

AGENDA
JEFFERSON COUNTY COMMISSION
THURSDAY, SEPTEMBER 9, 2010
9:30 A.M.

Old Charles Town Library Meeting Room
200 E. Washington Street, Charles Town, WV

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

APPROVAL OF PURCHASE ORDERS

APPROVAL OF ACCOUNTS PAYABLE

PUBLIC COMMENT

COUNTY ADMINISTRATOR REPORTS

COUNTY COMMISSION REPORTS

PRESENTATIONS:

1. 9:45 a.m. Presentation - Resolution to Recognize Friday, September 10, 2010 as the 10th Anniversary of Jefferson County Black History Preservation Society
2. 10:00 a.m. Angela Banks, Assessor - Exonerations
3. 10:15 a.m. Alana C. Hartman, WV Department of Environmental Protection, Potomac Basin Coordinator
- Update on the West Virginia's Watershed Implementation Plan for the Chesapeake Bay Total Maximum Daily Load
4. 10:30 a.m. Peter Appignani - Jefferson County Organization of Homeowners Association, Inc.
- Presentation and introduction to the Jefferson County Organization of Homeowners Association, Inc. (JCOHOA), its officers, members, purpose, etc.
5. 11:00 a.m.. Jennifer S. Maghan - County Clerk's Report

6. 11:15 a.m. Kirk Davis, Capital Projects Manager
- Water Advisory Committee Clean Water Grant - Approval of Payment
7. 11:30 a.m. Legal Update and Report - (Stephanie Grove)
8. 11:45 a.m. Mark Schiavone, Director of Capital Planning and Management
- Approval of Revision 002 to the General Fund - Discussion/Action
- Request to add 2 Fire & EMS Projects to FY 2011 CIP Impact Fee Fundable List - Discussion/Action

NEW BUSINESS:

9. Legislative Issues
10. Approval of Employment - Clifford Eugene Taylor - Trip Guard/Substitute Bailiff - Discussion/Action
11. Approval of Grant Resolutions for the Community Participation Grant Program - Discussion/Action
 - Camp Frame 4-H Association - \$5,000
 - Jefferson County Memorial Park Pool - \$6,500
 - Eastern Area Health Education Center - Freedom's Run - \$2,000
12. Approval of Grant Application and Resolution for the Community Participation Grant Program - Discussion/Action
 - National Humane Education Society - Briggs Animal Adoption Center - \$10,000
13. Revised Meeting Room Policy - Discussion/Action

Break for Lunch

~~~~~ AFTERNOON SESSION ~~~~~

14. 1:30 p.m. Budget Work Session - Review of Allocations Requested from Non-Profits - Discussion/Action

**CORRESPONDENCE:**

Correspondence received from Shawna Molina thanking her friends, neighbors and colleagues for their support her and the Jefferson County Council on Aging.

Correspondence received from Matthew Harris regarding the Commissions vote to restore funds.

Correspondence received from Susanne Lawton regarding the hazardous & electronic waste collection event that was held in July, 2010 by the Jefferson County Water Advisory Committee.

Harpers Ferry National Historical Park Community Bulletin received.

Correspondence received from the Division of Highways concerning the Statewide Transportation Improvement Program.

Certificate of Recognition received from the West Virginia Association of Counties as a member in good standing, entitled to all the rights & privileges of membership and promoting "State Strngth through County Cooperation."

Correspondence received from the West Virginia Culture and History regarding Bullskin Run Historic District will be considered by the Archives and History Commission for nomination to the National Register of Historic Places.

Valley Views received from the Potomac Valley Audubon Society for the month of September, 2010.

Video lottery weekly settlement report received from the West Virginia Lottery.

#### **ANNOUNCEMENTS:**

County-wide Parks and Recreation Summit to be held on Saturday, September 25, 2010 from 1 to 4 p.m. at the Jefferson County Community Center.

Medication Take-Back Day scheduled for Saturday, September 25, 2010 from 9:00 a.m. to 9:00 p.m. at the Jefferson County Sheriff's Office, 102 Industrial Blvd., Suite 100, Kearneysville, WV.

#### **RECESS**

*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.*

#1

# JEFFERSON COUNTY COMMISSION CHARLES TOWN, WV

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## *RESOLUTION*

### JEFFERSON COUNTY BLACK HISTORY PRESERVATION SOCIETY, INC. 10<sup>TH</sup> ANNIVERSARY

WHEREAS, in September of 2000 James L. Taylor, Nathaniel Downing, George C. Rutherford and James A. Tolbert met to begin compiling the largest collection of Black history ever undertaken in Jefferson County and;

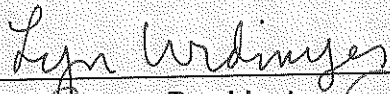
WHEREAS, in light of many significant historical events in Jefferson County and the exclusion of Black history in Jefferson County historical writings, the continuing trend of exclusion of these historical events could of led to the complete loss of Black history for present and future generations; and

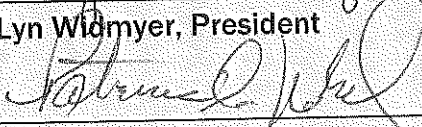
WHEREAS, this group decided to form the Jefferson County Black History Preservation Society and continue their research of Jefferson County Black history; and


WHEREAS, the Jefferson County Black History Preservation Society has become the only acceptable authority for Jefferson County Black History; and

SO, THEREFORE BE IT RESOLVED, that the County Commission of Jefferson County recognizes the Jefferson County Black History Preservation, Inc. on their 10<sup>th</sup> anniversary for their hard work and dedication to preserving Jefferson County's Black history.

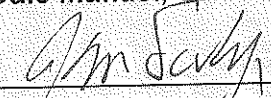
September 2, 2010

  
\_\_\_\_\_  
Lyn Widmyer, President

  
\_\_\_\_\_  
Patsy Noland, Commissioner

  
\_\_\_\_\_  
Frances B. Morgan, Commissioner

  
\_\_\_\_\_  
Dale Manuel, Commissioner

  
\_\_\_\_\_  
James Surkamp, Commissioner

|                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------|
| <p>Commission Office Use Only</p> <p>Date on Agenda: <u>9-9-10</u></p> <p>Appt Time or New Business:<br/><u>10:15 am</u></p> |
|------------------------------------------------------------------------------------------------------------------------------|

**AGENDA REQUEST FORM**

Name: Alana C. Hartman

Department or Entity: WV Dept. of Environmental Protection, Potomac Basin Coordinator

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1<sup>st</sup> Choice: September 9, 2010

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

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

Subject: Update on the WV's WIP Watershed Implementation Plan for the Chesapeake Bay Total Maximum Daily Load

Please provide the County Commission with a description of your request or presentation, including any background information: **Will present highlights of the draft of the Phase I WIP**

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

10:16 a/a/10

**Laura Kuhn**

**From:** "Tim Boyde" <tboyde@jeffersoncountywv.org>  
**To:** "Laura Kuhn" <laura@jeffersoncountywv.org>; "Nichelle Hosby" <nhosby@jeffersoncountywv.org>  
**Sent:** Tuesday, August 17, 2010 10:19 AM  
**Subject:** FW: Sept. 9 County Commission meeting  
 Please add this to the agenda for September 9.

**From:** Hartman, Alana C [mailto:Alana.C.Hartman@wv.gov]  
**Sent:** Tuesday, August 17, 2010 9:57 AM  
**To:** tboyde@jeffersoncountywv.org  
**Cc:** m.schwartz@freshwaterinstitute.org; Jennifer Brockman  
**Subject:** Sept. 9 County Commission meeting

Hi Mr. Boyde,  
 Thank you for your time on the phone this morning. As we discussed, I'd like to update the Commission on WV's WIP (Watershed Implementation Plan) for the Chesapeake Bay TMDL (Total Maximum Daily Load). If Sept 9 is indeed the next possible time for this update to occur, then I will be able to present highlights of the draft of the Phase I WIP, which we have to supply to EPA by Sept. 1. At that time, I would ask the Commissioners if they'd like to have myself and colleagues participate in a work session on this subject at some future time.

The public comment period for the document will begin on Sept. 24, and end on Nov. 8. Two public meetings on the subject will be hosted by EPA in November:

|         |                                                                            |
|---------|----------------------------------------------------------------------------|
| 11/3/10 | 6-8 pm Comfort Inn, 1872 Edwin Miller Blvd. Martinsburg                    |
| 11/4/10 | 6-8 pm Romney meeting AND WEBINAR, South Branch Inn, Route 50 East, Romney |

I wanted to get those dates on people's calendars if they are interested.

Please let me know if/when my presentation has been scheduled 9/9 agenda. Thank you!

Sincerely,

Alana (copying Michael Schwartz and Jennifer Brockman)

Alana C. Hartman

WV Dept. of Environmental Protection, Potomac Basin Coordinator

HC 63 Box 2545 Romney, WV 26757 (304) 822-7266 alana.c.hartman@wv.gov

8/17/2010

|                            |                 |
|----------------------------|-----------------|
| Commission Office Use Only |                 |
| Date on Agenda:            | 9/9/10          |
| Appt Time or New Business: | 10:30-<br>11:00 |

AGENDA REQUEST FORM

Name: Peter Appignani

Department or Entity: Jefferson County Organization of Homeowners Association, Inc.

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1<sup>st</sup> Choice: September 9, 2010

Date Requested – 2<sup>nd</sup> Choice: September 23, 2010

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

Subject:

Introduction to the Jefferson County Organization of Homeowners Association, Inc. (JCOHOA), its officers, members, purpose, etc.

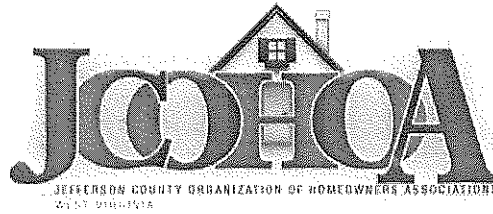
Please provide the County Commission with a description of your request or presentation, including any background information:

Short presentation see attached information sheet

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

Attachments:

- JCOHOA Information sheet,
- CAI Public Policies,
- Recent letter to Planning Commission



## **The Jefferson County Organization of Homeowners Associations, Inc.**

The purpose of the JCOHOA is to focus on the issues relating to the preservation and promotion of the present and future welfare of the Jefferson County Homeowners Associations. The Organization is comprised of Jefferson County, West Virginia Homeowners Associations having been established with the purpose of the discussion of common problems, the sharing of solutions, the communication of important information to our communities and to be a cohesive force to protect the interests and welfare of Jefferson County home owners.

*Your home is the largest single investment you will make in your lifetime.*

Who we are:

We are members, elected officers and/or Board of Directors of Jefferson County HOAs.

The idea, the need, for this organization grew out of conversations with several Homeowners Associations officers who regularly attend an every other month breakfast organized by one of our civic representatives. From these discussions, it became apparent that the HOAs in Jefferson County had many of the same problems, concerns and issues. Although many of the concerns are countywide, some of the concerns are more localized. However, they were still the same issues and concerns and affect many communities in Jefferson County. Several of us believed that if we began working together, in a synergistic effort, we could resolve many of these problems, issues and concerns through discussion and the sharing of solutions and ideas. We believe that this communication between HOAs and this sharing of knowledge will strengthen each HOA and will benefit our community members – the homeowners.

Some of the issues we are tackling:

- Eminent Domain (affecting PATH and Hall Town Waste Water Treatment Plant)
- Property taxes and tax appeals (including foreclosures)
- Common property taxes (Crystal Lake Property Owners Association)
- Law enforcement issues (e.g., vandalism, off road vehicles, speeding on private roads)
- Covenants and other governing documents
  - Chapter 36B, Uniform Common Interest Ownership Act.
- Snow removal reimbursement from FEMA
- Insurance and liability (HOA, Board & officers, other community volunteers & homeowners)
- Road maintenance and reserve fund issues
- Fire hydrant testing

Website: [HTTP://WWW.JCOHOA.ORG](http://www.jcohoa.org)

Email: [JCOHOA@googlegroups.com](mailto:JCOHOA@googlegroups.com)



## **The Jefferson County Organization of Homeowners Associations, Inc.**

- Management companies

### Communications:

The JCOHOA has become a valuable communications resource for our members. During the blizzards of 2010 our bulletin board became a forum that allowed us to share information. This information included road conditions in the county, emergency shelter locations and help line numbers for homeowners in need. Our Google Group forum:

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gave us instant access to our combined knowledge of what was happening across the county. This is information that could not be found on local radio or TV.

### Member HOAs: (number of homes)

- ◆ Blue Ridge Acres Civic Association (325)
- ◆ Breckenridge (282)
- ◆ Cloverdale Heights (137)
- ◆ Gap View Village (178)
- ◆ Meadow Brook Farms (95)
- ◆ Patrick Henry Estates (154)

- ◆ River View Park (92)
- ◆ Tuscawilla Hills (564\*)

Total: 1827 Homes

\*502 single family homes, 62  
apartments

The Jefferson County Organization of Homeowners Associations, Inc. was incorporated in the State of West Virginia in August 2009 under section 501(c)(3) of the Internal Revenue Code. Our Articles of Incorporation, Bylaws, and membership application can be obtained at our Google Group Forum.

Website: [HTTP://WWW.JCOHOA.ORG](http://www.JCOHOA.ORG)

Email: [JCOHOA@googlegroups.com](mailto:JCOHOA@googlegroups.com)



July 7, 2010

Mr. John Maxey, President  
Jefferson County Planning Commission  
C/O Jennifer M. Brockman, AICP, Director of Planning & Zoning  
116 East Washington Street  
Charles Town, WV 25414

Dear Chairman Maxey:

As you requested, we performed a cursory inspection of the subdivision regulation changes. We also understand that at the present time the changes to the subdivision regulations are being limited to changes that will correspond to the existing zoning ordinance. For now, we will limit our comments to the following paragraph on pages 103 & 104 of the *Subdivision and Land Development Regulations, 05.25.10 Amendment Draft*:

**Homeowner's Association (HOA) or Business Owner's Association (BOA).**  
An incorporated nonprofit organization operating under a recorded land agreement through which: (a) each lot owner is automatically a member; and (b) each lot is automatically subject to a proportionate share of the expense for the organizations activities, such as, but not limited to maintaining drives, streets, roads, and other common property. Homeowner's Associations and the Uniform Common Interest Ownership Act of West Virginia are interchangeable and reversible terms. The most recent Uniform Common Interest Ownership Act of West Virginia shall prevail.

1. We suggest using the following definition for **Common interest community** as guidance. This definition can be found in WV Code Chapter 36B.

§36B-1-103. Definitions

(7) "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in a declaration.:

Provided, That any resort owner which, prior to the effective date of this article, began the development of a resort and imposed fees or assessments upon owners of real estate in the resort for maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas and common facilities in and around the resort, for fire and police protection and for such other services as may be made available to owners of real estate, may also impose the same fees and assessments to be used for the same or similar purposes upon persons purchasing real estate in the resort after the effective date of this article without creating a common interest community.

"Ownership of a unit" does not include holding a leasehold interest of less than twenty years in a unit, including renewal options.

This definition, with an exception for certain resort owners, can also be found in the current revision of the Uniform Common Interest Ownership Act (UCIOA)<sup>1</sup>. A copy of this document has been provided to Ms Brockman.

"Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in a the declaration. The term does not include an arrangement described in Section 1-209 or 1-210. For purposes of this paragraph, "ownership of a unit" does not include holding a leasehold interest of less than [20] years in a unit, including renewal options.

The term "common interest community" includes HOAs (a.k.a. planned communities), condominiums, town homes, cooperatives and other forms of common interest communities. Sections 1-209 & 1-210 are specific exemptions. Definitions for associations, condominiums, cooperatives and planned communities can also be found in WV Code Chapter 36B and the current revision of the UCIOA. Again, they are synonymous in both documents.

#### WV §36B-1-103. Definitions

(3) "Association" or "unit owners' association" means the unit owners' association organized under section one hundred one, article three of this chapter.

(8) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interest in the common elements are vested in the unit owners.

---

<sup>1</sup> Amendments To, Uniform Common Interest Ownership Act, Drafted by the National Conference Of Commissioners On Uniform State Laws and by it approved and recommended for enactment in all the states at its annual conference meeting in its one-hundred-and-seventeenth year in Big Sky, Montana, July 18 – 25, 2008, with prefatory note and comments.

(10) "Cooperative" means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit.

(23)"Planned community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

UCIOA definitions:

(4) "Association" or "unit owners association" means the unit owners association organized under Section 3-101.

(10) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(12) "Cooperative" means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of the member's ownership interest in the association to exclusive possession of a unit.

(25) "Planned community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

2. We have no idea why a Business Owner's Association (BOA) is synonymous with a homeowner's association. WV Statute Chapter 36 contains the following definitions:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.  
§36-8-1. Definitions.

(3) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility or other business entity consisting of one or more persons, whether or not for profit.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

Please clarify in the ordinance. As an alternative, we suggest that you define homeowners associations and business owners associations separately.

3. The following sentence is perplexing:

Homeowner's Associations and the Uniform Common Interest Ownership Act of West Virginia are interchangeable and reversible terms.

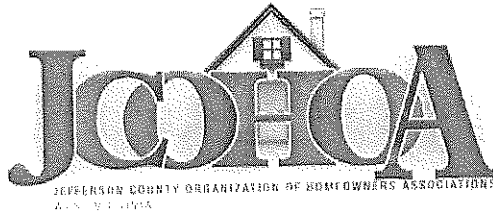
An HOA is an "organization", while, in the above context, the Uniform Common Interest Ownership Act of West Virginia (i.e., Chapter 36B of the WV Statutes) is a law. We suggest this sentence be removed.

This is indicative of a broader concern, which we believe to be a fundamental misunderstanding of common interest communities and the importance of the developer, planning commission, et al to better grasp the significance the Articles of Incorporation and Covenants, which are approved by the Planning Commission. Covenants not only prescribe the obligations, limitations and restrictions of an HOA, covenants also dictate how an HOA functions. Too many HOAs in Jefferson County have ceased functioning primarily because their covenants preclude them from functioning.

We respectfully request to be put on the agenda for your August 24, 2010 meeting for 15 minutes to explain who we are, our concerns and our desire to work with the Planning Commission with respect to common interest communities and the governing documents that the Planning Commission approves when a common interest community is established in Jefferson County.

Sincerely,

Peter Appignani  
*President*



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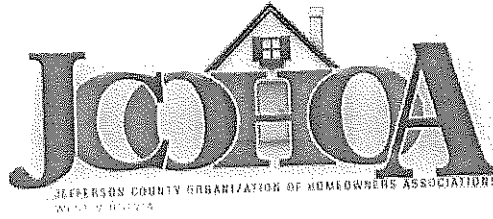
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Email: [JCOHOA@googlegroups.com](mailto:JCOHOA@googlegroups.com)

# Public Policies

*Public Policies*, is a publication produced by Community Associations Institute (CAI). This publication is made available at cost. Please be aware that this document is also available for downloading at no cost at [www.caionline.org](http://www.caionline.org)

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2010 Public Policies of Community Associations Institute

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Ph: 703-548-8600

Web site: [www.caionline.org](http://www.caionline.org)

Public policies are subject to change and may be amended from time to time. Please check our Web site annually for the latest updates or additions. To order additional copies of this manual please contact CAI.

## *Community Associations Institute*

Founded in 1973, Community Associations Institute (CAI) is the national voice for an estimated 60 million people who live in more than 305,000 community associations of all sizes and architectural types throughout the United States. Community associations include condominium associations, homeowner associations, cooperatives and planned communities.

CAI is dedicated to fostering vibrant, responsive, competent community associations that promote harmony, community and responsible leadership. CAI advances excellence through a variety of education programs, professional designations, research, networking and referral opportunities, publications, and advocacy before legislative bodies, regulatory bodies, and the courts.

In addition to individual homeowners, CAI's multidisciplinary membership encompasses community association managers and management firms, attorneys, accountants, engineers, builders/developers, and other providers of professional products and services for homeowners and their associations. CAI represents this extensive constituency on a range of issues including taxation, bankruptcy, insurance, private property rights, telecommunications, fair housing, electric utility deregulation, and community association manager credentialing. CAI's over 30,000 members participate actively in the public policy process through more than 60 local, regional and state chapters and 33 state Legislative Action Committees.

For additional information, please contact CAI's Government & Public Affairs Department by phone (703-548-8600), fax (703-684-1581) or e-mail ([g&pa@caionline.org](mailto:g&pa@caionline.org)).



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## COMMUNITY ASSOCIATIONS INSTITUTE

### PROCEDURES FOR THE ADOPTION OF PUBLIC POLICIES

To ensure a consistent and timely method for the adoption of public policies by CAI, and to promote the continued development of topical and timely public policies, the following procedures shall be followed:

1. Any member, chapter, Legislative Action Committee, other committee, council, task force, or staff of CAI may request the adoption of a public policy by submitting to the Government & Public Affairs Committee (G&PAC), directed to the designated staff member, a draft of the desired proposed policy or amendment and a statement of purpose detailing the basis and need for CAI to adopt the requested policy or amendment.
2. The Government & Public Affairs staff member and the chair of the G&PAC shall identify those committees or task forces from which input on the requested policy would be appropriate and will request input from those committees and task forces. Each such committee or task force is invited to submit written comments to the G&PAC. Those comments shall include a recommendation to the G&PAC on the course of action to take, including whether the proposed policy or amendment should be published for comment by CAI's members prior to final action being taken on the request.
1. The G&PAC staff person shall assemble comments and transmit those comments with the request for the proposed policy or amendment to the members of the G&PAC. The request for a proposed policy or amendment shall be an agenda item for the next scheduled meeting of the G&PAC. At that meeting, the Committee shall (1) consider whether the proposed policy or amendment should be published for comment by the CAI membership; (2) consider whether the proposed policy or amendment as recommended by the appropriate committee or taskforce should be acted upon at that time; or (3) to vote on whether to approve the proposed policy or amendment. If it is determined that the proposed policy or amendment should be published for comment by the membership of CAI or additional work is needed to shape the proposed policy or amendment, the proposal will be placed on the agenda and reconsidered at the next meeting of the G&PAC.
2. The draft approved by the Committee will be submitted to the Board of Trustees for consideration. The Board of Trustees may adopt the proposed policy or amendment as recommended or with modifications, disapprove the proposed policy or amendment, or return the proposal to the G&PAC with comments or suggested modifications. The Board of Trustees may, in such cases as it deems appropriate:
  - a. Conduct a public hearing, or hearings, at the ensuing conference to obtain input from the membership; or
  - b. Publish a draft of the proposed public policy in one or more of CAI's publications and invite comment on the proposal.
3. Upon approval by the Board of Trustees, the final draft of the public policy and background statement shall be formatted to be consistent with existing public policies in the *Public Policy Manual* and disseminated.
4. The Board of Trustees may, in its discretion, waive or modify any of the foregoing steps in order to expedite the consideration and adoption of a public policy if expedited review is determined necessary, appropriate or in the best interest of CAI.

**Amended by the Board of Trustees, March 3, 2010**  
**Adopted by the Board of Trustees, October 1, 1994**

# **Community Associations Institute SUMMARY OF PUBLIC POLICIES**

## **AESTHETICS AS AN ECONOMIC ISSUE**

CAI opposes any and all attempts at the federal, state and local levels to enact laws or regulations that ignore or negate the economic importance of aesthetic controls.

## **ALTERNATIVE DISPUTE RESOLUTION MECHANISMS**

CAI recognizes the need for and supports the use of alternative dispute resolution mechanisms to resolve disputes arising in community associations in appropriate cases.

## **ASSESSMENT INCREASE LIMITATIONS**

CAI supports the elimination of any requirement that community association documents prohibit the increase of assessments by the board of directors above a fixed percentage without approval of a vote of owners.

## **COMMUNITY ASSOCIATION BUDGETS AND RESERVES**

CAI believes it is imperative for all community associations to adopt and use a financial planning and budget process which accurately reflects projected annual operating costs and long-term capital or major expenses ("reserves") and results in a balanced budget. CAI believes that the developer and developer-controlled board should prepare and disclose the initial budget to assure accurate estimation of projected operating costs and reserves. CAI also supports full and open disclosure to owners and the opportunity for participation by owners in the development of the budget. Further, CAI opposes laws which would mandate how community associations fund and maintain reserves.

## **COMMUNITY ASSOCIATION MANAGER CREDENTIALING**

CAI encourages the national certification of community association managers. In states that propose mandatory regulation of community association managers, CAI will support a regulatory system that incorporates adequate protections for homeowners, mandatory education and testing on fundamental management knowledge, standards of conduct and appropriate insurance requirements. CAI opposes the licensing of community association managers as real estate brokers, agents or property managers.

## **COMMUNITY ASSOCIATION MEMBERS' AND RESIDENTS' BILL OF RIGHTS**

CAI supports a balance of the rights of an individual owner in a community association with the need for effective management of the affairs of the association for the benefit of all the owners. Reasonable association procedures which empower the board of directors and staff of the community association to perform their obligations efficiently must take into account the rights of an individual owner to privacy, enjoyment of his or her home and full participation in the community association

## **COMMUNITY ASSOCIATION TAXATION**

CAI supports the elimination of the residential requirements of Code Section 528; the gross revenue of 60% test of Code Section 528; the 90% expenditure test of Code Section 528; the flat 30% tax rate of Code Section 528 and replacement with an average marginal tax rate, paid by individual taxpayers.

## **DISCLOSURE BEFORE SALES IN COMMUNITY ASSOCIATIONS**

CAI believes that homeowners should be informed about association matters that may impact their decision to purchase a home/unit and will educate them about their personal rights and responsibilities with regard to the community association. Disclosure documents/resale certificates are invaluable consumer information tools because it is vital that buyers know what they are buying.

## **DISPLAY OF THE AMERICAN FLAG**

CAI strongly supports the elimination of community association restrictions that prohibit the display of a reasonably sized, removable American flag from a resident's exclusive use or limited common element areas, so long as the flag is displayed in accordance with the Federal Flag Code, 36 U.S.C. Sections 171-178, as amended. CAI further believes that community associations – not a state law – are best suited to determine the appropriate size, placement and installation of a flagpole.

## **EFFECTIVE COLLECTION OF COMMUNITY ASSOCIATION ASSESSMENTS**

CAI supports effective, fair and reasonable collection methods, including lien rights and due process protections, and opposes government limitations on their efforts. CAI also supports reasonable procedures to accommodate unit owners experiencing temporary financial difficulties.

## **ENVIRONMENTAL QUALITY**

CAI strongly supports protection of the health and well-being of all individuals residing or working in common-interest communities by increasing sensitivity to environmental quality; and environmental quality in common-interest communities and remediation of environmental pollution, including harmful substances contained in building materials and landfills.

## **FAIR DEBT COLLECTION PRACTICES ACT**

CAI supports legislative, regulatory or judicial actions to establish that community association assessments are not "consumer debt" as defined by the Fair Debt Collection Practices Act or similar state statutes.

## **FAIR HOUSING**

CAI supports the right of all individuals to be free from illegal discrimination on the basis of race, creed, color, sex, national origin, familial status or handicap. CAI also supports the right of community associations to enforce their covenants, by-laws and rules provided they do not illegally discriminate against any protected class. CAI will progressively pursue fair and reasonable interpretations and administration of, or changes to, Fair Housing Acts and related

legislation and regulations.

#### **FAIRNESS IN FEDERAL DISASTER RELIEF**

Community Associations Institute (CAI) supports a legislative or regulatory change to the Robert T. Stafford Disaster Relief and Emergency Assistance Act so that community associations are eligible for federal assistance following a disaster, including but not limited to debris removal and cleanup.

#### **FEDERAL HOME LOAN MORTGAGE CORPORATION PROPOSED EARTHQUAKE REQUIREMENTS FOR CERTAIN CONDOMINIUMS IN CALIFORNIA**

CAI supports a one-year delay in implementation of the Federal Home Loan Mortgage Corporation (Freddie Mac) Bulletin No. 95-2 and the appointment of an industry task force to develop better ways to protect Freddie Mac's interests without adverse impact on the availability of financing for condominium housing.

#### **FINANCING AVAILABILITY FOR COMMUNITY ASSOCIATION UNITS OR LOTS**

CAI urges the promotion by federal lending-related agencies and the secondary market to promote the availability of adequate financing programs for community association housing. CAI supports the development of consistent national legal and underwriting standards for community associations, and reciprocal approval of community associations by federal agencies and the secondary mortgage market and urges federal lending-related agencies and the secondary market to promote the availability of financing for community association housing.

#### **FLOOD INSURANCE**

CAI believes that flood insurance should be available to all community associations, either through primary carriers or through a federally supported program. Such coverage should be made available at rates that are appropriate to the risk without a coinsurance requirement and on a basis that recognizes the ownership structure of the community association involved. Such insurance coverage shall be provided in a manner that is fitting for the exposure faced by the association that distinguishes between the insurance responsibilities of the association and the individual residents and/or owners, and in accordance with the insurance responsibilities of the individual community associations, whether they are condominiums, cooperatives, homeowners associations, or PUDs.

CAI urges the insurance industry to be responsive to the flood insurance needs of community associations by providing the necessary coverage based on need, risk, and the practical considerations of community associations, both in general and as an optional alternative to government provided flood insurance under the National Flood Insurance Program (NFIP). At the same time CAI urges FEMA to review the terms, conditions, zone maps, and rating structure of the flood insurance coverage it provides community associations, under the NFIP, and revise them as necessary, to reflect the need, risk, financial and practical considerations of community associations.

## **GOVERNMENT REGULATION OF COMMUNITY ASSOCIATIONS**

CAI supports effective state legislation—when it is deemed necessary for consumer protection, conversion limitations, protections for ongoing operations or other additions to existing statutes or common law, to ensure that community association housing is developed and maintained consistently with legitimate public policy objectives and standards that protect individual consumers, balancing the legitimate rights of the development industry. Local legislation concerning the creation or governance of community associations is antithetical to a balanced, well-considered weighing of all issues and interests affecting community associations, encourages a patchwork of regulations within an individual state and is, therefore, better dealt with at the state level.

## **GREEN ISSUES, CONSERVATION & SUSTAINABILITY**

CAI supports environmental and energy efficiency policies that recognize and respect the governance and contractual obligations of community association residents as the best mechanism to enact sustainable environmental policies.

## **HOME-BASED BUSINESSES IN COMMUNITY ASSOCIATIONS**

CAI recognizes and supports the rights of residential common-interest communities to regulate the nature of commercial activities within their communities, including the option to choose whether or not individual residences can be used as home-based businesses. CAI encourages associations that regulate commercial activities to restrict only those activities that the associations have reasonably determined have an adverse effect on the community and to permit childcare facilities, home office use and other home-based businesses that do not have an adverse effect. CAI supports the amendment of covenants to allow home-based businesses that do not have an adverse impact on the community. CAI opposes legislation that would supersede any covenant restrictions on home-based commercial activities.

## **HOMEOWNER INVOLVEMENT IN COMMUNITY ASSOCIATIONS**

CAI believes in direct homeowner involvement and participation in community associations and should be encouraged throughout the developmental process and operational phases of community associations.

## **INSURANCE TRUSTEE ENDORSEMENT REQUIREMENT**

CAI encourages the secondary mortgage market to implement the addition of an Insurance Trustee endorsement requirement for community association property insurance policies for new projects in order to provide protection to the assets of the community association in the event of a major catastrophe, and opposes naming Freddie Mac or other secondary mortgage market entity as a loss payee on a community association insurance policy.

## **LIABILITY OF COMMUNITY ASSOCIATION VOLUNTEERS**

CAI supports legislative protections against unwarranted legal liability for volunteers serving as members of a community association board of directors or committee, to enable them to make responsible judgments without fear of personal loss interfering with the judgment or decision making process. CAI further supports indemnification of community association volunteers and

the provision of directors and officer's insurance coverage as a common expense.

#### **LIMITED LIEN PRIORITY FOR COMMUNITY ASSOCIATION ASSESSMENTS**

CAI supports a six-month priority lien over the first mortgage for regularly paid assessments and modification of any laws restricting lending institutions from making loans which are subject to the community association assessment lien priority.

#### **LOCAL TAXATION AND PUBLIC SERVICES FOR COMMUNITY ASSOCIATIONS**

CAI believes that common interest communities should not be taxed for municipal services not provided. Separate assessment and taxation of common property is unjust double taxation. Homeowners should be allowed to deduct association assessments attributable to the performance of public functions.

#### **PRIVATE PROPERTY PROTECTION**

CAI supports protections that enable property owners to challenge and resolve efforts to take common property. CAI opposes legislative, regulatory or judicial actions that would limit or restrict the ability and rights of community associations to maintain control over association common property.

#### **QUALITY CONSTRUCTION AND RIGHTS OF ASSOCIATIONS AND BUILDERS IN THE EVENT OF DEFECTS**

CAI believes that builders and construction professionals should deliver a product made with quality workmanship and free from defects. CAI also recognizes that homeowners must be reasonable in their expectations of the quality of construction of their homes. CAI supports legislation and regulations concerning construction defects that adequately balance the rights and responsibilities of community associations, their boards and homeowners, and of builders and construction professionals.

#### **REASONABLE OCCUPANCY STANDARDS**

CAI supports the right of community associations to establish reasonable occupancy standards. CAI opposes the implementation and enforcement of the Federal Fair Housing Act in a way that treats reasonable occupancy standards as discrimination on the basis of familial status. Under no circumstances should an occupancy standard of two persons per bedroom plus infants constitute discrimination under the Federal Fair Housing Amendments Act.

#### **RENTERS IN COMMUNITY ASSOCIATIONS**

CAI supports a balanced approach to the treatment of tenants in community associations, while protecting traditional property rights, including reasonable regulation of transient occupancy, tenant compliance with association standards, and the integration of tenants into the community on an equal basis.

## **RULES DEVELOPMENT AND ENFORCEMENT**

CAI supports legally sound, fair and equitable rules development and enforcement procedures in community associations.

## **SUPPORT FOR THE UNIFORM ACTS**

CAI supports and recommends consideration and adoption of the one or more of the Uniform Community Association Acts by all states. In those states where it is not appropriate, practical or possible to adopt one or more of these uniform acts in their entirety, the Institute supports and recommends consideration of appropriate portions of these laws.

## **TELECOMMUNICATIONS**

CAI supports the growth of competition in the telecommunications and video programming marketplace among telephony, cable, satellite, television broadcast, wireless cable, and other providers so that community association residents will have access to advanced, innovative services. However, CAI opposes governmental regulation that would require community associations to permit telecommunications providers, video programming providers or individual association residents to install equipment or wiring on common property without prior association approval and control. CAI also opposes any federal or state initiatives that would limit a community association's ability to enter into telecommunications or video programming contracts.

## **TRANSITION OF COMMUNITY ASSOCIATION CONTROL FROM THE DEVELOPER TO HOMEOWNERS**

CAI recognizes that successful transition is the responsibility of the developer, through continuing training, education programs, and homeowner involvement in association governance.

## **VETERANS ADMINISTRATION GUARANTEEING LOANS SECURED BY SHARES OF STOCK IN A HOUSING COOPERATIVE**

CAI supports and urges that Congress amend 38 U.S.C. 1810, to allow the same veteran's benefits to a housing cooperative purchaser as it does to a purchaser of condominium housing.

# AESTHETICS AS AN ECONOMIC ISSUE

## Policy

*Community Associations Institute (CAI) recognizes the strong relationship between aesthetics and economic value, and strongly supports the fundamental and contractual right of common-interest communities to determine the degree of aesthetics controls that are reasonable and appropriate for their community. Furthermore we acknowledge that community associations have different and varied needs and standards, affecting appearance, attractiveness and quality of life – all impacting on the economic value of the communities' individual properties.*

*It is the Public Policy of CAI that aesthetics have an actual economic impact upon the value, valuation, intended lifestyle, and expectations of owner/members of community associations, condominiums, planned unit developments, and master community associations – all of which are organized as nonprofit corporations and governed by legally recorded documents and elected boards of directors.*

*CAI opposes any and all attempts at the federal, state, and local levels to enact laws or regulations that ignore or negate the economic importance of aesthetic controls in enabling the intent of the effects of such legislation. We consider the negation of aesthetic regulations an economic taking. CAI further encourages all of its constituent organizations, member organizations, and the individual members of any of these to actively support the economic imperatives of aesthetic controls when interfacing with any government body and its members whenever those bodies and their members are considering any legislation impinging on the orderly governance of aesthetic issues.*

## Background

Recent trends in legislative bodies from the federal government, state legislatures and local governments show an increasing amount of legislation which proposes to negate Covenants Conditions & Restrictions (CC&Rs) and other legal contracts between homeowners and their homeowners associations. This legislation takes many forms, from federal antennae regulations and solar hot water heaters to motorcycle exclusions and flag display. Possible future topics might be skylights, lawn statuary (e.g. pink flamingos), derelict cars, and banners.

For instance, the U.S. House of Representatives Commerce Committee report pertaining to Section 207 (104-204) of the 1996 Telecommunications Act has language essentially directing that aesthetic considerations could not be considered with respect to the private contracts entered into when a citizen selects to purchase a home in any development governed by CC&Rs and other previously legal private restrictions on the subject of TV antennas. The CC&Rs, etc., form the basis for setting the lifestyle in the community.

The community lifestyle is often an overriding consideration in the purchase of a residence. Often a prime consideration in this contract (acceptance of CC&Rs) is the aesthetic look of the community. In general, the value of the home (property) is proportional to the attractiveness of the neighborhood in which it is sited. A property in a decaying neighborhood generally depreciates, while one in an appealing neighborhood generally appreciates.

Thus, congressional action manifested in the 1996 Telecommunications Act puts aesthetic controls, and thus the property values on a slippery slope of devaluation in opposition to the contract (CC&Rs), freely entered into with the expectation of an enhanced lifestyle and appreciating property value.

Every effort on all legislative levels – starting with Congress and filtering down through the states, counties, special districts and cities – must be made to NOT encroach on the property valuation by countermanding freely entered into contractual CC&Rs and lifestyle of the community. At the same time community associations should enact reasonable aesthetic regulations that affect the desire of the community at large while not unduly discouraging the desire for individual expression.

**Adopted by the Board of Trustees, October 25, 1997**

# ALTERNATIVE DISPUTE RESOLUTION

## Policy

*Community Associations Institute (CAI) recognizes the need for and supports the use of alternative dispute resolution mechanisms to resolve disputes arising in community associations in appropriate cases.*

## Background

Alternative Dispute Resolution (ADR) is viewed as a substitute vehicle to settle disputes outside of the traditional courtroom setting. There are several different procedures that fall under the definition of ADR from mediation to court-mandated binding arbitration. It is understood that conflicts will arise and that there are different vehicles to help resolve these conflicts. Many have embraced alternative dispute resolution, for it gives both parties involved in the dispute a method for resolving the dispute outside of the traditional courtroom. Community associations should whenever possible and whenever appropriate resort to this type of conflict resolution process, for it usually helps contain the heavy cost of resolving the dispute. ADR is viewed as a legitimate resource for many and an option to avoid costly litigation in the traditional forum. It is respected by both state legislatures and state courts.

It is also understood that ADR may not be the ideal option for resolving a dispute but if possible should be used if it does not compromise the rights of the community association. CAI recognizes that the financial costs and emotional investments required by litigation may be a burden on and detriment to community associations and owners. CAI encourages the use of mediation and arbitration to resolve disputes involving the use of common property and common elements, the use of dwellings, and in architectural rules and regulations. CAI further encourages continuing education programs to assist its members in understanding the benefits and limitations of alternative dispute resolution mechanisms.

**Adopted by the Board of Trustees, May 6, 1989**

**Reviewed by the Public Policy Committee, October 6, 1993**

**Reaffirmed by the Board of Trustees, October 9, 1993**

**Amended Approved by the Government & Public Affairs Committee, October 17, 2001**

**Approved by the Board of Trustees, May 3, 2002**

# ASSESSMENT INCREASE LIMITATIONS

## Policy

*Community Associations Institute (CAI) supports the elimination of any requirement that community association documents prohibit the increase of assessments by the Board of Directors above a fixed percentage without approval of a vote of owners.*

## Background

The Veteran's Administration and other regulatory authorities require that documents for community associations prohibit the increase of assessments by the Board of Directors above a fixed percentage without approval by a vote of the owners.

Assessment increases should be based upon the directors' prudent estimate of the funds necessary to meet anticipated expenses which must be paid for the benefit of their owners pursuant to their fiduciary duties. In some cases, the association must pay essential, unavoidable, anticipated expenses to fulfill its statutory and legal duty to maintain the community, whether or not the members may so choose.

Assessment increase limitations on a percentage basis are arbitrary and not necessarily related to the reality of a given community.

**Adopted by the Executive Committee, April 10, 1983**

**Amended by the Board of Trustees, October 7, 1983**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

# COMMUNITY ASSOCIATION BUDGETS AND RESERVES

## Policy

*Community Associations Institute (CAI) believes it is imperative that all community associations adopt and use a financial planning and budget process that accurately reflects projected annual operating costs and long-term capital or major expenses (“reserves”) that results in a balanced budget.*

*CAI believes that developer and developer-controlled boards should prepare and disclose initial budgets to assure accurate estimation of projected operating costs and reserves. CAI also supports full and open disclosure to owners and the opportunity for participation by owners in the development of budgets.*

*Although CAI believes community associations should be encouraged to fund and maintain reserves, CAI opposes laws which would mandate how community associations fund and maintain reserves. CAI believes that the method and manner of funding reserves are best addressed by the members of the community association and its elected board of directors.*

## Background

Community associations are responsible for substantial activities involving maintenance, services, repair and replacement of facilities and equipment, and rules enforcement. Depending upon the extent of association activities and facilities, the costs of carrying out these activities are collected annually from owners through association assessments. These assessments are determined during the annual budget process. Special services or amenities may be funded through user fees. Sound financial management and administration of these services require a careful and prudent approach to the development of a budget that ensures necessary funds are available for the operation and replacement of facilities. Particularly challenging to the developer-controlled board of the association is the development and adoption of the initial budget. This is due to the lack of prior activity of the association against which to compare or judge the adequacy of the initial proposed budget.

Community association boards are obligated to maintain common property and facilities and must be prepared to maintain common property and facilities and repair and replace facilities and equipment as necessary. The replacement of major facilities involves considerable cost that must come from existing cash resources, operating assessments, special assessments or loans at the time such replacement or repairs are needed. Due to the potential costs of future major repair and replacement, concern exists about the ability of the association and its owners to meet those costs exclusively through assessments, special assessments or loans.

*Developers should:*

- Use the services of an independent professional to prepare the budget or, at a minimum, review and offer recommendations for changes to the budget to help assure accuracy. The independent professional should have no financial involvement with the developer and should have prior community association budgeting experience. Additionally, the professional should rely upon his or her expertise in budget preparation and review. A developer who lacks the necessary expertise should seek professional assistance.
- Organize the association as an entity with the authority to borrow.
- Formulate the association budget and ensure that resultant assessment fee levels are not adjusted or amended as a result of marketing or sales considerations.
- Ensure that the initial budget, budget presentation, and reserves analysis reflect not only annual operating considerations, but initial funding of reserves accounts established for future repair and

replacement of capital facilities and equipment.

All associations should consider and adopt a formal policy for meeting substantial future repair and replacement obligations. Associations should fund, in whole or in part, reserve accounts based upon replacement cost estimates and annual contributions necessary to assure that all or a substantial portion of those funds are available when needed. Reserves should never be established solely as a fixed percentage of the operating budget or of the value of the improvements.

While all associations should plan for meeting their substantial future repair and replacement financial obligations, the form of any plan should be tailored to the individual association and its members. Different methods of reserve funding analysis should be appropriate for different associations. For example, some associations may be faced with tax liabilities associated with the funding of reserves for certain components. Community associations with substantial limited use areas, whose maintenance is paid for by the owners using those areas, may treat those maintenance costs differently. The amount that members of one association are willing and able to pay for assessments that cover unfunded repair and replacement reserves will differ from amounts of other associations. The ability or the attractiveness of borrowing for long-term capital or major expenses will also differ. CAI opposes laws that do not allow community associations and their members to determine the appropriate level and method of funding for reserves for long-term capital or major expenses.

CAI shall encourage and educate lenders with an understanding of the credit worthiness of associations, adequate instruments for securing loans, and the opportunity to extend credit for the repair, expansion or replacement of improvements.

**Adopted by the Board of Trustees, April 10, 1983**  
**Amended and Approved by the Public Policy Committee, 1993**  
**Approved by the Board of Trustees, October 9, 1993**  
**Amended and Approved by the Public Policy Committee, May 11, 1996**  
**Approved by the Board of Trustees, May 11, 1996**  
**Amended and Approved by the Public Policy Committee, October 22, 1997**  
**Approved by the Public Affairs Council, October 22, 1997**  
**Amended and Approved by the Public Policy Committee, April 22, 1998**  
**Approved by the Public Affairs Council, April 22, 1998**  
**Approved by the Board of Trustees, April 25, 1998**

# COMMUNITY ASSOCIATION MANAGER CREDENTIALING

## Policy

*Community Associations Institute (CAI) encourages the national certification of community association managers. In states that propose mandatory regulation of community association managers, CAI will support a regulatory system that incorporates adequate protections for homeowners, mandatory education and testing on fundamental management knowledge, standards of conduct and appropriate insurance requirements. CAI opposes the regulation of community association managers as real estate brokers, agents or property managers.*

*To ensure adequate consumer protection and to obtain CAI support for the adoption of legislation regulating community association managers, the following provisions must be included in the legislation:*

### **1. Require an Objective Examination Which Tests Community Association Management Knowledge**

*If community association managers are to be regulated, they must be tested on their knowledge of community association management, not a different profession's body of knowledge or an exam based solely on state-specific law.*

*It is preferred that states use the examination for the Certified Manager of Community Associations (CMCA®) credential as the objective examination.*

*For states that want to test state-specific law, a separate section can be added to the CMCA examination.*

*If states reject the CMCA examination option, there must be an independent community association management examination based upon a role delineation study and standards of reliability and validity.*

*Adding community association management questions to a property management or real estate brokerage examination is unacceptable.*

### **2. Contain an Appropriate Definition of a Community Association Manager**

*If the term "community association manager" is not included or defined properly in legislation, community association managers may be required to become real estate brokers, property managers, or members of other professions.*

*"Community Association Managers" must be distinguished from brokers and property managers in any legislation*

*The ideal definition is included in CAI's model legislation.*

### **3. Require Relevant Community Association Management Education as a Prerequisite to Sitting for the Examination**

*Some type of community association management coursework must be required before any manager takes the examination.*

*Preferably, this educational requirement will be the M-100.*

*A general course in the fundamental issues of community association management is the minimum requirement.*

*A real estate brokerage course or a property management course is not acceptable.*

### **4. Require Relevant Continuing Education Requirements**

*Continuing education must be mandated.*

*The continuing education requirements must specifically relate to community association management or topics that assist in a manager's professional development (e.g., accounting, office administration and public administration).*

*At least some portion of the continuing education must cover state-specific law governing the operation of community associations.*

**5. Adherence to Basic Standards of Professional Conduct and an Enforcement Mechanism for the Standards**

*Community association managers must be required to follow professional standards.*

*The Standards of Professional Conduct created by the National Board of Certification for Community Association Managers (NBC-CAM) may be used as the foundation for a state's standards. However, the elements of the standards must be incorporated into any state ethical code.*

*There must be some type of enforcement of the ethical standards. Due process provisions must also be present in the provision. (Note: State procedures must provide at least the minimum due process provided by NBC-CAM's enforcement procedures.)*

**6. Any Governance Board Must Primarily Consist of Community Association Managers.**

*If a state creates governing boards to govern professional regulatory programs, a board created to oversee the regulation of community association managers must consist primarily of community association managers.*

*Any community association manager regulatory program should be administered by an entity that regulates occupations.*

*Unless a separate regulation and separate governing board are created, the Real Estate Commission of a particular state should not govern the community association manager regulatory program.*

**7. Contain Separate Program Administration if Regulated by an Existing State Agency that Regulates Other Professionals**

*The community association manager regulatory program must be administered by an entity that regulates occupations.*

*Unless a separate regulation and separate governing board are created, the Real Estate Commission of a particular state should not govern the community association manager regulatory program.*

**To enhance consumer protections, CAI strongly encourages legislation that contains the following provisions:**

**Grandfather Provisions**

*Grandfather provisions typically permit community association managers currently practicing in the state to become licensed and/or regulated without having to take the prerequisite educational course or the examination.*

*If a grandfather provision is present in the legislation and is contingent upon community association managers having already obtained a particular credential or designation from a trade association or other entity, an analysis should be done on all pertinent designation and credentialing programs sponsored by other associations or entities. All designations and credentials that have substantially similar requirement should be included in the legislation.*

*CAI strongly supports a grandfather provision. However, the absence of such a provision will not prohibit CAI/LACs from supporting the legislation.*

The following provisions are deemed to be unacceptable provisions in legislation that regulates community association managers. In the event one or more provisions are present in the legislation, CAI/LACs will not support the legislation:

**1. Requirement that community association managers work under a real estate broker**

Legislation may distinguish community association managers from property managers and real estate brokers. However, requiring community association managers to work under real estate brokers or property managers is inappropriate.

Real estate brokers and property managers do not have the proper experience or education to manage or mentor community association managers.

Community association management is a profession that is separate and distinct from any other type of real estate activity.

**2. Requirement that Community Association Managers Obtain a "Property Management" License**

A property management license ignores the distinction between property managers and community association managers.

Community association managers obtaining this license will not obtain the necessary education to manage community associations, since community associations will be only one of the several subjects required for a property management license.

**3. Real Estate Education Requirements**

Community association management and real estate brokerage require different knowledge and skill sets.

Requiring community association managers to take real estate educational courses eliminates the distinction between the two professions and inadequately prepares managers for community association management.

**4. Requirement for Community Association Managers to be licensed as Real Estate Brokers**

Brokers and community association managers perform different job functions that require vastly different knowledge.

Requiring community association managers to become brokers does not prepare managers for the daily tasks of operating community associations.

**5. Allowing real estate brokers to manage community associations without appropriate training, education and regulation.**

**6. No Experience Requirement**

The community association manager license, credential, certificate, or any other designation mandated by the legislation should be granted to those entering the profession. There should be no prerequisite license, such as a real estate salesperson's license.

**Background**

CAI supports the protection of homeowners and community associations through increasing

professionalism, the training of community association managers, and appropriate insurance coverage. CAI also supports the national certification program sponsored by the National Board of Certification for Community Association Managers (NBC-CAM).

State legislatures have attempted on several occasions to regulate community association managers. Past legislation has attempted to license community association managers as real estate brokers, salespersons, or property managers. By definition, property managers perform facilities management and leasing services – not community association management. Community association managers perform different job functions, requiring different knowledge than that required of real estate brokers, agents or property managers. Any regulation of community association managers as brokers, agents or property managers does not provide community association residents the assurance that these managers have the knowledge and skills required for professional community association management. While licensure of real estate brokers, agents or property managers protects consumers in sales transactions, it does not protect consumers during the ongoing management and operation of community associations.

In response to these initiatives, CAI has developed a national certification program designed specifically for community association managers. The national certification program, administered by NBC-CAM, grants the Certified Manager of Community Associations (CMCA®) credential to those candidates who demonstrate fundamental knowledge in the specific principles of community association management. By obtaining the CMCA credential, managers provide assurance to association boards, members, residents, employers, management firms, legislators and regulators that they meet the standard of knowledge required of entry-level community association managers. The national certification program also provides the assurance that a certified manager is committed to act professionally and continue his or her professional education.

The national certification program provides many of the same requirements as state licensure. The program requires prerequisite education; a comprehensive examination of entry-level knowledge that was developed based upon rigorous standards set forth by the National Organization for Competency Assurance; required adherence to Standards of Professional Conduct; enforcement of those Standards; and continuing education requirements – without requiring a state to create a new regulatory bureaucracy to administer a licensure program. Therefore, states do not have to license or otherwise regulate community association managers. States should accept NBC-CAM's national certification program in lieu of state licensure.

**Adopted by the Board of Trustees, October 1, 1994**  
**Amended and Approved by the Manager Credentialing Legislative Task Force, April 22, 1998**  
**Approved by the Public Affairs Council, April 22, 1998**  
**Approved by the Board of Trustees, April 25, 1998**  
**Amended and Approved by the Government & Public Affairs Committee, October 17, 2001**  
**Adopted by the Board of Trustees, October 19, 2001**

# COMMUNITY ASSOCIATION MEMBERS' & COMMUNITY ASSOCIATIONS' RIGHTS AND RESPONSIBILITIES

## Policy

*Community Associations Institute (CAI) supports a balance of the rights of an individual owner in a community association with the need for effective management of the affairs of the association for the benefit of all owners. Reasonable association procedures which empower the board of directors and staff of the community association to perform their obligations efficiently must take into account the rights of an individual owner to privacy, enjoyment of his or her home, and full participation in the community association.*

### Preamble:

Community Associations Institute is dedicated to fostering responsive, competent community associations that promote harmony, community, and responsible leadership. To this end, community association members and associations have rights and responsibilities that should be recognized in order to promote positive and thriving communities. The rights and responsibilities of each party are set forth below in the core areas of *Governance*, *Building Community*, and *Business Administration*.

## **BUILDING COMMUNITY**

### Community Association Members

#### **Right To:**

Live in a responsive, competent, and harmonious community association governed by a reasonable, empathetic and impartial board of directors that treats each member with respect.

#### **Responsible For:**

- Complying with the governing documents of the community.
- Responding to association-initiated surveys and providing personal insight to help the board establish and implement the association's vision and priorities.
- Volunteering to serve on association committees and on the board with a sense of goodwill and without any conflicts of interest.
- Endeavoring to continuously learn about their community association and to provide constructive input to promote the positive evolution of the community.
- Being informed about issues of concern.
- Reporting all maintenance problems.
- Notifying the board or manager regarding possible employee misbehavior as well as good work, and respecting the relationships between the board and its employees and contractors, and the manager and its employees and contractors.
- Being aware of the contents of the governing documents, and understanding and adhering to their provisions.
- Damage to the community's common areas caused or proximately caused by the member, the actions of family, guests and tenants.
- Being a good neighbor and honoring others' rights to peaceful enjoyment of their homes and common area.
- Maintenance of unit and exclusive use common area, as defined in the governing documents.

### **Association**

**Right To:**

- Receive goodwill and participation from members to ensure that members live in a responsive, competent, and harmonious community association.
- Have board members be treated with respect as neighbors and as volunteers who have committed personal time for the betterment of the community.
- Seek and receive assistance through community volunteers.

**Responsible For:**

- Including community building in their short-and long-term goals and planning.
- Fostering a sense of community spirit and encouraging participation in the community.
- Encouraging the establishment of committees whose purpose is to build a sense of community.
- Encouraging all members to have a stake in upholding the governing documents of the community.
- Acting as a facilitator and regarding organizational power as a temporary stewardship.
- Creating ongoing systems to welcome and orient new residents, including both owners and renters.
- Encouraging community activities, programs, and events geared toward openness, fun, and friendship.
- Operating in a professional manner and being responsive to the community's needs.
- Ensuring that community association rules and regulations represent a balance between the needs and obligations of the community and those of the individual.
- Dedicating themselves to continuous learning about and improvement of their association's operations.
  - Providing an open forum for member input which may be during board meetings or at such other times as best facilitates communications between members and the association.

## GOVERNANCE

### Community Association Member

**Right To:**

- Be treated fairly and honestly by board members.
- Obtain all association fiscal information (excluding information concerning a particular owner or individual employee).
- Quiet enjoyment of residence and common facilities for their intended purpose in accordance with the association's rules and regulations.
- Participate in the process of governance through attending meetings of members, participating in the election of board members, serving on a committee, or running for a seat on the board.
- Have access to association records as specified in governing documents and state law.
- Attend board meetings in whatever manner such meetings are being held (in person or via electronic or telephonic means).
- Learn about board actions, and have access to all approved minutes of the association (other than executive board minutes).
- Live in a home free of conditions within the control of the association that materially interfere with peace, comfort or health.
- Expect all board members to be fully informed and knowledgeable in the association's business matters and the contents of the governing documents, to expect them to seek professional advice when appropriate, and to carry out their fiduciary duties with reasonably prudent business judgment.
- Have legible copies of all governing documents of their community.

**Responsible For:**

- Participating in member activities, i.e. attending member meetings, serving on committees and participating in other activities which assist the board in governance or enhance the community.
- Participating directly in the governance by casting votes or sending proxies for every election or ballot.
- Respecting the roles of all participants in community governance, and recognizing and honoring those differences of opinion.
- Notifying board of directors when covenant violations are observed or discrepancies in governing documents are noted.

**Association****Right To:**

- Exercise the authority given to the association under the governing documents and the state laws in which the association is located.
- Make and enforce necessary rules and regulations as authorized in the governing documents.
- Set assessments, according to the governing documents and state laws, to provide for the maintenance and improvement of the common areas.
- Expect all owners to be aware of, and abide by, the provisions of the governing documents, and to expect all owners to abide by the governing documents and to carry out their responsibilities.
- Carry out its duties through the duly elected or appointed board, free of unwarranted interference or threats.

**Responsible For:**

- Carrying out the duties of the association through a duly elected or appointed board.
- Holding effective, efficient board meetings open for owners' attendance (excluding executive sessions).
- Providing members with access to corporate records (excluding those which infringe upon the privacy of other owners).
- Suggesting and presenting amendments to the governing documents for the owners' approval.
- Enacting reasonable, enforceable rules and notifying owners in a timely fashion of scheduled consideration or new or amended rules before adoption, diligently enforcing such rules in a non-arbitrary manner, and holding fair and impartial hearings for alleged violations.
- Conducting open, fair and honest elections.
- Diligently ensuring each board member fulfills his or her fiduciary duties.
- Obtaining insurance coverage as is required by the governing documents or which the board deems reasonable, including director and officer liability insurance.
- Not unlawfully interfering with an owner's access or peaceful enjoyment of the residence.

**BUSINESS ADMINISTRATION****Community Association Members****Right To:**

- Be apprised of and have available the business processes affecting homeowners, such as recreation class sign-up, hall rental, design permit applications, complaints, suggestions, etc. in a user

friendly process and format.

Have copies of proceedings of the board made available upon request, and receiving communications via media such as newsletters, closed circuit television and Internet.

Have an appeals process for decisions made that affect the members, either individually or collectively.

Have business decisions of the community association made which uphold a member's resale value of their ownership and do not lessen the other benefits of owning a home in the community association.

**Responsible For:**

Being aware of the overall direction and condition of the association from a business standpoint, and provide input and personal involvement when and where appropriate.

Understanding the tremendous responsibilities of the community association board and that business decisions are based on a variety of viewpoints and legal limitations and requirements.

Making timely payments of assessments of all types, fines, and other charges levied by association.

Keeping the association aware of their current address.

**Association**

**Right To:**

Be treated with respect when acting in good faith to make decisions in the best interests of the community association members and the association.

Conduct business of the association as prescribed by state and local laws, and association documents.

Exercise appropriate business judgment in matters not addressed or directed by state or local laws, or association documents.

Diligently collect all monies due from members.

**Responsible For:**

Acting and making decisions that are ethical and fair, and are for the benefit of the association as a whole, with latitude to make exceptions where warranted on an individual basis.

Providing for the maintenance of the association's assets, including common areas (grounds and facilities) and finances, by planning and implementing necessary insurance coverage, reserve studies and the resultant necessary reserves, and financial and management audits and reviews.

Ensuring proceedings are efficient and effective in conducting the business of the association, such that decisions are sound and decisive, based on information/data and professional advice where expertise is not available on the board or staff.

Making decisions that minimize the exposure of the association to liability and exercising reasonable business judgment in decision-making.

**Adopted by the Board of Trustees, March 29, 1985**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 10, 1993**

**New Policy Substituted by the Government & Public Affairs Committee on October 23, 2002**

**Adopted by the Board of Trustees on October 25, 2002**

# COMMUNITY ASSOCIATION TAXATION

## Policy

*Community Associations Institute (CAI) supports:*

- 1) Elimination of the residential requirements of Code Section 528;*
- 2) Elimination of the gross revenue of 60% test of Code Section 528;*
- 3) Elimination of the 90% expenditure test of Code Section 528;*
- 4) Elimination of the flat 30% tax rate of Code Section 528 and replacement with an average marginal tax rate, paid by individual taxpayers.*

## Background

The present tax situation for homeowner association is unique within the area of tax law. It is the only organization that may annually choose which of two forms it wishes to file. As a result, gross inequities, unintended results and a level of complexity have befuddled tax preparers nationwide. The tax law should be simplified and an element of fairness applied.

When Section 528 for homeowner associations was added to the Code, the Conference Committee report recommended a tax rate of 46% of the 1120-H tax return. This rate was subsequently modified to 30%, based on the concept that it was appropriate for an average taxpayer qualifying as a homeowner. Even when the Tax Reform Act of 1986 reduced the maximum tax rate for individuals to 28%, no relief was extended to homeowner associations. They continued to pay 2% more than the maximum rate, and likely 8.5% more than the average rate paid by many individual homeowners. Thus, for years, associations utilizing this filing method have been penalized by the inequities of the tax code.

Also, the residential qualification criteria of 90% of expenditures for exempt function purposes eliminates many associations who would like to take advantage of the provisions of Code Section 528.

For example, there may be two associations sitting side-by-side that operate identically in every respect except that one provides valet and housekeeping services to its members. The association who provides these additional services will likely not meet the 90% test, while the other will. Though these services will probably not generate additional taxable income, the association is penalized and unable to utilize this form.

Should member activities result in a net loss, it must be carried forward to future years and may not be offset against the taxable income or non-member income of the association. If, on the other hand, there is a membership income net, it is taxable to the association unless the provisions of Revenue Ruling 70-604 are followed. These provisions are the subject of great controversy among community associations, their accountants and attorneys.

Congress and the Internal Revenue Service have clearly created a quagmire that is consuming vast amounts of effort, resources and energy, resulting in confusion throughout the industry. It is time for Congress to readdress the issues and correct these ongoing problems.

Adopted by the Board of Trustees, October 26, 1986

Amended by the Public Policy Committee, October 6, 1993  
Approved by the Board of Trustees, October 9, 1993  
Amended by the Public Policy Committee, May 8, 1996  
Approved by the Board of Trustees, May 11, 1996

# DISPLAY OF THE AMERICAN FLAG

## Policy

*Community Associations Institute (CAI) strongly supports the elimination of community association restrictions that prohibit the display of a reasonably sized, removable American flag from a resident's exclusive use or limited common element areas, so long as the flag is displayed in accordance with the Federal Flag Code, 36 U.S.C. Sections 171-178, as amended. CAI further believes that community associations – not a state law – are best suited to determine the appropriate size, placement and installation of a flagpole.*

### Background

CAI strongly believes that all Americans should have the opportunity to display the U.S. flag to demonstrate their patriotism and support of our country. Communities shall be reasonable and allow the public display of our nation's most sacred emblem. To that end, CAI has supported numerous bills to overturn anti-flag rules, and in the fall of 2001, initiated *Operation Old Glory!* that recommended all associations review their rules on flag display with respect to reasonableness.

While CAI applauds efforts by associations and state legislatures to promote the flying of the American flag, we do not feel it is sensible to eliminate all mechanisms for consideration and approval of the size, placement or installation of a flagpole. Although flagpoles may be appropriate for some associations, they are clearly not appropriate for *all* community associations. An association, not state law, is the best mechanism for making a determination on height and placement parameters for a flagpole. Further, the association's architectural review process can best determine if the installation and location of a flagpole may threaten the community's health or safety.

A number of states including Arizona, Florida and South Carolina have passed legislation that aligns with CAI policy by acknowledging that all residents must be allowed to fly a flag from their home and by permitting reasonable regulations regarding the installation and placement of a permanent flagpole. These states recognize that flagpoles, like any permanent fixture, should be reviewed by an association's architectural review committee prior to construction.

CAI will support proposals that strike any restrictive covenant in a deed, homeowners' association documents, rental agreement, lease, or contract that may preclude the display of one portable, removable United States flag on the property. However, the flag must be displayed in a respectful manner, consistent with 36 U.S.C. Sections 171-178, as amended. In cases where the flagpole becomes an issue, CAI will support language that 1) requires an association to adopt reasonable rules and regulations regarding the placement and manner of display of the American flag; and 2) prevents an outright prohibition on flagpoles.

Approved by the Government & Public Affairs Committee, October 23, 2002  
Adopted by the Board of Trustees, October 26, 2002

# EFFECTIVE COLLECTION OF COMMUNITY ASSOCIATION ASSESSMENTS

## Policy

*Community Associations Institute (CAI) supports the creation and continuation of effective methods to ensure efficient, economic and successful community association collection procedures. CAI opposes the enactment of governmental limitations on effective collection of assessments, fees and other charges of community associations. CAI supports laws strengthening such collection methods and lien rights by associations, provided collection methods are undertaken in a fair and reasonable manner, giving the affected owners notice, the opportunity to be heard, and other due process protections. CAI also supports reasonable procedures to accommodate unit owners experiencing difficulties meeting their assessment obligations.*

### Background

Like a local government's dependence on tax revenues, the financial viability of most community associations depends on their ability to collect assessments to meet their continuing expenses (some of which are for functions that serve public health and welfare requirements).

Community associations require the revenue from these assessments to maintain common areas, buildings and facilities at community benefit, to provide community services as mandated in their governing documents, and to fulfill their fiduciary responsibilities to members.

Community associations must be able to collect promptly and efficiently their budgetary obligations from delinquent owners by avoiding expensive litigation and to minimize the burden on remaining owners of the common expenses during a long period of time for collection.

State or local governments, by statute, ordinance or regulation, may jeopardize the ability of community associations to adopt reasonable and necessary collection procedures to adequately fund the association to pursue recalcitrant, delinquent owners or to effectively have a strong lien against the owner's units.

In times of difficulties, illness, loss of employment or other economic problems, CAI advocates flexibility and compassion in the application of collection policies and procedures.

**Adopted by the Executive Committee, April 10, 1983**  
**Amended by the Public Policy Committee, October 6, 1993**  
**Approved by the Board of Trustees, October 9, 1993**

# ENVIRONMENTAL QUALITY

## Policy

*Community Associations Institute (CAI) strongly supports protection of the health and well-being of those who reside or work in common-interest communities by increasing sensitivity to environmental quality. CAI supports environmental quality in common-interest communities and remediation of environmental pollution, including harmful substances contained in building materials and landfills.*

*CAI further supports legislation that considers the financial burden of environmental regulations on owners and occupants of property and the unique characteristics of community associations. Their ownership patterns, financial capabilities and operational characteristics must be considered as legislative and regulatory decisions are made.*

### Background

In recent years, public sensitivity to the impact of environmental conditions has increased dramatically. Concern over the health hazards of building materials such as asbestos, insecticides such as chlordane, ozone in the atmosphere, and natural ground materials such as radon is increasing. Various governmental entities such as the Environmental Protection Agency have addressed questions relating to the quality of air and water through actions like the Clean Water Act. How common-interest communities should and can recognize and address these and similar issues are of concern to CAI.

Community associations, whether commercial or residential, recognize the importance of the quality of the environment in which they exist. That environment includes the air, water and ground around the association buildings, as well as the chemicals applied to the building in its construction and its maintenance. The possibility of detrimental impact on the health and well-being of the occupants is of major concern to these associations. Also of concern is the financial burden created by a mandate, whether it arises from a regulatory body or from a practical decision, to remove any contaminants to the environment. Additionally, the location, expense and identification of alternative mechanisms for maintenance and processing are of concern.

CAI strongly endorses the concept that all materials used in the construction of a building be as low in harmful substances as is reasonably possible. CAI further endorses the concept that the municipalities within which they are located take all reasonable and mandated means to reduce, eliminate and control environmental contaminants in the air, in the water and in chemicals used on the property.

Appropriate efforts should be made to inform and educate those groups, including management firms, and individuals, such as maintenance personnel, who have to deal with the environmental factors affecting community associations. Knowledge and understanding of what must be done, and by whom, is essential. CAI also recognizes that legislative and regulatory bodies, in their endeavors to eliminate environmental contaminants, may impose extraordinary financial burdens on the owners and/or occupants of the properties in question. Homeowners may be unfairly burdened by the costs of removing certain kinds of building contaminants. Like all taxpayers, occupants of common interest communities are also required to participate, through taxing procedures, in the costs which municipalities must assume to protect their water and air. We urge careful consideration of this problem and its recognition in the development of programs designed to improve environmental impact. Special funding programs, such as long-term loans and support funds, should be included in any market programs.

Adopted by the Executive Committee, September 28, 1988  
Reviewed by the Public Policy Committee, October 6, 1993  
Reaffirmed by the Board of Trustees, October 9, 1993

# FAIR DEBT COLLECTION PRACTICES ACT

## Policy

*Community Associations Institute (CAI) supports taking legislative, regulatory or judicial action to establish that community association assessments are not "consumer debt" as defined by the Fair Debt Collection Practices Act or similar state statutes in circuits that have not already defined them as such but also acknowledge that they are considered "consumer debt" and should act accordingly.*

### Background

The Fair Debt Collection Practices Act (FDCPA) was enacted in 1979 to deter unscrupulous creditors from using harassment techniques to recover debt. The Act proscribes the type of activities debt collectors may undertake and requires certain disclosures to consumers. Compliance by community association practitioners has been mostly voluntary in the past, though recently many circuit courts have found that community association assessments do indeed fall under the FDCPA definition of debt, therefore making compliance necessary.

It is imperative those attorneys, management companies and others recognize this new trend and that precautions be taken to prevent violating the act in circuits that have ruled that community association assessments do indeed fall into the category of consumer debt. The courts have held in several cases that the association fees satisfied the "personal, family or household" requirement of a debt under the FDCPA. These circuits include the 4<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup>, which encompass the following states: Maryland, Arizona, Virginia, Illinois, Indiana, Wisconsin, California, Utah, Wyoming, Colorado, New Mexico, Kansas and Oklahoma. Thus, individuals who collect assessments on behalf of homeowner associations in the affected states are considered debt collectors for purposes of compliance with the Act. The penalties for violation can often be punitive in nature. There are community associations that are not located in these circuits that may be affected in the future.

To combat such rulings, it is necessary to restore consensus that community association assessments do not fall within the FDCPA's definition of debt.

Approved by the Public Policy Committee, April 22, 1998

Approved by the Public Affairs Council, April 22, 1998

Approved by the Board of Trustees, April 25, 1998

Amended and Approved by the Government & Public Affairs Committee, October 17, 2001

Approved by the Board of Trustees, May 3, 2002

# FAIR HOUSING

## Policy

*Community Associations Institute (CAI) supports the right of all individuals to be free from illegal discrimination on the basis of race, creed, color, sex, national origin, familial status or handicap. CAI also supports the right of community associations to enforce their covenants, by-laws and rules, provided they do not illegally discriminate against any protected class.*

*CAI will progressively pursue fair and reasonable interpretations and administration of, or changes to, Fair Housing Acts and related legislation and regulations.*

### Background

In 1966, Congress adopted the Federal Fair Housing Act to prohibit discrimination on the basis of race, color, religion, sex or national origin. In 1989, Congress amended the Act by adding handicap and familial status to the list of classes protected from discrimination.

CAI is concerned with illegal discrimination in housing and the availability of adequate and appropriate housing for all age groups.

Furthermore, CAI is concerned about the availability of housing accessible to disabled individuals, and supports improvements which make residential dwellings and surrounding areas readily accessible and usable by disabled people.

On occasion, enforcement and implementation of the Federal Fair Housing Act has unreasonably burdened community associations. For instance, the Department of Housing and Urban Development's (HUD) regulations regarding housing for older persons was onerous and difficult to understand. Community associations were unsure whether they maintained sufficient facilities and programs for older persons to qualify as senior housing. CAI supported regulations and legislation simplifying and ultimately eliminating the requirement that community associations maintain special facilities and programs to qualify as housing for older persons. HUD also took the position that community associations could maintain reasonable occupancy restrictions without violating the Federal Fair Housing Act. Later, without notice to the public, HUD prosecuted discrimination claims based on occupancy restrictions that were reasonable, but higher than those permitted under state law. CAI supported legislation allowing community associations to maintain reasonable occupancy restrictions. CAI will continue to work for other fair and reasonable interpretations of, and changes to, the Federal Fair Housing Act.

**Adopted by the Board of Trustees, October 29, 1988**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

**Amended by the Public Policy Committee, October 28, 1998**

**Approved by the Government & Public Affairs Council, October 28, 1998**

**Approved by the Board of Trustees, October 31, 1998**

# FAIRNESS IN FEDERAL DISASTER RELIEF

## *Policy*

*Community Associations Institute (CAI) supports a legislative or regulatory change to the Robert T. Stafford Disaster Relief and Emergency Assistance Act so that community associations are eligible for federal assistance following a disaster, including but not limited to debris removal and cleanup.*

### *Background*

When disasters strike and the President declares a region to be a disaster area, the Federal Emergency Management Agency (FEMA) comes in to provide assistance, which may include debris cleanup and financial aid to eligible individuals and communities. However, existing FEMA policy specifically excludes community association roads from receiving federal assistance for debris cleanup. Moreover, there has never been a thorough vetting by legislators or regulators on how to classify community association roads.

At the core of this issue is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act", 42 U.S.C. 5121-5206 and Related Authorities) which governs FEMA. The Stafford Act allows for financial assistance to states, counties, municipalities, as well as eligible "private nonprofit facilities," which are defined as entities that "provide essential services of a government nature to the general public." Currently, community association roads do not meet the requirements to be deemed "essential" and, therefore, are not included on FEMA's list of eligible private nonprofit facilities.

Also, the Stafford Act gives the President the discretion to 1) use of Federal departments, agencies and instrumentalities to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and 2) make grants to any state or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters. But, in practice, assistance is not extended to community associations.

This policy has cost community associations millions of dollars over the years, despite the fact that, a) community association residents pay the same federal taxes as non-association residents and are equally in need of help as any other community after a disaster strikes, and b) most association roads, like any other municipal or county roads, are used by the local police, fire department, paramedics, school buses, and open to the public.

The Stafford Act was passed to "alleviate the suffering and damage which result from disasters" by "providing Federal assistance programs for both public and private losses sustained in disasters." Regardless of whether HOAs are viewed as public or private, the government has a duty not to exclude 1 in 6 homeowners from help in a time of need.

**Approved by the Government & Public Affairs Committee, October 27, 2004**  
**Adopted by the Board of Trustees, October 30, 2004**

# FEDERAL HOME LOAN MORTGAGE CORPORATION PROPOSED EARTHQUAKE REQUIREMENTS FOR CERTAIN CONDOMINIUMS IN CALIFORNIA

## Policy

*Community Associations Institute (CAI) supports a one-year delay in implementation of the Federal Home Loan Mortgage Corporation (Freddie Mac) Bulletin No. 95-2 and the appointment of an industry task force to develop better ways to protect Freddie Mac's interests without adverse impact on the availability of financing for condominium housing.*

### Background

Dedicated to the protection, preservation and enhancement of community association housing, CAI has become aware of a policy adopted by the Federal Home Loan Mortgage Corporation (Freddie Mac) as set forth in their Bulletin No. 95-2, to require property mortgages secured by condominiums located in zip code areas rated as "high" and some located in "moderate" risk for earthquakes to be insured against earthquake damage or destruction.

While CAI recognizes and appreciates Freddie Mac's desire to protect its mortgage loans and its determination not to be the "insurer of last resort" of property damaged on a mass scale by earthquakes, CAI believes that the implementation as outlined in Bulletin No. 95-2 will be devastating not only to condominiums but to other residential communities with homeowners' associations and to individual owners in these communities. It will also detrimentally affect builders, real estate agencies, bankers and others who depend on this housing industry.

CAI believes implementation of such a policy will place an increased demand on other participants in the secondary mortgage market, which they may be unable or unwilling to meet. CAI is also concerned that this action by Freddie Mac will set a precedent for similar action by other secondary mortgage market lending institutions.

CAI believes that other solutions are or may be available to address Freddie Mac's concerns, such as mandatory natural disaster insurance coverage for residential mortgages on a nationwide basis, the creation of stricter construction standards and/or better enforcement of existing standards, and the availability of separate structural and contents insurance coverage.

CAI therefore urges Freddie Mac to consider a postponement for at least one year of its projected July 1, 1995, implementation date of the requirement for earthquake insurance and pre-funded deductibles under Bulletin No. 95-2. CAI also supports and encourages efforts by Freddie Mac and other involved parties to seek solutions to the problem which are acceptable to condominium owners, community associations, casualty insurers, mortgage lenders and mortgage purchasers. CAI further volunteers its cooperation and assistance to create and participate in this industry-wide partnership.

Adopted by the Executive Committee, June 12, 1995

# FINANCING AVAILABILITY FOR COMMUNITY ASSOCIATION UNITS OR LOTS

## Policy

*Community Associations Institute (CAI) urges federal lending-related agencies and the secondary market to promote the availability of adequate financing programs for community association housing. CAI supports the development of consistent national legal and underwriting standards for community associations and reciprocal approval of community associations by federal agencies and the secondary mortgage market. To achieve these objectives:*

- *There should be reciprocal approval of community associations by federal agencies and the secondary mortgage market.*
- *Adoption of uniform state legislation will facilitate the development of national financing programs.*
- *Improved state enabling legislation or the adoption of uniform state enabling legislation should be pursued to enhance the feasibility and development of national financing programs, and that uniform regulations and standards by state housing finance agencies and other secondary mortgage markets should also be pursued.*

## Background

In recent years, community association homeownership has evolved to play an increasingly significant role in meeting housing needs of Americans. However, for any form of housing to realize its full potential for growth and utilization, the full range of traditional sources of financing of development and sales, such as Veterans Administration loan guarantees and Federal Housing Administration mortgage insurance, must be available to community association developments.

The relative newness and sudden growth of community associations, however, has meant that adequate public and private sector financing mechanisms have not always been as available or as flexible to this form of housing as it is for traditional single-family housing.

Adopted by the Executive Committee, April 10, 1983  
Amended and approved by the Board of Trustees, May 1, 1993  
Amended by the Public Policy Committee, October 6, 1993  
Approved by the Board of Trustees, October 9, 1993

# FLOOD INSURANCE

## Policy

*Community Associations Institute (CAI) believes that flood insurance should be available to all community associations, either through primary carriers or through a federally supported program. Such coverage should be made available at rates appropriate to the risk without a coinsurance requirement and on a basis that recognizes the ownership structure of the community association involved.*

*Such insurance coverage should be provided in a manner that is fitting for the exposure faced by the association, that distinguishes between the insurance responsibilities of the association and the individual residents and/or owners, and in accordance with the insurance responsibilities of the individual community associations, whether they be condominiums, cooperatives, homeowners associations or PUDs.*

*CAI urges the insurance industry to be responsive to the flood insurance needs of community associations by providing the necessary coverage based on need, risk and the practical considerations of community associations, both in general and as an optional alternative to government-provided flood insurance under the National Flood Insurance Program (NFIP).*

*At the same time CAI urges the Federal Emergency Management Agency (FEMA) to continue to review the terms, conditions, zone maps, and rating structure of the flood insurance coverage it provides community associations, under the NFIP, and to revise them as necessary to reflect the need, risk and financial and practical considerations of community associations.*

## Background

A significant number of community associations have an exposure to loss from the perils of flood, heavy rains, surface water, back ups of sewers and drains, and other water sources. The losses are often catastrophic in nature and impact both the association property and that of the unit owners. These exposures exist whether or not the property is located in a "hazard zone" as designated by FEMA. Many associations have endeavored to protect themselves against these perils through the purchase of insurance, as well as by employing various risk management techniques.

The degree of flood risk to association buildings depends on the design, value and location of the buildings. The risk and related loss that occurs from flooding events impacts both the association property and that of the unit owner.

In 1968, Congress created the National Flood Insurance Program (NFIP), both to fill a void due to the general unavailability of flood insurance for residential property and to encourage new construction in areas subject to flooding to be built more safely, thereby lowering the risk and exposure of life and property. The rates charged for new construction reflected the risk while rates charged older buildings reflected a Congressionally-mandated subsidy. The premiums collected for the newer buildings have paid for the limited losses to those buildings and related program expenses while the premiums for the subsidized, older buildings have been inadequate to pay for such losses and expenses.

The NFIP has largely had to rely on two factors to sell its policies: the Federal requirement that mortgage loans on buildings in high flood hazard areas had to have flood insurance and efforts to convince the public at risk to purchase the coverage. Insurance agents have been educated and encouraged to sell the

coverage. Although these efforts have resulted in over four million buildings and households being protected, the overall success has been limited, since most buildings at risk are still not covered by flood insurance.

Before the mid 1980s, the private insurance industry made flood insurance available as needed to serve the needs of community associations. In the mid-1980s, the industry reduced the amount of flood coverage offered in areas of both high and moderate risk. The resulting void caused FEMA to respond to requests for flood insurance by revising its coverage and by designing flood insurance products to address the void in the marketplace. FEMA's unique condominium coverage became available in 1989.

In 1994, FEMA revised its flood coverage for community associations with the Residential Condominium Building Association Policy (RCBAP) form, addressing a number of needs of such associations. For example, FEMA changed the coverage for condominiums from actual cash value to replacement cost, introduced a co-insurance clause to encourage the purchase of insurance-to-value, and adjusted its rates and building clauses to reflect more accurately risk and insurance-to-value. These rates were intended to make the program actuarially sound.

The insurance to value and co-insurance provisions have resulted in associations feeling as if they have been forced to purchase more coverage than they believe they need for the risk to which their buildings are exposed. The purchase of "full limits" is necessary to avoid suffering co-insurance penalties at the time of a loss. The insurance-to-value limits of coverage are significantly higher (sometimes 50 to 100 times) than the limits of coverage many associations purchased in the 1980s. Since the rates were not reduced commensurately, these higher amounts of coverage have resulted in flood insurance premiums that are many times the amounts the same associations paid in the 1980s.

Associations are concerned that the NFIP rates do not accurately reflect the risk to the association buildings, nor the insurance-to-value resulting from the higher amounts required to be purchased. Many believe that their exposure is less so that their allowable purchased limits should be less. Associations also believe that FEMA has not explored the full range of rate, building classification, deductible and coverage options that may be both available and appropriate for flood insurance for community associations. Furthermore, the rates are sufficiently high in "non-hazard" areas that many who have a remote risk of loss no longer believe that they can not afford to purchase the coverage. Since the inception of the RCBAP policies and related unit owner policies, complaints have been rampant. In addition to concerns about rates and pricing; apparent errors in classifying properties and in applying appropriate rates have been cited. Mortgage brokers need more education in how to apply the rules accurately and equitably.

It is in the interest of community associations, and thus CAI, to examine the nature of the coverage provided, the need for such coverage, and the possible areas of modification. The information gathered should be transmitted to FEMA with a strong recommendation for appropriate modification of the NFIP. Furthermore, CAI could act as a facilitator and participant in discussion with private insurance carriers and FEMA to study what participation they could assume.

**Approved by the Board of Trustees, endorsing instructions from the Public Policy Committee that staff and appropriate committee members make revisions to the background information per discussion at the committee meeting, October 31, 1998**

**Approved by the Board of Trustees, May 3, 2002**

# GOVERNMENT REGULATION OF COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute supports effective state legislation—when it is deemed necessary for consumer protection, conversion limitations, protections for ongoing operations or other additions to existing statutes or common law to ensure that community association housing is developed and maintained consistent with legitimate public policy objectives and standards that protect individual consumers, balancing the legitimate rights of the development industry.*

*Local legislation concerning the creation or governance of community associations is antithetical to a balanced, well-considered assessment of all issues and interests affecting community associations. It also encourages a patchwork of regulations within an individual state and is, therefore, better dealt with at the state level.*

## Background

Due to the growth and popularity of the community association form of homeownership, there has been considerable activity at the state and local level regarding legislative and regulatory proposals to control and oversee this process. There have also been proposals at the Congressional level to establish national regulatory procedures and requirements. As a result of the substantial increase in the number of developments and consumers affected by these various forms of ownership, states and localities have pursued legislative and regulatory proposals not only to provide for consumer protection and the achievement of public policy objectives in the sales and development process, but in recent times to regulate the ongoing operations of community associations as well.

State legislation should:

- Provide for full and fair protection of the consumer, including existing residents in conversion projects, through the disclosure of all material facts relating to the development, operation and ownership of such housing.
- Be comprehensive in its coverage of the material aspects of the development and operation of this housing form.
- Provide adequate standards to promote the operational viability of the community association.
- Promote reasonable flexibility in the development process.
- Reflect an equitable balance between the interest and needs of housing developers and consumers.
- Not arbitrarily preclude or inhibit the development of any form of community association housing.

CAI believes that the above objectives are best achieved by state governments and not by or through legislative or regulatory procedures at the federal level or at the local government level. The likely diversity of legislative policies adopted by local governments would unnecessarily inhibit the developmental process across local jurisdictional lines, while enactments at the federal level would be too broad in scope to achieve these goals and fail to reflect and respond to the unique character and needs of

local markets.

State Legislative Action Committees (LACs) and CAI chapter legislative committees should strongly discourage all local legislative efforts with respect to the creation or governance of common interest communities, and may engage in local legislative efforts only under the following circumstances:

1. The existing law in a particular state provides that local land use regulations supersede state statutes in controlling the creation or governance of common interest communities.

OR

Local legislative initiative is clearly inevitable due to circumstances particular to that locality, and therefore, as a practical matter, control over the creation and governance of common interest communities occurs at the local municipal or county level.

OR

Existing land use or other county regulations or municipal ordinances specifically control the creation or governance of common interest communities.

AND

2. The actions by the LAC or chapter legislative committees will not weaken statewide legislative efforts with respect to the creation or governance of common interest communities.

AND

3. Support for the particular local legislative effort does not contravene any other CAI Public Policy OR support will further a CAI Public Policy.

AND

4. Actions by a chapter legislative committee (as distinguished from a LAC) are approved by the state LAC executive committee and chapter board of directors.

It is the policy of CAI to recommend that when state governments amend their basic community association development laws they consider the need for updated and comprehensive legislation to regulate the development of community association housing consistent with the above goals. Moreover, in undertaking such review, state governments are urged to consider and give favorable treatment to one or more of the Uniform Community Association Acts.

**Adopted by the Executive Committee, April 10, 1993**  
**Amended by the Public Policy Committee, October 6, 1993**  
**Approved by the Board of Trustees, October 9, 1993**  
**Amended by the Public Policy Committee, May 8, 1996**  
**Amended by the Public Policy Committee, October 9, 1996**  
**Approved by the Public Affairs Council, October 9, 1996**  
**Amended by the Public Policy Committee, October 22, 1997**  
**Amended and Approved by the Public Affairs Council, October 22, 1997**  
**Amended and Approved by the Board of Trustees, October 25, 1997**

## CONSERVATION, SUSTAINABILITY & GREEN ISSUES

### Policy

*CAI supports environmental and energy efficiency policies that recognize and respect the governance and contractual obligations of community association residents as the best mechanism to enact sustainable environmental policies.*

*CAI supports efforts by state legislatures to empower community associations to build consensus-based solutions regarding environmental initiatives, and opposes government and interest group efforts to override community policy or deed restrictions on single interest issues.*

### Background

Community Associations are the outgrowth of smart land use planning. Community associations, which include condominiums, planned communities and cooperatives, represent a comprehensive approach to housing that encompasses individual lots or units as well as common areas such as parks, conservation/natural habitats and parks and recreational facilities. These amenities usually are supported and maintained by the residents of the community, enabling state and local authorities to focus their resources on other uses.

Conservation issues also benefit from the governance process within community associations. Deed restrictions, bylaws and rules provide a basis for implementation, enforcement and maintenance of policies and projects to address community concerns. This process provides a democratic forum for individuals in the community to collectively develop a range of solutions to meet the needs and values of the community. Fostering such diversity of approaches provides neighborhood-level laboratories to develop a range of sustainable solutions. Such local decision-making should be respected and incentivized.

**Adopted by the Board of Trustees, March 3, 2010**

# HOME-BASED BUSINESSES IN COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute (CAI) recognizes and supports the rights of residential common-interest communities to regulate the nature of commercial activities within their communities, including the option to choose whether individual residences can be used as home-based businesses.*

*CAI encourages associations that regulate commercial activities to restrict only those activities that the associations have reasonably determined have an adverse effect on the community and to permit childcare facilities, home office use and other home-based businesses that do not have adverse effects.*

*CAI supports the amendment of covenants to allow home-based businesses that do not have an adverse impact on the community. CAI opposes legislation that would supersede any covenant restrictions on home-based commercial activities.*

## Background

### *Childcare Facilities*

Common-interest communities, particularly condominiums, are increasingly faced with conflicts between the need for the care of young children outside the home but within a residential setting and the rights of association unit owners who feel negatively impacted by childcare facilities within their communities because they do not need or wish to provide such care within their associations. Although the need for childcare is increasing, the rights of property owners continue to require protection without the threat created by encroaching upon the owner's personal environment. The threat of setting a precedent, which will lead to further invasion of the rights of the individual, is of equal concern.

Society has traditionally perceived that the best site for the care of children is the home, as the healthiest and safest development occurs in that environment. With society's increasing need for care for children outside their own homes, an increasing number of families are seeking assistance with the care of children. Some of that care is provided by public entities, while other care is provided by an individual's employer. Nonetheless, a growing number of children are cared for within a private residential setting.

When that private residential setting is within a common-interest community, particularly a condominium unit, questions are raised relating to the definition of childcare as residential or commercial use, the rights and expectations of property owners, payment for incurred costs, and the demands of satisfying the "public good." The possible negative impact of such purchase of insurance for private childcare in a residential setting can be particularly critical, since documents, state law and the secondary mortgage market mandate the insurance. The impact of traffic, noise, confusion and wear and tear on facilities should also be recognized and addressed.

### *Home Office Use*

Home computers, internet access and e-mail are commonplace and allow business to be conducted from home.

Approximately 100,000 home-based businesses are established each month. By some estimates, as many as 40 million people work out of their homes. As computer access increases, the number of home-based businesses is expected to grow even more dramatically. This is exacerbated by local and state

governments that enact zoning ordinances and other laws to encourage home-based business.

However, many community associations are governed by covenants which place restrictions or outright bans on home-based business. Therefore, increased conflict between homeowners operating home-based businesses and association boards seeking to enforce the covenants that restrict business activity is sure to increase.

Most associations do not object to businesses that do not adversely affect the residential character of the community, even where a covenant prohibits all business activity. However, few associations have adopted a home-based business policy that establishes a limit on permitted business activity.

Adopting a policy on home-based business will provide homeowners with guidelines as to which business activities are allowed. In addition, a policy will make it easier for the board to enforce the covenants against truly objectionable business activity.

**Adopted by the Board of Trustees, April 25, 1998**

# HOMEOWNER INVOLVEMENT IN COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute (CAI) believes that direct and active homeowner involvement and participation in community associations and with the board of directors shall be promoted throughout all phases of development of a community association. The board of directors should actively encourage homeowners to participate in committees and other aspects of the association.*

### Background

It is inherent in the legal documents and conceptual framework of community associations that the association exists to assure that business, governance and community responsibilities are carried out. The association, through a governing body selected by the owners; acts on behalf of the owners to carry out these responsibilities. A workable, effective and responsive governance process is necessary for the association to achieve its mission. The association's organization and structure should encourage homeowner involvement and participation. For that involvement to be effective and successful, the following must be established:

- The governing structure must be explicitly defined, with the rules and responsibilities and authority of the board, committees and agents clearly delineated.
- Organizational goals which respond to the needs of all owners must be established and these goals must be reviewed and reevaluated on a periodic basis.
- An open communications process must be maintained on a continuous basis and should encourage information flow between the board, committees and individual residents.
- A committee process should be established to assure an opportunity for effective owner participation in meaningful activities and decisions to support the governance process.

Adopted by the Board of Trustees, April 8, 1983

Amended by the Public Policy Committee, October 6, 1993

Approved by the Board of Trustees, October 9, 1993

Amended and Approved by the Government & Public Affairs Committee, October 17, 2001

Approved by the Board of Trustees, May 3, 2002

# INSURANCE TRUSTEE ENDORSEMENT REQUIREMENT

## Policy

*Community Associations Institute (CAI) encourages the secondary mortgage market to implement the addition of an insurance trustee endorsement requirement for community association property insurance policies for new projects to provide protection to the assets of the community association in the event of a major catastrophe. CAI opposes naming Freddie Mac or other secondary mortgage market entity as a loss payee on a community association insurance policy.*

### Background

In response to concerns expressed by Freddie Mac, CAI's Insurance and Risk Management Committee has studied what steps are reasonable and appropriate to satisfy both Freddie Mac's interest, and that of the secondary mortgage market, in having insurance proceeds appropriately applied and the association's interests in the restoration of property after a major catastrophe. CAI, an organization dedicated to the protection, preservation and enhancement of community association housing, recognizes and appreciates Freddie Mac's desire to protect its mortgage loans and its determination not to be the "insurer of last resort" of property damaged on a mass scale by major catastrophes such as earthquakes, floods, volcanic eruptions, fires, and other physical calamities. CAI also believes that the remedies suggested by Freddie Mac, such as being named as a loss payee on each association policy, will detrimentally affect residential communities and other groups involved with such communities and fail to recognize the fundamental nature and structure of community associations. In addition, such remedies will not be tolerated by the insurance industry and will result in a dramatic reduction in the availability of private insurance for community associations.

Historically, Freddie Mac, for example, has sought to be named as a "loss payee" on community association policies to assure that a Freddie Mac representative controls the expenditure of insurance proceeds, either to rebuild a property, or at that representative's choice, to pay down the mortgage investment made by Freddie Mac. Such a mechanism is an anathema to community associations and to their current insurers.

After several years of study and analysis, CAI's Insurance and Risk Management Committee believes that a reasonable compromise can be found in the naming of an insurance trustee for property policies held by condominiums, cooperatives, and planned communities that insure on a blanket basis. Such trustees are currently required in certain states and in certain CC&Rs and can be charged with and expected to adjust any loss in accordance with the CC&Rs of the particular association. CAI endorses and supports the concept that an insurance trustee be named for each association. In most circumstances, that trustee can be the Board of Directors or Managers itself. When the loss exceeds 10% of the insurable replacement cost or \$1,000,000, whichever is greater, the association must select an independent trustee.

CAI therefore urges the secondary mortgage market to consider naming an insurance trustee as a mechanism that appropriately protects its interests while also providing community associations with the control that is responsive to their interests. Such a mechanism is viewed as likely to be acceptable to the insurance industry segments that are involved with community associations and, thus, should facilitate the continued availability of insurance to all residential community associations. CAI encourages members of the insurance industry to support and cooperate with this approach to solve a mutual problem.

CAI further recommends to the insurance industry that the cost of this insurance trustee clause be an extension of coverage as long as the community association does not use a public adjuster. CAI also

recommends that the insurance trustee have a meaningful role in property reconstruction and that any fees charged be capped at some reasonable amount. CAI also volunteers its assistance and expertise to the development of appropriate policy language to achieve this goal and to persuade insurers to use and accept such an endorsement.

**Approved by the Insurance & Risk Management Professionals Committee, May 3, 2000**

**Amended and approved by the Government & Public Affairs Council (with instructions that staff make appropriate grammatical, stylistic or other non-substantive changes to the policy subsequent to action by the Board of Trustees), May 3, 2000**

**Approved by the Board of Trustees (with the understanding that staff will make appropriate grammatical, stylistic or other non-substantive changes to the policy), May 6, 2000**

# LIABILITY OF COMMUNITY ASSOCIATION VOLUNTEERS

## Policy

*Community Associations Institute (CAI) supports legislative protections against unwarranted exposure to liability for volunteers serving as members of a community association board of directors or committee, to enable them to make responsible judgments without fear of personal loss interfering with their judgment or decision-making process. CAI further supports indemnification of community association volunteer directors and committee members and the provision of directors and officer's insurance coverage as a common expense.*

### Introduction

Community associations are unable to operate without effective leadership. That leadership is supplied, in most cases, by volunteer members of the association who are elected to serve on the board of directors and committees. Needless to say, such persons place themselves in extraordinarily responsible and difficult positions, ones in which they endeavor to act for the benefit of the other members of the community and for the community as a whole.

Frequently, the actions which are, or should, be taken for the maximum protection of, and improvement to, the community will be unsatisfactory to other members, and thus may generate a negative response from one or more members. Fear of reprisal in such instances can limit a director's willingness to act appropriately. Thus, it is in the best interests of the community association to encourage any mechanism which will allow volunteer directors and committee members within common interest communities to act with the highest measure of responsibility and objectivity. Such mechanisms include protection which can be afforded by association governing documents, by insurance programs, and by the law.

It is not the intent of CAI that protection be provided to those volunteer directors and committee members whose acts or omissions are willful, wanton or grossly negligent.

### Background

Traditionally, members of the boards of directors serve at the pleasure of the members of the association, and without compensation. These volunteers give of their personal time and energies frequently, at personal financial expense and exposure of their personal assets to claims, for the betterment of the members and proper governance of the association as a whole.

The defense of claims against volunteer directors and committee members merely spreads the cost of any defense and resulting damages to all members of the association. Additionally, many associations have elected to provide to the association and its volunteer directors and committee members the protection afforded by a directors and officers liability policy. In recognition of the weaknesses and inconsistencies of many such policy forms, CAI, in conjunction with certain insurance carriers, has developed a broad and responsive directors and officers liability insurance program for community associations.

In recent years, various legislative bodies have recognized the potential damage to the "volunteer system" in their respective states and, indeed, nationally by the failure to afford volunteers, who discharge their duties in good faith for the greater good of the community, some effective form of immunity. Thus, many

state legislatures, as well as the federal government, have sought to provide protection through statutory immunities from damage judgments against such volunteer directors and committee members in situations where their acts or omissions do not constitute gross negligence, illegal, willful or wanton misconduct, and are not activities outside the realm of the association's purposes, functions and duties or the scope of the directors' or committee members' duties.

**Adopted by the Board of Trustees, April 11, 1987**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

**Amended and Approved by the Government & Public Affairs Committee, October 17, 2001**

**Approved by the Board of Trustees, May 3, 2002**

# LIMITED LIEN PRIORITY FOR COMMUNITY ASSOCIATION ASSESSMENTS

## Policy

1. Community Associations Institute (CAI) believes community associations should be provided with a six-month assessment lien priority over the lien of a first mortgage or deed of trust.
2. This should apply only to monthly or periodic common expense assessments made by an association pursuant to an annual operating budget that would have become due in the absence of acceleration together with reasonable attorneys' fees to collect this amount, and not to fines, penalties, late charges or special assessments imposed by the association

CAI also supports modification of any laws or secondary mortgage market guidelines restricting or discouraging lending institutions from making loans that are subject to the community association assessment lien priority.

## Background

Throughout the United States, community associations with statutory or covenanted rights to assess their members for the insurance, maintenance, management or upkeep of property operated for the common benefit and enjoyment of their members have been bearing an ever-increasing burden of expenses and obligations historically paid for and performed by units of local governments.

While liens for real estate taxes and other governmental charges against a unit have priority over a first mortgage or deed of trust, absent legislative authorization, community housing association assessments have no such priority, even though the association serves a quasi-governmental function and the association continues to preserve the value of the lender's mortgage security by maintaining and insuring the building(s).

In the absence of an association assessment lien priority, non-defaulting unit owners are forced to pay for the maintenance and upkeep of units being held by foreclosing lenders. Aside from the obvious unfairness of this situation, severe hardships are thereby imposed upon non-defaulting unit owners, many of whom are already budgeted at a high percentage of their take home pay toward the cost of shelter.

In areas of the economy where multiple defaults are not uncommon, the resulting budget increases and/or special assessments community associations are compelled to make upon their non-defaulting unit owners to cover the shortfall caused by the defaulting owners has, in turn, pushed a number of such unit owners into default.

Lenders holding mortgages on both defaulting and non-defaulting units have a vested interest in insuring that associations have the wherewithal to continue to maintain the common and shared areas of developments during foreclosure proceedings as the provision of insurance, maintenance and security services is essential to the preservation of the value of their mortgage security interests.

Recognizing the hardships and dangers inherent in this situation, while being at the same time cognizant of the need to protect the integrity of the mortgage lending process, the National Conference of Commissioners on Uniform State Laws has provided for a limited six-month association lien priority over

the lien of a first mortgage or deed of trust in its Uniform Condominium Act and related Acts. This six month lien priority was provided with the express consent of advisors to the Conference from the Department of Housing and Urban Development, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

**Adopted by the Executive Committee, April 10, 1983**  
**Amended By the Board of Trustees, October 7, 1983**  
**Reviewed by the Public Policy Committee, October 6, 1993**  
**Reaffirmed by the Board of Trustees, October 9, 1993**

# LOCAL TAXATION AND PUBLIC SERVICES FOR COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute (CAI) supports the following policies:*

- 1. Property taxes imposed on homeowners of community association housing should be imposed on the same terms and conditions as those imposed on other homeowners. Separate assessment and taxation of the common property of a community association is unjust double taxation.*
- 2. The provision of public services to homeowners in community associations should be equal to services provided to all other homeowners. Otherwise, (a) public service providers should compensate community association homeowners for the cost of services not provided or, (b) Congress and the state legislatures should permit homeowners to deduct that portion of their community association assessments properly attributable to the association's performance of public functions, or to receive a credit equal to that amount.*

## Background

Throughout the United States, community associations with statutory or covenanted rights to assess their members for the maintenance, management or upkeep of property operated for the common benefit and enjoyment of their members have been bearing an ever-increasing burden of expenses and obligations historically paid for and performed by units of local governments.

The unique character of the community association form of ownership has frequently resulted in the value of common area improvements being improperly assessed and taxed twice: first to the community association and second to the individual association unit owners whose unit values reflect their exclusive right, together with the other members of their association, to make use of recreational buildings, swimming pools, tennis courts and similar common-area improvements.

Newly created community associations are increasingly required to provide their members with what have historically been considered "municipal" services. Association members must then typically pay the same local taxes as other neighboring homeowners even though trash collection, road and sidewalks maintenance and repair, street lighting, disposal of sewage, storm, flood and erosion control systems, shade and ornamental tree maintenance, security patrols for crime, disorder and public safety and other forms of public services are not made available to them.

Notwithstanding the obvious privatization of public services, community association members are doubly disadvantaged by not being able to deduct the portion of their association maintenance assessments attributable to public functions from their income for income tax purposes, as they can for municipal taxes.

There should be recognition that, apart from the homes themselves, common property in condominium and homeowner association developments has no value or, at best, a nominal value for property tax purposes. Since the title dedication of that property is to the exclusive benefit of the association homes, the value of the homes includes the value of the open space and improvements. Thus, any portion of the services provided for private benefit – such as maintenance, insurance and replacement of private buildings or portions of buildings occupied exclusively by members of the association, recreational facilities whose use is restricted to members of the association, and maintenance of restricted grounds and

accessory support areas such as parking lots and garages restricted to members of the associations should be excluded.

**Adopted by the Board of Trustees, October 29, 1988**  
**Amended by the Public Policy Committee, October 6, 1993**  
**Approved by the Board of Trustees, October 9, 1993**  
**Amended by the Government & Public Affairs Committee, October 17, 2001**  
**Approved by the Board of Trustees, May 3, 2002**

# PRIVATE PROPERTY PROTECTION

## Policy

*Community Associations Institute (CAI) supports protections that enable property owners to challenge and resolve efforts to take common or private property. CAI opposes legislative or judicial actions that would limit or restrict the ability and rights of community associations to maintain control over association common property.*

### Background

The U.S. Supreme Court has addressed the issue of the Takings Clause of the Fifth Amendment of the U.S. Constitution through several court cases by proclaiming a two-part test. The test's first prong is when a court must determine whether a governmental regulation substantially advances a legitimate state interest. The second prong is where a court must determine whether the government regulation has deprived the property owner of all economically viable use of his property. The Supreme Court has adopted and urges the use of this test when determining cases of private property protection. The Takings Clause of the Fifth Amendment states, "Nor shall private property be taken for public use, without just compensation." Protection of private property rights embodies an essential part of our constitutional form of government.

CAI recognizes the need for homeowners and community associations to rely on the standard handed down by the Supreme Court in private property disputes. CAI opposes legislative and judicial actions that would limit or restrict community associations' right or ability to maintain control over association common property.

Adopted by the Board of Trustees, October 25, 1997  
Approved by the Government & Public Affairs Committee, October 17, 2001  
Approved by the Board of Trustees, May 3, 2002

# QUALITY CONSTRUCTION AND RIGHTS OF ASSOCIATIONS AND BUILDERS IN THE EVENT OF DEFECTS

## Policy

*Community Associations Institute (CAI) believes that builders and construction professionals should deliver a product made with quality workmanship and free from defects. CAI also recognizes that homeowners must be reasonable in their expectations of the quality of construction of their homes. CAI supports legislation and regulations concerning construction defects that adequately balance the rights and responsibilities of community associations, their boards and homeowners and of builders and construction professionals, in the following ways:*

### *The Opportunity to Cure*

*Builders and construction professionals should be given an opportunity to present a reasonable plan to repair defective construction, and an association must have the opportunity to accept or reject the plan. Nothing should preclude an association from taking emergency measures to correct any defect that poses an immediate health or safety risk.*

### *Homeowner Involvement*

*Like any other aspect of community association operations, an open communications process that assures the flow of information among the board, committees, and the individual homeowners must be established. If the community association brings a claim for construction defects, it has the responsibility to communicate to homeowners the nature of the defects, the remedies sought, the timing of the claims process, and the anticipated fees and expenses to be incurred.*

### *Alternative Dispute Resolution*

*Either party should be allowed to request use of an alternative dispute resolution (ADR) method, as long as it is performed in a reasonable timeframe and under terms that satisfy all parties. CAI recognizes the need for and supports the use of fair ADR mechanisms to resolve disputes arising in community associations in appropriate cases.*

### *Right to Recovery*

*To enable the association and its homeowners to be in the position they would have been if no defects had existed, the association should have the right to make claims for defects affecting common elements or other components for which the association has repair or maintenance responsibilities, and to utilize alternate dispute resolution and opportunities to cure. Should an association take emergency measures to correct a defect that poses an immediate health or safety risk, such action should not preclude an association's right to recovery, provided that evidence of the defect is preserved. The prevailing party should be allowed to recover costs and attorney's fees.*

### *The Association's Right to Bring Claims*

*When the association has the right to make claims (except during the period of developer control), the board of directors, as the elected representative body of all homeowners, should be allowed to make claims without homeowner approval. An individual homeowner should not have the right to make a claim for defects in common elements, but should have the right to make a claim for defects in his or her unit or personal property. Developers, builders and construction professionals should not be able to avoid their obligation to remedy defects by maintaining control of the association beyond the time permitted by law to make claims for defects. CAI opposes legislative incentives that would encourage the use of less than acceptable repairs to defects.*

## Background

CAI understands that most builders and construction professionals provide quality workmanship and deliver homes free from defects. Still, there are cases where defects exist.

CAI believes that the best way to minimize construction defects is to improve oversight, inspections and other quality control processes during the initial planning and building phases. Nonetheless, when defects are discovered, associations should allow builders and construction professional's reasonable time to repair the defect prior to filing a lawsuit. Litigation should be the last resort.

In many states, homebuilders, construction professionals, trial attorneys and others have introduced legislation to change the way associations may pursue construction defect claims against a builder or developer. Some of these bills have also added procedural requirements with which a community association must comply prior to filing a lawsuit relative to construction defects, including consent from a majority of owners before filing suit. Proponents of such proposals claim that these types of provisions ensure that only meritorious lawsuits are filed. However, CAI contends that it is the fiduciary duty of boards of directors to make decisions about maintenance of property as provided in the governing documents, including decisions to file suit.

Recognizing that CAI's diverse membership is affected in different ways by construction defect issues, this policy attempts to balance the interests and needs of our members and to provide an equitable approach to construction defect legislation and regulations. CAI believes advocates from either perspective must balance their approach and embrace the best interests of community associations as a whole.

**Approved by the Government & Public Affairs Committee, October 29, 2003**  
**Adopted by the Board of Trustees, October 31, 2003**

# REASONABLE OCCUPANCY STANDARDS

## Policy

*Community Associations Institute (CAI) supports the right of community associations to establish reasonable occupancy standards. CAI opposes the implementation and enforcement of the Federal Fair Housing Act in a way that treats reasonable occupancy standards as discrimination on the basis of familial status. Under no circumstances should an occupancy standard of two persons per bedroom plus infants constitute discrimination under the Federal Fair Housing Amendments Act.*

### Background

The Federal Fair Housing Amendments Act ("FHAA") prohibits discrimination on the basis of familial status. Familial status discrimination is discrimination against families with minor children. When adopting regulations implementing the FHAA, the Department of Housing and Urban Development ("HUD") stated:

*[T]here is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable in any way to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit.*

Despite these statements, HUD and others have sought to expand the impact of the FHAA to prohibit reasonable occupancy standards. In some cases, occupancy restrictions of five persons were challenged on the basis of familial status discrimination. This position is directly contrary to HUD's initial position that reasonable occupancy requirements are valid.

As a result of the position of HUD and others, individuals are unable to determine which occupancy restrictions will be permitted. The Ninth Circuit Court of Appeals in *Pfaff v. United States* stated:

*We are most troubled that in this especially complex area of the law, in which private individuals may be subject to heavy-handed enforcement proceedings, the Secretary [of HUD] has done so little to enlighten the public as to what she expects of them. HUD should spare a thought for the law-abiding property owner, because the familial status amendment presents particularly difficult questions of compliance...If HUD finds the line-drawing questions difficult, imagine the position of [the law abiding property owner]. . . . We also express our hope that HUD will avoid such incidents in the future by providing the public with guidance adequate to enable honest people to comply with the 1988 Fair Housing Amendments Act. [Citations and footnotes omitted.]*

Like the law abiding property owner, community associations also have difficulty determining what occupancy restrictions are permitted under the FHAA. As a result, Congress has considered legislation that would reiterate the ability of owners and managers of property to impose reasonable occupancy restrictions. In addition, the legislation would expressly provide that under no circumstances should an occupancy standard of two persons per bedroom plus infants constitute discrimination under the FHAA. CAI believes that this legislation, if adopted, would protect the interests of families while allowing community associations to regulate reasonably the use of residences and common property.

**Approved by the Public Policy Committee, April 22, 1998**  
**Amended and Approved by the Public Affairs Council, April 22, 1998**  
**Adopted by the Board of Trustees, April 25, 1998**

# RENTERS IN COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute (CAI) supports a balanced approach to the treatment of tenants in community associations, while protecting traditional property rights, including reasonable regulation of transient occupancy, tenant compliance with association standards, and the integration of tenants into the community on an equal basis.*

### Background

The presence of renters in investor-owned units in primary residential community association developments is a very sensitive, complex and controversial issue. Some feel that non-owners will not respect association rules and regulations or exercise the same degree of care in use of community property. Moreover, as the proportion of renters to owner occupants increases, there is concern that the property values of the community will be adversely affected and that the available pool of talent to draw upon for participation in the governance process will be diminished to unacceptable levels.

The following constraints on rental housing within association communities should be considered:

- Including within the legal documents a requirement for a minimum lease period to limit the use of units on a transitory rental basis in a primary residential development (non-resort).
- Requiring investor-owners to use standard recommended association-developed lease terms which incorporate provisions setting forth the responsibilities of both the investor-owner and the tenant to comply with the legal documents and rules of the association, and which details the rights of the association to bring eviction proceedings for recurrent or substantial noncompliance with such rules and regulations after notice to the landlord with the opportunity to cure the default.
- Establishing as a policy of the association that tenants will be treated as equals within the community and afforded every opportunity to function as productive, contributing members of the community, including receiving information materials such as newsletters, the opportunity to attend meetings of the association and its committees and the opportunity to serve on such committees.
- Requiring owners to notify the association when the tenancy is changed and provide the association with the name of the new tenants and their other occupants and a receipt from the tenant of the documents, rules and other information the association may reasonably require, necessary to the operation of the association.

The use of the community association housing for rental occupancy is both natural and inevitable as a result of the normal process of sales and re-sales that occur in any form of housing. Owners, as a result of individual investment objectives, employment changes or personal preference make individual determinations as to the desirability of retaining unit ownership for purposes of rental housing. The challenge to associations is to balance the need for establishing reasonable limits on the proportion of rental units within the community and controls on the tenants' behavior while, on the other hand, not adversely affecting the owner's property rights and meeting the objectives for participation and involvement.

Adopted by the Board of Trustees, April 8, 1983

Amended by the Public Policy Committee, October 6, 1993  
Approved by the Board of Trustees, October 9, 1993

# RULES DEVELOPMENT AND ENFORCEMENT

## Policy

*Community Associations Institute (CAI) supports legally sound, fair and equitable rules development and enforcement procedures in community associations, according to the following principles:*

- 1) All rules and regulations should be based upon proper legal authority as contained in applicable legislation, court precedent and the governing documents of the community.*
- 2) Rules and regulations should be adopted solely to serve legitimate needs of the community, taking into consideration the personal and property interests of the homeowners.*
- 3) Homeowners should be afforded the opportunity to review and comment upon proposed rules and regulations prior to their adoption by the governing body and duly adopted rules and regulations should be regularly communicated in writing to members and residents.*
- 4) The community's enforcement process should make adequate accommodation for due process requirements.*
- 5) The governing body should enforce all rules and regulations in a consistent, even-handed manner with common sense and compassion*

## Background

The community association form of housing results in unique legal and social inter-dependence among property owners and residents. The characteristics of shared property ownership and mutual governing responsibilities create the need for rules and regulations dealing with both property rights and standards of personal conduct. The long-term operation and social success of a community association is heavily dependent upon a rules-making and rules-enforcement process which operates in the best interest of the community, enjoys the consent and support of community members and ensures fair and consistent treatment of all members. The rules enforcement process, as with governments, must be open in all respects and the rules process must be soundly based on legal authority and legal principles and practices as guided both by statute and court decisions.

Adopted by the Board of Trustees, April 8, 1983  
Amended by the Public Policy Committee, October 6, 1993  
Approved by the Board of Trustees, October 9, 1993

# SUPPORT FOR THE UNIFORM ACTS

## Policy

*Community Associations Institute (CAI) supports and recommends consideration and adoption of the one or more of the Uniform Community Association Acts by all states. In those states where it is not appropriate, practical or possible to adopt one or more of these uniform acts in their entirety, CAI supports and recommends consideration of appropriate portions of these laws.*

### Background

Since the original condominium statutes in the United States were drafted in the 1960s, we have had more than 20 years of experience in the development and operation of common-interest communities. This experience has shown that the early statutes, although thoughtfully drafted and the product of the best thought of their time, did not deal adequately and completely with many of the issues that we encounter in the development and operation of common-interest communities.

CAI recognizes that, in many states, adoption of Uniform Community Associations Acts in their entirety or in part is not possible because of other considerations of state law and the need for practical political compromise in the legislative process.

CAI recognizes that, in many states it is the widely held belief that while condominiums ought to be regulated by a comprehensive statutory scheme, other forms of community associations, such as cooperatives and planned unit developments (PUDs), should be governed by other statutory regulations and the common law.

CAI recognizes and believes that the individual CAI chapters and legislative action committees in various states are in the best position to determine what legislation can be passed in those states. As a result, CAI provides substantial latitude to them to determine which legislation to support in their states, as long as it is not inconsistent with other CAI policies.

**Adopted by the Board of Trustees, October 9, 1993**

# TELECOMMUNICATIONS

## Policy

*Community Associations Institute (CAI) supports the growth of competition in the telecommunications and video programming marketplace among telephone, cable, satellite, television broadcast, wireless cable, and other providers so community association residents have access to advanced, innovative services. However, CAI opposes governmental regulation that would require community associations to permit telecommunications providers, video programming providers or individual association residents to install equipment or wiring on common property without prior association approval and control. CAI also opposes any federal or state initiatives that would limit a community association's ability to enter into telecommunications or video programming contracts.*

### Background

Community associations support a fully competitive telecommunications and video programming marketplace. By free and open competition, community association residents, acting through their elected boards, are able to select the most cost effective and innovative providers to serve their communities.

There have been many recent federal and state efforts to increase competition between franchise cable and newer telecommunications and video programming providers. Some of these efforts will require community associations to permit any individual association resident or service provider to install equipment or wiring on common property. If adopted, these proposals would violate the Fifth Amendment of the U.S. Constitution, damage common property, and create conflicts among association residents. CAI opposes any such forced entry legislative or regulatory proposals.

Some governmental entities have also proposed limitations on the rights of community associations to enter into certain telecommunications and video programming contracts. Limitations on these rights would inhibit the ability of community associations to negotiate for the most competitive and cost effective services for their residents. Therefore, CAI opposes any initiatives that would limit community association contract rights.

As competition in the telecommunications and video programming marketplace continues to increase, new technologies will emerge that increase access to services without infringing on community association common property or contract rights. Federal and state governments should support initiatives that would promote the development of such technologies.

Approved by the Public Policy Committee, April 22, 1998  
Approved by the Public Affairs Council, April 22, 1998  
Adopted by the Board of Trustees, April 25, 1998

# TRANSITION OF COMMUNITY ASSOCIATION CONTROL FROM THE DEVELOPER TO HOMEOWNERS

## Policy

*Community Associations Institute (CAI) recognizes that successful transition is the responsibility of the developer. This can be accomplished through (1) continuing training and education programs for homeowners, (2) homeowner participation and involvement in association governance, (3) ongoing communication with residents, and (4) maintenance of the association as a legal entity, with its own separate records, funds and operations.*

### Background

In the life of every community association there is a time at which the control of the association is transferred from the developer to the owners. At the outset, the developer creates the association and initiates association operations and governance. At the conclusion, owners are in complete control of the association and have full responsibility for continued governance. A smooth and productive transition is one in which the interests of both the developer and the owners, collectively, are served to assure successful completion of the development and sales process, while at the same time assuring that the association operation functions effectively and successfully with appropriate leadership throughout. Successful transition takes careful planning and necessarily involves training and education of the owners so they are prepared to assume this responsibility as the developer hands it over to them.

CAI recommends several techniques which the developer should employ:

- Establish training programs early in the sales process to educate owners about their rights and responsibilities and the principles of community association governance.
- Provide opportunities for homeowners to have meaningful participation and involvement in the governance of the association well in advance of the actual transfer of majority control. Conduct open and continuous communication with residents to make them aware of issues and concerns relating to the governance of their association.
- From the inception, operate the association as a legal entity, with its own records, funds and operations, distinctly separate from the activities of the developer, and make such records readily available to the association and its members.
- Wherever public services funded through homeowner property taxation is not available to owners in community association developments, some system of credits, reimbursement or pro rata reduction in the tax imposed upon owners in such situations should be provided.

Adopted by CAI Board of Trustees, April 8, 1983  
Amended by the Public Policy Committee, October 6, 1993  
Approved by the Board of Trustees, October 9, 1993

# VETERANS ADMINISTRATION GUARANTEEING LOANS SECURED BY SHARES OF STOCK IN A HOUSING COOPERATIVE

## Policy

*Community Associations Institute (CAI) supports and urges that Congress amend 38 U.S.C. 1810 to add a new paragraph (a) (8) to read, "To purchase a unit in a housing cooperative by purchasing interest in that cooperative, if such development or project is approved by the Administrator under criteria which the Administrator shall prescribe in regulations."*

*The above language is consistent with the language authorizing the Veterans Administration (VA) to guarantee loans for a condominium housing unit. Therefore, the above language will extend the same veterans benefits to a person who chooses a cooperative housing unit.*

### Background

The VA has assisted many former servicemen and servicewomen buy a home by guaranteeing the loan on the home. The Federal legislation for Veterans Benefits provides, at 38 U.S.C. et seq., and particularly at paragraph 1810 of the guarantees provisions, for homes. The loans are guaranteed for the purposes of purchasing a dwelling, farm, farm residence or a unit in a condominium, and to improve a dwelling or farm residence.

Therefore, a veteran can buy a single-family detached home, townhouse, farm residence or condominium unit and have the loan guaranteed. However, the veteran is denied veterans benefits if he or she chooses to purchase a cooperative housing unit. FHA insures mortgages secured by shares of stock in a housing cooperative under § 203 (n) of the National Housing Act. The Federal Home Loan Bank Board permits Federally Chartered Savings and Loan Associations to lend funds for the purchase of stock in a housing cooperative. The Federal National Mortgage Association, in its Charter by Congress, is authorized to purchase loans secured by stock in a housing cooperative.

**Adopted by the Board of Trustees, April 1, 1984**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

Community Associations Institute  
225 Reinekers Lane, Suite 300  
Alexandria, VA 22314-2875  
(703)548-8600  
[www.caionline.org](http://www.caionline.org)

ISBN: 0-941301-56-7  
Item # 1567

#16

Commission Office Use Only  
 Date on Agenda: 9-9-10  
 Appt Time or New Business: 11:15 am

AGENDA REQUEST FORM

Name: KIRK DAVIS

Department or Entity: WAC - CLEAN WATER GRANT

Estimation of amount of time needed for appointment: 10 MINUTES

Date Requested - 1<sup>st</sup> Choice: 9 SEPT 11:15 AM

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

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

Subject: PAYMENT OF CLEAN WATER GRANT FUNDS  
PRIOR TO STATE PAYMENT TO COUNTY

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

STATE PAYMENT WILL BE 6 TO 8 WEEKS FROM  
INVOICE DATE. CONTRACTOR'S NORMALLY GET'S PAID  
EVERY 30 DAYS.

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

MOVE THAT COMMISSION PAY THE CLEAN WATER  
GRANT FUNDS PRIOR TO STATE'S PAYMENT TO THE  
COUNTY. PAY FROM GENERAL ACCOUNT  
AMOUNT \$ 39,592.44

USA

Commission Office Use Only

Date on Agenda:

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: 9 September 2010

Date Requested – 2<sup>nd</sup> Choice: 16 September 2010

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

Subject: Approval of Revision 002 to the General Fund.

**Please provide the County Commission with a description of your request or presentation, including any background information:** This revision accommodates the actions of the County Commission during Regular Session on 18 August 2010. Specifically: (1) restore funding to County Clerk's salary lines, (2) accomidate additional costs due to VOCA salary increases in Prosecuting Attorney's office, (3) Correct drop of \$12,000 from Sheriff- trip guards, and (4) restore \$112,000 in cuts to fire department contributions. *The issue of the 2.5% salary increase will be handled under Budget Revision 003.*

**Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):** Move to approve the resolution regarding budget revision 002 to the General Fund.

**Attachments:** (1) Request for Revision to Approved Budget, (2) detailed worksheet for underlying budget changes, (3) Draft resolution to revise the General Fund Budget.

Ora Ash, Director  
 West Virginia State Auditor's Office  
 200 West Main Street  
 Clarksburg, WV 26302  
 Phone: 627-2415 ext. 5114  
 Fax: 627-2417

**REQUEST FOR REVISION TO APPROVED BUDGET**

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

JEFFERSON COUNTY COMMISSION  
 GOVERNMENT ENTITY

PO BOX 250 124 E. WASHINGTON STREET  
 STREET OR PO BOX  
 CHARLES TOWN 25414  
 CITY ZIP CODE

CONTROL NUMBER  
**2011**  
 FY  
**001**  
 FUND  
**002**  
 REV. NO.  
**1 of 1**  
 PG. OF NO.

Person To Contact Regarding  
 Budget Revision: **F. Mark Schiavone**  
 Phone: **(304) 728-3337**  
 Fax: **(304) 724-2178**

County  
 Government Type

**REVENUES: (net each acct.)**

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|----------------|---------------------|----------------------------|------------|------------|----------------|
|                | #N/A                |                            |            |            |                |
|                | #N/A                |                            |            |            |                |
|                | #N/A                |                            |            |            |                |
|                | #N/A                |                            |            |            |                |
|                | #N/A                |                            |            |            |                |
|                | #N/A                |                            |            |            |                |
|                | #N/A                |                            |            |            |                |

**NET INCREASE/(DECREASE) Revenues (ALL PAGES)**

COUNTIES-TRANSFERS TO THE GENERAL FUND FROM OTHER FUNDS MUST HAVE PRIOR APPROVAL OF AUDITOR'S OFFICE

**EXPENDITURES: (net each account category)**

(WV CODE 7-1-9)

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION     | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|----------------|-------------------------|----------------------------|------------|------------|----------------|
| 401            | County Commission       | 3,167,236                  |            | 154,550    | 3,012,686      |
| 402            | County Clerk            | 828,495                    | 27,259     |            | 855,754        |
| 405            | Prosecuting Attorney    | 1,473,598                  | 3,291      |            | 1,476,889      |
| 700            | Sheriff-Law Enforcement | 2,950,945                  | 12,000     |            | 2,962,945      |
| 713            | Fire Department         | 315,000                    | 112,000    |            | 427,000        |
|                | #N/A                    |                            |            |            |                |
|                | #N/A                    |                            |            |            |                |
|                | #N/A                    |                            |            |            |                |
|                | #N/A                    |                            |            |            |                |
|                | #N/A                    |                            |            |            |                |
|                | #N/A                    |                            |            |            |                |
|                | #N/A                    |                            |            |            |                |
|                | #N/A                    |                            |            |            |                |

**NET INCREASE/(DECREASE) Expenditures**

APPROVED BY THE STATE AUDITOR

BY: Director, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

| REVENUES Account | Description | Curr Approp | Credit | Debit | Final Approp | Comments |
|------------------|-------------|-------------|--------|-------|--------------|----------|
|------------------|-------------|-------------|--------|-------|--------------|----------|

**NET REVENUE GAIN/LOSS** -

**EXPENDITURES**

| Line                      | Description                 | Current Approved | Credit  | Debit   | Final Revised | Notes |
|---------------------------|-----------------------------|------------------|---------|---------|---------------|-------|
| 001-401-05-568-000-GG-000 | Co Comm Other Contribution  | 2,177,543        |         | 154,550 | 2,022,993     | /1    |
| 001-402-01-103-000-GG-000 | CC Salary/Wages             | 425,500          | 22,688  |         | 448,188       |       |
| 001-402-01-104-000-GG-000 | CC FICA Expenses            | 31,059           | 1,406   |         | 32,465        |       |
| 001-402-01-104-001-GG-000 | CC Medicare Expenses        | 7,264            | 329     |         | 7,593         |       |
| 001-402-01-106-000-GG-000 | CC Retirement               | 62,618           | 2,836   |         | 65,454        |       |
| 001-402-01-103-000-GG-000 | Pros Atty Wages             | 905,359          | 2,738   |         | 908,097       |       |
| 001-402-01-104-000-GG-000 | Pros Atty FICA              | 62,122           | 170     |         | 62,292        |       |
| 001-402-01-104-001-GG-000 | Pros Atty Medicare          | 14,529           | 40      |         | 14,569        |       |
|                           |                             | 125,245          | 343     |         | 125,588       |       |
| 001-402-01-106-000-GG-000 | Pros Atty Retirement        |                  |         |         |               |       |
| 001-700-01-108-004-PS-000 | Sheriff Law - trip guards   | -                | 12,000  |         | 12,000        |       |
| 001-713-05-567-000-PS-000 | Fire Companies Contribution | 140,000          | 112,000 |         | 252,000       |       |

|                             | Begin Balance | Total Credit | Total Debit | End Balance |
|-----------------------------|---------------|--------------|-------------|-------------|
| Checksums - Interdepartment | 3,951,239     | 154,550      | 154,550     | 3,951,239   |
| Checksums - Intradepartment |               |              |             |             |
| Revenues                    |               |              |             |             |
| Expenditures                |               |              |             |             |

| SAO Tally | Department               | Begin Balance | Total Credit | Total Debit | End Balance |
|-----------|--------------------------|---------------|--------------|-------------|-------------|
|           | 401 County Comm          | 3,167,236     |              | 154,550     | 3,012,686   |
|           | 402 County Clerk         | 828,495       | 27,259       |             | 855,754     |
|           | 405 Prosecuting Attorney | 1,473,598     | 3,291        |             | 1,476,889   |
|           | 700 Sheriff Law          | 2,950,945     | 12,000       |             | 2,962,945   |
|           | 713 Fire Departments     | 315,000       | 112,000      |             | 427,000     |
|           | CHECKSUM                 | 8,735,274     | 154,550      | 154,550     | 8,735,274   |

**NOTES**

/1 Actions approved by Act of County Commission during budget workshop on Thursday 19 August 2010

RESOLUTION

At a regular session of the Jefferson County Commission, held 9th September, 2010, the following order was made and entered:

SUBJECT: The revision of the General Fund (Fund 001) Levy Estimate (Budget) for the County of Jefferson. The following resolution was offered:

RESOLVED: That subject to approval of the State Auditor as ex officio chief inspector of public offices, the county commission does hereby direct the budget be revised PRIOR TO THE EXPENDITURE OR OBLIGATION OF FUNDS FOR WHICH NO APPROPRIATION OR INSUFFICIENT APPROPRIATION CURRENTLY EXISTS, as shown on budget revision number 002, a copy of which is entered as part of this record.

The adoption of the foregoing resolution having been moved by \_\_\_\_\_, and duly seconded by \_\_\_\_\_, the vote thereon was as follows:

|       |     |
|-------|-----|
| _____ | Yes |
| _____ | Yes |
| _____ | Yes |
| _____ | Yes |
| _____ | Yes |

WHEREUPON, \_\_\_\_\_, declared said resolution duly adopted, and it is therefore ADJUDGED and ORDERED that said resolution be, and the same is, hereby adopted as so stated above, and F. Mark Schiavone is authorized to fix his signature on the attached "Request for Revision to Approved Budget" to be sent to the State Auditor for approval.

Commission Office Use Only

Date on Agenda:

Appt Time or New Business:

**AGENDA REQUEST FORM**

**Name:** F. Mark Schiavone

**Department or Entity:** DCPM

**Estimation of amount of time needed for appointment:** 5 min

**Date Requested – 1<sup>st</sup> Choice:** 9 September 2010

**Date Requested – 2<sup>nd</sup> Choice:** 16 September 2010

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

**Subject:** Request to add 2 Fire & EMS projects to FY 2011 CIP Impact Fee Fundable list.

**Please provide the County Commission with a description of your request or presentation, including any background information:** The Emergency Services Agency has been tasked with prioritizing CIP projects and with making recommendations concerning the funding of such projects using Impact Fees. The Impact Fee Coordinator certifies that the requested projects fall within the legal guidelines for funding using impact fees. This request is from the ESA to include two projects, listed in the FY 2011 CIP, for funding by impact fees.

**Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):** Move to approve placement of two projects requested by the Emergency Services Agency on the list of FY 2011 approved CIP projects for funding using Impact Fees.

**Attachments:** Request letter from Pete Kelly, President, Jefferson County Emergency Services Agency.



## JEFFERSON COUNTY EMERGENCY SERVICES AGENCY

419 Sixteenth Avenue  
Ranson, WV 25438  
E-mail – [jcesa@jcesa.org](mailto:jcesa@jcesa.org)  
Telephone – 304-728-3287  
Fax – 304-728-6221

August 27, 2010

Mr. Mark Schiavone, Director  
Department of Capital Planning & Management  
Jefferson County Commission  
P.O. Box 250  
Charles Town, WV 25414

Dear Mr. Schiavone:

At its regular meeting on August 17, 2010 the JCESA Board of Directors received a report from its Impact Fee Committee making recommendations for funding FY 2011 fee-fundable projects. The committee recommended funding two of those projects:

- \$65,000 for Independent Fire Company for an emergency backup power generator,
- \$100,000 for Middleway Fire Company for construction of a new building, contingent on their being successful in obtaining additional funding to construct the building.

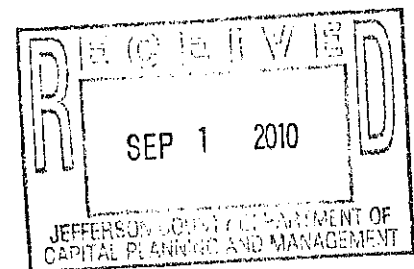
The board unanimously voted to approve both recommendations, subject to the funds being released if not spent during FY 2011. We respectfully request that you take any additional actions necessary to allocate these funds consistent with the restrictions as set out in this letter, and county policies related to the impact fee program.

Please contact Doug Pittinger if you have additional questions.

Sincerely,

R.M. "Pete" Kelley  
President

cc: JCESA Director, Doug Pittinger  
Independent Fire Company  
Middleway Fire Company



*It's About Saving Lives...*

#10

|                                                                                            |
|--------------------------------------------------------------------------------------------|
| <p>Commission Office Use Only</p> <p>Date on Agenda:</p> <p>Appt Time or New Business:</p> |
|--------------------------------------------------------------------------------------------|

**AGENDA REQUEST FORM**

Name: Robert Shirley

Department or Entity: Sheriff

Estimation of amount of time needed for appointment: 5 min

Date Requested – 1<sup>st</sup> Choice: 9/9/10

Date Requested – 2<sup>nd</sup> Choice: 9/16/10

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

Subject: **Appointment of Trip Guard/Substitute Bailiff**

Please provide the County Commission with a description of your request or presentation, including any background information: **I would like to appoint Clifford Eugene Taylor as a Trip Guard/Substitute Bailiff. This is an "as needed" position with out benefits.**

**At times, I am forced to pull a Deputy off of the street to go on a transport or to fill in at court, due to the lack of availability of current Trip Guards and Bailiffs. I would like to use Mr. Taylor to help alleviate this strain on my department.**

**Adding Mr. Taylor to the list of Trip Guards and Bailiffs will not have an impact on my budget.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **I move to appoint Clifford Eugene Taylor as Trip Guard and Substitute Bailiff.**

Attachments:

#11 A

# JEFFERSON COUNTY COMMISSION CHARLES TOWN, WV

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## *RESOLUTION*

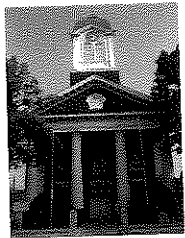
WHEREAS, The Jefferson County Commission has agreed to assist the Camp Frame 4-H Association to purchase plastic mattresses and other equipment and supplies as funds permit with funds made available through the Governor's Community Participation Grant program in the amount of \$5,000.

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.

\_\_\_\_\_  
LYN WIDMYER  
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 Participation Grant Program  
between the  
Jefferson County Commission  
and the  
Camp Frame 4-H Association

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the Jefferson County Commission and the Camp Frame 4-H Association its officers, agents, and representatives.

WITNESS THAT:

WHEREAS, the Jefferson County Commission has promised and agreed to act as funding agency to assist Camp Frame 4-H Association 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 Camp Frame 4-H Association.
2. The Camp Frame 4-H Association 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 Camp Frame 4-H Association and the President of the Jefferson County Commission.

JEFFERSON COUNTY COMMISSION

\_\_\_\_\_  
President

CAMP FRAME 4-H ASSOCIATION

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, 2007, 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 for improvements to Camp Frame in Jefferson County. Specifically, funds will be used to purchase plastic mattresses and other equipment and supplies as funds permit.
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, 2007, 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, 2011. 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, 2011.
5. **Compensation.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$5,000. This amount constitutes complete compensation for all services rendered. In

no instance shall the agreed upon compensation exceed \$5,000 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~~  
*Lyn Widmyer*

Federal Employee Identification Number

\_\_\_\_\_  
F.E.I.N.

# 110

# JEFFERSON COUNTY COMMISSION CHARLES TOWN, WV

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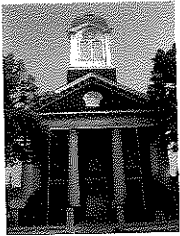
## *RESOLUTION*

WHEREAS, The Jefferson County Commission has agreed to assist the Jefferson County Memorial Park Pool to purchase pool vacuum system, exterior lighting, window frames, repair of the accessible entry ladder, and deck furniture with funds made available through the Governor's Community Participation Grant program in the amount of \$6,500.

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.

\_\_\_\_\_  
LYN WIDMYER  
PRESIDENT  
JEFFERSON COUNTY COMMISSION

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



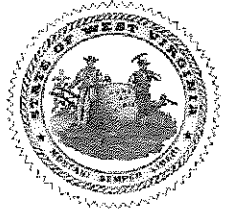
# THE COUNTY COMMISSION OF JEFFERSON COUNTY

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 Participation Grant  
between the  
Jefferson County Commission  
and the  
Jefferson County Memorial Park Pool

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the Jefferson County Commission and the Jefferson County Memorial Park Pool its officers, agents, and representatives.

WITNESS THAT:

WHEREAS, the Jefferson County Commission has promised and agreed to act as funding agency to assist Jefferson County Memorial Park Pool 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 Jefferson County Memorial Park Pool.
2. The Jefferson County Memorial Park Pool 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 Jefferson County Memorial Park Pool and the President of the Jefferson County Commission.

JEFFERSON COUNTY COMMISSION

\_\_\_\_\_  
President

JEFFERSON COUNTY MEMORIAL PARK POOL

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, 2009, 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 repair the poolhouse and replace equipment at the Jefferson County Memorial Park Pool. Purchases will include a pool vacuum system, exterior lighting, window frames, repair of the accessible entry ladder, and deck furniture.
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, 2009, 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, 2011. 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, 2011.

5. **Compensation.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$6,500. This amount constitutes complete compensation for all services rendered. In no instance shall the agreed upon compensation exceed \$6,500 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~~  
*Lyn Widmyer*

Federal Employee Identification Number

\_\_\_\_\_  
F.E.I.N.

# JEFFERSON COUNTY COMMISSION CHARLES TOWN, WV

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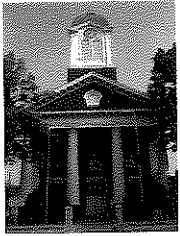
## *RESOLUTION*

WHEREAS, The Jefferson County Commission has agreed to assist the Eastern Area Health Education Center to promote Freedom's Run, a community walking and running event that includes the medical community, local parks, West Virginia University, and a local heritage team. The project will include magazine and newspaper advertising, design services, promotions, and equipment purchases and rentals with funds made available through the Governor's Community Participation Grant program in the amount of \$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.

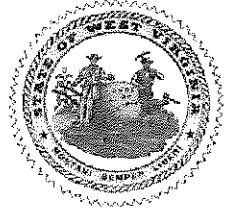
\_\_\_\_\_  
LYN WIDMYER  
PRESIDENT  
JEFFERSON COUNTY COMMISSION

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 Participation Grant Program  
between the  
Jefferson County Commission  
and the  
Eastern Area Health Education Center

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the Jefferson County Commission and the Eastern Area Health Education Center its officers, agents, and representatives.

WITNESS THAT:

WHEREAS, the Jefferson County Commission has promised and agreed to act as funding agency to assist Eastern Area Health Education Center 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 Eastern Area Health Education Center.
2. The Eastern Area Health Education Center 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 Eastern Area Health Education Center and the President of the Jefferson County Commission.

JEFFERSON COUNTY COMMISSION

\_\_\_\_\_  
President

EASTERN AREA HEALTH EDUCATION CENTER

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, 2009, 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 enable the Eastern Area Health Education Center to promote Freedom's Run, a community walking and running event that includes the medical community, local parks, West Virginia University, and a local heritage team. The project will include magazine and newspaper advertising, design services, promotion, and equipment purchases and rentals.
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, 2009, 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, 2011. 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, 2011.

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 A117.1-1961, 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.

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(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.

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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.

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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~~  
*Lyn Widmyer*

Federal Employee Identification Number

\_\_\_\_\_  
F.E.I.N.

# JEFFERSON COUNTY COMMISSION CHARLES TOWN, WV

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## RESOLUTION

The Jefferson County Commission met on the 9<sup>th</sup> day of September, 2010 with a quorum present and passed the following Resolution:

Be It Resolved that the County Commission of Jefferson County, West Virginia, hereby authorizes Lyn Widmyer, President of the Jefferson County Commission, to act on its behalf to enter into a contractual agreement with the West Virginia Development Office to receive and to act as the administrator of grant funds pursuant to provisions of the Community Participation Grant Program in the amount of \$10,000. The funds from this project will be used for the construction of a parking lot at the Briggs Animal Adoption Center.

Dated: \_\_\_\_\_

\_\_\_\_\_  
LYN WIDMYER  
PRESIDENT  
JEFFERSON COUNTY COMMISSION

# COMMUNITY PARTICIPATION GRANT PROGRAM

## FISCAL YEAR 2010

Deadline for Return:  
June 30, 2010

GRANTEE: Jefferson County Commission PROJECT NUMBER: 10LEDA0148  
PROJECT TITLE: National Humane Society/Briggs Adoption Center AMOUNT: \$10,000

### SECTION 1. GRANTEE

Local Governing Agency (Grantee): Jefferson County Commission Project Title: Parking lot Expansion  
Street Address: 124 East Washington Street City: Charles Town Zip: 25414  
Chief Elected Official: Lyn Widmyer President Email: sandy@JeffersonCountyWV.org  
Phone: (304) 728-3284 Fax: (304) 725-7916 Form Completed By: Jim Taylor  
Brief Description of Project: Parking lot Expansion consisting 20 to 26 spaces.

### SECTION 2. NONPROFIT ORGANIZATION (SUBGRANTEE)

Are funds requested for a nonprofit organization?  Yes  No  
Nonprofit Organization: NATIONAL HUMANE EDUCATION SOCIETY Executive Director: Jim Taylor  
Street Address: 3731 Berryville Pike City: Charles Town State/Zip: WV 25414  
Phone: (304) 725-0506 Fax: (304) 725-1523 Email: jtaylor@nhes.org  
Website: www.nhes.org IRS Cert. (Ex: 501(c) 3, etc.): 501(c)3 Yr. Cert: 1950  
 Federal Nonprofit Certification is attached. This application **WILL NOT** be processed without Federal nonprofit status. -B  
 State Regulation Checklist for Nonprofit Organization is attached. This application **WILL NOT** be processed without this Checklist. -A  
 Brochure or web pages explaining mission of the nonprofit organization and services it provides are attached. -C

### SECTION 3. ELIGIBLE PROJECTS

ELIGIBLE activities include, but are not limited to, permanent public improvements related to the following:

- |                                                                   |                                                          |
|-------------------------------------------------------------------|----------------------------------------------------------|
| <input checked="" type="checkbox"/> Business and Industrial Parks | <input type="checkbox"/> Land and Property Acquisition   |
| <input type="checkbox"/> City Hall and Courthouse Facilities      | <input type="checkbox"/> Libraries                       |
| <input checked="" type="checkbox"/> Construction and Renovation   | <input type="checkbox"/> Parks and Recreation            |
| <input type="checkbox"/> Demolition                               | <input checked="" type="checkbox"/> Parking Facilities   |
| <input type="checkbox"/> Economic Development                     | <input type="checkbox"/> Preservation and Beautification |
| <input type="checkbox"/> Emergency Services                       | <input type="checkbox"/> Public Safety                   |
| <input type="checkbox"/> Flood and Storm Drainage                 | <input type="checkbox"/> Street and Sidewalk Repair      |
| <input type="checkbox"/> Infrastructure                           | <input type="checkbox"/> Technology                      |
| <input type="checkbox"/> Law Enforcement                          | <input type="checkbox"/> Water, Wastewater Facilities    |

INELIGIBLE activities include, but are not limited to, expendable items related to the following:

- |                                                  |                                                      |
|--------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Administrative costs    | <input type="checkbox"/> Private Property            |
| <input type="checkbox"/> Food                    | <input type="checkbox"/> Rent                        |
| <input type="checkbox"/> Clothing                | <input type="checkbox"/> Maintenance                 |
| <input type="checkbox"/> Homeowners Associations | <input type="checkbox"/> Salaries                    |
| <input type="checkbox"/> Insurance Premiums      | <input type="checkbox"/> Scholarships                |
| <input type="checkbox"/> Maintenance             | <input type="checkbox"/> Sports Uniforms             |
| <input type="checkbox"/> Medical Programs        | <input type="checkbox"/> Training and Speakers' Fees |
| <input type="checkbox"/> National Dues           | <input type="checkbox"/> Travel Expenses             |
| <input type="checkbox"/> Postage                 | <input type="checkbox"/> Utility Costs               |

### SECTION 3. PROJECT OWNER AND LOCATION

The use of grant funds at/for private property or private gain or use is prohibited. Project sites and buildings must be publicly owned or owned by a federally certified nonprofit organization.

Owner of project site, property or building: NATIONAL HUMANE EDUCATION SOCIETY (NHES) Vicinity/site plan attached?  Yes  No

Location and address where grant funds will be used (sufficient to drive to site): 3731 Berryville Pike - located approximately 6 miles south of Charles Town on the west side of Route 340

Upon completion, what government agency will own, operate, or be responsible for the project?  
 Yes  No Project site(s) or building(s) are owned by a government agency.  
 Yes  No Project site(s) or building(s) are owned by a nonprofit organization. (If yes, attach copy of property deed). F 2

## SECTION 4. FUNDING SUMMARY

A minimum of 10 percent is required for a local match. Attach commitment letters for each funding source listed below.

|                                     | Amount           | Source                                            | Status                          | Documentation            |
|-------------------------------------|------------------|---------------------------------------------------|---------------------------------|--------------------------|
|                                     |                  | Grant Program, Bank Loan, Fundraising, Fees, etc. | Pending, Approved, Ongoing etc. | Letter, Resolution, etc. |
| a. Grant Funds Requested            | \$ 10,000        | Community Participation Grant Program             | Approved                        | Letter Attached G        |
| b. Local Funds (10% of grant funds) | \$ 12,400 - plus | LOCAL Fundraiser                                  | In the Bank                     | Letter Attached H        |
| c. Other Funds                      | \$               |                                                   |                                 |                          |
| d. Other Funds                      | \$               |                                                   |                                 |                          |
| e. Other Funds                      | \$               |                                                   |                                 |                          |
| Total Project Cost                  | \$               |                                                   |                                 |                          |

## SECTION 5. CERTIFICATION OF STATE REGULATIONS

**CHECK ITEMS 1-9 BELOW** to certify compliance with the following laws, regulations and requirements:

1.  **Competitive bids are required for purchases exceeding \$2,500 in cost.**  
Competitive bidding requirements, at a minimum, are as follows:
 

|                                                                                                                                                                    |                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>▪ \$2,500 or less</li> <li>▪ \$2,500.01 to \$5,000</li> <li>▪ \$5,000.01 to \$25,000</li> <li>▪ \$25,000 or more</li> </ul> | <ul style="list-style-type: none"> <li>▪ No bids required; however, competition is encouraged.</li> <li>▪ Three verbal bids documented on a verbal bid summary.</li> <li>▪ Three written bids required.</li> <li>▪ Class II Legal Ads required.</li> </ul> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
  
2.  **Sealed bids are required for any portion of this project with an estimated value of more than \$25,000.**  
Any attempt to segregate the project into sections of less than \$25,000 shall be cause for termination. Bids shall be obtained by public notice as a Class II legal advertisement in compliance with West Virginia Code §59-3. The ad must be published in the newspaper with the largest circulation in the area once a week for two successive weeks prior to the final bid date.
  
3.  **State prevailing wages will be paid for all construction associated with this project, regardless of the cost.**  
Wage rates may be obtained from the West Virginia Secretary of State at 304-558-6000, or [www.wvsos.com](http://www.wvsos.com). If federal funds are included, the highest rate (West Virginia or Davis-Bacon) will be paid. All contractors must have a West Virginia contractor's license. All construction must comply with **West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A**. These regulations apply to the employment of any contractor or subcontractor for this project, including the following trades and activities:
 

|                                                                                                                                                               |                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>▪ Construction</li> <li>▪ Reconstruction</li> <li>▪ Demolition</li> <li>▪ Enlargement</li> <li>▪ Remodeling</li> </ul> | <ul style="list-style-type: none"> <li>▪ Painting</li> <li>▪ Decoration</li> <li>▪ Alteration</li> <li>▪ Repair</li> <li>▪ Expansion</li> </ul> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
  
4.  **The following documents will be required for the release of grant funds.**
  - Copies of bids, quotes or bid summary
  - Copy of legal ad, which must require prevailing wages for construction
  - Copies of certified payroll records
  - Copies of invoices
  
5.  **Counties and municipalities may sponsor the applications of federally certified nonprofit organizations.**  
As the grantee, the county or municipality must act as the administrator of any grant funds provided to nonprofit organizations, and must maintain fiduciary responsibility for the expenditure of funds. Grantees are encouraged to execute intergovernmental agreements with subgrantees so that property acquired with grant funds will revert to the grantee if the nonprofit organization is dissolved.
  
6.  **State requirements for bidding and prevailing wage apply to federally certified nonprofit organizations.**  
Funds provided to counties and municipalities for grants to nonprofit organization are subject to all state and local requirements regarding audits, competitive bidding and prevailing wages. All construction must comply with **West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A**.
  
7.  **Professional services shall be obtained through a request for proposals. Architectural or engineering services shall be pursued in accordance with of the West Virginia Code §5G.**
  
8.  **No costs should be incurred or commitments made relative to a grant prior to the approval of this grant and the execution of a contract with the State of West Virginia.**
  
9.  **The use of grant funds at/for private property or private gain is prohibited. Project sites and buildings must be publicly owned or owned by a federally certified nonprofit organization.**

**SECTION 6. PROJECT DESCRIPTION**

Describe in **SPECIFIC TERMS** the scope of work to be completed and the proposed use(s) of grant funds.

The construction of a 20 to 26 spaces parking lot at the Briggs Animal Adoption Center.

## **SECTION 7. ASSURANCES**

**The applicant hereby assures and certifies that it shall comply with the following regulations, policies, and requirements:**

- A. The applicant assures the State that it will perform the work for which the grant was made as determined by the State.
- B. The applicant assures the State that it has or will secure qualified personnel to administer a grant, and that the costs to administer the grant will be paid for by the applicant.
- C. The applicant assures the State that it will have started work on the project before the end of the fiscal year in which the grant award is made.
- D. The applicant assures the State that it understands that the amount of the grant award cannot be increased without the written consent of the Governor.
- E. The applicant assures the State that payment for work performed will be requested in writing with copies of invoices attached that document the costs of each work segment making up the total amount of funds requested.
- F. The applicant assures the State that it understands that ten percent of the grant award will be held by the State as retainage, pending receipt of a written certificate of substantial completion attached to any final invoices for work not already paid.
- G. The applicant assures the State that it understands that by letter the State can terminate for cause an applicant's grant agreement with the amount of funds recovered equal to the percentage of incomplete work. The applicant further assures the State that it understands that it can be terminated by letter any grant agreement with the State before costs are incurred on the project.
- H. The applicant assures the State that any changes in the scope of work specified in a grant agreement will first be submitted in writing to the State for approval by change order.
- I. The applicant assures the State that in its hiring practices for work to be performed it will comply with the equal employment provisions of Titles VI and VII of the 1964 Civil Rights Act, and Presidential Executive Orders 11246 and 11375, as amended.
- J. **The applicant assures the State that competitive bids will be solicited on any major work element exceeding \$2,500 in cost.** Competitive bidding shall be pursued in all instances.
- K. **Competitive bidding 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.**
- L. **The Grantee shall solicit competitive, sealed bids for commodities and supplies related to this project which have an estimated value of more than \$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.** The receipt and utilization of funds procured through this program 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 the West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A.
- M. **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 prior to the final bid date.
- N. The applicant assures the State that **State prevailing wage rates will be paid on contract construction unless federal funds are included in the project, in which case, the higher of the State's or Davis-Bacon wage rates will be paid on all contract construction.**
- O. **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.**
- P. The applicant assures the State that any part of the project to be occupied by the general public will be made accessible to the handicapped.
- Q. The applicant assures the State that any permits, licenses, or other requirements of particular State or Federal agencies necessary for the project's design, construction, or operation will be secured.
- R. The applicant assures the State that it will not subgrant any of the grant funds received to any of its officials or employees or the members of their families or to employees of the WVDO or members of the State Legislature in any contracts awarded for work to be performed.
- S. The applicant assures the State that it will maintain and have available for inspection on written request by the State all records kept on the project including bid documents, copies of all contracts, contractors' payrolls, time sheets, and invoices. The applicant further assures the State that it will schedule an audit of any grant funds to be included in its annual audit as performed by the State Tax Department.
- T. The applicant assures the State, by evidence of attaching a resolution, motion, or similar action passed by its governing body, that it has the legal authority to apply for this grant, commit any local matching shares, authorize the person signing the grant to act as an agent for the applicant to answer any questions by the State about the application, and to abide by the understandings and assurances described in this section.
- U. As the grantee, the county or municipality must act as the administrator of any grant funds provided to nonprofit organizations, and must maintain fiduciary responsibility for the expenditure of funds. Grantees are encouraged to execute intergovernmental agreements with sub-grantees so that property and/or assets acquired with grant funds will revert to the grantee if the nonprofit organization is dissolved.

**SECTION 8. SIGNATURE AND RESOLUTION**

**This application must contain the following:**

- Application with Original Signature**
- Resolution by Unit of Local Government**
- Nonprofit Application Checklist with Original Signature – Required for Nonprofit Organizations**
- IRS 501(c) Determination Letter - Required for Nonprofit Organizations**

To the best of my knowledge, the information contained in this application is true and correct; the submission thereof has been duly authorized by the governing body; and the applicant will comply with the regulations, policies, guidelines and requirements outlined by the State of West Virginia. If the recipient is a nonprofit organization, the county or municipality certifies that this nonprofit organization is legally authorized to receive public funds.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Mayor or County Commission President**  
**ORIGINAL SIGNATURE REQUIRED-USE BLUE INK**

**West Virginia Development Office**  
**Community Development Division**  
**Community Participation Grant Program**  
1900 Kanawha Boulevard, East Building 6, Room 553  
Charleston, West Virginia 25305  
Phone: 304-558-4010 Fax: 304-558-2246  
[www.wvcommerce.org](http://www.wvcommerce.org)



Must Be Submitted With Application for Funding for Nonprofit Organizations

1. Local Government Agency: Jefferson County Commission Date of Application: 8-24-10  
 Project Title: PARKING LOT EXPANSION Chief Elected Official: Lyn Widmyer  
 Form Completed By: Jim Taylor Amount of Grant: \$ 10,000  
 Phone: (304) 728-3284 Fax: (304) 725-7916
2. Nonprofit Organization: NATIONAL HUMANE EDUCATION SOCIETY -  
(BRIGGS ANIMAL ADOPTION CENTER) Executive Director: Jim Taylor  
 Street Address, City, Zip: 3931 BERRYVILLE PIKE Phone: (304) 725-0505 Fax: (304) 725-1523  
CHARLES TOWN, WV 25414
- Federal nonprofit certification, 501c determination letter from Internal Revenue Service attached. -B  
 Mission statement, brochure, or web pages explaining mission of the organization and services it provides attached. -C

**CERTIFICATIONS AND ASSURANCES**

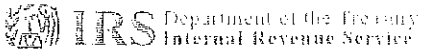
**CHECK ITEMS 3-11 BELOW** to certify compliance with the following laws, regulations and requirements:

3.  **Competitive bids are required for purchases exceeding \$2,500 in cost.**  
 Competitive bidding requirements, at a minimum, are as follows:
- |                          |                                                        |
|--------------------------|--------------------------------------------------------|
| • \$2,500 or less        | • No bids required; however, competition is encouraged |
| • \$2,500.01 to \$5,000  | • Three verbal bids documented on a verbal bid summary |
| • \$5,000.01 to \$25,000 | • Three written bids required                          |
| • \$25,000 or more       | • Class II Legal Ads required                          |
4.  **Sealed bids are required for any portion of this project with an estimated value of more than \$25,000.**  
 Any attempt to segregate the project into sections of less than \$25,000 shall be cause for termination. Bids shall be obtained by public notice as a Class II legal advertisement in compliance with West Virginia Code §59-3. The ad must be published in the newspaper with the largest circulation in the area once a week for two successive weeks prior to the final bid date.
5.  **State prevailing wages will be paid for all construction associated with this project, regardless of the cost.**  
 West Virginia prevailing wages must be paid for all construction projects using state grant funds. All contractors must have a West Virginia contractor's license. These regulations apply to every contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work. If federal funds are included, the highest rate (West Virginia or Davis-Bacon) will be paid. All construction must comply with the **West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A.**
6.  **The following documents will be required for the release of grant funds.**
- Copies of bids, quotes or verbal bid summary
  - Copy of legal ad, which must require prevailing wages for construction
  - Copies of certified payroll records for construction
  - Copies of invoices.
7.  **Counties and municipalities may sponsor the applications of federally certified nonprofit organizations.**  
 As the grantee, the county or municipality must act as the administrator of any grant funds provided to nonprofit organizations, and must maintain fiduciary responsibility for the expenditure of funds. Grantees are encouraged to execute intergovernmental agreements with subgrantees so that property acquired with grant funds will revert to the grantee if the nonprofit organization is dissolved.
8.  **State requirements for bidding and prevailing wage apply to federally certified nonprofit organizations.**  
 Funds provided to counties and municipalities for grants to nonprofit organizations are subject to all state and local requirements regarding audits, competitive bidding and prevailing wages. All construction must comply with the **West Virginia Act on Wages on Construction of Public Improvements, West Virginia Code §21-5A.**
9.  **Professional services shall be obtained through a request for proposals.**  
 Architectural or engineering services shall be obtained in accordance with West Virginia Code §5G.
10.  **No costs should be incurred or commitments made relative to a grant prior to the approval of this grant and the execution of a contract with the State of West Virginia.**
11.  **The use of grant funds at/for private property or private gain is prohibited.**  
 Project sites and buildings must be publicly owned or owned by a federally certified nonprofit organization.

Signature: \_\_\_\_\_

Executive Director, Nonprofit Organization  
**ORIGINAL SIGNATURE REQUIRED-USE BLUE INK**

Date: 8-24-10



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati OH 45201

In reply refer to: 0248156163  
Dec. 07, 2009 LTR 4167C EU  
54-0618244 000000 00  
00015522  
BODC: TE

NATIONAL HUMANE EDUCATION SOCIETY  
% ANNA C BRIGGS  
3731 BERRYVILLE PIKE  
CHARLES TOWN WV 25414



048713

Employer Identification Number: 54-0618244  
Group Exemption Number: 8097  
Person to Contact: Mrs. Crouch  
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your Nov. 24, 2009, request for information about your tax-exempt status.

Our records indicate that you were issued a determination letter in November 1996, and that you are currently exempt under section 501(c)(3) of the Internal Revenue Code.

Based on the information supplied, we recognized the subordinates named on the list you submitted as exempt from Federal income tax under section 501(c)(3) of the Code.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106 and 2522 of the Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

Michele M. Sullivan, Oper. Mgr.  
Accounts Management Operations I

For more than a half-century of operation, The National Humane Education Society (NHES) has given thousands of animals a second chance at life—thanks to the generosity of NHES's members and friends.

Over and over again, we've witnessed the miracle that love brings to abandoned and abused animals at Peace Plantation Animal Sanctuary and The Briggs Animal Adoption Center. The day-to-day care, feeding, and protection of several hundred animals may not be awe-inspiring, but it is truly a blessing to each and every one of the animals that we help!

Having passed the 57-year mark, NHES continues to grow and respond to the ever-increasing demand to shelter, feed, administer medical care, and find adoptive homes for abandoned and abused animals, while also addressing the continual needs to educate the public about the proper care of their own companion animals, to prevent animal overpopulation, and to promote a sentiment of kindness to animals. Our goal is to make a positive difference in the care and treatment of animals in our Nation and beyond.

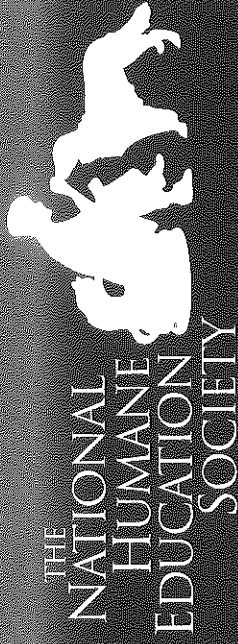
But the backbone of our operations continues to be the care and feeding of hundreds of animals each and every day of the year, as well as placing as many animals as possible in quality adoptive homes—thanks to the commitment and compassion of our staff, volunteers, and our many, many kind friends like you.

Your donations make it possible to work miracles in the second half-century of our mission. Thank you for your support.

*Gifts Beyond a Lifetime:* If you would take comfort in knowing that your compassion will continue to help create a more humane world for animals beyond your lifetime, please contact NHES Development Office at (304) 725-0506 to discuss Planned Giving opportunities.

***Mail and Donations:***

The National Humane Education Society  
P.O. Box 340  
Charles Town, WV 25414-0340  
(304) 725-0506 • (304) 725-1523 fax  
[www.nhes.org](http://www.nhes.org)



THE  
NATIONAL  
HUMANE  
EDUCATION  
SOCIETY

*Fostering a sentiment  
of kindness to animals  
for more than a  
half-century*

[www.nhes.org](http://www.nhes.org)

NHES founder Anna C. Briggs



P.O. Box 340  
Charles Town, WV 25414-0340



THE  
NATIONAL  
HUMANE  
EDUCATION  
SOCIETY

*Whenever we, as a society, allow an animal to die from starvation or abuse, or whenever a euthanizing agent enters the bloodstream of a healthy animal, we wound humanity.*

*Anna C. Briggs, Founder*

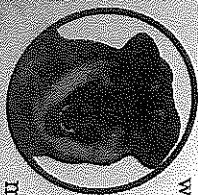
In 1948, in response to our Nation's constant killing of stray and abandoned companion animals, Mrs. Anna C. Briggs founded The National Humane Education Society (NHES) as a private, nonprofit animal welfare organization with a central mission to "foster a sentiment of kindness to animals in children and adults . . ." To achieve this mission—without financial assistance from local, state, or federal governments—NHES continues to expand and decrease animal suffering through its primary programs:



**Fostering kindness and compassion through Humane Education**

Since 1948, the Humane Education Program has been fostering a sentiment of kindness to animals through humane education presentations, hands-on education programs, and the distribution of humane education materials. Today, the Humane Education Program continues to grow by

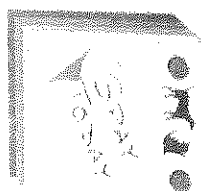
- (1) providing educational presentations to all ages,
- (2) providing informational services to supporters and the general public, (3) networking



with other humane organizations, (4) creating and distributing—both nationally and internationally—visual, electronic, and printed humane education materials, and (5) encouraging law-

makers to always consider the humane treatment of animals when making public policy.

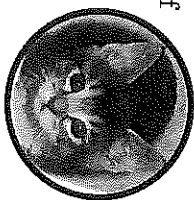
*To learn more about the Humane Education Program or to arrange for a presentation in your area, please call (304) 725-0506, or visit our website at [www.nhes.org](http://www.nhes.org).*



**Offering low-cost spay/neuter services to those who care enough to alter their animals**

Since its creation in 1994, Spay Today has exemplified NHES's belief that spaying and neutering is an integral part of the humane solution to ending the epidemic overpopulation and ensuing euthanasia of homeless cats and dogs as a means of population control. As a testament to this belief, Spay Today provides low-cost spay/neuter assistance to persons who understand the need to spay/neuter their companion animals but who cannot afford the normative fees that are charged for these procedures. Spay Today continues to expand by spaying and

neutering an increasing number of animals—literally thousands each year—through its growing network of participating veterinarians, whose service area includes the Panhandle of West Virginia and portions of Virginia and Maryland. *To learn more about Spay Today, or to obtain spay/neuter assistance, please call (304) 728-8330 or visit the NHES website at [www.nhes.org](http://www.nhes.org) and click on "Programs."*



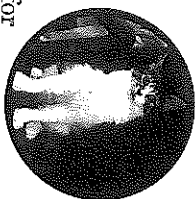
**Providing lifelong sanctuary and adoption services to homeless animals**

Created in 1950, PPAS, an Affiliate, was originally operated on a 150-acre farm in Sterling, Virginia. The farm was called PPAS because it best captured the landscape and placid atmosphere created by its founders, Anna C. Briggs and Alice Morgan Wright. Throughout its history, PPAS has

experienced many challenges but, through faith, a dedicated staff, and generous member support, it continues to provide lifelong sanctuary to homeless animals—primarily cats and kittens, a few resident dogs, and various farm animals—from its present location in Walton, New York. Since its creation, PPAS has never engaged in the euthanasia of animals as a means of population control. Alternatively, it operates a low-cost spay/neuter clinic to humanely reduce future generations of homeless animals.

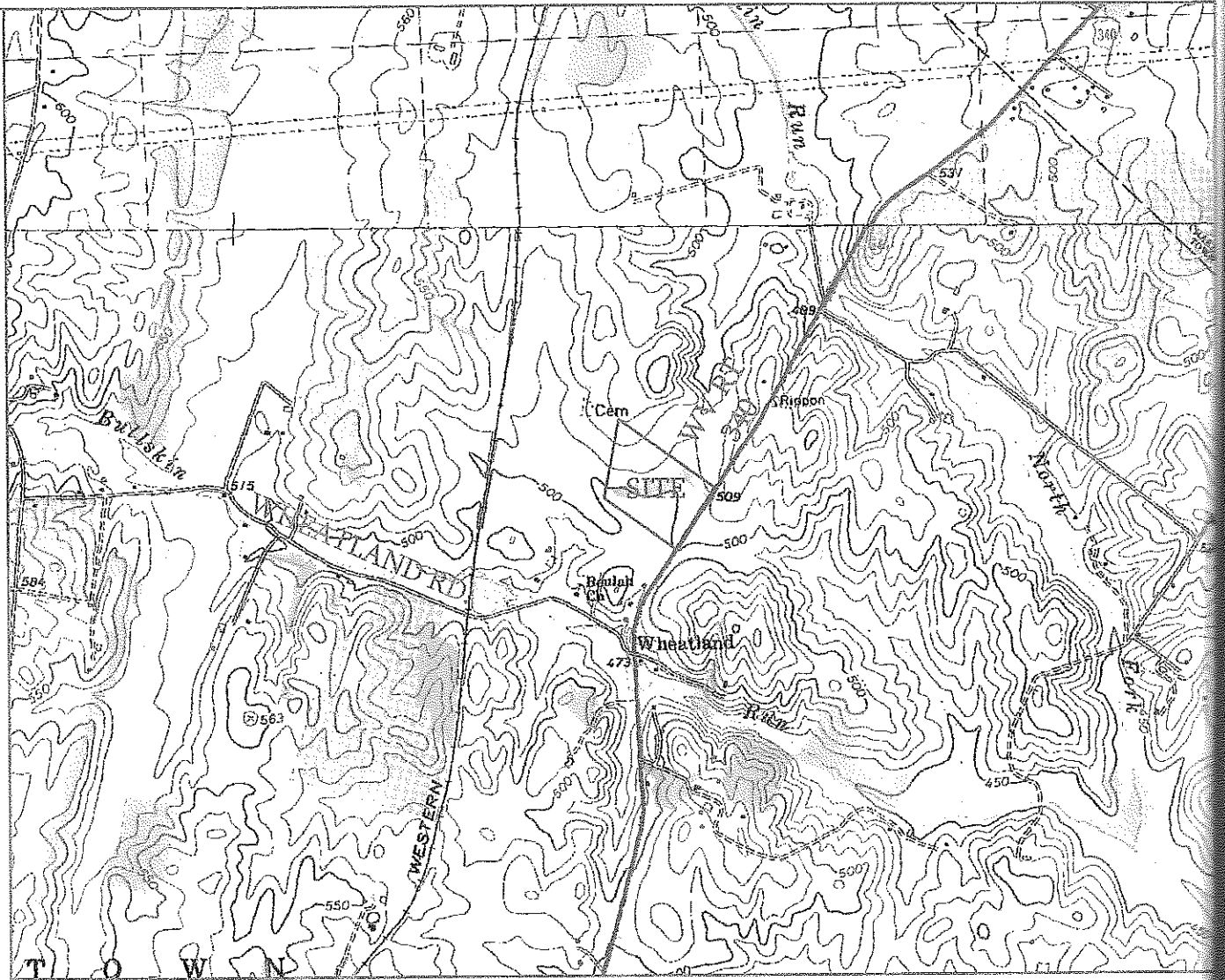
*To learn more about PPAS or to adopt one of their animals, please call (607) 865-5759, or visit their website at [www.ppasny.org](http://www.ppasny.org).*

**Brigitte Animal Adoption Center Providing a cradle of compassion for homeless animals**

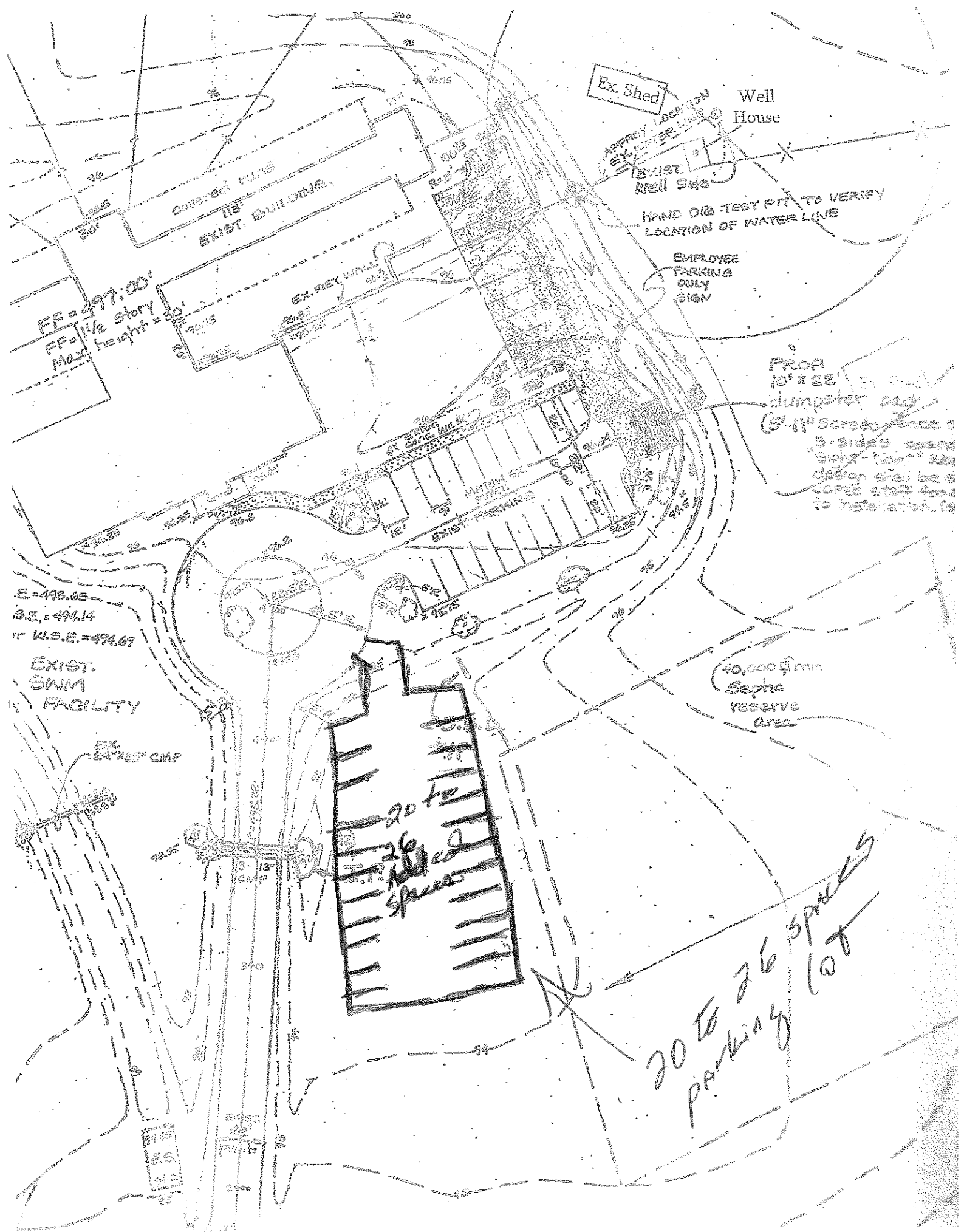


Created in 2000, BAAC provides comprehensive adoption services for companion animals by placing them in loving homes with compassionate people who will fulfill lifelong commitments to them by accepting them as members of their family. BAAC's comprehensive adoption services for cats and dogs consist of animal rescue; veterinary medical care, including mandatory spay/neuter before adoption; canine obedience training; and delivery of all dogs to their new homes. Today, BAAC continues to expand by providing for a rotating daily average of 70-plus dogs/puppies and 125 cats/kittens—all of which are available for adoption.

*To learn more about BAAC, or to view some of the animals available for adoption, please call (304) 724-6558 or visit their website at [www.baacs.org](http://www.baacs.org).*



LOCATION INSET  
SCALE: 1"=2000'



Ex. Shed

Well House

APPROX. LOCATION  
OF WATER LINE  
EXIST. Well Side

HAND DIG TEST PIT TO VERIFY  
LOCATION OF WATER LINE

EMPLOYEE  
PARKING  
ONLY  
SIGN

PROP  
10' x 22' shed  
dumpster pit  
6-11" screen fence  
6-8" sides board  
2" top  
2" bottom  
2" sides  
2" top  
2" bottom  
to installation

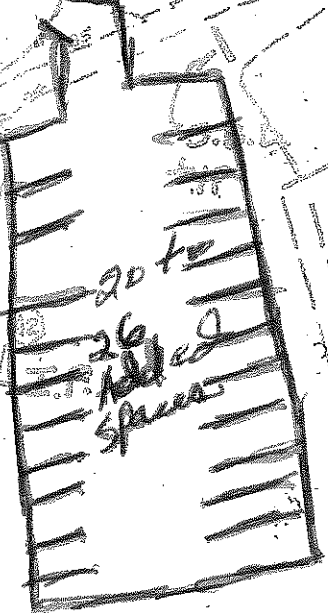
FF=497.00  
FF=1/2 story  
Max. height = 20'

E=499.05  
S.E.=494.14  
W.S.E.=494.07

EXIST.  
SANI.  
FACILITY

EX. 24" DIA. CMP

40,000 gpm  
Septic  
reserve  
area



20 to 26 spaces  
parking lot

**THIS DEED** Made this 24<sup>th</sup> day of November, 1998, by and between **JOHNSON A. LYKENS and JOANNE L. LYKENS**, Trustees of the Inter Vivos Trust Agreement of Johnson A. Lykens, dated April 29, 1992, parties of the first part, (hereinafter referred to as Grantors) and **THE NATIONAL HUMANE EDUCATION SOCIETY**, party of the second part, (hereinafter referred to as Grantee).

**WITNESSETH**, For value received the Grantors hereby grant and convey with covenants of general warranty unto the said Grantee, in fee simple, all that certain parcel of real estate, together with all rights, rights-of-way, easements, privileges, improvements and appurtenances belonging thereto, situate in the Kabletown District of Jefferson County, West Virginia, more particularly described on the exhibit attached hereto and labeled Exhibit A.

**AND BEING** a part of the same property which was conveyed to the Grantors by **JOHNSON A. LYKENS AND JOANNE L. LYKENS**, husband and wife, by deed dated March 25, 1998 and recorded in said Clerk's

THIS DEED Made this 24<sup>th</sup> day of November, 1998, by and between JOHNSON A. LYKENS and JOANNE L. LYKENS, Trustees of the Inter Vivos Trust Agreement of Johnson A. Lykens, dated April 29, 1992, parties of the first part, (hereinafter referred to as Grantors) and THE NATIONAL HUMANE EDUCATION SOCIETY, party of the second part, (hereinafter referred to as Grantee).

WITNESSETH, For value received the Grantors hereby grant and convey with covenants of general warranty unto the said Grantee, in fee simple, all that certain parcel of real estate, together with all rights, rights-of-way, easements, privileges, improvements and appurtenances belonging thereto, situate in the Kabletown District of Jefferson County, West Virginia, more particularly described on the exhibit attached hereto and labeled Exhibit A.

AND BEING a part of the same property which was conveyed to the Grantors by JOHNSON A. LYKENS AND JOANNE L. LYKENS, husband and wife, by deed dated March 25, 1998 and recorded in said Clerk's Office in Deed Book 894, at Page 493.

THIS CONVEYANCE IS SUBJECT, HOWEVER, to all rights, ways, utility line easements and restrictive covenants of record.

DECLARATION OF CONSIDERATION OR VALUE: Under the penalties of fine and imprisonment, as provided by law, Johnson A. Lykens and Joanne L. Lykens, whose address is 1530 Fort Duquesna Drive, Sun City Center, Florida 33573, do hereby declare that the total consideration paid for the real estate conveyed by the document to which this declaration is appended is TWO HUNDRED THREE THOUSAND SIX HUNDRED (\$203,600.00) Dollars.

WITNESS the following signatures and seals.

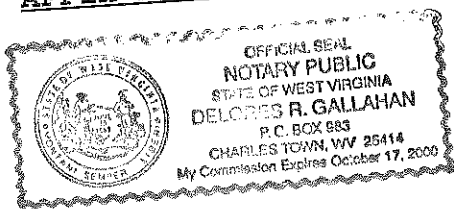
Johnson A. Lykens  
JOHNSON A. LYKENS, Trustee

Joanne L. Lykens  
JOANNE L. LYKENS, Trustee

STATE OF WEST VIRGINIA  
COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this 30<sup>th</sup>  
day of November, 1998, by JOHNSON A. LYKENS and JOANNE L. LYKENS,  
as Trustees of the Inter Vivos Trust Agreements of Johnson A.  
Lykens.

**AFFIX NOTARIAL SEAL**



Delores R. Gallahan  
Notary Public  
Commissioned as:  
Delores R. Gallahan

My Commission Expires:

October 17, 2000

This deed was prepared  
**WITHOUT BENEFIT OF A TITLE EXAMINATION**  
by F. Samuel Byrer, Attorney at Law,  
Charles Town, West Virginia 25414

EXHIBIT A

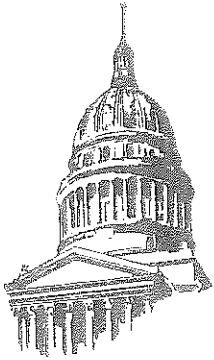
All that certain lot or parcel of real estate containing 29.651 acres, <sup>more or less</sup> situate in the Kabletown District, Jefferson County, West Virginia, as said and described in accordance with a survey and plat thereof, entitled "Lykens Property," prepared by Appalachian Surveys, Inc., dated September 29, 1998, recorded in the Office of the Clerk of the County Commission, Jefferson County, West Virginia, in Plat Book 16, at Page 26.

JEFFERSON COUNTY, WV  
FILED  
December 01, 1998 17:18:21

JOHN E. OTT  
COUNTY CLERK  
TRANSACTION NO: 1998013593  
Transfer Tax: \$897.60

BOOK OF DEEDS  
Book: 00921 Page: 00485





The Senate of West Virginia  
Charleston

August 10, 2010

COMMITTEES:  
TRANSPORTATION & INFRASTRUCTURE  
(CHAIR)  
ECONOMIC DEVELOPMENT  
(VICE CHAIR)  
AGRICULTURE  
EDUCATION  
FINANCE  
HEALTH & HUMAN RESOURCES  
NATURAL RESOURCES

JOHN R. UNGER II  
P. O. Box 2415  
MARTINSBURG 25402

PHONE: (304) 357-7933  
FAX: (304) 357-7987

Jefferson County Commission  
Ms. Lyn Widmyer, President  
Patsy Noland, Vice-President  
Dale Manuel, Commissioner  
Jim Surkamp, Commissioner  
Frances Morgan, Commissioner  
P.O. Box 250  
124 E. Washington Street  
Charles Town, WV 25414

Dear Ms. Widmyer, Ms. Noland, Commissioner Manuel, Commissioner Surkamp and Commissioner Morgan:

I am pleased to inform you that the Community Participation Project submitted by you or on your behalf during the 2009 Legislative Session has been subsequently approved by the West Virginia Senate and will be distributed by the Governor's Office in the amount of \$20,000.00 for the following specific purpose:

Briggs Animal Adoption Center-animal rescue and spaying

Libraries, seniors, emergency medical services and public education grants have been approved and forwarded to each respective agency for processing and distribution. Grants awarded through the Development Office will become eligible for funding once all the necessary information is collected and grant requirements have been met.

Please understand that all other notification will come from the state agency administering the grant requesting project information needed for fulfillment of the grant. Please remember that it may take several weeks or even months for the agency to receive and complete the required information to process the grant awards.

I was honored to submit this request for you and hope that these monies will enable you to continue meeting the needs of those in your community. As always, I enjoy working for you and welcome all of your suggestions, comments and questions.

Sincerely,

Senator John R. Unger II

cc: Mr. James Taylor, National Humane Education Society/Briggs Animal Adoption Center

The  
NATIONAL HUMANE  
EDUCATION SOCIETY

*Fostering a sentiment of kindness to animals*



August 25, 2010

Jefferson County Commission  
Community Participation Grant Program  
P.O. Box 250  
124 E. Charles Town, WV 25414

Subject: 10% Matching Funds

Dear Community Participation Grant Program Administrators:

Please allow this letter to serve as verification that we have already raised the required 10% of the project costs via local fundraising efforts.

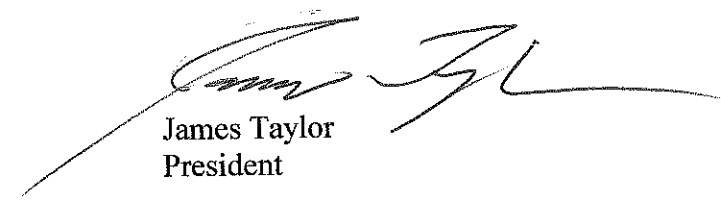
At this juncture, the total estimated cost for a 20 to 26 space parking lot is \$24,000.

Of this estimated cost, the BAAC and its parent corporation, The National Humane Education Society, have already raised 10% of these funds through a local fundraising effort:

- In April 2010, we raised \$32,700 from our annual Pedal for Pooches bike ride; of which more than 10% or \$2,400 of the estimated cost has been put into savings and will be allocated for the construction of the parking lot.

If you have any further questions regarding these monies, please do not hesitate to contact me at (304) 725-0506, extension 123.

Sincerely,

  
James Taylor  
President

NATIONAL OFFICE:  
P.O. Box 340  
CHARLES TOWN, WV 25414-0340  
PHONE 304/725-0506  
FAX 304/725-1523  
www.nhes.org

PROGRAM:  
SPAY TODAY  
P.O. Box 340  
CHARLES TOWN, WV 25414-0340  
Phone 304/728-8330  
Fax 304/724-6765  
www.spay-today.org

AFFILIATE:  
PEACE PLANTATION  
ANIMAL SANCTUARY  
12752 STATE HWY. 206  
WALTON, NY 13856-2327  
PHONE 607/865-5759  
FAX 607/865-6334  
www.ppasny.org

PROGRAM:  
BRIGGS ANIMAL  
ADOPTION CENTER  
P.O. Box 1023  
CHARLES TOWN, WV 25414-1023  
PHONE 304/724-6558  
FAX 304/724-6765  
www.baacs.org

**Jefferson County Commission  
County Meeting Room Policy**

All meeting rooms in Jefferson County-owned buildings are to be used only for County related meetings and/or business. All exceptions to this policy must be brought before the Jefferson County Commission for a vote during their regular meeting. Organizations authorized to use these rooms are as follows:

- County appointed Commissions, Boards and Authorities
- Republican and Democratic Executive Committees
- Meeting rooms may be used by elected officials (county, state, etc.) for meetings when it is for a stated public purpose. Any organization or individual using meeting rooms is subject to being "bumped" if the rooms are needed for any county related business. County appointed Boards, Commissions, Authorities, etc. will take precedence over any scheduling conflict.

No furniture should be removed from any meeting room at anytime.  
All rooms should be secured after the meeting is adjourned.

**Planning Commission Meeting Room:** The Planning Commission meeting room must be scheduled through the Planning Department. The key to the meeting room may be picked up and returned to the Planning Department staff during normal business hours. After using this meeting room, the contents of the room should be returned to their proper place according to the schematic diagram in the meeting room.

**County Commission Courtroom:** The County Commission Courtroom is scheduled through the County Clerk's office and the County Commission office and may only be used during normal business hours.

**Circuit Court Courtroom:** The Circuit Court Courtroom may be scheduled through the Circuit Judge's office.

**Bardane Public Service Center Conference Rooms:** All conference rooms located at the Bardane Public Service Center must be scheduled through the Office of Emergency Services located in the Bardane Public Service Center. In the event that meetings are held after hours, a responsible employee shall be in attendance. This employee will be responsible for making sure there is no damage, the meeting room is put back in proper order and the building and meeting rooms are secured before leaving.

In addition, employees working after normal business hours at the Bardane Public Service Center are responsible for securing the building.

## COUNTY COMMISSION OF JEFFERSON COUNTY

**POLICY TITLE:** County Meeting Room Policy  
**POLICY NUMBER:** 1996-1  
**ADOPTED:** January 18, 1996  
**REVISED:** September 9, 2010

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### PURPOSE:

All meeting rooms in Jefferson County-owned buildings are to be used only for County related meetings and/or business. All exceptions to this policy must be brought before the Jefferson County Commission for a vote during its regular meeting. Use of county-owned meeting rooms does not imply endorsement by the County Commission or staff of the viewpoints presented.

### POLICY:

The Jefferson County Commission encourages the widest possible use of county meeting rooms by government agencies and nonprofit community groups.

All meetings shall be open to the public.

Rooms may be used for educational, cultural, informational or governmental/civic activities and may include public lectures, panel discussions, workshops and other similar functions.

Room bookings are subject to cancellation if the room is needed for county government business.

Rooms will not be used for personal or family purposes.

Users agree to abide by all regulations of the meeting room relating to the use of the facilities and accept responsibility for all damages caused to the building and/or equipment beyond normal wear.

### PROCEDURES:

All exceptions to this policy must be brought before the Jefferson County Commission for a vote during its regular meeting. Organizations authorized to use these rooms are as follows:

- County appointed Commissions, Boards and Authorities

- Republican and Democratic Executive Committees
- Meeting rooms may be used by elected officials (county, state, etc.) for meetings when it is for a stated public purpose. Any organization or individual using meeting rooms is subject to being "bumped" if the rooms are needed for any county related business. County appointed Boards, Commissions, Authorities, etc. will take precedence over any scheduling conflict.

**Old Charles Town Library Meeting Room – 200 E. Washington Street, Charles Town, WV**

**25414:** The Old Charles Town Library meeting room must be scheduled through the County Commission Office. The key to the meeting room may be picked up and returned to County Commission staff during normal business hours. The applicant is responsible for getting an alarm code from the County Commission office. The applicant is responsible for the security alarm.

Groups interested in using the County meeting rooms must first fill out an application form provided by the Jefferson County Commission.

Proof of Liability Insurance must be submitted with application by the person reserving the room. Applicants not covered by insurance must sign the provided indemnification form. Submission of application does not constitute approval.

The County Commission reserves the right to cancel any reservations of the County Meeting Rooms.

For programs occurring outside of normal business hours applicant is responsible for entry and/or closure. Process for getting and returning the meeting room key is the responsibility of the applicant. Meeting room should be secured after the meeting is adjourned.

Maximum capacity is 112 people with tables and 171 people without tables.

The group accepts financial responsibility for any and all damage caused to the building or equipment beyond normal wear. The group contact person will be responsible for any charges incurred by the group.

No furniture should be removed from any meeting room at anytime.

The group is responsible for leaving the room in the condition in which it was found. Meeting rooms must be left in acceptable, un-littered condition. Tables and chairs should be returned to the positions in which they were found.

Use of audio-visual equipment must be indicated at time of reservation. The applicant must supply its own audio-visual equipment.

**County Commission Courtroom – 100 E. Washington Street, Charles Town, WV 25414:** The County Commission Courtroom is scheduled through the County Clerk's office. Maximum capacity is 49 people.

The group accepts financial responsibility for any and all damage caused to the building or equipment beyond normal wear. The group contact person will be responsible for any charges incurred by the group.

No furniture should be removed from any meeting room at anytime.

The group is responsible for leaving the room in the condition in which it was found. Meeting rooms must be left in acceptable, un-littered condition. Tables and chairs should be returned to the positions in which they were found.

**Circuit Court Courtroom – 100 E. Washington Street, Charles Town, WV 25414:** The Circuit Court Courtroom may be scheduled through the Circuit Judge's office. Maximum capacity is 150 people.

The group accepts financial responsibility for any and all damage caused to the building or equipment beyond normal wear. The group contact person will be responsible for any charges incurred by the group.

No furniture should be removed from any meeting room at anytime.

The group is responsible for leaving the room in the condition in which it was found. Meeting rooms must be left in acceptable, un-littered condition. Tables and chairs should be returned to the positions in which they were found.

**Bardane Public Service Center Conference Rooms – 1948 Wiltshire Road, Suite 3, Kearneysville, WV 25430:** All conference rooms located at the Bardane Public Service Center must be scheduled through the Extension Office located in the Bardane Public Service Center. In the event that meetings are held after hours, a responsible employee shall be in attendance. This employee will be responsible for making sure there is no damage, the meeting room is put back in proper order and the building and meeting rooms are secured before leaving. In addition, employees working after normal business hours at the Bardane Public Service Center are responsible for securing the building.

Maximum capacity for large room is 104 people and the small room is 36 people.

The group accepts financial responsibility for any and all damage caused to the building or equipment beyond normal wear. The group contact person will be responsible for any charges incurred by the group.

No furniture should be removed from any meeting room at anytime.

The group is responsible for leaving the room in the condition in which it was found. Meeting rooms must be left in acceptable, un-littered condition. Tables and chairs should be returned to the positions in which they were found.

**OLD CHARLES TOWN LIBRARY MEETING ROOM**

**REQUEST FORM**

Date Requested: \_\_\_\_\_

Meeting Time: \_\_\_\_\_ to \_\_\_\_\_

Organization Name: \_\_\_\_\_

Purpose of Meeting: \_\_\_\_\_

Please attach a brief description of your organization. (You may attach other printed materials.)

Please check the boxes on all that apply to your organization:

- Has previously used the library
- Is a not-for-profit organization
- Can provide a certificate of insurance

By signing this Request, I acknowledge that I have read and fully understand the Jefferson County Commission Meeting Room Policy for the use of the Old Charles Town Library Meeting Room. I agree to assume personal responsibility for my organization's compliance with these regulations, the behavior of all those attending any meeting or program, and the care of the meeting room and all property within the room.

Person Making Request: (printed): \_\_\_\_\_

Signature of Person Making Request: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_  
(If other than the representative signing above)

Representative's Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**OLD CHARLES TOWN LIBRARY MEETING ROOM**

**INDEMNIFICATION FORM**

As the individual or the authorized representative of the organization making the reservation, I agree to indemnify and hold harmless the Jefferson County Commission, its agents and representatives, from any and all lawsuits, action, claims or demands of any character or nature arising out of or brought on account of injuries or damages sustained by any person(s) as a consequence or result of using the meeting room, its furnishings or its equipment.

Person Making Request: (printed): \_\_\_\_\_

Signature of Person Making Request: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_  
(If other than the representative signing above)

Representative's Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

#14

### FY 2011 Non-Profit Budget Requests

| DMS ID | Date Received | Entity Name                                                  | Amount       | Documents        |
|--------|---------------|--------------------------------------------------------------|--------------|------------------|
| 5068   | 12/23/2009    | Meals on Wheels                                              | \$10,000     | Fin Stmt         |
| 5156   | 1/28/2010     | Birthright                                                   | \$2,500      |                  |
| 5171   | 2/2/2010      | Friends in Action                                            | \$2,500      | budget           |
| 5172   | 2/2/2010      | Jefferson County Community Ministries                        | \$3,000      |                  |
| 5190   | 2/12/2010     | NAACP Jefferson County                                       | \$2,500      |                  |
| 5207   | 2/17/2010     | Eastern Panhandle Free Clinic                                | \$15,000     | Fin Stmt         |
| 5237   | 2/17/2010     | Eastern Panhandle Free Clinic                                | \$1,500      |                  |
| 5237   | 2/22/2010     | Kiwanis Club of Charles Town                                 | \$5,200      |                  |
| 5238   | 2/22/2010     | Duffields Station Inc.                                       | \$30,000     | /1 Fin Stmt      |
| 5246   | 2/23/2010     | Claymont Society for Continuous Education                    | \$15,000     | Fin stmt         |
| 5251   | 2/24/2010     | Animal Welfare Society                                       | \$5,000      |                  |
| 5252   | 2/25/2010     | RTCA (Race Track Chaplaincy of America) Charles Town Council | \$15,000     | Audit/Fin Stmt   |
| 5267   | 2/26/2010     | Good Shepherd Interfaith Volunteer Caregivers, Inc.          |              |                  |
|        |               |                                                              | <b>TOTAL</b> | <b>\$107,200</b> |

### Delayed Entries

| DMS ID | Date Received | Entity Name                                                        | Amount       |                 |
|--------|---------------|--------------------------------------------------------------------|--------------|-----------------|
| 5282   | 3/2/2010      | Safe Haven Child Advocacy Center and Children's Home Society of WV | \$5,000      |                 |
| 5283   | 3/3/2010      | Shepherdstown Day Care                                             | \$30,000     | Audit/Fin stmt  |
| 5295   | 3/5/2010      | Boys and Girls Club of the Eastern Panhandle                       | \$10,000     | Audit/Fin stmt  |
| 5298   | 3/8/2010      | Boys and Girls Club of the Eastern Panhandle                       | \$5,000      |                 |
| 5298   | 3/8/2010      | Eastern Panhandle Conservation District                            | \$3,000      |                 |
| 5300   | 3/8/2010      | Potomac Headwaters RC&D, Inc.                                      | \$2,250      |                 |
| 5302   | 3/8/2010      | Saint Andrews Mountain Community Center, LLC                       | \$500        |                 |
| 5564   | 7/29/2010     | Books for Babies                                                   |              |                 |
|        |               |                                                                    | <b>TOTAL</b> | <b>\$55,750</b> |

### Entries submitted after Budget Finalization

|                                                |                                                       |                 |
|------------------------------------------------|-------------------------------------------------------|-----------------|
| 22-Jul-10                                      | Robert DuBose, Harpers Ferry Historic Town Foundation | \$8,000         |
| 25-Jun-10                                      | Roger Daily, Meals on Wheels of Jefferson County      | \$6,645 /2      |
| 29-Jun-10                                      | Mike Austin, Shepherdstown Men's Club                 | \$4,000         |
| 19-Jul-10                                      | Community Alternatives to Violence                    | \$10,000        |
| <b>TOTAL Additional Requests Apr-July 2010</b> |                                                       | <b>\$28,645</b> |

**TOTAL ALL NON-PROFIT REQUESTS \$191,595**

### Notes

- /1 Also presented this request at Regular Session, July 2010
- /2 Not clear whether this request is in addition to request of 23 Dec 09
- /3 \$60,000 to Harpers Ferry Potomac Street Project, 18 Aug 2010

### Documents - key

- Fin stmt - financial statement (profit/loss, balance sheet)
- Audit - financials were professionally audited
- Budget - a detailed budget for fund expenditure was submitted

FY 2011 Budget Workshop  
(19 Aug 2010)

**Summary of Actions 19 August - 2 September 2010**

**Staff Action**

|                                        |                     |           |                                           |
|----------------------------------------|---------------------|-----------|-------------------------------------------|
| <b>Unreserved balance</b>              | <b>\$ 2,054,543</b> | <b>/1</b> |                                           |
| elected officials Cap/Out              | \$ (153,400)        |           |                                           |
| Fire companies partial restore         | \$ (112,000)        |           | BR002 PENDING                             |
| Mandatory salary/trip guards           | \$ (42,587)         |           | BR002 PENDING                             |
| Potomac Street project                 | \$ (60,000)         |           | From 401                                  |
| back out 500,000 table games           | \$ (500,000)        |           |                                           |
| Farmland Protection Funding            | \$ (335,000)        | /2        | From 401                                  |
| Equipment funding for Jefferson Center | \$ (50,000)         | /3        | From 401                                  |
| Transfer to Fund 246 (Building Fund)   | \$ (175,000)        |           | From 401                                  |
| <hr/>                                  |                     |           |                                           |
| <b>Remaining unbudgeted</b>            | <b>\$ 626,556</b>   |           | Resides in 401-05-568 TRANS OTHR ENTITIES |
| <hr/>                                  |                     |           |                                           |
| 2.5% staff COLA adjustment             | \$ (215,200)        | /4        | BR003 PENDING                             |

**Summary of Actions 02 September 2010**

|                                          |              |    |
|------------------------------------------|--------------|----|
| Allocated \$190,000 for salary increases | \$ (190,000) | /5 |
| Approved \$25,000 for JCESA study        | \$ (25,000)  | /6 |
| Approved \$13,310 for cable TV project   | \$ (13,310)  | /7 |

- /1 after 750,000 already budgeted and all open purchase orders
- /2 5 yr 0 interest loan - conditioned on acceptance of MOA. Trans to Fund 057
- /3 staff to research using Building Fund (246)
- /4 funded using health insurance savings. Pending final analysis using Finance Dept data.
- /5 funded by Grp Health and Property/Liability insurance savings
- /6 funded from Coal Severance Fund (Fund 002)
- /7 funded via Capital Building Fund (Fund 246)

VIDEO LOTTERY REPORT  
FY 2009

Table Game Revenues  
FY 2011

| FY 2009    |            | FY 2010    |            | FY 2011   |            |
|------------|------------|------------|------------|-----------|------------|
| Date       | Amount     | Date       | Amount     | Date      | Amount     |
| 7/5/2008 * | 169,912.56 | 7/4/2009 * | 128,262.42 | 7/3/2010  | 115,402.58 |
| 7/12/2008  | 176,592.38 | 7/11/2009  | 168,815.08 | 7/10/2010 | 205,731.64 |
| 7/19/2008  | 160,344.08 | 7/18/2009  | 160,652.98 | 7/17/2010 | 161,386.78 |
| 7/26/2008  | 162,982.74 | 7/25/2009  | 158,869.08 | 7/24/2010 | 160,368.28 |
| 8/2/2008   | 178,171.04 | 8/1/2009   | 174,493.08 | 7/31/2010 | 157,802.08 |
| 8/9/2008   | 123,538.04 | 8/8/2009   | 138,408.80 | 8/7/2010  | 136,494.98 |
| 8/16/2008  | 82,482.89  | 8/15/2009  | 81,222.14  | 8/14/2010 | 78,376.68  |
| 8/23/2008  | 76,426.18  | 8/22/2009  | 76,260.31  | 8/21/2010 | 76,199.02  |
| 8/30/2008  | 89,459.86  | 8/29/2009  | 80,472.92  | 8/28/2010 | 72,460.03  |
| 9/6/2008   | 91,644.46  | 9/5/2009   | 80,798.15  |           |            |
| 9/13/2008  | 79,729.93  | 9/12/2009  | 86,286.92  |           |            |
| 9/20/2008  | 71,269.36  | 9/19/2009  | 70,010.15  |           |            |
| 9/27/2008  | 79,735.73  | 9/26/2009  | 69,316.87  |           |            |
| 10/4/2008  | 75,186.22  | 10/3/2009  | 72,286.04  |           |            |
| 10/11/2008 | 77,139.04  | 10/10/2009 | 69,650.63  |           |            |
| 10/18/2008 | 80,668.26  | 10/17/2009 | 73,560.21  |           |            |
| 10/25/2008 | 64,379.44  | 10/24/2009 | 67,581.66  |           |            |
| 11/1/2008  | 68,352.42  | 10/31/2009 | 64,528.30  |           |            |
| 11/8/2008  | 70,823.02  | 11/7/2009  | 63,741.59  |           |            |
| 11/15/2008 | 65,565.50  | 11/14/2009 | 65,959.64  |           |            |
| 11/22/2008 | 63,883.80  | 11/21/2009 | 59,547.05  |           |            |
| 11/29/2008 | 69,850.12  | 11/28/2009 | 72,399.98  |           |            |
| 12/6/2008  | 55,696.68  | 12/5/2009  | 51,006.51  |           |            |
| 12/13/2008 | 60,178.04  | 12/12/2009 | 52,460.58  |           |            |
| 12/20/2008 | 52,189.19  | 12/19/2009 | 32,834.39  |           |            |
| 12/27/2008 | 72,205.91  | 12/26/2009 | 53,406.34  |           |            |
| 1/3/2009   | 96,504.65  | 1/2/2010   | 92,980.40  |           |            |
| 1/10/2009  | 53,286.62  | 1/9/2010   | 55,020.46  |           |            |

|                          |           |                   |           |
|--------------------------|-----------|-------------------|-----------|
| 1/17/2009                | 56,068.87 | 1/16/2010         | 60,551.28 |
| 1/24/2009                | 71,474.63 | 1/23/2010         | 69,943.53 |
| 1/31/2009                | 61,089.80 | 1/30/2010         | 48,527.75 |
| 2/7/2009                 | 83,539.63 | 2/6/2010          | 37,155.14 |
| 2/14/2009                | 76,054.44 | 2/13/2010         | 44,334.00 |
| 2/21/2009                | 91,838.41 | 2/20/2010         | 76,946.12 |
| 2/28/2009                | 80,806.88 | 2/27/2010         | 72,024.40 |
| 3/7/2009                 | 48,837.13 | 3/6/2010          | 76,936.85 |
| 3/14/2009                | 96,025.39 | 3/13/2010         | 71,007.37 |
| 3/21/2009                | 79,002.82 | 3/20/2010         | 74,335.38 |
| 3/28/2009                | 79,250.83 | 3/27/2010         | 69,941.88 |
| 4/4/2009                 | 75,968.30 | 4/3/2010          | 70,636.28 |
| 4/11/2009                | 75,964.94 | 4/10/2010         | 69,692.79 |
| 4/18/2009                | 80,598.22 | 4/17/2010         | 69,335.92 |
| 4/25/2009                | 75,571.46 | 4/24/2010         | 68,714.11 |
| 5/2/2009                 | 73,957.05 | 5/1/2010          | 68,799.06 |
| 5/9/2009                 | 76,697.22 | 5/8/2010          | 67,403.54 |
| 5/16/2009                | 71,925.70 | 5/15/2010         | 70,186.32 |
| 5/23/2009                | 81,395.43 | 5/22/2010         | 64,695.71 |
| 5/30/2009                | 82,161.55 | 5/29/2010         | 67,157.40 |
| 6/6/2009                 | 74,895.74 | 6/5/2010          | 77,371.80 |
| 6/13/2009                | 67,327.23 | 6/12/2010         | 66,106.29 |
| 6/20/2009                | 75,500.53 | 6/19/2010         | 64,888.48 |
| 6/27/2009                | 67,354.10 | 6/26/2010         | 63,950.29 |
| 6/30/2009 ***            | 32,059.58 | 6/30/2010         | 29,667.19 |
| <b>TOTALS 4403564.04</b> |           | <b>4041141.56</b> |           |
|                          |           | <b>1164222.1</b>  |           |

Shawna Molina  
1815 Shenandoah River Drive  
Harpers Ferry WV 25425  
(571) 215.5396

RECEIVED

SEP 02 2010

September 1, 2010

Jefferson County Commission

Dear Friends, Neighbors, and Colleagues:

Just over 5 years ago, my family and I relocated to the Jefferson County WV and just about three years ago I assumed leadership of an ailing, yet vital, organization that serves some of the most vulnerable and important members of our community, Jefferson County Council on Aging. It was an unusual situation of vitalizing and renewing hope, outreach and assistance to so many in need while also expanding recreation opportunities in-house. Despite the novelty of it all, I was quickly embraced by a supportive and energetic Board of Directors, Staff, Consumers, Business Partners and the Community. Even my husband and son found this county overwhelmingly supportive as we sought to make Jefferson County our home. Almost three years later, I am indebted to this community for making this part of our lives so very special and memorable.

Nonetheless, we are moving onward, or rather, westward. A wonderful and exciting professional opportunity has been offered to my husband and we, as a family, have agreed to accept the challenge and adventure of moving across the country. While this new chapter in my life is about to unfold, I couldn't leave without first acknowledging a few very special people. Without their support and friendship, my experience in Jefferson County, WV would not have been enjoyable or successful.

First of all, I would like to thank the Board of Directors: Locke Wysong, Serving President during my tenure; Dale Manuel, Serving Vice President; Charles Kline, Serving Treasurer; Dorothy Taylor; Andrea Ward; Sue Watson; Jane Tabb; Dale Schaffer and Jimmy Pierson. This community is fortunate to have such a dedicated group of senior advocates who respond day and night to the agencies needs and service to our community. To our volunteer board, all I can say is "job well done." Many of these community volunteers have been serving JCCOA and Jefferson County for 5, 10, and 15 years or more. Not once have they ever sought recognition - thank you - you're all the greatest and I have no doubts that the best interest of this agency and its success will still be in the forefront of each members agenda.

Their dedication is not singular, however. One of the things I first noticed about this agency when I started working here, was the way in which the staff pulled together to advocate for one another - soon I found them advocating more for our consumers, and for improvement and expansion of JCCOA. To a large degree, this improved environment is attributable to the staff talents. The overall impact from their effective leadership and advocacy is felt wide and far in this community. The JCCOA Staff are emblematic of all of the human service personnel that work tirelessly on behalf of their respective constituency.

In our business, we rely heavily on elected officials, community stakeholders, and business partners to help advocate for our community's awareness of our citizens needs such as hunger, outreach, medical assistance, transportation, abuse and or neglect. We, at JCCOA, couldn't do this work effectively, and safely, without the cooperation of these individuals. I want to personally thank Senator Herb Snyder, Senator John Unger, Delegate Tiffany Lawrence, Jefferson County Board of Commissioners, Ranson City Council members, and those unnamed, for their support and expertise. Furthermore, this agency and community regularly benefit

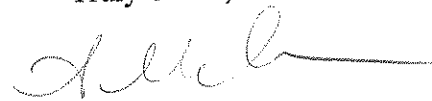
Shawwna Molina  
1815 Shenandoah River Drive  
Harpers Ferry WV 25425  
(571) 215.5396

from the volunteers and professionalism of the Hollywood Casinos at Charles Town Races, City of Ranson Civic Center, City of Charles Town, Bolivar Community Center, local sheriff departments and smaller, but just as effective, municipal law enforcement agencies. This community is top notch, and has a great team of advocates working for its development.

I want to thank the JCCOA neighbors on 4th and 5th avenues in Ranson, many of whom have, over the past 3 years, watched our agency undergo Capital building projects as JCCOA has grown, but yet remain patient to our growing pains and have become good friends to our center, staff and volunteers.

Seniors of JCCOA and the Jefferson County Community – I would like to thank you for the prospects this community has offered to me during my tenure. The experience I gained from Jeff Co also molded me and will greatly help in my future endeavors. The professional experiences I gained from each individual board member, business partners, community partners etc. are all priceless to me. I have grown in many ways through this professional experience and will always treasure the opportunities you have shared with me. Lastly and most importantly – Best Wishes to a Positive Future.

Truly Yours,



*Shawwna Molina, CPRP*

Executive Director

Jefferson County Council on Aging

\*\*\*\*\*

30 August 2010

Matthew Harris  
P.O. Box 1135  
Ranson, WV 25438

Jefferson County Commission  
124 East Washington St.  
Charles Town, WV 25414-1072

Re; Friday 27 August 2010 Article (Commission Votes To Restore Money)

Dear Jefferson County Commissioners:

In response to the above stated article. I am relieved to see that the Commission is able to restore such funding to our areas volunteer fire departments. We have to be dependent on our local fire departments in the time of an emergency.

Dale Manuel is completely right stating that our public safety in #1.

But, we can't always depend on the local residence to produce money we dont have to pay the local Fire Departments. This relates to the issue in the spring of this year concerning turning our Volunteers Fire Departments into paid departments.

The funding for the local departments Commissioner Widmyer was considering is just not an option right now. Its going to take 5 years or more for this economy to start picking back up and funding the Counties potentially grow. Funding for certain projects within our County is a very good gesture, but the timing is wrong. The reason I know this is I do study economics and business. I would suggest looking at starting fund raisers. Fund raisers are not only sometimes tax write offs, but it will also make the County Government look much more positive and earn back the respect that has been lost.

Think of it this way, make it an option for the general public to donate and assist the County with certain project than to enforce. Its better to have an option than to mandate.

With the above being said, I encourage the idea of funding the local Volunteer Fire Departments, but not uphold enforcing local taxpayers to pay for something they might not be able to afford or being involved in. The other issue we are having problems with is the response time the the Fire Departments, EMS and Police Departments. Many residence are lossing respect for these departments. These department should provide the County Taxpayers and Commission with quarterly and annuel audits. We have the right to know where the departments money goes and how its spent. Taxpayer do pay for this service. We seem to find time and funding to hold a small event for re-election of governing officials, but no time to hold fund raisers to help support County Programs. Of course I am not trying to provide slander against our elected officials, but it does make sense to think about the reverse.

Respectfully:

Matthew Harris

**RECEIVED**

SEP 01 2010

Jefferson County Commission

Good Morning Everyone:

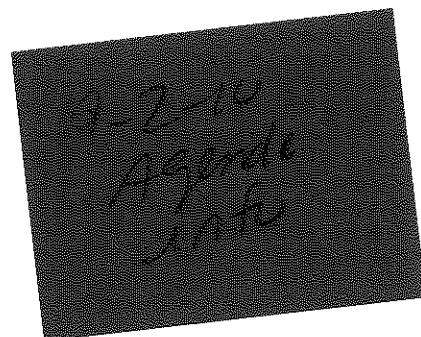
Thanks to all of you for sharing the flyer for the Hazardous & Electronic Waste Collection event held in July by the Jefferson County Water Advisory Committee (WAC). The event was a huge success. Below is a list of all the items that were collected and safely disposed. The WAC is holding another event which we hope will be equally successful, a Medication Take Back Program. This event is actually sponsored by the Federal DEA but WAC is our local agency involved along with the Jefferson County Sheriff's Department. We are hoping that you will share the attached flyer by posting it wherever you see fit and by sharing with the people on your lists so that we have an equally successful collection event to keep these medications from being flushed and ending up in our streams and groundwater.

Here are the results of the hazardous & electronic collection day.

- 7 - 55 gallon drums of fuel
- 4 - 55 gallon drums of oil
- 2 - 55 gallon drums of antifreeze
- 33 pallet size boxes of paint in cans
- 5 - 55 gallon drums of aerosols
- 11 - 55 gallon drums of pesticides
- 4 - 55 gallon drums of cleaners and other household cleaners
- 3- pallets and 3-drums of batteries
- 40 fluorescent light bulbs
- About 50 pounds of mercury containing objects
- About 15 pounds of reactive agents (agents that can spontaneously ignite)
- 7083 televisions
- 3502 computers
- 5406 monitors
- 8191 items of miscellaneous electronic equipment

Thanks again for your help, Sue  
Volunteer, Jefferson County Water Advisory Committee

Susanne Lawton, General Manager



Jefferson County Public Service District  
340 Edmond Rd, Suite A, Kearneysville, WV 25430  
Phone # 304-725-4647: Fax # 304-725-5976: Cell # 304-283-3072

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.



# Medication Take-Back Day



When: Saturday, September 25  
9:00 am to 9:00 pm

Where: Jefferson County Sheriff's Office  
102 Industrial Blvd., Suite 100  
Kearneysville, West Virginia

For more information please contact Jefferson County  
Sheriff's Office (304) 728-3205

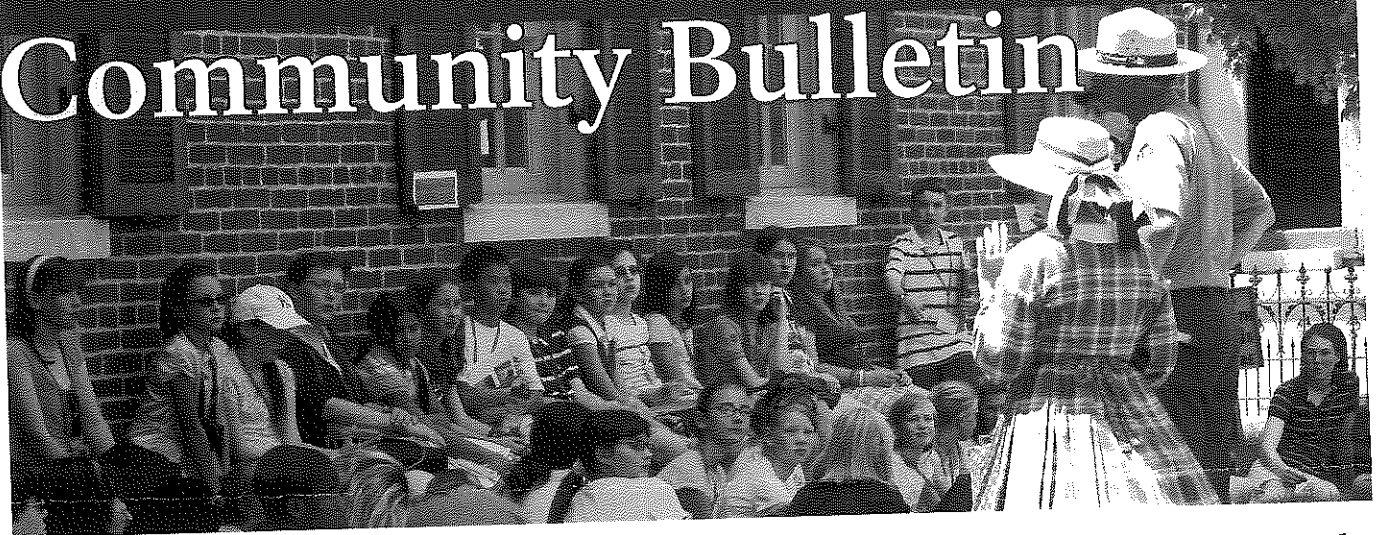
Bring your unused and unwanted medication to the National  
Take-Back Initiative sponsored by the DEA

- Please leave medication in original container if possible
- You may remove any personal information, **leave prescription information visible**
- Anonymous expired, unused, and unwanted prescription drugs





# Community Bulletin



## Harpers Ferry Celebrates National Public Lands Day

Lace up your hiking boots or just put on a comfortable pair of sneakers and head to Harpers Ferry National Historical Park on Saturday, September 25th, from 11:00 a.m. to 4:00 p.m. for National Public Lands Day. National Public Lands Day is the nation's largest hands-on volunteer effort to improve and enhance the public lands in America. This event for hikers and walkers of all ages and levels of experience is designed to show off the opportunities for walking and hiking in and around Harpers Ferry, while helping to preserve these trails for the future enjoyment. Harpers Ferry Park has over 18 miles of hiking trails that include mountains, gently rolling fields and flat walking—trails for everyone. Join in one of our four guided walks this day or explore on your own.

Stop in our Public Lands Day Tent in the Lower Town to find out more about our event partners—The Appalachian Trail Conservancy, the Harpers Ferry Historic Town Foundation, & Potomac Appalachian Trail Conservancy (PATC). Visitors are invited to contrast and compare items in a civil war soldier's pack versus a modern hiker's pack, the latest in modern hik-

ing equipment and lightweight food stuffs. Take in a guided hike and enjoy the breathtaking vistas! Guided hikes are appropriate for families and are rated easy to strenuous.

If you plan to join one of our hikes, please come prepared with water, insect repellent, sunscreen, and comfortable shoes.

In conjunction with National Public Lands Day, Harpers Ferry NHP, the Appalachian Trail Park Office, the Appalachian Trail Conservancy, and the Potomac Appalachian Trail Club are sponsoring a volunteer clean up project from 9 a.m. to 4 p.m. Volunteers should meet at 9 at the Keyes Gap Parking area and from there be shuttled to the clean up site. Volunteers are encouraged to wear long pants, long-sleeved shirts and gloves. Bring a lunch. Water will be provided. This is a rain or shine event. Contact is Jessica Liptak 304-535-5017.

### Guided Hikes:

12:00-3:00 Maryland Heights Hike—  
Rating: strenuous. 4.5 miles to the Overlook. Meet at the Lower Town

Green. Stop along the way at the Civil War Naval Battery and at the rocky overlook. For those who would like to go higher, an additional 2 miles of trail will take you to the top of the mountain to the 19th century ruins of the Stone Fort.

1:00-2:00 Virginius Island Trail Walk—  
Rating: easy. Meet at the Lower Town Green. Archeological evidence of our park industrial and transportation story can be found along the trail. Here lie the ruins of a bygone industrial center—Hall's and Virginius Islands.

2:00-3:00 Lower Town to Jefferson's Rock and ATC Office 1 mile, Walk--  
Rating: moderate. Meet at the Lower Town Green. Join the Appalachian Trail staff and walk in the steps of Presidents, captains of industry and social reformers.

3:00 to 4:00 C&O Canal- Rating easy.  
Meet at Lower Town Green. The hike will cover about .9 mile to the C&O Canal towpath via the Potomac River footbridge.

For additional information, please contact the Visitor Center at 302-535-6029

## August Volunteers of the Month

Harpers Ferry National Historical Park would like to recognize the volunteer contributions of Natural Resource Interns Carissa Turley, Darwin (D.J.) Fredman and Seth Morphis – all students at Shepherd University majoring in Environmental Studies. These three individuals, with their positive attitudes and willingness to accomplish projects, have had a huge impact on the accomplishments of the Natural Resource Branch this summer. At the conclusion of their intern experience, all three will have collectively donated over 1,100 hours – over \$23,000 – of service to the park, not to mention receive relevant coursework credit through Shepherd.

These students were able to comprehensively experience natural resources elements of the park from Short Hill to School House Ridge North and South. Projects they have been involved with range from pest management to wildlife and vegetation monitoring, geology and water quality. Specifics within each area include; installing and monitor-

ing traps on Ash Trees for Emerald Ash Borers; live trapping of nuisance wildlife; insect pest control; monitoring white-tailed deer populations; monitoring and documenting a rare Allegheny wood rat; setting up plots for long term vegetation monitoring; geologic hazard and fluvial geology monitoring; and initializing the parks water quality program by sampling of 11 streams running within the park.

Intern Supervisor and Park Biologist Dale Nisbet cannot say enough good things about these three students! Carissa, D.J. and Seth repeatedly sought out NPS advice for protocols, equipment, and general knowledge that involved working with park partners from the U.S. Department of Agriculture and U.S. Geological Society. All had the opportunity to visit other resource professionals at local NPS sites including; Antietam Battlefield, Catocin Mountain, and Rock Creek Park.

We wish Carissa, D.J. and Seth good luck as they finish the requirements of their degree programs.

## Upcoming Events

**September 4 - Basil Williamson's Tavern: The War of 1812** 11-6pm Lower Town, Harper House  
Join in a variety of early republic activities including recruitment of soldiers, period food demonstration, a live quadrille dance band and instruction in early republic dance by Ieva Erst, a lady of great ability.

**September 4 - United States Marine Band "Free Country"** 6pm Camp Hill at Mather Training Center. Enjoy the music of one of our country's premier military bands. Free concert.

**September 25 - National Public Lands Day** 11am - 4pm Lower Town  
Explore area trails, see breath-taking vistas while helping to keep trails clean and pristine. Guided hikes rated easy

to challenging will be offered in many areas of the park.

**October 2 - Mr. Lincoln Returns to Harpers Ferry** 1pm & 3pm Lower Town  
Our 16th president comes to life as Jim Getty portrays Abraham Lincoln.

**October 9 - Election Day 1860!**  
11am - 4pm Lower Town  
Attend our living history fall event "Election Day 1860." Look back 150 years to November 6, 1860, when the American electorate cast their ballots for the next president of the United States. Cast your vote!

**October 16 - At All Times Ready: The U. S. Marines** 11am - 4pm Lower Town  
Learn how the U.S. Marines reacted to abolitionist John Brown's October 1859 raid on the U.S. Army.

**October 30-31 - Under Fire: The Battle of Harpers Ferry 1862**  
11am - 4pm Bolivar Heights Battlefield  
Learn about the Battle of Harpers Ferry and see an artillery demonstration. Baltimore Light Artillery presents a military camp. Programs are at 12 noon, 2pm & 3pm.

**November 6-7 - Fall Cider Making**  
11am - 4pm Lower Town  
Enjoy this fall tradition that harks back to happier times for German immigrant Frederick Roeder and his family when the tavern business was thriving.

**December 4-5 - Captain Flagg's US Quarter Master City: Approach of Peace 1864** Sat. 12-8pm Sun. 11am-4pm Lower Town  
Join this special Yuletide of 1864, when Harpers Ferry soldiers attempted to create Christmas in a war zone. Programs feature local citizens and soldiers preparing for the Yuletide; a Civil War-style Santa Claus dispersing presents to the soldiers, a Victorian Cotillion, Yuletide confections, and special guided walking tours.



National Park Service  
U.S. Department of the Interior

The history of Harpers Ferry has few parallels in the American drama. It is more than one event, one date, or one individual. It is multi-layered, involving a diverse number of people and events, decisions and actions that influenced the course of our nation's history. Visit Harpers Ferry and step into history.

Harpers Ferry National Historical Park  
P.O. Box 65  
Harpers Ferry, West Virginia 25425

Visitor Center  
304-535-6029

Harpers Ferry Historical Association Bookshop  
304-535-6881

Harpers Ferry NHP Home Page  
[www.nps.gov/hafe/](http://www.nps.gov/hafe/)

The National Park Service cares for the special places saved by the American people so that all may experience our heritage.



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION **RECEIVED**  
**Division of Highways**

1900 Kanawha Boulevard East • Building Five • Room 110  
Charleston, West Virginia 25305-0430 • (304) 558-3505  
AUG 27 2010

Joe Manchin III  
Governor

Jefferson County Commission

August 24, 2010

To Whom It May Concern:

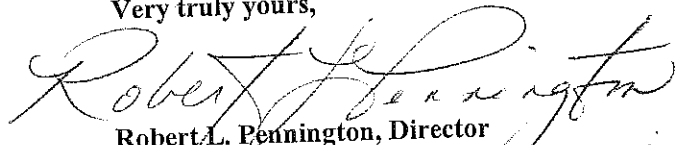
The Statewide Transportation Improvement Program (STIP) is a financially constrained document required to show planned Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) expenditures for federal fiscal years 2010-2015. One of the requirements to funding any projects with FHWA or FTA funds is that each proposed project undergo a public "review and comment period". Therefore, additions or deletions to the STIP and certain changes to projects currently in the STIP must meet this requirement before federal funds can be obtained. Accordingly, I am again requesting your assistance in making available (to anyone who wishes to review them) the attached listing of proposed amendments to the approved 2010-2015 STIP.

All written comments are to be received no later than September 7, 2010, and should be addressed to:

Mr. Robert L. Pennington, Director  
Program Planning and Administration Division  
West Virginia Division of Highways  
Building 5, Room A-816  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0430

Should you need additional information, please call (304) 558-3113. Thank you for your assistance in this matter; your efforts are indeed appreciated.

Very truly yours,

  
Robert L. Pennington, Director  
Program Planning and Administration Division

RLP:Cb

Attachment

cc: Mr. Tony Tarone, Federal Transit Administration – w/ attachment  
Mr. Jeff Blanton, Federal Highway Administration – w/ attachment  
Mr. Kevin Burgess, Federal Highway Administration – w/ attachment  
Ms. Susan O'Connell, Division of Public Transit – w/ attachment

STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM (STIP) FFY 2010-2015  
PROGRAM AMENDMENT FOR 2010

| COUNTY                  | FFY  | DISTRICT | GROUP | FUNDING OBLIGATION DATE | FUND TYPE | PHASE | ROUTE | PROJECT NAME                      | TYPE OF WORK                   | STATE PROJ. NUMBER | FEDERAL PROJECT NUMBER | TOTAL PHASE COST | FEDERAL DOLLAR COST | FEDERAL COST CHANGE |
|-------------------------|------|----------|-------|-------------------------|-----------|-------|-------|-----------------------------------|--------------------------------|--------------------|------------------------|------------------|---------------------|---------------------|
| <b>PROJECT COMMENTS</b> |      |          |       |                         |           |       |       |                                   |                                |                    |                        |                  |                     |                     |
| JACKSON                 | 2010 | G        | G     | 9/28/2010               | ARRA      | CON   | WV016 | RAVENSWOOD SIDEWALKS (ARRA)       | CONST SW (S) & PAVED SHOULDERS | U318 RAVEN 2 00    | ERP2009239D            | \$230,000        | \$230,000           |                     |
| <b>ADD NEW PROJECT</b>  |      |          |       |                         |           |       |       |                                   |                                |                    |                        |                  |                     |                     |
| JACKSON                 | 2010 | G        | G     | 9/28/2010               | ARRA      | CON   | NA000 | WALNUT & SYCAMORE ST ADA (ARRA)   | CONST SW (S), RAMPS            | U318 RAVEN 3 00    | ERP2009239D            | \$150,000        | \$150,000           |                     |
| <b>ADD NEW PROJECT</b>  |      |          |       |                         |           |       |       |                                   |                                |                    |                        |                  |                     |                     |
| WIRT                    | 2010 | G        | G     | 9/28/2010               | ARRA      | CON   | WV014 | ELIZABETH SIDEWALK RECONSTRUCTION | CONST SW (S) & PAVED SHOULDERS | U353 ELIZA 2 00    | ERP2009240D            | \$170,000        | \$170,000           |                     |
| <b>ADD NEW PROJECT</b>  |      |          |       |                         |           |       |       |                                   |                                |                    |                        |                  |                     |                     |

*The West Virginia Association of Counties*

*recognizes*

# JEFFERSON COUNTY

*as a member in good standing, entitled to all the rights & privileges of  
membership and promoting*

*"State Strength through County Cooperation"*

**2010 - 2011**

*Patricia L. Hamilton*

Patricia L. Hamilton  
Executive Director, WVACO

*Gerald Hough*

Gerald Hough  
President, WVACO  
Prosecuting Attorney, Gilmer County





*The Culture Center*  
1900 Kanawha Blvd., E.  
Charleston, WV 25305-0300

**Randall Reid-Smith, Commissioner**

Phone 304.558.0220 • [www.wvculture.org](http://www.wvculture.org)  
Fax 304.558.2779 • TDD 304.558.3562  
EEO/AA Employer

August 24, 2010

Ms. Lyn Widmyer  
Jefferson County Commission  
PO Box 250  
124 E. Washington Street  
Charles Town, WV 25414

Dear Ms. Widmyer:

We hereby notify you that the Bullskin Run Historic District (**roughly** bound by Leetown Road, Huyett Road, Berryville Pike, and Withers Larue Road) will be considered by the Archives and History Commission for nomination to the National Register of Historic Places. The National Register is the Federal government's official list of historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our Nation's heritage.

Listing of the Bullskin Run Historic District provides recognition of the community's historic importance and assures protective review of Federal projects that might adversely affect the character of the historic district. A state income tax credit is also available to owners of contributing buildings that are rehabilitated. If the district is listed in the National Register, certain Federal investment tax credits for rehabilitation and other provisions may apply.

Listing in the National Register does not mean that limitations will be placed on the properties by the Federal government. Public visitation rights are not required of owners. The Federal government will not attach restrictive covenants to the properties or seek to acquire them.

You are invited to attend the Archives and History Commission meeting at which the nomination will be considered. The Commission will meet at 9:30 a.m. on October 1, 2010. The meeting will take place at the French Creek Presbyterian Church on Route 2 in French Creek, Upshur County.

Attached please find a notice that explains, in greater detail, the results of listing in the National Register and that describes the rights and procedures by which an owner may comment on or object to listing in the National Register.

Should you have any questions about this nomination before the Archives and History Commission meeting, please contact Ms. Erin Riebe, National Register Coordinator, at 304.558.0240.

Sincerely,

Susan M. Pierce  
Deputy State Historic Preservation Officer

**RECEIVED**

AUG 27 2010

Jefferson County Commission

enclosure

## **RIGHTS OF OWNERS TO COMMENT AND/OR OBJECT TO LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES**

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing may submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility of the property for listing in the National Register. If the property is then determined to be eligible for listing, although not formally listed, Federal agencies will be required to allow for the Advisory Council on Historic Preservation to have an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If you choose to object to the listing of your property, the notarized objection must be submitted to Ms. Susan M. Pierce, Deputy State Historic Preservation Officer, West Virginia Division of Culture and History, 1900 Kanawha Boulevard East, Charleston, West Virginia, 25305-0300 by October 1, 2010.

If you wish to comment on the nomination of the property to the National Register, please send your comments to the State Historic Preservation Office before the Archives and History Commission considers this nomination on October 1, 2010. A copy of the nomination and information on the National Register and the Federal tax provisions are available from the above address upon request.

## FEDERAL RESULTS OF LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES

**Eligibility for Federal tax provisions:** If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 revises the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984, and as of January 1, 1987, provides for a 20 percent investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15 percent and 20 percent Investment Tax Credits (ITCs) for rehabilitations of older commercial buildings are combined into a single 10 percent ITC for commercial or industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

**Consideration in planning for Federal, federally licensed, and federally assisted projects:** Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies take into account the effect of an undertaking on any building, structure, site, or district that is listed in or eligible for inclusion in the National Register of Historic Places. Agencies must also afford the Advisory Council on Historic Preservation the opportunity to comment on all projects affecting historic properties listed in or eligible for inclusion in the National Register. For further information, please refer to 36 CFR 800.

**Consideration in issuing a surface coal mining permit:** In accordance with the Surface Mining and Control Act of 1977, there must be consideration of historic values in the decision to issue a surface coal mining permit where coal is located. For further information, please refer to 30 CFR 700 et. seq.

**Qualification for Federal grants for historic preservation where funds are available:** Presently, funding is unavailable.

## STATE RESULTS OF LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES

**Eligibility for state tax provisions:** If a property is listed in the National Register, certain state tax provisions may also apply. The 1999 West Virginia legislature approved a state income tax credit for homeowners. The Rehabilitation Investment Tax Credit Program provides a West Virginia state income tax credit for the rehabilitation of historic private residences. This is a 20% state income tax credit which is based on qualified expenditures undertaken as part of the rehabilitation of a historic private residence. The state credit is applied directly against state taxes owed by the owner. This credit is available to private homeowners for approved rehabilitation work on their own residence. This benefit is available to the owner of a private residence that is rehabilitated according to the Secretary of the Interior's Standards for Rehabilitation. The building must be listed in the National Register of Historic Places either individually or as a contributing building in an historic district that is listed in the National Register of Historic Places. It must be listed in the National Register prior to submission of the Historic Preservation Certification Application Request for Certification of Completed Work.

**Consideration in planning for state, state licensed, and state assisted projects:** The Division of Culture and History will review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties outlined in W. Va. Code §29-1-8. The review process will be conducted on lands owned or leased by the state, or on private lands where investigation and development rights have been acquired by the state by lease or contract as outlined in W. Va. Code §29-1-8b. Permit approval of activities affecting historic properties listed in the National Register or determined eligible for listing in the National Register will be demonstrated by written letter from the Division of Culture and History upon completion of the review process.

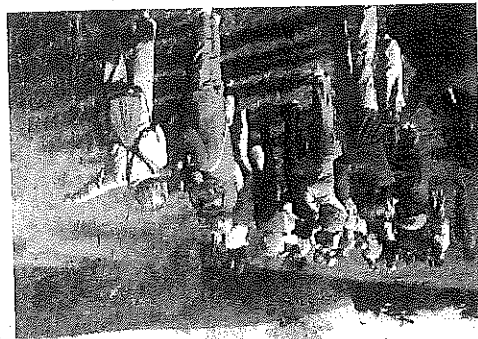
**Qualification for state grants for historic preservation where funds are available:** The West Virginia State Historic Preservation Office administers two grant programs. The Certified Local Government program receives 10% of the state's annual allotment of the Federal Historic Preservation Fund. This program supports survey and planning activities. The second grant fund, the State Historic Preservation Development Grant program, assists with the rehabilitation of properties listed in the National Register of Historic Places. Both programs are matching grants.

## Berkeley Springs Birding Festival Set for September 24-26

The Third Annual Berkeley Springs Fall Birding Festival will be held in and around Berkeley Springs the weekend of September 24-26.

Most of the festival's events will be free and everyone is invited to attend.

The festival is timed to coincide with the annual fall bird migration, which should be in full swing at that time. It is the only fall birding festival being held in West Virginia.



PVAS is once again the lead sponsor of the festival. Local community sponsors include Clark's, the Country Inn, the Nature Niche, Old Oak Art Glass, Sleepy Creek Retreat, Cornelia Belton, Jane McCloud, and Jane Davis.

The festival's first events will be a free program at the Country Inn the evening of Friday, September 24. The program, which will start at 7:30 p.m., will feature West Virginia nature writer and broadcaster Dr. Scott Shalaway discussing his experiences in the Galapagos Islands.

Dr. Shalaway, who has a Ph.D. in wildlife ecology from Michigan State University, lives in Cameron, WV. His weekly nature column appears in the *Pittsburgh Post-Gazette*, the *Charleston Gazette*, the *Martinsburg News-Journal* and other newspapers in the region. He also hosts weekly nature radio shows on stations in Pittsburg and Wheeling.

On Saturday, Dr. Shalaway will lead an 8:00 a.m. bird walk that will start at the Panorama Overlook.

At 10:00 a.m., Saturday, a free birding workshop will be held at Cacapon State Park. The workshop will be aimed at children but

Potomac Valley Audubon Society is people dedicated to preserving, restoring, and enjoying the natural world through education and action.

See *Birding Festival*, Page 4

See *Education Programs*, Page 5

## Fall Education Programs Are Underway

As soon as school starts in August, PVAS is back in the classroom with our environmental themed programs both at schools and at the Yankauer Preserve. Several classrooms have already booked a day for a trip to the preserve and our monthly Wee Naturalist programs have already resumed. Other schools and scouting groups have been in contact with PVAS to discuss possible environmental-themed programs later this fall.

Last year, several high school biology teachers who have heard about our program requested it for their classrooms. Ellen Murphy and Krystal Kennedy (watershed instructor) adapted the program and offered it upon request at Martinsburg High School last year. Based on that experience, Krystal further adapted and revised the program as part of her co-op at Shepherd University last year. The DEP grant will allow us to pilot-test this new version of the curriculum more completely with up to five classrooms at five different high schools in Jefferson and Berkeley Counties in the spring. The WV DEP funded the Watershed Education Initiative for fourth graders last year as well. It will be another busy watershed year!

The second grant is from the WV Division of Environmental Protection (WVDEP) to pilot a high school version of our Watershed Education Initiative that focuses on water quality issues. Similar to our fourth-grade Watershed Education Initiative, this program will have about seven visits throughout the school year. We're hoping to put students to work in their school greenhouses to take care of native plants. The program will conclude with a service-learning component that will allow them to plant an erosion control garden at the school using the plants they've raised throughout the spring.

PVAS has been awarded two grants to better serve schools this year. One is a grant from the City of Ranson for PVAS to serve Ranson Elementary School with programs for grades K-5. These programs may take place at the school, at Yankauer, or in the new Flowing Springs Park in Ranson next to the new Home Depot. The City of Ranson has been supporting PVAS programs at the school since 2006.

## Two New Grants

## Fall Wee Naturalists Schedule Announced

The fall schedule for our "Wee Naturalists" program is now set.

The program is aimed at pre-school children ages 3-5. It is designed to provide regular opportunities for small children and loving adults to explore nature together safely under the guidance of an experienced PVAS instructor. Children must be accompanied by a parent, grand-



parent or other adult relative, or a guardian.

For this fall, program sessions will be offered at the Yankauer Nature Preserve on the third Wednesday and Thursday of each month, from August through December. Each session will last from 9:30 a.m. to 11:00 a.m., and each month's sessions will explore a different nature theme.

For example, September's sessions will focus on insects, the focus in October will be on signs of fall, and the December theme will be "Snowflakes and Snowbirds."

To ensure that everyone receives close, personal attention, enrollment will be limited and pre-registration is required.

Families may register for one, several, or all of the monthly sessions. The fee will be \$8 per child/adult team per session for one or two sessions, and \$7 per session for three or more sessions.

The program is led by Suzi Taylor, of Sharpsburg, Maryland, a veteran PVAS camp director who has a degree in environmental education.

For more information or to register, contact Suzi at 301-432-1908 or [tomasdsuzi506@cs.com](mailto:tomasdsuzi506@cs.com). Information and registration forms are also available on the PVAS website at [www.potomacandubon.org](http://www.potomacandubon.org).

The program was initiated last year with support from the Eastern West Virginia Community Foundation's Two Rivers Giving Circle.

## Two Master Naturalist Workshops Set for September

PVAS is offering two Master Naturalist Workshops during the September 11-12 weekend.

The workshops, which provide expert instruction on specific natural history topics, count as elective courses for individuals enrolled in the Potomac Valley Master Naturalist Program.

However, the workshops are also open on a space-available basis to anyone who is interested. Enrollment for each workshop will be limited to 20 persons. Application forms and further information are available on the PVAS website.

The specific dates and topics of the two September workshops are as follows:

Hello everyone:  
Although Valley Views has been on vacation for the past two months, PVAS has not been idle. Since the beginning of June, in spite of this summer's oppressive heat, we have:

- completed another successful summer camp season at the Yankauer Nature Preserve
- successfully launched a new satellite camp at CraftWorks in southern Jefferson County and a new iteration of our digital nature photography camp for teenagers
- gotten our seventh annual evening concert series underway at Yankauer
- held a fine fundraising reception at Rusty and Cricket Morgan's beautiful home in Rippon
- helped Jane Tabb promote Jefferson County agriculture at one of her excellent Fresh Feast on the Farm dinners and sponsored 11 field trips that ranged in locations from the C&O Canal near Shepherdstown to Delaware's Bombay Hook Refuge on the Eastern Shore.

Now, with cooler temperatures at last on the way, we're looking forward to this fall. As usual, we've got a variety of activities scheduled. Among other things:

- we'll be resuming our school programs and our Wee Naturalist program for preschoolers
- we'll also be resuming our monthly presentations at NCTC, with the first one—a joint program with NCTC—set for September 8
- we're once again sponsoring the Berkeley Springs Fall Birding Festival, and this year's festival promises to be bigger and better than ever
- Wil Hershbarger is once again leading his very popular "insect walks" for us
- we've got an interesting variety of field trips scheduled, along with two Master Naturalist workshops
- our Yankauer concerts will continue through September.

We hope you'll find something in this lineup that interests you. We can't be all things to all people but we do strive to offer a wide range of programming that helps to increase understanding and appreciation of nature among people of all ages. And of course we always welcome any suggestions you might have for new and different kinds of programming—we're always willing to give new ideas a try.

—Peter Smith

**Volunteers Sought for American Conservation Film Festival**

Love movies? ACFE is seeking volunteers to help make the 8<sup>th</sup> annual Festival a success by lending brains, poise, muscle, or enthusiasm in return for Festival passes, T-shirts, and other special goodies. Email [info@conservationfilm.org](mailto:info@conservationfilm.org) for a list and description of volunteer opportunities (most with no experience necessary) and an application.

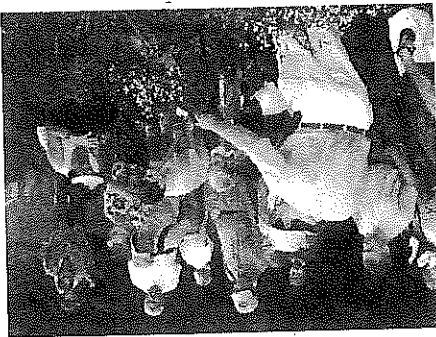
about love, nature, and the nature of love.  
 • September 28: Steve Citala. Close out the summer season with this dynamic performer who is influenced by Rhythm & Blues, Little Feat, and Eric Clapton.

Those who attend are welcome to bring their own picnic suppers, but the preserve does not have trash pickup so everyone is asked to carry out everything they bring in.

Picnic tables will be available in the pavilion on a first-come, first-served basis. Attendees may also bring their own chairs or picnic blankets for their comfort. Please leave pets at home.

For more information, contact Kristin Alexander at [pvasmail@aol.com](mailto:pvasmail@aol.com) or 304-676-3397.

### "Insect Walks" Are Great



**Family Fun**  
 PVAS is again sponsoring two evening "insect walks" this year, on August 28 and September 11.

Both walks will be led by local insect expert Will Hershberger, who is coauthor of "The Songs of Insects," a book and audio CD published by Houghton-Mifflin Company.

These walks are family-oriented events that are especially popular with young children but anyone with an interest is welcome to participate. There is no fee.

However, space will be limited so those who would like to participate should make a reservation as soon as possible by contacting Peter Smith at [pvsmitth@frontiernet.net](mailto:pvsmitth@frontiernet.net) or 304-876-1139.

The August 28 walk will be held along the C&O Canal across from Shepherdstown. The walking group will assemble at 7:00 p.m. in the large Canal parking lot on Canal Road, three-tenths of a mile south of the Shepherdstown bridge.

The September 11 walk will be held at Cacapon State Park outside Berkeley Springs. Participants will meet at 6:30 p.m. at the entrance to the Park's Lodge.

From both locations, Hershberger will lead explorations of nearby fields and roadsides. Insects likely to be encountered include tree crickets, several species of meadow katydids, perhaps one or two species of round-winged katydids, northern true katydids, oblong-wing katydids, and perhaps some bush katydids.

Those who wish to participate should bring flashlights and be prepared to walk through high grass and weeds. Tucking pants legs into socks and spraying them with a DEET-based insect repellent is recommended.

The walks will not take place if it is raining.

Hershberger, who lives in Hedgesville, has been a naturalist all his life.

**Saturday and Sunday, September 11-12: Leave No Trace Program Trainer Course.** This special two-day course will also be held at the For the Love of Children Outdoor Education Center. It will start at 4:00 p.m. on the 11<sup>th</sup>, include an overnight stay that evening, and end at 3:00 p.m. on the 12<sup>th</sup>.

The Leave No Trace (LNT) program emphasizes skills and techniques essential to LNT minimum impact outdoor ethics and education. Students who complete this trainer course will become qualified LNT Trainers.

Topics covered will include the role and function of an LNT Trainer; the principles and ethics of LNT; teaching skills and techniques and student learning LNT program; the role and function of the non-profit organization LNT, Inc. Each participant will understand, demonstrate, and be able to teach minimum impact techniques for friends, family, sponsoring organization and other community groups and lead a discussion on outdoor ethics and help others explore their own personal outdoor ethic.

More information and a detailed schedule with a list of items to bring will be provided upon registration. The fee for the course is \$35 for all participants. For more information, contact Clark Dixon at [dixonconsultants@aol.com](mailto:dixonconsultants@aol.com).

## Yankauer Concert Series Underway

PVAS is again offering a series of free outdoor concerts this summer at the Yankauer Nature Preserve.

Our Seventh Annual "Music in the Cedars" concert series began August 3 and will continue through September. The concerts are being held Tuesday evenings, with each one running from 6:30 to 7:30 p.m.

The concerts are held rain or shine in the Preserve's covered pavilion. There is no fee and anyone is welcome to attend.

The schedule of the remaining concerts is as follows:

- August 31: The Outpatients. Come enjoy an evening of "Toe Tappin' Acoustic Mayhem." Three part harmonies, blazing instrumental, and all around "newgrass" jamming.
- September 7: Daryl Bryarly. Go back in time with Daryl as he performs folk, Civil War, Celtic, and original songs on the Hammered Dulcimer.
- September 14: Rolling Coyotes. A blend of country-tinged folk with diverse instrumentation and vocals describing unique places, characters and themes.
- September 21: Betty Jo and Scott Rockswell will be joined by their daughter Gena for a family trio performing songs

He has been photographing and recording the natural world for more than a decade and his work has been published in magazines, calendars, and books.

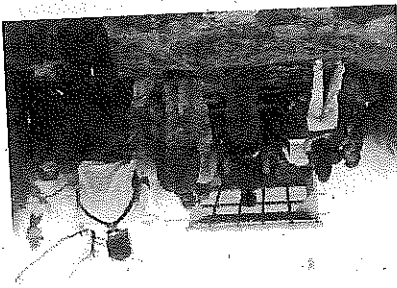
His recordings of birds, frogs and insects are archived at the Macaulay Library of Natural Sounds at the Cornell Laboratory of Ornithology.

His website can be found at [www.naturimagesandsounds.com](http://www.naturimagesandsounds.com).

### Join Bob Dean for Banding and

### Birding Trip to Dolly Sods

PVAS will sponsor a trip to the Dolly Sods Scenic Area in Grant County, West Virginia, the weekend of September 11-12.



Local birding expert Bob Dean will lead the trip and the main activity will be observing the bird banding in progress at the Allegheny Front Migration Observatory on both mornings.

The Observatory's banding station has operated annually since 1958 with a total capture of more than 230,000 birds over the years. The bulk of the captures are members of the wood warbler family, so this will be an opportunity to see many species of these birds up close.

Afternoons will be devoted to hawk watching from either the banding station or the Bear Rocks area at the north end of Dolly Sods, if weather conditions permit. If not, the group will spend the afternoon hiking in the wilderness area, birding and botanizing with an option to pick wild cranberries, blueberries, and huckleberries. There will be no fee and anyone with an interest is welcome to participate.

Participants will rendezvous at 7:30 a.m. on Saturday the 11<sup>th</sup> at the parking area across from the Red Creek Campground, which is located about 2 miles south of the north entrance to Dolly Sods.

Participants should plan to make their own overnight accommodations in the area. Possibilities include the Red Creek Campground and other campsites maintained by the Monongahela National Forest (www.forestcampsites.com/dow/eastern/moncomp.htm); Canadian Valley State Park Lodge (www.cananaaresort.com), Harman's North Fork Cottages (www.wvlogcabins.com) and B&Bs in and around Petersburg and Davis (www.bbonline.com/wv/Petersburg.html).

The drive time to Dolly Sods is about 2 hours and 30 minutes from the Charles Town area. For more information, contact Bob Dean at [bobdean52@gmail.com](mailto:bobdean52@gmail.com).

### Plan Ahead for October 7-10

### Cape May Hawk-Watching Trip

PVAS is sponsoring a hawk-watching trip to Cape May, NJ, the weekend of October 7-10. This should be a good opportunity to see large numbers of accipiters and falcons, as well as buteos. The trip will use the resources of the New Jersey Audubon Society.

City and the Cape May Bird Observatory, which offer morning and afternoon bird walks and a special hawk-watching platform where one can comfortably watch the migration; naturalists will be present to help identify incoming hawks.

Anyone with an interest is welcome to come along and there will be no fee. But participants will be expected to bring their own transportation and make their own hotel or motel reservations. The Cape May Bird Observatory website ([www.birdcapemay.org](http://www.birdcapemay.org)) contains a list of hotels and motels which offer discounts to birders.

For more information, contact the trip leader, Sandy Sagalkin, at [momsansagalkin@myactv.net](mailto:momsansagalkin@myactv.net) or 301-432-6847.

*Birding Festival* (continued from page 1)

also open to beginning birders of all ages. It will be led by the Park's Naturalist, Kelly Smith, and cover such topics as identification basics, birding manners, and using guidebooks and equipment.

Saturday afternoon's activities will include a 1:00 p.m. free session on "The Joys of Backyard Birding," which will provide tips on ways to attract, identify, and enjoy a wide variety of birds in your own yard.

At 2:00 p.m., Dr. Shalaway, local naturalist Joe Gentile and others will lead a free mountaintop nature walk at the Eldon Nature Preserve near Great Cacapon.

Saturday evening will feature two presentations at the County Inn. At 7:00 p.m., Marcy Heacker, a forensic ornithologist with the Smithsonian Museum of Natural History, will provide a behind-the-scenes look at her work on avian bird strikes and the search for possible remnant populations of birds thought to be extinct, such as the Ivory Billed Woodpecker.

At 8:15 p.m., Dr. Shalaway will lead an interactive session on bird identification that will be of interest to both beginning and advanced birders.

The Saturday evening event will include desert and coffee, and a \$10 fee will be charged to help cover festival expenses. Advance tickets will be available at the Nature Niche store at 50 North Washington Street in Berkeley Springs, telephone 304-258-0992.

Tickets will also be available at the Friday evening program and at the door.

The festival will wrap up the morning of Sunday, September 26, with a free 8:30 a.m. bird walk led by Dr. Shalaway at Sleepy Creek Retreat, a mountainside meadowland property south of Berkeley Springs. The property features sweeping views and a rich variety of habitats, and it will provide good opportunities to see migrating raptors, blue jays and warblers.

All of the festival events at the County Inn will be held in the Inn's Garden Room. Copies of the festival program and other materials will be available throughout the festival weekend at that location. For more details see the PVAS website or call the Nature Niche store at the number shown above anytime during business hours.

### Birdseed Sale Next Month

Order forms will be in the October Valley Views. The delivery date will be Saturday, November 6.

Contact Diana Mullis, [dianamullis@aol.com](mailto:dianamullis@aol.com) or 304-267-3482, for more information.

Our fourth-grade Watershed program will be conducted in some classes this fall and several schools have inquired about extending the program for the entire year. This year-long program still emphasizes local watersheds, the Chesapeake Bay, and water quality, but it expands into helping students learn more about home water use, recycling, overpackaging, and ways to reduce lunch waste in their school's cafeteria.

Thanks to grants from the Two Rivers Giving Circle and Escobal, PVA's will be piloting revised 2<sup>nd</sup> and 3<sup>rd</sup> grade programs this fall. Funding restrictions on transportation have made visiting Yankauer more of a challenge for some classes so our solution is to take PVA's programs into the schools! These programs combine environmentally themed activities in the classroom with a schoolyard scavenger hunt that helps students realize that nature is all around them, not just in a park or nature preserve. Each program includes a pre- and post-assessment and additional activities and resources for teachers. The programs are being piloted at Burke Street, Berkeley Heights, Tuscarora, and Winchester Avenue Elementary Schools in Berkeley County.

## South Mountain Hawk Watch

PVA's will sponsor a hawk-watching trip to Maryland's Washington Monument State Park on Thursday, September 16. Anyone with an interest is invited to participate.

The annual Broad-winged Hawk migration should be at or near its peak that week, and the Washington Monument State Park is one of the best sites in the mid-Atlantic for viewing hawks. The Park's monument offers an excellent vantage point to watch these magnificent birds as they ride the thermals that sweep along the mountain's ridge line.

Other species that may be seen include the Sharp-shinned Hawk, the Red-shouldered Hawk, the Red-tailed Hawk, the American Kestrel, and the Northern Harrier.

Local naturalist Dave Weesner will lead the trip and help identify the birds seen.

The Park is located four miles east of Boonsboro and 1 1/2 miles north of Alternate Route 40 on Monument Road.

Participants will gather at 9:00 a.m. in the Park's uppermost parking lot, just below the monument. From there, the group will walk the up to the monument at the summit. The trail is not long but it is rather rough and not suitable for anyone who needs assistance. The length of the stay at the monument will depend on how the hawk flight is going. If conditions are good, the trip leaders may stay until early afternoon. Other participants can leave whenever they wish.

Participants should bring binoculars if they have them and dress appropriately for the weather.

No pre-registration is needed for this trip, and there is no fee.

Please note that the trip will be cancelled if it is raining because hawks do not fly in such conditions.

For more information about the trip contact Peter Smith at 304-876-1139 or [pysmith@frontier.net](mailto:pysmith@frontier.net)

## Have You Ever Visited a Carnivorous Plant Nursery?

If you'd like to learn about hawk-watching in a more systematic way, Dave Weesner is teaching a course on the subject at Hagerstown Community College the same week as our field trip. The course will include two hours of classroom instruction at HCC's Valley Mall Center the evening of Wednesday, September 15 (from 6:30 to 8:30 p.m.), and a morning field trip to a location yet to be determined on Saturday, September 19. This course carries a \$35 fee.

As a follow-up to that course, Dave will also lead an all-day, College-sponsored hawk-watching trip to Hawk Mountain, in Pennsylvania on Monday, October 4. The fee for this trip will be \$30, which will include transportation in an HCC van.

For information on how to sign up for the course or the October 4 trip, contact Dave at 301-302-6376.

If you're interested in the unusual, you won't want to miss our October 3 tour of the Botanique Carnivorous Plant Nursery in the Blue Ridge mountains north of Charlottesville, Virginia.

The tour will be free and anyone with an interest is welcome to participate.

Founded in 1982, the Botanique nursery is an internationally recognized facility that specializes in carnivorous plants, such as the Venus Fly Trap, Pitcher Plants, Sundews and more.

Pitcher Plants are the nursery's main focus, and it is said to contain the greatest variety of such plants in the U.S.

The nursery is focused on research and education as well as commercial sales, and it views part of its mission as helping to preserve relic plant populations and to increase public support for wildlife preservation efforts generally.

The nursery can only be visited by appointment, so this a good opportunity to see it.

Plants will be available for purchase.

Participants should plan to meet at 3:30 p.m. at the nursery, which is located at 387 Pitcher Plant Lane, Starbucksville. Directions can be found on [www.mapquest.com](http://www.mapquest.com) but not on Google maps. The trip should take about 2 1/2 hours from the Charles Town area.

For more info about the nursery go to [www.pitcherplant.com](http://www.pitcherplant.com). For info about the trip, contact Kelly Heldreth at [kheldreth@hotmail.com](mailto:kheldreth@hotmail.com).

## Camp Roundup for 2010

It was hot! It was great! Which words best describe camp this summer? Both of them! Camp was great and we had six fabulous weeks at Yankauer and two more at Cool Spring Farm in south Jefferson County. And, yes, it was hot, but we made it through! This year's sessions included *Camp Survivor*, *Earth Artists*, and *Dirty as well as Out of the Nest*, *Just For Pleadings*, and *First Explorers* for preschool campers.

Two hundred forty-eight campers attended at least one week of camp, spending much of their time in the woods where it was (somewhat) cooler. The highlight of any camp week is building

Matt Poole of NCTC, who had taken the lead on the camp since its inception, has taken a new job in New England, so he was unavailable for the camp this year. Thankfully, Bruce Field, a nature photographer from Hagerstown, volunteered to take the lead this year. He was assisted by Krystal Kennedy, a recent Shepherd University graduate. Krystal is a veteran PVAS instructor of both PVAS Watershed Program and Audubon Discovery Camp. Bruce and Krystal were a great team and put together an amazing week of photo experiences for the students. Asbury United Methodist Church even allowed us to use their van for a day so students could take photos at Antietam Battlefield and photograph raptors at Trege Mountain Sanctuary in Keedysville.

We thank Matt Poole for all of his energy over the years in developing this camp and wish him well in his new job in New England. A huge thank you also goes to Bruce Field for picking up where Matt left off and his willingness to instruct the camp as a volunteer. We thank Dina Spanòmanolis of Trege Mountain Sanctuary for allowing campers to visit her wildlife rehab facility and take photos of her falconry birds. Will Hershberger also deserves an enormous thank you for coming one afternoon to do a mini-workshop for the students on macro photography that was truly inspirational. Pass-for Rudy Bropleh, Everane Bropleh, Monroe Burger, Clark Dixon, Joyce Dunmore, and Vernon Hunter of Asbury UMC were extremely helpful in making the camp a success and we thank them for their "over and above" efforts. Finally, we sincerely thank the Potomac Valley Nature Photographers for a \$500 contribution toward the camp to offset the real costs.



A selection of the students' photos will be posted in a slideshow at potomacaudubon.org shortly. You'll see evidence of all they learned with their photos of the nature in and around Shepherdstown, the C&O Canal, Antietam National Battlefield, and some of the wildlife and falconry birds from Trege Mountain Sanctuary.

## Don't Miss Special September Program at NCTC!

PVAS will not present a program of its own at the National Conservation Training Center during September. Instead, on Wednesday, September 8, we are cosponsoring with NCTC a special presentation on the past, present and future of the Chesapeake Bay.

The speaker will be author and environmentalist Ned Tillman, who was originally scheduled to present this program last February but had to cancel because of snow.

The program will be held in the Byrd Auditorium at 7:00 p.m.

Admission will be free.

Tillman is a lifelong resident of the Chesapeake Bay watershed

"Forts" in the woods and some of the structures were amazing. Yankauer forts featured multiple rooms, recreation centers, and interior decoration! At any given time, campers could also be found taking hikes, making recycled crafts, chasing butterflies, looking for insects, keeping an eye out for the black rat snake that lives in the shed, avoiding poison ivy, investigating the world while blindfolded, playing "Ranger Rick" and "Camouflage," tug-of-war, listening to "Muncha Muncha," and just exploring.

Middle school aged campers were able to choose from three sessions designed for more in-depth investigations. "Ways of the Bay" campers enjoyed an overnight adventure to Echo Hill Outdoor School on the Chesapeake Bay, then returned to Yankauer for fish dissection led by Vicky Blazer of the USGS Lcetown Aquatics Lab. "Dirty Jobs" featured everything yucky, including growing mold spores, dissecting worms, and boiling bones. "Wildlife CSI" gave campers the opportunity to learn about endangered species from NCTC's Randy Robinson and forensic science from Jodi Kissner who teaches at Martinsburg High School. This session also gave campers the chance to study the effects of decomposition on several chickens which was "disgusting, but pretty cool," as one camper commented.

Our new Discovery Camp site at Cool Spring Farm in south Jefferson County provided 40 campers with a beautiful site for "Earth Artists" and "Camp Survivor." The site is more convenient for families in mid and southern Jefferson County and features fields, wetlands, woods, hiking trails, and, best of all, a stream! Parents of these campers raved about the setting and were excited that this satellite site saved them gas and time. Suzi Taylor, Melinda Phares, and Bland Campbell staffed this program. Special thanks goes to David Lillard of CraftWorks and Linda Case who opened her farm to our campers.

Our summer camps would never be possible without volunteers who donate an hour a day, and sometimes even a week or more, to make our programs successful. Many thanks to Susan Fiharty, Sherri Cooper, Merilee Cunningham, Bland Campbell, Wanda Miller, Clark Dixon, Debbie Crouse, David Wilson, and Skylar Benedict for their time and commitment to our program. Our middle-school Counselors-in-Training, who volunteered their time after a week-long training, included Lydia McGilton, Destinee Myers, Lily Braithwaite, Carl Thomas, Daniel Pike, Miles Waldman, Emma Waldman, Maddie Hinkle, Rebecca Phillips, and Baileigh Reed-Grimmett. Staff at Yankauer this summer were Christian Thomas, Robby Glenn, Krystal Kennedy, and Marybeth Grove. We'd also like to recognize and sincerely thank our generous intern sponsors, Henry and Faye Davenport, Stan and Judy Jones, Jean Neely, and Craig and Roy Winkler. These generous sponsors allow PVAS to attract excellent staff thanks to our ability to offer a competitive wage.

## Digital Nature Photography Camp a Success

Seven students entering grades 9 to 12 and one adult signed up for this year's digital nature photography camp which was held in downtown Shepherdstown August 2-6. PVAS partnered with Asbury United Methodist Church who loaned PVAS its Youth Center in Shepherdstown for the camp.

with the help of funds from the West Virginia Department of Agriculture and the U.S. Department of Agriculture's Specialty Crop Block Grant Program.

The program is intended to help promote the local food movement and agritourism in Jefferson County. It provides unique dining experiences that highlight delicious, locally produced foods served in beautiful farm settings.

Ten percent of each event's gross revenues are donated to a local non-profit organization that partners to provide volunteer wait staff (on July 17, PVAS was the partner organization). The host farm also receives ten percent. The remaining proceeds cover event and program costs.

The next Fresh Feast dinner is set for October 2 at the historic York Hill farm on Ridge Road, near Shendoah Junction. The Hart-Bennett Foundation, Inc., will be the partner organization. Watch the program's website at [www.freshfeastonthefarm.com](http://www.freshfeastonthefarm.com) for details. Or contact Jane Tabb at 304-725-4325 or [VineMont@frontiernet.net](mailto:VineMont@frontiernet.net).

## June Annual Meeting, Election, and Volunteer Recognition

The June 11 potluck at Yankauer was well attended and certainly no one left hungry! After the meal, Wayne Braunstein held Board elections where Leigh Jenkins, Mina Goodrich, and Jane Vanderhook were re-elected to the board and Kathy Stolzenburg and Jesse Morgan were elected as new board members. With the elections complete, outgoing Board members Nancy Kirschaum (vice president) and Susan Brookreson (member at large) were recognized for their many contributions to PVAS over the years.

Outstanding volunteers received Kingfisher Awards, presented by Kristin Alexander, Ellen Murphy, and Carolyn Thomas. Recognition was given to the following volunteers for their "over and above" service to PVAS over the 2009-2010 fiscal year: Alice Barkus, Wayne Braunstein, Debbie and John Crouse, Mark Cucuzella, Bob Dean, Clark Dixon, Jeff Feldman, Kelly Fike, Joe Gentile, Kelly Heldreth, Will Hershberger, Krystal Kennedy, Nancy Little, Gretchen Meadows, Wanda Miller, Diana Mullis, James & Suzi Munnis, Tim Murphy, Matt Orsle, Deb Pathoff, Dan Ruane, Sandy Sagalkin, Tom Shantz, Gary & Diane Sylvester, Jane Vanderhook, Ted Wachter, and Rodney Woods. We send all of these amazing, generous people our heartfelt thanks!

## Car Donation Raises Over \$1,500

PVAS occasionally is lucky enough to have a car donated to the organization. When this happens, PVAS works with WADE (Winchester Auto Dealers Exchange) in Bunker Hill, WV. WADE will pick up the car if necessary, clean it up and sell it at one of its auctions. About a week later PVAS receives a check from WADE for the car based on the sale of the car minus some fees charged by WADE for their service.

In June, a 1999 Toyota Camry was generously donated by Keith Alexander. WADE picked up the car and sold it at auction. PVAS received a check in July for \$1,512. We sincerely thank Keith and Eva for their generous donation! If you have a vehicle you'd like to get rid of fairly easily and have the money go to a good cause, get in touch with Kristin Alexander at [pvasmail@aol.com](mailto:pvasmail@aol.com) or 304-676-3397.

and an active sportsman and environmentalist.

He has enjoyed a career in the environmental industry, and now advises organizations on how to become more sustainable.

Tillman received a BA from Franklin and Marshall College and a MS from Syracuse University in earth and environmental sciences.

He has been on the staff of The Johns Hopkins University and the University of Maryland and president of Target Environmental, Columbia Technologies, and Growth Adventures.

He has served as chair of the Howard County Conservancy, the County Environmental Sustainability Board, and the Maryland Geothermal Energy Commission.

He is the author of *The Chesapeake Watershed: A Sense of Place and A Call To Action* (Alan C. Hood & Company, 2009). For more information, see the book's website at [www.thechesapeakewater-shed.com](http://www.thechesapeakewater-shed.com).

## Reception at Ripon Lodge - Thanks!

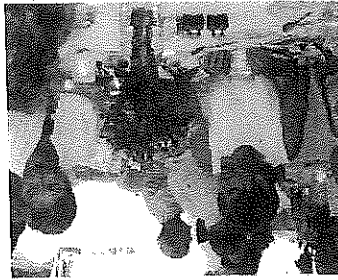
It seems like a lifetime ago, but we want to acknowledge and thank Cricket and Rusty Morgan for their hospitality at their home and farm. Ripon Lodge. The event was a fundraiser for PVAS to support our youth programs, and successfully raised \$5,694 thanks to the generosity of our members and friends.

June 5 looked like it was going to be a stormy day, so the lawn party quickly became an indoor reception, thanks to our generous hosts and flexible volunteers. The weather, though warm, cooperated in the end, and Rusty was able to explain the interesting history of the farm and house to his guests and lead a tour of their renovated bank barn that is being converted to a brewery for their own beer-making operation that will use hops and barley grown right there on the farm.

In keeping with the farm theme, homemade beef barbecue and wonderful other foods were served thanks to the talented and generous planning committee: Alice Barkus, Gretchen Meadows, Diana Mullis, Deb Pathoff, and Jane Vanderhook. Many thanks also go to the day's volunteers, Susan and Joe Brookreson, Jeff Feldman, Jennifer Jones, and our servers, Molly Briggs, Jesse Schmitt, and Anya Wallace.

## July "Fresh Feast on the Farm" Dinner A Big Success

The July 17, "Fresh Feast on the Farm," dinner was a big success, with all but one of the available tickets sold.



In all, more than 50 people attended the event, which was held at Bill White Grantham's Meadow Green/Aqua Green Farm on Route 51 near Middleway in southern Jefferson County. The Fresh Feast on the Farm program was launched by Jane Tabb, of Keameysville, in 2008.

# Accessible Trail Work Starts in September

The Cedar Loop upgrade to a wheelchair-accessible trail will begin in earnest in September. A SCA (Student Conservation Association) crew will be coming through in September to take out the stands of allanths along the trail. Doing this first will prevent potential damage to the trail caused by future allanths control. (Trees falling on trail, etc...)

The next day is the Day of Caring when volunteers will help clean up the fallen allanths and, if time allows, begin other trail work by digging out some stumps that are too close to the trail, leveling out some parts of the trail, etc...

Later in September, we plan to have a week with the WVCC when the trail will actually be installed to bring it up to ADA compliance. The trail is being constructed with funds from the Division of Highways Recreational Trails Program. PVAS received permission to proceed on the project almost a year ago, but with the severe winter weather and the resulting damage to the pavilion floor and cedar trees, our energies were required elsewhere. We're looking forward to getting started!

## Student Conservation Conference at NCTC

PVAS and Friends of NCTC partnered to offer several partial scholarships for the Student Climate and Conservation Congress (SC3) that took place in June at NCTC. Jamie Huff of Bunker Hill, Zoe Levine of Shepherdstown, Emily Yarrington of Berkeley Springs, and Nico Hobbs of Shepherdstown were the lucky recipients.

The week-long experience was sponsored by the Green Schools Alliance and NCTC, and aims to get high school students actively engaged in "greening" their schools and community. Kristin Alexander was invited to be a cohort leader this year to participate and facilitate discussions and activities.

Speakers at this year's conference included writers such as Bob Pyle and Bill McKibben, scientists such as Dr. Sylvia Earle (oceanographer) and Mamie Parker (fisheries scientist), artists like Peter Essick (photographer for National Geographic) and Ian Cheney (filmmaker - King Corn) and activist Rob Watson (founding father of F.E.E.D.). In addition to having access to amazing speakers, students discussed readings and lectures in cohort groups, went rafting on the Shenandoah River, caught butterflies with Bob Pyle, and explored ways to green their schools and communities.

Approximately 100 student fellows from schools across the country gathered for the Summit's second year.

## Shepherd University Day of Service

Shepherd University's annual Day of Service took place on August 11. The Day of Service is part of Freshman orientation at Shepherd. The idea is to have students go out into the community as small groups to learn about the community and get to know each other. Seven incoming Freshmen, one upperclassman, and one in-

structor chose to come to Yankauer and worked extremely hard!

The first order of business was to line the outside of the pavilion floor with pond liner to be sure we don't have freeze/thaw destruction of our floor ever again. The students dug a trench around the pavilion and lined the trench with pond liner up to the edge of the floor. The liner will also help direct water toward the rain garden.

We had a great day. The students worked hard and fast so by 11:30 we were done with that project which was anticipated to take the entire day! They sat down for a much-deserved lunch and went for a hike to the river to help see where students were in relation to the Potomac River and Shepherdstown.

Upon returning to the pavilion, students began to trim vegetation from the entrance to the parking lot that was interfering with visibility of the road. They also took out quite a bit of autumn olive and cleared the parking lot fence of vegetation so it's easier to see. By the time the pavilion area was cleaned up from the day's jobs, it was time to head back to Shepherd for an ice cream social.

Many thanks to the students and to the Office of Service Learning for arranging this wonderful Day of Service! The day always ends with a huge feeling of accomplishment.

## Day of Caring Set for September 14

This year's Day of Caring will kick off with a 7:30 a.m. breakfast at War Memorial Park in Martinsburg. From 8:30 a.m.-4:00 p.m., join us at Yankauer Preserve to work on invasive removal (like allanths, autumn olive and silt grass), clean up the butterfly garden, trim the trails and parking lot, and work on the accessible trail project. Lots of work AND fun to be had by all. We'll provide a delicious hot lunch (around 12) if you provide the labor!

After a hard day's work, enjoy dinner at the Clarton in Shepherdstown from 4:30-6 p.m. where you can celebrate a day of hard work for a good cause with fellow community members. To pre-register to help, contact Tim Murphy at 304-876-8133 or [timurt@comcast.net](mailto:timurt@comcast.net).

## Watch for "Growing Native" Events

PVAS is once again planning to partner with the Potomac Conservancy to hold Growing Native seed-collection events in the Eastern Panhandle this fall.

Plans remain to be finalized but we will likely host at our Edolon and Yankauer nature preserves, and a seed-collection kiosk will be installed at the Yankauer preserve for those who cannot attend organized events but would like to help.

Watch your email and the PVAS web page for details.

The Growing Native seed collection program is aimed at improving water quality in the Potomac River. Each year, it musters thousands of volunteers throughout the Potomac River watershed to gather native tree seeds that are donated to state tree nurseries where they are nurtured into small tree seedlings. The seedlings are then planted along streams and rivers in the Potomac watershed to help restore forests that filter pollution and run-off.

Anyone is welcome to participate, and it's easy to do. At each event, a state forester is on hand to aid with tree identification and seed-collection bags are provided.

Since the program's inception in 2001, volunteers have collected more than 150,000 pounds of seeds and helped restore hardwood forests along nearly 800 miles of streamside land.

See the program's website at [www.growinngnative.org](http://www.growinngnative.org) for more details.

## Japanese Stiltgrass Fungus Disease Spreading Throughout Region

Release: 07/22/2010

The Hur Herald: [http://www.hurherald.com/cgi-bin/db\\_scripts/articles?Action=user\\_view&db=articles\\_hurherald&id=40557](http://www.hurherald.com/cgi-bin/db_scripts/articles?Action=user_view&db=articles_hurherald&id=40557)

By Forester, Russ Richardson

The fungus disease killing Japanese stiltgrass, a locally common-annual weed, has been rapidly spreading through the region giving some hope that the toxic plant might someday become a pesky ditch weed instead [of] the severe ecological threat it has developed into.

Japanese stiltgrass was introduced to the US over 90 years ago and the fungus killing local stiltgrass is the first time any disease has been identified that kills the weed.

The fungus, known as Bipolaris, that infects and kills Japanese stiltgrass (*Microstegium vimineum*) was first photographed locally in 2008 and identified by researchers in Maryland, Indiana and WVU as killing Japanese stiltgrass in 2009.



Infected stiltgrass ©Hur Herald Publishing

A scientific research paper announcing the discovery of the disease was published this month in the Journal of Plant Disease. In the paper, Crummies Creek Tree Farm and the Calhoun County, WV area has been recognized as one of the first places widespread presence of Bipolaris fungus was infecting and killing stiltgrass.

In mid June 2010, researchers from Indiana University confirmed that fresh samples of stiltgrass from Calhoun County were heavily infected with the fungus.



Calhoun County Infestation ©Hur Herald Publishing

The first signs of the disease in local stiltgrass appeared as small purple lesions on blades of young stiltgrass seedlings were spotted shortly after stiltgrass seeds started to germinate in early May. It is still not known exactly how the disease got started, how it spreads or how it affects other types of vegetation.

Interest in the Bipolaris fungus has been very high and researchers from Indiana and the US Forest Service are expected to visit the area later in the summer to look more closely at the disease.

Excitement over the potential use of the disease to control stiltgrass invasions is very high with landowners, conservationists and forester managers from as far away as New York and Virginia requesting samples of locally diseased plants and old stiltgrass

## National Ban on Lead-based Ammunition and Fishing Tackle Sought

The notion that lead-based ammunition and fishing tackle is harmful to the environment has been around since before the turn of the millennium. Scientific research and anecdotal evidence has been mounting, and action is taking shape. Going back to early 2000, the U.S. Army announced its intentions to change to 'green' ammunition, i.e., lead-free, tin-based standard rounds. On October 11, 2009, the governor of California signed Assembly Bill AB 962 into law which bans the use of lead-based ammunition in the ranges of the California condor.

Now, on August 3, 2010, a petition to extend a ban on the use of lead-based ammunition and fishing tackle nationwide was presented to the Environmental Protection Agency. The petition is presented under the auspices of The Toxic Substances Control Act.

Sponsored by American Bird Conservancy, Association of Avian Veterinarians, Center for Biological Diversity, Public Employees for Environmental Responsibility, and Project Guppie, the petition lays out the current research and evidence of impact on wildlife. The executive summary wraps it up with this explanation: "In recent decades the federal government has begun to implement regulations to reduce the exposure of human beings to lead in drinking water, paint, gasoline, toys, toxic dumps, lead wheel balancing weights, and both indoor and outdoor shooting ranges. Strict recycling regulations have been imposed on disposal of lead-acid batteries. However, spent lead ammunition and lost lead fishing tackle are uncontrolled and lead remains widely encountered and distributed in the environment from these sources. The continued availability of traditional lead bullets and shot exposes any animal that preys or scavenges on targeted wildlife to lead's toxic effects."

Not unexpectedly, the actions taken and remedies sought are not without controversy. The California bill is accused of doing an end around and trampling on Second Amendment rights. Sections of the law invoke controls on the availability and sale of ammunition and thus enter the realm of gun control. To many, its scope extends beyond the apparent threat to condors and gets into issues of animal rights vs. citizen rights. In short, it imposes constraints on the traditions and practices of sport fish and game enthusiasts that go to the heart of fostering attitudes and arguments.

The petition currently before the EPA is simple on its face. Regulate the use of these sources of toxicity in our environment. Protect wildlife and human kind alike. To be expected, the controversies will take their courses with the particulars of the regulations.

Acceptance of regulation that sticks to the issue at hand should be palatable to all. Non lead-based technologies have already been developed and implemented without sacrifice to quality or efficiency. Retailers of sporting equipment don't like the burdens of the California law (Cabela's in particular) but they aren't opposed to carrying products that add to their bottom line. Manufacturers don't seem to be phased by the petition because they have been introducing products that meet its stated intent over the course of recent years without sacrificing quality or performance. Speculation

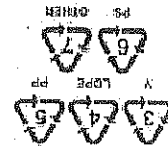
of huge price increases of these items isn't an issue unless windfall opportunism comes to bear, which is not very likely in such a highly scrutinized situation.

To track developments and for more information, here is a list of Web sites that you may want to check out: American Bird Conservancy, <http://www.abcbirds.org/newsandreports/releases/100803.html>; Center for Biological Diversity, [http://www.biologicaldiversity.org/news/press\\_releases/2010/lead-08-03-2010.html](http://www.biologicaldiversity.org/news/press_releases/2010/lead-08-03-2010.html); and National Audubon Society (see Audubon Magazine, Project Guppie), <http://www.audubonmagazine.org/features/0212/endan-gered-species.html>

## Berkeley County Pilots Expanded

### Plastics Recycling

#### Plastic #3 - #7 Pilot Program Begins!!

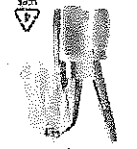


The South Berkeley Recycling Center (SBRC) will host the county's first program for the collection of mixed plastic #3 through #7. This is a 6 month pilot program to test the public's interest and the economics associated with the collection of mixed plastic #3 through #7.

For the next 6 months only, any plastic container with a recycling symbol #3, #4, #5, #6 or #7 will be accepted at the SBRC. The plastic containers can be commingled together, placed in any plastic bag and deposited in the separate trailer marked for this collection. All plastic containers must be empty and clean of food material. Lids and caps do NOT need to be removed. Do not mix these items with the current collection of plastic #1, #2 or the plastic bag collection. This pilot collection program will end January 31, 2011. Below is more data on the specific items acceptable.



**Plastic #3 - Polyvinyl chloride (or vinyl)**  
Often used for window cleaners, detergent bottles, shampoo bottles, cooking oil bottles, and clear food packaging. Please look for the recycling symbol with the number 3.



**Plastic #4 - Low density polyethylene**  
Often used for squeezable bottles and frozen food containers. Please look for the recycling symbol with the number 4.



**Plastic #5 - Polypropylene**  
Often used for yogurt containers, syrup bottles, ketchup bottles and medicine bottles. Please look for the recycling symbol with the number 5.



**Plastic #6 - Polystyrene**  
Often used for disposable plates, cups, meat trays, egg cartons, carry-out containers, aspirin bottles and compact disc cases. Please look for the recycling symbol



**Plastic #7 - Miscellaneous**  
Often used in three and five-gallon water bottles, sunglasses, DVDs, iPod, computer cases, signs and displays, certain food containers and nylon. Please look for the recycling symbol with the number 7.

For more information:  
304-267-9370 Office  
304-671-2925 Recycling Hotline  
berkeleycommunityswa@msn.com  
www.berkeleycommunityrecycling.com

## Audubon Taps Noted Conservation and Communications Leader as New President

New York, NY - The National Audubon Society today announced that David Yarnold has been named its new President and Chief Executive Officer, giving new momentum to efforts to connect people with nature and their power to protect it. A passionate conservationist, Yarnold currently serves as Executive Director of Environmental Defense Fund and President of Environmental Defense Action Fund. Prior to that, he was a Pulitzer Prize-winning editor at the *San Jose Mercury News*...

Yarnold has been at EDF since April 2005, where he is responsible for all operations, from programs, to development and marketing/communications. He helped expand EDF's innovative corporate partnerships work, focused on EDF's international programs, particularly in China, and helped the organization grow from \$52M to \$117M in revenue. He is also President of the organization's Action Fund, its political action arm.

"Audubon's mission has never been more relevant. From the grassroots to state houses to national and regional policy, its wingspan is unparalleled," Yarnold said. "I'm excited by the opportunity to work with a nationwide network of Audubon Chapters and Audubon Centers that combine local concern, knowledge and action to equal conservation that makes a difference on a grand scale. It will be an honor to lead an organization whose name has meant 'trust' and 'conservation achievement' for more than a hundred years."

Yarnold's *San Jose Mercury News* was consistently ranked as one of America's 10 Best Newspapers. His paper was called, "America's Boldest Newspaper" by a panel of international judges. During his time in San Jose, the *Mercury News* was widely recognized for its commitment to diversity and for its in-depth coverage of technology. He was also one of three Pulitzer Prize finalists for editorial writing in 2005.

"For me, going to Audubon is like going home. Community-based education and action that breeds broader changes has always been engaging and rewarding for me and those are the things Audubon does best," Yarnold said.

He will assume the Presidency of Audubon on Sept 1.

**In Memoriam - David Eldridge**

Longtime PVAS member Dave Eldridge passed away June 1 after a valiant struggle with cancer. He died peacefully at home, surrounded by family. A memorial service was held June 12 at the Shepherdstown Presbyterian Church.

Our sincere condolences go out to his wife of 41 years, Mary Sue, and his two sons, David and Jonathan.

First as a Board member and then as a volunteer, Dave served as PVAS's membership chair for many years. As Audubon insiders know, this is one of the most difficult jobs to fill at any Audubon chapter. The work's not easy and there's nothing glamorous about it. But Dave thrived on it and he always carried out his duties faithfully, cheerfully and well.

We will miss his diligence, his kind spirit, and his good sense of humor.

Donations may be made to the David C. Eldridge Scholarship Fund via the Shepherd University Foundation, P.O. Box 5000, Shepherdstown, WV 25443.

**Look for PVAS Display at Apple Butter Festival**

PVAS will again have a display at this year's Apple Butter Festival in Berkeley Springs, so if you attend stop by and say hello. The PVAS display will be located with the other conservation-related displays.

The Festival will be held October 9 & 10.

**Calendar of Upcoming Events**

- (See [www.potomacaudubon.org](http://www.potomacaudubon.org) for updates!)
- Sep 7: "Music in the Cedars" Concert
  - Sep 8: Chesapeake Bay program at NCTC
  - Sep 11: Insect walk at Cacapon State Park
  - Sep 11: Banding and Birding trip to Dolly Sods (possibly 9/12 also)
  - Sep 11: Master Naturalist Workshop - Beavers
  - Sep 11-12: Master Naturalist Workshop - Leave No Trace
  - Sep 14: Day of Caring at Yankauer
  - Sep 14: "Music in the Cedars" Concert
  - Sep 16: Hawk-watching at Washington Monument State Park
  - Sep 21: "Music in the Cedars" Concert
  - Sep 24: Potomac Valley Nature Photographers Mtg.
  - Sep 24-26: Berkeley Springs Fall Birding Festival
  - Sep 28: "Music in the Cedars" Concert
  - Oct 2: Freedom's Run
  - Oct 3: Tour of Botanique carnivorous plant nursery
  - Oct 7-10: Hawk-watching trip to Cape May, NJ
  - Oct 9-10: Berkeley Springs Apple Butter Festival
  - Oct 16: NCTC Open House
  - Oct 22: Potomac Valley Nature Photographers Mtg.
  - Nov 4-7: American Conservation Film Festival

**JOIN PVAS TODAY!**

We now offer two kinds of memberships:

**1. PVAS Local Membership**

Here's what you get:

- Access to a wide variety of PVAS programs and events for adults and children.
- Discounts for selected chapter activities, like children's summer camps.
- A subscription to PVAS's newsletter and e-mail alerts about events and programs of special interest.
- ALL your dues stay here to support local PVAS efforts!

To become a local member: Enclose a check for \$20 (\$15 for seniors and students). Please make check out to "PVAS." This fee covers membership for everyone in your household for one year.

**2. Dual Membership with National Audubon**

You get all the benefits of PVAS membership plus membership in the National Audubon Society, which includes a subscription to *Audubon* magazine. If you select this option, almost all of your dues will go to National Audubon. To obtain a dual membership, enclose a check for \$20 if you are joining NAS for the first time or \$35 to renew an existing NAS membership (\$15 in either case for seniors and students). Make check out to "National Audubon Society."

**Membership Form**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_  
 Phone (optional): \_\_\_\_\_  
 E-mail: (optional) \_\_\_\_\_  
 PVAS Local Membership \_\_\_\_\_  
 Dual Membership with National Audubon \_\_\_\_\_

(For PVAS local membership, check the box following if you do NOT want PVAS to share your contact information with National Audubon.)

I'd like to get *Valley Views* by e-mail \_\_\_\_\_ US mail \_\_\_\_\_ (check one)

..... (Audubon chapter code C9ZY540Z)

Clip and mail this form to:

-Membership Chair, PVAS  
 PO Box 578  
 Shepherdstown, WV 25443

Thank you for your support!

**READ TEXT - DOT ALERT**

If red text or a red dot appears on your mailing label, your membership may have expired and this could be your last issue of *Valley Views*. Take action to renew your Dual membership or local membership.



Potomac Valley Audubon Society  
 P O Box 578  
 Shepherdstown, WV 25443  
 Return Service Requested

<http://www.potomacaudubon.org>

A proud partner of the United Way of the Eastern Panhandle and the Combined Federal Campaign.



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DATED MATERIALS

MAIL TO:

Jefferson County Commission  
 100 E Washington Street  
 Charles Town, WV 25414

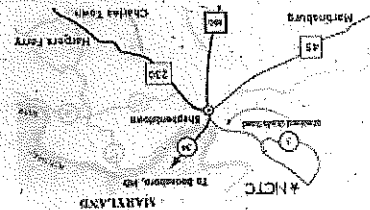
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 Shepherdstown, WV

September 2010

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Volume 29, Issue 1

The Potomac Valley Audubon Society meets at 7:00 p.m. on the second Wednesday of each month, September through April, at the US Fish and Wildlife Service National Conservation Training Center (NCTC), Shepherdstown, WV, in the Instructional West Building. Programs are free and open to the public. For additional information about PVAS or its programs and activities, please call any of the board members listed here or see <http://www.potomacaudubon.org>. PVAS serves the Eastern Panhandle of West Virginia and neighboring Washington County, Maryland.



**PVAS BOARD**

The PVAS Board meets every other month on the first Wednesday of the month (Sept.-June). Meeting location will be announced prior to meetings. These to all PVAS members.

**PVAS Officers and Board Members**

- President: Peter Smith 304 876-1139  
 Vice President: Vacant  
 Secretary: Larymina@peoplepc.com  
 Treasurer: Lex Miller  
 Board Development: Wayne Braunstein 304 728-7181  
 Board Members-at-Large: Don Briggs, Susan Brookreson, Clark Dixon, Rob Hoxton, Leigh Jenkins, Georgia Jepsen, Jesse Morgan, Kathy Stolzenburg, Carolyn Thomas, Jane Vanderhook  
**Ex Office Board Members**  
 Diana Mullis 304 267-3482  
**Emeritus Board Members**  
 Jean Neely  
 Executive Director: Kristin Alexander 304 676-3397  
 Web Master: Kathy Bilton  
 PVAS Wildlife Rescue Coord: Diana Mullis

304-267-3482  
 kca@mail730@aol.com  
 kathy@fred.net

VIDEO LOTTERY REPORT  
FY 2009

FY 2010

FY 2011

| Date       | Amount     | Date       | Amount     | Date      | Amount     |
|------------|------------|------------|------------|-----------|------------|
| 7/5/2008 * | 169,912.56 | 7/4/2009 * | 128,262.42 | 7/3/2010  | 115,402.58 |
| 7/12/2008  | 176,592.38 | 7/11/2009  | 168,815.08 | 7/10/2010 | 205,731.64 |
| 7/19/2008  | 160,344.08 | 7/18/2009  | 160,652.98 | 7/17/2010 | 161,386.76 |
| 7/26/2008  | 162,982.74 | 7/25/2009  | 158,869.08 | 7/24/2010 | 160,368.28 |
| 8/2/2008   | 178,171.04 | 8/1/2009   | 174,493.08 | 7/31/2010 | 157,802.08 |
| 8/9/2008   | 123,538.04 | 8/8/2009   | 138,408.80 | 8/7/2010  | 136,494.98 |
| 8/16/2008  | 82,482.89  | 8/15/2009  | 81,222.14  | 8/14/2010 | 78,376.68  |
| 8/23/2008  | 76,426.18  | 8/22/2009  | 76,260.31  | 8/21/2010 | 76,199.02  |
| 8/30/2008  | 89,459.86  | 8/29/2009  | 80,472.92  | 8/28/2010 | 72,460.03  |
| 9/6/2008   | 91,644.46  | 9/5/2009   | 80,798.15  |           |            |
| 9/13/2008  | 79,729.93  | 9/12/2009  | 86,286.92  |           |            |
| 9/20/2008  | 71,269.36  | 9/19/2009  | 70,010.15  |           |            |
| 9/27/2008  | 79,735.73  | 9/26/2009  | 69,316.87  |           |            |
| 10/4/2008  | 75,186.22  | 10/3/2009  | 72,286.04  |           |            |
| 10/11/2008 | 77,139.04  | 10/10/2009 | 69,650.63  |           |            |
| 10/18/2008 | 80,668.26  | 10/17/2009 | 73,560.21  |           |            |
| 10/25/2008 | 64,379.44  | 10/24/2009 | 67,581.66  |           |            |
| 11/1/2008  | 68,352.42  | 10/31/2009 | 64,528.30  |           |            |
| 11/8/2008  | 70,823.02  | 11/7/2009  | 63,741.59  |           |            |
| 11/15/2008 | 65,565.50  | 11/14/2009 | 65,959.64  |           |            |
| 11/22/2008 | 63,883.80  | 11/21/2009 | 59,547.05  |           |            |
| 11/29/2008 | 69,850.12  | 11/28/2009 | 72,399.98  |           |            |
| 12/6/2008  | 55,696.68  | 12/5/2009  | 51,006.51  |           |            |
| 12/13/2008 | 60,178.04  | 12/12/2009 | 52,460.58  |           |            |
| 12/20/2008 | 52,189.19  | 12/19/2009 | 32,834.39  |           |            |
| 12/27/2008 | 72,205.91  | 12/26/2009 | 53,406.34  |           |            |
| 1/3/2009   | 96,504.65  | 1/2/2010   | 92,980.40  |           |            |
| 1/10/2009  | 53,286.62  | 1/9/2010   | 55,020.46  |           |            |
| 1/17/2009  | 56,068.87  | 1/16/2010  | 60,551.28  |           |            |
| 1/24/2009  | 71,474.63  | 1/23/2010  | 69,943.53  |           |            |
| 1/31/2009  | 61,089.80  | 1/30/2010  | 48,527.75  |           |            |
| 2/7/2009   | 83,539.63  | 2/6/2010   | 37,155.14  |           |            |
| 2/14/2009  | 76,054.44  | 2/13/2010  | 44,334.00  |           |            |
| 2/21/2009  | 91,838.41  | 2/20/2010  | 76,946.12  |           |            |
| 2/28/2009  | 80,806.88  | 2/27/2010  | 72,024.40  |           |            |
| 3/7/2009   | 48,837.13  | 3/6/2010   | 76,936.85  |           |            |
| 3/14/2009  | 96,025.39  | 3/13/2010  | 71,007.37  |           |            |
| 3/21/2009  | 79,002.82  | 3/20/2010  | 74,335.38  |           |            |
| 3/28/2009  | 79,250.83  | 3/27/2010  | 69,941.88  |           |            |
| 4/4/2009   | 75,968.30  | 4/3/2010   | 70,636.28  |           |            |

|               |           |           |           |
|---------------|-----------|-----------|-----------|
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| 4/18/2009     | 80,598.22 | 4/17/2010 | 69,335.92 |
| 4/25/2009     | 75,571.46 | 4/24/2010 | 68,714.11 |
| 5/2/2009      | 73,957.05 | 5/1/2010  | 68,799.06 |
| 5/9/2009      | 76,697.22 | 5/8/2010  | 67,403.54 |
| 5/16/2009     | 71,925.70 | 5/15/2010 | 70,186.32 |
| 5/23/2009     | 81,395.43 | 5/22/2010 | 64,695.71 |
| 5/30/2009     | 82,161.55 | 5/29/2010 | 67,157.40 |
| 6/6/2009      | 74,895.74 | 6/5/2010  | 77,371.80 |
| 6/13/2009     | 67,327.23 | 6/12/2010 | 66,106.29 |
| 6/20/2009     | 75,500.53 | 6/19/2010 | 64,888.48 |
| 6/27/2009     | 67,354.10 | 6/26/2010 | 63,950.29 |
| 6/30/2009 *** | 32,059.58 | 6/30/2010 | 29,667.19 |

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TOTALS 4403564.04

4041141.56

1164222.05

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WEST VIRGINIA LOTTERY  
 First Benchmark  
 Charles Town  
 County / City Split  
 Fiscal Year 2011

Charles Town  
 1998 Net Terminal Revenue \$ 45,803,174  
 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 35.08%       | SHEPHERDS TOWN 14.29% |
|-----------------------------------|------------------------|------------------------|----------------------|---------------------|---------------------|---------------------|---------------------|-----------------------|
| 3 days ending:<br>7/1/10 - 7/3/10 | \$ 115,402.58          | \$ 115,402.58          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| Week ending:<br>07/10/10          | \$ 205,731.84          | \$ 205,731.84          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| 07/17/10                          | \$ 161,388.76          | \$ 161,388.76          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| 07/24/10                          | \$ 160,568.28          | \$ 160,398.28          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| 07/31/10                          | \$ 157,802.08          | \$ 157,802.08          | \$ -                 | \$ -                | \$ -                | \$ -                | \$ -                | \$ -                  |
| 08/07/10                          | \$ 161,617.82          | \$ 136,494.98          | \$ 25,122.84         | \$ 3,120.27         | \$ 8,682.45         | \$ 916.98           | \$ 8,913.09         | \$ 3,580.05           |
| 08/14/10                          | \$ 168,753.38          | \$ 78,378.68           | \$ 78,378.68         | \$ 9,734.38         | \$ 27,088.98        | \$ 2,860.75         | \$ 27,494.54        | \$ 11,200.03          |
| 08/21/10                          | \$ 162,398.04          | \$ 76,199.02           | \$ 76,199.02         | \$ 9,483.92         | \$ 28,334.38        | \$ 2,781.26         | \$ 28,730.62        | \$ 10,888.84          |
| 08/28/10                          | \$ 144,920.06          | \$ 72,460.03           | \$ 72,460.03         | \$ 8,999.54         | \$ 25,042.19        | \$ 2,644.79         | \$ 25,418.97        | \$ 10,354.64          |
| <b>Subtotal</b>                   | <b>\$ 1,416,380.62</b> | <b>\$ 1,184,222.05</b> | <b>\$ 252,158.57</b> | <b>\$ 31,318.11</b> | <b>\$ 87,146.00</b> | <b>\$ 9,203.78</b>  | <b>\$ 88,457.22</b> | <b>\$ 36,033.48</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<br>August 28, 2010 |
|---------------------------------------------------|--------------------------------|
| <b>To be Deposited on:</b>                        | <b>September 3, 2010</b>       |
| Amount Played                                     | 77,810,218.31                  |
| Amount Won                                        | 68,960,987.41                  |
| Amount Promo                                      | 260,284.00                     |
| MWAP Contribution                                 | <u>41,027.18</u>               |
| <b>Adjusted Gross Terminal Revenue</b>            | <b><u>7,547,919.72</u></b>     |
| Administrative Costs @ 4%                         | 301,916.79                     |
| Excess Lottery Fund @ 4%                          | <u>0.00</u>                    |
| <b>Net Terminal Revenue</b>                       | <b><u>7,246,002.93</u></b>     |
| Surcharge @ 10%                                   | 0.00                           |
| State Share Excess @ 58%                          | 0.00                           |
| Track Share of Capital Reinvestment @ 42%         | 0.00                           |
| Track Share of Capital Reinvestment @ 42% - 96%   | \$ -                           |
| Track Share of Capital Reinvestment @ 42% - 4%    | \$ -                           |
| <b>Adjusted Net Terminal Revenue</b>              | <b><u>7,246,002.93</u></b>     |
| Racetrack @ 46.50% / 42%                          | 3,389,391.36                   |
| Lottery Fund @ 30% / 0%                           | 2,173,800.89                   |
| Excess Lottery Fund @ 0% / 41%                    | 0.00                           |
| Race Track Purses @ 7% / 14% / 8%                 | 507,220.21                     |
| Workers' Compensation Debt Reduction @ 7%         | 507,220.21                     |
| Employee Pension Fund @ 1% / .6%                  | 72,460.03                      |
| Greyhound Development @ .75%                      | 54,345.02                      |
| Thoroughbred Development @ .75%                   | 54,345.02                      |
| Racing Commission @ 1%                            | 72,460.03                      |
| County/Municipality @ 2%                          | 144,920.06                     |
| <b>3% Funds:</b>                                  |                                |
| Tourism Promotion Fund @ 1.375%                   | 99,832.64                      |
| Development Office Promotion Fund @ .375%         | 27,172.51                      |
| Research Challenge Fund @ .5%                     | 36,230.01                      |
| Capitol Renovation and Improvement Fund @ .6875%  | 49,816.27                      |
| 2004 Capitol Complex Parking Garage Fund @ .0825% | 4,528.76                       |
| <b>1% Funds:</b>                                  |                                |
| State Capitol Complex Parking Garage @ 1%         | 0.00                           |
| Cultural Facilities and Capitol Resources @ .6%   | 36,230.01                      |
| Capitol Dome and Capitol Improvements @ .6% / 1%  | 36,230.01                      |
|                                                   | <b><u>7,246,002.93</u></b>     |

P.O. Box 2067  
Charleston, WV 25327



Phone: (304) 558-0500  
Fax: (304) 558-3321  
www.wvlottery.com

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John C. Musgrave  
Director

To: Controller

Location: Jefferson County Commission

Fax #: (304) 725-7916

Phone #: (304) 728-3284

From: Stacy Acree ext. 352

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**Comments:**

VIDEO LOTTERY WEEKLY SETTLEMENT REPORT

**Sandy McDonald**

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**From:** "Toni Milbourne" <toni@spiritofjefferson.com>  
**To:** "Peggy Smith" <peggy-smith@frontiernet.net>; "RA Mayor David Hamill" <mayor@cityofransonwv.net>; "Sandy McDonald" <sandy@jeffersoncountywv.org>; "CT Ann Paonessa" <annpwv@frontiernet.net>; "Joe Cosentini" <joe@charlestownwv.us>; "Paul Marshall" <pmarshall@ecologyservices.com>; "Lou Tiano" <ltiano@frontiernet.net>; "Jimmy Pierson" <jpierson@cityofransonwv.net>; "Dan McVicar" <mcvicar@nih.gov>; "Amy Boyd" <clerk@shepherdstown.us>; "Corporation of Bolivar Town Hall" <bolivar@frontiernet.net>; <Patricia.Morse@wellsfargo.com>; "Dale Manuel" <dmanuel@frontiernet.net>; "Patsy Noland" <pnoland@jeffersoncountywv.org>; "Lyn Widmyer" <lynwidmyer@gmail.com>; "Frances Morgan" <fmorgan@jeffersoncountywv.org>; "Jim Surkamp" <surkamp@frontiernet.net>; "Lauren" <lthurston@jcprc.org>; <Marsha\_Wassel@nps.gov>; "Todd Wilt" <tnthauling@frontiernet.net>; "Mike Jacobs" <mjacobs@shepherd.edu>; "Heather Morgan" <heather@jeffersoncountywvchamber.org>; <genet\_25414@yahoo.com>; "Bobby Shirley" <rshirley@jcsdvw.com>  
**Sent:** Thursday, September 02, 2010 12:37 PM  
**Subject:** County-wide Parks & Recreation Summit  
Hello all:

The Jefferson County Community Center is the location for the county-wide parks and recreation summit. The event will be held on Saturday, September 25 from 1 to 4 p.m. All entities are invited and encouraged to participate in this summit to discuss the following:

1. What your entity provides as recreation for county residents. Please prepare a brief presentation to share.
2. How communication and working together can better provide recreation for the county.
3. Where the future of recreation lies.
4. The possibility of a county-wide parks and recreation system.
5. Any other relevant recreational issues.

Please RSVP and let me know if you will attend. Refreshments will be served and I would like to be prepared.

If you are receiving this message and feel as if it should be shared, please do so. I am not sure of all the players in all agencies.

Thank you in advance for your participation in this endeavor!

See you on the 25th.

Toni Milbourne  
JCPRC Secretary



# Medication Take-Back Day



When: Saturday, September 25  
9:00 am to 9:00 pm

Where: Jefferson County Sheriff's Office  
102 Industrial Blvd., Suite 100  
Kearneysville, West Virginia

For more information please contact Jefferson County  
Sheriff's Office (304) 728-3205

Bring your unused and unwanted medication to the National  
Take-Back Initiative sponsored by the DEA

- Please leave medication in original container if possible
- You may remove any personal information, **leave prescription information visible**
- Anonymous expired, unused, and unwanted prescription drugs

