**R926. Transportation, Program Development.**

**R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes.**

**R926-14-1. Purpose.**

The purpose of this rule is to establish the following:

(1) administration of the Utah Scenic Byway program;

(2) the criteria that a highway shall possess to be considered for designation as a state scenic byway;

(3) the process for nominating a highway to be designated as a state scenic byway;

(4) the process for nominating an existing state scenic byway to be considered for designation as a National Scenic Byway or All-American Road;

(5) the process and criteria for removing the designation of a highway as a scenic byway or segmentation of a portion thereof; and

(6) the requirements for public hearings to be conducted regarding proposed changes to the scenic byway status of a corridor and related notifications.

**R926-14-2. Authority.**

This rule is authorized by the following grants of rulemaking authority and: the Open and Public Meetings Act, Title 52, Chapter 4; the Utah Administrative Rulemaking Act, Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

**R926-14-3. Definitions.**

Terms used in this rule are defined in the Designation of Highways Act, Title 72, Chapter 4. The following additional terms are defined for this rule:

(1) "All-American Road" means a scenic byway designation made at the national level for state scenic byways that significantly meet criteria for multiple qualities out of the six defined intrinsic qualities.

(2) "America's Byways" means the brand utilized by the National Scenic Byways Program for promotion of the National Scenic Byways and All-American Roads.

(3) "Committee" or "State Committee" means the Utah State Scenic Byway Committee as defined in the Designation of Highways Act, Title 74, Chapter 4, and does not refer to any local scenic byway committee herein defined.

(4) "Corridor management plan" means a written document prepared by the local scenic byway committee in accordance with federal policies that specifies the actions, procedures, controls, operational practices, and administrative strategies necessary to maintain the intrinsic qualities of a scenic byway.

(5) "De-designation" means the removal of a current state scenic byway designation as recommended by the committee and approved by the Legislature.

(6) "Department" means the Utah Department of Transportation.

(7) "Designation" means a roadway the committee has recommended, and the Legislature has approved as a state scenic byway or an existing state scenic byway the Legislature has approved and the U.S. Secretary of Transportation has selected as a national scenic byway or All-American Road.

(8) "Federal policies" means those regulations outlining the National Scenic Byway Program and that set forth the criteria for designating roadways as National Scenic Byways or All-American Roads, specifically the FHWA Interim Policy.

(9) "Local legislative body" means the elected governing board of a political subdivision, such as a town, city, county, or tribal government.

(10) "GOEO" means the Utah Governor's Office of Economic Opportunity.

(11) "Grant" means discretionary funding available on a competitive basis to designated scenic byways from the Federal Highway Administration through the National Scenic Byways Program.

(12) "Intrinsic quality" means scenic, historic, recreational, cultural, archaeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area. The National Scenic Byways Program further defines each of these qualities.

(13) "Local Scenic Byway Committee" means the committee consisting of the local byway coordinator and representatives from nearby local legislative bodies, agencies, tourism related groups and interested individuals that recommends and prioritizes various projects and applications relating to a scenic byway. The local scenic byway committee promotes and preserves intrinsic values along the byway.

(14) "Local Byway Coordinator" means an individual recognized by the local scenic byway committee as chair. If a local scenic byway committee does not exist for a scenic byway, the local byway coordinator is an individual recognized by the state committee chair as the person to contact for applications and other administrative business for the state scenic byway.

(15) "National Scenic Byway" means a scenic byway designation made at the national level for byways that significantly meet criteria for at least one quality out of the six defined intrinsic qualities.

(16) "National Scenic Byways Program" or "NSBP" means a program provided by the Federal Highway Administration to promote the recognition and enjoyment of America's memorable roads.

(17) "State Scenic Byway" means a Utah roadway corridor that has been designated by the committee with approval from the Legislature for its intrinsic qualities.

(18) "Status" refers to the current designation of a scenic byway, i.e., state scenic byway, National Scenic Byway, All-American Road, undesignated roadway, segmented scenic byway or de-designated scenic byway.

**R926-14-4. Utah State Scenic Byway Committee Organization and Administration.**

(1) The authorization of the committee, its membership, administration, powers, and duties are defined in the Designation of Highways Act, Title 72, Chapter 4.

(2) The committee shall conduct business to administer the State Scenic Byway program within the state. This business shall include:

(a) designating, de-designating, hearing appeals of segmentation denials of state scenic byways, and consideration of segmentation under a request for agency action;

(b) recommending considerations for state scenic byway and National and All-American Road recognition to the Legislature;

(c) recommending applications to the NSBP;

(d) prioritizing applications for Scenic Byway Discretionary funding and other funding that may be available; and

(e) other business as may be needed to administer the scenic byway program.

(3)(a) The committee shall meet to conduct business necessary to administer the state scenic byway program.

(b) The meeting is intended to be an in-person gathering of the full committee at a single anchor location. Where the need arises, and as authorized by the Open and Public Meetings Act, Title 52, Chapter 4, the committee may hold electronic meetings.

(c)(i) Any additional meetings called by the chair, including committee meetings to consider factors associated with a request for agency action to segment property adjacent to a scenic byway, may be held as either in-person or electronic meetings, at the discretion of the chair, as authorized by the Open and Public Meetings Act, Title 52, Chapter 4.

(ii) Electronic meetings may be fully electronic, i.e. each member may join on an individual remote connection, but an anchor location must be provided for the public at one or more connections, preferably at a conference room available to either the department or the Utah Office of Tourism, that is large enough to accommodate anticipated demand.

(iii) Electronic meetings may be via teleconference, video conference, web conference, or other emerging electronic technology, at the discretion of the chair, as long as adequate time is provided to set up the required electronic connections for participants and the technology used is generally publicly available.

(iv) All meetings, whether in-person or electronic, must be advertised and accessible to the public for both hearing and comment, which in the case of electronic meetings will require publication of connection details and anchor locations.

(v) The published agenda for electronic meetings needs to include details on the format of how and when public comment will be received and addressed by the committee. For example, comment during an electronic meeting may be taken continuously via a chat window, then read by the moderator during the time set aside for public input. For electronic meetings, public participants may be requested to hold their comments until a designated period is opened by the chair.

**R926-14-5. Criteria Required of a Highway to Be Considered for Designation as a State Scenic Byway.**

(1) A road being considered for state scenic byway designation must meet the following criteria:

(a) the nominated road must possess at least two of the six intrinsic qualities described in Section 72-4-303;

(b) the nominated road may be either a planned or existing route and in the case of a planned route, legal public access, safety standards and all-weather pavement must be guaranteed at completion of construction;

(c) roadway safety on the nominated road must be evaluated against and guided by American Association of State Highway and Transportation Officials safety standards for federal aid primary or secondary roads;

(d) the nominated road must have strong local support for byway designation and the proponents must demonstrate this support and coordination;

(e) the nominated road must accommodate recreational vehicles or provisions should be made for travel by recreational vehicles;

(f) the nominated road need not lead to or provide connection to other road networks; it may be dead-ended, or provide only a single outlet for traffic;

(g) the nominated road need not be open during the winter months, but seasonal road closures must be clearly posted, shown on applicable maps, and specified in any promotional literature; and

(h) the nominated road may include portions of the Interstate Highway System, but only if the Interstate component is a small part of the mileage of the overall nominated scenic byway and is included primarily for continuity of travel.

(2) These criteria are meant to be restrictive in nature to limit the number of designated state scenic byways to maintain the quality and integrity of the scenic byway system.

**R926-14-6. Process for Nominating a Highway to Be Designated a State Scenic Byway.**

(1) Nominations for a corridor to be designated a state scenic byway shall be forwarded to the committee by a local legislative body.

(2) The nomination application must demonstrate how the nominated road meets the criteria to qualify as a state scenic byway.

(3) The committee will act on a byway-related application only after the requesting entity has held public hearings in accordance with Section R926-14-10 and submitted minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(4) The committee will consider the nomination after review of the application and after a presentation by the nominating sponsor group, either at the byway location, or at a committee meeting. The committee will vote on proposed designations at the next committee meeting to determine whether to forward the proposal to the Legislature for further consideration. The committee will report the results of the vote to the nomination sponsor.

(5) Individual communities along the byway corridor that do not support the designation of the state scenic byway within the limits of their community have the statutory right, as prescribed in the Designation of Highways Act, Title 72, Chapter 4, to opt out of any new byway designation through official segmentation action of their local legislative body, but they become ineligible for byway grants and promotional considerations by doing so.

(6)(a) Upon approval by the committee and the Legislature of a state scenic byway nomination, the committee shall notify the Utah Office of Tourism, the department, and other interested agencies of the new designation and of the approved alignment and limits of the designated corridor.

(b) The committee will make a request to these agencies that they modify reference of the scenic byway, to reflect the change in scenic byway status, on maps and in materials and website applications identifying state scenic byways.

(7) On receiving notification of a newly designated state scenic byway, the department shall amend Rule R926-13 to include the description of the state scenic byway and the date of its approval. The department shall forward to the NSBP any electronic files needed to describe or display the new state scenic byway in online maps, brochures, or other publications of the NSBP. The department will add the state scenic byway to the official highway map at its next printing.

**R926-14-7. Process for Nominating a Highway to Be Designated a National Scenic Byway or All-American Road.**

(1) In addition to state recognition, state scenic byways may be nominated to the National Scenic Byways Program so that they may be recognized as a byway of national significance through designation as a National Scenic Byway or All-American Road.

(2) Local scenic byway committees shall notify the state committee of their intent to apply for National Scenic Byway or All-American Road status and the state committee shall in turn notify the Legislature of this intent.

(3)(a) Local scenic byway committees shall prepare the necessary nomination applications required by the National Scenic Byways Program.

(b) Local scenic byway committees shall also prepare the required corridor management plan as outlined in federal policies.

(c) When the NSBP issues a call for applications, a local scenic byway committee may submit a nomination application if the state scenic byway has been approved for consideration in accordance with the requirements of the Designation of Highways Act, Title 72, Chapter 4.

(4) Local scenic byway committees shall confer with the state committee during the preparation of a corridor management plan and will submit their nomination applications to the committee for review before submitting to the NSBP.

(5) The committee will refer considerations for National or All-American Road designations to the Legislature for approval, along with the recommendation of the committee. As required in the Designation of Highways Act, Title 72, Chapter 4, Legislative approval must be obtained before any application for nomination may be submitted to the NSBP.

(6)(a) Upon approval by the NSBP of a National Scenic Byway nomination, the committee shall notify the Utah Office of Tourism, the department, and other interested agencies of the new designation and of any differences in alignment or limits as related to existing state scenic byway designations.

(b) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in status on maps and in materials and website applications identifying scenic byways.

(7) On receiving notification of a change in status to National Scenic Byway or All-American Road, the department shall amend Rule R926-13 to update the description of the byway to reflect the approved changes and the date of NSBP approval.

**R926-14-8. Process and Criteria for Removing the Designation of a Highway as a Scenic Byway or Segmentation of a Portion Thereof.**

(1) The committee may de-designate a scenic byway if the intrinsic values for which the corridor was designated have become significantly degraded and no longer meet the requirements for which it was originally designated.

(2) The local legislative body may remove designation on a localized segment of a designated byway if the intrinsic values within the segment have become degraded or if the segment being considered was included primarily for continuity of travel along the designated corridor, does not in and of itself contain the intrinsic values for which the corridor was designated, and the segmentation has strong community-based support.

(3) Highways that are part of the National Highway System are still subject to certain federal outdoor advertising regulations, regardless of their scenic byway status. When considering a de-designation or segmentation on an National Highway System route, either the committee or the local legislative body should become familiar with the regulatory differences between scenic byway status and National Highway System status, since de-designation or segmentation would not affect the ongoing applicability of National Highway System regulations and may not always produce the desired effect.

(4) De-designated corridors and communities or parcels segmented out of the scenic byway designation are no longer subject to byways-related regulations and are no longer eligible for byways-related grants and promotional considerations.

(5) Committee processes for de-designation may be initiated by the committee itself or by request from a local legislative body.

(6) Segmentation of specific parcels or portions of a scenic byway may be considered directly by the local legislative body of a county, city, or town where the segmentation is proposed, as provided in the Designation of Highways Act, Title 72, Chapter 4. The same public hearing requirements are followed for local legislative actions as are provided herein for committee actions.

(7)(a) Alternately, segmentation of specific parcels of property adjacent to a scenic byway may be requested by the property owner by submitting a written request for agency action, as provided in the Administrative Procedures Act, Title 63G, Chapter 4, Part 2.

(b) The request for agency action shall contain the information required by Subsection 63G-4-201(3)(a), and shall include a statement why the owner considers the property to be non-scenic as defined in Section 72-4-301.

(c) The written request for agency action shall be mailed to the Office of Tourism, Film and Global Branding within GOEO, with a copy of the request mailed to the Program Development Group within the Utah Department of Transportation to the attention of Program Development.

(d)(i) Segmentation of property under a request for agency action shall take effect 60 days after receipt of the written request by the Office of Tourism within GOEO, unless the committee demonstrates to an administrative law judge within 60 days, with subsequent action by the administrative law judge, that the property fails to meet the definition of non-scenic area as defined in Section 72-4-301.

(ii) Pursuant to Subsection 72-4-303(3)(d), receipt of the request for agency action shall be the date on which the mailed copy of the request is received by GOEO's Office of Tourism.

(iii) Requests for Agency Action shall be mailed to: GOEO OFFICE OF TOURISM Attention:

Scenic Byway Committee

300 North State Street

Council Hall / Capitol Hill

Salt Lake City Utah 84114

(iv) A copy of the request for agency action shall be mailed to:

Program Development Group of the Utah Department of Transportation

4501 South 2700 West

PO Box 143600

Salt Lake City Utah 84114

(e) A request for agency action involving segmentation is classified as an informal adjudicative proceeding.

(8) Requests to the committee for de-designation of state scenic byways shall be submitted by a local legislative body along or adjacent to the scenic byway corridor. Each request shall include discussion of the specific reasons for de-designation. Reasons may include:

(a) segment or corridor is no longer consistent with the state's criteria for selection as a scenic byway;

(b) failure to have maintained or enhanced intrinsic values for which the scenic byway was designated;

(c) degradation of the intrinsic values for which the scenic byway was selected;

(d) segment of the byway is not representative of the intrinsic values for which the scenic byway was designated and was included primarily for connectivity; or

(e) state scenic byway designation has become a liability to the corridor.

(9) Local legislative bodies shall inform the committee and UDOT Program Development of their action to segment within 30 days of the date of the action to segment. The local legislative body shall include the discussion of the specific reasons for segmenting. Reasons may include those identified in Subsections (8)(a) through (d).

(10) Parcels on existing byways may not be segmented out of a byway solely for evading state and federal regulations pertaining to byway designation but must also be considered non-scenic or otherwise meet the criteria listed in Subsection (8). However, towns, cities, and counties may remove themselves entirely for any purpose, as provided in the Designation of Highways Act, Title 72, Chapter 4.

(11) State and federal highway regulations require that no regulated outdoor advertising be located within 500 feet of a designated scenic area. Therefore, the size of any parcel or parcels being considered for segmentation would need to be large enough to meet that offset requirement.

(12) Upon receipt of the local legislative body's action to segment, the committee chair will add the action to the agenda of the next committee meeting.

(13) The local legislative body shall provide the committee with the following information at the next committee meeting:

(a) the date the local legislative body acted on the request to segment;

(b) the defined limits of the segmented portion of the scenic byway, including route and milepost details and definitions;

(c) the approved meeting minutes from any relevant public meetings; and

(d) a copy of the signed resolution from the local legislative body.

(14)(a) If the responsible legislative body has heard and denied a request to segment a state scenic byway, the denial can be appealed to the committee. The appeal must include information regarding the public hearings, minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(b) When considering appeals related to segmentations, the committee shall follow Title 72, Chapter 4, Part 3, Utah State Scenic Byway Program.

(15)(a) Following discussion of the request or appeal, the committee will vote on the request for de-designation or appeal of the denial of segmentation.

(b) The committee will then forward the result of the vote to the requesting local legislative body or appealing party.

(c) If the committee approves a de-designation, the committee shall forward the de-designation request to the Legislature for further consideration in accordance with Section 72-4-303.

(16)(a) Upon approval of a segmentation by a local legislative body, the local legislative body shall notify the committee and the local byway coordinator of the action taken.

(b) Upon receiving notification under Subsection (16)(a), approval of a segmentation by the committee, or approval of a de-designation by the Legislature, the committee shall notify the Utah Office of Tourism, the department, the NSBP, if applicable, and other interested stakeholders and request that the change be reflected in the scenic byway status, on relevant maps, and in relevant materials and website applications identifying scenic byways.

(18)(a) Upon receiving notification of segmentation or de-designation, the department shall amend Rule R926-13 to update the description of the byway to reflect the approved changes.

(b) The department shall forward to the NSBP any changes that would have a substantive effect on online maps, brochures, or other publications of the NSBP.

(c) The department will show substantive changes on the official highway map at its next printing.

(19) For purposes of byway program eligibility and subjection to byway regulations, the official date of de-designation or segmentation is:

(a) for de-designation, the effective date of the concurrent resolution that approves the de-designation in accordance with Section 72-4-303;

(b) for a segmentation considered by the committee or a local legislative body, the date the committee or the local legislative body approves the segmentation; or

(c) for a segmentation proposed by a property owner through a request for agency action, as provided in the Administrative Procedures Act, Title 63G, Chapter 4, Part 2, the date described in Subsection (7)(d)(i).

**R926-14-9. Local Government Consent.**

Consent of affected local governments along the byway corridor is required by the Designation of Highways Act, Title 72, Chapter 4 for any change in scenic byway status.

**R926-14-10. Requirements for Public Hearings to Be Conducted Regarding Changes to Status of a State Scenic Byway and Related Notifications.**

(1) Before action is taken on a change in status of a corridor, the entity requesting the change must hold a public hearing, as provided in this section, for receiving public comments on the change in status and to respond to questions and concerns.

(2)(a) If a change in status is being considered due to a request for agency action from a property owner to segment property adjacent to a scenic byway, the committee shall hold the public hearing required by this section.

(b) Except for changes requested by a property owner as described under Subsection (2)(a), the entity requesting the change in status is responsible for holding the public hearing required by this section.

(c) The requesting entity is:

(i) the entity submitting an application or request to the committee;

(ii) the committee, in the case of a process initiated by the committee itself; or

(iii) the local legislative body considering a segmentation request.

(3)(a) Requesting entities shall ensure the venue used to hold public hearings described in Subsection (1) are located as close as practicable to the area affected by the proposed status change.

(b)(i) Depending on the length of the corridor, the committee may require the requesting entity to hold multiple public hearings in a variety of locations.

(ii) The committee chair shall review and approve the number and locations of public hearings to ensure people throughout the length of the corridor have the opportunity to provide public comment on the proposed status change.

(c) The requesting entity shall inform the committee and the local scenic byway committee of the date and time of each public hearing the requesting entity schedules.

(4) A public hearing required by this section:

(a) may be held separately, or as an identifiable agenda item of a regular meeting of a local legislative body; and

(b) is subject to the notice and other relevant requirements of Title 52, Chapter 4, Open and Public Meetings Act.

(5) At a minimum, the following information related to the proposed change in status is to be addressed at each public hearing:

(a) the impact on outdoor advertising;

(b) the potential impact of traffic volumes;

(c) the potential impact of land use along the byway;

(d) the potential impact on grant eligibility; and

(e) the potential impact on the local tourist industry.

(6) The requesting entity shall keep minutes of the hearing, including a detailed summary of comments and the names and addresses of those making comments and shall make these available to the committee, along with proof of required notifications.

**R926-14-11. Requirements for Consideration of Adjudicative Proceedings Associated with a Segmentation Request Submitted by a Property Owner Under a Request for Agency Action.**

(1) If the committee determines at a public hearing that property associated with a property owner's request for agency action to segment property does not meet the definition of non-scenic as defined in Section 72-4-301, the chair of the committee shall notify the property owner that its request for agency action is denied pending administrative hearing.

(2) The chair of the committee shall notify the property owner in writing of:

(a) the committee's denial of the request for agency action;

(b) the committee's intent to have the matter considered by an administrative law judge; and

(c) a list of available administrative law judges, if known.

(3) No more than 10 days after the written notice is sent advising the property owner of the committee's denial of the request for agency action and intent to have the matter considered by an administrative law judge, the property owner shall notify the committee in writing of their agreement on selection of the administrative law judge named by the committee or advise the committee of an alternate judge agreed upon by the committee.

(4) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in Section 63G-4-203.

**KEY: transportation, scenic byways, highways**

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