Opinion 2009-09** concerned the permissibility of a state

agency deriving the benefits of discounted lodging rates from an entity that is regulated by the agency.

As a part of their regulatory duties, agency employees must be on-site to oversee activities being conducted under the state's license. In the instance under review, the hotel in question does not offer discounted government rates, but it is willing to offer the same discounted rate to state employees as is provided to the hotel's own employees—roughly a 75% discount. It does appear that equivalent hotel rates are available at other nearby properties which are not regulated by the state.

In its review of the request, the Ethics Commission examined the provisions of 6B-2-5(b) which prohibits public employees from using their position to produce a private gain for themselves or

another, as well as the language of 6B-2-5(c)(1) concerning the solicitation and acceptance of gifts on the part of public employees operating as regulators.

In its opinion, the Ethics Commission ruled that the acceptance of discounted rates from the hotel that is subject to state regulatory scrutiny would constitute a prohibited "gift" under the Ethics Act. Given the status of the regulated hotel as a "resort" and the close proximity of other hotel options at the same or lower costs, the acceptance of reduced rate accommodations would affect the confidence of the general public that the state was properly exercising its regulatory authority.

**RECEIVED**

OCT 29 2009

Jefferson County Commission

**WEST VIRGINIA ETHICS COMMISSION  
ADVISORY OPINIONS  
2009 TOPICAL INDEX  
(Covering actions through July 9)**

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**BOARDS AND COMMISSIONS**

**2008-10:**

Permissibility of a county authority maintaining a business contract with a company controlled by an elected county commissioner (See also COUNTY GOVERNMENT)

**BOARDS OF EDUCATION**

**2009-04:**

Permissibility of a county board of education member voting on the superintendent's employment contract when his employer has pending civil action against the superintendent personally

**COUNTY GOVERNMENT**

**2008-10:**

Permissibility of a county authority maintaining a business contract with a company controlled by an elected county commissioner (See also BOARDS AND COMMISSIONS)

**2009-01:**

Permissibility of the spouse of an elected county commissioner being employed by a county hospital

**2009-02:**

Permissibility of a county employee wellness program being extended to elected county officials

**2009-03:**

Permissibility of a county commission reimbursing county officials or employees for government related calls made on personal cellular phones

**2009-05 (CORRECTED):**

Permissibility of a part-time prosecuting attorney's business contracting with a local extension service agency

**2009-07:**

Permissibility of a county commissioner, acting as a private attorney, drafting wills and administering estates in the county where such matters may be probated

**LEGISLATURE**

NONE PUBLISHED

**MUNICIPAL GOVERNMENT**

**2009-06:**

Permissibility of a member of a city council voting on matters benefiting the church to which he belongs

FILED

ADVISORY OPINION NO. 2009-09

2009 OCT -8 AM 9: 37

Issued On October 1, 2009 By The

WEST VIRGINIA ETHICS COMMISSION

OFFICE OF THE SECRETARY OF STATE

**OPINION SOUGHT**

A State Agency asks whether it would violate the Ethics Act to accept a lower lodging rate for certain Agency employees from a resort which the State Agency regulates.

**FACTS RELIED UPON BY THE COMMISSION**

The Requester is a public agency that provides oversight and administration of a regulated industry which operates licensed activities at various locations in the state. As part of its administration and regulation, employees of the State Agency are stationed on-site at each of the licensed locations and/or make in-person visits in order to oversee the activities of each regulated entity.

One of the entities which the State Agency will regulate is located in a resort.<sup>1</sup> As part of its regulatory powers, employees of the State Agency will be sent to the facility to oversee the activities being operated at the resort. According to the Requester, much of the regulatory and oversight work performed by the Agency employees will be performed in the evening and overnight hours. Thus, the Requester desires to have the employees obtain lodging at the resort. The State Agency expresses concern that long hours and fatigue of its employees warrants lodging in close proximity to the regulated entity.

Currently, the resort does not offer a discounted rate for public employees, nor an established "government rate." Instead, based upon information and belief, all patrons and guests pay the prevailing commercial rate, which typically averages around \$400.00 a night. According to the Requester, the proposed special rate for the State Agency officials and employees to stay at the resort is \$100.00 a night. Per the Requester, this is the same nightly rate paid by employees of the resort.

As the State Agency noted in its request for an opinion, this special rate is "a substantial savings from the [resort's] regular nightly rate and compares favorably with other [local] hotel rates." There are multiple hotels and inns located within a ten (10) mile radius of the resort, including one that is one (1) mile away. A review of some of these local hotel rates reflects nightly rates equal to or less than the proposed \$100.00 rate.

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<sup>1</sup> The regulated entity is not yet operational. In addition to its oversight duties, the State Agency is also charged with reviewing, certifying, and monitoring so that the entity will be able to begin its regulated activities.

The West Virginia Ethics Acts forbids public officials or employees from accepting any gift, directly or indirectly, from any person engaged in activities which are regulated or controlled by his or her agency. W. Va. Code § 6B-2-5(c)(1)(B). In this matter, the resort is regulated by the State Agency. Therefore, the officials and employees of the State Agency are precluded from accepting "gifts" from the entity.

Accordingly, the issue to be decided by the Commission is whether the offer and acceptance of a special, Agency-only reduced lodging rate from a regulated entity constitutes a prohibited "gift" under the West Virginia Ethics Act.

After weighing the potential benefit to the State Agency and the Commission's necessity to uphold our legislative mandates, the Commission hereby finds that a special, Agency-only lodging rate provided by a regulated entity would constitute a gift for purposes of the Ethics Act, and thus be prohibited by West Virginia Code § 6B-2-5(c).

In making this determination, the Commission would note that the regulatory relationship between the State Agency and the licensee demands the utmost protection of the public confidence in the impartiality of its oversight. An appearance of impropriety is rife when a licensee establishes a special rate for the Agency which regulates it.

More importantly, the State Agency's concern about having its employees in close proximity to the regulated entity is tempered by the availability of other hotels near the location. The Commission would note there are multiple hotels and inns within a ten (10) mile radius of the regulated resort, including one that is one (1) mile away, which offer rates at least equal to or less than the proposed special rate. Use of these other non-regulated hotels would avoid the appearance of impropriety and still allow the State Agency to save money on lodging expenses without compromising the safety of its employees.

In denying the Requester's acceptance of the proposed special rate in this matter, the Commission wishes to make clear that it is **not** limiting the use and acceptance of reduced lodging rates offered to **all** public employees by a non-regulated entity.<sup>2</sup> As the

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<sup>2</sup> The Commission recognizes that there may be times when the employees of certain regulatory agencies, for example health departments, must stay overnight at entities they generally regulate, e.g. hotels. In such a situation, the public employees may accept reduced lodging rates when such rates are offered to **all** public employees, not just the agency that regulates them because **all** hotels are subject to the agency's regulation. The Commission cautions, however, that before accepting such a reduced rate from a regulated entity, regulatory agencies should consider the potential appearance of impropriety, undue influence and conflicts of interest that may arise therefrom.

# The City of Ranson would like to invite you to attend the American Planning Association Audio/ Web Conference "Planning with Large Institutions"

Conference Date, Time, and Location:  
November 18th from 4-5PM at Ranson City Hall 312 S. Mildred St.

Hospitals, universities, and other large institutions have a dramatic impact on their host communities. At times the needs of the institution are in conflict with the community. In other situations, the institutions may be committed to sustaining the surrounding neighborhoods and local planners and officials are challenged to help guide investment and development. Learn how institutions and communities work successfully and the role the planning commission and other officials play.

### Presenters will include:

Jeff Davidson, AICP  
Planning and Community Development Director  
Iowa City, IA

Anne Papageorge  
Vice President of Facilities  
University of Pennsylvania

Monique Y. MacKenzie  
Coordinator, Capital Planning/Project Management  
UMN Twin Cities

Nancy Tierney  
Associate Dean, Facilities & Planning  
University of Arizona, College of Medicine  
in partnership with Arizona State University

**This audio/web conference has been approved for CM - 1.0 credit and is being offered to you at no cost!**

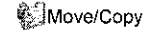
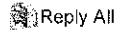
**RECEIVED**

OCT 29 2009

**Reserve your seat today!!**  
Contact Sarah Kleckner, Planning Director for the City of Ranson  
304-724-3864 or [skleckner@cityofransonwv.net](mailto:skleckner@cityofransonwv.net)

Jefferson County Commission

**Re: Planning and Zoning Draft Agenda**



Show Header

Print Hide Envelope

From: gil narro garcia [Add to Address Book](#)  
To: info@jeffersoncountywv.org  
Date: Friday, October 23, 2009 2:03:49 PM  
Subject: Re: Planning and Zoning Draft Agenda

Here we go again---these deep pocket developers are at their usual tricks, given that most Commissioners have pretty much rubber stamped all past requests for variances of this nature. It's an Eastern US joke they have about Jefferson County. Just say NO! If the developer needs more time, have them request a request a new permit and have them pay the necessary fees. Guys, have you no backbone?

RE: 6. Request by Beallair Homes, LLC for a variance to extend the current time period for approval of the first final plat for a period of 12 months for Beallair West...

Gil N Garcia

HF, WV 25425

304-535-2235