

**SPECIAL MEETING OF THE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**9th Floor Conference Room*
Boulevard Tower
1018 Kanawha Boulevard East
Charleston, West Virginia**

**April 4, 2017
9:30 a.m.**

AGENDA

- I. Call to Order**
- II. Approval of Revisions to Series 25, Procedural Rule, Residency Classification for Admission and Fee Purposes**
- III. Approval of Renovations to the F. Ray Power Building**
- IV. Possible Executive Session under the Authority of West Virginia Code §6-9A-4 to Discuss Personnel Issues and Pending Litigation**
 - A. Approval of Presidential Selection and Compensation at Glenville State College
 - B. Approval of Amended Presidential Search Procedure for Fairmont State University
 - C. Discussion of Pending Litigation
- V. Additional Board Action and Comment**
- VI. Adjournment**

****To join by conference call, dial 1-866-453-5550 and enter participant code: 5245480#.***

**West Virginia Higher Education Policy Commission
Meeting of April 4, 2017**

ITEM: Approval of Revisions to Series 25, Procedural Rule, Residency Classification for Admission and Fee Purposes

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the revisions to Series 25, Procedural Rule, Residency Classification for Admission and Fee Purposes, to be filed with the Secretary of State for the thirty-day public comment period and if no substantive comments are received, that the Commission extends its final approval.

STAFF MEMBER: L.G. Corder

BACKGROUND:

In 2015, the Commission approved revisions to Series 25, Procedural Rule, Residency Classification for Admission and Fee Purposes. The revisions required institutions to charge in-state tuition rates to certain students using VA education benefits, ensuring that institutions could maintain approval to educate GI Bill beneficiaries.

The federal law prompting the revision was amended on December 16, 2016, to require in-state tuition for dependents of active duty service members using transferred VA education benefits as well as survivors using the Fry Scholarship regardless of the date of the service member's death. The amendment will take effect July 1, 2017. All institutions were notified in January 2017 about the mandated amendments.

Suggested further revisions to Series 25 are proposed to bring the rule in compliance with the recent federal amendments.

It is recommended that the Commission approve the rule for filing with the Secretary of State for a formal thirty-day public comment period and staff be instructed to final file the rule with the Secretary of State at the conclusion of the comment period if no substantive comments are received.

**TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**SERIES 25
RESIDENCY CLASSIFICATION FOR ADMISSION AND FEE PURPOSES**

§133-25-1. General.

1.1. Scope. -- Rule regarding residency classification of students for admission and fee purposes.

1.2. Authority. -- West Virginia Code §§18B-10 and 18B-2B-6.

1.3. Filing Date. -- ~~December 20, 2016.~~

1.4. Effective Date. -- ~~January 20, 2017.~~

1.5. Repeal of Former Rule. -- Repeals and replaces Title 133, Series 25 which had an effective date of ~~May 21, 2015.~~ January 20, 2017.

§133-25-2. Classification for Admission and Fee Purposes.

2.1. Students enrolling in a West Virginia public institution of higher education shall be assigned a residency status for admission, tuition, and fee purposes by the institutional officer designated by the President. In determining residency classification, the issue is essentially one of domicile. In general, the domicile of a person is that person's true, fixed, permanent home and place of habitation. The decision shall be based upon information furnished by the student and all other relevant information. The designated officer is authorized to require such written documents, affidavits, verifications, or other evidence as is deemed necessary to establish the domicile of a student. The burden of establishing domicile for admission, tuition, and fee purposes is upon the student.

2.2. If there is a question as to domicile, the matter must be brought to the attention of the designated officer at least two (2) weeks prior to the deadline for the payment of tuition and fees. Any student found to have made a false or misleading statement concerning domicile shall be subject to institutional disciplinary action and will be charged the nonresident fees for each academic term theretofore attended.

2.3. The previous determination of a student's domiciliary status by one institution is not conclusive or binding when subsequently considered by another institution; however, assuming no change of facts, the prior judgment should be given strong consideration in the interest of consistency. Out-of-state students being assessed resident tuition and fees as a result of a reciprocity agreement may not transfer said reciprocity status to another public institution in West Virginia.

§133-25-3. Residence Determined by Domicile.

3.1. Domicile within the state means adoption of the state as the fixed permanent home and involves personal presence within the state with no intent on the part of the applicant or, in the case of a dependent student, the applicant's parent(s) to return to another state or country. Residing with relatives (other than parent(s)/legal guardian) does not, in and of itself, cause the student to attain domicile in this State for admission or fee payment purposes. West Virginia domicile may be established upon the completion of at least twelve (12) months of continued presence within the state prior to the date of registration: Provided, That such twelve (12) months' presence is not primarily for the purpose of attendance at any institution of higher education in West Virginia. Establishment of West Virginia domicile with less than twelve (12)

months' presence prior to the date of registration must be supported by evidence of positive and unequivocal action. In determining domicile, institutional officials should give consideration to such factors as the ownership or lease of a permanently occupied home in West Virginia, full-time employment within the state, paying West Virginia property tax, filing West Virginia income tax returns, registering of motor vehicles in West Virginia, possessing a valid West Virginia driver's license, and marriage to a person already domiciled in West Virginia. Proof of a number of these actions shall be considered only as evidence which may be used in determining whether or not a domicile has been established. Factors militating against the establishment of West Virginia domicile might include such considerations as the student not being self-supporting, being claimed as a dependent on federal or state income tax returns or on the parents' health insurance policy if the parents reside out of state, receiving financial assistance from state student aid programs in other states, and leaving the state when school is not in session.

§133-25-4. Dependency Status.

4.1. A dependent student is one (1) who is listed as a dependent on the federal or state income tax return of his/her parent(s) or legal guardian or who receives major financial support from that person. Such a student maintains the same domicile as that of the parent(s) or legal guardian. In the event the parents are divorced or legally separated, the dependent student takes the domicile of the parent with whom he/she lives or to whom he/she has been assigned by court order. However, a dependent student who enrolls and is properly classified as an in-state student maintains that classification as long as the enrollment is continuous and that student does not attain independence and establish domicile in another state.

4.2. A nonresident student who becomes independent while a student at an institution of higher education in West Virginia does not, by reason of such independence alone, attain domicile in this state for admission or fee payment purposes.

§133-25-5. Change of Residence.

5.1. A person who has been classified as an out-of-state student and who seeks resident status in West Virginia must assume the burden of providing conclusive evidence that he/she has established domicile in West Virginia with the intention of making the permanent home in this State. The intent to remain indefinitely in West Virginia is evidenced not only by a person's statements, but also by that person's actions. In making a determination regarding a request for change in residency status, the designated institutional officer shall consider those actions referenced in §133-25-3 of these rules. The change in classification, if deemed to be warranted, shall be effective for the academic term or semester next following the date of the application for reclassification.

§133-25-6. Military

6.1. An individual who is on full-time active military service in another state or a foreign country or an employee of the federal government shall be classified as an in-state student for the purpose of payment of tuition and fees: Provided, That the person established a domicile in West Virginia prior to entrance into federal service, entered the federal service from West Virginia, and has at no time while in federal service claimed or established a domicile in another state. Sworn statements attesting to these conditions may be required. The spouse and dependent children of such individuals shall also be classified as in-state students for tuition and fee purposes.

6.2. Persons assigned to full-time active military service in West Virginia and residing in the state shall be classified as in-state students for tuition and fee purposes. The spouse and dependent children of such individuals shall also be classified as in-state students for tuition and fee purposes.

6.3. Any student living in West Virginia and receiving education benefits provided under Chapter 30

or Chapter 33 ~~of~~ from the U.S. Department of Veterans Affairs shall be charged in-state tuition and fees to attend a West Virginia public institution of higher education. ~~The student must be within the limits of the three (3) year eligibility period of discharge from a service period of at least 90 days at the time of enrollment. The student will be considered an in-state student for residency purposes as long as they remain continuously enrolled at the institution. In the event the student ceases enrollment, in-state residency will only be re-assigned if the student re-enrolls at another West Virginia public institution of higher education within the eligibility period described above.~~ so long as such student is considered a "covered individual" as described in 38 U.S.C. §3679, as in effect at any time.

§133-25-7. Aliens.

7.1. Students who meet the domiciliary requirements noted in Sections 3, 4, and 5 of this policy, and who are U.S. Permanent Resident Aliens, Political Asylees or Political Refugees, or who hold an A, E, G, H, I, L, O, P, R, TD, TN, U, or V visa, may apply to be reviewed for in-state residency for tuition purposes.

7.2. Students who hold B, C, D, F, J, K, M, or Q visas are not eligible for establishing in-state residency for tuition purposes.

7.3. Students who meet the domiciliary requirements and who are the beneficiary of a pending I-485 application to adjust status to permanent resident may apply to be reviewed for in-state residency for tuition purposes.

§133-25-8. Former Domicile.

8.1. A person who was formerly domiciled in the State of West Virginia and who would have been eligible for an in-state residency classification at the time of his/her departure from the state may be immediately eligible for classification as a West Virginia resident provided such person returns to West Virginia within a one (1) year period of time and satisfies the conditions of §133-25-3 of these rules, regarding proof of domicile and intent to remain permanently in West Virginia.

§133-25-9. Appeal Process.

9.1. Each institution shall establish procedures which provide opportunities for students to appeal residency classification decisions with which they disagree. The decisions of the designated institutional official charged with the determination of residency classification may be appealed in accordance with appropriate procedures established by the president of the institution. At a minimum, such procedures shall provide that:

9.1.a. An institutional committee on residency appeals will be established to receive and act on appeals of residency decisions made by the designated institutional official charged with making residency determinations.

9.1.a.1. The institutional committee on residency shall be comprised of members of the institutional community, including faculty and at least three, in any event, an odd number. The student representative(s) shall be appointed by the president of the institutional student government association while the faculty representative(s) shall be selected by the campus-wide representative faculty organization.

9.1.a.2. The student contesting a residency decision shall be given the opportunity to appear before the institutional committee on residency appeals. If the appellant cannot appear when the committee convenes a meeting, the appellant has the option of allowing committee members to make a decision on the basis of the written materials pertaining to the appeal or waiting until the next committee meeting.

9.1.b. The residency appeal procedures will include provisions for appeal of the decision of the institutional committee on residency appeals to the president of the institution.

9.1.c. Residency appeals shall end at the institutional level.

**West Virginia Higher Education Policy Commission
Meeting of April 4, 2017**

ITEM: Approval of Renovations to the F. Ray Power Building

INSTITUTION: West Virginia State University

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the renovation of the F. Ray Power Building.

STAFF MEMBER: Jim King and Ed Magee

BACKGROUND:

On June 17, 2013, the West Virginia Department of Administration conveyed a 19 $\frac{3}{4}$ acre parcel formerly know as the West Virginia Rehabilitation Center (Rehab) to West Virginia State University for the sum of \$1.00. This parcel is located adjacent to and immediately west of the campus, and provides a venue that the institution may consider as opportunities arise for growth and/or expansion.

After careful consideration of the existing physical plant, the University chose to demolish all but a few buildings on the Rehab site, leaving only those structures that would potentially fulfill the goals as set forth in the University's Vision 2020 Strategic Plan as well as the Campus Development Plan.

As one of two land grant institutions in the state, West Virginia State University has a long history of agricultural and environmental research, and continues to expand its research and extension services. Available space on campus for this endeavor has been exhausted to the point that laboratory space has been leased off-campus. To accommodate this growth, it was determined that the Agricultural and Environmental Research Station would be located in the F. Ray Powers Building, one of the remaining structures on the former Rehab site. Selective demolition has already been performed to prepare the building for renovation.

Realizing that the University now had a potential location to house the Agricultural and Environmental Research Station, an application was made to the United States Department of Agriculture (USDA), specifically the National Institute of Food and Agriculture 1890 Facilities Program. This department funds infrastructural improvements associated with programs such as West Virginia State University's. Approximately \$5.2 million was awarded to the University to move forward with this renovation. Of this grant, approximately \$4.7 million will be used for construction, and approximately

\$634,000 of supplemental funds from other federal programs will be used. Additionally, subsequent phases will secure an additional \$1.3 million for additional work through 2018.

To date, West Virginia State University has performed some preliminary work in anticipation of obtaining the grant. Edward Tucker Architects was retained in January 2016 to design the initial 22,600 square feet (Phases 1 & 2). Some of the work to be performed includes roof replacement, window replacement, interior build-out, new fume hoods, walk-in refrigerator and new laboratory grade casework. The renovation also includes new mechanical, electrical and plumbing infrastructure, fire protection, IT/data infrastructure and life safety code improvements. The contractor was selected through the standard bid process, and agreed that the \$4,734,000 bid would remain valid for a time until approval of USDA grant funds. That notice was officially received mid-March 2017.

This project was approved by the West Virginia State University Board of Governors on March 16, 2017. It conforms to Series 12, Legislative Rule, Capital Project Management, Sections 5 and 7 requiring any capital improvements over \$1 million to be included in the Campus Development Plan and submitted for approval by the Commission.

If approved, this action will allow West Virginia State University to formally engage with the contractor to begin the scope of work related to the renovation.



March 27, 2017

Dr. Paul L. Hill, Chancellor
West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East
Suite 700
Charleston, WV 25301

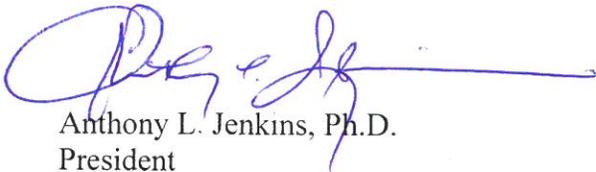
Dear Chancellor Hill:

On behalf of West Virginia State University (WVSU), please accept this letter and enclosed detailed information as submission and a formal request to place the approval of WVSU's campus development plan and the renovation of the F. Ray Power building located on the property formerly known as the West Virginia Rehabilitation Center on the agenda of a special meeting of the West Virginia Higher Education Policy Commission (HEPC). Both the campus development plan and the renovation project were approved during the Board of Governor's meeting on March 16, 2017.

As sections 5 and 7 of the Series 12 legislative rule state, any capital improvements exceeding \$1 million must be provided in the campus development plan and approved by the HEPC, a special meeting is being requested. The United States Department of Agriculture has approved funding for the renovation of the F. Ray Power building, listed on pages 58 and 60 of the campus development plan. The University needs to move forward quickly with this renovation as any delays in this contract will generate the potential for significant market price adjustments related to materials and services. This price adjustment need may in turn result in the awarded contractor pulling from the current contract and claiming a breach of contractual obligations by the Corporation and University.

I am pleased to submit this document and information as we look to the future and work together in moving West Virginia State University forward. As you review WVSU's campus development plan and request for a special meeting, please do not hesitate to contact me should you have questions or require any further information.

Sincerely,



Anthony L. Jenkins, Ph.D.
President

Cc: Dr. Ed Magree, Vice Chancellor for Finance
Mr. Jim King, Director of Design and Planning

WEST VIRGINIA STATE UNIVERSITY
Research and Public Service
Institute, West Virginia

Project Report:
**Relocation and Improvement of the Agricultural and
Environmental Research Station**

Prepared for Approval by the
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

February 22, 2017

Relocation and Improvement of the Agricultural and Environmental Research Station at West Virginia State University

Summary

West Virginia State University (WVSU) continues efforts to strengthen its Food and Agricultural programming, including 1890 Research, Extension and Teaching. These efforts are congruent with the University's Vision 2020 Strategic Plan as it relates to enhancing curricula associated with Science, Technology, Engineering and Mathematics (STEM), including the further development of basic and applied research on the areas of agriculture, food, environmental and natural resources. One of the main endeavors currently being addressed is the relocation of the University's Agricultural and Environmental Research Station (*Figures 1 & 2*). This institutional effort in turn comprises the development of an integrated research and extension facility via the renovation of the University's F. Ray Power Building (former administration building of the WV Rehabilitation Center - *Figure 3*) and other associated infrastructural site improvements. Once completed, this building will provide much-needed wet labs, offices and multipurpose instructional spaces.

Needs Statement

Early growth of the University's Food and Agricultural programs was accommodated through the renovation of existing space on campus. To date, however, all previously available space has been completely exhausted. In fact, as it relates to research space, the University has been obliged to seek space off campus in order to accommodate for its continuous research growth. The current absence of adequate space on campus is hindering the expansion of these programs and stands in the way of more effective integration of research, extension (outreach) and teaching efforts. Therefore, addressing the current lack of programming space is a major institutional priority.

Goals and Objectives

The United States Department of Agriculture's National Institute of Food and Agriculture (USDA NIFA) 1890 Facilities Program has been a valuable asset to the University in that it provides recurrent funding to support infrastructural improvements associated with the aforementioned endeavors. WVSU is currently using this funding to address the following goals. Goal 1: Continue efforts to relocate the new Agricultural and Environmental Research Station, including site development and improvement of infrastructure at the new identified location (former WV Rehabilitation Center); Goal 2: Finalize all specifications for building renovations and design, and begin the renovation work of the F. Ray Powers building, which will house the Integrated Research and Extension Facility; and Goal 3: Continue supporting its food and agricultural related research and extension program components located at the existing research station, throughout campus and off-campus locations.

Progress Update & Current Activities

The University hired an architect (Edward Tucker, Inc.) in January 2016 to assist with all architectural and engineering aspects of the project, including Phases 1 & 2 (Figure 2). Selective interior demolition and abatement of interior hazardous materials has been performed ahead of the General Construction Project. Seven eligible bids were received on December 16, 2016, from General Contractors. Mi-De-Con, Incorporated, was recently selected as the most qualified vendor to provide these services. Of the total 33,300 square feet available in the building, 22,600 square feet will be renovated in this project with the balance of 10,700 square feet remaining shell for future build-out. The architectural scope of new work includes roof replacement, storefront window replacement, interior walls, doors, interior finishes, chemical fume hoods, walk-in refrigerator, and commercial and laboratory grade casework. The Systems scope of new work includes Mechanical, Electrical, Plumbing, Fire Protection and IT/Data infrastructure. The Site/Civil scope of new work includes repair of existing asphalt, sealing, restriping, signage and landscaping.

As per federal guidelines, the General Contractor is being currently cleared and approved by the USDA; and the funding associated with this project has also been requested.

Project Cost and Funding Sources

Federal funding from the 1890 Facilities Program (USDA grant) will be used to absorb most of the cost associated with this overall project. As it relates to the building renovation currently at hand, the base bid (\$4,734,000) derives from the 1890 Facilities program, and additional institutional funding derived from other Federal programs (\$633,843) will supplement the rest of the contract's cost. An additional \$1,706,510 to support Phases 2 and 3 will derive from existing and future 1890 Facilities, and other federal funding. Finally, funding to support Phase 4 will be sought upon completion of Phases 1-3.

WEST VIRGINIA STATE UNIVERSITY
 Research and Public Service
 Institute, West Virginia

Relocation and Improvement of the Agricultural and Environmental Research Station
Summary: Phase Description and Expected Timeline

PHASES	DESCRIPTION	PLANNED TIMELINE	ESTIMATED COST
PHASE 1: Access Road Improvements	Improvement of main access road leading up to the renovated building (e.g. Integrated Research and Extension Facility), including road resurfacing, pedestrian paths, lighting, and landscaping.	This phase is planned to be completed immediately after the renovation of the Integrated building is completed (by March 2018).	\$200,000 Road / Entrance Improvement
PHASE 2: Renovation of F. Ray Power Building and Site Improvements	Renovation of the integrated building and site improvements of its surrounding areas, including enhancement of landscape, sidewalks, and parking areas.	This phase is estimated to be completed within 10 months from its commencement (by February 2018).	\$5,167,843 Const. \$200,000 Furnishings \$398,080 A/E Service \$175,000 Other \$107,357 Contingency
PHASE 3: Demolition of Remaining Dilapidated Buildings and additional Site Improvements	Demolition and removal of remaining dilapidated buildings (e.g. building A), and design of a utilities scheme to support the placement of future programming at the site.	This phase is planned to start while the renovation of the integrated building is in its last stages of renovation (between September 2017 and August 2018).	\$826,073
PHASE 4: Establishment of a Greenhouse Complex and Further Renovations to Buildings C & E	Architectural and engineering design of a greenhouse complex and its establishment; and further renovations to Buildings C (historical building) and E to support Extension and Agriculture programming and storage.	This phase will be addressed immediately after Phase 3 is completed; as new funding has been identified and secured (after August 2018).	\$6,500,000 <i>(Funding not yet secured)</i>

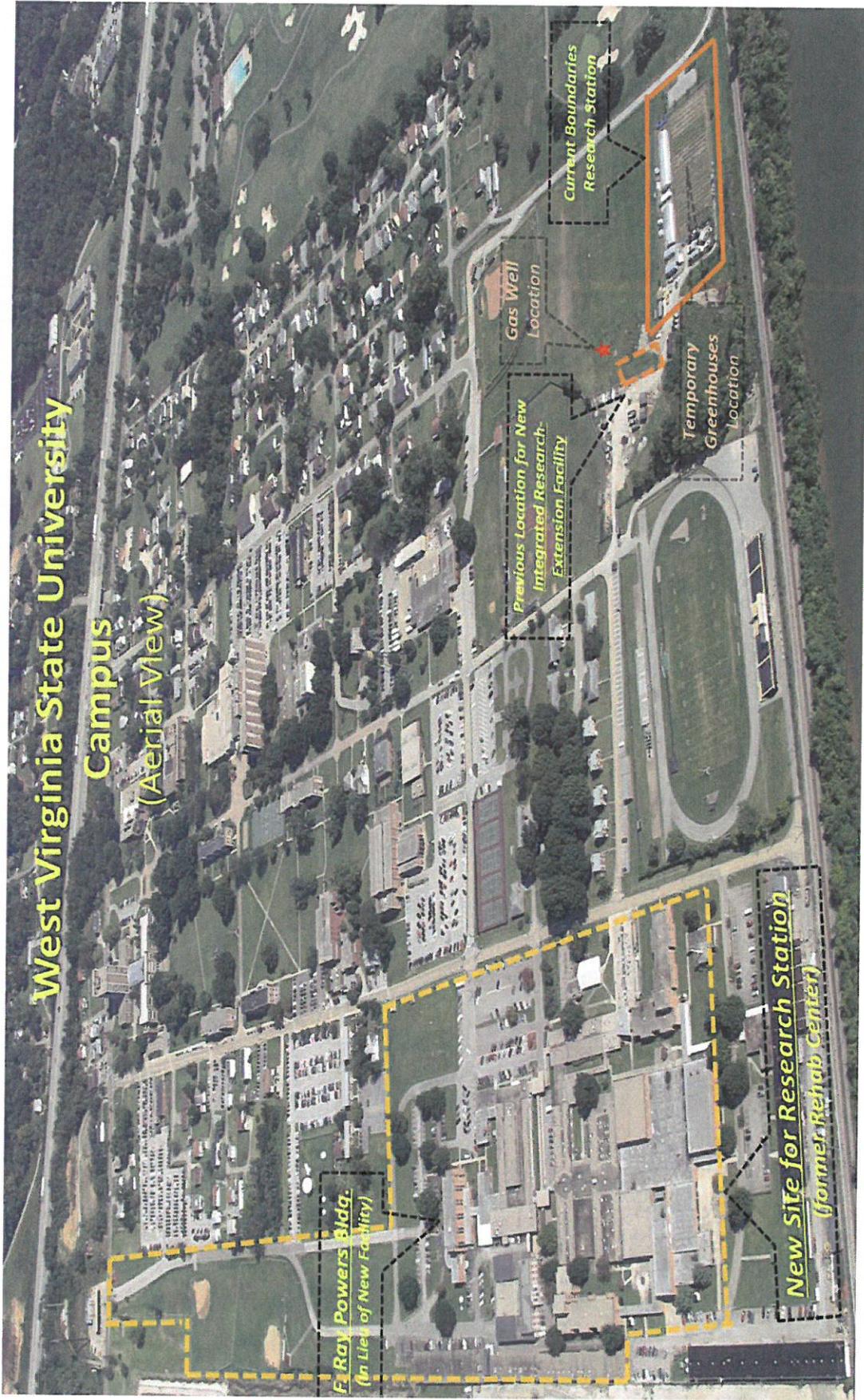


Figure 1: New Campus Site Location for the WVSU Agricultural and Environmental Research Station



West Virginia State University

Research Experimental Station

Institute, West Virginia
March 12, 2014

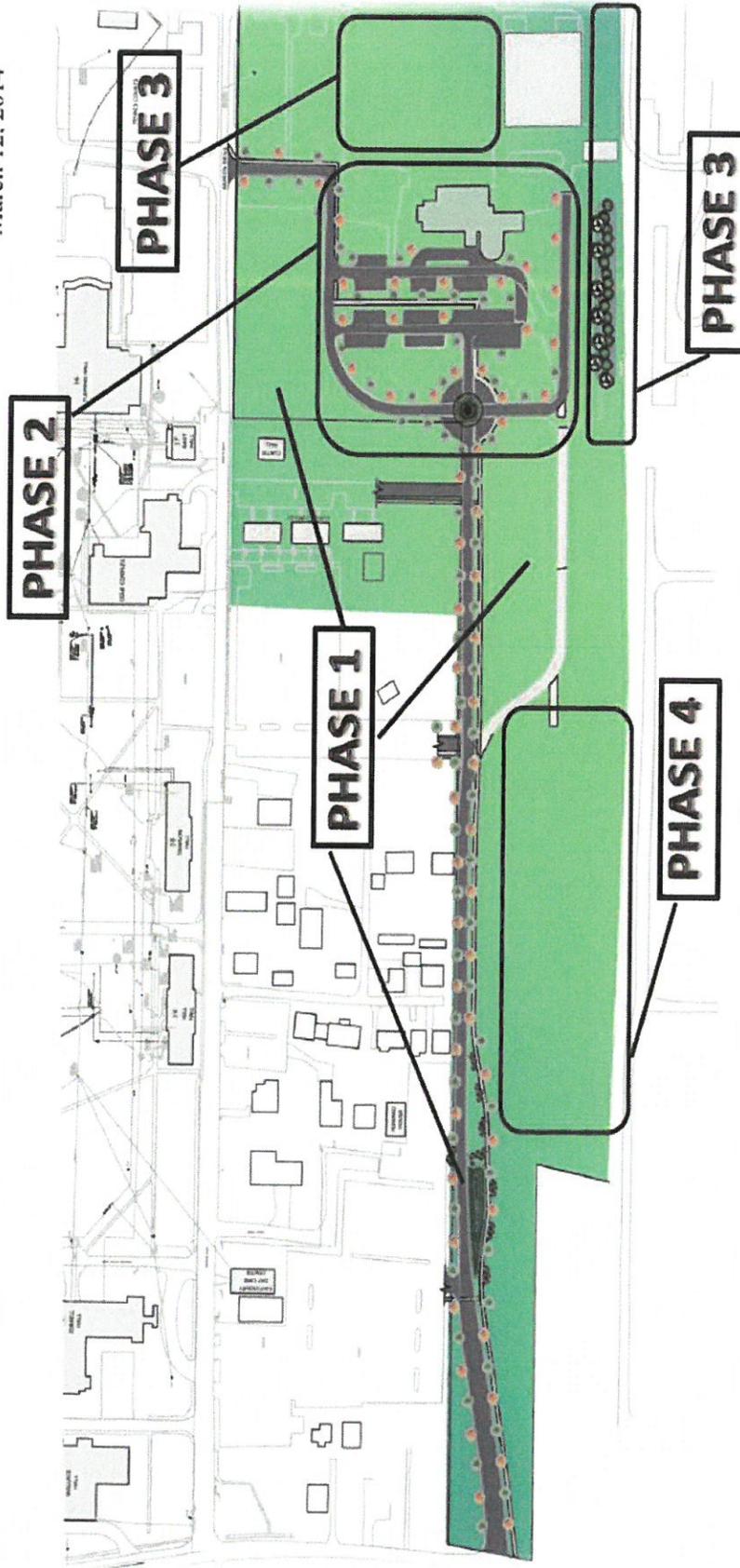


Figure 2: Layout of the Proposed Renovation Phases for the WVSU Research Station