

OFF-HIGHWAY MOTOR VEHICLE RECREATION GRANTS AND COOPERATIVE AGREEMENTS PROGRAM PROPOSED REGULATIONS

Text of Modified Regulations (2nd 15 Day Notice)

The original proposal is in single underline. Changes made during the 1st 15 day notice are illustrated by double underline for proposed additions and by strikeout for proposed deletions. Changes made during the 2nd 15 day are illustrated by italics with a dotted line and double strikeout for proposed deletions.

4970.01. DEFINITIONS

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(u) "Good Standing" means that the Grantee is at all times adhering to the statutes and regulations governing the Grants and Cooperative Agreements Program.

(aa) ~~"Indirect Costs" means expenses incurred for the management and administration of a project~~ the cost of any activity that does not directly result in the completion of the project and/or the management or administration of a project (e.g., utility costs, accounting services, contract administration, postage, management personnel, telephone bills, etc.).

(jj) "Project" means the activities and Deliverables described in the Project Application to be accomplished with funding, which includes both Grant funds and matching funds, through a Project Agreement.

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Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5020.1(j), 5024.1, 5090.07, 5090.10, 5090.11, 5090.32, 5090.35, 5090.50, 5090.53, Public Resources Code; Sections 38001 and 38006, Vehicle Code, 25 CFR Section 83.5(a); Sections 210.3 and 66010.4, Education Code; and U. S. IRC Section 501(c)(3).

4970.05. GENERAL APPLICATION REQUIREMENTS

- (a) The 2008 Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/11) (hereinafter Appendix) and all of its contents and subsequent revisions adopted through the rulemaking process are hereby incorporated by reference.
- (b) Applications shall establish how each proposed Project is directly related to OHV Recreation in the Project Area specified in the Application. Proposed Projects will be screened by the OHMVR Division prior to scoring. Those Applications that do not establish a direct relation to OHV Recreation shall be rejected.
- (c) Subject to the discretion of the OHMVR Division as specified in Section 4970.07.2, any Application determined by the OHMVR Division to be non-compliant with these requirements may be disqualified.
- (d) Each Applicant may submit only one (1) Application for each Grants Cycle. The Application may contain multiple Projects.

- (e) Applicants shall undertake a public review process of their Application.
- (1) All preliminary Applications shall be available on the Division Website the day following the Application deadline for public review and comment.
 - (2) Applicant shall notify the public of the opportunity to review and comment on the Preliminary Application no later than the first Tuesday following the first Monday in March. The notice shall include instructions for accessing the Division Website for Application review and public comments. Public notification efforts shall include at least one of the following:
 - (A) Notice mailed and/or emailed to those persons the Applicant determines most likely to have an interest in or be affected by the Application, and to those who have requested notice,
 - (B) Publication on Applicant's website,
 - (C) Publication in local newspaper,
 - (D) News release,
 - (E) Public meeting or hearing conducted by the Applicant.
 - (3) Public comments shall be submitted to the Applicant and the OHMVR Division.
 - (4) Public comments ~~submitted-received~~ shall be ~~submitted received~~ no later than 5:00 pm Pacific standard time on the first Monday in April.
- (f) All Applicants shall provide matching funds or the equivalent value of services, or material, in an amount not less than twenty-five percent (25%) of the total Project cost as identified on the Project Cost Estimate (rev.1/11).
- (1) All items of expense applied towards match ~~funds shall be applicable to the Project~~ must directly further the activities and Deliverables described in the Project Application and be accomplished with funding through a Project Agreement and shall be documented the same as any other item of expense.
 - (2) The same match expenses shall not be duplicated for multiple Projects.
 - (3) Cash value for volunteer time shall be determined using the agency's hourly reimbursement rate for the paid classification that most closely matches the duties performed by the volunteer. Cash value for salaried employee time shall be based on the agency's hourly reimbursement rate for the classification.
 - (4) Any item of expense that would be eligible as a Project cost is also eligible as a match.
- (g) All Applicants shall provide a Project Cost Estimate (see Appendix) for each requested Project.
- (h) All Applicants shall complete an inventory of Equipment for items purchased with OHV Trust Funds within the last five years.
- (i) All Applicants except those applying solely for law enforcement shall complete the Applicant Certifications.
- (j) Additional requirements within the Appendix, incorporated by reference, shall be completed as applicable.
- (k) Nonprofit organizations shall provide documentation, in the form of an Internal Revenue Service (IRS) letter of determination or publication on the official IRS website, verifying current IRC, Section 501(c)(3) status.
- (l) ~~Educational Institutions and Nonprofit organizations~~ An Applicant applying for a Grant involving activities on any public lands not managed by the Applicant shall include written permission from the Land Manager authorizing the Applicant to conduct the proposed Project and a description of how the Project fits with the land management goals of the area.
- (1) The written permission must be on Land Manager's letterhead and signed by the authorized representative of the Land Manager.

- (2) The written permission shall contain a current signature and date. The date of required letter must not be more than six (6) months prior to the beginning of the grant cycle for that Project in which the Project will be applied for.
- (3) The written permission must specifically identify the proposed Project(s) and a description of how the Project(s) fits with the land management goals of the area.
- (m) All city, county and District Applicants shall submit a governing body resolution providing approval to ~~apply~~ receive for grant funding from the OHV Trust Fund.
- (n) All Applicants shall comply with the environmental application requirements contained in Section 4970.06.
- (o) Nonprofit organizations shall provide IRS Form 990 (or something to the equivalent) from the previous year.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code

4970.08. ELIGIBLE PROJECT COSTS

- (a) Eligible Project costs are the costs directly related to the work identified in the Project Description. Additionally, the Applicant may receive reimbursement up to fifteen percent (15%) of the requested amount for Indirect Costs.
- (b) Examples of eligible costs include but are not limited to:
 - (1) For acquisition projects only, preliminary acquisition costs for contract preparation, acquisition appraisal, and negotiation,
 - (2) Costs for an employee directly engaged in OHV Project implementation, or the first level supervisor of said employee, subject to the following:
 - (A) Costs shall be computed according to the prevailing wage (for contracted services) or salary scale (for Applicant's staff), and may include benefits (i.e., vacation, sick leave, and social security contribution) that are customarily charged by the Grantee or contractor. Personnel benefit charges shall be calculated in proportion to the actual time worked on an OHV Project.
 - (B) Costs charged to an OHV Project shall be computed on actual time worked on the Project and supported by timesheets and attendance records or comparable documentation describing the work performed on the OHV Project.
 - (C) Costs for overtime are allowed under the Grantee's established overtime policy.
 - (D) Costs for direct Project supervision.
 - (3) Stipends paid ~~volunteers~~ according to the Grantee's normal practice or policy as per diem costs to volunteers only when a volunteer is working at a remote location for three or more consecutive days. A remote location is considered to be further than 50 miles from volunteer's ~~home~~/headquarters. Per diem allowances shall be as stated in Section 4970.08(b)(4).
 - (4) Travel expenses and per diem for federal agencies shall follow the policies of the federal agency requesting the funds with regard to travel reimbursement and shall not exceed the established federal rates. All non-federal agency Applicants shall follow the policy established by the State of California for its employees with regard to travel reimbursement and shall not exceed the rates paid to Exempt, Excluded, and Represented State of California employees. The rates are posted at <http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm>.

- (5) Costs associated with Equipment acquired with Grantee's funds and used for an OHV Project shall be charged on a use basis in accordance with the Applicant's local fair market rental rates but shall never exceed the Grantee's actual cost. The Grantee may not charge a use fee for vehicles or Equipment purchased with OHV Trust Funds, except for fuel and minor maintenance costs,
- (6) Supplies and materials, including personal safety items, may be purchased for a specific OHV Project or may be drawn from a central stock, provided the items are claimed at a cost no higher than the original purchase price paid by the Grantee,
- (7) Construction activities, from site preparation (e.g., demolition, excavation, grading, etc.) through completion of the structure or Facility,
- (8) Relocation costs that result from the displacement of a person and/or business, in accordance with California Government Code Sections 7260-7277 or the agency's applicable law if different from California law,
- (9) Grantee insurance premiums for hazard and liability insurance for an OHV Facility,
- (10) Transportation costs for moving Equipment, material, and personnel from base of operations to project sites (excluding moving and relocation expenses resulting from changes in assignments),
- (11) Preparation and publication of maps, videos, and/or handouts may be included as part of any related Project. Maps, videos and/or handouts that display the OHV trust fund logo shall be reviewed by the OHMVR Division prior to publication,
- (12) Rent or lease of facilities or Equipment to directly complete the Project, provided that the lease shall be fair market value or Grantee's actual cost, whichever is less and shall be proportionate to the area of the facility used for the Project. Utilities to operate these facilities are eligible provided the utilities are documented separately from any rent or lease costs. Facilities not required in order to directly complete the Project shall only be eligible as an indirect cost.
- (13) (A) Equipment purchase or repair shall be requested as part of the Application for a specific Project. The OHMVR Division will not directly fund the purchase of equipment.
 - ~~1. The OHMVR Division shall only reimburse Grantee for the cost of renting/leasing the Equipment during the performance period (i.e., on a one-year project, the Grantee shall only be reimbursed the equivalent of a one-year rental/lease amount).~~
 - ~~2. If the Grantee chooses to buy the Equipment, funds other than grant funds and/or match shall be used to pay any additional amount over rental/lease cost.~~
 - ~~3. Grantee may apply for additional Equipment funds to further reimburse the cost of purchasing the Equipment during subsequent grant cycles consistent with subsection~~
 - ~~4. The OHMVR Division will only reimburse up to the amount of actual Equipment cost~~
- ~~(B) Equipment purchase or repair shall be requested as part of the Application for a specific Project.~~
- ~~(C) (B) Equipment repair shall be due to normal wear and tear and may include major mechanical overhaul or replacement of parts if it is shown by a financial analysis in the Application that repair is more cost effective than the purchase of a new piece of Equipment.~~

~~(D)~~ (C) Equipment shall be used for OHV related purposes unless the Applicant is funding the portion of the purchase price not dedicated to OHV purposes, and

~~(E)~~ (D) ~~Subject to 4970.08 (13),~~ For Nonprofit Applicants, the maximum grant request for Equipment purchases shall not exceed \$15,000 per item and the cumulative Equipment purchase total shall not exceed \$30,000 per Applicant.

~~(F)~~ (E) ~~The purchase cost of equipment by a Grantee shall be necessary for materials to, and appropriate for the length of anticipated use for the Project and shall not exceed the minimum requirements necessary to successfully accomplish the Project.~~

- (14) Costs associated with site-specific Project planning such as design, permitting, or CEQA or NEPA analysis.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32, 5090.50, Public Resources Code.

4970.10.4 Acquisition

- (a) Purpose
Secure interests in land to sustain and/or expand OHV Recreation access and OHV Opportunities.
- (b) Available Funding
From the O&M category, at least ten percent (10%) of the funds will be available for acquisition Projects.
- (c) Examples of Deliverables
Acquisition Deliverables include, but are not limited to the following:
- (1) Purchase of right-of-way or easement,
 - (2) Lease of twenty-five (25) years or more,
 - (3) Purchase of land in fee title,
 - (4) Purchase of an option, and
 - (5) Rights to use real property, such as permits or licenses.
- (d) Project-Specific Application Requirements
In addition to the common requirements listed in Section 4970.05, Applications for acquisition Projects shall include:
- (1) Project Description
The Project Description shall provide sufficient clarity such that those not familiar with the Applicant or Project can understand what the Applicant intends to do.
The Project Description shall include:
 - (A) A statement of the procurement activity the Applicant proposes to undertake,
 - (B) How the proposed Project relates to OHV Recreation and will add to, enhance, or otherwise sustain OHV Recreation or OHV Opportunity in the Project Area,
 - (C) Identification of the needs the Project will address,
 - (D) Location of the land to be acquired,

- (E) The total acreage to be acquired,
 - (F) The easements affecting the property,
 - (G) The number of parcels,
 - (H) The location(s) of existing OHV Opportunities in and around the acquisition property and how the Project will affect or relate to that existing OHV Recreation,
 - (I) The total estimated cost of land to be acquired. The estimate shall be based on an appraisal by a certified a competitive market analysis provided by a real estate professional to substantiate the value of the property, and
 - (J) The status of Due Diligence.
- (2) Acquisition Plan
The plan shall describe the process for accomplishing the acquisition Project. An acquisition plan shall include the following:
- (A) Acquisition timeline, which shows the steps and timeline for completing the Project, including the preparation and delivery of any reports to be prepared with the funds as a Deliverable,
 - (B) Discussion of the Applicant's ability to accomplish the acquisition Project. The Applicant shall demonstrate the ability to complete the acquisition within the proposed Applicant's timeline, and
 - (C) The Due Diligence undertaken, or to be undertaken, to determine the property is usable for its intended purpose (e.g., preliminary title report and underlying documents under Schedule B, zoning information, Phase 1 Environmental Site Assessment, biotic assessment).
- (3) Project-Specific Maps
Project-specific maps shall include:
- (A) A map(s) identifying the specific roads, trails, areas, and/or related Facilities to be acquired under the Project. The map(s) shall contain enough detail to provide someone unfamiliar with the area the ability to locate the site, and
 - (B) Assessors parcel maps, including Assessor Parcel Number (APN), of each parcel to be purchased.
- (e) Warranty for OHV use:
- (1) The Applicant shall warrant that the acquired property will be used for OHV Recreation,
 - (2) With the exception of federal agencies, the Applicant shall cause to be inserted in the acquisition deed or other recorded transfer of title document a condition that the property shall be used for OHV Recreation purposes as defined in these Regulations and that the State of California is granted Power of Termination pursuant to California Civil Code Section 885.010 et seq. providing that, in the event the property is not used for OHV Recreation, title to the property shall be transferred to the State of California. Federal agencies shall agree to use the property for OHV Recreation purposes for a minimum of 25 years; if the property is not used

~~for the purpose of OHV Recreation for 25 years, title of the property shall transfer to the State. Federal agencies, to the maximum extent consistent with federal law, the (Federal Agencies) BLM intends to shall use and manage the property for OHV Recreation in accordance with the controlling (Federal Agencies) Federal Agency's BLM land use plan; if the property is not used for the purpose of OHV Recreation, the (Federal Agencies) BLM will Federal Agencies shall use reasonable efforts to request appropriations necessary to reimburse the Commission State its pro-rata share of the acquisition costs of the property.~~

- (3) Funds awarded for acquisition shall only be released into an escrow account established for the acquisition. Applicant shall submit all acquisition documentation, including the escrow instructions, to the OHMVR Division for review prior to close of escrow. OHMVR Division shall have no obligation to release grant funds unless the acquisition transaction conforms to these regulations.
- (f) Optional Project-Specific Application Documents
If Applicants deem it helpful to support their specific Project Application, they may submit up to two (2) pages of Project-specific photos.
- (g) Evaluation Criteria
See Appendix, incorporated by reference, for acquisition evaluation criteria.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

~~**4970.25.3. Financial Audit Financial Audits of the Grants and Cooperative Agreements Program**~~

- ~~(a) The Department of Parks and Recreation, Audits Office shall conduct or cause to be conducted audits of the Grants and Cooperative Agreements program to ensure the annual program budget is managed efficiently and that processes and procedures are in place to ensure all expenditures are being made per the OHMVR Act on a three-year cycle as follows:~~
 - ~~(1) Year 1: Audits Office shall determine that the program has an adequate system to award Grants and Cooperative Agreements in accordance with Section 4970.15. Funding Distribution.~~
 - ~~(2) Year 2: Audits Office shall determine that the program has an adequate system to award Grants and Cooperative Agreements on a competitive basis, except for Law Enforcement grants.~~
 - ~~(3) Year 3: Audit Office shall determine that the program has adequate internal control policies and procedures to properly account for and manage all awards, including monitoring awards and ensuring funds are utilized in accordance with the Grant terms, accounting for all advances and procedures to ensure that any unspent advances are returned.~~