

**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 not originally identified. The following revisions were made after the Notice of Rulemaking Action:

4970.06.1 – California Environmental Quality Act (CEQA) Requirements

Specific Purpose

Section 4970.06.1(d)(1) is amended to remove reference to “or in progress” environmental compliance work and to remove the proposed paragraph discussing submission of Project-related NEPA compliance documentation.

Necessity

The amendment to Section 4970.06.1(d)(1) addresses concerns raised by a commenter during the 45-day public comment period. The commenter stated the proposed regulation did not comply with the Public Resources Code regarding completion of environmental review procedures. Although the Department contends the proposed language is appropriate, the Department determined continued discussions with interested parties in this regard would provide further clarity. The Department may reconsider the concept in future regulatory revisions.

4970.10.4 – Acquisition

Specific Purpose

Section 4970.10.4(e)(2) is amended to specify federal agencies must agree to use property acquired under the Grants and Cooperative Agreements Program (Program) 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 the ability to procure property under the Program. The Department was contacted by the U.S. Bureau of Land Management (BLM) during the 45-day public comment period and informed that federal agencies were precluded from accepting property with deed restrictions containing reversionary clauses with no end date such as the one found in Section 4970.10.4(e)(2). As a result, two successful acquisition projects submitted by the BLM during the 2010/11 grant cycle had to be withdrawn. Working with the BLM, the Department has proposed language imposing a 25-year timeframe for OHV recreational use of any property

acquired by federal agencies under the Program. BLM solicitors have indicated that the time limit would make the reversionary clause acceptable.

4970.19 – PROJECT AGREEMENT

Specific Purpose

Section 4970.19(a) is amended to allow the OHVMR Division and grantees to agree to amend project agreements, with consent of both parties, to comply with law.

Section 4970.19(c) is amended to state the OHVMR Division may not execute project agreement with grantees that have refunds due to the State.

Section 4970.19(e) is amended to allow the OHVMR Division and grantees to execute project agreements using electronic signatures. The appropriate Civil Code sections are referenced.

Necessity

The amendment to Section 4970.19(a) is necessary to permit adjustments to Project Agreement language in response to changes in federal law. After the most recent grant cycle, the Department was informed by the U.S. Forest Service that supplemental provisions would need to be added to their project agreements. These supplemental provisions were due to changes in federal requirements. Current examples include: reimbursable billing requirements for the U.S. Forest Service; principal contact information; and, debarment and suspension notification. Discussions with the U.S. Forest Service indicated these changes occurred frequently . It would be impractical for the Department to change regulations with every federal change, so the proposed language provides latitude to amend terms of the project agreements with consent of both parties as needed to comply with law. The proposed language applies solely to the project agreement and is not intended to allow parties to change the content, deliverable, or expectations of the individual projects.

The amendment to Section 4970.19(c) is necessary to provide the Department the discretion to execute project agreements with grantees that have refunds due to the State. A comment received during the 45-day public comment period stated the proposed Section 4970.19(c) would reduce the Department's ability to work with agencies making good-faith efforts to address outstanding debts. Thus, the proposed term "will" was changed to the permissive "may."

The amendment to Section 4970.19(e) is necessary to clearly indicate electronic signatures are acceptable in order to execute Project Agreements in the Program. Electronic signatures are a common and expedient way to conduct business and the Department legal counsel opined that electronic signatures were appropriate and would be consistent with state and federal codes. The addition of the Civil Code cites the authority for electronic signatures pursuant to the Uniform Electronic Transactions Act.

4970.23.1 – Advances

Specific Purpose

Section 4970.23.1(b)(7) is amended to suggest specific electronic file types when submitting electronic data to the Department.

Necessity

The amendment to Section 4970.23.1(b)(7) is necessary to provide grantees direction regarding electronic data. The Department intends to collect geographic information related to the Program in order to create a comprehensive Geographic Information System (GIS) database. Absent direction from the Department, grantees may submit obsolete or unusable data. The Department consulted with internal and external GIS users and determined it would be useful to suggest data file formats for submitted data. File types identified by the extensions .shp, .gpx, or .kml are commonly used industry standards and are widely available to professional and lay users.

4970.23.2 – Reimbursements

Specific Purpose

Section 4970.23.2 is amended to suggest specific electronic file types when submitting electronic data to the Department.

Necessity

The amendment to Section 4970.23.2(g) is necessary to provide grantees direction regarding electronic data. The Department intends to collect geographic information related to the Program in order to create a comprehensive GIS database. Absent direction from the Department, grantees may submit obsolete or unusable data. The Department consulted with internal and external GIS users and determined it would be useful to suggest data file formats for submitted data. File types identified by the extensions .shp, .gpx, or .kml are commonly used industry standards and are widely available to professional and lay users.

4970.25.2 – Financial Audits

Specific Purpose

Section 4970.25.2 was renumbered as Section 4970.25.1 in the Initial Statement of Reasons and is amended to remove a confusing reference to the Department.

Necessity

The amendments to Sections 4970.25.2(a), (b), and (d) are necessary to reduce confusion and clarify who will be conducting audits. A comment received during the 45-day public comment period remarked about confusion caused by reference to the Department, which was undefined in the regulations. In response, the Department is now clearly identified as the Department of Parks and Recreation, Audits Office.

DOCUMENT INCORPORATED BY REFERENCE

EVALUATION CRITERIA – General Criteria (Rev. 1/11)

Specific Purpose

Evaluation Criteria – General Criteria (Rev. 12/11) is amended to improve grammar.

Necessity

The amendment to Item 14 is necessary to improve grammar and consistency among the possible responses provided for the item.

NONSUBSTANTIAL CHANGES

All substantive changes to the regulations were made available to the public for the written comment periods and the public hearing. Two nonsubstantial changes were also made to the regulations. The nonsubstantial changes are as follows:

The reference citation after Section 4970.19 is revised for consistency with citations throughout the regulations. The amendment to Section 4970.19 is not substantial and does not materially alter the content of the regulations.

Section 4970.23.1(b)(6) is revised to improve the grammar. The period at the end of this sentence is replaced with a comma and the word “and”, consistent with the preceding paragraphs.

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

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.

Comment 1

The commenter noted that reference made to “the Department” in Section 4970.25 is confusing and undefined.

- Bruce Brazil

Note: This comment was in reference to the renumbered regulation Section 4970.25.1 (a), (b), and (d).

Department Response

The Department agrees with the comment. The regulations are revised to clearly indicate the Department of Parks and Recreation, Audits Office will conduct the tasks identified in regulation Sections 4970.25.1(a), (b), and (d).

Comment 2

The commenter contended Item 14, *Sustaining OHV Recreation*, on the document incorporated by reference entitled *Evaluation Criteria, General Criteria* is unclear, and the term “sustaining” should be defined. The commenter further

stated that only some of the provided responses actually “sustain” OHV recreation and proposed an additional response.

- Bruce Brazil

Department Response

The Department disagrees with the comment. The Department finds the term “sustain” to be so broadly interpreted that any attempt to define the term may inadvertently exclude otherwise eligible applicants from responding to Item 14. Furthermore, applicants are afforded the opportunity to explain their efforts to sustain OHV recreation. The Department considers the five options provided in Item 14 to be sufficient and consistent with a dictionary definition of “sustain.”

Comment 3

The commenter offered general support for the proposed regulation revisions.

- Christian Elliot, County of Santa Clara

Department Response

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

Comment 4

The commenter addressed the revision to Section 4970.05 and stated that inserting the term “permission” into an agreement is applicable to those entities working with private property owners and is unnecessary for others.

- Ed Waldheim, Friends of Jawbone

Department Response

The Department is taking no action on the comment. The Department is not requiring the term “permission” be inserted into an agreement. Rather, the Department has proposed to make terminology in the regulations consistent with Public Resources Code Section 5090.50(f)(2). Thus, “permission” from the land manager is replacing the “agreement” with the land manager. The regulation also specifies how “permission” from the land manager may be demonstrated and does not apply to private property owners.

Comment 5

The commenter addressed the revision to Section 4970.11 and stated how this may apply to ongoing restoration activities by his organization.

- Ed Waldheim, Friends of Jawbone

Department Response

The Department is taking no action on the comment. The Department is requiring that erosion control efforts be explained in the project description during the application process. This description should be consistent with the subsequent on-the-ground implementation of the project.

Comment 6

The commenter addressed the revisions to Sections 4970.23.1 and 4970.23.2 and suggested that existing databases and experts be consulted to ensure the Department is collecting appropriate data.

- Ed Waldheim, Friends of Jawbone

Department Response

The Department agrees with this comment. The Department is revising the proposed regulations to suggest acceptable data file formats for submitted data. File types identified by the extensions .shp, .gpx, or .kml are commonly used industry standards and are widely available to professional and lay users.

Comment 7

The commenter opposed the proposed change to Sections 4970.06.1(d)(1). The commenter contended the changes were counter to the requirements of the Public Resources Code.

- Karen Schambach, Center for Sierra Nevada Conservation

Department Response

The Department is removing the proposed changes objected to by the commenter. The Department notes there are situations where the formerly proposed language is appropriate and consistent with the Public Resources Code. The Department will confer with the commenter to explore potential alternatives in the future.

Comment 8

The commenter stated that the word “shall” proposed in Section 4970.08(b)(11) could be misinterpreted to mean every sign or minor document with an OHMVR logo would be subject to review by the Department. The commenter suggested the “shall” be replaced with “may.”

- Jim Keeler, Bureau of Land Management, California State Office

Department Response

The Department is taking no action on the comment. The Department considers the language to be explicit and applicable only to maps, videos, and/or handouts displaying the Trust Fund logo. The requirement does not apply to other documents or signs.

Comment 9

The commenter stated that the word “will” proposed in Sections 4970.19(c) and (d) should be replaced with “may.” The commenter noted the wording in Section 4970.19(c) would reduce the Department’s ability to work with agencies making good-faith efforts to address outstanding debts. Similarly, the wording in Section 4970.19(d) would reduce flexibility when dealing with agencies closing out projects.

- Jim Keeler, Bureau of Land Management, California State Office

Department Response

The Department agrees with the comment, in part. The Department agrees agencies working in good faith to refund the OHV Trust Fund should have the opportunity to continue in the Program; thus, “will” is changed to “may” in Section 4970.19(c). The Department is taking no action regarding the comment on Section 4970.19(d). The proposed revision provides the strongest impetus to close out projects in a timely manner.

Comment 10

The commenter suggested minor changes to the tense of the responses in Item 14, *Sustaining OHV Recreation*, found in the document incorporated by reference entitled *Evaluation Criteria, General Criteria*. The commenter also suggested identifying management plans in the third response option. The commenter noted that general plans are identified, but federal agencies do not have general plans; instead, management plans serve a similar purpose.

- Jim Keeler, Bureau of Land Management, California State Office

Department Response

The Department agrees with the comment. The Department is revising the wording of the responses to improve the tense and is including management plans as an option in the third response.

Comment 11

The commenter proposed several changes to the regulations regarding the acquisition of property. The first suggestion was to insert language into the discussion of due diligence in Section 4970.10.4(d)(2)(C) in order to explain the merits of the property to be acquired.

The commenter also proposed to include a time limit of 15 years in the Warranty of Use required by Section 4970.10.4(e)(2). The proposed change would allow federal agencies to participate in property acquisition under the Program. Currently, federal agencies are unable to acquire land with certain deed restrictions without a waiver from the U.S. Department of Justice. The commenter believes the revised regulation would make it possible to obtain a waiver.

- Jim Keeler, Bureau of Land Management, California State Office

Department Response

The Department is taking no action on the first suggested change. The Department determined the additional information suggested to demonstrate “Due Diligence” under Section 4970.10.4(d)(2)(C) is sufficiently addressed by the applicant in the required response to Sections 4970.10.4(d)(1)(B) and (H). The Department considers the suggested language redundant.

The Department partially agrees with the second comment. The Department is revising the language to accommodate federal agencies in the acquisition of

property. However, the Department has revised the timeframe to use the property for OHV recreation to a minimum of 25 years.

Comment 12

The commenter proposed to change Section 4970.19(b) to revise project administration procedures when a project agreement and a payment request are delivered concurrently.

- Jim Keeler, Bureau of Land Management, California State Office

Department Response

The Department is taking no action on the comment. Processing of payment requests is an internal procedure that does not require regulation. Furthermore, the Department considers the existing regulation sufficient to prevent processing of payment requests until a fully executed Project Agreement is on file.

Comment 13

The commenter was confused about the proposed wording of Item 2 in the document incorporated by reference entitled *Evaluation Criteria, Education and Safety Criteria*.

- Mary Kotschwar, Desert Tortoise Preserve Committee, Inc.

Department Response

The Department is taking no action on the comment. The Department considers the proposed language to be appropriate. The existing scenarios contained within the parentheses are exceptions; otherwise, the preceding statement is applicable.

COMMENTS RECEIVED AFTER CLOSE OF THE 45 DAY COMMENT PERIOD AND PUBLIC HEARING

The commenter opposed the proposed change to Sections 4970.06.1(d)(1)(A) and (B). The commenter contended the changes were counter to the requirements of the Public Resources Code.

-Mesonika Piecuch, ORV WATCH KERN COUNTY

Department Response

The Department is addressing a similar comment submitted within the comment period (see Comment 7). The Department is removing the proposed changes objected to by the commenter. The Department notes there are situations where the formerly proposed language may be appropriate and consistent with CEQA.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15 DAY COMMENT PERIOD

No comments were received.

COMMENTS RECEIVED AFTER CLOSE OF THE 15 DAY COMMENT PERIOD

The commenter suggested Section 4970.19 be revised to specify that the project itself may not be amended after the public review period.

- Karen Schambach, Center for Sierra Nevada Conservation

Department Response

The Department is taking no action on the comment. The Department considers the existing language to be adequate.

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.

LOCAL MANDATE DETERMINATION

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