

**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 re-adoption of amended Off-Highway Motor Vehicle Recreation (OHMVR) 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, and federally recognized Native American tribes. Under the current regulations (adopted in December, 2003), grants for local agencies, non-profits, educational institutions and cooperative agreements for federal agencies and Native American tribes (collectively referred to herein as "grants") may be awarded for acquisition, development, law enforcement, operations and maintenance, resource management, safety and education, and equipment projects. During the 2004/2005 grant cycle, \$17 million was allocated to local agencies, non-profits, educational institutions and federal agencies 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.

Instructions on how to apply for grants (OHV Grant Application Guide, June 2000, herein referred to as "2000 Guide") were incorporated by reference into the regulations implementing the grants program. Although amendments to Public Resources Code section 5090.01 *et seq.* became effective in 2003 (AB 2274) and again in 2005 (AB 2666), a revised application guide consistent with the statute and regulations was not adopted. Therefore, applicants, required to follow the 2000 Guide, are unable to prepare grant applications consistent with the statute and regulations. Furthermore, existing regulations require grants be awarded on a competitive basis. However, the existing regulations, including the 2000 Guide, do not contain criteria specific to the grant types nor are they adequate to allow Division staff to objectively evaluate and rank applications. The effect of having the 2000 Guide (which is out of compliance with the governing statutes and regulations), and the lack of clear, objective evaluation criteria results in a Grants program that cannot be administered in a lawful manner. Until the regulations are revised, the grants program must either shut down or face the risk of being shut down by legal challenge. The resulting lack of grant funding will immediately jeopardize local and federal off-highway motor vehicle (OHV) recreation programs that protect public peace, health and safety, and general welfare.

The Current Regulations Jeopardize the Viability of the Grants Program

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.

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Throughout the life of the program \$263 million dollars has been allocated to grant applicants. California State Parks, OHVMR Division, has partnered with the federal agencies (U.S. Forest Service and Bureau of Land Management) as well as local agencies, educational institutions, counties, and non-profits to provide and manage OHV opportunities, including providing funding for trail maintenance, law enforcement, safety training, visitor services, and wildlife and cultural resources monitoring and protection.

The program is governed by statute (Public Resources Code § 5090.01 et seq.) and regulations (CCR Title 14, Division 3, Chapter 15, § 4970.00 et seq.). The 2000 Guide, which describes in detail to applicants how to apply for grants or cooperative agreements, is provided by the Division and incorporated by reference into the regulations. The last official update to the application instructions was the 2000 Guide, even though new statutory requirements were codified in 2003 and 2005 with the passage of AB 2274 and AB 2666, respectively. The 2000 Guide was updated in the OHVMR Division office; however, it was not subjected to the Administrative Procedures Act (APA) and cannot be used to direct or instruct applicants due to inconsistency with current statute and regulations. Therefore, the 2000 Guide remains in effect as the guiding document for applicants. As such applicants cannot comply in concert with the 2000 Guide, the statute, and the regulations. Therefore, applicants face the impossible task of complying with conflicting rules; thus, no application can be entirely within the law.

In addition, the regulations require the grants be awarded on a competitive basis (4970.32 (a)). Although existing regulations provide general evaluation criteria governing all applications, there are no criteria specific to each project within an application. In the absence of project specific criteria or an understanding of how Division staff will apply the evaluation criteria and provide funding determinations for applications based on the criteria, the assertion of a competitive grants program is without merit.

The OHVMR Commission allocates grants and cooperative agreements funding on a yearly basis as long as funds are available. The grants and cooperative agreements cycle is a six-to-ten month cycle from the time applications are submitted to the Division and applicants receive funding allocations by the Commission, to the time an applicant receives a certified agreement to expend funds.

These emergency regulations are necessary to implement the legislative mandates for the 2005/2006 cycle, since the regular rulemaking process would unduly delay adoption of the revised regulations resulting in a delay of over six months. This delay could jeopardize and devastate federal programs for the entire 2005/2006 fiscal year and part of the 2006/2007 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 OHVMR 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 application guidelines consistent with statutes and regulations providing clear evaluation criteria for objective and

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competitive awarding of grants, the 2005/2006 Grants and Cooperative Agreements program is in jeopardy. The filing deadline for 2005/2006 applications was June 10, 2005, with final funding determinations to be made by the Commission in December 2005. 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 1st.

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 2006/2007 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 language of AB 2274 provided that 30% of the Conservation and Enforcement Services Account (CESA) allocated by the OHMVR Commission must go toward restoration of lands, lands that are no longer used for OHV recreation. Funding for this type of activity is derived from a dedicated funding source that can only be used for restoration activities. In the current regulations, restoration activities are included in the resource management project category, which also includes other types of activities such as natural resource conservation. The activities allowed within a restoration project and solely paid for with restoration funds are not clearly defined. To clearly comply with the statute, facilitate tracking of funds allocated for restoration activities, and properly implement the restoration program as intended, the emergency regulations propose stand-alone restoration projects, which provide clarity and specificity associated with the types of activities and the eligible costs that may be included under restoration.

Specific applicability of the 25% funding match by local agencies is confusing to the grant applicants. The 2000 Guide directly conflicts with itself and with the current regulations. The 2000 Guide lacks sufficient clarity in the applicability of the match requirement and as a result grant applicants are unable to compete effectively and fairly in the Grants program.

Absent the readoption of these emergency regulations, the OHMVR Division Grants and Cooperative Agreements program will be out of compliance with the regulations adopted December 2003. If the Division proceeds under the normal rulemaking process, funding allocations for the 2005/2006 cycle will be in violation of existing law. Under the leadership of a new Deputy Director, the Division has undergone an extensive review of the regulations, including participation of stakeholder groups. The result of this exercise has been 1) the development of these emergency regulations to conform to the requirements of AB 2274, eliminating ambiguities caused by the regulations/2000 Guide conflict and AB 2666, and 2) a competitive grants and cooperative agreements program that is efficient, follows the statute, and provides a means to evaluate, rank, and make funding determinations for the allocation of funds. There was not sufficient time to develop new regulations using the results of stakeholder input and submit them through the regular Office of Administrative Law (OAL)

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process before the next grants and cooperative agreements cycle (June 2005), thus the need for emergency regulations.

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

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. Currently, grants and cooperative agreements are allocated in categories that include acquisition, development, equipment, law enforcement, operation and maintenance, planning, resource management, and OHV safety and/or education. These project types provide urgent on-going services to counties as well as federal agencies. As previously noted, the inconsistent regulations combined with the 2000 Guide conflict and the lack of objective evaluation and ranking criteria mean no grant funds can be distributed. The resulting lack of 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 allocated 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 OHV funded law enforcement personnel provide first response at incidents. In addition, OHV funded law enforcement staff provide back-up and accident scene safety. A shortage of such staff would create critical delays in response time leading to unnecessary suffering or death.

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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, OHV funded law enforcement officers in conjunction with other agencies and 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 OHV 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 OHV 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 OHV 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 OHV 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. OHV 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

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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 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 OHV 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 OHV 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 OHV funding, the entire OSV enforcement patrol would collapse and the progress made in recent years would be lost.

The proposed emergency regulations will allow grant and cooperative agreement applicants time to submit applications consistent with the governing statutes, regulations, and new application instructions. It will also create 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 Permanent Rulemaking Process

The OHMVR Division since June 10, 2005 has been in the process of reviewing grant and cooperative agreement applications and making funding determinations for the 2005/2006 funding cycle. Readoption of the 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 is 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 stakeholders have an opportunity to provide input on those changes.

The grants and cooperative agreements process includes 1) the submission of applications, 2) the OHMVR Division's review, score and funding determinations, and 3) final funding allocation by the OHMVR Commission. While the first two steps have been completed, the remaining step of allocation by the OHMVR Commission has yet to occur. Until the OHMVR Commission is able to make their funding determinations using the application evaluation system as detailed in the regulations, the OHMVR Division will need this information to make

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the necessary changes to the regulations as a result of active involvement in this remaining process.

The emergency regulations provide an application evaluation system that includes specific evaluation criteria for each type of project submitted within each application. From June 13 through September 29, 2005, Division staff evaluated and scored those applications that were determined to be complete and made funding determinations for each project scored.

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.

In December 2005, the Commission will hold their final funding meeting in which they will allocate funds for the 2005/2006 grant and cooperative agreement cycle.

The intensive workload required during the 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 Grant 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 we have identified and need attention are:

- Clarify specific regulation language clean-up to provide more clarity to potential applicants and the public;
- 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 emergency regulations and the application instructions to include all of the abovementioned items. The Initial Statement of Reasons and the Notice of Proposed Rulemaking have been drafted and have been reviewed by the Department's Legal Division. Final revisions to the proposed text and all documents incorporated by reference, the Initial Statement and the Notice are currently being made.

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Because there have been some significant revisions to the emergency regulations and related documents, the Division, in accordance with Government Code § 11346.45(a), is planning to conduct several meetings with stakeholders prior to the publication of the Notice of Proposed Rulemaking. The purpose of these meetings is to involve those parties who would be subject to the proposed regulations in discussions in which they can provide their input. The Division is planning to conduct these meetings in early December.

Also, in the past several months, the members of the OHMVR Commission have dedicated their time to reviewing those applications that have been evaluated by the Division and making their final funding allocations. As such, Commission members have not had the time or opportunity to provide their comments on the regulations and, in particular, the section that provides the application evaluation system and the allocation of funds process.

A Commission meeting has been scheduled for early December 2005 to give Commission members the opportunity to voice their comments about the regulations. These comments may necessitate additional revisions to the regulations and related documents. Since the current readoption of the emergency regulations expires on December 7, 2005, the Division is hereby requesting a second readoption of the emergency regulations to allow stakeholders and the Commission members to provide their input before initiating regulatory action. Once the comments are received, the OHMVR Division will then make the necessary changes to the program and move forward to submit final regulations. Finally, in order to avoid the 45-day comment period occurring during the holiday season, the Division plans to submit final regulations in January 2006.

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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, 5024.1, 5090.04, 5090.05, 5090.06, 5090.07, 5090.10, 5090.11, 5090.32, 5090.35, 5090.50, 5090.51(b), and 5090.64(b)(1) and (2), and 21000 et seq., PRC; CCR, Title 14, Section 4852 and Sections 15000 et seq.; CVC Sections 111, 400, 436, 557, 38000, 38001, 38006, 38012, and 38225(c); 42 U.S.C. 4371; 43 U.S.C. 1601 et seq.; 40 CFR part 1500.1 et seq.; 25 CFR 83.5(a); Education Code Section 210.1; U.S. Internal Revenue Code Section 501(c)(3).
Repealed: 25 U.S.C. 479a and 479a-1.

4970.01. PROGRAM PURPOSE

Implemented: Sections 5090.02 and 5090.32(d), PRC
Repealed: Sections 5090.10, 5090.35, 5090.50, and 5090.53(b)(4), PRC

4970.02. COMMISSION'S ANNUAL PROGRAM REVIEW MEETING

Implemented: Sections 5090.24(f) and 5090.32, 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. DEVELOPMENT PROJECTS

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

4970.06. EQUIPMENT PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.07. FACILITIES OPERATION AND MAINTENANCE (FO&M) PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.08. LAW ENFORCEMENT PROJECTS

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

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4970.09. OHV SAFETY OR EDUCATION PROGRAM PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.10. PLANNING PROJECTS

Implemented: Sections 5024.1, 5090.32, and 5090.50, PRC

4970.11. RESOURCE MANAGEMENT PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.12. RESTORATION PROJECTS

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

4970.13. STUDIES AND SCIENTIFIC RESEARCH PROJECTS

Implemented: Sections 5024.1, 5090.32, and 5090.50, PRC

4970.14. TRAIL MAINTENANCE, TRAIL CONSERVATION, AND TRAIL REROUTE PROJECTS

Implemented: Sections 5090.32 and 5090.50, PRC

4970.15. CEQA REQUIREMENTS

Implemented: Sections 5090.32 and 5090.50(g), PRC

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. ACCOUNTING, ANNUAL AUDITS AND PERFORMANCE REVIEWS AND SITE VISITS

Implemented: Section 5090.32, PRC

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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 (collectively referred to herein as “grants”) with cities, counties, appropriate districts, federal agencies, and federally recognized Native American tribes. The statute was amended effective January 2003 and again in January 2005. The Department has determined that the existing implementing 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 Regulations. The existing 2000 Guide has not been revised consistent with Public Resources Code 5090.50 et seq. or the implementing regulations and is inconsistent with the text of 14 CCR 4970.00 et seq. These proposed emergency regulations incorporate Application Instructions that are consistent with Public Resources Code section 5090.50 et seq. and the implementing regulations.

14 CCR 4970.32 requires that OHV grants and cooperative agreements be awarded on a competitive basis. The 2000 Guide does not contain criteria specific to the project types or require the submittal of application data adequate to allow for objective application ranking. The existing evaluation criteria at 14 CCR 4970.32 (c) are not adequate to allow Division staff to objectively rank applications. These proposed emergency regulations revise the grant project categories, submittal requirements, and evaluation criteria to facilitate objective ranking and allow for competitive grant awards.

The current regulations do not clearly provide the standards by which applicants can determine whether they must comply with the matching fund requirement in statute. Specifically, the regulations do not state that law enforcement grants to local agencies are subject to a 25% match requirement, as required under Public Resources Code section 5090.51. These emergency regulations include a new section that clarifies and makes specific the types of projects and applicants that are required by statute to provide matching funds or the equivalent value of services, material, or property used. The new project categories also facilitate the allocation of funds while ensuring compliance with the funding categories required in statute. The emergency regulations also clarify requirements for environmental documentation, specifying the contents of a Wildlife Habitat Protection Program/Habitat Management Program (WHPP/HMP) and a Soils Conservation Strategy for certain types of projects and applicants as required in the statute.

These proposed regulations clearly indicate which applicants and projects must comply and discuss the components that are required within the WHPP/HMP. The proposed regulations also clarify requirements for compliance with the California Environmental Quality Act (CEQA; Public Resources Code § 21000 et seq.) and the National Environmental Policy Act (NEPA; 42 USCA § 4321 et seq.).

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In addition, certain sections of the existing regulations have been repealed since they are procedural in nature and/or already exist in the State Administrative Manual. The language in these repealed sections has been incorporated into the Department's Manual for Off-Highway Motor Vehicle Recreation Local Assistance Grants, Grants to Nonprofit Organizations and Educational Institutions, and Cooperative Agreement Program, dated April 2005, as appropriate.

The proposed emergency regulations, CCR, Title 14, Division 3, Chapter 15, Articles 1 through 5, and Sections 4970.00 through 4970.21 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. Seventeen definitions are being added to this section to clarify terms in the statute and/or in the proposed regulations. Twenty-two definitions are being amended to further clarify language in the statute or in the text of the regulations. Thirteen definitions are being deleted since they are no longer in the text of the regulation.

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 and the Division prior to the start of each grant 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 development projects, (2) the agencies and organizations that are eligible to apply, (3) examples of development projects, and (4) the specific application and content requirements for development projects.

CCR § 4970.06 provides (1) the purpose for equipment projects, (2) the agencies and organizations that are eligible to apply, (3) examples of equipment purchases or repairs, and (4) the specific application and content requirements for equipment projects.

CCR § 4970.07 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.

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CCR § 4970.08 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 requirements for law enforcement projects.

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

CCR § 4970.10 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 applications and content requirement of planning projects.

CCR § 4970.11 provides (1) the purpose of resource management projects, (2) the agencies and organizations that are eligible to apply, (3) examples of resource management projects, and (4) the specific application and content requirements for resource management 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, (4) eligible costs for restoration projects, and (5) the specific application and content requirements for restoration projects.

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

CCR § 4970.14 provides (1) the purpose of trail maintenance, trail conservation, and trail reroute projects, (2) the agencies and organizations that are eligible to apply, (3) examples of trail maintenance, trail conservation, and trail reroute projects, and (4) the specific application and content requirements for trail maintenance, trail conservation, and trail reroute 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 WHPP/HMP in grant and cooperative agreement applications, and the potential closure process for such projects.

CCR § 4970.17 identifies the projects and applicants that require a Soil Conservation Program in grant and cooperative agreement applications, and the potential closure process for such projects.

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.

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CCR § 4970.19 provides the system that will be utilized by the OHMVR Division to evaluate, score, and rank 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 and conduct annual performance reviews and site visits. It also provides for the grantees' responsibility to use generally accepted accounting methods and to maintain and retain records, documents, and accounts.

Policy Statement Overview (Objectives)

The Director of the Department of Parks and Recreation has determined the existing regulations governing the OHMVR grants and cooperative agreements program are internally inconsistent. The Director has also determined the existing regulations do not allow for a competitive grants program, as required under 14 CCR 4970.32. These regulatory shortcomings preclude lawful administration of the Grants program. Additionally, the existing regulations do not specify which grants projects require matching funds or the equivalent, as required under the governing statute for specific projects. In particular, law enforcement grants for local agencies require such a match. The failure to require applicants to submit information on the match would likely cause all affected applications to be incomplete and thus be rejected outright.

These emergency regulations will correct these problems and ensure grants can be allocated during the 2005/2006 cycle. The Director is committed to operating the grants program in a manner that is lawful and 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

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savings to local agencies, cost or savings to any State agency, or cost or savings in federal funding to the State.