

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

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATIONS

Public Resources Code (PRC) § 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003, (Act), as amended, governs off-highway motor vehicle grants and cooperative agreements with cities, counties, districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, educational institutions, and, beginning in 2008, State agencies. Amendments to these sections of the statute that became effective in 2003 (AB 2274) and in 2005 (AB 2666) necessitated the development of the Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program Regulations (CCR Title 14, Division 3, Chapter 15.5, § 4970.49 through 4970.72), which were initially adopted as emergency regulations and permanently adopted in May, 2007.

The provisions of the Act were to be repealed on January 1, 2008. On October 12, 2007, the Governor signed Senate Bill 742 (SB 742), effective January 1, 2008, which extended the Act to January 1, 2018, deleted certain obsolete provisions, and made significant amendments to the provisions that govern the OHMVR Grants and Cooperative Agreements Program.

Since the 2007 permanent regulations mentioned previously are no longer consistent with the current statutes, the Department of Parks and Recreation (Department) is proposing to repeal the text of the regulations and the OHMVR Division, Grants and Cooperative Agreements Program, Grants Program Manual (April 2007), which was incorporated by reference. The Department is also proposing to permanently adopt 2008 regulations, which would appear in the CCR as Title 14, Division 3, Chapter 15, § 4970.00 – 4970.26 and would apply to grant and cooperative agreement applications received by the OHMVR Division on or after January 1, 2008.

The Department is proposing to adopt 2008 regulations, CCR Title 14, Division 3, Chapter 15, § 4970.00 – 4970.26, for the following specific purposes:

- To comply with the current governing statute, PRC § 5090.01 through 5090.70, as amended by SB 742;
- To provide specific regulation language that will ensure clarity to potential applicants and the public as required by Government Code §11349.1;
- To eliminate a separate Grants Program Manual and to include in the regulation text the application instructions, an application evaluation system, and administrative procedures in order to avoid redundancy and to provide more clarity to applicants;
- To provide for the submission of grant and cooperative agreement applications

exclusively via the Internet through the OHMVR Division's On-line Grant Application (OLGA);

- To require a two-step application submission that will ensure a smoother public review and comment process, allow a preliminary review by the OHMVR Division, and provide the opportunity for applicants to revise their applications and submit a stronger more competitive and responsive final application; and
- To provide the 2008 Soil Conservation Standard and Guidelines, which are incorporated by reference

Refer to the sections beginning on page six for a detailed explanation of the specific purpose of each section within the proposed regulations.

NECESSITY

The Legislature enacted SB 742, effective January 1, 2008, to extend the provisions of the Act and to amend many of the laws affecting both OHV recreation and the OHMVR Grants and Cooperative Agreements Program. This Program provides a means for the State to assist eligible agencies and organizations as defined in statute to develop, maintain, expand and manage high-quality OHV recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat of areas in a manner that will sustain long-term OHV recreation. These proposed regulations are necessary to clarify the intent of the amended provisions of PRC § 5090.01 et seq. Refer to the sections beginning on page six for an explanation of the necessity of each section within the proposed regulations.

MANDATES FOR SPECIFIC ACTIONS OR PROCEDURES OR SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations do not impose any mandates on agencies or organizations. Participation in the OHMVR Grants and Cooperative Agreements Program is voluntary.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any other technical, theoretical, or empirical studies, reports, or documents other than those incorporated by reference in proposing these regulations.

REASONS FOR THE PROPOSED REPEAL OF THE 2007 PERMANENT REGULATIONS

The Department proposes to repeal the 2007 regulations, CCR Title 14, Division 3, Chapter 15.5, § 4970.49 – 4970.72, in order to adopt regulations that are consistent with the current statute, which was amended by SB 742, and provide the clarity necessary to ensure the administration of an efficient and effective program. Some of the specific reasons for the repeal of the 2007 regulations are described below. Each of the following

paragraphs first describes some of the provisions in the Act and/or the 2007 regulations prior to the enactment of SB 742. Each paragraph then describes the SB 742 amendments to those provisions and/or the revisions in the proposed 2008 regulations.

Prior to the enactment of SB 742, the Act, which was clarified by the 2007 regulations, imposed certain duties and responsibilities on the OHMVR Commission and the OHMVR Division. The language of SB 742 has revised and recast some of those duties and responsibilities.

The Act provided that grants may be made to cities, counties, and districts; and cooperative agreements may be entered into with federal agencies or federally recognized Native American tribes. The language of SB 742 has expanded the eligible applicants to include State agencies.

The Act provided that grant and cooperative agreements may be awarded for the planning, acquisition, development, maintenance, administration, operation, enforcement, restoration, and conservation of trails, trailheads, area, and other facilities associated with the use of off-highway motor vehicle, and programs involving off-highway motor vehicle education and safety. The provisions of SB 742 include percentages of the total amount appropriated by the Legislature to be awarded for specified purposes: fifty percent for operation and maintenance, twenty-five percent for restoration, twenty percent for law enforcement, and five percent for education and safety.

SB 742 requires law enforcement grants and cooperative agreements to be allocated to local and federal law enforcement entities for personnel and related equipment, with the amount of the grant or cooperative agreement being proportional to the off-highway motor vehicle enforcement needs under each entity's jurisdiction. The provisions of SB 742 also require the OHMVR Division to develop a method to determine the law enforcement needs for each applicant and the eligibility guidelines for law enforcement projects. SB 742 also provides forty percent of law enforcement grants and cooperative agreements shall be given to local law enforcement entities, thirty percent to units of the United States Bureau of Land Management, and thirty percent to units of the United States Forest Service. Also included in SB 742 is the requirement the Department of Parks and Recreation audit law enforcement entities that receive grant money at least once every five years.

The 2007 regulations required all grants and cooperative agreements to be awarded on a competitive basis. The provisions of SB 742 require the distribution of grants and cooperative agreements on a competitive basis except for law enforcement grants, which shall be allocated in accordance with the method described in the previous paragraph.

The Act required cities, counties, districts, nonprofit organizations, and educational institutions provide matching funds, or the equivalent value of services, material, or property used, in an amount not less than twenty-five percent of the total expense of certain project types. SB 742 requires all applicants to provide matching funds or the

equivalent value of services or material used, in an amount not less than twenty-five percent of the total project cost.

The Act did not include an appeal process for the awarding of grants and cooperative agreements. The provisions of SB 742 require the OHMVR Division to establish an administrative appeal process as part of the grants and cooperative agreements program. SB 742 also provides the specific grounds, the procedures, and the timelines for an appeal.

The Act required a Wildlife Habitat Protection Program (WHPP) and a Soil Conservation Program for all federal agency and federally recognized Native American tribe applications with the exception of applications solely for law enforcement. The Act also provided that all city, county, and appropriate district applications for acquisition and development projects shall require a WHPP and a Soil Conservation Program. SB 742 applies the WHPP and the Soil Conservation Program requirements to all projects that involve a ground disturbing activity. The language in the Definitions section of the proposed 2008 regulations is clarifying that a WHPP is an animal and plant Habitat Management Program (HMP) pursuant to the statute and refers to the program HMP throughout the regulations text.

The 2007 regulations included the OHMVR Division, Grants and Cooperative Agreements Program, Grants Program Manual (April 2007), which was incorporated by reference. The Grants Program Manual, which described in detail to eligible applicants how to apply for grants and cooperative agreements, consisted of three chapters, an appendix, and a glossary of terms. Chapter One addressed the specific application instructions for each project type; Chapter Two described the application evaluation system that included evaluation criteria for each project type; Chapter Three covered the project administration procedures that clarified the responsibilities of the Division and the grantee. The Appendix included all the required forms and instructions, and the glossary defined terms that were used throughout the Grants Program Manual.

In order to avoid the confusion that resulted from having a separate Grants Program Manual, and to provide a more cohesive and succinct presentation of the application instructions, evaluation system, and the administrative procedures, the Department is including these components in the 2008 regulation text itself. This approach provides a condensed resource, ensures more clarity to potential applicants, and eliminates the necessity for a separate glossary since all the terms which require definition are included in the "Definitions" section of the regulations text. An Appendix, which includes all the required forms and instructions, is incorporated by reference in the regulations.

The 2007 regulations allowed for the submission of paper grant and cooperative agreement applications. This application submission process has been cumbersome for both the applicant and OHMVR Division staff, who were required to deal, in many instances, with volumes of paper in order to meet all the requirements within the statutes. The proposed 2008 regulations provide for the submission of grant and cooperative agreement applications via the Internet through the OHMVR Division's On-line Grant

Application (OLGA), which is a user-friendly interactive database that guides applicants through the application process. The OLGA simplifies the submission process for applicants by allowing multiple people working on an application to access the document on-line from various locations via a password, and eliminates the costs associated with the copying and mailing of paper applications.

The 2007 regulations required applicants to submit final applications after conducting a public review and comment process. The timing for the public review process was, in some instances, problematic for applicants, who were required to allow sufficient time for the public to submit comments, include responses to the comments in their application, make revisions to their application as a result of the comments, and adhere to the deadline for submission of a final application to the OHMVR Division. The proposed 2008 regulations ensure a smoother application submission process by requiring a preliminary as well as a final application submission. The preliminary application is an initial version of the final application containing key items that will 1) facilitate the posting of preliminary applications on the OHMVR Division's website for public review and comment early in the process, 2) allow for public comments to be submitted simultaneously to the OHMVR Division and the applicant, 3) enable the OHMVR Division to conduct a preliminary review of the application and have the discretion to perform a preliminary site visit, and 4) allow applicants the opportunity to modify their applications as a result of the OHMVR Division's preliminary review and/or public comments and to submit a stronger more competitive and responsive final application.

The 2007 regulations included the Soil Conservation Standard and Guidelines for Off-Highway Vehicle Recreation Management (11/14/91). The proposed 2008 regulations include the 2008 Soil Conservation Standard and supporting 2008 Soil Conservation Guidelines, which are incorporated by reference.

For the above reasons, the Department is proposing to repeal the 2007 regulations and to permanently adopt 2008 regulations, which comply with the amended statute and provide more clarity consistent with Government Code § 11349.1.

SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED SECTION OF THE 2008 REGULATIONS

The following provides the specific purpose and necessity for each proposed section in CCR Title 14, Division 3, Chapter 15, § 4970.00 – 4970.26

ARTICLE 1 – GENERAL PROVISIONS

4970.00 – APPLICATION OF CHAPTER

Specific Purpose

This section explains that California Code of Regulations, Title 14, Division 3, Chapter 15, which contains § 4970.00 through 4970.26, shall apply only to grant or cooperative agreement applications received by the OHMVR Division on or after January 1, 2008.

Necessity

The proposed section of the regulations is necessary to distinguish Chapter 15, § 4970.00 through 4970.26, from the prior regulations and to clarify that Chapter 15, which begins with this section and continues through 4970.26 shall apply only to grant and cooperative agreement applications received by the OHMVR Division on or after January 1, 2008 in accordance with PRC § 5090.32.

4970.01 – DEFINITIONS

Specific Purpose

This section contains forty-three definitions, which provide clarity to grant and cooperative agreement applicants and the general public for terms that are used within PRC § 5090.01 et seq. and/or are in the proposed text of the regulations. This section provides a definition of “Grant,” which includes grants to cities, counties, districts, State agencies, educational institutions, or nonprofit organizations, and also cooperative agreements with federal agencies or federally recognized Native American tribes. Throughout the remainder of the text of the proposed regulations, the OHMVR Grants and Cooperative Agreements Program is referred to as the Grants program.

Necessity

This proposed section of the regulations is necessary to clarify the terms used in PRC § 5090.01 et seq. and in the text of these proposed regulations. The terms identified in this section are uniquely defined for the purposes of these proposed regulations so that applicants and the Department understand exactly what is required in the application, application evaluation, funding, and grant administrative processes for the Grants program.

4970.02 – PROGRAM PURPOSE

Specific Purpose

This section sets forth the reasons for the Grants program. It identifies the types of activities that must be accomplished with the funds received from the program by eligible agencies and organizations.

Necessity

The proposed section is necessary to provide a synopsis of how the Grants program is used to achieve the legislative intent of the OHMVR program. The Grants program provides a means for the State to assist eligible agencies and organizations as defined in statute to develop, maintain, expand and manage high-quality OHV recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat of areas in a manner that will sustain long-term OHV recreation. These proposed regulations are necessary to further clarify the intent of PRC § 5090.01 et seq.

4970.03 – DETERMINING APPLICANT ELIGIBILITY

Specific Purpose

This section identifies the entities that are eligible to apply for grants or cooperative agreements under the Grants program. It clarifies eligibility by identifying the organizational definitions within each eligibility category provided in the statute. It also clarifies that applicants are limited to certain project types and provides a table that illustrates the eligible applicants for each project type. It also provides that applications received from entities that do not comply with the eligibility requirements will not be considered by the OHMVR Division.

Necessity

The proposed section of the regulations is necessary to provide the specific entities that are eligible to apply for the Grants program and to identify applicant eligibility for each project type in accordance with PRC § 5090.50. It is also necessary to clarify the OHMVR Division's responsibility in accordance with PRC § 5090.32 when an applicant does not comply with the eligibility requirements.

4970.04 – GRANTS PROGRAM CYCLE

Specific Purpose

This section identifies the activities and the dates and/or timeframes for those activities that shall occur during the entire grants program cycle. It provides that grants shall be awarded on an annual basis and the awarding of a grant does not guarantee ongoing or future funding. It discusses the public meeting the OHMVR Commission shall conduct prior to the start of each grant program cycle. It also provides clarity by including a table illustrating the activities and dates in the grant cycle and indicates the responsibilities of the OHMVR Division, the applicants, and the grantees.

Necessity

The proposed section of the regulations is necessary to establish the activities, dates, and/or timeframes for the entire grants program cycle. This is proposed to ensure funds

are allocated, distributed and encumbered within established timeframes to avoid reversion of unspent funds. The timeframes identified in the regulations provide for grants to be awarded in a timeframe consistent with applicant's fiscal cycle. This timeframe will allow applicants time to plan resources efficiently (e.g., budget planning, seasonal workload). It is also necessary to clarify the responsibilities of the OHMVR Commission, the OHMVR Division, applicants, and grantees, and to provide the conditions under which the grants shall be awarded in accordance with PRC § 5090.24(b), 5090.32, and 5090.50.

4970.05 – GENERAL APPLICATION REQUIREMENTS

Specific Purpose

This section identifies the general requirements that apply to all grant applications. The Appendix to these proposed regulations, which includes all the required forms and instructions for the Grants program, is incorporated by reference. This section provides that applications shall establish how proposed projects are directly related to OHV recreation and describes the responsibilities of the OHMVR Division in screening proposed project applications prior to scoring and rejecting those applications that do not establish a direct relation to OHV recreation. It also provides that applications determined by the OHMVR Division to be non-compliant with the general application requirements may be disqualified. This section also provides the general application content requirements, which include: 1) documentation of a public review process to solicit public comment, 2) matching funds, 3) project cost estimates, 4) equipment inventories, 5) demonstration of current 501(c)(3) status for nonprofit organizations, 6) written agreements with appropriate land managers authorizing educational institutions and nonprofit organizations to conduct proposed projects, 7) Governing Body Resolutions authorizing the applications for cities, counties, districts, educational institutions, nonprofit organizations, and federally recognized Native American Tribes, and 8) environmental documentation.

Necessity

The proposed section of the regulations is necessary to identify the forms that are required to be completed by the applicants and to inform applicants they are restricted to one application per grant cycle. Furthermore, it describes the public review process which applicants are required to undertake, identifies the OHMVR Division's responsibilities related to the screening of applications, and the disqualification of non-compliant applications in accordance with PRC § 5090.32 and 5090.50.

4970.06 – ENVIRONMENTAL REQUIREMENTS

Specific Purpose

This section identifies the specific environmental documentation that is required in grant applications.

Subsection 4970.06.1 discusses the requirement of the OHMVR Division to comply with the California Environmental Quality Act (CEQA) before approving each grant. The subsection provides that project requests for funding both CEQA and/or National Environmental Policy Act (NEPA) requirements and actual project deliverables shall be funded in two phases. CEQA documentation shall be submitted by city, county, district, State agency, educational institution and nonprofit organization applicants for all grants are discussed. It refers grant applicants relying on a Categorical Exemption for CEQA compliance to the Environmental Review Data Sheet (ERDS). The type of documentation, including completed project-related NEPA compliance documentation, that shall be submitted by federal agency and federally recognized Native American tribe applicants for all cooperative agreements is also discussed. This subsection also specifies the responsibilities of the OHMVR Division in reviewing the required CEQA and/or NEPA documentation, requesting additional information from grant and cooperative agreement applicants within a reasonable timeframe, and determining the feasibility of completing the CEQA work with the time and resources available; and it also provides the OHMVR Division reserves the right to cease CEQA compliance work on a project if the application evaluation and scoring process indicates the project may not be funded.

Subsection 4970.06.2 provides that a Habitat Management Program (HMP) must be completed by all applicants submitting a proposed project involving ground disturbing activity. The subsection provides that only one HMP shall be submitted for each application and shall encompass all project areas for every project with ground disturbing activities for which funding is requested. It also discusses the OHMVR Division's responsibilities in the review of each HMP.

Subsection 4970.06.3 provides that the 2008 Soil Conservation Standard and supporting 2008 Soil Conservation Guidelines are incorporated by reference. It cites the language in the PRC that provides the legislative intent and requirements for soil conservation. It provides that all applicants submitting proposed projects involving ground disturbing activity shall complete the Soil Conservation section demonstrating and agreeing the applicant has, or will implement, a Soil Conservation Plan that achieves the Soil Conservation Standard for the proposed project. The subsection also provides that the Soil Conservation Plan shall utilize the Soil Guidelines or other comparable methods that demonstrate how the Soil Conservation Standard is being or will be met. It discusses the required components of the Soil Conservation Plan and provides the responsibilities of and the timelines for the OHMVR Division's review of all Soil Conservation Plans.

Necessity

The proposed section of the regulations is necessary to clarify the specific environmental documentation required in all grant applications. The proposed subsection 4970.06.1 is necessary to clarify the provisions of CEQA, which are required by PRC § 5090.50(d)(4), as it applies to the grant application process. The subsection is also necessary to clarify the OHMVR Division's responsibilities relating to the review of the required CEQA and/or NEPA documentation in accordance with PRC § 5090.32.

The proposed subsection 4970.06.2 is necessary to clarify the requirements for a HMP in the grant application process in accordance with PRC § 5090.35 and 5090.53. The subsection also clarifies the OHMVR Division's responsibilities in the review of each HMP in accordance with PRC § 5090.32.

The proposed subsection 4970.06.3 is necessary to incorporate by reference the 2008 Soil Conservation Standard and supporting 2008 Soil Conservation Guidelines and to clarify the requirements for a Soil Conservation Plan in the grant and cooperative agreement application process in accordance with PRC § 5090.35 and 5090.53. It is also necessary to clarify the OHMVR Division's responsibilities in the review of Soil Conservation Plans in accordance with PRC § 5090.32.

4970.07 – APPLICATION SUBMISSION

Specific Purpose

This section identifies the submission process for all grant applications. It requires that all applications be submitted via the Internet through the OHMVR Division's OLGA and provides OHMVR Division staff support to applicants when needed. It provides that all applicants shall submit preliminary and final applications and includes the components required within the applications. It clarifies the OHMVR Division will review preliminary applications and may choose to perform a preliminary application site visit. It also provides that, prior to the submittal of final applications; applicants may make modifications as a result of the OHMVR Division's preliminary review and/or public comment.

Subsection 4970.06.1 provides for a question and answer procedure for applicants who need clarification on the application process.

Subsection 4970.06.02 describes the actions the OHMVR Division shall take regarding final application defects.

Necessity

The proposed section of the regulations is necessary to introduce the OLGA as the method for applicants to utilize in their application preparation and submittal. The OLGA will reduce the amount of paper consumption, provide for ease and centralized public review, and allow for intra-applicant collaboration.

The proposed section is also necessary to provide applicants the requirements for submitting grant preliminary and final applications. The preliminary application will allow the applicant to receive feedback from the OHMVR Division and the public. By receiving this feedback, the applicant will be able to submit a competitive and fully compliant final application. Furthermore, it is necessary to provide assistance to applicants who need clarification on the submission process and to describe the responsibilities of the OHMVR

Division regarding final application defects in accordance with PRC § 5090.32 and 5090.50.

4970.08 – ELIGIBLE PROJECT COSTS

Specific Purpose

This section provides clarification regarding those costs that are eligible for reimbursement for OHV projects. It provides numerous examples of eligible project costs and allows applicants to receive up to ten (10) percent reimbursement for indirect administrative costs.

Necessity

The proposed section is necessary to ensure OHV Trust Funds are expended only for those activities and costs as defined in individual project agreements and which are directed towards achieving the intent of the OHMVR program. It is necessary to articulate what costs are allowable for reimbursement within the Grants program in accordance with PRC § 5090.32 and 5090.50. Additionally, this section will ensure that audit and fiscal issues are minimized.

4970.09 – INELIGIBLE PROJECT COSTS

Specific Purpose

This section provides that costs not associated with the OHV project are not eligible for reimbursement. It also provides clarity by including numerous examples of ineligible costs.

Necessity

The proposed section is necessary to ensure OHV Trust Funds are not expended for activities and costs which are outside the project agreement and are not directed towards achieving the intent of the OHMVR program. It is necessary to articulate what costs are not allowable for reimbursement within the Grants program in accordance with PRC § 5090.32 and 5090.50. Additionally, this section will ensure that audit and fiscal issues are minimized.

ARTICLE 2 – TYPES OF PROJECTS AND SPECIFIC APPLICATION REQUIREMENTS

4970.10 – OPERATION AND MAINTENANCE (O&M)

Specific Purpose

This section identifies the purpose of operation and maintenance projects that may be funded by the Grants program. It clarifies that operation and maintenance includes operation and maintenance of facilities, conservation, development, planning, or acquisition associated with the use of OHVs for recreation or motorized access to non-motorized recreation. It provides the percentage of funds appropriated by the Legislature that is available for operation and maintenance, discusses the minimum and maximum amounts allowable for funding requests, provides the limitations and certification requirements for funding, and clarifies that the operation and maintenance category is divided into four sub-categories: 1) ground operations, 2) development, 3) planning, and 4) acquisition. It also provides a table that illustrates applicant eligibility for each of the four sub-categories/project types.

Subsection 4970.10.1 identifies the purpose of the ground operations project type, provides the percentage of the funding from the operation and maintenance category that is available for ground operations, provides specific examples of ground operations deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for ground operations projects. .

Subsection 4970.10.2 identifies the purpose of the development project type, provides the percentage of the funding from the operation and maintenance category that is available for development, provides specific examples of development deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for development projects.

Subsection 4970.10.3 identifies the purpose of the planning project type, provides the percentage of funding from the operation and maintenance category that is available for planning, provides specific examples of planning deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for planning projects.

Subsection 4970.10.4 identifies the purpose of the acquisition project type, provides the percentage of funding from the operation and maintenance category that is available for acquisition, provides specific examples of acquisition deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for acquisition projects.

Necessity

The proposed section of the regulations is necessary to define the purpose of the operation and maintenance category. This section further identifies the four subcategories/project types within this category. The subcategories/projects types were

created to meet the legislative intent of sustaining existing off-highway motor vehicle recreation opportunities.

Additionally, this section is necessary to define the amount of funding available for the categories as a whole, to identify eligible agencies and organizations, provide examples of deliverables, describe project-specific application requirements, and list optional project-specific documents for each project type. The section refers to the Appendix for the evaluation criteria for each project type within the operation and maintenance category in accordance with PRC § 5090.32 and 5090.50. The specific examples that are provided in this section will assist potential applicants and the public to understand what types of activities qualify for each project type. The project-specific requirements in this section will assist applicants to provide the information that must be submitted in an application for each of the project types in order for the application to comply with the statute and regulations and be competitive.

4970.11 – RESTORATION

Specific Purpose

This section identifies the purpose of restoration projects that may be funded by the Grants program, provides the percentage of funds appropriated by the Legislature that is available for restoration projects, discusses the minimum and maximum amount allowable for funding requests, and refers to Table 1 of the regulations to clarify those applicants who are eligible to apply for restoration projects. It provides specific examples of restoration deliverables, describes project-specific application requirements and refers to the Appendix for the evaluation criteria for restoration projects.

Necessity

The proposed section of the regulations is necessary to meet the expanded eligible activities within the Restoration category (e.g., planning, repair, Scientific Studies). This section is also necessary to identify: the amount of available funding, eligible agencies and organizations, examples of deliverables, project-specific application requirements, and directs applicants to the Appendix for the evaluation criteria for restoration projects in accordance with PRC § 5024.1, 5090.32 and 5090.50. The specific examples that are provided in this section will assist potential applicants and the public to understand what types of activities qualify for restoration projects. The project-specific requirements in this section will assist applicants to provide the information that must be submitted in a restoration project application in order for the application to comply with the statute and regulations, and be competitive.

4970.12 – LAW ENFORCEMENT

Specific Purpose

This section identifies the purpose of law enforcement projects that may be funded by the Grants program. It provides the percentage of funds appropriated by the Legislature that is available for law enforcement. It clarifies the applicant eligibility for law enforcement projects and provides the allocation of available funding for each applicant eligibility category. It discusses the minimum and maximum amount allowable for funding requests and provides examples of eligible law enforcement costs and project-specific application requirements.

Necessity

The proposed section of the regulations is necessary to clarify the purpose of law enforcement projects and to identify eligible applicants and their respective funding allocation. Furthermore, this section is also necessary to identify examples of eligible costs and the project-specific application requirements in accordance with PRC § 5024.1, 5090.32 and 5090.50. The specific examples that are provided in this section will assist potential applicants and the public to understand what types of activities qualify for law enforcement projects. The project-specific requirements in this section will assist applicants to provide the information that must be submitted in a law enforcement project application in order for the application to comply with the statute and regulations.

4970.13 – EDUCATION AND SAFETY

Specific Purpose

This section identifies the purpose of education and safety projects that may be funded by the Grants program, provides the percentage of funds appropriated by the Legislature that is available for education and safety projects, discusses the minimum and maximum amounts allowable for funding requests, and refers to Table 1 of the regulations to clarify those applicants who are eligible to apply for education and safety projects. It provides specific examples of education program deliverables and safety program deliverables, describes project-specific application requirements and optional project-specific application documents, and refers to the Appendix for the evaluation criteria for education and safety projects.

Necessity

The proposed section of the regulations is necessary to clarify the purpose of education and safety projects, provide the amount of available funding, identify eligible agencies and organizations, and provide examples of deliverables for education or safety programs. Additionally, this section is necessary to describe project-specific application requirements and optional project-specific documents, and to refer to the Appendix for the evaluation criteria for education and safety projects in accordance with PRC § 5090.32 and 5090.50. The specific examples that are provided in this section will assist potential applicants and the public to understand what types of activities qualify for education and

safety projects. The project-specific requirements in this section will assist applicants to provide the information that must be submitted in an education and safety project application in order for the application to comply with the statute and regulations and be competitive.

ARTICLE 3 – APPLICATION EVALUATION SYSTEM AND FUNDING

4970.14 – EVALUATION CRITERIA

Specific Purpose

This section identifies the required types of evaluation criteria and discusses which applications require general criteria and which project types require project-specific criteria.

Subsection 4970.14.1 discusses the purpose of general criteria, requires applicants to respond to the criteria questions with respect to their entire OHV operation, provides examples of general criteria, and requires non-land manager applicants to cooperate with the appropriate land manager to obtain the general criteria information.

Subsection 4970.14.2 provides that applicants for projects other than law enforcement shall complete project-specific criteria for each project and the required information shall be specific to the particular project proposed for funding.

Subsection 4970.14.3 discusses the requirements for applicants' use of factual documentation, provides examples of factual documentation, and discusses the responsibility of the evaluation panel to investigate referenced documents and to use its discretion to clarify the information provided or reject the project application.

Necessity

The evaluation criteria are necessary to comply with the legislative intent to prioritize projects based on the legislative intent articulated in the Act. Additionally, the section is necessary to clarify the requirements regarding applicants' use of factual documentation and the responsibility of the evaluation panel in reviewing the factual documentation in accordance with PRC § 5090.32 and 5090.50.

The proposed section of the regulations is necessary to clarify the application evaluation process that will be used to evaluate each project (with the exception of law enforcement projects) in an application. The evaluation criterion, which includes general and project-specific criteria, is necessary to distribute grant funds on a competitive basis.

4970.15 – FUNDING DISTRIBUTION

Specific Purpose

This section identifies the percentage of funds appropriated by the Legislature for operation and maintenance, restoration, law enforcement, and education and safety.

Subsection 4970.15.1 provides the allocation percentages for each subcategory/project type within the operation and maintenance category, discusses the composition of the evaluation panel, provides the method the panel shall use to evaluate and determine a final score for each project, and provides a table that illustrates the score calculation for ground operation projects. The subsection also provides the procedure the OHMVR Division shall follow in awarding funds for the operation and maintenance project types.

Subsection 4970.15.2 discusses the composition of the evaluation panel for restoration projects, discusses the method the panel shall use to evaluate and determine a final score for each project, provides a table that illustrates the score calculation for restoration projects, and provides the procedure the OHMVR Division shall follow in awarding funds for restoration projects. The subsection also provides that the OHMVR Division will consult with staff from the Wildlife Conservation Board during the evaluation and scoring process for restoration projects.

Subsection 4970.15.3 provides the allocation percentages for each eligible entity category for law enforcement, clarifies that law enforcement projects are awarded on a non-competitive basis, provides the method of determining the relative need of each applicant, and discusses the responsibility of the OHMVR Division in reviewing law enforcement funding requests. This subsection also provides the procedure the OHMVR Division shall follow in awarding funds for law enforcement projects.

Subsection 4970.15.4 discusses the composition of the evaluation panel for education and safety applications, provides the method the panel shall use to evaluate and determine a final score for each project, and provides the procedure the OHMVR Division shall follow in awarding funds for education and safety projects.

Necessity

The proposed section of the regulations is necessary to identify the amount of funding available within the operation and maintenance, restoration, law enforcement, and education and safety categories. Within the operation and maintenance category, the available funding is further allocated within the sub-categories in order to comply with the legislative intent to sustain existing OHV recreation. While the statute states the Division determines the level of need for law enforcement entities it does not specify how the need will be established. Therefore the section is necessary to clarify that law enforcement projects are funded on a non-competitive basis and to provide the method used to establish need and allocate funds for law enforcement projects in accordance with PRC § 5090.32 and 5090.50. The section is also necessary to clarify the methods used by the evaluation panels in evaluating and determining scores for competitive project

applications, and the procedures to be used by the OHMVR Division in awarding funds for competitive project applications in accordance with PRC § 5090.32 and 5090.50.

4970.16 – NOTICE OF INTENT TO AWARD

Specific Purpose

This section identifies the responsibility of the OHMVR Division to post a notice of Intent to Award on the OHMVR Division website upon completion of the evaluation and scoring process.

Necessity

In accordance with PRC § 5090.50, the proposed section of the regulations is necessary to communicate the results of the application and evaluation process to the applicants and the public. Posting the results of the evaluation process on the OHMVR Division website provides the applicants and the public a centralized location to view the results and identifies the start of the appeal period.

4970.17 – APPEAL PROCESS

Specific Purpose

This section identifies the right of applicants to appeal the Intent to Award. It discusses the required grounds for appeal and provides a table that illustrates the steps for submitting the appeal and the timelines for each step. This section also provides that applicants may not seek legal remedies through the courts until the appeal process has been completed.

Necessity

PRC § 5090.50, requires the OHMVR Division develop an appeal process to allow applicants an opportunity to contest the results of the Notice of Intent to Award. This section is necessary to meet this statutory requirement and to provide the applicants the reasons, steps, and timeframes for an appeal. The timeframes outlined in the section are necessary to meet statutory requirement and to ensure timely distribution of appropriated funds.

4970.18 – AWARD OF GRANTS

Specific Purpose

This section identifies the responsibility of the OHMVR Division to prepare and execute grant and cooperative agreements upon approval of projects by the Director of the Department of Parks and Recreation.

Necessity

The proposed section of the regulations is necessary to clarify the responsibility of the OHMVR Division to prepare and execute project agreements upon the approval of the Director and to facilitate the distribution of funds to successful applicants in accordance with PRC § 5090.32 and 5090.50(j). This is to clarify the Director of the Department of Parks and Recreation, not the Deputy Director of the OHVMR Division, is the approving authority for Grants and Cooperative Agreements.

ARTICLE 4 – PROJECT ADMINISTRATION PROCEDURES

4970.19 – PROJECT AGREEMENT

Specific Purpose

This section identifies the responsibility of the OHMVR Division to prepare and execute project agreements, which set forth the terms and conditions of the project, with the grantees upon approval of the Director, and provides that grantees may not submit claims for reimbursement or advance payments until project agreements are fully executed.

Subsection 4970.19.1 clarifies the meaning of the project performance period and provides the project performance period for acquisition, development, planning, and restoration projects is three years, and the project performance period for ground operations, law enforcement and education and safety projects is one year. Subsection 4970.19.2 clarifies when a project amendment is required and provides the conditions under which a request for a project amendment by the grantee may be approved. This subsection provides the procedure and timeframe that grantees shall follow in requesting a project amendment, and that unspent funds in themselves do not justify a project amendment for a time extension. This subsection also discusses the OHMVR Division's responsibility in reviewing requested amendments, and the procedures the OHMVR Division shall follow in approving or disapproving amendment requests.

Subsection 4970.19.3 provides that an applicant or grantee may at any time unilaterally cancel or withdraw an approved project by written notification to the OHMVR Division. The subsection also provides the procedures that grantees shall follow for a cancelled project regarding advanced funds and, if the grantee had commenced the project, the costs that are eligible for reimbursement, and the requirements for record keeping.

Subsection 4970.19.4 clarifies that the failure of the grantee to comply with the terms and conditions of the project agreement may be treated by the OHMVR Division as a breach of contract. This subsection provides the procedures and timeframes the OHMVR Division and the grantee shall follow to cure the breach, and the procedures the OHMVR Division shall follow if the grantee has not cured the breach or commenced action to cure the breach within the specified timeframe. This subsection also provides that projects that

have had a breach of contract shall remain subject to all record keeping and audit requirements contained in these proposed regulations.

Subsection 4970.19.5 clarifies the procedures the grantee shall follow if the project has not been completed within the project performance period specified in the project agreement.

Subsection 4970.19.6 clarifies that the project agreement creates a legal duty on the part of the grantee to comply with the terms and conditions of the grant.

Necessity

The proposed section of the regulations is necessary to provide for program accountability. The section identifies the responsibilities of the OHMVR Division in preparing and executing project agreements, in reviewing requests for project amendments, and in addressing a breach of contract by a grantee in accordance with PRC § 5090.32 and 5090.50. The proposed section is necessary to provide the meaning of the project performance period and to specify the performance period for the various project types to ensure timely expenditure of appropriated funds. The proposed section is also necessary to clarify the grantees' administrative responsibilities in regards to changes in the project agreement and to clarify the legal duty of the grantee to comply with the terms and conditions of the grant in accordance with PRC § 5090.32 and 5090.50.

4970.20 – EQUIPMENT MANAGEMENT REQUIREMENTS

Specific Purpose

This section identifies the requirements that shall apply to all equipment purchased with OHV Trust Funds.

Necessity

This section is necessary to ensure the investment in equipment purchased with OHV Trust Funds are properly maintained, stored, identified, and disposed in a responsible prudent manner. As custodians of the OHV Trust Fund, the OHMVR Division finds it necessary to provide directions to the grantees on the disposition of equipment in accordance with PRC § 5090.32 and 5090.50.

4970.21 – DEVELOPMENT PROJECT PROCEDURES

Specific Purpose

This section identifies the documentation that shall be prepared for each development project, and provides that a registered civil or structural engineer or a licensed architect shall sign plans for structural items. The section provides that the OHMVR Division may review development documentation prior to the start of the project, and also provides the grantees' responsibilities to follow all laws that pertain to public works projects including the Americans with Disabilities Act and Title 24 of the California Building Standard Codes regarding disabilities.

Necessity

The proposed section of the regulations is necessary to give applicants specific direction and guidance to assist them in compliance with all applicable building and accessibility codes in accordance with PRC § 5090.32, 5090.50 and Public Law 101-336, July 26, 1990, 104 Stat. 327, and Title 24, California Building Standards Code. Additionally, this section is necessary to ensure structural plans are approved by a licensed engineer or architect and the OHMVR Division has the right to review those plans.

4970.22 – ACCOUNTING PRACTICES

Specific Purpose

This section identifies the responsibilities of the grantees to maintain fiscal controls and fiscal accounting procedures based on Generally Accepted Accounting Principles (GAAP). This section also discusses the responsibilities of grantees to: 1) keep adequate records, 2) document all labor costs, 3) document costs associated with the use of equipment, 4) retain all financial accounts, documents, and records pertinent to the project for three years from the expiration of the project agreement or until an audit started during the three years has been completed, a report is published, and audit findings are resolved, 5) place advances in a separate interest-bearing account, and 6) document matching funds, which shall be directly related to the project and may not be used for more than one project.

Necessity

The proposed section of the regulations is necessary to clarify the grantee's responsibility to maintain fiscal controls and fiscal accounting procedures. It requires applicants to deposit payment advances in an interest-bearing account, and to document all costs and matching funds associated with the OHV project in accordance with PRC § 5090.32 and 5090.50. Additionally, the section is necessary to identify the time period required for grantees to retain financial records pertinent to the project. Specifying accounting protocols will ensure timely compliance with PRC § 5090.50(h).

4970.23 – PAYMENT REQUESTS

Specific Purpose

This section identifies the procedures grantees shall follow to request payments for advances and reimbursements. It also discusses the OHMVR Division's responsibilities for approving and processing payment requests.

Subsection 4970.23.1 clarifies that, although advances are generally not allowed, the OHMVR Division may consider granting an advance if extenuating circumstances exist. The subsection provides the procedures that: 1) grantees shall follow to request an advance, and 2) the OHMVR Division shall follow in approving or disapproving an advance request.

The subsection also provides the procedures that shall be followed by grantees for subsequent advance requests.

Subsection 4970.23.2 provides the documentation that shall be included in requests for reimbursement.

Necessity

The proposed section of the regulations is necessary to provide the procedures that shall be followed: 1) by grantees to request advances and reimbursements, and 2) by the OHMVR Division in approving/disapproving advance requests, and approving and processing reimbursement requests in accordance with PRC § 5090.32 and 5090.50. This section is necessary to ensure efficient and consistent processing of payment requests and fiscal accountability.

4970.24 – PROJECT CLOSEOUT

Specific Purpose

This section identifies the procedures and timelines that grantees shall follow after completing a project. The section also describes the responsibilities of the OHMVR Division in reviewing all supporting documentation submitted by grantees and processing final payment requests.

Necessity

The OHMVR Division has a fiduciary responsibility to ensure program accountability. This section is necessary to articulate to the grantee the administrative processes such as completion of match requirement, supporting documentation, and final payment requests required to close out a project. These documents are required to demonstrate and articulate effective completion of the project as originally approved and scored, and to create a clear and complete record for audit purposes. This section is also necessary to

make certain the OHV Trust Funds were expended in compliance with the project agreement and in accordance with PRC § 5090.32 and 5090.50.

4970.25 – AUDITS

Specific Purpose

This section identifies the types of audits the OHMVR Division or the Department shall conduct.

Subsection 4970.25.1 provides examples of the types and methods of review that may be included in a performance audit. It clarifies that failure of grantees to cooperate with performance audit requests may result in denial of payment requests and/or refund to the State of amounts already paid or advanced. It provides that the OHMVR Division may conduct a site visit that may include a review of progress towards the accomplishment of deliverables. The subsection also provides the requirements: 1) of grantees in preparation for and during site visits by the OHMVR Division, and 2) of the OHMVR Division staff in developing a report, which shall be provided to the grantee, that contains comments and recommendations regarding the grantee's project

Subsection 4970.25.2 cites PRC § 5090.50(h) which requires the Department to conduct an annual financial audit of the Grants program; and that, during each year, the department shall also conduct, or cause to be conducted, an audit of the performance of a minimum of twenty percent of grants and cooperative agreement recipients. The subsection provides that law enforcement grantees shall be subject to a financial and performance audit at least once every five years. It provides the procedures that shall be followed by the OHMVR Division and the Department's Audit Office for a financial audit. It discusses the requirements of grantees in cooperating with and providing the requested documentation to the Audit Office. It describes the conditions which will result in an audit exception and clarifies the Department's right to visit project areas.

Subsection 4970.25.3 provides that the grantee shall be provided a copy of the final audit report. It also provides the procedures and timelines that shall be followed by grantees if the audit results identify audit exceptions and the remedies that may be taken as a result of grantees failure to remit payments due for audit exceptions.

Necessity

The proposed section of the regulations is necessary to clarify the requirements and procedures that shall be followed by: 1) the OHMVR Division and grantees for performance audits, and 2) the OHMVR Division, the Department's Audit Office, and the grantees for financial audits in accordance with PRC § 5090.32, 5090.35, 5090.50, and 5090.53.

4970.26 – HOW TO CONTACT THE OHMVR DIVISION

Specific Purpose

This section provides the mailing address of the OHMVR Division to which all inquiries and correspondence related to the Grants program shall be addressed. It also provides the procedure for making Grants program inquiries by phone or e-mail and provides a phone number, fax number, and e-mail address for general inquiries.

Necessity

In order to ensure program success, the OHMVR Division encourages applicants, grantees, and the public to contact us whenever they have a question or comment about the Grants program. Questions raised by applicants need to be addressed in a timely fashion prior to potentially inappropriate expenditure of funds or submission of nonconforming applications. In addition, the ability to contact the OHMVR Division allows members of the general public to voice concerns regarding specific projects. This section is necessary to provide those individuals contact information in accordance with PRC § 5090.32. This section also provides the mailing address, fax number, and email address for applicants that may wish to contact the OHMVR Division in writing.

DOCUMENTS INCORPORATED BY REFERENCE

The Appendix is incorporated by reference in § 4970.05(a) of the proposed regulations. As such, any subsequent revisions to its contents are subject to the rulemaking process. The Appendix contains all the required forms and instructions for grant applications including: 1) General Information, 2) Location Map, 3) Public Review Process, 4) Equipment Inventory, 5) Environmental Review Data Sheet, 6) Habitat Management Program, 7) Project Cost Estimate, 8) Applicant Certifications, 9) Law Enforcement Project Certification, 10) Governing Body Resolution, 11) Evaluation Criteria, and 12) Law Enforcement Needs Assessment. The Appendix also contains samples of the various Project Agreements that will be executed with grantees and a sample form for Payment Requests.

The 2008 Soil Conservation Standard and 2008 Soil Conservation Guidelines are incorporated by reference in subsection 4970.06.3(a) of the proposed regulations. As such, any subsequent revisions to its contents are subject to the rulemaking process.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The proposed regulations provide clarity for the public and future applicants of the OHMVR Grants and Cooperative Agreements Program and ensure consistency with the statute. The proposed sections of the regulations were developed by OHMVR Division staff with public input, including focus groups of stakeholders as required by PRC §

5090.50(d)(2) and provided in Government Code § 11346(b). Alternatives to the regulations were considered by the Department but were rejected since all provisions in the proposed regulations are necessary to comply with the statute and to provide clear and concise guidance to potential grant and cooperative agreement applicants.

ALTERNATIVES TO PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

Participation in the OHMVR Grants and Cooperative Agreements Program is voluntary and limited to cities, counties, districts, State agencies, agencies of the federal government, federally recognized Native American tribes, nonprofit organizations, and educational institutions. There is no economic impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations will not have a significant adverse economic impact on any business since OHV Trust Funds are used on land managed by local and federal agencies.

AVOIDANCE OF UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

No federally mandated regulation or amendment is being proposed. There are no conflicts between the proposed regulations and any federal regulations.