

**Preliminary Performance Review**

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**Office of Coalfield  
Community Development**

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**The Office of Coalfield Community Development  
is in Compliance with Most Statutory Mandates**

**The Office of Coalfield Community Development's  
Land Valuation Assistance Program Is Not Utilized**



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John Sylvia  
Director

January 7, 2003

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a *Preliminary Performance Review of the Office of Coalfield Community Development*, which will be presented to the Joint Committee on Government Operations on Tuesday, January 7, 2003. The issues covered herein are "The Office of Coalfield Community Development is in Compliance with Most Statutory Mandates;" and "The Office of Coalfield Community Development's Land Valuation Assistance Program is Not Utilized."

We transmitted a draft copy of the report to the Office of Coalfield Development on December 26, 2002. The Agency opted not to have an Exit Conference. We received the agency response on January 2, 2003.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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# Executive Summary

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## **Issue 1: The Office of Coalfield Community Development is in Compliance with Most Statutory Mandates.**

The Office of Coalfield Community Development is in compliance with seven out of eight statutory powers and duties. Those powers and duties which the OCCD is in compliance with are: 1) establishment of a procedure for developing Community Impact Statements; 2) establishment of a procedure for determining assets that could be developed in communities; 3) establishment of a procedure for determining land and infrastructure needs; 4) determination of the need for meetings between interested parties and the communities; 5) establishment of a procedure for assisting property owners in the sale of their property; 6) maintenance and operation of a system to receive and address questions and complaints; and, 7) assistance is offered in the development of economic and community assets. The OCCD is not in compliance with the requirement that it establish procedures for the development of Action Reports and annual updates.

## **Issue 2: The Office of Coalfield Community Development's Land Valuation Assistance Program Is Not Utilized.**

The OCCD is required to establish procedures to assist property owners who desire to voluntarily sell their property to coal or land companies. The program provides free appraisals to property owners who question the fairness of the price offered for their property, however no one has taken advantage of the program since its inception in 1999. According to the OCCD the reason is that the number of surface mining permits issued has declined due to pending federal litigation. The Legislative Auditor finds that the failure of the OCCD to promote the service hinders utilization. Also, the rules governing eligibility may be too restrictive.

The land appraisal assistance offered by the state through the OCCD should be a valuable and useful service to residents of coalfield communities. The OCCD needs to determine the best way to acquire appraisal services when and if they are requested. The OCCD must consider additional ways to inform the public of the availability of the land valuation program and should issue press releases in communities where surface mining permits are pending.

## Recommendations:

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1. *The OCCD should immediately develop procedures for the development and implementation of Action Reports, as required by statute.*
2. *The OCCD should inform communities in which permit applications are pending that an independent appraisal service is available to them by immediately issuing press releases to all outlets serving the communities in which permits are pending. The OCCD should make it a policy to issue press releases in communities every time it receives a community impact statement.*
3. *The OCCD should investigate whether requesting that the Legislature expand the statute to assist additional landowners would be in the coalfield communities' best interest.*
4. *OCCD should develop rules specifying how appraisal services shall be acquired.*



# Review Objective, Scope and Methodology

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This preliminary performance review of the West Virginia Office of Coalfield Community Development is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended. The Office of Coalfield Community Development is responsible for assisting communities affected by surface mining.

## Objective

The Objective of this review was to determine if the Office of Coalfield Community Development is operating in an effective and efficient manner and to determine if there is a demonstrable need for the agency.

## Scope

The Scope of this evaluation covers the period from the agency's creation in 1999 to December 2002. The Legislative Auditor did not determine the need for the Office of Coalfield Community Development due to the fact that the agency has only had a director since December 2001 and has only been in operation for three years.

## Methodology

The Methodology included, but was not limited to, interviews, conversations and correspondence with the Office of Coalfield Community Development, the Department of Environmental Protection, the Development Office and other state agencies. The Legislative Auditor also reviewed Community Impact Statements, Community Development Statements and other documents provided by the Office of Coalfield Community Development. The Legislative Auditor contacted other state agencies and their local offices in order to determine the effectiveness of the agency. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).



# Issue 1

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## The Office of Coalfield Community Development Is In Compliance with Most Statutory Mandates.

The West Virginia Office of Coalfield Community Development (OCCD) was created by Senate Bill 681 during the 1999 legislative session to assist communities affected by surface mining activity throughout the state. The mission of OCCD is to:

- i Identify and assist communities affected by surface mining activity to develop a plan for long-term economic viability after mining;
- ii Assist property owners in such areas whose property marketability has been diminished by surface mining activity.

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*Of eight powers and duties, the OCCD has complied with seven.*

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West Virginia *Code* §5B-2A-5 outlines eight powers and duties for the OCCD. Of these powers and duties, the OCCD has complied with seven: 1) establishment of a procedure for developing Community Impact Statements; 2) establishment of a procedure for determining assets that could be developed in communities; 3) establishment of a procedure for determining land and infrastructure needs; 4) determination of the need for meetings between interested parties and the communities; 5) establishment of a procedure for assisting property owners in the sale of their property; 6) maintenance and operation of a system to receive and address questions and complaints; and, 7) assistance is offered in the development of economic and community assets. The OCCD has not complied with §5B-2A-5(4), which requires the establishment of a procedure to develop Action Reports and annual updates.

## Community Impact Statement Requirements Are Sufficient

The OCCD is meeting one of its most significant powers and duties. West Virginia *Code* requires the OCCD to establish and administer a procedure for developing Community Impact Statements (CIS) for proposed new surface mining operations describing the location, extent, duration and impact of the mines on the surrounding area. The OCCD has established procedures in §145-8-4 of the Code of State Rules. Coal operators are required to develop and file the CIS with the OCCD no more than 60 days after filing an application for a surface mining permit with the Department of Environmental Protection (DEP). Community Impact Statements are also required within 90 days after the permit application is complete and within 90 days after the first five year incremental renewal date for all permits issued prior to June 11, 1999.

The OCCD is required by §145-8-5.5.1 of the CSR to share the

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Community Impact Statements with county development authorities. These statements are used for developing long range plans with coal and land companies and the communities impacted by surface mining. Impact statements are required to include over two dozen factors, such as the amount and location of land to be mined or used in the actual surface mining operations; all applicable permit numbers; latitude and longitude coordinates; expected duration of the mining operations; the intended blasting plan; and economic information. The OCCD has a Community Impact Statement Review Checklist that is used to verify that all required information is included in the statement. The OCCD uses the Community Impact Statements to assist county and regional development authorities in identifying developable land and infrastructure by providing information and related data from the impact statements.

The OCCD currently has 168 active permits requiring Community Impact Statements. As of November 13, 2002, only eleven statements were over 30 days delinquent. Although the OCCD has notified the operators of this requirement, it is unable to compel compliance. The OCCD has no regulatory powers and relies upon the DEP to impose sanctions against operators who fail to comply.

The Legislative Auditor contacted the West Virginia Association of Counties, the Division of Environmental Protection's (DEP) Environmental Advocate, the DEP's Office of Explosives and Blasting and local DEP offices to inquire as to the usefulness and importance of the impact statements. Only the Office of Explosives and Blasting provided criticism of the program, stating that impact statements are not being utilized by the public at [this] location. The Director of the Association of Counties stated that they definitely have a significance.

### **The OCCD's Action Reports Do Not Contain Information Required By Law**

The one requirement that the OCCD has not met is the preparation of Action Reports. Action Reports, as set forth in §5B-2A-5(4) and §5B-2A-10 of the *Code* are required to:

- i Make recommendations for achieving economic development initiatives; and
- i Identify sources of potential funding.

Annual status updates of the Action Report are required to describe accomplishments and prospects for continued economic development. No

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updates were provided to the Legislative Auditor. The OCCD informed the Legislative Auditor:

*While the OCCD does not have a written policy for action reports and annual updates, this requirement is satisfied by the annual reports required by the Development Office Executive Director, as well as periodic reports provided in meetings directly with the Governor or members of his staff.*

The OCCD provided information to the Legislative Auditor that was identified as Action Reports. However, the information did not contain any recommendations or sources of potential funding for economic development initiatives as required by law. No other information provided to the Legislative Auditor contained the required information.

The Legislature had an opportunity to eliminate the requirement for Action Reports when it amended the *Code* to eliminate the requirement for Community Development Statements in March 2002. However, the Legislature chose to keep the Action Report requirement with the OCCD. The information required to be contained in Action Reports potentially improves the decision making processes related to economic development and planning in coalfield communities and throughout government. **The OCCD should develop procedures for gathering and analyzing the information required for the Action Reports so that they may be used in planning for the future of the coalfield communities.**

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*The information required to be contained in Action Reports potentially improves the decision making processes related to economic development and planning in coalfield communities.*

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## **Conclusion**

The OCCD has existed since June 1999 and has only had a Director since December 2001. Despite the lack of a Director for its first two years of existence, the OCCD is in compliance with seven out of eight statutory powers and duties. The OCCD is meeting one of its most significant powers and duties by establishing procedures to develop Community Impact Statements. The only duty the OCCD fails to perform is providing specific information required to be in the Action Reports.

## **Recommendation:**

1. *The OCCD should immediately develop procedures for the development and implementation of Action Reports, as required by statute.*



### **The Office of Coalfield Community Development's Land Valuation Assistance Program Is Not Utilized.**

The Office of Coalfield Community Development (OCCD) is required by statute to *establish a procedure to assist property owners who desire voluntarily to sell their property*. Coal mining operators in some cases have an incentive to offer a purchase price to property owners who are in close proximity to mining operations to avoid potential damage to the property from mining and blasting activity. In such cases, the OCCD has a program that will have property appraised at no cost to the owner. The property owner can then determine the fairness of the coal company's offer based on an independent appraisal from the OCCD. However, no one has taken advantage of this service since it was created in July 1999. One reason, according to the OCCD, may be that the number of surface mine permits issued has declined due to pending litigation. However, the Legislative Auditor finds that the Land Valuation Assistance Program suffers from the OCCD's lack of promoting the service and because the rules governing the eligibility for the program may be restrictive.

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*No formal, written requests for appraisal assistance have been received by the OCCD.*

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### **Land Valuation Rules Have Strict Requirements**

Since the start of the Land Valuation Assistance Program, the OCCD has not provided property appraisal assistance to land owners. No formal, written requests for appraisal assistance have been received by the OCCD. The OCCD received only three verbal inquiries since its creation, but could not offer assistance to these individuals due to statutory limitations. In order to receive assistance from the OCCD for land valuation, property owners must meet all of the following statutory requirements:

- i The operator or any person, firm or corporation directly or indirectly affiliated with the operator, makes an offer, in writing to purchase the property stating all the terms and conditions of the proposed purchase;
- i The property to be purchased is located within one thousand feet of property which actually is or will be mined;
- i The structures are actually being used for commercial purposes or are occupied residences situated on the property to be purchased.

The OCCD reports that citizens have expressed frustration with the

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OCCD's inability to offer assistance to those living close to a mining operation but outside the 1,000 foot statutory boundary. Structures in close proximity to surface mining sites can be damaged, individuals can be harmed and water supplies can be destroyed by the activities associated with the operations of surface mines. It is often in the best interest of coal companies and land owners for the companies to acquire land in close proximity to mining activities.

### **Lack of Promotion Contributes To Under Utilization of The Program**

The Legislative Auditor finds that the OCCD's failure to adequately inform the public of the availability of the land valuation assistance inhibits the use of the program. The OCCD only advertises the service on the Development Office's website. The page is difficult to find and only accessible to those residents of coalfield communities with access to the world wide web. The Legislative Auditor is also concerned that the OCCD has only vague plans for acquiring the services of an appraiser. The OCCD should investigate the best way to acquire these service for the citizens of the coalfields.

When asked by the Legislative Auditor if the OCCD thought the statute should be changed in order to increase the number of citizens utilizing this service, the OCCD responded that it feels strongly that current legislation is sufficient. The OCCD maintains that the large number of backlogged surface mining permits within the DEP is the cause of the non use of the service. The OCCD expects this function to be used in the future, as more surface mining permits will be issued by DEP when the current litigation over mountaintop removal is reversed or upheld in federal appeals court. Since fiscal year 1999 to the present date, DEP received 108 permit applications for surface mining projects. Out of these, only 45 have been awarded. DEP still has a back log of applications from 1997 as well.

The Legislative Auditor questions how many land owners would have requested assistance with land appraisals if the program had been advertised in the communities around the 45 approved surface mining operations. It is not possible to determine if current legislation is sufficient when the OCCD has not issued press releases or assisted a single land owner.

### **Conclusion**

The land appraisal assistance offered by the state through the OCCD



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*The land appraisal assistance offered by the state through the OCCD should be a valuable and useful service.*

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should be a valuable and useful service in the coal fields of West Virginia. The OCCD should develop other ways to advertise or otherwise notify property owners in affected communities about the service, so that individuals who may be assisted by the service are aware that it is provided by the State. The OCCD should also issue press releases to affected communities when it receives community impact statements. In addition, the OCCD should investigate whether requesting that the Legislature expand the statute to assist additional landowners would be in the coalfield communities' best interest.

### **Recommendations:**

2. *The OCCD should inform communities in which permit applications are pending that an independent appraisal service is available to them by immediately issuing press releases to all outlets serving the communities in which permits are pending. The OCCD should make it a policy to issue press releases in communities every time it receives a community impact statement.*
3. *The OCCD should investigate whether requesting that the Legislature expand the statute to assist additional landowners would be in the coalfield communities' best interest.*
4. *OCCD should develop rules specifying how appraisal services shall be acquired.*



# Appendix A Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia  
Director

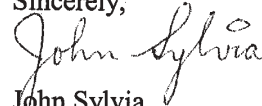
December 26, 2002

Paul Hardesty, Director  
Office of Coalfield Community Development  
Building 6, Room 650  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0311

Dear Mr. Hardesty:

This is to transmit a draft copy of the Preliminary Performance Review of the Office of Coalfield Community Development. This report is scheduled to be presented at the Sunday, January 5, 2003 interim meeting of the Joint Committee on Government Operations. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have. If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us to schedule an exact time. In addition, we need your written response by noon on January 2, 2002 in order for it to be included in the final report. If your agency intends on distributing additional material to committee members at the meeting, please contact the House Committee on Government Organization staff at 340-3192 by Thursday, January 2, 2003 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with the agency. Thank you for your cooperation.

Sincerely,  
  
John Sylvia

Enclosure  
c: D. Satterfield  
JS/wsc

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*Joint Committee on Government and Finance*

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# Appendix B Agency Response

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**R E C E I V E D**  
JAN 02 2002

**PERFORMANCE EVALUATION AND  
RESEARCH DIVISION**

## MEMORANDUM

**To:** John Sylvia  
Performance Evaluation and Research Division

**From:** Paul Hardesty, Director  
Office of Coalfield Community Development

**Date:** December 31, 2002

We are in receipt of the December 26, 2002 draft copy of the Preliminary Review of the Office of Coalfield Community Development. The OCCD believes that overall this is a positive report, and we are pleased to respond to the two recommendations made by this Division.

**Issue 1: The OCCD's Action Reports Do Not Contain Information Required By Law:**

Beginning January 1, 2003 the OCCD will prepare quarterly action reports to the legislative committees for economic development, with copies sent to the Executive Director of the West Virginia Development and the Governor's Office.

**Issue 2: The Office of Coalfield Community Development's Land Valuation Assistance Program Is Not Utilized.**

The OCCD feels that the office has satisfied the Code with regard to the Land Valuation Program. The OCCD feels strongly that the State should refrain from getting involved in the business of property matters. Should the Legislature feel this issue should be revisited, then the OCCD would gladly engage in further dialog.

If you should have any questions concerning these responses, please feel free to contact me at 558-0078 x406 or Frances Secoy at 558-0078 x404.

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