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SHEMIA FAGAN
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CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 736
PARKS AND RECREATION DEPARTMENT

FILED

03/30/2023 12:26 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendments to Oregon Scenic Bikeways for updated committee structure, establishment process and definitions.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/19/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Jo Niehaus
503-580-9210
jo.niehaus@opr.d.oregon.gov

725 Summer St. NE
Suite C
Salem, OR 97301

Filed By:
Jo Niehaus
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/19/2023

TIME: 6:00 PM - 8:00 PM

OFFICER: Jo Niehaus

HEARING LOCATION

ADDRESS: Virtual, 725 Summer St. NE, Suite C, Salem, OR 97301-1266

SPECIAL INSTRUCTIONS:

Virtual hearing only, no physical location.

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 253-205-0468

CONFERENCE ID: 88396437438

SPECIAL INSTRUCTIONS:

Register in advance for this webinar:

https://us06web.zoom.us/webinar/register/WN_rjxn3v11SqmwazbTkMNneA

NEED FOR THE RULE(S)

The Oregon Scenic Bikeways Program, managed by Oregon Parks and Recreation Department and Cycle Oregon, is seeking rule changes to the agency's administrative rules and definitions that govern the formation of the Scenic Bikeways Committee and establishment process of the Scenic Bikeways under Chapter 736 Division 9 (OAR 736-009-0020, OAR 736-009-0025, OAR 736-009-0030).

These changes seek to increase diversity and participation in the committee by adding two additional at-large seats and widening participation to a representative appointed by the Oregon Recreation Trails Advisory Council (ORTAC) and

Oregon Bicycle and Pedestrian Advisory Committee (OBPAC). It will also clarify and streamline the committee's process by defining more clearly the group's quorum and process for recommendation designation.

Definitions will be updated to include the term "Improved Public Way" in order to open up qualifying bikeways to include other surfaces than bituminous paved paths and "bicycle path" will be clarified to include public ways that allow for bicycles including electric-assisted bicycles that are operator propelled or electric assisted. This definition will also be extended to wheelchair and other adaptive equipment use to accommodate accessible shared-use options.

Criteria for route designation was also amended to include "minimizing adverse effects and conflicts between other existing recreation user types" to ensure existing trail or road use is not compromised for other users.

Overall this rulemaking seeks to better serve Oregonians through widening definitions to allow for maximum participation from a more diverse array of participants and to protect recreation access for differently-abled individuals and different types of cyclists.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Scenic Bikeways Designation Process: <https://www.oregon.gov/oprd/BWT/Documents/SB-Designation-process.pdf>

Scenic Bikeways Plan Template: <https://www.oregon.gov/oprd/BWT/Documents/SB-Bikeway-Plan-Template.docx>

Scenic Bikeways Brochure: <https://www.oregon.gov/oprd/BWT/Documents/SB-Bikeways-Brochure-Web.pdf>

Economic Impact Report of Scenic Bikeways (2014): <https://www.oregon.gov/oprd/BWT/Documents/SB-Oregon-Scenic-Bikeways-economic-report.pdf>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

OPRD held a Rules Advisory Committee (RAC) with community input that included partners representing Oregon's historically underrepresented communities and persons with disabilities. During the RAC's discussion, there was no adverse impact identified to racial equity throughout the state. Members supported the amendments to this rule that expand representative seats on the Scenic Bikeways Committee to support its intent to make the Scenic Bikeways Program more approachable and accessible to all.

FISCAL AND ECONOMIC IMPACT:

Potential fiscal and economic impacts would largely be seen as positive. Industries including or adjacent to travel, recreation, tourism and specific cycling businesses could see increase economic opportunity. A full economic impact report was completed in 2014 that found that Scenic Bikeways attracted visitors and cyclists who spent millions of dollars locally on their activities, travel, food, fuel, lodging, and other recreation.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) State agencies impacted by the rule adoption include the Oregon Parks and Recreation Department who administers the Scenic Bikeways Program and already impacted by the program's administrative rules. These proposed amendments will not economically impact the state or its associated agencies. No adverse economic impact is anticipated for units of local government or members of the public as a result of these amendments. Potential impact from greater opportunity for involvement or more proposed scenic bikeways could result in positive economic impact by way of increased tourism and accessibility.

(2) (a) It is difficult to estimate the number and types of small businesses subject to the rule as the rule impacts the Scenic Bikeways program and its processes. Potential impacts could be seen in the state's travel and tourism industries, cycling and related industries, local businesses including agricultural activities along or nearby scenic bikeways and many others. (b) There are no expected costs associated with reporting, recording keeping and administrative activities imposed by these proposed amendments. (c) Compliance of the amended changes will not result in additional cost of professional services, equipment supplies, labor and administration.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The interests of small businesses were expressed during the Rules Advisory Committee (RAC) which included individual who own small businesses, represent a destination association who works to promote local small businesses, current and former county commissioners and others who's professional and personal interests overlap with those of their local community's small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

736-009-0020, 736-009-0025, 736-009-0030

AMEND: 736-009-0020

RULE SUMMARY: Added to the definition for "Bicycle Path" and added "Improved Public Way" to allow for wider range of bike paths not limited to just paved paths and widened definition to be more inclusive of accessible equipment people with disability use to recreate. Added to "Amenities" to encourage proponents though not required and could result in greater service to the public.

CHANGES TO RULE:

736-009-0020

Definitions ¶¶

For purposes of this division, unless the context requires otherwise:¶¶

- (1) "Agriculture/Forestry" means crops, wineries, vineyards, ranches, fisheries, orchards, nurseries, old-growth and reforested lands.¶¶
- (2) "Amenities" may include potable water, lodging, camping, restrooms, bike shops, equipment storage, charging stations, restaurants and grocery stores.¶¶
- (3) "Commission" means the Oregon Parks and Recreation Commission.¶¶
- (4) "Committee" means the eleven-member Scenic Bikeway Committee appointed by the director to recommend the establishment and designation of Oregon Scenic Bikeways to the department.¶¶
- (5) "Council" means the Oregon Recreation Trails Advisory Council.¶¶
- (6) "Department" means the Oregon Parks and Recreation Department.¶¶
- (7) "Director" means the Oregon Parks and Recreation Director appointed under ORS 390.127.¶¶
- (8) "Landform" means topography that becomes more interesting as it gets steeper or more massive, or more severely sculptured. Outstanding landforms may be monumental or artistic and subtle.¶¶
- (9) "Landscape" means a combination of outdoor, manmade, natural, and agricultural features within a view shed.¶¶
- (10) "Linear Route" means a route that progresses from a starting to an ending point. The beginning and end of a linear route do not meet, but may connect to another route or a destination point.¶¶
- (11) "Loop Route" means a route that starts and ends at the same location or connects to another cycling route that returns to the starting point.¶¶
- (12) "Natural Features" means non-manmade attractions including geologic formations, wildlife sites, waterfalls, lake basins, old-growth stands, and mountain meadows.¶¶
- (13) "Oregon Recreation Trail" means any trail established and designated by the department pursuant to the

Oregon Recreation Trails System Act.¶

(14) "Oregon Regional Trail" means any trail that connects communities, recreation sites or other trail systems and provides close-to-home recreational opportunities.¶

(15) "Oregon Scenic Bikeway" means a route designated for bicyclists under ORS 390.962.¶

(16) "Oregon Scenic Trail" means trails that provide access to and enjoyment of significant scenic natural views and features.¶

(17) "Bicycle Path" means a paved ~~trail~~ improved public way along a road or an independent right-of-way used by ~~bicyclists~~ individuals operating a bicycle or electric assisted bicycle, pedestrians, (including joggers, skaters, and users of wheelchairs), other adaptive equipment and other non-motorized travelers.¶

(18) "Paved" means a hard surface such as concrete, asphalt cement concrete (A/C) or other stable bituminous surface.¶

(19) "Improved Public Way" means a legally documented right of way that could include a gravel surface.¶

(20) "Proponent" means a group, organization, or individual who proposes the designation of an Oregon Recreation Trail.¶

(201) "Public Land" means any lands owned or leased by the federal government, this state or any political subdivision thereof.¶

(212) "Route" means a combination of streets and paths used to travel to destinations or in corridors for transportation or recreation.¶

(223) "Scenic" means an abundance and variety of aesthetically-pleasing manmade or natural elements along the route.¶

(234) "Trail Corridor" means the land associated with the use agreement, easement or right-of-way upon which the trail lies.¶

(245) "Unique" means relatively rare or unusual as applied to a resource or combination of features within a geographic region.¶

(256) "Vegetation" means forest, prairies, orchards, active farm cropland and tree farms with a variety of patterns, form and textures created by plant life, and small scale vegetation features that add striking and intriguing detail elements to the landscape.¶

(267) "Water" means ocean, rivers, lakes, streams, waterfalls, rapids, marshes, estuaries, bays, canals and harbors that add movement or serenity to a scene, or the degree to which water dominates the scene.

Statutory/Other Authority: ORS 390.124

Statutes/Other Implemented: ORS 390.950 - 390.989

AMEND: 736-009-0025

RULE SUMMARY: This rule seeks to expand the number of seats on the Scenic Bikeways Advisory Committee and increase participation and representation from public at-large members to require members from a historically underrepresented community and a representative person with a disability. Changed the number of members on the advisory committee to 13 from 11. Changed the number of at-large seats to 5 from 3. The amendment to allow for representatives but potentially non-members of the Oregon Bicycle and Pedestrian Advisory Committee and the Oregon Recreation Trails Advisory Council will also extend opportunities to more diverse perspectives. Process around quorum was also clarified to simple majority of the committee. Updated the name of Oregon Destination Marketing Organizations to their new official name, Oregon Destination Association.

CHANGES TO RULE:

736-009-0025

Oregon Scenic Bikeways Committee ¶

- (1) The director shall appoint a Scenic Bikeways Advisory Committee composed of ~~11~~ 13 members.¶
(a) The following committee members shall be nominated by their respective directors for appointment:¶
(A) A representative of the Oregon Tourism Commission (dba Travel Oregon);¶
(B) A representative from the Oregon Department of Transportation;¶
(C) A representative of a Federal lands management agency; and¶
(D) ~~A member of the~~ representative appointed by the Oregon Bicycle and Pedestrian Advisory Committee established pursuant to ORS 366.112¶
(b) The following committee members shall be appointed by the director:¶
(A) A representative of Oregon Destination Marketing OrganizAssociations;¶
(B) ~~A liaison from~~ representative appointed by the Oregon Recreation Trails Advisory Council (ORTAC) established pursuant to ORS 390.977;¶
(C) A representative of counties who shall be selected in consultation with the Association of Oregon Counties;¶
(D) A representative of cities who shall be selected in consultation with the League of Oregon Cities; and¶
(E) ~~The~~ Five at-large members, with at least one member who represents a historically underrepresented community and one member who represents persons with disabilities.¶
(2) Committee members appointed under subsection (1)(b) may serve two consecutive four-year terms on the committee.¶
(3) The director shall appoint the chair from the committee membership, considering the recommendations of the committee.¶
(4) The committee shall meet at times and places specified by the call of the director.¶
(5) A simple majority of ~~the~~ committee members ~~of the committee~~ appointed under subsections (1)(a) and (b) constitutes a quorum for the transaction of business.¶
(6) Function and Duties of Scenic Bikeways Committee:¶
(a) The committee shall evaluate proposed Oregon Scenic Bikeways against the criteria provided in OAR 736-009-0030 and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2). The committee shall make a recommendation to the director on each application for a proposed Oregon Scenic Bikeway.¶
(b) The committee shall evaluate each Oregon Scenic Bikeway route at least once every five years. The committee may recommend that the department improve, remove, or reroute portions of a route no longer meeting the criteria for an Oregon Scenic Bikeway.
Statutory/Other Authority: ORS 390.971(8)
Statutes/Other Implemented: ORS 390.956, 390.959, 390.962, 390.968, 390.971

AMEND: 736-009-0030

RULE SUMMARY: Removed the word "superior" from 736-009-0030(2) as it is subjective and removal will expand number of eligible routes for designation. Removed requirement for a public meeting during ORTAC consultation as it duplicates public process. Addition of 736-009-0030(5)(e)(E) helps protect the current varied recreation use on existing trails during the evaluation of new scenic bikeway applications.

CHANGES TO RULE:

736-009-0030

Establishing Oregon Scenic Bikeways ¶¶

Pursuant to ORS 390.962(1), the department prescribes the criteria in this rule in addition to those provided in the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2), for the designation of Oregon Scenic Bikeways.¶¶

(1) Oregon Scenic Bikeways may be comprised of bicycle paths, designated transportation corridors or a combination thereof. Oregon Scenic Bikeways may include route sections located in or near existing rights-of-way for roads or highways.¶¶

(2) Oregon Scenic Bikeways may be linear, loop, or a combination of linear and loop routes that are routes of ~~superior~~ scenic quality that inspire people to experience Oregon's natural beauty and cultural heritage by bicycle.¶¶

(3) Pursuant to ORS 390.962(1), an Oregon Scenic Bikeway may be located:¶¶

(a) Over public land with the consent of each governmental entity having jurisdiction over the lands designated; or¶¶

(b) Over privately-owned lands in the manner and subject to the limitations provided in ORS 390.950 to 390.989 and 390.995(2).¶¶

(4) The Department will periodically call for Bikeway applications.¶¶

(5) Evaluation of Applications¶¶

(a) To be considered as an Oregon Scenic Bikeway, a proponent must submit to the department a completed Oregon Scenic Bikeway Application form in the format specified by the department.¶¶

(b) The department will review each Oregon Scenic Bikeway proposal for completeness, including whether the application adequately addresses the considerations provided in ORS 390.965(2). The department will provide all complete, eligible applications to the committee. Incomplete or ineligible applications will be returned to the proponents with an explanation of the deficiencies.¶¶

(c) The committee will consider routes for designation based on the criteria provided in sections (1)-(3) of this rule and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).¶¶

(d) The committee shall conduct a field review of the proposed route, to include a review conducted on bicycles by no less than three (3) members of the committee.¶¶

(e) The committee shall score the route against criteria established in the Oregon Recreation Trails System Act, ORS 390.950 through 390.989 and 390.995, and this rule, including but not limited to:¶¶

(A) Emphasis on use of public lands,¶¶

(B) Minimizing adverse effects on adjacent landowners,¶¶

(C) Harmony with and complement to established forest, agricultural, or other use plans, and¶¶

(D) Any natural features, agriculture, forest, unusual or unique landforms, vegetation, water components, scenic beauty and interest, as well as amenities available to the route.¶¶

(E) Minimizing adverse effects and conflicts between other existing recreation user types.¶¶

(f) Based on the application, field review and scoring the committee shall determine if the route qualifies to be recommended for designation as an Oregon Scenic Bikeway.¶¶

(g) The committee will forward recommendations for designation to ORTAC for ~~consultation during an ORTAC public meeting.~~¶¶

(h) The committee will forward recommendations for designation to the director for approval to advance to the designation process.¶¶

(i) If the committee does not recommend designating the route as an Oregon Scenic Bikeway, it shall provide comments and recommendations to the proponent. The proponent may reapply to the department only after fully addressing the recommendations of the committee.¶¶

(6) Designation Process:¶¶

(a) The Proponent must submit to the department a completed Bikeway Plan in the format specified by the department.¶¶

(b) The department shall hold public meetings on the recommended designation as provided in ORS 390.965(1).¶¶

(c) The committee shall provide each recommendation for designation as an Oregon Scenic Bikeway to the director.¶

(d) After the public meetings required in subsection (b) the director shall either:¶

(A) Submit the committee's recommendation to the commission for approval or denial of the proposed Oregon Scenic Bikeway; or¶

(B) Request that the committee provide further consideration of issues presented in the public meeting.¶

(7) Scenic Bikeway Management¶

(a) The department will enter into written cooperative agreements with landowners, federal agencies, other state agencies, local governments, private organizations and individuals as necessary to ensure that the development, signing, operation, maintenance, location or relocation of the trail meet the Oregon Scenic Bikeway Standards.¶

(b) The department shall evaluate each Oregon Scenic Bikeway at least once every five (5) years. The department will provide the committee an evaluation of the Scenic Bikeway including any significant changes on the route that would diminish its scenic qualities and the strength of the local proponent group. Upon review, the committee may recommend:¶

(A) The trail be improved to meet the standards of state designation; or¶

(B) Removal of Oregon Scenic Bikeway designation when or if the route no longer meets the criteria.¶

(c) Signing and Publication of Oregon Scenic Bikeway.¶

(A) Consistent with the requirements of ORS 390.959, the department will establish sign standards and coordinate sign placement for all routes that the commission designates as an Oregon Scenic Bikeway.¶

(B) The department will publish on its web page and make available standardized route maps for all Oregon Scenic Bikeways.

Statutory/Other Authority: ORS 390.971(8)

Statutes/Other Implemented: ORS 390.956, 390.959, 390.962, 390.968, 390.971