

290-RICR-50-00-1

## TITLE 290 - DEPARTMENT OF TRANSPORTATION

### CHAPTER 50 - SCENIC ROADWAYS BOARD

#### SUBCHAPTER 00 - N/A

#### PART 1 - Rules of the Rhode Island Scenic Roadways Board

### 1.1 Purpose and Authority

- A. Purpose. The Rhode Island Scenic Roadways Board ("the Board") exists for the purpose of carrying out those purposes described in R.I. Gen. Laws Chapter 24-15. The Board will promulgate rules and establish standards for the maintenance, identification, construction, use, and preservation of the scenic highway system. Additionally, the Board will establish standards for regulating and limiting the construction or establishment of a highway which is inconsistent with the purposes of R.I. Gen. Laws § 24-15-9.
- B. Authority. These Rules are adopted pursuant to the R.I. Gen. Laws § 24-15-9.

### 1.2 Definitions

- A. The following definitions shall apply to this regulation:
  - 1. "Adverse effect" means when a project damages or destroys scenic resources or characteristics which contribute to the roadway's designation as scenic. Adverse effects include, but are not limited to:
    - a. Physical destruction, damage or alteration of all or part of the scenic roadway or its scenic resources as defined in § 1.4 of this Part.
    - b. Alteration of the character of the roadway's setting
    - c. Introduction of visual, audible, or atmospheric elements that are out of character with the roadway or alter its setting;
    - d. Neglect of a scenic roadway resulting in deterioration or destruction of the roadway or its scenic resources; and
    - e. Transfer, lease, or sale of public-owned property without adequate provision for its continued preservation.

### **1.3 Access to Public Records, Petitions for Promulgation of Rules, Petitions for Declaratory Orders**

- A. Requests made pursuant to R.I. Gen. Laws Chapter 38-2 "Access to Public Records" shall be made in accordance with the "ACCESS TO THE PUBLIC RECORDS OF THE RHODE ISLAND DEPARTMENT OF TRANSPORTATION".
- B. Petitions made for the promulgation of rules or for a declaratory order pursuant to R.I. Gen. Laws §§ 42-35-6 or 42-35-8 shall be made in accordance with the Department of Transportation's Petition for Promulgation of Rules and Declaratory Orders, Part 30-00-7 of this Title.

### **1.4 Criteria for Designation of Scenic Roadways**

- A. In order to be eligible for designation as a scenic roadway, the road must possess significant scenic resources which are present within the viewshed of the road and which singly or in combination create an unusually attractive, continuous and integrated traveling experience for motorists, bicyclists, or pedestrians. The Board shall consider the following types of scenic resources:
  - 1. Natural. Significant natural characteristics which include surface water (both salt and fresh), vegetation, woods, wetlands and wildlife habitats, topography and surficial geological formations, and cultivated or uncultivated agricultural lands.
  - 2. Historical. Significant historical characteristics associated with individual buildings, districts or historic landscapes.
  - 3. Cultural. Significant cultural characteristics which may be contemporary built features such as buildings, bridges and designed landscapes.
  - 4. Archaeological. Significant archaeological characteristics which are generally subsurface historical features, but may include exposed sites or standing features.
  - 5. Recreational. Significant recreational opportunities for active or passive recreation, seasonal or special events but must be well known and recurring.
  - 6. Visual. Other significant visual characteristics which are striking and memorable views and/or interesting and attractive spaces in a continuous, integrated experience.

- B. Demonstration of significant resources of a single type is sufficient to support a nomination, except in the case of archaeological and recreational resources where at least one of the other four types of resource must also be present.

## **1.5 Procedures for Designation of Scenic Roadways**

### **A. Who May Apply for Scenic Designation of a Road.**

1. The Director of the Rhode Island Department of Transportation may apply to the Board for designation of any state highway as a scenic roadway.
2. The governing body of any municipality may apply to the Board for designation of any road within the borders of the municipality as a scenic roadway. In the case of a municipality that nominates a state highway, the municipality shall notify the Director of the Rhode Island Department of Transportation regarding the nomination. The Director shall have thirty (30) calendar days to comment on the application.

### **B. Application Form.** Application for designation of a roadway shall be made on the form provided by the Board. Using the form, an application shall include all information required in §§ 1.5(B)(1) through (8) of this Part. Any incomplete application will not be considered.

1. That one or more of the scenic criteria as set forth in § 1.4 of this Part are present on the road which is proposed for designation;
2. That singly or in combination, the scenic elements create an unusually attractive, continuous and integrated travelling experience for motorists, bicyclists, or pedestrians;
3. What measures the municipality has taken, or will take, to preserve and enhance the scenic character of the roadway which is the subject of the application. Such measures may include, but are not limited to regulation of land use, land and site planning, control of outdoor advertising, control of earth moving and landscaping, the design and appearance of structures and equipment, and public education;
4. Whether the road is or will be actively promoted for use by tourists.
5. In the case of a nomination by a municipality, the application shall include a certified record of the vote of the governing body approving of the filing of the application. The application shall also describe the public hearing or other measures taken by the municipality to inform owners of the properties abutting the roadway and other interested parties about the application. If the nomination includes a state highway, the application

shall also include a copy of the notice given to the Director of RI Department of Transportation;

6. In the case of a nomination by the Director of the RI Department of Transportation, the application shall include a copy of the notice given to the governing body of the municipality or municipalities in which the highway is located;
  7. A list of owners of properties abutting the proposed scenic roadway which identifies the property owned and includes the owners' mailing addresses and a copy of the written notice used to inform owners of said nomination. The list of owners shall be compiled from the records of the local tax assessor; and
  8. The dimensions of the road, including width, available shoulder, if any, grade, intersections and traffic signals also shall be disclosed within the application.
  9. The Board reserves the right to request additional information if needed for full evaluation of the application.
- C. Public Notice and Hearing. A public hearing shall be held prior to the approval or denial of any application for designation of a scenic roadway by the Board.
1. Newspaper publication. Notice of the scheduled public hearing shall be published in a newspaper of general circulation within the geographic area of the roadway which is proposed for designation. Such notice shall be published fifteen (15) to thirty (30) days before the hearing date.
  2. Mailing of notice. Written notice of the scheduled hearing shall be mailed by first class mail to the Director of RIDOT, the chief elected official and governing body of the municipality, to the owners of the properties fronting the road for which designation is proposed, to appropriate media, and to others who have requested notice. The list of owners shall be compiled from the records of the local tax assessor.
  3. Content of notice. Each notice shall state the date, time, and place of the hearing and contain a brief description of the area included in the proposed scenic roadway designation. The notice shall announce the availability of the complete application and where it may be obtained or reviewed. A copy of the application with attachments shall be made available for review at the office of the Town or City Clerk in the municipality where the proposed roadway is located. The notice shall also state where written statements may be sent in advance of the hearing date.

4. Opportunity for public comment. At the hearing, members of the public will be given an opportunity to present oral or written comments on the proposed scenic roadway designation.
- D. Action by the Board on the Application. An application shall be approved or disapproved by a majority of the Board members at a meeting held following the public hearing.
    1. Written notice of the Board's action and a statement of the reasons for the action shall be sent to the chief elected official and governing body of the municipality in which the roadway is located and to the Director of the RI Department of Administration (Statewide Planning Program) and to the Director of the RI Department of Transportation.
  - E. Records. The Board shall maintain a list of Rhode Island's designated scenic roadways together with a copy of the application documentation accepted by the Board.
  - F. Review of Previous Scenic Designation. The Board may review previous scenic designations to determine if changes have occurred which affect the roadway's scenic resources and to consider whether the roadway continues to satisfy the criteria as set forth in § 1.4 of this Part for designation. The Board may request the assistance of the original applicant or other interested parties in such review. Based on its review, the Board may choose to retain the designation, to request withdrawal of the designation, to request remedial action to retain the designation, or to request the expansion or reduction of the limits of the designation.
  - G. Withdrawal of Scenic Designation. The Director of the RI Department of Transportation may apply to the Board for the withdrawal of the scenic roadway designation of a state highway, or the governing body of a municipality may apply to the Board for the withdrawal of the scenic roadway designation of a road located within the municipality, or the Board itself may propose the withdrawal of the scenic designation of a road. The application for withdrawal of the scenic designation shall be made in writing and shall contain documentation of destruction or adverse changes to the designated road's scenic resources and/or evidence that the designation is no longer desired. Prior to acting on the application, the Board shall provide notice and hold a public hearing in the same manner as for designation, § 1.5(C) of this Part. An application for withdrawal of scenic designation may be approved or denied by a majority of the Board members at a meeting following the public hearing. The Board may reduce the area of a previous scenic designation as an alternative to withdrawal of the entire designation.

1. Provided, however, that no application for removal of a highway or road, or portion thereof, from the scenic highways system, shall be approved unless the owners of a majority of the lineal lot frontage abutting the highway or road agree to the removal by filing an application with the director or governing municipal body, within the sixty (60) days immediately preceding the application, a written statement or statements agreeing to the removal.

## **1.6 Procedures for Application for Permission to Perform Construction, Repair, or Alteration of Scenic Roadways**

### **A. General**

1. **Scope of Review.** These procedures are adopted to preserve designated scenic roadways during construction, repair, or alteration. No construction, repair or alteration shall be performed or permitted to a scenic roadway except in conformance with this procedure. Included within the scope of the Board's review are grade changes, alteration of vegetation, curb cuts and other accesses or entrances leading into the right-of-way of the scenic roadway as well as roadway construction or repair. Projects for construction, repair, or alteration to scenic roadways shall be reviewed by the Board to evaluate whether the proposed project will have an adverse effect upon or alter the scenic resources or characteristics that qualify the roadway to be designated as scenic. The Board will consider all relevant information including the contents of the application itself and the views (if any) of RIDOT, a municipality, or the public regarding the project's impact to the scenic qualities of the roadway.
2. **Timing.** Any applicant is required to complete these procedures prior to beginning construction, repair, or alteration work to a scenic roadway. Any applicant should ensure that the review process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The applicant should establish a schedule for completing the advisory process that is consistent with the planning and approval schedule for the undertaking.

### **B. Identifying Designated Scenic Roadways**

1. **Consultation.** Early in the planning or permitting of a project which may alter a scenic roadway, RIDOT and/or the municipality shall report to the Board any proposed construction, repair, alteration or permitting proposed for a scenic roadway.

2. Designation of Roadway Under Design. If the Board designates a scenic roadway which is already the subject of RIDOT or a municipality's plan for construction, repair or alteration, RIDOT or the municipality shall begin to comply with these procedures from the date of designation. In its review, the Board shall take into account the practicality and feasibility of making changes in the plans or construction done prior to designation.
3. Public comment. With respect to construction, alteration or repair of any scenic roadway, RIDOT or the municipality undertaking the project will include information about the roadway's scenic designation in information provided to the public about the project, invite public comment on the project's impact of the scenic qualities of the roadway, and provide the Board with copies of written comments received and a written summary of oral comments, including the names of those commenting.

C. Determination of Effect upon Scenic Roadways

1. Permits. RIDOT or any municipality issuing permits to any persons or entities, including but not limited to utility companies, for a construction, repair or alteration project on a scenic roadway, or any rights way or easements or vegetation connected to that scenic roadway, shall inform the Board of such application. All such permit requests shall be governed by § 1.6 of this Part.
2. Minor Alterations. In the case of the minor, routine maintenance of a designated scenic roadway, the Chairperson may, at his/her discretion, refer the review of the proposed work to the technical staff for a recommendation. The Chairperson may then choose to approve the work based on the technical staff recommendation and notice will be given to all members of the Board. If the Chairperson finds that the work is not minor, then the Chairperson shall refer the matter to the full Board for review. Maintenance shall be defined as sweeping, crack sealing, striping, replacing signs, resurfacing involving insignificant topographical changes, repair of failed drainage and minor utility repair.
3. Major Alterations. Any applicant with plans to perform construction, repair or alteration to a scenic roadway as defined in § 1.6(A) of this Part shall submit to the Boards at each recognized stage of planning and design (as applicable, Conceptual Design, 10%,30%,75%, 90% and PS &E) all available information concerning the planned project, including all information as to the manner in which the project will affect the scenic roadway and an application in a form prescribed by the Board. In order to obtain final approval to perform construction, repair or alteration on a

scenic roadway, said application shall include the following information as required by the Board:

- a. Identification of the applicant and any proposed contractors for the proposed construction, alteration or repair;
- b. Detailed, 20-scale plans and specifications of the proposed changes to the scenic roadway including drawings and, where appropriate, photographs;
- c. The dates of the proposed construction, repair or alteration;
- d. A statement as to the measures taken in the proposed project to preserve the scenic character of the roadway;
- e. A map demonstrating the locations of the proposed project.

4. Board Review

- a. The Board shall promptly review the application to determine if the proposed project will have an Adverse effect on the scenic roadway. The Board shall respond to the application with sixty (60) days of receiving the application and will advise the applicant if more information is needed or if more time is required for the Board's review.

5. Determination of No Adverse Effect.

- a. If the Board finds the effect on the scenic roadway not to be adverse, it shall document the finding and notify the applicant and interested persons who have made their concerns known, and the project may proceed. In reaching a finding of no adverse effect, the Board may stipulate changes to the project or conditions which will avoid potential adverse effects.

6. Determination of Adverse Effect. If the Board finds that the project will have an adverse effect on the features or characteristics of the scenic roadway, it shall:

- a. Notify the applicant, the Director of RIDOT and/or the chief elected official and the governing body of the municipality in which the roadway is located and other interested persons who have requested in writing that they be notified of any such determination.



- b. Consult with the applicant, RIDOT, and/or the municipality in which the roadway is located regarding alternatives which would avoid, minimize, or mitigate the adverse effects of the project and preserve the scenic resources of the roadway. Such alternatives include but are not limited to consideration of a waiver of RIDOT or Federal standards, reduction of the speed limit and design speed, landscape treatments, tree and shrub replacements, stone wall replacements, and use of traffic calming measures, where applicable.
  - c. The Board may invite other interested parties to participate in the consultation.
- 7. Agreement on Avoidance or Satisfactory Mitigation of Adverse Effect.
  - a. After a thorough review of the alternatives, the Board and the applicant, RIDOT and/or the municipality may agree that there is a prudent and feasible alternative that avoids, minimizes or mitigates the adverse effect of the project. If an agreement is approved by the Board, the Chairperson and the applicant, the Director of RIDOT and/or the particular municipality shall sign a Memorandum of Agreement describing such alternative with the measures to eliminate, minimize, or mitigate the adverse effect, and the project may proceed. The applicant may withdraw a project which is objectionable to the Board for modification and resubmission.
- 8. Acceptance of Adverse Effect.
  - a. After a thorough review of the alternatives, the Board with the advice of the Director of RIDOT and/or the particular municipality may determine that in the interest of public safety there are no prudent or feasible alternatives to avoid, minimize, or mitigate the adverse effect. Upon such decision, the Board may either prepare a written report of Acceptance of the Adverse Effect, permitting the project to proceed, or the Board may accept an application from the Director of RIDOT or the municipality for withdrawal or reduction of the limits of the scenic designation as outlined in § 1.5(G) of this Part.
- 9. Failure to Agree.
  - a. After a thorough review of the alternatives, if the Board decides to withhold its approval, it will notify the applicant, RIDOT, and/or the municipality in writing and the project shall not proceed.

10. Appeal by Applicant.
  - a. Within twenty (20) days of receipt from the Board of a decision to withhold approval of the project, the applicant, RIDOT and/or the municipality may request in writing a full evidentiary hearing before the Board in accordance with R.I. Gen. Laws § 42-35-9. The project shall not proceed until the hearing is completed, and a decision and order are rendered. No further administrative review of this determination is available.
11. Judicial Review.
  - a. Upon receipt of a written adverse effect decision and final order of the Board, the applicant may obtain judicial review in accordance with R.I. Gen. Laws § 42-35-15.
12. Fulfillment of the Terms of a Memorandum of Agreement.
  - a. When a Memorandum of Agreement exists, the applicant shall carry out the undertaking in accordance with the terms. Failure to carry out the terms requires the applicant to resubmit the project to the Board for comment in accordance with § 1.6 of this Part.

D. Miscellaneous

1. Public Request to the Board. Any person may request the Board to determine whether a project falls within the scope of this Board's jurisdiction and is subject to review in accordance with these Rules. Communications from the public will be reported to the full Board at its next meeting.
2. Determination of Jurisdiction. Upon receipt of a public request, the Board shall advise the person making the request and the party performing the activities which fall within the jurisdiction of the Board of their finding. An inquiry to the Board does not suspend action on an undertaking. If the Board finds that the activity or project is subject to review, the Board shall immediately notify the party performing the activities to stop any actions which would preclude the Board's opportunity to complete its review and require that party to make application to the Board in accordance with § 1.6 of this Part.

## 1.7 Additional Provisions

- A. Emergency Provisions. When compliance with these Rules would pose a serious threat to public safety, the Chairperson may waive compliance to the extent

necessary to protect the public. The Chairperson will promptly inform the Board of taking an action under this section, and if a majority of the Board's members object within three (3) days, such emergency action is rescinded.

- B. Severability. If any section or provision of these Rules is held invalid by a court of competent jurisdiction, the remaining sections or provisions of these Rules shall not be affected thereby.

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