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Comments on proposed rulemaking, OHV grants, amendments to CCR Title 14, Division 3, Section 4970.00-4770.26

General comment #1: Many of the proposed amendments to these regulations are a request for more detailed supporting information. We agree that applications should provide sufficient detail to allow evaluation of the application; however we are concerned that this could impose significant additional work on the already overburdened staff who review the applications. We contend that there needs to be a balance. Applications should provide sufficient supporting information, but this should not be excessive.

1. Sections 4970.10.2, 4970.10.3, and 4970.10.4 are amended to indicate a minimum of ten percent (10%) of the Operation and Maintenance funding will be awarded to each of the development, planning, or acquisition subcategories.

Comment: Although we agree with the concept of specific allocation of funds to planning, development, and acquisition, we do not believe that projects with a low score should be funded just because they are in a particular category. The merit of each project should be carefully considered. Also we are not sure this proposed change will have much of an effect because projects will still receive funding in order of score.

2. Sections 4970.10.2(e) is amended to require applicants with successful development projects to ensure their funded facilities are used for long-term OHV recreation. The amendment also requires that applicants return the grant funding to the State if they fail to keep their facilities available for OHV recreation for at least 25 years.

Comment: This could have the unintended consequence of creating a de facto 25 year service life span for OHV facilities when in some cases OHV facilities are used for far longer periods to time. However we agree that there should be a minimum period for use with a potential for repayment of funds.

3. **Necessity and Rationale**

The amendments to Sections 4970.10.2, 4970.10.3 and 4970.10.4 are necessary to ensure funding within development, planning, and acquisition subcategories. There are four subcategories under Operation and Maintenance: ground operations, development, planning, and acquisition. Existing regulations specify that at least 70 percent of the funding allotted to Operation and Maintenance is dedicated for ground operations. Of the remaining Operation and Maintenance funding, up to 10 percent may be used for each of the development, planning, and acquisition subcategories. Instead, the proposed regulations would require *at least* 10 percent of the Operation and Maintenance funding be awarded to development, planning, and acquisition projects. This change would continue the preferential funding of

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existing OHV recreation opportunities through the ground operations subcategory, but would also ensure ongoing improvements to facilities by requiring funding in the other subcategories.

Comment: It is our understanding that facility maintenance and operations are funded through ground operations grants. We agree that applicants should be encouraged to apply for planning, development and acquisition projects, however we fail to understand how this change would ensure ongoing improvements to facilities. The rationale should be re examined because it does not appear to support the proposed change.

Habitat Management Program (HMP) Part 2 (Rev. 1/11) is amended to update outdated information, provide additional instruction, and improve usability.

Comment: This is an updating of the regulations for consistency. We agree with this change.

4. HMP Section III is amended to update the format of maps required to be submitted with the HMP. Instructions indicating only one acceptable electronic format are revised to suggest several possible formats. The revisions also delete the outdated option to submit maps on paper; the Program requires applicants to submit their applications and all supporting documentation online.

Comment: Most documents are submitted in electronic format. We agree with this change.

5. HMP Section IV, Table 5 instructions are amended to eliminate confusion about what must be included in Table 5. The expanded instructions now direct the applicant to include specific data from prior Tables.

Comment: This represents a clarification of the HMP forms. We agree with this change, however we suggest a wording change under “monitoring methodology” to state that “Species can be combined if methods are the same for more than one species. The term “lumped” is unclear.

Evaluation Criteria - General Criteria (Rev. 12/11) is amended to provide additional instruction to applicants and revise scoring criteria and request more specific explanations or data where applicable.

Necessity and Rationale

The amendment to the introduction on the *Evaluation Criteria - General Criteria (Rev. 12/11)* is necessary to clearly instruct applicants that do not manage OHV opportunities about which questions they should answer. Items 2 through 10 are applicable only to Applicants that manage land with legal OHV opportunity, but applicants without legal OHV opportunity frequently attempt to answer them even though the questions are not applicable.

Comment: We have concerns about the statement that “points will be awarded only for responses that are supported by published information”. In many cases unpublished field notes and data recorded by staff and volunteers is cited as supporting information. In many cases this is the only information available. We agree that applicants should provide sufficient detail about the source of any supporting information they provide, however Division staff reviewing

the application should be allowed some latitude when verifying information submitted by the applicant. Publication should not be a requirement.

6. Evaluation Criteria - General Criteria (Rev. 12/11)

The amendment to Item 5 is necessary to require applicants to identify the closeout status of prior applications. Previously applicants were asked to identify the “percentage of deliverables accomplished.” However, this term is ambiguous and applicants are often unclear how to answer, particularly if projects were partially completed or terminated early. Requiring the status of closeouts according to the regulations will provide a readily quantifiable measure of the applicant’s project management history.

Comment: This represents a clarification of the application form. We agree with this change. See General Comment #1.

Evaluation Criteria – Acquisition Project Criteria (Rev. 1/11) is amended to revise specific scoring criteria and request more specific explanations or data where applicable.

Necessity and Rationale

The amendment to Item 2 is necessary to accommodate situations where the applicant has not been able to conduct natural or cultural resources analysis on property they intend to acquire. Past applicants, particularly federal agencies have indicated they may not have legal access to perform necessary inventories prior to applying for a grant to fund the purchase. Item 2 is also amended to clearly instruct applicants to provide a name and date for reference documents. Previous requests for reference documents have included a variety of undated data sources that could not be verified.

Comment: This represents a clarification of the application form. We agree with this change. See General Comment #1.

7. The amendment to Item 4 is necessary to acknowledge the real-world situation of most applicants requesting funds through the Program. In most instances, the future costs will be borne by a combination of OHV grants and the applicant’s budget. Thus, an option is added to account for that scenario. Item 4 is also amended to prompt applicants to provide more detail regarding the project’s funding. Prior responses to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Comment: This represents a clarification of the application form. We agree with this change. See General Comment #1.

8. The amendment to Item 6 is necessary to clarify expectations regarding public input. Applicants are prompted to identify meeting dates and participants providing public input. The instructions are also clarified to establish a reasonable 12 month time limit on the public input and to exclude internal meetings and conference calls. Previously applicants have included meetings that were

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not project-specific and/or occurred several years prior to the application and did not appear to relate directly to the project. The revised list of allowable meetings also better reflects desired outreach to the broader public. The scoring maximum is deleted because it is no longer necessary.

Comment: This represents a clarification of the application form. We agree with this change.

Evaluation Criteria – Development Project Criteria (Rev. 1/11) is amended to revise specific scoring criteria and request more specific explanations or data where applicable.

Necessity and Rationale

The amendment to Item 2 is necessary to accommodate situations where the applicant has not yet conducted natural or cultural resources analysis for development projects. Item 2 is also amended to clearly instruct applicants to provide names and dates for reference documents. Previous requests for reference documents have included a variety of undated data sources that could not be verified.

Comment: This represents a clarification of the application form. We agree with this change. See General Comment #1.

9. Evaluation criteria, development project criteria: The amendment to Item 13 is necessary to renumber it as Item 3. This amendment places Item 13, which addresses riparian and wetland issues, next to Item 2, which concerns natural and cultural resources. This move consolidates resource-related questions and improves the logical flow of the evaluation criteria. The amendment also deletes confusing language that makes it appear restoration activities could be performed under a development grant. Item 3 is also amended to clearly instruct applicants to provide a name and date for a reference document.

Comment: This represents a clarification of the application form. We agree with this change.

10. Evaluation criteria, development project criteria: The amendment to Item 3 is necessary to renumber the question as Item 4. Item 3 is amended to spell out the word “motorcycle” and to include the “Side-by-side” as a vehicle type. “Side-by-side” is a common name for certain four-wheeled OHVs and is synonymous with Recreation Utility Vehicles, which exists as an option to the question. In the past applicants have attempted to include side-by-sides as a separate vehicle type. Item 3 is also amended to delete the unnecessary “Other” option, as there are no other vehicle types that could be indicated. Item 3 is also amended to prompt applicants to provide more detail regarding the question. Prior responses to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Evaluation criteria, development project criteria: The amendment to Item 4 is necessary to renumber the question as Item 5. The amendment also clearly instructs applicants to provide a name and date for an adopted plan that supports the need for the project. Previous responses have included a variety of undated documents that could not be verified.

Comment: These represent a clarification of the application form. See General Comment #1.

11. Evaluation criteria, development project criteria: The amendment to Item 5 is necessary to renumber the question as Item 6. The amendment also prompts applicants to provide more detail regarding the question. Prior responses to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Comment: We agree with this change. The use of recycled building materials is difficult to accomplish.

12. Evaluation criteria, development project criteria: The amendment to Item 7 is necessary to renumber the question as Item 8. The amendment also provides an additional response to the question. Several past development projects, such as storage buildings, do not fit any of the three existing options. In these instances the applicant cannot accurately answer the question.

Comment: This represents a clarification of the application form. We agree with this change.

13. Evaluation criteria, development project criteria: The amendment to Item 8 is necessary to renumber the question as Item 9. The amendment also clarifies the Department's interpretation that a trail provides improved access to nonmotorized recreational opportunities. Other eligible projects, such as restrooms or campsites, are support facilities that improve recreational opportunities, but do not provide for improved access.

Comment: This amendment could have the unintended consequence of reducing the score for development projects for facilities other than trails. Some forms of non motorized recreation do not require a trail for access, such as water sports. However we agree with the Department's interpretation that trails provide access and facilities provide support. We therefore agree with this amendment.

14. Evaluation criteria, development project criteria: The amendment to Item 10 is necessary to renumber the question as Item 11. The amendment is also necessary to clarify expectations regarding partners participating in the project. The instructions are revised to indicate partners must be an organization or group actively engaged in the project, cannot be a subcontractor, and cannot be paid by any Program project. Additionally, to avoid the appearance of favoritism, any unit of the OHMVR Division may not be claimed as a partner. Applicants are also prompted to specifically identify partners and their role in the project. Previously applicants have included paid workers, groups, and individuals that might potentially participate in the project, and others whose relation to the project has been unclear.

Comment: We agree that applicants should identify the role of partners participating in a project.

15. The amendment to Item 12 is necessary to renumber the question as Item 13. The amendment is also necessary to prompt applicants to provide more detail regarding the project's offsite impacts. Prior responses to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Comment: It would be helpful to have a more complete definition of "off site impacts". The term "off site impacts" is subjective and could potentially include things such as effects on use

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at other riding areas, SVRA's, County law enforcement, etc. A narrower definition would help guide the applicant.

Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11) is amended to revise specific scoring criteria and request more specific explanations or data where applicable.

Necessity and Rationale

The amendment to Item 2 is necessary to require applicants to identify the closeout status of prior applications. Previously applicants were asked to identify the “percentage of deliverables accomplished”. However, this term is ambiguous and applicants are often unclear how to answer, particularly if projects were partially completed or terminated early. Requiring the status of closeouts according to the regulations will provide a readily quantifiable measure of the applicant's project management history.

Comment: This represents a clarification of the application form. We agree with this change. See General Comment #1.

16. *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)* The amendment to Item 4 is necessary to clarify expectations regarding partners participating in the project. The instructions are revised to indicate partners must be an organization or group actively engaged in the project, cannot be a subcontractor, and cannot be paid by any Program project. Additionally, to avoid the appearance of favoritism, any unit of the OHMVR Division may not be claimed as a partner. Applicants are also prompted to specifically identify partners and their role in the project. Previously applicants have included paid workers, groups and individuals that might potentially participate in the project, and others whose relation to the project has been unclear.

Comment: We agree that applicants should identify the role of partners participating in a project.

17. The amendment to Item 11 is necessary to remind applicants that training addressed in the question must be provided to members of the public. Numerous applicants have indicated training will be provided exclusively to agency personnel, not the public. The amendment also prompts applicants to provide more detail regarding the applicant's selection. Prior responses to this question have been minimal, making it difficult for administrators to validate the selection indicated by the applicant.

Comment: This represents a clarification of the application form. We agree with this change.

Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11) is amended to revise specific scoring criteria and request more specific explanations or data where applicable.

Necessity and Rationale

18. The amendment to Item 2 is necessary to prompt applicants to provide more detail regarding the question. Prior responses to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Comment: This represents a clarification of the application form. We agree with this change. See General Comment #1.

19. Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11) The amendment to Item 4 is necessary to clarify expectations regarding partners participating in the project. The instructions are revised to indicate partners must be an organization or group actively engaged in the project, cannot be a subcontractor, and cannot be paid by any Program project. Additionally, to avoid the appearance of favoritism, any unit of the OHMVR Division may not be claimed as a partner. Applicants are also prompted to specifically identify partners and their role in the project. Previously applicants have included paid workers, groups and individuals that might potentially participate in the project, and others whose relation to the project has been unclear.

Comment: This represents a clarification of the application form. We agree that the role of partners in a project should be clear.

20. Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11) The amendment to Item 6 is necessary to account for a wider variety of relevant responses. The selection regarding “controlling OHV use” is made more inclusive by removing reference to physical barriers. The proposed response allows the applicant to include other methods to control use, such as signage or seasonal closures. The selection addressing “wet crossings” is revised to no longer specify bridges; installation of a bridge is typically a development project. However, the response may now include a variety of other methods to address wet crossings, such as culverts or armored crossings. Applicants are also prompted to provide more detail regarding the question. Prior explanations to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Comment: Although we agree with this change we feel that there should be some clarification of what constitutes “controlling OHV use”. Providing some examples such as in the paragraph above would be helpful.

21. Item 8 is deleted. The question is not generally applicable to ground operations and has proven to be extremely difficult for applicants to receive points for the question. In fact, only one applicant has received points for this question over four grant cycles. Since the question is so rarely applicable, it is ineffective when ranking projects.

Comment: We agree with this change.

Evaluation Criteria – Planning Project Criteria (Rev. 1/11) is amended to revise specific scoring criteria and request more specific explanations or data where applicable.

Necessity and Rationale

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22. The amendment to Item 2 is necessary to include “potential offsite impacts” as an issue a planning project would address. Previously, offsite impacts were considered separately under Item 9. The proposed revision consolidates all of the potential issues into the same question. Applicants are also prompted to provide more detail regarding the question. Prior explanations to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Comment: It would be helpful to have a more complete definition of “off site impacts”. See previous comment. See General Comment #1.

23. Evaluation Criteria – Planning Project Criteria (Rev. 1/11) The amendment to Item 3 is necessary to remove the expectation that the project must result in improved facilities. In some instances, the results of the planning project may correctly indicate that the proposed undertaking is not the best option and should not be pursued.

Comment: We agree with this change.

24. Evaluation Criteria – Planning Project Criteria (Rev. 1/11) The amendment to Item 5 is necessary to prompt applicants to provide more detail regarding the question. Prior responses to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Comment: Some clarification of what is meant by “substantial” would allow a more complete response by applicants. This term is subjective and needs clarification.

25. Evaluation Criteria – Planning Project Criteria (Rev. 1/11) The amendment to Item 6 is necessary to clarify expectations regarding partners participating in the project. The instructions are revised to indicate partners must be an organization or group actively engaged in the project, cannot be a subcontractor, and cannot be paid by any Program project. Additionally, to avoid the appearance of favoritism, any unit of the OHMVR Division may not be claimed as a partner. Applicants are also prompted to specifically identify partners and their role in the project. Previously applicants have included paid workers, groups and individuals that might potentially participate in the project, and others whose relation to the project has been unclear.

Comment: See our previous comments on this subject.

26. The amendment to Item 7 is necessary to revise the scoring for the question and to add clarification. The points are increased slightly to offset the potential points reduced by the deletion of item 8.

Comment: We agree with this change.

27. Evaluation Criteria – Planning Project Criteria (Rev. 1/11) Regarding the amendment to Item 7, development of OHV opportunities adjacent to population centers; applicants would be instructed to consider populations centers only within 50 miles of the planning location. Fifty miles is a reasonable distance, as opposed to past applications which have indicated population centers in excess of one hundred miles away. The amendment also prompts applicants to

provide more detail regarding the question. Prior responses to this question have been minimal, making it difficult for administrators to validate the score indicated by the applicant.

Comment: Some OHV areas draw from population centers hundreds of miles away, for example Jawbone draws relatively little from a 50 mile radius and mostly from Southern California. It is extremely difficult to find suitable areas for OHV recreation and planning projects need to occur wherever possible. Although it is desirable to have OHV recreation areas near population centers this is difficult to accomplish because of the “NIMBY” syndrome. Also the item includes no definition of a “population center”. This amendment should be revised or eliminated.

28. Evaluation Criteria – Planning Project Criteria (Rev. 1/11) Item 8 is deleted. It is nearly impossible for applicants to receive points for the question. Most applicants are unable to state with certainty that future funds for project implementation have been identified. Because the question is rarely applicable, it is ineffective when ranking projects.

Comment: We disagree with this amendment. Too many planning projects are never implemented. It is important for the applicant to state how implementation of the planning project will be funded as part of the justification for funding of the planning project.

Evaluation Criteria – Restoration Project Criteria (Rev. 12/11) is amended to revise specific scoring criteria and request more specific explanations or data where applicable.

Necessity and Rationale

The amendment to Item 2 is necessary to improve the clarity and accuracy of the responses. The response regarding domestic water supply is amended to include examples of facilities that might be adversely impacted. The response addressing archaeological and historical resources is modified to include resources potentially eligible to be listed on the California Register of Historical Resources or the National Register of Historic Places. Only a very small fraction of archaeological and historical resources are listed on the Registers, so this change expands the resources that would be protected by the project and for which an applicant could receive points. The response is also modified to properly identify the National Register of Historic Places and spell out the acronym for Area of Critical Environmental Concern. The amendment also prompts applicants to provide more detail regarding the applicant’s selections. Prior responses to this question have been minimal, making it difficult for administrators to validate the selections indicated by the applicant.

The amendment to Item 3 is necessary to instruct applicants to provide a name and date for a reference document. Previous requests for reference documents have included a variety of undated data sources that could not be verified.

Comment: This represents a clarification of the application form. We agree with this change. See General Comment #1.

29. Evaluation Criteria – Restoration Project Criteria (Rev. 12/11) The amendment to Item 5 is necessary to instruct applicants to provide a name and date for an adopted plan that supports the need for the project. Previous responses have included a variety of undated documents that could not be verified.

Comment: It should not be difficult for applicants to provide this information. We agree with this change.

30. *Evaluation Criteria – Restoration Project Criteria (Rev. 12/11)* The amendment to Item 8 is necessary to clarify expectations regarding partners participating in the project. The instructions are revised to indicate partners must be an organization or group actively engaged in the project, cannot be a subcontractor, and cannot be paid by any Program project. Additionally, to avoid the appearance of favoritism, any unit of the OHMVR Division may not be claimed as a partner. Applicants are also prompted to specifically identify partners and their role in the project. Previously applicants have included paid workers, groups and individuals that might potentially participate in the project, and others whose relation to the project has been unclear.

Comment: See our previous comments on this topic.