

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Pursuant to Government Code 11346.9 (a) (1), the Department is updating the Initial Statement of Reasons to include the amendments not originally identified. The following revisions were made after the Initial Statement of Reasons was published on April 20, 2018:

4970.01. – DEFINITIONS

Specific Purpose

Section 4970.01 is to amend two existing definitions, and adopt one new definition that provide further clarity to both Applicants and Grantees on how certain terminology is used in the context of the administration of the Grants Program. In addition, updated definition section letter sequencing to account for the new definition that was added.

Necessity

The amendment to Section 4970.01(q) is necessary to provide an updated definition of the term Equipment. Due to inflation, the prices of materials has increased from the inception of the current regulations when the term Equipment was first defined. The new definition will provide a more realistic “cost of unit” that is more in line with today’s cost of material.

The amendment to Section 4970.01(w) is necessary to provide further clarity to both Applicants and Grantees that the activity of maintaining or replacing an existing fence line will not constitute a “Ground Disturbing” activity. The Department received comments from the public, during the 45-day public comment period, wanting further explanation on this one revised definition. This proposed change specifically clarifies that only maintaining or replacing an existing fence line will be considered a non-grounding disturbing activity as the ground had already been disturbed.

The adoption of Section 4970.01(y) is necessary to specifically differentiate the terms Equipment and Heavy Equipment and how “Heavy Equipment” will be used in this Grants Program.

The amendment to Section 4970.01. (z) – (ss) is necessary to avoid definition letter sequencing duplication and should have been revised with the 15-day text. Change is considered a Section 100 non-substantive change.

4970.05. GENERAL APPLICATIONS

Specific Purpose

Section 4970.05.(a) is amended to specify the correct revision year for 2008 Grants and Cooperative Agreements Program Regulations.

Necessity

The amendment to Section 4970.05.(a) is necessary to provide clarity to the public, and is considered a Section 100 non-substantive change.

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Specific Purpose

Section 4970.05.(l)(2) is amended to capitalize the word “grant”, “cycle” add an “s” to pluralize the word grant.

Necessity

The amendment to Section 4970.05.(l)(2) is necessary for document consistency and is considered a Section 100 non-substantive change. “Grants Cycle” is used throughout Section 4970.04. and once in Section 4970.05.(d) but was missed in error in Section 4970.05.(l)(2).

Specific Purpose

Section 4970.05.(f) is amended to remove a duplication of the word “percent”.

Necessity

The amendment to Section 4970.05.(f) is necessary to remove a grammatical error and is considered a Section 100 non-substantive change.

4970.06.01 CALIFORNIA ENVIROMENTAL QUALITY ACT (CEQA) REQUIROMENTS

Specific Purpose

Section 4970.06.1(b)(3) is amended to fix a grammatical error of putting comma in the wrong location in the sentence.

Necessity

The amendment to Section 4970.06.1(b)(3) is necessary to remove a grammatical to ensure the proposed regulation text is comprehensible to Applicants/Grantees. Change is considered a Section 100 non-substantive change.

Specific Purpose

Sections 4970.06.3 (g)(C) is amended to capitalize “grant” and “application” which are both defined in Section 4970.01.

Necessity

The amendment to 4970.06.3 (g)(C) is necessary to ensure Applicants/Grantees knows that word has a specific meaning for the Grants and Cooperative Agreements Program. This was missed in error and is considered a Section 100 non-substantive change.

Specific Purpose

Sections 4970.06.3 (g)(D) is amended to capitalize “grant”, “project” and “application” which are defined in Section 4970.01.

Necessity

The amendment to 4970.06.3 (g)(D) is necessary to ensure Applicants/Grantees knows that word has a specific meaning for the Grants and Cooperative Agreements Program. This was missed in error and is considered a Section 100 non-substantive change.

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4970.07.2. FINAL APPLICATION DEFECTS

Specific Purpose

The amendment to Section 4970.07.(f) is amended to capitalize the word “application” which is defined in Section 4970.01.

Necessity

The amendment to Section 4970.07.(f) is necessary to ensure Applicants/Grantees knows that word has a specific meaning for the Grants and Cooperative Agreements Program. This was missed in error and is considered a Section 100 non-substantive change.

4970.08. ELIGIBLE PROJECTS COSTS

Specific Purpose

Section 4970.08.(b)(9) is amended to specify that Non-Profits are limited to the 100 miles requirement from the base of operation with regard to transportation costs of moving material and personnel.

The words “project”, “grant” and “cycle” have also been capitalized and “grant” has also been pluralized.

Necessity

The amendment to Section 4970.08.(b)(9) is necessary to provide clarity to the public, Applicants and Grantees on which category of grantee is limited to the proposed 100 mile limit. The proposed language submitted under the 45-day public comment period was interpreted by the public as placing the 100 mile limit restriction on all grantee types, which was not the intent of the initial proposed language. The Department was compelled to revise the language to ensure clarity that it was only the Nonprofit grantees having the restriction.

The words “project” and “grant” have been capitalized because they are defined in Section 4970.01. The word “grant” has also been pluralized and “cycle” was capitalized for document consistency. “Grants Cycle” is used throughout Section 4970.04. and once in Section 4970.05.(d) but was missed in error in Section 4970.08.(b)(9).

This was missed in error and is considered a Section 100 non-substantive change.

Specific Purpose

Section 4970.08.(b)(12) is amended in response to comments received during the 45-day public comment period and feedback received during the Public Hearing held June 5, 2018. Language was added to this section to inform Applicants/Grantees on how they would determine the per mile fee mentioned in Section 4970.08.

Necessity

The amendment to 4970.08.(b)(12) is necessary to provide clarity to Applicants/Grantees on how they are to claim Equipment costs in their Application. Due to the comments received during the 45-day public comment period for the initial

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proposed changes to the regulations, the Department felt further clarity was needed and initiated the new language as part of the 15-day public comment period and was adopted.

Specific Purpose

Section 4970.08.(b)(12)(D)(1) is amended in response to comments received during the 45-day public comment period. The new language adds “and/or” at the end of Section 4970.08(b)(12)(D)(1) to inform Applicants/Grantees that they have the option of claiming either the “daily use fee” or “mileage” or both when using their own Equipment.

Necessity

Comments received during the 45-day public comment period necessitated a change to the initial proposed language as there was confusion from the public on whether an Applicant/Grantee can claim both the “daily use fee” and “mileage”. The Department provided the language to ensure the clarity during the 15-day public comment period and is being adopted.

Specific Purpose

Section 4970.08.(b)(12)(E)(2) is amended to correctly identify the section being referenced.

Necessity

The amendment to 4970.08.(b)(12)(E)(2) is necessary to ensure the correct section is being referenced. This correction was also made in response to comment received during the 45-day public comment period and feedback received during the Public Hearing held June 5, 2018.

Specific Purpose

Section 4970.08.(b)(12)(J) has been repeal to avoid redundancy.

Necessity

The repeal of 4970.08.(b)(12)(J) is necessary to avoid redundancy. This information is listed in 4970.08(b)(12) and should have been removed from 4970.08.(b)(12)(J). This was missed in error and is considered a Section 100 non-substantive change.

Specific Purpose

Multiple sub-sections in 4970.08.(13) are amended to capitalize “equipment”, “grants”, “project” and “heavy equipment” because these are all terms defined in 4970.01.

The word “program” has been capitalized following the work “grant”.

Necessity

The amendment to these words within sub-sections in 4970.08.(13) are necessary to ensure Applicants/Grantees know that a specific word has a specific meaning for the Grants and Cooperative Agreements Program. These changes are considered a Section 100 non-substantive change.

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The amendment to “program” was necessary for document consistency. The term “Grant Program” is capitalized throughout the Grant and Cooperative Agreements regulations. This changes are considered a Section 100 non-substantive change.

4970.09. INELIGIBLE PROJECT COSTS

Specific Purpose

Section 4970.09.(b)(10) is amended to clarify what type of property a Youth Mentoring Program project may utilize.

Necessity

The amendment to 4970.09.(b)(10) is necessary as there were concerns expressed during the 45-day public comment period that training on motorized vehicles could be conducted on non-motorized Departmental park units. The provided language in the 15-day public comment period to clarify that any youth training being conducted could only occur at a Departmental park unit that allowed motorized recreation.

4970.10.2. DEVELOPMENT

Specific Purpose

The amendment to Section 4970.10.2.(d)(2)(A) is amended to fix an oversight of accidentally removing “A” as the first word of the sentence in amending regulatory language.

Necessity

The amendment to Section 4970.10.2.(d)(2)(A) is necessary to ensure the verbiage is grammatically correct when Applicants/Grantees read the regulatory language. Change is considered a Section 100 non-substantive change.

4970.10.2. ACQUISITION

Specific Purpose

The amendment to Section 4970.10.4.(d)(2) is amended to fix an oversight of accidentally removing “A” as the first word of the sentence in amending regulatory language.

Necessity

The amendment to Section 4970.10.4.(d)(2) is necessary to ensure the verbiage is grammatically correct when Applicants/Grantees read the regulatory language. Change is considered a Section 100 non-substantive change.

4970.18. CONTINGENCY LIST(S)

Specific Purpose

The amendment to Section 4970.18. has been made to capitalize the word “grant” and “cycle” add to pluralize the word “grant”. On the second use of the word “grant” it has been capitalized.

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Necessity

The amendment to Section 4970.18. is necessary for document consistency. “Grants Cycle” is used throughout Section 4970.04. On the second use of the word “grant” is necessary to capitalize because this word is defined in the Section 4970.01. These changes are considered a Section 100 non-substantive change.

4970.23 ACCOUNTING PRACTICES

Specific Purpose

Section 4970.23.(c) is amended to adjust the requirements in the logbook/source document to remove the text “hours or” on the document that is used to track an Equipment use.

Necessity

The amendment to 4970.23.(c) is necessary as the Department received public comments during the 45-day public comment period seeking clarification on the necessary documentation and what is required. The Department changed the proposed language for the 15-day public comment period and is adopted.

4970.24.1 ADVANCES

Specific Purpose

Section 4970.24.1(a) is amended to fix a misspelling of the OHMVR Division. It was listed as “OVMVR” in error.

Necessity

The amendment to Section 4970.24.1(a) is necessary to ensure clarity for the Grantee/Applicant of what OHMVR Division will be responsible for the consideration of granting an advance. Change is considered a Section 100 non-substantive change.

4970.23 PAYMENT REQUESTS

Specific Purpose

Section 4970.23 has been amended to add the version of the document and “herby incorporated by reference”.

Necessity

The amendment to Section 4970.23 is necessary to comply with the California Rulemaking Law under the Administrative Procedure Act. Change is considered a Section 100 non-substantive change.

4970.23.1 Advances

Specific Purpose

Section 4970.23.1(a) has been amended to add the version of the document and “herby incorporated by reference”.

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Necessity

The amendment to Section 4970.23.1(a) is necessary to comply with the California Rulemaking Law under the Administrative Procedure Act. Change is considered a Section 100 non-substantive change.

Specific Purpose

Section 4970.23.1(b)(5) has been amended to add the version of the document and “herby incorporated by reference”.

Necessity

The amendment to Section 4970.23.1(b)(5) is necessary to comply with the California Rulemaking Law under the Administrative Procedure Act. Change is considered a Section 100 non-substantive change.

4970.23.2. Reimbursements

Specific Purpose

Section 4970.23.2(e) has been amended to add the version of the document and “herby incorporated by reference”.

Necessity

The amendment to Section 4970.23.2(e) is necessary to comply with the California Rulemaking Law under the Administrative Procedure Act. Change is considered a Section 100 non-substantive change.

4970.24 PROJECT CLOSEOUT

4970.24.1 Project Documentation

Specific Purpose

Section 4970.24.1(a) and 4970.21.1(a)(1) have been amended to add the version of the document and “herby incorporated by reference”.

Necessity

The amendments to Section 4970.24.1(a) and 4970.21.1(a)(1) are necessary to comply with the California Rulemaking Law under the Administrative Procedure Act. Change is considered a Section 100 non-substantive change.

DOCUMENTS INCORPORATED BY REFERENCE

Specific Purpose

Evaluation Criteria – General Criteria Item 5 is amended to fix the language adjustment made in the 15-day text which caused Item 5 to be inconsistent with Department’s intended goal that applicants should be in Good Standing versus how many Projects were closed out.

Necessity

The amendment to Item 5 is necessary to fix the adjustment that was made with the intention of providing clarity to Item 5 in response to comments received during the 45-

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day public comment period. Department decided not adopt the proposed 15-day text language. Instead, the Department reverted back to the originally proposed language and changed the grammar to remove a double negative without regulatory effect.

Specific Purpose

Evaluation Criteria Acquisition Item 4 is amended to add clarity.

Necessity

The amendment to Item 4 is necessary to provide clarity and ensure Applicants understand that if they check this selection, the Applicant will not apply for future OHV grants. This adjustment was made in response to comments received during the 45-day public comment period.

Specific Purpose

Evaluation Criteria – Education and Safety Criteria Item 2 is amended to fix the language adjustment made in the 15-day text which caused Item 2 to be inconsistent with Department's intended goal that applicants should be in Good Standing versus how many Projects were closed out.

Necessity

The amendment to Item 2 is necessary to fix the adjustment that was made with the intention of providing clarity to Item 2 in response to comments received during the 45-day public comment period. Department decided not adopt the proposed 15-day text language. Instead, the Department reverted back to the originally proposed language and changed the grammar to remove a double negative without regulatory effect.

Specific Purpose

Habitat Management Program (HMP) Part 2 is amended to fix a formatting oversight by the Department.

Necessity

The amendment to Habitat Management Program (HMP) Part 2 is necessary to add clarity to the revision date.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF APRIL 20, 2018 THROUGH JUNE 4, 2018.

COMMENT LETTER 1

Santa Clara County Parks, Christian Elliott (Received by email 05-23-2018)

Comment 1.1: The commenter has reviewed the proposed modifications to the program and has no suggested changes. They appreciated the clarity the proposed changes will make to the program and are supportive of the proposed changes.

Response: The Department is taking no action on this comment. The Department thanks the commenter for their support, thorough review, and their thoughtful comment.

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COMMENT LETTER 2

Stewards of the Sierra National Forest, Mike Wubbels (Received by email 06-04-2018)

Comment 2.1: The commenter recommends the Department increase the minimum match requirement to 40% for public agencies.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, the Department does not have the authority to independently make a change to the match requirement. The requirement for a minimum of 25 percent match for each grantee is set by Public Resources Code (PRC) Section 5090.50 and can only be changed through the state legislative process.

Comment 2.2: The commenter recommends the Department reduce the maximum project cost limits to \$500,000.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Although the Department is taking no action with regard to this comment at this time, the Department believes more time is needed to thoroughly review the commenter's recommendation and analyze the possible consequences of adopting such a recommendation. The suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 2.3: The commenter recommends the Department penalize grantees who return unused funds that are greater than 30% of their original award amount at the end of their performance period.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department disagrees with the commenter's recommendation that grantees be penalized if they return unused funds that are greater than 30%. With this proposed regulatory package, the Department is formalizing a Contingency List that would utilize "un-used" grant funds from past projects to award future projects that may not have been awarded otherwise. Finally, the Department desires grantees to utilize their grant funds appropriately and without concern that they will be penalized if they do not utilize their whole grant amount.

Comment 2.4: Commenter recommends that a Habitat Management Plan (HMP) and a Soils Conservation Plan (SCP) be required for Restoration projects that have soil disturbance activities.

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Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Sections 4970.06.2 and 4970.06.3 continue to require a HMP and SCP, respectively, to be submitted for all projects with Ground Disturbing Activity. The language in HMP Part 1 and SCP Part 1 regarding the need to complete Part 2 has not been changed, and Applications for Restoration projects must still include a description of monitoring that will be used to determine a successful outcome (see 4970.11 (f)(1)(E)). Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 2.5: The commenter recommends the Department add a definition of “Heavy Equipment” to the regulations.

Response: The Department accepts this comment. The definition of Heavy Equipment was proposed during a 15-day public review and comment period and is being adopted. Additionally, in a related matter, the definition of Equipment was also proposed during the same 15-day public review and comment and is being adopted as well. The revision to the definition of Equipment is revised to compliment the newly defined Heavy Equipment term.

Comment 2.6: The commenter recommends the Department use the word “new” when referencing Ground Disturbing activities within the definition.

Response The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, the Department does not have the authority to independently make a change to statute. PRC 5090.53 cites when compliance with the Soils Conservation Standard is required and any change must be done through the state legislative process.

Comment 2.7: The commenter recommends the Department increase the minimum match requirement to 40% for public agencies. This is also mentioned in comment 2.1.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, the Department does not have the authority to independently make a change to the match requirement. The requirement for a minimum of 25 percent match for each grantee is set by Public Resources Code (PRC) Section 5090.50 and can only be changed through the state legislative process.

Comment 2.8: The commenter recommends the Department require a Habitat Management Plan for Restoration Projects.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Section 4970.06.2 continues to require a HMP to be submitted for all projects with Ground Disturbing

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Activity. The language in HMP Part 1 regarding the need to complete Part 2 has not been changed, and Applications for Restoration projects must still include a description of monitoring that will be used to determine a successful outcome. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 2.9: The commenter recommends the Department require a Soil Conservation Plan for “new” ground disturbing Projects only.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, the Department does not have the authority to independently make a change to statute. PRC 5090.53 cites when compliance with the Soils Conservation Standard is required and any change must be done through the state legislative process.

Comment 2.10: The commenter recommends the Department require a Soil Conservation Plan for Restoration Projects where soil disturbances activities are planned.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Section 4970.06.3 continues to require a SCP to be submitted for all projects with Ground Disturbing Activity. The language in SCP Part 1 regarding the need to complete Part 2 has not been changed, and Applications for Restoration projects must still include a description of monitoring that will be used to determine a successful outcome. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 2.11: The commenter requests the Department keep the Soil Conservation Section the way it is currently.

Response: The Department is taking no action on this comment. The proposed regulatory change is only meant to clarify the content and iterative process currently required in the Soil Conservation Plan, which is a component of the current regulations. The Department has in many occasions heard from frustrated grantees on how to report the necessary information. The proposed change does not change any current regulatory mandate; it neither adds nor eliminates current requirements. The proposed change is an attempt by the Department to provide a clearer format in which to provide the same information. The changes proposed in this section will not conflict with PRC 5090.02© or any current statute.

Comment 2.12: The commenter recommends the Department define a written set of criteria on how they will determine an applicant’s conduct to be “incompatible and/or contrary to the mission of the Department” per the newly adopted Section 4970.07.2(f).

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Response: The Department is taking no action. The Department would find it difficult to impossible to provide an exhaustive and all-encompassing set of criteria "...that will allow and enable the Division to justify the rejection of an applicant based on a written set of criteria..." The Division will use a reasonable standard in evaluating the suitability of an applicant to ensure that their mission and/or conduct as an organization is not incompatible with public service and/or the mission of the Department. Additionally, during the annual workshops held at the start of a new grant cycle, Departmental staff discuss in detail program regulations, what common issues are encountered in applications, what is allowed and what is not, and tips on creating a better application; the workshops would be the best forum for the commenter's recommendation. Finally, the Department believes that Sections 4970.17 (Appeal Process) and 4970.26 (How to contact the OHMVR Division) of the program current regulations affords the Applicant/Grantee the ability to appeal any matter relating to the Grants Program. In the situation cited by the commenter, the Applicant would be able to appeal a rejection of their Application to the Deputy Director of the Division, and if still not satisfied, to the Director of the Department.

Comment 2.13: The commenter recommends that the Department create an appeal process per the newly adopted Section 4970.07.2(f).

Response: The Department is taking no action. The Department believes that Sections 4970.17 (Appeal Process) and 4970.26 (How to contact the OHMVR Division) of the program current regulations affords the Applicant/Grantee the ability to appeal any matter relating to the Grants Program. In the situation cited by the commenter, the applicant would be able to appeal a rejection of their application to the Deputy Director of the Division, and if still not satisfied, to the Director of the Department.

Comment 2.14: The commenter recommends the Department develop a list of typical, "unreasonable and/or unnecessary" Project Costs which are mentioned in the newly adopted Section 4970.07.2.(g)(6).

Response: The Department is taking no action. The Department believes that by creating a list of "typical, unreasonable and/or unnecessary Projects Costs" would cause confusion and not provide the clarity that the commenter seeks. The uniqueness of this grants program is that every project applied for is unique in themselves and each requested activity or cost item is looked at in the context of the project as a whole and compared to other similar projects. Additionally, during the annual workshops held at the start of a new grant cycle, Departmental staff discuss in detail program regulations, what common issues are encountered in applications, what is allowed and what is not, and tips on creating a better application; the workshops would be the best forum for the commenter's recommendation. Finally, this grants program is a supplemental program to assist grantees in completing their project and is not meant to fully fund their whole program. This proposed addition to the regulations is consistent with the legislative intent of the program to fund as many projects as possible. The Department will use a "reasonable person" approach to evaluating a request and make the appropriate determination as to the reasonableness of the request. One example of an

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unreasonable request was an applicant in a previous grant cycle wanted to provide educational material to the off-highway community about being responsible riders. The requested project was a relatively modest request to create flyers with important information that they then could provide in various off-highway vehicle riding areas. Within the requested activities and project cost estimate, the applicant wanted to lease a building to house staff for a year and to purchase the necessary machinery to produce the flyers. What should have been a modest project with a reasonable funding request ballooned to an unreasonable funding request. This proposed regulation will allow the Department to line item out individual cost estimate line item and/or activity.

Comment 2.15: The commenter recommends the Department keep the term “Equipment” in Section 4970.08(b)(9) to allow transportation costs from the base of operations to the project sites.

Response: The Department is taking no action on this comment. The category of “Equipment” was removed from Section 4970.08(b)(10) and placed in the newly adopted “Equipment” Sections 4970.08(b)(12)(F) and 4970.08(b)(13)(D), which addresses all issues related to Equipment. The Department believes this consolidation of regulation language for Equipment would provide clarity, consistency and avoid duplication.

Comment 2.16: The commenter recommends the Department increase the maximum transport mileage limit of 100 miles to 250 in Section 4970.08.

Response: The Department is taking no action on this comment. The Department has determined that a 100 mile per day allowance in transporting personnel, materials and Equipment for nonprofit applicants/grantees was appropriate. The Department came to this determination by evaluating past grant applications, along with discussions throughout the years with stakeholders, and discussions with previous applicants/grantees on the mileage staff or volunteers travel to reach their project areas. Current regulations only allows grantees to claim costs for transporting personnel, materials and Equipment from the base of operations to the Project Area. Because of their unique circumstances, for nonprofits, the base of operations was considered the project area. The Department realizes the important role nonprofits have in the totality in sustaining OHV recreation state wide. The Department also realizes the importance and contribution that volunteers play in successfully accomplishing the project objectives of the nonprofits. For these two reasons, the proposed regulation change allows the nonprofits and their volunteers to recover some of the costs that is not currently available to them. The 100-mile radius is believed to be a good compromise at this time; however, the Department is willing to revisit the allowance in the future.

Comment 2.17: The commenter recommends the Department have all grant applicants list the Department as the lien holder for equipment purchased with grant funds. The commenter states that only making this requirement for non-profits is an unfair bias due to there being no difference between applicants when it comes to equipment purchases.

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Response: The Department is taking no action on this comment. The Department believes there is sufficient public recourse and accountability of public entity grantees that would ensure the proper safeguarding of Trust Funds. To this date, there have been no known instances where Equipment bought by public entity grantees have been misused and/or misappropriated. On the other hand, due to the fluidity and constant turnover of nonprofit members, it is important the program has the appropriate safeguards in place to ensure accountability and use of Equipment bought via this program. In all known instances where Equipment has been bought with grant funds and the Equipment was misused – it has been done by nonprofit grantees.

Comment 2.18: The commenter is asking how the Department will address items that meet the definition of equipment, which is an item over \$1,000 in value that are not readily available for lease and do not require ownership titles (e.g. chainsaws, ATV trailers and power washers) in relation to the newly adopted lien requirement for non-profits.

Response: The Department partially accepts this comment. A revision to the definition of Equipment was proposed during a 15-day public review and comment period and is being adopted. The revised definition of Equipment will allow for many of the items that the commenter points out not to be considered Equipment and thus not requiring the State to be named as a lien-holder. The Department only considers items that have an average cost of \$5000 or over to be considered Equipment. The examples provided by the commenter (other than an ATV) have an average cost of less than \$5000 which does not require them to name the State as a lien-holder. The example of an ATV given by the commenter would be considered Equipment, and would require ownership title stipulation.

Comment 2.19: The commenter noted that the reference of 4970.08(13)(D)(2) is not valid because it does not exist.

Response: The Department accepts this comment. A revision to 4970.08(b)(12)(E) to reference 4970.08(12)(D)(2) was proposed during a 15-day public review and comment period and is being adopted.

Comment 2.20: The commenter lists the same concern mentioned in comment 2.16, which is that the 100-mile limit for transportation cost is too low and that the limit should be raised to 250 miles.

Response: The Department is taking no action on this comment. The Department has determined that a 100 mile per day allowance in transporting personnel, materials and Equipment for nonprofit applicants/grantees is appropriate. The Department came to this determination by evaluating past grant applications, along with discussions throughout the years with stakeholders, and discussions with previous applicants/grantees on the mileage staff or volunteers travel to reach their project areas. Current regulations only allows grantees to claim costs for transporting personnel, materials and Equipment from the base of operations to the Project Area. Because of their unique circumstances, for nonprofits, the base of operations was considered the project area. The Department realizes the important role nonprofits have in the totality

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in sustaining OHV recreation state wide. The Department also realizes the importance and contribution that volunteers play in successfully accomplishing the project objectives of the nonprofits. For these two reasons, the proposed regulation change allows the nonprofits and their volunteers to recover some of the costs that is not currently available to them. The 100-mile radius is believed to be a good compromise at this time; however, the Department is willing to revisit the allowance in the future.

Comment 2.21: The commenter lists the same concern mentioned in comment 2.5, which is the lack of definition for Heavy Equipment.

Response: The Department accepts this recommended comment. The definition of Heavy Equipment was proposed during a 15-day public review and comment period and is being adopted. Additionally, in a related matter, the definition of Equipment was also proposed during the same 15-day public review and comment and is being adopted as well. The revision to the definition of Equipment revised to be compliment the newly defined Heavy Equipment term.

Comment 2.22: The commenter recommends the Department accept an hourly rate instead of a mileage rate due to use of Equipment such as Sweco Tractors, Excavators and Skid Steer Tractors.

Response: The Department is taking no action on this comment. The proposed changes will now differentiate between Heavy Equipment and Equipment. For the items that the commenter gives examples for and other equipment that work in a confined project area would be considered Heavy Equipment. With regard to Heavy Equipment, a grantee may charge a daily rate as opposed to a mileage rate because of the reasons mentioned by the commenter. So, although the proposed change is not exactly the recommended change by the commenter, in essence, this proposed change will have the same affect.

Comment 2.23: The commenter recommends the Department request a burden of proof by the applicant that the damage mention in Section 4970.11 was caused by OHV legal or illegal use and not caused by the use of heavy equipment, tractors, licensed street vehicles, etc.

Response: The Department is taking no action. Current regulations requires an applicant to provide a nexus between legal or illegal OHV use and any damage that may have occurred. Current practice for the program is that at the preliminary application in-take and review process, any restoration project description must show the nexus. If no clear nexus exists, the application reviewer will contact the applicant for further information. Once a nexus is shown, the application will then be accepted.

Comment 2.24: The commenter recommends the Department require a Habitat Management Plan for Restoration Projects. This is a same comment as mentioned in comment 2.8.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Section 4970.06.2

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continues to require a HMP to be submitted for all projects with Ground Disturbing Activity. The language in HMP Part 1 regarding the need to complete Part 2 has not been changed, and Applications for Restoration projects must still include a description of monitoring that will be used to determine a successful outcome. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 2.25: The commenter recommends the Department allow the surplus funds mentioned in Section 4970.18 to be transferred from one category to another to maximize the use of current funding available, making the Operations and Maintenance category the most important category.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, the Department does not have the authority to independently make a change to category distributions as that is set by statute. The category distributions are listed in Public Resources Code (PRC) 5090.50 and can only be changed through the state legislative process.

Comment 2.26: The commenter is requesting a definition for the term “useful life” regarding equipment use.

Response: The Department is taking no action. By not defining the term as part of the regulations, the ordinary “Webster” definition of “useful life” will be used in this program, which is “The amount of time during which something is in good enough condition to be used”.

Comment 2.27: The commenter has listed the same concern mentioned in comment 2.17, which was addressed above. Commenter believes the nonprofits are being treated differently.

Response: The Department is taking no action on this comment. The Department believes there is sufficient public recourse and accountability of public entity grantees that would ensure the proper safeguarding of Trust Funds. Contrary to public entities, the fluidity and transitory nature of nonprofit organizations and their members, makes it prudent to have stricter controls on the nonprofit applicants/grantees in order to ensure that the public funds are being accounted for. Previous experience has shown the times that the Department has found inappropriate use of grant funds has been from nonprofit grantees.

Comment 2.28: The commenter is requesting that the Department define the term “documents”.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, by not defining the term as part of the regulations, the ordinary “Webster” definition of “documents” will be used in this program, which is “a piece(s) of written, printed, or

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electronic matter that provides information or evidence or that serves as an official record”.

Comment 2.29: The commenter is requesting that the Department list what documents are required in Section 4970.25.1(a)(2).

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the appropriate documentation (documents) can vary widely from one project to another. It would be unreasonable for the Department to provide an exhaustive list of documents that would be appropriate for all circumstances. If a grantee has a specific question with regard to their own project and what document would be necessary, they can contact the grant administrator that is assigned to them.

COMMENT LETTER 3

Sierra Responsible Riders, Mike McCarthy (Received by email 06-04-2018)

Comment 3.1: The commenter is requesting that the Department give a two-year lead time, from when the changes in this regulation package are finalized, to implementation.

Response: The Department is taking no action on this comment. As the commenter states, the vast majority of grant recipients are repeat grantees. Additionally, the majority of the grantees use a start date that is either October 1 or January 1 following the end of a grant cycle; those grantees will not be affected by the change in the grant cycle process. For those grantees that normally have a July to September start date for their projects, this will only affect them during the first year after the regulatory change takes effect. During this change, the Department will work with those grantees to ensure that there is no gap from one project to another. This change will be similar to what occurred when the Department did a whole program revision in 2008; at that time, the grants program missed a grant cycle. The Department worked with the grantees through extensions to ensure appropriate coverage for the various projects. Finally, since the vast majority of the grant recipients are repeat grantees, the project descriptions and cost estimate are pretty similar from year to year. The Department believes that there will be enough time for applicants and grantees to understand the new changes to the regulations and adjust accordingly.

Comment 3.2: The commenter is requesting that the Department consider the impact of extending the grant cycle with regards to delaying the start time of a project within the same year.

Response: The Department is taking no action on this comment. The Department must reiterate that the Grants Program is a supplemental program that assist with the grantees overall program and is not meant to be reliant as the only source of funding. Additionally, the performance period for all the various grant categories remain the same. By moving the start date by two months at the front end of a project will also give two months at the end of the project period; this will allow the grantee to have the same time period and seasons of the year that they already have.

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Comment 3.3: The commenter is requesting that the Department consider the impact of extending the grant cycle with regards to past projects being completed which could impact the score of a current application.

Response: The Department is taking no action on this comment. The Department did evaluate the possible impacts the changes may have on an applicant and/or grantees and has found that no significant impact would occur for the change stated by the commenter. The change, as stated by the commenter, would only impact the few repeated grantees that have a start of the performance period of July through September. The majority of repeated grantees will have no impact as their start dates occur after September. For those few grantees that will be impacted, the Department will work with them so that their project performance period does not have a negative impact on the project.

Comment 3.4: The commenter is recommending that the Department modify the submittal deadlines to allow entities which are not the Land Manager to submit their preliminary and final applications one week after the applications are due for the Land Managers to remove the burden from the non-land manager applicants. They feel this would also give the Department time to start reviewing applications sooner which would reduce the “bottleneck” that requiring this information at the final presents.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, the commenter is recommending the Department have two different timelines for application submittal; having public entity, land managing applicants submit their application one week prior to the other applicants. This would place those public entity, land managing applicants at a disadvantage as they would have less time to work on their applications than other applicants. Additionally, the commenter’s recommendation would place an undue burden on the Departmental panel reviewers that currently find it difficult to complete their review and verification of applications under the current regulatory timeframes.

Comment 3.5: The commenter is recommending that the Department modifying the soil conservation and habitat management plans requirements and allow the non-profits to refer to the Land Managers instead of submitting them separately. They feel this would also give the Department time to start reviewing applications sooner which would reduce the “bottleneck” that requiring this information at the final presents.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, Soils Conservation Plans (SCP) and Habitat Management Plans (HMP) are project area specific; normally, when a land manager submits an application for grant funding, they would submit a project area that is different than the nonprofit entity working on the same jurisdiction. If the commenter’s recommendation was accepted, the Department

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believes there would be more confusion among the applicants on SCP and HMP submittals.

Comment 3.6: The commenter recommends the Department clarify and rationalize what “deems unreasonable and/or necessary” means. They would like the Department to spell out how such a finding will be made and what it will be based on. They are requesting that the Department identify factors that would be considered when making such a determination.

Response: The Department is taking no action on this comment. The Department would find it difficult to impossible to provide an exhaustive and all-encompassing criteria or rationale that is spelled out as requested by commenter. The Department will use a reasonable standard in evaluating the reasonableness of a project activity and/or requested budget line item. More specifically, the review panels will evaluate previous and current similar projects along with the necessity of the project activity or budget line item to the overall success of the project to determine if the request is reasonable or needed. As an example of a previous non-reasonable request, a nonprofit applied for an educational project to produce and distribute written flyers on safe OHV riding, a noble request. However, in their application, the applicant wanted to lease a building, hire staff people, and lease equipment in order to accomplish this modest project. The Department believes the items being requested in the project cost estimate was not reasonable. At that time, the applicant failed to ultimately submit their application successfully, so the request was not eventually reviewed. The proposed change will afford the Department to eliminate such requests in the future. Finally, the Department believes that Sections 4970.17 (Appeal Process) and 4970.26 (How to contact the OHMVR Division) of the program current regulations affords the Applicant/Grantee the ability to appeal any matter relating to the Grants Program. In the situation cited by the commenter, the Applicant would be able to appeal a rejection of any project activity and/or project cost estimate line item to the Deputy Director of the Division, and if still not satisfied, to the Director of the Department.

Comment 3.7: The commenter recommends the Department allow applicants to challenge rejections to items that fall under the newly adopted Section 4970.07.2(g)(6) during the 30-day appeal period.

Response: The Department is taking no action on this comment. The Department believes that Sections 4970.17 (Appeal Process) and 4970.26 (How to contact the OHMVR Division) of the program current regulations affords the Applicant/Grantee the ability to appeal any matter relating to the Grants Program. In the situation cited by the commenter, the Applicant would be able to appeal a rejection of any project activity and/or project cost estimate line item to the Deputy Director of the Division, and if still not satisfied, to the Director of the Department.

Comment 3.8: The commenter recommends the Department consider that the IRS rates mentioned in the newly adopted Section 4970.08(b)(9) were developed for a completely different purpose and is completely inappropriate for the transportation of

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materials or personnel to an off-road work site. They believe that the IRS rates are established for a typical passenger vehicle operated on paved roads and should not be used to gauge the costs of off-road transportation.

Response: The Department is taking no action. Currently, the Internal Revenue Service (IRS) standard business rate is the only objective standard available that the Department can use that would allow the greatest flexibility and compensation to the grantee. With that said, the Department reiterates that this program is a supplemental financial assistance program that is meant only to support the grantee's program as a whole. Additionally, in order to achieve the legislative intent funding as many projects as possible, the program must be able to make efficient use of these trust funds. Grantees should not rely on this program as their only means of funding.

Comment 3.9: The commenter recommends the Department consider using an automatic adjustment, indexed to the consumer price index to allow the equipment cap of \$30,000 per item to rise over time. This cap is mentioned in the newly adopted Section 4970.08(b)(12)(A).

Response: The Department is taking no action on this comment. The lifting of the \$15,000 per item cap restriction that is being proposed is the first change in Equipment purchases for nonprofits in ten years. The Department believes that it will take several grant cycles to make a determination on how this one change will affect the overall program. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 3.10: The commenter recommends the Department add clarification on whether an applicant is allowed to charge both a daily use fee and a per mile fee for equipment acquired with non-grant funds. The commenter suggests replacement of the period at the end of clause 1. with “; and” to ensure applicants know they are allowed to charge both.

Response: The Department accepts this recommended comment. The clarification proposed by the commenter, which was to add clarity to Section 4970.08, subsection (b)(12)(D) by replacing the period at the end of the clause and adding the word “and” to ensure applicants know they are allowed to charge both a daily use fee and a per mile charge, was proposed during a 15-day public review and comment period and is being adopted with a slight modification. The Department added the words “and/or” at the end of the subsection (b)(12)(D). Although the Department is not accepting the exact recommendation by the commenter, the change will have the same effect. The proposed change in the 15-day public comment period provides the clarification that the applicant can charge a daily use fee and/or a “per mile charge”.

Comment 3.11: The commenter recommends the Department provide guidance as to how the applicant should establish the per mile fees in Section 4970.08(b)(12)(D).

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Response: The Department accepts this recommended comment. The clarification proposed by the commenter, which was to provide guidance as to how the applicant should establish the per mile fees in Section 4970.08, subsection (b)(12)(D), was proposed during a 15-day public review and comment period and is being adopted. The Department added the words “and/or” at the end of the subsection (b)(12)(D). Although the Department is not accepting the exact recommendation by the commenter, the change will have the same effect.

Comment 3.12: The commenter recommends the Department consider allowing either a per mile or per operating hour fee as a per hour metric for operating costs on pieces of equipment like augers, chainsaws, excavators, etc.

Response: The Department is taking no action on this comment. The Department believes that the proposed changes to the cost allowance of Equipment is a balanced approach that provides grantees the necessary supplemental funds to assist with their program, maintain the legislative intent of funding as many projects as possible, and providing a consistent mechanism for capturing and verifying Equipment costs. The examples given by the commenter are a mixed list of equipment types that fall under the definition of Equipment, some under the new proposed term of Heavy Equipment and some that do not meet either of those requirements. Current regulations along with the proposed changes address each of those types.

Comment 3.13: The commenter recommends the Department consider sending out an annual update by mail publishing the standard rates for common pieces of equipment. The rates could be determined by a working committee of stakeholders and the Department staff.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The Department believes more time is needed to more thoroughly review and evaluate the recommendation for possible inclusion in future changes to the regulations.

Comment 3.14: The commenter recommends the Department update the section referenced in Section 4970.08(b)(12)(E). They also reiterate two concerns that were address in previous comments.

Response: The Department accepts this comment. The Department updated the section listed in section 4970.08(b)(12)(E) to reference 4970.08(12)(D)(2) was proposed during a 15-day public review and comment period and is being adopted.

Comment 3.15: The commenter recommends the Department add a rationale for how an applicant would determine the per mile fee mentioned in Section 4970.08(b)(12)(F). They then mention a concern that is addressed above regarding how the Department defines a standard mileage rate.

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Response: The Department accepts this comment. Clarification to address commenter's concern was added in 4970.08(12) during a proposed 15-day public review and comment period and is being adopted. Additionally, as stated above, the Internal Revenue Service (IRS) standard business rate is the only objective standard available that the Department can use that would allow the greatest flexibility and compensation to the grantee.

Comment 3.16: The commenter recommends the Department define "heavy equipment", mentioned in Section 4970.08.

Response: The Department accepts this recommended comment. The definition of Heavy Equipment was proposed during a 15-day public review and comment period and is being adopted. Additionally, in a related matter, the definition of Equipment was also proposed during the same 15-day public review and comment and is being adopted as well. The revision to the definition of Equipment is revised to compliment the newly defined Heavy Equipment term.

Comment 3.17: The commenter recommends the Department allow items used to maintain, use, or secure/transport equipment in section 4970.08 in relation to Section 4970.09(b)(12) which mentions that "...equipment not properly used, secured or maintained..." is an ineligible cost.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The items suggested by the commenter are allowed as indirect costs; however, the commenter might have been suggesting that the items should be allowed as a direct cost. The Department believes that the items listed by the commenter are not activities and/or materials that directly complete the project and thus should remain as indirect costs.

Comment 3.18: The commenter requests the Department to provide sample filled out form(s) to aid applicants in better understanding how the newly adopted forms, listed in the appendix, are to be used.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Although the Department is taking no action with regard to this comment at this time, the Department will seek to develop "sample filled-out forms" as requested by the commenter for the forms that are part of this regulatory package. As the completed samples will not be in regulations, if the Department develops such completed samples, they will be made available for those grantees wanting to use them.

Comment 3.19: The commenter recommends the Department raise the minimum match requirement for Federal agencies.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, the

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Department does not have the authority to independently make a change to the match requirement. The requirement for a minimum of 25 percent match for each grantee is set by Public Resources Code (PRC) Section 5090.50 and can only be changed through the state legislative process.

Comment 3.20: The commenter recommends the Department change the scoring of grant applications submitted by Federal Agencies.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the current scoring criteria within the regulations were developed to provide an objective, transparent and equitable process to score applications. The recommendation by the commenter to change the current criteria scoring would be contrary to the intended purpose and would give an unfair advantage to some applicants over others.

Comment 3.21: The commenter recommends the Department limit what federal funds can be used for match.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The current statute requires a minimum of 25% match for all categories with the exception of Restoration. Additionally, current regulations provides grantees the greatest flexibility for them to meet the match requirement. If the Department were to accept the commenter's recommendation, it would place an undue burden on one set of grantees over another.

Comment 3.22: The commenter states the change in the scoring of General Criteria now favors large public entities, especially Federal agencies that can generate large amounts of matching funds and discriminates against smaller entities such as non-profits.

Response: The Department is taking no action on this comment. The proposed changes to the scoring within the General Criteria are being made to either clarify existing questions, update ways for the grantee to communicate with the public, and/or clean-up existing questions that had errors. The remaining changes to the proposed questions allows all grantees to obtain the maximum scoring for those questions. The Department believes that none of the proposed changes will have an undue disadvantage to any particular applicant group.

Comment 3.23: The commenter recommends the Department consider a Grantee's past performance with respect to the amount of returned funds when evaluating and scoring subsequent grant applications. One idea presented was changing an applicant Good Standing status based on the returned funds.

Response: The Department is taking no action on this comment. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations. The

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Department believes more time is needed to evaluate and ferret out the recommendation by the commenter in order to determine whether acceptance of the recommendation would be prudent to adopt.

COMMENT LETTER 4

Desert Search & Rescue, Allen Wessel (Received by email 06-01-2018)

Comment 4.1: The commenter requests the Department increase the maximum per item charge to listed in Section 4970.08(b)(12)(A) to \$50,000 due to future inflation.

Response: The Department is taking no action on this comment. The lifting of the \$15,000 per item cap restriction that is being proposed is the first change in Equipment purchases for nonprofits in ten years. The Department believes that it will take several grant cycles to make a determination on how this one change will affect the overall program and if the total equipment cap of \$30,000 should be raised. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

COMMENT LETTER 5

CALIFORNIA OFF-ROAD VEHICLE ASSOCIATION (CORVA), Bruce Whitcher (Received by email 06-04-2018)

Comment 5.1: The commenter requests the Department add a definition for “Heavy Equipment”.

Response: The Department accepts this recommended comment. The definition of Heavy Equipment was proposed during a 15-day public review and comment period and is being adopted. Although, the Department did not use the language recommended by the commenter, the proposed definition is thought to be clearer on what the program will consider Heavy Equipment to be. Additionally, in a related matter, the definition of Equipment was also proposed during the same 15-day public review and comment and is being adopted as well. The revision to the definition of Equipment revised to be compliment the newly defined Heavy Equipment term.

Comment 5.2: The commenter recommends the Department expand the definition of Ground Disturbing Activity by adding “maintenance or replacement of existing fence lines that do not require disturbance beyond replacement of fence posts and wire”.

Response: The Department accepts this recommended comment. The language recommended by the commenter was proposed during a 15-day public review and comment period and is being adopted.

Comment 5.3: The commenter recommends the Department use a sample report and form(s) that guide grantees on the issue of Soils Compliance Reports so reporting can be consistent.

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Response: The Department is taking no action on this comment. Although the Department is taking no action with regard to this comment at this time, the Department will seek to develop “sample reports and forms” as requested by the commenter for the reports and forms that are part of this regulatory package. As the completed samples will not be in regulations, if the Department develops such completed samples, they will be offered to the grantees as requested.

Comment 5.4: The commenter states the changes to 4970.06.3 may have the unintended consequence of requiring more comprehensive NEPA analysis than in the past. They further add that this could limit the agencies routine maintenance operations.

Response: The changes to the proposed regulatory language in the Soils Standard and Guideline does not change nor add to any current regulatory requirement. The proposed change only seeks to clarify the requirements. The Department disagrees with the commenter and believes that no changes will be needed by federal grantees in order to conform to the National Environment Protection Act (NEPA).

Comment 5.5: The commenter recommends the Department add language that would allow flexibility for reimbursement from Federal agencies to non-profits.

Response: The Department is taking no action on this comment. The Department believes the proposed changes in the Equipment category is a balanced approach that will be able to assist grantees in successfully completing their projects while maintaining the legislative intent of funding as many projects as possible. Additionally, the proposed changes will provide for more consistent reporting and administration of the projects by the Department.

Comment 5.6: The commenter recommends the Department revise the language in General Criteria question number five.

Original Comment: Documents Incorporated by Reference 2019. Evaluation Criteria - General Criteria, Question #5 related to the standing of applicants: The wording is unclear. We suggest the following:

“Has applicant been in good standing at all times during the two calendar years immediately prior to the current grant cycle? Yes – (10 points) No – (zero points)

Response: The Department accepts this recommended comment. The Department made an adjustment to language during the 15-day public review and comment period with the intention of providing clarity to the question. However, the Department decided not adopt the proposed 15-day text language. Instead, the Department reverted back to the originally proposed language and changed the grammar to remove a double negative without regulatory effect.

Comment 5.7: The commenter requests the Department clarify two of the responses in the Evaluation Criteria for Acquisition Projects, number 2c. They would like clarity between the selection “the project will provide additional protection to cultural sites” and “project impacts to cultural sites will be mitigated”.

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Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The Department believes the proposed regulatory package is not the appropriate forum to clarify existing criteria questions. The Department conducts annual workshops at the start of each grant cycle; a section of the workshop is dedicated to providing information on the intent of criteria questions and the possible responses; the annual workshops would be the appropriate forum to respond to the commenter.

Comment 5.8: The commenter recommends the Department revise the language in Evaluation Criteria for Acquisition Projects, question number 4 to “Applicant will not apply for future OHV grants”, for clarity.

Response: The Department accepts this recommended comment. The language recommended by the commenter was proposed during a 15-day public review and comment period and is being adopted.

Comment 5.9: The commenter recommends the Department consider the potential advantage the adjustment to the Evaluation Criteria for Ground Operations, question six could provide for tracks and other small fenced facilities and the disadvantage it could create for Federal agencies that provide 80% of OHV opportunities. They request that the original language be retained.

Response: The Department is taking no action on this comment. The proposed change to the Ground Operations criteria question #6 does not change the intent or the application of the original question. Previous remarks by applicants indicated that the current version of the question was not clear. The proposed change is to clarify that a totally enclosed (by fencing) park would be able to obtain the full point value. Applicants that do not have a completely fenced facility can still obtain the maximum points available for the entirety of question #6.

COMMENT LETTER 6

California Native Plant Society, Greg Suba (Received by email 06-04-2018)

Text in red font are amendments we believe would maintain the intent of SB 249 and/or improve the Grant Program’s guidelines in general. Unless otherwise noted, strike-through and underlined text is copied directly from the proposed amendment documents provided by the Department.

Comment 6.1: The commenter recommends the Department retain the references to PRC Sections 5090.10, 5090.50 and 5090.53 in the definition “Conservation”.

Response: The Department is taking no action on this comment. The reference to PRC Sections 5090.10, 5090.50, and 5090.53 was deleted for clarity and conformance with amendment to PRC Section 5090.35. Section 4970.01 (f) has been modified to be the same as PRC Section 5090.10, and there is no need to refer back to that statute within the definition. The reference to PRC Section 5090.35 is a reference to the Soil

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Conservation Standard as described in PRC Section 5090.35 (b)(1). The remainder of PRC Section 5090.35 specifically applies to the SVRAs and is not applicable to the Grants Program. PRC Section 5090.53 refers to a wildlife habitat protection program, which is required under the Grants Program, but PRC Section 5090.35 (c) refers to a wildlife habitat protection plan, which is required within the SVRAs. PRC Section 5090.53 does not incorporate wildlife protection plan requirements in PRC Section 5090.35. Reference to PRC Sections 5090.50 and 5090.53 was thus omitted from Section 4090.01 (f) to avoid confusion with the SVRA standards in PRC Section 5090.35. Compliance with 5090.50 and 5090.53 is retained in Section 4970.05 (n).

Comment 6.2: The commenter recommends the Department add “other than fencing” to the definition of “Ground Disturbing Activity” to indicate that adding fencing is considered Ground Disturbing Activity.

Response: The Department accepts this recommended comment. The language recommended by the commenter was proposed during a 15-day public review and comment period and is being adopted.

Comment 6.3: The commenter requests the Department explain what a “program” is and how an applicant developed the “program”. They would like the Department to provide an example of a wildlife habitat protection “program” that is not actually a “plan” to justify the ISOR for section 4970.01(x).

Response: The Department is taking no action on this comment. PRC Section 5090.35 (c) was amended to specify use of a wildlife habitat protection plan within SVRAs. PRC Section 5090.53 was not amended and continues to specify use of a wildlife habitat protection program for applicable Grants Program Projects. References to a wildlife habitat protection plan have thus been omitted from the Grants Regulations.

Comment 6.4: The commenter recommends the Department retain the reference to PRC Section 5090.35 throughout the regulations in general.

Response: The Department is taking no action on this comment. With the passage of SB 249 (Allen), the reference to PRC Section 5090.35 specifically applies to the Departments’ operation of State Vehicular Recreation Areas (SVRAs) and is not applicable to the Grants Program. PRC Section 5090.35 (b)(1) refers to the Soil Conservation Guidelines which is still applicable to this grants program as described in PRC Section 5090.53.

Comment 6.5: The commenter is stating that the Department add “OHMVR” before “Division” to clarify the Division’s role in approving projects.

Response: The Department is taking no action on this comment. As stated in the Initial Statement of Reasons, “OHMVR” was added before “Division” for document consistency and clarity only; the roles and responsibilities of the Department is not being changed with this clarification.

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Comment 6.6: The commenter recommends the Department add “SVRA” to the language in Section 4970.09(b)(10) to clarify that the properties mentioned are SVRA parks.

Response: The Department accepts this recommended comment. The language recommended by the commenter was proposed during a 15-day public review and comment period and is being adopted.

Comment 6.7 The commenter recommends the Department add “at the Department, at the California Department of Fish & Wildlife, at the California Air Resources Control Board, or other state agencies” to the list of reference documents evaluation panelists may seek information relevant to a grant proposal’s eligibility.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. However, to the commenter’s point, the program does currently allow the review panels to verify any information provided in an application from any source available to them including the agencies listed by the commenter.

COMMENT LETTER 7

BLM CA State Office, Sandra McGinnis (Received by email 06-4-2018)

Comment 7.1: The commenter recommends the Department change language in the definition of “Ecological Restoration” to include “...is the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed.”

Response: The Department is taking no action on this comment because the comment is inconsistent with the proposed revision in the rulemaking file. The Department is proposing to delete 4970.01(o) because PRC Section 5090.50(b)(2) no longer uses the term “ecological restoration.”

Comment 7.2: The commenter recommends the Department increase the unit acquisition cost from \$1,000 to \$5,000 in the definition of “Equipment”.

Response: The Department accepts this recommended comment. The increase of acquisition cost of Equipment being raised from \$1,000 to \$5,000 was proposed during a 15-day public review and comment period and is being adopted.

Comment 7.3: The commenter recommends the Department add “requested in writing” before “refund(s)” in the definition of “Good Standing”.

Response: The Department is taking no action on this comment. The Department believes it is unnecessary to add the language as requested by commenter. Current regulations are clear to grantees when refunds are due and when they become

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delinquent. Additionally, it is the responsibility of the grantees to ensure they are aware of all regulations and should be aware of when refunds are owed.

Comment 7.4: The commenter recommends the Department replace the newly adopted language “The act of installing and/or replacing a sign, placing of boulders or other material to delineate a Facility, or sweeping sand/dirt from a paved road are not considered a “Ground Disturbing Activity” with “Facility, sweeping sand/dirt from a paved road or activities identified in a CEQA/NEPA document as not being ground disturbing are not considered a “Ground Disturbing Activity”.”

Response: The Department is taking no action on this comment. CEQA analyses do not always assess or describe project activities based on ground disturbance, so the change proposed by the comment would not provide a consistent metric for purposes of determining whether a project is Ground Disturbing pursuant to PRC Section 5090.50 (e). Additionally, Ground Disturbance is a term used in PRC Section 5090.53 as a requirement for the grants program; any change must be made through the legislative process.

Comment 7.5: The commenter recommends the Department add “or first responder” to the definition of “Medical”.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the current definition of medical does provide for “first responders” to be considered as part of the emergency services personnel classification.

Comment 7.6: The commenter recommends the Department replace “developed through” with “developed regarding” to expand the newly adopted language in the definition of “Youth Mentoring Program”.

Response: The Department is taking no action on this comment. The Department believes the proposed language provides enough clarity to the public that the Department recognizes, that with this program, the use of off-highway vehicles is an integral part of a youth mentoring project that this program would support.

Comment 7.7: The commenter recommends the Department allow Non-profits to apply for development and planning projects.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Furthermore, the type of projects and who is eligible for each project type is set in statute and can only through the state legislative process.

Comment 7.8: The commenter recommends the Department allow the use of social media as an avenue for public notification efforts in Section 4970.05(e)(2).

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Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The Department believes the current options available to applicants in order to meet the public notification is diverse and flexible enough that an applicant should have no problem meeting this requirement.

Comment 7.9: The commenter recommends the Department add “with the exception of indirect costs” Section 4970.05(f)(1). In the original comment they noted Section 4970.05(f)(2) but they quoted 4970.05(f)(1).

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Current regulations require all project costs be documented the same. Some of the strengths of the program is transparency and accountability of public funds which are reflective in current regulation requirement to provide the appropriate documents for costs. If the Department accepted the commenter’s recommendation, the program would be less transparent and accountable.

Comment 7.10: The commenter recommends the Department add “when a project is on Federally Managed lands, compliance with NEPA applies and applicants shall submit an analysis of the environmental impacts of the proposed Project comparable with the requirements of CEQA” to Section 4970.06.1(c)(1)(F) to allow for Nonprofits to apply for grants that are in Federally managed lands and be NEPA and CEQA compliant.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 7.11: The commenter recommends the Department delete the items in 4970.06.3(e)(3) because they believe the items listed in this section will add extensive workload which may hinder their opportunity to apply for certain project types.

4970.06.3. Soil Conservation **General Discussion:** The changes in adding a “maintenance plan” is not required for the 2008 Conservation Standards and Guidelines. The regulations have very little guidance and definition. A Field Office maintenance plan is an implementation plan that may or may not be authorized in a Field Office Resources Management Plan (RMP), and thus may trigger NEPA. The proposed language has a potential in adding an extensive workload, thus hindering the opportunities for BLM to apply for Operation, Development and Restoration grants.

BLM does support the continuation of a Soil Compliance action plan that complies with the 2008 Conservation Standards and Guidelines.

(e.3) **Delete all:** A maintenance plan for the Project Area that describes:

- A. The current trail maintenance schedule,

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- B. The type of maintenance conducted,
- C. Equipment used for maintenance within the Project Area, and
- D. Procedures for documenting maintenance activities.

Response: The Department is taking no action on this comment. The proposed regulatory change is only meant to clarify the content and iterative process currently required in the Soil Conservation Plan, which is a component of the current regulations. The Department has in many occasions heard from frustrated grantees on how to report the necessary information. The proposed change does not change any current regulatory mandate; it neither adds nor eliminates current requirements. The proposed change is an attempt by the Department to provide a clearer format in which to provide the same information. The changes proposed in this section will conflict with PRC 5090.02(c) or any current statute.

Comment 7.12: The commenter requests the Department define “quantifiably” in Section 4970.06.3(e)(4)(b)(3).

Response: The Department is taking no action on this comment. By not defining the term “quantifiably” in the regulations, the program will use the common definition of the word which is “able to be expressed or measured as a quantity”.

Comment 7.13: The commenter recommends the Department modify items requested in 4970.06.3(e)(4)(g)(A). Specifically, commenter recommends adding the following to the Soils Conservation Plan: The compliance report shall address the following:

1. Historical conditions,
2. Change analysis,
3. Findings,
4. Conclusions, and
5. A compliance action plan describing activities to be implemented and a schedule of those activities.

Response: The Department is taking no action on this comment. The proposed regulatory change is only meant to clarify the content and iterative process currently required in the Soil Conservation Plan, which is a component of the current regulations. The Department has in many occasions heard from frustrated grantees on how to report the necessary information. The proposed change does not change any current regulatory mandate; it neither adds nor eliminates current requirements. The proposed change is an attempt by the Department to provide a clearer format in which to provide the same information. The changes proposed in this section will conflict with PRC 5090.02(c) or any current statute.

Comment 7.14: The commenter recommends the Department add “if known” before “a list of planned actions” and replace “OHV Facility” with “Project Area” in Section 4970.06.3(4)(g)(D)(1).

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Response: The Department is taking no action on this comment. Applicants to the OHV grants program requesting funding for any project that involves ground disturbing activities are expected to be capable of identifying and discussing anticipated ongoing maintenance to achieve long-term sustainability for completed project areas and other possible future project areas observed within their OHV facility during grant performance periods.

Comment 7.15: The commenter recommends the Department delete “A description of an area or areas within an OHV Facility where future projects are to be performed, including a brief description of the planned work” in Section 4970.06.3(4)(g)(D)(2).

Response: The Department is taking no action on this comment. Applicants to the OHV grants program requesting funding for any project that involves ground disturbing activities should be familiar with current and future ground disturbing projects for which grant funds may be requested. This does not preclude an applicant from explaining a change in priorities when future grant funds are requested.

Comment 7.16: The commenter recommends the Department add “premium pay” to the type of overtime allow in Section 4970.08(b)(2)(C).

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Although the Department is taking no action, the current program regulations allow for what the commenter is requesting. Section 4970.08(b)(2)(A) states in part “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”.

Comment 7.17: The commenter recommends the Department add “and operation cost of applicant’s equipment used on project” at the end of Section 4970.08(b)(5).

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The commenter recommends adding language to this section of the regulations that specifically deals with an applicant’s Equipment; the Department believes this is an inappropriate section for the recommended language. However, the language recommended by the commenter is contained as part of the revised Equipment section of the proposed regulatory package.

Comment 7.18: The commenter recommends the Department retain “Equipment”, remove the new language defining 100 miles from the project site as an eligible cost and replace “per mile” with “per hour” in Section 4970.08(b)(9).

Response: The Department partially accepts this comment. It was the intent of the Department, for the initial language, contained in the 45-day public comment period, to apply only to nonprofit grantees. It is the nonprofits grantees that have such a diverse and inconsistent location(s) where they keep their Equipment. It is the intent to provide

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clarity to nonprofit grantees on what the program will allow with regard to capturing Equipment costs. Since public entities normally have a defined, consistent and long term location for their Equipment storage, the Department believes there is no need to have such requirements for public entities. The Department proposed the clarity in a 15-day public review and comment period and is being adopted.

Comment 7.19: The commenter recommends the Department add “administration” to the purpose of Operations and Maintenance Projects.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The language defining the Operation and Maintenance category is contained in Public Resources Code 5090.50 and the Department does not have the authority to make this change via the regulatory process.

Comment 7.20: The commenter recommends the Department add Non-profits to Table 3 as eligible for Planning Projects.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The language defining the Operation and Maintenance category and which applicant type is eligible for the Operation and Maintenance category is contained in Public Resources Code 5090.50. The Department does not have the authority to make this change via the regulatory process.

Comment 7.21: The commenter recommends the Department add “or any item that would be considered minor on the ground improvements that is less than \$10,000” to Section 4970.10.1(c)(8). In the original comment, they referenced 4970.10.1(a)(8) which doesn’t exist. The Division believes, based on the content of the comment, that they meant to create a new section that would be 4970.10.1(c)(8) as a new example of a deliverable.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The program is designed to provide financial assistance to entities that provide OHV recreation. The \$10,000 project minimum requirement was established to ensure that an applicant’s OHV program is managed in a holistic manner and that effective and efficient use of the program resources is maintained. If the Department were to accept the commenter’s recommendation, the Department believes that a substantial amount of small projects would be submitted and would cause an undue burden to the program and exceed current resource capabilities.

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Comment 7.22: The commenter recommends the Department add, “programmatic management coordination” to the purpose of Planning Projects in Section 4970.10.3, for Federal Agencies.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The commenter proposes to expand the types of projects that would fall under the category of “Planning”. The Department believes this would be inconsistent with the legislative intent which is that “Planning” is for the development and preparation of plans that lead specifically to creating new OHV recreation opportunities.

Comment 7.23: The commenter recommends the Department add funding for an OHV Program Coordinator and specialist to the Deliverables of a Planning Project listed in Section 4970.10.3(c).

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The commenter proposes to expand the types of projects that would fall under the category of “Planning”. The Department believes this would be inconsistent with the legislative intent which that “Planning” is for the development and preparation of plans that lead specifically to creating new OHV recreation opportunities.

Comment 7.24: The commenter recommends the Department retain “Costs associated with equipment used for a project will be paid 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” and remove “a logbook or source document which identify the operator, date of activity, work performed and hours or miles charged to the Project” from Equipment Use under Accounting Practices, Section 4970.22.23(c).

Response: The Department is taking no action on this comment. Some of the strengths of the program is transparency and accountability of public funds which are reflective in current regulation requirement to provide the appropriate documents for costs. If the Department accepted the commenter’s recommendation, the program would be less transparent and accountable. Additionally, it is common practice and usually a mandatory practice, for public agencies (such as the commenter) to maintain logs books for their vehicle fleet. This proposed regulatory change would not create a further burden on the grantees.

Comment 7.25: The commenter recommends the Department add a fourth option for Matching Funds under accounting Practices where a Federal Agency Contractor could be used as Matching Funds for a Project.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Per Article XVI,

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Section 6 of the California Constitution, the Department can only reimburse grantees for actual expenses. The recommendation by the commenter would be in conflict with such restrictions.

Comment 7.26: The commenter recommends the Department create a Federal agency version of the newly adopted Expenditure Workbook that matches Federal financial documents.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Some of the strengths of the program is transparency and accountability of public funds which are reflective in current regulation requirement to provide the appropriate documents for costs. If the Department allowed the various grantee types to use their own forms would be contrary to the Department's philosophy of consistency, and streamlining of processes for maximum efficiency of the program.

Comment 7.27: The commenter recommends the Department make an exception for Federal Agencies with regards to the records requested for reimbursements in Section 4970.23.2.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The commenter is recommending that federal agencies be treated differently with regard to appropriate documentation. If the Department accepted the commenter's recommendation, the program would be less transparent and accountable.

Comment 7.28: The commenter recommends the Department start the one hundred twenty (120) day window for refunds due to the State, the day they receive a refund letter, instead of the last day of the Project Performance Period.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The language contained in the Project Agreement General Provisions (United State Federal Agencies) is a reiteration of what is currently contained in the main body of the regulations. What the commenter is requesting, to have the Department notify grantees in writing when a refund is due, is customary practice for the program. However, this practice is only a courtesy reminder and grantees should at all times be aware of the regulations and should be aware that current regulations provide the time frames when refunds are due. With the revisions portions of the regulations that allows for the use of previously awarded money being used to fund future projects, it is critical for the Department and the program to receive any refunds due immediately.

Comment 7.29: The commenter recommends the Department make an exception for Federal Agencies with regards to the records requested for reimbursements in the Project Agreement General Provisions, Section G.1.

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Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The commenter is recommending that federal agencies be treated differently with regard to appropriate documentation. If the Department accepted the commenter's recommendation, the program would be less transparent and accountable.

Comment 7.30: The commenter recommends the Department revise the proposed scoring in General Criteria question number five, in the Appendix.

Response: The Department is taking no action on this comment. The commenter seeks to have a "grace-period" for when a grantee is placed in no in "Good Standing". In the past, the Department has had a problem with grantees not conforming to the requirements of submitting the appropriate closeout documentation on a timely basis. In 2015, the Department took the steps to initiate regulations that would make grantees more accountable and to impose stricter penalties for not adhering to the timely submission of documentation. The commenter wishes to "loosen" these penalties which is contrary to the purpose of our original intent. Additionally, this change in the scoring criteria as proposed is to provide an incentive for an applicant to always be in good standing.

Comment 7.31: The commenter recommends the Department repeal General Criteria question number seven, stating this Criteria question favors confined OHV experiences.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The Department disagrees with the commenter's assertion that the question favors small tracks. The current question, as composed, allows for both small tracks and larger OHV land managers to obtain the maximum points allowable.

Comment 7.32: The commenter recommends the Department repeal General Criteria question number eight, stating this Criteria question favors confined OHV experiences.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The Department disagrees with the commenter's assertion that the question favors small tracks. The current question, as composed, allows for both small tracks and larger OHV land managers to obtain the maximum points allowable.

Comment 7.33: The commenter recommends the Department remove "onsite" from General Criteria question 11.b to allow applicants to receive points for OHV formal education program that are not onsite.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The question cited

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by the commenter was established to provide an extra incentive for an applicant to bring the public onto their managed lands to educate them regarding OHV recreation. Other questions within the General Criteria section allows for applicants to receive points for educating the public off-site.

Comment 7.34: The commenter recommends the Department change response “Daily (5 points)” to “During regular office hours (5 points)” for General Criteria question number 11.c

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The Department believes the current question cited by the commenter is effective and has served its purpose. The Department believes applicants should be given additional points, not necessarily when the offices are open, but when the public is out on their land.

Comment 7.35: The commenter recommends the Department remove “onsite” from the response box for General Criteria question 11.b so an applicant can respond with examples instructed at a partner’s facility.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The question cited by the commenter was established to provide an extra incentive for an applicant to bring the public onto their managed lands to educate them regarding OHV recreation. Other questions within the General Criteria section allows for applicants to receive points for educating the public off-site.

Comment 7.36: The commenter recommends the Department add the option of a Social Media site to receive points for outreach efforts.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The Department believes the current question cited by the commenter is effective and has served its purpose; the options available to applicants are quite diverse and allow for a variety of ways to address the public.

Comment 7.37: The commenter recommends the Department remove the request for the name and date of reference document to support the applicants selection on Development Project Criteria, question 2.c because this information is protected and is available for public view after the application is submitted.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The scoring of applications is based on an objective set of criteria questions that the applicant completes and a panel of staff from the Department review and verify. In order to verify the information provided by an applicant, the reference documents must be available during the application process and not afterward.

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Comment 7.38: The commenter recommends the Department add “or Natural Material” as an option listed in Development Project Criteria number six.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. The Department believes the current question cited by the commenter is effective and has served its purpose at this time. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 7.39: The commenter recommends the Department remove Education and Safety Criteria number two stating that they feel that it is repetitive of General Application, question 5.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Many applicants submit applications solely for Education and Safety projects and thus do not complete the General Criteria questions. Education and Safety projects are evaluated and compete with similar projects separately from the other categories; thus, the question cited by the commenter is necessary.

COMMENT LETTER 8

DEFENDERS OF WILDLIFE, Jeff Aardahl (Received by email 06-04-2018)

Comment 8.1: The commenter recommends the Department require Project applicants to consult with California Department of Fish and Wildlife (CDFW) to determine if incidental take permits are required for specific grant projects. If CDFW finds that the permit is required, the commenter recommends the Department or the Grant applicant apply and obtain an incidental take permit before an application is approved.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding as a courtesy as the comments were submitted to the Department after the close of the public comment period. Section 4970.06.1 continues to require CEQA compliance for each Grant and Cooperative Agreement, and Section 4970.06.2 continues to require a HMP to be submitted for all Projects with Ground Disturbing Activity. Regarding CEQA, consistent with the definition of a project under the CEQA Guidelines (CCR Title 14, Section 15378), Applications are reviewed to assess whether Project activities could cause a physical change in the environment. Many proposed activities are routine and ongoing and do not effect physical changes to the environment. To the extent a Grants Program Project meets the definition of a project under CEQA, all Project activities are reviewed for significant effects pursuant to CEQA Guidelines Section 16382. Both CEQA and the HMP require consideration of

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effects on state-listed species. Grantees are responsible for consulting with and obtaining from agencies all permits necessary for implementation of their Projects and overall program; the Department would not be the permittee. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 8.2: The commenter recommends the Department require a grant applicant to be authorized or permitted by the U.S. Fish and Wildlife Service (for federal agencies) or incidental take permit (for non-federal entities). They further recommend that these documents be required at the submission of a grant application.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding in good faith as the comments were submitted to the Department after the close of the public comment period. To the extent a Grants Program Project meets the definition of a project under CEQA, all Project activities are reviewed for significant effects pursuant to CEQA Guidelines Section 16382, including effects on special-status species. Grantees are responsible for consulting with and obtaining from agencies all permits necessary for implementation of their Projects and overall program; the Department is not a permitting agency for California's fish, wildlife, and plant resources. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 8.3: The commenter recommends the Department involve the CDFW in the CEQA review of a Grant application.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding in good faith as the comments were submitted to the Department after the close of the public comment period. Section 4970.06.1 continues to require CEQA compliance for each Grant and Cooperative Agreement, and Section 4970.06.2 continues to require a HMP to be submitted for all Projects with Ground Disturbing Activity. Regarding CEQA, the Department files all notices, including Notices of Exemption, with the State Clearinghouse. Grantees are responsible for consulting with and obtaining from agencies all permits necessary for implementation of their Projects and overall program; the Department is not a permitting agency for California's fish, wildlife, and plant resources. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 8.4: The commenter recommends the Department work with CDFW in determining when compensatory mitigation is required for Grant funded Projects that result in impacts to species listed under CESA as threatened or endangered.

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Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding in good faith as the comments were submitted to the Department after the close of the public comment period. Grantees are responsible for consulting with and obtaining from agencies all permits necessary for implementation of their Projects and overall program. Compensatory mitigation, if required, would be determined during consultation with the permitting agency. The Department is not a permitting agency for California's fish, wildlife, and plant resources but would incorporate any required mitigation into its CEQA analysis. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 8.5: The commenter recommends the Department perform reviews of agency law enforcement activities, their effectiveness and success in achieving compliance with OHV recreation laws and regulations through frequent site visits and reports.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding in good faith as the comments were submitted to the Department after the close of the public comment period. The Department currently reviews all law enforcement grant applications inclusive of Law Enforcement needs assessments and certifications submitted by the grantees. State Park Peace Officers conduct regular site visits to directly evaluate effectiveness of grantee's OHV law enforcement projects. These efforts are supported by statewide OHV Law Enforcement training classes instructed by State Park Peace Officers.

Comment 8.6: The commenter recommends the Department conduct field evaluations of lands/areas affected by Grant-funded activities to determine whether the Soil Conservation Standard is being met.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding in good faith as the comments were submitted to the Department after the close of the public comment period. Presently, Department staff and consultants review grant applications and conduct field visits to ensure grant monies are applied to projects as stated and defined in awarded grant applications and according to the Soil Conservation Standard. The proposed regulatory language revision specific to Soil Conservation Plan content and process is intended to ensure a project-specific soil conservation plan provides documentation of compliance with the Soil Conservation Standard within the Project Area, as required by PRC Section 5090.53.

Comment 8.7: The commenter recommends the Department consider applicants who are not meeting the Soil Conservation Standard not eligible to apply for a grant.

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Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding in good faith as the comments were submitted to the Department after the close of the public comment period. Department staff and consultants review grant applications and conduct field visits to ensure grant monies are applied to projects as stated and defined in awarded grant applications and in compliance with the Soil Conservation Standard. Section 4970.06.3 continues to require an SCP to be submitted for all projects with Ground Disturbing Activity. Section 4970.07.2(e) continues to allow the Department to reject applications not in compliance with the Soil Conservation Standard and Section 4970.25.2 continues to allow the Department to deny payment requests for grantees not in compliance with their SCP.

Comment 8.8: The commenter recommends the Department require strict compliance with the Soil Conservation Standard beyond an applicant's statement of compliance.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding in good faith as the comments were submitted to the Department after the close of the public comment period. Department staff and consultants review grant applications and conduct field visits to ensure grant monies are applied to projects as stated and defined in awarded grant applications and in compliance with the Soil Conservation Standard. Section 4970.25.2 continues to allow the Department to conduct Project Performance Reviews including site visits to determine grantee's progress toward SCP implementation and overall compliance with the Soil Conservation Standard. Section 4970.24 allows the Department to deny grant payments to Grantee's found to be not in compliance with the Soil Conservation Standard. Section 4970.05(n) allows the Department to prohibit Grantee's found to be not in compliance with the Soil Conservation Standard from applying for future grant projects. When a Grantee submits a project application and when they submit a grant payment requests, they are required to certify "*under penalty of perjury*" that they are complying with grant program regulations including compliance with the Soil Conservation Standard. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 8.9: The commenter recommends the Department involve the CDFW in the review of Grants for activities that may or will affect rivers, streams or lakes to determine if a Lake and Streambed Alteration Program is required.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Additionally, the Department is responding in good faith as the comments were submitted to the Department after the close of the public comment period. To the extent a Grants Program Project meets the definition of a project under CEQA, all Project activities are reviewed for significant effects pursuant to CEQA Guidelines Section 16382, including effects on aquatic resources. Grantees are responsible for consulting with and obtaining

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from agencies all permits necessary for implementation of their Projects and overall program. The Department does not have authority for issuance of Lake and Streambed Alteration Agreements but would incorporate any required mitigation into its CEQA analysis. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

SUMMARY AND RESPONSE TO PUBLIC COMMENTS RECEIVED DURING THE PUBLIC HEARING JUNE 5, 2018 BAKERSFIELD, CALIFORNIA.

PUBLIC COMMENT HEARING 1:

California Trail User Coalition (CTUC), Ed Waldheim

Comment 1.1: The commenter requests that the Department remove the requirement to use interest earned, on grant funds, towards the Project/refunded to the State if not used because they perceive the interest amount minimal. This provision can be found in the Appendix within the General Provisions.

Response: The Department is taking no action on this comment. The requirement for interest earned is not a new provision it was simply repositioned within the General Provisions and is necessary to maximize grant funds used towards Projects.

Comment 1.2: The commenter requests that the Department consider that some nonprofits have to transport equipment more than 100 miles which is now the limit for transporting equipment in the newly adopted Section 4970.08(b)(9).

Response: The Department is taking no action on this comment. The Department has determined that a 100 mile per day allowance in transporting personnel, materials and Equipment for nonprofit applicants/grantees was appropriate. The Department came to this determination by evaluating past grant applications, along with discussions throughout the years with stakeholders, and discussions with previous applicants/grantees on the mileage staff or volunteers travel to reach their project areas. Current regulations only allows grantees to claim costs for transporting personnel, materials and Equipment from the base of operations to the Project Area. Because of their unique circumstances, for nonprofits, the base of operations was considered the project area. The Department realizes the important role nonprofits have in the totality in sustaining OHV recreation state wide. The Department also realizes the importance and contribution that volunteers play in successfully accomplishing the project objectives of the nonprofits. For these two reasons, the proposed regulation change allows the nonprofits and their volunteers to recover some of the costs that is not currently

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available to them. The 100-mile radius is believed to be a good compromise at this time; however, the Department is willing to revisit the allowance in the future.

Comment 1.3: The commenter accepts the new forms proposed in the Appendix, based on feedback from members of his team who have been using them but wants the Department to consider that it can be challenging to use the forms when their preference is to use QuickBooks due to managing a large amount of checks.

Response: The Department is taking no action on this comment. The Department thanks the commenter for their support, thorough review and adoption of the new forms. The Department did consider the commenter's preference and believes that the proposed new workbook forms will provide for better accountability.

Comment 1.4: The commenter states concern for not being able to use contractor work as match.

Response: The Department is taking no action on this comment because the comment is not directed toward any proposed revision in the rulemaking file. Per Article XVI, Section 6 of the California Constitution, the Department can only reimburse grantees for actual expenses. The recommendation by the commenter would be in conflict such restrictions.

Comment 1.5: The commenter states they feel nonprofits are being discriminated upon with regards to the cap of \$30,000 on equipment purchased in the newly adopted Section 4970.08(b)(12)(A).

Response: The Department is taking no action on this comment. The lifting of the \$15,000 per item cap restriction that is being proposed is the first change in Equipment purchases for nonprofits in ten years. The Department believes that it will take several grant cycles to make a determination on how this one change will affect the overall program before it can make a decision on the \$30,000 maximum that concerns the commenter. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 1.6: The commenter recommends the Department require nonprofits to list them as lien holders so a nonprofit would need to gain permission from the Department prior to disposing the Equipment.

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Response: The Department accepts this comment and notes that the concept suggested in this comment was a part of the 45-day regulations proposed, specifically in Section 4970.08(b)(12)(B).

Comment 1.7: The commenter states that their company, Fred's company and Randy's company all provide matching funds and as a result CTUC has created contracts with these companies. The commenter believes they should create a contract with the Department because of the information requested for audits.

Response: The Department is taking no action on this comment and considers it irrelevant to any specific proposed regulation or proposed revision in the rulemaking file. The Department considers the Project Agreement a contract and finds no other contract is needed between a Grantee and the Department.

PUBLIC COMMENT HEARING 1:

Stewards of the Sierra National Forest, Mike Wubbles

Comment 2.1: The commenter requests that the Department increase the match requirement for public agencies to 40%.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Furthermore, the Department does not have the authority to independently make a change to the match requirement. The requirement for a minimum of 25 percent match for each grantee is set by Public Resources Code (PRC) Section 5090.50 and can only be changed through the state legislative process.

Comment 2.2: The commenter requests that the Department reduce the maximum Project cost limits to \$500,000.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 2.3: The commenter requests that the Department consider the scenario where a Grantee returns 30% of their original award pointing out that other Projects could have been funded with un-used grant funds.

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Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. With this proposed regulatory package, the Department is formalizing a Contingency List that would utilize “un-used” grant funds from past projects to award future projects that may not have been awarded otherwise.

Commented 2.4: The commenter requests that the Department require a Habitat Management Program and Soil Conservation Plan for Restoration Projects.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Sections 4970.06.2 and 4970.06.3 continue to require a HMP and SCP, respectively, to be submitted for all projects with Ground Disturbing Activity. The language in HMP Part 1 and SCP Part 1 regarding the need to complete Part 2 has not been changed, and Applications for Restoration projects must still include a description of monitoring that will be used to determine a successful outcome (see 4970.11 (f)(1)(E)). Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 2.5: The commenter requests that the Department define the term “Heavy Equipment”.

Response: The Department accepts this recommended comment. The definition of Heavy Equipment was proposed during a 15-day public review and comment period and is being adopted. Additionally, in a related matter, the definition of Equipment was also proposed during the same 15-day public review and comment and is being adopted as well. The revision to the definition of Equipment revised to be compliment the newly defined Heavy Equipment term.

Comment 2.6: The commenter requests that the Department only require environmental reviews and plans for “new” Ground Disturbing Activity.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Furthermore, the Department does not have the authority to independently make a change to statute. PRC 5090.53 cites when compliance with the Soils Conservation Standard is required and any change must be done through the state legislative process.

Comment 2.7: The commenter requests that the Department consider Public Resource Code 5090.02(c) is outside the scope of requirements of 2008 Soil Conservation Guideline’s plan.

Response: The Department is taking no action. The proposed regulatory change is only meant to clarify the content and iterative process currently required in the Soil

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Conservation Plan, which is a component of the current regulations. The Department has in many occasions heard from frustrated grantees on how to report the necessary information. The proposed change does not change any current regulatory mandate; it neither adds nor eliminates current requirements. The proposed change is an attempt by the Department to provide a clearer format in which to provide the same information. The changes proposed in this section will not conflict with PRC 5090.02(c) or any current statute.

Comment 2.8: The commenter requests that the Department explain how they will determine an applicant's conduct is incompatible or contrary to the Department as mentioned in the newly adopted Section 4970.07.2(g)(6).

Response: The Department is taking no action. The Department would find it difficult to impossible to provide an exhaustive and all-encompassing set of criteria "...that will allow and enable the Division to justify the rejection of an applicant based on a written set of criteria..." The Division will use a reasonable standard in evaluating the suitability of an applicant to ensure that their mission and/or conduct as an organization is not incompatible with public service and/or the mission of the Department. Additionally, the Department believes that Sections 4970.17 (Appeal Process) and 4970.26 (How to contact the OHMVR Division) of the program current regulations affords the Applicant/Grantee the ability to appeal any matter relating to the Grants Program. In the situation cited by the commenter, the Applicant would be able to appeal a rejection of their Application to the Deputy Director of the Division, and if still not satisfied, to the Director of the Department.

Comment 2.9: The commenter requests that the Department create a list of reasonable and unreasonable Project costs under Section 4970.07.2(g)(6).

Response: The Department is taking no action. The Department believes that by creating a list of "typical, unreasonable and/or unnecessary Projects Costs" would cause confusion and not provide the clarity that the commenter seeks. The uniqueness of this grants program is that every project applied for is unique in themselves and each requested activity or cost item is looked at in the context of the project as a whole and compared to other similar projects. Additionally, the Department reiterates that this grants program is a supplemental program to assist them in completing their project and is not meant to fully fund their whole program. This proposed addition to the regulations is consistent with the legislative intent of the program to fund as many project as possible. The Department will use a "reasonable person" approach to evaluating a request and make the appropriate determination as to the reasonableness of the request. One example of an unreasonable request was an applicant in a previous grant cycle wanted to provide educational material to the off-highway community about being responsible riders. The requested project was a relatively modest request to create flyers with important information that they then could provide in various off-highway vehicle riding areas. Within the requested activities and project cost estimate, the applicant wanted to lease a building to house staff for a year and to purchase the necessary machinery to produce the flyers. What should have been a modest project

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with a reasonable funding request ballooned to an unreasonable funding request. This proposed regulation will allow the Department to line item out individual cost estimate line item and/or activity.

Comment 2.10: The commenter requests that the Department leave the word “Equipment” in Section 4970.08(b)(9).

Response: The Department is taking no action on this comment. The category of “Equipment” was removed from Section 4970.08(b)(9) and placed in the newly adopted “Equipment” Sections 4970.08(b)(12)(F) and 4970.08(b)(13)(D), which addresses all issues related to Equipment. The Department believes this consolidation of regulation language for Equipment would provide clarity, consistency and avoid duplication.

Comment 2.11: The commenter requests that the Department further define “Equipment”.

Response: The Department partially accepts this comment. A revision to the definition of Equipment was proposed during a 15-day public review and comment period and is being adopted. The revised definition of Equipment will allow for many of the items that the commenter points out not to be considered Equipment. The Department only considers items that have an average cost of \$5000 or over to be considered Equipment.

Comment 2.12: The commenter states the Department is treating nonprofits with an “unfair bias” with the newly adopted requirement in Section 4970.08(b)(12)(B), which states that a nonprofit “shall list the State of California, Department of Parks and Recreation, Department as the lien holder and shall obtain OHMVR approval prior to disposition”.

Response: The Department is taking no action on this comment. The Department believes there is sufficient public recourse and accountability of public entity grantees that would ensure the proper safeguarding of Trust Funds. To this date, there have been no known instances where Equipment bought by public entity grantees have been misused and/or misappropriated. On the other hand, due to the fluidity and constant turnover of nonprofit members, it is important the program has the appropriate safeguards in place to ensure accountability and use of Equipment bought via this program. In all known instances where Equipment has been bought with grant funds and the Equipment was misused – it has been done by nonprofit grantees.

Comment 2.13: The commenter states that their nonprofit would cease to exist if the transportation costs covered by grant funds is only \$100. The commenter is referring to the newly adopted language added to Section 4970.08(b)(9), stating that a Grantee may claim up to 100 miles for transportation cost at the Internal Revenue Service standard mileage business rate and anything exceeding this amount can be listed as matching funds.

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Response: The Department is taking no action on this comment. The Department has determined that a 100 mile per day allowance in transporting personnel, materials and Equipment for nonprofit applicants/grantees was appropriate. The Department came to this determination by evaluating past grant applications, along with discussions throughout the years with stakeholders, and discussions with previous applicants/grantees on the mileage staff or volunteers travel to reach their project areas. Current regulations only allows grantees to claim costs for transporting personnel, materials and Equipment from the base of operations to the Project area. Because of their unique circumstances, for nonprofits, the base of operations was considered the project area. The Department realizes the important role nonprofits have in the totality in sustaining OHV recreation state wide. The Department also realizes the importance and contribution that volunteers play in successfully accomplishing the project objectives of the nonprofits. For these two reasons, the proposed regulation change allows the nonprofits and their volunteers to recover some of the costs that is not currently available to them. The 100-mile radius is believed to be a good compromise at this time; however, the Department is willing to revisit the allowance in the future.

Comment 2.14: The commenter noted that the reference of 4970.08(13)(D)(2) is not valid because it does not exist.

Response: The Department accepts this comment. A revision to 4970.08(b)(12)(E) to reference 4970.08(12)(D)(2) was proposed during a 15-day public review and comment period and is being adopted.

Comment 2.15: The commenter requests the Department define the term “heavy equipment”.

Response: The Department accepts this recommended comment. The definition of Heavy Equipment was proposed during a 15-day public review and comment period and is being adopted. Additionally, in a related matter, the definition of Equipment was also proposed during the same 15-day public review and comment and is being adopted as well. The revision to the definition of Equipment revised to be compliment the newly defined Heavy Equipment term.

Comment 2.16: The commenter requests the Department allow an hourly rate instead of a mileage rate in Section 4970.08(12)(J) due to the type of equipment they use.

Response: The Department is taking no action. The proposed changes will now differentiate between Heavy Equipment and Equipment. For the items that the commenter gives examples for and other equipment that work in a confined project areas would be considered Heavy Equipment. With regard to Heavy Equipment, a grantee may charge a daily rate as opposed to a mileage rate because of the reasons mentioned by the commenter. So, although the proposed change is not exactly the recommended change by the commenter, in essence, this proposed change will have the same affect.

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Comment 2.17: The commenter requests the Department require a burden of proof from an applicant that the Restoration work requested is needed due to legal or illegal OHV use and not caused by something else, like someone in car or tractor.

Response: The Department is taking no action. Current regulations requires an applicant to prove a nexus between legal or illegal OHV use and any damage that may have occurred. Current practice for the program is that at the preliminary application intake and review process, any restoration project description must show the nexus. If no clear nexus exists, the application review will contact the applicant for further information. Once a nexus is shown, the application will then be accepted.

Comment 2.18: The commenter requests the Department require a Soil Conservation Plan for the Restoration Project type mentioned in Comment 2.17.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Section 4970.06.3 continues to require a SCP to be submitted for all projects with Ground Disturbing Activity. The language in SCP Part 1 regarding the need to complete Part 2 has not been changed, and Applications for Restoration projects must still include a description of monitoring that will be used to determine a successful outcome. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 2.19: The commenter likes the adoption of a contingency list in Section 4970.18 and would like the Department to consider moving excess funds from one Project type to another.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Furthermore, the Department does not have the authority to independently make a change to category distributions as that is set by statute. The category distributions are listed in Public Resources Code (PRC) 5090.50 and can only be changed through the state legislative process.

Comment 2.20: The commenter requests the Department define the term “useful life” mentioned in Section 4970.21.

Response: The Department is taking no action. By not defining the term as part of the regulations, the ordinary “Webster” definition of “useful life” will be used in this program, which is “The amount of time during which something is in good enough condition to be used”.

Comment 2.21: The commenter requests the Department provide a list of the documents requested in Section 4970.25.1(a)(2) and would like to know if these documents can be sent in as a hardcopy or an electronic copy.

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Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

PUBLIC COMMENT HEARING 1:

California Four Wheel Drive Association, John Stewart

Comment 3.1: The commenter acknowledges and agrees with Mr. Waldheim's Comment 1.7.

Response: The Department accepts this comment and notes that the concept suggested in this comment was a part of the 45-day regulations proposed, specifically in Section 4970.08(b)(12)(B).

Comment 3.2: The commenter requests the Department define Equipment.

Response: The Department accepts this comment. A revision to the definition of Equipment was proposed during a 15-day public review and comment period and is being adopted.

Comment 3.3: The commenter requests the Department provide a maintenance allowance for the lifecycle of equipment. The commenter uses a chainsaw breaking as an example.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Although the Department is taking no action with regard to this comment at this time, the suggestion will be further evaluated for possible inclusion in future changes to the regulations.

Comment 3.4: The commenter requests clarification on where matching funds start for volunteer travel time. The commenter states the Department should consider travel time for moving equipment, such as a chainsaw and an excavator to be a part of matching funds.

Response: The Department is taking no action on this comment but will provide clarification. The Department has determined that a 100 mile per day allowance in transporting personnel, materials and Equipment for nonprofit applicants/grantees is an

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Eligible Project Cost and anything past the 100 mile per day allowance can be claimed as matching funds. The Department came to this determination by evaluating past grant applications, along with discussions throughout the years with stakeholders, and discussions with previous applicants/grantees on the mileage staff or volunteers travel to reach their project areas. Current regulations only allows grantees to claim costs for transporting personnel, materials and Equipment from the base of operations to the Project area. Because of their unique circumstances, for nonprofits, the base of operations was considered the project area. The Department realizes the important role nonprofits have in the totality in sustaining OHV recreation state wide. The Department also realizes the importance and contribution that volunteers play in successfully accomplishing the project objectives of the nonprofits. For these two reasons, the proposed regulation change allows the nonprofits and their volunteers to recover some of the costs that is not currently available to them. The 100-mile radius is believed to be a good compromise at this time; however, the Department is willing to revisit the allowance in the future.

Comment 3.5: The commenter requests the Department ask for a burden of proof from applicants proposing a Restoration Project where they are claiming they are removing trash related to illegal OHVing.

Response: The Department is taking no action. Current regulations requires an applicant to prove a nexus between legal or illegal OHV use and any damage that may have occurred. Current practice for the program is that at the preliminary application intake and review process, any restoration project description must show the nexus. If no clear nexus exists, the application review will contact the applicant for further information. Once a nexus is shown, the application will then be accepted.

Comment 3.6: The commenter requests the Department create an emergency category that could be used to fund volunteer cleanup days without having to go through a grant cycle to cover \$2,000-\$5,000 in expenses.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Furthermore, the type of projects and who is eligible for each project type are set in statute and can only be changed through the state legislative process.

PUBLIC COMMENT HEARING 1:

California Trail User Coalition (CTUC), Ed Waldheim (2nd time commenting)

Comment 4.1: The commenter requests the Department define heavy equipment.

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Response: The Department accepts this recommended comment. The definition of Heavy Equipment was proposed during a 15-day public review and comment period and is being adopted. Additionally, in a related matter, the definition of Equipment was also proposed during the same 15-day public review and comment and is being adopted as well. The revision to the definition of Equipment revised to be compliment the newly defined Heavy Equipment term.

Comment 4.2: The commenter requests the Department clarify how they can charge for items like a shovel, posthole digger, augur or chainsaw when they break and how much they can spend on said items.

Response: The Department is taking no action on this comment because the comment is not directed toward any specific proposed regulation or proposed revision in the rulemaking file. Furthermore, Section 4970.08(b)(5) addresses supplies and materials purchased for specific OHV Projects as an eligible cost.

Comment 4.3: The commenter acknowledges that the Department added a day or mileage option in Section 4970.08(b)(12)(D) and 4970.08(b)(12)(E) and is supportive of these additions.

Response: The Department is taking no action on this comment. The Department thanks the commenter for their support, thorough review, and their thoughtful comment.

SUMMARY AND RESPONSE TO PUBLIC COMMENTS RECEIVED DURING THE PUBLIC HEARING JUNE 7, 2018 SACRAMENTO, CALIFORNIA.

PUBLIC COMMENT HEARING 2:

Conservation program Director, CNPS, Greg Suba

Comment 1.1: The commenter had concerns about the ambiguity of the proposed definition of “Youth Mentoring Program”. The commenter believes that the language, as written, could be interpreted as being able to provide OHV training to youths at all park units. The commenter suggested clarifying the language to specify that the training could only take place at a Departmental operated State Vehicular Recreation Area (SVRA).

Response: The Department accepts this recommended comment. Clarity on which Departmental park units can the training take place was proposed during a 15-day public review and comment period and is being adopted.

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Comment 1.2: The commenter recommends the Department retain the reference to PRC Section 5090.35 throughout the regulations in general.

Response: The Department is taking no action on this comment. With the passage of SB 249 (Allen), the reference to PRC Section 5090.35 specifically applies to the Departments' operation of State Vehicular Recreation Areas (SVRAs) and is not applicable to the Grants Program. PRC Section 5090.35 (b)(1) refers to the Soil Conservation Guidelines which is still applicable to this grants program as described in PRC Section 5090.53.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No alternatives were proposed to the OHMVR Division unit that would lessen the adverse economic impact on small business.

ALTERNATIVES DETERMINATION

The department has determined that no alternative: Would be more effective in carrying out the purpose for which the regulation is proposed; or would be as effective and less burdensome to affected private person and then the proposed regulations; or be more cost effective to affected private persons and equally effective in implementing statutory policy or other provisions of law.