

ADOPT (2007)**Chapter 15.5****OFF-HIGHWAY MOTOR VEHICLE RECREATION
GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS****ARTICLE 1 - GENERAL PROVISIONS****4970.49. APPLICATION OF CHAPTER**

Chapter 15.5 applies only to Grant and Cooperative Agreement Applications received by the Off-Highway Motor Vehicle Recreation Division on or after January 1, 2007.

4970.50. DEFINITIONS

The words used in this chapter have the following meanings whenever the words are capitalized in this Chapter 15.5:

- (a) “Act” means the Off-Highway Motor Vehicle Recreation Act of 2003, as amended, commencing at Public Resources Code Section 5090.01, or any subsequent amended versions.
- (b) “Administrative Costs” means the costs of functions performed in support of the Deliverables associated with the Project. Examples of Administrative Costs include, but are not limited to, activities such as personnel providing administrative support directly related to the Project, time keeping, accounting, fiscal management, record keeping and/or purchasing.
- (c) “Allocation” means a determination of Funds to be made available for, or an expenditure limit established for, an organizational unit or function, a Project or work activity or Deliverable.
- (d) “All-Terrain Vehicle (ATV)” means any vehicle as defined by California Vehicle Code Section 111.
- (e) “Applicant” means any of the following that are eligible to apply for funding under the Off-Highway Motor Vehicle Recreation (OHMVR) Division Grants and Cooperative Agreements program:
 - (1) For a city or county: a department or comparable subdivision;
 - (2) An Appropriate District;
 - (3) For the U.S. Forest Service: a Forest or Regional Office;
 - (4) For the U.S. Bureau of Land Management: a Field, District, or State Office;
 - (5) For other Federal Agencies: a Field, District, Regional or State Office or similar subdivision;
 - (6) A Federally Recognized Native American Tribe;
 - (7) An Educational Institution;
 - (8) A Nonprofit organization.
- (f) “Application” means a compilation of required documents in conformance with these regulations to support a request for funding from the Off-Highway Motor Vehicle Recreation (OHMVR) Division’s Grants and Cooperative Agreements program for proposed Project(s).
- (g) “Application Instructions” means directions for completing an Application for an OHV Grant or Cooperative Agreement found in Chapter 1 of the Off-Highway Motor Vehicle Recreation Division Manual for Grants and Cooperative Agreements dated April 2007.
- (h) “Appropriate District” means one that has clear legal responsibility for open space, recreation, parks, and resource related activities that are land based.
- (i) “Appropriation” means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose and usually for a specific period of time.

- (j) “Audit” means a comprehensive review in accordance with Generally Accepted Auditing Standards (GAAS), developed by the American Institute of Certified Public Accountants (AICPA) and the Government Auditing Standards issued by the United States General Accounting Office (GAO). The Audit is a review of the Grantee’s relevant financial records by the Department of Parks and Recreation Audit Office staff or other Department designee to determine that they support the expenditures authorized in the Project Agreement.
- (k) “Buffer” refers to lands or physical barriers acquired or established contiguous to existing or proposed off-highway motor vehicle recreational areas to protect plant and wildlife habitat, soils, view sheds, or reduce noise and other effects to the surrounding lands, for the purpose of sustaining OHV Recreation.
- (l) “Casual” means non-competitive OHV Recreation.
- (m) “CEQA” means the California Environmental Quality Act, Public Resources Code (PRC) Section 21000 et seq.; Title 14, California Code of Regulations (CCR), Division 6, Chapter 3, Article 20.
- (n) “Commission” means the Off-Highway Motor Vehicle Recreation (OHMVR) Commission.
- (o) “Conservation” means activities, practices, and programs developed and/or implemented in connection with ongoing OHV Recreation that sustain and preserve soils, plants, wildlife and their habitat, and natural and cultural resources as referenced in or required by PRC Sections 5090.10, 5090.35, 5090.50, and 5090.53.
- (p) “Construction” means the act of building or assembling using different parts, materials, or elements in an ordered manner including, but not limited to, physical barriers, trails, Roads, facilities, hardening of stream crossings, fencing, sediment control structures, and facilities landscaping.
- (q) “Cooperative Agreement” means an agreement between the Division and a Federal Agency, or a Federally Recognized Native American Tribe for the purposes authorized and defined in PRC 5090.50 and these regulations.
- (r) “Cultural Resources” are associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage; are associated with the lives of persons important in our past; embody the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or have yielded, or may be likely to yield, information important in prehistory or history. Cultural resources also include Historical Resources. Historical Resources include, but are not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California. A resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (PRC Section 5024.1, Title 14 CCR, Section 4852).
- (s) “Deliverables” means the specific tangible outcomes or work products to be provided, acquired or produced with the Funds made available pursuant to the Project Agreement. Examples include the purchase of specified property, installation of specified erosion control measures, Construction of a restroom, specific hours or days of patrol, Construction of a specified length fencing, production of a specified number of maps, purchase of specified Equipment, Restoration of a specific area, Maintenance of a specific length of trail, completion of research resulting in a written report, and planning that results in a report or reports including any related specified documents.
- (t) “Deputy Director” means the manager of the California Department of Parks and Recreation, OHMVR Division.

- (u) “Development” means the Construction of new, and/or improvement of, existing Facilities, Roads, trails, or areas to improve existing or provide additional Opportunities, experiences, or services for OHV Recreation.
- (v) “Division” means the OHMVR Division of the California Department of Parks and Recreation.
- (w) “Division Website” means the internet page of the Department of Parks and Recreation, OHMVR Division at (www.ohv.parks.ca.gov).
- (x) “Due Diligence” means to conduct or cause to be conducted an investigation of all aspects of property proposed to be acquired and/or developed using Funds, including investigating the suitability of the property for the intended use, and all critical facts and assumptions used in developing the proposed Project that would assist in evaluating the success of the Project in providing OHV Recreation opportunities and to avoid and/or minimize potential risks that could impair the future sustainability of OHV Recreation.
- (y) "Educational Institution" means a public or private preschool, elementary, or secondary school, college or university, or institution; the governing board of a school district; or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools in accordance with Section 210.1 of the Education Code.
- (z) “Environmental Document” means a document prepared in accordance with the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA).
- (aa) “Equipment” means vehicles, tools, instruments, or apparatus. Equipment includes, but is not limited to: all vehicles, GPS units, sound meters, cameras, radios, first aid kits, computers and remote-sensing devices that are used in the implementation of a Project. Equipment does not include expendable items such as first aid kit refill supplies, personal safety gear, or tires.
- (bb) “Facility” means the assets of an organization that include: buildings, grounds, parking facilities, and structures other than buildings such as shade structures, fences, trash enclosures, cattleguards, etc., and includes the systems that support facilities (fuel, electrical, sewer, water, waste, etc.).
- (cc) “Federal Agency” means a unit of the United States government.
- (dd) “Federally Recognized Native American Tribe” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Village pursuant to Title 25, Code of Federal Regulations (CFR) Section 83.5(a).
- (ee) “Fund” means the Off-Highway Vehicle Trust Fund as created by subdivision (c) of Section 38225, CVC.
- (ff) “Grant” means an agreement between the Division and a city, county, appropriate district, Educational Institution, or Nonprofit organization for the purposes as authorized and defined in PRC Section 5090.50 and these regulations.
- (gg) “Grantee” means any city, county, appropriate district, Nonprofit organization, Educational Institution, Federal Agency, or Federally Recognized Native American Tribe receiving OHV Grant or Cooperative Agreement Funds.
- (hh) “Grants Program Manual” means the Off-Highway Motor Vehicle Recreation Division Manual for Grants and Cooperative Agreements (April 2007) and all its contents and subsequent revisions submitted through the rulemaking process.
- (ii) “Maintenance” means the routine, ongoing or periodic work required to ensure Roads, trails, areas, and related facilities used for OHV Recreation and Conservation features (e.g., water diversion features, sediment basins, etc.) for the protection of natural and Cultural Resources that are impacted by OHV Recreation activities continue to function as intended.
- (jj) “Monitoring” means periodic data collection and review to determine if the OHV Project is in compliance with the statutory requirements and program or Project objectives.

- (kk) “NEPA” means the National Environmental Policy Act pursuant to United States Code (U.S.C.) Title 42, Section 4371; 40 Code of Federal Regulations (CFR) part 1500.1 et seq.
- (ll) “Nonprofit” means an organization having tax-exempt status pursuant to Section 501(c) (3) of the Internal Revenue Code.
- (mm) “OHV” means an off-highway motor vehicle as specified in CVC Section 38006 and/or street licensed motor vehicle while being used on lands to which CVC Division 16.5 applies.
- (nn) “OHV Opportunities” means Roads, trails, or areas on lands that are open to legal OHV Recreation.
- (oo) “OHV Recreation” means the activity of driving or riding motorized vehicles for leisure purposes on land to which CVC Division 16.5 applies.
- (pp) “Operation” means the use of staff and Equipment to facilitate and/or supervise the proper functioning of an OHV Recreation Road, trail, area or lands and any related visitor or user facilities or services, including the protection of persons, life and property.
- (qq) “Performance Review” means the review of a Project to identify any areas where the Division may provide technical advice and consultation to the Grantee to improve any aspect of a program or Project funded by OHV Funds and may include assessing progress toward the accomplishment of Deliverables.
- (rr) “Project” means the activities and Deliverables described in the Project Application to be accomplished with funding through a Project Agreement.
- (ss) “Project Agreement” means a contract executed to formally implement a Project.
- (tt) “Project Area” means the physical boundaries within which the activities will be performed and Deliverables will be accomplished as described in the Project Agreement.
- (uu) “Regional OHV Facility” means a Facility, primarily for Casual OHV Recreation, providing a wide variety of OHV Opportunities for a wide range of OHV interests, that is 500 or more acres, and with a population of 500,000 or more within a 150-mile radius or three (3) hour travel time, and with the potential to become financially self-sustaining in accordance with criteria adopted by the Commission pursuant to PRC Section 5090.51(b).
- (vv) “Repair” means to fix, mend, make new, or revitalize to a sound condition or to the condition existing prior to the OHV-related damage, after being damaged.
- (ww) “Reroute” means the closure, (if not retained for other non-motorized recreation), and Restoration of an existing segment of a trail or Road and replacement with a new alignment.
- (xx) “Restoration” means the completion of all work activities that are necessary to return land, plant communities, and plant covers to conditions comparable to those of surrounding lands, or at least those that existed prior to OHV Recreation when the Road, trail, or area has been closed to OHV Recreation.
- (yy) “Roads” include: fire trails, logging roads, service roads regardless of surface composition, or other roughly graded trails and roads upon which vehicular travel by the public is permitted (CVC 38001).
- (zz) “Scientific Research” means study and exploration into questions posed by theories and hypotheses, and defined by measurable steps or operations (e.g., sample design, methodology, statistical inferences). Scientific research is used to evaluate, estimate, analyze, and address the possible impact on, or of, OHV Recreation and develop responsive management recommendations.
- (aaa) “Snowmobile” means any vehicle as defined in CVC 557.
- (bbb) “Soil Conservation Program” means a plan containing a process or processes to anticipate and prevent accelerated and unnatural erosion as provided for in the “Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91)” or its successor.

- (ccc) “Viable Species Composition” means that species found in the Project Area have populations with the estimated numbers and distribution of reproductive individuals to enable their continued existence.
- (ddd) “Wildlife Habitat Protection Program (WHPP)” means an animal and plant Habitat Management Program (HMP) designed to sustain a Viable Species Composition for the Project Area, pursuant to PRC Sections 5090.35, 5090.50, and 5090.53.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 4442, 4442.5, 5020.1(j), 5024.1, 5090.04, 5090.05, 5090.06, 5090.07, 5090.10, 5090.11, 5090.32, 5090.35, 5090.50, 5090.51(b), 5090.53, and 5090.64(b)(1) and (2), and 21000 et seq., PRC; CVC Division 1, Sections 111, 400, 436, 557, Division 16.5, Chapter 1, Sections 38001, 38006, 38012, and 38225(c); USC, Title 42, Section 4371; USC, Title 43 Sections 1601 et seq.; 40 CFR part 1500.1 et seq.; 25 CFR Section 83.5(a); Education Code Section 210.1; U.S. Internal Revenue Code, Section 501(c)(3).

4970.51. PROGRAM PURPOSE

The purpose of the OHMVR Grants and Cooperative Agreements Program is to promote well managed OHV Recreation by providing financial assistance to eligible agencies and organizations that develop, maintain, operate, expand, support, or contribute to well managed high-quality OHV Recreation areas, Roads, and trails, and to responsibly maintain the wildlife, soils, and habitat of Project Areas in a manner that will sustain long-term OHV Recreation in accordance with the legislative provisions and intent of the Act commencing at Public Resources Code (PRC) Section 5090.01.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5090.01 thru 5090.70, PRC.

4970.52. COMMISSION’S ANNUAL PROGRAM REVIEW MEETING

Prior to the start of each application cycle, the Commission shall conduct one (1) public meeting to collect: 1) public input concerning the OHV Grants and Cooperative Agreements Program, 2) recommendations for program improvements, and 3) public input for specific Project needs for Grants and Cooperative Agreements Program areas.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Section 5090.24(f), PRC.

4970.53. GENERAL APPLICATION REQUIREMENTS

- (a) The Grants Program Manual and all its contents and subsequent revisions submitted through the rulemaking process are hereby incorporated by reference.
- (b) Awarding a Grant or Cooperative Agreement does not guarantee ongoing or future OHV funding in any Project category.
- (c) Applications must establish how each proposed Project is directly related to sustaining OHV Recreation in the Project Area specified in the Application. Proposed Projects will be screened by the Division prior to scoring. Any Project Application that does not establish a specific link to OHV Recreation will not be considered. For the purposes of this section, “OHV Recreation” includes both legal and illegal OHV use on public or private property to which CVC Division 16.5 applies. Provided however, where the Project is related to illegal use, the Project purpose must be limited to enforcement to prevent such illegal use, allowable protection of resources, Restoration to Repair damage, or for barriers, signing, or education to prevent such illegal use.

- (d) Subject to the discretion of the Division as specified in subsection (f)(4) of this Section, any Applications determined by the Division to not be in conformance with these requirements shall be returned to the Applicant without consideration.
- (e) General Application requirements are as follows:
- (1) Each Applicant may submit only one (1) Application for each grant cycle. The Application may contain multiple Projects.
 - (2) Application requests for Projects shall be not less than \$10,000 per Project and not exceed a maximum of \$500,000 per Project or a total of \$2 million per Applicant.
 - (3) For Acquisition, Conservation, Development, Planning or Restoration Projects or any other Project not exceeding an expenditure of \$15,000 per year, Funds may be requested for expenditure over a three (3) year period.
 - (4) Public Casual use of facilities shall not be less than sixty (60) percent of the total use in Project Areas.
 - (5) Equipment Funds requested or expended shall be in conformance with the requirements specified in Chapters 1 and 3.
 - (6) Payment of Administrative Costs from the Fund may not exceed ten (10) percent of the total Project amount requested in the Application.
 - (7) All Applicants shall undertake a public review process of their Application(s). The process shall include the following minimum steps:
 - (A) Public notice. At least thirty (30) calendar days prior to submitting the final Application, Applicants shall notice to the public of the opportunity to submit comments on the draft Application. The notice shall be published at a minimum in the Applicant's newsletter and/or Applicant's website and mailed to those persons, agencies, or organizations the Applicant determines likely to have an interest in or be affected by the Project.
 - (B) Public review. Draft Applications shall be made available for public review and comment not later than the date of publication of the public notice. At a minimum, Applicants shall make available to the public for the purpose of this review the Application Face Sheet, Project description, and Project Costs/Deliverables form.
- (f) The Application submission process shall consist of the following:
- (1) The Division shall establish a timeline for the submission of Applications and post the timeline on the Division Website.
 - (2) Applications that are not in the possession of the Division by the Application submission deadline set by the Division for the Application cycle shall be returned to the Applicant without consideration.
 - (3) Questions concerning the Application process and the interpretation of these regulations shall be submitted in writing to the Division Website, Questions and Answers section. Responses to these questions will be made in writing via the Division Website within five (5) calendar days of submission of the questions. The last date for submitting questions to the Division will be fifteen (15) calendar days prior to the final Application deadline. The Division shall provide a response to all Applicants' questions on the Division Website not later than ten (10) calendar days before the Application deadline, in order for the response to be applicable. Applicants shall not rely on answers to questions unless placed on the Division Website, Questions and Answers section, by the Division.
 - (4) The Division may, but has no obligation to, waive or correct inconsequential defects in the Application. "Inconsequential," for the purpose of this subsection (f)(4) and

subsection (f)(5), shall mean a situation where correction of an Application or waiver of a defect will not give the Applicant an unfair advantage over other Applicants or Applications.

- (A) Examples of an unfair advantage may include, but are not limited to, situations where an Applicant is allowed to: increase or reduce its request and/or amend the Deliverables, provide completed information in an uncompleted form or submittal, provide new information that was not submitted in or with the Application as submitted on the submittal date, have its Application evaluated under other Project type criteria, or provide additional analysis of information submitted in the Applications after the submittal date.
 - (B) Examples of inconsequential defects may include, but are not limited to: signing a form or other document that was complete as submitted, but not signed; correcting mathematical errors where those corrections do not cause the Application to violate maximum or minimum amounts allowable; clarifying the meaning of technical words or acronyms; or substituting a substantially equivalent good, service, Equipment, or Deliverable for one or more as submitted in the Application when the need for the substitution could not have been known by the Applicant on the submittal date.
- (5) The Division may request additional information of an Applicant in order to clarify inconsequential information submitted in the Application. Examples of inconsequential information include, but are not limited to: the location of a Project Area, habitat, or other affected area; cost entries on forms that do not match totals; or information on an otherwise completed form where the clarification does not change the purpose for the Project or amount requested.
- (g) Except as provided in Section 4970.53(f)(4), Applications found to have defects that are inconsistent with applicable statute and/or these regulations will be rejected by the Division. The appeal process shall be as follows:
- (1) The Division shall send a written notice of rejection to the Authorized Representative and Project Administrator as shown on the Application Face Sheet by both e-mail and FAX. The notice of rejection shall specify the defect(s) and refer to the appropriate statutes and regulations that apply.
 - (2) The Applicant has until 5:00 p.m. on the third full business day after the Division sends the notice of rejection to request an appeal by one of the following methods:
 - (A) Submission of an e-mail to the Grants Program Manager detailing the Applicant's response to the notice of rejection.
 - (B) Submission of a FAX to the Grants Program Manager detailing the Applicant's response to the notice of rejection.
 - (C) Contacting the Grants Program Manager to schedule a telephone conference to present the Applicant's response to the notice of rejection.
 - (D) Contacting the Grants Program Manager to schedule a meeting at the Division Headquarters to present the Applicant's response to the notice of rejection.
 - (3) If the Applicant does not receive a response from the Division by 5:00 p.m. on the fifth business day after the Applicant presents its response to the notice of rejection, the appeal shall be deemed denied.
- (h) Applications shall meet all of the requirements contained in the Grants Program Manual, including fully completed Application Forms. All Application Forms are in the Appendix. In addition to the Forms, the Applications shall contain the following information for each project:

- (1) Applications must clearly describe each Project, including a demonstration of how each proposed Project is directly related to sustaining OHV Recreation in the Project Area specified in the Application.
- (2) Documentation of the public review process.
- (3) All city, county, Appropriate District, Educational Institution, and Nonprofit organization Grant Applications and any Federally Recognized Native American Tribe Cooperative Agreement Applications shall include a completed Governing Body Resolution certified by the clerk of the governing body.
- (4) Photo(s) when needed, as described in the Application Instructions.
- (5) A map or maps as described in the Application Instructions.
- (6) The environmental requirements contained in Section 4970.63.
- (7) If applicable, Applications shall include identification of the match to be applied to the Project in accordance with Section 4970.66.
- (8) Project Applications that include a request for Funds to conduct Scientific Research related to the Project must provide:
 - i. The research Project design that includes a description of the goals, objectives, and methodologies and how the research will be used to make management decisions sustaining long-term OHV Recreation;
 - ii. The curriculum vitae of the primary researcher(s);
 - iii. Documentation of peer review of the research plan. The peer review shall be conducted by at least three (3) qualified experts from the scientific discipline or related fields. The peer reviewers shall not be from the Applicant agency nor involved in implementing the research Project itself.
 - iv. Other information required to be included as specified in Article 2 under the Application content requirements for the specific Project type.
- (9) Project-specific information required for submittal under Article 2.
- (10) See Chapter 1 of the Grants Program Manual for lists of eligible and ineligible costs and Project-specific eligible costs.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections: 5090.32, 5090.35, 5090.50, 5090.51, and 5090.53, PRC; Government Code Section 11343.

ARTICLE 2 - TYPES OF PROJECTS AND SPECIFIC APPLICATION AND CONTENT REQUIREMENTS

4970.54. ACQUISITION PROJECTS

- (a) Acquisition Projects secure interests in land to: expand and/or sustain OHV Recreation access and Opportunities, provide Buffers, and/or eliminate trespass.
- (b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Acquisition Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Acquisition Projects.
- (d) Applications for Acquisition Projects shall include all the information required under Section 4970.53(h) plus the following:
 - (1) An acquisition plan, which shows the steps and timelines for acquiring the Project, and a discussion of the Applicant's ability to accomplish the Project.
 - (2) Due Diligence to determine if the property is usable for its intended purpose.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

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

4970.55. CONSERVATION PROJECTS

- (a) Conservation Projects are implemented in connection with ongoing OHV Recreation and OHV Opportunities to protect natural and Cultural Resources and develop and/or implement soil Conservation standards and WHPPs/HMPs as required by the Act, including: Monitoring or researching those practices, activities, or Projects to provide data for management decisions; or Rerouting of Roads to comply with soil standards and wildlife habitat protection programs or to protect Cultural Resources.
- (b) Cities, counties, Appropriate Districts, Federal Agencies, Federally Recognized Native American Tribes, Educational Institutions, and Nonprofit organizations are eligible to apply for Conservation Projects.
- (c) Applications for Conservation Projects shall include all the information required under Section 4970.53(h) plus the following:
 - (1) When applicable, Nonprofit organization and Educational Institution Applicants shall have a written agreement with the property manager, land management agency or landowner to perform the Project.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5090.32, 5090.35, 5090.50, and 5090.53, PRC.

4970.56. DEVELOPMENT PROJECTS

- (a) Development Projects sustain OHV Opportunity and provide OHV Recreation experiences, or related visitor services in the form of new, improved, or upgraded Facilities, Roads, trails, or areas, including the relocation of an existing Road or trail that is not a required Reroute within a Conservation or Trail Maintenance Project.
- (b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Development Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Development Projects.
- (d) Applications for Development Projects shall include all the information required under Section 4970.53(h) plus the following:

- (1) Conceptual drawings and site plans for the Development Project.
- (2) Land tenure certification to the Division as indicated in the Application Instructions.
- (e) Grantees are required to meet all access requirements under State or Federal law as applicable, including, without limitation, the Americans with Disabilities Act of 1990 (Public Law 101-336, July 26, 1990, 104 Stat 327).

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

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

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

- (a) Facilities Operation and Maintenance (FO&M) Projects are for routine work to maintain existing facilities, other than Roads, trails, or areas, and provide visitor assistance, and health and safety measures attributable or related to OHV Recreation being provided by the Applicant.
- (b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for FO&M Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for FO&M Projects.
- (c) Applications for FO&M Projects shall include all the information required under Section 4970.53(h).

NOTE: Authority cited: Sections 5001.5, and 5003, PRC.

Reference cited: Sections 5090.32 and 5090.50, PRC.

4970.58. LAW ENFORCEMENT PROJECTS

- (a) Law Enforcement Projects provide financial assistance to local and Federal Agencies for protection of life and property, including natural and Cultural Resources, enforcement of laws, public safety, search and rescue, personnel support, placement of barriers and other means of traffic control, and training related to OHV Recreation and OHV Opportunities.
- (b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Law Enforcement Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Law Enforcement Projects.
- (c) Applications for Law Enforcement Projects shall include all the information required under Section 4970.53(h).

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5090.32, 5090.50, and 5090.64(b)(2), PRC; CVC Section 38000.

4970.59. OFF-HIGHWAY VEHICLE (OHV) SAFETY AND/OR EDUCATION PROGRAM PROJECTS

- (a) OHV Safety and/or Education Program Projects provide the following to members of the public:
 - (1) OHV safety activities, and/or
 - (2) Teaching safe and environmentally responsible Operation of OHVs.
- (b) Cities, counties, Appropriate Districts, Federal Agencies, Federally Recognized Native American Tribes, Educational Institutions, and Nonprofit organizations are eligible to apply for Safety and/or Education Program Projects.
- (d) Applications for OHV Safety and/or Education Program Projects shall include all the information required under Section 4970.53(h) plus the following:

(1) Written Agreement

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5090.32 and 5090.50, PRC.

4970.60. PLANNING PROJECTS

- (a) Planning Projects fund activities that produce a report or reports that work out in advance and, in general, detail how an OHV Opportunity or Project Area is to be organized, developed, operated, conserved, and/or maintained, to meet demand and sustain long-term OHV recreational use. Planning Projects may also provide programmatic management coordination.
- (b) Project specific planning efforts such as engineering, landscape design, environmental analysis, permitting, and similar actions for specific Projects, such as Conservation, Development, or Restoration, must be submitted as a component of the specific Project type.
- (c) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Planning Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Planning Projects.
- (d) Applications for Planning Projects shall include all the information required under Section 4970.53(h).

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5024.1, 5090.32, 5090.35, 5090.50, and 5090.53, PRC.

4970.61. RESTORATION PROJECTS

- (a) Restoration Projects provide funding to complete all work activities that are necessary to return land, plant communities, and plant covers to conditions comparable to those of surrounding lands or at least those that existed prior to OHV Recreation, when the Road, trail, or area has been closed to OHV Recreation and the Applicant has adopted a decision to restore the lands when the Applicant has determined that:
 - (1) Best available Maintenance and Conservation practices are not sufficient to meet established soil standards and/or wildlife habitat protection program requirements.
 - (2) An area has been damaged by OHV Recreation where such OHV Recreation is not lawfully allowed on such area, or
 - (3) The Road, trail, or area that previously provided OHV Opportunity is closed as part of a plan adopted by the Applicant due to natural or cultural or other similar resource protection considerations.
- (b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Restoration Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Restoration Projects.
- (c) Applications for Restoration Projects shall include all the information required under Section 4970.53(h) plus the following:
 - (1) An explanation of what law enforcement efforts and follow up activities will be performed to ensure successful completion of the Restoration Project.
 - (2) Official documentation of: (i) the Road, trail or area closure for one of the three reasons stated herein above and (ii) the official decision to restore the lands or to proceed with the Restoration Project subject only to completion of environmental review required by either CEQA or NEPA.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5090.32, 5090.50, and 5090.64(a), PRC.

4970.62. TRAIL MAINTENANCE PROJECTS

- (a) Trail Maintenance Projects consist of two types: Trail Maintenance and/or Trail Reroute where the reroute is necessary due to safety issues and/or damage caused by natural disaster.
- (b) Cities, counties, Appropriate Districts, Federal Agencies, and Federally Recognized Native American Tribes are eligible to apply for Trail Maintenance Projects. Educational Institutions and Nonprofit organizations are not eligible to apply for Trail Maintenance Projects.
- (c) Applications for Trail Maintenance Projects shall include all the information required under Section 4970.53(h) plus the following:

 - (1) A Trail Maintenance Plan.

NOTE: Authority cited: Sections 5001.5, and 5003, PRC.

Reference cited: Sections 5090.32 and 5090.50, PRC.

ARTICLE 3 – ENVIRONMENTAL AND MATCH REQUIREMENTS**4970.63. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REQUIREMENTS**

- (a) The Division is required to comply with CEQA (PRC Section 21000 et seq.) in order to approve all Grants and Cooperative Agreements under the OHMVR Grants and Cooperative Agreements Program.
- (b) Where the Regulations and this Grants Program Manual require Funds for Project-specific environmental analysis (CEQA or NEPA compliance) to be requested as part of a Project to complete all Deliverables, such as: Acquisition, Conservation, Development, Planning, or Restoration, the Project approval and implementation process will consist of two (2) steps as follows:
- (1) Full funding of the Project Agreement will be specifically conditioned on completion of CEQA or NEPA activities during the first phase of the Project to complete the Environmental Documentation authorized in the Project Agreement.
 - (2) When the CEQA or NEPA activities have been completed and the Grantee agency has made the decision to proceed with implementation of the Project, as conditioned by the outcome of the CEQA and/or NEPA document, the Project Agreement will be submitted to the Commission for approval to release the Funds available for completion of the Project.
- (c) FOR CITY, COUNTY, APPROPRIATE DISTRICT, EDUCATIONAL INSTITUTION, AND NONPROFIT ORGANIZATION APPLICANTS ONLY:
- (1) All city, county, appropriate district, Educational Institution and Nonprofit organization Applicants shall provide the required documentation for the Division to determine that CEQA compliance has been met. All such Applicants relying on a Categorical Exemption for CEQA compliance shall also provide responses to questions required in the Environmental Review Data Sheet (ERDS) found in the Appendix. CEQA compliance shall be determined by one of the following:
 - (A) A Notice of Exemption (NOE) finding that the Project is exempt from CEQA that has been filed for the Project consistent with CEQA Guidelines Section 15062, or
 - (B) An Initial Study/Negative Declaration (IS/ND) or an Initial Study/Mitigated Negative Declaration (IS/MND) for activities that are not categorically exempt, but fit within the definition of activities that may be covered by a ND under CEQA, together with a copy of the Notice of Determination filed for the Project (NOD), or
 - (C) An Environmental Impact Report (EIR) if the proposed activity poses a potentially significant impact as defined in an IS/ND checklist, or meets any of the tests for mandatory findings of significance under CEQA (PRC Section 21083; CEQA Guidelines Section 15065), or
 - (D) Other documentation indicating the requirements of CEQA have been satisfied in the discretion of the Applicant or the reasons the Applicant believes the Project is categorically exempt or not subject to the CEQA requirements.
 - (2) Within forty-five (45) calendar days of receipt of the Applications, the Division shall review the Application for environmental compliance.
 - (A) Any Application not addressing (1) above shall be returned to the Applicant without further processing.
 - (B) If (1) above is addressed and the Division needs to clarify information provided, the Division shall submit in writing a request for such information from the

Applicant within the forty-five (45) day review period. The Division shall request the Applicant provide the additional information in writing to the Division within ten (10) calendar days of receipt of the request.

(C) Applicants that do not return the requested additional information within the ten (10) calendar day limit may have their Applications returned without further processing.

(3) Notwithstanding subdivision (b)(1), where the Applicant is not a lead agency and CEQA compliance has not otherwise been met, the Applicant shall provide responses to questions required in the Environmental Review Data Sheet (ERDS) found in the Appendix, and shall also provide adequate information to the Division to make a sufficient Project review to determine the appropriate level of CEQA compliance and any additional Environmental Documentation required.

(A) Within forty-five (45) calendar days of determining the Application has complied with the Application Instructions, the Division will determine what additional documentation or information is required for the Division to complete the requirements for CEQA, with an assessment of the amount of further CEQA analysis and compliance that may be required. The Division cannot promise to complete the added CEQA work needed if the time and resources required exceed the time and resources available to complete the Application selection process. If the Division determines that it cannot complete the necessary additional CEQA work, it reserves the right to inform the Applicant in writing and return the Application and supporting materials.

(B) If the Division determines additional information is required for the Application to comply with CEQA and that such work may be completed with existing resources and within the timeframe for the Application process, it will request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.

(1) Applicants who do not return the requested additional information within the ten (10) day time limit may have their Applications returned without further processing.

(2) For those Applications that are accepted for further CEQA compliance, the Division will use its best efforts to cause the CEQA compliance work to be completed in sufficient time for final Commission review of the Applications and approval to issue Project Agreements. However, the Division cannot guarantee the Project will be certified as CEQA compliant. Also, the Division reserves the right to cease CEQA compliance work if it determines the Project may not be funded in light of the Project evaluation and scoring process and submission of the Project to the Commission for review and approval.

(d) FOR FEDERAL AGENCIES OR FEDERALLY RECOGNIZED NATIVE AMERICAN TRIBE APPLICANTS ONLY

(1) All Federal Agency and Federally Recognized Native American Tribe Applicants shall submit completed Project-related NEPA compliance documentation with their Applications together with the responses to questions required by Section 1.4 of the Application Instructions, to allow the Division to make a sufficient Project review to determine the appropriate level of CEQA compliance and any additional Environmental Documentation required.

- (2) Within forty-five (45) calendar days of determining an Application has complied with the Application Instructions, the Division will determine what additional documentation or information is required for the Division to complete the requirements for CEQA, with an assessment of the amount of further CEQA analysis and compliance that may be required. The Division cannot promise to complete the added CEQA work needed if the time and resources required exceed the time and resources available to complete the Application selection process. If the Division determines it cannot complete the necessary additional CEQA work, it reserves the right to inform the Applicant in writing and return the Application and supporting materials.
- (A) If the Division determines additional information is required for the Applications to comply with CEQA and such work may be completed with existing resources and within the timeframe for the Application process, it will request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.
- (B) Applicants who do not return the requested additional information within the ten (10) day time limit may have their Applications returned without further processing.
- (C) For those Applications that are accepted for further CEQA compliance, the Division will use its best efforts to cause the CEQA compliance work to be completed in sufficient time for final Commission review and approval of the Applications for the Project(s). However, the Division cannot guarantee the Project will be certified as CEQA compliant. Also, the Division reserves the right to cease CEQA compliance work if it determines the Project may not be funded in light of the Project evaluation and scoring process and submission of the Project to the Commission for review and approval.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

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

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

- (a) A Wildlife Habitat Protection Program (WHPP) is an animal and plant Habitat Management Program (HMP) designed to sustain a viable species composition for the Project Area, pursuant to PRC Sections 5090.35 (b) and 5090.50.
- (b) All Federal Agency and Federally Recognized Native American Tribe Applications for Funds, with the exception of Law Enforcement shall submit a WHPP/HMP designed to sustain a viable species composition for the Project Area.
- (c) All city, county, and appropriate district Applicants for Acquisition and Development Projects shall develop and submit with their Application, pursuant to PRC Section 5090.53, a WHPP/HMP designed to sustain a viable species composition for the Project Area.
- (d) When WHPP/HMP implementation is required, the WHPP/HMP must be implemented regardless of whether the Grantee received Funds specifically for WHPP/HMP implementation.
- (e) A WHPP/HMP shall follow the Application Instructions and the Appendix, and include the following components as applicable:
- (1) Species or habitats of concern related to OHV Recreation.
 - (2) Risk factors associated with OHV Recreation.
 - (3) Management objectives and actions, including success criteria.

- (4) Monitoring.
- (5) Management review and response.
- (f) Within forty-five (45) calendar days of the Application submittal date, the Division shall review all Applications to ensure all required components of the WHPP/HMP are addressed.
 - (1) Any Application required to include a WHPP/HMP per (b) or (c) above and not addressing all required WHPP/HMP components as described in Section 1.5 of the Application Instructions, shall be returned to the Applicant without further processing.
 - (2) If all required WHPP/HMP components are addressed but the Division needs to clarify information provided and has determined such clarification may be completed within the timeframe for the Application process, it shall request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.
 - (3) Applicants who do not return the requested additional information within the ten (10) day time limit shall have their Applications returned without further processing.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Section 5090.32, 5090.35, 5090.50, and 5090.53, PRC.

4970.65. SOIL CONSERVATION PROGRAM

- (a) All Federal Agency and Federally Recognized Native American Tribe Applications, with the exception of Applications solely for Law Enforcement, pursuant to PRC Section 5090.50(i), shall submit documentation showing that the Project meets the Soil Conservation Standards required by PRC Section 5090.53(b).
- (b) All city, county, and appropriate district Applications for Acquisition and Development Projects shall submit evidence showing that the Project meets the Soil Conservation Standards required by PRC Section 5090.53(b).
- (c) The Soil Conservation Program shall comply with PRC 5090.35, 5090.50, and 5090.53, the Application Instructions, the Appendix, and the Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91) until replaced by any subsequent Soil Conservation Standards. The Soil Conservation Program shall include the following components as applicable:
 - (1) Maintenance
 - (2) Soils Condition Assessment
 - (3) Monitoring
 - (4) Actions Taken
 - (5) Technical Assessment for New Trail Construction

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Section 5090.32, 5090.35, 5090.50, and 5090.53, PRC.

4970.66. MATCH REQUIREMENTS

- (a) Except as provided in 4970.68 (c), cities, counties, and Appropriate Districts, Nonprofit organizations, and Educational Institutions shall provide matching funds or the equivalent value of services, material, or property used, in an amount of not less than twenty five (25) percent of the total expense of the off-highway motor vehicle Facility to be funded by the Grant.
- (b) All Federal Agencies and Federally Recognized Native American Tribes are exempt from the matching funds requirement in accordance with PRC Section 5090.51(a).

- (c) There shall be no matching fund requirement for Applications that request Funds for Acquisition, Construction, Development, or Planning of a Regional OHV Facility as defined in Section 4970.50(uu).
- (d) Cities, counties, and Appropriate Districts must provide a match as follows:
 - (1) For Acquisition Projects, in non-regional facilities only.
 - (2) For Conservation Projects, in all facilities with the exception of Construction activities in regional facilities.
 - (3) For Development Projects, in non-regional facilities only.
 - (4) For FO&M Projects, in all facilities with the exception of Construction activities in regional facilities.
 - (5) For Law Enforcement Projects, in all facilities.
 - (6) For OHV Safety and/or Education Program Projects, in all facilities.
 - (7) For Planning Projects, in non-regional facilities only.
 - (8) For Restoration Projects, in all facilities with the exception of Construction activities in regional facilities.
 - (9) For Trail Maintenance Projects in all facilities with the exception of Construction activities in regional facilities.
- (e) Nonprofit organizations and Educational Institutions must provide a match as follows:
 - (1) For Conservation Projects, in all facilities with the exception of Construction activities in regional facilities.
 - (2) For OHV Safety and/or Education Program Projects, in all facilities.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Section 5090.51, PRC.

ARTICLE 4 - APPLICATION EVALUATION AND APPROVAL OF PROJECT AGREEMENTS

4970.67. APPLICATION EVALUATION SYSTEM

- (a)** Applications that meet the submission requirements will be evaluated, scored, and awarded on a competitive basis according to the provisions of the Grants Program Manual Chapter 2, Application Evaluation System and OHV Form K in the Appendix.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5090.24 and 5090.32, PRC.

4970.68. COMMISSION APPROVAL OF GRANTS AND COOPERATIVE AGREEMENTS APPLICATIONS

- (a)** Applications shall be considered once annually as long as OHV Trust Funds are available.
- (b)** In accordance with the provisions of the Grants Program Manual, Chapter 2, the Commission Chair may designate a Grants and Cooperative Agreements Program Subcommittee (“Subcommittee”) to hold public meetings for preliminary consideration of the Applications that have been evaluated, scored, and ranked by the Division.
- (c)** The Commission shall review Applications and approve the issuance of Project Agreements by the Division. This review shall be conducted in accordance with these regulations and will include public comment relating to the Applications as submitted. The Commission may accept the findings and conclusions of the Division, any recommendations of the Subcommittee, if appointed by the Chair, or make revisions based on these regulations, the information in the Applications as originally submitted, and any public comment regarding the information submitted in the original Applications.
- (d)** The Division shall post the Commission’s approved Project list on the Division Website.

Note: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5090.32 and 5090.61, PRC.

ARTICLE 5 - PROJECT ADMINISTRATION PROCEDURES**4970.69. PROJECT AGREEMENTS**

- (a) The Division shall prepare and execute Project Agreements to implement the Projects approved by the Commission.

Note: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Sections 5090.32 and 5090.61, PRC

4970.70. PROJECT ADMINISTRATION

- (a) The Division and the Grantees shall comply with the Project administration procedures set forth in Chapter 3 of the Grants Program Manual.
- (b) Grantees shall maintain financial accounts, documents, and records in accordance with the accounting practices described in Chapter 3 Section 3.6.3 for all Projects and shall make them available to the Department's Auditor.

Note: Authority cited: Sections 5001.5 and 5003, PRC

Reference cited: Sections 5090.32 and 5090.50

4970.71. PERFORMANCE REVIEWS

- (a) The Division may conduct Performance Reviews of the Grantee's Project(s) taking into consideration past and current performance. The purpose of these Performance Reviews is to identify any areas where the Division may provide technical advice and consultation to the Grantee to improve any aspect of a Project. These Performance Reviews may include, but are not limited to, review of a Project to determine progress toward the completion of Deliverables, review of implementation of WHPP/HMP and Soil Conservation Programs, or other requirements contained in Project Agreements. Performance Review may be accomplished by, but not limited to, desk reviews, questionnaires and other standards of inquiry, and/or site visits.
- (b) The Grantee shall permit Division staff, with a minimum of twenty-one (21) calendar days notice, to conduct a site visit to review the Grantee's Project(s). The site visit will include review of progress towards the accomplishment of Deliverables, which may become part of Audit findings, and may include a final inspection of the Project facilities or other Project Deliverables to determine if the work performed is in accordance with Project Agreement.
- (1) Grantees shall make their Project Areas, applicable documentation, and staff who are knowledgeable about or oversee the Project available to the Division for site visits as described in Chapter 3.
- (2) When Division staff conducts a site visit, staff shall develop a report containing any comments and recommendations with regard to the performance of the Grantee's Project. A copy of the report shall be provided to the Grantee.
- (3) Grantees shall respond in writing to the Division within sixty (60) calendar days to all comments and recommendations provided by Division staff as a result of a site visit. The response shall describe all actions taken or proposed in response to the recommendations in the site visit report.
- (c) Failure to cooperate with requests for information or site access during a Performance Review or Audit made pursuant to these regulations may result in denial of payment requests and/or reimbursement to the State of amounts advanced.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Section 5090.32, PRC.

4970.72. AUDITS

- (a) The Department of Parks and Recreation Audit Office staff or other Department designee will Audit Projects to assure that the expenditures incurred by the Grantee were made in accordance with the provisions of Public Resources Code Section 5090.50 and have been expended in accordance with the Project Agreement.
- (b) The Grantee shall retain all financial accounts, documents, and records pertinent to the Project for: a) three (3) years from the expiration date of the Project Agreement or b) until an Audit started during the three (3) years following the expiration of the Project Agreement has been completed; a report is published; and any Audit findings are resolved and/or payment or other correction made with regard to any Audit findings contained in the final Audit report.
- (c) Failure to fully complete Projects as agreed in the Project Agreement; and/or to maintain records supporting the expenditures made pursuant to the Project Agreement, these regulations, and any other applicable law; and/or failure of such records to support expenditures claimed and payments received, shall be grounds for an Audit exception requiring refund of amounts paid.
- (d) The Department shall have the right to visit Project Areas to confirm the completion of Deliverables and inspect and/or make copies of any books, records, or reports of the Grantee pertaining to all Projects.
- (e) Upon completion of the Department Audit, the Grantee shall be provided a copy of the final Audit report that shall contain the results of the Audit including all Audit exceptions and refunds found to be due. If the Audit results identify exceptions resulting in refunds due to the State, the Grantee shall have sixty (60) calendar days to refund the overpayment to the State unless the Grantee elects to request review of the Audit results as set forth in 4970.72(f).
- (f) A Grantee may request review of the Audit report. The Grantee must request the review in writing to the Division within thirty (30) calendar days of receipt of the Audit report. Where a Grantee has requested such review, the Division will have final authority to determine what if any amount is due back to the State. The Division will have thirty (30) calendar days to respond to the request. If the Division does not provide a response within thirty (30) days, the final Audit report will be deemed accepted. The Grantee shall have sixty (60) calendar days from the date Audit results are deemed final to remit payment. Failure to remit payment within the sixty (60) calendar days may result in the withholding or commensurate reduction of future reimbursement payments or advances on other Grantee Projects or such other remedies to collect the money as may be available by law.

NOTE: Authority cited: Sections 5001.5 and 5003, PRC.

Reference cited: Section 5090.32, PRC.