

TITLE 14. NATURAL RESOURCES
DIVISION 3. CALIFORNIA DEPARTMENT OF PARKS AND RECREATION
CHAPTER 12. LAND AND WATER CONSERVATION

[Notice published March 7, 2008]

NOTICE OF PROPOSED RULEMAKING

The California Department of Parks and Recreation (Department) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has scheduled a public hearing on this proposed action starting at 9:00am on April 29, 2008, at Rusch Park Community Center, Room 1 located at 7801 Auburn Blvd. Citrus Heights, California 95610. The Community Center is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at **5:00 pm on April 29, 2008**. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Ms. Debra Gonzalez
Office of Grants and Local Services
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001
Email: dgonzalez@parks.ca.gov
Fax: (916) 653-6511
Phone: (916) 654-1618

AUTHORITY AND REFERENCE

Public Resources Code (PRC) §5099.10 authorize the Department to adopt the proposed regulation, which would implement, interpret, or make specific PRC §§5099-5099.12 and 16 USC 4601 – 4601-11 (Public Law 88-578 78 Stat 897)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The LWCF was established through the Land and Water Conservation Fund Act of 1965 (Act). The Act provides federal funds to assist States and Federal agencies in meeting present and future outdoor recreation demands and needs of the citizens of the United States for planning, acquisition, and development of needed land and water areas and facilities and funds for the Federal acquisition and development of certain lands and other areas. The funds are allocated to the states each federal fiscal year by apportionment established by the Act and authorized by the Secretary of the Interior.

Public Resources Code (PRC) §§5098 – 5098.3 established a State fund in which the funds received from the federal government could be deposited. Public Resources Code (PRC) §§5099-5099.12 was enacted to enable California to participate in the LWCF (Public Law 88-578 78 Stat 897). It also defined eligible applicants, and how the funds were to be divided between local government and state agencies.

Regulations for the Land and Water Conservation Fund were developed to comply with PRC §5099.10. Over time the Department has developed Procedural Guides to update and provide more guidance for the administration of the program. The procedural guide has not been submitted to the Office of Administrative Law to update and amend existing regulations.

The Department proposes to amend §4900 in Title 14, Division 3, Chapter 12 of the California Code of Regulations (CCR), and repeal §4901, §4902, §4903 and §4904 concerning the Land and Water Conservation.

- The proposed regulation will amend §4900 Definitions and incorporate by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 to implement, interpret, and make specific PRC §5099.10. Section 4900 Definitions lists eight terms and their meanings. The Proposed regulation will amend §4900 to incorporate and update the Land and Water Conservation Fund program description, application requirements, project administration, administrative procedures, and post selection federal requirements, including authority, allocation of funds, eligibility criteria, and expand the definitions section to 38 terms and their meanings.
- The proposed regulation will repeal §4901 Authority because it is contained in the proposed Amended §4900 incorporating by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 which sites the statutory authority for the proposed regulation.
- The proposed regulation will repeal §4902 Allocation of Funds because it is contained in the proposed Amended §4900 incorporating by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 which updates how funds are distributed for the Land and Water Conservation Fund program.

- The proposed regulation will repeal §4903 Project Criteria because it is contained in the proposed Amended §4900 incorporating by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 which updates and expands the program criteria and description including purpose of the program and funding, summary of the competitive grant process, timeline, eligibility criteria of applicants, eligible and ineligible projects, land tenure requirements, match requirements, updates application requirements including application submission instructions, application requirements checklist, resolution form and instructions, project proposal criteria and instructions, cost estimate form and instructions, eligible cost chart, overview of CEQA/NEPA compliance, proposal description and environmental screening form, section (6)(f)(3) Boundary Map requirements, State Historic Preservation Act MOU form and contact information, certification of compliance for development projects, lower tier covered transactions, debarment and suspension instructions for certification, certification regarding lobbying, civil rights assurance, post selection federal requirements, and updates project administration including sample grant contract, contract provisions, grant payments, grant progress status report, reimbursement payments, payment request, sample performance report, performance report, grant completion packet requirements, project certification form, grant expenditure form, force labor costs summary form, equipment costs summary form and MOU of unrecorded grant agreement, and updates administrative procedures including changes to grant scope, changes to project liquidation date, signage, surcharge project costs, expenditure guidelines, accounting requirements, record retention, compliance inspections, conversions, program income and audit requirement.
- The proposed regulation will repeal §4904 Priorities Among Eligible Projects because it is contained in the proposed Amended §4900 incorporating by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 which details information on how the LWCF funds are distributed, provides a summary of the competitive grant process including a LWCF program process flowchart.

FEDERAL REGULATION AND STATUTE CONFORMITY

The LWCF is established on the federal level by the Land and Water Conservation Fund Act of 1965 [16 U.S.C. §4601-4 through 4601-11].

The federal statute recommended:

- Creation of a national recreation policy
- That all agencies administering outdoor recreation resources adopt programs designed to make the best possible use of available resources in light of people's needs
- That each State, through a central agency, should develop a long – range plan for outdoor recreation
- Establishment of an independent Bureau of Outdoor Recreation
- Establishment of a federal funding program to provide grants to States

The federal Land and Water Conservation Fund Manual Release Number 151, December 9, 1991 serves as a basic reference for States to administer the Land and Water Conservation Grants uniformly. This manual provides broad outlines that are the basis for the LWCF program. The manual requires States to develop a State Comprehensive Outdoor Recreation Plan; and the State Comprehensive Outdoor Recreation Plan requires the establishment of an open project selection process for LWCF grants. Title 36, Chapter 1, Part 59 U.S. Code of Federal Regulations outlines State responsibility for compliance and enforcement of these provisions for State and locally sponsored projects. In order to achieve the expected outcomes of the LWCF program and the open project selection process, the Department has developed the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007.

The Department finds that it is authorized to adopt a regulation that differs from federal statute. The proposed amendment to the existing regulations supports the provisions found in State statute.

INCORPORATION BY REFERENCE

The purpose of the proposed amendment to §4900 is to incorporate by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§7500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the State: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None. Only California governmental organizations with management responsibilities over public lands in the state of California are eligible to compete for grants under this program.

Cost impacts on a representative private person or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of this regulation will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Effect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Business reporting requirement: None.

Small business determination: The Department has determined that the proposed regulation does not affect small business. Only California governmental organizations with management responsibilities over public lands in the state of California are eligible to compete for grants under this program.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code §11346.5 (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

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Sacramento, CA 94296-0001
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The backup contact person for these inquiries is:

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Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Debra Gonzalez at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department will have the entire rule making file available for inspection and copying throughout the rule making process at its office at the above address. As the date of the notice is published in the Notice Register, the rule making file consists of (1) this notice, (2) the proposed text of the regulation, (3) the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007, (4) the initial statement of reasons, (5) C.C.R §§4900 – §4904, (6) “A quick History of the Land and Water Conservation Fund Program” history from National Park Service, U.S. Department of the Interior website, (7) Compliance Responsibilities and Legal Protection (Title 36, Chapter 1, Part 59 U.S. Code of Federal Regulations) from National Park Service, U.S. Department of the Interior website, (8) Public Resources Code §5098, §5098.3, §5099, §5099.2, §5099.3, §5099.35, §5099.4, §5099.5, §5099.7, §5099.10, §5099.11, §5099.12, (9) Land and Water Conservation Fund Technical Assistance Workshops, (10) Land and Water Conservation Fund Draft Technical Assistance Workshops, (11) Land and Water Conservation Fund Act of 1965.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Debra Gonzalez at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Debra Gonzalez at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at www.parks.ca.gov and by following the link to *Grants*.