

**Department of Parks and Recreation
OHMVR Grant and Cooperative Agreement
Program Regulations**

FINAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATIONS

The Off-Highway Motor Vehicle Recreation Act of 1988 (Section 5090.01 et seq. of the Public Resources Code), which established a program that provides for opportunities for off-highway motor vehicle recreation at specified areas throughout the State, has been amended by the legislature via Assembly Bill 2274 (Keeley) to prescribe changes to the procedures for grant application, monitoring, and funding. This amendment is cited in the enabling legislation as the Off-Highway Motor Vehicle Recreation Act of 2003, hereinafter referred to as “the Act”.

The Act requires annual performance audits on all grants to improve program accountability. The Act also authorizes the issuance of grants to educational institutions and nonprofit organizations for certain projects that are designed to sustain a managed off-highway motor vehicle recreation program. The Act further establishes an independent grant category for Off-Highway Vehicle (OHV)-related law enforcement programs.

Chapter 15 of the California Code of Regulations (CCR) is being amended to clarify and make specific the provisions of the Act and to provide the appropriate changes to the guidelines and standards for the Off-Highway Motor Vehicle Recreation (OHMVR) Grant and Cooperative Agreement Program. The proposed amended regulations are grouped into applicable “Articles” and are the combined effort of the OHMVR Commission, various stakeholders in the OHMVR Grant Program, and OHMVR Division staff.

NECESSITY

The legislature enacted the Off-Highway Motor Vehicle Recreation Act of 2003 (the Act) to significantly amend and to greatly clarify many of the laws affecting both OHV recreation and the OHMVR Program which provides a means for the State to help agencies and organizations as defined in the Act to control indiscriminate and uncontrolled use of OHV, to protect the environment, and to sustain long-term OHV recreation. Refer to each section for more detail on necessity.

REASONS FOR MANDATING SPECIFIC ACTIONS OR PROCEDURES OR SPECIFIC TECHNOLOGIES OR EQUIPMENT

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

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

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

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts. Participation in the OHMVR Grant and Cooperative Agreement Program is voluntary.

DETERMINATION OF EFFECTIVENESS OF ALTERNATIVES TO THE REGULATIONS CONSIDERED BY THE AGENCY

The proposed regulations were developed by an OHMVR Commission Stakeholders Subcommittee comprised of a representative of the OHMVR Commission, various stakeholders in the OHMVR Program, and OHMVR Division staff. Many alternatives to the proposed amendments were considered; but these amendments were consented to by the Subcommittee as being the most effective and least burdensome to affected persons and are, therefore, proposed for adoption.

DOCUMENTS INCORPORATED BY REFERENCE

The Department did not incorporate by reference any new documents in the proposed amendments to these regulations. Two documents: (1) Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91), and (2) OHV Grant Application Guide (June 2000) were incorporated by reference in the initial adoption of these regulations and remain unchanged in these proposed amendments.

SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED AMENDMENT AND A SUMMARY OF OBJECTIONS, RECOMMENDATIONS, CHANGES, AND RESPONSE TO COMMENTS

The following provides the specific purpose and necessity for each proposed amendment to CCR Title 14, Division 3, Chapter 15, Sections 4970.00 –

4970.32. A summary of comments and recommendations follow the specific purpose and necessity for each pertinent amended section together with the Department's response including an explanation of how the proposal was amended to accommodate the comment or the reason for rejecting the comment. Note: Although most of the comments are presented in a summary format, quotation marks are used when the wording is verbatim.

Article 1 General Provisions

SECTION 4970.00 – DEFINITIONS

Specific Purpose

Thirteen definitions have been added to this section to provide clarity to new terms that are provided in the Act or are applicable and/or unique to the OHMVR Grant and Cooperative Agreement Program. Eleven definitions have been amended also to provide clarity and/or to incorporate language provided in the Act. Five definitions have been deleted since they have been superseded by new terminology in the Act; or they are redundant to other terms in the Act; or they do not require clarification. In addition, the definitions have been listed in alphabetical order to make this section more "user friendly".

Necessity

This Section was needed to clarify the terms used in the Act (amended Sections 5090.01 et seq. of the Public Resources Code) and CCR Sections 4970.00 et seq. Definitions are needed so that applicants and the Department understand exactly what is being required in the application, funding, and monitoring process.

Subsection 4970.00(a) "Allocation" – This definition was renumbered from (c) to maintain the alphabetical order.

Subsection 4970.00(b) "Amendment to a Project Agreement" – This definition was renumbered from (d) to maintain the alphabetical order.

Subsection 4970.00(c) "Annual Performance Review" – This definition was added since it is an important new element of the OHMVR Grant and Cooperative Agreement Program provided in the Act, Public Resources Code (PRC) Section 5090.32(l) that necessitates clarification by definition.

Subsection 4970.00(d) "Application" – This definition was renumbered from (a) to maintain the alphabetical order.

Subsection 4970.00(e) "Appropriation" – This definition was renumbered from (b) to maintain the alphabetical order.

Subsection 4970.00(f) “ATV” – This definition was renumbered from (e) to maintain the alphabetical order and was amended to comply with California Vehicle Code Section 111 that provides that an ATV shall have “nine hundred pounds or less unladen weight”.

Subsection 4970.00(g) “Buffer” – This definition was added since it is an important element of the program that necessitates clarification by definition. Buffers are utilized to comply with the requirements of PRC Sections 5090.32(d), 5090.35, and 5090.53 and Vehicle Code Section 38370.

Subsection 4970.00(h) “CEQA” – This definition was renumbered from (g) to maintain the alphabetical order.

Subsection 4970.00(i) “C&E” - This definition was renumbered from (f) to maintain the alphabetical order.

Subsection 4970.00(j) “Casual” - This definition was renumbered from (h) to maintain the alphabetical order.

Subsection 4970.00(k) “Certified” – This definition was renumbered from (i) to maintain the alphabetical order.

Subsection 4970.00(l) “Commission” – This definition was renumbered from (j) to maintain the alphabetical order.

Subsection 4970.00(m) “Conflicts” – This definition was added since it is a term used in CCR Sections 4970.01 and 4970.32(c)(14), that necessitates clarification by definition.

Subsection 4970.00(n) “Conservation” – This definition was amended to incorporate the words “and natural and cultural resources” as referenced in the Act, PRC Sections 5090.50 and 5090.64 and to simplify the definition by deleting the words “in accordance with the standards adopted pursuant to” and replacing them with the term “as referenced in”. Also, the term “and 5090.50”, is added to clarify that that section in the Act also refers to the word “conservation”.

Subsection 4970.00(o) “Control Language” – This definition was renumbered from (m) to maintain the alphabetical order.

Subsection 4970.00(p) “Cooperative Agreement” – This definition was renumbered from (l) to maintain the alphabetical order and was amended to incorporate the new language “a federally recognized Native American tribe” as referenced in the Act in PRC Section 5090.50.

Subsection 4970.00(g) “Cultural Resources” – This definition was added since it is an important term referenced in the Act, PRC Sections 5090.50(f) and 5090.64(b)(2), that necessitates clarification by definition.

Subsection 4970.00(r) “Deliverables” – This definition was added since it is an important new term used in CCR Section 4970.29(o), that necessitates clarification by definition.

Subsection 4970.00(s) “Department” – This definition was renumbered from (o) to maintain the alphabetical order.

Subsection 4970.00(t) “Development” – This definition was added since it is an important element of the OHMVR Program provided in the Act, PRC Sections 5090.32(a) and 5090.50(c) that necessitates clarification by definition.

Subsection 4970.00(u) “Director” – This definition was renumbered from (p) to maintain the alphabetical order.

Subsection 4970.00(v) “Division” – This definition was renumbered from (q) to maintain the alphabetical order.

Subsection 4970.00(w) “Enforcement” – This definition was renumbered from (r) to maintain the alphabetical order and was amended to comply with the amended language in the Act, PRC Section 5090.64(2), which deleted the term “peace officers” and replaced it with “law enforcement personnel”; and to add the words “and cultural” to comply with the amended language in PRC Sections 5090.50(f) and 5090.64(b)(2) of the Act. Also, the phrase “of the vehicle code” and the word “and” were added for further clarification.

Subsection 4970.00(x) “Guide” – This definition has been deleted since no clarification was deemed necessary.

Subsection 4970.00(x) “Environmental Document” – This definition was renumbered from (s) to maintain the alphabetical order.

Subsection 4970.00(y) “Federal Agency” – This definition was renumbered from (t) to maintain the alphabetical order.

Subsection 4970.00(z) “Fiscal Audit” – This definition was added since it is an important element in the OHMVR Program, referenced in CCR Section 4970.29(n), that necessitates clarification by definition.

Subsection 4970.00(aa) “Force Account” – This definition was renumbered from (u) to maintain the alphabetical order.

Subsection 4970.00(bb) “Fund” – This definition was renumbered from (v) to maintain the alphabetical order.

Subsection 4970.00(cc) “Grantee” – This definition was renumbered from (w) to maintain the alphabetical order and was amended to comply with amended language as referenced in the Act, PRC Sections 5090.50, and 5090.61(a) and Vehicle Code Section 38026(d).

Subsection 4970.00(dd) “Law Enforcement Personnel” – This definition was added since it is a new term provided in the Act, PRC Section 5090.64(b), that necessitates clarification by definition. This new term supersedes the term “peace officer” in the Act.

Subsection 4970.00(ee) “Local Agency” – This definition was renumbered from (y) to maintain the alphabetical order.

Subsection 4970.00(ff) “Maintenance” – This definition was renumbered from (z) to maintain the alphabetical order.

Subsection 4970.00(gg) “Major Maintenance” – This definition was added since it is an important element of the OHMVR Program, referenced in CCR Section 4970.04, that necessitates clarification by definition.

Subsection 4970.00(hh) “OHV Recreation” – this definition was deleted since no clarification of this term is necessary.

Subsection 4970.00(hh) “Minor Trail Relocation” – This definition was renumbered from (aa) to maintain the alphabetical order and was amended to delete the term “rehabilitation” and to replace it with “restoration “ as provided in the Act, PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b), 5090.50(c), and 5090.64(a).

Subsection 4970.00(ii) “Monitoring” – This definition was renumbered from (bb) to maintain the alphabetical order.

Subsection 4970.00(jj) “Native American tribes” – This definition was added since it is new language provided in the Act, PRC Section 5090.50(b), that necessitates clarification by definition.

Subsection 4970.00(kk) “Peace Officer” – This definition was deleted since it is superseded by the term “Law Enforcement Personnel” as referenced in PRC Section 5090.64(2) of the Act.

Subsection 4970.00(kk) “NEPA” – This definition was renumbered from (cc) to maintain the alphabetical order.

Subsection 4970.00(ll) “Non-profit” – This definition was added since it is a new term as referenced in the Act, PRC Section 5090.50(f), that necessitates clarification by definition.

Subsection 4970.00(mm) “Off-Highway Vehicle Operation” – This definition was renumbered from (dd) to maintain the alphabetical order and amended for clarification purposes. The last sentence of the definition has been deleted from this subsection and moved to subsection (zz) since it is a separate definition of the word “Roads”.

Subsection 4970.00(nn) “OHV” – This definition was renumbered from (ee) to maintain the alphabetical order and was amended to delete the reference to Section 38012 of the Vehicle Code which is not necessary since Section 38006 of the Vehicle Code references that section. Also, the examples were deleted since they were deemed unnecessary.

Subsection 4970.00(oo) “OHV Grant” – This definition was renumbered from (ff) to maintain the alphabetical order.

Subsection 4970.00(pp) “OHV Opportunities” – This definition was renumbered from (gg) to maintain the alphabetical order.

Subsection 4970.00(qq) “Operation” – This definition was renumbered from (ii) to maintain the alphabetical order.

Subsection 4970.00(rr) “4WD route” – This definition has been deleted since it has been deemed unnecessary to clarify.

Subsection 4970.00(rr) “PAR” – This definition was renumbered from (jj) to maintain the alphabetical order and was amended to reflect the renumbered Section of the CCR in which the term “PAR” is used.

Subsection 4970.00(ss) “System” – This definition has been deleted since it is superseded in the Act, PRC Sections 5090.15(c), and 5090.32(a) by the term “state vehicular recreation areas”.

Subsection 4970.00(ss) “Project” – This definition was renumbered from (ll) to maintain the alphabetical order.

Subsection 4970.00(tt) “Project Agreement” – This definition was renumbered from (mm) to maintain the alphabetical order.

Subsection 4970.00(uu) “Project Performance Period” – This definition was renumbered from (nn) to maintain the alphabetical order and was amended to delete the words “billed, and paid” for clarification purposes in accordance with PRC Section 5090.32(d) of the Act.

Subsection 4970.00(vv) “Regional OHV Facility”– This definition was renumbered from (oo) to maintain the alphabetical order.

Subsection 4970.00(ww) “Repair of trails, roads, and areas” – This definition was added since it is an important element of the OHMVR Program in accordance with PRC Section 5090.35 of the Act that necessitates clarification be definition.

Subsection 4970.00(xx) “Re-scope” – this definition was renumbered from (qq) to maintain the alphabetical order.

Subsection 4970.00(yy) “Restoration” – This definition was renumbered from (pp) to maintain the alphabetical order. The word “rehabilitation” was deleted and replaced by the word “restoration” since the term “restoration” supersedes the term “rehabilitation” as referenced in the Act, PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b), 5090.50(c), and 5090.64(a).

Subsection 4970.00(zz) “Roads” – this definition was originally contained in the definition for “Off-Highway Vehicle Operation [renumbered subsection (mm)], but has been added as a separate definition for clarification purposes in accordance with Section 38001 of the Vehicle Code.

Comment

Regarding Subsection 4970.00(m), which reads: *“Conflicts” means new or ongoing OHV issues involving agencies, principal, or interested parties.* “This definition appears to be overly broad and lacks clarity. [Gov. C. §11349(c)]. This is especially true given the words, “OHV issues” and “involving...interested parties”.

Department’s Response to Comment

The Department does not agree that the definition of “Conflicts” is too broad. This definition was the product of the OHV Commission Stakeholders Subcommittee after extensive discussion. The Subcommittee included representatives from the OHV business community, OHV users, environmental groups and other interested parties. The Department is therefore taking no action on this comment.

Comment

Regarding Subsection 4970.00(n), which reads: *“Conservation” means activities, practices, and programs that sustain soil, plants, wildlife and their habitat and natural and cultural resources in accordance with the standards adopted pursuant to, as referenced in PRC Sections 5090.10, and 5090.35, and 5090.50.* “This definition is not necessary, as the word “conservation” is already defined in

PRC §5090.10. This section provides that: §5090.10. “Conservation” means activities, practices, and programs that sustain soils, plants, wildlife, and their habitat in accordance with the standards adopted pursuant to Section 5090.35. It therefore violates the non-duplication requirement of Gov. C. §11349(f). The proposed definition also directly conflicts with PRC §5090.10, as the words “natural and cultural resources” do not appear in §5090.10. It therefore is not “consistent” within the meaning of Gov. C. § 11349(d).”

Department’s Response to Comment

PRC §5090.10 is found in Article 1. General Provisions, and pertains to both state vehicular recreation areas and trails, and the grants program. The words “natural and cultural resources” were added in Subsection 4970.00(n) of the proposed regulations because this new language was included in AB 2274. PRC Subsection 5090.50(f) provides that “grants may be awarded to educational institutions and nonprofit organizations for eligible projects that are designed to sustain a managed off-highway motor vehicle recreation program. Eligible projects shall be limited to scientific research, *natural resource conservation activities, as defined in Section 5090.10, cultural resource conservation activities,* and programs involving off-highway motor vehicle safety or education.” Therefore, the proposed definition is not duplicative and does not conflict with PRC §5090.10. The proposed definition clarifies the legislative intent of the new PRC Subsection 5090.50(f) of AB 2274 as it relates to PRC §5090.10 in accordance with paragraph (3) of subdivision (a) of California Government Code §11349.1 and is, therefore, in compliance with Government Code §§11349(d) and 11349(f). The Department is therefore taking no action on this comment.

Comment

Regarding Subsection 4970.00(q), which reads: “Cultural Resources” are associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage; are associated with the lives of persons important in our past; embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or has yielded, or may be likely to yield, information important in prehistory or history. Cultural resources also include Historical Resources. A resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the California Register of Historical Resources (PRC Section 5024.1, Title 14, Section 4852). “The definition of ‘cultural resources’ is breathtakingly broad, vague, and uncertain. CCR §4852...cited as authority, refers to Historical Resources Eligibility. Sections 4851 *et seq.* of these regulations set forth a detailed procedure as to how to properly designate an area as a historical resource.” PRC §5090.43(c) refers to “Cultural Preserves” that may be designated after a public hearing.

The definition of “Cultural Resource” needs to be “significantly narrowed to include only those cultural resources that are specifically designated and recognized as a “Cultural Preserve” after a public hearing”.

Department’s Response to Comment

The definition for “Cultural Resources” is consistent with new statutes as a result of AB 2274. Specifically, PRC §5090.50(f) and §5090.64(b)(2) give the Division the necessary authority. Language for the definition comes directly from PRC §5024.1. Therefore, it is not appropriate to significantly narrow the definition of cultural resources. The Department is therefore taking no action on this comment.

Comment

Regarding Subsection 4970.00(gg), which reads: “Major Maintenance” means the reconstruction and repair of existing facilities, trails or trail segments, or re-routes over ¼ mile in length and associated restoration. Major maintenance requires environmental documentation, typically a categorical exemption or negative declaration. All maintenance and development projects that require an EIS or EIR to be compliant with environmental laws will also be considered major maintenance or development. Repairs that do not require environmental documentation, but have costs that meet or exceed \$5,000, are also defined as major maintenance. \$5000 is artificially low with regard to the definition. “This is especially so if indeed a Major Maintenance item could be construed as a “major capital expenditure” of funds, which require OHV Commission approval under PRC §5090.24(e). Requiring Commission approval would unnecessarily inhibit development and restoration work, and actually cause further environmental damage since the Commission is only required to meet four times per year while projects are put on hold. Therefore, the level should be raised to \$10,000; and a clarification should be added that the term “Major Maintenance” is not a “major Capital expenditure” under PRC §5090.24(e).

Department’s Response to Comment

The commenter has raised a valid point with regard to the definition of Major Maintenance. The Department is currently drafting revisions to the regulations with the goal of completing the regulation adoption process prior to the next grant cycle. Although the Department is not taking action at this time, this comment is being considered for incorporation in the regulations currently being drafted.

SECTION 4970.01 – PROGRAM PURPOSE

Specific Purpose

This Section sets forth the reason for the Off-Highway Motor Vehicle Recreation Grant and cooperative Agreement Program. It identifies the types of entities that may participate in the program and what is to be accomplished with funds received from the program. It has been amended to clarify the amendments in the Act.

Necessity

The proposed amendment to this regulation is needed to clarify PRC Section 5090.02 and also to reflect and clarify the amended language in PRC Section 5090.50 of the Act.

The words “cities, counties, appropriate districts, and” were deleted and the words “and organizations, as defined in 4970.01, and” were added since eligibility for OHMVR grants and cooperative agreements have been expanded to include federally recognized Native American tribes, educational institutions, and nonprofit organizations as provided in the Act, PRC Section 5090.50, and listed in the renumbered CCR Section 4970.10.

The word “allow” is deleted and replaced by the word “sustain” to clarify the intent of the Act as provided in PRC Section 5090.02(c)(2).

Comment

Regarding §4970.01. Program Purpose. The wording of the first sentence of this regulation should be changed from: *“The purpose of the OHV grants and cooperative agreements program is to provide financial assistance to agencies and organizations, as set forth in 4970.10(a), ;and to develop and maintain high quality OHV programs that responsibly maintain the wildlife, soils, and habitat areas in a manner that will sustain long term OHV recreation.”*, to: “The purpose of the OHV grants and cooperative agreements program is to provide financial assistance to agencies and organizations, as set forth in 4970.10(a) to **expand**, develop and maintain high quality OHV **recreation areas through** programs that responsibly maintain wildlife, soils, and habitat of areas in a manner that will **encourage and** sustain long term OHV recreation.”. This wording is more appropriate because, according to PRC §5003 and §5090.02(c)(1), (2), “the legislative intent under the OHV Grants Program is to encourage development and expansion of new OHV opportunities as well as maintain existing ones, and to do so in a responsible manner. As the proposed regulation reads, it seems to imply that OHV recreation merely needs to be “sustained on existing lands within State Parks’ jurisdiction.”

Department's Response to Comment

Existing language in §4970.01 reflects the legislative intent of PRC §5090.02(c)(1) and (2), but does not adequately capture the other intentions outlined in PRC §§5090.02(a), (b) and (c)(3). The changes indicated in the proposed regulations for §4970.01 reflect the overall intent of the legislature. The word “expanded” is included in PRC §5090.02(c)(1). Therefore, although the Department is taking no action on this comment at this time, the word “expand” is being considered for incorporation in the regulations currently being drafted.

Article 2 Types of Projects

SECTION 4970.02 – PLANNING PROJECTS AND STUDIES

Specific Purpose

This Section identifies the purpose of a planning project and the components that are required in a planning grant or cooperative agreement. It has been amended to include the purpose of a study and the components that are required in a study grant or cooperative agreement. This Section identifies specific types of planning and environmental documents as possibly being a project funded by a grant or cooperative agreement. It has been amended to identify specific types of studies that may possibly be funded by a grant or cooperative agreement.

Necessity

The proposed amendment to this regulation is needed to clarify PRC Sections 5090.32(h) and 5090.32(i) of the Act and Section 38001(a) of the Vehicle Code.

Subsection (f) is added to this regulation to clarify and make specific PRC Section 5090.32(i) of the Act by identifying specific types of studies on OHV recreation that may be funded by a grant or cooperative agreement.

The words “roads, trails, and routes” have been added to subsection (b)(1) to further clarify PRC Section 5090.32(h) of the Act.

The word “impact” has been deleted and the words “potential effects” have been added to subsection (b)(5) to clarify and be consistent with subsection (f).

Comment

Regarding §4970.02. Planning Projects and Studies. “The only reference we find to “conflicts” in the Public Resources Code appears in PRC §5090.24, which authorizes the OHV Commission to do the following: (c) Consider, upon the request of any owner or tenant, whose property is in the vicinity of any land in the

system, any alleged adverse impacts occurring on that person's property from the operation of off-highway motor vehicles and recommend...; (g) Prepare and submit a program report to the Governor...The report shall address... the resolution of conflicts of use in those areas and trails, ..." Sub-section (g) only requires that the Commission resolve existing conflicts, not to go out and find them with grant money to study the following: potential effects between OHV recreation and other recreation uses, potential effects of OHV recreation on adjacent lands, and potential effects between OHV recreation and local residents.

Department's Response to Comment

It is important to note that the proposed language in §4970.02 pertains to **planning** and **studies**. PRC §§ 5090.32(h) and 5090.32 (i) provide the Division with the responsibility to fund any kind of planning project or study related to OHV use. Because these grants provide funding to look at new, not existing projects, it is prudent to study potential conflicts to help determine if a proposed project appears financially feasible. Identifying conflicts early allows time to resolve issues in advance of spending large amounts of public funds. It should also be noted that the words "potential conflict" in §4970.02(b)(5) were added to the regulations in 1999. At that time, the proposed regulations went through a public review and comment process; therefore the comment pertaining to the words "potential conflicts" is dismissed as irrelevant per California Rulemaking Code §11346.9(a)(3). The Department is therefore taking no action on this comment.

Comment

Section 4970.02(f)(5) is "calling for "further technological advances to reduce noise and air pollution from OHVs". "There is *nothing* in the authority cited (or anywhere else in the Public Resources Code) discussing the reduction of "air pollution" from OHVs. This is the responsibility of the California Air Resources Board, not State Parks. State Parks is therefore exceeding its statutory grant of authority in this regard."

Department's Response to Comment

Subsection 4970.02(f)(5) does not "call" for further technological advances to reduce noise and air pollution from OHVs. Subsection (f) states that "Studies on OHV recreation **may** (emphasis added) include those that address the following:" (1) through (6) are examples of the types of studies that may be funded by a grant or cooperative agreement. PRC §5090.32 is cited as a reference under §4970.02 of these regulations. Specifically, PRC §5090.32(i) provides, as one of the Division's duties and responsibilities, "Conduct, or cause to be conducted, surveys and prepare, or cause to be prepared, studies that are **necessary or desirable** (emphasis added) for implementing the program. The Division

believes that, in order to implement a viable program, it is also prudent to explore future technologies to comply with the increasingly stringent air standards in California. The Department is therefore taking no action on this comment.

SECTION 4970.03 – ACQUISITION PROJECTS

Specific Purpose

This Section identifies why acquisition projects are important in providing off-highway vehicle recreation. The types of acquisition projects are identified as well as eligible costs associated with the acquisition projects. Guidelines for the acquisition projects are also identified. This Section has been amended to: (1) incorporate language that provides further clarification of the intent of the Act; and (2) to simplify the fund disbursement procedure by deleting unnecessary language. It has also been amended to delete language referring to application requirements. The application requirement language has been moved to a more appropriate section.

Necessity

The proposed amendment to this regulation is needed to clarify PRC Sections 5090.32(d), 5090.35 and 5090.43(c) of the Act. It is also being amended to remove language referring to the application requirements.

The words “and maintain” have been added to subsection (a) to further clarify PRC Section 5090.35(a) of the Act.

The words “and provide appropriate buffers to sustain OHV opportunity” have also been added to subsection (a) to further clarify PRC Section 5090.32(d) and 5090.43(c) of the Act.

Subsection (c)(7) has been added as follows: “Wildlife, habitat, soil, and cultural surveys” to further clarify 5090.35(c) and 5090.43(c) of the Act.

Subsections (k)(1), (k)(2), (l), (m)(1), (m)(2)(A), (m)(2)(B), and (m)(2)(C) have been deleted from the section and moved to renumbered Section 4970.11 which addresses application requirements.

SECTION 4970.04 – DEVELOPMENT AND MAJOR MAINTENANCE PROJECTS

Specific Purpose

This Section identifies the types of development projects that may be eligible for funding as an OHV grant or cooperative agreement. Requirements such as plans, wages, and access are identified. It has been amended to include the identification of major maintenance projects that may also be eligible for funding as an OHV grant or cooperative agreement.

Necessity

The proposed amendment to this regulation is necessary to further clarify and make specific PRC Sections 5090.35 and 5090.50 of the Act.

The words “and major maintenance” have been added to subsection (a), (c), and (g) to further clarify PRC Sections 5090.35 and 5090.50 of the Act.

The words “reconstruction and repair of existing facilities, trails or trail segments; or re-routes over ¼ mile in length and associated restoration” have been added to subsection (c)(1) to further define a major maintenance project.

Subsection (c)(9) has also been added to define a major maintenance project and to further clarify PRC Sections 5090.35 and 5090.50.

Subsection (d) has been amended by deleting the words “shall not commence (construction or the award of a contract for work) until the”, and “has approved the”, and “for the project in writing” and by adding the words “and major maintenance”, and “may require approval before construction begins”. The intent of this amended language is to eliminate the mandatory written nature of Division approval of development and major maintenance projects before construction begins.

SECTION 4970.05 – OPERATION AND MAINTENANCE (O&M) PROJECTS

Specific Purpose

This Section identifies the different general components of an O&M project and the specific types of activities that may be considered in an O&M project. Matching fund requirements are also outlined. This Section has been amended to further clarify the definition of a minor maintenance project and to incorporate new language from the Act.

Necessity

The proposed amendment to this regulation is necessary to further clarify PRC Sections 5090.32, 5090.50, and 5090.64(b)(2) of the Act.

The words “repair and” were deleted from subsection (b)(1) and subsection (b)(17) was added to further define a minor maintenance project.

The words “and program” were added to subsection (b)(4) to further clarify PRC Section 5090.32.

The words “peace officer” were deleted and the words “law enforcement personnel” were added to subsection (b)(5) to conform to the new language as referenced in PRC Section 5090.64(b)(2) of the Act.

The words “trail segments that are under ¼ mile in length” were added to subsection (b)(13) to further define a minor maintenance project.

The words “under \$5000 (excluding tax)” were added to subsection (b)(15) to further define a minor maintenance project.

Comment

Regarding §4970.05. Operation and Maintenance (O&M) Projects, subsection (b)(17) added to subsection (b) as an additional example of O&M activities: *“Minor maintenance for repair of facilities that does not require environmental documentation beyond a categorical exclusion of negative declaration, and the cost for the project is below \$5,000.”* Raise the threshold for minor maintenance for \$5,000 to \$10,000.

Department’s Response to Comment

As previously mentioned in the Department’s response to a comment pertaining to Subsection 4970.00(gg) of these proposed regulations, the commenter has a valid point. Although the Department is not taking action on this comment at this time, it is being considered for incorporation in the regulations currently being drafted.

SECTION 4970.06 – RESOURCE MANAGEMENT PROJECTS

Specific Purpose

This Section identifies the purpose of a resource management project. Examples of the types of activities considered as resource management are listed as well as the sub-activities that constitute resource management. This Section has been amended to further clarify the amended language in the Act.

Necessity

This proposed amendment to this regulation is necessary to further clarify PRC Sections 5090.11, 5090.24, 5090.32, 5090.35, 5090.50, and 5090.64 of the Act.

The words “or rehabilitate” were deleted and the words “restore, or repair” were added to subsection (a) to comply with the new language as referenced in PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b), 5090.50(c), and 5090.64(a) of the Act.

The words “and cultural” were added to subsection (a) to comply with language as referenced in PRC Sections 5090.50(f) and 5090.64(b)(2) of the Act.

The words “or to provide data that will allow for appropriate management decisions related to natural and cultural resource issues” were added to subsection (a) to further clarify PRC Sections 5090.32 and 5090.50(f) of the Act.

The words “both of two” were deleted and the word “more” was added to subsection (b) to reflect the increase in the number of sub-activities from two to three as a result of amended language in PRC Sections 5090.50(c) and 5090.50(e) of the Act.

The word “rehabilitation” was deleted and was replaced by the word “restoration” in subsection (b) to conform to amended language in PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b), 5090.50(c), and 5090.64(a) of the Act.

The words “and (3) repair of trails, roads, and areas” were added to subsection (b) to further clarify PRC Sections 5090.50(c) and 5090.50(e) of the Act.

The words “rehabilitation activities” were deleted in subsection (c) and replaced by the word “restoration” and the word “rehabilitation” was deleted in subsection (d)(1) and (d)(10) and replaced by the word “restoration” to conform to amended language in PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b), 5090.50(c), and 5090.64(a) of the Act.

The words “repair of roads, trails, and areas” were added to subsections (c) and (d)(1) to further clarify PRC Sections 5090.50(c), and 5090.50(e) of the Act.

The words “or to protect habitat or wildlife” were added to subsection (d)(9) to further clarify PRC Section 5090.35 of the Act.

Subsection (d)(11) was added to provide another example of a resource management activity.

Comment

Regarding §4970.06. Resource Management Projects, specifically subsection 4970.06(a), *Resource management projects are intended to conserve, restore or repair or rehabilitate natural and cultural resources in an effort to maintain environmentally balanced OHV recreation, or to provide data that will allow for appropriate management decisions related to natural and cultural resource issues.* Subsection (a) discusses “cultural resource issues”. “The term “cultural resources” is not based on sound statutory authority as defined by the proposed regulations.” With regard to the references cited: §§5090.33 and 5090.55 have been repealed.

Department’s Response to Comment

With regard to statutory authority: AB 2274 added language to PRC §5090.50(f), which is a referenced citation in the proposed regulations on page 11, line 15. Specifically, PRC §5090.50(f) uses the words, “...*cultural resource conservation activities...*”. The term “natural and cultural resource” regarding “issues” was reviewed and agreed upon by the OHV Commission’s Stakeholder Subcommittee. With regard to §§5090.33 and 5090.55: These reference citations were deleted in these draft regulations. Please note the strikeouts on page 11, line 15. The Department is therefore taking no action on this comment.

Comment

Regarding §44970.06. Resource Management Projects., specifically subsection 4970.06(d)(11), “(d) *Examples of resource management activities are as follows:...(11) Studies to determine the possible effects of OHV recreation on wildlife, vegetation, cultural resources, and soils for the purpose of implementing a resource management project.*”, §5090.35 [Gov. C. §5090.10] only authorize activities in furtherance of “conservation”, meaning soils, plants, wildlife and their habitat, and “cultural resources” is undefined. “OHV” is not mentioned in any of the statutes noted, therefore, delete §4970.06 (d)(11).

Department’s Response to Comment

PRC §5090.32(i) does not limit the Division’s authority on what to study. This section reads: “*Conduct, or cause to be conducted, surveys and prepare, or cause to be prepared, studies that are necessary or desirable for implementing the program.*” In addition, PRC §5024.1(c) reads: “*a resource may be listed as an historical resource in the California Register if it meets any of the following National Register of Historic Places criteria: (1) Is associated with events that have made a significant contribution to the broad patterns of California’s history, and **cultural** heritage. (2) Is associated with the lives of persons important in our past.*” The Department is therefore taking no action on this comment.

SECTION 4970.07 – SAFETY AND/OR EDUCATION PROGRAM PROJECTS

Specific Purpose

This Section identifies the purpose of safety and/or education projects and gives examples of common types of projects. The attributes of a quality safety and/or education project are enumerated. Matching fund requirements are identified. This Section has been amended to further clarify the amended language in the Act.

Necessity

The proposed amendment to this regulation is necessary to clarify the amended language in PRC Section 5090.32(k) of the Act.

The words “and/or” were added to subsections (a), (b), renumbered (c), and renumbered (d) to further clarify the amended PRC Section 5090.32(k) that provides that the Division shall prepare and coordinate safety “and” education programs. This amendment clarifies that an education project can be other than a safety education project.

Subsection (c) was deleted because Public Resources Code Section 5090.24(e) requires the Commission to approve all funding and this is covered under Section 4970.18 of these proposed regulations which provides that the Commission is responsible for allocating all funds approved by the Legislature. Subsequent subsections were renumbered to maintain the numerical sequence.

Sentence (6) was added to renumbered subsection (c) to provide an example of education materials other than safety education materials.

SECTION 4970.08 – EQUIPMENT PURCHASES

Specific Purpose

This Section identifies what an equipment purchase grant or cooperative agreement is and what types of equipment and/or tools are eligible for purchase. Expense criteria for different types of equipment and tools are specified. This Section has been amended to clarify the type of insignia that must be displayed on all equipment purchased with OHMVR funds.

Necessity

The proposed amendment to this regulation is necessary to further clarify PRC Section 5090.32 of the Act.

The words “an approved version of the Department of Parks and Recreation” were added to subsection (i) to clarify that all equipment purchased with OHMVR funds must display an “OHV Funds at Work” insignia that has been approved by the Department.

SECTION 4970.09 – LAW ENFORCEMENT PROJECTS

Specific Purpose

This **new** Section has been added to identify what a law enforcement project is and what types of activities must be included in a law enforcement project.

Necessity

This proposed new regulation is necessary to clarify and make specific the amended language in PRC Sections 5090.32(b) and (c), 5090.50, and 5090.64(b)(2) of the Act which requires the Division to award grants and cooperative agreements for the enforcement of trails, trailheads, areas, and other facilities associated with the use of off-highway motor vehicles.

Article 3 OHV Grant Application Requirements

SECTION 4970.10 – APPLICATION – GENERAL

Specific Purpose

This Section identifies the types of agencies that may apply for a grant or cooperative agreement through the OHMVR grant program. Specific items that must be included in an application are identified as well as the environmental documentation requirements. The public involvement requirements are also identified. This Section was amended to expand the eligibility to apply for a grant or cooperative agreement to other agencies and organizations as provided in the Act. It was also amended to include some additional application requirements and to clarify that there is a match requirement for certain agencies and organizations for some of the projects that are eligible for OHV funding.

Necessity

The proposed amendment to this regulation is necessary to comply with and clarify amended language in PRC Sections 5090.32 and 5090.50 of the Act.

This Section has been renumbered from 4970.09 to 4970.10 because of the addition of the “Law Enforcement Projects” Section numbered 4970.09 under Article 2.

Subsection (a) was amended to include language that allows cooperative agreements to be made to federally recognized Native American tribes; and also allows grants to be made to educational institutions and non-profit organizations for scientific research, natural management activities, cultural resource conservation activities, and programs involving off-highway motor vehicle safety or education as provided by amended language in PRC Sections 5090.32 and 5090.50 of the Act.

The words “federally recognized Native American tribes” and the words “and educational institutions” were added to subsection (f) to clarify the amended language in PRC Section 5090.50 of the Act.

The words “distribute and” and the words “on their draft applications, at least 30 days” and the word “final” were added to subsection (g) to clarify and make specific the application requirements regarding public involvement in accordance with PRC Section 5090.32 of the Act.

Subsections (h) and (i) were added to ensure that the public meeting required in subsection 4970.10(g) provides for meaningful participation of the public and a way to demonstrate this is to require the applicant to include in the final application a summary of all comments received at the public hearing and the responses of the applicant to those comments. Subsection (i) requires that the final application include any letters received related to the grant application. This assists the Division in determining whether the applicant fully complied with subsection (h) in summarizing and responding to public comments.

Subsection (k) was added to specify that a 25% match is required from local agencies, non-profits, and educational institutions for equipment, operation and maintenance, resource management, and safety and/or education projects in accordance with PRC Section 5090.32 of the Act.

Comment

Regarding renumbered §4970.10 (formerly §4970.09) Application – General, subsection (a) *“OHV grants may be made to cities, counties, and appropriate districts and cooperative agreements may be made with agencies of the...Educational institutions and non-profit organizations...are eligible for grants for scientific research, natural management activities, (as defined in PRC Section 5090.10),....”*. PRC §5090.10 defines the word “conservation”, not “natural management activities”. Replace “natural management activities” with the word “conservation”.

Department’s Response to Comment

AB 2274 added the specific wording *“...natural resource conservation activities, as defined in Section 5090.10...”* to PRC §5090.50(f). To be consistent with this

statutory language, the wording in these regulations §4970.10(a) should be changed. The Department is therefore changing the wording in the final proposed regulations as follows: OHV grants may be made to cities, counties, and appropriate districts, and cooperative agreements may be made with agencies of the federal government and federally recognized Native American tribes, Educational institutions and non-profit organizations (as defined in Section 501(c)(3) of the Internal Revenue Code) are eligible for grants for scientific research, natural ~~management~~ resource conservation activities, (as defined in PRC, Section 5090.10), cultural resource conservation activities, and programs involving off-highway motor vehicle safety and education.

SECTION 4970.11 – CONTENT

Specific Purpose

This Section identifies in detail the items that are required in an application for the different types of OHV grant and cooperative agreement projects. It was significantly amended to clarify by specifying in detail the application content requirements for each type of project as well as the resource and enforcement requirements for each type of project.

Necessity

The proposed amendment to this regulation is necessary to clarify and make specific the application content requirements in accordance with PRC Sections 5090.32 and 5090.50 of the Act. The specificity is needed so that applicants understand exactly what is being required in the application process.

This Section has been renumbered from 4970.10 to 4970.11 to maintain the numerical sequence.

Subsection (a) identifies what must be included in applications for planning projects and studies. The words “and studies” were added to subsection (a) to clarify PRC Section 5090.32 (i) of the Act.

Subsection (a)(1) was significantly amended to clarify and specify what must be included in the description of a planning project and study.

The language in subsection (a)(2) was moved to (a)(1) for clarification and new language was added to subsection (a)(2) that provides that a listing and description of the study goals, objectives, and methodologies must be included in the application in accordance with PRC Section 5090.32(i) of the Act.

The word “Identify” was deleted and replaced by the words “Identification of” in subsection (a)(3) to be consistent with the language in subsection (a)(1) and (a)(2).

Subsection (b) identifies what must be included in applications for acquisition projects. New language was numbered subsection (b)(1) which requires a summary of public input as it relates to the acquisition proposal.

New language was numbered subsection (b)(2) which requires a constraints analysis including existing or potential conflicts and environmental constraints.

New language was numbered subsection (b)(3) which requires a description of illegal OHV use in and around the acquisition property.

Old subsections (b)(1), (b)(2), and (b)(3) were renumbered (b)(4), (b)(5), and (b)(6), respectively because of the addition of the preceding new language that specifies what also must be included in applications for acquisition projects.

Subsection (b)(7) has been added which requires that a completed environmental document must be included in applications for acquisition projects.

Subsections (b)(8)(A), (b)(8)(B), and (b)(8)(C) were added to specify that all agencies acquiring property under the OHMVR Grant and Cooperative Agreement Program must complete a Wildlife Habitat Protection Program; and wildlife habitat, soil, plant, and cultural surveys; and must agree to monitor the conditions of soil in the project each year to determine whether the soil loss standard adopted pursuant to PRC Section 5090.35 is being met. These three subsections were moved from Section 4970.03 since the language is more appropriate to this Section.

Subsection (c) identifies what must be included in an application for development and major maintenance projects. The words “and major maintenance” were added to subsection (c) to be consistent with Section 4970.04.

Subsections (c)(1) through (c)(5) were added to specify exactly what must be included in an application for development and major maintenance projects.

Subsection (d) identifies what must be included in applications for O&M projects. Subsection (d)(12) was added to provide that all federal cooperative agreements require environmental documentation.

Subsection (d)(13) was added to specify that a Law Enforcement Plan must be included in an application for an O&M project.

Subsection (e) identifies what a Law Enforcement Plan consist of. The word “identifying” was deleted and replaced by the words “and description of” in subsection (e)(1) for clarification purposes. A list of law enforcement tasks was numbered (A) through (F) to be consistent with the format in other sections of the regulations.

The example given in subsection (e)(4) was deleted since it was not necessary for clarification.

Subsection (f) was added to identify what must be included in applications for resource management projects.

Subsections (g)(1) through (g)(3) were added to identify what must be included in applications for safety and/or education projects. Subsection (g)(4) was added to specify that no environmental documentation is required as part of a safety and/or education project.

Subsections (h)(1) through (h)(3) were added to identify what must be included in applications for equipment purchase projects, Subsection (h)(4) was added to specify that no environmental documentation is required as part of an equipment purchase project.

Subsections (i)(1) through (i)(3) were added to identify what must be included in applications for law enforcement projects. Subsection (i)(4) was added to specify that no environmental documentation is required as part of a law enforcement project.

The words “those costs exceeding 10% shall be justified” were deleted and replaced by the words “and not exceed 10%” in subsection (j) to specify that under no circumstances may administrative costs exceed 10% of the funding amount.

Comment

Regarding “4970.11 Content subsection (a) Applications for Planning Projects and Studies will include the following:… 1) A summary of public input from all affected stake holders as it relates to the acquisition proposal.”, there is “no authority or reference cited for the specific requirement that public input be obtained from all affected stakeholders prior to applying for acquisition of property for OHV use. While public input is important, it is felt that this would unnecessarily burden the application process.”

Department’s Response to Comment

This comment correctly quotes renumbered §4970.11 (formerly 4970.10) Content subsection (a) as:“(a) *Applications for planning projects and studies will include the following:*”, but **incorrectly** quotes subsection (a) (1) as: “(1) A summary of public input from all affected stakeholders as it relates to the acquisition proposal.” The proposed changes to subsection (1) are as follows: “A *description discussion of the planning goals and process, including public involvement, environmental setting, existing OHV opportunities, the need for expanded,*

managed OHV opportunities and/or problems.” The requirement for “a summary of public input from affected stakeholders as it relates to the acquisition proposal” is in §4970.11(b)(1) and refers to acquisition projects, not planning projects and studies. The requirement stated is for a summary of input from affected (the word “all” is not present) stakeholders. If there is no input, then the summary would state this. However, the Division agrees with the commenter that “public input is important”, and an implication of the need for public input is consistent with the OHV Commission’s Public Involvement policy, approved April 29, 2003: *“Priority will be given to applications exhibiting a willingness to involve a broad spectrum of interested parties. Applications should outline efforts to reach out and seek input from all interested public, as well as, a demonstrated ability to gain support from the OHV, environmental, and local communities for all proposed activities.”* The Department is therefore taking no action on this comment.

Comment

Regarding §4970.11(a)(2) “user conflicts”, the Public Resources Code appears only to address actual, existing conflicts, not potential conflicts. For this reason, section (a)(2) should eliminate the words “potential conflicts”.

Department’s Response to Comment

This comment incorrectly references §4970.11(a)(2) as “A constraints analysis including, but not limited to existing or potential conflicts and environmental constraints.”. It is in fact §4970.11 (b)(2). This subsection refers to acquisition projects. The purpose of this regulation is to clarify law that pertains to the grant process. It is not prudent to consider acquisition of land using public funds without analyzing potential conflicts as was stated in the Department’s response to the first comment regarding §4970.02 of these proposed regulations. The Department is therefore taking no action on this comment.

SECTION 4970.12 – PROJECT ACCOMPLISHMENT REPORT (4/2000) (PAR)

Specific Purpose

This Section identifies what a PAR is and where a copy of it may be obtained. The types of projects requiring a PAR are discussed. This Section was amended to include an additional requirement for local agencies with grant funded OHV facilities.

Necessity

The proposed amendment to this regulation is necessary to specify additional PAR requirements in accordance with PRC Section 5090.32(d) of the Act.

This Section has been renumbered from 4970.11 to 4970.12 to maintain the numerical sequence.

New language has been numbered subsection (d) which requires local agencies to annually seek to identify acquisition opportunities surrounding grant funded OHV facilities for the purpose of buffer.

Old subsection (d) was renumbered to subsection (e).

SECTION 4970.13 – CONSISTENCY WITH RESOURCE, RECREATION, GENERAL, OR MASTER PLANNING DOCUMENTS

Specific Purpose

This Section states that OHV grant and cooperative agreement applications must be consistent with applicable planning documents.

Necessity

The amendment to this regulation is necessary to clarify PRC Sections 5090.32(d) and 5090.50 of the Act.

This Section has been renumbered from 4970.12 to 4970.13 to maintain the numerical sequence.

The word “conformance” was deleted and replaced with the word “consistency” in the title of this Section for clarification purposes.

The word “compliance” was deleted and replaced with the word “consistency” in subsection (a) for clarification purposes.

SECTION 4970.14 – ENVIRONMENTAL DOCUMENTATION

Specific Purpose

This Section discusses the environmental documentation requirements for each OHV grant or cooperative agreement. Additional soils and wildlife monitoring and other resource protection requirements are discussed.

Necessity

The proposed amendment to this regulation is necessary to clarify the amended language in PRC Section 5090.50 of the Act and to reference CCR Section 4970.11 which specifies which types of applications do and do not require environmental documentation.

This Section has been renumbered from 4970.13 to 4970.14 to maintain the numerical sequence.

The words “ as described in 4970.11” have been added to subsection (a) to reference the Section in these regulations that specifies which types of applications require environmental documentation.

The words “with the exception of those applications that do not require environmental documentation according to 4970.11 of these regulations” were added to subsection (c) to reference the Section in these regulations that specify which types of applications do not require such documentation.

SECTION 4970.15 – GRANTEE OBLIGATIONS

Specific Purpose

This Section identifies the requirements of grantees when signing a Project Agreement and receiving OHV grant program funds. It was amended to clarify some requirements and to specify additional requirements.

Necessity

The proposed amendment to this regulation is necessary to clarify and specify grantee requirements in accordance with PRC Section 5090.32(d) of the Act.

This Section has been renumbered from 4970.14 to 4970.15 to maintain the numerical sequence.

The word “effects” has been deleted and replaced by the word “impacts” in subsection (a) for clarification purposes.

The words “or planned” were added in subsection (a) to further clarify a grantee requirement in accordance with PRC Section 5090.32(d) of the Act.

Subsection (e) was added to specify that grantee obligations include giving credit to California State Parks as a partner.

Comment

Pertaining to §4970.15 Grantee Obligations, subsection (a), the last sentence, beginning on line 29, “*The applicant must consider the cumulative impacts ~~effects~~ of other projects that have been conducted or planned in the OHV funded areas when completing the environmental documentation in compliance with*

NEPA and CEQA.” PRC §5090.32(d) was cited as the only reference to this regulation. Nowhere in the PRC is there authority for State Parks requiring an applicant to consider “*cumulative effects* of other projects, *existing or planned*”. This regulation will artificially restrict future OHV parks, contrary to the stated purpose of the legislature under §5003 and §5090.02. A proposed new OHV park should stand or fall on its” own merits, and not be tied to the success or failure of other parks managed by the agency. Delete the last sentence of §4070.15.

Department’s Response to Comment

The word “cumulative” was added to the regulations in 1999. At that time, the proposed regulations went through a public review and comment process. The current proposed regulations have not added or changed the word; therefore comments related to the concept of cumulative are not relevant to this current regulatory process. The Department is therefore dismissing this comment as irrelevant in accordance with California Rulemaking Law §11346.9(a)(3).

SECTION 4970.16 – INSPECTIONS

This Section had no changes to the text but has been renumbered from 4970.15 to 4970.16 to maintain the numerical sequence.

Article 4 Project Funding

SECTION 4970.17 – FUNDING AMOUNTS AND RECOMMENDATIONS

Specific Purpose

This Section identifies the process of OHMVR Grant Program and Cooperative Agreement Application selection and funding. The role of the Commission and public participation is outlined. The minimum amount of an application is established as well. This Section has been amended to eliminate the requirement that the Division recommend to the Commission the “priority” of each application that has been evaluated. It has also been amended to eliminate the requirement that the Commission “comment” on each application.

Necessity

The proposed amendment to this regulation is necessary to clarify the Division’s and the Commission’s role in evaluating and allocating OHMVR Grant and Cooperative Agreement Program funds in accordance with PRC Sections 5090.32 and 5090.50 of the Act.

This Section has been renumbered from 4970.16 to 4970.17 to maintain the numerical sequence.

Old subsection (b), which requires the Division to use the evaluation criteria as a basis to recommend the priority of each application, has been deleted. Old subsection (c), which requires the Division to recommend to the Commission the priority for each application, has been deleted.

New language has been added to subsection (a) which requires the Division to evaluate applications and provide recommendations and funding level to the Commission on each application and any applicable evaluation criteria. Renumbered CCR Section 4970.32, which specifies the evaluation criteria, is referenced. The prioritization of each application is no longer practical because of the number of different types of projects that may be funded with OHMVR funds in accordance with PRC Section 5090.32(d) of the Act.

Subsection (d) is renumbered to (b) to maintain the sequence and the words “and comment annually on” have been deleted. The word “annually” has also been added to clarify that the Commission is required to review the applications annually, but is not required to comment in writing on each application annually. The words “and establish a Commission Priority and Funding List” have also been deleted from renumbered subsection (b) since prioritization of applications is no longer required.

Subsection (e) has been renumbered to (c) to maintain the sequence.

SECTION 4970.18 – FUNDING PROCESS

Specific Purpose

This Section identifies the Commission's role in allocating funds. It has been significantly revised to eliminate the requirement that the Commission allocate funds according to the OHV Grant Priority and Funding List, which is no longer required according to the proposed amendment to CCR Section 4970.17.

Necessity

The proposed amendment to this regulation is necessary to clarify PRC Sections 5090.24(d) and (f) of the Act.

This Section has been renumbered from 4970.17 to 4970.18 to maintain the numerical sequence.

The language in this Section, which refers to the Commission's OHV Grant Priority and Funding List, has been deleted and subsection (a) has been added which requires the Commission to allocate all funds approved by the legislature

for each fiscal year. This language has been added to clarify PRC Section 5090.24 of the Act.

SECTION 4970.19 – PAYMENTS

Specific Purpose

This Section discusses how funds allocated for OHV grant projects are distributed to grantees. Transmittal documents for payments, required documentation and methods of payment are discussed. This Section has been amended to clarify and specify grantee requirements in submitting payment request documentation; and, to clarify the Division's responsibility in the payment process.

Necessity

The proposed amendment to this regulation is necessary to clarify Division and grantee requirements in the payment process in accordance with PRC Sections 5090.32 (c) and (d), and 5090.50 of the Act.

This Section has been renumbered from 4970.18 to 4970.19 to maintain the numerical sequence.

Language has been added to subsection (a) to specify that grantees are required to categorize their expenditures, including restoration, on the payment request form in accordance with PRC Sections 5090.24(g) and 5090.64 of the Act and Sections 8352.8(b) and (c) of the Revenue and Taxation Code.

Subsection (b) has been reworded to change it from the passive to the active form to emphasize the Division's responsibility to certify Payment Request Forms before payment is made.

Subsection (c) has been reworded to change it from the passive to the active form to emphasize the grantee's responsibility to submit Payment Request Forms to the Division within the Project Performance Period.

The word "will" has been deleted and replaced by the word "shall" in subsection (d) to be consistent with the language throughout the regulations. The words "or by" were added to subsection (d) for clarification purposes.

The word "Commission" has been deleted and replaced by the word "Division" in subsection (h) to specify that grantees must request written permission from the Division, not the Commission, in order to spend interest accrued on advances. Also, the word "Division" has been deleted and replaced by the word "fund" in subsection (h) for clarification purposes.

SECTION 4970.20 – ELIGIBLE COSTS

This Section had no changes to the text but has been renumbered from 4970.19 to 4970.20 to maintain the numerical sequence.

SECTION 4970.21 – INELIGIBLE COSTS

This Section had no changes to the text but has been renumbered from 4970.20 to 4970.21 to maintain the numerical sequence.

SECTION 4970.22 – OPERATION AND MAINTENANCE OF OHV FUNDED FACILITIES

This Section had no changes to the text but has been renumbered from 4970.21 to 4970.22 to maintain the numerical sequence.

Comment

Pertaining to 4970.22 Operation and Maintenance of OHV Funded Facilities, subsection (a), delete the words “conservation of natural values” as they are amorphous.

Department’s Response to Comment

The words “conservation of natural values” were added to the regulations in 1999. At that time, the proposed regulations went through a public review and comment process. The current proposed regulations have not added or changed the words; therefore this comment is not relevant to these proposed regulations. The Department is therefore dismissing this comment as irrelevant in accordance with California Rulemaking Law §11346.9(a)(3).

SECTION 4970.23 – USE OF OHV FUNDED FACILITIES

Specific Purpose

This Section identifies how property acquired or developed by local agencies with OHV funds shall be used. It has been amended to clarify language regarding the use of revenue generated from OHV grant program purchased property.

Necessity

The proposed amendment to this regulation is necessary to clarify language that is in accordance with PRC Sections 5090.32(d) and 5090.50 of the Act.

This Section has been renumbered from 4970.22 to 4970.23 to maintain the numerical sequence.

The words “by the facility” have been added to subsection (f) for clarification purposes.

Article 5 Project Agreements, Amendments, and Re-scopes

SECTION 4970.24 – PROJECT AGREEMENT

This Section had no changes to the text but has been renumbered from 4970.23 to 4970.24 to maintain the numerical sequence.

SECTION 4970.25 – AMENDMENT TO PROJECT AGREEMENT

Specific Purpose

This Section identifies what an Amendment to the Project Agreement is and how it is processed. It has been amended to clarify the language.

Necessity

The proposed amendment to this regulation is necessary to further clarify the procedures pertaining to an Amendment to the Project Agreement in accordance with PRC Section 5090.32(d) of the Act.

This Section has been renumbered from 4970.24 to 4970.25 to maintain the numerical sequence.

The words “to the project” have been deleted and the word “through” has been added to subsection (d) for clarification purposes.

SECTION 4970.26 – RE-SCOPE OF PROJECT AGREEMENT

Specific Purpose

This Section identifies what a re-scope is and how it is processed. It has been amended to make it grammatically correct.

Necessity

The proposed amendment to this regulation is necessary to make the language provided in accordance with PRC Section 5090.32(d) grammatically correct.

This Section has been renumbered from 4970.25 to 4970.26 to maintain the numerical sequence.

The word “Re-scope” throughout this Section has been changed from a capitalized word to a lower case word to make it grammatically correct.

The words “What is” have been deleted from subsection (b)(3) to make it grammatically correct and consistent with the prior subsections.

Article 6 OHMVR Commission

SECTION 4970.27 – ANNUAL APPLICATION REVIEW MEETINGS

Specific Purpose

This Section identifies the role of the OHMVR Commission in the OHMVR Grant and Cooperative Agreement Program. The requirement of the Commission to hold a meeting and to take testimony from the public regarding applications is discussed. This Section is being amended to incorporate the new language in the Act that delineates the Commission’s and the Division’s responsibilities in the application review process. It is also being amended to delete the reference to the Commission Funding and Priority List.

Necessity

The proposed amendment to this regulation is necessary to clarify new language in PRC Sections 5090.23, 5090.24 and 5090.32 of the Act.

This Section has been renumbered from 4970.26 to 4970.27 to maintain the numerical sequence.

Subsection (a) has been significantly amended to conform to and clarify the amended language in PRC Section 5090.24(f) of the Act which specifies that the Commission is required to conduct one public meeting annually, prior to the start of each grant program cycle, to collect public input. Also, reference to the two Commission subcommittee hearings is deleted since amended PRC Section 5090.24(f) of the Act requires only one public meeting annually. Language has also been added to subsection (a) to clarify PRC Section 5090.23 of the Act.

The words “and establish a Commission Priority and Funding List” have been deleted from subsection (b) to be consistent with the amendments to renumbered CCR Section 4970.17.

Subsection (c), which refers to the Commission Priority and Funding List, has been deleted to be consistent with the amendments to renumbered CCR Section 4970.17.

Subsection (d) has been renumbered to subsection (c) to maintain the alphabetical sequence. The words “Department of Fish and Game” have been deleted and replaced by the words “Resources Agency” in renumbered subsection (c) to reflect the appropriate channel of authority. The words “copies of the applications” have been deleted and replaced by the words “a complete list of grant applications” to correctly identify these parties and to simplify the information sharing process between the Division and the Resource Agency.

Subsection (e) has been renumbered to subsection (d) to maintain the alphabetical sequence. The words “Department of Fish and Game” have been deleted and replaced by the words “Resources Agency” in renumbered subsection (d) to be consistent with the amended language in the prior subsection.

Subsection (f) has been renumbered to subsection (e) to maintain the alphabetical sequence.

Article 7 OHV Grant Application Guide

SECTION 4970.28 – APPLICATION GUIDE – GENERAL

Specific Purpose

This Section identifies the OHV Application Guide, its purpose and where copies may be obtained. The OHV Application Guide is incorporated by reference into the regulations. This Section has been amended to eliminate the reference to the definition for “Guide” which has been deleted.

Necessity

The proposed amendment to this regulation is necessary to be consistent with the amendments proposed in CCR Section 4970.00.

This Section has been renumbered from 4970.27 to 4970.28 to maintain the numerical sequence.

The capitalized word “Guide” has been changed to the lower case word “guide” in subsections (a) and (c) for clarification purposes.

The words “as defined in Section 4970.00(x)” have been deleted from subsection (a) to be consistent with the proposed deletion of the definition of “Guide” in CCR Section 4970.00.

Article 8 Accounting, Audits, and Annual Performance Review

SECTION 4970.29 – ACCOUNTING AUDITS, AND ANNUAL PERFORMANCE REVIEW – GENERAL

Specific Purpose

This Section identifies the accounting, record retention and audit functions that relate to OHV grant and cooperative agreement projects. Accounting procedures are outlined. The audit function is discussed including applicable time periods for submittal of information and refunds. This Section has been amended to identify the procedures for the annual performance review process including applicable time frames, specific elements to be evaluated, and the contents of the final report.

Necessity

The proposed amendment to this regulation is necessary to clarify and make specific the amended language in PRC Sections 5090.32 (d) and (l), and 5090.50 of the Act. The proposed amendment is also necessary to conform to PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b) and (c), 5090.50(c), and 5090.64(a) of the Act.

This Section has been renumbered from 4970.28 to 4970.29 to maintain the numerical sequence.

The words “or educational institutions” have been added to subsection (l) to conform to amended PRC Section 5090.50(f) of the Act. The words “and the OHMVR Commission” have been added to subsection (l) to clarify the Commission’s responsibility in accordance with CCR Section 4970.26(c).

The words “conservation activities such as” have been added to subsection (m) for clarification purposes. The word “rehabilitation” has been deleted and replaced with the word “restoration and repair” to conform to the amended language in PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b), 5090.50(c), and 5090.64(a) of the Act.

The words “soils, or plants” were added to subsection (m) to clarify PRC Section 5090.35(c) of the Act.

The sentence “Enforcement activities shall also be clearly identified” has been added to subsection (m) to conform to PRC Section 5090.50(c) of the Act.

Subsections (n), (o), (p), (q), and (r) have been added to clearly specify the procedures for the annual performance review process, including the timeframes, the purpose of the review, the elements to be evaluated, the content of the review report, and the provision of the final report to the grantee by the Division. These procedures are delineated to clarify the language in amended PRC Section 5090.32(l) of the Act.

Comment

Pertaining to §4970.29 Accounting, Audits and Annual Performance Review – General, subsection “(r) *Elements to be evaluated as part of the annual performance review include the following (as applicable):...(10) Conflicts (including the potential for future conflicts associated with urban encroachment and/or changes in adjoining land uses*”, the statutes only authorize the consideration of actual, existing conflicts that have been brought to the attention of the department.

Department’s Response to Comment

The issue of conflicts (including the wording: potential for future conflicts) was discussed extensively by and developed through the OHV Commission’s Stakeholders Subcommittee. The Department is therefore taking no action on this comment.

SECTION 4970.30 – PROJECT TERMINATION

This Section has no changes to the text but has been renumbered from 4970.29 to 4970.30 to maintain the numerical sequence.

SECTION 4970.31 – CONSERVATION AND ENFORCEMENT SERVICES ACCOUNT

Specific Purpose

This Section identifies the origin of the Conservation and Enforcement Services Account. Requirements pertaining to the accounting for conservation and enforcement expenditures are addressed. A list of activities that are considered conservation or enforcement is provided. This Section has been amended to change the term “peace officers” to “law enforcement personnel” and to change the word “rehabilitation” to “restoration” to conform to language in the Act. It has also been amended to clarify a section in the Vehicle Code.

Necessity

The proposed amendment to this regulation is necessary to conform to PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b), 5090.50(c), 5090.64(a), and 5090.64(b)(2) of the Act and to clarify Section 38370 of the Vehicle Code.

This Section has been renumbered from 4970.30 to 4970.31 to maintain the numerical sequence.

The words “peace officers” have been deleted and replaced with the words “law enforcement personnel” in subsection (a) and subsection (g)(1) to conform to the amended language in PRC Section 5090.64(b)(2) of the Act.

The word “rehabilitation” has been deleted and replaced by the word “restoration” to conform to the amended language in PRC Sections 5090.11, 5090.24(c), 5090.32(a), 5090.35(b), 5090.50(c), and 5090.64(a) of the Act.

The words “people and” have been added to subsection (g)(3) to clarify the intent of Section 38370 of the Vehicle Code.

SECTION 4970.32 – EVALUATION CRITERIA

Specific Purpose

This Section covers the selection process of applications for funding. The criteria to be used to evaluate applications is set forth. This Section has been amended to further clarify the existing criteria and to add another evaluation criteria.

Necessity

The proposed amendment to this regulation is necessary to clarify PRC Sections 5090.23, 5090.24(f), and 5090.32(d) of the Act; and to clearly define the evaluation criteria required to be used by the Division so that grantees will understand what is expected.

This Section has been renumbered from 4970.31 to 4970.32 to maintain the numerical sequence.

The words “and ranked” have been deleted from subsection (b) since prioritization of the applications is no longer required, consistent with the proposed amendments in renumbered CCR Sections 4970.17 and 4970.18.

The words “identified in Section 4970.31(c)” have been deleted from subsection (b) and the word “established” has been added for clarification purposes.

The words “Support and opposition” have been deleted and replaced by the words “Public Input” in subsection (c)(3) Also, the words “of support and opposition” have been deleted and replaced by the words “commenting on the grant” in subsection (c) to be consistent with the language contained in the Act; e.g. PRC Section 5090.24(f).

The word “Uses” has been added to subsection (c)(6), to clearly identify the purpose of that subsection. The words “What”, “OHV” and “use” have been deleted and replaced by the words “vehicles” and “using” in subsection (c)(6) for clarification purposes. Also, The rest of subsection (c)(6) has been deleted and replaced by the sentence “In addition, types and extent of non-motorized use of OHV funded facilities, trails, and open areas” for clarification purposes and to eliminate the language which indicates the preferred type of facility since there is no preference for one type of facility over another.

The words “if applicable” have been added to subsection (c)(8) since environmental documentation is not required for all types of projects, consistent with amended and renumbered Section 4970.11. Also, an additional sentence has been added to subsection (c)(8) to clarify an additional evaluation criteria regarding route inventory and designation status for those applicants who are required to provide environmental documentation.

The word “Cost” has been deleted and replaced by the word “Program” in subsection (c)(13) to clarify what effectiveness is being evaluated. Also, the words “Current, and anticipated future” have been added to subsection (c)(13) to clarify exactly what shall be taken into consideration in evaluating program effectiveness.

Subsection (c)(14) has been added to identify another evaluation criteria in accordance with CRC Section 4970.01.

Comment

Pertaining to §4970.32 Evaluation Criteria, subsection “(b) *Each application shall be evaluated ~~and ranked~~ by Division staff and the Commission based on ~~established the criteria. Identified in Section 4970.31(c)–...~~ (5) Existing OHV Opportunity: The application shall identify the legal OHV opportunities that exist within a 50-mile radius of the project area. Changes in OHV opportunity in the last two years (e.g., miles of trails or acres of OHV riding opportunity) shall also*

be identified”, include the additional numbers of OHV users in the equation. Also, an issue of great concern to the OHV community, the regulations should include “an inventory of other areas that are open to *non-motorized* users. For over the past decade, OHV recreationists have been told to “go somewhere else” while public lands remain open to everyone *except* OHV users. It is now becoming all too clear that there is simply nowhere else to go” for OHV users.

Department’s Response to Comment

Subsection 4970.32(c)(5) was added as regulation in 1999. At that time, the proposed regulations went through a public review and comment process. The current proposed regulations have not added or changed this subsection; therefore the comment is not relevant to these proposed regulations. The Department is therefore dismissing this comment as irrelevant in accordance with California Rulemaking Law §11346.9(a)(3).

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

Participation in the OHMVR Grant and Cooperative Agreement Program is voluntary and limited to cities, counties, special districts, agencies of the federal government, federally recognized Native American tribes, non-profit organizations, and educational institutions. There is no economic impact on small business.

Comment

There is no discussion of reasonable alternatives in the Initial Statement of Reasons as it relates to the economic impact of these regulations on small business. A comprehensive analysis of reasonable alternatives is appropriate in this instance.

Department’s Response to Comment

These proposed regulations pertain to new law and do not apply to small business as discussed under the next disclosure; therefore discussion of reasonable alternatives does not apply.

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

The proposed regulations would not have a significant adverse economic impact on any business since OHV grant and cooperative agreement funds are used on land managed by local and federal agencies.

Comment

The awarding of grants to public agencies, as well as non-profit and educational institutions for the purpose of studying the *potential effects* of OHV recreation on natural and cultural resources, other recreation uses, adjacent lands and local residents will have adverse effects on OHV related businesses, including grant money being unavailable for managing existing facilities, expanding existing facilities, or acquiring new lands for future OHV parks; and grant funds being sought after by non-profit and education organizations who adamantly oppose OHV recreation on public lands. Studies by non-profit and educational organizations will conclude that OHV recreation is “harmful to the environment, cultural resources, or whatever... is being studied”. The Commission will be able to accept these findings and deny future funding to the OHV facility, resulting in “outright closure or additional restrictions on the operation of OHVs at the park” State Parks should conduct a comprehensive study, including consultation with OHV related businesses, to determine the economic effect these regulations will have on businesses that rely on OHV recreation.

Department’s Response to Comment

The Department prepared these proposed regulatory changes to reflect statutory changes provided in AB 2274. The proposed regulations affect grant and cooperative agreement applications for OHV funds. Eligible applicants include cities, counties, appropriate districts, nonprofit organizations educational institutions, agencies of the United States, and federally recognized Native American tribes. They do not apply to private businesses or individuals. Because OHV related businesses are not eligible to apply for OHV grant and cooperative agreement funding related to these proposed regulations, it is not appropriate for the Department to conduct a comprehensive study on their affect on business in California.

AVOIDANCE OF UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

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

