



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <https://rules.wyo.gov>

Revised June 2020

1. General Information			
a. Agency/Board Name*			
b. Agency/Board Address		c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address			
h. Date of Public Notice		i. Comment Period End Date	
j. Public Comment URL or Email Address:			
k. Program			
Amended Program Name (if applicable):			
* <input type="checkbox"/> By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.			
2. Legislative Enactment For purposes of this Section 2, "new" only applies to regular non-emergency rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.			
a. Are these non-emergency regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?			
<input type="checkbox"/> No. <input type="checkbox"/> Yes. If the rules are new, please provide the Legislative Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154):			
3. Rule Type and Information For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.			
a. Provide the Chapter Number, Title and Proposed Action for Each Chapter. Please use the "Additional Rule Information" form to identify additional rule chapters.			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. The Agency has completed a takings assessment as required by W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

_____ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

_____ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

STATEMENT OF PRINCIPAL REASONS

Business Ready Community Grant and Loan Program Rule Changes – 05/09/2022

The purpose of the Business Ready Community Grant and Loan Program (BRC) Rules is to implement W.S. 9-12-601 through 9-12-603, which provides for the making of grants and loans to eligible applicants for economic development infrastructure. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of awards and a hearing process.

During the 2022 Legislative Session, amendments were made to the BRC statute and signed into law (HB0009), draft rules to support the statute changes were reviewed by the Wyoming Business Council Board of Directors, Investments Committee and will likely be adopted at its May 11, 2022 public meeting.

These amendments included the addition of language “The council may also enter into cooperative agreements with the Eastern Shoshone Tribe, the Northern Arapaho Tribe or the cooperative tribal governing body to promote the purposes of this article.”

The Wyoming Business Council is statutorily exempt from the Wyoming Administrative Procedure Act under W.S. § 9-12-102(g)(iii).

Chapter 1

GENERAL PROVISIONS

Section 1. Purpose. The purpose of the program is to promote economic development at the city, town, county and regional levels in order to improve economic health and a stronger state economy. These rules are adopted in order to implement W.S. 9-12-602 through 9-12-603, which provide for the making of grants and loans to eligible applicants for economic or educational development infrastructure. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of awards and a hearing process.

Section 2. Authority. Rulemaking for this program is the responsibility of the Wyoming Business Council as authorized by W.S. 9-12-104(a)(iv) and W.S. 9-12-601.

Section 3. Definitions.

(a) “Applicant” means a county, incorporated city or town, joint powers board, or a cooperative tribal governing body who applies for funding under the Business Ready Community Grant and Loan Program (BRC).

(b) “Award recipient” means a county, incorporated city or town, joint powers board, or cooperative tribal governing body who has been awarded funds under the BRC.

(c) “Board” means the Wyoming State Loan and Investment Board.

(d) “Cash match” means cash contributed to the total eligible project cost. Real estate owned by the applicant or community development organization may be used as cash if the property in question was not purchased or developed by BRC funds and the value of the real estate is supported by an appraisal. Engineering and design work completed within six months of the date a project application is received by the Wyoming Business Council may be counted as cash match.

(e) “Community Development Organization” means a business entity organized to provide services as an agent of the applicant for the exclusive mission of helping to develop and support economic development within a specified city, county or region by providing necessary resources and assistance.

(f) “Council” means the Wyoming Business Council Board of Directors.

(g) “Council staff” means the staff of the Wyoming Business Council assigned to administer the program.

(h) “Economic development” means creating additional economic health and a

stronger state economy.

(i) “Eligible project costs” means total project cost, less ineligible project costs. Examples of ineligible costs include appliances, equipment, furnishings and other features of the facility which are not physically attached.

(j) “Ineligible project costs” means project costs that are not eligible for BRC funding and include appliances, equipment, furnishings and other features of the facility which are not physically attached, and any other items identified by Council staff.

(k) “Infrastructure” means the purchase of land, buildings, facilities, telecommunications infrastructure, rights of way, airports, sewer and water projects, roads, landscaping, recreational and convention facilities or other infrastructure determined by Council staff. It does not include rehabilitation or expansion of existing infrastructure unless Council staff determines the rehabilitation or expansion is necessary to meet the purposes of this program.

(l) “In-kind match” are contributions with value and must be applicable to the period to which the matching requirement applies and must be necessary for the project. Examples of in-kind contributions include labor, materials and real estate. In-kind contributions must be verifiable from the records showing how the value placed on in-kind contributions was derived. Labor services will be reported using rates consistent with those ordinarily paid by the applicant or other employers for similar work in the same labor market. Donated materials will be valued at market value at the time of donation. The value of donated buildings or land will be established using a market value or appraisal set by an independent appraiser or a market analysis prepared by a licensed realtor.

(m) “Managed Data Center” means a center whose primary purpose is the centralized repository for storage, management and dissemination of data and information for multiple businesses. This definition does not include spaces primarily for housing office computers, including individual workstations, servers associated with workstations or small server rooms.

(n) “Multi-year project” means a large scale, stand-alone project which will be constructed over separate calendar years and which cannot be separated into smaller, independently operational phases.

(o) “Net revenue” means income generated by the lease or sale of a BRC funded asset, less expenses associated with maintaining the asset. Deductible expenses must be paid by owner and can include utility costs, insurance, property taxes, pest control, repairs, property association fees and property maintenance.

(p) “Non-recourse loan” is a loan that is secured by a pledge of collateral, typically real property.

(q) “Phased projects” means a project in which parts (“phases”) are completed

and fully functional before the entire project is built-out. Receipt of funding for a phased project does not guarantee additional funding for future phases.

(r) “Political subdivision” means a division of the state that exists primarily to discharge some function of local government.

(s) “Primary jobs” are jobs created or retained by a business(es) that provide(s) goods and services that are primarily exported out of the state, that gain market share from imports to the state, that meet an unmet need in the market area and result in the creation of new wealth or economic diversification. An additional consideration will be wages and benefits.

(t) “Revenue generating project” means real property developed with BRC grants or loans that can generate revenue from lease payments or the proceeds from the sale of real property.

(u) “State Development Organization” means a corporation organized under W.S. 17-11-101 through 17-11-120 with the authority to provide financing for new, existing or expanding businesses and to fulfill other economic or community development purposes throughout the state of Wyoming and which may take equity positions and shall take security positions in its borrowers’ businesses and appropriate personal guarantees from the owners thereof.

Section 4. Eligible Applicants.

(a) A county, an incorporated city or town, joint powers board, cooperative tribal governing body, or some combination thereof may apply for BRC funding. A joint powers board may apply with the approval of all participating agencies to the joint powers agreement. Two or more eligible applicants may apply for a joint project via one application.

(b) The Council may enter into a cooperative agreement with the Eastern Shoshone Tribe, the Northern Arapaho Tribe, or the cooperative tribal governing body in order to promote the purpose of this program.

(c) An applicant may contract with a Community Development Organization, State Development Organization or political subdivision to use BRC funds.

Section 5. Type of Projects.

(a) A Business Committed Project is a project in which an applicant has a business committed to start-up, expand, locate or retain jobs in the community. The applicant must demonstrate that new primary jobs will be created or retained by the business. In addition to assisting a particular business, a Business Committed Project may also fulfill the purpose of a Community Readiness Project. The maximum grant amount is three million dollars (\$3,000,000). Funding in excess of the maximum grant amount may

be applied for as a BRC loan.

(b) A Community Readiness Project is a project which has no specific business committed to expand or locate in a community. The community wants to build infrastructure to ready itself for new business development under a specific strategy or plan of action. The applicant must demonstrate potential exists for creation of new primary jobs. The maximum grant amount is three million dollars (\$3,000,000). Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(c) A Community Project is a project in which an applicant wants to improve the community's aesthetic character or quality of life in order to make itself more attractive for business development or workforce attraction and/or retention under a specific strategy or plan of action. Landscaping and streetscaping enhancements must be located in commercial districts, sites of business activity or high visibility areas. Recreation, convention or cultural centers must have a draw greater than the jurisdictional boundaries of the applicant. The maximum grant amount for Category 1 applicants is five hundred thousand (\$500,000) and the maximum grant amount for Category 2 applicants is seven hundred fifty thousand (\$750,000). Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(d) A planning project is a project in which an applicant creates or further develops a community's economic development strategy and outlines an implementation plan.

(i) An economic development plan assesses the community as a whole and identifies potential future economic development opportunities. This may include regional targeted industry plans. The maximum award is fifty thousand (\$50,000).

(ii) A feasibility study is a site specific or industry specific plan to determine the feasibility of a project to meet economic development objectives. The maximum award is twenty-five thousand (\$25,000).

(iii) A promotional plan addresses marketing of a community's assets that promotes business and/or workforce retention and attraction. The maximum award is twenty-five thousand (\$25,000).

(iv) A tourism plan addresses economic development opportunities for a defined region or community related to tourism and visitor attraction. The maximum award is twenty-five thousand (\$25,000).

Section 6. Eligible Activities.

(a) Grants for planning projects may only be used for the creation of the planning document(s). Funds may not be used for salary costs of the applicant or local organizations, travel costs for anyone other than the planning consultant(s) or reproduction of any promotional materials.

(b) Grant and loan funds may be used for the expansion of infrastructure previously funded under this program for phased projects.

(c) Grant and loan funds may not be used for the rehabilitation or expansion of existing infrastructure unless the Council determines the rehabilitation or expansion is necessary to meet the purpose of the program.

Section 7. Ownership of Infrastructure

(a) The infrastructure funded by this program shall be owned by the applicant or an agent of the applicant, such as a community development organization, state development organization or political subdivision acting in the role of agent of the applicant.

(b) Unless the project is owned by the applicant, there shall be documentation that in the event of dissolution of the owner, the BRC-funded infrastructure shall revert to the sponsoring applicant or a related city, town, county, joint powers board or tribe acting as agent of the applicant. This requirement may be satisfied by either specific language within articles of incorporation or a filing of the real estate record with the county of record.

(c) The infrastructure or facility can be sold to a private entity without advertising the sale or calling for bids, provided that the award recipient makes a determination that the sale will benefit the economic development of the community and holds the sale in accordance with W.S. 15-1-112(b) and any other applicable statute.

(d) If the owner of any infrastructure or facility built with BRC funds sells the infrastructure or facility to a private entity prior to the end of the project reporting requirements, the new owner shall fulfill the requirements of the grant agreement.

(e) For business committed projects, applicants must agree to repay with a reasonable rate of return any funds received to reduce costs if the business relocates after the date of first receiving funds. This agreement shall set forth the terms of any potential relocation and the means through which it will repay all BRC funds.

Section 8. Revenue Generating Projects.

(a) Revenue generated by the applicant or an owner described in Section 7 of this Chapter must be recaptured at a negotiated rate commensurate with the public investment.

(b) Revenue recaptured to the BRC fund must comply with the following requirements:

(i) If the total net revenue generated is less than the BRC grant amount, then no less than twenty-five percent (25%) of net revenue shall be recaptured to the BRC fund; or

(ii) If the total net revenue generated is equal to or more than the BRC grant amount, then no less than twenty-five percent (25%) of the BRC award shall be recaptured to the BRC fund.

(c) Revenue paid to the BRC fund shall not exceed the original grant amount of the project.

(d) Revenue recapture requirements may be satisfied by repayment of a BRC loan or via revenue recapture payments unless otherwise prohibited by applicable statutes, rules or regulations.

(e) All funds recaptured at the local level shall be placed in a segregated economic development account or separate line item within a budget.

(f) No more than fifty percent (50%) of local recapture may be used for operational expenses of the agent of the applicant such as a local economic, community, or state organization if matched dollar-for-dollar by local funds. The Council staff may, at its expense, conduct an audit of records of the agent for the applicant.

(g) Revenue recapture must be repaid to the BRC fund annually or according to a schedule agreeable to Council staff.

Section 9. Projects Involving a Private Developer.

(a) Projects involving a private developer shall demonstrate that adequate consideration exists by showing that the expected benefit to the State is at least as great as the BRC assistance. Such projects shall meet at least two of the following four criteria:

(i) Repayment of BRC funds as described in Section 8;

(ii) Direct, permanent jobs created as a result of the project;

(iii) Projected tax benefits;

(iv) Donation of real estate that is not otherwise necessary for the project to the applicant or an agent of the applicant. The value of all real estate donations must be verified by a certified appraisal or market analysis as determined by Council staff.

Section 10. Local Public Hearing and Approval.

(a) An applicant is required to inform and educate the public and business community to the greatest extent possible about the proposed economic development project (including, but not limited to the economic development opportunity, possible funding sources and alternative solutions) utilizing a variety of techniques and media. The applicant must make readily available to the public access to the application and associated

materials, exclusive of business plans or business financial information. An applicant shall actively solicit citizen input that can be submitted via writing, electronically or in person at a public hearing. A minimum of one public hearing is required before submission of an application. For the purposes of this program, seven (7) days is the minimum period for notification of a hearing date. Public notice shall be published in an official medium such as local newspapers, public fora, local governmental social media pages or another venue as approved by Council staff. If the project facility is to be located outside the geographical boundaries of the applicant, the applicant shall hold an additional public hearing near the location of the proposed project facility. The notice shall contain a concise description of the proposed project and state that time will be set aside at the public hearing to take testimony from citizens about the project.

(i) To inform the public and gather information, any public hearing shall at a minimum:

(A) Identify the economic development opportunity or opportunities;

(B) Explore all known possible funding sources and alternative solutions to the opportunity or opportunities;

(C) Be advertised with a comprehensive description of the proposed project;

(D) Solicit testimony from citizens who may feel that the proposed project might compete with an existing business;

(E) Conduct specific outreach to any affected industry or industries and any competitors within that industry.

(ii) An applicant must use its best efforts to notify all providers of similar services in the market area about the public hearing at least seven (7) days in advance of the public hearing.

(b) An application must be accompanied by a description of the applicant's public engagement process, written comments received by the applicant, evidence of the public hearing notification, minutes from the public hearing and a signed resolution passed by the applicant or participating agencies to a joint powers board after the public hearing is held and public comments are considered.

Section 11. Application Procedures.

(a) The applicant must schedule a consultation with a Wyoming Business Council Regional Director to discuss the project.

(i) Each Wyoming Business Council Regional Director is available to

assist applicants with the development of projects and preparation of applications.

(ii) Final draft applications and final draft application materials must be provided to the Regional Director no less than two weeks prior to submission.

(b) Each application shall be reviewed by the Council staff to determine eligibility and completeness.

(c) Incomplete applications will be either tabled or sent back to the applicant for resubmittal at a different time. If Council staff determine that an application is incomplete, the applicant shall be provided an explanation of the Council staff's findings and recommendations.

(d) The Council staff shall provide statewide notice of Council and Board meetings at which BRC applications will be discussed.

(e) The Council staff shall provide the Council with a summary of each application and a recommendation as to that application.

(f) Under extraordinary circumstances, the Council may recommend a waiver of rule requirements if the Council determines the waiver is consistent with the purpose of the BRC.

(g) The Council staff shall provide the Board with a summary of each application including the Council's recommendation.

Section 12. Application Submittal Requirements.

(a) Application Submittal Requirements. Each applicant shall submit the required application form and any supplemental documentation required by Council staff.

(b) Recipient of Previous Awards. An applicant shall demonstrate satisfactory performance under previous grants and/or loans awarded through this program.

Section 13. Allocation Plan and Funding Cycles

(a) The Council may adopt a funding allocation plan for BRC projects and prioritize project types.

(b) Applications will be accepted according to an annual deadline schedule posted by the Council.

(c) BRC awards per applicant are limited as follows:

Business Committed	No Limit
Managed Data Center Cost Reduction	No Limit

Community Readiness	One per calendar year
Community Project	One per calendar year
Planning	One per calendar year

(d) An applicant may request, with a single application, grant or loan funds up to the annual maximum amount for a multi-year project for a period not to exceed three (3) fiscal years. The applicant must demonstrate how the project meets the definition of a multi-year project.

Section 14. Application Evaluation. Council staff shall utilize a scoring matrix to evaluate a grant and/or loan application.

Section 15. Grant Match Requirements.

(a) BRC loans do not require a match.

(b) A BRC loan can be used to satisfy the grant match requirement.

(c) A grant for a “Planning” project shall require a minimum match of twenty-five percent (25%) of total eligible project activities. Community Development Block Grant funds cannot be used for a match.

(d) The total required match is based on total eligible project costs.

(e) Applicants must provide five percent (5%) of the required match for the project.

(i) Eligible in-kind sources of match funds include property, building(s) and other sources as determined by Council staff.

(ii) Ineligible in-kind sources of match funds include operations, maintenance, grant writing, grant administration and other as determined by Council staff.

(f) The following is a breakdown of the required match percentages by category:

BRC Required Match			
	Category 1 Applicant	Category 2 Applicant	Notes
Business Committed	10%	5%	Half of match must be cash
Community Readiness	10%	5%	Half of match must be cash
Community Project	20%	10%	Half of match must be cash
Planning	25%	25%	Half of match must be cash
All matches are calculated as a percentage of total project cost.			

(g) Applicants for all other projects are categorized based on population and local government share of state sales and use tax per capita. Categories determine the required match. Sales and use tax figures are updated annually by the Wyoming Department of Revenue and population figures are updated every five years by the U.S. Census Bureau. Sales and use tax figures used for category determinations will be an average of the three most recent years' data available. A schedule of categories will be regularly updated and posted on the Wyoming Business Council website.

(i) Category One applicants are those municipalities with a population greater than 1,300 or are located in a county where the three-year average of the local government share of state sales and use tax per capita is more than seventy percent (70%) of the statewide average.

(ii) Category Two applicants are those municipalities with a population under 1,300 or are located in a county where the three-year average of the local government share of state sales and use tax per capita is less than seventy percent (70%) of the statewide average.

(iii) In the event the applicant is a joint powers board, the project's location will determine its categorization.

Section 16. Fund Disbursement, Project Monitoring, Performance Measures and Revenue Recapture Reporting.

(a) Procurement Standards. Applicants must follow state procurement regulations for cities and towns and the Wyoming Preference Act. If a non-municipal applicant has a procurement policy, Council staff or qualified consultants reserve the right to review that policy prior to fund disbursements and to disburse funds in accordance with that policy to the extent it is consistent with State law.

(b) Fund Disbursement. Funds shall be disbursed to the applicant only as needed to discharge obligations incurred in accordance with Board-approved eligible project costs. Request for disbursement shall be made via the online grant management system, access to which shall be provided by Council staff. Requests for fund disbursement must be supported by adequate proof that such an obligation has been incurred for the project purpose and is due and owing.

(c) Fund Reversion.

(i) If the Council staff determines that a project has not been completed within a reasonable time, Council staff shall notify the applicant in writing at least thirty (30) days prior to presenting the matter for Council review.

(ii) If the Council staff determines that the project is complete, but the full amount of the grant or loan has not been expended, Council staff shall notify the award recipient of this determination. Thirty (30) days following the notification, the unused

portion of the grant or loan shall revert to the BRC Fund.

(iii) For projects that have not been started within one year: Council staff shall notify an award recipient of a pending expiration prior to the one-year anniversary of the grant/loan approval. The award recipient may submit a written request to continue the project. Council staff may request new or updated information and documentation. Council staff may recommend, and the Council may grant an extension of time in which to start or terminate the project.

(iv) For projects with contingencies, Council staff may request a monthly update on the status of any project contingency. The award recipient has the option to submit a new application or may request an extension or modification of the contingency terms through the Council staff. Council staff may recommend and the Council may grant an extension of time or grant a modification to the contingency terms.

(d) Project Monitoring.

(i) Reports. Within fifteen (15) calendar days of the conclusion of each calendar quarter during the term of the award contract, the applicant shall provide Council staff with a progress report. Each progress report shall set forth, in narrative form, the work accomplished under the grant or loan during the quarter and shall include a financial status report. At the end of the project, the applicant shall provide Council staff a comprehensive report of the project and a cumulative financial statement that reflects the total fund expenditure pursuant to the award contract.

(ii) Audits and inspections. The Council staff may, at its expense, conduct an audit of the records of the applicant and inspect the construction and operation of the project.

(iii) Record retention. Award recipients shall agree to retain all records related to the project for five (5) years following the Council staff's date of notice to award recipient of closeout of the grant.

(e) Project Evaluation.

(i) Reports. Upon project construction, the award recipient shall submit annual reports for five years to evaluate project outcomes against established measures on an annual basis. Council staff shall tailor reports to the specific nature of each grant or loan, in agreements between the Council and award recipient. This requirement shall transfer with the transfer of any ownership interest in the infrastructure or building constructed with BRC funds.

(ii) Evaluation results. The Council shall use the evaluation report information to measure program outcomes, to promote learning from experience and to improve program performance. Evaluation results shall be available to other award recipients.

(iii) Project outcomes reported shall be substantiated by the applicant.

(iv) At the end of the term of a BRC project, the award recipient shall provide a comprehensive report to the Council staff, in a format prescribed by the Council staff that is a cumulative financial and performance report of the project. This report shall, at a minimum, include a detailed accounting of project expenditures that were paid for with BRC grant or loan funds; the match contributed and the source of the match monies; recapture revenue(s) received, including an accounting of how recaptured revenues were or will be used, how recaptured revenue use complies with the rules of the BRC program and the project grant/loan agreement; and the accomplishments that resulted from the grant or loan. An authorized official of the award recipient shall certify, under penalty of false swearing, that the information in the report is true. The Council staff reserves the right to require the award recipient to request a BRC project audit be conducted by the director of the department of audit or his designee. The award recipient shall be responsible to pay the cost of this audit.

Section 17. Public Comments on Applications Submitted and Under Board Consideration for Funding Recommendations.

(a) Comments regarding any application submitted under this program may be offered by any interested party.

(b) Written comments shall be received by the Council no less than fourteen (14) calendar days prior to the public meeting at which the application is to be considered by the Board and:

(i) May be submitted using an online form to be prescribed by the Council;

(ii) May be submitted by email to the wbc.public-comment@wyo.gov;
or

(iii) May be submitted by mail or courier service as follows:

Wyoming Business Council
Attn: Public Comment
214 West 15th Street
Cheyenne, WY 82002

(c) Written comments submitted by any means other than those set forth in Subsection 17(b) of this Chapter shall not be considered.

(d) Prior to taking action on any application, the Board may accept oral comments during public session from any interested party. In accordance with W.S. 16-4-403(b), any party wishing to offer oral comments shall notify the Council as set forth

below. Such notification shall include:

- (i) The first and last name of the person offering comment; and
 - (ii) The affiliation(s) of the person offering comment; and
 - (iii) If applicable for commenters participating virtually, the unique identifier (such as screen name or user name) of the person offering comment such that the Council can identify the person offering comment and enable them to speak.
- (e) Notwithstanding Subsection 17(d) of this Chapter, the Board reserves its right to forego public comments during any meeting of the Board or to otherwise impose reasonable limitations, such as limitations on comment length, on any comment period.

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(d) “Cash match” means cash contributed to the total eligible project cost. Real estate owned by the applicant or community development organization may be used as cash if the property in question was not purchased or developed by BRC funds and the value of the real estate is supported by an appraisal. Engineering and design work completed within six months of the date a project application is received by the Wyoming Business Council may be counted as cash match.

(e) “Community Development Organization” means a business entity organized to provide services as an agent of the applicant for the exclusive mission of helping to develop and support economic development within a specified city, county or region by providing necessary resources and assistance.

(f) “Council” means the Wyoming Business Council Board of Directors.

(g) “Council staff” means the staff of the Wyoming Business Council assigned to administer the program.

(h) “Economic development” means creating additional economic health and a stronger state economy.

(i) “Eligible project costs” means total project cost, less ineligible project costs. Examples of ineligible costs include appliances, equipment, furnishings and other features of the facility which are not physically attached.

(j) “Ineligible project costs” means project costs that are not eligible for BRC funding and include appliances, equipment, furnishings and other features of the facility which are not physically attached, and any other items identified by Council staff.

(k) “Infrastructure” means the purchase of land, buildings, facilities, telecommunications infrastructure, rights of way, airports, sewer and water projects, roads, landscaping, recreational and convention facilities or other infrastructure determined by Council staff. It does not include rehabilitation or expansion of existing infrastructure unless Council staff determines the rehabilitation or expansion is necessary to meet the purposes of this program.

(l) “In-kind match” are contributions with value and must be applicable to the period to which the matching requirement applies and must be necessary for the project. Examples of in-kind contributions include labor, materials and real estate. In-kind contributions must be verifiable from the records showing how the value placed on in-kind contributions was derived. Labor services will be reported using rates consistent with those ordinarily paid by the applicant or other employers for similar work in the same labor market. Donated materials will be valued at market value at the time of donation. The value of donated buildings or land will be established using a market value or appraisal set by an independent appraiser or a market analysis prepared by a licensed realtor.

(m) “Managed Data Center” means a center whose primary purpose is the centralized repository for storage, management and dissemination of data and information for multiple businesses. This definition does not include spaces primarily for housing office computers, including individual workstations, servers associated with workstations or small server rooms.

(n) “Multi-year project” means a large scale, stand-alone project which will be constructed over separate calendar years and which cannot be separated into smaller, independently operational phases.

(o) “Net revenue” means income generated by the lease or sale of a BRC funded asset, less expenses associated with maintaining the asset. Deductible expenses must be paid by owner and can include utility costs, insurance, property taxes, pest control, repairs, property association fees and property maintenance.

(p) “Non-recourse loan” is a loan that is secured by a pledge of collateral, typically real property.

(q) “Phased projects” means a project in which parts (“phases”) are completed and fully functional before the entire project is built-out. Receipt of funding for a phased project does not guarantee additional funding for future phases.

(r) “Political subdivision” means a division of the state that exists primarily to discharge some function of local government.

(s) “Primary jobs” are jobs created or retained by a business(es) that provide(s) goods and services that are primarily exported out of the state, that gain market share from imports to the state, that meet an unmet need in the market area and result in the creation of new wealth or economic diversification. An additional consideration will be wages and benefits.

(t) “Revenue generating project” means real property developed with BRC grants or loans that can generate revenue from lease payments or the proceeds from the sale of real property.

(u) “State Development Organization” means a corporation organized under W.S. 17-11-101 through 17-11-120 with the authority to provide financing for new, existing or expanding businesses and to fulfill other economic or community development purposes throughout the state of Wyoming and which may take equity positions and shall take security positions in its borrowers’ businesses and appropriate personal guarantees from the owners thereof.

Section 4. Eligible Applicants.

(a) A county, an incorporated city or town, joint powers board, cooperative tribal governing body, or some combination thereof may apply for BRC funding. A joint powers board may apply with the approval of all participating agencies to the joint powers agreement. Two or more eligible applicants may apply for a joint project via one application.

(b) The Council may enter into a ~~contract~~/cooperative agreement with the Eastern Shoshone Tribe, ~~or the Northern Arapahoe Tribe~~, or the cooperative tribal governing body in order to promote the purpose of this program.

(c) An applicant may contract with a Community Development Organization, State Development Organization or political subdivision to use BRC funds.

Section 5. Type of Projects.

(a) A Business Committed Project is a project in which an applicant has a business committed to start-up, expand, locate or retain jobs in the community. The applicant must demonstrate that new primary jobs will be created or retained by the business. In addition to assisting a particular business, a Business Committed Project may also fulfill the purpose of a Community Readiness Project. The maximum grant amount is

three million dollars (\$3,000,000). Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(b) A Community Readiness Project is a project which has no specific business committed to expand or locate in a community. The community wants to build infrastructure to ready itself for new business development under a specific strategy or plan of action. The applicant must demonstrate potential exists for creation of new primary jobs. The maximum grant amount is three million dollars (\$3,000,000). Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(c) A Community Project is a project in which an applicant wants to improve the community's aesthetic character or quality of life in order to make itself more attractive for business development or workforce attraction and/or retention under a specific strategy or plan of action. Landscaping and streetscaping enhancements must be located in commercial districts, sites of business activity or high visibility areas. Recreation, convention or cultural centers must have a draw greater than the jurisdictional boundaries of the applicant. The maximum grant amount for Category 1 applicants is five hundred thousand (\$500,000) and the maximum grant amount for Category 2 applicants is seven hundred fifty thousand (\$750,000). Funding in excess of the maximum grant amount may be applied for as a BRC loan.

(d) A planning project is a project in which an applicant creates or further develops a community's economic development strategy and outlines an implementation plan.

(i) An economic development plan assesses the community as a whole and identifies potential future economic development opportunities. This may include regional targeted industry plans. The maximum award is fifty thousand (\$50,000).

(ii) A feasibility study is a site specific or industry specific plan to determine the feasibility of a project to meet economic development objectives. The maximum award is twenty-five thousand (\$25,000).

(iii) A promotional plan addresses marketing of a community's assets that promotes business and/or workforce retention and attraction. The maximum award is twenty-five thousand (\$25,000).

(iv) A tourism plan addresses economic development opportunities for a defined region or community related to tourism and visitor attraction. The maximum award is twenty-five thousand (\$25,000).

Section 6. Eligible Activities.

(a) Grants for planning projects may only be used for the creation of the planning document(s). Funds may not be used for salary costs of the applicant or local organizations, travel costs for anyone other than the planning consultant(s) or reproduction of any promotional materials.

(b) Grant and loan funds may be used for the expansion of infrastructure previously funded under this program for phased projects.

(c) Grant and loan funds may not be used for the rehabilitation or expansion of existing infrastructure unless the Council determines the rehabilitation or expansion is necessary to meet the purpose of the program.

Section 7. Ownership of Infrastructure

(a) The infrastructure funded by this program shall be owned by the applicant or an agent of the applicant, such as a community development organization, state development organization or political subdivision acting in the role of agent of the applicant.

(b) Unless the project is owned by the applicant, there shall be documentation that in the event of dissolution of the owner, the BRC-funded infrastructure shall revert to the sponsoring applicant or a related city, town, county, joint powers board or tribe acting as agent of the applicant. This requirement may be satisfied by either specific language within articles of incorporation or a filing of the real estate record with the county of record.

(c) The infrastructure or facility can be sold to a private entity without advertising the sale or calling for bids, provided that the award recipient makes a determination that the sale will benefit the economic development of the community and holds the sale in accordance with W.S. 15-1-112(b) and any other applicable statute.

(d) If the owner of any infrastructure or facility built with BRC funds sells the infrastructure or facility to a private entity prior to the end of the project reporting requirements, the new owner shall fulfill the requirements of the grant agreement.

(e) For business committed projects, applicants must agree to repay with a reasonable rate of return any funds received to reduce costs if the business relocates after the date of first receiving funds. This agreement shall set forth the terms of any potential relocation and the means through which it will repay all BRC funds.

Section 8. Revenue Generating Projects.

(a) Revenue generated by the applicant or an owner described in Section 7 of this Chapter must be recaptured at a negotiated rate commensurate with the public investment.

(b) Revenue recaptured to the BRC fund must comply with the following requirements:

(i) If the total net revenue generated is less than the BRC grant amount, then no less than twenty-five percent (25%) of net revenue shall be recaptured to the BRC fund; or

(ii) If the total net revenue generated is equal to or more than the BRC grant amount, then no less than twenty-five percent (25%) of the BRC award shall be recaptured to the BRC fund.

(c) Revenue paid to the BRC fund shall not exceed the original grant amount of the project.

(d) Revenue recapture requirements may be satisfied by repayment of a BRC loan or via revenue recapture payments unless otherwise prohibited by applicable statutes, rules or regulations.

(e) All funds recaptured at the local level shall be placed in a segregated economic development account or separate line item within a budget.

(f) No more than fifty percent (50%) of local recapture may be used for operational expenses of the agent of the applicant such as a local economic, community, or state organization if matched dollar-for-dollar by local funds. The Council staff may, at its expense, conduct an audit of records of the agent for the applicant.

(g) Revenue recapture must be repaid to the BRC fund annually or according to a schedule agreeable to Council staff.

Section 9. Projects Involving a Private Developer.

(a) Projects involving a private developer shall demonstrate that adequate consideration exists by showing that the expected benefit to the State is at least as great as the BRC assistance. Such projects shall meet at least two of the following four criteria:

(i) Repayment of BRC funds as described in Section 8;

(ii) Direct, permanent jobs created as a result of the project;

(iii) Projected tax benefits;

(iv) Donation of real estate that is not otherwise necessary for the project to the applicant or an agent of the applicant. The value of all real estate donations must be verified by a certified appraisal or market analysis as determined by Council staff.

Section 10. Local Public Hearing and Approval.

(a) An applicant is required to inform and educate the public and business community to the greatest extent possible about the proposed economic development project (including, but not limited to the economic development opportunity, possible funding sources and alternative solutions) utilizing a variety of techniques and media. The applicant must make readily available to the public access to the application and associated

materials, exclusive of business plans or business financial information. An applicant shall actively solicit citizen input that can be submitted via writing, electronically or in person at a public hearing. A minimum of one public hearing is required before submission of an application. For the purposes of this program, seven (7) days is the minimum period for notification of a hearing date. Public notice shall be published in an official medium such as local newspapers, public fora, local governmental social media pages or another venue as approved by Council staff. If the project facility is to be located outside the geographical boundaries of the applicant, the applicant shall hold an additional public hearing near the location of the proposed project facility. The notice shall contain a concise description of the proposed project and state that time will be set aside at the public hearing to take testimony from citizens about the project.

(i) To inform the public and gather information, any public hearing shall at a minimum:

(A) Identify the economic development opportunity or opportunities;

(B) Explore all known possible funding sources and alternative solutions to the opportunity or opportunities;

(C) Be advertised with a comprehensive description of the proposed project;

(D) Solicit testimony from citizens who may feel that the proposed project might compete with an existing business;

(E) Conduct specific outreach to any affected industry or industries and any competitors within that industry.

(ii) An applicant must use its best efforts to notify all providers of similar services in the market area about the public hearing at least seven (7) days in advance of the public hearing.

(b) An application must be accompanied by a description of the applicant's public engagement process, written comments received by the applicant, evidence of the public hearing notification, minutes from the public hearing and a signed resolution passed by the applicant or participating agencies to a joint powers board after the public hearing is held and public comments are considered.

Section 11. Application Procedures.

(a) The applicant must schedule a consultation with a Wyoming Business Council Regional Director to discuss the project.

(i) Each Wyoming Business Council Regional Director is available to

assist applicants with the development of projects and preparation of applications.

(ii) Final draft applications and final draft application materials must be provided to the Regional Director no less than two weeks prior to submission.

(b) Each application shall be reviewed by the Council staff to determine eligibility and completeness.

(c) Incomplete applications will be either tabled or sent back to the applicant for resubmittal at a different time. If Council staff determine that an application is incomplete, the applicant shall be provided an explanation of the Council staff's findings and recommendations.

(d) The Council staff shall provide statewide notice of Council and Board meetings at which BRC applications will be discussed.

(e) The Council staff shall provide the Council with a summary of each application and a recommendation as to that application.

(f) Under extraordinary circumstances, the Council may recommend a waiver of rule requirements if the Council determines the waiver is consistent with the purpose of the BRC.

(g) The Council staff shall provide the Board with a summary of each application including the Council's recommendation.

Section 12. Application Submittal Requirements.

(a) Application Submittal Requirements. Each applicant shall submit the required application form and any supplemental documentation required by Council staff.

(b) Recipient of Previous Awards. An applicant shall demonstrate satisfactory performance under previous grants and/or loans awarded through this program.

Section 13. Allocation Plan and Funding Cycles

(a) The Council may adopt a funding allocation plan for BRC projects and prioritize project types.

(b) Applications will be accepted according to an annual deadline schedule posted by the Council.

(c) BRC awards per applicant are limited as follows:

Business Committed	No Limit
Managed Data Center Cost Reduction	No Limit

Community Readiness	One per calendar year
Community Project	One per calendar year
Planning	One per calendar year

(d) An applicant may request, with a single application, grant or loan funds up to the annual maximum amount for a multi-year project for a period not to exceed three (3) fiscal years. The applicant must demonstrate how the project meets the definition of a multi-year project.

Section 14. Application Evaluation. Council staff shall utilize a scoring matrix to evaluate a grant and/or loan application.

Section 15. Grant Match Requirements.

(a) BRC loans do not require a match.

(b) A BRC loan can be used to satisfy the grant match requirement.

(c) A grant for a “Planning” project shall require a minimum match of twenty-five percent (25%) of total eligible project activities. Community Development Block Grant funds cannot be used for a match.

(d) The total required match is based on total eligible project costs.

(e) Applicants must provide five percent (5%) of the required match for the project.

(i) Eligible in-kind sources of match funds include property, building(s) and other sources as determined by Council staff.

(ii) Ineligible in-kind sources of match funds include operations, maintenance, grant writing, grant administration and other as determined by Council staff.

(f) The following is a breakdown of the required match percentages by category:

BRC Required Match			
	Category 1	Category 2	Notes
	Applicant	Applicant	
Business Committed	10%	5%	Half of match must be cash
Community Readiness	10%	5%	Half of match must be cash
Community Project	20%	10%	Half of match must be cash
Planning	25%	25%	Half of match must be cash
All matches are calculated as a percentage of total project cost.			

(g) Applicants for all other projects are categorized based on population and

local government share of state sales and use tax per capita. Categories determine the required match. Sales and use tax figures are updated annually by the Wyoming Department of Revenue and population figures are updated every five years by the U.S. Census Bureau. Sales and use tax figures used for category determinations will be an average of the three most recent years' data available. A schedule of categories will be regularly updated and posted on the Wyoming Business Council website.

(i) Category One applicants are those municipalities with a population greater than 1,300 or are located in a county where the three-year average of the local government share of state sales and use tax per capita is more than seventy percent (70%) of the statewide average.

(ii) Category Two applicants are those municipalities with a population under 1,300 or are located in a county where the three-year average of the local government share of state sales and use tax per capita is less than seventy percent (70%) of the statewide average.

(iii) In the event the applicant is a joint powers board, the project's location will determine its categorization.

Section 16. Fund Disbursement, Project Monitoring, Performance Measures and Revenue Recapture Reporting.

(a) Procurement Standards. Applicants must follow state procurement regulations for cities and towns and the Wyoming Preference Act. If a non-municipal applicant has a procurement policy, Council staff or qualified consultants reserve the right to review that policy prior to fund disbursements and to disburse funds in accordance with that policy to the extent it is consistent with State law.

(b) Fund Disbursement. Funds shall be disbursed to the applicant only as needed to discharge obligations incurred in accordance with Board-approved eligible project costs. Request for disbursement shall be made via the online grant management system, access to which shall be provided by Council staff. Requests for fund disbursement must be supported by adequate proof that such an obligation has been incurred for the project purpose and is due and owing.

(c) Fund Reversion.

(i) If the Council staff determines that a project has not been completed within a reasonable time, Council staff shall notify the applicant in writing at least thirty (30) days prior to presenting the matter for Council review.

(ii) If the Council staff determines that the project is complete, but the full amount of the grant or loan has not been expended, Council staff shall notify the award recipient of this determination. Thirty (30) days following the notification, the unused portion of the grant or loan shall revert to the BRC Fund.

(iii) For projects that have not been started within one year: Council staff shall notify an award recipient of a pending expiration prior to the one-year anniversary of the grant/loan approval. The award recipient may submit a written request to continue the project. Council staff may request new or updated information and documentation. Council staff may recommend, and the Council may grant an extension of time in which to start or terminate the project.

(iv) For projects with contingencies, Council staff may request a monthly update on the status of any project contingency. The award recipient has the option to submit a new application or may request an extension or modification of the contingency terms through the Council staff. Council staff may recommend and the Council may grant an extension of time or grant a modification to the contingency terms.

(d) Project Monitoring.

(i) Reports. Within fifteen (15) calendar days of the conclusion of each calendar quarter during the term of the award contract, the applicant shall provide Council staff with a progress report. Each progress report shall set forth, in narrative form, the work accomplished under the grant or loan during the quarter and shall include a financial status report. At the end of the project, the applicant shall provide Council staff a comprehensive report of the project and a cumulative financial statement that reflects the total fund expenditure pursuant to the award contract.

(ii) Audits and inspections. The Council staff may, at its expense, conduct an audit of the records of the applicant and inspect the construction and operation of the project.

(iii) Record retention. Award recipients shall agree to retain all records related to the project for five (5) years following the Council staff's date of notice to award recipient of closeout of the grant.

(e) Project Evaluation.

(i) Reports. Upon project construction, the award recipient shall submit annual reports for five years to evaluate project outcomes against established measures on an annual basis. Council staff shall tailor reports to the specific nature of each grant or loan, in agreements between the Council and award recipient. This requirement shall transfer with the transfer of any ownership interest in the infrastructure or building constructed with BRC funds.

(ii) Evaluation results. The Council shall use the evaluation report information to measure program outcomes, to promote learning from experience and to improve program performance. Evaluation results shall be available to other award recipients.

(iii) Project outcomes reported shall be substantiated by the applicant.

(iv) At the end of the term of a BRC project, the award recipient shall provide a comprehensive report to the Council staff, in a format prescribed by the Council staff that is a cumulative financial and performance report of the project. This report shall, at a minimum, include a detailed accounting of project expenditures that were paid for with BRC grant or loan funds; the match contributed and the source of the match monies; recapture revenue(s) received, including an accounting of how recaptured revenues were or will be used, how recaptured revenue use complies with the rules of the BRC program and the project grant/loan agreement; and the accomplishments that resulted from the grant or loan. An authorized official of the award recipient shall certify, under penalty of false swearing, that the information in the report is true. The Council staff reserves the right to require the award recipient to request a BRC project audit be conducted by the director of the department of audit or his designee. The award recipient shall be responsible to pay the cost of this audit.

Section 17. Public Comments on Applications Submitted and Under Board Consideration for Funding Recommendations.

(a) Comments regarding any application submitted under this program may be offered by any interested party.

(b) Written comments shall be received by the Council no less than fourteen (14) calendar days prior to the public meeting at which the application is to be considered by the Board and:

(i) May be submitted using an online form to be prescribed by the Council;

(ii) May be submitted by email to the wbc.public-comment@wyo.gov;
or

(iii) May be submitted by mail or courier service as follows:

Wyoming Business Council
Attn: Public Comment
214 West 15th Street
Cheyenne, WY 82002

(c) Written comments submitted by any means other than those set forth in Subsection 17(b) of this Chapter shall not be considered.

(d) Prior to taking action on any application, the Board may accept oral comments during public session from any interested party. In accordance with W.S. 16-4-403(b), any party wishing to offer oral comments shall notify the Council as set forth below. Such notification shall include:

- (i) The first and last name of the person offering comment; and
 - (ii) The affiliation(s) of the person offering comment; and
 - (iii) If applicable for commenters participating virtually, the unique identifier (such as screen name or user name) of the person offering comment such that the Council can identify the person offering comment and enable them to speak.
- (e) Notwithstanding Subsection 17(d) of this Chapter, the Board reserves its right to forego public comments during any meeting of the Board or to otherwise impose reasonable limitations, such as limitations on comment length, on any comment period.