

**DEPARTMENT OF PARKS AND RECREATION
OFF-HIGHWAY MOTOR VEHICLE RECREATION
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS**

FINAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATIONS

Public Resources Code (PRC) § 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003, (Act), as amended, governs off-highway motor vehicle grants and cooperative agreements with cities, counties, districts, federal agencies, federally recognized Native American Tribes, nonprofit organizations, educational institutions, and, beginning in 2008, State agencies. Amendments to these sections of the statute that became effective in 2003 (AB 2274) and in 2005 (AB 2666) necessitated the development of the Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program Regulations (CCR Title 14, Division 3, Chapter 15.5, § 4970.49 through 4970.72), which were initially adopted as emergency regulations and permanently adopted in May, 2007.

The provisions of the Act were to be repealed on January 1, 2008. On October 12, 2007, the Governor signed Senate Bill 742 (SB 742), effective January 1, 2008, which extended the Act to January 1, 2018, deleted certain obsolete provisions, and made significant amendments to the provisions that govern the OHMVR Grants and Cooperative Agreements Program.

Since the 2007 permanent regulations mentioned previously are no longer consistent with the current statutes, the Department of Parks and Recreation (Department) is proposing to repeal the text of the regulations and the OHMVR Division, Grants and Cooperative Agreements Program, Grants Program Manual (April 2007), which was incorporated by reference. The Department is also proposing to permanently adopt 2008 regulations, which would appear in the CCR as Title 14, Division 3, Chapter 15, § 4970.00 – 4970.26 and would apply to grant and cooperative agreement applications received by the OHMVR Division on or after January 1, 2008.

The Department is proposing to adopt 2008 regulations, CCR Title 14, Division 3, Chapter 15, § 4970.00 – 4970.26, for the following specific purposes:

- To comply with the current governing statute, PRC § 5090.01 – 5090.70, as amended by SB 742;
- To provide specific regulation language that will ensure clarity to potential applicants and the public as required by Government Code §11349.1;
- To eliminate a separate Grants Program Manual and to include in the regulation text the application instructions, an application evaluation system, and administrative procedures in order to avoid redundancy and to provide more clarity to applicants;

- To provide for the submission of grant and cooperative agreement applications exclusively via the Internet through the OHMVR Division's On-line Grant Application (OLGA);
- To require a two-step application submission that will ensure a smoother public review and comment process, allow a preliminary review by the OHMVR Division, and provide the opportunity for applicants to revise their applications and submit a stronger more competitive and responsive final application; and
- To provide the 2008 Soil Conservation Standard and Guidelines, which are incorporated by reference.

Refer to the sections beginning on page six for a detailed explanation of the specific purpose of each section within the proposed regulations. Each section also includes relevant public comments received during the initial 45-day written comment period (August 22 through October 6, 2008) and at the two public hearings held on October 7, 2008 and October 9, 2008 in Sacramento and San Diego, respectively; and also comments from the subsequent 15-day written comment period (October 22 through November 5, 2008). Following each comment is the Department's response.

NECESSITY

The Legislature enacted SB 742, effective January 1, 2008, to extend the provisions of the Act and to amend many of the laws affecting both OHV recreation and the OHMVR Grants and Cooperative Agreements Program. This Program provides a means for the State to assist eligible agencies and organizations as defined in statute to develop, maintain, expand and manage high-quality OHV recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat of areas in a manner that will sustain long-term OHV recreation. These proposed regulations are necessary to clarify the intent of the amended provisions of PRC § 5090.01 et seq. Refer to the sections beginning on page six for an explanation of the necessity of each section within the proposed regulations.

MANDATES FOR SPECIFIC ACTIONS OR PROCEDURES OR SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not impose any mandates on agencies or organizations. Participation in the OHMVR Grants and Cooperative Agreements Program is voluntary.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any other technical, theoretical, or empirical studies, reports, or documents other than those incorporated by reference in proposing these regulations.

REASONS FOR THE PROPOSED REPEAL OF THE 2007 PERMANENT REGULATIONS

The Department proposes to repeal the 2007 regulations, CCR Title 14, Division 3, Chapter 15.5, § 4970.49 – 4970.72, in order to adopt regulations that are consistent with the current statute, which was amended by SB 742, and provide the clarity necessary to ensure the administration of an efficient and effective program. Some of the specific reasons for the repeal of the 2007 regulations are described below. Each of the following paragraphs first describes some of the provisions in the Act and/or the 2007 regulations prior to the enactment of SB 742. Each paragraph then describes the SB 742 amendments to those provisions and/or the revisions in the proposed 2008 regulations.

Prior to the enactment of SB 742, the Act, which was clarified by the 2007 regulations, imposed certain duties and responsibilities on the OHMVR Commission and the OHMVR Division. The language of SB 742 has revised and recast some of those duties and responsibilities.

The Act provided that grants may be made to cities, counties, districts, nonprofits, and educational institutions; and cooperative agreements may be entered into with federal agencies or federally recognized Native American Tribes. The language of SB 742 has expanded the eligible applicants to include State agencies.

The Act provided that grant and cooperative agreements may be awarded for the planning, acquisition, development, maintenance, administration, operation, enforcement, restoration, and conservation of trails, trailheads, area, and other facilities associated with the use of off-highway motor vehicle, and programs involving off-highway motor vehicle education and safety. The provisions of SB 742 include percentages of the total amount appropriated by the Legislature to be awarded for specified purposes: fifty percent for operation and maintenance, twenty-five percent for restoration, twenty percent for law enforcement, and five percent for education and safety.

SB 742 requires law enforcement grants and cooperative agreements to be allocated to local and federal law enforcement entities for personnel and related equipment, with the amount of the grant or cooperative agreement being proportional to the off-highway motor vehicle enforcement needs under each entity's jurisdiction. The provisions of SB 742 also require the OHMVR Division to develop a method to determine the law enforcement needs for each applicant and the eligibility guidelines for law enforcement projects. SB 742 also provides forty percent of law enforcement grants and cooperative agreements shall be given to local law enforcement entities, thirty percent to units of the United States Bureau of Land Management, and thirty percent to units of the United States Forest Service. Also included in SB 742 is the requirement the Department to audit law enforcement entities that receive grant money at least once every five years.

The Act required all grants and cooperative agreements to be awarded on a competitive basis. The provisions of SB 742 require the distribution of grants and cooperative

agreements on a competitive basis except for law enforcement grants, which shall be allocated in accordance with the method described in the previous paragraph.

The Act required cities, counties, districts, nonprofit organizations, and educational institutions provide matching funds, or the equivalent value of services, material, or property used, in an amount not less than twenty-five percent of the total expense of certain project types. SB 742 requires all applicants to provide matching funds or the equivalent value of services or material used, in an amount not less than twenty-five percent of the total project cost.

The Act did not include an appeal process for the awarding of grants and cooperative agreements. The provisions of SB 742 require the OHMVR Division to establish an administrative appeal process as part of the grants and cooperative agreements program. SB 742 also provides the specific grounds, the procedures, and the timelines for an appeal.

The Act required a Wildlife Habitat Protection Program (WHPP) and a Soil Conservation Program for all federal agencies and federally recognized Native American tribe applications with the exception of applications solely for law enforcement. The Act also provided that all city, county, and appropriate district applications for acquisition and development projects shall require a WHPP and a Soil Conservation Program. SB 742 applies the WHPP and the Soil Conservation Program requirements to all projects that involve a ground disturbing activity. The language in the Definitions section of the proposed 2008 regulations is clarifying that a WHPP is an animal and plant Habitat Management Program (HMP) pursuant to the statute and refers to the program HMP throughout the regulations text.

The 2007 regulations included the OHMVR Division, Grants and Cooperative Agreements Program, Grants Program Manual (April 2007), which was incorporated by reference. The Grants Program Manual, which described in detail to eligible applicants how to apply for grants and cooperative agreements, consisted of three chapters, an appendix, and a glossary of terms. Chapter One addressed the specific application instructions for each project type; Chapter Two described the application evaluation system that included evaluation criteria for each project type; Chapter Three covered the project administration procedures that clarified the responsibilities of the OHMVR Division and the grantee. The Appendix included all the required forms and instructions, and the glossary defined terms that were used throughout the Grants Program Manual.

In order to avoid the confusion that resulted from having a separate Grants Program Manual, and to provide a more cohesive and succinct presentation of the application instructions, evaluation system, and the administrative procedures, the Department is including these components in the 2008 regulation text itself. This approach provides a condensed resource, ensures more clarity to potential applicants, and eliminates the necessity for a separate glossary since all the terms which require definition are included in the Definitions section of the regulations text. An Appendix, which includes all the required forms and instructions, is incorporated by reference in the regulations.

The 2007 regulations allowed for the submission of paper grant and cooperative agreement applications. This application submission process has been cumbersome for both the applicant and OHMVR Division staff, who were required to deal, in many instances, with volumes of paper in order to meet all the requirements within the statutes. The proposed 2008 regulations provide for the submission of grant and cooperative agreement applications via the Internet through the OLGA, which is a user-friendly interactive database that guides applicants through the application process. The OLGA simplifies the submission process for applicants by allowing multiple people working on an application to access the document on-line from various locations via a password, and eliminates the costs associated with the copying and mailing of paper applications.

The 2007 regulations required applicants to submit final applications after conducting a public review and comment process. The timing for the public review process was, in some instances, problematic for applicants, who were required to allow sufficient time for the public to submit comments, include responses to the comments in their application, make revisions to their application as a result of the comments, and adhere to the deadline for submission of a final application to the OHMVR Division. The proposed 2008 regulations ensure a smoother application submission process by requiring a preliminary as well as a final application submission. The preliminary application is an initial version of the final application containing key items that will 1) facilitate the posting of preliminary applications on the OHMVR Division's website for public review and comment early in the process, 2) allow for public comments to be submitted simultaneously to the OHMVR Division and the applicant, 3) enable the OHMVR Division to conduct a preliminary review of the application and have the discretion to perform a preliminary site visit, and 4) allow applicants the opportunity to modify their applications as a result of the OHMVR Division's preliminary review and/or public comments and to submit a stronger more competitive and responsive final application.

The 2007 regulations included the Soil Conservation Standard and Guidelines for Off-Highway Vehicle Recreation Management (11/14/91). The proposed 2008 regulations include the 2008 Soil Conservation Standard and supporting 2008 Soil Conservation Guidelines, which are incorporated by reference.

For the above reasons, the Department is proposing to repeal the 2007 regulations and to permanently adopt 2008 regulations, which comply with the amended statute and provide more clarity consistent with Government Code § 11349.1.

SPECIFIC PURPOSE, NECESSITY, PUBLIC COMMENTS, AND THE DEPARTMENT'S RESPONSES FOR EACH PROPOSED SECTION OF THE 2008 REGULATIONS AND DOCUMENTS INCORPORATED BY REFERENCE

The following provides the specific purpose, necessity, public comments from the two written comment periods and the two public hearings, and the Department's responses to the comments for each proposed section in CCR Title 14, Division 3, Chapter 15, § 4970.00 – 4970.26, and also the Appendix and 2008 Soil Conservation Standard and Guidelines, which are incorporated by reference. In accordance with Government Code §

11346.9(3) of the Administrative Procedures Act, some of the comments are presented in a summary format; and, where duplicative comments were received, they are grouped for response.

Several public comments submitted were general in nature and did not apply specifically to any of the regulations sections. These comments together with the Department's responses are presented after the discussion of § 4970.26 and before the discussion of the Documents Incorporated by Reference.

Also in accordance with Government Code § 11346.9(3), the Department does not have to respond to those comments that are not specifically directed at the text of the proposed regulations or the documents incorporated by reference, or are not specifically directed at the procedures followed by the Department in proposing these regulations. However, as mentioned above, these comments are also included with the Department's responses.

ARTICLE 1 – GENERAL PROVISIONS

4970.00 – APPLICATION OF CHAPTER

Specific Purpose

This section explains that California Code of Regulations, Title 14, Division 3, Chapter 15, which contains § 4970.00 – 4970.26, shall apply only to grant or cooperative agreement applications received by the OHMVR Division on or after January 1, 2008.

Necessity

The proposed section of the regulations is necessary to distinguish Chapter 15, § 4970.00 – 4970.26, from the prior regulations and to clarify that Chapter 15, which begins with this section and continues through § 4970.26 shall apply only to grant and cooperative agreement applications received by the OHMVR Division on or after January 1, 2008 in accordance with PRC § 5090.32.

4970.01 – DEFINITIONS

Specific Purpose

This section contains forty-three definitions, which provide clarity to grant and cooperative agreement applicants and the general public for terms that are used within PRC § 5090.01 et seq. and/or are in the proposed text of the regulations. This section provides a definition of "Grant," which includes grants to cities, counties, districts, State agencies, educational institutions, or nonprofit organizations, and also cooperative agreements with federal agencies or federally recognized Native American Tribes. Throughout the remainder of the text of the proposed regulations, the OHMVR Grants and Cooperative Agreements Program is referred to as the Grants program.

Necessity

This proposed section of the regulations is necessary to clarify the terms used in PRC § 5090.01 et seq. and in the text of these proposed regulations. The terms identified in this section are uniquely defined for the purposes of these proposed regulations so that applicants and the Department understand exactly what is required in the application, application evaluation, funding, and grant administrative processes for the Grants program.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Subsection 4970.01(q) “Ecological Restoration” – If restoration to the ecological conditions necessary to sustain the wildlife and/or plant species supported by the habitat is not possible or feasible, it should not be referred to as “ecological restoration.” The comment suggests the following change in the definition: “Ecological Restoration” means to return the habitat to the ecological conditions necessary to sustain the wildlife and/or plant species supported by the habitat, or that existed prior to the OHV use.

The comment also states that restored areas are supposed to be closed to vehicles; if the phrase “affected by ongoing OHV use” refers to use on adjacent lands, that issue should be addressed in a separate regulation as follows: Where wildlife and/or plant species in a restored area continue to be impacted by ongoing use in adjacent areas, measures must be taken to eliminate those impacts, including, if necessary, closure of the adjacent area. – Karen Schambach, Public Employees for Environmental Responsibility and the California Wilderness Coalition

Department’s Response to Comment

The definition referenced by the commenters has been changed to be consistent with the Society for Ecological Restoration’s definition. For the purposes of defining this activity, it is not germane to address OHV use or non-use as part of the definition. Therefore, the definition no longer qualifies the activity based on the presence of legal or illegal OHV use.

Comment

Subsection 4970.01(y) “Ground Disturbing Activity” – The definition of the term should be limited to activities that require heavy machinery, as opposed to those carried out with hand tools and small machines such as augers and chainsaws. As long as NEPA/CEQA have been done, as required by the Grant Regulations, and the workers are properly trained in local sensitive, threatened, and endangered species, then that should be sufficient environmental documentation. Clarification of the term “ground disturbing activity” is requested. – Brendan Hughes

Department's Response to Comment

The definition referenced by the commenter has been revised to provide clarifying language.

The activities identified in the comment, which utilize hand tools and small machines, have the potential to damage natural and cultural resources and as such, should be considered ground disturbing.

Comment

Subsection 4970.01(hh) "OHV Recreation" – California Vehicle Code (CVC) Division 16.5, which is cited in the definition of this term, refers to routes other than a highway, which by CVC definition excludes: "fire trails, logging roads, service roads regardless of surface composition, or other roughly graded trails and roads upon which vehicular travel by the public is permitted." (CVC 38001). Limiting OHV recreation to these roughly graded routes will eliminate the "extra consideration" for access to non-motorized recreation required by SB 742. [Cite: PRC 5090.50 (b)(1)(B)(ii)]

The comment suggests the following change: "OHV Recreation means the activity of driving or riding motorized vehicles, off paved roads, for leisure purposes including motorized access to non-motorized recreation activities." – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The requirement in PRC § 5090.50(b)(1)(B)(ii) is accomplished through the Evaluation Criteria, which award additional points to projects that improve facilities that provide motorized access to non-motorized recreation. However, these projects must also provide for access by registered OHV in order to be eligible for OHV Trust Funds.

PRC § 5090.50(a) identifies activities associated with "off-highway motor vehicles" as eligible under the Grants program. Division 16.5 of the CVC, Section 38001 et seq. provides the definition for "off-highway." Hence it is necessary to define OHV recreation in accordance with Division 16.5 of the CVC.

The Department is therefore taking no action on this comment.

Comment

Subsection 4970.01(nn) "Repair" and subsection 4070.01(oo) "Restoration" – The comment asks why there are two definitions for procedures that accomplish the same thing. Using the above definitions would indicate that restoration could not be done on the unit or any portion thereof that was closed to OHV use when the damage occurred. The area must be repaired. The comment also states that these definitions could generate

confusion or conflict with the contents of § 4970.11 if you follow the definition of “Restoration.” – Bruce Brazil

Department’s Response to Comment

A definition of Repair, as it pertains to Restoration projects, was required to clarify the statutory language "repair to habitat" contained in PRC § 5090.50(b)(2)(A).

Activities associated with both terms could be eligible for funding under the Restoration project type detailed in § 4970.11(a).

The Department is therefore taking no action on this comment.

Comment

Subsection 4970.01(nn) “Repair” – The term “repair” can also apply to damage from authorized OHV use, as the term is used in the proposed regulation § 4970.11 – Restoration. The following suggested change is provided: “Repair” means to fix, mend, make new or revitalize to the condition of the habitat that existed prior to authorized or unauthorized OHV use and related damage.” – Karen Schambach, Public Employees for Environmental Responsibility and the California Wilderness Coalition

Department’s Response to Comment

The Department concurs with the commenters and has revised the definition.

Comment

Subsection 4970.01(00) “Restoration” – An incorrect word is used in the definition of Restoration. A word should not be used in its own definition. "restoration of land" should be "return of land" – George Barnes

Department’s Response to Comment

The Department concurs with the commenter and has revised the definition.

Public Comments Received During 15-Day Written Comment Period

Comment

Subsection 4970.01(q) “Ecological Restoration” – The definition of “ecological restoration” should be returned to the definition of the previous version of the grant regulations, which more reflects the reality and purpose of OHV restoration funding, which is to repair damage caused by OHVs to habitat. – Brendan Hughes

Department's Response to Comment

The definition describes the term "Ecological Restoration." The purpose of the OHV Restoration funding is described in subsection 4970.11(a), which links ecological restoration efforts with OHV use. Pursuant to subsection 4970.11(f)(1)(B), applicants are required to identify how their proposed restoration project relates to OHV use.

The Department is therefore taking no action on this comment.

Comment

Subsection 4970.01(y) "Ground Disturbing Activity" – The definition of "ground disturbing activity" should be limited to projects using heavy machinery and other vehicles to carry out their objectives. It should not encompass those activities that are done with hand tools and human power. Using hand tools with human power allows for properly informed individuals to be more careful than people using machinery to watch out for species and important cultural objects in the work area. Therefore, ground disturbing activities using hand tools should be exempt from having to prepare a habitat management program and soil conservation plan, provided that the necessary NEPA and archeological work have been done. – Brendan Hughes

Another comment on this subsection indicates that the definition of "Ground Disturbing Activity" is distorted by the changes made in this revision. The term "earth moving" is even more vague than the term being defined. All OHV projects involve "ground disturbing activities" because the wheels of vehicles disturb soil. This change in definition could result in allowing roads and trails inappropriate exemptions from the soil standard. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

In response to the first comment on this subsection, the current definition of ground disturbing activity is necessary to ensure compliance with PRC § 5090.53. The activities identified in the comment, which utilize hand tools and human power to move earth, have the potential to damage natural and cultural resources.

In response to the second comment on this subsection, the section referenced by the commenter was changed to further clarify the definition of "Ground Disturbing" by including the term "earth moving." In light of the revised definition of ground disturbing activities, any project involving "earth moving" activities, whether accomplished by large mechanical equipment or small hand tools, would be subject to the requirements of PRC § 5090.53(a).

The Department is therefore taking no action on these comments.

4970.02 – PROGRAM PURPOSE

Specific Purpose

This section sets forth the reasons for the Grants program. It identifies the types of activities that must be accomplished with the funds received from the program by eligible agencies and organizations.

Necessity

The proposed section is necessary to provide a synopsis of how the Grants program is used to achieve the legislative intent of the OHMVR program. The Grants program provides a means for the State to assist eligible agencies and organizations as defined in statute to develop, maintain, expand and manage high-quality OHV recreation areas, roads trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat of areas in a manner that will sustain long-term OHV recreation. These proposed regulations are necessary to further clarify the intent of PRC § 5090.01 et seq.

4970.03 – DETERMINING APPLICANT ELIGIBILITY

Specific Purpose

This section identifies the entities that are eligible to apply for grants or cooperative agreements under the Grants program. It clarifies eligibility by identifying the organizational definitions within each eligibility category provided in the statute. It also clarifies that applicants are limited to certain project types and provides a table that illustrates the eligible applicants for each project type. It also provides that applications received from entities that do not comply with the eligibility requirements will not be considered by the OHMVR Division.

Necessity

The proposed section of the regulations is necessary to provide the specific entities that are eligible to apply for the Grants program and to identify the applicant eligibility for each project type in accordance with PRC § 5090.50. It is also necessary to clarify the OHMVR Division's responsibility in accordance with PRC § 5090.32 when an applicant does not comply with the eligibility requirements.

4970.04 – GRANTS PROGRAM CYCLE

Specific Purpose

This section identifies the activities and the dates and/or timeframes for those activities that shall occur during the entire grants program cycle. It provides that grants shall be awarded on an annual basis and the awarding of a grant does not guarantee ongoing or future funding. It discusses the public meeting the OHMVR Commission shall conduct

prior to the start of each grant program cycle. It also provides clarity by including a table illustrating the activities and dates in the grant cycle and indicates the responsibilities of the OHMVR Division, the applicants, and the grantees.

Necessity

The proposed section of the regulations is necessary to establish the activities, dates, and/or timeframes for the entire grants program cycle. This is proposed to ensure funds are allocated, distributed and encumbered within established timeframes to avoid reversion of unspent funds. The timeframes identified in the regulations provide for grants to be awarded in a timeframe consistent with applicant's fiscal cycle. This timeframe will allow applicants time to plan resources efficiently (e.g., budget planning, seasonal workload). It is also necessary to clarify the responsibilities of the OHMVR Commission, the OHMVR Division, applicants, and grantees, and to provide the conditions under which the grants shall be awarded in accordance with PRC § 5090.24(b), 5090.32, and 5090.50.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Section 4970.04 Table 2 – The public will not have an opportunity to comment on an applicant's final application. The comment requests that the public have the opportunity to comment on the final agency submission. – Bruce Brazil

Department's Response to Comment

The opportunity for public comment will occur after the preliminary application filing date. As identified in subsection 4970.07(b), the preliminary application will contain the key elements necessary for the public to understand the merits of the projects. This will provide ample opportunity for public comment. Pursuant to subsection 4970.07(f), applicants may modify their application after preliminary submittal only as result of OHMVR Division preliminary review and/or public comments.

The Department is therefore taking no action on this comment.

4970.05 – GENERAL APPLICATION REQUIREMENTS

Specific Purpose

This section identifies the general requirements that apply to all Grant program applications. The Appendix to these proposed regulations, which includes all the required forms and instructions for the Grants program, is incorporated by reference. This section provides that applications shall establish how proposed projects are directly related to OHV recreation and describes the responsibilities of the OHMVR Division in screening proposed applications prior to scoring and rejecting those applications that do not

establish a direct relation to OHV recreation. It also provides that applications determined by the OHMVR Division to be non-compliant with the general application requirements may be disqualified. This section also provides the general application content requirements, which include: 1) documentation of a public review process to solicit public comment, 2) matching funds, 3) project cost estimates, 4) equipment inventories, 5) demonstration of current 501(c)(3) status for nonprofit organizations, 6) written agreements with appropriate land managers authorizing educational institutions and nonprofit organizations to conduct proposed projects, 7) Governing Body Resolutions authorizing the applications for cities, counties, districts, educational institutions, nonprofit organizations, and federally recognized Native American Tribes, and 8) environmental documentation.

Necessity

The proposed section of the regulations is necessary to identify the forms that are required to be completed by the applicants and to inform the applicants they are restricted to one application per grant cycle. Furthermore, it describes the public review process which applicants are required to undertake, identifies the OHMVR Division's responsibilities related to the screening of applications and the disqualification of non-compliant applications in accordance with PRC § 5090.32 and 5090.50.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Subsection 4970.05(h) – The Equipment Inventory sheet on page 4 of the Appendix states that only the last 5 years of equipment purchases using OHV Trust Funds must be listed. This is in conflict with proposed regulation subsection 4970.05(h), which provides that all applicants shall complete an inventory of equipment for items purchased with OHV Trust Funds, but does not provide a timeframe on the purchases. Either the Equipment Inventory sheet or the regulation must be changed. – Bruce Brazil

Department's Response to Comment

The Department concurs with the commenter and has revised the section.

4970.06 – ENVIRONMENTAL REQUIREMENTS

Specific Purpose

This section identifies the specific environmental documentation that is required in grant applications.

Subsection 4970.06.1 discusses the requirement of the OHMVR Division to comply with the California Environmental Quality Act (CEQA) before approving each grant. The

subsection provides that project requests for funding both CEQA and/or National Environmental Policy Act (NEPA) requirements and actual project deliverables shall be funded in two phases. CEQA documentation shall be submitted by city, county, district, State agency, educational institution and nonprofit organization applicants for all grants are discussed. It refers grant applicants relying on a Categorical Exemption for CEQA compliance to the Environmental Review Data Sheet (ERDS). The type of documentation, including completed project-related NEPA compliance documentation, that shall be submitted by federal agency and federally recognized Native American Tribe applicants for all cooperative agreements is also discussed. This subsection also specifies the responsibilities of the OHMVR Division in reviewing the required CEQA and/or NEPA documentation, requesting additional information from grant and cooperative agreement applicants within a reasonable timeframe, and determining the feasibility of completing the CEQA work with the time and resources available; and it also provides the OHMVR Division reserves the right to cease CEQA compliance work on a project if the application evaluation and scoring process indicates the project may not be funded.

Subsection 4970.06.2 provides that a HMP must be completed by all applicants submitting a proposed project involving ground disturbing activity. The subsection provides that only one HMP shall be submitted for each application and shall encompass all project areas for every project with ground disturbing activities for which funding is requested. It also discusses the OHMVR Division's responsibilities in the review of each HMP.

Subsection 4970.06.3 provides that the 2008 Soil Conservation Standard and supporting 2008 Soil Conservation Guidelines are incorporated by reference. It cites the language in the PRC that provides the legislative intent and requirements for soil conservation. It provides that all applicants submitting proposed projects involving ground disturbing activity shall complete the Soil Conservation section demonstrating and agreeing the applicant has a Soil Conservation Plan that achieves the Soil Conservation Standard for the proposed project. The subsection also provides that the Soil Conservation Plan shall utilize the Soil Guidelines or other comparable methods that demonstrate how the Soil Conservation Standard is being or will be met. It discusses the required components of the Soil Conservation Plan and provides the responsibilities of and the timelines for the OHMVR Division's review of all Soil Conservation Plans.

Necessity

The proposed section of the regulations is necessary to clarify the specific environmental documentation required in all grant applications. The proposed subsection 4970.06.1 is necessary to clarify the provisions of CEQA, which are required by PRC § 5090.50(d)(4), as it applies to the grant application process. The subsection is also necessary to clarify the OHMVR Division's responsibilities relating to the review of the required CEQA and/or NEPA documentation in accordance with PRC § 5090.32.

The proposed subsection 4970.06.2 is necessary to clarify the requirements for a HMP in the grant application process in accordance with PRC § 5090.35 and 5090.53. The

subsection also clarifies the OHMVR Division's responsibilities in the review of each HMP in accordance with PRC § 5090.32.

The proposed subsection 4970.06.3 is necessary to incorporate by reference the 2008 Soil Conservation Standard and supporting 2008 Soil Conservation Guidelines and to clarify the requirements for a Soil Conservation Plan in the grant and cooperative agreement application process in accordance with PRC § 5090.35 and 5090.53. It is also necessary to clarify the OHMVR Division's responsibilities in the review of Soil Conservation Plans in accordance with PRC § 5090.32.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Subsection 4970.06.1(c)(3)(A) – This subsection states that in cases where the applicant is not the lead agency, “The OHMVR Division cannot commit to completing the added CEQA work needed if the time and resources required exceed the time and resources available to complete the Application selection process.”

What is the threshold for the OHMVR Division deciding that available time and resources are exceeded? Some indication of a threshold would be helpful. – Bruce Whitcher, California Off-Road Vehicle Association

Department's Response to Comment

The threshold would be a factor of the amount and scope of the projects and the number of applications submitted. These factors will vary with each grant cycle and will require an analysis each year to determine the resource requirement.

The Department is therefore taking no action on this comment.

Comment

Subsection 4970.06.2(b) – This subsection requires applicants to submit only one HMP for each application; and, the HMP shall encompass all project areas for every project with ground disturbing activities for which funding is requested. Applications with multiple projects may involve different habitat types, different species and different potential impacts. The statute requires a separate HMP for each project. The comment suggests the following change in the language of this subsection: Applicants shall submit one HMP for each project for which funding is requested. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

Applicants are required to submit one HMP that represents a compilation of the HMP-related elements for all the applicant's proposed projects with ground disturbing activities. The HMP form is designed to accommodate multiple projects by allowing for a variety of species, monitoring regimes, and management approaches; hence, multiple projects can be addressed on a single HMP form.

The Department is therefore taking no action on this comment.

Comment

Subsection 4970.06.3(b) – The definition of Restorability should be added. – Ed Stovin

Department's Response to Comment

The term "Restorability" as used in the Soil Conservation Standard and Guidelines incorporates the intent of PRC § 5090.35(b), which references the establishment of a soil conservation standard "at least sufficient to allow restoration of off-highway vehicle areas and trails," and includes closure provisions for portions of an OHV project area that do not comply with the Soil Conservation Standard (PRC § 5090.53(c)).

The Department is therefore taking no action on this comment.

Public Comments Received During 15-Day Written Comment Period

Comment

Subsection 4970.06.3(c) – This subsection substitutes the word "submit" for "demonstrate and agree that the applicant has, or will implement" a Soil Conservation Plan. There is no other requirement in the proposed regulations to implement a Soil Conservation Plan. This section should be changed to require the applicant to "submit and agree to implement" a Soil Conservation Plan. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The regulation section referenced by the commenter requires applicants, applying for projects involving ground disturbing activities, to submit a Soil Conservation Plan relative to their proposed project areas. Pursuant to subsection 4070.06.3(d), the Soil Conservation Plan must demonstrate how the Standard is being met. Implementation of the Soil Conservation Plan is subject to review pursuant to subsection 4970.25.1(a).

The Department is therefore taking no action on this comment.

Comment

Subsection 4970.06.3(e)(1) – The purpose and intent of the Wildlife Habitat Protection Program and Soil Standard is to address the ongoing impacts to wildlife habitat and soil resources from all OHV activities. All OHV projects involve “ground disturbing activities” because the wheels of vehicles disturb soil. Given the change in the definition of “ground disturbing activity” to “earth moving Project-related activity,” this change in the regulation threatens to limit application of the soil standard only to discrete “Projects” involving heavy machinery, and eliminates the requirements of a Soil Conservation Program for the ongoing management of OHV areas. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

Pursuant to PRC § 5090.53(a), only projects involving ground disturbing activities are subject to the soil conservation standard and habitat management program requirements.

In light of the definition of ground disturbing activities, any project involving “earth moving” activities, whether accomplished by large mechanical equipment or small hand tools, would be subject to the requirements of PRC § 5090.53(a).

The Department is therefore taking no action on this comment.

4970.07 – APPLICATION SUBMISSION

Specific Purpose

This section identifies the submission process for all grant applications. It requires that all applications be submitted via the Internet through the OHMVR Division’s OLGA and provides OHMVR Division staff support to applicants when needed. It provides that all applicants shall submit preliminary and final applications and includes the components required within the applications. It clarifies the OHMVR Division will review preliminary applications and may choose to perform a preliminary application site visit. It also provides that, prior to the submittal of final applications; applicants may make modifications as a result of the OHMVR Division’s preliminary review and/or public comment.

Subsection 4970.06.1 provides for a question and answer procedure for applicants who need clarification on the application process.

Subsection 4970.06.02 describes the actions the OHMVR Division shall take regarding final application defects.

Necessity

The proposed section of the regulations is necessary to introduce the OLGA as the method for applicants to utilize in their application preparation and submittal. The OLGA will reduce the amount of paper consumption, provide for ease and centralized public review, and allow for intra-applicant collaboration.

The proposed section is also necessary to provide applicants the requirements for submitting grant preliminary and final applications. The preliminary application will allow the applicant to receive feedback from the OHMVR Division and the public. By receiving this feedback, the applicant will be able to submit a competitive and fully compliant final application. Furthermore, it is necessary to provide assistance to applicants who need clarification on the submission process and to describe the responsibilities of the OHMVR Division regarding final application defects in accordance with PRC § 5090.32 and 5090.50.

4970.08 – ELIGIBLE PROJECT COSTS

Specific Purpose

This section provides clarification regarding those costs that are eligible for reimbursement for OHV projects. It provides numerous examples of eligible project costs and allows applicants to receive up to ten (10) percent reimbursement for indirect administrative costs.

Necessity

The proposed section is necessary to ensure OHV Trust Funds are expended only for those activities and costs as defined in individual project agreements and which are directed towards achieving the intent of the OHMVR program. It is necessary to articulate what costs are allowable for reimbursement within the Grants program in accordance with PRC § 5090.32 and 5090.50. Additionally, this section will ensure that audit and fiscal issues are minimized.

4970.09 – INELIGIBLE PROJECT COSTS

Specific Purpose

This section provides that costs not associated with the OHV project are not eligible for reimbursement. It also provides clarity by including numerous examples of ineligible costs.

Necessity

The proposed section is necessary to ensure OHV Trust Funds are not expended for activities and costs which are outside the project agreement and are not directed towards

achieving the intent of the OHMVR program. It is necessary to articulate what costs are not allowable for reimbursement within the Grants program in accordance with PRC § 5090.32 and 5090.50. Additionally, this section will ensure that audit and fiscal issues are minimized.

ARTICLE 2 – TYPES OF PROJECTS AND SPECIFIC APPLICATION REQUIREMENTS

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Some of the public comments relevant to Article 2 refer to more than one section within the Article. These comments and the Department's responses are presented below and are followed by each individual section with the comments and responses relevant to each section.

Comment

Sections 4970.10, 4970.11, 4970.12, and 4970.13 – The commenter indicates that the funding caps being considered for the project types are arbitrary in nature and are no longer necessary as a result of the new funding distribution provisions in SB 742. The commenter also states that the funding caps are unfair to areas where one Agency manages the bulk of their opportunity, such as Imperial County which used more fuel than any other county in the State, and only has one real applicant, EL Centro BLM. The commenter further states that there now is a good scoring system; and, in order to assess the grant program needs, there should be one grant cycle with no funding caps. – Tom Tammone

Another comment regarding the funding caps indicates, to prevent remaining surplus grant funds, caps should be raised 25 percent. – Ed Stovin

Department's Response to Comment

The Department desires to distribute available funds to the largest pool of applicants possible. The funding restriction amounts were developed based on previous OHMVR grant cycles and modified as a result of input received from focus groups. For example, in recent years, the Restoration category had surplus funds remaining after all applications were scored. As a result, the Department determined a funding cap is not warranted for the Restoration category.

The Department is therefore taking no action on this comment.

Comment

Sections 4970.10, 4970.11, 4970.12, and 4970.13 – More funds should be allocated towards Law Enforcement and Safety and Education. This is the best tactic to keeping

operational/maintenance/restoration costs down. Recommend changing the allocation of funds to the appropriate categories as follows:

- Operation and Maintenance – 30%
- Restoration – 20%
- Law Enforcement – 25%
- Education and Safety – 25% – Pam Nelson

Another comment on these sections indicates that the amounts allocated in SB 742 are inadequate. Law enforcement should be 30 percent. – Terri Weiner

Department's Response to Comment

Grant funding allocations are determined by PRC § 5090.50(b) et seq. The Department does not have the authority to modify the allocations by the administrative law process.

The Department is therefore taking no action on this comment.

4970.10 – OPERATION AND MAINTENANCE (O&M)

Specific Purpose

This section identifies the purpose of operation and maintenance projects that may be funded by the Grants program. It clarifies that operation and maintenance includes operation and maintenance of facilities, conservation, development, planning, or acquisition associated with the use of OHVs for recreation or motorized access to non-motorized recreation. It provides the percentage of funds appropriated by the Legislature that is available for operation and maintenance, discusses the minimum and maximum amounts allowable for funding requests, provides the limitations and certification requirements for funding, and clarifies that the operation and maintenance category is divided into four sub-categories: 1) ground operations, 2) development, 3) planning, and 4) acquisition. It also provides a table that illustrates applicant eligibility for each of the four sub-categories/project types.

Subsection 4970.10.1 identifies the purpose of the ground operations project type, provides the percentage of the funding from the operation and maintenance category that is available for ground operations, provides specific examples of ground operations deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for ground operations projects.

Subsection 4970.10.2 identifies the purpose of the development project type, provides the percentage of the funding from the operation and maintenance category that is available for development, provides specific examples of development deliverables, describes project-specific application requirements and optional project-specific application

documents, and refers to the Appendix for the evaluation criteria for development projects.

Subsection 4970.10.3 identifies the purpose of the planning project type, provides the percentage of funding from the operation and maintenance category that is available for planning, provides specific examples of planning deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for planning projects.

Subsection 4970.10.4 identifies the purpose of the acquisition project type, provides the percentage of funding from the operation and maintenance category that is available for acquisition, provides specific examples of acquisition deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for acquisition projects.

Necessity

The proposed section of the regulations is necessary to define the purpose of the operation and maintenance category. This section further identifies the four subcategories/project types within this category. The subcategories/project types were created to meet legislative intent of sustaining existing off-highway motor vehicle recreation opportunities.

Additionally, this section is necessary to define the amount of funding available for the categories as a whole, to identify eligible agencies and organizations, provide examples of deliverables, describe project-specific application requirements, and list optional project-specific documents for each project type. This section refers to the Appendix for the evaluation criteria for each project type within the operation and maintenance category in accordance with PRC § 5090.32 and 5090.50. The specific examples that are provided in this section will assist potential applicants and the public to understand what types of activities qualify for each project type. The project-specific requirements in this section will assist applicants to provide the information that must be submitted in an application for each of the project types in order for the application to comply with the statute and regulations and be competitive.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Subsection 4970.10(a) – This subsection appears to give equal status to applications from both motorized recreation and motorized access to non-motorized recreation. However, PRC § 5090.50 states that “applications will be given preference that sustain existing motorized opportunities,” but also that motorized access to non-motorized opportunity will be given special consideration. The OHV Grants program is a motorized recreation program. Funding for non-motorized recreation is available from any number of

other sources. Grant funding for ground operations for non-motorized access should not be given higher priority than motorized recreation ground operations for existing motorized opportunities. This should be clarified in the regulations. – Bruce Witcher, California Off-Road Vehicle Association

Another comment indicates motorized access to non motorized recreation should not have a preference through the scoring. – Tom Tammone

Department's Response to Comment

In response to the first comment, the Department concurs that funding for non-motorized recreation is prohibited by PRC § 5090.50(a) and these regulations do not allow funding for this activity. The Evaluation Criteria gives a preference for projects that sustain existing OHV opportunities and gives additional consideration for projects providing motorized access to non-motorized recreation by allowing additional points for projects with these components.

In response to the second comment, PRC § 5090.50(b)(1)(B)(ii) requires the OHMVR Division to give additional consideration to projects that provide motorized access to non-motorized recreation. This is accomplished through the Evaluation Criteria.

The Department is therefore taking no action on these comments.

Comment

Section 4970.10 – In the operations and maintenance funding category, costs associated with staff monitors and field educators should be eligible costs. – Pam Nelson

Department's Response to Comment

Soil and wildlife monitoring activities are eligible costs for a Ground Operations Project within the Operations and Maintenance funding category. Costs associated with “field educators” would need to be applied for under the Education and Safety project type.

The Department is therefore taking no action on this comment.

Comment

Subsection 4970.10.1(c)(1) – The use of the term “OHV Opportunity” is inconsistent with PRC § 5090.50(b), given your definition for that term. As written, Ground Operation projects exclude projects to improve access for non-motorized opportunity. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

Subsection 4970.10.1 allows projects that improve facilities which provide both motorized access to non-motorized recreation and OHV recreation opportunities. In accordance with PRC § 5090.50(a) the proposed projects will be required to demonstrate a link between the proposed project and OHV recreation as defined.

The Department is therefore taking no action on this comment.

Comment

Section 4970.10 – Under the operations and maintenance funding category, allow the creation of “speed/racing” areas as an eligible activity so that dust can be mitigated. – Pam Nelson

Department's Response to Comment

Dust mitigation efforts, such as those identified in the comment, are an eligible project activity under a Ground Operations or Development Project within the Operations and Maintenance funding category.

The Department is therefore taking no action on this comment.

4970.11 – RESTORATION

Specific Purpose

This section identifies the purpose of restoration projects that may be funded by the Grants program, provides the percentage of funds appropriated by the Legislature that is available for restoration projects, discusses the minimum and maximum amount allowable for funding requests, and refers to Table 1 of the regulations to clarify those applicants that are eligible to apply for restoration projects. It provides specific examples of restoration deliverables, describes project-specific application requirements and refers to the Appendix for the evaluation criteria for restoration projects.

Necessity

The proposed section of the regulations is necessary to meet the expanded eligible activities within the Restoration category (e.g., planning, repair, Scientific Studies). This section is also necessary to identify: the amount of available funding, eligible agencies and organizations, examples of deliverables, project-specific application requirements, and directs applicants to the Appendix for the evaluation criteria for restoration projects in accordance with PRC § 5024.1, 5090.32 and 5090.50. The specific examples that are provided in this section will assist potential applicants and the public to understand what types of activities qualify for restoration projects. The project-specific requirements in this section will assist applicants to provide the information that must be submitted in an

application in order for the application to comply with the statute and regulations and be competitive.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Subsection 4970.11(c)(1) – The minimum funding request amount will exclude valuable projects for which restoration involves primarily restricting vehicle access, to allow natural regeneration of vegetation, such as in meadows. The comment suggests applicants be requested to group multiple projects in a single application, and that the application minimum be \$10,000 as provided in the following suggested language: The minimum application request shall be no less than \$10,000 – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The regulations, as written, allow applicants to group Restoration activities at various project sites under one Restoration Project, to reach the \$10,000 minimum.

The Department is therefore taking no action on this comment.

Comment

Section 4970.11 – Under restoration funding, require violators to do field work, including coursework on ecology and human health issues related to off-roading, assisting monitors and rangers in looking for trouble spots that cause current and future restoration problems. – Pam Nelson

Department's Response to Comment

The commenter suggests activities that are beyond the authority of the Grant program.

The Department is therefore taking no action on this comment.

Comment

Subsection 4970.11(e)(5) – The commenter indicates the term “vertical mulching” is not defined in the regulations and asks for the meaning of the term. – Roger Poff

Department's Response to Comment

The term vertical mulching as used in this land restoration context involves placing dead plant material to disguise unauthorized trails and deter OHV traffic.

The Department is therefore taking no action on this comment.

4970.12 – LAW ENFORCEMENT

Specific Purpose

This section identifies the purpose of law enforcement projects that may be funded by the Grants program. It provides the percentage of funds appropriated by the Legislature that is available for law enforcement. It clarifies the applicant eligibility for law enforcement projects and provides the allocation of available funding for each applicant eligibility category. It discusses the minimum and maximum amount allowable for funding requests and provides examples of eligible law enforcement costs and project-specific application requirements.

Necessity

The proposed section of the regulations is necessary to clarify the purpose of law enforcement projects and to identify eligible applicants and their respective funding allocation. Furthermore, this section is also necessary to identify examples of eligible costs and the project-specific application requirements in accordance with PRC § 5024.1, 5090.32 and 5090.50. The specific examples that are provided in this section will assist potential applicants and the public to understand what types of activities qualify for law enforcement projects. The project-specific requirements in this section will assist applicants to provide the information that must be submitted in a law enforcement project application in order for the application to comply with the statute and regulations.

4970.13 – EDUCATION AND SAFETY

Specific Purpose

This section identifies the purpose of education and safety projects that may be funded by the Grants program, provides the percentage of funds appropriated by the Legislature that is available for education and safety projects, discusses the minimum and maximum amounts allowable for funding requests, and refers to Table 1 of the regulations to clarify those applicants that are eligible to apply for education and safety projects. It provides specific examples of education program deliverables and safety program deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for education and safety projects.

Necessity

The proposed section of the regulations is necessary to clarify the purpose of education and safety projects, provide the amount of available funding, identify eligible agencies and organizations, and provide examples of deliverables for education or safety projects. Additionally, this section is necessary to describe project-specific application

requirements and optional project-specific documents, and to refer to the Appendix for the evaluation criteria for education and safety projects in accordance with PRC § 5090.32 and 5090.50. The specific examples that are provided in this section will assist potential applicants and the public to understand what types of activities qualify for education and safety projects. The project-specific requirements in this section will assist applicants to provide the information that must be submitted in an education and safety project application in order for the application to comply with the statute and regulations and be competitive.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Subsection 4970.13(b) – Funding for Safety and Education should be increased. – Ben vonDielingen

Department's Response to Comment

Grant funding allocations are determined by PRC § 5090.50(b) et seq. The Department does not have the authority to modify these allocations by the administrative law process.

The Department is therefore taking no action on this comment.

ARTICLE 3 – APPLICATION EVALUATION SYSTEM AND FUNDING

4970.14 – EVALUATION CRITERIA

Specific Purpose

This section identifies the required types of evaluation criteria and discusses which applications require general criteria and which project types require project-specific criteria.

Subsection 4970.14.1 discusses the purpose of general criteria, requires applicants to respond to the criteria questions with respect to their entire OHV operation, provides examples of general criteria, and requires non-land manager applicants to cooperate with the appropriate land manager to obtain the general criteria information.

Subsection 4970.14.2 provides that applicants for projects other than law enforcement shall complete project-specific criteria for each project and the required information shall be specific to the particular project proposed for funding.

Subsection 4970.14.3 discusses the requirements for applicants' use of factual documentation, provides examples of factual documentation, and discusses the

responsibility of the evaluation panel to investigate referenced documents and to use its discretion to clarify the information provided or reject the project application.

Necessity

The proposed section of the regulations is necessary to clarify the application evaluation process that will be used to evaluate each project (with the exception of law enforcement projects) in an application. The evaluation criterion, which includes general and project-specific criteria, is necessary to distribute funds on a competitive basis.

The evaluation criterion are necessary to prioritize projects based on the legislative intent articulated in the Act. Additionally, the section is necessary to clarify the requirements regarding applicants' use of factual documentation and the responsibility of the evaluation panel in reviewing the factual documentation in accordance with PRC § 5090.32 and 5090.50.

4970.15 – FUNDING DISTRIBUTION

Specific Purpose

This section identifies the percentage of funds appropriated by the Legislature for operation and maintenance, restoration, law enforcement, and education and safety categories.

Subsection 4970.15.1 provides the allocation percentages for each subcategory/project type within the operation and maintenance category, discusses the composition of the evaluation panel, provides the method the panel shall use to evaluate and determine a final score for each project, and provides a table that illustrates the score calculation for ground operation projects. The subsection also provides the procedure the OHMVR Division shall follow in awarding funds for the operation and maintenance project types.

Subsection 4970.15.2 discusses the composition of the evaluation panel for restoration projects, provides the method the panel shall use to evaluate and determine a final score for each project, provides a table that illustrates the score calculation for restoration projects, and provides the procedure the OHMVR Division shall follow in awarding funds for restoration projects. The subsection also provides that the OHMVR Division will consult with staff from the Wildlife Conservation Board during the evaluation and scoring process for restoration projects.

Subsection 4970.15.3 provides the allocation percentages for each eligible entity category for law enforcement, clarifies that law enforcement projects are awarded on a non-competitive basis, provides the method of determining the relative need of each applicant, and discusses the responsibility of the OHMVR Division in reviewing law enforcement funding requests. This subsection also provides the procedure the OHMVR Division shall follow in awarding funds for law enforcement projects.

Subsection 4970.15.4 discusses the composition of the evaluation panel for education and safety applications, provides the method the panel shall use to evaluate and determine a final score for each project, and provides the procedure the OHMVR Division shall follow in awarding funds for education and safety projects.

Necessity

The proposed section of the regulations is necessary to identify the amount of funding available within the operation and maintenance, restoration, law enforcement and education and safety categories. Within the operation and maintenance category, the available funding is further allocated within the sub-categories in order to comply with the legislative intent to sustain existing OHV recreation. While the statute states the OHMVR Division determines the level of need for law enforcement entities it does not specify how the need will be established. Therefore the section is necessary to clarify that law enforcement projects are funded on a non-competitive basis and to provide the method used to establish need and allocate funds for law enforcement projects in accordance with PRC § 5090.32 and 5090.50. The section is also necessary to clarify the methods used by the evaluation panels in evaluating and determining scores for competitive project applications, and the procedures to be used by the OHMVR Division in awarding funds for competitive project applications in accordance with PRC § 5090.32 and 5090.50.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Subsection 4970.15.1(a) – The comment indicates the funding distribution percentages for the subcategories in the Operation and Maintenance category are not required in the statute; and that the percentage for acquisition projects, 10 percent, is too low and should be raised to 25 percent. The commenter also states that there is no formula for distributing remaining funds from other subcategories. – Tom Tammone

Department's Response to Comment

The subcategories were created to categorize a very diverse set of activities identified in PRC § 5090.50(b)(1)(A) for project evaluation purposes. The subcategories group similar activities as an aid to applicants when developing proposed projects. The subcategories and associated funding restrictions are a result of input supplied through regulation focus groups in accordance with PRC § 5090.50(d)(2).

The subcategory funding restrictions identified in the comment are necessary to ensure the equitable distribution of limited funding and to comply with the requirement in PRC § 5090.50(b)(1)(B)(i) requiring preference be given to those projects that sustain existing OHV recreation opportunities. At least 70 percent of the funding in the Operations and

Maintenance category is reserved for Ground Operations projects which directly relate to sustaining existing OHV recreation opportunities.

The Department is therefore taking no action on this comment.

4970.16 – NOTICE OF INTENT TO AWARD

Specific Purpose

This section identifies the responsibility of the OHMVR Division to post a notice of Intent to Award on the OHMVR Division's website upon completion of the evaluation and scoring process.

Necessity

The proposed section of the regulations is necessary to communicate the results of the application and evaluation process to the applicants and the public in accordance with PRC § 5090.50. Posting the results of the evaluation process on the OHMVR Division's website provides the applicants and the public a centralized location to view the results and identifies the start of the appeal period.

4970.17 – APPEAL PROCESS

Specific Purpose

This section identifies the right of applicants to appeal the Intent to Award. It discusses the required grounds for appeal and provides a table that illustrates the steps for submitting the appeal and the timelines for each step. This section also provides that applicants may not seek legal remedies through the courts until the appeal process has been completed.

Necessity

The proposed section of the regulations is necessary to comply with PRC § 5090.50, which requires the OHMVR Division to develop an appeal process to allow applicants an opportunity to contest the results of the Notice of Intent to Award. This section provides the applicants the reasons, steps, and timeframes for an appeal. The timeframes outlined in this section are necessary to meet statutory requirements and to ensure timely distribution of appropriated funds.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Section 4970.17 – The commenter indicates that the timeframe for the appeal process, 60 days, is too long and should be revised to 30 days. The commenter also requests, in lieu of the final decision on an appeal being made by the Director of the Department, appeals be handled through the binding arbitration process. – Tom Tammone

Department's Response to Comment

The appeal timeframes and appointed agent to consider appeals are set forth in PRC § 5090.50(i) et seq. The Department does not have the authority to modify statutory requirements through the administrative law process.

The Department is therefore taking no action on this comment.

4970.18 – AWARD OF GRANTS

Specific Purpose

This section identifies the responsibility of the OHMVR Division to prepare and execute grant and cooperative agreements upon approval of projects by the Director of the Department of Parks and Recreation.

Necessity

The proposed section of the regulations is necessary to clarify the responsibility of the OHMVR Division to prepare and execute project agreements upon the approval of the Director and to facilitate the distribution of funds to successful applicants in accordance with PRC § 5090.32 and 5090.50(j). This is to clarify the Director of the Department of Parks and Recreation, not the Deputy Director of the OHMVR Division, is the approving authority for Grants and Cooperative Agreements.

ARTICLE 4 – PROJECT ADMINISTRATION PROCEDURES

4970.19 – PROJECT AGREEMENT

Specific Purpose

This section identifies the responsibility of the OHMVR Division to prepare and execute project agreements, which set forth the terms and conditions of the project, with the grantees upon approval of the Director, and provides that grantees may not submit claims for reimbursement or advance payments until project agreements are fully executed.

Subsection 4970.19.1 clarifies the meaning of the project performance period and provides the project performance period for acquisition, development, planning, and restoration projects is three years, and the project performance period for ground operations, law enforcement, and education and safety projects is one year.

Subsection 4970.19.2 clarifies when a project amendment is required and provides the conditions under which a request for a project amendment by the grantee may be approved. This subsection provides the procedure and timeframe that grantees shall follow in requesting a project amendment, and that unspent funds in themselves do not justify a project amendment for a time extension. This subsection also discusses the OHMVR Division's responsibility in reviewing requested amendments, and the procedures the OHMVR Division shall follow in approving or disapproving amendment requests.

Subsection 4970.19.3 provides that an applicant or grantee may at any time unilaterally cancel or withdraw an approved project by written notification to the OHMVR Division. The subsection also provides the procedures that grantees shall follow for a cancelled project regarding advanced funds and, if the grantee had commenced the project, the costs that are eligible for reimbursement, and the requirements for record keeping.

Subsection 4970.19.4 clarifies that the failure of the grantee to comply with the terms and conditions of the project agreement may be treated by the OHMVR Division as a breach of contract. This subsection provides the procedures and timeframes the OHMVR Division and the grantee shall follow to cure the breach, and the procedures the OHMVR Division shall follow if the grantee has not cured the breach or commenced action to cure the breach within the specified timeframe. This subsection also provides that projects that have had a breach of contract shall remain subject to all record keeping and audit requirements contained in these proposed regulations.

Subsection 4970.19.5 clarifies the procedures the grantee shall follow if the project has not been completed within the project performance period specified in the project agreement.

Subsection 4970.19.6 clarifies that the project agreement creates a legal duty on the part of the grantee to comply with the terms and conditions of the grant.

Necessity

The proposed section of the regulations is necessary to provide for program accountability. This section identifies the responsibilities of the OHMVR Division in preparing and executing project agreements, in reviewing requests for project amendments, and in addressing a breach of contract by a grantee in accordance with PRC § 5090.32 and 5090.50. The proposed section is necessary to provide the meaning of the project performance period and to specify the performance period for the various project types to ensure timely expenditure of appropriated funds. The proposed section is also necessary to clarify the grantees' administrative responsibilities in regards to

changes in the project agreement and to clarify the legal duty of the grantee to comply with the terms and conditions of the grant in accordance with PRC § 5090.32 and 5090.50.

4970.20 – EQUIPMENT MANAGEMENT REQUIREMENTS

Specific Purpose

This section identifies the requirements that shall apply to all equipment purchased with OHV Trust Funds.

Necessity

The proposed section of the regulations is necessary to ensure the investment in equipment purchased with OHV Trust Funds are properly maintained, stored, identified, and disposed in a responsible, prudent manner. As custodians of the OHV Trust Fund, the OHMVR Division finds it necessary to provide directions to the grantees on the disposition of equipment in accordance with PRC § 5090.32 and 5090.50.

4970.21 – DEVELOPMENT PROJECT PROCEDURES

Specific Purpose

This section identifies the documentation that shall be prepared for each development project, and provides that a registered civil or structural engineer or a licensed architect shall sign plans for structural items. The section provides that the OHMVR Division may review development documentation prior to the start of the project, and also provides the grantees' responsibilities to follow all laws that pertain to public works projects including the Americans with Disabilities Act and Title 24 of the California Building Standard Codes regarding disabilities.

Necessity

The proposed section of the regulations is necessary to give applicants specific direction and guidance to assist them in compliance with all applicable building and accessibility codes in accordance with PRC § 5090.32, 5090.50 and Public Law 101-336, July 26, 1990, 104 Stat. 327, and Title 24 , California Building Standards Code. Additionally, this section is necessary to ensure structural plans are approved by a licensed engineer or architect and the OHMVR Division has a right to review those plans.

4970.22 – ACCOUNTING PRACTICES

Specific Purpose

This section identifies the responsibilities of the grantees to maintain fiscal controls and fiscal accounting procedures based on Generally Accepted Accounting Principles

(GAAP). This section also discusses the responsibilities of grantees to: 1) keep adequate records, 2) document all labor costs, 3) document costs associated with the use of equipment, 4) retain all financial accounts, documents, and records pertinent to the project for three years from the expiration of the project agreement or until an audit started during the three years has been completed, a report is published, and audit findings are resolved, 5) place advances in a separate interest-bearing account, and 6) document matching funds, which shall be directly related to the project and may not be used for more than one project.

Necessity

The proposed section of the regulations is necessary to clarify the grantee's responsibility to maintain fiscal controls and fiscal accounting procedures. It requires applicants to deposit payment advances in an interest-bearing account, and to document all costs and matching funds associated with the OHV project in accordance with PRC § 5090.32 and 5090.50. Additionally, the section is necessary to identify the time period required for grantees to retain financial records pertinent to the project. Specifying accounting protocols will ensure timely compliance with PRC § 5090.50(h).

4970.23 – PAYMENT REQUESTS

Specific Purpose

This section identifies the procedures grantees shall follow to request payments for advances and reimbursements. It also discusses the OHMVR Division's responsibilities for approving and processing payment requests.

Subsection 4970.23.1 clarifies that, although advances are generally not allowed, the OHMVR Division may consider granting an advance if extenuating circumstances exist. The subsection provides the procedures that: 1) grantees shall follow to request an advance, and 2) the OHMVR Division shall follow in approving or disapproving an advance request. The subsection also provides the procedures that shall be followed by grantees for subsequent advance requests.

Subsection 4970.23.2 provides the documentation that shall be included in requests for reimbursement.

Necessity

The proposed section of the regulations is necessary to provide the procedures that shall be followed: 1) by grantees to request advances and reimbursements, and 2) by the OHMVR Division in approving/disapproving advance requests, and approving and processing reimbursement requests in accordance with PRC § 5090.32 and 5090.50. This section is necessary to ensure efficient and consistent processing of payment requests and fiscal accountability.

4970.24 – PROJECT CLOSEOUT

Specific Purpose

This section identifies the procedures and timelines that grantees shall follow after completing a project. The section also describes the responsibilities of the OHMVR Division in reviewing all supporting documentation submitted by grantees and processing final payment requests.

Necessity

The OHMVR Division has a fiduciary responsibility to ensure program accountability. This section is necessary to articulate to the grantee the administrative processes such as completion of match requirement, supporting documentation, and final payment requests required to close out a project. These documents are required to demonstrate and articulate effective completion of the project as originally approved and scored, and to create a clear and complete record for audit purposes. This section is also necessary to make certain the OHV Trust Funds were expended in compliance with the project agreement and in accordance with PRC § 5090.32 and 5090.50.

4970.25 – AUDITS

Specific Purpose

This section identifies the types of audits the OHMVR Division or the Department shall conduct.

Subsection 4970.25.1 provides examples of the types and methods of review that may be included in a performance audit. It clarifies that failure of grantees to cooperate with performance audit requests may result in denial of payment requests and/or refund to the State of amounts already paid or advanced. It provides that the OHMVR Division may conduct a site visit that may include a review of progress towards the accomplishment of deliverables. The subsection also provides the requirements: 1) of grantees in preparation for and during site visits by the OHMVR Division, and 2) of the OHMVR Division staff in developing a report, which shall be provided to the grantee, that contains comments and recommendations regarding the grantee's project.

Subsection 4970.25.2 cites PRC § 5090.50(h) which requires the Department to conduct an annual financial audit of the Grants program; and that, during each year, the department shall also conduct, or cause to be conducted, an audit of the performance of a minimum of twenty percent of grants and cooperative agreement recipients. The subsection provides that law enforcement grantees shall be subject to a financial and performance audit at least once every five years. It provides the procedures that shall be followed by the OHMVR Division and the Department's Audit Office for a financial audit. It discusses the requirements of grantees in cooperating with and providing the requested

documentation to the Audit Office. It describes the conditions which will result in an audit exception and clarifies the Department's right to visit project areas.

Subsection 4970.25.3 provides that the grantee shall be provided a copy of the final audit report. It also provides the procedures and timelines that shall be followed by grantees if the audit results identify audit exceptions and the remedies that may be taken as a result of grantees failure to remit payments due for audit exceptions.

Necessity

The proposed section of the regulations is necessary to clarify the requirements and procedures that shall be followed by: 1) the OHMVR Division and grantees for performance audits, and 2) the OHMVR Division, the Department's Audit Office, and grantees for financial audits in accordance with PRC 5090.32, 5090.35, 5090.50, and 5090.53.

4970.26 – HOW TO CONTACT THE OHMVR DIVISION

Specific Purpose

This section provides the mailing address of the OHMVR Division to which all inquiries and correspondence related to the Grants program shall be addressed. It also provides the procedure for making Grants program inquiries by phone or e-mail and provides a phone number, fax number, and e-mail address for general inquiries.

Necessity

In order to ensure program success, the OHMVR Division encourages applicants, grantees, and the public to contact the OHMVR Division whenever they have a question or comment about the Grants program. Questions raised by applicants need to be addressed in a timely fashion prior to potentially inappropriate expenditure of funds or submission of nonconforming applications. In addition, the ability to contact the OHMVR Division allows members of the general public to voice concerns regarding specific projects. This section is necessary to provide those individuals contact information in accordance with PRC § 5090.32. This section also provides the mailing address, fax number, and e-mail address for applicants that may wish to contact the OHMVR Division in writing.

GENERAL OR MISCELLANEOUS COMMENTS

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Revenue and Taxation Code 8352.8.

(a) The Conservation and Enforcement Services Account is hereby established as an account in the Off-Highway Vehicle Trust Fund created by Section 38225 of the Vehicle Code.

(b) Funds in the Conservation and Enforcement Services Account shall be allocated to the Division of Off-Highway Motor Vehicle Recreation of the Department of Parks and Recreation for expenditure, upon appropriation by the Legislature, for the following purposes:

(1) Up to the 40% of the funds, for cooperative agreements or challenge cost-sharing agreements with the United States Forest Service and the United States Bureau of Land Management, to complete necessary route designation planning work and to implement route planning decisions.

There is nothing in the draft Grant Regulations that refers to this or designates how the money would be divided between categories. If it was meant to be separate from the OHV Grants, then no OHV grant should be considered that requests funding for a Travel Management project, for either the USFS or BLM. – Bruce Brazil

Department's Response to Comment

The funding identified by the commenter was a product of the budget bill for the 2008/09 fiscal year, which was approved by the State Legislature and Governor. The existence of another OHV Trust Fund funding source does not in and of itself prohibit grants and cooperative agreements from funding similar activities. The "route designation" related activities identified in the comment would be eligible under the grants and cooperative agreements' Operations and Maintenance funding category in accordance with PRC § 5090.50(b)(1)(A). The grantee would only be able to receive reimbursement for eligible costs from one or the other funding source (i.e., no double dipping). Administration and audit practices shall compare the scopes of work for similar projects to ensure they are not duplicate activities and reimbursements.

The Department is therefore taking no action on this comment.

Comment

In general, the proposed regulations follow the 2007 regulations with amendments specified by SB 742. The proposed regulations also incorporate the new 2008 Soil Conservation Standards and Guidelines by reference.

The application process is improved by the opportunity for preliminary filing and application review. Submission of applications via the OLGA is useful but untried as the program is not yet available. We look forward to having a “user friendly” on line application available. – Bruce Witcher, California Off-Road Vehicle Association

Department’s Response to Comment

No response required.

The Department is therefore taking no action on this comment.

Comment

The commenter requests better clarification on the types of projects for motorized access to non-motorized areas. – Bruce Brazil

Department’s Response to Comment

The Ground Operations Evaluation Criteria in the Appendix portion of the regulations, item number 9, provides a partial list of “non-motorized” recreation activities that would meet the statutory requirement in PRC § 5090.50(b)(1)(B)(ii).

The Department is therefore taking no action on this comment.

DOCUMENTS INCORPORATED BY REFERENCE

Appendix

The Appendix is incorporated by reference in subsection 4970.05(a) of the proposed regulations. As such, any subsequent revisions to its contents are subject to the rulemaking process. The Appendix contains all the required forms and instructions for grant applications including: 1) General Information, 2) Location Map, 3) Public Review Process, 4) Equipment Inventory, 5) Environmental Review Data Sheet, 6) Habitat Management Program, 7) Project Cost Estimate, 8) Applicant Certifications, 9) Law Enforcement Project Certification, 10) Governing Body Resolution, 11) Evaluation Criteria, and 12) Law Enforcement Needs Assessment. The Appendix also contains samples of the various Project Agreements that will be executed with grantees and a sample form for Payment Requests.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

Environmental Data Review Sheet, Page 5 of 77, Item 5 – The commenter indicates that there does not appear to be a definition for “highly erosive soils” in the regulations. – Roger Poff

Department’s Response to Comment

“Highly erosive soils” is a common term, and therefore is not defined in the regulations. It refers to soils that are composed of materials, such as sand, that tend to erode easily.

The Department is therefore taking no action on this comment.

Comment

Applicant Certifications, Page 18 of 77, Item A1 – “Monitor Soil Conditions” is unclear. It implies trails, but perhaps it refers to open OHV riding areas? – Roger Poff

Department’s Response to Comment

The requirement applies to OHV recreation facilities, including trails and OHV open areas, included in the applicant’s proposed project areas.

The Department is therefore taking no action on this comment.

Comment

Evaluation Criteria, General Criteria, Page 53 of 77, Item 12(a) – [“Land Manager has developed a systematic methodology for evaluating soil conditions of its OHV Opportunities?”] The comment requests an explanation of this statement. – Roger Poff

Department’s Response to Comment

The ability to respond affirmatively to this evaluation criteria question would require the applicant to have an existing plan that evaluates soil conditions. This plan may be in the form of a resource plan, storm water plan, or other plan that assesses soil conditions.

The Department is therefore taking no action on this comment.

Comment

Evaluation Criteria, Ground Operations Project Criteria, Page 67 of 77, Item 2 – The comment expresses a concern regarding the assignment of points for loss of OHV

opportunity when compared to points assigned for damage to cultural resources, sensitive species or trespass. While PRC § 5090.50 does direct the OHMVR Division to give preference to applications that sustain OHV opportunity, other state and federal statutes require the protection of cultural resources and sensitive species and these statutes supersede the PRC § 5090.50 requirement. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The comment is only referencing one section of the Ground Operations Project Evaluation Criteria. There are other sections of the Ground Operations Project Evaluation Criteria that allow for proposed projects to earn points for resource protection. The points referenced in the comment are weighted in accordance with PRC § 5090.50(b)(1)(B)(i), which requires the OHMVR Division to give preference to applications that sustain existing OHV recreation.

The Department is therefore taking no action on this comment.

Comment

Evaluation Criteria, Planning Project Criteria, Page 71 of 77, Item 2, Line 3 – The comment requests an explanation of the language “Potential effects on soil conditions or fugitive dust.” – Roger Poff

Department's Response to Comment

The section referenced by the commenter has been revised to provide clarifying language.

Comment

Evaluation Criteria, Restoration Project Criteria, Page 77 of 77, Item 11 – The size of a sensitive habitat within a project area does not necessarily reflect its importance. For example, most Sierra meadows are less than 5 acres in size, yet they are essential habitat for many sensitive species. They are also some of the habitats most vulnerable to OHV damage and in need of restoration. The size criteria should be eliminated. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The item in the Restoration Project Evaluation Criteria was added to comply with PRC § 5090.50(b)(2)(F)(i), which requires the OHMVR Division to give additional consideration to projects that restore areas with the potential for the most environmental damage. This does not prohibit smaller sized Restoration projects from receiving funding.

The Department is therefore taking no action on this comment.

2008 Soil Conservation Standard and 2008 Soil Conservation Guidelines

The 2008 Soil Conservation Standard and 2008 Soil Conservation Guidelines are incorporated by reference in subsection 4970.06.3(a) of the proposed regulations. As such, any subsequent revisions to its contents are subject to the rulemaking process.

Public Comments Received During 45-Day Written Comment Period and Two Public Hearings

Comment

2008 Soil Conservation Standard and Guidelines – The comment expresses concern regarding the Soil Standard, which requires management that prevents “erosion or sedimentation which significantly affects resource values beyond the facilities.” The definition of “significant” is meaningless and without a standard. The definition should provide a standard that includes measurable criteria to determine significance both within and external to a facility or route. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

While the concept of “significant” may seem to be subjective, it is a standard that is used in all CEQA/NEPA documents. The term is always circumstances/context driven; as such, a numeric standard would not be possible. As with the CEQA process, the tools provided in the Soil Conservation Standard and Guidelines will allow the agencies to establish appropriate “levels of significance” for their unique situations. The intent is that a site specific threshold of significance would be established by the agency.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Standard and Guidelines – Several comments express concern about the Soil Conservation Standard that requires OHV facilities be managed for long-term use without generating soil loss that exceeds restorability. One comment indicates that the requirement in general is impossible because soil loss includes soil function, nutrients, and biota, which cannot be restored in timeframes less than millennia. Eroded soil that is captured (and which may be retrievable) is no longer soil. It is sediment lacking most of the critical properties of soil.

Another comment states that the term “Restorability” as used in the Soil Standard, and the definitions of “Restoration” and “Soil Loss” combined could potentially make virtually every OHV trail that has been in use for even a short time ineligible for grant funding or worse, require them to be closed and restored. Some irretrievable soil movement off site is virtually unavoidable as part of normal use. The definition of “soil loss” is apparently taken from the Consulting Agency Review Committee (CARC) proceedings, but no

specific reference is provided to support this very stringent definition. A more realistic definition of soil loss should be used as follows:

“Soil loss is defined as movement of soil to a location where the soil cannot be reasonably retrieved, recycled, or replaced to allow the restoration of land to the contours, the plant communities, and plant covers comparable to those on surrounding lands, or at least those that existed prior to off-highway motor vehicle use.” – Karen Schambach, Public Employees for Environmental Responsibility, Bruce Whitcher, California Off-Road Vehicle Association

Department’s Response to Comment

Soil loss, as defined in the Soil Standard and Guidelines, is “movement of soil material to a location where the soil cannot be reasonably retrieved and recycled.” This definition was developed by CARC members as part of the CARC process of developing and approving the Soil Standard and Guidelines. A reference was not provided because there is no formal document that cites CARC deliberations.

The Soil Standard and Guidelines refers to “soil” in a generic sense as earth surface materials.

“Restorability” as used in the Soil Standard, applies more broadly to incorporate the intent of PRC § 5090.35(b), which references the establishment of a soil conservation standard “at least sufficient to allow restoration of off-highway vehicle areas and trails,” and includes closure provisions for portions of an OHV project area that do not comply with the Soil Conservation Standard (PRC § 5090.53(c)).

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Standard and Guidelines – The soil standards guidelines appear more stringent than law. The guidelines could potentially require many trails to be closed and restored. – Tom Tammone

Department’s Response to Comment

The Soil Conservation Standard and Guidelines were developed in full compliance with PRC § 5090.35(b). The Guidelines were developed to provide assistance to applicants in complying with the Soil Conservation Standard.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Standard, Page 3, Section 1.3, Minimum Requirements – The Standard is “project” driven. The purpose and intent of the Soil Standard and Guidelines

was to ensure proper long-term management of OHV areas to minimize soil loss. It is contrary to the intent of the PRC to only apply the Standard to projects. A facility manager cannot “ensure that an OHV facility is managed for its sustainable prescribed use, without generating soil loss that exceeds restorability” when the Standard is only applied to discrete projects. The Standard must be incorporated as a permanent management requirement for all areas that use OHV Trust Funds. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

The Soil Standard and Guidelines apply to defined project areas, containing ground disturbing activities, which receive grant funding. It is the responsibility of the grant applicant to appropriately define a project area. A requirement in receiving grant funding, is the development and implementation of a maintenance and monitoring plan that will result in compliance with the Soil Conservation Standard within the project areas.

The Department recognizes the importance of appropriate resource management and thus the Scoring Criteria give points for soils monitoring and management in the entire area managed by the applicant.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Standard, Page 3, Section 1.3.1, Assessment, Maintenance, and Monitoring – This section should read “All State-funded OHV areas” rather than “all OHV projects,” for the reasons outlined in the previous comment. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

The Soil Standard and Guidelines apply to defined project areas that receive grant funding, pursuant to PRC § 5090.53. It is the responsibility of the grant applicant to appropriately define a project area.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Standard, Page 5, Section 1.3.3, Definitions of Terms in the 2008 Standard [footnote] – The 2008 Soil Conservation Guidelines include requirements that are significantly more stringent than the 1991 Guidelines. The 2008 Guidelines were developed under contract by the California Geological Survey and the Consulting Agency Review Committee ¹ as mandated by AB 2666. We believe the CARC is incorrectly referenced as the “Cooperating Agency Review Committee” at the bottom of page 4. Furthermore, there is no reference to the California Geological Survey (CGS) report in the

bibliography, an omission that is surprising given that the 2008 Guidelines themselves were developed under contract by CGS. The process by which the Guidelines were developed is described in the referenced article.

We request that supporting references providing the background for the 2008 Guidelines be included in the document. – Bruce Whitcher, California Off-Road Vehicle Association

Department's Response to Comment

The Department assumes the commenter is referring to an article prepared for the Environmental and Engineering Geosciences periodical published jointly by the Geological Society of America and the Association of Engineering Geologists. This article was prepared after the Soil Standard and Guidelines were written and approved by the CARC group, therefore it was not referenced.

The Department concurs with the commenter regarding the incorrect reference at the bottom of page 4. This section has been revised.

Comment

2008 Soil Conservation Standard, Page 5, Section 1.3.3, Definition of Terms – Long-term, when applied to a resource such as soils, is millennia, not 25 years. There is no definition for "Sustainable." In any event, when referring to a virtually non-renewable resource such as soil, a service life of 25 years cannot be considered sustainable. – Karen Schambach, Public Employees for Environmental Responsibility

Another comment on this section indicates that long term use is arbitrarily defined as a period of 25 years. There is no indication of what is to be done at the end of this period. – Bruce Whitcher, California Off-Road Vehicle Association

Department's Response to Comment

"Sustainable long term prescribed use" is used in reference to the State of California's capitalization of real property standards. The term is used in reference to the management of an OHV facility for a minimum service life of 25 years. It is not in reference to nor does the Soil Standard require the recreation of soil horizons formed from the weathering of geologic formations.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Standard, Page 5, Section 1.3.3, Definition of Terms – The definition of "restoration" is generally impossible to meet. For example, how can the land contours of South Wall, Hungry Valley SVRA, be restored when an entire geologic formation that controlled the shape of the land has been removed? Protocols for

determining species diversity, exclusion of non-native plants, and plant cover restoration are not specified; accomplishing this degree of restoration, comparable to surrounding undamaged land, is a very long-term goal—far beyond the likely existence of the OHV program. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

The term “restoration” as defined in PRC § 5090.11, means "upon closure of the (OHV) unit or any portion thereof, the restoration of the land to the contours, the plant communities, and the plant covers comparable to those on surrounding lands or at least those which existed prior to the OHV use." The definition does not require that a geologic formation or portion thereof, must be recreated.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Standard, Page 5, Section 1.3.3, Definition of Term “Soil Loss” – This tacitly assumes soil is a homogeneous substance, and that transport preserves its homogeneity. Retrieval/recycling does not restore soil horizons; the composition of transported soil is no longer the same as that of the soil in place; the layering and soil biota are irretrievably lost under conditions of “soil loss.” – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

Retrieval/recycling refers to re-applying soil as trail tread, or amending and using the soil to restore plant communities or plant covers.

The Soil Conservation Standard refers to “soil” in a generic sense as earth surface materials.

Through the CARC process of developing the Soil Standard and Guidelines, it was determined that a definition of “soil loss,” as it applies to the Soil Conservation Standard, was necessary. The “soil loss” definition provided in the Soil Standard and Guidelines was developed and agreed upon by CARC members.

The terms “restoration” and “restorability,” as defined in the PRC and used in the Soil Standard and Guidelines, do not require the recreation of geologic formations nor the recreation of soil horizons formed from the weathering of geologic formations.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 6, first paragraph – The Guidelines should apply to government “areas” receiving OHV funding, not “projects.” Applying the Guidelines to a project infers that the Guidelines only apply until the project grant file is closed. [PRC § 5090.53]. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

The Soil Standard and Guidelines apply to defined project areas, during the term of the grant, pursuant to PRC § 5090.53. It is the responsibility of the grant applicant to appropriately define a project area.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 6, first paragraph – The 30 government organizations, OHV groups, industry consultants and environmental communities should be identified. The implication is that there was total agreement among these communities, which is not the case. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

The cited sentence in the Soil Conservation Standard and Guidelines refers to input received from different parties prior to the development. There was no intent to imply there was total agreement or disagreement among these parties during the input gathering stage of the development. They were listed to show compliance with PRC § 5090.35(b)(1).

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 7, Section 2.3, Assessment – No standard is stated for “excessive” discharges of sediment. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

The item referenced by the commenter is an introductory sentence in the Assessment portion of the Guidelines. The sentence provides examples of activities that may constitute an OHV project. The term “excessive” can be applied in a variety of ways and in various settings. In the case of the provided example, “excessive” sediment discharge

violations may be dictated by regulations that are specific to a particular watershed, or it may be a subjective evaluation by a proactive OHV facility manager.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 11, Vegetation – The “shoulds” are entirely inappropriate as this information is essential for restoration. – Karen Schambach, Public Employees for Environmental Responsibility

Department’s Response to Comment

These are guidelines to be used for planning of all types of OHV projects, not standards for restoration. Guidelines are to be used as suggestions to reach desired goals, not as requirements that must be used.

The use of language such as “shall” and “must” in the guidelines is not appropriate. Not all guidelines are applicable to a given OHV project. Additionally, OHV facility managers may be adhering to the Soil Conservation Standard by means that are not detailed in the guidelines. The guidelines are written so alternative applications can be used to achieve the end goal of adherence to the Soil Conservation Standard.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 12, Hydrology – Watercourse Protection Zones – This paragraph is confusing. It would be clearer if these two sentences were reversed and reworded to read: “...sections of existing trails. These widths are presented as guidelines for protecting watercourses from sediment which may discharge from trails and roads that run parallel or sub-parallel to watercourses. The Protection Zone widths listed below are not intended for the approaches of OHV trails and roads to designated crossings.” – United States Forest Service

Department’s Response to Comment

The Department has considered this comment and has concluded it is not necessary to revise the statement.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 14, Air Quality – Asbestiform minerals are also hazards when water-borne. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The Department agrees with the commenter; however, the comment refers to the section entitled "Air Quality." As such, the comment is not in context with the referenced section.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 14, Wildlife – This section does not recognize that Wildlife Habitat Protection Plans are required for all State-funded OHV areas. The "may's" throughout this paragraph should be "must's" pursuant to PRC § 5090.35 and 5090.53. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The use of requirement language such as "shall" and "must" in the guidelines is not appropriate. Not all guidelines are applicable for an OHV project. Additionally, OHV facility managers may be adhering to the Soil Conservation Standard by means that are not detailed in the guidelines. The guidelines are written so that alternative applications can be used to achieve the end goal of adherence to the Soil Conservation Standard.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 14, Cultural and Historical Resources – Are cultural and historical resources of no importance outside of dunes and deserts? – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The Department concurs with the commenter and has revised the section.

Comment

2008 Soil Conservation Guidelines, Page 15, Cultural and Historical Resources – Of course habitat for endangered wildlife and vegetation and paleontological sites should be known and delineated; delete the word "if necessary." This is always necessary and

required by CEQA. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

These are guidelines and are not meant to supplant other legal requirements relative to these issues. The phrase “if necessary” refers to the existence of the sensitive areas identified. If none of these sensitive areas are present then it would not be necessary.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page17, Analytical Models for Erosion Potential Assessment – Revised Universal Soil Loss Equation – None of these predictive models is appropriate to OHV areas. These models were developed for agricultural or mine reclamation. Erosion potential from OHV use is entirely different. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The introduction to the Erosion Potential Assessment, Section 2.3.5, explains how these models might be useful for OHV assessment purposes which in some instances are similar to agricultural or mining situations.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Pages 17 and 18, Analytical Models for Erosion Potential Assessment – Water Erosion Prediction Program – What use is to be made of erosion prediction? What guideline derives from the prediction? – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The introduction to the Erosion Potential Assessment, Section 2.3.5, explains how these models might be useful for assessment purposes. For example, if an area of land is being considered for OHV recreation, an Erosion Hazard Assessment using one of the suggested models would highlight what parts of that land are more susceptible to erosion than others. An OHV facility could then be designed such that easily eroded areas are cordoned off or managed in such a way as to minimize OHV traffic. This in turn would limit mechanical erosion. The limitations of using the noted Erosion Potential Assessment methods are also noted in the introduction to the section.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Pages 19 and 20, Section 2.4.1, Maintenance Planning and Implementation:

Bullet point 2 – Expert trails are ugly because of deep erosion, common complete destruction of any living occupant, dumped oil from damaged vehicles, and other flotsam of this form of recreation. You can't paper it over, and such trails are completely inconsistent with any kind of conservation. – Karen Schambach, Public Employees for Environmental Responsibility

Bullet point 8 – Reword to: "Sediment that has accumulated in waterbreak (e.g., rolling dip) sediment traps, where present, should be recycled into the crest of the rolling dip or the trail tread and structure." – United States Forest Service

Bullet point 10 – Reword to: "...repaired with soil reclaimed from sediment traps, where present, at waterbreak outlets and outside...." – United States Forest Service

Bullet point 13 – (which should be moved to the beginning...) It would be clearer if reworded to read: "Maintenance of roads and trails should be conducted by moving the smallest amount of soil necessary to meet the objective." – United States Forest Service

After making the revisions recommended above, move the last three bullet points to the beginning of the list for emphasis. – United States Forest Service

Department's Response to Comment

In response to the comment on bullet point 2, regardless of difficulty rating, trail segments can meet the standard by following the guidelines identified in the Soil Conservation Standard and Guidelines. In response to the comment on bullet point 8, the suggested language is unnecessarily limiting. In response to comments on bullet points 10 and 13, the Department has considered these comments and has concluded that it is not necessary to revise the statements. In response to the last comment regarding this section, the Department did not list the bullet point items in order of importance. All bullet points have the same weight and value.

The Department is therefore taking no action on these comments.

Comment

2008 Soil Conservation Guidelines, Page 21, Section 2.5.1, The Monitoring Plan – What is Plan B if monitoring and management appropriate to the size, type, and use of the OHV facility are beyond the staff and budget limits? – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

Monitoring is a required component of the Soil Conservation Plan. Pursuant to Subsection 4970.06.3(d), any applicant required to submit a Soil Conservation Plan must demonstrate how all components of the Soil Conservation Standard is or will be met in the project area. Implementation of the Soil Conservation Plan is subject to review pursuant to subsection 4970.25.1(a).

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 22, Section 2.5.2, Change Detection Methodology – General Considerations – “One or more” is much too permissive. No quantitative information that is relevant can be obtained from photographs alone. This protocol further fails to assess habitat impact and specific vegetation impact, as well as off-trail and off-site impacts. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

This is an introduction to a section on Change Detection Methodology. The section is provided as a guideline and provides examples of change detection methods. The number and type of change detection methods used depends on facility and project needs.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 23, Section 2.5.3, Change Detection Methodology – Monitoring for Specific Environments and OHV Activities – Open areas should not incorporate features such as habitat for endangered plants and animals. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The guideline referenced by the commenter was provided as a tool to OHV facility managers responsible for managing open OHV areas. The facility manager has the ultimate responsibility in determining if OHV use is suitable in their particular facility.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Pages 23 and 24, Section 2.5.4, Compliance Reporting:

The “shoulds” are especially inappropriate here—if reporting is not done, the monitoring is an exercise in futility. – Karen Schambach, Public Employees for Environmental Responsibility

Bullet point 5 – This [bullet] implies a commitment of resources and an executive decision. In this context the word “distributed” in the last sentence seems too weak. There should be a requirement that the responsible official acknowledge that he/she has read the results of the monitoring (or an executive summary), or at a minimum, “signs off” on the results to acknowledge the monitoring report exists. – United States Forest Service

Department’s Response to Comment

In response to the first comment in this section, the use of language such as “shall” and “must” in the guidelines is not appropriate. Not all guidelines are applicable for all OHV projects. Additionally, OHV facility managers may be adhering to the Soil Conservation Standard by means that are not detailed in the guidelines. The guidelines are written so that alternative applications can be used to achieve the end goal of adherence to the Soil Conservation Standard.

In response to the comment on bullet point 5, the intent of the bullet point referenced by the commenter is to provide guidance to applicants in compliance reporting, given a variety of settings and management operations. The Department will also validate compliance via performance reviews, which are a more effective measurement than a “sign off” by an agency official.

The Department is therefore taking no action on these comments.

Comment

2008 Soil Conservation Guidelines, Page 24, Section 2.6.1, Project Design Considerations, paragraphs 2 and 3 – The word “principals” is used incorrectly two times; it should be “principles.” – United States Forest Service

Department’s Response to Comment

The Department concurs with the commenter and has revised the section.

Comment

2008 Soil Conservation Guidelines, Page 24, OHV Trails and Roads – General Design Considerations – All of these items apply to new construction; there are so many violations of these planning criteria in existing SVRAs and areas funded by the OHV program, bringing them into compliance with these design standards must be the thrust of the OHV program. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

Although the items referenced by the commenter are in the Project Design and Construction section, application of the information is not limited to new construction but can apply to all types of OHV projects involving ground disturbing activities.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 24, OHV Trails and Roads – General Design Considerations, second sub-bullet point – Out-sloping is listed as a design technique for achieving hydrologic invisibility. Out-sloping is an excellent drainage strategy, and it should be encouraged on roads, especially on those with low gradients, but out-sloping rarely works on single-track trails. With use, trails develop berms and become slightly entrenched (and it does not take much of a berm to impede water drainage off the tread). I suggest rewording this to read: "...hydrologic invisibility include out-sloping low gradient roads, rolling tread profiles, and rolling dips." Or, alternatively: "...hydrologic invisibility include out-sloping road treads, and frequent dispersal of road and trail runoff with rolling tread profiles and rolling dips." – United States Forest Service

Department's Response to Comment

The Department concurs with the commenter and has revised the section.

Comment

2008 Soil Conservation Guidelines, Page 27, bullet entitled "Rolling Dips," and Page 28, bullet entitled "Waterbreaks" – There appears to be some overlap between these two bullet sections, and it is unclear which section actually refers to the "OHV Rolling Dip" drainage structure typically used on single-track OHV trails. Nor is there any mention of the use of a sediment trap (where appropriate) at the rolling dip outlet to recycle soil back into the trail tread and rolling dip structure, which is implied but not mentioned specifically several other places in the Guidelines. The first drawing on page 30 clearly refers to a typical OHV Rolling Dip, but the discussion under "Waterbreaks" also refers to elements of an OHV Rolling Dip.

Other than not mentioning sediment traps, most of the discussion under these two headings is very good. I suggest rearranging the sub-bullet points under both of these bullets to get all the elements specifically related to OHV Rolling Dips all under "Rolling Dips" and to keep the "Waterbreaks" more generic. The discussion under Rolling Dips should include the importance and construction of sediment traps at drainage outlets, where appropriate, and should discuss the importance of compacting the core (crest) of the rolling dip structure during construction and maintenance. – United States Forest Service

Department's Response to Comment

There are many types of waterbreaks used to divert runoff water from a trail, including rolling dips. The Soil Conservation Standard and Guidelines does not reference all waterbreak types. It is understandable the commenter observed some overlap between the rolling dip and waterbreak sections. However, this perceived overlap does not outweigh the importance of a detailed discussion on rolling dip design.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Pages 27 and 28, bullet entitled "Rolling Dips," sub-bullet 4 – The geometry and design of the rolling dip structure on single-track trails has more to do with the speed and flow of the OHV traffic than the wheelbase of the vehicle. – United States Forest Service

Department's Response to Comment

The Department concurs with the commenter and has revised the section.

Comment

2008 Soil Conservation Guidelines, Pages 28 and 29, bullet entitled "Waterbreaks," sub-bullet 4 – Mixing rock and soil into the core (crest) of rolling dip structures makes them weaker and less resistant to traffic, not stronger as is suggested. Also, using soil cement to harden rolling dip structures has been tried and has not been effective (because it breaks down). The mention of "dog-bones" and logs to reinforce drainage structures is good. I have also observed rolling dip structures very effectively hardened with paver blocks. – United States Forest Service

Department's Response to Comment

The Department concurs with the commenter and has revised the section.

Comment

2008 Soil Conservation Guidelines, Pages 29 and 30, bullet entitled "Watercourse Crossings," sub-bullet 2 – This bullet seems redundant (sub-bullet 4 covers the same issues) and is very confusing because it could be misinterpreted to imply an approach segment that is at or near the watercourse level, making it subject to severe erosion by floodwater. I suggest deleting sub-bullet point 2, since the same concepts are already covered under sub-bullet point 4 in this section. If there is something else in sub-bullet 2 that I am missing, then it is not explained very well. – United States Forest Service

Department's Response to Comment

The two sub-bullet points referenced by the commenter refer to two different items, crossings and approaches to crossings. The Department has concluded further clarification is not required.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 32, OHV Hill Climbs – Hill climbs are incompatible with soil conservation. These activities lead to irretrievable damage. – Karen Schambach, Public Employees for Environmental Responsibility

Department's Response to Comment

The trail type referenced by the commenter can be compatible with the Soil Conservation Standard by utilizing techniques and methods identified in the referenced section.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 46 – This page is blank in the .pdf version online and in its print out. Is there some information missing? – United States Forest Service

Department's Response to Comment

The page was intentionally left blank for book formatting purposes. Information has not been omitted.

The Department is therefore taking no action on this comment.

Comment

2008 Soil Conservation Guidelines, Page 48, OHV Trail Condition Evaluation Form Code Key:

Items G8-Y8-R8 Channel Section – The trail condition form was designed to be used by persons with very limited training and technical knowledge. Evaluating channel conditions at crossings is highly technical, and even experts disagree on indicators of changes. If this “Channel Section” is retained, I suggest that a very clear explanation of how this evaluation criterion is interpreted be included in the instructions, along with language that gives the evaluator the option to avoid using “Channel Section” to evaluate a crossing if he/she does not feel qualified to evaluate channel morphology. – United States Forest Service

Cause Codes – There is confusion and overlap among C9, C15, and C20. As written, I have no idea what C20 is intended to mean, but it appears to be covered under C9. I suggest *designated* be separated out from C9 (designation and design are two quite different issues), layout be added to C15, and C20 be dropped and replaced with a cause code for designation. These Cause Codes would then read as follows:

C9 Segment is not designed for the type or amount of use occurring.

C15 Design / layout / construction prevents effective drainage.

C20 Trail is not designated for the type and amount of use occurring. – United States Forest Service

Department's Response to Comment

In response to the comment on items G8-Y8-R8, the trail evaluation form is provided as an example form for monitoring trail conditions. Applicants may use other methodologies for trail condition monitoring. The need to use appropriately trained personnel for monitoring activities is stipulated in the third bullet of Section 2.5.1 of the Soil Conservation Standard. Workshops conducted by the Department will provide training relative to this form. The Department is therefore taking no action on this comment.

In response to the comment on the Cause Codes, the Department concurs with the commenter and has revised the section.

Comment

2008 Soil Conservation Guidelines, Page 49, Maintenance Checklist:

Guideline 5 suggests 4-inch lifts, but lifts of 6 to 8 inches are mentioned on page 38. This should be consistent, or if a difference is justified, an explanation of where and why should be given. In my experience, because equipment is lighter, soils have more organic matter, and soil moisture is variable, 4-inch lifts are appropriate for construction and maintenance of OHV rolling dips. However, 6 to 8 inch lifts may be appropriate where larger and heavier equipment is involved. Lifts of 12 inches or less are the standard for forest roads, landings, and crossing fills. But equipment is typically heavier than that used on OHV roads and trails. – United States Forest Service

Guideline 8 – Change to “Soil collected in sediment traps at rolling dip outlets...” – United States Forest Service

Department's Response to Comment

In response to the comment on Guideline 5, the recommended height of the lifts is intended as a guide. The guidelines are not intended to supplant existing agency standards that must account for local conditions and equipment availability.

In response to the comment on Guideline 8, not all rolling dips are designed with sediment traps, and sediment can still be collected at rolling dip outlets that do not have sediment traps.

The Department is therefore taking no action on these comments.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The proposed regulations provide clarity for the public and future applicants of the OHMVR Grants and Cooperative Agreements Program and ensure consistency with the statute. The proposed sections of the regulations were developed by OHMVR Division staff with public input, including focus groups of stakeholders as required by PRC § 5090.50(d)(2) and provided in Government Code § 11346(b). Alternatives to the regulations were considered by the Department but were rejected since all provisions in the proposed regulations are necessary to comply with the statute and to provide clear and concise guidance to potential grant and cooperative agreement applicants.

ALTERNATIVES TO PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

Participation in the OHMVR Grants and Cooperative Agreements Program is voluntary and limited to cities, counties, districts, State agencies, agencies of the federal government, federally recognized Native American Tribes, nonprofit organizations, and educational institutions. There is no economic impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations will not have a significant adverse economic impact on any business since OHV Trust Funds are used on land managed by local and federal agencies.

AVOIDANCE OF UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

No federally mandated regulation or amendment is being proposed. There are no conflicts between the proposed regulations and any federal regulations.