

**Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
FINDING OF EMERGENCY**

Express Finding of Emergency:

The Director of the Department of Parks and Recreation finds an emergency exists, and that adoption of the 2007 Off-Highway Motor Vehicle Recreation (OHMVR) Emergency Regulations is necessary to avoid serious harm to the public peace, health, safety, and general welfare.

Statement of Specific Facts Showing the Need for Immediate Action

Summary:

Public Resources Code (PRC) section 5090.01 et seq. governs off-highway motor vehicle recreation grants and cooperative agreements with cities, counties, appropriate districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, and educational institutions. Grants and cooperative agreements are awarded on a competitive basis to eligible agencies and organizations to fund projects such as acquisition, development, conservation, facilities operation and maintenance, law enforcement, off-highway vehicle safety and education programs, planning, restoration, trail maintenance in order to enforce California motor vehicle laws, enforce state and federal resource protection laws, restore damaged areas, protect sensitive habitats and cultural sites, promote safety, and educate off-highway vehicle recreationists on safety and resource protection. For the past three fiscal years approximately \$18 million has been appropriated to the OHMVR Grants and Cooperative Agreements Program.

The Grants Program Manual, Chapter 1, Application Instructions, Section 1.2.1 – Grants Cycle (page 4) provides a detailed chart of the activities that are included within each annual grant cycle. The third item on the chart addresses the Application Filing Date, which provides that applications are due to the OHMVR Division by 5:00 p.m. on the first Monday of August. Each year, prior to the Application Filing Date, the OHMVR Division conducts Grants Program Workshops for potential applicants. The purpose of these all day workshops is to provide assistance on the application process to minimize the number of applications that are incomplete and, therefore, ineligible for funding.

The 2007/2008 workshops were originally scheduled for June 5th & 7th 2007, in Sacramento and Ontario, respectively. These dates were selected to provide the applicants the usual two-month time period to prepare their applications and to undertake the required public review process on their proposed applications, which includes the requirement of a public notice at least thirty (30) calendar days prior to submitting the final application to the Division by the due date, the first Monday in August.

On May 21, 2007, the Senate Budget Subcommittee, on the recommendation of their staff, rejected the \$18 million proposed in the Governor's Budget for the 2007/2008 OHMVR Grants and Cooperative Agreements Program. The Assembly Budget Subcommittee approved the proposed funding. As a result, the issue of the grant funding was to be presented to the two-house Budget Conference Committee in June for resolution.

Given the uncertainty of funding, and the inconvenience this posed to potential grant applicants, the Grants Program Workshops were rescheduled to July 17th and 19th at the same locations. In June, the Budget Conference Committee restored the funding for the 2007/2008 Grants and Cooperative Agreements Program. The rescheduling of the workshops to mid-July should allow adequate time for the entire process, including the Governor's action on the budget once submitted from the Legislature and the final funding amount for the 2007/2008 Grants and Cooperative Agreements Program.

In the 2007 Off-Highway Motor Vehicle Recreation (OHMVR) Emergency Regulations, the Department is proposing to change the application due date to 5:00 pm on the third Monday in September (September 17). This revision would provide applicants two months from the dates of the rescheduled workshops in order to obtain the required public input and submit complete applications for the competitive process. These Emergency Regulations are only applicable to the 2007/2008 grant cycle and do not alter the permanent Regulations.

The proposed revision to the 2007/2008 grant cycle application due date will allow grant and cooperative agreement applicants time to submit applications consistent with the governing statutes, regulations, and application instructions. It will also ensure the continuance of a defined competitive process, without interrupting vital law enforcement, public health measures, resource management and protection activities.

The Inability to Allocate Grant Funds Threatens Public Peace, Health, Safety, and General Welfare

If the Department is unable to revise the regulations to allow for the new application due date, the grant funded services and projects may not be funded for the 2007/2008 grant cycle. This would result in the elimination or reduction of funding for projects and services administered by local and federal agencies that would have otherwise received funding. The results of reduced or eliminated funding would include less availability of law enforcement officers for public safety, emergency response and resource protection; reduced or eliminated trail maintenance projects that prevent erosion, maintain water quality and resource management. Overall public health and safety for both riders and non-riders alike would be hampered by the loss of grant or cooperative agreement funding.

Authority and Reference Citations

Authority Citations

All authority citations in the regulations reference sections 5001.5 and 5003 of the Public Resources Code.

Reference Citations:

4970.49. APPLICATION OF CHAPTER

Implemented: Sections 5090.01 through 5090.70, PRC

4970.50. DEFINITIONS

Implemented: Sections 4442, 4442.5, 5020.1(j), 5024.1, 5090.04, 5090.05, 5090.06, 5090.07, 5090.10, 5090.11, 5090.32, 5090.35, 5090.50, 5090.51(b), 5090.53, 5090.64(b)(1) and (2), and 21000 et seq., PRC; Sections 111, 400, 436, 557, 38001, 38006, 38012, and 38225(c), Vehicle Code; USC, Title 42, Section 4371; USC Title 43, Sections 1601 et seq.; 40 CFR part 1500.1 et seq.; 25 CFR Section 83.5(a); Section 210.1, Education Code; and U.S. Internal Revenue Code, Section 501(c)(3).

4970.51. PROGRAM PURPOSE

Implemented: Sections 5090.01 through 5090.70, PRC

4970.52. COMMISSION'S ANNUAL PROGRAM REVIEW MEETING

Implemented: Section 5090.24(f), PRC

4970.53. GENERAL APPLICATION REQUIREMENTS

Implemented: Sections 5090.32, 5090.35, 5090.50, 5090.51, and 5090.53, PRC

4970.54. ACQUISITION PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.55. CONSERVATION PROJECTS

Implemented: Sections 5090.32, 5090.35, 5090.50, and 5090.53, PRC

4970.56. DEVELOPMENT PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC; and Public Law 101-336, July 26, 1990, 104 Stat. 327

4970.57. FACILITIES OPERATION AND MAINTENANCE (FO&M) PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.58. LAW ENFORCEMENT PROJECTS

Implemented: Sections 5090.32, 5090.50 and 5090.64(b)(2), PRC

4970.59. OFF-HIGHWAY VEHICLE (OHV) SAFETY AND/OR EDUCATION PROGRAM
Implemented: Sections 5090.32 and 5090.50, PRC

4970.60. PLANNING PROJECTS

Implemented: Sections 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53, PRC

4970.61. RESTORATION PROJECTS

Implemented: Sections 5090.32, 5090.50 and 5090.64(a), PRC

4970.62. TRAIL MAINTENANCE PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.63. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REQUIREMENTS

Implemented: Sections 5090.32 and 5090.50(g), 15000 et seq., and 21000 et seq., PRC; USC Title 42, section 4371; and 40 CFR part 1500.1, et seq.

4970.64. WILDLIFE HABITAT PROTECTION PROGRAM (WHPP) / HABITAT
MANAGEMENT PROGRAM (HMP)

Implemented: Sections 5090.32, 5090.35, 5090.50 and 5090.53, PRC

4970.65. SOIL CONSERVATION PROGRAM

Implemented: Sections 5090.32, 5090.35, 5090.50 and 5090.53, PRC

4970.66. MATCH REQUIREMENTS

Implemented: Section 5090.51, PRC

4970.67. APPLICATION EVALUATION SYSTEM

Implemented: Sections 5090.24 and 5090.32, PRC

4970.68. COMMISSION APPROVAL OF GRANTS AND COOPERATIVE
AGREEMENTS PROGRAM APPLICATIONS

Implemented: Sections 5090.32 and 5090.61, PRC

4970.69. PROJECT AGREEMENTS

Implemented: Sections 5090.32 and 5090.61, PRC

4970.70. PROJECT ADMINISTRATION

Implemented: Sections 5090.32 and 5090.50, PRC

4970.71. PERFORMANCE REVIEWS

Implemented: Section 5090.32, PRC

4970.72. AUDITS

Implemented: Section 5090.32, PRC

Informative Digest

Summary of Existing Laws and Regulations Directly Related to the Proposed Action and Effect of the Proposed Action

Public Resources Code section 5090.01 et seq. governs off-highway motor vehicle recreation grants and cooperative agreements with cities, counties, appropriate districts, federal agencies, and federally recognized Native American tribes, nonprofit organizations, and educational institutions.

The OHMVR Division Grants and Cooperative Agreements Program, Grants Program Manual (April 2007), which is incorporated in these regulations by reference, provides application instructions, an application evaluation system, and project administration procedures. The application instructions include an application filing date for each annual grant cycle, which is the first Monday of August.

CCR § 4970.49 provides that Chapter 15.5 applies only to applications that are received by the OHMVR Division on or after January 1, 2007.

CCR § 4970.50 provides definitions that clarify terms that are applicable or unique to the OHMVR Program. This section is being amended to revise the effective date of the Off-Highway Motor Vehicle Recreation Division Manual for Grants and Cooperative Agreements Program, Grants Program Manual (April 2007), which is incorporated by reference, to July 2007.

CCR § 4970.51 sets forth the purpose for the OHMVR Grants and Cooperative Agreements Program.

CCR § 4970.52 identifies the role of the OHMVR Commission prior to the start of each application cycle.

CCR § 4970.53 identifies the general application requirements that apply to all grant and cooperative agreement applications. The Grants Program Manual, which includes the application instructions, the application evaluation system, and the project administration procedures, is incorporated by reference. It also provides the OHMVR Division's responsibilities in the application submission process.

CCR § 4970.54 provides (1) the purpose of acquisition projects, (2) the agencies and organizations that are eligible to apply for acquisition projects, (3) a reference to the Grants Program Manual, which contains all the application requirements and forms, and (4) the project specific documents required for acquisition projects.

CCR § 4970.55 provides (1) the purpose of conservations projects, (2) the agencies and organizations that are eligible to apply for conservation projects, (3) a reference to the Grants Program Manual, which contains all the application requirements and forms, and (4) the project specific document required for conservations projects.

CCR § 4970.56 provides (1) the purpose of development projects, (2) the agencies and organizations that are eligible to apply for development projects, (3) a reference to the Grants Program Manual, which contains all the applications requirements and forms, (4) the project specific documents required for development projects, and (5) the requirement to meet all access requirements including the Americans with Disabilities Act of 1990.

CCR § 4970.57 provides (1) the purpose of facilities operation and maintenance projects, (2) the agencies and organizations that are eligible to apply for facilities operation and maintenance projects, and (3) a reference to the Grants Program Manual, which contains all the application requirements and forms.

CCR § 4970.58 provides (1) the purpose of law enforcement projects, (2) the agencies and organizations that are eligible to apply for law enforcement projects, and (3) a reference to the Grants Program Manual, which contains all the application requirements and forms.

CCR § 4970.59 provides (1) the purpose of off-highway vehicle (OHV) safety and/or education program projects, (2) the agencies and organizations that are eligible to apply for OHV safety and/or education program projects, (3) a reference to the Grants Program Manual, which contains all the application requirements and forms, and (4) a project specific document required for OHV safety and/or education program projects.

CCR § 4970.60 provides (1) the purpose of planning projects, (2) that planning actions for specific projects must be submitted as a component of the specific project type, (3) the agencies and organizations that are eligible to apply for planning projects, and (4) a reference to the Grants Program Manual, which contains all the application requirements and forms.

CCR § 4970.61 provides (1) the purpose of restoration projects, (2) the agencies and organizations that are eligible to apply for restoration projects, (3) a reference to the Grants Program Manual, which contains all the application requirements and forms, and (4) the project specific documents required for restoration projects.

CCR § 4970.62 provides (1) the purpose of trail maintenance projects, (2) the agencies and organizations that are eligible to apply for trail maintenance projects, (3) a reference to the Grants Program Manual, which contains all the application requirements and forms, and (4) a project specific document required for trail maintenance projects.

CCR § 4970.63 provides the specific environmental documentation that is required in all grant and cooperative agreement applications for projects that require CEQA compliance and it identifies the OHMVR Division's responsibilities in the review of the required environmental documentation.

CCR § 4970.64 provides (1) the purpose of a Wildlife Habitat Protection Program (WHPP) / Habitat Management Program (HMP), (2) the projects that require a

WHPP/HMP in grant and cooperative agreement applications, (3) the components to be included in a WHPP/HMP, and (4) the OHMVR Division's responsibilities in reviewing each WHPP/HMP.

CCR § 4970.65 provides (1) the projects that require evidence that a soil conservation program has been met in grant and cooperative agreement applications, (2) that the soil conservation program shall comply with the statute, the Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91) until replaced by any subsequent Soil Conservation Standards, and the Application Instructions and Appendix of the Grants Program Manual, and (3) the components that shall be included in the soil conservation program.

CCR § 4970.66 provides which types of projects in which types of facilities require that a funding match shall be provided by city, county, appropriate district, educational institution, and nonprofit organization applicants; and also provides that federal agencies and federally recognized Native American tribes are exempt from the funding match requirement.

CCR §4970.67 provides that applications shall be evaluated, scored, and awarded on a competitive basis according to Chapter 2, Application Evaluation System and OHV Form K in the Appendix of the Grants Program Manual.

CCR § 4970.68 provides that (1) applications shall be considered annually as long as funds are available, (2) the Commission Chair may designate a subcommittee to hold public meetings for preliminary consideration of applications, (3) the Commission will review applications in accordance with these regulations, and (4) the Division shall post the Commission's project list on the Division Website.

CCR § 4970.69 provides that the Division shall prepare and execute project agreements approved by the Commission.

CCR § 4970.70 provides that the Division and grantees shall comply with the project administration procedures in Chapter 3 of the Grants Program Manual. It also provides that grantees will maintain financial accounts, documents, and records in accordance with the Grants Program Manual and shall make them available to the Department's Auditor.

CCR § 4970.71 provides that the Division may conduct performance reviews of the grantees' projects. It also identifies the purpose of a performance review, which may be accomplished by desk reviews, questionnaires and other standards of inquiry, and/or site visits. It further provides the grantees' requirements regarding site visits, the Division's responsibility in developing reports regarding site visits, and the grantees' requirements to respond to the reports.

CCR § 4970.72 provides that the Department's Audit Office shall audit projects to ensure expenditures have been incurred in accordance with the statute and the project

agreements. It also provides all the grantees' requirements regarding the audits, the Department's responsibility to provide grantees with a copy of the final audit report, and the grantee's requirements in responding to the audit reports.

Documents Incorporated by Reference

The Grants Program Manual, which is incorporated by reference, is comprised of three chapters:

- Chapter 1 – Application Instructions
- Chapter 2 – Application Evaluation System
- Chapter 3 – Project Administration Procedures

Chapter 1, Application Instructions, Section 1.2.1 – Grants Cycle (page 4) provides a detailed chart of the activities that are included within each annual grant cycle. The third item on the chart, which provides that applications are due to the OHMVR Division by 5:00 p.m. on the first Monday of August, has been revised to 5:00 p.m. on the third Monday in September for the 2007/2008 grant cycle.

The date on the Title Page of the Grants Program Manual has been revised from April 2007 to July 2007. At the bottom of each page of the Grants Program Manual, the date has been revised from April 2007 to July 2007.

The Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91), which is incorporated by reference, will remain in effect until replaced by any subsequent soil conservation standards in accordance with PRC § 5090.35(b).

Mandate on Local Agencies or School Districts

The Director of the Department of Parks and Recreation has determined the proposed emergency regulations do not impose a mandate requiring reimbursement by the State, pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. Local agencies or school districts will not be required to incur additional costs in order to comply with the proposed emergency regulations.

Cost or Savings Estimate

The Director of the Department of Parks and Recreation has determined the regulations will not involve costs to any local agency or school district, other non-discretionary cost or savings to local agencies, cost or savings to any State agency, or cost or savings in federal funding to the State.