

**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 that an emergency exists, and that adoption of 2006 Off-Highway Motor Vehicle Recreation (OHMVR) Emergency Regulations is necessary to preserve the public peace, health and safety, and general welfare.

**Specific Facts Showing the Need for Immediate Action**

**Summary:**

Public Resources Code section 5090.01 et seq. governs off-highway motor vehicle grants and cooperative agreements with cities, counties, appropriate districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, and educational institutions. Under the permanent regulations (adopted in December, 2003), grants for cities, counties, appropriate districts, nonprofit organizations, educational institutions and cooperative agreements for federal agencies and Native American tribes were awarded for acquisition, development, law enforcement, operations and maintenance, resource management, safety and education, and equipment projects. During the 2004/2005 grant cycle, \$18 million was available for allocation by the Commission to eligible agencies and organizations to fund projects to maintain trails and facilities, clean restrooms, 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 riders on safety and resource protection.

During the 2004/2005 application cycle, the Director of the Department of Parks and Recreation determined that the 2003 permanent regulations were inconsistent with the statute. One of the bases for this determination was the fact that the instructions to apply for grants and cooperative agreements (OHV Grant Application Guide, June 2000), which were incorporated by reference into the regulations, had not been revised to include amendments to the Public Resources Code section 5090.01 that became effective in 2003 (AB 2274) and again in 2005 (AB 2666). Another basis was that the 2003 regulations required grants to be awarded on a competitive basis. However, the regulations did not contain criteria specific to the project types nor were they adequate to allow OHMVR Division staff to objectively evaluate and rank applications.

To remedy the situation before the beginning of the 2005/2006 application cycle, the Director proposed and the Office of Administrative Law (OAL) approved the adoption of emergency regulations in April 2005. The 2005 emergency regulations allowed 2005/2006 grant and cooperative agreement applicants time to submit applications consistent with the governing statutes, regulations, and new application instructions. The 2005 emergency regulations also created a defined competitive process that would avoid the interruption of vital law enforcement, life saving visitor service activities, public health measures, and/or resource management and protection activities.

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

The grants and cooperative agreements process includes 1) the submission of applications, 2) the Division's review, scoring, and funding determinations, and 3) final funding allocations by the OHMVR Commission. This process takes six to ten months to complete from the time applications are submitted to the Division to the time the successful applicants receive a certified project agreement to expend funds. To ensure the integrity of the process for the 2005/2006 funding cycle, the Department requested and OAL approved two readoptions of the 2005 emergency regulations. The second readoption will expire on April 5, 2006.

Through the implementation of the 2005 emergency regulations in the 2005/2006 funding cycle, the Division learned about aspects of the grants and cooperative agreements process, which will need attention in the process of permanently adopting the regulations. The emergency regulations themselves, the application instructions, the application evaluation system, and administrative procedures need revision to ensure that the permanent regulations provide the standard of clarity that is required in Government Code 11349.1, and that the application instructions provide a smoother application and evaluation process consistent with statutes and regulations.

While the first two steps of the grants and cooperative agreements process discussed above had been completed for the 2005/2006 cycle by the end of September 2005, the remaining step of allocation by the OHMVR Commission was not completed until the end of February 2006. Consequently, the Division did not have the information until recently to make the necessary changes to those sections of the regulations that provide the requirements for that final step.

The Division has been working on the formal adoption process since August 2005 and has conducted several meetings with stakeholders to involve them in discussions regarding the proposed permanent regulations and to allow them to provide their input. The Division identified a team of staff that has been working on the formal permanent adoption and has been making the necessary revisions to the emergency regulations and the application instructions. However, since the OHMVR Commission did not determine their 2005/2006 final funding allocations until February 2006, any potential changes to those sections of the proposed regulations and application instructions that provide the application evaluation system and the allocation of funds process have been delayed.

Since the 2005 emergency regulations expire on April 5, 2006, the Department is moving forward with the permanent adoption of regulations and will be submitting the formal package, including the proposed text and application instructions, prior to that expiration date. The 2006 permanent regulations package also proposes the repeal of the 2003 permanent regulations because of the inconsistencies with the amended statute.

The regular rulemaking process would delay the adoption of the 2006 regulations for at least six months. Since these regulations will not be submitted to OAL until the end of March 2006, the earliest possible date they will be approved is the end of September 2006. Consequently, the 2006/2007 application cycle could not begin until October 2006, which would result in final funding allocations not being made by the Commission until May of 2007. In addition, because the 2003 permanent regulations are not consistent with the governing statutes and

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

are proposed to be repealed and the 2005 emergency regulations expire on April 5, 2006, there will be no regulations in effect for the 2006/2007 funding cycle, which will essentially put the OHMVR Grants and Cooperative Agreements Program on hold until the permanent regulations are approved.

These 2006 emergency regulations are necessary to implement the Grants and Cooperative Agreements Program for the 2006/2007 cycle in a timely manner since the regular rulemaking process would unduly delay adoption of the 2006 regulations. This delay could jeopardize and devastate federal programs for the entire 2006/2007 fiscal year and part of the 2007/2008 cycle. Local programs would be similarly affected depending on applicable budget cycles. This regular rulemaking timeline directly conflicts with: 1) the applicant's ability to write and submit a grant or cooperative agreement, 2) the timeline for the allocation of funds by the OHMVR Commission, and 3) the applicant's ability to secure personnel for on-the-ground services after receiving a certification for expenditure of funds.

Until the regulations are revised permanently, including revised and improved application guidelines providing more clarity regarding the evaluation criteria for objective and competitive awarding of grants, the 2006/2007 Grants and Cooperative Agreements program is in jeopardy. The filing deadline for 2006/2007 applications is in July 2006, with final funding determinations to be made by the Commission in December 2006. To delay the allocation of funds beyond this scheduled date would seriously impact applicants in general, and the federal agencies in particular, due to their fiscal cycle beginning October 1<sup>st</sup>.

If federal applicants cannot receive their funding in a reasonable time after the start of their fiscal cycle, they will be unable to budget for and commence with necessary hiring. Thus, even if federal applicants ultimately receive funding from the program, if the funding allocation is substantially delayed due to the normal rulemaking process, any portion of the federal programs supported by the cooperative agreements may be effectively eliminated until the 2007/2008 fiscal year. As discussed below, the resulting interruption of vital law enforcement, life saving visitor service activities, and resource protection and management would have deleterious effects on public peace, health, and safety, and impacts to the general welfare would be significant.

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

The OHMVR Program came into effect in 1971 when two members of the legislature - an off-road enthusiast and a conservationist - recognized the need to balance OHV recreation with environmental stewardship by enacting legislation to help manage OHV recreation. Less than a decade later, the Grants and Cooperative Agreements Program came into existence. Throughout the life of the program \$263 million dollars has been allocated to grant and cooperative agreement applicants. California State Parks, OHVMR Division, has partnered with the federal agencies (U.S. Forest Service and Bureau of Land Management) as well as cities, counties, appropriate districts, educational institutions, and non-profit organizations to provide and manage OHV opportunities, including providing funding for trail maintenance, law

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

enforcement, safety training, visitor services, and wildlife and cultural resources monitoring and protection.

Over the past twenty years, the numbers of off-highway vehicles sold has increased dramatically. The Grants and Cooperative Agreements Program provides key State funding to effectively manage this recreation use. The proposed 2006 emergency regulations provide that grants and cooperative agreements are allocated in categories that include acquisition, conservation, development, equipment, law enforcement, facilities operation and maintenance, planning, OHV safety and/or education, restoration, scientific research, and trail maintenance. These project types provide urgent on-going services to counties as well as federal agencies. A delay in the disbursement of 2006/2007 OHV funds could cripple or even terminate long-standing programs that protect the public peace, health and safety, and general welfare.

The funds from the Grants and Cooperative Agreements program provide visitor services educating OHV recreationists on safe and responsible use and compliance with laws and regulations. As such, funds from the grants and cooperative agreements program provide essential services as well as help support significant law enforcement efforts geared toward OHV recreation users on both federal and local lands. The funds help support federal and local peace officers and other personnel assigned to enforce, promote, and monitor compliance with laws and regulations. Without grants funds, law enforcement officers are subject to re-assignment to other areas besides the enforcement of OHV related activities. For example, a variety of regional and national demands vie for the time of U.S. Forest Service Law Enforcement Officers, including large fire support, drug enforcement, and other special details. When agencies receive OHV funds, agencies are able to keep officers in the area and assigned to OHV related enforcement activities (e.g., enforcing speed limits, helmet requirements, noise regulations, preventing trespass, responding to violent crime(s), protecting sensitive biological and cultural sites).

When accidents occur, grant or cooperative agreement funded personnel provide emergency response, search and rescue, and medical aide. Without funding, there will be a reduction in the number of seasonal personnel, and some seasonal personnel will not be hired, resulting in fewer officers in the field. The personnel shortage will have immediate and serious effects, especially in areas with no other source of funding. In areas where safety protocols prohibit single officer units, patrols will not be done if backup officers are not available. Fewer personnel will be available to promote and enforce safety measures such as speed limits and DUI laws. It is estimated that as a result, accidents would increase in both number and severity. The funding shortage could also hamper the ability of emergency responders to provide timely assistance, since some grant-funded law enforcement personnel provide first response at incidents. In addition, grant-funded law enforcement staff provides back-up and accident scene safety. A shortage of such staff would create critical delays in response time leading to unnecessary suffering or death.

Peaceful and lawful use of OHV areas would likely decrease with a delay or halt in funding, which could have devastating effects for the general public as well as the natural resources. In recent years, grant-funded law enforcement officers in conjunction with other agencies and

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

user groups have created partnerships and outreach programs to increase responsible OHV use and lawful behavior. The Bureau of Land Management (BLM) El Centro Office, for example, has forged a partnership with the Imperial County Sheriff's Office (ICSO) to promote and enforce the laws in the Southern California desert. The Imperial Sand Dunes Recreation Area was once plagued by riots, assaults, auto theft, and other criminal activity. Violations of natural and cultural resource protection measures were common. Together, the BLM and ICSO have made great strides in increasing resource protection and returning the Imperial Sand Dunes Recreation Area to a family environment. Although the BLM might attempt to continue to fund some enforcement in the area should grant funding cease, more than likely the ICSO would be unable to do so. Interruption of this successful partnership, even for one season, could allow past criminal problems to resurface. It would take years of concerted effort to regain ground lost by just one season without funding.

Overall public health and safety for both riders and non-riders alike would be hampered by the loss of grant or cooperative agreement funding. One very popular OHV trail, which crosses over the Sierra, receives approximately 25,000 visitors during the summer months. Studies estimate annual waste generated on public land (based on 0.35 gallons per person per day) would be about 75,000 pounds, or 8,800 gallons of human waste. Absent the provision of grant funding, the problems of human waste disposal and habitat damage would be exacerbated, and the applicant's management plan to correct existing problems would be halted. In Southern California, at a popular OHV area over a holiday weekend, the BLM supplies 300 rolls of toilet paper to 12 restrooms facilities. In these restrooms, 1,200 gallons of waste are pumped out 2-3 times per year. Without grant funds, these facilities would be closed; the nearest sanitary facilities are 28 miles away. The public would have no restroom facilities and would more than likely use canyons or washes in the Wilderness or nearby Area of Critical Environmental Concern. Lack of grant or cooperative agreement funds would lead to disposal of large quantities of human waste on the ground and pose an immediate and long-term threat to human health.

Additionally, enforcement of infractions such as dumpster diving, in which people break into dumpsters and scatter debris, sewage and gray water dumping, and littering would likely decrease in the absence of grant funds. The result would be more trash, human waste and pollution spread into public areas and sensitive environments, an increase in vermin, and the spreading of disease and illness to both humans and wildlife. Grant funds are also used to educate recreationists on the dangers of OHV related petroleum spills, and to provide recreationists with petroleum spill kits, complete with absorbent to encourage proper disposal of spilled materials.

As part of their routine patrols of OHV areas, rangers monitor sensitive natural and cultural resources that may be affected by illegal OHV use. However, reduced patrols would lead to increased damage to sensitive resources and illegal intrusion into closed areas. Cultural resources would be subject to vandalism and theft. With the lack of general field presence, unintentional resource damage could go undetected, and measures that might otherwise protect such sites would be delayed. The Statewide efforts to maintain trails for proper drainage and prevention of erosion, protect water quality, provide the newest in technology for waste disposal, and enforce laws to prevent resource damage, are vitally important to the

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

continuation of OHV recreation in California. Each of these activities by itself is important for the protection of valuable resources. Without trail maintenance, erosion caused sediment will drain into local streams and rivers, threatening water quality. Without funding to make sure issues are addressed, California's valuable resources will be at risk.

OHV funds pay for aircraft to fly over Wilderness areas to look for wilderness intrusion by individuals using snowmobiles. After violators are located, law enforcement units on the ground, also paid for by grant funds, are guided to violators and issue citations. Although Wilderness intrusions and violations still occur, the number of intrusions has been steadily reduced due to increased enforcement, volunteer patrols, and an increase in outreach and communication—all paid for with OHV funds. OHV-funded U.S. Forest Service employees are assigned to patrol the groomed over-the-snow vehicle (OSV) trails to ensure compliance and provide services to visitors. These patrols are time intensive. An officer typically dedicates a full day (usually 10+ hours) when doing OSV patrols and is not available to take any other calls for service. Without the grant funds, officers will be assigned to general patrol and will only respond to specific reports of violations. As a result of this reassignment response times to get equipment and travel to violation areas will be extended, minimizing the chance of apprehending violators. Without grant funding, the entire OSV enforcement patrol would collapse and the progress made in recent years would be lost.

The proposed 2006 emergency regulations 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, life saving visitor service activities, public health measures, and/or resource management and protection activities.

**Status of the 2005 Emergency Regulations and the 2005/2006 Application Cycle**

The OHMVR Division from June 2005 through September 2005 was in the process of reviewing grant and cooperative agreement applications and making funding determinations for the 2005/2006 funding cycle in accordance with the 2005 emergency regulations. Readoption of the 2005 emergency regulations in August 2005 was necessary to ensure the integrity of the competitive grants and cooperative agreements process as discussed above. A second readoption was necessary as a result of the additional time required to complete the 2005/2006 competitive grants and cooperative agreements process, to make the necessary changes to the regulations as a result of that process, and to ensure that stakeholders and the OHMVR Commission had an opportunity to provide input on those changes. The second readoption of the 2005 emergency regulations will expire on April 5, 2006.

On September 30 and October 21, 2005, the OHMVR Commission held Subcommittee public meetings for preliminary consideration of the grant and cooperative agreement applications that had been evaluated, scored, ranked, and had received funding determinations by the Division. The Commission subcommittee used the OHMVR Division's funding determinations as the basis for development of a Commission consent calendar.

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

At the Commission final funding allocation meetings, in December 2005, the Commission scored and approved funding for 137 grant and cooperative agreement applications. Upon legal review, the Division determined 46 applications were scored without consideration for the evaluation criteria provide in and required by the 2005 emergency regulations. In response to this finding, the Commission called for a meeting to reconsider the 46 grant and cooperative agreement applications in question.

On January 25, 2006, a lawsuit was filed in Sacramento County Superior Court by six stakeholder groups/associations alleging the Commission did not base their decisions on evidence in the record and that those decisions were not supported by substantial evidence in the official record of public testimony at the December 2005 public meeting. The lawsuit requested the Court issue an injunction enjoining all disbursements of funds until the issues within the lawsuit had been resolved.

On February 27, 2006 the Commission held a public meeting to reconsider, score, and make funding determinations for the 46 applications. During this final funding allocation process, the Division could not move forward with the execution of the final 2005/2006 project agreements until it was determined the re-scoring of the 46 applications would not affect the available funding for the applications for which the Commission had followed the process.

As mentioned earlier, the current readoption of the 2005 emergency regulations expires on April 5, 2006. Therefore, a third readoption of the 2005 emergency regulations is necessary because of the delay in the disbursement of 2005/2006 funds. The third readoption will also continue to ensure the integrity of the 2005/2006 grants and cooperative agreements process, which includes the administrative procedures required by the regulations once the final funding determinations have been made and the project agreements are executed with the successful applicants.

In requesting this third readoption of the 2005 emergency regulations, the Department is proposing to limit the requirements of these regulations to grant and cooperative agreement applications that have been received by the OHMVR Division **prior to January 1, 2006**.

**Status of the Permanent Rulemaking Process**

The intensive workload required during the 2005/2006 grants and cooperative agreements evaluation process precluded the Division from dedicating staff to the task of working solely on the permanent adoption of emergency regulations. However, the OHMVR Division identified a team of staff to work on formal adoption beginning in August 2005. Through the implementation of the emergency regulations in the 2005/2006 funding cycle, the Division has learned about aspects of the Grants and Cooperative Agreements Program, including the emergency regulations themselves, the application instructions, the application evaluation system and administrative procedures which will need attention in the process of permanently adopting the regulations. Items which have been identified and need attention are:

- Include specific regulation language to provide more clarity to potential applicants and the public;

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

- Clarify documentation requirements including required environmental review documentation to provide more clarity to future applicants;
- Clarify several areas within the application instructions that need improvement to ensure a smoother application process consistent with statutes and regulations; and
- Clarify areas within the evaluation criteria that need improvement to ensure more defensible objectives and competitive awarding of grants and cooperative agreements.

The team that has been working on the permanent adoption of the regulations has revised the text of the 2005 emergency regulations and the application instructions to include all of the abovementioned items.

Because there have been some significant revisions to the 2005 emergency regulations and related documents, the Division, in accordance with Government Code § 11346.45(a), conducted several meetings with stakeholders to involve those parties who would be subject to the proposed permanent regulations in discussions in which they could provide their input.

A Commission meeting was held on March 10, 2006, to give Commission members and the public the opportunity to provide their comments about the proposed 2006 regulations prior to the publication of the official Notice of Proposed Rulemaking in OAL's Notice Register. These comments have been taken into consideration in preparing the proposed text of the 2006 permanent regulations and the documents incorporated by reference, including the application instructions.

The regular rulemaking process would delay the adoption of 2006 permanent regulations for at least six months. Since the Department is requesting the readoption of the 2005 emergency regulations to effect only those grant and cooperative agreement applications received by the Division prior to January 1, 2006, the Department is proposing to adopt the 2006 regulations as emergency regulations and is submitting the 2006 notice for the permanent regulations simultaneously to OAL prior to April 5, 2006. With the approval of the 2006 emergency regulations, the Division can then move forward with the 2006/2007 grant and cooperative agreement application cycle and avoid delays while the proposed 2006 permanent regulations are going through the regular rulemaking process.

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

**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:**

**4970.00. 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, and 5090.64(b)(1) and (2), and 21000 et seq., PRC; Title 14, CCR, Division 6, Chapter 3, Article 20; Title 14, CCR, Division 3, Chapter 11.5, Section 4852; CVC Sections 111, 400, 436, 557, 38001, 38006, 38012, and 38225(c); 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); Education Code Section 210.1; U.S. Internal Revenue Code Section 501(c)(3).

**4970.01. PROGRAM PURPOSE**

Implemented: Sections 5090.01 thru 5090.70, PRC

**4970.02. COMMISSION'S ANNUAL PROGRAM REVIEW MEETING**

Implemented: Section 5090.24(f), PRC

**4970.03 GENERAL APPLICATION REQUIREMENTS**

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

**4970.04. ACQUISITION PROJECTS**

Implemented: Sections 5090.32 and 5090.50, PRC;  
Title 1, Division 7, Chapter 16, Section 7260 et seq.,  
Government Code

**4970.05. CONSERVATION PROJECTS**

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

**4970.06. DEVELOPMENT PROJECTS**

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

**4970.07. EQUIPMENT PROJECTS**

Implemented: Sections 5090.32 and 5090.50, PRC

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

4970.08. FACILITIES OPERATION AND MAINTENANCE (FO&M) PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.09. LAW ENFORCEMENT PROJECTS

Implemented: Sections 5090.32, 5090.50, and 5090.64(b)(2), PRC; CVC 38000 et seq.

4970.10. OHV SAFETY AND/OR EDUCATION PROGRAM PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.11. PLANNING PROJECTS

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

4970.12. RESTORATION PROJECTS

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

4970.13. SCIENTIFIC RESEARCH PROJECTS

Implemented: Sections 5024.1, 5090.32, and 5090.50, PRC

4970.14. TRAIL MAINTENANCE PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.15. CEQA REQUIREMENTS

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

4970.16. WILDLIFE HABITAT PROTECTION PROGRAM (WHPP)/HABITAT MANAGEMENT PROGRAM (HMP)

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

4970.17. SOIL CONSERVATION PROGRAM

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

4970.18. MATCH REQUIREMENTS

Implemented: Section 5090.51, PRC

4970.19. APPLICATION EVALUATION SYSTEM

Implemented: Sections 5090.24 and 5090.32, PRC

4970.20. COMMISSION ALLOCATION OF FUNDS AND APPROVAL OF GRANT AND COOPERATIVE AGREEMENT PROGRAM APPLICATIONS

Implemented: Sections 5090.32 and 5090.61, PRC

4970.21. AUDITS

Implemented: Section 5090.32, PRC

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

4970.22 PERFORMANCE REVIEWS

Implemented: Section 5090.32, PRC

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

**Informative Digest/Policy Statement Overview**

**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 grants and cooperative agreements with cities, counties, appropriate districts, federal agencies, and federally recognized Native American tribes, nonprofit organizations, and educational institutions. The statute was amended effective January 2003 and again in January 2005. The Department has determined that the permanent regulations in CCR, Title 14, Division 3, Chapter 15, Articles 1 through 8, Sections 4970.00 through 4970.32, which were adopted on December 31, 2003, are internally inconsistent and cannot be administered in a lawful manner. The June 2000 OHV Grant Application Guide (herein referred to as "2000 Guide"), which provides mandatory content and format for grant and cooperative agreement applications, is incorporated by reference into the 2003 Regulations. The existing 2000 Guide has not been revised consistent with Public Resources Code 5090.01 et seq. or the implementing regulations and is inconsistent with the text of 14 CCR 4970.00 et seq. In April 2005, the Department proposed and OAL approved 2005 emergency regulations, which incorporated Application Instructions that are consistent with Public Resources Code section 5090.01 et seq. and the implementing regulations.

In addition, Section 4970.32 of the 2003 regulations required that OHV grants and cooperative agreements be awarded on a competitive basis. The 2000 Guide did not contain criteria specific to the project types or require the submittal of application data adequate to allow for objective application ranking. The evaluation criteria in Section 4970.32 (c) were not adequate to allow Division staff to objectively rank applications. The 2005 emergency regulations revised the grant project categories, submittal requirements, and evaluation criteria to facilitate objective ranking and allow for competitive grant awards for the 2005/2006 funding cycle.

To ensure the integrity of the 2005/2006 grants and cooperative agreements process, which takes from six to ten months to complete, the 2005 emergency regulations were readopted twice and will expire on April 5, 2006. The Division has been working on the formal adoption process since August 2005. However, since the final funding determinations were not completed by the Commission until the end of February 2006, revisions to sections of the proposed regulations that provide the application evaluation system and the allocation of funds process could not be made until recently.

As a result, the Department is proposing to adopt 2006 emergency regulations prior to the expiration of the 2005 emergency regulations. The Department is submitting the 2006 proposed permanent regulations at the same time. These parallel processes will allow the 2006/2007 funding cycle to remain on schedule as the proposed permanent regulations go through the regular rulemaking process.

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

The proposed 2006 emergency regulations, CCR, Title 14, Division 3, Chapter 15.5, Articles 1 through 5, and Sections 4970.00 through 4970.22 provide clear and concise guidelines and standards for the OHMVR Program as follows:

CCR § 4970.00 provides definitions that clarify terms that are applicable or unique to the OHMVR Program.

CCR § 4970.01 sets forth the purpose for the OHMVR Grant and Cooperative Agreement Program. This section is being amended to further clarify the legislative intent of the statute.

CCR § 4970.02 identifies the role of the OHMVR Commission prior to the start of each application cycle.

CCR § 4970.03 provides the general requirements that apply to all grant and cooperative agreement project applications.

CCR § 4970.04 provides (1) the purpose of acquisition projects, (2) the agencies and organizations that are eligible to apply, (3) examples of acquisition projects, (4) eligible costs associated with acquisition projects, and (5) the specific application and content requirements for acquisition projects.

CCR § 4970.05 provides (1) the purpose of conservation projects, (2) the agencies and organizations that are eligible to apply, (3) examples of conservation projects, and (4) the specific application and content requirements for conservation projects.

CCR § 4970.06 provides (1) the purpose for development projects, (2) the agencies and organizations that are eligible to apply, and (3) the specific application and content requirements for development projects.

CCR § 4970.07 provides (1) the purpose of equipment projects, (2) the agencies and organizations that are eligible to apply, (3) examples of equipment purchases or repair, (4) the specific application and content requirements for equipment projects, and (5) the requirements for the use, identification, registration, maintenance, and disposal of equipment purchased, leased, or rented with OHV funds.

CCR § 4970.08 provides (1) the purpose of facilities operation and maintenance projects, (2) the agencies and organizations that are eligible to apply, (3) examples of facilities operation and maintenance projects, and (4) the specific application and content requirements for facilities operation and maintenance projects.

CCR § 4970.09 provides (1) the purpose of law enforcement projects, (2) the agencies and organizations that are eligible to apply, (3) examples of law enforcement projects, and (4) the specific application and content requirement for law enforcement projects.

CCR § 4970.10 provides (1) the purpose of OHV safety and/or education program projects, (2) the agencies and organizations that are eligible to apply, (3) examples of OHV safety

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

and/or education projects, and (4) the specific applications and content requirement for OHV safety and/or education program projects.

CCR § 4970.11 provides (1) the purpose of planning projects, (2) the agencies and organizations that are eligible to apply, (3) examples of planning projects, and (4) the specific application and content requirements for planning projects.

CCR § 4970.12 provides (1) the purpose of restoration projects, (2) the agencies and organizations that are eligible to apply, (3) examples of restoration projects, and (4) the specific application and content requirements for restoration projects.

CCR § 4970.13 provides (1) the purpose of scientific research projects, (2) the agencies and organizations that are eligible to apply, (3) examples of scientific research projects, and (4) the specific application and content requirements for scientific research projects.

CCR § 4970.14 provides (1) the purpose of trail maintenance projects, (2) the agencies and organizations that are eligible to apply, (3) examples of trail maintenance projects, and (4) the specific application and content requirements for trail maintenance projects.

CCR § 4970.15 identifies the specific environmental documentation that is required to be included in grant and cooperative agreement applications for projects that require CEQA compliance.

CCR § 4970.16 identifies the projects and applicants that require a Wildlife Habitat Protection Program/Habitat Management Program in grant and cooperative agreement applications.

CCR § 4970.17 identifies the projects and applicants that require a Soil Conservation Program in grant and cooperative agreement applications.

CCR § 4970.18 identifies the projects and applicants that are required to provide matching funds or the equivalent in value of services, materials, or property used.

CCR § 4970.19 provides the system that will be utilized by the OHMVR Division to evaluate, score, and rank and make funding determinations for grants and cooperative agreements program applications and also provides for the Division's submission of evaluated single and multiple project applications to the OHMVR Commission for funding consideration.

CCR § 4970.20 provides the process through which the OHMVR Commission allocates funds, which includes public hearings to obtain input from applicants and the general public. This section also identifies the Division's responsibility to administer the funds allocated by the Commission.

CCR § 4970.21 provides the Department of Parks and Recreation's responsibility to audit projects. It also provides for the grantees' responsibility to use generally accepted accounting methods and to maintain and retain records, documents, and accounts.

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

CCR § 4970.22 provides the Division's responsibility to conduct performance reviews of grantee's open projects to determine progress toward the accomplishment of deliverables.

**Policy Statement Overview (Objectives)**

These emergency regulations are necessary to ensure the timely allocation of funds during the 2006/2007 cycle. The Director is committed to operating the grants and cooperative agreements program in a manner that affords applicants the opportunity to plan for and implement OHV projects essential to preserving the public peace, health and safety, and general welfare. Timely allocation of grant funds is necessary to ensure these programs can continue uninterrupted.

**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.