



September 29, 2021

Texas Department of Transportation  
Executive Director Marc Williams  
125 E 11<sup>th</sup> Street  
Austin, TX 78701

Dear Director Williams and Staff,

Thank you for the opportunity to provide public comment on the Texas Department of Transportation's (TxDOT) proposed rules for Senate Bill 941 by Senator Dawn Buckingham and sponsored by Representative Eddie Morales. As the state's only nonprofit organization dedicated to the preservation and enhancement of our visual environment, particularly as seen by the traveling public, Scenic Texas successfully advocated for the creation of the first State Scenic Byway Program in Texas. With overwhelming bipartisan support from the Legislature, Scenic Texas encourages TxDOT's leadership to create, through its rulemaking process and implementation, a program that will make our great state more beautiful, more scenic, and more friendly for the traveling public.

During this time of public comment on TxDOT's newly proposed rules §§15.140 – 15.147 regarding the creation of a State Scenic Byways Program, we respectfully submit the following responses and feedback for TxDOT's consideration:

**1. Proposed Rule §15.143 | Eligible Entity | Subsection (a)**

(a) To be eligible to participate in the state scenic byway program, an entity must be:

- (1) a political subdivision; or
- (2) a community group that is approved by the department.

Senate Bill 941 was intentionally written to broadly include both political subdivisions and agency-approved community groups as eligible entities. We strongly encourage TxDOT not to limit interested community groups, including but not limited to Chambers of Commerce, Homeowners Associations (HOAs), statewide nonprofits or their associated local chapters or affiliates (i.e. Scenic Texas, Keep Texas Beautiful, etc.) from applying.

We urge TxDOT to recognize that many political subdivisions or community groups may apply solely to receive designation of a local roadway and may not pursue federal funds, as is their prerogative. As such, we encourage the agency not to disqualify entities based on certain financial criteria or an organization's legal structure. If assessing an entity's ability to meet the required 80% federal, 20% local match, please keep in mind that in-kind contributions count as part of the match. Furthermore, we discourage disqualification of an entity based on size or membership. Many of the roadways described in this statute run through Texas' smaller rural towns which may have small but active community groups.



**Scenic Texas respectfully asks for clarity on the following:**

- Can the applicant be a chamber of commerce, local nonprofit chapter, or homeowners association?
- Can a statewide organization be considered a community group, especially if they have demonstrated experience working within local communities across the state?
- What kinds of organizations may not be approved to participate, and why?
- Will there be size, membership, financial, or legal status requirements that a community group must meet to be considered eligible to participate in the program?
- Once an entity has applied and their road is designated a State Scenic Byway, is that same entity responsible for applying for designation as a National Scenic Byway? What if that entity is dissolved in the future? Can a different entity apply for federal designation and be responsible for the financial match requirements?

**2. Proposed Rule §15.144 | Application Procedure | Subsection (a)**

(a) State Scenic Byway Application. An eligible entity may submit to the department an application for the designation of a highway as a State Scenic Byway. In accordance with federal guidance, the department may require that a corridor management plan may be submitted with the application.

The proposed rules describe an application form to be prescribed by TxDOT. We encourage TxDOT to create an application that is short, simple, and would not require professional assistance, especially for interested community groups that may not have extensive experience with government applications or forms. We suggest posting this application clearly on the Department's website, as well as disseminating information on the program and application in applicable agency newsletters, email listservs, and other public-facing materials. Applications should be allowed for submission year-round. We discourage the Department from collecting an application fee.

In regards to the potential requirement for a Corridor Management Plan (CMP), Scenic Texas is concerned about creating a potential financial barrier to applying for a Scenic Byway designation, as it can be extremely costly to conduct a CMP. If a community group wants to pursue a scenic byway designation but is not pursuing federal grant funding for a project, we do not believe a need exists for a CMP.

Lastly, the National Scenic Byway Program has historically awarded funding to political subdivisions or community groups for the development or update of a CMP, including most recently in California, Indiana, Louisiana, Maine, Minnesota, New Hampshire, New Mexico, Oklahoma, and Washington. If a CMP is deemed absolutely necessary for a project, we would suggest that the Department notify the applying entity, without disqualification and allow them to factor the cost of a CMP into the plan or to create a new proposal for a CMP.

**We request the following amendment to the proposed rule change in order to address these concerns:**

- (a) State Scenic Byway Application. An eligible entity may submit to the department an application for the designation of a highway as a



State Scenic Byway. In accordance with federal guidance, the department may require that a corridor management plan may be submitted with the application only if the applicant is also requesting grant money for a project or is required by the federal program.

(b) If a corridor management plan is deemed necessary, the Department will notify the applicant and allow for sufficient time for revisions to the application to factor in the cost of such a plan, or to submit an application for the creation of a new corridor management plan.

Additionally, Scenic Texas respectfully requests clarity on the following:

- TxDOT describes an application form to be provided by the department. What is the timeline for creation of an application? Will that form be drafted now and adopted as part of the final rules, or will it be drafted at a later date? If later, will there be opportunity for public comment on the criteria outlined in an application?
- Will there be an application fee?

Scenic Texas requests that public comment be allowed on the creation of the application, allowing for input from stakeholders, in a public and transparent process. If the application will not be included in a public comment period, then we urge the department to clearly define what will be necessary in order to apply.

### **3. Proposed Rule §15.144 | Application Procedure | Subsection (b)**

(b) Concurrence. Before the department may designate a highway as a State Scenic Byway, the applicant must obtain concurrence from each governmental entity that has jurisdiction over the highway that is subject to the application.

Scenic Texas has serious concerns regarding this subsection, as it is both vague and does not align with the intent of the enacting legislation. This seems like an unreasonable burden, particularly as there are no criteria listed for non-concurrence. This allows TxDOT and/or local governments to override legislative intent.

#### **Proposed Rule Change:**

Scenic Texas strongly requests that the Department strike the entirety of Subsection (b) of Proposed Rule §15.144 as seen below.

~~(b) Concurrence. Before the department may designate a highway as a State Scenic Byway, the applicant must obtain concurrence from each governmental~~



~~entity that has jurisdiction over the highway that is subject to the application.~~

If the subsection is **not** struck, Scenic Texas respectfully requests clarity on the following:

- What other entities besides the Texas Department of Transportation have jurisdiction over a highway that might be subject to this program?
- What does concurrence look like? Written or verbal confirmation?
- Will TxDOT be able to “override” the non-concurrence if the project meets all of the other requirements?
- Will TxDOT further define what circumstances other government entities may not concur and potential remedies?
- If this language remains, will the project have an opportunity to appeal the non-concurrence and who will hear the appeal?

#### **4. Proposed Rule §15.144 | Application Procedure | Subsection (c)**

~~(c) National Scenic Byway Applications. Subject to Federal Highway Administration notice and after a highway is designated as a State Scenic Byway, an eligible entity may submit to the department:~~

~~(1) an application for designation of the State Scenic Byway as a National Scenic Byway; and~~

~~(2) an application for a national scenic byway grant for a project on the State Scenic Byway.~~

If an applicant decides to pursue national designation but does not intend to ask for federal grant money, it would seem reasonable that they only be required to submit the application for national designation. Some entities may not pursue a grant, as some communities may view being designated as a National and State Scenic Byway as their ultimate goal.

#### **Proposed Rule Change:**

(c) National Scenic Byway Applications. Subject to Federal Highway Administration notice and after a highway is designated as a State Scenic Byway, an eligible entity may submit to the department:

(1) an application for designation of the State Scenic Byway as a National Scenic Byway; and if applicable,

(2) an application for a national scenic byway grant for a project on the State Scenic Byway.



## 5. Proposed Rule §15.147 | Removal of Designation

§15.147. Removal of Designation. The department may remove a state scenic byway designation if the department determines that the highway no longer meets the criteria for designation under the national scenic byways program provided by 23 U.S.C. Section 162.

We urge the Department to clearly state the federal criteria for de-designation in the rules so that they can be found easily by stakeholders. If the Department declines to do so, we would strongly urge the Department to include in the final rules a list of reasons a particular roadway may be de-designated (i.e. lack of maintenance, lack of financial support, etc.) and a process by which roadways at risk of de-designation be allowed the opportunity to remediate the issue within a reasonable period of time in order to maintain compliance with state and federal statutes. Through this de-designation process, we urge TxDOT to notify the appropriate contact at the entity responsible for applying for designation, as well as to contact the local political subdivision of the non-compliant scenic byway. Because the eligible roadways are statutorily protected from billboards, we do not see an instance in which a designated roadway would fall out of compliance, unless it was removed from the relevant section of state statute.

### **We request the following amendment to the proposed rule in order to reflect this:**

§15.147. Removal of Designation.

- (a) The department may remove a state scenic byway designation if the department determines that the highway no longer meets the criteria for designation under the national scenic byways program provided by 23 U.S.C. Section 162.
- (b) Before removal of a state scenic byway designation, the department must make a good faith effort to contact the political subdivision or community organization that oversaw the roadway's designation as a state scenic byway. If the listed contact at the community group cannot be reached or is no longer with the organization, the department will notify the applicable political subdivision in which the non-compliant offense has occurred.
- (c) If a state scenic byway is no longer compliant with 23 U.S.C. Section 162, the department shall allow for reasonable time, not to exceed six months, to remediate the non-compliant offense, while allowing the roadway to maintain its status as a state scenic byway during the process.



Scenic Texas respectfully requests clarity on the following:

- Are there any other reasons that the agency could remove a scenic byway designation?
- What is the basis for removal of a designation?
- Can other jurisdictions in which the roadway is located request de-designation of the roadway?

## **6. Suggested Addition | Applications Denied By TxDOT and Inquiries From Unqualified Roadways**

While the footprint of the State Scenic Byways Program is currently limited to the approximately 30 roads found in Texas Transportation Code, Sec. 391.252, our organization is already receiving interest from other stakeholders about the addition of other roadways. We encourage TxDOT to keep an official internal list of (1) applications denied by TxDOT and reason for denial; and (2) roads for which the Department receives inquiries, but are not listed under Texas Transportation Code, Sec. 391.252.

Our affiliate, Scenic America, has seen other states use this momentum to explore expansion of the program. In states across the nation, the excitement generated over these designations has leveraged dollars for economic development and tourism, as well as beautification, community betterment, and road improvement.

In closing, we respectfully request TxDOT amend the proposed rules and provide clarity as requested above. We encourage the Texas Transportation Commission and staff, as they deliberate on the rules, to ensure the process does not become cumbersome and therefore preclude interested stakeholders from pursuing a State Scenic Byway designation. These suggestions, we believe, reflect the intentions of the legislature and ensure good stewardship of taxpayer assets, as well as enhance the scenic beauty of our state. Thank you for hearing our concerns and considering our requests. Please do not hesitate to reach out if you require additional information or if we can be helpful in finalizing these rules.

With gratitude,

A handwritten signature in black ink that reads "Sarah Tober".

Sarah Tober  
Scenic Texas President

cc: TxDOT Deputy General Counsel Becky Blewett  
Transportation Planning and Programming (TPP) Division Director Jessica Butler  
TPP Supervisor Peggy Thurin  
TPP Supervisor Casey Wells  
TPP Planner Christeen Pusch  
TPP Planner Carlos Calle