

**CALIFORNIA DEPARTMENT OF PARKS AND RECREATION  
OFF-HIGHWAY MOTOR VEHICLE RECREATION DIVISION**

November 19, 2018

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS AND  
DOCUMENTS INCORPORATED BY REFERENCE:  
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM**

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of Title 1 of the California Code of Regulations (CCR), Off-Highway Motor Vehicle Recreation (OHMVR) Division is providing notice of changes made to the proposed Grants and Cooperative Agreements Program regulations in CCR, title 14, sections 4970.01, 4970.06.3, 4970.07.2, 4970.08, 4970.09, and 4970.15.3, and the incorporated Habitat Management Program (HMP) Part 2, Project Agreement General Provisions (United States Federal Agencies) and Project Agreement General Provisions (Nonfederal Applicants Only) forms, which were noticed to the public during a 45-day comment period from April 20 to June 4, 2018, the subject of public hearings on June 5 and 7, 2018, and noticed to the public during a 15-day comment period from June 27 to July 12, 2018.

The changes made to the proposed regulation text and Documents Incorporated by Reference follow this notice and available for public inspection on our website at [http://ohv.parks.ca.gov/?page\\_id=1164](http://ohv.parks.ca.gov/?page_id=1164). The OHMVR Division will accept written comments regarding the proposed changes between November 20 and December 4, 2018. All written comments must be submitted to the OHMVR Division no later than December 4, 2018, and addressed to:

Department of Parks and Recreation  
Off-Highway Motor Vehicle Recreation Division  
Attn: Sixto Fernandez, Grants Manager  
Grants and Cooperative Agreements  
1725 23rd Street, Suite 200  
Sacramento, California 95816-7100

Written comments delivered by email or facsimile will also be accepted by the Department. Written comments may be submitted by email to [ohv.grants@parks.ca.gov](mailto:ohv.grants@parks.ca.gov) or via facsimile at (916) 324-1610. Electronic mail or facsimile transmission must be completed by the deadline given above.

All written comments received by December 4, 2018, that pertain to the indicated changes will be reviewed and responded to by OHMVR Division's staff as part of the compilation of the final rulemaking file. Please limit your comments to the proposed modifications listed in this notice.

**OFF-HIGHWAY MOTOR VEHICLE RECREATION  
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM  
PROPOSED REGULATIONS**

Text of Modified Regulations and Documents Incorporated by Reference  
(Second 15-Day Notice)

Changes made during the 45-day notice period are illustrated with a single underline for proposed additions and a single strikeout for proposed deletions. Changes made during the 1<sup>st</sup> 15-day notice period are illustrated with a double underline for proposed additions and a double strikeout for proposed deletions. Changes made during the 2<sup>nd</sup> 15-day notice period are illustrated with a dotted underline for proposed additions and a double strikeout in italics for proposed deletions.

**4970.01. Definitions.**

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~~(u)~~(t) "Good Standing" means that the Grantee is at all times adhering to the statues and regulations governing the Grants and Cooperative Agreements Program ~~and/or~~ that the Grantee does not have any outstanding refund(s) due to the Department from any other grant(s) program(s) administered by the Department.

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~~(ss) "Youth Mentoring Program" means a formal program recognized by the Department in which youths under the age of 18 are engaged, educated and developed through the use of off-highway vehicles.~~

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**4970.06.3. Soil Conservation.**

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(e)

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- (4) A description of monitoring procedures to be used for ensuring grant-funded work within the Project Area is adhering to the Soil Conservation Standard. The description shall include:
- ~~(A) The description shall include:~~
- ~~1. Monitoring methods to be employed,~~
  - ~~2. A monitoring schedule, and~~
  - ~~3. Anticipated management of collected monitoring data, such as the use of a Geographic Information System (GIS) database.~~
- ~~(B) Suggested monitoring methodologies are provided in the soil conservation guidelines, including:~~
- ~~1. Implementation monitoring, which is used to determine whether activities were conducted as planned,~~
  - ~~2. Effectiveness monitoring, used to determine if design, construction, and maintenance practices are adequate,~~
  - ~~3. Assessment monitoring, used to characterize existing conditions and quantifiably contrast with conditions of a previous~~

~~assessment~~

- (A) Monitoring methods to be employed,
  - (B) A monitoring schedule, and
  - (C) Anticipated management of collected monitoring data, such as the use of a Geographic Information System (GIS) database.
- (f) Suggested monitoring methodologies are provided in the soil conservation guidelines, including:
- (1) Implementation monitoring, which is used to determine whether activities were conducted as planned,
  - (2) Effectiveness monitoring, used to determine if design, construction, and maintenance practices are adequate, and
  - (3) Assessment monitoring, used to characterize existing conditions and quantifiably contrast with conditions of a previous assessment.
- ~~(g)~~ Within 45 calendar days of the final Application submission, the OHMVR Division shall review all Applications to ensure all required Soil Conservation components are addressed.
- (1) If the OHMVR Division needs to clarify information provided and has determined that such clarification may be completed within the timeframe for the Application process, it shall request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.
  - (2) Applicants who do not return the requested additional information within the ten (10) day time limit may have their Applications returned without further processing.
- ~~(g)~~ When Soil Conservation Plan implementation is required, the Grantee shall implement the Soil Conservation Plan regardless of whether the Grantee received funds specifically for Soil Conservation Plan implementation.
- ~~(g)~~ (h) At the Project closeout of an awarded grant, a Compliance Report shall be submitted. The Compliance Report provides documentation demonstrating that the grant-funded work proposed within the Project Area has been completed consistent with the Project Agreement. Compliance Report documentation includes:
- ~~(A)~~ (1) Change analysis, such as quantifying trail condition improvements by contrasting initial and subsequent trail assessments,
  - ~~(B)~~ (2) Documentation of maintenance activities within the Project Area,
  - ~~(C)~~ (3) Documentation of Project Area infrastructure improvements, such as the repair of a trail watercourse crossing proposed in the initial Grant Application, and
  - ~~(D)~~ (4) A Compliance Action Plan, which includes:
    - ~~(A)~~ (A) A list of planned actions to be taken at an OHV Facility in consideration of continued adherence to the Soil Conservation Standard and the Grant-funded work identified as completed in the Project Area, and
    - ~~(B)~~ (B) A description of an area or areas within an OHV Facility where future Projects are to be performed, including a brief description of the planned work.

~~3. The Compliance Action Plan can be referenced in subsequent OHV Trust Fund grant applications to identify future Projects that will provide coherency with completed Grant funded Projects.~~

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#### 4970.07.2. Final Application Defects.

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~~(f) The OHMVR Division may reject an Application from an Applicant whose conduct is incompatible and/or contrary to the mission of the Department.~~

(f)(g)(f) The OHMVR Division shall review the Application and may, at its sole discretion, decrease the requested amount and eliminate activities based on the following considerations:

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~~(6) Any Project Cost Estimate item and/or Project activity the OHMVR Division deems unreasonable and/or unnecessary.~~

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#### 4970.08. Eligible Project Costs.

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(b) Examples of eligible costs include, but are not limited to:

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(10)(9) Transportation costs for moving Equipment, material, and personnel, ~~from base of operations to project sites (excluding moving and relocation expenses resulting from changes in assignments). The base of operations shall be considered the centralized location where the material, and/or personnel are stored or gathered,~~ or 100 miles from the main project site whichever is less; any cost exceeding the 100 mile maximum may be claimed only as match. Nonprofit Grantees shall be limited to reimbursement for costs of transportation to and from the Project site, up to 100 miles in each direction. the base of operation or 100 miles from the main project site whichever is less; aAny cost exceeding the 100 mile maximum may be claimed only as match. All transportation costs shall be stated as a "per mile" charge in the Project Cost Estimate and shall not exceed the federal Internal Revenue Service standard mileage business rate provided as of the start of the Grants Cycle for which the cost is being requested,.

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(12) Equipment costs for Nonprofit Grantee.

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(F) Grantee may charge a per mile fee, up to 100 miles in each direction, for transporting Equipment to and from the Project site. from base of operations to project site. The base of operations is considered the centralized location where the majority of Equipment is stored or 100 miles each direction whichever is less.

(G) Heavy Equipment acquired solely with funds outside this Grants Program.

~~2. Grantee may charge for fuel for the use of the heavy Equipment while being utilized for project activities.~~ Tires and major repairs to Heavy Equipment may be requested after justifying need to and approval by the OHMVR Division prior to purchase. In order to justify the need for tires, the Grantee must provide photos showing the condition of the tires needing replacement; photos must include the tires and the piece of Heavy Equipment on which the tires are installed. For major repairs, the Grantee must provide a financial analysis explaining why the repair is more cost-effective than the purchase of a new piece of Heavy Equipment.

(H) Heavy Equipment purchased with funds from this Grants program.

~~2. Fuel and general maintenance may be requested.~~

~~2.3~~ Tires and major repairs to Heavy Equipment may be requested after justifying need to and approval by the OHMVR Division prior to purchase. In order to justify the need for tires, the Grantee must provide photos showing the condition of the tires needing replacement; photos must include the tires and the piece of Heavy Equipment on which the tires are installed. For major repairs, the Grantee must provide a financial analysis explaining why the repair is more cost-effective than the purchase of a new piece of Heavy Equipment.

(13) Equipment costs for all other Grantees.

(E) Heavy Equipment acquired solely with funds outside this Grants Program.

~~1. A daily use fee may be charged for Heavy Equipment according to Applicant's local fair market rental rates, but shall never exceed the Grantee's actual cost; this use fee shall cover the use of the Heavy Equipment and general maintenance during the duration of the Project.~~

1. A daily use fee may be charged according to Applicant's local fair market rental rates, but shall never exceed the Grantee's actual cost; this use fee shall cover the use of the Heavy Equipment and general maintenance during the duration of the Project.

~~2. Grantee may charge for fuel for the use of the Heavy Equipment while being utilized for Project activities.~~

~~2.2.~~ Tires and major repairs to Heavy Equipment may be requested after justifying need to and approval by the OHMVR Division prior to purchase. In order to justify the need for tires, the Grantee must provide photos showing the condition of the tires needing replacement; photos must include the tires and the piece of Heavy Equipment on which the tires are installed. For major repairs, the Grantee must provide a financial analysis explaining why the repair is more cost-effective than the purchase of a new piece of Heavy Equipment.

(F) Heavy Equipment acquired with funds from this Grants program.

...

~~2. Fuel and general maintenance may be requested.~~

~~2.3.~~ Tires and major repairs to Heavy Equipment may be requested after justifying need to and approval by the OHMVR Division prior to purchase. In order to justify the need for tires, the Grantee must provide photos showing the condition of the tires needing replacement; photos must include the tires and the piece of Heavy Equipment on which the tires are installed. For major repairs, the Grantee must provide a financial analysis explaining why the repair is more cost-effective than the purchase of a new piece of Heavy Equipment.

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#### **4970.09. Ineligible Project Costs.**

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(b) Examples of ineligible Project costs include, but are not limited to:

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- (10) Any Project cost more appropriately funded by other OHMVR Division programs or reimbursed by any other funding source. ~~No grant funds and/or match funds shall be expended at any property owned and/or managed by the Department, with the exception of a "Youth mentoring program project"~~ Education and Safety Project activities that teach children under the age of eighteen (18) OHV skills within State Vehicular Recreation Areas owned and/or managed by the Department, provided the Department derives no financial value from the Project. ~~No grant funds and/or match funds shall be expended at any property owned and/or managed by the Department, of Parks and Recreation. A Youth Mentoring Program Project may utilize a State Vehicular Recreation Area owned and/or managed by the Department for OHV training purpose only and whereby the Department derives no financial value from the Project.~~

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#### **4970.15.3. Law Enforcement.**

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- (b) Law enforcement Projects are awarded on a non-competitive basis. The relative need of an Applicant is established by the Project request amount identified on the Project Cost Estimate and the Applicant's responses to the Law Enforcement Needs Assessment. The OHMVR Division shall review the Project request amounts and may, at its sole discretion, increase or decrease the requested amount based on the following conditions:

...

~~(6) Any cost item and/or Project activity the OHMVR Division deems unreasonable and/or unnecessary.~~

**HABITAT MANAGEMENT PROGRAM (HMP)  
(PART 2 - RISK ANALYSIS, MANAGEMENT PROGRAM, AND REPORTING)**

APPLICATION YEAR: \_\_\_\_\_

APPLICANT TYPE / NAME: \_\_\_\_\_

Is this Application supported by a HMP submitted by another Applicant? . . . . .  YES       NO  
Identify Applicant submitting HMP: \_\_\_\_\_

Has the Applicant previously submitted a HMP Part 2 that is currently in use in the  
proposed Project Area? . . . . .  YES       NO

**SECTION I. SUMMARY OF HMP CHANGES**

Applicants must submit a complete HMP with all Tables, regardless of whether a HMP was previously submitted. Hardcopy maps may remain on file at the Division and do not need to be resubmitted if they have not changed. Submittal of all maps in an electronic format is encouraged.

Table 1 describes how the program has changed from last year. Summarize any changes including additions to the previous year's HMP.

**Change From Previous Year** – Describe a substantive change (e.g., new species being monitored, change in monitoring methodology) in the HMP from the previous year.

**Section Where Change Occurs** – List where the change is found in the HMP.

Table 1. Summary of HMP Changes	
Change From Previous Year	Section Where Change Occurs

**NOTE:** For all Applicants having not previously submitted a HMP that is currently in use in the proposed Project Area: Submit only Sections II-IV.

Whenever the HMP relies on a ~~regional or other~~ study, the HMP must clearly explain how that study applies to the specific Project Area.



## HABITAT MANAGEMENT PROGRAM (HMP) (PART 2 - RISK ANALYSIS, MANAGEMENT PROGRAM, AND REPORTING)

### SECTION II. SPECIAL-STATUS SPECIES AND ANY OTHER SPECIES OF LOCAL CONCERN THAT WERE CONSIDERED FOR INCLUSION IN THE HMP

Complete Table 2 for all reviewed special-status species and any other species of local concern. List all special-status species that could occur within the Project Area of all proposed Projects with Ground Disturbing Activities. Special-status species are:

- Federally Endangered (FE)
- Federally Threatened (FT)
- Species proposed for federal listing as endangered or threatened (FPE/T)
- Federal Candidate (FC)
- United States Forest Service Sensitive Species (FSS)
- Bureau of Land Management Sensitive Species (BLMSS)
- State Endangered (SE)
- State Threatened (ST)
- Species proposed for state listing as endangered or threatened (SPE/T)
- State Candidate (SC)
- California Species of Special Concern (CSSC)
- State Fully Protected (SP)
- California Rare Plant Rank 1A-4 (CRPR)
- United States Forest Service Management Indicator Species "MIS" (FSMIS)
- Bureau of Land Management "MIS" (BLMMIS)
- Species of local concern and any other that the Grant or Cooperative Agreement Applicant has determined shall be included in the HMP (SLC)

**Listing Status** – Identify the list(s) that contain the identified species utilizing the acronym codes in parentheses above.

**Habitat** – Describe the listed species' habitats.

**Potential for Occurrence** – Identify whether there is potential for the listed species to occur within the Project Area of applicable proposed Projects.

**Addressed by HMP?** – Indicate whether the species or habitat is addressed in the HMP. If not, explain why. If the species could potentially be affected by any Project activities in areas open to legal OHV recreation, state YES and be sure to address the species in subsequent HMP sections. If the species could not be affected by Project activities, state NO. Include a brief explanation of the rationale for not including a particular species when the answer in the column box is NO. For example, if activities are limited to routine trail maintenance involving trail brushing, minor grading, and reinstallation of erosion control structures, those activities probably would not affect foraging special-status migratory birds.

**NOTE:** The Wildlife and Habitat Data Analysis Branch of the California Department of Fish and Wildlife (CDFW) produces complete lists of "special" plants and animals, which are updated as part of the California Natural Diversity Data Base (CNDDDB). Subscribers to CNDDDB receive the list data as part of their subscription. The lists can also be obtained from the CDFW website at: <http://www.wildlife.ca.gov>. Other useful California species lists can also be found at this website.

## HABITAT MANAGEMENT PROGRAM (HMP) (PART 2 - RISK ANALYSIS, MANAGEMENT PROGRAM, AND REPORTING)

Table 2. Table of All Special-Status Species and Any Other Species of Local Concern That Were Considered for Inclusion in the HMP				
Species	Listing Status <sup>1</sup>	Habitat	Potential for Occurrence <sup>2</sup>	Addressed by HMP? If not, explain why? <sup>3</sup>
<sup>1</sup> Listing Status Key: FE Federally Endangered SC State Candidate FT Federally Threatened CSSC California Species of Special Concern FPE/T Species proposed for federal listing as endangered or threatened SP State Fully Protected FC Federal Candidate CRPR California Rare Plant Rank 1A-4 FSS USFS Sensitive Species FSMIS USFS Management Indicator Species BLMSS BLM Sensitive Species BLMMIS BLM Management Indicator Species SE State Endangered SLC Species of Local Concern and any other the Applicant has determined shall be included in the HMP ST State Threatened SPE/T Species proposed for state listing as endangered or threatened				
<sup>2</sup> Potential for occurrence could be based upon presence or absence of suitable habitat, incidental observations, and/or survey results.				
<sup>3</sup> Examples of reasons to exclude species from the HMP include: • surveys have shown that the species' habitat does not occur in or near any OHV Recreation area • potential habitat exists, but surveys to protocol have not detected the species • there is no overlap in time between OHV Recreation and species occurrence (or sensitivity such as nesting) • risk factors—there are no known risk factors for the species that are related to OHV Recreation (examples of risk factors for species include turbidity, sedimentation of spawning gravels for fish, increase in water temperature [for fish and amphibians], loss of snags [for cavity nesters], elimination/disturbance of hollow logs as denning sites [for fur bearers]) • the species has not been seen in the area in a long time (e.g., since 1952)				

### SECTION III. MAP(S) OF PROJECT AREA WITH SPECIES AND/OR HABITAT ADDRESSED BY THE HMP

Applicants must include maps for all species and/or habitats addressed in the HMP (i.e., where YES is the answer to the question in the fifth column of Table 2). The map(s) should illustrate the spatial relationship between special-status species, Project activities, and OHV Recreation. If the Applicant does not include a map showing each species and/or habitat as described above, provide an explanation for the omission (e.g., lack of funds, mapping next year). Maps must include the following:

1. Identification of Project activities and OHV Recreation within the Application Project Area (e.g., Roads, trails, and areas open for OHV Recreation) and the location of special-status species and/or their habitats. If specific features (e.g., streams, specific campgrounds) are discussed in the HMP, they shall be shown on the maps. *Detailed location information that might jeopardize special-status species does not need to be included. The Applicant may use circles or other symbols to indicate relative locations.*
2. Include a north arrow and scale. Reference all maps to a vicinity map of the OHV area or otherwise clearly indicate the location of the area mapped.
3. Use the same common/scientific names on the map as are used in Table 2.
4. Attach all relevant maps to the HMP. Maps must be in an electronic format, such as JPEG or PDF files.

## HABITAT MANAGEMENT PROGRAM (HMP) (PART 2 - RISK ANALYSIS, MANAGEMENT PROGRAM, AND REPORTING)

### SECTION IV. MANAGEMENT/MONITORING PROGRAM BY SPECIES AND SENSITIVE HABITAT

Complete Tables 3, 4, and 5 to provide a description of the data, management program, monitoring program, and management review and response process for the species/habitats marked YES in Table 2. Address the information in all three tables for each species, related group of species, or habitat.

#### **Table 3: Data (Including Baseline Data) and Management Program for Species and/or Sensitive Habitats**

Complete Table 3 for each species and habitat marked YES in Table 2. Each column must be filled out for each species/habitat.

**Species/Habitat** – List all species/habitats marked YES in Table 2. Similar species/habitats may be grouped, but all species/habitats marked YES in Table 2 must be clearly addressed.

**Known Information** – Summarize relevant information known about each species and/or sensitive habitat (e.g., general location, population size, and use of the area as breeding and foraging).

**Methodology** – Summarize methodology used to obtain known information, including protocols and frequency/intensity of effort.

**Concerns/Risks/Uncertainties** – Explain how OHV Recreation may be affecting the species or habitat. Describe the concerns and risks (e.g., loss of salmon spawning habitat and riparian vegetation at stream crossings) related to OHV management and describe any uncertainties about potential effects (e.g., dust from OHV Recreation may negatively affect the spawning habitat but the impact, if any is unknown). The concerns/risks drive the management program.

**Management Objective(s)** – List all management objectives(s) (e.g., keep sediment out of the stream; maintain riparian vegetation at stream crossings) that have been developed to address the identified concern/risk(s) and any identified uncertainties.

**Management Action(s)** – List all proposed or ongoing management actions (e.g., harden stream crossings; install fence to keep OHVs on designated trails) to meet the objective(s).

**Success Criteria** – List the success criteria (e.g., no additional sediment in the spawning gravels; no loss of riparian vegetation at stream crossings) that will be used to gauge the effectiveness of each management action.

Table 3. Data (Including Baseline Data) and Management Program for Species and/or Sensitive Habitats						
Species/ Habitat	Known Information	Methodology (Used to obtain Known Information)	Concerns/Risks/ Uncertainties	Management Objective(s) (Related to Concerns/Risks/ Uncertainties)	Management Action(s) (to meet Management Objectives)	Success Criteria (to measure results of Management Actions)

## HABITAT MANAGEMENT PROGRAM (HMP) (PART 2 - RISK ANALYSIS, MANAGEMENT PROGRAM, AND REPORTING)

### Tables 4a and 4b: Applicable Monitoring ~~Summary of HMP Monitoring Program~~

Complete Table 4a for all species/habitats marked YES in Table 2. Each column must be filled out for each species/habitat.

Complete Table 4b if applicable per instructions below.

Whenever the HMP relies on a regional or other study, the HMP must clearly explain how that study applies to the specific Project Area.

#### **Table 4a. Summary of HMP Monitoring Program**

**Species/Habitat** – List all species/habitats marked YES in Table 2. Species/habitats may be grouped where the same monitoring methodology addresses all such species, but all species/habitats marked YES in Table 2 must be clearly addressed. Where a monitoring methodology addresses all such species, state “All Species.”

**OHV Effects ~~Change~~ Detection Methodology** – ~~“Change~~*OHV Effects Detection Methodology Monitoring*” is defined as qualitative monitoring to detect change caused by OHV Recreation. Describe how ~~change detection~~*OHV e*~~Effects Detection Methodology monitoring~~ will be conducted (e.g., the wildlife checklist, visiting known habitat or populations, before and after photo points).

**Management Action Effectiveness Monitoring Methodology, Including Triggers** – *“Effectiveness Monitoring”* uses the success criteria to determine if the management actions achieved the desired management objectives; Include the success criteria, management actions, and management objective from Table 3. ~~a~~*Appropriate* effectiveness monitoring may ultimately be based on larger-scale monitoring efforts. This methodology is intended to monitor the effectiveness of management actions taken. These actions can include previously installed best management practices (BMPs) or new BMPs needed to fix a problem identified during change detection monitoring. Describe how effectiveness monitoring will be conducted (i.e., describe how the Applicant will assess whether each management action is successful based on success criteria in Table 3). Include specific triggers for management change.

**Triggers for Management Change** – List examples of problems that would trigger a management action.

**Identify Any Applicable Validation Monitoring (Focused Studies)** – *“Validation Monitoring.”* uses scientific studies that determine whether the underlying management assumptions are correct (e.g., “Have the appropriate concerns and risks been identified? Does meeting the management objectives ensure that OHV activities are not adversely affecting populations of species x?”). Describe any studies being conducted to determine whether the underlying management assumptions are correct (Validation Monitoring). Monitoring must relate directly to the project area and species/habitat. Be specific as to applicability. For most projects this column is not applicable.

Table 4a. Summary of HMP Monitoring Program			
Species/ Habitat	OHV Effects <del>Change</del> Detection Methodology	Management Action Effectiveness Monitoring Methodology, Including Triggers	Identify any Applicable Validation Monitoring (Focused Studies) <u>Triggers for Management Change</u>

## HABITAT MANAGEMENT PROGRAM (HMP) (PART 2 - RISK ANALYSIS, MANAGEMENT PROGRAM, AND REPORTING)

### Table 4b. Validation Monitoring (if applicable)

“Validation Monitoring”: uses scientific studies that determine whether the underlying management assumptions are correct (e.g., “Have the appropriate concerns and risks been identified? Does meeting the management objectives ensure that OHV activities are not adversely affecting populations of species x?”). For most projects, this table is not applicable, but validation monitoring should be described where it is relevant to monitoring and evaluating the effects of OHV recreation on species/habitats in Table 2.

Species/Habitat – List any species/habitats marked YES in Table 2 for which validation monitoring is being/has been conducted. Species/habitats may be grouped where the same monitoring methodology addresses all such species. Where a monitoring methodology addresses all such species, state “All Species”.

Identify Any Applicable Validation Monitoring (Focused Studies) – Describe any studies being conducted to determine whether the underlying management assumptions are correct (Validation Monitoring). Monitoring must relate directly to the project area and species/habitat. Be specific as to the applicability.

<b>Table 4b. Validation Monitoring (if applicable)</b>	
<u>Species/Habitat</u>	<u>Identify Any Applicable Validation Monitoring</u>

### **Table 5: Management Review and Response; Adaptive Management**

Table 5 describes what the Applicant plans to do with monitoring data. Address each monitoring methodology listed in Table 4a and Table 4b (if applicable).

Monitoring Methodology – List each monitoring methodology that was included in Table 4a, Column 2 (~~Change OHV Effects Detection Methodology~~) and, Column 3 (~~Management Action Effectiveness Monitoring Methodology~~); and Table 4b, and Column 4 (Validation Monitoring, if applicable), if applicable. Use a separate row for each monitoring methodology. Species can be combined if methods are the same for more than one species (e.g., serpentine plants, bats, etc.).

How Monitoring Information Data Will Be Analyzed and Used to Inform Management – Describe how the Applicant will use ~~its~~ the monitoring information data to determine if management objectives from Table 3 (Column 5) are being met and whether to make any necessary management changes are necessary. How will monitoring data be analyzed? How will monitoring data be used to correct any problems found or evaluate whether other changes to management of OHV recreation are needed?;

How Data Will Be Analyzed – Describe how the data will be analyzed to determine if management objectives from Table 3 are being met.

Management Response to Identified Triggers – Describe the management responses to the identified triggers listed in Table 4a, Column 3.

Who Will Plan Management Response – Describe the staff involved in planning a management response.

## HABITAT MANAGEMENT PROGRAM (HMP) (PART 2 - RISK ANALYSIS, MANAGEMENT PROGRAM, AND REPORTING)

<b>Table 5. Management Review and Response; Adaptive Management</b>				
Monitoring Methodology (from Table 4a., Columns 2 and 3 and Table 4b., Column 2)	How Monitoring Information Data Will Be Analyzed and Used to Inform Management	How Data Will Be Analyzed	Management Response to Identified Triggers (from Table 4a., Column 4)	Who Will Plan Management Response

**SECTION V. PREVIOUS YEAR'S MONITORING RESULTS AND MANAGEMENT ACTIONS BASED ON MONITORING RESULTS**

Summarize the previous year's monitoring accomplishments and results in Table 6.

**Monitoring Accomplishments** – Summarize each monitoring action that was implemented under the previous year's HMP. Discussion must be directly related to each monitoring method listed in Table 5, Column 1 of the previous year's HMP.

**Results** – Summarize the results of each monitoring accomplishment. Applicants are encouraged to attach specific monitoring reports and/or checklists that provide more details.

**Were Objectives and Success Criteria Achieved?** – Describe whether management actions achieved the objectives and success criteria in the previous year's HMP. Make sure to specifically address the objectives listed in Table 3, Column 5, and the success criteria listed in Table 3, Column 7 of the previous year's HMP.

Applicants must keep the detailed monitoring results on file for reference. The results must be made available to the OHMVR Division upon request.

<b>Table 6. Previous Year's Monitoring Results</b>		
Monitoring Accomplishments (List Methodologies listed in previous year's Table 5, Column 1)	Results	Were Objectives and Success Criteria Achieved? (from Table 3)

## HABITAT MANAGEMENT PROGRAM (HMP) (PART 2 - RISK ANALYSIS, MANAGEMENT PROGRAM, AND REPORTING)

**Table 7: Management Actions Based on Monitoring Results**

Use Table 7 to summarize the management actions taken and/or planned based on the monitoring results of the previous year.

**Management Actions** – Identify all the management actions taken or planned based on the monitoring results of the previous year. Management actions must be listed for each situation in Table 6 for which the objectives and success criteria were not achieved. Management actions could be those listed in Table 3, Column 6, or other actions specific to the issue.

**Species/Habitat** – List the species/habitats for which each management action was taken and/or planned.

**Date Completed or Planned** – Identify the date the action item was accomplished or is planned to be accomplished.

**Changes Needed to HMP** – Describe how the Applicant is going to change its HMP, including changes to monitoring, to allow the Applicant to better meet success criteria or objectives.

Table 7. Management Actions Based on Monitoring Results			
Management Actions	Species/ Habitat	Date Completed or Planned	Changes Needed to HMP

**Table 8: Management Actions Taken in Response to HMP-related Public Concerns**

**Concern Raised by Public** – Describe any HMP-related concerns raised by the public.

**Actions Taken to Address the Concern** – Describe actions taken to address the concern.

Table 8. Management Actions Taken in Response to HMP-related Public Concerns	
Concern Raised by Public	Actions Taken to Address the Concern

## Project Agreement General Provisions (United States Federal Agencies)

### A. Definitions

1. The term "State" as used herein means the State of California, Department of Parks and Recreation.
2. The term "Act" as used herein means the Off-Highway Motor Vehicle Recreation Act of 2003 as amended.
3. The term "Application" as used herein means the individual Project Application and ~~the required~~ attachments required pursuant to the enabling legislation, regulations, and/or Grant program, which is hereby incorporated into this Agreement by ~~this~~ reference.
4. The term "Project" as used herein means the Project ~~which is described on~~ Attachment 1 of this Agreement and in the ~~Project Application, which is hereby incorporated into this agreement by reference.~~
5. The term "Project Cooperative Agreement" as used herein means the Application and the Project Agreement and its General Provisions.
6. The term "Federal Agency" as used herein means the unit of Federal Government named on page 1 of this Agreement as the Federal Agency.

### B. Project Execution

1. Subject to the availability of funds through an appropriation in the state budget, the State hereby commits to the Federal Agency a sum of money not to exceed the amount stated on page 1 of the Project Agreement in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the Project Description on Attachment 1 of the Project Agreement and under the terms and conditions set forth in this Project Cooperative Agreement.

The Federal Agency agrees to furnish any additional funds that may be necessary to complete the Project. Any modification or alteration of the Project as set forth in the Application on file with the State must be submitted to the State for approval prior to disbursement of funds.

2. The Federal Agency agrees to execute and complete the Project in accordance with the Project performance period set forth on page 1 of the Project Agreement, and under the terms and conditions of this Agreement.
3. If the Project includes development, the development plans, specifications and estimates or Force Account Schedule shall be reviewed and approved by the State prior to the Federal Agency proceeding with the Project. Unless the development plans, specifications and estimates or Force Account Schedule are approved by the State, the State shall have no obligations to make Grant payments for the work or any construction which is commenced.
4. The Federal Agency shall comply with all applicable current laws and regulations affecting Development Projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities. In addition, the Federal Agency shall complete the development work in accordance with the State-approved development plans, specifications, and estimates or Force Account Schedule.
5. The Federal Agency shall make property or facilities acquired and/or developed pursuant to this Project Cooperative Agreement available for inspection upon request by the State to



determine if development work is in accordance with the approved plans, specifications and estimates or Force Account Schedule, including a final inspection upon Project completion.

6. If the Project includes acquisition of real property, the acquisition shall be in accordance with the terms of Title II and Title III, ~~the~~ Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646); 94 Stat. 1894 [1970] and the applicable regulations and procedures implementing such Act for all real property aAcquisitions, and where applicable, shall assure that the Act has been complied with for property to be developed with assistance under the Project Cooperative Agreement ~~and~~. The Federal Agency agrees to comply with ~~the~~ Government Code, Chapter 16, ~~commencing with~~ Section 7260 et seq., to the extent ~~it may be~~ applicable, and all other applicable federal, state and local laws or ordinances affecting relocation and real property aAcquisition. Documentation of such compliance will be made available for review upon request by the State.
7. This Project Cooperative Agreement in no way restricts either party from cooperating with or receiving cooperation from other public and private agencies, organizations and individuals, or from accepting contributions and gifts for the development, administration, and operation of vehicle activity on the lands of the Federal Agency or other public lands within California.
8. Nothing herein shall be construed as obligating either party hereto to expend, or ~~as~~ involving either party in any contract or other obligation for the future payment of, moneys in excess of appropriations authorized by law and administratively allocated for this purpose.
9. No member of, or Delegate to, Congress or Resident Commissioner shall be admitted to share any part of the Project Cooperative Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Project Cooperative Agreement if made with a corporation for its general benefit.
10. ~~The Federal Agency and its employees~~ In performance of this Project Cooperative Agreement, the Federal Agency and its employees shall act in an independent capacity and not as officers or employees of the State. Neither party to this Agreement shall have the authority, expressed or implied, to bind the other party to any obligation except as may be authorized by this Agreement.
11. All real property acquired or improvements constructed under this Project Cooperative Agreement shall be and will remain the property of the Federal Agency, but shall remain available for off-highway vehicle use in accordance with the Federal Agency Project Plan, the Off-Highway Motor Vehicle Act of 2003 and its implementing regulations, and the Application.

#### C. Project Costs

1. The Cooperative Agreement moneys to be provided to the Federal Agency under this Project Cooperative Agreement shall be disbursed as follows, but not to exceed in any event one-hundred (100) percent of the allowable Project costs or the State Grant amount set forth on page 1 of this ~~a~~Agreement, whichever is less.
2. If the Project includes acquisition of real property, under the authority of the Act of October 10, 1978 (P.L. 95-442; 92 Stat. 1065), the State shall disburse to the Federal Agency the Grant moneys as follows, but not to exceed in any event the allowable Project costs for acquisition or the State funds amount allocated for acquisition as set forth on page 1 of this Project Agreement, whichever is less.

The State will disburse to the Federal Agency, to be deposited immediately into escrow, the sum of purchase price if within the maximum value indicated in the Federal Agency Project Plan and State-approved costs of acquisition.

The Federal Agency, upon showing that the Project may not proceed without advance funding, may request advance payment of those funds needed up to a maximum of ninety (90) percent of the State Grant amount allocated for development as shown on page 1 of

this Project Agreement, upon receipt and approval by the State of plans, specifications and estimates or Force Account Schedule from the Federal Agency.

The statements to be submitted by the Federal Agency shall set forth in detail the incurred or estimated cost of work performed or to be performed on development of the Project and whether performance will be by construction contract or by Force Account Schedule.

D. Project Administration

1. The Federal Agency shall promptly submit such progress, performance or other reports concerning the status of work performed on the Project as the State may request. In any event, the Federal Agency shall provide the State a report showing total final Project expenditures including State funds and all other moneys expended within one hundred-twenty (120) days after completion of the Project.
2. The Federal Agency shall make property and facilities maintained, operated, acquired or developed pursuant to this Project Cooperative Agreement available for inspection by the State upon request.
3. The Federal Agency may be provided advanced payments for Grants upon a showing by the Federal Agency that the Project may not proceed in the absence of advance payment. The Federal Agency shall use any moneys advanced by the State under the terms of this Project Cooperative Agreement solely for the Project herein described. All moneys advanced to the Federal Agency shall remain property of the State until expended for Project purposes.
4. The Federal Agency shall place advanced payments into a separate interest-bearing account, if ~~they are~~ legally able to do so, setting up and identifying such account prior to the advance. Interest earned on Grant moneys shall be used on the Project or paid to the State.
5. If Cooperative Agreement moneys are advanced and not expended, the unused portion of the advance or that portion of the advance which is in excess of the Project cost, whichever is the larger amount, shall be returned to the State within one hundred-twenty (120) days of completion of the Project or end of the Project performance period, whichever is earlier.
6. The Federal Agency will provide and maintain a sign on the Project site that ~~includes wording identifying~~ includes the funding source (Off-Highway Vehicle Fund) and the administering agency (California State Department of Parks and Recreation).
7. Equipment must be used solely for OHV-related purposes unless the Applicant is funding the portion of the purchase price not dedicated to OHV purposes, and that portion is not part of the total project cost.

E. Project Termination

1. The Federal Agency may unilaterally rescind this Project Cooperative Agreement at any time prior to the commencement of the Project. After Project commencement this Agreement may be rescinded, modified or amended by mutual agreement in writing. A Project shall be deemed commenced when the Federal Agency makes any expenditure, receives an advance of Cooperative Agreement moneys or incurs any obligation with respect to the Project.
2. Failure by the Federal Agency to comply with the terms of this Project Cooperative Agreement or any other agreement under the Act may be cause for suspension of all obligations of the State hereunder and reimbursement to the State of any Grant moneys already provided to the Federal Agency. However, such failure shall not be cause for the suspension of all obligations of the State hereunder if, in the judgement of the State, such failure was due to no fault and beyond the control of the Federal Agency to prevent, mitigate or remedy such default.

3. Because the benefit to be derived by the State, from full compliance by the Federal Agency with the terms of this Agreement, is the operation, development, preservation, protection and net increase in the quantity and quality of public outdoor recreation facilities available to the people of the State of California, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of Grant moneys under the terms of this Agreement, the Federal Agency agrees that payment by the Federal Agency to the State of an amount equal to the amount of the Grant moneys disbursed under this Agreement by the State would be inadequate compensation to the State for any breach by the Federal Agency of this Agreement.
4. The Federal Agency further agrees, therefore, that the appropriate remedy in the event of a breach by the Federal Agency of this Agreement shall be the specific performance of this Agreement, unless otherwise agreed to by the State. Notwithstanding the foregoing, in the event of a breach of this Agreement, or any portion thereof, which is due to no fault and beyond the control of the Federal Agency to prevent, mitigate, or remedy, the State's sole remedy shall be the reimbursement of any funds advanced or paid that pertain to the breached term or terms of this Agreement.

F. Indemnification

1. The United States shall be liable, to the extent allowed by law, including the Federal Tort Claims Act, for any claim for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her employment, arising out of this Agreement.
2. The State of California shall be liable, to the extent allowed by law, including the Government Tort Claims Act, for any claim for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the State employees while acting within the scope of his or her employment, arising out of this Agreement.

G. Financial Records

1. The Federal Agency shall maintain, and make available for inspection by the State at reasonable times, accurate financial accounts, documents, and records for three (3) years from the expiration date of the Project Agreement, or three (3) years from the start of an audit engagement, whichever comes first, and until an audit started during the three (3) years is ~~has been~~ completed and a report published.

During regular office hours, each ~~of the parties~~ party hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or matters related thereto.

2. The Federal Agency may use any generally accepted accounting system, provided such system meets the minimum requirements of Federal Management Circular 74 – 4 and Office of Management and Budget Circular A 102.

H. Use of Facilities

- ~~1.~~ ~~The property acquired or developed with Cooperative Agreement moneys under this agreement shall be used by the Federal Agency only for the purpose for which the State Cooperative Agreement moneys were requested and no other use of the area shall be permitted except by specific act of the Legislature.~~
- 1.2 The Federal Agency shall, without cost to the State, except as may be otherwise provided in this Agreement or other agreement with the State, operate and maintain the property acquired or developed pursuant to this Agreement in the manner of and according to the Off-Highway Motor Vehicle Recreation Act and related regulations, the Application, and any other applicable provisions of law.
- 2.3 Use of the Project facilities shall comply with all applicable laws including, but not limited to, the requirements for registrations of all day-use vehicles with the Department of Motor

Vehicles or identified under the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1993.

I. Nondiscrimination

1. The Federal Agency shall not discriminate against any person on the basis of sex, race, color, national origin, religion, ancestry, or physical handicap in the use of any property or facility acquired or developed pursuant to this Agreement.
2. The Federal Agency shall not discriminate against any person on the basis of residence except to the extent that the reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.
- ~~3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this Project Cooperative Agreement.~~

J. Application Incorporation

The Application and any subsequent change or addition approved by the State is hereby incorporated in this Project Cooperative Agreement.

K. Severability

If any provision of this Agreement or the Application thereof is held invalid, that invalidity shall not affect other provisions or Applications of the this Agreement which can be given effect without the invalid provision or Application, and to this end the provisions of this Agreement are severable.

L. Governing Law

1. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California and the United States.
2. The Federal Agency shall comply with all Federal, State, and/or Local laws, regulations, ordinances and executive orders that are applicable during the performance period.
- ~~3. Grantee shall comply with all Grant and Cooperative Agreements program regulations that are applicable during the performance period.~~

## Project Agreement General Provisions (Nonfederal Applicants Only)

### A. Definitions

1. The term "State" as used herein means the State of California, ~~State~~ Department of Parks and Recreation.
2. The term "Act" as used herein means the Off-Highway Motor Vehicle Recreation Act of 2003 as amended.
3. The term "Project" as used herein means the Project ~~which is described on~~ Attachment 1 of this Agreement and in the ~~Project Application, which is hereby incorporated into this agreement by reference.~~
4. The term "Application" as used herein means the individual Project Application and ~~its required~~ attachments ~~required~~ pursuant to the enabling legislation, regulations, and/or Grant program, which is incorporated into this Agreement by reference.
5. The term "Project Agreement" as used herein means the Application and the Project Agreement and its General Provisions.
6. The term "Grantee" as used herein means the party described as the Grantee on page 1 of the Project Agreement.

### B. Project Execution

1. Subject to the appropriation and availability of Grant funds in the state budget, the State hereby awards to the Grantee the sum of money (Grant money) stated on page 1 of the Project Agreement in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the Project Description on Attachment 1 of the Project Agreement and the terms and conditions set forth in this Agreement.

The Grantee assumes the obligation to furnish any additional funds that may be necessary to complete or carry out the Project as described. Any modification or alteration in the Project as set forth in the Application on file with the State must be submitted to the State for approval. ~~The~~ State's obligation to make Grant payments is limited to the Project as provided for herein, or as modified with the approval of the State.

2. The Grantee agrees to complete the Project in accordance with the Project performance period set forth on page 1 of the Project Agreement, and under the terms and conditions of this agreement.
3. If the Project includes development, the development plans, specifications and estimates or Force Account Schedule shall be reviewed and approved by the State prior to ~~the~~ Grantee proceeding with the Project. Unless the development plans, specifications and estimates are approved by the State, the State shall have no obligation to make Grant payments for the work.

The Grantee, ~~shall~~ comply with all applicable current laws and regulations affecting Development Projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities. In addition, the Grantee shall complete the development work in accordance with the State-approved development plans, specifications, and estimates or Force Account Schedule.

4. The Grantee shall make property or facilities acquired and/or developed pursuant to this Agreement available for inspection upon request by the State to determine if development work is in accordance with the approved plans, specifications and estimates or Force Account Schedule, including a final inspection upon Project completion.
45. If the Project includes acquisition of real property, ~~and~~ the cost of which is to be reimbursed with Grant moneys under this Agreement, ~~the acquisition shall as required thereby,~~ comply

with Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code and any other applicable federal, state, or local laws or ordinances. Documentation of such compliance will be made available for review by the State upon request. Eminent domain may not be used to acquire property using the Grant funds provided by this Agreement.

56. If the Project includes acquisition of real property, the purchase price shall be the fair market value of such property as established by an appraisal completed according to established current appraisal practices and methods as approved by both the Grantee and the State. The Grantee agrees to furnish the State with additional supportive appraisal material or justification as may be requested by the State to complete its review and approval of the fair market value.

The Grantee agrees to furnish the State with preliminary title reports respecting such real property or such other evidence of title which is determined to be sufficient by the State. The Grantee agrees to correct prior to or at the close of escrow any defects of title which in the opinion of the State might interfere with the operation of the Project.

#### C. Project Costs

1. The Grant moneys to be provided to the Grantee under this Agreement shall be disbursed as follows, but not to exceed in any event one-hundred (100) percent of the allowable Project costs or the State Grant amount as set forth on page 1 of this Agreement, whichever is less:

42. If the Project includes acquisition of real property, the State shall disburse to the Grantee the Grant moneys as follows, but not to exceed in any event the State Grant amount set forth on page 1 of this Agreement.

The State will disburse the amount of the State-approved purchase price together with State-approved costs of acquisition. Funds for acquisition shall only be released into an escrow account established for the acquisition. The State may elect to make disbursement for deposit into escrow.

- ~~2. If the Project includes development, after approval by State of Grantee's plans, specifications and estimates or Force Account Schedule and after completion of the Project or any phase or unit thereof, State shall disburse to Grantee upon receipt and approval by State of a statement of incurred costs from Grantee, the amount of such approved incurred costs shown on such statement, not to exceed the State Grant amount set forth on page 1 of this agreement, or any remaining portion of such Grant amount to the extent of such statement. Grantee, upon a showing that the Project may not proceed without advance funding, may request advance payment of those funds needed up to a maximum of ninety (90) percent of the State Grant amount allocated for development upon receipt and approval by State of Grantee plans, specifications and estimates or Force Account Schedule.~~

~~The statements to be submitted by Grantee shall set forth in detail the incurred or estimated cost of work performed or to be performed on development of the Project and whether performance will be by construction contract or by Force Account. Statements shall not be submitted, nor shall State make payments, more frequently than for work performed during ninety (90) day periods unless otherwise requested by State.~~

#### D. Project Administration

1. The Grantee shall promptly submit such progress, performance or other reports concerning the status of work performed on the Project as the State may request. In any event, the Grantee shall provide the State a report showing total final Project expenditures including State and all other moneys expended within one hundred twenty (120) days after completion of the Project.
2. The Grantee shall make property and facilities maintained, operated, acquired or developed pursuant to this Agreement available for inspection by the State upon request.

3. The Grantee may be provided advanced payments for Grants. The Grantee shall place such moneys in a separate interest-bearing account, if legally able to do so, setting up and identifying such account prior to the advance. Interest earned on Grant moneys shall be used on the Project or paid to the State. If Grant moneys are advanced and not expended, the unused portion of the Grant (plus interest) shall be returned to the State within one hundred-twenty (120) days of completion of the Project or end of the Project performance period, whichever is earlier.

Income, after deduction for reasonable expenses associated with that income, that is earned by the Grantee from a State-approved non-recreational use on an acquisition Project, subsequent to taking title by the Grantee, but before use for OHV Recreation, must be used by the Grantee for recreational purposes at the Project.

- ~~34.~~ The Grantee shall use any moneys advanced by the State under the terms of this agreement solely for the Project herein described.

- ~~4.~~ The Grantee may be provided advanced payments for Grants but only for those that are for Planning, Acquisition, and Facility Operation and Maintenance. The Grantee shall place such moneys in a separate interest bearing account, setting up and identifying such account prior to the advance, interest earned on Grant moneys shall be used on the Project or paid to the State. If Grant moneys are advanced and not expended, the unused portion of the Grant (plus interest) shall be returned to the State within one hundred twenty (120) days of completion of the Project or end of the Project performance period, whichever is earlier.

~~Income, after deduction for reasonable expenses associated with that income, that is earned by the Grantee from a State approved non-recreational use on an acquisition Project, subsequent to taking title by the Grantee, but before use for OHV Recreation, must be used by the Grantee for recreational purposes at the Project.~~

5. The Grantee will provide and maintain a sign on the Project site that ~~includes wording identifying~~ identifies the funding source (Off-Highway Vehicle Fund) and the administering agency (California State Department of Parks and Recreation).

- ~~56.~~ Equipment must be used solely for OHV-related purposes unless the Applicant is funding the portion of the purchase price not dedicated to OHV purposes, and that portion is not part of the total project cost.

#### E. Project Termination

1. The Grantee may unilaterally rescind this Agreement at any time prior to the commencement of the Project. After Project commencement this Agreement may be rescinded, modified or amended by mutual agreement in writing.
2. Failure by the Grantee to comply with the terms of this Agreement or any other agreement under the Act may be cause for suspension of all obligations of the State hereunder and reimbursement to the State of any Grant moneys already provided to the Grantee. However, such failure shall not be cause for the suspension of all obligations of the State hereunder if, in the judgment of the State, such failure was due to no fault and beyond the control of the Grantee to prevent, mitigate or remedy.
- ~~3.~~ ~~Failure of the Grantee to comply with the terms of this agreement or contract under the enabling legislation may be cause for suspension of all obligations of the State hereunder. However, such failure shall not be cause for the suspension of all obligations of the State hereunder if in the judgment of the State such failure was due to no fault and beyond the control of the Grantee to prevent, mitigate, or remedy.~~
- ~~34.~~ Because the benefit to be derived by the State, from the full compliance by the Grantee with the terms of this Agreement, is the operation, development, preservation, protection and net increase in the quantity and quality of public outdoor recreation facilities available to the people of the State of California, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of Grant moneys under the terms of this Agreement, the Grantee agrees that payment by the

Grantee to the State of an amount equal to the amount of the Grant moneys disbursed under this Agreement by the State would be inadequate compensation to the State for any breach by the Grantee of this Agreement.

4. The Grantee further agrees, therefore, that the appropriate remedy in the event of a breach by the Grantee of this Agreement shall be the specific performance of this Agreement, unless otherwise agreed to by the State. Notwithstanding the foregoing, in the event of a breach of this Agreement, or any portion thereof, which is due to no fault and beyond the control of the Grantee to prevent, mitigate, or remedy, the State's sole remedy shall be the reimbursement of any funds advanced or paid that pertain to the breached term or terms of this Agreement.

#### F. Hold Harmless

1. The Grantee hereby waives all claims and recourse against the State including the right to contribution of loss of damage to persons or property arising from, growing out of or in any way connected with or incident to this Agreement except claims arising from the concurrent or sole negligence of the State, its officers, agents and employees.
2. The Grantee shall protect, indemnify, hold harmless and defend the State, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the acquisition, development, construction, operation or maintenance of the property described as the Project which claims, demands or causes of action arise under Government Code Section 895.2 or otherwise except for liability arising out of, and attributable to, the concurrent or sole negligence of the State, its officers, or employees.
3. In the event the State is named as codefendant under the provisions of Government Code Section 895 et seq., the Grantee shall notify the State of such fact and shall represent the State in the legal action unless the State undertakes to represent itself as codefendant in such legal action in which event the State shall bear its own litigation costs, expenses, and attorney's fees.
4. In the event of judgment against the State and the Grantee because of the concurrent negligence of the State and the Grantee, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request, and each party hereby waives its right to, a jury apportionment.

#### G. Financial Records

1. The Grantee shall retain for inspection all financial accounts, documents, and records for three (3) years from the expiration date of the Project Agreement, or three (3) years from the start of an audit engagement, whichever comes first, and until an audit started during the three (3) years is ~~has been~~ completed, and a report published and any Audit findings are resolved and/or payment or other correction made with regard to any Audit findings contained in the final Audit report.
2. During regular office hours each ~~of the parties~~ party hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or matters related thereto.

#### H. Use of Facilities

1. The Grantee shall, without cost to State, except as may be otherwise provided in this Agreement or any other Grant agreement, operate and maintain the property acquired or developed pursuant to this Agreement in the manner of and according to ~~the provisions of this agreement~~ the Off-Highway Motor Vehicle Recreation Act and any related regulations, or any other applicable provisions of law ~~which may be applicable to such operation and maintenance~~. The property acquired or developed with Grant moneys under this agreement shall be used by the Grantee only for the purpose for which the State Grant moneys were



~~requested and no other use of the area shall be permitted except by specific act of the Legislature.~~

- ~~2. The Grantee shall without cost to State, except as may be otherwise provided in this or any other Grant agreement, operate and maintain the property acquired or developed pursuant to this agreement in the manner of and according to the provisions of this agreement, the Off-Highway Motor Vehicle Recreation Act and any related regulations, or any other provision of law which may be applicable to such operation and maintenance. Use of the facilities shall comply with all applicable laws, including, but not limited to, the requirements for registration of all day use-vehicles with the Department of Motor Vehicles or identified under the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1993.~~
- ~~3. Use of the facilities shall comply with all applicable laws, including, but not limited to, the requirements for registration of all day use-vehicles with the Department of Motor Vehicles or identified under the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1993.~~

I. Nondiscrimination

1. The Grantee shall not discriminate against any person on the basis of sex, race, color, national origin, religion, ancestry, or physical handicap in the use of any property or facility acquired or developed pursuant to this Agreement.
2. The Grantee shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.
- ~~3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this Project agreement.~~

J. Application Incorporation

1. The Application and any subsequent change or addition approved by the State is hereby incorporated in this Agreement as though set forth in full in this Agreement.

K. Severability

1. If any provision of this Agreement or the Application thereof is held invalid, that invalidity shall not affect other provisions or applications of ~~the~~ this Agreement which can be given effect without the invalid provision or Application, and to this end the provisions of this Agreement are severable.

L. Governing Law

1. This Agreement shall be construed in accordance with and be governed by the laws of the State of California. Any legal action arising out of the terms of this Agreement shall take place in the county wherein the Project funded by this Agreement is located. If the Project is located in or among two or more counties, any legal action shall be taken in the county wherein the largest land area of the Project is located.
2. The Grantee shall comply with all Federal, State, and/or Local laws, regulations, ordinances and executive orders that are applicable during the performance period.
- ~~3. Grantee shall comply with all Grant and Cooperative Agreements program regulations that are applicable during the performance period.~~