

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

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Pursuant to Government Code 11346.9(a)(1), the Department is updating the Initial Statement of Reasons to include amendments to the Grants and Cooperative Agreements Program (Program) regulations not originally identified. The following revisions were made after the Notice of Rulemaking Action:

4970.10.2 – Development

Specific Purpose

Section 4970.10.2(e)(2) is amended to indicate the OHMVR Division may seek reimbursement of funds granted for development projects if the resulting facility is not used for OHV recreation for a minimum of 25 years.

Necessity

The amendment to Section 4970.10.4(e)(2) is necessary to allow federal agencies to apply for development grants under the Program. The proposed regulation initially required applicants to refund grant money if the facility being developed was not used for OHV recreation for at least 25 years. A comment received from the U.S. Bureau of Land Management (BLM) during the 45-day public comment period indicated that the BLM could not comply with the proposed language requiring the return of grant funds. The BLM cannot commit to a potential refund in the future because they are unable to guarantee the expenditure of funds for which they have no current appropriation or authority. The BLM suggested alternative language that would be acceptable and would allow a refund to be pursued in the future. The OHMVR Division has incorporated some of the suggested language and made it broadly applicable to all applicants.

4970.15.1 – Operation and Maintenance (O&M)

Specific Purpose

Section 4970.15.1(a) is amended to improve consistency throughout the regulations.

Necessity

The amendment to Section 4970.15.1(a) is necessary to replace the word “distributed” with “available”. A comment received during the 45-day public comment period suggested terminology in Section 4970.15.1(a) should be consistent with the wording in 4970.10.2. Similar wording also appears in paragraph (b) of Sections 4970.10.1, 4970.10.3, and 4970.10.4.

DOCUMENTS INCORPORATED BY REFERENCE

Publication of incorporated documents in full in the CCR would be cumbersome, unduly expensive, or otherwise impractical (1 CCR 20 (c)(1)). All documents incorporated by reference are available upon request or may be found on the OHMVR Division website at http://ohv.parks.ca.gov/?page_id=1164.

Specific Purpose

Habitat Management Program (HMP) Part 2 (Rev. 1/11) is amended to improve readability.

Necessity and Rationale

The amendment to the instructions for Section IV, Table 5 replaces the word “lumped” with “combined”. A commenter found the word “lumped” to be unclear.

Specific Purpose

Evaluation Criteria – General Criteria (Rev. 12/11) instructions are amended to remove an unnecessary requirement in the instructional paragraph. The proposed introductory question, which identifies the evaluation items to which applicants should respond, is also amended to improve grammar.

Necessity

The amendment to the instructions removes an unnecessary requirement that supporting information must be published. A commenter correctly noted during the public review that some information may be valid and available for review, but unpublished.

The amendment to the introductory question is necessary to improve grammar.

Specific Purpose

Evaluation Criteria – Acquisition Project Criteria (Rev. 1/11) is amended to add another potential response to Item 5.

Necessity

The amendment to Item 5 is necessary to include hunting among the possible responses provided for the item, as suggested by a commenter.

Specific Purpose

Evaluation Criteria – Development Project Criteria (Rev. 1/11) is amended to add another potential response to Item 9 and provide clarity to Item 11.

Necessity

The amendment to Item 9 is necessary to include hunting among the possible responses provided for the item, as suggested by a commenter.

The amendment to Item 11 is necessary to clarify that partners on a specific project may not be paid from grant funds included in that particular project. The initial proposed revisions indicated that partners could not be funded by any project. However, a commenter correctly noted that some applicants routinely work in partnership with other successful applicants.

Item 13 was unnecessarily included in the first 15-day comment period. No changes were made to this Item.

Specific Purpose

Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11) is amended to provide clarity to Item 4, revise a response in Item 8, and request more specific explanation in Item 15.

Necessity

The amendment to Item 4 is necessary to clarify that partners on a specific project may not be paid from grant funds included in that particular project. The initial proposed revisions indicated that partners could not be funded by any project. However, a commenter correctly noted that some applicants routinely work in partnership with other successful applicants.

The amendment to Item 8 is necessary to adjust a response to include audio and/or video programs, as suggested by a commenter.

The amendment to Item 15 is necessary to prompt applicants to provide more detail regarding their performance of search and rescue operations or providing medical assistance. Previously applicants offered no explanation, making it difficult for administrators to validate the score indicated by the applicant.

Specific Purpose

Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11) is amended to provide clarity to Item 5, provide examples in Item 6, and add another potential response to Item 8.

Necessity

The amendment to Item 5 is necessary to clarify that partners on a specific project may not be paid from grant funds included in that particular project. The initial proposed revisions indicated that partners could not be funded by any project. However, a commenter correctly noted that some applicants routinely work in partnership with other successful applicants.

The amendment to Item 6 is necessary to provide guidance to applicants when answering the question. A commenter suggested that examples be provided to explaining measures to control OHV use.

The amendment to Item 8 is necessary to include hunting among the possible responses provided for the item, as suggested by a commenter.

Specific Purpose

Evaluation Criteria – Planning Project Criteria (Rev. 12/11) is amended to add another potential response to Item 3, to provide clarity and consistency to Item 6, to revise a response in Item 7, and to renumber Item 10.

Necessity

Item 2 was unnecessarily included in the first 15-day comment period. No changes were made to this Item.

The amendment to Item 3 is necessary to include hunting among the possible responses provided for the item, as suggested by a commenter.

The amendment to Item 6 is necessary to clarify that partners on a specific project may not be paid from grant funds included in that particular project. The initial proposed revisions indicated that partners could not be funded by any project. However, a commenter correctly noted that some applicants routinely work in partnership with other successful applicants.

Item 6 was also addressed in the second 15-day notice period correct an omission in the original proposal. This question appears in all of the evaluation criteria, however the proposed language for the Planning Project Criteria inadvertently left out two words in the final instructional statement. Revisions on the second 15-day notice period made this Item consistent with the other evaluation criteria.

The amendment to Item 7 is necessary to align the criterion with the goals of the OHMVR Division Strategic Plan. A commenter noted that development of OHV opportunity within 50 miles of population centers was difficult and suggested the proposed regulation be revised or deleted. In the second 15-day comment period the OHMVR Division revised the regulation to establish a 60-mile distance for proximity of planning projects to population centers. While it is a minimal adjustment, the proposed revision is consistent with the overall goal of the OHMVR Division to increase OHV opportunity near population centers. Additionally, Public Resources Code 5090.50(d)(3) requires applications to be in accordance with the Strategic Plan among other things. Objective 2.1 of the Strategic Plan specifies the desire to establish new OHV opportunities within a 60-mile radius from population centers.

The amendment to Item 10 is necessary to renumber the question as Item 8. Two items were deleted in the initial proposal necessitating the revision. The content in the Item is unchanged from the initial proposed revisions.

Specific Purpose

Evaluation Criteria – Restoration Project Criteria (Rev. 12/11) is amended provide clarity to Item 8.

Necessity

The amendment to Item 8 is necessary to clarify that partners on a specific project may not be paid from grant funds included in that particular project. The initial proposed revisions indicated that partners could not be funded by any project. However, a commenter correctly noted that some applicants routinely work in partnership with other successful applicants.

NONSUBSTANTIAL CHANGES

All substantive changes to the regulations were made available to the public for the written comment periods and the public hearing. Nonsubstantial changes were made to the following regulation sections:

Section 4970.15.1, Table 4 – Example of Score Calculation for GO Projects, and Section 4970.15.2, Table 5 – Example of Score Calculation for Restoration Projects, are amended for consistency with the revised general criteria and project-specific scores.

The proposed regulation revisions are necessary to ensure the examples provided in the tables are accurate. Revisions to the evaluation criteria changed the possible score. The revised examples reflect this change.

Evaluation Criteria – Planning Project Criteria (Rev. 12/11) is amended to correct an error that appeared in the originally noticed revision and again in the second 15-day notice. In Item 7 the fourth response option showed the original and proposed scores, but the revised score appeared in strikethrough when it should have been underlined. Scoring changes appear throughout the *Planning Project Criteria* document and are correctly identified. In context it is apparent the score was being changed from “2” to “4”.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45 DAY COMMENT PERIOD

In accordance with Government Code Section 11346.9(a)(3), comments received during the 45-day comment period and the public hearing are summarized below.

Bruce Brazil, three emails dated June 25, 2013

Comment, Proposed Grant Regulations changes #1

The commenter suggested the proposed changes to Section 4970.10.2 should be expanded to allow replacement of any facilities not used for OHV recreation as an alternative to returning previously awarded grant funds. Additionally, the replacement facility should not be funded through the OHV grants program.

Lastly, the commenter suggests the regulations be amended to require grantees to retain OHV opportunity in the area of the development project.

Department Response

The Department disagrees with this comment. The proposed regulation initially required applicants to refund grant money if the facility being developed was not used for OHV recreation for at least 25 years. The BLM submitted a comment indicating they could not comply with the proposed language requiring the return of grant funds. The BLM cannot commit to a potential refund in the future because they are unable to guarantee the expenditure of funds for which they have no current appropriation or authority. It is similarly expected the BLM could not commit to replacing a facility in the future without an appropriation of authority.

Regarding the suggestion to retain OHV opportunity in the vicinity of development projects, the Department neither considers it appropriate nor has the authority to dictate land use of applicants through the Grants Program regulations.

Comment, Proposed Grant Regulations changes #2

The commenter found the new introductory question on the document incorporated by reference entitled *Evaluation Criteria, General Criteria* to be unclear. The commenter also questioned why Item 4 *Agency Contribution* was revised to delete the instructional phrase “If response is \$0, then no points” and cited an example applicant he felt would benefit inappropriately.

Department Response

The Department disagrees with these comments. The Department corrected verb tense in the introductory question, but the finds the question to be clear. If an applicant or land manager has legal riding opportunity they should select “Yes” and respond to the appropriate evaluation items. If they do not have legal riding opportunities, they should select “no” and respond accordingly.

Regarding the second comment, the phrase being deleted was rendered unnecessary by the new introductory question. If an applicant did not have legal riding opportunity, such as the example cited by the commenter, they are directed by the introductory question to not answer Item 4.

Comment, Proposed Grant Regulations changes #3

The commenter suggested adding hunting as a form of non-motorized recreation in the *Evaluation Criteria* for multiple project types.

Department Response

The Department accepts this comment. The Department has added hunting as an option in Item 5 of the *Evaluation Criteria – Acquisition Project Criteria*, Item 9 of the *Evaluation Criteria – Development Project Criteria*, Item 8 of the *Evaluation Criteria – Ground Operations Project Criteria*, and Item 3 of the *Evaluation Criteria – Planning Project Criteria*.

Karen Schambach,
letter dated July 3, 2013

Comment 1

The commenter stated that federal land managers could not abide by the changes proposed to Section 4970.10.2. This comment is specifically directed at the change to Section 4970.10.2(e)(2) which would have required applicants return the grant funding to the State if they fail to keep facilities available for OHV recreation for at least 25 years.

Department Response

The Department accepts this comment. The proposed regulation initially required applicants to refund grant money if the facility being developed was not used for OHV recreation for at least 25 years. The BLM submitted a comment indicating they could not comply to the proposed language requiring the return of grant funds. The BLM cannot commit to a potential refund in the future because they are unable to guarantee the expenditure of funds for which they have no current appropriation or authority. The proposed regulation has been revised to broadly allow the OHMVR Division to seek reimbursement of development funds if a facility is unavailable for OHV recreation for at least 25 years. This revised language would also allow for consideration of the circumstances that led to the closure before requesting reimbursement.

Comment 2

The commenter suggested terminology in Section 4970.15.1(a) should be consistent with the wording in Section 4970.10.2.

Department Response

The Department accepts this comment. Section 4970.15.1(a) is amended to replace the word “distributed” with “available” making it consistent with the wording in 4970.10.2. The word “available” is also used in paragraph (b) of Sections 4970.10.1, 4970.10.3, and 4970.10.4.

Comment 3

The commenter suggested that *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)* Item 8 should be amended to ensure access for “normal vehicles” which are used to access non-motorized recreation.

Department Response

The Department is taking no action on this comment as the suggestion is outside the proposed rulemaking action. The Department considers the existing program to be consistent with PRC Section 5090.50 et seq.

Comment 4

The commenter suggested that Item 8 of *Evaluation Criteria – General Criteria (Rev. 12/11)* should be amended to include other vehicles that may be accessing non-motorized recreation.

Department Response

The Department is taking no action on the comment. The Department considers the existing program to be consistent with PRC Section 5090.50 et seq.

Allen Wessel, Desert Group Search and Rescue Volunteers,
email dated July 21, 2013

Comment

The commenter was concerned the proposed change to Item 4 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)* would prevent his organization from identifying other applicants as partners. The commenter noted his organization works in partnership with several other successful applicants.

Department Response

The Department accepts this comment. The initial proposed revisions indicated that partners could not be funded by any project. Item 4 is amended to clarify that partners on a specific project may not be paid from grant funds included in that particular project.

This criterion appears in the *Evaluation Criteria* for multiple project categories. For consistency, the Department has also amended Item 11 of the *Evaluation Criteria – Development Project Criteria*, Item 5 of the *Evaluation Criteria – Ground Operations Project Criteria*, and Item 8 of the *Evaluation Criteria – Restoration Project Criteria*.

Fred Whitney,
email dated August 5, 2013

Comment

The commenter proposed several additional questions to be asked of governmental applicants. The questions would assess the governmental applicants relationship with nonprofit organizations and identify the staff to be paid with the grant funds. The commenter also suggested all applicants should detail their performance of tasks included in the grant request. The commenter proposed these questions dramatically affect the scoring.

Department Response

The Department is taking no action on this comment. The comment is not directed at the proposed actions. Furthermore, the Department believes the existing program requirements are sufficient to satisfy most of the suggested questions. Nonprofit

organizations are already required to provide written permission from the land manager when applying for funding (see Section 4970.05(l)). A project cost estimate is required for all projects which should provide sufficient detail regarding the monetary participation of nonprofits or the staffing involved in the project. Lastly, existing requirements for the description of the project and subsequent closeout procedures provide staff enough information to verify grant performance.

Jane Arteaga, Bureau of Land Management
undated letter received August 5, 2013

Comment

The commenter stated BLM could not could not comply with the changes proposed to Section 4970.10.2(e)(2) which would have required applicants return the grant funding to the State if facilities do not remain available for OHV recreation for at least 25 years. The BLM cannot commit to a potential refund in the future because they are unable to guarantee the expenditure of funds for which they have no current appropriation or authority. The BLM suggested alternative language that would be acceptable and would allow a refund to be pursued in the future.

Department Response

The Department accepts this comment. The proposed regulation initially required applicants to refund grant money if the facility being developed was not used for OHV recreation for at least 25 years. The proposed regulation has been revised to broadly allow the OHMVR Division to seek reimbursement of development funds if a facility is unavailable for OHV recreation for at least 25 years. This revised language would also allow for consideration of the circumstances that led to the closure before requesting reimbursement.

Public Resources Code 5090.50(c) declares federal agencies are eligible applicants the Grants Program and the BLM is specifically addressed in regulation Section 4970.03. The OHMVR Division considers it counterproductive to develop regulations that would preclude the participation of the BLM in any category or subcategory of funding. The BLM is a valuable partner to the OHMVR Division and an important provider of OHV recreation throughout the State. They are also the second largest recipient of funding provided by the Grants Program. The proposed regulation has been revised to broadly allow the OHMVR Division to seek reimbursement of development funds if a facility is unavailable for OHV recreation for at least 25 years. This revised language would also allow for consideration of the circumstances that led to the closure before requesting reimbursement.

Randy Banis, Friends of Jawbone
email dated August 5, 2013

Comment 1

The commenter offered general support for the proposed regulation revisions and commended staff for simplifying some of the evaluation criteria.

Department Response

The comment provides general support for the regulation revisions, and the Department is taking no action on the comment.

Comment 2

The commenter suggested two changes to Item 8 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)*. Item 8 identifies various educational methods that may be used in a project. The commenter suggested adding a method entitled “Mobile Devices/GPS Units” and modifying “Audio programs” to read “Audio/video programs”.

Department Response

The Department partially accepts this comment. The Department rejects adding a new method specifically for “Mobile Devices/GPS Units”. It is impossible to list every potential educational method and, as the commenter noted, “Other” is an available option for this and other unlisted or emerging techniques. The Department accepts the suggested modification to identify “Audio/video programs”.

Comment 3

The commenter noted that the revisions to now require “detailed explanations” on the evaluation criteria may be hampered by the character limits within the On-line Grants Application (OLGA) data entry fields. The commenter suggested increasing the character limits on OLGA for the various data fields.

Department Response

The Department is taking no regulatory action on this comment. The Department is, however, working with the OLGA programmers to increase the character limits for many of the data fields encountered on the application.

Comment 4

The commenter observed that grants should go to areas providing the most OHV opportunity and commented that large grants sometimes go to areas with less opportunity. This is particularly important for law enforcement agencies who must balance opportunity with enforcement.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward a specific regulation section or proposed revision.

Amy Granat, California Off-Road Vehicle Association
letter dated August 5, 2013

General Comment #1

The commenter offered general support for the proposed regulation revisions, but cautioned that the numerous requests for added information should not create an unnecessary workload for staff.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward a specific regulation section or proposed revision.

Comments 4, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 21, 23, 25, 26, 29 (including a preceding unnumbered comment), and 30

The commenter offered support for the proposed regulation revisions that accomplished the following: updated outdated information; offered clarification; provided additional instruction; improved consistency; and improved usability.

Department Response

The Department is taking no action on these comments. The comments are supportive of the proposed revisions. The Department thanks the commenter for the thorough review of the proposed actions and their thoughtful comments.

Comment 1

The commenter is concerned the proposed regulations will mandate the funding of low-scoring projects, despite the merits of the projects. The commenter is uncertain how much of an effect the proposed regulation will actually have.

Department Response

The Department is taking no action on this comment. The Department considered the comment, but is satisfied the highest scoring projects within each Operation & Maintenance subcategory will be funded. The commenter correctly notes that the effect of this change will likely be minimal and only apparent in situations when the available funding has been drastically reduced.

Comment 2

The commenter suggested the proposed regulation may create an unanticipated, perceived lifespan for development projects. The commenter did agree generally there should be a minimum use period and mechanism for repayment of grant funds.

Department Response

The Department is taking no action on this comment. As noted earlier, based on a comment received from the BLM, the Department has revised the proposed regulation to allow the OHMVR Division to seek reimbursement of development funds if a facility is unavailable for OHV recreation for at least 25 years. This revised language would also allow for consideration of the circumstances that led to the closure before requesting reimbursement.

Comment 3

The commenter questioned the rationale offered in the Initial Statement of Reasons for the changes to Sections 4970.10.2, 4970.10.3 and 4970.10.4.

Department Response

The Department is taking no action on this comment. The commenter was uncertain how the change would ensure ongoing improvements to facilities. The Department is providing the following expanded discussion of the rationale to the proposed revisions:

There are four subcategories under Operation and Maintenance (O&M): ground operations, development, planning, and acquisition. Existing regulations specify that at least 70 percent of the funding allotted to O&M is dedicated for ground operations. Of the remaining O&M funding, up to 10 percent may be used for each of the development, planning, and acquisition subcategories. Under this framework, the first 70 percent of O&M funding is awarded to ground operations grants. If the next highest scoring projects are all ground operations, it is possible (though unlikely unless funding is reduced) that no development, planning, or acquisition projects would be funded.

Alternatively, the proposed regulations would require at least 10 percent of the O&M funding be awarded to development, planning, and acquisition projects. Thus, 70 percent of O&M funding is awarded to ground operations grants. Ten percent of the O&M funding is awarded to projects in each of the development, planning, and acquisition subcategories, regardless of higher scoring ground operations projects.

The proposed change would continue the maintenance and upkeep of existing OHV recreation opportunities through the ground operations funding, but would also guarantee that development, planning, and acquisition projects would be funded, as well. The Department considers the continued efforts to plan, develop, and acquire OHV recreation facilities as necessary to meet the goals of expanding and improving the existing OHV recreation system. The revised funding approach means some projects designed to provide new or improved facilities and opportunities would continue, even when faced with reduced funding, thus ensuring continued improvements to the system.

Comment 5

The commenter suggested the instructions for Section IV, Table 5 in the *Habitat Management Program (HMP) Part 2 (Rev. 1/11)* be revised to improve readability.

Department Response

The Department accepts this comment. The word “lumped” has been replaced with “combined” in the instructions for Section IV, Table 5 in the *Habitat Management Program (HMP) Part 2 (Rev. 1/11)*.

Unnumbered Comment *Evaluation Criteria - General Criteria (Rev. 12/11)*

The commenter is concerned that the scoring criteria must be supported by published information and offered several examples of valid but unpublished data. The commenter suggested “publication” is not always necessary and some leeway should be allowed.

Department Response

The Department accepts this comment. The instructions to the *Evaluation Criteria - General Criteria (Rev. 12/11)* have been revised to remove the requirement that all supporting information must be published.

Comment 13

The commenter supported the proposed revision to Item 9 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)*, but noted the change may reduce scores for non-trail projects.

Department Response

The Department is taking no action on this comment. The comment is generally supportive of the revision.

Comment 15

The commenter suggested the term “offsite impacts” found on Item 13 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* could be better defined.

Department Response

The Department is taking no action on this comment. The Department considers the existing Item to be sufficient. Site-specific examples of “offsite impacts” are provided in the Item.

Comment 20

The commenter suggested that examples be included in Item 6 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)*. This would provide guidance to applicants when responding to the question.

Department Response

The Department accepts this comment. Item 6 has been revised to include examples of possible methods to control OHV use.

Comment 22

The commenter suggested the term “offsite impacts” found on Item 2 of the *Evaluation Criteria – Planning Project Criteria (Rev. 1/11)* could be better defined.

Department Response

The Department is taking no action on this comment. The Department considers the existing Item to be sufficient. Site-specific examples of “offsite impacts” are provided in the Item.

Comment 24

The commenter stated the term “substantial” found on Item 5 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* is subjective and should be better defined.

Department Response

The Department is taking no action on this comment. The possible range of planning projects is broad and highly variable; it would be difficult to establish a uniform threshold for what is considered “substantial”. As such, the Department originally revised the Item to prompt applicants to more fully explain their response to the question. The added information will allow the Department to better assess the level of stakeholder input on a case by case basis.

Comment 27

The commenter suggested the proposed regulation revision to Item 7 of the *Evaluation Criteria – Planning Project Criteria (Rev. 1/11)* should be revised or deleted. The commenter noted the difficulty in finding areas for OHV recreation, much less those within 50 miles of population centers. It was also noted that population center is undefined.

Department Response

The Department accepts this comment in part. The Department agrees it is difficult to create OHV recreation in proximity to populated areas. However, the Department contends the scarcity of nearby OHV opportunity is the very reason projects nearer to the population centers should be rewarded with added points in the scoring criteria. The Department is increasing the distance from 50 to 60 miles. This minimal increase in distance aligns the response with the OHMVR Commission’s Strategic Plan as required by Public Resources Code 5090.50(d)(3). The Strategic Plan includes Objective 2.1 which specifies the desire to establish new OHV opportunities within a 60-mile radius from population centers.

The term “population center” remains undefined. The population variation across the state makes selecting a numerical threshold difficult. For example, what many would consider a “population center” southern California may exceed the entire population of several northern counties. Applicants are, however, directed to explain their answers which allows the Department to consider each response on a case by case basis.

Comment 28

The commenter is opposed to the deletion of Item 8 in the *Evaluation Criteria – Planning Project Criteria (Rev. 1/11)*. The commenter contended many planning projects are never realized and identifying the funding is important.

Department Response

The Department disagrees with this comment. As noted in the Initial Statement of reasons, most applicants are unable to definitively identify the funding source for implementation of a planned facility. Responses to Item 8 frequently cite future budget appropriations or future grants, neither of which are guaranteed. It is exceedingly rare that a dedicated funding source is associated with a planning project.

Ed Waldheim, Friends of Jawbone,
email dated August 5, 2013

General Introductory Comment

The commenter provided an extensive commentary on the program, particularly as it relates to nonprofit organizations like those he is affiliated with. The commenter is concerned by a perceived disparity between governmental agencies and nonprofit organizations in the application process.

Department Response

The Department is taking no action on the comment. The comment is general in nature and not directed toward a specific regulation section or proposed revision.

Comment

The commenter supported the revisions to funding availability for development, planning, and acquisition projects (Sections 4970.10.2, 4970.10.3, 4970.10.4 and 4970.15.1).

Department Response

The Department is taking no action on this comment. The comment is supportive of the proposed revision.

Comment

The commenter noted that the *Habitat Management Program (HMP) Part 2 (Rev. 1/11)* is the responsibility of the land manager and does not affect nonprofit organizations. Commenter stated their work is not distinguished from others.

Department Response

The Department is taking no action on the comment. The comment is not directed toward the proposed revisions to the document.

Comment

The commenter stated the proposed introductory question on the *Evaluation Criteria – General Criteria (Rev. 12/11)* does not separate the work nonprofits do from the land managers they are working with.

Department Response

The Department disagrees with this comment. The introductory question, as with the entirety of the *Evaluation Criteria – General Criteria (Rev. 12/11)*, is not intended to separate the work of individual applicants. Instead, they are intended to measure the quality of the land manager's overall OHV program. Additionally, non-land manager applicants, such as most nonprofit organizations, are clearly instructed to cooperate with the land manager to obtain the information necessary to complete the general criteria.

Comment

The commenter questioned the Visitor Opportunity Ratio (V/O ratio) as determined in Item 1 of the *Evaluation Criteria – General Criteria (Rev. 12/11)*. The commenter stated V/O ratio does not relate to opportunity and proposed an alternative score based on number of trails being maintained.

Department Response

The Department is taking no action on the comment. The comment is not directed toward the proposed revisions to the document.

Comment

The commenter had no objections to Item 2 of the *Evaluation Criteria – General Criteria (Rev. 12/11)*.

Department Response

The Department is taking no action on the comment. The comment is not directed toward the proposed revisions to the document.

Comment

The commenter questioned the applicability of the questions contained in Item 3 of the *Evaluation Criteria – General Criteria (Rev. 12/11)*.

Department Response

The Department is taking no action on the comment. The comment is not directed toward the proposed revisions to the document.

Comment

The commenter questioned the applicability of the questions contained in Item 4 of the *Evaluation Criteria – General Criteria (Rev. 12/11)*.

Department Response

The Department is taking no action on the comment. The comment is not directed toward the proposed revisions to the document. The commenter does not recognize the question is not directed to the nonprofit organization, but to the land manager, as clearly specified in the instructions.

Comment

The commenter had no objections to Item 5 of the *Evaluation Criteria – General Criteria (Rev. 12/11)*.

Department Response

The Department is taking no action on the comment. The comment is general in nature and not directed toward a specific regulation section or proposed revision.

Comment

The commenter had no objections to Item 6 of the *Evaluation Criteria – General Criteria (Rev. 12/11)*.

Department Response

The Department is taking no action on the comment. The comment is general in nature and not directed toward a specific regulation section or proposed revision.

Comment

The commenter questioned the applicability of the questions contained in Item 7 of the *Evaluation Criteria – General Criteria (Rev. 12/11)*. The commenter contended the question rewards fenced facilities, ignores staffing levels in the field, and values barriers more than education.

Department Response

The Department is taking no action on the comment. The comment is not directed toward the proposed revisions to the document. The commenter does not recognize the question is specific to the measures a land manager takes to prevent OHV trespass.

Comment

The commenter stated that Item 8 of the *Evaluation Criteria – General Criteria (Rev. 12/11)* favored fenced facilities and punished applicants that provide more opportunity. The commenter stated that part B of Item 8 does not provide opportunity and a nonprofit organization cannot score points in the item.

Department Response

The Department is taking no action on the comment. The comment is not directed toward the proposed revisions to the document. The Department notes the question is designed to identify the systems land managers use to monitor OHV-related impacts to natural and cultural resources. The commenter does not recognize the

question is not directed to the nonprofit organization, but to the land manager, as clearly specified in the instructions.

Comment

The commenter challenged the scoring in part C of Item 9 in the *Evaluation Criteria – General Criteria (Rev. 12/11)*, noting the efforts of his organization should score as better.

Department Response

The Department is taking no action on the comment. The comment is not directed toward the proposed revisions to the document. The commenter does not recognize the question is not directed to the nonprofit organization, but to the land manager, as clearly specified in the instructions.

Comment

The commenter questioned the applicability of Item 10 in the *Evaluation Criteria – General Criteria (Rev. 12/11)*, suggesting it should not be included because it does not relate to ground operations.

Department Response

The comment is general in nature and not directed toward a specific regulation section or proposed revision. The commenter has confused the *General Criteria* with the *Ground Operations Project Criteria*. The *Evaluation Criteria – General Criteria (Rev. 12/11)* are intended to measure all aspects of the land manager’s overall OHV program, including resource protection, education, and enforcement actions.

Comment

The commenter questioned the applicability of Item 11 in the *Evaluation Criteria – General Criteria (Rev. 12/11)*, noting that several components of the question do not relate to ground operations.

Department Response

The comment is general in nature and not directed toward a specific regulation section or proposed revision. The commenter has confused the *General Criteria* with the *Ground Operations Project Criteria*. The *Evaluation Criteria – General Criteria (Rev. 12/11)* are intended to measure all aspects of the land manager’s overall OHV program, including resource protection, education, and enforcement actions.

Comment

The commenter stated Item 12 in the *Evaluation Criteria – General Criteria (Rev. 12/11)*, should be included in the applicants general contact information.

Department Response

The comment is general in nature and not directed toward a specific regulation section or proposed revision. The Department notes the purpose of the question is not merely to list a website, but is designed to identify educational outreach efforts undertaken by the land manager or applicant.

Comment

The commenter questioned the applicability of Item 13 in the *Evaluation Criteria – General Criteria (Rev. 12/11)*, noting that the question is about education instead of ground operations.

Department Response

The comment is general in nature and not directed toward a specific regulation section or proposed revision. The commenter has confused the *General Criteria* with the *Ground Operations Project Criteria*. The *Evaluation Criteria – General Criteria (Rev. 12/11)* are intended to measure all aspects of the land manager's overall OHV program, including resource protection, education, and enforcement actions.

Comment

The commenter suggested a different questions for Item 14 in the *Evaluation Criteria – General Criteria (Rev. 12/11)*.

Department Response

The comment is not directed toward a specific regulation section or proposed revision. The suggestions provided by the commenter do not acknowledge the array of actions that might be taken to sustain OHV recreation.

Comment

The commenter addressed Item 3 of the *Evaluation Criteria – Acquisition Project Criteria (Rev. 1/11)* and stated what he believed the purpose of acquisition to be. The commenter also recommended altering the scoring for the question.

Department Response

The Department is taking no action the comment. The comment is not directed toward the proposed revisions to the document.

Comment

The commenter noted the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* does not ask how the project will enhance OHV opportunity.

Department Response

The Department is taking no action on this comment. The comment is not directed toward the proposed revisions to the document. The Department notes this information is included in the project description.

Comment

Speaking of Item 5 in the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* the commenter stated a management plan should be required of all land manager applicants.

Department Response

The Department is taking no action on this comment. The existing question prompts applicants to identify an applicable plan related to the proposed project.

Comment

The commenter stated Item 6 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* does not apply to OHV recreation.

Department Response

The Department is taking no action on this comment. The comment is not directed toward the proposed revisions to the document. Furthermore, the Department notes the question is specific to the building material that might be included in a development project. When the evaluation criteria were created extra consideration was given to recycled or sustainable construction material or techniques.

Comment

The commenter stated Item 7 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* does not apply to OHV opportunity.

Department Response

The Department is taking no action on this comment. The comment is not directed toward the proposed revisions to the document. Furthermore, the Department notes the question is specific to the construction technologies that might be incorporated into a development project. When the evaluation criteria were created extra consideration was given to recycled or sustainable construction material or techniques.

Comment

The commenter stated Item 8 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* does apply does not identify the specific size of the project.

Department Response

The Department is taking no action on this comment. The comment is not directed toward the proposed revisions to the document. The question broadly assesses the benefits added by a variety of development projects, some of which do not involve creation of trails or riding areas. The specifics of the project are included in the project description narrative that is required in each application.

Comment

The commenter questioned why Item 9 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* addresses non-motorized use. The commenter stated

that trails are already available for nonmotorized users and providing access to nonmotorized areas is inappropriate.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document. The Department notes that Public Resources Code 5090.50(b)(1)(B) specifically directs the Program to give additional consideration to applications that improve facilities that provide motorized access to nonmotorized recreation.

Comment

The commenter stated Item 11 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)* is unacceptable for nonprofit organizations. The commenter objected that subcontractors are not considered as partners and questioned the purpose of the question.

Department Response

The Department disagrees with this comment. The purpose of the question is to identify entities other than the grantee that are assisting in the completion of the project. Additional points are awarded to projects that have a larger base of supporting organizations. The Department is excluding subcontractors as partners because they are paid to participate.

Comment

The commenter questioned the need for Item 12 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)*. The commenter suggested the primary concern should be if a project will create added recreational opportunity.

Department Response

The Department disagrees with this comment. The comment is general in nature and not directed toward the proposed revisions to the document. The purpose of the question is to identify how a newly developed project will be maintained in the future. The Department notes that only land managing agencies are allowed to apply for development projects and ideally the land manager would fund the future expenses associated with the project. However, the question has been revised to reflect the real-world scenario where most projects are maintained in the future through a combination of OHV Trust Funds and the applicant's operational budget.

Comment

The commenter objected to Item 13 of the *Evaluation Criteria – Development Project Criteria (Rev. 1/11)*. The commenter opposed the idea that a project with offsite impacts would be scored favorably.

Department Response

The Department disagrees with this comment. The comment is general in nature and not directed toward the proposed revisions to the document. Moreover, the commenter has entirely misunderstood the question. The question does not reward projects with offsite impacts as the commenter suggests; instead, points are awarded to projects that will address the offsite impacts associated with the project.

Comment

The commenter stated that Item 1 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)* provides no incentive for nonprofit organizations to participate and instead rewards governmental agencies.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

Comment

The commenter has no objections Item 2 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)*.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

Comment

The commenter stated Item 4 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)* is unfavorable to nonprofit organizations because subcontractors that provide in-kind services are not considered partners.

Department Response

The Department disagrees with this comment. The purpose of the question is to identify entities other than the grantee that are assisting in the completion of the project. Additional points are awarded to projects that have a larger base of supporting organizations. The Department does not consider a subcontractor being paid out of the grant to be “providing in-kind services”.

Comment

The commenter questioned the purpose of Item 5 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)*. The commenter suggested OHV education should be applicable to all OHV use, not specific to vehicle types.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document. The

Department notes that many education projects are specific to one or two vehicle types.

Comment

The commenter, while addressing Item 7 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)*, stated that OHV education should be addressed on a statewide level. The commenter suggested there be one overall program instead of individual projects.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

Comment

The commenter, while addressing Item 8 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)*, reiterated that OHV education should be addressed through a statewide program.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

Comment

The commenter, while addressing Item 9 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)*, reiterated that OHV education should be addressed through a statewide program.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

Comment

The commenter stated Items 11,12,13,14, and 15 of the *Evaluation Criteria – Education and Safety Project Criteria (Rev. 12/11)*, are appropriate for safety projects.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

Comment

The commenter stated that Item 1 of the *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)* does not reward nonprofit organizations appropriately, while others applicants that provide a 76% match receive more points.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

The Department notes that the commenter incorrectly asserts nonprofit organizations will receive no points on this question. The applicant's status as a nonprofit organization or a governmental entity is not factored in this question. Points are awarded solely on the applicant's contribution to the project. A contribution equal to 25% of the total project costs is the minimum required to participate in the program per Public Resources Code 5090.50(d)(5). The Department further notes that most nonprofit organizations contribute more than 25% of the total project costs.

Comment

The commenter had no objections to Item 2 of the *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)*.

Department Response

The Department is taking no action on this comment.

Comment

The commenter remarked on an answer selection provided in Item 3 of the *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)*. The commenter finds the option "providing varied levels of riding difficulty" to be worthless.

Department Response

The Department is taking no action on this comment. The comment is not directed toward the proposed revisions to the document.

Comment

The commenter, while addressing Item 4 of the *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)*, noted that his organization conducts meeting for the purpose of developing grant applications.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

Comment

The commenter stated Item 5 of the *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)* is meaningless. The commenter objected that subcontractors are not considered as partners and questioned the purpose of the question.

Department Response

The Department disagrees with this comment. The purpose of the question is to identify entities other than the grantee that are assisting in the completion of the project. Additional points are awarded to projects that have a larger base of supporting organizations. The Department is excluding subcontractors as partners because they are paid to participate.

Alternatively, it is unclear if the commenter is concerned that a volunteer, who happens to be a contractor by profession, cannot contribute in-kind services to a project. If the contractor is not being paid from the grant, the efforts of that individual would be considered part of the matching contribution for the project.

Comment

The commenter has no objections Item 6 of the *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)*.

Department Response

The Department is taking no action on this comment.

Comment

The commenter stated that Item 7 of the *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)* is unrealistic and recyclable materials cannot be readily applied to a project.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document.

Comment

The commenter questioned why Item 8 of the *Evaluation Criteria – Ground Operations Project Criteria (Rev. 1/11)* is included. The commenter stated that trails are available for all users.

Department Response

The Department is taking no action on this comment. The comment is general in nature and not directed toward the proposed revisions to the document. The Department notes that Public Resources Code 5090.50(b)(1)(B) specifically directs the Program to give additional consideration to applications that improve facilities that provide motorized access to nonmotorized recreation.

General Closing Comment

The commenter observed that the application includes many unnecessary questions that serve no purpose. The commenter suggested that the application process could be simpler and proposed a list of questions he felt would be adequate.

Department Response

The Department is taking no action on the comment. The comment is general in nature and not directed toward a specific regulation section or proposed revision.

The Department is confident the Program, which was developed with considerable public input including the commenter, effectively implements Public Resources Code 5090.50 et seq. The Department believes much of the information suggested by the commenter is effectively gathered by the existing *General Criteria* and project-specific *Evaluation Criteria*. Furthermore, the proposed questions are directed almost exclusively to ground operations projects and the Department finds it necessary to provide different evaluation criteria for each of the different project types.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15 DAY COMMENT PERIOD – AUGUST 23, 2013 TO SEPTEMBER 9, 2013

No comments were received.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15 DAY COMMENT PERIOD – SEPTEMBER 6, 2013 TO SEPTEMBER 23, 2013

No comments were received.

ALTERNATIVES DETERMINATION

The Department has determined that no alternative: would be more effective in carrying out the purpose for which the regulation is proposed; or would be as effective and less burdensome to affected private persons than the proposed regulation; or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

LOCAL MANDATE DETERMINATION

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