

OHVR Grant Eligibility

A Legal Perspective

By: H. Nicole Hanna, AAG

The opinions provided herein are mine alone and are not officially attributed to the Utah Attorney General's Office.

The Pre-Scoring Process



Eligibility determinations are made as part of the initial grant application review process before they are scored by the advisory committee.



Generally, eligibility determinations are inherently exclusive by nature: meaning that if an entity is not eligible, no matter how good their project is, it cannot legally be funded by DOR.

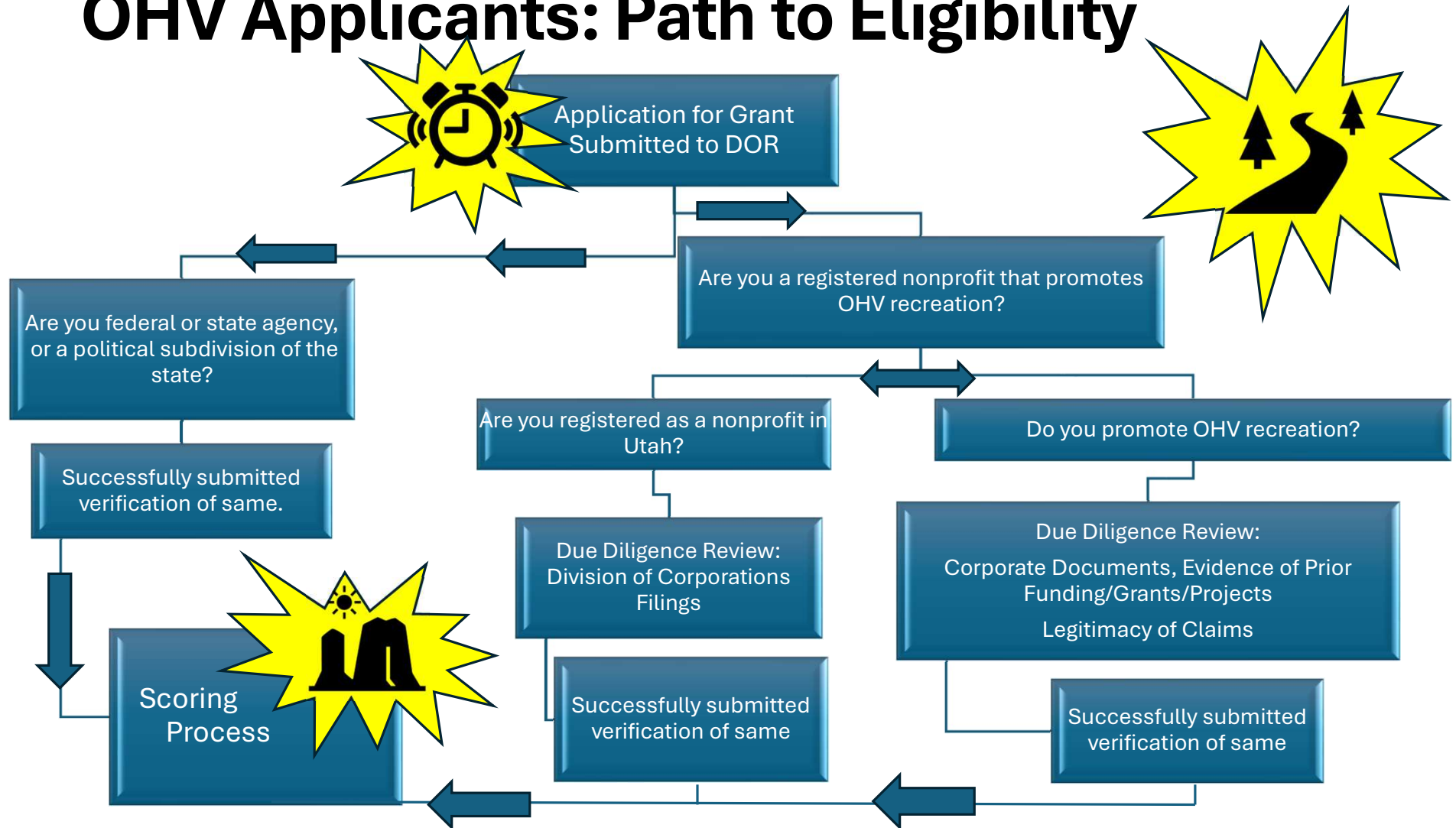


Conceptually, most eligibility determinations are the same as the determination of whether an application is complete: the answer is generally a fairly simple determination of whether the basic requirements have been met.

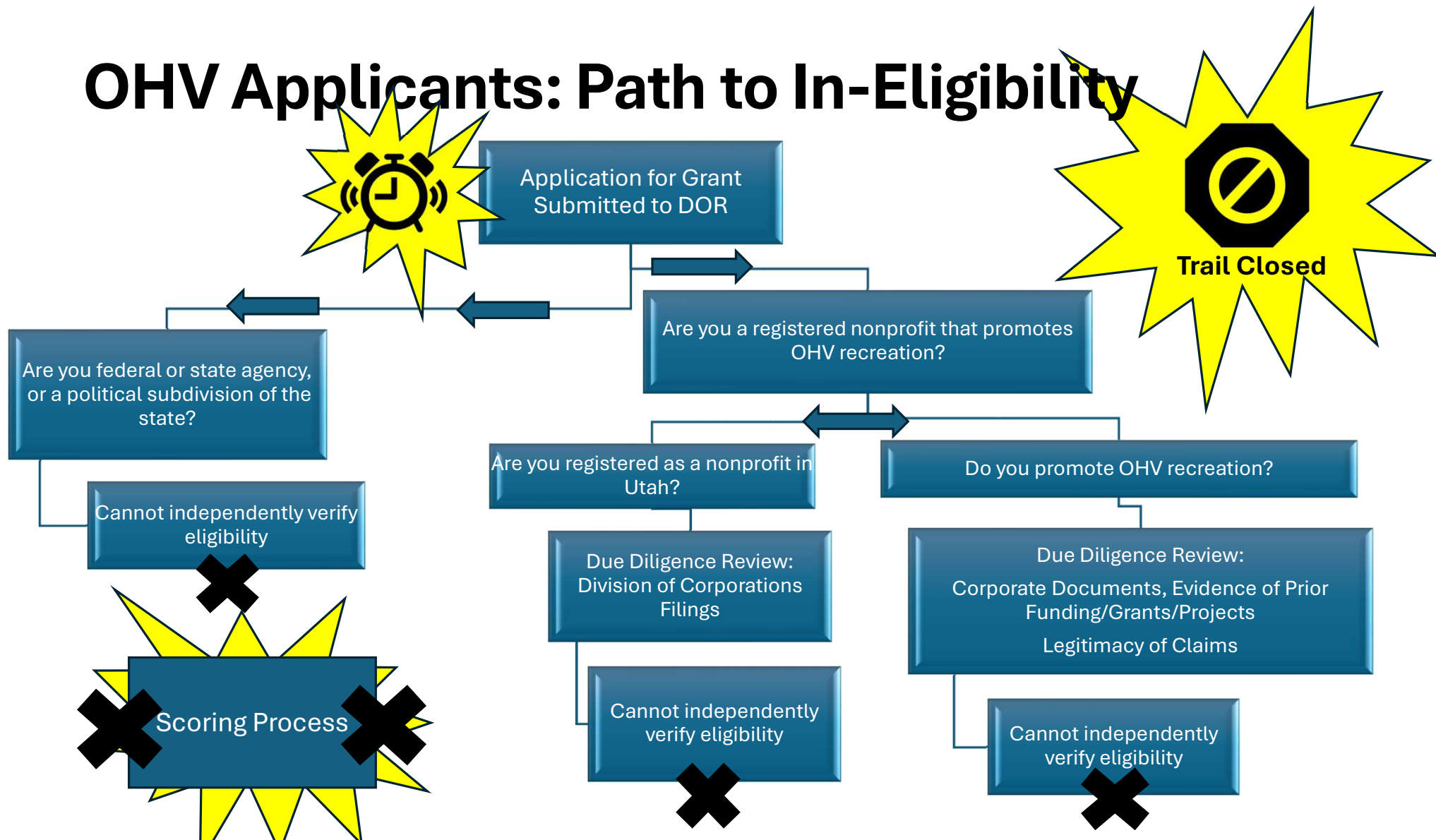


Ultimately it is the applicant's responsibility to demonstrate eligibility.

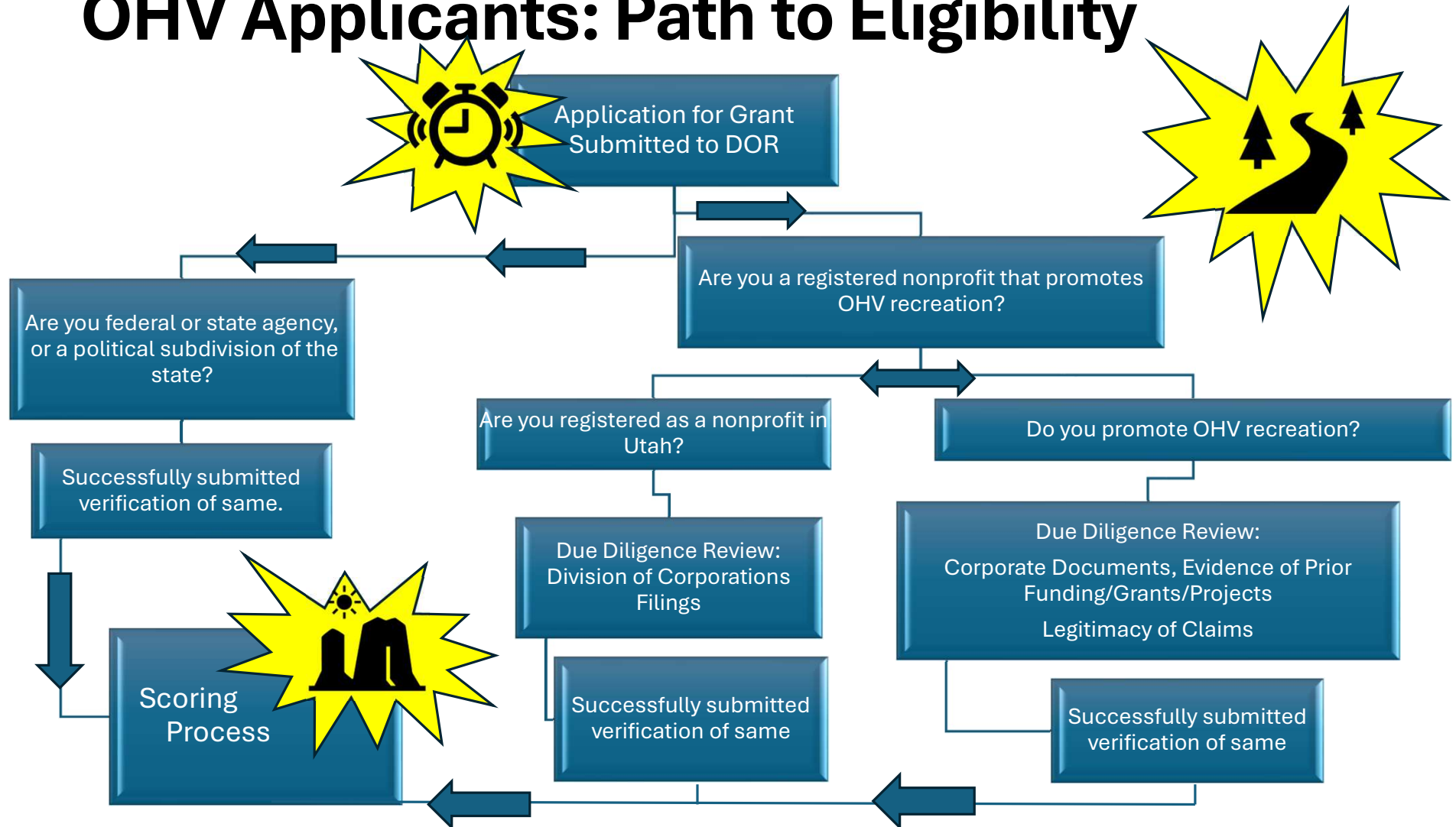
OHV Applicants: Path to Eligibility



OHV Applicants: Path to In-Eligibility



OHV Applicants: Path to Eligibility



Eligibility: Statutory Authority

- **Eligibility means an entity must fit into one of the following categories:**
 - **Federal Agencies** (Executive branch: but not the military, Congress or the judiciary) UCA § 63G-16-301(4).
 - **State Agencies** (DNR, DOR) "State agency" means: a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of the executive branch of state government; or an education entity. UCA § 63G-16-301(7).
 - **Political Subdivisions of the State:** "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, special district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, or other governmental subdivision (Jordan Valley Water Conservancy District) or public corporation (Utah Housing Corporation). UCA § 63G-7-102(10).
 - **OHV organizations** which are incorporated as nonprofit corporations in Utah for the purpose of promoting the interests of OHV recreation. UCA § 41-22-19(1)(viii).

OHV Organizations: Requirements for Eligibility

Must be
incorporated
in Utah as a
nonprofit
corporation

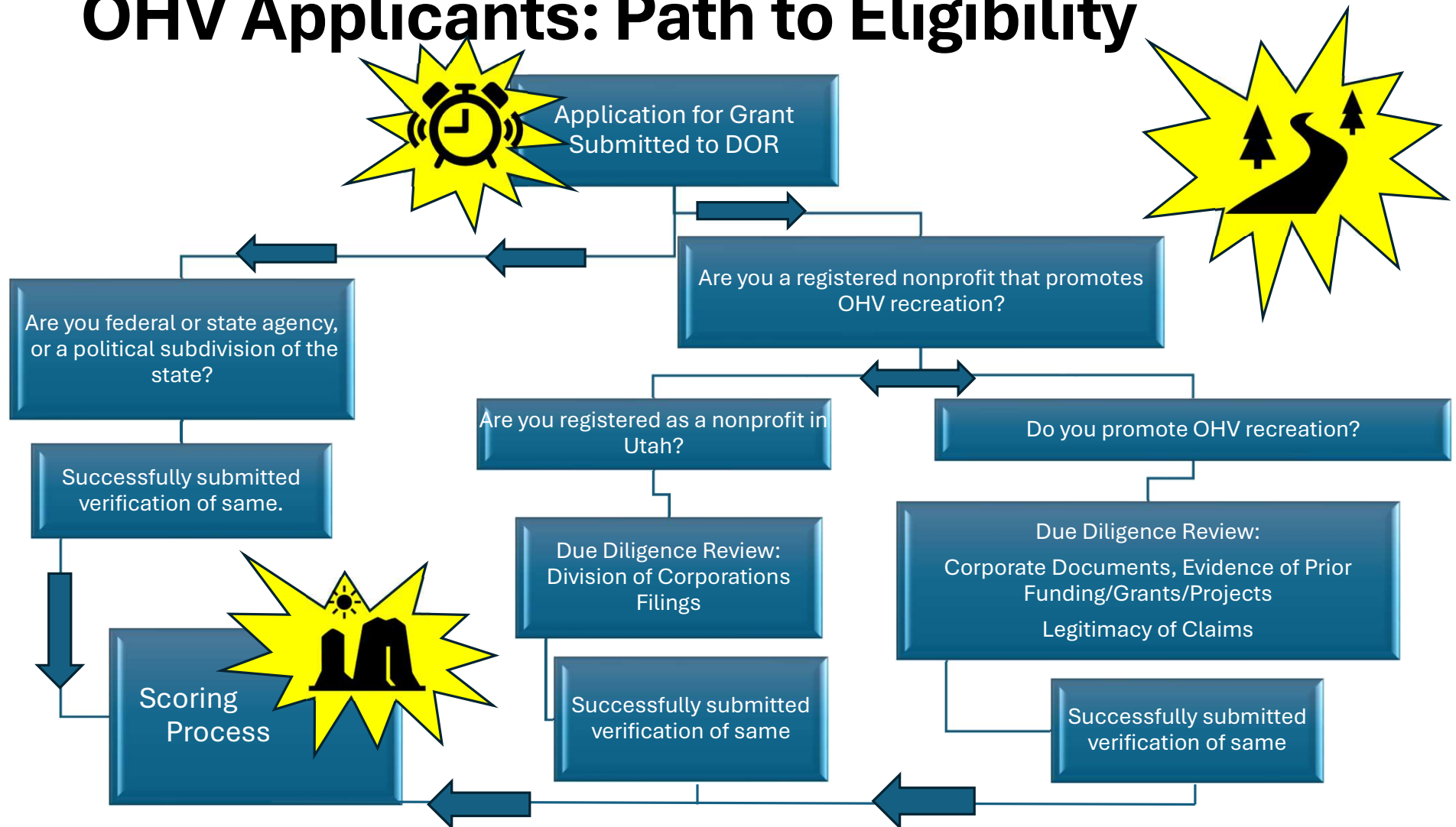
- Cannot be eligible as only a registered charitable organization. UCA § 13-22-110.
- Cannot be a “foreign nonprofit corporation” (meaning they are incorporated in another state) unless they also incorporate in Utah. UCA § 16-6a-102.

AND

Must be
created for
the purpose
of promoting
the interests
of OHV
recreation

- Corporate Documents: Articles of Incorporation; Bylaws
- Does not have to be the sole purpose

OHV Applicants: Path to Eligibility



Incorporating in Utah-Division of Corporations & Commercial Code



THE ONLY WAY TO INCORPORATE IN UTAH AS A
NONPROFIT ORGANIZATION IS THROUGH
REGISTRATION WITH THE DIVISION OF
CORPORATIONS & COMMERCIAL CODE



LEGAL DATABASE OF ALL NONPROFIT
ORGANIZATIONS REGISTERED IN UTAH, ALONG
WITH THEIR INCORPORATION DOCUMENTS AND
THE PRIMARY SOURCE OF VERIFYING ELIGIBILITY
FOR NONPROFITS.



[HTTPS://COMMERCE.UTAH.GOV/CORPORATIONS/](https://commerce.utah.gov/corporations/)



Incorporating in Utah- Requirements

Required filings.

- A nonprofit corporation is incorporated, and its corporate existence begins when the articles of incorporation are filed by the Division of Corporations and commercial unless a delayed effective date is specified or there is a proceeding by the state to revoke, cancel or involuntarily dissolve the nonprofit.
- The filing of the articles of incorporation by the Division of Corporations is conclusive proof that all conditions precedent to incorporation have been satisfied. UCA § 16-6a-203(1) and (2).

Who Can File?

- Anyone over the age of 18 who files articles of incorporation that meet the following requirements:
 - (a) Purpose;
 - (b) Corporate name (UCA § 16-6a-401);
 - (c) Registered Agent (UCA § 16-17-203(1));
 - (d) Incorporator's names and addresses;
 - (e) Voting rights (if any);
 - (f) Stock/shares (if any); and distribution of assets on dissolution. UCA §§ 16-6a-201 and 202.

Incorporating in Utah- Articles of Organization Sample Language

Things to Notice:

- Only very basic provisions are required, and the language is usually intentionally broad
- **Purpose clause:**
 - *The specific purposes, but not limited to, for which the corporation has been formed are enumerated.*
 - To act and operate exclusively as a nonprofit corporation pursuant to the laws of the State of Utah, and to act and operate as a charitable organization in lessening the burdens of government, providing relief of the poor and distressed or underprivileged, and promoting social welfare by reducing unemployment through economic development.
 - To engage in any and all activities and pursuits, and to support or assist such other organizations, as may be reasonably related to the foregoing and following purposes.
 - To engage in any and all other lawful purposes, activities and pursuits, which are substantially similar to the foregoing and which are or may hereafter be authorized by Section 501(c)(3) of the Internal Revenue Code and are consistent with those powers described in the Utah Nonprofit Corporation and Cooperation Association Act, as amended and supplemented.
 - To solicit and receive contributions, purchase, own and sell real and personal property, to make contracts, to invest corporate funds, to spend corporate funds for corporate purposes, and to engage in any activity "in furtherance of, incidental to, or connected with any of the other purposes."
 - *Additional Requirements Must be Met if Exempt From Federal Tax*

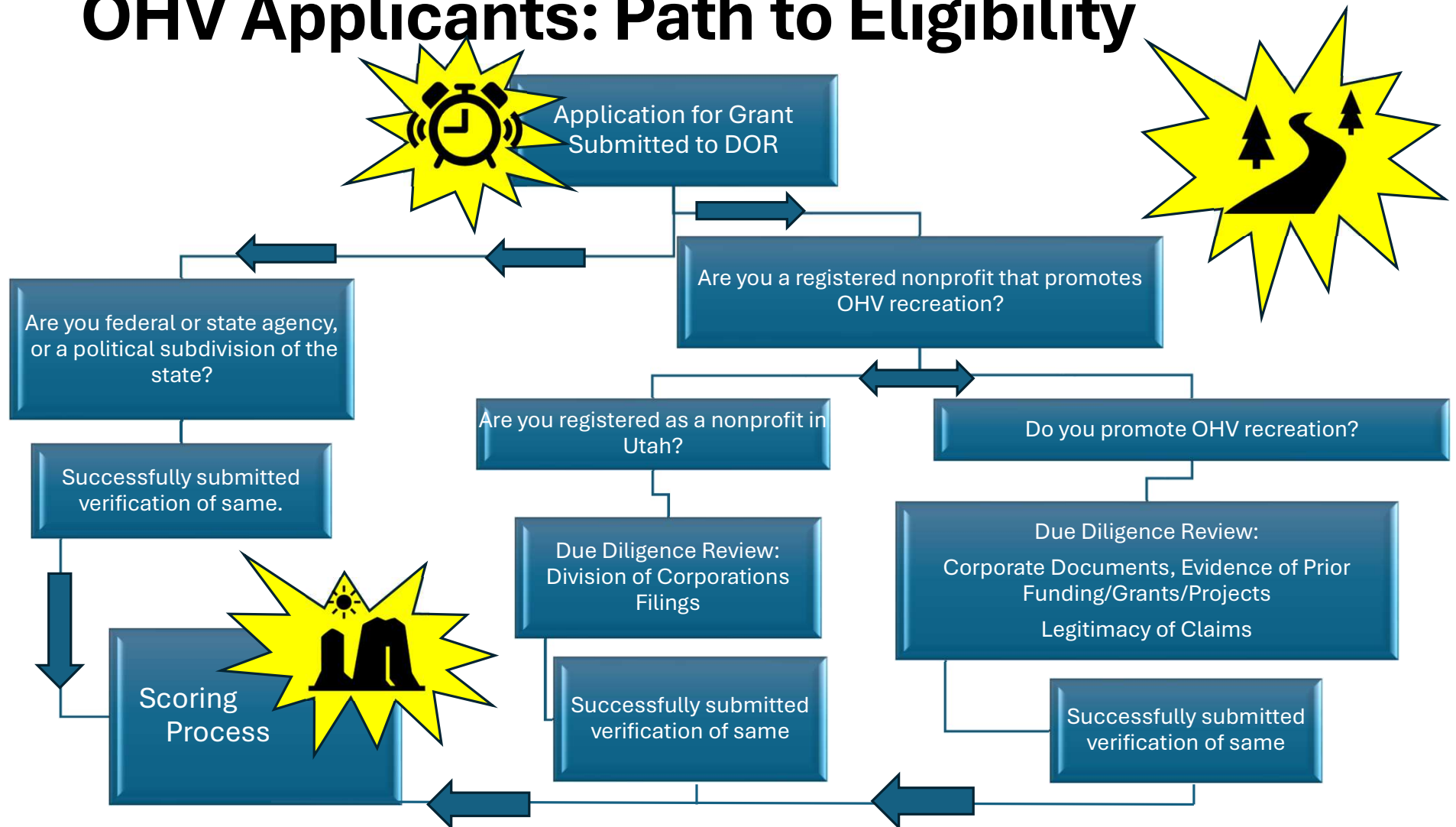


Incorporating in Utah: By-laws Sample Language

• **ARTICLE II-PURPOSE:**

- UNA is organized to operate exclusively for charitable and educational purposes.
- UNA does not discriminate on the basis of race, religion, gender, national origin, disability, age, or sexual orientation.
- UNA's mission is to unify, strengthen, and elevate Utah's nonprofits.
- UNA's vision is to promote strong and vibrant communities for all Utah.

OHV Applicants: Path to Eligibility



Promoting the Interests of OHV Recreation

- **Articles of Incorporation/Bylaws/Other Corporate Documents**
- **Inclusive not Exclusive**
- **Baseline Determination**
 - *DOR's review:*
 - Legal (code, rule and corporate document review)
 - Practical (site visits, modification of documents, organizational history, intent, discussions with counsel, evidence of past OHV projects/ investments in projects)
 - Policy (Will this further the interests of OHV recreation/access consistent with the grant program's intent and purpose)
 - Law Enforcement (registration/compliance)
 - *Not a cursory process*





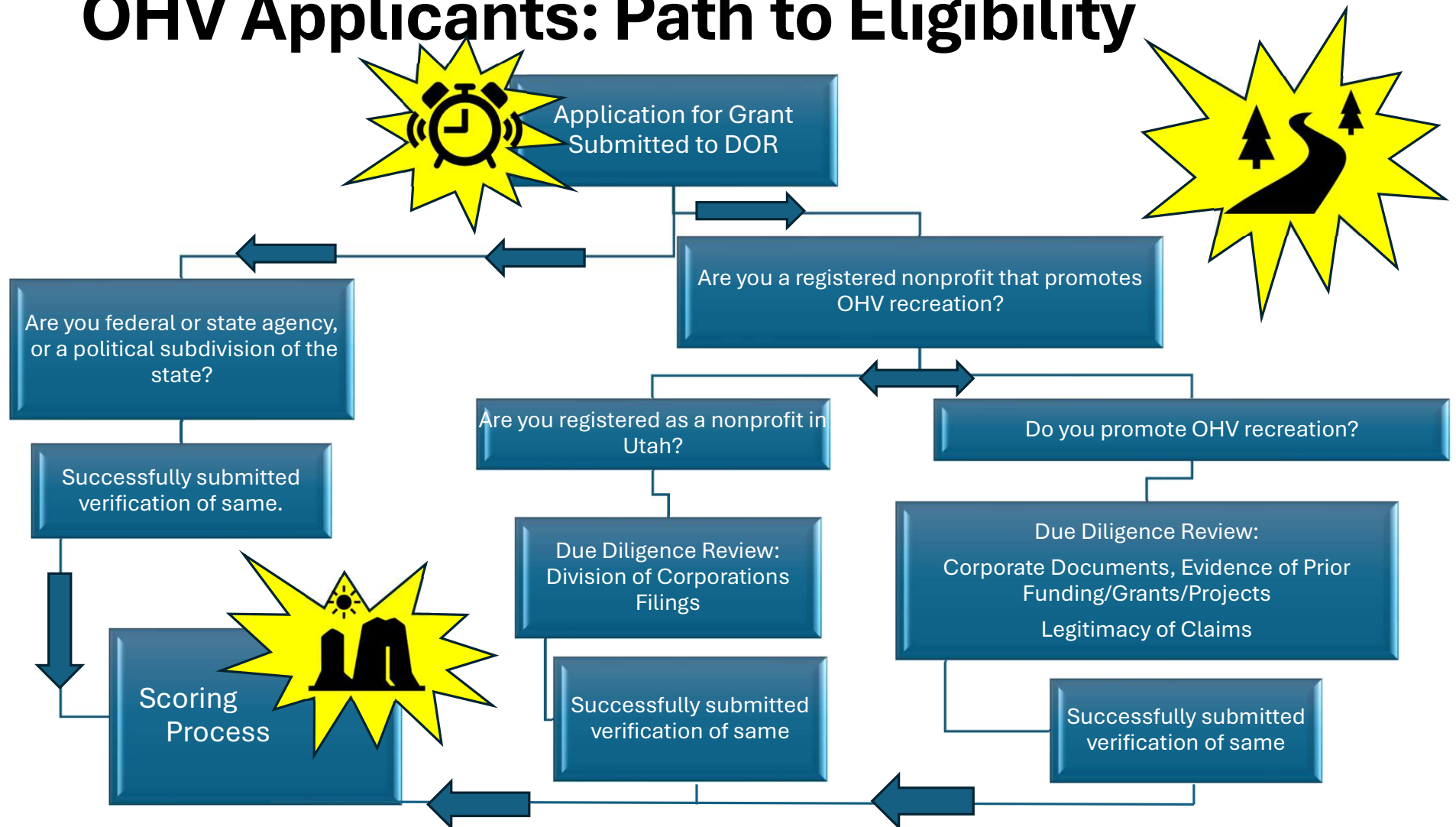
Eligibility vs. Project Funding

Division of Duties

- **DOR**
 - Eligibility and other determinations that are dictated by code, rule or policy.
 - Not discretionary unless stated so in code, rule or policy (shall vs. may)
 - E.g., Compliance with UCA § 41-22-19 (Funding provision that dictates what the grant funds can and cannot be used for under Utah law).
 - E.g., Applications were completed timely and submitted by DOR's due date.
- **Advisory Council**
 - Duties advising on policies related to the use of off-highway vehicles. UCA § 41-22-2(1).
 - Does not determine eligibility, but rather evaluates projects based on the available funds, project applications, and all other requirements set forth in rule. R650-301.

Note: DOR may act outside of the recommendations of the Advisory Council, but it is generally not their practice.

OHV Applicants: Path to Eligibility



Eligibility in Practice: Foundation for America's Public Lands

Entity Determination:

- Federal Agency/OHV Organization?

Federal Agency Eligibility:

- Established by an Act of Congress in 2019
- Charitable arm of the BLM, allowing the Foundation to partner with private and public entities to "foster[] strategic partnerships and generate...[]...private support to help connect more people and communities to public lands and waters, today and for generations to come." (Mission Statement).
- Operating Agreement with the BLM (Articles of Incorporation/By-Laws)
- Registered as a charitable entity where required by state law.
 - The eligibility determination is made by reviewing these documents for language indicating that the nonprofit is incorporated in Utah and promotes the interests of OHV recreation.
- Incorporated in Washington, D.C. as a nonprofit.

The Foundation has agreed to incorporate in Utah as a nonprofit, so we go to purpose:

- Must "promote the interests of OHV recreation."
- The Foundation has demonstrated their commitment to support outdoor recreation activities, included motorized and non-motorized outdoor recreation activities.

Therefore, they are likely eligible to receive grant monies as an OHV organization that promotes OHV recreation.



Questions and Comments: Grant Eligibility



Trail Cameras and Utah Law

Compliance with the Law

- In order to have trail cameras on public lands year-round, state agencies must comply with the requirements of UCA § 23A-5-307:

The Law

- *UCA § 23A-5-307. Trail Cameras*
 - (1) As used in this section, "trail camera" means a device that is not held or manually operated by a person and is capable of capturing images, video, or location data of wildlife using heat or motion to trigger the device.
 - (2)-[3] [omitted]
 - (4) A trail camera is prohibited on public land during the period beginning on July 31 and ending on December 31, except for use by:
 - (i) the division for monitoring or research;
 - (ii) a land management agency in the course the land management agency's regular duties;
 - (iii) any of the following conducting research in conjunction with the division:
 - (A) a non-governmental organization;
 - (B) an educational institution; or
 - (C) certain individuals.

The Solution

- DOR and DWR are working on an MOU based on other similar interagency agreements.



Questions and Comments: Trail Cameras