

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

**INITIAL STATEMENT OF REASONS**

**SPECIFIC PURPOSE OF THE REGULATIONS**

Public Resources Code (PRC) § 5090.01 et seq. governs off-highway motor vehicle grants and cooperative agreements with cities, counties, appropriate districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, and educational institutions. Amendments to these sections of the statute became effective in 2003 (AB 2274) and again in 2005 (AB 2666).

The Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program Regulations (CCR Title 14, Division 3, Chapter 15, 4970.00 through 4970.32), which were permanently adopted in December 2003, provided revisions to the prior regulations to comply with some of the amendments to the statute that became effective in 2003 (AB2274). Under the 2003 permanent regulations, grants for cities, counties, appropriate districts, nonprofit organizations, educational institutions and cooperative agreements for federal agencies and Native American tribes were awarded during the 2004/2005 grant cycle for acquisition, development, law enforcement, operations and maintenance, resource management, safety and education, and equipment projects. However, the instructions on how to apply for grants or cooperative agreements (OHV Grant Application Guide, June 2000), which were incorporated by reference into the 2003 permanent regulations, were not revised to be consistent with the current statute and regulations. Therefore, the Department determined that the 2003 regulations are internally inconsistent and cannot be administered in a lawful manner.

In addition, the 2003 regulations also required that grants be awarded on a competitive basis. Although the regulations provided general evaluation criteria governing all applications, there were no criteria specific to each project within an application. In the absence of project specific criteria or an understanding of how to apply the criteria and determine funding for proposed projects based on the criteria, the assertion of a competitive grants and cooperative agreements program is without merit.

In accordance with PRC § 5090.61, the Commission allocates grant and cooperative agreement funding on a yearly basis as long as funds are available. The grant and cooperative agreement application cycle is a six-to-ten month cycle from the time applications are submitted to the Division and applicants receive funding allocations by the Commission, to the time an applicant receives a certified project agreement to expend funds.

In order to implement the legislative mandates for the 2005/2006 grant and cooperative agreement application cycle and to avoid the delay which would result from the regular

rulemaking process, the Department submitted revised regulations to the Office of Administrative Law (OAL) in April 2005 under emergency regulations procedures. The emergency regulations were approved by OAL and were to remain in effect until August 10, 2005.

The Division from June through September 2005 was in the process of reviewing grant and cooperative agreement applications for the 2005/2006 funding cycle. The cycle continued through the actual allocation of funds by the Commission. At the end of July 2005, in order to ensure the integrity of the competitive grants and cooperative agreements process, the Department requested and received OAL approval for the readoption of the emergency regulations, which were to remain in effect until December 6, 2005. By this date, the Commission had not yet made its final funding allocations. Therefore, in order to allow the Division time to review and identify elements of the entire application and funding allocation process that might need improvement or revision within the permanent regulations, the Department requested and received OAL approval for the second readoption of the emergency regulations, which will remain in effect until April 5, 2006.

At the Commission final funding allocation meetings, in December 2005, the Commission scored and approved funding for 137 grant and cooperative agreement applications. Upon legal review, the Division determined 46 applications were scored without consideration for the evaluation criteria provided in and required by the 2005 emergency regulations. In response to this finding, the Commission called for a meeting to reconsider the 46 grants and cooperative agreement applications in question.

On January 25, 2006, a lawsuit was filed in Sacramento Superior Court by six stakeholder groups/associations alleging that the Commission did not adequately explain its funding decisions, and that those decisions were not supported by substantial evidence in the official record of public testimony at the December 2005 public meeting. The lawsuit requested that the Court issue an injunction enjoining all disbursements of funds until the issues within the lawsuit had been resolved.

On February 27, 2006 the Commission held a public meeting to reconsider, score, and make funding determinations for the 46 applications. During this final funding allocation process, the Division could not move forward with the execution of the final 2005/2006 project agreements until it was determined the re-scoring of the 46 applications would not affect the available funding for the applications for which the Commission had followed the process.

Since the Commission did not complete its final funding determinations for the 2005/2006 cycle until February 2006 causing a delay in the disbursement of 2005/2006 funds, the Department is requesting a third readoption of the 2005 emergency regulations. The third readoption will also ensure the integrity of the 2005/2006 grants and cooperative agreements process, which includes the administrative procedures required by the regulations once the final funding determinations are made and the project agreements are executed with the successful applicants.

In requesting the third readoption, the Department is proposing to limit the requirements of these regulations to grant and cooperative agreement applications that have been received by the Division **prior to January 1, 2006**. If the readoption is approved by OAL, the 2005 emergency regulations will remain in the California Code of Regulations (CCR) as Title 14, Division 3, Chapter 15, 4970.00 – 4070.21. 4970 – Application of Chapter will be added at the beginning of Chapter 15 to explain that the Chapter shall only apply to applications received by the Division prior to January 1, 2006.

With the implementation of the 2005 emergency regulations in the 2005/2006 funding cycle, the Division has learned about aspects of the OHMVR Grants and Cooperative Agreements Program, including the text of the emergency regulations, the application instructions, the application evaluation system, and administrative procedures, which will need further attention in the process of permanently adopting the regulations. Although the 2005 emergency regulations significantly revised the 2003 permanent regulations, the Division is proposing in the permanent adoption process to make additional amendments to the text of the 2005 emergency regulations, including documents incorporated by reference, to provide the clarity that is necessary to ensure a smoother application process, and more defensible objectives in the competitive awarding of grants and cooperative agreements.

Since the 2003 permanent regulations are inconsistent with the current statutes that govern the OHMVR Grants and Cooperative Agreements Program, the Department is proposing to repeal the text of the regulations and the OHV Grant Application Guide, June 2000, which was incorporated by reference. The Department is also proposing to permanently adopt 2006 regulations, which would appear in the CCR as Title 14, Division 3, Chapter 15.5, 4970.49 – 4970.72 and would apply to grant and cooperative agreement applications received by the Division **on or after January 1, 2006**.

The Department is proposing to adopt 2006 regulations, CCR Title 14, Division 3, Chapter 15.5, 4970.49 – 4970.72, for the following specific purposes:

- To provide specific regulation language that will ensure clarity to potential applicants and the public as required by Government Code section 11349.1;
- To provide a comprehensive manual, incorporated by reference, which will include application instructions, an application evaluation system, and administrative procedures that will ensure a smoother application process consistent with statutes and regulations;
- To provide documentation requirements including required environmental documentation to provide more clarity to future applicants; and
- To provide evaluation criteria that will ensure defensible standards and competitive awarding of grants and cooperative agreements.

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

## **NECESSITY**

The Legislature enacted AB 2274, effective in 2003, and AB 2666, effective in 2005, to amend and clarify many of the laws affecting both OHV recreation and the OHMVR Grants and Cooperative Agreements Program. This Program provides a means for the State to assist eligible agencies and organizations as defined in statute to develop, maintain, expand and manage high-quality OHV recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat of areas in a manner that will sustain long-term OHV recreation. These proposed regulations are necessary to further clarify the intent of PRC § 5090.01 et.seq. Refer to the sections beginning on page six for an explanation of the necessity of each section within the proposed regulations.

## **MANDATES FOR SPECIFIC ACTIONS OR PROCEDURES OR SPECIFIC TECHNOLOGIES OR EQUIPMENT**

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

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

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

## **REASONS FOR THE PROPOSED REPEAL OF THE 2003 PERMANENT REGULATIONS**

The Department proposes to repeal the 2003 regulations, CCR Title 14, Division 3, Chapter 15, 4970.00 – 4970.32 in order to adopt regulations that are consistent with the current statute and provide the clarity necessary to ensure the administration of an efficient and effective program. Some of the specific reasons for the repeal of the 2003 regulations are as follows:

The types of eligible projects and the application requirements for each type of project are addressed in two separate articles. Potential applicants would have to refer back and forth between articles to determine exactly what types of activities are eligible for funding and what the application requirements are for each type of project. The proposed 2006 regulations merge the two articles into one that addresses the types of projects eligible for funding, the agencies and organizations that are eligible to apply, and specific application and content requirements for each type of project. Also, to facilitate the application process and to ensure compliance with the statute, e.g., the requirement discussed in the next paragraph, the number of types of projects has been increased from eight to eleven.

The language of AB 2274 provided that 30% of the Conservation and Enforcement Services Account (CESA) allocated by the Commission must go toward restoration of

lands that are no longer used for OHV recreation. Funding for this type of activity is derived from a dedicated funding source that can only be used for restoration activities. In the 2003 regulations, restoration activities are included in the resource management project category, which also includes other types of activities such as natural resource conservation. The activities allowed within a restoration project and solely paid for with restoration funds are not clearly defined. To clearly comply with the statute, facilitate tracking of funds allocated for restoration activities, and properly implement the restoration program as intended, the 2006 regulations propose stand-alone restoration grants, which provide clarity and specificity associated with the types of activities and the eligible costs that may be included under restoration.

The OHV Grant Application Guide, June 2000, which describes in detail to grant applicants how to apply for grants, was provided by the Division and incorporated by reference into the 2003 regulations. As it was last officially updated in 2000, it does not address subsequent statutory requirements codified in 2003 and 2005 with the passage of AB 2274 and AB 2666, respectively. Although an update to the 2000 Guide was drafted in the Division office, it was not subjected to the Administrative Procedures Act process and cannot be used to direct or instruct applicants. Therefore, the 2000 Guide remained in effect as the guiding document for applicants during the 2004/2005 funding cycle. As such, applicants could not comply in concert with the 2000 Guide, the statute, and the regulations. Faced with the impossible task of complying with conflicting rules, no application could be entirely within the law. The proposed 2006 regulations are consistent with the statute and include The Off-Highway Motor Vehicle Recreation Division Manual for Grants and Cooperative Agreements (March 2006) (herein referred to as "OHMVR Division Manual"), which is incorporated by reference and provides 1) specific application instructions for each project type consistent with the current statute and the regulations, 2) an application evaluation system that includes evaluation criteria for each project type, and 3) administrative procedures that clarify the responsibilities of the Division and the grant or cooperative agreement applicant once the project agreements are executed.

Specific applicability of the 25% funding match by eligible agencies and organizations is confusing to the grant applicants. The OHV Grant Application Guide, June 2000, directly conflicts with itself and with the 2003 regulations. The 2000 Guide lacks sufficient clarity in the applicability of the match requirement and as a result grant applicants are unable to compete effectively and fairly in the grants program. To clearly comply with the statute, the 2006 regulations propose a separate section that specifically addresses the funding match requirements for each type of project.

In addition, the 2003 regulations required that grants and cooperative agreements be awarded on a competitive basis (4970.32(a)). Although the 2003 regulations provide general evaluation criteria governing all applications, there are no criteria specific to each project within an application. In the absence of project specific criteria or an understanding of how Division staff will apply the evaluation criteria and provide funding determinations for applications based on the criteria, the assertion of a competitive grant program is without merit. The proposed 2006 regulations revise the evaluation criteria and

clarify areas within the criteria to ensure defensible standards and competitive awarding of grants and cooperative agreements.

Articles 4 and 5 of the 2003 regulations contain sections that are procedural in nature and should not be included in the text of the regulations. The proposed 2006 regulations incorporate by reference the OHMVR Division Manual for Grants and Cooperative Agreements, which includes these procedures.

For the above reasons, the Department is proposing to repeal the 2003 regulations and to permanently adopt 2006 regulations, which comply with the amended statute and provide more clarity consistent with Government Code § 11349.1.

### **SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED SECTION OF THE 2006 REGULATIONS**

The following provides the specific purpose and necessity for each proposed section in CCR Title 14, Division 3, Chapter 15.5, 4970.49 – 4970.72.

#### **ARTICLE 1 – GENERAL PROVISIONS**

##### **4970.49 – APPLICATION OF CHAPTER**

###### **Specific Purpose**

This section explains that Chapter 15.5, 4970.49 through 4970.72, shall apply only to grant or cooperative agreement applications received by the Division on or after January 1, 2006.

###### **Necessity**

The proposed section is necessary to distinguish the application of Chapter 15.5 from that of Chapter 15, 4970 through 4970.21, which contains the 2005 emergency regulations proposed to be readopted. The readoption is necessary in order to maintain the integrity of the 2005/2006 grant cycle and related applications, all of which were received prior to January 1, 2006. Chapter 15.5 shall apply to grant or cooperative agreement applications received on or after January 1, 2006 and begins with this section and continues through 4970.72.

##### **4970.50 – DEFINITIONS**

###### **Specific Purpose**

This section contains fifty-seven definitions, which provide clarity to grant and cooperative agreement applicants and the general public for terms that are used within PRC § 5090.01 et seq. and/or are in the proposed text of the regulations.

## **Necessity**

This proposed section is necessary to clarify the terms used in PRC § 5090.01 et seq. and in the text of these proposed regulations. The definitions are needed so that applicants and the Department understand exactly what is required in the application, application evaluation, funding, and grant or cooperative agreement administrative processes for the OHMVR Grants and Cooperative Agreements Program.

## **4970.51 – PROGRAM PURPOSE**

### **Specific Purpose**

This section sets forth the reasons for the Off-Highway Motor Vehicle Recreation Grants and Cooperative Agreements Program. It identifies the types of activities that must be accomplished with the funds received from the program by eligible agencies and organizations.

### **Necessity**

The proposed section of the regulations is needed to further clarify PRC § 5090.02, which provides the legislative findings and intent of the enabling legislation commencing with PRC § 5090.01.

## **4970.52 – COMMISSION’S ANNUAL PROGRAM REVIEW MEETING**

### **Specific Purpose**

This section identifies the role of the Commission prior to the start of each OHMVR Grants and Cooperative Agreements Program application cycle. The requirement of the Commission to hold a meeting to take testimony from the public regarding the program is discussed.

### **Necessity**

This proposed section of the regulations is necessary to clarify the initial role of the Commission in the OHMVR Program application cycle in accordance with PRC § 5090.24(f).

## **4970.53 – GENERAL APPLICATION REQUIREMENTS**

### **Specific Purpose**

This section identifies the general requirements that apply to all grant and cooperative agreement applications. The OHMVR Division Manual which includes the application instructions, the application evaluation system, and the administration procedures, is

incorporated by reference. This section discusses the application submission process, which includes the Division's responsibility to: 1) establish a timeline and post the timeline on the Division website, and 2) respond to questions submitted in writing concerning the application process and the interpretation of these regulations and to post these responses on the Division website. It also provides that the Division may: 1) waive or correct inconsequential defects in applications on a case-by-case basis, and 2) request additional information of an applicant on a case-by-case basis to clarify information submitted in the application. This section also provides for the general application content requirements for all grant and cooperative agreement applications, which include: 1) documentation of the required public review process to solicit public comment on proposed applications and 2) an application face sheet and application summary sheet and all other requirements in the statute, and the proposed text of these regulations as contained in the Division Manual.

### **Necessity**

The proposed section of the regulations is necessary to clarify the general application requirements that apply to all eligible grant and cooperative agreement applicants, and the Division's responsibilities related to the application submission process in accordance with PRC § 5090.32, 5090.35, 5090.50, 5090.51 and 5090.53. This section is also necessary to clarify that any substantive revisions to the contents of the OHMVR Division Manual are subject to the rulemaking process in accordance with § 11343 of the Government Code.

## **ARTICLE 2 – TYPES OF PROJECTS AND SPECIFIC APPLICATION AND CONTENT REQUIREMENTS**

### **4970.54 – ACQUISITION PROJECTS**

#### **Specific Purpose**

This section identifies the purpose of acquisition projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of acquisition projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to acquisition projects, and provides the specific application and content requirements for acquisition projects.

#### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for acquisition projects in accordance with PRC § 5090.32, and 5090.50, and Title 1, Division 7, Chapter 16, Section 7260 et seq., Government Code, which addresses "Relocation Assistance". The specific examples and eligible costs that are provided in this section will help potential applicants and the public to understand

what types of activities and expenditures qualify for acquisition projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in an acquisition project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.55 – CONSERVATION PROJECTS**

### **Specific Purpose**

This section identifies the purpose of conservation projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of conservation projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to conservation projects, and provides the specific applications and content requirements for conservation projects.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for conservation projects in accordance with PRC § 5090.32, 5090.35, 5090.50, and 5090.53. The specific examples and eligible costs that are provided in this section will help potential applicants and the public to understand what types of activities and expenditures qualify for conservation projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in a conservation project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.56 – DEVELOPMENT PROJECTS**

### **Specific Purpose**

This section identifies the purpose of development projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of development projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to development projects, and provides the specific application and content requirements for development projects.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for development projects in accordance with PRC § 5090.32, and 5090.50, and Public Law 101-336, July 26, 1990, 104 Stat.327, the Americans with Disabilities Act of 1990. The specific examples that are provided in this section will help

potential applicants and the public to understand what types of activities and expenditures qualify for development projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in a development project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.57 – EQUIPMENT PROJECTS**

### **Specific Purpose**

This section identifies the purpose of equipment projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of equipment purchase or repair, refers to the OHMVR Division Manual for examples of eligible costs attributable to equipment projects, and provides the specific application and content requirements for equipment projects. The use, identification, registration, maintenance, and disposal of equipment purchased, leased, or rented with OHV Trust funds are also discussed.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for equipment projects in accordance with PRC § 5090.32, and 5090.50. The specific examples that are provided in this section will help potential applicants and the public to understand what types of purchases and/or repairs and related expenditures qualify for equipment projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in an equipment project application in order for the application to comply with the statute and regulations and be competitive. Detailed provisions in this section are necessary to assist applicants in understanding the use, identification, registration, maintenance, and/or disposal requirements for equipment projects paid from OHV Trust Funds.

## **4970.58 – FACILITIES OPERATION AND MAINTENANCE (FO&M) PROJECTS**

### **Specific Purpose**

This section identifies the purpose of facilities operation and maintenance projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of facilities operation and maintenance projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to facilities and maintenance projects, and provides the specific application and content requirements for facilities operation and maintenance projects.

## **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for facilities operation and maintenance projects in accordance with PRC § 5090.32 and 5090.50. The specific examples that are provided in this section will help potential applicants and the public to understand what types of activities and expenditures qualify for facilities operation and maintenance projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in a facilities operation and maintenance project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.59 – LAW ENFORCEMENT PROJECTS**

### **Specific Purpose**

This section identifies the purpose of law enforcement projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of law enforcement projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to law enforcement projects, and provides the specific application and content requirements for law enforcement projects.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for law enforcement projects in accordance with PRC § 5090.32, 5090.50, and 5090.64(b)(2) and CVC Section 38000 et seq. The specific examples that are provided in this section will help potential applicants and the public to understand what types of activities and expenditures qualify for law enforcement projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in a law enforcement project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.60 – OHV SAFETY AND/OR EDUCATION PROGRAM PROJECTS**

### **Specific Purpose**

This section identifies the purpose of OHV safety and/or education program projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of OHV safety and/or education program projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to OHV safety and/or education

projects, and provides the specific application and content requirements for OHV safety and/or education program projects.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for OHV safety and/or education program projects in accordance with PRC § 5090.32 and 5090.50. The specific examples that are provided in this section will help potential applicants and the public to understand what types of activities and expenditures qualify for OHV safety and/or education program projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in an OHV safety and/or education program project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.61 – PLANNING PROJECTS**

### **Specific Purpose**

This section identifies the purpose of planning projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of planning projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to planning projects, and provides the specific application and content requirements for planning projects.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for planning projects in accordance with PRC § 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53. The specific examples that are provided in this section will help potential applicants and the public to understand what types of activities and expenditures qualify for planning projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in a planning project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.62 – RESTORATION PROJECTS**

### **Specific Purpose**

This section identifies the purpose of restoration projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of restoration

projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to restoration projects, and provides the specific application and content requirements for restoration projects.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for restoration projects in accordance with PRC § 5090.32, 5090.50 and 5090.64(a). The specific examples that are provided in this section will help potential applicants and the public to understand what types of activities and expenditures qualify for restoration projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in a restoration project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.63 – SCIENTIFIC RESEARCH PROJECTS**

### **Specific Purpose**

This section identifies the purpose of scientific research projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of scientific research projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to scientific research projects, and provides the specific application and content requirements for scientific research projects.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for studies and scientific research in accordance with PRC § 5024.1, 5090.32 and 5090.50. The specific examples that are provided in this section will help potential applicants and the public to understand what types of activities and expenditures qualify for scientific research projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in a scientific research project application in order for the application to comply with the statute and regulations and be competitive.

## **4970.64 – TRAIL MAINTENANCE PROJECTS**

### **Specific Purpose**

This section identifies the purpose of trail maintenance projects that may be funded by the OHMVR Grants and Cooperative Agreements Program, and it identifies which agencies and organizations are eligible to apply. It provides specific examples of trail maintenance

projects, refers to the OHMVR Division Manual for examples of eligible costs attributable to trail maintenance projects, and provides the specific application and content requirements for trail maintenance projects.

### **Necessity**

The proposed section of the regulations is necessary to identify eligible agencies and organizations, establish eligible costs, and clarify the purpose and specific application and content requirements for trail maintenance projects in accordance with PRC § 5090.32 and 5090.50. The specific examples that are provided in this section will help potential applicants and the public to understand what types of activities and expenditures qualify for trail maintenance projects. The specific examples of application and content requirements in this section will help applicants to provide the information that must be submitted in a trail maintenance project application in order for the application to comply with the statute and regulations and be competitive.

## **ARTICLE 3 – ENVIRONMENTAL AND MATCH REQUIREMENTS**

### **4970.65 – CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REQUIREMENTS**

#### **Specific Purpose**

This section identifies the specific environmental documentation that is required in all grant and cooperative agreement applications. The type of documentation that shall be submitted by city, county, appropriate district, educational institution and nonprofit organization applicants for all grants is discussed. The type of documentation, including completed project-related National Environmental Policy Act compliance documentation, that shall be submitted by federal agency and federally recognized Native American tribe applicants for all cooperative agreements is also discussed. This section also specifies the responsibilities of the Division in reviewing the required environmental documentation, requesting additional information from grant and cooperative agreement applicants within a reasonable timeframe, and determining the feasibility of completing the CEQA work with the time and resources available; and it also provides that the Division reserves the right to cease CEQA compliance work on a project if the application evaluation and scoring process indicates the project may not be funded.

#### **Necessity**

The proposed section of the regulations is necessary to clarify the provisions of CEQA, which are required by PRC § 5090.50(g), as it applies to the grant and cooperative agreement application process. The section is also necessary to clarify the differences between the documentation requirements for grant applicants and for cooperative agreement applicants; and to clarify the Division's responsibilities relating to the review of the required environmental documentation in accordance with PRC § 5090.32.

## **4970.66 – WILDLIFE HABITAT PROTECTION PROGRAM (WHPP) / HABITAT MANAGEMENT PROGRAM (HMP)**

### **Specific Purpose**

This section identifies the purpose of a WHPP/HMP, the types of projects for which federal agency and federally recognized Native American tribe cooperative agreement applicants shall submit a WHPP/HMP, and the types of projects for which city, county, and appropriate district grant applicants shall submit a WHPP/HMP. It also discusses the required application components of the WHPP/HMP and the Division's responsibilities in the review of each WHPP/HMP.

### **Necessity**

The proposed section of the regulations is necessary to clarify the requirements for a WHPP/HMP in the grant and cooperative agreement application process in accordance with PRC § 5090.35 and 5090.53. The section is also necessary to clarify the differences between the WHPP/HMP requirements for grant applicants and cooperative agreement applicants in accordance with PRC § 5090.50(h) and (i) and 5090.53(b). The section also clarifies the Division's responsibilities in the review of each WHPP/HMP in accordance with PRC § 5090.32.

## **4970.67 – SOIL CONSERVATION PROGRAM**

### **Specific Purpose**

This section identifies the types of projects for which federal agency and federally recognized Native American tribe cooperative agreement applicants shall submit evidence that a soil conservation program has been developed; and it identifies the types of projects for which city, county, and appropriate district grant applicants shall submit evidence that a soil conservation program has been developed. The section also provides that the soil conservation program shall comply with the statute, the application instructions in the OHMVR Division Manual, and the Soil Conservation Guidelines/Standards for Off-Highway Motor Vehicle Recreation Management (11/14/91) until replaced by the 2006 soil conservation standards.

### **Necessity**

The proposed section of the regulations is necessary to clarify the requirements for a soil conservation program in the grant and cooperative agreement application process in accordance with PRC § 5090.35 and 5090.53. The section is also necessary to clarify the differences between the soil conservation program requirements for grant and cooperative agreement applicants in accordance with PRC § 5090.50(h) and (i) and 5090.53(b).

## **4970.68 – MATCH REQUIREMENTS**

### **Specific Purpose**

This section identifies the funding match that city, county, appropriate district, educational institution, and nonprofit organization grant applicants are required to provide in the application process; and it discusses the exemption from the match requirement for federal agency and federally recognized Native American tribe cooperative agreement applicants. The section also discusses the differences in the match requirement for each grant applicant in regional and non-regional facilities as it applies to each type of project.

### **Necessity**

The proposed section of the regulations is necessary to clarify the funding match requirement in accordance with PRC § 5090.51.

## **ARTICLE 4 – APPLICATION EVALUATION AND ALLOCATION OF OHV FUNDS**

### **4970.69 – APPLICATION EVALUATION SYSTEM**

#### **Specific Purpose**

This section provides that grants and cooperative agreement applications shall be awarded funds on a competitive basis and establishes the application evaluation system, which is included in Chapter 2 of the OHMVR Division Manual. It also provides that this evaluation system shall be used to evaluate each type of project included in the application. The section also identifies the Division's responsibility to ensure that each application forwarded to the Commission for funding consideration is complete. The section further provides that the Division shall return incomplete applications to the applicant without being evaluated.

#### **Necessity**

The proposed section of the regulations is necessary to clarify the application evaluation system that shall be used to evaluate each type of project in an application in accordance with PRC § 5090.24 and 5090.32. The evaluation criteria, scoring and ranking method, and funding determinations provided in Chapter 2 of the OHMVR Division Manual will assist each applicant in understanding what is required to ensure a competitive application and will establish more defensible objectives and competitive awarding criteria for the funding of grants and cooperative agreements applications.

## **4970.70 – COMMISSION ALLOCATION OF FUNDS AND APPROVAL OF GRANTS AND COOPERATIVE AGREEMENTS PROGRAM APPLICATIONS**

### **Specific Purpose**

This section identifies the timeframe for the consideration of applications, determination of a complete application, and describes the Division's responsibility in ensuring that all evaluated grant and cooperative agreement applications submitted to the Commission for funding consideration are complete. The section also identifies the public hearing process and the allocation of funding process that the Commission shall follow when it awards funds to grants and cooperative agreements applicants; and it identifies the Division's responsibilities in preparing and executing project agreements and in providing the Resources Agency and applicants, and other organizations and interested parties upon written request, a copy of the Commission's funding allocations.

### **Necessity**

The proposed section of the regulations is necessary to clarify the process through which the Commission approves funds for grant and cooperative agreement applications and allocates funding in accordance with PRC § 5090.61. The section is also necessary to clarify the Division's responsibility relating to the awarding of funds to grants and cooperative agreements applications in accordance with PRC § 5090.32.

## **ARTICLE 5 – AUDITS AND PERFORMANCE REVIEWS**

### **4970.71 – AUDITS**

#### **Specific Purpose**

This section identifies the grantees' requirement to maintain financial accounts, documents, and records for all projects in accordance with generally accepted accounting methods, and it identifies the Department's right to inspect and/or make copies of any of the grantees' books, records, or reports pertaining to all projects. This section also defines the time period during which the grantees are required to retain all project financial accounts, documents, and records. The responsibility of the Department to provide a final audit report and the responsibility of the grantee to refund any overpayment identified in the audit is discussed.

#### **Necessity**

The proposed section of the regulations is necessary to clarify the process through which the Department conducts audits in accordance with PRC § 5090.32(l).

## **4970.72 – PERFORMANCE REVIEWS**

### **Specific Purpose**

The section identifies the Division's responsibilities in conducting performance reviews of grantees' programs. This section provides that performance reviews may include desk reviews of project accomplishment reports, questionnaires and other standards of inquiry, and/or site visits. It also discusses the Division's responsibility to develop a report on each site visit conducted and the grantee's responsibility to respond to any comments and recommendations within the Division's report with regard to the performance of the grantee's project.

### **Necessity**

The proposed section of the regulations is necessary to clarify the process through which the Division conducts performance reviews in accordance with PRC § 5090.32(I).

### **DOCUMENTS INCORPORATED BY REFERENCE**

**The Off-Highway Motor Vehicle Recreation Division Manual for Grants and Cooperative Agreements** (OHMVR Division Manual) is incorporated by reference in 4970.53(a). As such, any subsequent revisions to its contents are subject to the rulemaking process.

The OHMVR Division Manual is comprised of three chapters:

Chapter 1 – Grants and Cooperative Agreements Application Instructions contains the directions and forms that are necessary for each applicant to provide an application that complies with the statute and regulations. The Applications Instructions include a discussion of the OHMVR Program purpose and provide a program overview. The OHMVR grants and cooperative agreements funding cycle, application process, regulations, application instruction components, and application filing requirements are also discussed. This chapter also provides the forms and instructions for the application face sheet, summary sheet, and project costs and deliverables. Also included are specific application requirements for each project type for which grant and cooperative agreement applicants may apply.

Chapter 2 – Application Evaluation System contains the procedures that the Division shall follow in evaluating applications. This chapter also discusses the Commission Subcommittee and Full Commission meetings that shall be conducted to receive input from the public, stakeholders, and subcommittee members about potential funding levels for applications and to establish a consent list. It also provides the evaluation criteria for each specific project type that shall be used by the Division to score, rank, and make funding determinations on complete applications.

Chapter 3 – Grants and Cooperative Agreements Project Administration Procedures discusses the procedures that shall be followed by the Division and grantees after project agreements have been executed with successful grant and cooperative agreement applicants. Items that are discussed include project agreements, project costs/deliverables, project performance periods, eligible and ineligible project costs, and amendments to project agreements. This chapter also includes a discussion of the Department/Division’s responsibility to conduct audits and performance reviews and the grantees’ obligations regarding the audits and performance reviews.

**The Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91)** are incorporated by reference in 4970.67(d) and will remain in effect until replaced by the 2006 soil conservation standards in accordance with PRC § 5090.35(b).

### **ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY AND THE AGENCY’S REASON FOR REJECTING THOSE ALTERNATIVES**

The proposed regulations provide more clarity for the public and future applicants of the OHMVR Grants and Cooperative Agreements Program and ensure consistency with the statute. The proposed sections of the regulations were developed by Division staff in collaboration with various stakeholders in the OHMVR Program. Alternatives to the regulations were considered by the Department but were rejected since all provisions in the proposed regulations are necessary to comply with the statute and to provide clear and concise guidance to potential grant and cooperative agreement applicants.

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

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

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

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

### **AVOIDANCE OF UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS**

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