

**APPLICATION FOR DESIGNATION
AS A BROWNFIELD ECONOMIC
DEVELOPMENT DISTRICT**

**SUBMITTED BY
OLD STANDARD, LLC
D/B/A OLD STANDARD BUSINESS PARK**

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**APPLICATION FOR DESIGNATION
AS A BROWNFIELD ECONOMIC DEVELOPMENT DISTRICT**

Old Standard, LLC is the owner of a parcel of land located in Jefferson County, West Virginia formerly known as the Old Standard Quarry. The Quarry was in operation for approximately 100 years and ceased operations in the 1970's. The Property has been left without any significant activity since then. Old Standard, LLC respectfully submits this Application for designation of the Old Standard Quarry as a Business Park and as a Brownfield Economic Development District pursuant to Section 5B-2-6a, West Virginia Code as amended and the regulations promulgated thereunder.

The following Application addresses each element of the information required by the regulations with supporting Exhibits.

I. GENERAL DESCRIPTION OF THE OLD STANDARD BUSINESS PARK

The Old Standard Business Park will be located on the site of the Old Standard Limestone Quarry. The property contains 407 acres more or less. The property is adjacent to the Shenandoah River on the eastern side. Millville Road (Secondary Rt. 27) is the boundary on the western side of the property. The property also shares a boundary with a parcel of land owned by one of the members of the Old Standard, LLC on the north side of the property. On the northeastern side of the property Old Standard shares a boundary with the National Park Service.

The Old Standard Property contains a 40 acre lake. The lake is approximately one (1) mile long and varies in width up to a maximum of 400 feet wide. The lake is ninety feet deep and is fed by natural springs which recharge the water at a fairly swift rate.

The Old Standard, LLC took title to this property by Deeds recorded in the office of the Clerk of the County Commission of Jefferson County in Deed Book 984 at page 501 and Deed Book 998 at page 555. The property is described as Tax Map 11, parcel 24.1 and Tap Map 9-2, parcel 50.

A copy of the Concept Plan prepared by Greenhorn and O'Meara dated August 20, 2008 is attached as Exhibit 1. The Concept Plan shows the proposed placement of office buildings, roads, parking, a hotel at the northern end of the Quarry Lake, and an Extended Stay Hotel. Shown on the Concept Plan is the recently completed Waste Water Treatment Plant which will serve the property. A topographical map is attached as Exhibit 1A. Attached as Exhibit 1B is a spreadsheet that provides details of the footprint, height, and other information pertaining to the buildings to be constructed in the Old Standard Business Park.

The entire Old Standard Property was included in a Voluntary Remediation Agreement (VRA) Project No. 05295, with the West Virginia Department of Environmental Protection. Approximately 300 acres have been released from the Remediation Plan leaving 67 acres left to be remediated. A copy of the Voluntary Remediation Agreement signed by the Director of the West Virginia Department of Environmental Protection on May 21, 2003, is attached as Exhibit 2.

Old Standard, LLC has made considerable progress in the remediation of the site and remains in full compliance with all applicable requirements pursuant to the Remediation Agreement.

The meets and bounds description of the property is contained in the two (2) Deeds which are attached hereto as Exhibits 3 & 4. The Site Plan prepared by Greenhorn and O'Meara (Exhibit 1) contains the accurate boundaries of the Old Standard.

Old Standard, LLC is the Record Title owner of the Old Standard Quarry Property which should now be known as the Old Standard Brownfield Economic Development District.

II. TIMELINE FOR COMPLETION

The Old Standard Business Park will contain twenty-nine (29) office buildings, a first class hotel, an Extended Stay Hotel and the Waste Water Treatment Plant which is adjacent to the Quarry Lake. The Waste Water Treatment Plant was constructed for \$4.2 million on real estate sold to the Jefferson County Public Service District for \$1.00. The Plant is fully operational. Old Standard, LLC will convey the Waste Water Treatment Plant to the PSD for one dollar (\$1.00) in the future.

The Old Standard contemplates a fifteen (15) year build-out for the Business Park. The Data Center shown as building 24 on the western side of the property

and the Extended Stay Hotel will be constructed as Phase I of the development. Detailed information pertaining to Phase I is included below.

III. TRAFFIC IMPACT

A Traffic Impact Study is attached as Exhibit 5. The Traffic Impact Study was prepared by Greenhorn and O'Meara. The Study was updated January 16, 2007.

IV. ESTIMATED BREAKDOWN OF PROJECT COSTS

Attached to this Application as Exhibit 6 which contains three (3) spreadsheets with the projected costs for the Extended Stay Hotel and a Computer Data Center which will be the first buildings constructed in the business park. These two (2) buildings constitute Phase I of the project. It is reasonable to believe that the costs of additional buildings would be somewhat in conformity with the costs shown on Exhibit 6 with a reasonable inflation factor.

V. FINANCIAL ABILITY OF APPLICANT TO UNDERTAKE AND COMPLETE THE PROJECT:

Old Standard, LLC moved forward with the construction of the Waste Water Treatment Plant at a cost of \$4.2 million dollars. The Plant is fully operational. The construction of the Waste Water Treatment Plant demonstrates the financial commitment of Old Standard to this project.

The completion of the Waste Water Treatment Plant significantly increases the value of the property. Each phase of the project will be financed separately and the proceeds of the sale will be applied as debt service and further development as

shown in the pro forma marked Exhibit 6. The proceeds of the sale of the lot on which the Extended Stay Hotel will be located are estimated to be \$2.2 million dollars. Exhibit 6 also shows that the sale of the real estate for the construction of the data center expected to be \$6 million dollars.

Old Standard, LLC will convey the property to a related Limited Liability Company in phases. Each phase will be developed as tenants are obtained for the buildings in the Industrial Park. The Members of Old Standard, LLC currently own and operate Extended Stay Hotels in Virginia and Maryland. Old Standard is familiar with this business and can successfully operate the Extended Stay Hotel as a result of the proximity of many federal facilities in Jefferson County. The construction of the Waste Water Treatment Plant and the presence of water utilities on site provide a distinct advantage for further development of this project. One of the Members of Old Standard is the owner and operator significant water and Waste Water Treatment Facilities in Jefferson County and is familiar with this part of the business.

Old Standard, LLC has owned the Old Standard Property for five (5) years. The appraised value of the Old Standard Property is five (5) times the amount which is owed on the property and there is considerable equity for future development.

Old Standard is currently conducting extensive negotiations with future users. However, Old Standard is unable to conclude any agreements until it is able to obtain governmental approval which will allow further design and construction of

the project. Without designation as a Brownfield Economic Development District, Old Standard is unable to finalize arrangements with future users or to proceed with any design and construction in this important project.

VI. UTILITY INFRASTRUCTURE

The Old Standard, LLC holds the NPDES Permit for the Waste Water Treatment Plant constructed near the south end of the Quarry Lake. The Waste Water Treatment Plant discharges effluent which meets or exceeds Chesapeake Bay standards. The Plant may also be expanded as necessary. Waterlines are on site provided by Jefferson Utilities.

A copy of the Old Standard NPDES Permit is attached as Exhibit 7. A copy of the Agreement with Jefferson Utilities is attached as Exhibit 9. A copy of the most recent inspection report and a letter of commendation from the West Virginia Department of Environmental Protection is attached as Exhibit 8. The inspection report contains color photographs of the Plant and some of the machinery. The Letter of Commendation from the WVDEP is dated August 8, 2008.

Old Standard, LLC entered into an Agreement with the Jefferson County Public Service District to convey the Waste Water Treatment Plant to the Public Service District for \$1.00. This will relieve the Jefferson County Public Service District of the capital costs of construction of the state of the art waste water treatment plant at the Old Standard Property. The Public Service District inspected and approved the construction drawings and specifications for the Waste Water Treatment Plant. An onsite inspector from the JCPSD was present throughout construction. The Waste

Water Treatment Plant is constructed in conformity with the plans and specifications approved by the PSD with all requirements of the WVDEP.

VII. ROAD IMPROVEMENTS

Old Standard, LLC will construct a four (4) land access road from US Rte 340 to the Business park in the public right-of-way of Millville Rd. (See Rt. 27) when demand requires. Old Standard, LLC will bear the expense of the traffic signals required at the intersection of Millville Rd. and US Rte. 340. All interior roads, parking and other transportation requirements on the Old Standard Property will be the responsibility of Old Standard, LLC or its Successors and Assigns. A copy of the Agreement with the West Virginia Division of Highways is attached as Exhibit 10. All of the transportation facilities that will be taken into the state road system will be constructed to the standards of the Division of Highways.

VIII. VOLUNTARY REMEDIATION AGREEMENT

A copy of the Voluntary Remediation Agreement is attached as Exhibit 2. Old Standard, LLC remains in full compliance with the Agreement and all regulations applicable thereto. (See Exhibit 2 and Exhibit 8)

IX. THE OLD STANDARD BROWNFIELD ECONOMIC DEVELOPMENT DISTRICT WILL CREATE SIGNIFICANT ECONOMIC DEVELOPMENT

The Extended Stay Hotel will be constructed in Phase I. The hotel will be 250 rooms and approximately 105,000 sq. ft. At approximately \$90.00 per sq. foot for construction, the construction cost for the hotel cost will be \$9.5 million dollars.

Various contractors and employees of contractors will be onsite to complete the construction with an estimated number of 100 employees at \$10.00 - \$30.00 per hour. Permanent employees at the Extended Stay Hotel will be approximately twenty (20) with twenty (20) restaurant employees. These employees will have salaries in the range of \$20,000 - \$60,000 per year.

The data center is expected to be 100,000 sq. ft. at \$700.00 per sq. ft. for a total construction cost of \$70 million dollars. The data centers are designed as full-time back-up computer centers to allow the user to have access to its computer information under any circumstances including a national emergency. All systems must be redundant and the construction specifications are much more expensive to build. During construction the contractors and their employees will be approximately 200 a number at wages at \$10.00 - \$40.00 per hour. Permanent employees will 24 at \$30,000 - \$80,000 per year for salaries.

Assuming that the Extended Stay Hotel and the data center would have a real estate property tax value in the amount of \$79.5 million dollars the real estate taxes paid on these two (2) buildings alone would be over \$1 million dollars per year. Personal property taxes are estimated to be almost \$131,000 per year.

The number of employees, real estate taxes, and personal property taxes would all increase proportionately as the remaining buildings are constructed.

X. BUT FOR THE ECONOMIC DEVELOPMENT DISTRICT, THE PROJECT WOULD NOT BE POSSIBLE

The Old Standard Property is currently zoned in two (2) ways. The northern 80 acres is zoned as High Density Residential. The rest of the property is zoned as Rural. A business park is not a Permitted Use in either the Rural District or the High Density Residential District of Jefferson County. Therefore, the Old Standard Property would need to be rezoned to general commercial/light industrial to allow the construction of the business park.

After initial discussions with various council members, Old Standard filed an Application for Annexation into the City of Charles Town. This was necessary because the county zoning designations did not provide for a Business Park in any of the Principal Permitted Uses. Attached as Exhibit 11, is a copy of the Power Point Presentation in support of Annexation into the City of Charles Town. Exhibit 11 contains important photographs that demonstrate the vast amount of burned limestone on the property. Exhibit 11 also contains the basic information regarding job creation, increases in tax revenues, and other benefits which would come about as a result of the completion of the Business Park Project.

The Charles Town City Council was initially very favorable toward Annexation. After several out of state preservation groups and the National Park Service lobbied hard against the project the City Council rejected the Annexation Proposal. Many of the arguments used by out of state preservation groups and the

National Park Service would later be used in the Petition to Rezone the property which was then filed with Jefferson County.

On April 17, 2007, Old Standard, LLC filed a Petition to Rezone the property in order that a business park might be constructed. A copy of the Petition for Rezoning is attached as Exhibit 12. Old Standard paid the filing fee required by the Zoning Ordinance in the amount of \$21,327.00 upon filing the Petition for Rezoning. A copy of the receipt of the filing fee is attached as Exhibit 13.

The Jefferson County Zoning Ordinance requires that a Public Hearing be conducted on a Petition to rezone property within sixty (60) days of its filing. The Planning Commission conducted a Public Hearing. The Planning Commission voted unanimously that the Old Standard Business Park was not consistent with the Jefferson County Comprehensive Plan. The Planning Commission voted unanimously to reject the Rezoning Petition. The Planning Commission forwarded its recommendation to deny the Application of Rezoning to the County Commission. The first Staff Assessment is attached as Exhibit 14.

Sherry Kelly, Chief Planner/Zoning Administrator for Jefferson County, rendered the First Staff Report regarding the Old Standard Rezoning Request. This is marked Exhibit 14. The Report is dated June 4, 2007. Ms. Kelly accurately sites the goals of the Comprehensive Plan on page 1 of her report including encouraging growth and development for sewer and water are available; promoting growth and development that are economically and environmentally sound; encourage and support Commercial, Industrial, and Agricultural activities to provide a diversified

sound economy; and increase the employment base and commercial enterprises in Jefferson County.

Ms. Kelly's report is a positive report which concludes that the rezoning of the Old Standard Property would be consistent with the Comprehensive Plan. This is the report that was provided to Old Standard before the Planning Commission conducted its Public Hearing.

At the Public Hearing a second Staff Report dated June 11, 2007, was provided to the Planning Commission and Old Standard. This report is marked as Exhibit 15. The second report took a completely different view point from the first report. The second report was completely focused on issues in the Comprehensive Plan which would be negative factors without presenting a balanced view.

Exhibit 15 (the second report) was drafted by a newly hired County employee who had not been in the County for more than a week or two. It was later learned that a County Commissioner put additional pressure on the author of the second report to write a report which would conclude that the Old Standard Rezoning Request was inconsistent with the Comprehensive Plan.

Exhibit 15 (the second report) was drafted by a newly hired County employee who had not been in the County for more than a week or two. It was later learned that a County Commissioner put additional pressure on the author of the second report to write a report which would conclude that the Old Standard Rezoning Request was inconsistent with the Comprehensive Plan.

The Jefferson County Commission voted 3-2 to deny the Old Standard Rezoning Request. A copy of the County Commission Minutes from July 19, 2007 is attached as Exhibit 14.

XI. REASONS FOR DENIAL OF THE OLD STANDARD REZONING PETITION

After Old Standard filed its Rezoning Petition, the County Commission referred the Petition to the Planning Commission for Public Hearing and a Staff Report. The Staff Assessment dated June 11, 2007, Exhibit 15.

The Planning Commission noted that there were no commercial enterprises adjacent to the Shenandoah River. Even though there is no prohibition in the Comprehensive Plan, the Commission concluded that it would be "inappropriate" for a business park to be located adjacent to the Shenandoah River.

There is no designation for a "business park" in the current Jefferson County Zoning Ordinance. Jefferson County has enacted a new Zoning Ordinance which is not yet effective. The new Zoning Ordinance contains large areas designated for a business park including areas which are adjacent to the Shenandoah River. Old Standard must conclude that the recommendations of the Planning Commission were specifically directed toward the Old Standard Application and not the general concept of a business park located near the Shenandoah River.

At the Planning Commission Public Hearing, various historic preservation groups from outside West Virginia appeared to testify. Officials from the National Park Service testified against the proposal. The opposition of the National Park

Service and its surrogate groups is at odds with federally mandated expansion plans for the National Park. The Old Standard Property is specifically excluded from all plans to expand the Harpers Ferry National Park. Old Standard must conclude that the National Park Service wishes to control the Old Standard Property without acquiring it.

The Federal Government had an option to purchase Old Standard property. The Government performed various studies on the Quarry Property and concluded that the government did not wish to exercise the option to purchase the Quarry. Instead, the government chose to purchase a parcel of land near Shepherdstown for the construction of the National Conservation Training Center. After studying the Old Standard Quarry Property, the government concluded that the remediation costs would be prohibitive.

The Planning Commission placed great weight on the testimony of the National Park Service even though the Planning Commission knew that the Old Standard Property was not scheduled for the proposed expansion of the National Park.

At the County Commission hearing on July 19, 2007, the same out of state Preservation Groups and the National Park Service appeared to oppose the rezoning. Old Standard made every effort to reach out to the National Park Service and its surrogate preservation groups. Representatives of the National Park Service and the preservationist met with the Member of Old Standard to discuss the project to determine if there were adjustments to be made to make the project acceptable to them.

After a full presentation by Old Standard, the preservation groups and the National Park Service left the meeting without further comment. None of these groups has ever attempted to work with Old Standard to resolve any complaints or disputed issues which might allow the opponents to have significant impact in the design of the project. Old Standard made several offers to the County Commission to negotiate the design of the business park to give county government substantial input in the design and implementation of the project. The President of the County Commission expressly refused to negotiate and stated in public that the County Commission would not negotiate with Old Standard.

One of the concerns raised in the Public Hearings was the additional traffic which would be generated by the Business Park. One of the reasons Jefferson County experiences a traffic difficulty is the conversion of Jefferson County into a community. The Old Standard Business Park would relieve traffic congestion created by commuters because those persons working at Old Standard would not be driving to the Washington DC area to work. Anyone who would be coming to the Old Standard Business Park from outside Jefferson County would be driving "against the rush hour traffic" thereby relieving traffic congestion created by commuters.

Old Standard, its Successors or Assigns, will be responsible for significant road improvements which are described in Section VII. Old Standard has a Contract with the Division of Highways to make the improvements including a traffic signal at US 340 and Millville Road and the upgrade of the Millville Road from 340 to

the Business Park. All onsite road improvements will be the responsibility of Old Standard as the Business Park is constructed.

A public Petition in support of the Old Standard Business Park was submitted to the County Commission. The Petition contained over 500 names of residents of Jefferson County. The Chamber of Commerce voted to support the rezoning of the Old Standard Quarry. The Jefferson County Development Authority voted to support the Rezoning Petition. Many business leaders attended the County Commission meeting and spoke in favor of the Rezoning Petition filed by Old Standard. Nonetheless, the County Commission voted to deny the application.

The original Old Standard, LLC Petition for Rezoning the Quarry Property would have accomplished the following goals:

- a. Creation of 6,000 permanent jobs at the business park.
- b. Preservation of significant areas as a buffer between the Shenandoah River and the National Park Service Property at the Murphy Farm.
- c. Infrastructure costs for transportation improvements to be the responsibility of Old Standard.
- d. Waste Water Treatment and water infrastructure costs to be paid by Old Standard.
- e. Preservation of the Riverside Park along the Shenandoah River which would be open to the public.

- f. Construction of approximately 2,000,000 sq. ft. of office space for research, development and flex space which would generate millions of dollars in property taxes for the County.
- g. Construction of a first class hotel – conference center which would generate significant real estate taxes and hotel/motel taxes.
- h. Completion of the WVDEP Voluntary Remediation Program to remove of 2,000,000 cubic yds. of burned limestone and other debris which remains on the property.
- i. All utilities underground with a 6 ft. earth and berm along Millville Road to visually screen the office buildings from the adjacent National Park Service Property.
- j. 100 ft. set back from the eastern edge of the lake to any building on the east side of the lake for preservation of the Old Standard Quarry Lake.

Old Standard proposed an alternative plan for seventeen (17) buildings with hotel and conference center. The President of the County Commission expressly stated that the Commission would not negotiate with Old Standard.

Both the County Commission and the Planning Commission rejected the Old Standard Rezoning Petition which included all of the positive features above-described.

XII. REASONS FOR DENIAL OF THE OLD STANDARD REZONING PETITION

Old Standard respectfully requests approval of this Application for designation as a Brownfield Economic Development District for the construction of the Old Standard Business Park. The infrastructure costs for road improvements, waste water treatment facilities and water service are all being borne by Old Standard. The benefits for this significant economic development are set forth in the Application. Old Standard requests that the Secretary receive and file the Application and give the Application expeditious treatment.

OLD STANDARD, LLC
By Counsel

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Form #7

SECRET

2008 AUG 15 PM 3:58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Review Committee

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

Form #3

Do Not Mark In This Box -601-

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Development Office TITLE NUMBER: 145

CITE AUTHORITY: W.Va. Code 5B-2-6a

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

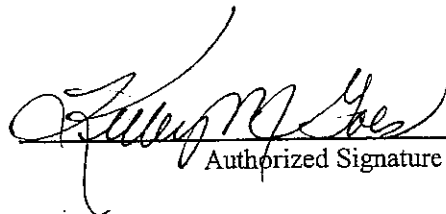
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

TITLE OF RULE BEING PROPOSED: Brownfield Economic Development Districts

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

Brief Summary

This proposed legislative rule explains and clarifies W. Va. Code § 5B-2-6a, which provides for the establishment of brownfield economic development districts and establishes the procedures, standards, legal documents, fees and notice applicable to an applicant for the establishment of a brownfield economic development district.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: _____

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: _____

Address: _____

Phone Number: _____ Email: _____

Fiscal Note Summary

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

NA

Fiscal Note Detail

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

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

Rule Title: _____

Rule Title: _____

-604-

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

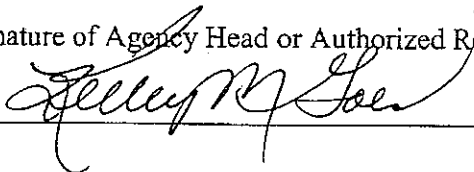
MEMORANDUM

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

The statute and corresponding rule creates a district for purposes of remediation and development of brownfield sites.

Date: 8/15/08

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 15, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No) West Virginia Development Office, State Capitol Complex,
Building 6, Room 553, Charleston, WV 25305-0311
304-558-2234

LEGISLATIVE RULE TITLE: Brownfield Economic Development Districts

1. Authorizing statute(s) citation W.Va. Code 5B-2-6a

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 1, 2008 - Public Comment Period

b. What other notice, including advertising, did you give of the hearing?

NA

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 31, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 15, 2008

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Kelley M. Goes, Executive Director, WV Development Office, State Capitol
Complex, Bldg. 6, Rm 553, Charleston, WV 25305-0311; Phone: 558-2234; Fax:
558-1189; kelley.m.goes@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same as above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

- b. Date of hearing or comment period:

NA

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

- d. Attach findings and determinations and reasons:

Attached NA



1900 Kanawha Boulevard, East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386
www.wvopenforbusiness.com

Brownfield Economic Development Districts

In lieu of a public hearing, a 30-day public comment period was provided and no comments were received.

Check List for Compliance with W. Va. Code § 5B-2-6a

- _____ a.1. Applicants for a brownfield economic development district must demonstrate that the district when designated will create significant economic development activity;
- _____ a.2. Applicants shall submit a development plan that provides specific details on proposed financial investment, direct and indirect jobs to be created and the viability of the district;
- _____ a.3. Brownfield economic development districts:
 - _____ 3.1. May not contain single-family housing;
 - _____ 3.2. Shall provide all the infrastructure within the district without cost to the state, county, public service district or local municipal government;
- _____ a.4. Applicants shall demonstrate that were it not for this designation, the contemplated development would not be possible and that the development is in the best interest of the state;
- _____ a.5. The applicant shall own or control the property within the district;
- _____ a.6. All costs for the application process shall be borne by the applicant;
- _____ a.7. An applicant shall demonstrate that the applicant has attempted to work in good faith with local officials in regard to land-use issues;
- _____ a.8. Prior to granting a designation of brownfield economic development district, the applicant shall provide documentation that the applicant has met all the requirements set forth in W. Va. Code § 22-22-1 et seq. to be designated as a brownfield site or voluntary remediated site and is in compliance with the remediation plan;

Notes:

- 1. Brownfield economic development districts are not subject to the provisions of chapter eight-a of this code;
- 2. Nothing may be construed by section 5B-2-6a to exempt brownfield economic districts from environmental regulation that would pertain to the development;
- 3. The decision of the development office in regard to an application is final; and
- 4. Once designated, the district shall work in conjunction with the regional brownfield assistance centers of Marshall University and West Virginia University as specified in W. Va. Code § 18B-11-7.

Check List for Application for Brownfield Economic Development District

Application

A complete application for establishment of a brownfield economic development district includes, at a minimum, the following:

- _____ 1 The applicant's name.
- _____ 2. The applicant's current address.
- _____ 3. The applicant's telephone number, facsimile number and e-mail address.
- _____ 4. The applicant's financial capabilities.
- _____ 5. The name of the proposed brownfield economic development district.
- _____ 6. A general description of the site to be designated a brownfield economic development district, which shall include, at a minimum, the following:
 - _____ 6.1. A written description of the site that includes any city, county, and street addresses, and adjacent landmarks, buildings, waterways, former uses or other identifying information.
 - _____ 6.2. The deed book number and deed number of the site.
 - _____ 6.3. The County tax map references.
 - _____ 6.4. Geographic information system data to accurately delineate the voluntary remediation site.
 - 6.4.1. All geographic information system location data must have a horizontal accuracy within 12.2 meters (40 feet) in accordance with the U.S. Department of Interior U.S. Geological Survey National Map Accuracy Standards.
 - _____ 6.5. Any other identifying information that will serve to clearly and concisely identify the real estate to be included in the brownfield economic district.
 - _____ 6.6. A brownfield economic development district may not include any non-contiguous location or property not owned or controlled by the applicant at the time the application is filed.
- _____ 7. A map showing the boundaries of the brownfield economic development district and showing the proposed economic development in the district.

- _____ 8. Documentation establishing that as of the date of the application the applicant owns or controls all of the land in the proposed brownfield economic development district.
- _____ 9. A time line for completion of the economic development project.
- _____ 10. A traffic study performed by a recognized traffic consultant if (a) the economic development project will directly and indirectly employ more than 200 employees who will work in the district once the economic development project is finished, or (b) if more than 200 individuals will reside in the district once the economic development project is completed, or (c) if any combination of residents and employees exceeds 200 persons in the aggregate.
- _____ 11. A true copy of the economic development concept project plan including an estimated breakdown of project costs, which shall not include the cost to complete the voluntary remediation agreement.
 - 11.1. "Economic development plan" means written and graphic material for provision of a development that at a minimum includes the following information:
 - _____ 11.1.1 Name, address and phone number of property owner(s).
 - _____ 11.1.2. Name, address and phone number of property developer (if not the owner).
 - _____ 11.1.3. Name of development project, date, direction, scale.
 - _____ 11.1.4. Date economic development plan was prepared.
 - _____ 11.1.5. Name, address and phone numbers of project architect(s), engineer(s) and landscape architect(s).
 - _____ 11.1.6. Intended land-use/nature of development.
 - _____ 11.1.7. Vicinity map showing general location, surrounding property and major physical features.
 - _____ 11.1.8. General layout of property showing shape, approximate dimensions, and total acreage.
 - _____ 11.1.9. A conceptual site development plan showing alignment of building(s), what developer anticipates will be the use of the building(s) and any phases of the project, if the project will be done in phases.

- _____ 11.1.10. A description of the infrastructure that will be provided by the developer.
- _____ 12. Documentation of financial ability of the applicant to undertake and complete the proposed economic development project plan or an independent economic feasibility study demonstrating the feasibility of the proposed economic development project.
- _____ 13. If the project infrastructure will tie in to a public or private utility, a letter from the utility or utilities serving the area in which the project is located certifying the following:
- 13.1. They have reviewed and approved all plans and specifications for the project's infrastructure applicable to the utility to determine that the infrastructure conforms to the utility's reasonable requirements and, when the infrastructure consists of water transmission or distribution facilities, that the infrastructure will provide for adequate fire protection for the district; and
- 13.2. If the infrastructure is built in conformance with said plans and specifications, the utility will accept the improvements following their completion.
- _____ 14. If state or local roads adjacent to the brownfield economic development district will need to be upgraded to facilitate ingress and egress from the district, the developer shall pay for the cost of these improvements which shall be evidenced by a letter from the Division of Highways, State Department of Transportation, or the local government entity describing generally the construction work to be done, and that the developer has agreed to reimburse the Department or local government entity for the costs of construction. If the developer will build roads that upon completion will be taken into the state or local road system, the developer shall provide a letter from the Division of Highways or local government entity certifying that if the road(s) is built to standards of the Division of Highways or the local government entity, the road(s) will be taken into the State Road System of the local road system, as the case may be.
- _____ 15. If the utility does not currently have adequate capacity to provide reliable service customers in the brownfield economic development without significant upgrades or modifications to its treatment, storage, source of supply, or transmission facilities, the applicant must agree to pay the cost of upgrading the utility so that it has adequate capacity to provide the utility service.
- _____ 16. A true copy of the voluntary remediation agreement with the Secretary of the Department of Environmental Protection covering some or all of the land in the proposed district.

- _____ 17. Facts and documents demonstrating that designation of a site as a brownfield economic development district will create significant economic development, as defined in section 2 of this rule, including, but not limited to:
 - 17.1. Estimated total number of jobs to be created in the brownfield economic development district.
 - 17.1.1. Estimated number of construction jobs over the life of the project.
 - 17.1.2. Estimated number of permanent jobs once the project is completed and all buildings are occupied.
 - 17.1.3. Estimated number of temporary or seasonal jobs once the project project is completed and all buildings to be occupied are occupied.
 - 17.1.4. Estimated number of part-time jobs once the project is completed and all buildings are occupied.
- _____ 18. Facts and documents demonstrating that but for designation as brownfield economic development district, the contemplated economic development project would not be possible.
- _____ 19. Facts and documents demonstrating that the economic development project is in the best interest of the State. At a minimum, these facts and documents shall include an economic forecast of:
 - _____ 19.1. The additional amount of real and personal property taxes expected to be collected once the economic development project is completed.
 - _____ 19.2. The additional state and local taxes the completed project will generate, not including ad valorem property taxes or taxes levied on employees working in the district.
 - _____ 19.3. The amount of West Virginia personal income taxes that will be paid by employees working in the district once the project is completed, based on the payroll of the district.
- _____ 20. Facts and documents demonstrating that applicant has attempted to work in good faith with local officials in regard to land-use issues.
 - _____ 20.1. A copy of the original land use plan submitted to the local land use officials.
 - _____ 20.2. A copy of any and all amended or revised land development plan and plat submitted to the local land use officials, with a cover document highlighting the major difference(s) between each version of the land use plan.

- _____ 20.3. One or more documents showing that the land use plan was rejected by the land use officials. Examples of these documents include, but are not limited to, a transcript of the public meeting at which the land use plan was rejected, a letter or order signed by the chairman of the land use officials providing reasons why the land use plan was rejected, the affidavit of the applicant or the affiant's attorney stating the affiant's understand of why the land use plan was rejected.
- _____ 21. Facts and documents demonstrating that the applicant is in compliance with the voluntary remediation agreement and that all of the requirements of W. Va. Code § 22-22-1 *et seq.*, as of the date the application for establishment of the brownfield economic development district was filed with the Development Office

Public Notice

The emergency legislative rule requires one public notice, which the Director of the Development Office must file in the State Register within 14 days after the application is received. 145 WVC SR 11.-7.

Time Line

The DOD has 90 days to act on the application, which begins when the application is physically received by the DOD.

If within said 90 day period, the DOD requests additional information, the applicant has 60 days to provide the additional information.

Once the additional information is physically received, the DOD has 30 days to act on the application, or the balance of the original 90-day period, whichever is greater.

If applicant does not provide additional information within 60 days of receipt of the request for same, the applicant must submit another \$2,500 application processing fee and the DOD has a new 90 days to act on the application.

TITLE 145

EMERGENCY LEGISLATIVE RULE

DEPARTMENT OF COMMERCE

DEVELOPMENT OFFICE

SERIES 11

BROWNFIELD ECONOMIC DEVELOPMENT DISTRICTS

§ 145-11-1. General.

1.1. Scope. This legislative rule explains and clarifies the statute authorizing the establishment of brownfield economic development districts and establishes the procedures, standards, legal documents, fees and notice applicable to an applicant for the establishment of a brownfield economic development district.

1.2. Authority. -- W. Va. Code § 5B-2-6a

1.3. Filing Date. -- _____

1.4. Effective Date. -- _____

§ 145-11-2. Definitions.

For purposes of this rule:

2.1. "Applicant" means a person who is applying or has applied to the Director of the Development Office for establishment of a brownfield economic district.

2.2. "Application" means an application for establishment of a brownfield economic development district that is filed with the Director of the Development Office pursuant to W. Va. Code § 5B-2-6a and this rule, which provides all of the information and documentation required by this rule.

2.3. "Application fee" or "fee" means the fee provided for in section four of this rule.

2.4. "Brownfield" means a brownfield as defined in W. Va. Code § 22-22-2.

2.5. "Brownfield economic development district" means a district established by the Director of the Development Office pursuant to W. Va. Code § 5B-2-6a and in accordance with this rule.

2.6. "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

2.7. "Department of Commerce" means the Department of Commerce created in the executive branch of state government in W. Va. Code § 5F-1-2(a).

2.8. "Department of Environmental Protection" means the Department of Environmental Protection created in the executive branch of state government in W. Va. Code § 5F-1-2(a).

2.9. "Development Office" means the West Virginia Development Office created in article two, chapter five-b of the Code, which is an agency, division of office that is incorporated in and administered as part of the Department of Commerce, as provided in W. Va. Code § 5B-1-2.

2.9.1. "Designee" in the phrase "or his or her designee," when used in reference to the Director of the Development Office, the Secretary of Commerce, or the Secretary of Environmental Protection, means any officer or employee of those agencies duly authorized by Director of the Development Office, the Secretary of Commerce or the Secretary of Environmental Protection, directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this rule.

2.10. "Direct jobs" means jobs located in the brownfield economic development district during the construction phase and employment in the district after the project plan is completed.

2.11. "Director" means the "Director of the West Virginia Development Office."

2.12. "Economic development plan" means written and graphic material for provision of a development that at a minimum includes the following information:

- 2.12.1. Name, address and phone number of property owner(s).
- 2.12.2. Name, address and phone number of property developer (if not the owner).
- 2.12.3. Name of development project, date, direction, scale.
- 2.12.4. Date economic development plan was prepared.
- 2.12.5. Name, address and phone numbers of project architect(s), engineer(s) and landscape architect(s).
- 2.12.6. Intended land-use/nature of development.
- 2.12.7. Vicinity map showing general location, surrounding property and major physical features.
- 2.12.8. General layout of property showing shape, approximate dimensions, and total acreage.
- 2.12.9. A conceptual site development plan showing alignment of building(s), what developer anticipates will be the use of the building(s) and any phases of the project, if the project will be done in phases.
- 2.12.10. A description of the infrastructure that will be provided by the developer.

2.13. "Full-time employee" means a permanent hourly or salary employee who is headquartered at a business location in the brownfield economic development district and who works more than eighteen hundred hours during the entire twelve-month period ending on the last day of the calendar year, whether these hours are hours worked in the district, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.

2.14. "Full-time employment" means employment for at least one hundred forty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

2.15. "Indirect jobs" means jobs created in the county in which the brownfield economic district is located that did not exist in the county before completion of the project plan for the district and which are not located or based in the district.

2.16. "Infrastructure" means broadband Internet, electric lines, natural gas or propane lines, water lines, water processing plant, fiber optic telephone lines, sewer lines, sewer disposal facilities, storm water lines, storm water disposal facilities, lighting and/or roads located within the brownfield economic development district and any upgrades to existing facilities and roads located outside the district that are necessary to deliver reliable electric, natural gas or propane, telephone, and water to businesses and residents located within the district, and to transmit and treat sewage and storm water generated in the district and the cost of improving roads located outside the district, including, but not limited to, adding turn lanes or lanes, widening lanes, adding traffic signals as may be necessary to minimize congestion to the extent due to economic development and economic activity in the district, and improve public safety. "Infrastructure" does not include customer charges for connection to a utility or charges for the utility service used or consumed by the utility customer.

2.17. "New employee" means a person hired by the developer or other employer located in the brownfield economic district to fill a position or a job in this district which previously did not exist in the developer's or other district employer's business enterprise in this State prior to the date on which the economic development project is placed in service or use in this State. A person is considered to be a "new employee" only if the person's duties in connection with the operation of the business in a brownfield economic development district are on:

2.17.1. A regular, full-time and permanent basis, or

2.17.2. A regular, part-time and permanent basis provided the person is customarily performing the duties at least twenty hours per week for at least six months during the calendar year.

2.18. "New job" means a job which did not exist in the brownfield economic development district in the business of the developer or other employer located in the district prior to the economic development project being placed in service.

2.19. "Own or control the property in the brownfield economic development district" means that the property is owned by the applicant or by a related person as defined in this rule.

2.20. "Part-time employee" means an employee who works less than twenty hours per week.

2.21. "Permanent employee" means any employee who is not a temporary or seasonal employee and who customarily performs his or her duties at least twenty hours per week for at least six months during the calendar year.

2.22. "Person" includes any natural person, corporation, partnership, or entity treated as a partnership for federal and state income tax purposes. For purposes of applying for establishment of a brownfield economic development district, "person" also includes a county, municipality, the West Virginia Economic Development Authority, a county or municipal economic development authority, and the Regional Brownfield Assistance Center established at Marshall University or West Virginia University pursuant to W. Va. Code § 18B-11-7.

2.23. "Related person" means:

23.1. A corporation, partnership, association or trust controlled by the applicant;

23.2. An individual, corporation, partnership, association or trust that is in control of the applicant;

23.3. A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the applicant; or

23.4. A member of the same controlled group as the applicant.

23.5. For purposes of this rule, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent (50%) or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent (50%) or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

2.24. "Seasonal employee" means an employee who normally works on a full-time basis less than five months in a year.

2.25. "Secretary of Commerce" means the chief executive officer of the Department of Commerce, or his or her designee.

2.26. "Secretary of Environmental Protection" means the chief executive officer of the Department of Environmental Protection, or his or her designee.

2.27. "Single-family housing" means a single-family dwelling unit on a separate lot that shares no common wall with any other dwelling unit.

2.28. "Significant economic development activity" means:

2.28.1 Total private real and personal property investment in an economic development project that is in excess of fifty million dollars (\$50 million), not including the cost of land, through infrastructure, new construction, reconstruction, installation of fixtures and equipment of the project; and

2.28.2. Creation of additional annual payroll within the district in excess of five million dollars (\$5 million).

2.29. "Site" means the contiguous land owned or controlled by the developer when the application is filed under this rule, comprising fifty (50) acres or more of which at least twenty-five percent (25%) of the site acres are subject to a voluntary remediation agreement entered into with the Secretary of Environmental Protection, as provided in W. Va. Code § 22-22-1 *et seq.*, or were subject to such an agreement and for which the developer received a certificate of completion issued by the Department of Environmental Protection as provided in W. Va. Code § 22-22-13.

2.30. "Temporary employee" means any employee who is not a permanent employee, a part-time permanent employee, a seasonal employee or a part-time seasonal employee.

2.31. "This State" means the State of West Virginia.

2.32. "Voluntary remediation" means a series of measures that are self-initiated by a person to identify and address potential sources of contamination of property and to establish that the property complies with applicable remediation standards that are performed pursuant to a voluntary remediation plan.

2.33. "Voluntary remediation plan" means the remediation work plan approved by the Secretary of Environmental Protection and authorized in the voluntary remediation agreement executed pursuant to W. Va. Code § 22-22-1 *et seq.*

2.34. "West Virginia Code" or "W. Va. Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§ 145-11-3. Content of application.

An application for establishment of a brownfield economic development district shall, at a minimum, include the following:

3.1. The applicant's name.

3.2. The applicant's current address.

3.3. The applicant's telephone number, facsimile number and e-mail address.

3.4. The applicant's financial capabilities.

3.5. The name of the proposed brownfield economic development district.

3.6. A general description of the site to be designated a brownfield economic development district, which shall include, at a minimum, the following:

3.6.1. A written description of the site that includes any city, county, and street addresses, and adjacent landmarks, buildings, waterways, former uses or other identifying information.

3.6.2. The deed book number and deed number of the site.

3.6.3. The County tax map references.

3.6.4. Geographic information system data to accurately delineate the voluntary remediation site.

3.6.4.1. All geographic information system location data must have a horizontal accuracy within 12.2 meters (40 feet) in accordance with the U.S. Department of Interior U.S. Geological Survey National Map Accuracy Standards.

3.6.5. Any other identifying information that will serve to clearly and concisely identify the real estate to be included in the brownfield economic district.

3.6.6. A brownfield economic development district may not include any non-contiguous location or property not owned or controlled by the applicant at the time the application is filed.

3.7. A map showing the boundaries of the brownfield economic development district and showing the proposed economic development in the district.

3.8. Documentation establishing that as of the date of the application the applicant owns or controls all of the land in the proposed brownfield economic development district.

3.9. A time line for completion of the economic development project.

3.10. A traffic study performed by a recognized traffic consultant if (a) the economic development project will directly and indirectly employ more than 200 employees who will work in the district once the economic development project is finished, or (b) if more than 200 individuals will reside in the district once the economic development project is completed, or (c) if any combination of residents and employees exceeds 200 persons in the aggregate.

3.11. A true copy of the economic development concept project plan including an estimated breakdown of project costs, which shall not include the cost to complete the voluntary remediation agreement.

3.12. Documentation of financial ability of the applicant to undertake and complete the proposed economic development project plan or an independent economic feasibility study demonstrating the feasibility of the proposed economic development project.

3.13. If the project infrastructure will tie in to a public or private utility, a letter from the utility or utilities serving the area in which the project is located certifying the following:

3.13.1. They have reviewed and approved all plans and specifications for the project's infrastructure applicable to the utility to determine that the infrastructure conforms to the utility's reasonable requirements and, when the infrastructure consists of water transmission or distribution facilities, that the infrastructure will provide for adequate fire protection for the district; and

3.13.2. If the infrastructure is built in conformance with said plans and specifications, the utility will accept the improvements following their completion.

3.14. If state or local roads adjacent to the brownfield economic development district will need to be upgraded to facilitate ingress and egress from the district, the developer shall pay for the cost of these improvements which shall be evidenced by a letter from the Division of Highways, State Department of Transportation, or the local government entity describing generally the construction work to be done, and that the developer has agreed to reimburse the Department or local government entity for the costs of construction. If the developer will build roads that upon completion will be taken into the state or local road system, the developer shall provide a letter from the Division of Highways or local government entity certifying that if the road(s) is built to standards of the Division of Highways or the local government entity, the road(s) will be taken into the State Road System of the local road system, as the case may be.

3.15. If the utility does not currently have adequate capacity to provide reliable service customers in the brownfield economic development without significant upgrades or modifications to its treatment, storage, source of supply, or transmission facilities, the applicant must agree to pay the cost of upgrading the utility so that it has adequate capacity to provide the utility service.

3.16. A true copy of the voluntary remediation agreement with the Secretary of the Department of Environmental Protection covering some or all of the land in the proposed district.

3.17. Facts and documents demonstrating that designation of a site as a brownfield economic development district will create significant economic development, as defined in section 2 of this rule, including, but not limited to:

3.17.1. Estimated total number of jobs to be created in the brownfield economic development district.

3.17.1.1. Estimated number of construction jobs over the life of the project.

3.17.1.2. Estimated number of permanent jobs once the project is completed and all buildings are occupied.

3.17.1.3. Estimated number of temporary or seasonal jobs once the project is completed and all buildings to be occupied are occupied.

3.17.1.4. Estimated number of part-time jobs once the project is completed and all buildings are occupied.

3.18. Facts and documents demonstrating that but for designation as brownfield economic development district, the contemplated economic development project would not be possible.

3.19. Facts and documents demonstrating that the economic development project is in the best interest of the State. At a minimum, these facts and documents shall include an economic forecast of:

3.19.1. The additional amount of real and personal property taxes expected to be collected once the economic development project is completed.

3.19.2. The additional state and local taxes the completed project will generate, not including ad valorem property taxes or taxes levied on employees working in the district.

3.19.3. The amount of West Virginia personal income taxes that will be paid by employees working in the district once the project is completed, based on the payroll of the district.

3.20. Facts and documents demonstrating that applicant has attempted to work in good faith with local officials in regard to land-use issues.

3.20.1. A copy of the original land use plan submitted to the local land use officials.

3.20.2. A copy of any and all amended or revised land development plan and plat submitted to the local land use officials, with a cover document highlighting the major difference(s) between each version of the land use plan.

3.20.3. One or more documents showing that the land use plan was rejected by the land use officials. Examples of these documents include, but are not limited to, a transcript of the public meeting at which the land use plan was rejected, a letter or order signed by the chairman of the land use officials providing reasons why the land use plan was rejected, the affidavit of the applicant or the affiant's attorney stating the affiant's understand of why the land use plan was rejected.

3.21. Facts and documents demonstrating that the applicant is in compliance with the voluntary remediation agreement and that all of the requirements of W. Va. Code § 22-22-1 *et seq.*, as of the date the application for establishment of the brownfield economic development district was filed with the Development Office.

3.22. Ongoing requirement to correct errors or update information in application.

3.23. Other information, as requested by the Director of the Development Office.

§ 145-11-4. Application fee.

4.1. The application fee shall be \$2,500, which amount shall be paid at the time the application is submitted

to the Development Office. In the event extraordinary costs are incurred by the Development Office as a result of processing the application, before or after deciding whether to grant or deny the application, the applicant shall reimburse the Development Office for the amount of the extraordinary costs upon receipt of the Development Office's invoice.

4.2. If the application is withdrawn by the applicant before the Development Office begins its review of the application, the application fee shall be refunded to the applicant. If the application is withdrawn after the Development Office has begun review of the application, no portion of the application fee shall be refunded to the applicant.

4.3. If during review of the application the Development Office requests additional information from the applicant that is not provided by the applicant within sixty days of being notified by facsimile transmission or certified mail of the additional information needed and thereafter the information requested is provided, the applicant shall pay a fee of \$2,500 at the time the additional information is provided and the amended application shall be treated as a new application for purposes of this rule.

§ 145-11-5. Time-line for processing application.

5.1. The Development Office shall mark on the application the date it is received by the Development Office.

5.2. The Development Office shall have ninety days after it physically receives a complete application to establish a brownfield economic development district in which to grant the application, deny the application, or request additional information from the applicant. A complete application is one which provides all of the information required by section three of this rule.

5.3. If the application is granted or denied, the Director of the Development Office shall promptly notify the applicant in writing of the decision, which shall be served on the applicant by certified mail, or by facsimile transmission and first class regular mail.

5.4. If the Director requests additional information from the applicant, the request shall be made in writing and served on the applicant by certified mail, or by facsimile transmission and first class regular mail.

5.5. The applicant shall have sixty days from date of receipt of the request for additional information in which to provide the additional information.

5.6. When the additional information is provided within the applicable sixty-day period, the Director shall have thirty days after physical receipt of the additional information to act on the application or the balance of the original ninety-day period to act on the application, whichever is longer.

5.7. When the additional information is provided subsequent to the applicable sixty-day period, the additional information and the original application shall be treated as a new application, requiring payment of a new application fee, and the Director shall have ninety days from date of receipt of the new application fee in which to act on the application by granting or denying the application or requesting additional information.

§ 145-11-6. Timely filing and paying; performance when last day to act is Saturday, Sunday or legal holiday in this State.

6.1. *Delivery in person.* – If any document required by this rule to be filed with the Director of the Development Office, or any payment required to be made, within a prescribed period or on or before a prescribed

date, is delivered in person on or before such date to the Development Office at Charleston, West Virginia, during normal business hours of the Development Office, it shall be timely filed.

6.2. *Timely mailing.* – If any document required by this rule to be filed with the Director of the Development Office, or any payment required to be made within a prescribed period or on or before a prescribed date under authority of this rule, is, after such period or such date, delivered by United States mail to the Director of the Development Office, the date of the United States Postal Service postmark stamped on the cover in which such document or payment is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be, provided the following mailing requirements are met:

6.2.1. The postmark date falls within the prescribed period or on or before the prescribed date for filing of the document or for making payment, and

6.2.2. The document or payment was, within the time prescribed in subdivision 6.2.1, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to Director of the Development Office or the Development Office.

6.3. *Registered and certified mailing.* – For purposes of this section, if any document or payment is sent by United States registered or certified mail, the date of registration or certification shall be deemed the postmark date.

6.4. *Treatment of private delivery services.*

6.4.1. Any reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in paragraph 6.4.2 by any designated delivery service.

6.4.2. *Designated delivery service.* – For purposes of this subsection, the term “designated delivery service” means any delivery service provided by a trade or business if such service is designated by the Secretary of the United States Treasury or the State Tax Commissioner as a delivery service for tax returns, payments and other documents filed with the Internal Revenue Service or with the State Tax Department provided the delivery service:

6.4.2.1. Is available to the general public,

6.4.2.2. Is at least as timely and reliable on a regular basis as the United States mail, and

6.4.2.3. Records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item referred to in this section is to be delivered, the date on which such item was given to such trade or business for delivery.

6.5. *Time for performance.* – When the last day to act falls on a Saturday, Sunday or legal holiday in this State, the act shall be timely if done on the next day that is not a Saturday, Sunday or legal holiday in this State.

§ 145-11-7. Public notices.

7.1. Within fourteen days after receipt of and application for establishment of a brownfield economic development district, the Director of the Development Office shall file a notice in the State Register:

TO WHOM IT MAY CONCERN

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Notice is hereby given that _____ filed an application with the Director of the West Virginia Development on _____, 2008, for establishment of the _____ brownfield economic development district. The proposed district consists of _____ contiguous acres located at _____. Included in the application is a plan for economic development of the district, which is generally described as follow:

[Insert brief description of the economic development project, including phases of the project, if any, and the project's estimated cost.]

Interested persons may inspect the application during normal business hours of the West Virginia Development Office in Charleston, West Virginia, to the extent inspection is permitted under the State Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.*

7.2. Within fourteen days after the Director established a brownfield economic development district or rejects the application for establishment of the district, a copy of the Director's letter or order shall be filed in the State Register.

§ 145-11-8. Criterion for considering application.

The Director of the Development Office shall use the following criterion when determining whether to grant or deny an application for establishment of a brownfield economic development district:

8.1. Criterion for determining whether establishing a brownfield economic development district will create significant economic development, as defined in section two of this rule, in the district include, but are not limited to:

8.1.1. The cost of the economic development project, exclusive of land cost will be greater than ten million dollars.

8.1.2. The estimated number and quality of jobs to be created within the district, including, but not limited to, construction jobs and permanent employment jobs.

8.1.3. The estimated annual payroll of the jobs to be created in the district.

8.1.4. The extent to which the jobs in the district are new jobs as contrasted with the relocation of existing jobs from within this State.

8.1.5. The extent to which the economic development project will support, enhance, and diversify existing business located in the county or region in which the district is located.

8.2. Criterion for determining whether but for designation of the site as a brownfield economic development district the proposed economic development would not be possible include, but are not limited to:

8.2.1. Rejection of the applicant's land use proposal by the local officials who would otherwise need to approve the proposal.

8.2.2. The reason(s) for rejection of the applicant's proposal given by the local land use officials, if any reason(s) were provided in writing.

8.3. Criterion for determining whether the economic development project is in the best interest of the State

include but are not limited to:

8.3.1. The extent to which the new permanent jobs created will be quality jobs that pay high wages and provide good benefits.

8.3.2. The extent to which the district will stimulate and support the growth of new or existing businesses located outside the district but in the county.

8.3.3. The extent to which the district will stimulate and support the growth of new or existing businesses located outside the county but in this State.

8.3.4. The extent to which the district will compete with or compliment existing businesses in the county.

8.3.5. The extent to which the economic development project will, directly, or indirectly, improve the opportunities in the area where the district will be located for the successful establishment or expansion of other commercial or industrial businesses in the county.

8.3.6. The extent to which the economic development project will, directly, or indirectly, assist in the creation of additional employment opportunities in the area where the district will be located.

8.3.7. The extent to which the economic development project will help to diversify the local economy.

8.3.8. Other criteria:

8.3.8.1. The estimated amount of ad valorem property taxes that will be generated annually as a result of the completed project.

8.3.8.2. The estimated state and local taxes, not including ad valorem property taxes, that will be generated annually from businesses activities and employment in the district.

8.3.8.3. The estimated state and local taxes, including ad valorem property taxes, that will be generated annually from businesses activities and employment outside the district that are fairly related to business and other activities in the district.

8.4. Criterion for determining whether the applicant has attempted to work in good faith with local officials in regard to land use include but are not limited to:

8.4.1. The land use plan submitted to local officials.

8.4.2. Any revised land use plan submitted to local officials.

8.4.3. That the land use plan(s) submitted by the applicant was rejected or tabled by the local officials, or the local officials refused to consider the land use plan.

8.5. *Burden of Proof.* – The burden of proof is on the applicant for establishment of a brownfield economic development district to prove by clear and convincing evidence that establishment of the brownfield economic development district is consistent with all of the requirements of W. Va. Code § 5B-2-6a.

§ 145-11-9. Duties of applicant after district is established.

9.1. Upon completion of the economic development plan and plat for the brownfield economic development district, the applicant or any successor to the applicant shall submit the plan and plat to the Director of the Development Office for approval. If the Director finds that the plan and plat are substantially in compliance with the concept plan submitted with the application for establishment of the brownfield economic development district, the Director shall approve the plan and plat for recording by the applicant or any successor to the applicant in the office of the county clerk of the county in which the district is located.

9.2. On or before the first day of the thirty-sixth month following the month in which the brown field economic development district was established by the Director of the Development Office, the project engineer or architect retained or employed by applicant or any successor to the applicant shall certify to the Director that the economic development project remains in substantial compliance with all material provisions of the economic development project concept plan including, but not limited to, the project completion time-line, filed with the application for establishment of the brownfield economic development district and identify any area or area where material changes, if any were made. The seal of the architect or engineer shall be affixed to the certification. This certification shall be made on or before the first day of every eighteen month anniversary thereafter until the project architect or engineer retained or employed by the applicant or any successor to the applicant, certifies, under seal, that eighty percent (80%) or more of the buildings in the economic development project concept plan, based on square footage of space, has been completed. For purposes of this section "substantial compliance" means compliance with the material provisions of the economic development concept plan and the project completion timeline.

9.2. Whenever the applicant or any successor to the applicant fails to comply with the requirements of subsection 9.1 for more than thirty calendar days, the designation of the district as a brownfield economic development district shall automatically be revoked without further action by the Director of the Development Office.

9.3. Whenever the applicant or any successor to the applicant desires to materially change or deviate from the economic development concept plan or the project completion time-line submitted with the application for the brownfield economic development district, the applicant or any successor to the applicant shall apply to the Director of the Development Office for approval of the material change in or deviation from the concept plan at least thirty days before entering into any contract that by itself or in conjunction with one or more other contracts, would result in a material change in or deviation from the economic development concept plan or the project completion time-line. For purposes of this subsection "material change" means a reduction in the aggregate square footage of the buildings proposed in the economic development project concept plan by more than fifteen percent (15%), or a change in the use of a building to a use inconsistent with or a use less desirable than the use or uses described in the concept plan.

9.4. Whenever the applicant or any successor to the applicant fails to comply with the requirements of subsection 9.3, the designation of the district as a brownfield economic development district shall automatically be revoked without further action by the Director of the Development Office.

9.5. Whenever the brownfield economic development district is revoked pursuant to this section, the Director shall promptly notify the applicant or any successor to the applicant in writing of the revocation due to the action or inaction of the applicant or any successor to the applicant. The Director shall send a copy of the notice to the governing body of the local jurisdiction or jurisdictions in which the brownfield economic district was located. The Director's notice shall be served on the applicant or any successor to the applicant and on the governing body by certified mail return receipt requested, or by facsimile transmission and regular mail.

§ 145-11-10. Vested property right; termination.

10.1. When a brownfield economic development district is established as provided in W. Va. Code § 5B-2-6a and this rule, the applicant for the district and any successor to the applicant shall have a vested property right to undertake and complete the concept economic development project plan.

10.2. Failure to abide by the terms and conditions of this rule or material failure to complete the economic development project concept plan shall result in revocation of the brownfield economic development district as provided in section 9 of this rule and in forfeiture of the right established in this section.

10.3. The vesting period within which the economic development concept project plan must be completed is three years from the date the brownfield economic development district is established by the Director of the Development Office. This three-year period shall automatically be extended for thirty-six months each time the certification required by subsection 9.2 is filed with the Director of the Development Office and shall become permanent once eighty percent (80%) or more of the buildings in the economic development project concept plan, based on square footage of space, have been completed, unless the district is sooner terminated, as provided in this rule.

10.4. Revocation of the brownfield economic development district as provided in this rule or expiration of the five year vesting period prior to completion of the economic development concept plan shall not affect the portion of the economic development concept plan completed before the district is revoked or the five-year vesting period expires. Neither of these events shall affect any construction work in progress begun before the district is revoked or the five-year vesting period expires except that this grandfather rule shall not apply to any construction work in progress that is not consistent with the economic development concept plan filed with the application for creation of the brownfield economic development district or any change thereto that has been approved in writing by the Director of the Development Office.

§ 145-11-11. Orders of the Director are final.

The order of the Director of the Development Office establishing a brownfield economic development district is final when issued by the Director except as otherwise provided in this rule for termination of the district due the action or failure to act of the applicant or any successor to the applicant.