

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

**FINAL STATEMENT OF REASONS**

**SPECIFIC PURPOSE OF THE REGULATIONS**

**Background**

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 was without merit.

In accordance with PRC § 5090.61, the OHMVR 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 at least a ten month cycle from the time applications are submitted to the OHMVR Division and applicants receive funding allocations by the Commission, to the time an applicant receives a certified project agreement to expend funds.

## **2005 OHMVR Grants and Cooperative Agreements Program Emergency Regulations**

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 remained 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 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 requested and received approval for a third readoption of the 2005 emergency regulations, which remained in effect until August 1, 2006. The third readoption also ensured

the integrity of the 2005/2006 grants and cooperative agreements process, which included the administrative procedures required by the regulations once the final funding determinations were made and the project agreements were executed with the successful applicants.

In requesting the abovementioned third readoption, the Department proposed to limit the requirements of the 2005 emergency regulations to grant and cooperative agreement applications that were received by the Division **prior to January 1, 2006**. The readoption was approved by OAL, and the 2005 emergency regulations remained in the California Code of Regulations (CCR) as Title 14, Division 3, Chapter 15, § 4970.00 – 4070.21. Section 4970 – Application of Chapter, was 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. To continue to ensure the integrity of the 2005/2006 grant cycle, the Division requested and received approval from OAL for a fourth readoption of the 2005 emergency regulations, which continued to apply only to the grant and cooperative agreement applications that were received prior to January 1, 2006. This last readoption of the 2005 emergency regulations expired on November 29, 2006.

### **2006 OHMVR Grants and Cooperative Agreements Program Emergency Regulations and Proposed Permanent Regulations**

With the implementation of the 2005 emergency regulations in the 2005/2006 funding cycle, the Division had learned 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 needed further attention in the process of permanently adopting the regulations. Although the 2005 emergency regulations significantly revised the 2003 permanent regulations, the Division proposed to make additional amendments to the text of the 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. It was the intent of the Division to make the additional amendments before the beginning of the 2006/2007 grant cycle.

Since the regular rulemaking process would delay the adoption of the 2006 regulations for at least six months, the Division would not be able to begin the 2006/2007 grant cycle until October 2006, which would cause a significant delay in the final funding allocations made by the Commission. Therefore, in March 2006, the Division simultaneously submitted and received approval from OAL for 2006 emergency regulations and a Notice of Proposed Rulemaking for permanent regulations. The 2006/2007 grant cycle would be governed by the 2006 emergency regulations until the completion of the permanent regulations process. The Department proposed that the 2006 emergency regulations would apply only to grant and cooperative agreement applications received by the Division **on or after January 1, 2006**.

The 2006 emergency regulations appeared in the CCR as Title 14, Division 3, Chapter 15.5, § 4970.49 – 4970.72. Section 4970.49 – Application of Chapter, in the 2006 emergency

regulations, explains that Chapter 15.5 shall only apply to applications received on or after January 1, 2006. The 2006 emergency regulations were to remain in effect until August 3, 2006.

The abovementioned Notice of Proposed Rulemaking for the permanent regulations was published in the OAL Notice Register on April 7, 2006. Two public hearings were held on May 31, 2006 and June 2, 2006 in Sacramento and Ontario, respectively. Many comments were received during the written comment period and at the two public hearings, some of which required legal review. Some of the comments received were of a technical nature and required significant time to prepare the Division's responses. A number of the comments have resulted in substantive changes being made to the regulations that would require the Division to provide an additional comment period before completing the permanent adoption of the regulations.

In addition, during the 2006/2007 funding cycle, the Division determined there were additional aspects of the OHMVR Grants and Cooperative Agreements Program, including the text of the regulations and the OHMVR Grants Program Manual, which needed further attention in the process of permanently adopting the regulations. Therefore, the Division proposed revisions that would require an additional comment period. Because of the time required to complete the responses to public comments and to allow the required additional comment period, the Division requested and received approval from OAL for two readoptions of the 2006 emergency regulations. The second readoption will expire on March 27, 2007.

Based on the public comments received and experience with the program during the 2006/2007 grants cycle, the Division revised, reorganized, and clarified the permanent regulations that were proposed in April 2006. On February 13, 2007, the Division, having made the abovementioned revisions to the proposed permanent regulations, initiated the required additional 15-day comment period, which expired on February 28, 2007.

The 2007 proposed permanent regulations, upon OAL approval, will appear in the CCR as Title 14, Division 3, Chapter 15.5, § 4970.49 – 4970.72. Section 4970.49 – Application of Chapter, in the proposed permanent regulations, explains that Chapter 15.5 shall apply only to applications received **on or after January 1, 2007**. The Department is proposing to adopt the 2007 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 § 11349.1;
- To provide a comprehensive manual, incorporated by reference, which will include application instructions, an application evaluation system, and project administration 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;
- To provide evaluation criteria that will ensure the equitable distribution of available

- funds to deserving programs; and
- To support applicants which have well-rounded OHV programs that meet the legislative intent of providing high-quality OHV recreational opportunities while protecting related environmental resources.

Refer to the sections beginning on page eight for a detailed explanation of the specific purpose of each section within the proposed regulations. Each section also includes relevant comments received during the initial 45-day written comment period, two public hearings that were held on May 31, 2006 and June 2, 2006 in Sacramento and Ontario, respectively, and comments from the subsequent 15-day comment period. Following each comment is the Department's response.

### **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 eight 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 local agencies or school districts. 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**

Since the 2003 permanent regulations are inconsistent with the current statutes that govern the OHMVR Grants and Cooperative Agreements Program, the Department proposes to repeal the 2003 regulations, CCR Title 14, Division 3, Chapter 15, 4970.00 – 4970.32 and the OHV Grant Application Guide, June 2000, which was incorporated by reference. The repeal is necessary in order to adopt regulations that comply 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 2007 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 nine.

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 2007 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 2007 regulations are consistent with the statute and include The Off-Highway Motor Vehicle Recreation Division Manual for Grants and Cooperative Agreements (April 2007) (herein referred to as "Grants Program 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) project administration 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 2007 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 2007 regulations revise the evaluation criteria and clarify areas within the criteria to ensure an equitable distribution of available funds to deserving programs and to support applicants that have well-rounded OHV programs that meet the legislative intent of providing high-quality OHV recreational opportunities while protecting related environmental resources.

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 2007 regulations incorporate by reference the Grants Program Manual, which includes these procedures.

For the above reasons, the Department is proposing to repeal the 2003 regulations and to permanently adopt 2007 regulations, which comply with the amended statute and provide more clarity consistent with Government Code § 11349.1.

### **SPECIFIC PURPOSE, NECESSITY, PUBLIC COMMENTS, AND THE DEPARTMENT'S RESPONSES FOR EACH PROPOSED SECTION OF THE 2007 REGULATIONS AND DOCUMENTS INCORPORATED BY REFERENCE**

The following provides the specific purpose, necessity, public comments from the two written comment periods and the two public hearings, and the Department's responses to the comments for each proposed section in CCR Title 14, Division 3, Chapter 15.5, 4970.49 – 4970.72 and the Grants Program Manual, which is incorporated by reference. Some of the comments are presented in a summary format. Quotation marks are used when the wording is verbatim. Where duplicative comments were received, they are combined for response.

In accordance with Government Code § 11346.9(3) of the Administrative Procedures Act, the Department does not have to respond to those comments that are not specifically directed at the text of the proposed regulations or the documents incorporated by reference, or are not specifically directed at procedures followed by the Department in proposing these regulations. However, these comments are included at the end of this document with the Department's responses.

## **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. The date has been revised from January 1, 2006 to January 1, 2007 to indicate the timeframe for which these permanent regulations will apply.

#### **Necessity**

The proposed section is necessary to distinguish the application of Chapter 15.5 from that of Chapter 15, § 4970 through 4970.21, which contained the 2005 emergency regulations, and applied to grant and cooperative agreement applications received prior to January 1, 2006. It also is necessary to distinguish the application of the 2006 emergency regulations, which expire on March 27, 2007 and apply to applications received on or after January 1, 2006, from these proposed permanent regulations. Chapter 15.5, which begins with this section and continues through § 4970.72, shall apply to grant or cooperative agreement applications received on or after January 1, 2007.

#### **Public Comments Received During 15-Day Written Comment Period**

##### **General Comments on the Procedures Followed by the Department in Proposing These Regulations**

#### **Comment**

I do not feel that the regulations are ready to be adopted without further considerations by the end organizations applying for the funds.” – Bob Chamberlain

#### **Department Response to Comment**

Government Code § 11346.8(c) of the Administrative Procedures Act (APA) provides that regulations, which have been substantially changed from that which was originally made available to the public, shall be made available to the public for 15 days before the agency adopts the resulting regulations. These OHMVR Grants and Cooperative Agreements Program Regulations were originally made available to the public in April 2006. At that time, the Department initiated a 45-day written comment period, as required by the APA, and conducted two public hearings in Sacramento and Ontario.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, the regulations as proposed in April 2006 have been revised, reorganized, and clarified. In accordance with the APA, these revised regulations have been made available to the public for a final 15-day public review and comment period before they are finalized and

submitted to the Office of Administrative Law (OAL) for adoption. The Department is therefore taking no action on this comment.

### **Comment**

“Thank you for the opportunity to comment on the Revised Proposed OHMVR Grants and Cooperative Agreements Program Regulations. As you know, we submitted comments on the proposed Regulations on May 31, 2006, along with other members of the interested public. We also attended the public hearing on that date, in Sacramento.

We recognize the complexity of this program and the amount of work that has gone into the rulemaking since this process began several years ago. The public has waited far too long for permanent regulations, and we honestly have no desire to see adoption delayed. However, we find it impossible to identify, let alone comment on, the changes to the proposed regulations, and it is certainly not possible to make substantial comments in the allotted fifteen days.

The California Code of Regulations requires:

(a) At least 15 calendar days prior to the adoption of a change to a regulation required to be made available to the public by Government Code section 11346.8(c), the rulemaking agency shall mail a notice stating the period within which comments will be received together with a copy of the full text of the regulation as originally proposed, with the proposed change clearly indicated, to the following:

(1) all persons who testified at the public hearing; (2) all persons who submitted written comments at the public hearing; and (3) all persons whose comments were received by the agency during the public comment period; and (4) all persons who requested notification from the agency of the availability of such changes.

Instead, the Division has provided to the public two documents; the first is the original proposed regulation package, completely stricken; the second is a document substantially changed from the original, but which completely fails to note such changes. Because the Division has failed to identify the proposed changes, it is impossible for the public to do so. The OHV Division had seven months to produce a document that complies with the requirement to clearly identify changes. If the Division wants to treat the revisions as a totally new document, it must allow the 45-day comment period to which new proposals are subject.

Our attempts to compare the two documents side-by-side reveal many substantive, unwelcome changes. However, due to the awkward way in which the Division has presented the revisions, we are not confident in our ability to identify all changes. The Division has, effectively, hidden all changes to the original proposed regulations. For this same reason, we cannot discern whether the changes require a 15-day or 45-day comment period.

We intend to submit a separate comment letter document that attempts to identify our concerns with the current document; still, we urge the OHMVR Division prepare a new document that complies with OAL regulations and clearly identifies changes to the original

proposed regulations and provide that document to the public for the appropriate comment period.” – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department’s Response to Comment***

Government Code § 11346.8(c) of the Administrative Procedures Act (APA) provides that regulations, which have been substantially changed from that which was originally made available to the public, shall be made available to the public for 15 days before the agency adopts the resulting regulations. These OHMVR Grants and Cooperative Agreements Program Regulations were originally made available to the public in April 2006. At that time, the Department initiated a 45-day written comment period, as required by the APA, and conducted two public hearings in Sacramento and Ontario.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, the regulations as proposed in April have been revised, reorganized, and clarified. In accordance with the APA, these revised regulations have been made available to the public for a final 15-day public review and comment period before they are finalized and submitted to the Office of Administrative Law (OAL) for adoption.

Many changes were incorporated into the regulations as a result of the input received during the 45-day written comment period. The changes were throughout the document, making a strikeout /underline version very difficult and confusing to read. In addition, if the revised regulations had been presented in strikeout/underline format for the 15-day comment period, commenters could only submit comments on those portions that were underlined or struck out. By striking out and underlining the entire document, the public was allowed to comment on any portion of the regulations. Therefore, to facilitate public review and for the ease of reading, the Division provided a strike-out version of the text of the regulations proposed in April, 2006 and a clean copy of the entire revised text of the proposed regulations. The Department therefore is taking no further action on this comment.

## **4970.50 – DEFINITIONS**

### **Specific Purpose**

This section contains definitions that 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. Six definitions have been added to this section to provide clarity to terms that are provided in the statute and/or in the text of these proposed regulations. Twenty-two definitions have been amended to provide further clarity to terms already defined in this section. Seven definitions have been deleted for terms that are no longer included or are redundant to other terms in the proposed regulations text. The subsections within this section have been appropriately renumbered as a result of the aforementioned revisions to maintain the numerical order. This section has also been revised to provide that the words used in Chapter 15.5, § 4970.50 – 4970.72 have the meanings provided in this section whenever the words are capitalized.

## **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.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, the following definitions were added to this section to clarify terms used in the statute and/or the text of the proposed regulations:

Subsection 4970.50(e) “Applicant”  
Subsection 4970.50(aa) “Equipment”  
Subsection 4970.50(bb) “Facility”  
Subsection 4970.50(hh) “Grants Program Manual”  
Subsection 4970.50(oo) “OHV Recreation”  
Subsection 4970.50(tt) “Project Area”

The following definitions were amended to provide further clarity to terms already provided in this section:

Subsection 4970.50(b) “Administrative Costs”  
Subsection 4970.50(g) “Application Instructions”  
Subsection 4970.50(j) “Audit”  
Subsection 4970.50(k) “Buffer”  
Subsection 4970.50(s) “Deliverables”  
Subsection 4970.50(u) “Development”  
Subsection 4970.50(v) “Division”  
Subsection 4970.50(x) “Due Diligence”  
Subsection 4970.50(cc) “Federal Agency”  
Subsection 4970.50(ii) “Maintenance”  
Subsection 4970.50(jj) “Monitoring”  
Subsection 4970.50(mm) “OHV”  
Subsection 4970.50(nn) “OHV Opportunities”  
Subsection 4970.50(pp) “Operation”  
Subsection 4970.50(qq) “Performance Review”  
Subsection 4970.50(rr) “Project”  
Subsection 4970.50(ss) “Project Agreement”  
Subsection 4970.50(uu) “Regional OHV Facility”  
Subsection 4970.50(vv) “Repair”  
Subsection 4970.50(xx) “Restoration”  
Subsection 4970.50(zz) “Scientific Research”  
Subsection 4970.50(bbb) “Soil Conservation Program”

The following definitions were deleted since the terms defined are no longer used in the text of the proposed regulations but are incorporated in the Glossary of Terms in the Grants Program Manual since the terms are used within the Manual:

Former subsection 4970.50(m) “Certified”

Former subsection 4970.50(hh) “Law Enforcement Personnel”

The following definitions were deleted since the terms that are defined are no longer used in the proposed regulations or are self-explanatory and do not require a definition:

Former subsection 4970.50(v) “Director

Former subsection 4970.50(dd) “Fiscal Audit”

Former subsection 4970.50(mm) “Off-Highway Motorcycle”

Former subsection 4970.50(nn) “Off-Highway Vehicle Operation”

Former subsection 4970.50(ddd) “Website”

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.50(b) “Administrative Costs”. - “Personnel is not a category of administrative costs and should be deleted from the definition or qualified to refer to personnel time spent on administrative tasks related to the project.” – Judith Spencer, Commitment to Our Recreational Environment (CORE)

### ***Department’s Response to Comment***

The definition in the regulations indicates that administrative costs are costs of functions performed in support of the Deliverables associated with the Project. Costs of personnel that are providing administrative support to the project, but are not directly involved in the activities of the project, are administrative in nature. The definition in this section has been revised for clarification.

### ***Comment***

Subsection 4970.50(c) “Allocation” - “The intent of the program is for *the Commission* (as stated in the PRC 5090.61) to approve funding for OHV recreation areas, facilities and opportunities (5090.02), but not to simply provide funding to an organization or a functional unit thereof as suggested by the proposed definition of “allocation.” The proposed language should be made consistent with the PRC and refer to the types of projects that may be funded with grants and cooperative agreements listed in section 5090.50(c).” – CORE

### ***Department's Response to Comment***

For the purposes of § 4970.50 "Definitions," the definition of "Allocation" is sufficient and complies with Public Resources Code § 5090.61 and 5090.02. The individual project types for which the Commission can allocate funds through grants and cooperative agreements are discussed in great detail in the § 4970.54 through 4970.62 of the regulations as well as the supporting chapters. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(i) "Audit" – "If Generally Accepted Auditing Standards is in capital letters because it is a document that is published, a reference to the document should be provided, otherwise the capitalization should be abandoned. – CORE

### ***Department's Response to Comment***

This section is now 4970.50(j). The proposed definition was unclear due to the syntax. The definition in this section has been revised for clarification.

### ***Comment***

Subsection 4970.50(j) "Buffer" – "Buffer should include watershed resources. Real estate should not include the word "development", which suggests future structures or ones under construction. Other recreation uses should be considered in the buffer formulation." – CORE

### ***Department's Response to Comment***

This section is now 4970.50(k). Watershed resources is too broad a term and could include areas not intended by this definition. The definition has been revised for clarification. The definition no longer refers to real estate development. The definition is broad enough to accommodate concerns about other recreation effects.

### ***Comment***

Subsection 4970.50(o) "Conservation" – "The PRC does not limit conservation to ongoing OHV recreation. It allows for habitat conservation projects regardless of OHV presence"....." Limiting the definition as proposed would make it inconsistent with the PRC." – CORE

### ***Department's Response to Comment***

This comment seems to suggest the Off-Highway Motor Vehicle Recreation (OHMVR) Act in the PRC would allow for conservation activities whether or not OHV activities are present. Defining conservation to allow for the funding of activities unrelated to OHV recreation would violate the purposes and authority of the OHMVR Act, which provides for the management of OHV activities. The definition of conservation in the Act (PRC § 5090.10) refers to sustaining soils, plants, wildlife and their habitat in accordance with the standards adopted

pursuant to PRC § 5090.35. Section 5090.35 refers solely to the management of lands used for OHV recreation. Thus, conservation activities must be associated with the management of lands, trails, roads, or areas used for and affected by OHV recreation to achieve the adopted soil standards and/or wildlife protection plans. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.50(y) “Due Diligence” – “Potential conflict with land uses should be evaluated as part of the due diligence process.” – CORE

***Department’s Response to Comment***

This section is now 4970.50(x). For the purposes of § 4970.50 “Definitions,” it would not be feasible to list every component of “Due Diligence.” The definition in this section has been revised for clarification.

***Comment***

Subsection 4970.50(z) “Educational Institution” – “A definition of an educational institution as an “institution” is superfluous.” – CORE

***Department’s Response to Comment***

This section is now 4970.50(y). The definition of “Educational Institution” is taken verbatim from § 210.1 of the Education Code. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.50(ii) “Maintenance” – ““Ongoing” is defined by the Oxford dictionary as “continuing; still in progress”. This is inappropriate, as maintenance may be sporadic and conducted on an as-needed basis.” This comment also recommends the addition of “resource protection” as one of the features and the elimination of the words “for the protection of natural and cultural resources that may be impacted by OHV recreation activities.” – CORE

Another comment on this subsection recommends the elimination of “water bar”, which are not used in the program, and the addition of “rolling dip” as examples of conservation features. – Kathy Mick, U.S. Forest Service

***Department’s Response to Comment***

In response to the first commenter; the phrase (as modified in the final Regulations), “for the protection of natural and Cultural Resources that may be impacted by OHV recreation activities.” is necessary to maintain the statutory intent of the program as identified in PRC

5090.35 and 5090.50. Both commenters raise valid points regarding syntax and technical terminology. The definition in this section has been revised for clarification.

***Comment***

Subsection 4970.50(qq) “Operation” – the comment recommends some grammatical revisions – CORE

***Department’s Response to Comment***

This section is now 4970.50(pp) and has been revised to incorporate the recommendation in this comment.

***Comment***

Subsection 4970.50(uu) “Regional OHV Facility” – “PRC 5090.51 states that the Commission will determine the definition of regional facility. CORE would like to ensure that the Commission has indeed defined this term or concurs with the definition as proposed.” – CORE

***Department’s Response to Comment***

The proposed definition of “Regional OHV Facility” reflects Commission policy. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.50(xx) “Restoration” – “This definition omits the PRC definition, which includes the “upon closure” language. The comment also recommends replacing the word “recreation” at the end of the sentence with “use or trespass.” – CORE and Edward Waldheim, California Off Road Vehicle Association, Inc. (CORVA)

Another comment on this subsection recommends that work should be done on this definition to clarify whether closure for restoration purposes is temporary or permanent. – David Hubbard, Ecologic Partners

***Department’s Response to Comment***

The definition of Restoration has been revised to add language referencing when a Road, trail, or area has been closed to OHV Recreation.

“Recreation” may include “use or trespass”, so there is no need to state these as separate activities.

The OHMVR Act requires closure and restoration when soil standards or wildlife protection plans cannot be met. The Act does not require permanent closure. The PRC

§ 5090.02 (c)(3), 5090.35, and 5090.53 (b)(3) refers to temporary closures when repairs are needed to conform the land, trails, roads, or areas to the soil standards or wildlife protection plans required by the PRC. Closures connected with the restoration definition must be distinguished as something more or different from temporary, but are not necessarily permanent.

***Comment***

Subsection 4970.50(bbb) “Soil Conservation Program” – Question on status of the 2006 soil conservation standards. – CORVA

***Department’s Response to Comment***

The proposed regulations have been developed with reference to the currently applicable soil conservation standards, while recognizing the need for future amendment as revised standards are developed and proposed. In the meantime, the Regulations and Grants Program Manual have been revised for clarification.

**Public Comments Received During 15-Day Written Comment Period**

***Comment***

Subsection 4970.50(c) “Allocation” – The comment indicates, “the word “Funds” should be lower case or a definition should be provided for consistency” – CORE

***Department’s Response to Comment***

“Fund” is defined in § 4970.50(ee). The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.50(e) “Applicant” – The comment indicates, “We recognize that the OHMVR Act does not allow non-profit organization to apply for certain types of grants; and while we disagree with this limitation, we accept that it cannot be changed through these implementing regulations. However, it appears that the regulations have expanded the number of grant types for which non-profit organizations are ineligible. This is an opportunity lost; and it is unfair. Provided the non-profit organization can meet all of the other requirements for funding (e.g., CEQA compliance, a valid wildlife habitat plan, ability to satisfy soil standards), it should be able to apply and compete for grant funds. In many cases, non-profit, private organizations – given the particular skill, expertise, and passion of their members – are in the best position to gauge the needs of the project area in question. Moreover, such organizations often do a better job than public entities of meeting the grant’s objectives.” – David P. Hubbard, Esq. (EcoLogic Partners, Inc.)

### ***Department's Response to Comment***

The proposed Regulations have in no way been drafted with the intent to limit the participation of nonprofit organizations beyond the limits imposed by PRC 5090.50 et seq. The commenter may be referring to the elimination of "Scientific Research" as a stand-alone project type. Nonprofit organizations can still apply for OHMVR grant funds for Scientific Research activities pertaining to natural resource conservation under the "Conservation" project type. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50 (e)(3) "Applicant" – The comment asks, "By what authority does the Division now exclude Forest Service Ranger Districts as Applicants?" – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department's Response to Comment***

Public agencies are given broad discretion to establish rules to implement a program when the Legislature has left the details of such implementation to the agency, as here where the Division is charged with implementation of all aspects of the OHV Program. The specificity in defining applicants is necessary to provide a reasonable limit on the number of applicants and applications and to avoid applicants circumventing the maximum funding restrictions identified in § 4970.53(e)(2). The funding restrictions are necessary to allow for a fair and equitable distribution of limited OHMVR grant resources. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(e)(8) "Applicant" – The comment asks, "I believe there are different types of nonprofits – are the regs going to limit to a 501.C.3?" – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

Yes. As defined in § 4970.50(II) nonprofit organization are limited to those having tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. This is consistent with past program regulations and is a reasonable requirement in that other types of nonprofit organizations are limited in the activities they may perform. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(h) "Appropriate District" – The comment recommends "resource related" should be modified to read "resource-related" – CORE

### ***Department's Response to Comment***

This subsection has been revised to incorporate the recommendation in this comment.

### ***Comment***

Subsection 4970.50(j) "Audit" – The comment indicates "Audit" should include non-financial aspects of the program, such as effectiveness in providing sustainable user experience, long-term viability, and similar factors that would be used to determine whether a project or grantee is meeting the intent of the OHMVR Act" – CORE

### ***Department's Response to Comment***

The suggested revision would change the usage of the term throughout the document. "Audit" has been used for financial purposes only; "performance review" has been used to address the other elements suggested. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(k) "Buffer" – The comment suggests that the definition " should include watershed resources. Other recreational uses should be considered in the buffer formulation. The buffer should include lands or physical barriers to reduce dust and trespass as well as noise." – CORE

### ***Department's Response to Comment***

"Watershed resources" is too broad a term and could include areas not intended by this definition. The existing definition is broad enough to include lands or physical barriers to reduce dust and trespass. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(o) "Conservation" – "The PRC does not limit conservation to ongoing OHV recreation. It allows for habitat conservation regardless of OHV presence. While it may be argued that conservation activities conducted after closure are better characterized as restoration, it should be noted that the PRC definition of restoration does not include habitat conservation activities. The PRC definition is much more narrow and includes only soil contour and plant restoration activities. Limiting the definition as proposed would make it inconsistent with the PRC. (comment previously submitted)" – CORE

### ***Department's Response to Comment***

This comment seems to suggest the Off-Highway Motor Vehicle Recreation (OHMVR) Act in the PRC would allow for conservation activities whether or not OHV activities are present. Defining conservation to allow for the funding of activities unrelated to OHV recreation would

violate the purposes and authority of the OHMVR Act, which provides for the management of OHV activities. The definition of conservation in the Act (PRC § 5090.10) refers to sustaining soils, plants, wildlife and their habitat in accordance with the standards adopted pursuant to PRC § 5090.35. Section 5090.35 refers solely to the management of lands used for OHV recreation. Thus, conservation activities must be associated with the management of lands, trails, roads, or areas used for and affected by OHV recreation to achieve the adopted soil standards and/or wildlife protection plans.

Additionally, the current definition and implementation of restoration in the regulations does not prevent such a project from being undertaken to restore habitat. In fact, the proposed evaluation criteria allow more points for restoring sensitive habitat, returning lands to original contours, and/or vegetation that existed prior to OHV use, would include the restoration of habitat where the lands were previously used as habitat. It is important to note that the intent of the program is to temporarily close trails or areas and repair those areas when soil standards or wildlife protection plans are not being met. It is only necessary to close and restore trails and areas when it is determined that the soils standards and/or wildlife protection plans cannot be met. The regulations are consistent with the legislative intent and statutory requirements. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(r) “Cultural Resources” – The comment indicates, “Cultural Resource should include a reference to the National Historic Preservation Act as well as the California equivalent.” - CORE

### ***Department’s Response to Comment***

The definition refers to PRC § 5024.1 and Title 14 CCR, Section 4852, which relate to the California Register of Historic Resources. This is the State equivalent of the National Historic Preservation Act. The National Historic Preservation Act does not apply. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(r) “Cultural Resources” – the comment suggests, “Represents should be “represent” and possesses should be “possess”. “Cultural resource” should be “Cultural Resource” for consistency. “record, or manuscript which is historically” should be “record, or manuscript that is historically”. – CORE

### ***Department’s Response to Comment***

This subsection has been revised to incorporate the recommendation in this comment.

**Comment**

Subsection 4970.50(x) “Due Diligence” – The comment recommends, “Potential conflict with land uses should be explicitly evaluated as part of the due diligence process. (comment previously submitted) – CORE

**Department’s Response to Comment**

For the purposes of § 4970.50 “Definitions” it would not be feasible to list every component of “Due Diligence”, instead the wording of the definition was revised to encompass all aspects of “Due Diligence”. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970(y) “Educational Institution” – The comment indicates “A definition of an educational institution as an “institution” is superfluous.” – CORE

**Department’s Response to Comment**

The definition of “Educational Institution” is taken verbatim from § 210.1 of the Education Code. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.50(ii) “Maintenance” – The comment suggests that this definition should apply to OHV Recreation *and related activities* since but for the OHV Recreation other related use would not occur.” – CORE

**Department’s Response to Comment**

Public agencies are given broad discretion to establish rules to implement a program when the Legislature has left the details of such implementation to the agency, as here where the Division is charged with implementation of all aspects of the OHV Program. The suggested revision could potentially expand the grants program beyond the statutory intent set forth in PRC § 5090.50 et seq. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.50(oo) “OHV Recreation” – “As long as funding is provided by allocation of tax dollars based on OHV use that is incidental to other activities, such as hunting, OHV Recreation must be defined and managed as including that incidental use. (See 2007 Fuel Study commissioned by the legislature)” – CORE

### ***Department's Response to Comment***

The purpose for the comment is not entirely clear to the Department. One interpretation of the comment could be the suggestion that OHV funds be spent to manage and/or regulate hunting activities in addition to the mere act of driving off-road for the purpose of accessing the hunting activity. If so, this would expand the use of the funds beyond those provided for in statute and require the Department to exceed its jurisdiction.

Public agencies are given broad discretion to establish rules to implement a program when the Legislature has left the details of such implementation to the agency, as here where the Division is charged with implementation of all aspects of the OHV Program. The definition in the proposed regulations complies with the statutory intent of the program set forth in PRC § 5090.50 et seq. and encompasses the incidental vehicle use described in the comment. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(qq) "Performance Review" – The comment indicates "The performance review should be defined as comprehensive project evaluation which is intended to assess the project effectiveness, long-term viability and cost efficiency against established metrics. A report should be prepared at the conclusion of the review and the report should be made available to the commission and public after grantee review and comment." – CORE

### ***Department's Response to Comment***

Performance Reviews include ongoing staff work, such as desk reviews and processing payment requests that would not warrant a formal report. Site visits are a more comprehensive element of the performance review process and do result in a written report, pursuant to 4970.71(b). The proposed language would unnecessarily restrict the Department's ability to monitor the progress of OHMVR grant funded projects. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.50(tt) "Project Area" – The comment indicates "The "Project Area" should include the sphere of influence the project is anticipated to affect." – CORE

### ***Department's Response to Comment***

The proposed change would exceed the statutory requirement and significantly and unnecessarily broaden the area to be included in WHPP/HMP and Soil Conservation Plans, putting an additional burden on applicants and program funds. The project area, as referenced in PRC § 5090.53, is the area for which funding is being provided. Regulations must be consistent with the Department's statutory authority. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.50(uu) “Regional OHV Facility” – The comment asks where the Commission criteria for a regional OHV facility are listed and suggests that underlining be removed. – Bruce Brazil

**Department’s Response to Comment**

The criteria for a regional OHV facility are listed in Commission Policy #1. The underling in this subsection has been deleted.

**Comment**

Subsection 4970.50(vv) “Repair” – The comment asks about the term “OHV-related damage” in the definition of “repair.” – Bruce Brazil

**Department’s Response to Comment**

All projects funded must be related to OHV use. If the actual damage occurred due to a fire or storm, it would still be OHV-related if an OHV facility was damaged. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.50(xx) “Restoration” – The comment indicates “The regulations perpetuate the myth that all restoration projects (i.e., projects eligible for restoration funding) must foreclose future use of the project area by OHVs. In other words, once an area or trail is “restored” using restoration grant funds, it may never be used by OHVs again. As pointed out in the 2006-2007 LAO Audit, the Division and the Commission have for years misinterpreted (or mis-defined) “restoration” to include this prohibition; yet it is nowhere to be found in the OHMVR Act (Pub.Res.Code § 5090.01 et seq.) or in the legislative history leading up to the Act’s adoption. Therefore, it is our recommendation that the regulations, when defining and using the term “restoration,” do so in a manner consistent with the Act and with the findings of the LAO Audit. In short, restoration projects should not include a blanket, a priori prohibition against future OHV use in the areas restored.” – David P. Hubbard, Esq. (EcoLogic Partners, Inc.)

**Department’s Response to Comment**

The OHMVR Act requires closure and restoration when soil standards or wildlife protection plans cannot be met. The Act does not require permanent closure. The PRC § 5090.02(c)(3), 5090.35, 5090.53(b)(3) refers to temporary closures when repairs are needed to conform the land, trails, roads, or areas to the soil standards or wildlife protection plans required by the PRC. Closures connected with the restoration definition must be distinguished as something more or different from temporary, but are not necessarily permanent.

***Comment***

“The definition of VOLUNTEER is missing in CCR 4970.50, DEFINITIONS.” – Bruce Brazil

***Department’s Response to Comment***

The definitions in 4970.50 are for terms that are used within CCR, Title 14, Division 3, Chapter 15.5. The term “volunteer” is not used in this chapter. It is used in the Application Instructions and Appendix. It is defined in the Glossary. The Department is therefore taking no action on this comment.

**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. It has been amended to further clarify the legislative intent of the statute.

**Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

***Comment***

“PRC language includes the need for ecological balance and this language should be included herein.” – CORE

***Department’s Response to Comment***

The reference in PRC § 5090.02 to “ecologically balanced recreation” is a broad goal of California’s OHV program. Section 4970.51 specifically addresses the purpose of the Grants and Cooperative Agreements program, which certainly includes responsible management of resources. This section has been revised for clarification.

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Section 4970.51 – The comment states, “While we appreciate the addition of the “well-managed” wording it seem [sic] rather light in giving meaning to ecological balance. As we noted in our prior letter, the PRC language includes the need for ecological balance and this language should be included herein.” – CORE

### ***Department’s Response to Comment***

The reference in PRC § 5090.02 to “ecologically balanced recreation” is a broad goal of California’s OHV program. Section 4970.51 specifically addresses the purpose of the Grants and Cooperative Agreements program which includes responsible management of resources. As a result of previous comments, this section has been revised for clarification.

### ***Comment***

Section 4970.51 - “Funds should be not be used for any type of non-motorized use, such as creating buffer zones, or creating separate trails to “reduce user conflict.” There is no motorized use in the Wilderness Areas. There should be an [sic] campaign to point out that the Wilderness Areas are where to go, if you don’t like motorized sports.” – Jeff Sanford

### ***Department’s Response to Comment***

Section 4970.53(c) requires that an applicant identify how each project is directly related to sustaining OHV Recreation in the Project Area. This requirement ensures compliance with the statutory intent of the program as set forth in PRC § 5090.50(c). The Department is therefore taking no action on this comment.

### ***Comment***

Section 4970.51 – “The opening paragraph talks about maintaining, operating, expanding, etc. etc... but how do you reward folks doing that? Again this has to be done by having an over-all (one page) view of what the agency is doing. Numbers don’t lie, or if they do lie you can catch them on audit.” – Ed Waldheim, CORVA

### ***Department’s Response to Comment***

An applicant’s overall OHV program as well as the merits of the specific proposed project is evaluated in the Evaluation Criteria, OHV Form K, found in the Appendix. The result of the Evaluation Criteria is a score, which is the basis for allocating funds. The Department is therefore taking no further action on this comment.

## **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. This section has been amended as described below.

### **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 Grants Program Manual are subject to the rulemaking process in accordance with § 11343 of the Government Code.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) In subsection 4970.53(a), the “OHMVR Division Manual” has been renamed the “Grants Program Manual” to accurately indicate that it applies specifically to the Grants Program administered by the OHMVR Division,
- (2) Subsection 4970.53(c) has been added to provide that applications must establish how each proposed project is directly related to sustaining OHV recreation in accordance with the legislative intent of the enabling statute,
- (3) The last sentence of former subsection 4970.53(e)(1) has been moved to subsection 4970.53(d) to provide emphasis on the fact that applications determined to not be in conformance with general application requirements will be returned by the Division to the applicant without consideration.
- (4) Former subsection 4970.53(c) has been renumbered to 4970.53(e) and has been revised (1) to include a funding minimum and maximum amount per project type and a funding limit per applicant to ensure an equitable distribution of available funds to deserving programs, (2) to provide that applications for acquisition, conservation, development, planning, or restoration projects or applications for projects not exceeding \$15,000 per year, may be requested for expenditure over a three year period to accommodate those applications that are for long-term projects, and (3) to provide that equipment requests may now be requested within the related project so that applicants no longer are required to submit an entirely separate application for equipment purchases, leasing, or repair.
- (5) Former subsection 4970.53(d) has been renumbered to 4970.53(f) and has been revised (1) to include examples of “unfair advantage” and “inconsequential defects” to provide more clarity.
- (6) Subsection 4970.53(g) has been added to provide an appeal process for applicants whose applications the Division has determined to be inconsistent with applicable statute and/or these regulations and have been rejected in writing by the Division.
- (7) Former subsection 4970.53(e) has been renumbered to 4970.53(h) and has been revised (1) to provide that all applications shall meet all the requirements contained in the Grants Program Manual, (2) to provide that applications must include a demonstration of how each proposed project is directly related to sustaining OHV recreation, (3) to provide that requests to fund scientific research work shall now be included within the appropriate project type, (4) to refer to Chapter 1 of the Grants Program Manual for lists of eligible and ineligible costs and project-specific eligible costs. These revisions have been made to simplify the application process.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.53(c)(6)(A) “Public notice” – This language requires that the notice shall be mailed to those persons the agency or organization determines most likely to have an interest. This could be interpreted as only requiring notice to one or two people. The word “

most” should be deleted. The language should read “Notice should be provided to anyone likely to have an interest.” – Karen Schambach, Center for Sierra Nevada Conservation (CSNC), Jason Fried, California Wilderness Coalition (CWC)

***Department’s Response to Comment***

This section is now 4970.53(e)(7)(A). The language could be considered too limiting; however the proposed revision would be too broad in its scope. This section has been revised for clarification.

***Comment***

Subsection 4970.53(c)(6)(B) “Public review” – This comment recommends the following sentence be added to the end of this subsection: “Applicants will hold at least one public meeting to receive comments prior to submitting the application.” The comment further indicates, “The public comments prior is [sic] vital in ensuring that the applicant is working with the community to meet their needs and understand and resolve any community concerns.” The comment also suggests that an exemption from the public meeting could be added to this subsection for small value projects to reduce the burden on the applicant. – CORE

***Department’s Response to Comment***

This section is now 4970.53(e)(7)(B). Section 4970.53(h)(2) requires the applicant to submit “Documentation of the public review process” as part of the application process. Many applicants hold a public meeting even though it is not required. Requiring a public meeting within the existing timeframe would place an unnecessary burden on some applicants. The Department is therefore taking no action on this comment.

***Comment***

Another comment on this subsection indicates that the language provides that “you need to have your draft applications available for public review no later than the date of the publication of the public notice, but the notification of the public notice is only one of the three requirements. So that might need to be clarified.” – U. S. Forest Service

***Department’s Response to Comment***

This comment is unclear on what issue needs to be clarified. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(d)(3) – “The section should be revised to include the requirement that answers be posted to allow sufficient time for an applicant to revise his/her application to

respond to the clarification provided as a result of the Q&A. 10 days does not seem to be sufficient time for those preparing complex, multi-site or multi-project applications.”- CORE

***Department’s Response to Comment***

This section is now 4970.53(f)(3). Ten days prior to the application deadline is the very latest that Division responses will be posted to the website. The Division will endeavor to provide responses to applicants’ inquiries as quickly as possible. Of course it would behoove an applicant to submit their inquiries as soon as possible to ensure a prompt response from the Division. As always the Division will attempt to respond in a timely manner but since the quantity and content of the inquiries is unknown, we cannot commit to a time frame greater than the ten days. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(d)(5) – The comment requests an explanation of how this subsection “does not present an unfair advantage by asking certain applicants for clarification.” - U.S. Forest Service

***Department’s Response to Comment***

This section is now 4970.53(f)(5). In order to evaluate each application, the Division, the public, and the Commission must understand the Applicants’ information. Clarification will only be requested for information that will not give the applicant an unfair advantage over other applicants or applications. This section has been revised for clarification.

***Comment***

Subsection 4970.53(e)(1) – The comment recommends that the last two words of the subsection, “ without consideration”, be deleted and replaced by “with written explanation of the deficiencies. The applicant may request a review and consideration of the application by the Commission regardless of the Division’s determination.” The comment also indicates “ PRC 5090.24(e) gives the Commission the authority to review and approve all minor and major capital outlay expenditures for the system. The Commission may review an application and find it meets the need of the OHMVR program. Given the changing nature of the program consideration should be given to a 2-step process in which the Division determines completeness of all of the applications and then allows applicants time to revise applications deemed incomplete prior to evaluating all applications. This could be phased out over a 3-year period. – CORE

***Department’s Response to Comment***

This subsection, which is now 4970.53(g), has been revised to incorporate an appeal process.

***Comment***

Subsection 4970.53(e)(2)(A) – The comment indicates that the language requires the agencies “to respond to public comments up to ten days before submitting their application; however, we can get answers to questions [from the Division] only up to 15 days.” The comment recommends that the timeframes should match in terms of when the questions will stop being answered by the Division and when the agencies can stop responding to public comments.” – U.S. Forest Service

***Department’s Response to Comment***

The Regulations have been revised to remove the ten-day requirement referenced in the comment. The applicants are required to provide documentation identifying their public review process. This section has been revised for clarification.

***Comment***

Subsection 4970.53(e)(4) – Clarification is requested. The comment indicates that it appears that the Division means that for federal regional offices and for state offices a PAR is not required, but clarification is necessary. – U.S. Forest Service

***Department’s Response to Comment***

The PAR form has been eliminated.

**Public Comments Received During 15-Day Written Comment Period**

***Comment***

Subsection 4970.53(c) “The word “allowable” should be struck from “illegal use, allowable protection of resources,…” – CORE

***Department’s Response to Comment***

This is included specifically to reflect limitations on the use of OHMVR funds for protection of resources related to illegal OHV recreation. Funds may only be used for purposes related to OHV recreation. Protection of resources from impacts unrelated to OHV recreation may not be funded. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(c) “As defined in the document, the General Application Requirements would prohibit using Restoration grants in Wilderness and other areas where OHV use is prohibited, because of the requirement to sustain OHV use in the Project Area specified in the Application. Under what Authority is this proposed regulation made?” – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department's Response to Comment***

This section specifically defines "OHV Recreation" to include both legal and illegal use on both public and private property and further clarifies that projects related to illegal use may include "Restoration to Repair Damage." This is consistent with PRC § 5090.50(e). Enforcing closures and restoring damage caused by illegal OHV recreation sustain long-term OHV recreation by preventing and repairing damage caused by illegal use that could lead to future additional closures. The Department is therefore taking no action on this comment.

### ***Comment***

Subsections 4970.53(e)(1), (2), and (3) – "There are a number of new regulations proposed here (1, 2, and 3) that were not in the original proposal, yet there is nothing identifying these as new proposals." – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department's Response to Comment***

Based on public comments received and experience with the program during the 2006/2007 grants cycle, the regulations as proposed in April have been revised, reorganized, and clarified. In accordance with the APA, these revised regulations have been made available to the public for a final 15-day public review and comment period before they are finalized and submitted to the Office of Administrative Law (OAL) for adoption. To facilitate public review and for the ease of reading, the Division has provided a strike-out version of the text of the regulations proposed in April, 2006 and a clean copy of the entire revised text of the proposed regulations. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.53(e)(2) – . The comment indicates that the use of the word "applicant" not "agency" is good because "it would encourage agency's to develop relations with 501 c3's, as separate applicants that apply on the agency's behalf. However the one size fits all may have some draw backs, like everyone will just apply for the maximum." – Tom Tammone

### ***Department's Response to Comment***

The project funding restrictions were developed based on data from previous OHMVR grant cycles and an attempt to ensure an equitable distribution of limited OHMVR grant funds. Applicants who apply for more than they need and are therefore unable to spend it within the project performance period will lose points in the evaluations process the following year. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.53(e)(2) – The comment recommends, “Funding caps need to be augmented by a baseline system....” It also indicates, “established projects should be limited to 10% a year increase. The comment further suggests that the existing formula for C&E funds be used and that the minimum be spent on these funds. – Tom Tammone

**Department’s Response to Comment**

The project funding restrictions were developed based on data from previous OHMVR grant cycles and an attempt to ensure an equitable distribution of limited OHMVR grant funds. The proposed revision would unnecessarily complicate the application process. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.53(e)(2) – “Application Maximum/per Applicant:” The comment indicates that subsection 4970.50(e) of these regulations “ provides definitions for an applicant. Does this mean that each office of the Federal agencies are multiple applicants, while different substations of one sheriff’s office aren’t?” – Bureau of Land Management

**Department’s Response to Comment**

As stated in § 4970.50(e)(1), a county “Department” is considered an applicant under these proposed regulations. Hence, only one application would be accepted from a County Sheriff’s “Department”. Substations would have to apply for funds as a component of the countywide application. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.53(e)(2) – The comment recommends a cap for Acquisition and Development Projects. It indicates, “Given today’s land values and construction costs, a cap of \$500,000 for these two project categories may not allow a worthy project to be implemented unless phased over several years. – Elizabeth Norton, Lassen National Forest

**Department’s Response to Comment**

For the purposes of the OHMVR grant program, in which the grant application amounts routinely surpass the available grant funds, it is not feasible to provide funding for the described acquisition/construction projects that exceed the proposed funding restrictions. Large scale acquisition/construction projects the commenter is alluding to should be funded through the agencies capital outlay resources. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.53(e)(3) – The comment cites the subsection, “...Projects or any other Project not exceeding an expenditure of \$15,000 per year, Funds may be requested for expenditure over a three (3) year project.” Does this mean that projects over 15,000 are not eligible for a 3 year period?” – Bureau of Land Management

**Department’s Response to Comment**

Section 4970.53(e)(3) has been revised as follows:

“Acquisition, Conservation, Development, Planning or Restoration Projects are funded for a three (3) year period. For Facilities Operation and Maintenance, Law Enforcement, OHV Safety and or/Education Program, and Trail Maintenance Projects not exceeding \$15,000 per year, Funds may be requested for expenditure over a three (3) year period.” This section has been revised for clarification.

**Comment**

Subsection 4970.53(e)(3) – The comment asks, “Why would the state want to ‘drag out’ (over 3 years) such a small grant?” – Karen McKinley, Los Padres National Forest

**Department’s Response to Comment**

This provision was added for the benefit of smaller agencies for which a grant of that size would not be considered “small”. Requesting funds once for a three year period will eliminate a considerable amount of administrative costs and result in more efficient use of funds for agencies making requests of this size. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.53(e) – The comment recommends “all projects have a three year performance period to expend funds. This will reduce the need for applicants to submit yearly applications, and the Division to review them. It will save everyone time and allow applicants to plan their OHV/OSV programs and staffing levels over a multi-year period with the certainty of available funds.” – Elizabeth Norton, Lassen National Forest

**Department’s Response to Comment**

These regulations were developed in an attempt to balance the timely prudent use of State funds with the ability of the agencies to complete the proposed projects in the time allowed. The project types for which the three year period is allowed are typically more involved, requiring multiple phases to complete, hence it is reasonable to provide the longer performance period. The other project types are more suited to a

shorter performance period which helps ensure the prudent timely use of limited State funding. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(e)(4) – “Casual use: How are you going to get that information? It has to be part of the over all information that PAR was getting. I do not see it on any report proposed. – Ed Waldheim, CORVA

***Department’s Response to Comment***

Section 4970.53(h)(1) requires that an applicant describe how the proposed project is directly related to sustaining OHV recreation in the project area. This requirement will ensure that the “casual use” requirement is met. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(e)(6) – One comment asks why is there a provision for administrative costs. “Our program is here to support specific needs. There should be no Administrative fee” – Ed Waldheim, CORVA

A second comment indicates ” for large grants, ten (10) percent is a large amount to be allowed for administration.” – Narvell Conner

Another comment states “In view of tightened receipts, eliminate the 10% for administrative costs – dollars to the ground!” – Karen McKinley, Los Padres National Forest

***Department’s Response to Comment***

As general policy guidance, the OHMVR Commission has specifically addressed this issue and provided its guidance. The Division is given full statutory authority for implementation of all aspects of the program (PRC § 5090.32(d)). It must do so in compliance with appropriate law and consistent with OHMVR Commission general policy where such policy is consistent with statute. Therefore, administrative costs are limited in § 4970.53(e)(6) to 10% of the total project amount requested. Administrative costs must now be identified in the Project Costs/Deliverables page and must be documented the same as any other expenses (Chapter 3, Section 3.8). The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(e)(7) – The comment asks how the public concerns are being addressed since public meetings are not required. It also asks what are the applicants’ requirements once comments have been received from the public during the required comment period. – Tom Tammone

Another comment recommends, “A public meeting must be required as part of the application process for all but very small (e.g. <\$200,000) and non-controversial projects. The public comment period is vital in ensuring that the applicant is working with the community to meet their needs and understand and resolve any community concerns. Such interaction promotes long-term projects that are sustainable. An exemption for small value projects that are not subject to controversy could be added to this section to reduce the burden on the applicant or alternatively, a value and/or controversy threshold could be included.” – CORE

***Department’s Response to Comment***

The current regulatory requirement regarding “public review” is compliant with the statutory intent of the program as set forth in PRC § 5090.50 et seq. Section 4970.53(h)(2) requires the applicant to submit “Documentation of the public review process” as part of the application process. Many applicants hold a public meeting even though it is not required. Requiring a public meeting within the existing timeframe would place an unnecessary burden on some applicants.

OHV Form H, found in the Appendix, provides information on the applicant’s public review process, including how the comments were incorporated into the final application. The Department is therefore taking no action on this comment

***Comment***

Subsection 4970.53(e)(7)(A) – The comment states “The public notice should include publication in a newspaper of general circulation Response to public comments should be provided to the public (on the website or in some other format) and included in the application.” – CORE

***Department’s Response to Comment***

Mandatory publication in a newspaper of general circulation would be an additional expense to the applicant and further delay the application process. OHV Form H, found in the Appendix, documents the public notification efforts made, the comments received, and the application changes as a result of those comments. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(g) – The comment recommends an appeal process for applicants, such as binding arbitration for both the application completion status and the scoring of the application. – Tom Tammone

### ***Department's Response to Comment***

An appeals process for applications found incomplete has been added in § 4970.53(g). The Commission meeting and Subcommittee meetings (if any) provide an appeal process for scores. Further appeals and binding arbitration would unnecessarily delay the process and subsequent funding of approved projects. A binding arbitration process would be an additional expense to the program. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.53(g) – the comment indicates, “An appeal process means for [sic] more work for Division staff.” It recommends that an appeal process should not be offered and further states “Applicants can try, again, the following year if their application is rejected and learn from this experience. – Elizabeth Norton, Lassen National Forest

### ***Department's Response to Comment***

The appeal process in § 4970.53(g) was added in response to comments from the public and has been crafted in a way to be fair to the applicant while not unnecessarily complicating the application process. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.53(f)(3) – The comment recommends, “The section should be revised to include the requirement that answers be posted to allow sufficient time for an applicant to revise his/her application to respond to the clarification provided as a result of the Q&A. 10 days does not seem to be sufficient time for those preparing complex, multi-site or multi-project applications.” – CORE

### ***Department's Response to Comment***

Ten days prior to the application deadline is the last date Division responses will be posted to the website. It represents 17% of the current application period. Any longer period would further delay the application process. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.53(f)(4)(A) – The comment recommends, “The word completed should be struck in “provide *completed* information in an uncompleted form or submittal.” – CORE

### ***Department's Response to Comment***

The Department will clarify by replacing “completed” with “missing.”

***Comment***

Subsection 4970.53(f)(4)(B) – The comment recommends, “The word “good” should be replaced with the word “item”. The singular form of goods does not exist, the work [sic] good can only be used as an adjective.” – CORE

***Department’s Response to Comment***

“Item” would change the meaning, so the subsection has been revised by replacing “good” with “product.”

***Comment***

Subsection 4970.53(g) – The comment states, “PRC 5090.24(e) gives the Commission the authority to review and approve all minor and major capital outlay expenditures for the system. The Commission may review an application and find it meets the need of the OHMVR program.

As written, the same body that rejects the application reviews the rejection. The appeal-deciding officer should not be the same person who directly manages staff reviewing the applications.” – CORE

***Department’s Response to Comment***

PRC § 5090.24(e) applies after a minor or capital outlay project has gone through the Department’s approval process. Minor and major capital outlay projects are different from grants and cooperative agreements. Approval of grants and cooperative agreements by the Commission is addressed in PRC § 5090.50(j). The Division is given responsibility for implementation of all aspects of the program in PRC § 5090.32(d). The appeal process in § 4970.53(g) applies after the Division has found the application as being incomplete or otherwise not in compliance and therefore unable to be funded. The appeal process is an opportunity for applicants to show the Division how the application is in compliance. Applications that are not in compliance may not be funded, regardless of merit. Once an application has been found complete and in compliance the project is scored by the Division. The Commission review is the equivalent of an appeal process for the Division score. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(g)(3) – The comment states, “We believe that every applicant deserves the courtesy of a specific answer to an appeal.” – Bureau of Land Management

***Department's Response to Comment***

The appeal process proposed in § 4970.53(g) was added in response to comments from the public and has been crafted in a way to be fair to the applicant while not unnecessarily complicating the application process. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(h) – “The application should demonstrate how the proposed project also maintains ecological balance.” – CORE

***Department's Response to Comment***

This is addressed in § 4970.53(h)(6) and 4970.63. Projects that are not in compliance with relevant CEQA, WHPP/HMP and Soil Conservation Program requirements are not eligible for funding. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(h)(7) – The comment indicates that the 25% match requirement is too high and should be comparable to the RTP match.” – Ed Waldheim, CORVA

***Department's Response to Comment***

The Recreational Trails Program (RTP) is a federal program administered by the Department. Public Resources Code § 5090.51(a) requires a 25% match for OHMVR grants. Regulations cannot be used to contradict statute. Changing statute is beyond the scope of this regulatory process. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(h)(7) – The comment indicates, “This is a state generated funding process. The funds come from STATE generated taxes. Recent grant history has been the majority of funds are going to Federal agencies...USFS, BLM, etc.” The comment states that Federal agencies are exempt from the matching funds requirements. It recommends, “the matching funds requirements should be straight across the board, either required for all applicants (except recognized Native American Tribes) or the local agencies should be exempt, and the federal agencies should have to pay the match.” – Jeff Sanford

***Department's Response to Comment***

Public Resources Code § 5090.51(a) requires a 25% match for OHMVR grants. Cooperative agreements are not required to have a match. Regulations cannot be used to contradict

statute. Changing statute is beyond the scope of this regulatory process. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.53(h)(8) – The comment recommends that this subsection be deleted since Article 2 of the regulations text and Chapter 1, page 16, have all the requirements under the various project categories. – Elizabeth Norton, Lassen National Forest

***Department’s Response to Comment***

The requirements specific to scientific research (i.e., Curriculum Vitae, Peer Review, etc..) are not covered under the specific project descriptions in the PRC, Article 2. These requirements are covered in Chapter 1 of the Grants Program Manual under the project types for which scientific research is eligible; however, it is a crucial requirement that warrants repeating. It would be unfortunate for a project to be rejected because an applicant was not clear on the unique requirements associated with scientific research activities. The Department is therefore taking no action on this comment.

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

***Comment***

Article 2 – Types of Projects and Specific Application and Content Requirements – The comment states, “The differences between conservation, restoration and FO&M and trail maintenance projects seem artificial and confusing. The proliferation of categories has in the past lead to confusion among applicants and conflicting direction from Division staff. The categories should be reduced to new acquisition and development, operations and maintenance and science projects to simplify the process.” – CORE

***Department’s Response to Comment***

The funds for each project come from one funding source. Conservation and Restoration projects each come from their own funding category, as established by statute. Also by statute, trail maintenance and FO&M projects are funded out of the Non-CESA funding category. Changing statute is beyond the scope of this regulatory process. The Department is therefore taking no action on this comment.

**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. This section has been amended as described below.

## **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing requirements for acquisition projects in accordance with PRC § 5090.32, and 5090.50.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Former subsection 4970.54 (c) which provides specific examples of acquisition projects has been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for acquisition projects,
- (2) Former subsection 4970.54(d), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection.
- (3) Former subsection 4970.54(e) has been renumbered to 4970.54(c) and has been revised (1) to refer to subsection 4970.53(h) of the General Application Requirements, which provides that applications for acquisition projects shall meet all the application filing requirements contained in the Grants Program Manual, and (2) to require two additional project specific documents unique to acquisition projects. These revisions have been made to further clarify and simplify the application process for acquisition projects.
- (4) Former subsection 4970.54(f), which addresses relocation assistance, has been moved to Chapter 1 of the Grants Program Manual to provide all the required information within the Application Instructions to simplify the application process.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.54(a) – The comment recommends the following language be added at the end of this subsection: “and dust and noise impacts to neighboring properties and/or uses.”  
– CORE

### ***Department’s Response to Comment***

The current language includes, “provide Buffers” which by definition includes land interests acquired to prevent dust and noise impacts. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.54(b) – “The PRC does not prohibit acquisition by educational institutions and nonprofit organizations. While acquisition is not explicitly listed as one of the allowed activities in Section 5090.50(f); It is conceivable that a scientific research project may require acquisition of an easement on the property on which is conducted.” – CORE

**Department’s Response to Comment**

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and non-profit organizations is explicit and leaves no room for interpretation. Acquisition is not a defined authorized activity, even for an easement, thus is not allowable. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.54(e) – The comment recommends that “Needs assessment” be added to this subsection as 4970.54(e)(2), which would require subsequent renumbering. – CORE

**Department’s Response to Comment**

As part of the application process and pursuant to PRC 5090.50 et seq. the applicant is required to submit a “Project Description” which, among other things, requires the applicant to identify, “How the proposed acquisition project relates to OHV recreation and will add to, enhance or otherwise sustain OHV Opportunity.” This component along with the required “Acquisition Plan” and “Due Diligence” will ensure that the applicant has performed the necessary “Needs assessment”. The Department is therefore taking no action on this comment.

**Public Comments Received During 15-Day Comment Period**

**Comment**

Subsection 4970.54(b) – The comment asks why nonprofit organizations are not eligible to apply for acquisition projects. – Ed Waldheim, CORVA

Another comment states, “The PRC does not prohibit acquisition by educational institutions and nonprofit organizations. While acquisition is not explicitly listed as one of the allowed activities in Section 5090.50 (f); It [sic] is conceivable that a scientific research project may require acquisition of an easement on the property on which is conducted.” – CORE

## ***Department's Response to Comment***

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and nonprofit organizations is explicit and leaves no room for interpretation. Acquisition is not a defined authorized activity, even for an easement, thus is not allowable. The Department is therefore taking no action on this comment.

## **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. This section has been amended as described below.

### **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing requirements for conservation projects in accordance with PRC § 5090.32, 5090.35, 5090.50, and 5090.53.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.55(a) has been amended to provide further clarification regarding the purpose for conservation projects,
- (2) Former subsection 4970.55(c) which provides specific examples of conservation projects, has been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for conservation projects,
- (3) Former subsection 4970.55(d), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection,
- (4) Former subsection 4970.55(e) has been renumbered to 4970.55(c) and has been revised (1) to refer to subsection 4970.53(h) of the General Application Requirements, which provides that applications for conservation projects shall meet all the application filing requirements contained in the Grants Program Manual, and (2) to required one additional project specific document unique to conservation projects. These revisions have been made to further clarify and simplify the application process for conservation projects.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.55(a) – The comment recommends that the language “are implemented in connection with ongoing OHV recreation and” be deleted from this subsection. “The PRC does not limit conservation to ongoing OHV recreation.” – CORE

### ***Department’s Response to Comment***

This comment seems to suggest the Off-Highway Motor Vehicle Recreation (OHMVR) Act in the PRC would allow for conservation activities whether or not OHV activities are present. Defining conservation to allow for the funding of activities unrelated to OHV recreation would violate the purposes and authority of the OHMVR Act, which provides for the management of OHV activities. The definition of conservation in the Act (PRC § 5090.10) refers to sustaining soils, plants, wildlife and their habitat in accordance with the standards adopted pursuant to PRC § 5090.35. Section 5090.35 refers solely to the management of lands used for OHV recreation. Thus, conservation activities must be associated with the management of lands, trails, roads, or areas used for and affected by OHV recreation to achieve the adopted soil standards and/or wildlife protection plans. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.55(c)(4) – “We find no statutory authority for determining reroutes to be a conservation project in the Authority or references cited. As the conservation community has discussed countless times with the Division staff over the past few years, closing the offending route is a legitimate conservation project; building the new portion is a development project. Cite: PRC 5090.10” – CNSC, CWC

### ***Department’s Response to Comment***

Public agencies are given broad discretion to establish rules to implement a program when the Legislature has left the details of such implementation to the agency, as here where the Division is charged with implementation of all aspects of the OHV Program. Defining trail reroutes as one of many different activities for conserving soils and wildlife habitat is an appropriate exercise of the Department’s administrative discretion.

PRC § 5090.10 provides broadly that conservation includes activities, practices, and programs that sustain soils, plants, wildlife, and their habitat in accordance with the standards adopted pursuant to § 5090.35. Rerouting a trail or portion of a trail to sustain soils or wildlife is an activity or practice that sustains soils or wildlife. It is one of many items on a menu of items that would be appropriate for conservation.

PRC § 5090.35 provides for two types of activities. First, the offending area must be temporarily closed and repaired when soil or habitat standards are not being met. If, however, it is determined the standards may not be met using the temporary closure and repair method, then the trail, land, area must be closed and restored. Restoration consists of returning the land to its condition prior to the OHV use (PRC § 5090.11).

PRC § 5090.64 (b) (1) specifies the expenditure of funds from the Conservation and Enforcement Services Account for conservation pursuant to § 5090.10, 5090.35, 5090.50, and 5090.53. As noted above, § 5090.10 broadly provides for any activities that protect and sustain soils or habitat in accordance with the standards adopted pursuant to §5090.35. Section 5090.35 does not define conservation further, but requires the adoption of soil conservation standards to prevent erosion. PRC § 5090.50 does not further define conservation, but allows the expenditure of grant funds for trail conservation purposes. Section 5090.53, again, does not further define conservation, but requires federal agencies to comply with soil conservation standards and habitat protection planning requirements.

Thus, including trail reroutes as a component of a conservation project application is appropriate rather than requiring the applicant to prepare and submit separate applications: a conservation project for the closure and a development project to build the replacement for the closed portion. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.55(c)(5) – The comment recommends deleting “HMP” from this subsection. “PRC does not define the WHPP as an HMP” – CORE

### ***Department’s Response to Comment***

While the commenter is correct that the PRC does not specifically define a WHPP as a HMP, the PRC does not contain a specific definition of WHPP at all. Rather, PRC § 5090.35(g) requires preparation and implementation of a “wildlife habitat protection program” to “sustain a viable species composition.” PRC § 5090.50 and 5090.53 apply this requirement to certain grants and cooperative agreements. Sustaining a viable species composition requires far more than simply taking “protective” measures for wildlife. Furthermore, the Legislative Findings in PRC § 5090.02(a) express concern about impacts on “wildlife habitats, native wildlife, and native flora.” Accordingly, PRC § 5090.10 defines “Conservation” to mean, “activities . . . that sustain soils, plants, wildlife, and their habitat in accordance with the standards adopted pursuant to Section 5090.35.” Consistent with the statutory mandate and sound ecological principles, §4970.66 describes WHPP as a HMP. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.55(c)(6) – The comment recommends adding the language “related to resource protection” to this subsection. – CORE

### ***Department's Response to Comment***

The regulations have been modified and examples of eligible projects have been moved into Chapter One of the Grants Program Manual under the specific project types. The item the comment is referring to is "Signing" which can be an eligible project activity under several different project types. The activity (i.e. Signing) must be included in the application for the type of project for which it is being used.

### **Public Comments Received During 15-Day Written Comment Period**

#### ***Comment***

Subsection 4970.55(a) – The comment recommends that the word "trails" be added in the last part of the subsection; so that it reads, "...or Rerouting of Roads and trails to comply with soil standards...." – Karen McKinley, Los Padres National Forest

#### ***Department's Response to Comment***

The term "Roads" is defined in § 4970.50(yy) and encompasses the meaning of the requested change. The Department is therefore taking no action on this comment.

#### ***Comment***

Subsection 4970.55(a) and (b) – The comment states, "The PRC does not limit conservation to ongoing OHV recreation. It allows for habitat conservation projects regardless of OHV presence. The PRC does not prohibit non-profit or education institutions from being funded." – CORE

#### ***Department's Response to Comment***

This comment seems to suggest that the Off-Highway Motor Vehicle Recreation (OHMVR) Act in the PRC would allow for conservation activities whether or not OHV activities are present. Defining conservation to allow for the funding of activities unrelated to OHV recreation would violate the purposes and authority of the OHMVR Act, which provides for the management of OHV activities. The definition of conservation in the Act (PRC § 5090.10) refers to sustaining soils, plants, wildlife and their habitat in accordance with the standards adopted pursuant to PRC § 5090.35. Section 5090.35 refers solely to the management of lands used for OHV recreation. Thus, conservation activities must be associated with the management of lands, trails, roads, or areas used for and affected by OHV recreation to achieve the adopted soil standards and/or wildlife protection plans.

Nonprofit organizations are listed in 4970.55(b) as eligible applicants for conservation projects. The Department is therefore taking no action on this comment.

## **Comment**

Subsection 4970.55(b) – The comment indicates that nonprofit organizations should be eligible to apply for conservation projects. – Ed Waldheim, CORVA

## **Department's Response to Comment**

Nonprofits are eligible for Conservation projects, as specified in 4970.55(b) and consistent with PRC § 5090.50(f). The Department is therefore taking no action on this comment.

## **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. This section has been amended as described below.

### **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing 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.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.56(a) has been amended to provide further clarification regarding the purpose for development projects,
- (2) Former subsection 4970.56(c), which provides specific examples of development projects, has been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for development projects,
- (3) Former subsection 4970.56(d), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection,
- (4) Former subsection 4970.56(e), which addresses the amount of public casual use of facilities required, has been moved from this section to Chapter 1 of the Grants Program Manual to provide more information within the Application Instructions to assist potential applicants in determining all requirements for development projects,
- (5) Former subsection 4970.56(f) has been renumbered to 4970.56(c) and has been revised (1) to refer to subsection 4970.53(h) of the General Application Requirements, which

provides that applications for development projects shall meet all the application filing requirements contained in the Grants Program Manual, and (2) to require two additional project specific documents unique to development projects. These revisions have been made to further clarify and simplify the application process for development projects.

- (6) Former subsection 4970.56(g) has been renumbered to 4970.56(d) to maintain the numerical order.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.56(a) – The comment recommends the deletion of the word “experience” to improve grammar. – CORE

### ***Department’s Response to Comment***

This section has been revised to incorporate the recommendation in this comment.

### ***Comment***

Subsection 4970.56(b) – “The PRC does not prohibit development by educational institutions and nonprofit organizations.” – CORE

### ***Department’s Response to Comment***

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and non-profit organizations is explicit and leaves no room for interpretation. Development is not a defined authorized activity and, thus, is not allowable. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.56(c)(6) – The comment recommends adding, “with neighboring land uses and/or other non-motorized users” at the end of this subsection. – CORE

### ***Department’s Response to Comment***

The regulations have been modified and examples of eligible projects have been moved into Chapter One of the Grants Program Manual under the specific project types. The comment is referring to the Development Project example, “Construction Projects to reduce use conflicts” which encompasses the commenter’s suggestion as well as many other situations. The suggested revision would unnecessarily limit the example. The Department is therefore taking no action on this comment.

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Subsection 4970.56(a) – The comment recommends, “Development projects should include construction projects to reduce user conflicts with neighboring land uses and/or other non-motorized users in addition to trail re-routing.” – CORE

### ***Department’s Response to Comment***

The Regulations have been modified and examples of eligible Projects have been moved into Chapter 1 of the Grants Program Manual under the specific Project types. The comment appears to refer to the Development Project example: “Construction Projects to reduce use conflicts” which encompasses the commenter’s suggestion as well as many other situations.

### ***Comment***

Subsection 4970.56(b) – The comment indicates that nonprofit organizations should be eligible to apply for development projects. – Ed Waldheim, CORVA

### ***Department’s Response to Comment***

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and nonprofit organizations is explicit and leaves no room for interpretation. Development is not a defined authorized activity and, thus, is not allowable. The Department is therefore taking no action on this comment.

## **4970.57 – EQUIPMENT PROJECTS**

NOTE: Former Section 4970.57 – EQUIPMENT PROJECTS has been deleted. Funding for Equipment may now be requested within projects where it will be used. Refer to Section 4970.53 – GENERAL APPLICATION REQUIREMENTS for application instructions.

Subsequent sections in this regulation text have been renumbered to maintain the numerical order.

Below are written comments received on Equipment and the Department’s responses to the comments.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.57(a) – The comment recommends that equipment leasing be allowed within equipment projects. – CORVA

### ***Department's Response to Comment***

The Equipment project type has been eliminated. Equipment costs, including equipment lease costs, are eligible to be included as expenses in the project type for which the equipment is predominantly being used.

### ***Comment***

Subsection 4970.57(d)(5) – The comment recommends that this subsection read as follows: “Trail bulldozers.” – CORE

### ***Department's Response to Comment***

The Equipment project type has been eliminated. Language regarding equipment has been revised in Chapter 3, Section 3.6.1.

### ***Comment***

Subsection 4970.57(g) – The comment recommends that the words “unless other use is incidental” be added at the end of this subsection. – CORE

### ***Department's Response to Comment***

The Equipment project type has been eliminated. Language regarding equipment has been revised in Chapter 3, Section 3.6.1.

## **SECTION 4970.57 – 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. This section has been amended as described below.

## **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing requirements for facilities operation and maintenance projects in accordance with PRC § 5090.32 and 5090.50.

This section has been renumbered from § 4970.58 to § 4970.57 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.57(a) has been amended to provide further clarification regarding the purpose for facilities operation and maintenance projects,
- (2) Former subsection 4970.58(c) which provides specific examples of facilities operation and maintenance projects, has been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for facilities operation and maintenance projects,
- (3) Former subsection 4970.58(d), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection,
- (4) Former subsection 4970.58(e) has been renumbered to 4970.57(c) and has been revised to refer to subsection 4970.53(h) of the General Application Requirements, which provides that applications for facilities operation and maintenance projects shall meet all the application filing requirements contained in the Grants Program Manual. These revisions have been made to further clarify and simplify the application process for facilities operation and maintenance projects.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.58(a) – The comment recommends that the word “measures” be added after “health and safety” in this subsection. – CORE

### ***Department’s Response to Comment***

This section is now 4970.57(a). This section has been revised to incorporate the recommendation in this comment.

**Comment**

Subsection 4970.58(b) – “The PRC does not prohibit FO&M by educational institutions and nonprofit organizations.” – CORE, CORVA

**Department’s Response to Comment**

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and non-profit organizations is explicit and leaves no room for interpretation. Facilities operation and maintenance is not a defined authorized activity, and, thus, is not allowable. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.58(c)(13) – The comment recommends that this subsection be deleted because it is redundant with language in subsection (a) of this section. – CORE

**Department’s Response to Comment**

The regulations have been modified and examples of eligible projects have been moved into Chapter One of the Grants Program Manual under the specific project types. Chapter One has been revised for clarification.

**Public Comments Received During 15-Day Comment Period**

**Comment**

Subsection 4970.57(b) – The comment indicates that nonprofit organizations should be eligible to apply for facilities operation and maintenance projects. – Ed Waldheim, CORVA

**Department’s Response to Comment**

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and nonprofit organizations is explicit and leaves no room for interpretation. Facilities operation and maintenance is not a defined authorized activity, and, thus, is not allowable. The Department is therefore taking no action on this comment

## **4970.58 – 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. This section has been amended as described below.

### **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing requirements for law enforcement projects in accordance with PRC § 5090.32, 5090.50, and 5090.64(b)(2) and CVC Section 38000 et seq.

This section has been renumbered from § 4970.59 to § 4970.58 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.58(a) has been amended to provide further clarification regarding the purpose for law enforcement projects,
- (2) Former subsection 4970.59(c) which provides specific examples of law enforcement projects, has been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for law enforcement projects,
- (3) Former subsection 4970.59(d), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection,
- (4) Former subsection 4970.59(e) has been renumbered to 4970.58(c) and has been revised to refer to subsection 4970.53(h) of the General Application Requirements, which provides that applications for law enforcement projects shall meet all the application filing requirements contained in the Grants Program Manual. These revisions have been made to further clarify and simplify the application process for law enforcement projects.

## **4970.59 – 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. This section has been amended as described below.

### **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing requirements for OHV safety and/or education program projects in accordance with PRC § 5090.32 and 5090.50.

This section has been renumbered from § 4970.60 to § 4970.59 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.59(a) has been amended to provide further clarification regarding the purpose for OHV safety and/or education program projects,
- (2) Former subsection 4970.60(c) which provides specific examples of law enforcement projects, has been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for OHV safety and/or education program projects,
- (3) Former subsection 4970.60(d), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection,
- (4) Former subsection 4970.60(e) has been renumbered to 4970.59(c) and has been revised (1) to refer to subsection 4970.53(h) of the General Application Requirements, which provides that applications for law enforcement projects shall meet all the application filing requirements contained in the Grants Program Manual, and (2) to require one additional project specific document unique to OHV safety and/or education program projects. These revisions have been made to further clarify and simplify the application process for OHV safety and education program projects.

## **4970.60 – 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. This section has been amended as described below.

### **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing requirements for planning projects in accordance with PRC § 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53.

This section has been renumbered from § 4970.61 to § 4970.60 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.60(a) has been amended to provide further clarification regarding the purpose for planning projects,
- (2) Subsection 4970.60(b) has been added to clarify which types of planning efforts must be submitted as a component of a specific project type ,
- (3) Former subsection 4970.61(c), which provides specific examples of planning projects, has been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for planning projects,
- (4) Former subsection 4970.61(d), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection,
- (5) Former subsection 4970.61(e) has been renumbered to 4970.60(d) and has been revised to refer to subsection 4970.53(h) of the General Application Requirements, which provides that applications for planning projects shall meet all the application filing requirements contained in the Grants Program Manual. These revisions have been made to further clarify and simplify the application process for planning projects.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.61(b) – “The PRC does not prohibit planning by educational institutions and nonprofit organizations.” – CORE

### ***Department’s Response to Comment***

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and non-profit organizations is explicit and leaves no room for interpretation. Planning is not a defined authorized activity and, thus, is not allowable. The Department is therefore taking no action on this comment.

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Subsection 4970.60 – The comment asks if a planning grant for restoration is funded with non-CESA funds, will the related restoration project also be funded with non-CESA funds? – Tom Tammone

### ***Department’s Response to Comment***

Planning Projects look at broad, programmatic issues. After the Planning Project determines the need for site specific projects, the planning and environmental evaluation for the site specific projects are submitted in the appropriate Project Type. The Department is therefore taking no action on this comment.

## **4970.61 – 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. This section has been amended as described below.

## **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing requirements for restoration projects in accordance with PRC § 5090.32, 5090.50 and 5090.64(a).

This section has been renumbered from § 4970.62 to § 4970.61 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.61(a) has been amended to provide further clarification regarding the purpose for restoration projects,
- (2) Former subsection 4970.62(c), which provides specific examples of restoration projects, has been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for restoration projects,
- (3) Former subsection 4970.62(d), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection,
- (4) Former subsection 4970.62(e) has been renumbered to 4970.61(c) and has been revised (1) to refer to subsection 4970.53(h) of the General Application Requirements, which provides that applications for planning projects shall meet all the application filing requirements contained in the Grants Program Manual, and (2) to require two additional project specific documents unique to restoration projects. These revisions have been made to further clarify and simplify the application process for planning projects.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.62(b) – “There is no statutory authority cited for restricting restoration grants. In fact, there is specific statutory authority allowing educational institutions and nonprofits to apply for restoration grants at 5090.50(f). “...Eligible projects shall be limited to scientific research, natural resource conservation activities, as defined in section 5090.10...” Section 5090.10 defines “conservation as meaning “activities, practices, and programs that sustain soils plants, wildlife, and their habitat in accordance with the standards adopted pursuant to Section 5090.35. Restoration projects are funded from the Conservation and Enforcement Services Account and as conservation projects, are among those projects for which educational institutions and nonprofits may apply. “ – CSNC, CWC, CORE

### ***Department's Response to Comment***

Restoration and conservation are two separately defined terms in the statute, both in their definitions and in the authority for expending CESA funds. Restoration is the act of restoring lands to conditions prior to OHV use. Conservation are activities to sustain soils and habitat according to standards adopted to prevent erosion. Rules of statutory interpretation require that the words of a statute be given their plain meaning unless otherwise indicated by the statute and that each provision be read in concert with the whole statute.

Had the Legislature intended restoration be a conservation activity, they would have included it within the conservation definition. PRC § 5090.35, furthermore, makes the clear distinction between soil conservation standards and restoration when it provides for closure and restoration when it is determined that the soil conservation standards cannot be met through temporary closure and repair.

The Legislature is presumed to be well aware of the words and phrases it uses when establishing statute. In PRC § 5090.50 (f), non-profit and educational institutions are given authority to perform, among other items, "...natural resource conservation activities, as defined in § 5090.10..." It is, therefore, legally presumed that the Legislature was well aware of the separate definition for restoration and intentionally did not include restoration as an activity permitted by non-profit or educational institutions.

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and non-profit organizations is explicit and leaves no room for interpretation. Restoration is not a defined authorized activity and, thus, is not allowable. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.62(c)(4) – The comment recommends that "Law enforcement to patrol closures" be added in this subsection, which would require subsequent renumbering. –  
CORE

### ***Department's Response to Comment***

The regulations have been modified and examples of eligible projects have been moved into Chapter One of the Grants Program Manual under the specific project types. Regulation § 4970.61(c)(1) does require applicants to provide "An explanation of what law enforcement efforts and follow up activities will be performed to ensure successful completion of the Restoration Project."

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Subsection 4970.61(a) and (b) – The comment indicates, “Restoration should include activities necessary after closure of an area, road or trail due to safety hazards, user conflicts, conflicts with adjacent land uses, damage to historic or cultural resources, water quality, and watershed impacts and damage to other resources.

The PRC does not prohibit non-profit or education institutions from being funded to do this work. Restoration projects lend themselves especially well to being executed by non-profit or education institutions.” – CORE

### ***Department’s Response to Comment***

The proposed regulatory language complies with applicable statutes regarding Restoration activities. The suggested additions appear to exceed the statutory intent of the OHV Grants Program.

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and nonprofit organizations is explicit and leaves no room for interpretation. Acquisition is not a defined authorized activity, even for an easement, thus is not allowable. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.61(a) – The comment indicates that restoration is an injustice to the entire program because any trail that is restored will be used again by hikers, equestrians, etc. but cannot be used for OHV recreation. The comment recommends that restored trails should be closed to all visitors. – Ed Waldheim, CORVA

### ***Department’s Response to Comment***

Restoration has been interpreted to mean that areas closed and restored may never be reopened. The audit conducted by the Bureau of State Audits questioned that conclusion. The OHMVR Act requires closure and restoration when soil standards or wildlife protection plans cannot be met. The Act does not require permanent closure if at some future point in time soils and wildlife can be properly protected. Thus, the section in question has not been revised.

The PRC refers in several locations to temporary closures when repairs are needed to conform the land, trails, roads, or areas to the soil standards or wildlife protection plans required by the PRC. As such, closures connected with the restoration definition must be distinguished as something more or different from temporary, but not necessarily permanent.

Additionally, the statutory definition of restoration only requires the lands be restored to conditions that existed prior to OHV uses. If the trails or roads were used by hikers prior to OHV use, that is the level of restoration authorized. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.61(b) – The comment indicates, “As stated in our May 31, 2006 comments, there is no legal authority to deny non-profits the ability to apply for a restoration grant, and clear authority, as cited in that letter to do so. There is a great need for restoration of OHV-damaged areas on public lands and land managers on both state and federal lands need the help of non-profits to address that need. The obstinacy of the Division in denying non-profits the ability to apply for restoration grants, despite clear legal authority to do so, only reinforces the public perception that the Division is philosophically opposed to spending money on restoration.” – Karen Schambach, Center for Sierra Nevada Conservation

Another comment asks, “Is the prohibition for non-profits applying for restoration grants statutory, or policy? BLM is currently having a difficult time with our national policy on contracting with non-profits, and with a proper agreement in place, would welcome the possibility of Non-Profits directly applying for restoration funding.” – Bureau of Land Management

### ***Department’s Response to Comment***

Restoration and conservation are two separately defined terms in the statute, both in their definitions and in the authority for expending CESA funds. Restoration is the act of restoring lands to conditions prior to OHV use. Conservation are activities to sustain soils and habitat according to standards adopted to prevent erosion. Rules of statutory interpretation require that the words of a statute be given their plain meaning unless otherwise indicated by the statute and that each provision be read in concert with the whole statute.

Had restoration been intended by to be a conservation activity, the Legislature would have included it within the conservation definition. PRC § 5090.35, furthermore, makes the clear distinction between soil conservation standards and restoration when it provides for closure and restoration when it is determined that the soil conservation standards cannot be met through temporary closure and repair.

The Legislature is presumed to be well aware of the words and phrases it uses when establishing statute. In PRC § 5090.50 (f), nonprofit and educational institutions are given authority to perform, among other items, “...natural resource conservation activities, as defined in § 5090.10...” It is, therefore, legally presumed that the Legislature was well aware of the separate definition for restoration and intentionally did not include restoration as an activity permitted by nonprofit or educational institutions.

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and nonprofit organizations is very explicit and leaves no room for interpretation. Restoration is not a defined authorized activity and, thus, is not allowable. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.61(c) – The comment states, “Restoration projects continue to be held to a higher standard of environmental review than any other project, reinforcing our belief that the Division continues its antipathy towards Restoration projects. (1) While we are in support of law enforcement to protect restored areas, no such requirement is made of acquisition, development, or maintenance projects, all of which depend equally on law enforcement to protect resources. (2) The “official documentation” required of restoration projects has no counterpart in other grant categories, and the “official decision to restore the lands or to proceed with the Restoration Project subject only to completion of environmental review required by CEQA or NEPA” is not only awkwardly worded, but redundant, as CEQA compliance is required of all projects under 4970.63. Why are Restoration Projects specifically singled out for law enforcement and environmental review, especially considering the purpose of such projects is the restoration of lands damaged by vehicles to their former condition? – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department’s Response to Comment***

Law enforcement efforts must be addressed to ensure there will be adequate enforcement of the closure for the restoration to be successful. The proposed regulation makes it clear that, before a restoration project may be considered, the applicant must provide documentation concerning the problems that led to the closure and the official decisions made. Official documentation is generally defined as plans, analysis, or other documentation officially prepared and/or used in the ordinary course of the applicant’s administration of its programs. Other project types have other requirements that do not require the same level of diligence. For example, restoration has its own restricted funding category under law and law enforcement on other project types is generally handled by way of the law enforcement category. The Department is therefore taking no action on this comment.

### **4970.63 – SCIENTIFIC RESEARCH PROJECTS**

NOTE: Former Section 4970.63 – SCIENTIFIC RESEARCH PROJECTS has been deleted. Funding for Scientific Research shall now be included within the application for the appropriate project type. Refer to Section 4970.53 – GENERAL APPLICATION REQUIREMENTS for application instructions.

Subsequent sections in this regulation text have been renumbered to maintain the numerical order.

Below are written comments received on Scientific Research and the Department's responses to the comments.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.63(a) – The comment indicates that this subsection does not explain what OHV is impacting. “Perhaps it could read ‘impacts of OHV recreation on the local environment and the impacts of the local environment on OHV recreation.’” – Doug Frazer

### ***Department's Response to Comment***

The “Scientific Research” Project type has been eliminated. Scientific Research activities are to be performed under the project type for which the Scientific Research is applicable (i.e. Conservation, Law Enforcement, Planning). As part of the application process the applicant is required to identify how the specific project relates to OHV Recreation or Opportunity.

### ***Comment***

Subsection 4970.63(c)(3), (4), (5), & (6) – Several comments recommend that these subsections should include existing as well as potential effects; e.g. “Document actual effects and estimate potential effects.....” - CSNC, CWC, CORE, U.S. Forest Service

### ***Department's Response to Comment***

The “Scientific Research” Project type has been eliminated. Scientific Research activities are to be performed under the project type for which the Scientific Research is applicable (i.e. Conservation, Law Enforcement, and Planning). Section 4970.53(h)(8) has been modified to provide for the research project flexibility requested by the comments.

### ***Comment***

Subsection 4970.63(c)(8) – “Documenting lands is not very helpful. Documenting where OHV recreation occurs on land would be better.” – Doug Frazer

Another comment on this subsection recommends that it read as follows: “~~Document lands subject to OHV recreation use through~~ Develop geologic survey and slope maps or topographic maps for areas of OHV recreation.” – CORE

### ***Department's Response to Comment***

The “Scientific Research” Project type has been eliminated. Scientific Research activities are to be performed under the project type for which the Scientific Research is applicable

(i.e. Conservation, Law Enforcement, Planning). Section 4970.53(h)(8) has been revised to provide for the clarification.

## **4970.62 – 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. This section has been amended as described below.

### **Necessity**

The proposed section of the regulations is necessary to clarify the purpose, to identify eligible agencies and organizations, and to provide the application filing requirements for trail maintenance projects in accordance with PRC § 5090.32 and 5090.50.

This section has been renumbered from § 4970.64 to 4970.62 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.62(a) has been amended to provide further clarification regarding the purpose for trail maintenance projects,
- (2) Former subsections 4970.64(c) and (d), which provide specific examples of trail maintenance projects, have been moved from this section to Chapter 1 of the Grants Program Manual to provide more detailed information within the Applications Instructions that will assist potential applicants in determining which activities are eligible for trail maintenance projects,
- (3) Former subsection 4970.64(e), which refers to Chapter 3 of the Manual for a list of eligible and ineligible costs, has been deleted since these listings are now in Chapter 1 of the Grants Program Manual referenced in the following subsection,
- (4) Former subsection 4970.64(f) has been renumbered to 4970.62(c) and has been revised (1) to refer to subsection 4970.53(h) of the General Application Requirements, which provides that applications for trail maintenance projects shall meet all the application filing requirements contained in the Grants Program Manual, and (2) to require one additional project specific document unique to trail maintenance projects. These revisions have been made to further clarify and simplify the application process for trail maintenance projects.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.64(a) – The comment recommends that the word “considerations” be added after the word “safety” in this subsection. – CORE

### ***Department’s Response to Comment***

This section is now 4970.62(a). This section has been revised for clarification.

### ***Comment***

Subsection 4970.64(b) – “The PRC does not prohibit trail maintenance by educational institutions and nonprofit organizations, Section 5090.50(f).” – CORE, CORVA

### ***Department’s Response to Comment***

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and non-profit organizations is explicit and leaves no room for interpretation. Trail maintenance is not a defined authorized activity and, thus, is not allowable. The Department is therefore taking no action on this comment.

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Subsection 4970.62(a) – The comment recommends, “Trail Maintenance should include maintenance of roads and trails to ensure quality user experience and repair of damage caused by wear and tear due to normal use.” – CORE

### ***Department’s Response to Comment***

The commenter’s proposed language would unnecessarily limit the use of this project type. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.62(a) – The comment recommends adding the words “user conflicts” as follows: “... trail maintenance and/or trail reroute where the reroute is necessary due to safety issues and/or **user conflicts and/or** damage caused by natural disaster.” – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

The suggested revision is unnecessary because “user conflicts” would be covered under the current proposed language of “due to safety issues”. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.62(b) – The comment indicates that nonprofit organizations should be eligible to apply for trail maintenance projects. – Ed Waldheim, CORVA”

Another comment recommends that educational institutions and nonprofit organizations be allowed to apply for trail maintenance projects with a written agreement proviso from the land management agency. – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

Statutory authority is necessary for public programs. It must be expressed or sufficiently implicit according to the words of the statute. It is not merely sufficient that an activity is not prohibited. The authority for educational institutions and nonprofit organizations is explicit and leaves no room for interpretation. Trail maintenance is not a defined authorized activity and, thus, is not allowable. The Department is therefore taking no action on this comment.

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

### **4970.63 – 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. This section has been amended as described below.

## **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.

This section has been renumbered from § 4970.65 to § 4970.63 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Subsection 4970.63(b) has been added to provide a two-step approval and implementation process for applications that require project specific environmental analysis (CEQA or NEPA compliance),
- (2) Former subsection 4970.65(b)(1) has been renumbered to 4970.63(c)(1) and has been revised to eliminate the requirement for a separate Environmental Review Data Sheet (ERDS) for restoration projects. This revision was made to simplify the application process,
- (3) Former subsection 4970.65(c) has been renumbered to 4970.63(c)(2) and provides the procedures by which the Division will review applications for environmental compliance,
- (4) Former subsection 4970.65(b)(2) has been renumbered to 4970.63(c)(3) and has been revised (1) to refer to the Appendix of the Grants Program Manual for the ERDS and (2) to clarify that the Commission shall review and approve grant applications for issuance of project agreements,
- (5) Former subsection 4970.65(d) has been renumbered to 4970.63(d) and has been revised to clarify that the Commission shall review and approve cooperative agreement applications for issuance of project agreements.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.65(b)(2)(B)(1) – The comment recommends that this subsection read “may (instead of “will”) have their application returned without further processing.” The comment suggests, “There may be cases when the applicant has a legitimate reason for exceeding the ten-day limit. The Division should not forfeit its discretion to allow additional time in some cases.” – CSNS, CWC

***Department's Response to Comment***

This section is now 4970.63(c)(2)(C). This section has been revised to incorporate the recommendation in this comment.

***Comment***

Subsection 4970.65(b)(2)(B)(2) – The comment recommends the deletion of the last sentence in this subsection because it is duplicative of the first sentence in the next subsection. – CSNC

***Department's Response to Comment***

This section is now 4970.63(c)(2). This section has been revised to incorporate the recommendation in this comment.

***Comment***

Subsection 4970.65(d)(2)(B) – The comment recommends that this subsection read “may (instead of “will”) have their application returned without further processing.” The comment suggests, “There may be cases when the applicant has a legitimate reason for exceeding the tin-day limit. The Division should not forfeit its discretion to allow additional time in some cases.” – CSNS, CWC

***Department's Response to Comment***

This section is now 4970.63(d)(2)(B). This section has been revised to incorporate the recommendation in this comment.

**Public Comments Received During 15-Day Written Comment Period**

***Comment***

Former section 4970.63 - The comment indicates, “I would like to point out that the original intent of the OHV funding was to further enhance the sport of off-road vehicles. I would like to ask that these funds be used only for the enhancement of and furtherance of our sport. Using these funds for scientific research will only result in further trail closures. This is a result of the studies being conducted by groups whose intent is to further restrict off road vehicle use.” – Jeff Sanford

***Department's Response to Comment***

The Scientific Research project type has been eliminated. Scientific research is an eligible activity under the appropriate conservation, law enforcement or planning project. Valid scientific studies related to OHV recreation will help sustain long-term OHV opportunities by providing information to improve program management. Scientific research is specifically

identified in PRC 5090.50(f) as eligible for funding. Changes to statute are beyond the scope of this regulatory process. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.63(b)(1) and (2) – The comment states, “ the sentence should read “project funding” not “full funding” since a project cannot be partially funded without CEQA/NEPA compliance being fulfilled.” It also recommends, “The funds should be released only when the CEQA/NEPA process is completed, not “as conditioned by the outcome of the CEQA/NEPA document”. Delete the phrase “as conditioned by the outcome of the CEQA/NEPA document.”” – CORE

### ***Department’s Response to Comment***

The Division is given full statutory authority for implementation of all aspects of the program (PRC § 5090.32(d)). It must do so in compliance with appropriate law. The proposed regulation the commenter is referring to specifically relates to a multi-phase project where an applicant could receive preliminary funding to perform the necessary “step 1” environmental documentation then receive funding for “step 2” only if the outcome of the environmental documentation supports the completion of the project. If the environmental documentation does not support the completion of the project then no additional funding would be released. The commenter’s proposed language would allow for funding to be released for “step 2” even if the environmental documentation does not provide for the completion of the project.

### ***Comment***

Subsection 4970.63(b)(2) and (c)(3)(B)(2) – The comment indicates that once the CEQA or NEPA activities have been completed, the project agreement should not have to be submitted to the Commission for approval. The comment also states that for those applications that are accepted for further CEQA compliance, the Commission should not have final review of the application and approval of the project agreement. – Ed Waldheim, CORVA

Another comment asks, “Does it get submitted to the Commission or the Division? According to CCR 4970.70, the Commission can only consider Grants requests at ONE meeting a year.” – Bruce Brazil

### ***Department’s Response to Comment***

The California Environmental Quality Act (CEQA) prohibits state and local agencies from funding projects until the CEQA analysis has been completed. PRC § 5090.50(j) requires Commission approval for all grants and cooperative agreements. The Division cannot fund a project unless it has been approved by the Commission. The Commission cannot approve a project until the CEQA analysis has been done.

The subsections mentioned reference two different issues. Section 4970.63(b)(2) is referencing projects which include CEQA or NEPA activities as part of a multi-step project where the project would be scored and full funding for the project will be conditional. Once CEQA or NEPA has been completed and the agency is able to proceed with “step 2” of the project, the Project Agreement will be submitted to the Commission for approval to release the remainder of the funds for completion of the project. Section 4970.63(c)(3)(B)(2) identifies CEQA compliance for those projects in which CEQA or NEPA are not part of a project. The Department is therefore taking no action on this comment.

## **4970.64 – 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. This section has been amended as described below.

### **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.

This section has been renumbered from § 4970.64 to § 4970.66 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

Subsection 4970.64(d) has been added to clarify that when WHPP/HMP implementation is required, the plan must be implemented regardless of whether the grantee received funds specifically for WHPP/HMP implementation.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.66(a) – The comment recommends the deletion of the language “an animal and plant Habitat Management Program (HMP)” in this subsection. The comment indicates, “PRC does not define the WHPP as an HMP.” – CORE

### ***Department’s Response to Comment***

This section is now 4970.64(a). While the commenter is correct that the PRC does not specifically define a WHPP as a HMP, the PRC does not contain a specific definition of WHPP at all. Rather, PRC § 5090.35(g) requires preparation and implementation of a “wildlife habitat protection program” to “sustain a viable species composition.” PRC § 5090.50 and 5090.53 apply this requirement to certain grants and cooperative agreements. Sustaining a viable species composition requires far more than simply taking “protective” measures for wildlife. Furthermore, the Legislative Findings in PRC § 5090.02(a) express concern about impacts on “wildlife habitats, native wildlife, and native flora.” Accordingly, PRC § 5090.10 defines “Conservation” to mean, “activities . . . that sustain soils, plants, wildlife, and their habitat in accordance with the standards adopted pursuant to § 5090.35.” Consistent with the statutory mandate and sound ecological principles, § 4970.64 describes WHPP as a HMP. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.66(c) – The comment indicates that the regulations do not fit some facilities and their operations. For example, installing a small tool or equipment shed in a fairly developed park area would still require a WHPP. – David Pierce, County of Santa Clara Parks and Recreation Department

### ***Department’s Response to Comment***

This section is now 4970.64(c). The small shed would likely be a development project, and PRC subsections 5090.50(b)(1) and (2) require WHPPs and soils surveys and wildlife and soils monitoring in the project area for development projects. Accordingly the regulations require that all development project applications include a WHPP and documentation showing that the Project meets the Soil Conservation Standards. It is worth noting that although required, both such documents for the example given in the comment would likely be fairly simple. Both focus on the project area. “Project Area” means the physical boundaries within which the activities will be performed and Deliverables will be accomplished as described in the Project Agreement. (see CCR § 4970.50(tt)). The project area for construction of a tool shed would be small, thus requiring little soils mapping and likely affecting few, if any, special-status species. The Department is therefore taking no action on this comment.

**Comment**

Subsection 4970.66(c), (d), (f)(1) & (2) – The comment recommends the deletion of “/HMP” in all these subsections. The comment indicates, “PRC does not define the WHPP as an HMP.” – CORE

**Department’s Response to Comment**

See the above response to the CORE comment about 4970.66(a) defining WHPP as a HMP. The Department is therefore taking no action on this comment.

**Comment**

Subsections 4970.66(d)(1) and 4970.66(d)(2) – The comment recommends that these subsections read as follows:

4970.66(d)(1) “Species or habitats of concern in the proposed project area ~~related to OHV recreation.~~”

4970.66(d)(2) “Risk factors for the species ~~associated with OHV recreation.~~” – CORE

**Department’s Response to Comment**

This section is now 4970.64. Subsections 4970.64(b) and (c) already define the area of WHPP/HMP coverage to be “the project area.” The addition of “in the proposed project area” is thus unnecessary. The WHPP/HMP is also not limited to species, but may include sensitive habitats. The addition of “for the species” is thus not appropriate. Furthermore, WHPP/HMP, OHV Form F, found in the Appendix, gives very specific instructions as to WHPP/HMP content. The additional language proposed for § 4970.64(d)(2) is not necessary. Regarding the requirement of an OHV recreation nexus, the entire focus of grants and cooperative agreements is on activities associated with OHVs (see, e.g., PRC § 5090.50(c)). Subsections 4970.64(e)(1) and (2) thus appropriately focus the WHPP/HMP on species, habitats, and risk factors related to OHV recreation. The Department does not adopt the proposed edits and is therefore taking no action on this comment.

**Comment**

Subsection 4970.66(f)(3) - The comment recommends that this subsection read “may (instead of “will”) have their application returned without further processing.” The comment suggests, “There may be cases when the applicant has a legitimate reason for exceeding the tin-day [sic] limit. The Division should not forfeit its discretion to allow additional time in some cases.” – CSNS, CWC

**Department’s Response to Comment**

This section is now 4970.64(f)(3). The WHPP/HMP is part of the application itself, and as such it must be complete upon submittal. Any needed clarification should thus be minor in

scope. The Department has determined that it is thus reasonable and necessary for applicants to respond to requests for clarification within 10 days.

### **Public Comments Received During 15-Day Written Comment Period**

#### ***Comment***

Subsection 4970.64(a) – The comment states, “PRC does not define WHPP as an HMP” – CORE

#### ***Department’s Response to Comment***

While the commenter is correct that the PRC does not specifically define a WHPP as a HMP, the PRC does not contain a specific definition of WHPP at all. Rather, PRC § 5090.35(g) requires preparation and implementation of a “wildlife habitat protection program” to “sustain a viable species composition.” PRC § 5090.50 and 5090.53 apply this requirement to certain grants and cooperative agreements. The Division and indeed numerous stakeholders have long recognized that sustaining a viable species composition requires far more than simply taking “protective” measures for wildlife. Furthermore, the Legislative Findings in PRC § 5090.02(a) express concern about impacts on “wildlife habitats, native wildlife, and native flora.” Accordingly, PRC § 5090.10 defines “Conservation” to mean, “activities . . . that sustain soils, plants, wildlife, and their habitat in accordance with the standards adopted pursuant to § 5090.35.” Consistent with the statutory mandate and sound ecological principles, § 4970.66 describes WHPP as a HMP. It is the Division’s goal for a future statutory revision to add “Habitat Management Program” in the place of “wildlife habitat protection program” to better reflect the comprehensive approach being implemented. The Department is therefore taking no action on this comment.

#### ***Comment***

Subsection 4970.64(b) – the comment recommends that OHV Safety/Education grant projects be added to the exception list as well as Law Enforcement projects. “Most safety/ed programs are focused “off forest” on education.” – Karen McKinley, Los Padres National Forest

#### ***Department’s Response to Comment***

The WHPP/HMP, OHV Form F, Part 1, found in the Appendix allows for the situation described by the commenter. If the proposed OHV Safety and/or Education project has no species or habitats of concern or risk factors associated with OHV recreation the applicant simply has to check two boxes and sign. No further WHPP/HMP documentation is required. The Department is therefore taking no action on this comment.

### **Comment**

Subsection 4970.64(e)(1) and (2) – “The WHPP must include all species and habitats affected by the project in its totality, not just the OHV Recreation component. Activities incidental to OHV recreation such as fishing and hunting have an impact on species, therefore narrowing the focus of WHPP to OHV Recreation is not appropriate. See discussion of OHV Recreation in Definitions.” – CORE

### **Department’s Response to Comment**

The proposed change would significantly and unnecessarily broaden the area to be included in WHPP/HMP, putting an additional burden on applicants and program funds. The project area, as referenced in PRC § 5090.53, is the area for which funding is being provided. Management or regulation of other activities, such as hunting and fishing, are not within the jurisdiction of the OHMVR Program of the Department. The Department is therefore taking no action on this comment.

## **4970.65 – 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 updated soil conservation standards. This section has been amended as described below.

### **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).

This section has been renumbered from § 4970.67 to § 4970.65 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

(1) The language in subsections 4970.65(a) and (b) has been revised for clarification,

- (2) Former subsection 4970.67(c) has been deleted because it is redundant with subsection (a).
- (3) Former subsection 4970.67(d) has been renumbered to 4970.65(c) and has been revised (1) to provide that the soil conservation program shall comply with the Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (11/14/91) until replaced by any subsequent soil conservation standards, and (2) includes a list of components that the soil conservation program shall include, as applicable.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.67(b) – The comment indicates that the regulations do not fit some facilities and their operations. For example, installing a small tool or equipment shed in a fairly developed park area would still require a soil conservation plan. – David Pierce, County of Santa Clara Parks and Recreation Department

### ***Department's Response to Comment***

This section is now 4970.65(b). As discussed in the response to David Pierce, County of Santa Clara Parks and Recreation Department, regarding subsection 4970.66(c), the small shed would likely be a development project, and PRC subsections 5090.50(b)(1) and (2) require WHPPs and soils surveys and wildlife and soils monitoring in the project area for development projects. Accordingly the regulations require all development project applications include documentation showing that the project meets the Soil Conservation Standards as listed in the instructions for the Soil Condition Table, OHV Form G, found in the Appendix. The table reports on trails that would be within the applicable proposed project areas. The project area, for the example given in the comment would presumably be very small, thus requiring little soils mapping. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.67(b) – “This wording is awkward; a program is not ‘met.’ We suggest the following language: “...shall submit evidence that the project meets the Soil Conservation Standards required by PRC Section 5090.53(b).” – CSNC, CWC

### ***Department's Response to Comment***

This section is now 4970.65(b). This section has been revised to incorporate the recommendation in this comment.

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Subsection 4970.65(a) – The comment asks about the status of the new soil conservation standards. – Ed Waldheim, CORVA

### ***Department's Response to Comment***

This section applies to whatever Soil Conservation Standards have been established pursuant to PRC § 5090.35(b). When the Soil Conservation Standards change, the new standards will apply. The Department is therefore taking no action on this comment.

## **4970.66 – 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. This section has been amended as described below.

### **Necessity**

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

This section has been renumbered from § 4970.68 to § 4970.66 to maintain the numerical order.

Based on experience with the program during the 2006/2007 grant cycle, this section has been revised as follows:

Subsections 4970.66(d) and (e) have been revised to be consistent with the elimination of the equipment and scientific research project types.

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Subsection 4970.66(a) – The comment indicates that the 25% match requirement is too high and it should be comparable to the RTP match. – Ed Waldheim, CORVA

***Department's Response to Comment***

The Recreational Trails Program (RTP) is a federal program administered by the Department. PRC § 5090.51(a) requires a 25% match for OHMVR grants. Regulations can not be used to contradict statute. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.66(d)(9) – The comment states that there should be no match requirement for trail maintenance projects. – Ed Waldheim, CORVA

***Department's Response to Comment***

PRC § 5090.51(a) requires a 25% match for OHMVR grants. Regulations cannot be used to contradict statute. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.66(e)(2) – The comment recommends that this subsection be deleted. “In the interest of providing education and safety programs (the first line of defense against irresponsible riding and collateral effects), fund these endeavors in their entirety without a match. – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

PRC § 5090.51(a) requires a 25% match for OHMVR grants for OHV safety and/or education program projects. Regulations cannot be used to contradict statute. The Department is therefore taking no action on this comment.

**ARTICLE 4 – APPLICATION EVALUATION AND APPROVAL OF PROJECT AGREEMENTS**

**4970.67 – 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. This section has been amended as described below.

## **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.

This section has been renumbered from § 4970.69 to § 4970.67 to maintain the numerical order.

Based on experience with the program during the 2006/2007 grant cycle, this section has been revised as follows:

The former section has been deleted and §4970.67now provides that applications that meet the submission requirements will be evaluated, scored, and awarded on a competitive basis in accordance with Chapter 2 of the Grants Program Manual and the Appendix. All the detailed information regarding the application evaluation system and the relevant application forms are now provided in the Grants Program Manual to simplify the application process.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.69(b) and (d) – Several comments indicate that there is a fundamental question of who approves grants at issue here. The comments indicate the Commission determines funding allocations per the PRC and applicants should be allowed the benefit of the Division’s input regarding deficiencies that the Division found in the applications determined to be incomplete. The comments suggest that applicants who have their applications returned as incomplete be provided with the right to appeal directly to the Commission. The comments also indicate that the Division makes funding recommendations, not funding determinations. – CORE, CSNC, CWC, Doug Frazer

### ***Department’s Response to Comment***

To address these comments while minimizing delays, an appeal process has been added in § 4970.53(g).

The Division is given full statutory authority for implementation of all aspects of the program (PRC § 5090.32 (d)). It must do so in compliance with appropriate law and statute. Competitive requirements include the development of consistent standards and rules. Failure of an applicant to comply with the rules, when it gives the applicant an advantage over other applicants, is not legally appropriate. Thus, it is well within the Division’s authority to establish the rule that incomplete applications must be returned to the applicant without further processing.

The grant procedures do provide for Commission action with regard to those areas where discretion is necessary, that of evaluating the applications. The evaluation process requires that all applications that have been evaluated be available for review and that the evaluation panel's scores and factual findings on which the scores are based be available for review. Thus, the process does inherently include close scrutiny of the evaluation process by both the public and the Commission. Additionally, as part of this scrutiny, the Commission, in considering the applications for approval, may revise the scores given by the evaluation panel in light of information contained in the applications and the evaluation criteria.

Use of the word "determination" more closely conforms to the requirements of the evaluation process that determines the scores and funding levels in accordance with a defined process. The Division is merely reporting the results of the process as opposed to making a recommendation. The Department is therefore taking no action on this comment.

### **Public Comments Received During 15-Day Written Comment Period**

#### ***Comment***

Subsection 4970.67(a) – The comment states, "Include the timeframe when applications will be scored (e.g. within 30 days of submittal)." – Elizabeth Norton, Lassen National Forest

#### ***Department's Response to Comment***

The grants cycle is described in Chapter 1, Section 1.2.1 of the Grants Program Manual. The timeframe for scoring is dependant on the scheduling of Commission meetings and as such a more specific timeframe is not possible. The Department is therefore taking no action on this comment.

### **4970.68 – COMMISSION 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. This section has been amended as described below.

## **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 to post the Commission's project list on the Division Website in accordance with PRC § 5090.32.

This section has been renumbered from § 4970.70 to § 4970.68 to maintain the numerical order.

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

- (1) Former subsection 4970.70(b) has been deleted since this provision is now addressed in subsection 4970.67(a).
- (2) Former subsection 4970.70(c) has been renumbered to 4970.68(b) and has been revised to provide further clarification.
- (3) Former subsection 4970.70(d) has been renumbered to 4970.68(c) and has been revised to provide that the Commission shall review applications and approve the issuance of project agreements and that the review will be conducted in accordance with these regulations. This section has been revised to clarify the Commission's responsibility in the application approval process.
- (4) Former subsection 4970.70(e) has been renumbered to 4970.68(d) and has been revised to provide that the Division shall post the Commission's approved project list on the Division website. This section has been revised to simplify the notification process for the Commission's approval of applications.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4970.70(b) – The comment recommends that the language “or will be annotated with a list of deficiencies” be added at the end of this subsection. – CORE

### ***Department's Response to Comment***

An appeal process for applications found to be incomplete has been added in 4970.53(g). This includes notifying the applicant of any deficiencies. Any applications that are found incomplete and are unsuccessful with the appeal are ineligible for funding.

### ***Comment***

Subsection 4970.70(c) – The comment recommends that the word “determinations” (in the last line) be deleted and replaced by “recommendations.” The comment indicates, “The Commission determines funding allocations per the PRC.” – CORE

### ***Department’s Response to Comment***

This section is now 4970.68(c). Use of the word “determination” more closely conforms to the requirements of the evaluation process that determines the scores and funding levels in accordance with a defined process. The Division is merely reporting the results of the process as opposed to making a recommendation. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.70(d) - The comment recommends that the language (in the second to last sentence) “or testimony relating to scoring criteria” be deleted from this subsection. The comment indicates, “Any relevant public input must be accepted by the Commission, there is no reason to single out the scoring criteria for public testimony to be considered by the Commission.” – CORE

### ***Department’s Response to Comment***

This section is now 4970.68(c). This section has been revised to allow for the Commission to make revisions to Division findings based on public comments regarding the information submitted in the original applications.

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Subsection 4970.68(b) and (c) - the comment recommends that the designation of a subcommittee be mandatory instead of permissive. It also expresses concern about the Commission being able to make revisions based on these regulations. – Ed Waldheim, CORVA

Another comment asks “Can ADDITIONAL information be presented by way of public comment or is the public limited to commenting just on the information submitted?” – Bruce Brazil

### ***Department’s Response to Comment***

Pursuant to California Government Code (CGC) § 11125(a), the Commission meeting agenda, including any consent calendar items, must be posted ten days in advance. CGC §

11125.7(a) requires that the Commission provide the opportunity for public comment on each agenda item. These protections provide the public with adequate notice and opportunity to request an item be removed from consent. Subcommittee meetings slow the process by delaying the execution of the project agreements to the grantees. The Chair of the Commission has the discretion to appoint subcommittees.

In response to the last comment, this section limits what the Commission may consider in scoring projects. It does not limit public comment. The Commission is limited in what it may consider to avoid tainting the competitive process. By this requirement, the Commission may only consider public comments that pertain to the information as submitted in the applications, even though members of the public may make any comments they may wish to make. The Department is therefore taking no action on this comment.

### **Comment**

Subsection 4970.68(a) – The comment states, “... the grant money should be more fairly distributed among those applicants who qualify for the money. The OHMVR Division spends many hours screening these applications to be sure the requests for money are legitimate and planned for a good and valid reason. After this process is complete, the seven-member OHMVR Commission can remove or alter any grant request that they choose with little or no reason, thus making the competitive bidding process unequal. This opens the door to a commissioner’s special interest or his prejudice against a grant request. Any individual can challenge the OHMVR Divisions review and without research or proof of accuracy of the individual’s claim, the commissioners can arbitrarily change the percent of allocation to the grant. I heard numerous complaints about this procedure. Even the commissioners said this process has many flaws.” –Narvell Conner

Another comment indicates that “The Division’s commitment to a competitive grant application and evaluation process comes through loud and clear in these regulations; and this commitment is further strengthened by the detailed set of scoring criteria set forth in Appendix K. Unfortunately, however, the regulations impose no duty on the Commission to subscribe to these same ideals. Over the last two or three grant cycles, we have watched the Commission not only ignore the Division’s scoring and funding recommendations but disregard the entire competitive grant application policy. The Commission arbitrarily re-benchmarks scores, without resort to data or the evaluative criteria, simply to ensure that grant project’s it favors are funded before (and often instead of) grant projects it dislikes. The regulations should be drafted to require that the Commission, not just the Division, follow the established evaluative criteria and scoring rubric. No one is demanding that the Commission slavishly follow the recommendations of the Division; but when it deviates from those recommendations, the Commission should at least demonstrate that the decision is based on the same evaluative criteria used by Division. – David P. Hubbard, Esq. (EcoLogic Partners, Inc.)

### ***Department's Response to Comment***

This issue was addressed in § 4970.68(c) which allows the Commission to adjust scores in accordance with the regulations based on information submitted in the original application or public comments based on information submitted in the original application. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.68(c) – The comment states, “Public comments relating to the project, its impacts, benefits, viability and other factors, even if omitted from the application and not addressed by the evaluation criteria may be considered by the Commission in review of the proposed projects. This is necessary to allow for meaningful public input that is not constrained by the failure of the application to provide relevant information that may affect the public.” – CORE

### ***Department's Response to Comment***

This section limits what the Commission may consider in scoring projects. It does not limit public comment. The Commission is limited in what it may consider to avoid tainting the competitive process. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.68(c) - “The regulations as proposed do not allow the Commission to review applications that have been deemed incomplete by the Division. The Commission determines funding allocations according the PRC. Applicants should be allowed the benefit of Division’s input regarding deficiencies that the Division found in the application.” – CORE

### ***Department's Response to Comment***

The Division is given responsibility for implementation of all aspects of the program in PRC § 5090.32(d). The appeal process applies after the Division has found the application as being incomplete or otherwise not in compliance and therefore unable to be funded. The appeal process is an opportunity for applicants to show the Division how the application is in compliance. Applications that are not in compliance may not be funded, regardless of merit. Once an application has been found complete and in compliance, the project is scored by the Division. The Commission review is the equivalent of an appeal process. The Department is therefore taking no action on this comment.

### ***Comment***

Subsection 4970.68(c) – “Include the timeframe when the Commission will review applications and approve funds (e.g. within 90 days of application submittal). Right now the evaluation process is open ended with uncertainty when applicants can expect

considerations of their proposals. If applicants have to meet a specific due date, I recommend due dates also apply to the Division’s review and Commission’s approval process.” – Elizabeth Norton, Lassen National Forest

***Department’s Response to Comment***

The grants cycle is described in Chapter 1, Section 1.2.1 of the Grants Program Manual. The timeframe for Commission evaluation is dependant on the scheduling of Commission meetings and as such a more specific timeframe is not possible. The Department is therefore taking no action on this comment.

**ARTICLE 5 – PROJECT ADMINISTRATION PROCEDURES**

**4970.69 – PROJECT AGREEMENTS**

**Specific Purpose**

This new section has been added to identify the Division’s responsibility to prepare and execute Project Agreements to implement projects approved by the Commission.

**Necessity**

The proposed section of the regulations is necessary to clarify the Division’s administrative responsibilities in implementing projects approved by the Commission in accordance with PRC § 5090.32and 5090.61.

**Public Comments Received During 15- Day Written Comment Period**

***Comment***

Subsection 4970.69(a) – “Include the timeframe when the Division will execute Project Agreements (e.g. within 30 days of Commission approval of funds). In the past, the execution of Agreements has taken so long that some grantees have to delay projects and services to the public.” – Elizabeth Norton, Lassen National Forest

***Department’s Response to Comment***

Executing project agreements is a complicated process involving entities, which are outside the control of the Division (i.e., applicant, State Controllers Office). In many cases the Project Agreement process has been delayed due to legal actions on part of various stakeholder groups. As such it is not possible to regulate the timeframe for the Division to execute project agreements. The Department is therefore taking no action on this comment.

## **4970.70 – PROJECT ADMINISTRATION**

### **Specific Purpose**

This new section has been added to identify the project administration responsibilities of the Division and the grantees as set forth in Chapter 3 of the Grants Program Manual. It also discusses the grantees' requirement to maintain financial accounts, documents, and records for all projects and to make them available to the Department's auditor.

### **Necessity**

The proposed section of the regulations is necessary to clarify the project administration responsibilities of the Division and grantees in accordance with PRC § 5090.32 and 5090.50.

## **4970.71 – 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. This section has been amended as described below.

### **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).

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

Former § 4970.72 has been renumbered to § 4970.71 has been revised to clarify the purpose and nature of performance reviews, the responsibility of grantees regarding site visits conducted by Division staff, the Division staff's responsibility to develop a report regarding site visits conducted, and the grantees' requirement to respond to the report.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Subsection 4070.72(a) – The comment recommends that the first sentence in this subsection read as follow, "The Division ~~may~~ shall conduct annual performance reviews of the grantee's project(s)...." The comment indicates, " Annual audit is required by PRC 5090.32(l). The use of 'may' is permissive." – CORE

### ***Department's Response to Comment***

This section is now 4970.71(a). The PRC requires an annual audit of grants and cooperative agreements. An audit examines the fiscal aspects with regard to the expenditures of the grant while a Division staff performance review formally examines the financial and other documentation required to be submitted by grantees to verify that the grantee is expending the grant funds so as to perform or achieve the outcome intended by the grant(s). Performance reviews take place either during the project performance period or after completion. Audits are conducted by auditors independent from the Division staff following completion of the project. The Department is therefore taking no action on this comment.

## **Public Comments Received During 15-Day Written Comment Period**

### ***Comment***

Subsection 4970.71 - The comment recommends, "At the end of each contract period, at a minimum, a self-evaluation must be required of the grantees to ensure the program is functioning as intended." – CORE

### ***Department's Response to Comment***

Chapter 3, Section 3.8, requires grantees to submit a report on the deliverables accomplished through the project. Grant administrators conduct ongoing performance reviews during and at the end of the project. The audit conducted after the close of the project confirms that deliverables were achieved. The Department is therefore taking no action on this comment.

## **4970.72 – 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. This section has been amended as described below.

### **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).

Based on public comments received and experience with the program during the 2006/2007 grants cycle, this section has been revised as follows:

Former § 4970.71 has been renumbered to § 4970.72 and has been revised to clarify the responsibility of the Department's Audit Office staff to audit projects to ensure compliance with the provisions of the Public Resources Code and the project agreement. It provides for the grantees' requirement and the timeframe to maintain all records pertinent to project agreements. It discusses the Department's responsibility to furnish an audit report to the grantee and the grantee's requirement to refund overpayments resulting from audit exceptions. It also provides that a grantee may request in writing a review of an audit report and discusses the Division's responsibility to respond to the request. The section also provides for the timeframe in which a grantee must remit any payments due and discusses the consequences of grantees' failure to remit payments within the allowable timeframe.

### **Public Comments Received During 15-Day Written Comment Period**

#### ***Comment***

Subsection 4970.72 - "Annual audit is required by PRC 5090.32(1). The use of "may" is permissive." – CORE

#### ***Department's Response to Comment***

The only use of the word "may" in this section is relative to the grantee requesting a review of the audit report. Since this is at the grantee's option and is not required by statute, requiring it would be an unnecessary burden on grantees. The Department is therefore taking no action on this comment.

### **DOCUMENTS INCORPORATED BY REFERENCE**

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

Based on the public comments received on the regulations proposed in April 2006 and the experience with the program during the 2006/2007 grants cycle, the Grants Program

Manual, formerly known as the OHMVR Division Manual, has been revised, reorganized, and clarified.

The Grants Program Manual is comprised of three chapters, a glossary of terms, and an appendix:

**Chapter 1** – The Application Instructions contain the directions 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 regulations and the responsibility of the Division to provide final administrative interpretation of any provisions in the regulations or the Grants Program Manual. The chapter also discusses the grants cycle and the application filing requirements, which include filing requirement assistance, determination of applicant and project eligibility, required baseline documents and information, a list of eligible and ineligible project costs, and specific project types and requirements. An application checklist is included and specific application requirements for each project type are provided. Also included are the requirements, when applicable, for environmental documentation, wildlife habitat protection programs/habitat management programs, soil conservation programs, the public review process, and a governing body resolution.

### **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

#### ***Comment***

Page 8 of 76 – Application Filing Requirements – “OHMVR should accept postmarks or overnight courier (UPS, FEDEX, DHL) verification for grant application deadlines. It’s much easier for the grant applicant to get the application to the local post office or courier than to Sacramento by a time certain, given you are accepting applications from all over the State and the grant application is extremely complex. NO other grant application we have ever prepared has a time certain deadline. They have always been postmark deadlines.” – David Pierce, County of Santa Clara Parks and Recreation Department

#### ***Department’s Response to Comment***

In order to avoid delays in the application process, the Department feels that postmarks are not adequate in assuring that applications arrive in a timely manner. Waiting for late arrivals could delay the process. The Department hopes to be able to provide applicants with an online application process in the future, which would eliminate this issue. The Department is therefore taking no action on this comment.

#### ***Comment***

Page 13 of 76 – Application Summary Sheet, Item G – The comment asks why administrative costs may be included. – CORVA

***Department's Response to Comment***

Administrative costs are limited in CCR § 4970.53(e)(6) to 10% of the total project amount requested per direction of the OHMVR Commission. Administrative costs must now be identified in the Project Costs/Deliverables page and must be documented the same as any other expense (Grants Program Manual, Chapter 3, section 3.7). The Department is therefore taking no action on this comment.

***Comment***

Page 32 of 76 – Equipment Projects, first paragraph – The comment asks why equipment rentals are not included. – CORVA

***Department's Response to Comment***

The equipment project type has been eliminated. Equipment purchase, rental, lease and maintenance is now included in the appropriate project type.

***Comment***

Page 50 of 76 – Restoration Environmental Review Data Sheet (OHV Form K) – The comment states that the purpose of the Restoration ERDS is unclear and should be explained. A subsequent comment questions the need for the information requested under Item 3 Monitoring and Maintenance and questions the statutory authority for requesting this information. — CSNC, CWC

***Department's Response to Comment***

The Restoration Environmental Review Data Sheet (ERDS) has been eliminated. Restoration project applicants now complete the same ERDS as other applicants, OHV Form L, found in the Appendix. The purpose of the ERDS is for the Department to meet its legal responsibility to assure that appropriate CEQA requirements have been met prior to funding a project.

***Comment***

Page 51 of 76 – Restoration Environmental Data Sheet, Specific Adverse Environmental Effects, Item B. Cumulative effects – The comment asks what the statutory authority is for asking the question: Will trail closure and/or restoration affect other trails in the area such that they will become damaged or cause more user conflicts? “When a restoration project is proposed, a decision to close a road, trail or area has already been made. The wording of the question, in itself, clearly shows a strong bias against restoration. Item B must be deleted.” – CSNC, CWC

### ***Department's Response to Comment***

As noted above, the Restoration Environmental Review Data Sheet (ERDS) has been eliminated. Restoration project applicants now complete the same ERDS as other applicants, OHV Form L, found in the Appendix. OHV Form L does include questions regarding cumulative impacts (Item 4) and indirect impacts (Item 9). As noted in Chapter 1, Section 1.4 Environmental Documentation, the OHMVR Division is required to comply with the California Environmental Quality Act (CEQA) (PRC Section 21000 et seq.) before the approval of all grants and cooperative agreements. While the applicant may have already decided to close an area and is thus seeking funding for the project, the Division must ensure CEQA review of the grant-funded project. Where an NOD has not been filed, the Division must determine whether the project is Categorical Exempt or requires further CEQA review. The questions reflect the Division's due diligence in complying with CEQA and ensuring review of the entire action, including cumulative and indirect impacts.

The specific statutory authority for asking a question related to cumulative effects is from the CEQA Guidelines, §Section 15300.2 (b), Cumulative Impact and 15300.2 (c), Significant Effect. The Department recognizes that several of the questions under the old Item B were relevant to indirect impacts, rather than cumulative impacts. OHV Form L has been revised accordingly.

### ***Comment***

Page 64 of 76 – Soil Conservation Program – The comment asks, “How will it be determined if/when promised maintenance has been accomplished?” – CSNC, CWC

### ***Department's Response to Comment***

Grantees must monitor the condition of soils in each project area yearly (PRC § 5090.53(b)(2)) to determine whether the soil loss standards are being met. Grantees report the results of this monitoring on the Soils Condition Table, OHV Form G, found in the Appendix. Each year, applicants (other than Law Enforcement) are required to update this table to demonstrate to the Division their trails are adequately maintained and/or repaired. Performance reviews, which may include site visits by Division personnel, can also verify if and when maintenance was completed. The requirements for submitting a Soils Conservation Program have been updated and clarified in the Grants Program Manual to include a specific section on actions taken during the year to correct prior year deficiencies.

### ***Comment***

Page 67 of 76 – Project Activity Report (PAR) – “We do not see a need for the PAR any longer based on the way that the evaluation criteria is now being used. And if there is going to be a PAR included, we would like to have instructions to fill out the PAR. Page 73 of 76 contains definitions, but there are no step-by-step instructions on how to address items within the PAR and how to properly full that out.” – U.S. Forest Service

***Department's Response to Comment***

The PAR form has been eliminated.

***Comment***

Page 67 of 76 – Project Activity Report (PAR) – The comment indicates, “Item 4 is very confusing. The comment recommends that item 4 should ask for total miles available for recreation, and then break it down as follows: total miles for 4x4's, level two roads, single track. The types of trails should then be broken down as follows: 4x4 non-license requirement, 4x4 street legal only, green sticker vehicles (quad and bikes), green sticker vehicles (single track trails, motorcycle only) – CORVA

***Department's Response to Comment***

The PAR form has been eliminated.

***Comment***

Page 68 of 76 – Project Activity Report (PAR) – The comment indicates that the PAR does not require reporting on the number of trails that were maintained. The comment recommends that the PAR include a complete section for Operation and Maintenance. – CORVA

***Department's Response to Comment***

The PAR form has been eliminated.

***Comment***

Page 69 of 76 – Project Activity Report (PAR) – The comment recommends that the PAR require the number of hours of volunteer work in the field. – CORVA

***Department's Response to Comment***

The PAR form has been eliminated. Volunteer hours are reported in the Project/Costs Deliverables, OHV Form J and are used in the Evaluation Criteria, OHV Form K, found in the Appendix.

***Comment***

Page 72 of 76 – Law Enforcement Contacts – “This sheet should include ‘Riding in an unauthorized or closed area.’ ‘Other’ should be broken out more. It is not useful to lump ‘alcohol-related contacts’ with ‘no whip/flag’ or ‘unsafe speed.’ There could be an equipment-related category to cover no whip or helmet or other required gear.” – CSNC, CWC

### ***Department's Response to Comment***

The PAR form has been eliminated.

### **Public Comments Received During 15-Day Written Comment Period**

#### ***Comment***

Page 3 of 35 – Off-Highway Motor Vehicle Recreation Grants and Cooperative Agreements Program Cycle – The comment cites the language in the second paragraph, “The evaluation process will be conducted by an "Evaluation Panel consisting of not less than three (3) Division staff members.” The comment further states, “ This is a change from the 5 person panel in the 2006 Regs. Neither year mentioned any qualifications for panel members. While the decrease from 5 to 3 members may not be too important, we feel that it is important for the panel to include expertise in specific subject matters for proper Quality Control of grant application evaluation. Law Enforcement, Biology, Soil science, and Cultural Resources requirements should be evaluated by a qualified panel.” – Bureau of Land Management

Another comment recommends adding the word “qualified” after “three (3)” and before “Division staff members.” The comment explains that “qualified” means with appropriate professional experience relative to the project type being evaluated. – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

The addition of the proposed language could unnecessarily, tend to limit the ability to select panel members. Panel members will be selected from staff having responsibility for and knowledge of the programs that will be evaluated. If additional specific expertise is needed on a subject area due to the breadth of the OHV program areas, the panel members will have access to other staff or consultants who can provide the panel member with further expertise. Also, the Evaluation Criteria in OHV Form K are now more objective. The more specific scoring criteria provide details on how a project is scored. Section 4970.53(h) requires that projects be described clearly in the application. These improvements enable more objective evaluation based on the factual information provided in the application rather than the application requiring extensive interpretation based on expert knowledge in a given subject area. The Department is therefore taking no action on this comment.

#### ***Comment***

Page 3 of 35 – Off-Highway Motor Vehicle Recreation Grants and Cooperative Agreements Program Cycle - “The Evaluation Panel must be required to evaluate, score and rank each project independently of the other panel members.

CORE notes that the correlations between scores at 2006 grant cycle, indicate close cooperation between evaluators, introducing peer-generated bias into the scoring process. This must be avoided.” – CORE

### ***Department's Response to Comment***

We are unclear what correlations are referred to since individual scores were not generated in the 2006 grant cycle. Scoring was done by consensus to prevent any one evaluator from skewing the results based on personal bias. The process suggested would create an opportunity for bias to enter into the evaluation process. Based on comments received, the evaluation criteria in OHV Form K found in the Appendix are now more objective with more detailed scoring.

### ***Comment***

Page 3 of 35 – Off-Highway Motor Vehicle Recreation Grants and Cooperative Agreements Program Cycle - The comment indicates, “The date of meetings and process has to be tightened up...” “The fiscal year for the State of California is July 1 to June 30. Currently the Commission had hearing on grants in January for money that was already appropriated 6 months before in the State Budget.....” “It is conceivable that this year’s grants will not even be distributed when the fiscal year comes to an end.” – Ed Waldheim, CORVA

### ***Department's Response to Comment***

The timetable reflects the time to process applications, including completeness and compliance checks, scoring, and publishing applications and results. It also reflects the notice requirements for the Commission or Subcommittee meetings and the completion of this permanent regulation adoption procedure. The Department hopes to be able to adjust the timetable in the future to be able to allocate funds earlier in the year. The Department is therefore taking no action on this comment.

### ***Comment***

Page 4 of 35 – Grants Cycle – “The Activity table states applications are due the first Monday of August. If applications are for project work which federal applicants would like to implement at the beginning for their fiscal year (October 1), then the August date does not allow enough time for Agreements to be executed. In the past, this process has taken up to six months.” The comment suggests an application due date of the first Monday in April. The comment also requests that the timeframe for each step in the activity table be provided. – Elizabeth Norton, Lassen National Forest

### ***Department's Response to Comment***

The Department must balance the desire to get funds out as early as possible with the need to provide adequate time for each step in the process. The application period cannot begin until the Division is ready to conduct the applicant workshops. The content of the workshops depends upon the text of the final approved permanent regulations. The workshops cannot be conducted until after the permanent regulations are adopted. The timetable reflects the time to process applications, including completeness and compliance checks, scoring, and

publishing applications and results. It also reflects the notice requirements for the Commission or Subcommittee meetings and the completion of this permanent regulation adoption procedure.

After these permanent regulations are adopted, the Department will work to adjust the timeline to allocate the funds earlier while allowing for a longer application period. However, the Department is also limited by the State Budget approval process and cannot allocate funds until the State Budget is approved. The Department is therefore taking no action on this comment.

***Comment***

Page 4 of 35 – Grants Cycle – The comment recommends that postmarks be allowed. – Karen McKinley, Los Padres National Forest

***Department’s Response to Comment***

In order to avoid delays in the application process, the Department feels that postmarks are not adequate in assuring that applications arrive in a timely manner. Waiting for late arrivals could delay the process. The Department hopes to be able to provide applicants with an online application process in the future which would eliminate this issue. The Department is therefore taking no action on this comment.

***Comment***

Page 4 of 35 – Grants Cycle - “The regulations propose the Division posting the Application materials at least sixty (60) calendar days before the application filing date. This does not provide sufficient time for applicants to prepare a proper application package, because:

1. The level of detail and amount of information required in the OHMVR application responses puts a tremendous burden on the applicant to provide voluminous data to substantiate the answers. In order to adequately respond to application questions, the applicant is forced to conduct a great deal of research.
2. CEQA and other extensive environmental studies required by the application may often take much longer than 60 days to prepare, complete and formally adopt.
3. Obtaining required resolutions from governing bodies often takes longer than 60 days.” – Santa Clara County Parks and Recreation Department

***Department’s Response to Comment***

The Department must balance the desire to get funds out as early as possible with the need to provide adequate time for each step in the process. The application period cannot begin until the Division is ready to conduct the applicant workshops. The content of the workshops depends upon the text of the final approved permanent regulations. The workshops cannot be conducted until after the permanent regulations are adopted. The timetable reflects the time to process applications, including completeness and compliance checks, scoring, and

publishing applications and results. It also reflects the notice requirements for the Commission or Subcommittee meetings and the completion of this permanent regulation adoption procedure. The Department is therefore taking no action on this comment.

***Comment***

Page 4 of 35 – Grants Cycle – “If only 60 days are allowed from the time the Division releases the grant application package, the Grants Program Workshop should be offered before that 60-day period, not during the period since items learned at the workshop may significantly affect a prospective grantee’s application package. It is highly likely that an applicant could start working on their application (in the limited amount of time provided for it) and discover at the Workshop that their efforts were wasted.” – Santa Clara County Parks and Recreation Department

***Department’s Response to Comment***

As discussed above, the workshops cannot be conducted until after the permanent regulations have been adopted. The regulations will be posted as soon as possible after adoption. In response to this comment, the Division will conduct the workshops as soon as possible after adoption. However, the exact date of adoption is not known in advance, so it is difficult to arrange for meeting rooms and staffing in advance. The preparation of the presentations also takes time and cannot be completed until the permanent regulations are adopted. The Department hopes to be able to adjust the timetable in the future to be able to allocate funds earlier in the year and provide more time for preparation of applications.

***Comment***

Page 4 of 35 – Grants Cycle – “The Division needs to formalize a regular schedule for grant applications and awards. Over the past several years the timelines for grant applications and awards has not followed a routine schedule. With no reliable schedule, grantees have great difficulty projecting budgets and staffing to prepare annual grant applications.” – Santa Clara County Parks and Recreation Department

***Department’s Response to Comment***

The regulation adoption process of previous emergency regulations and the current proposed permanent regulations have delayed the timeline. The Department hopes to be able to adjust the timetable in the future to be able to allocate funds earlier in the year and provide more time for preparation of applications. In response to this comment, the Department will attempt in the future to stabilize onto a set schedule that provides for more time for application completion and earlier allocation of funds.

***Comment***

Page 4 of 35 – Grants Cycle - “The Division needs to synchronize the grant award cycle to parallel State, Federal and County fiscal year cycle (July 1 through July 30). Since the OHV

grant is an operating grant, for budgeting, record keeping and ultimately reimbursement purposes, it is more efficient and intuitive if the grant period synchronizes with the State and County's fiscal year." – Santa Clara County Parks and Recreation Department

***Department's Response to Comment***

The fiscal year for State and County entities is different from the Federal Government fiscal year. As discussed above, the application timeline has been delayed by the regulatory process. After these permanent regulations are adopted, the Department will work to adjust the timeline to allocate the funds earlier while allowing for a longer application period. However, the Department is also limited by the State Budget approval process and cannot allocate funds until the State Budget is approved. The Department is therefore taking no action on this comment.

***Comment***

Page 4 of 35 – Grants Cycle – The comment recommends that the application filing date be moved from August to March 30. The comment also recommends the following time line:

Results of Division Application Evaluation Period – by May 30

Commission Subcommittee Meeting – NORTH – in June. At these meetings, the committee will vote in public for an amount to be considered for the consent calendar.

Commission Subcommittee Meeting – SOUTH - in July.. Same as above

Full Commission Meeting – in August

Division and Grantees Execute Project Agreements – in September – Ed Waldheim, CORVA

***Department's Response to Comment***

Applicants need time to prepare their applications and conduct required public notice between the approval of these proposed permanent regulations and the filing deadline. There must also be time to conduct workshops to assist applicants with preparing their applications. The content of these workshops depends upon the text of the final approved permanent regulations. The workshops cannot be conducted until after the permanent regulations are adopted.

The Department expects the processing, scoring and copying of applications and scores to take about two months. The results of scoring and the applications must be made available to the Commission and the public in time to review them before the meeting. Due to the volume of information, the Department has chosen thirty days as a reasonable period for the Commission and the public to review these documents.

Pursuant to California Government Code (CGC) § 11125(a), the Commission meeting agenda, including any consent calendar items, must be posted ten days in advance. CGC § 11125.7(a) requires that the Commission provide the opportunity for public comment on each agenda item. These protections provide the public with adequate notice and opportunity to request an item be removed from consent. The Department is therefore taking no action on this comment.

### ***Comment***

Page 4 of 35 – Grants Cycle – The comment indicates that the application deadline is “ the only reference to a specific date- do you want to be this specific?” – Bureau of Land Management

### ***Department’s Response to Comment***

Yes, the specific date was established to account for the various restrictions on the program, (i.e. regulation adoption, State budget adoption, Holidays) and to give applicants the maximum time possible to prepare the applications. The Department intends to update these regulations as needed and will adjust the date earlier in the year when circumstances permit it. The Department is therefore taking no action on this comment.

### ***Comment***

Page 5 of 35 – Filing Requirement Assistance - “Last sentence is unclear: “Applicants shall not rely to answers to questions unless placed on the Division Website...” – Bureau of Land Management

### ***Department’s Response to Comment***

Section 1.3.1 states that questions concerning the Application process and the interpretation of these regulations shall be submitted in writing to the Division website, Questions and Answers section. A central location to collect questions and display answers allows all potential applicants the benefit of receiving the same response and/or interpretation of the questions asked. This method to centralize the questions and answers prevents giving an applicant an unfair advantage over other applicants. The comment refers to a cautionary statement alerting applicants to only rely on official responses which the Division has posted on the website. The Department is therefore taking no action on this comment.

### ***Comment***

Page 5 of 35 – Determining Applicant Eligibility - “Should have a comma so that the list reads “Field, District, or State Office:” – Bureau of Land Management

### ***Department’s Response to Comment***

This section has been revised to incorporate the recommendation in this comment.

### ***Comment***

Page 5 of 35 – Determining Project Eligibility (first bullet) – The comment recommends an exception to the \$500,000 cap per project for Acquisition ;and Development Projects...” “All project categories should have a 3 year project performance period.” - Elizabeth Norton, Lassen National Forest

### ***Department’s Response to Comment***

For the purposes of the OHMVR grant program, in which the grant application amounts routinely surpass the available grant funds, it is not feasible to provide funding for the described acquisition/construction projects that exceed the proposed funding restrictions. Large scale acquisition/construction projects the commenter is alluding to should be funded through the agencies capital outlay resources.

Section 1.3.3 was developed in an attempt to balance the timely prudent use of State funds with the ability of the agencies to complete the proposed projects in the time allowed. The project types for which the three year period is allowed are typically more involved, requiring multiple phases to complete, hence it is reasonable to provide the longer performance period. The other project types are more suited to a shorter performance period which helps ensure the prudent timely use of limited State funding. The Department is therefore taking no action on this comment.

### ***Comment***

Page 5 of 35 – Determining Project eligibility (second bullet) – The comment cites the language, “For Acquisition, Conservation, Development, Planning or Restoration or for other Projects not exceeding \$15,000 per year, Funds may be requested for expenditure over a three (3) year period.” The comment recommends that this wording be changed. “... meaning is not clear. Why list 5 project types, then add “any other project.” – Bruce Brazil

Another comment states, “It is not clear if the modifier of \$15,000 per year applied to “other” projects or all projects referred to in this section. Please clarify.” – CORE

### ***Department’s Response to Comment***

To clarify, the wording will be revised as follows:

“Acquisition, Conservation, Development, Planning or Restoration Projects are funded for a three (3) year period. For Facilities Operation and Maintenance, Law Enforcement, OHV Safety and/or Education Program, and Trail Maintenance Projects not exceeding \$15,000 per year, Funds may be requested for expenditure over a three (3) year period.”

***Comment***

Page 5 of 35 – Determining Project Eligibility (Equipment) - “Should be a category for unspecified minor repairs (less than 2K for example) since we cannot anticipate what may need repairs” – Bureau of Land Management

***Department’s Response to Comment***

The repair related expenditures identified by the commenter would be considered an eligible project cost under this section and would be identified on the Project Cost Deliverables, OHV Form J, Part 2, Project Cost Estimates, associated with the project type for which the equipment is being used. The Department is therefore taking no action on this comment.

***Comment***

Page 5 of 35 – Determining Project Eligibility (Equipment) – “Normal wear and tear is rather subjective. Does this mean that minor repairs (broken mirror, blown tire, dents, incurred in the course of riding) would not be covered?” – Karen McKinley, Los Padres National Forest

***Department’s Response to Comment***

The minor repairs identified by the commenter would certainly be considered “normal wear and tear” and as such an eligible project cost under this section. The Department is therefore taking no action on this comment.

***Comment***

Page 5 of 35 – Determining Project Eligibility (Equipment) – “There is a sentence about “electronics” regardless of cost – what do you mean?” – Karen McKinley, Los Padres National Forest

***Department’s Response to Comment***

The statement is a qualifier associated with the item directly above which requires Equipment with a purchase price greater than \$1,000.00 to be identified as a line item expense on the Project Cost Deliverables, OHV Form J, Part 2, Project Cost Estimates. The statement in question requires that all electronics, regardless of cost, be identified as a line item expense on the Project Cost Deliverables, OHV Form J, Part 2, Project Cost Estimates. This qualifier is required to ensure that these small electronic items (e.g. GPS units, laptop computers, cellular phones), which are prone to theft, are accounted for uniquely. The Department is therefore taking no action on this comment.

***Comment***

Page 5 of 35 – Determining Project Eligibility (Equipment) – “Electronics should have a threshold for reporting to reduce administrative burden of reporting low-value items.” – CORE

***Department’s Response to Comment***

The requirement to list electronics items individually was in response to concerns regarding the number of GPS units, computers, and other electronic items that have been funded previously by the program. The Department would like to monitor these items more closely.

***Comment***

Page 5 of 35 – Determining Project Eligibility (Equipment) – “Electronics is not defined- in this section, in the glossary, or in the PCD Instructions. It would help to further define the location of the form (e.g., page 41 of 102). The instructions on the Instruction Form do not mention this requirement.” – Bureau of Land Management

***Department’s Response to Comment***

The term is not defined in the Glossary because its use for the purpose of these chapters is not unique. The sections are meant to be used in conjunction with the application forms located in the appendix. The reference to the appendix is consistent with other sections of the Grants Program Manual.

The appendix has been revised to incorporate the requirements to list all electronics, regardless of cost, as a line item on the Project Costs/Deliverables, OHV Form J.

***Comment***

Page 5 of 35 – Determining Project Eligibility (Equipment) - “What happens to equipment when the project is completed?” – Bruce Brazil

***Department’s Response to Comment***

As stated in 1.3.3, funded equipment must be used for OHV purposes. Equipment items are retained by the applicant at the conclusion of the project. The Department is therefore taking no action on this comment.

**Comment**

Page 6 of 35 – Determining Project Eligibility (Match) – “The reference to 4970.68(c) seems to be in error. Section 4970.68(c) speaks only to the Commission approval process and does not provide any exceptions that seem relevant to matching funds.” – CORE

**Department’s Response to Comment**

This section and section 4970.66(a) have been revised to incorporate the recommendation in this comment.

**Comment**

Page 6 of 35 – Determining Project Eligibility (Match) – The comment indicates that the match is too high. – Ed Waldheim, CORVA

**Department’s Response to Comment**

Public Resources Code (PRC) § 5090.51(a) requires a 25% match for OHMVR grants, with the exception of grants funding planning, acquisition, development, or construction of a regional OHV motor vehicle facility. Regulations cannot be used to contradict statute. The Department is therefore taking no action on this comment.

**Comment**

Page 6 of 35 – Determining Project Eligibility (Match) – The comment recommends elimination of the match requirement for OHV Safety and/or Education Program Projects and for nonprofit organizations. – Karen McKinley, Los Padres National Forest

**Department’s Response to Comment**

PRC § 5090.51(a) requires a 25% match for OHMVR grants, with the exception of grants funding planning, acquisition, development, or construction of a regional OHV motor vehicle facility. Regulations cannot be used to contradict statute. The Department is therefore taking no action on this comment.

**Comment**

Page 6 of 35 – Determining Project Eligibility (Match) – “This section does not seem to be consistent with Section 5090.51(a) of the PRC. The PRC section excepts matching requirements for planning, acquisition, development or construction of a regional facility. It does not constrain the exceptions to conservation projects, e.g. a conservation project of a regional facility that has a planning component would be excepted from the requirement to match funding under the law, but not under the regulations as proposed.” – CORE

***Department's Response to Comment***

The section outlines the exceptions from the matching fund requirements consistent with PRC § 5090.51(a), including construction associated with a conservation project. Planning for a regional facility would be a planning project. The Department is therefore taking no action on this comment.

***Comment***

Page 6 of 35 – Determining Project Eligibility (Match) – “The use of the term “Construction Projects” is confusing, since an applicant cannot request grant funding for a “Construction Project”, but must request grant funding for a “Development Project”. This inconsistency must be addressed.” – CORE

***Department's Response to Comment***

The term “Construction Projects” is not used on page 6 of 35, but rather “Construction activities”. The term “Construction” is defined in the Glossary. Construction may be part of a variety of project types. Where that construction is at a regional facility, it is exempt from the matching funds. The Department is therefore taking no action on this comment.

***Comment***

Page 6 of 35 – Form of Filing – “Ensure compatibility of required forms, tables or spreadsheets with Forest Service computer system capability.” – Jeff Applegate, Mendocino National Forest

***Department's Response to Comment***

The electronic application program is being developed to be compatible with computers utilizing the Microsoft Windows 98, or newer, operating system. The Department is therefore taking no action on this comment.

***Comment***

Page 6 of 35 – Form of Filing – “I would caution about limiting the format description/type. Change first paragraph to “Applicants must submit all applications in digitally using the format provided by the Division.” – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

This section reflects the electronic format currently being developed for the Grants Program application. Of course in the future as technology evolves these changes may necessitate minor regulatory amendments. The Department is therefore taking no action on this comment.

**Comment**

Page 7 of 35 – Application Filing Date – “This should be dead line of March 31.” – Ed Waldheim, CORVA

***Department’s Response to Comment***

The Application Filing Date reflects the time to process applications, including completeness and compliance checks, scoring, and publishing applications and results. It also reflects the notice requirements for the Commission or Subcommittee meetings and the completion of this permanent regulation adoption procedure. Applicants need time to prepare their applications and conduct required public notice between the approval of these proposed permanent regulations and the filing deadline. There must also be time to conduct workshops to assist applicants with preparing their applications. The content of these workshops depends upon the text of the final approved permanent regulations. The workshops cannot be conducted until after the permanent regulations are adopted.

The Department expects the processing, scoring and copying of applications and scores to take about two months. The results of scoring and the applications must be made available to the Commission and the public in time to review them before the meeting. Due to the volume of information, the Department has chosen thirty days as a reasonable period for the Commission and the public to review these documents.

The Department hopes to be able to adjust the timetable in the future to be able to allocate funds earlier in the year. The Department is therefore taking no action on this comment.

**Comment**

Page 7 of 35 – Application Filing Date – “The Division needs to follow standard grant application protocol and accept postmark dates or overnight courier (IPS, FEDEX, DHL) date verification for grant application deadlines. It is much easier for the grant applicant to get the application to the local post office or courier than to Sacramento by a certain time. No other grant application we have ever prepared has a time-certain deadline. Postmark deadlines are the standard.” – Santa Clara County Parks and Recreation Department

***Department’s Response to Comment***

In order to avoid delays in the application process, the Department feels that postmarks are not adequate in assuring that applications arrive in a timely manner. Waiting for late arrivals could delay the process. The Department hopes to be able to provide applicants with an online application process in the future which would eliminate this issue. The Department is therefore taking no action on this comment.

**Comment**

Page 7 of 35 – Baseline Documents and Information – “Baseline documents must be made available to the public along with the application to allow for meaningful public review. The current language does not assure their availability to the public in a timely fashion.” – CORE

**Department’s Response to Comment**

This section is consistent with previous program Regulations and was implemented in an attempt to reduce the hardship on the applicant and streamline the application process. Any member of the public should have access to the baseline documents by contacting the applicant directly. The Department is therefore taking no action on this comment.

**Comment**

Page 7 of 35 – Baseline Documents and Information (third paragraph) – “ Trail Soil Conditions. This has to have new standards, the old standards do not work as described under 4970.65” – Ed Waldheim, CORVA

**Department’s Response to Comment**

This section applies to the Soil Conservation Standards established pursuant to PRC § 5090.53(b). When the Soil Conservation Standards change, the new standards will apply. The Department is therefore taking no action on this comment.

**Comment**

Page 7 of 35 – Baseline Documents and Information (third paragraph) – “Require WHPP/HMP submission as a contingency for final agreements after allocations have been awarded. WHPP/HMP requires significant specialist’s time and effort up front with no assurance that grants will be funded.” – Jeff Applegate, Mendocino National Forest

**Department’s Response to Comment**

PRC § 5090.35(g) requires preparation and implementation of a “wildlife habitat protection program” to “sustain a viable species composition.” PRC § 5090.50 and 5090.53 apply this requirement to certain grants and cooperative agreements. As such it is imperative that the most current WHPP/HMP be submitted as part of the application or be on file with the Division for the application to be evaluated.

**Comment**

Page 8 of 35 – Eligible Project Costs (7) – The comment indicates the need to have flexibility to purchase or lease equipment. The comment further states, “ This has not been done under your proposed regulations.” – Ed Waldheim, CORVA

### ***Department's Response to Comment***

The Equipment Project type has been eliminated. Equipment costs, including equipment lease costs, are eligible to be included as expenses in the project type for which the equipment is predominantly being used. Equipment lease expenses are addressed in section 1.3.7 item 7.

### ***Comment***

Page 8 of 35 – Eligible Project Costs (7) – “Item shouldn't refer to Caltrans Rates. The whole topic is badly in need of formal discussion and written policy. We do not really have flexibility, but with specific policies, we could better plan.” – Bureau of Land Management

### ***Department's Response to Comment***

The proposed language referenced by the commenter was added to provide equipment rental rate standards to a very diverse applicant pool. The choice of the Caltrans Rates as a standard was due to the accessibility of these rates which are published and easily accessed through the Caltrans website, and the stature of the Caltrans organization as one of the largest equipment renting entities in the State of California. The Department is therefore taking no action on this comment.

### ***Comment***

Page 8 of 35 – Eligible Project Costs (11) – The comment indicates that this provision appears to be in conflict with No. 9 in the list of Ineligible Costs on the next page. – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

Eligible Cost item 11 refers to costs associated with the displacement of persons and/or businesses in accordance with a specific section of the California Government Code. This is quite a bit different than the ineligible cost associated with the relocation of an employee of the applicant. The Department is therefore taking no action on this comment.

### ***Comment***

Page 9 of 35 – Eligible Project Costs (16) – “Administrative Costs- Should have a specific reference to the location in chapter 3 where the further instructions are located. I could not find any reference.” – Bureau of Land Management

### ***Department's Response to Comment***

There are several sections in Chapter 3 (Project Administration Procedures) which could be applicable to the documentation of administrative costs. It would not be feasible to reference

every applicable section as some sections might be more applicable in different circumstances. The Department is therefore taking no action on this comment.

***Comment***

Page 9 of 35 – Ineligible Project Costs (8) – “A blanket prohibition like this doesn’t provide the flexibility for an efficient program. With a funding mix of Fees and appropriated funding, sometimes travel should be an approved costs for grant funding.” The comment recommends the following language: " Travel must be related to the work of the grant..." – Bureau of Land Management

***Department’s Response to Comment***

In a Grants program where the requested amounts routinely exceed the available funding, it is crucial that allowable costs be directly associated with Grant activities. The commenter’s proposed language is unnecessarily broad. The Department is therefore taking no action on this comment.

***Comment***

Page 9 of 35 – Ineligible Project Costs (12) – “We assume that only monetary awards are disallowed- rather than certificates” – Bureau of Land Management

***Department’s Response to Comment***

The item is referring to costs associated with, “Awards, trophies, or plaques for volunteers.” Certificates would be considered awards and as such, costs associated with certificates would be ineligible. The Department is taking no action on this comment.

***Comment***

Page 9 of 35 – Ineligible Project Costs (14) – “Please define ‘properly secured or maintained.’ Do you have specific guidelines?” – Karen McKinley, Los Padres National Forest

***Department’s Response to Comment***

The definition of the term, “properly secured and maintained” would be dependant on the type of equipment in question. It would not be feasible to list every possible scenario due to the diversity of program applicants, geographic conditions and project activities. Rather, the State would rely on the equipment manufactures recommendation as to what constitutes “properly secured or maintained”. The Department is therefore taking no action on this comment.

**Comment**

Page 10 of 35 – Specific Project Types and Requirements – “The Division should create streamlined separate applications for typical types of OHMVR *venues*, rather than the nine different categories of *activities*. Having nine different types of projects with different applications, requirements, attachments, environmental conditions, and very detailed information, for each of them makes for an overwhelming application. Streamlined applications for typical types of OHV recreational pursuits would be most welcomed.” – Santa Clara County Parks and Recreation Department

**Department’s Response to Comment**

The project types are based on statutory requirements related to funding categories and the need to have a fair competitive process. The Department has been able to reduce the project types from eleven to nine and will continue to look at ways to streamline the process. The Department is therefore taking no action on this comment.

**Comment**

Page 10 of 35 – Specific Project Types and Requirements – “Given the confusion, and substantive changes over the past years, submitting projects in the wrong category should receive the benefit of the doubt before complete rejection.” – Bureau of Land Management

**Department’s Response to Comment**

The Division has endeavored to define and describe the project types later in Chapter One of the Grants Program Manual. As indicated in section 1.3.10, “If you are unsure what Project type your Project is, contact the Division for assistance.” The Department is therefore taking no action on this comment.

**Comment**

Page 12 of 35 – Application Checklist (Common Documents) – “Why are photos in the common documents section?” – Bruce Brazil

**Department’s Response to Comment**

General photos of the applicant’s OHV program may be included as a common document. Project specific photos are included with the particular project. The Department is therefore taking no action on this comment.

### ***Comment***

Page 12 of 35 – Application Checklist (Common Documents) – “Delete Photos under common documents – unless you find them to be of value in your evaluation. And if they are, then they need to receive points.” – Karen McKinley, Los Padres National Forest

### ***Department’s Response to Comment***

General photos of the applicant’s OHV program may be included as a common document. These general photos potentially could be utilized in scoring under the General Criteria section of the Evaluation Criteria, OHV Form K, found in the Appendix. The Department is therefore taking no action on this comment.

### ***Comment***

Page 13 of 35 – Acquisition Projects (Project Costs/Deliverables) – “Due diligence should be specified to comply with the All Appropriate Inquiry standards under CERCLA.” – CORE

### ***Department’s Response to Comment***

As noted by the comment, "Due Diligence" is included among the eligible costs for Acquisition Projects. Furthermore, Due Diligence is a required component of an Acquisition application. Although not further defined in the regulations, Environmental Site Assessment is included among the Due Diligence examples. Depending on the nature of the Acquisition, a formal Phase 1 environmental site assessment meeting EPA's All Appropriate Inquiries Rule may not be appropriate. The Department therefore is taking no further action on this comment.

### ***Comment***

Page 13 of 35 – Acquisition Projects (Project Description) – “The project description needs to address not only sustaining OHV Recreation or OHV Opportunities, but also how the project will provide for effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement essential for ecologically balanced recreation.” – CORE

### ***Department’s Response to Comment***

Adding the language suggested by the comment to each project type is unnecessary, The basic purpose of all project types under the Act is to sustain OHV Recreation and OHV Opportunities. Specific project types, such as conservation or restoration may be funded to provide for ecologically balanced recreation, but still must contribute directly to sustain OHV Recreation. Each project must also comply with applicable environmental protections, such as: CEQA and/or NEPA, compliance with soil conservation standards, or protection of wildlife through wildlife protection programs in order to insure ecological balance. Thus,

because environmental balance is obtained through these other provisions, it is appropriate that each project description need only request an explanation as to how the implementation of the project will sustain OHV Recreation and OHV Opportunities. The Department is therefore taking no action on this comment.

***Comment***

Page 13 of 35 – Acquisition Projects (Project Description) – “Project description must include a description of current and anticipated adjacent land uses, current use of property to be purchased, any potential displacement of non-motorized uses, access to the property proposed for acquisition and support or opposition to the acquisition in order to allow for meaningful review of project impacts and long term viability.” – CORE

***Department’s Response to Comment***

Incorporating the suggestion in the comment would unnecessarily enlarge and complicate the project description. Other required information and analysis, such as maps and due diligence, is designed to address the setting of the proposed acquisition and the existence of any impediments or impacts associated with the acquisition and its ultimate use for OHV Recreation. The Department is therefore taking no action on this comment.

***Comment***

Page 13 of 35 – Acquisition Projects (Project Specific Photos) – “Are these [project specific photos] part of the 3 page total limit from the description above?” – Bureau of Land Management

***Department’s Response to Comment***

No. Item number 2 is limited to three pages, item number 3 is limited to an additional two pages. Each item with page limits is listed separately to clarify. The Department is therefore taking no action on this comment.

***Comment***

Page 14 of 35 – Acquisition Projects (Project specific Maps) – “Maps should include a topographical map.” – CORE

***Department’s Response to Comment***

Applicants may submit topographic maps with their application; however the topographical features of a proposed acquisition project are not part of the Evaluation Criteria, OHV Form K, and as such are not mandatory. The Department is therefore taking no action on this comment.

***Comment***

Page 16 of 35 – Conservation Projects (Project Description) – “The project description needs to address not only sustaining OHV Recreation or OHV Opportunities, but also how the project will provide for effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement essential for ecologically balanced recreation.” – CORE

***Department’s Response to Comment***

Adding the language suggested by the comment to each project type is unnecessary. The basic purpose of all project types under the Act is to sustain OHV Recreation and OHV Opportunities. Specific project types, such as conservation or restoration may be funded to provide for ecologically balanced recreation, but still must contribute directly to sustain OHV Recreation. Each project must also comply with applicable environmental protections, such as: CEQA and/or NEPA, compliance with soil conservation standards, or protection of wildlife through wildlife protection programs in order to insure ecological balance. Thus, because environmental balance is obtained through these other provisions, it is appropriate that each project description need only request an explanation as to how the implementation of the project will sustain OHV Recreation and OHV Opportunities. The Department is therefore taking no action on this comment.

***Comment***

Page 16 of 35 – Conservation Projects (Project specific Maps) – “Maps should include a topographical map.” – CORE

***Department’s Response to Comment***

Applicants may submit topographic maps with their application; however the topographical features of a proposed conservation project are not part of the Evaluation Criteria, OHV Form K, and as such are not mandatory. The Department is therefore taking no action on this comment.

***Comment***

Page 16 of 35 – Conservation Projects (Involving Scientific Research) – “The lines are still a bit fuzzy between Conservation, Safety Education, Restoration and Planning. The Dear Interested Party letter refers to changes made to allow funding for Equipment and Scientific Research to be taken from appropriate allocations ( LE or Conservation) rather than FO&M as in 2007 process. I haven't located specific regulation or manual references to these changes.” – Bureau of Land Management

### ***Department's Response to Comment***

Information regarding scientific research and equipment can be found in section 4970.53(h) of the Regulations, and in Chapter One under the specific project types. The Department is therefore taking no action on this comment.

### ***Comment***

Page 17 of 35 – Development Projects (Project Description) – “The project description needs to address not only sustaining OHV Recreation or OHV Opportunities, but also how the project will provide for effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement essential for ecologically balanced recreation.” CORE

### ***Department's Response to Comment***

Adding the language suggested by the comment to each project type is unnecessary. The basic purpose of all project types under the Act is to sustain OHV Recreation and OHV Opportunities. Specific project types, such as conservation or restoration may be funded to provide for ecologically balanced recreation, but still must contribute directly to sustain OHV Recreation. Each project must also comply with applicable environmental protections, such as: CEQA and/or NEPA, compliance with soil conservation standards, or protection of wildlife through wildlife protection programs in order to insure ecological balance. Thus, because environmental balance is obtained through these other provisions, it is appropriate that each project description need only request an explanation as to how the implementation of the project will sustain OHV Recreation and OHV Opportunities. The Department is therefore taking no action on this comment.

### ***Comment***

Page 18 of 35 – Development Projects (Project Specific Maps) – “Maps should include a topographical map.” – CORE

### ***Department's Response to Comment***

Applicants may submit topographic maps with their application; however the topographical features of a proposed development project are not part of the Evaluation Criteria, OHV Form K, and as such are not mandatory. The Department is therefore taking no action on this comment.

### ***Comment***

Page 20 of 35 – Law Enforcement Projects (Project Description) – “The project description needs to address not only sustaining OHV Recreation or OHV Opportunities, but also how the project will provide for effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement essential for ecologically balanced

recreation.” CORE

***Department’s Response to Comment***

Adding the language suggested by the comment to each project type is unnecessary. The basic purpose of all project types under the Act is to sustain OHV Recreation and OHV Opportunities. Specific project types, such as conservation or restoration may be funded to provide for ecologically balanced recreation, but still must contribute directly to sustain OHV Recreation. Each project must also comply with applicable environmental protections, such as: CEQA and/or NEPA, compliance with soil conservation standards, or protection of wildlife through wildlife protection programs in order to insure ecological balance. Thus, because environmental balance is obtained through these other provisions, it is appropriate that each project description need only request an explanation as to how the implementation of the project will sustain OHV Recreation and OHV Opportunities. The Department is therefore taking no action on this comment.

***Comment***

Page 20 of 35 – Law Enforcement Projects (Project Description) – “The project descriptions should include approach to protecting natural and cultural resource, adjacent land owners from trespass, dust and noise and other users from conflicts.” – CORE

***Department’s Response to Comment***

The project description requirement lists the minimum requirements. An applicant is free to provide additional information as required to fully explain the proposed project. This may include items such as those mentioned in the comment as well as any other items that may be pertinent. However, the guidelines are intended to be applicable to a diversity of possible situations; some may or may not include the need to address the items listed in the comments. Furthermore, items such as impacts on natural or cultural resources, intrusions to adjacent lands, and potential conflicts among multiple recreation groups are addressed in the Evaluation Criteria, OHV Form K, Part 6, found in the Appendix. The Department is therefore taking no action on this comment.

***Comment***

Page 22 of 35 – OHV Safety and/or Education Program Projects (Project Description) – “The project description needs to address not only sustaining OHV Recreation or OHV Opportunities, but also how the project will provide for effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement essential for ecologically balanced recreation.” – CORE

***Department’s Response to Comment***

Adding the language suggested by the comment to each project type is unnecessary. The basic purpose of all project types under the Act is to sustain OHV Recreation and OHV

Opportunities. Specific project types, such as conservation or restoration may be funded to provide for ecologically balanced recreation, but still must contribute directly to sustain OHV Recreation. Each project must also comply with applicable environmental protections, such as: CEQA and/or NEPA, compliance with soil conservation standards, or protection of wildlife through wildlife protection programs in order to insure ecological balance. Thus, because environmental balance is obtained through these other provisions, it is appropriate that each project description need only request an explanation as to how the implementation of the project will sustain OHV Recreation and OHV Opportunities. The Department is therefore taking no action on this comment.

### ***Comment***

Page 22 of 35 – OHV Safety and/or Education Program Projects (Example List) – “Add ‘public contact opportunities’ to ‘Creating or staffing sound testing, spark arrester inspection, and/or **public contact opportunities such as trade shows and community festivals/fairs.**’ Much education occurs at these types of venues.” – Karen McKinley, Los Padres National Forest

### ***Department’s Response to Comment***

The examples referenced by the commenter are not meant to be a complete list; the suggested additions would unnecessarily limit the examples when the intent was to provide a broad set of examples. The Department is therefore taking no action on this comment.

### ***Comment***

Page 25 of 35 – Planning Projects (Project Description) – “The project description needs to address not only sustaining OHV Recreation or OHV Opportunities, but also how the project will provide for effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement essential for ecologically balanced recreation. – CORE

### ***Department’s Response to Comment***

Adding the language suggested by the comment to each project type is unnecessary. The basic purpose of all project types under the Act is to sustain OHV Recreation and OHV Opportunities. Specific project types, such as conservation or restoration may be funded to provide for ecologically balanced recreation, but still must contribute directly to sustain OHV Recreation. Each project must also comply with applicable environmental protections, such as: CEQA and/or NEPA, compliance with soil conservation standards, or protection of wildlife through wildlife protection programs in order to insure ecological balance. Thus, because environmental balance is obtained through these other provisions, it is appropriate that each project description need only request an explanation as to how the implementation of the project will sustain OHV Recreation and OHV Opportunities. The Department is therefore taking no action on this comment.

**Comment**

Page 24 of 35 – Planning Projects (first paragraph) – “ The application instructions state: Note (Project specific planning efforts such as Project engineering, landscape design, environmental analysis, permitting and the like for specific Projects, such as Conservation, Development, or Restoration, must be submitted as a component of one of these specific Project types.). However, such projects are not included as examples under those specific Projects. Under Development projects, they are listed as allowable costs, but Restoration Projects require the applications include design, permitting, or NEPA/CEQA documents, while also showing them as an eligible project cost. Such language is extremely ambiguous and confusing.” – Karen Schambach, Center for Sierra Nevada Conservation

**Department’s Response to Comment**

The examples cited under the specific project types are not meant to be a complete list as indicated by the statement, “but are not limited to the following:” The regulations require that project specific planning activities be an eligible cost and not in projects in and of themselves. The documentation that is required for a restoration project application refers to the prior decisions to close the area or trail that is proposed for restoration funding by the specific restoration project. To the extent that more detailed project specific design or environmental work is required to implement the project, such work must be included as part of the total work needed to complete the restoration. The Department is therefore taking no action on this comment.

**Comment**

Page 25 of 35 – Planning Projects (Project Description) – “Project description should include the relationship for the proposed opportunity/facilities to existing OHV areas in the general location, future recreation needs of the general location, both motorized and non-motorized, and how the plan will aid in meeting these needs.” – CORE

**Department’s Response to Comment**

The project description and the evaluation criteria will capture most of the suggested information. The Department is therefore taking no action on this comment.

**Comment**

Page 25 of 35 – Planning Projects (Involving Scientific Research) – “It may not be realistic to expect the applicant to supply the curriculum vitae of the primary researcher(s). Until funding is available, an agency is unlikely to be able to get a commitment from a specific researcher.” – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department's Response to Comment***

This was a requirement previously under the Scientific Research project type, hence it was included under the requirements for Planning Projects involving Scientific Research. It is reasonable to expect applicants to have identified the specific scope and methodology of proposed research. This includes the involvement of qualified researchers. The Department is therefore taking no action on this comment.

### ***Comment***

Page 26 of 35 – Restoration Projects (Project Description) – “The project description needs to address not only sustaining OHV Recreation or OHV Opportunities, but also how the project will provide for effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement essential for ecologically balanced recreation.” – CORE

### ***Department's Response to Comment***

Adding the language suggested by the comment to each project type is unnecessary. The basic purpose of all project types under the Act is to sustain OHV Recreation and OHV Opportunities. Specific project types, such as conservation or restoration may be funded to provide for ecologically balanced recreation, but still must contribute directly to sustain OHV Recreation. Each project must also comply with applicable environmental protections, such as: CEQA and/or NEPA, compliance with soil conservation standards, or protection of wildlife through wildlife protection programs in order to insure ecological balance. Thus, because environmental balance is obtained through these other provisions, it is appropriate that each project description need only request an explanation as to how the implementation of the project will sustain OHV Recreation and OHV Opportunities. The Department is therefore taking no action on this comment.

### ***Comment***

Page 27 of 35 – Restoration Projects (Project Description) – “Again, the requirements for a Restoration grant are far more onerous than for other grant categories. Project description requires *“official documentation of the closure of the road, trail or area and documentation of the decision to restore the land or the decision subject only to the completion of CEQA or NEPA to be funded as a component of the Project Agreement.”* What in the world does that mean???

What constitutes *“official documentation?”* And why is it only required of restoration projects? We are not opposed to requiring follow-up law enforcement, but why is this required only of restoration projects? What is the Statutory Authority for these requirements? – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department's Response to Comment***

The intent of the OHMVR Act is to restore roads, trails or areas when it has been determined that the areas need to be closed to OHV use as a result of resource protection requirements. The proposed regulation makes it clear that, before a restoration project may be considered, the applicant must provide documentation concerning the problems that led to the closure and the official decisions made. Official documentation is generally defined as plans, analysis, or other documentation officially prepared and/or used in the ordinary course of the applicant's administration of its programs. Other project types have other requirements that do not require the same level of diligence. For example, restoration has its own restricted funding category under law and law enforcement on other project types is generally handled by way of the law enforcement category. The Department is therefore taking no action on this comment.

### ***Comment***

Page 28 of 35 – Trail Maintenance Projects (Project Description) – “The project description needs to address not only sustaining OHV Recreation or OHV Opportunities, but also how the project will provide for effectively managed areas and adequate facilities for the use of off-highway vehicles and conservation and enforcement essential for ecologically balanced recreation. – CORE

### ***Department's Response to Comment***

Adding the language suggested by the comment to each project type is unnecessary. The basic purpose of all project types under the Act is to sustain OHV Recreation and OHV Opportunities. Specific project types, such as conservation or restoration may be funded to provide for ecologically balanced recreation, but still must contribute directly to sustain OHV Recreation. Each project must also comply with applicable environmental protections, such as: CEQA and/or NEPA, compliance with soil conservation standards, or protection of wildlife through wildlife protection programs in order to insure ecological balance. Thus, because environmental balance is obtained through these other provisions, it is appropriate that each project description need only request an explanation as to how the implementation of the project will sustain OHV Recreation and OHV Opportunities. The Department is therefore taking no action on this comment.

### ***Comment***

Page 28 of 35 – Trail Maintenance Projects (Project Description) – “Why is no “official documentation” of the decision to maintain or reroute a trail required, as is the case for restoration projects? Why is law enforcement not required for the maintained trail, as is the case for restored areas?” – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department's Response to Comment***

The intent of the OHMVR Act is to restore roads, trails or areas when it has been determined that the areas need to be closed to OHV use as a result of resource protection requirements. Confusion existed in prior grant cycles as to the requirement. Thus, the proposed regulation makes it clear that, before a restoration project may be considered, the applicant must provide documentation concerning the problems that led to the closure and the official decisions made. Official documentation is generally defined as plans, analysis, or other documentation officially prepared and/or used in the ordinary course of the applicant's administration of its programs. Other project types have other requirements that do not require the same level of diligence. For example, restoration has its own restricted funding category under law and law enforcement on other project types is generally handled by way of the law enforcement category. The Department is therefore taking no action on this comment.

### ***Comment***

Page 31 of 35 – Wildlife Habitat Protection Program (WHPP) / Habitat Management Program (HMP) – “Exempt Safety and Education Program projects from the WHPP/HMP requirements. Reference the WHPP/HMP forms (Form F Part 1 and Part 2) on this page. As you did with the ERDS form, include a check box on the WHPP/HMP form that the project does NOT need to meet WHPP/HMP requirements.” – Elizabeth Norton, Lassen National Forest

### ***Department's Response to Comment***

Wildlife habitat protection program is a statutory requirement under PRC 5090.50 which only exempts applicants applying solely for law enforcement projects from the requirement. Regulations cannot be used to contradict statute. The Department is therefore taking no action on this comment.

### ***Comment***

Page 32 of 35 – Soil Conservation Program – “Yearly monitoring of soil condition in a project area seems excessive and expensive. I recommend every 3 to 5 years instead. – Elizabeth Norton, Lassen National Forest

### ***Department's Response to Comment***

Annual monitoring of soil conditions is a statutory requirement under PRC 5090.53(b)(2). Regulations cannot be used to contradict statute. The Department is therefore taking no action on this comment.

**Comment**

Page 32 of 35 – Soil Conservation Program – “ Safety and Education Program projects should also be exempt from the soil Conservation Program. As you did with the ERDS form, include a check box on the Soil Condition form that the project does NOT need to meet these requirements.” – Elizabeth Norton, Lassen National Forest

**Department’s Response to Comment**

Soil conservation standards are a statutory requirement under PRC 5090.50 which only exempts applicants applying solely for law enforcement projects from the requirement. Regulations cannot be used to contradict statute. The Department is therefore taking no action on this comment.

**Comment**

Page 32 of 35 – Soil Conservation Program – ““Local agencies such as cities...” Aren't Federal Agencies also required?” – Bureau of Land Management

**Department’s Response to Comment**

This section requires a Soil Conservation Program for federal agencies unless applying solely for law enforcement projects. Cooperative agreements are by definition for federal applicants. The Department is therefore taking no action on this comment.

**Comment**

Page 32 of 35 – Soil Conservation Program (end of fourth paragraph) – ““If Funds are requested for Open Riding Areas...” What does this sentence mean? what format? Which soil standards/guides are currently controlling?” – Bureau of Land Management

**Department’s Response to Comment**

This section applies to the Soil Conservation Standards established pursuant to PRC § 5090.53(b). When the Soil Conservation Standards change, the new standards will apply. The Department is therefore taking no action on this comment.

**Comment**

Page 32 of 35 – Soil Conservation Program (Maintenance) – “We are unclear about the "trail Maintenance plan" BLM does not have a standard format.” – Bureau of Land Management

***Department's Response to Comment***

The Department would expect that a well-managed OHV program would include some sort of trail maintenance plan. It does not need to be a standard format. The Department is therefore taking no action on this comment.

***Comment***

Page 33 of 35 – Soil Conservation Program (Monitoring) –  
“We have yet to see a report by anyone on this. You should have a sample of what you are looking for.” – Ed Waldheim, CORVA

***Department's Response to Comment***

Results of monitoring activities would be a simple narrative describing how their trails are monitored and may differ for each applicant depending on the applicant's program. As such, a specific form requirement was not established. The Department is therefore taking no action on this comment.

***Comment***

Page 33 of 35 – Soil Conservation Program (Actions Taken) – The comment indicates that the current soil standards (roads, trails, or areas identified as yellow or red) are not working. – Ed Waldheim, CORVA

***Department's Response to Comment***

This section applies to the Soil Conservation Standards established pursuant to PRC § 5090.53(b). When the Soil Conservation Standards change, the new standards will apply. The Department is therefore taking no action on this comment.

***Comment***

Page 34 of 35 – Public Review Process – “All documents submitted or referenced in the application must be made available to the public for review.” – CORE

***Department's Response to Comment***

The regulations already require that a citation be provided for any referenced documents and that the physical location of referenced documents, together with a contact person to access the documents, is identified. By reason of such reference, any member of the public should have access by contacting the applicant directly. The Department is therefore taking no action on this comment.

### ***Comment***

Page 34 of 35 – Public Review Process (Correspondence) – “ The sentence ‘include all correspondence received both in support and opposition, and indicate a reference in the application package to the letters, emails, or documents received.’ Isn’t this covered in OHV Form H? The way this is written, I would think I needed to write the info somewhere else too.” – Karen McKinley, Los Padres National Forest

### ***Department’s Response to Comments***

This section has been revised to incorporate the recommendation in this comment.

### ***Comment***

Page 34 of 35 – Public Review Process (Correspondence) – “Require only summarization of the content of all letters, e-mails or other types of public input received with actual correspondence available upon request only. Requiring all correspondence received presents a major undertaking of scanning and inserting a great number of pages into applications.” – Jeff Applegate, Mendocino National Forest

### ***Department’s Response to Comment***

Public input is a vital component of the grants program; as such, it is imperative that the actual copy of the public comments be included in the application package. The Department is therefore taking no action on this comment.

**Chapter 2** – Application Evaluation System contains the procedures that the Division and Commission shall follow in evaluating applications. This chapter also discusses the Commission Subcommittee and Full Commission meetings that may 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 requires the applicant to provide the appropriate general and project specific criteria for each individual project. It also discusses the evaluation process, the evaluation panel, the calculation of the scores, funding targets, and the ranking and funding of projects.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Page 2 of 19 – Table of Contents, Specific Criteria – The comment suggests that the relevant regulation section be added after each project type. – CORVA

### ***Department's Response to Comment***

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

### ***Comment***

Page 3 of 19 – Application and Project Evaluations, first paragraph, second sentence – The comment recommends that the words “by the Division” be added after the word “evaluated.” The comment also recommends that the following sentence be added at the end of this paragraph: “Applications deemed incomplete will be provided to the applicant with a written explanation of deficiencies.” – CORE

### ***Department's Response to Comment***

The new wording, “Applications that are submitted on time and found to be in compliance with the Regulations and the Grants Program Manual will be evaluated using the competitive criteria described in the Appendix, OHV Form K, and the process contained in this Chapter,” is a synopsis of the scoring process that is applied by both the Division and the Commission. An appeal process has been added in Section 4970.53(g) that includes notification of the reason for rejection.

### ***Comment***

Page 3 of 19 – Application and Project Evaluations, second paragraph – the comment recommends that the word “determinations” be replaced by the word “recommendations” throughout this paragraph to reflect that the Division makes funding recommendations, not determinations. – CORE

### ***Department's Response to Comment***

Use of the word “determination” more closely conforms to the requirements of the evaluation process that determines the scores and funding levels in accordance with a defined process. The Division is merely reporting the results of the process as opposed to making a recommendation. The Department is therefore taking no action on this comment.

### ***Comment***

Page 3 of 19 – Preparation for the OHMVR Subcommittee and Full Commission Meetings – “The consent calendar has long been used as a means for efficiently dealing with grants for which there is no controversy. The new scoring system, however, can put these grantees at a disadvantage. By agreeing to accept the funding amount recommended by the Division staff, these grants could still receive no funding if they fall below the cut-off line. For what action would the subcommittee establish a “consent calendar: for grant approval, or to agree to a score?” – CSNC, CWC

***Department's Response to Comment***

The scoring system has been changed. The scores result in a ranked list. Each project is funded at the requested amount until funds are exhausted. If a subcommittee is appointed, its role is defined in Chapter 2, Section 2.2. The Department is therefore taking no further action on this comment.

***Comment***

Page 3 of 19 – Preparation for the OHMVR Subcommittee and Full Commission Meetings – “We’re not understanding the need for a subcommittee meeting and how those meetings would be beneficial in deriving a consent calendar given the competitive process and the current evaluation scoring system.” – U.S. Forest Service

***Department's Response to Comment***

If a subcommittee is appointed, its role is defined in Chapter 2, Section 2.2. The Department is therefore taking no further action on this comment.

***Comment***

Page 4 of 19 – Evaluation Process – The comment recommends that the last sentence in this section be deleted. “It is self evident that higher achieving projects would be ranked higher.” – CORE

***Department's Response to Comment***

This sentence has been removed from Chapter 2.

***Comment***

Page 4 of 19 – Criteria – “Objective and desired outcome, which presumably are the 1<sup>st</sup> criterion listed in each evaluation sheet for a project type (although not explicitly stated), are not consistent with the definitions in the Regulation or the PRC. For example, restoration projects have as an evaluation criterion the following language:

1. The project benefits critical environmental resources and/or addresses resource damage. The project must address one or more of the following:
  - a. Soil, water, wildlife, or habitat
  - b. Rare, threatened, and endangered species
  - c. Cultural resources
  - d. Wilderness or other environmentally sensitive area

This language is not consistent with the Regulations, which defines restoration as:

Restoration projects return land, plant communities, and plant covers to

conditions comparable to those of surrounding lands or at least those that existed prior to OHV recreation, upon closure to OHV recreation...

It should be noted that benefit to critical environmental resources is not the same as returning land to conditions that existed prior to OHV use. The evaluation criteria should reflect a “direct correspondence” to the law and regulations to avoid confusion.” – CORE

***Department’s Response to Comment***

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. While the statute and regulation definitions indicate what restoration is, they do not indicate how to distinguish one restoration project from another in terms of how to establish priorities for funding. These details are left to the Division to determine as part of its implementation process. The Division has adopted the criteria with input from the Commission. Thus, all proposed restoration projects must return the lands to conditions that existed prior to OHV use, but a restoration project that benefits critical resources will appropriately score higher than one that does not. The Department is therefore taking no action on this comment.

***Comment***

Page 4 of 19 –Analysis of Project Needs and Benefits – The comment recommends that this section also require visitor counts, miles of trail or acres, and a recreational budget. – CORVA

***Department’s Response to Comment***

The Opportunity Summary, OHV Form D, found in the Appendix, was created to obtain data on visitors and opportunity. The funding for the applicant’s OHV program is addressed in the Evaluation Criteria, OHV Form K, found in the Appendix.

***Comment***

Page 4 of 19 – Evaluation Panel and Division Determinations, first paragraph – The comment recommends that the following sentence be added to this paragraph: “Each reviewer shall conduct the review and scoring independently of other reviewers.” The comment indicates that independence of each reviewer ensures fairness in a competitive process – CORE

***Department’s Response to Comment***

This is now addressed in Chapter 2, Section 2.5.1. Independent scoring would provide the opportunity for one evaluator to unfairly influence the score based on personal bias. In response to comments, the Evaluation Criteria, OHV Form K, found in the Appendix, are now more objective.

**Comment**

Page 4 of 19 – Evaluation Panel and Division Determinations, second paragraph – The comment recommends that the last sentence read as follows: “These findings shall include: the applications, evaluation scores, application rankings, findings of fact supporting each ~~the~~ evaluation scores given under the criterion, and funding ~~determinations~~ recommendations.” – CORE

**Department’s Response to Comment**

This is now addressed in Chapter 2, Section 2.1. In response to comments, the Evaluation Criteria, OHV Form K, found in the Appendix, are now more objective. The more specific scoring criteria provide details on how a project is scored. Use of the word “determination” more closely conforms to the requirements of the evaluation process that determines the scores and funding levels in accordance with a defined process. The Division is merely reporting the results of the process as opposed to making a recommendation. The Department is therefore taking no action on this comment.

**Comment**

Page 4 of 19 – Evaluation Panel and Division Determinations – “The process involving five Division staff members is fraught with potential risks to its integrity....The panel format lends itself to peer pressure as well, and allows no transparency into the scoring process to reassure the public and the grantees.” The comment asks that the open deliberations of the Commission not be substituted by the findings of the panel. The comment also asks, “How will public transparency and accountability be provided under the staff panel format?” CSNC, CWC

**Department’s Response to Comment**

In response to comments, the Evaluation Criteria, OHV Form K, found in the Appendix, are now more objective. The more specific scoring criteria provide details on how a project is scored.

**Comment**

Page 4 of 19 – Evaluation Panel and Division Determinations – “There is transparency in the Commission process; however, right now we do not see transparency on the Division process and ask to have a section added to this chapter that would explain step by step the process that the Division will undertake in evaluating the applications, how the staff will be guided and trained, and how there will be transparency within that process.” – U.S. Forest Service

### ***Department's Response to Comment***

In response to comments, the Evaluation Criteria, OHV Form K, found in the Appendix, are now more objective. The more specific scoring criteria provide details on how a project is scored. Section 4970.53(h) requires that projects be described clearly in the application. Special training would not be required for evaluating projects.

### ***Comment***

Page 5 of 19 – Funding Targets – The comment recommends that there be more detail in this section on those projects that are funded with non-CESA funds, e.g. Facilities Operation and Maintenance Projects and Acquisition Projects. – CORVA

### ***Department's Response to Comment***

The specific project types that are funded out of non-CESA funds are now listed at the end of Chapter 2, Section 2.6.

### ***Comment***

Page 5 of 19 – Funding “Cutoff Points” and Ranking of Projects – “there may be a problem with the cutoff points resulting in consent items not being funded. Also, grants will fall below the cutoff point based solely on the evaluation of the Division staff – with no review by the Commission or input from the general public. There is also a bigger problem. Projects brought back to the Division or the Commission for ‘rescoping’ will have had the advantage of being scored based on certain criteria that may no longer apply. How will the Division address such project rescopes?” – CSNC, CWC, Doug Frazer

### ***Department's Response to Comment***

Items on the consent calendar are not funded until all of the projects in that funding category have received scores from the Commission. The public has the opportunity to comment on the consent calendar and may request that specific projects be removed. Scope amendments are addressed in Chapter 3, Section 3.2. To prevent an amendment from giving an applicant an unfair advantage, this sentence was added:

“An amendment that would change the original intent or purpose of the Project Agreement will not be allowed.”

### ***Comment***

Page 5 of 19 – Funding “Cutoff Points” and Ranking of Projects – The comment recommends that money be set aside for acquisition of projects in the future. The comment also suggests that applications that fall below the cutoff point should be funded if monies become available in the future. – CORVA

***Department's Response to Comment***

Funding is established in the annual state budget, as approved by the Governor and Legislature. Saving money for future acquisition projects is beyond the scope of this program. The Department is therefore taking no action on this comment.

***Comment***

Pages 6 through 17 of 19 – All Evaluation Criteria – “ Points for sub-criteria are not consistently defined. It is not clear how points will be allocated at the sub-criterion level. This should be modified to provide the possible points for each sub-criterion in cases where each of the sub-criteria must be met. Ranges of possible points may be provided for those sub-criteria where one or more (not all) sub-criteria may be required to be met.” – CORE

***Department's Response to Comment***

In response to comments, the Evaluation Criteria, OHV Form K, found in the Appendix, are now more objective. The more specific scoring criteria provide details on how a project is scored.

***Comment***

Pages 6 through 17 of 19 – All Evaluation Criteria – “We feel there are far too many criteria and will not be able to be addressed within all of the page limitations for each project type.” The comment requests that there be consideration of adding a couple of pages per project type in order to address the criteria adequately. – U. S. Forest Service

***Department's Response to Comment***

In response to comments, the Evaluation Criteria, OHV Form K, found in the Appendix, are now more objective. The more specific scoring criteria provide details on how a project is scored. Not all criteria responses require a detailed write up. Applicants are required to refer to supporting documents. Where a narrative response is required, the Department believes the space allowed is adequate.

***Comment***

Page 6 of 19 – Acquisition Projects (Title) – The comment recommends that the title include the applicable regulations section 4970.54. - CORVA

***Department's Response to Comment***

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

**Comment**

Page 6 of 19 – Acquisition Projects, Criteria, Part 1 – “It is not clear to us if the grantee would earn 40 points if the request includes only one of the sub criteria, or if a grant that met multiple criteria would score higher than one meeting only a single criterion.” – CSNC, CWC

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. In response to comments, the Evaluation Criteria in OHV Form K are now more objective. The more specific scoring criteria provide details on how a project is scored.

**Comment**

Page 6 of 19 – Acquisition Projects, Criteria, Part 1 – The comment recommends that the following be added to Part 1:

- “f. Provide OHV opportunity near urban areas
- g. Open area to be used that meet needs of riders close enough with access and connectivity
- h. Provide area of diverse recreational needs, i.e. OHV, mountain bikes, equestrian trails” - CORVA

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. In response to comments, the Evaluation Criteria in OHV Form K are now more objective. The more specific scoring criteria provide details on how a project is scored. These topics are generally addressed in Form K, Part 1 and item 4 of Form K, Part 2. The criteria take into account the needs for diverse motorized recreation opportunity.

**Comment**

Page 6 of 19 – Acquisition Projects, Criteria, Part 5(a) – The comment recommends that part 5(a) be deleted. The comment indicates, “Completion of prior acquisitions is not necessarily indicative of success of the proposed project and will disadvantage those who run successful programs and are intending to expand them.” – CORE

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Past performance is now addressed in the general criteria, eliminating the need for information regarding prior acquisition projects.

**Comment**

Page 6 of 19 – Acquisition Projects, Criteria, Part 5(c) – “It seems that the availability of qualified staff to carry out this (or any) projects should be worth more than 5 points as no matter how good a project may be, its success ultimately depends on those who are responsible for carrying it out.” – CSNC, CWC

**Department’s Response to Comment**

Evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. The quality of the applicant’s program is now assessed in the General Evaluation Criteria, OHV Form K, Part 1.

**Comment**

Page 6 of 19 – Acquisition Projects, Criteria, Part 5 – The comment recommends that the following be added, “d. Utilize stakeholders input” – CORVA

**Department’s Response to Comment**

Evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. The quality of the applicant’s program is now assessed in the General Evaluation Criteria, OHV Form K, Part 1. While stakeholder input is integral to the process, it is a difficult concept to objectively quantify and was not incorporated as a criterion. The Department is therefore taking no action on this comment.

**Comment**

Page 7 of 19 – Conservation Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.55. – CORVA

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

**Comment**

Page 7 of 19 – Conservation Projects, Criteria, Part 1 – “Conservation is defined in the PRC as ‘activities, practices, and programs that sustain soils, plants, wildlife and their habitat in accordance with the standards adopted pursuant o Section 5090.35.’ Where in the PRC does the Division find authority for the statement in Criteria 1: ‘The project will protect and conserve ecological conditions to sustain long-term use of the roads, trails and/or areas for OHV recreation?’” – CSNC, CWC

### ***Department's Response to Comment***

Evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. This specific item has been changed; however, the topic is still addressed.

It is necessary to read the OHMVR Act in its entirety. The declaration of intent in PRC § 5090.02 (c) is clear. The purpose of the program is to manage existing and enhanced opportunities so as to sustain long-term use. The management must be in accordance with standards for sustained long-term use to prevent accelerated erosion. Section 5090.35, furthermore, establishes priorities for protection of public safety, appropriate utilization of lands, and conservation of land resources. Section 5090.43 requires making areas available for the "fullest public use or the outdoor recreational opportunities present."

Management of lands must balance ecological considerations with providing OHV recreational use. It is clear that the program concerns provision of OHV recreation and sustaining that long-term use. Therefore, it is essential under the statute that funds spent on conservation, law enforcement, or any other activities associated with ecological protection be evaluated in terms of how those expenditures contribute to sustaining long-term OHV recreation. The Department is therefore taking no action on this comment.

### ***Comment***

Page 7 of 19 – Conservation Projects, Criteria, Part 1(a) – The comment recommends that the word "Reduce" be replaced by the word "Manage" at the beginning of the sentence. – CORVA

### ***Department's Response to Comment***

Evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. The Department determined that reducing erosion is a desired outcome. The Department is therefore taking no action on this comment.

### ***Comment***

Page 7 of 19- Conservation Projects, Criteria, Part 1(c) – the comment recommends that the following be added to the end of this sentence: "and show data to support the monitoring." The comment also asks, "How have conservation projects supported the need to protect with data, long term resource management plans?" – CORVA

### ***Department's Response to Comment***

Based on comments received, the evaluation criteria have been revised and are now part of Evaluation Criteria, OHV Form K, found in the Appendix. General Criterion 7.b addresses a Resource Management Information System, which in conjunction with the WHPP/HMP and Soils Condition Table provide data resulting from monitoring.

**Comment**

Page 8 of 19 – Development Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.56. – CORVA

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

**Comment**

Page 8 of 19 – Development Projects, Criteria, Part 1(b) – The comment recommends that the words “property damage” be deleted at the end of this sentence and that the following be added, “Reduce likelihood of adjacent landowners incidents of trespass and property damage.” - CORVA

**Department’s Response to Comment**

Evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. This item has been removed from the evaluation criteria for development projects. It is now addressed in the General Evaluation Criteria, OHV Form K, Part 1, item 5, found in the Appendix.

**Comment**

Page 8 of 19 – Development Projects, Criteria, Part 1(g) – “Subsection g. requires clarification.” – CORE

**Department’s Response to Comment**

Evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. This item has been removed from the evaluation criteria for development projects.

**Comment**

Page 9 of 19 – Equipment Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.57. – CORVA

**Department’s Response to Comment**

The Equipment project type has been eliminated. Equipment is now included within the project where it will be used. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form.

**Comment**

Page 9 of 19 – Equipment Projects, Criteria, Part 1 – the comment recommends that the word "rental" be added after the word "purchase." – CORVA

**Department's Response to Comment**

The Equipment project type has been eliminated. Equipment is now included within the project where it will be used.

**Comment**

Page 9 of 19 – Equipment Projects, Criteria, Part 3 (e) and (f) – "Please clarify [Part 3] Sections e and f. Section 3 should be combined with Section 1, since it states the objectives of the equipment purchase." – CORE

**Department's Response to Comment**

The Equipment project type has been eliminated. Equipment is now included within the project where it will be used.

**Comment**

Page 9 of 19 – Equipment Projects, Criteria, Part 3 – The comment recommends that the following be added to this part: "A chart of all the miles of trails maintained or anticipated to be maintained." – CORVA

**Department's Response to Comment**

The Equipment project type has been eliminated. Equipment is now included within the project where it will be used. The comment appears to be asking for the Trail Maintenance Plan, OHV Form M, as required for Trail Maintenance Projects.

**Comment**

Page 9 of 19 – Equipment Projects, Criteria, Part 4 – "Section [Part] 4 is redundant with Section [Part] 1. Add 10 points to Section [Part] 3." – CORE

**Department's Response to Comment**

The Equipment project type has been eliminated. Equipment is now included within the project where it will be used.

**Comment**

Page 10 of 19 – Facilities Operation and Maintenance (FO&M) Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.58. – CORVA

**Department's Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

**Comment**

Page 10 of 19 – Facilities Operation and Maintenance (FO&M) Projects, Criteria, Part 1 – The comment recommends that the following be added to Part 1: "Provide Recreational Budget." – CORVA

**Department's Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Funding for the applicant's OHV program is addressed in Part 1, Item 4c.

**Comment**

Page 10 of 19 – Facilities Operation and Maintenance (FO&M) Projects, Criteria, Part 1(c) – The comment recommends that the words "Protecting residents" be deleted from the beginning of this sentence and replaced by: "Work with and reduce potential conflict with" – CORVA

**Department's Response to Comment**

This item has been removed from the evaluation criteria for FO&M projects. It is now addressed in the General Evaluation Criteria, OHV Form K, Part 1, item 5, found in the Appendix.

**Comment**

Page 10 of 19 – Facilities Operation and Maintenance (FO&M) Projects, Criteria, Part 3 – "The value of 30 points for prior experience is double of that allotted for the same criterion in other types of projects (except for Trail Maintenance). This seems excessive. Revise to be consistent with other types of projects." – CORE

### ***Department's Response to Comment***

Evaluation criteria are now in OHV Form K, found in the Appendix. This item has been removed from the evaluation criteria for FO&M projects.

### ***Comment***

Page 11 of 19 – Law Enforcement Projects, Criteria, Parts 1, 2, 3, and 4 – “How were the points assigned for this category of grants? It appears somewhat arbitrary.” – CNSC, CWC

### ***Department's Response to Comment***

Evaluation criteria are in OHV Form K, found in the Appendix. Points were assigned based on the importance to the program of each item within that project type. The Department is therefore taking no action on this comment.

### ***Comment***

Page 11 of 19 – Law Enforcement Projects, Criteria, Part 1 – “We object to the emphasis on sustaining long-term recreation. Many law enforcement grants are to protect resources from OHV use; not to sustain OHV use. – CSNC, CWC

### ***Department's Response to Comment***

Evaluation criteria are in OHV Form K, found in the Appendix. This item has been replaced with item 3. The intent of the program is stated in Public Resources Code section 5090.02:

***“(c) Accordingly, it is the intent of the Legislature that: (1) Existing off-highway motor vehicle recreational areas, facilities, and opportunities be expanded and be managed in a manner consistent with this chapter, in particular to maintain sustained long-term use.”***

Thus, sustaining long-term use must be an element of any project funded. Enforcement of OHV laws and other public safety functions performed in law enforcement projects sustain long-term use by preventing injuries and resource damage.

### ***Comment***

Page 11 of 19 – Law Enforcement Projects, Criteria, Part 1(a) – “The criteria require only “reducing” resource damage, intrusion into wilderness and closed areas and conflicts. The goal of any law enforcement grant should be the **prevention** of resource damage, trespass or conflict; not just the reduction of these. Certainly we don't expect total elimination of illegal behavior, but the goal should be prevention, not reduction. It is not clear what is meant by 1(a) “reducing ‘potential’ resource damage. It might be better worded, “Preventing resource damage or reducing the potential for resource damage...” – CSNC, CWC

***Department's Response to Comment***

This item has been addressed in the Evaluation Criteria, OHV Form K, Part 6, item 2 , found in the Appendix. In response to comments, the language has been modified to “Law enforcement efforts are targeted to minimize or prevent impacts to natural and cultural resources.”

***Comment***

Page 11 of 19 – Law Enforcement Projects, Criteria, Part 2 – the comment recommends that the number of visitors, citations, and contacts be required in this part. – CORVA

***Department's Response to Comment***

Evaluation criteria are in OHV Form K, found in the Appendix. Visitor attendance is addressed for agencies that manage OHV riding areas in the Opportunity Summary OHV Form D. The number of citations issued does not give an accurate picture of the effectiveness of the applicant's OHV law enforcement program. The Department is therefore taking no action on this comment.

***Comment***

Page 11 of 19 – Law Enforcement Projects, Criteria, Part 3(a) – The comment recommends that the words “ reliance on OHV funds” be deleted from the end of the sentence and that the following be added: “the need for additional law enforcement.” – CORVA

***Department's Response to Comment***

Evaluation criteria are in OHV Form K, found in the Appendix. The reliance on OHV funds has been addressed in Part 6, item 4. The Department is therefore taking no action on this comment.

***Comment***

Page 11 of 19 – Law Enforcement Projects, Criteria, Part 4 – “In (4), criteria should include ‘Demonstrates a commitment to enforcing laws and protecting resources, rather than ‘commitment of staff to OHV program.’” – CSNC, CWC

***Department's Response to Comment***

Evaluation criteria are in OHV Form K, found in the Appendix. The applicant's commitment to enforcing laws and protecting resources has been addressed in Part 6, all items.

**Comment**

Page 11 of 19 – Law Enforcement Projects, Criteria, Part 4(b) – The comment recommends that the sentence read as follows: “History of fiscal accountability and measured positive outcomes with similar grants or projects.” – CORVA

**Department’s Response to Comment**

Evaluation criteria are in OHV Form K, found in the Appendix. This item is addressed in Part 6, item 4.

**Comment**

Page 12 of 19 – OHV Safety and/or Education Program Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.60. – CORVA

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

**Comment**

Page 12 of 19 – OHV Safety and/or Education Program Projects, Criteria, Part 1 – The comment recommends that the words “natural resources” be deleted from the end of the first sentence and be replaced by “ Protecting the opportunity implies resource protection does not need to be separate.” – CORVA

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. This is addressed in Part 7, item 4a.

**Comment**

Page 12 of 19 – OHV Safety and/or Education Program Projects, Criteria, Part 2(e) – “Section e is vague and needs clarification.” The comment recommends that the sentence read as follows: “Other ~~proactive~~ safety/educational programs (e.g. xxxx) measures.” – CORE

**Department’s Response to Comment**

This item has been removed. Project specific evaluation criteria are part of Evaluation Criteria, OHV Form K, found in the Appendix.

**Comment**

Page 12 of 19 – OHV Safety and/or Education Program Projects, Criteria, Part 2(e) – The comment recommends that the words “relevant to current and future users” be added at the end of this sentence. – CORVA

**Department’s Response to Comment**

This item has been removed. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix.

**Comment**

Page 13 of 19 – Planning Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.61. – CORVA

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

**Comment**

Page 13 of 19 – Planning Projects, Criteria, Part 1 – the comment requests clarification of “protection of resources.” The comment indicates that the protection of OHV opportunity already includes the resource protection. – CORVA

**Department’s Response to Comment**

This item has been removed. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix.

**Comment**

Page 13 of 19 – Planning Projects, Criteria, Part 1(c) – “The term “critical resources” could be interpreted very narrowly. We suggest it say, “Protecting habitat or natural or cultural resources.” – CSNC, CWC

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Based on the comments received, the term “critical resources” is no longer used in the criteria.

### ***Comment***

Page 14 of 19 – Restoration Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.62. – CORVA

### ***Department's Response to Comment***

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

### ***Comment***

Page 14 of 19 – Restoration Projects, Criteria, Part 1 – The comment recommends that the first sentence read as follows: “ 1. The project restores the site to a condition prior to OHV use ~~benefits critical environmental resources and/or addresses resource damage.~~ “ – CORE

### ***Department's Response to Comment***

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. This item has been reworded into Part 9, item 2. The Department is therefore taking no action on this comment.

### ***Comment***

Page 14 of 19 – Restoration Projects, Criteria, Part 1 – The comment recommends that the following be added: “1(e) Damage due to trespass.” The comment indicates that, “Criteria are not consistent with regulation or law. Damage due to trespass should be included.” – CORE

### ***Department's Response to Comment***

While the statute and regulation definitions indicate what restoration is, they do not indicate how to distinguish one restoration project from another in terms of how to establish priorities for funding. These details are left to the Division to determine as part of its implementation process. The Division has adopted the criteria with input from the Commission. Thus, all proposed restoration projects must return the lands to conditions that existed prior to OHV use, but a restoration project that benefits critical resources will appropriately score higher than one that does not. The criteria reflect the policy on which priorities among the restoration projects will be established as reflected by the possible scores.

Damage due to trespass would be addressed in Part 9, item 3, “OHV activity in a closed area.” The Department is therefore taking no action on this comment.

**Comment**

Page 14 of 19 – Restoration Projects, Criteria, Part 1 – The comment asks, “Does restoration still mean ‘permanent closure?’” – CORVA

**Department’s Response to Comment**

The OHMVR Act requires closure and restoration when soil standards or wildlife protection plans cannot be met. The Act does not require permanent closure. The PRC § 5090.02(c)(3), 5090.35, 5090.53(b)(3) refers to temporary closures when repairs are needed to conform the land, trails, roads, or areas to the soil standards or wildlife protection plans required by the PRC. Closures connected with the restoration definition must be distinguished as something more or different from temporary, but are not necessarily permanent.

**Comment**

Page 14 of 19 – Restoration Projects, Criteria, Part 1(a) – “Item 1(a) should include vegetation. We realize ‘habitat’ is very inclusive, but some restoration projects deal with protecting endemic plants that some staff may not necessarily recognize as ‘habitat.’” – CSNC, CWC

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Habitat includes not only the plants that provide habitat to animals, but also the plant’s habitat. The Department is therefore taking no further action on this comment.

**Comment**

Page 14 of 19 – Restoration Projects, Criteria, Part 2(a) – The comment recommends that “avoid the need for future maintenance and law enforcement...” be deleted. The comment indicates, “It is inconsistent with Item 3(a)(iii) which asks the applicant to demonstrate ‘appropriate use of law enforcement...to protect the restoration area.’ It is also inconsistent with 4970.62(e)(4). Criteria should include ‘appropriate methods’ rather than focus on reduced costs. We want effective restoration, not cheap restoration.” – CSNC, CWC

**Department’s Response to Comment**

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. The Department has a responsibility to assure that as much is accomplished as possible with available funds. The efficient use of OHV funds, however, is only one element considered in evaluating projects. Part 9, item 4 addresses measures to ensure success. All restoration projects must also include monitoring and success criteria as part of the project description. The Department is therefore taking no further action on this comment.

**Comment**

Page 14 of 19 – Restoration Projects, Criteria, Part 2(a) – The comment recommends that the word “avoid” be replaced by the word “minimize”. – CORVA

**Department’s Response to Comment**

This item has been removed from the restoration project criteria. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix.

**Comment**

Page 14 of 19 – Restoration Projects, Criteria, Part 2(d) – The comment recommends that the words “to reduce reliance on OHV funds” be deleted because it has already been covered. – CORVA

**Department’s Response to Comment**

This item has been removed from the restoration project criteria. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix.

**Comment**

Page 14 of 19 – Restoration Projects, Criteria, Part 4 – The comment recommends that Part 4 (demonstrate site will be monitored and maintained) should be worth more than 10 points. – CSNC, CWC

**Department’s Response to Comment**

Monitoring and maintenance are no longer scoring criteria. Rather, they are required elements of the project description for all restoration projects.

**Comment**

Page 14 of 19 – Restoration Projects, Criteria, Part 5(c) – “It is unreasonable to require a ‘proven track record of addressing problem areas in a timely manner so as to avoid closure.’ These are restoration grants and should stand on their own. This item should include points, instead, for qualified staff, as do the other types of grants.” – CSNC, CWC

**Department’s Response to Comment**

This item has been removed from the restoration project criteria. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix.

**Comment**

Page 15 of 19 – Scientific Research Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.63. – CORVA

**Department’s Response to Comment**

The Scientific Research project type has been eliminated. Scientific research is included in the appropriate conservation, law enforcement or planning project. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form.

**Comment**

Page 15 of 19 – Scientific Research Projects, Criteria, Part 1 – “It is inappropriate to require a research project to ‘lead to enhancing or protecting existing OHV opportunity...or protecting resources to avoid closure of OHV opportunity.’ One cannot direct research to ‘lead’ to anything; scientific findings are simply what they are.... this program has three statutorily required components: opportunity, conservation and law enforcement. There is nothing in the PRC that requires that all grants be tied to opportunity. Indeed, the intent is to determine appropriate locations for an inherently destructive use.” – CSNC, CWC, U. S. Forest Service

**Department’s Response to Comment**

The Scientific Research project type has been eliminated. Scientific research is included in the appropriate conservation, law enforcement or planning project. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. This comment was considered in revising the scientific research elements within the conservation, law enforcement and planning project criteria. Valid scientific studies related to OHV recreation will help sustain long-term OHV opportunities by providing information to improve program management.

**Comment**

Page 15 of 19 – Scientific Research Projects, Criteria, Part 2 – “An application cannot say what the research will find; if it could, the research would be unnecessary. It’s not clear what 2(a) is trying to say: “The results will directly affect land management decision that will sustain and/or enhance OHV recreation.’ Again, will we only fund research that promises to sustain and enhance OHV recreation?” The wording for the criteria for Scientific Research Projects suggests a lack of understanding of research projects and scientific process.” – CSNC, CWC, U.S. Forest Service

***Department's Response to Comment***

The Scientific Research project type has been eliminated. Scientific research is included in the appropriate conservation, law enforcement or planning project. Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. This comment was considered in revising the scientific research elements within the conservation, law enforcement and planning project criteria. Valid scientific studies related to OHV recreation will help sustain long-term OHV opportunities by providing information to improve program management. This element is intended to ensure the study is relevant.

***Comment***

Page 17 of 19 – Trail Maintenance Projects (Title) - The comment recommends that the title include the applicable regulations section 4970.64. – CORVA

***Department's Response to Comment***

Project specific evaluation criteria are now part of Evaluation Criteria, OHV Form K, found in the Appendix. Referencing specific regulation sections would further complicate this form. The Department is therefore taking no action on this comment.

***Comment***

Page 17 of 19 – Trail Maintenance Projects, Criteria, Part 2 – The comment recommends that visitor counts, miles of trails, and a recreational budget be required here. – CORVA

***Department's Response to Comment***

Evaluation criteria are in OHV Form K, found in the Appendix. Visitor attendance and available riding opportunity are addressed in the Opportunity Summary, OHV Form D, found in the Appendix. Funding for the applicant's OHV program is addressed in Part 10, item 1.

***Comment***

Page 17 of 19 – Trail Maintenance Projects, Criteria, Part 3 – “The value of 30 points for prior experience is double of that allotted for the same criterion in other types of projects (except for Facility Maintenance). This seems excessive. Revise to be consistent with other types of projects.” – CORE

***Department's Response to Comment***

This item is addressed in the Evaluation Criteria, OHV Form K, Part 10, item 3, found in the Appendix. The point values have been adjusted.

**Comment**

Page 17 of 19 – Trail Maintenance Projects, Criteria, Part 3(c) – “Item [Part] 3(c) should omit the second clause, ‘...avoidance of the need for conservation measures or closures due to environmental damage (10 points).’ This is redundant, as 10 points are also awarded in item [Part] 1(a) ‘Maintain authorized OHV recreation roads, trails, and areas so as to avoid soil or wildlife or plant damage in order to meet soil conservation standards and wildlife protection plans and avoid future closures...’” – CSNC, CWC

**Department’s Response to Comment**

Evaluation criteria are in OHV Form K, found in the Appendix. This item is addressed in Part 10, item 3. This item has been reworded and the point values have been adjusted.

**Comment**

Page 18 of 19 – Formula and Procedure for Establishing Funding Determinations, Part 2(h) – The comment recommends that the words “unless funds are available” be added at the end of this sentence. – CORVA

**Department’s Response to Comment**

Based on comments received, partial funding based on score has been eliminated. All projects are fully funded at the requested amount, as long as funds are available.

**Comment**

Pages 18 and 19 – Formula and Procedure for Establishing Funding Determinations – “All references to ‘funding determination’ should be modified to ‘funding recommendation.’ The Commission is the body that makes the funding determination with consideration of the Division’s recommendations.” – CORE

**Department’s Response to Comment**

Use of the word “determination” more closely conforms to the requirements of the evaluation process that determines the scores and funding levels in accordance with a defined process. The Division is merely reporting the results of the process as opposed to making a recommendation. The Department is therefore taking no action on this comment.

**Public Comments Received During 15-Day Written Comment Period**

**Comment**

Page 3 of 7 – Application and Project Evaluations – The comment indicates to ensure that agreements are awarded on a competitive basis, challenges, including those from the

Commission, to the Division's recommendations for funding must be made in writing and the Division should review the challenges. – Ed Waldheim, CORVA

***Department's Response to Comment***

This issue was addressed in 4970.68(c) and in Evaluation Criteria, OHV Form K in the Appendix. The scoring for the evaluation criteria is now more specific. We learned from the 2006 grant cycle that processing and distributing additional written comments creates an unnecessary burden on applicants, the Commission, Division staff and other resources. The Department is therefore taking no action on this comment.

***Comment***

Page 3 of 7 – Application and Project Evaluations – Several comments indicate that the Division needs to show some accountability for how they are scoring the grants. “There is no requirement for the person/persons making the scoring decision to provide detailed information and the way the score was derived. It is only fair to the requesting organizations to know how each score was determined. I understand that the process is difficult but additional information should be provided to help organizations not making the cut to become more competitive for the available funding. - Tom Tammone, Bob Chamberlain

***Department's Response to Comment***

This issue was addressed in § 4970.67 and in the Evaluation Criteria, OHV Form K, found in the Appendix. The scoring for the evaluation criteria is now more specific. Any scores not supported by the application would be adjusted and the reasons reported in the Division's findings. The Department is therefore taking no action on this comment.

***Comment***

Page 3 of 7 – Preparation for the OHMVR Subcommittee and Full Commission Meetings – The comment suggests that there should be no alterations of the applications after the deadline. The Commission should not be allowed to make revisions based on the information in the applications as originally submitted or any public comment regarding the applications. The comment further recommends that the Division's evaluation be accepted as presented unless the Commissioners detect an error. The comment also indicates that it seems that more than fifty percent of the funds go to administrative costs.” - Narvell Conner

***Department's Response to Comment***

Pursuant to § 4970.53(f)(4) and (5), this section permits the Division, for purposes of clarification, to waive or correct inconsequential defects in the Application where a correction of an Application or waiver of a defect will not give the Applicant an unfair advantage over Applicants. Section 4970.68(c) allows the Commission to only adjust scores based on information submitted in the original application or from public comments that are based on information submitted in the original application.

Administrative costs are limited in § 4970.53(e)(6) to 10% of the total project amount requested. The Department is therefore taking no action on this comment.

***Comment***

Page 3 of 7 – Preparation for the OHMVR Subcommittee and Full Commission Meetings – The comment indicates that an overall plan for OHV management should be required in all applications. – Ed Waldheim, CORVA

***Department’s Response to Comment***

The Opportunity Summary, OHV Form D, and the General Evaluation Criteria, OHV Form K, Part 1, found in the Appendix, obtain and evaluate data provided by the applicant regarding their overall OHV program. The Department is therefore taking no action on this comment.

***Comment***

Page 3 of 7 – Preparation for the OHMVR Subcommittee and Full Commission Meetings – “When will the Chair select the subcommittees? This was not done in a public meeting the previous two years” – Bruce Brazil

***Department’s Response to Comment***

Appointing subcommittees is at the discretion of the Chair of the Commission. The Department is therefore taking no action on this comment.

***Comment***

Page 3 of 7 – Preparation for the OHMVR Subcommittee and Full Commission Meetings (first paragraph, second sentence) – “Suggest replacing “election” with “discretion”” – CORE

***Department’s Response to Comment***

This section has been revised to incorporate the recommendation in this comment.

***Comment***

Page 3 of 7 – Preparation for the OHMVR Subcommittee and Full Commission Meetings (first paragraph, last sentence) – “The public must be given the opportunity to speak on any subject that has relevance to the Commissions’ formulation of a decision to approve or disapprove a particular Grant and Cooperative Agreement Application.” – CORE

### ***Department's Response to Comment***

The public review portion of the application prior to submission already allows for this. Any new information presented by the public or the applicant that is not a part of the submitted application could constitute an unfair advantage in the competitive process. The Department is therefore taking no action on this comment.

### ***Comment***

Page 4 of 7 – Analysis of Project Criteria (second paragraph – “Definition of “published information” that appears in this Section is not in the Glossary. Suggest adding it to Glossary.” – CORE

### ***Department's Response to Comment***

The Glossary has been revised to incorporate the recommendation in this comment.

### ***Comment***

Page 4 of 7 – Analysis of Project Criteria - “ There was much discussion at commission hearings about what constituted “factual “ information.” “...it appears the Division is trying to equate factual with ‘published.’ There are many instances where we do not pull together and PUBLISH a comprehensive report with all the pieces of data you are requesting. The documentation is often of field notes and calendars and logs that we review and come up with stats to populate the application. Coming up with new plans and reports (we don't publish either) would be out of the norm.” – Karen McKinley, Los Padres National Forest

### ***Department Response to Comment***

The Department has come to recognize the importance of applicants supplying factual documentation to support their responses to their Application. For this reason, the Department is requiring that all responses be based on factual conditions or statistics referenced to and documented by information contained in documents officially published, maintained, and/or used in the ordinary course of the applicant's operations. Examples of factual documentation include, without limitation, management reports, general or management plans, environmental documents, visitor counts, or other documentation the Applicant has officially adopted for use in its Operation. If the applicant has adopted its field notes, calendar or logs as information used in its operations, this would meet the definition.

### ***Comment***

Page 4 of 7 – Analysis of Project Criteria – “The level of detail and amount of information the Division requires for the application responses surpasses all typical grant applications. As a result, it requires extensive research and effort by the applicant to provide the voluminous data requested for substantiating responses. The Division should streamline the application

process to require less extensive documentation and data.” – Santa Clara County Parks and Recreation Department

***Department’s Response to Comment***

The competitive process and objective evaluation criteria require sufficient detail and documentation to allow each project to be evaluated. The Department continues to work toward streamlining the application process while complying with applicable statute. The Department is therefore taking no action on this comment.

***Comment***

Page 4 of 7 – General Criteria – “The criteria must measure the project’s effectiveness at providing managed and ecologically balanced recreation to be consistent with the purpose of the OHMVR program (PRC 5090.02). The criteria should be revised to make the language consistent with the PRC.” – CORE

***Department’s Response to Comment***

Chapter 2, Section 2.4.1 second paragraph addresses this by requiring “General Criteria that measure such things as: ...Management of natural and Cultural Resources.”

***Comment***

Page 4 of 7 – General Criteria – The comment recommends that this section include the requirement for an overall plan for OHV management. – Ed Waldheim, CORVA

***Department’s Response to Comment***

The Opportunity Summary, OHV Form D and the General Evaluation Criteria in OHV Form K, Part 1, found in the Appendix, obtain and evaluate data provided by the applicant regarding their overall OHV program. The Department is therefore taking no action on this comment.

***Comment***

Page 4 of 7 – General Criteria (second paragraph) – “We believe that more specific guidance is needed for visitor counting consistency from applicant to applicant” – Bureau of Land Management

***Department’s Response to Comment***

More detail is provided in the instructions for the Opportunity Summary, OHV Form D, found in the Appendix. Further detail is not provided to allow applicants to use their agency’s standard procedure for estimating attendance. Requiring a particular procedure would be an unnecessary burden on applicants. The Department realizes that all attendance figures are

estimates. The Department expects the estimates to be based on data that has been adopted by the applicant in the official management of its operations. The Department is therefore taking no action on this comment.

***Comment***

Page 6 of 7 – Funding Targets – One comment indicates, “Unless required by the PRC... the Commission should NOT identify funding targets within each of the four funding categories. It makes little sense to have a funding target of \$7.5 million with \$2.6 million unallocated in Restoration (after this last grant cycle) when the Non-CESA funding target was only \$5.5 million and \$5.3 million of Non-CESA projects were unfunded. You will never achieve a balanced OHV program or meet the goals and vision in the PRC, Regulations or OHV Strategic Plan with this kind of disparity between program needs. The emphasis should be on providing well managed OHV opportunities vs. closing OHV roads/trails.” – Elizabeth Norton, Lassen National Forest

Another comment states, “So far, I have not been able to find out how the decision is made for the amounts of money allocated to the separate categories of conservation, law enforcement, restoration, and non-CESA which includes (acquisition, development, equipment, operation and maintenance, OHV safety and/or education, planning, scientific research, and trail maintenance). This last category is very large but received proportionally the smallest amount of funding. The non-CESA allotment is not adequate while \$ 2.6 million is left over in the area of restoration. I can’t believe off-highway vehicles are doing enough damage in California to warrant the amount reserved for restoration. We must do what is necessary to maintain the road and trail system that we already have so it will not deteriorate into non-existence...” “ I am requesting that you help repair or eliminate this poorly set up system and save our resources before they are all squandered.” – Narvell Conner

***Department’s Response to Comment***

The Commission is given the responsibility in statute PRC § 5090.24(d) to allocate funds. The funding targets for each funding category are determined by the Commission in the annual program review meeting or by the Division based on input received in that meeting, pursuant to Chapter One, section 1.2. The Department is therefore taking no action on this comment.

***Comment***

Page 6 of 7 – Funding Targets – The comment indicates the funding targets are not consistent with the law. – Ed Waldheim, CORVA

***Department Response to Comment***

The funding targets for each funding category are determined by the Commission in the annual program review meeting or by the Division based on input received in that meeting,

pursuant to Chapter One, Section 1.2. The statutory requirements for allocation of CESA funds apply to the program as a whole, not only to the Grants and Cooperative Agreements Program. Therefore, funding targets, when taken alone will not necessarily reflect the percentages required in statute. The Department is therefore taking no action on this comment.

***Comment***

Page 6 of 7 – Funding Targets – The comment states, “There are far too many dollars in the CESA Category. Each category of the Non-CESA, (acquisitions, development, operation and maintenance, OHV safety and/or education, planning, scientific research, and trail maintenance) should be broken down like the CESA and an equal amount of money should be marked for these categories.” – Narvell Conner

***Department’s Response to Comment***

The description of funding categories is based on existing statute. When statutes change, the related regulations are changed appropriately. The Department cannot change regulations based on proposed changes to statute. The Department is therefore taking no action on this comment.

***Comment***

Page 7 of 7 – Ranking and Funding of Projects – The comment indicates that the Commission’s funding targets should not serve as “cutoff points” for the individual funding categories. The comment recommends that the applications should be scored first and the Commission should adjust the funding targets last as needed. The comment further recommends that this section be eliminated from the Grants Program Manual– Tom Tammone

***Department’s Response to Comment***

Providing the applicants with funding targets in advance allows them to apply for projects based on the funding priorities set by the Commission. The Department is therefore taking no action on this comment.

***Comment***

Page 7 of 7 – Ranking and Funding of Projects – The comment indicates that an application’s face value may not be what should be used to fund projects with public funds. The comment further recommends that the current equating of score and percent funding should be kept, not the full funding that these regulations propose. – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

In response to comments and data from previous OHMVR grant cycles, the project funding restrictions were developed in an attempt to ensure an equitable distribution of limited OHMVR grant funds and to allow successful applicants to be fully funded and therefore able to achieve all deliverables as outlined in their project application. The Department is therefore taking no action on this comment.

### ***Comment***

Page 7 of 7 – Ranking and Funding of Projects – “Fully funding projects tend to penalize smaller organizations because if larger organizations grants are fully funded, they may deplete the entire amount of funds available during the current funding cycle. As an alternative, it might be worth considering full funding up to a certain percentage of the entire funding available per each pot (i.e. 5-10%) – or up to a certain dollar amount per pot (the former approach might provide more flexibility and consistency between the different funding pots).” – Santa Clara County Parks and Recreation Department

### ***Department's Response to Comment***

This has been addressed by establishing maximum request amounts in 4970.53(e) and evaluating the applicant's expenditure history, as reported in the Evaluation Criteria, OHV Form K, found in the Appendix. The Department is therefore taking no action on this comment.

### ***Comment***

Page 7 of 7 – Ranking and Funding of Projects – “This approach is not fair to project applicants asking for a higher level of funding than others with the same quality of application for lower funding requests. A prorated partial funding is potentially more appropriate, and should be determined by the Commission on a case-by-case basis. To mechanize the process, is to strip the Commission of its discretion and duty to review and approve all minor and major capital outlay expenditures proposed for the system (PRC 5090.24)” – CORE

### ***Department's Response to Comment***

This has been addressed by establishing maximum request amounts in 4970.53(e) and evaluating the applicant's expenditure history, as reported in the Evaluation Criteria, OHV Form K, found in the Appendix. PRC § 5090.24(e) applies after a minor or capital outlay project has gone through the Department's approval process. Minor and major capital outlay projects are different from grants and cooperative agreements. Approval of grants and cooperative agreements by the Commission is addressed in PRC § 5090.50(j). The Division is given responsibility for implementation of all aspects of the program in PRC § 5090.32(d). The Department is therefore taking no action on this comment.

### **Comment**

Page 7 of 7 – Ranking and Funding of Projects – the comment indicates that the provision for a “random selection” should not be necessary if the competitive process is working properly. – Ed Waldheim, CORVA

### ***Department’s Response to Comment***

With the new evaluation criteria in OHV Form K, the calculation of scores described in section 2.5.2, and the provisions for funding the projects at the cutoff line in order of amount requested described in section 2.7, the Department does not expect to use a random selection method very often. However, should the need for a tiebreaking mechanism arise, it must be addressed in the regulations. The Department is therefore taking no action on this comment.

### **Comment**

Page 7 of 7 – Ranking and Funding Projects – “If multiple projects have the same score at the funding cutoff line, I recommend you split the balance equally between the tied applicants. Tossing a coin or funding in order of the request amount does not seem fair. If a tied applicant can not use the partial funds that they would receive if the balance was equally split, they can request their application be withdrawn from further consideration. The balance would then be split equally among the remaining tied applicants.” – Elizabeth Norton, Lassen National Forest

### ***Department’s Response to Comment***

With the new evaluation criteria in OHV Form K, the calculation of scores described in section 2.5.2, and the provisions for funding the projects at the cutoff line in order of amount requested described in section 2.7, the Department does not expect to use a random selection method very often. Partial funding of a project could result in the very project deliverables that allowed a project to score well not being implemented due to inadequate funds, thus invalidating the project’s final score. The Department is therefore taking no action on this comment.

**Chapter 3** – Project Administration Procedures discuss 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, including project cost/deliverables, project performance periods, amendments to project agreements, project withdrawals, project breach-terminations, failure to perform, and financial responsibilities, and project closeouts. This chapter also includes a discussion of the Department/Division’s responsibility to conduct performance reviews and site visits, and audits. It also provides the grantees’ obligations regarding the Department’s/Division’s reports on audits and performance reviews conducted.

## **Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

### ***Comment***

Page 5 of 15 – Eligible Project Costs, Item 13 – The comment asks if administrative costs are eligible costs. – CORVA

### ***Department's Response to Comment***

Administrative costs are now documented on the Project Costs/Deliverables Form, OHV Form J, Part 2. Subsection 4970.53(e)(6) provides for administrative costs not to exceed 10% of the amount requested for the project. The Department is therefore taking no action on this comment.

### ***Comment***

Page 6 of 15 – Equipment Projects – The comment recommends that the first paragraph include equipment leases. – CORVA

### ***Department's Response to Comment***

The Equipment Project type has been eliminated. Equipment costs, including equipment lease costs, are eligible to be included as expenses in the project type for which the equipment is predominantly being used. The Department is therefore taking no action on this comment.

### ***Comment***

Page 9 of 15 – Minor Amendments to the Project Scope and Major Amendments to the Project Scope – The comment recommends “further explanation of a minor amendment of project scope and a major amendment of project scope, to add further clarity of which types of projects those were and which types of changes would occur and more importantly an explanation be added to explain how a major or minor project scope would fall within the competitive process. Because for a major scope amendment, that means a project is being changed from its original intent, which would mean that it may need to be rescored and how would that affect other projects that need to be moved forward?” – U.S. Forest Service

### ***Department's Response to Comment***

In response to comments, amendments have been clarified in Chapter 3, section 3.2.

### ***Comment***

Page 13 of 15 – Section 4: Audits – The comment recommends that “additional information be added in regard to audit requirements and the types of forms and things that a grantee

would need in order to satisfy an audit after the fact that a project has been closed.” – U.S. Forest Service, Doug Frazer

### ***Department’s Response to Comment***

In response to comments, more details on accounting procedures have been added in Chapter 3, section 3.6.3 and on audits in section 3.0.

## **Public Comments Received During the 15-Day Written Comment Period**

### ***Comment***

Page 3 of 11 – Project Performance Period – The comment recommends all projects have a project performance period of three years with no cap on annual expenses for any project (no \$15,000 limit). “There are many advantages for having multi-year projects: less work for applicants to submit annual applications, less staff time for the Division, less reading time for the Commission, and less travel time and expense for everyone to attend Commission hearings. More importantly, applicants can plan their program of work over three years with some certainty of their budget.” – Elizabeth Norton, Lassen National forest

### ***Department’s Response to Comment***

These regulations were developed in an attempt to balance the timely prudent use of State funds with the ability of the agencies to complete the proposed projects in the time allowed. The project types for which the three year period is allowed are typically more involved, requiring multiple phases to complete, hence it is reasonable to provide the longer performance period. The other project types are more suited to a shorter performance period which helps ensure the prudent timely use of limited State funding. The Department is therefore taking no action on this comment.

### ***Comment***

Page 6 of 11 – Equipment Management Requirements – “We need more specific guidance on process for disposal of equipment purchased with grant funds.” – Bureau of Land Management

### ***Department’s Response to Comment***

This section has been revised to incorporate the following bullet items:

- “Equipment that is no longer in useable condition may be used as a trade-in for the replacement equipment to be used for OHV purposes.
- Surplus equipment may be transferred or traded within the agency, provided that the Division approves the transfer and the equipment continues to be used for OHV purposes within the State of California.”

**Comment**

Page 7 of 11 – Accounting Practices (Time Sheets) – “How is the value of the time for a volunteer calculated? Most of the work that is being done by volunteers is low level labor. Maybe the requesting agency should have to provide the figures for an equivalent position within that agency.” – Bruce Brazil

**Department’s Response to Comment**

Chapter 3, section 3.6.3 addresses this item. The Department concurs that the value of volunteer labor should be based on the hourly rate of a comparable paid position with the agency. This is explained clearly in section 3.6.3. The Department is therefore taking no action on this comment.

**Comment**

Page 7 of 11 – Accounting Practices (Equipment Use) – The comment recommends providing applicants a list of Caltrans rates if the Division is not allowing agency rates. – Karen McKinley, Los Padres National Forest

**Department’s Response to Comment**

This section has been revised to incorporate the recommendation in this comment. The following link <http://www.caltrans.ca.gov/hq/eqsc/rentalrates/RentalRate.htm> to the Caltrans, Division of Equipment, Rental Rates, will be added to Chapter 3, section 3.6.3, Equipment Use.

**Comment**

Page 7 of 11 – Accounting Practices (Matching Funds and Agency Contributions) – “Requiring the same level of documentation for match funds will be very time consuming to compile and also mean extra work for the auditors.” “In addition, I assume you would also want documentation of all volunteer contributions to the program that were identified as a match.” The comment recommends that this section be deleted. – Elizabeth Norton, Lassen National Forest

**Department’s Response to Comment**

This level of documentation for matching funds is an existing requirement and is precisely what Department auditors’ desire as it removes any ambiguity in what is actually being provided by the Grantee. All contributions to the Project from any source, if identified as a Match or Agency Contribution will need to be so documented. The Department is therefore taking no action on this comment.

**Comment**

Page 8 of 11 –Billing/Reporting Requirements – “The requirement of submitting quarterly billings would cause inordinate amount of administrative staff time for processing reimbursements. It would more efficient for grantees if reimbursement requests were submitted at the conclusion of the project, or on a yearly basis.” – Santa Clara County Parks and Recreation Department

**Department’s Response to Comment**

The quarterly billing/reporting process is an existing requirement. It is part of the performance review process. There are provisions for applicants to provide a statement that no spending has taken place and explain why. As part of the performance review process, any problems with documentation of expenses can be detected and corrected during the project performance period. After the end of the project, it may be too late to correct problems and the audit may find exceptions that require grantees to refund payments. The Department is therefore taking no action on this comment.

**Comment**

Page 9 of 11 – Site Visit Reports – “Site visit reports should be made available to the public.” - CORE

**Department’s Response to Comment**

The Site Visit Report is a public document; its level of availability is determined by the Public Records Act. The Department is therefore taking no action on this comment.

**Comment**

Page 9 of 11 – Project Closeout – The comment recommends that the final payment request be changed from 90 days to 150 days. The comment further indicates that with the Forest Service accounting system, some transactions may not clear until after 90 days. – Elizabeth Norton, Lassen National Forest

**Department’s Response to Comment**

The Department understands the potential processing delays that can exist, however it is important to note that allocated State funds are encumbered only for a specified period of time. The Department must ensure the State allocated funds are processed for payment before the funds revert back to the OHV Trust Fund. In order to balance the needs of the Grantees and the State, the Department will revise the requirement from 90 calendar days to 120 calendar days.

***Comment***

Page 10 of 11 – Audits – “A member of the OHMVR Division stated that the auditing of this program leaves a lot to be desired. I feel that every grant given should be examined quarterly, rather than annually, to make sure that the money is on track and going where it was intended. If it is not, then the money should be returned to the grant fund.” – Narvell Conner

***Department’s Response to Comment***

Section 3.6.5 requires quarterly billings or reports to the Division. This is part of the Division’s performance review process, as described in Section 3.7. The Department is therefore taking no action on this comment.

**Appendix** – The Appendix contains the application forms, and samples of a project agreement and general provisions, a governing body resolution, and a payment request form.

**Public Comments Received During 45-Day Written Comment Period and Two Public Hearings**

***Comment***

Page 47 of 52 – Project Agreement General Provisions (Local Agencies Only) – “there is no project agreement for other than governments, was this an oversight?” – CORVA

***Department’s Response to Comment***

The General Provisions pages are provided as examples. The Local Agency provisions are adjusted for nonprofit and educational institution applicants. The Department is therefore taking no action on this comment.

**Public Comments Received During 15-Day Written Comment Period**

**General Comments Regarding Appendix**

***Comment***

“Please incorporate by reference or narrative to applicable sections of the regs for each section to assist applicants in reviewing all materials to submit a quality application.” – Karen McKinley, Los Padres National Forest

***Department’s Response to Comment***

The Department intends for the Regulations to be used in conjunction with the application forms located in the Appendix. However in many cases the contents of the forms are

applicable to several different sections in the regulations. To provide the references requested by the commenter would be a difficult task and could unnecessarily complicate an already involved process.

***Comment***

The comment indicates that visitor contacts/citations have not been incorporated into the project types. It further states that visitor contacts should be in the opportunity section; citations should be in the law enforcement project type. – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

The visitor contact/citation information provided in previous grant cycles was considered to be generally inaccurate and not a reliable criterion for scoring grants. Instead frequency of patrol and public safety efforts are used to evaluate Law Enforcement grants in the Evaluation Criteria, OHV Form K, Part 6.

***Comment***

Project Activity Report (PAR) – The comment requests an explanation for the elimination of the Project Activity Report (PAR). The comment further indicates that the PAR should not be eliminated without replacing it with a better report that gathers the information necessary to provide the history of each applicant for evaluation purposes. – Ed Waldheim, CORVA

***Department's Response to Comment***

In response to comments, the PAR form has been eliminated. The information is now gathered on other forms. The Opportunity Summary Sheet, OHV Form D, reports data on the applicant's OHV opportunity and attendance. The Project Evaluation Criteria, OHV Form K, provides and evaluates further data on the applicant's OHV program and previously funded projects. Other information previously reported in the PAR does not directly relate to the scoring criteria and has therefore been eliminated in an effort to streamline and simplify the application process. The Department is therefore taking no action on this comment.

***Specific Comments Regarding Appendix***

***Comment***

OHV Form C, Application Summary Sheet Instructions, Column (B): Amount Requested – The comment recommends the following language be added: "This amount must match the rounded ***Grant Request*** total from the Project..." – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

This information is already contained in the instructions for the Application Summary Sheet, OHV Form C. The Department is therefore taking no action on this comment.

***Comment***

OHV Form D, Opportunity Summary Instructions, item III - "While this sounds like a good general idea, the application presents possibilities of unintended consequences. Adding acres to miles is mixing apples and oranges. Strong possibilities of double or inconsistent counting from area to area or agency to agency. How will the counties with no available area, but a wealth of illegal activity on private ground compete?" – Bureau of Land Management

***Department's Response to Comment***

This form is intended to capture only legal riding opportunity. The information contained in this form is not used for scoring applicants applying only for Law Enforcement or OHV Safety and/or Education Projects. The instructions for this form indicate that applicants applying only for Law Enforcement or OHV Safety and/or Education Projects need not complete this form.

The Department determined comparing acres with miles is reasonable given the typical use of each category. Typically, every square foot of an open riding area is not driven on by each rider using that area, whereas each rider using a given length of trail must ride on each foot of that trail. The Department is therefore taking no action on this comment.

***Comment***

OHV Form E, Equipment Inventory Instructions, first line – "Shouldn't the inventory include previously purchased equipment inventory for consistency, even if nothing new is required for the current year." – Bureau of Land Management

***Department's Response to Comment***

This form is used to evaluate the need for equipment to be purchased in the proposed project. The form is not used if the applicant is not requesting equipment in any of the current year's proposed projects. Requiring this form to be completed by applicants not requesting funding for equipment purchase would unnecessarily complicate an already involved process. The Department is therefore taking no action on this comment.

***Comment***

OHV Form F, WHPP/HMP Instructions – The comment recommends that OHV Safety and/or Education Program Projects be exempt from the WHPP. – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

The WHPP/HMP, OHV Form F, Part 1 allows for the situation described by the commenter. If the proposed OHV Safety and/or Education project has no species or habitats of concern or risk factors associated with OHV recreation, the applicant simply has to check two boxes and sign. No further WHPP/HMP documentation is required. The Department is therefore taking no action on this comment.

***Comment***

OHV Form G, Soil Condition Table Instructions – “Annual soil condition inventories are unnecessary. “ The comment recommends that these be done every 3 to 5 years. It also recommends, “Data from Previous Year’ should be changed to ‘Data from Previous Inventory’ so reviewers can compare the ratings.” – Elizabeth Norton, Lassen National Forest

***Department's Response to Comment***

This is a statutory requirement under PRC 5090.53(b)(2). Regulations cannot be used to contradict statute. The Department is therefore taking no action on this comment.

***Comment***

OHV Form G, Soil Condition Table – “Format Recommendation – change the column heading of “Rating” to ‘**Current Rating**’, change the column heading of ‘Data from Previous Year’ to ‘**Previous Rating**’; move ‘Previous Rating’ column next to ‘Current Rating’ for ease of comparison. Format Recommendation – Print at ‘Landscape’ orientation.” – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

Since the soil condition monitoring is an annual requirement under PRC 5090.53(b)(2), the language proposed by the commenter could be misleading. The Department is therefore taking no action on this comment.

***Comment***

OHV Form H, Public Review Process – “Add ‘Other’ checkbox to ‘Public Notification Efforts.’ Other efforts could be newsletter, community fair...” – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

“Other” would be too broad an option. The public notice requirements are discussed in more detail in § 4970.53(e)(7) and Chapter 1, section 1.7. The “newsletter” scenario mentioned by

the commenter would be covered under the “News Release” check box of the Public Review Process, OHV Form H. The Department is therefore taking no action on this comment.

***Comment***

Project/Costs Deliverables Instructions, OHV Form J Part 2 – “Will the software allow addition of more lines, additional sheets, or summary sheets? Larger projects will not be able to work with this level of specify” – Bureau of Land Management

***Department’s Response to Comment***

The electronic form will allow additional lines based on the number of items the applicant enters. The level of specificity has not changed, other than more clearly stating deliverables, linking costs to specific deliverables, and moving the administrative costs to this form from the Application Summary Sheet, OHV Form C. These clarifications were in response to comments received related to accountability. The Department has also clarified the Project Costs/Deliverables, OHV Form J, Part 2 are just estimated costs. This allows the applicant flexibility when the actual costs vary from the estimates. The Department is therefore taking no action on this comment.

***Comment***

OHV Form J, Project Costs/Deliverables – “This is a new information request. Perhaps you could provide an example of a completed form? Should this be quantified (i.e. 10 days of Trail specialist time)?” – Karen McKinley, Los Padres National Forest

***Department’s Response to Comment***

Examples were not included in the proposed regulations and grants program manual in an attempt to simplify a complex document. Examples can be provided to interested applicants prior to the application deadline when the Division conducts workshops for the benefit of applicants. Also, the applicants will have the benefit of a question/answer tool via the Division website to obtain clarification. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria Instructions, third paragraph - “This paragraph embodies part of the difficulties between applicants and OHMVR staff in the 2006/2007 application process, without really defining a workable solution. What kind of published information is required to comply. Is this a new report, existing data, or something else? We applaud the need, but cannot figure how to comply.” – Bureau of Land Management

### ***Department's Response to Comment***

The Department expects that a well-managed OHV program will have some existing documentation that the applicant can use as a source of data to support their claims. It is not expected that the applicant will need to spend additional time researching and writing new documents. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria - "Public participation should be included as a criterion and scored along with other categories." – CORE

### ***Department's Response to Comment***

The evaluation criteria were developed in an attempt to measure quantifiable attributes of OHV programs and proposed projects. Public participation is a highly subjective issue and also complicated to determine "how much" and "what type" would be considered beneficial. Many of the criteria take into account the use of volunteers. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria – "In general, it appears the Division has attempted to include all criteria that may apply to each grant category. This is probably movement in a positive direction. However, we simply don't have time, given the volume of new information in this revision, to review all the criteria in each category. We remain concerned that the Evaluation Team members are simply required to be on the Division staff, without any other qualification, and the Division's internal process continues to lack transparency." – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department's Response to Comment***

The evaluation criteria were developed to be more objective thereby reducing the subjective influence of Division staff. Scores will be based on the objective information provided by the Applicant. All of this information will be available for review by the public and other applicants. The evaluation criteria are designed so that an applicant is able to assign scores based on the applicant's assessment of how its program and information relates to the possible available scores. The Division staff will merely be validating applicant responses and confirming that the scoring is supported by the applicant's source documents or making changes where needed. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria – "Evaluation criteria are very difficult to develop and assign defined points in an objective manner. However, the various standards described here are too specific and will arbitrarily deduct points from otherwise well managed OHV

programs and deserving applicants. I recommend more generic criteria to similar to the previous ones used in the last grant cycle. – Elizabeth Norton, Lassen National Forest

***Department's Response to Comment***

The Evaluation Criteria were developed as a result of a general dissatisfaction with the previous scoring criteria on the part of applicants, OHMVR Commission and the public. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria – “While specific recommendations, point totals may help with overall objectivity, they may serve as a detriment to a program as diverse, and field conditions as wildly variable as California's. Would strongly recommend that there is no real reason to divide the points available by the number of available criteria. BLM has no snow program, but loses points in many categories for not being able to check off the OSV boxes. There could be many possible criteria, with more potential points and limits on total scores.” – Bureau of Land Management

***Department's Response to Comment***

The criteria were carefully drafted to allow for the diversity of California's OHV recreational opportunities. While BLM has little snowmobile opportunity, they have more winter-season opportunity for wheeled OHVs. The ratio is based on combined totals from both OHV and OSV, so all attendance is accounted for. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 1 – “I find these criteria almost overwhelming. For example, how will you rate # 1 Ratio of Visitation to OHV Opportunity? ...Will you enter this data from OHV Form D in another database to sort by ratio?” – Elizabeth Norton, Lassen National Forest

***Department's Response to Comment***

Yes, the information for that section derives from the Opportunity Summary; OHV Form D. Scoring the result is the product of a simple mathematical formula. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 1 – “Visitation Ratio – doesn't provide a 'goal' – just a relative scale for the current year's mix of applicants. What is the OHV program seeking as a 'good' program visitation ratio?” – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

The evaluation criteria do not attempt to establish what a “good program visitation ratio is”. That is a highly subjective issue which these criteria were developed to avoid. The criteria favor programs with higher densities of use, which would indicate more efficient use of Trust Fund dollars. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 2 – “Who determined that well managed trails or areas need maps, difficulty levels displayed on the maps, trailheads with several support facilities, and signing with mileage to the next feature? This narrow interpretation of a quality OHV opportunity may cause many applicants to lose up to eight points. – Elizabeth Norton, Lassen National Forest

### ***Department's Response to Comment***

Public agencies are given broad discretion to establish rules to implement a program when the Legislature has left the details of such implementation to the agency, as here where the Division is charged with implementation of all aspects of the OHV Program. It is the position of the Division that a map with the features identified in the Evaluation Criteria is a crucial component of well-managed OHV program. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 2 – “Not all trailheads have or NEED all the items listed as facilities – are fully developed trailheads the only option for the OHV Program?” – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

The Evaluation Criteria were developed in an attempt to evaluate OHV programs in comparison to other OHV programs. Hence a program with more developed trailheads is considered superior and will garner more points in this category. This section is not the sole source for scoring; there are several other categories where applicants can earn points even if they do not have well developed trail heads. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 2 – “Please add ‘***in accordance with agency direction***’ to the signing requirement. Are all these items needed?” – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

The Evaluation Criteria were developed in an attempt to evaluate OHV programs in comparison to other OHV programs. Hence a program with better-signed trails is considered superior, regardless of agency direction, and will garner more points in this category. This section is not the sole source for scoring; there are several other categories where applicants can earn points even if they do not have well signed trails. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 2 - "Maps should show adjacent uses and note other recreational uses in the project location." – CORE

***Department's Response to Comment***

The evaluation criteria in question were developed to evaluate the quality of the OHV opportunity of the applicant. The items mentioned by the commenter, while important, are not relative to this criterion. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 3a – The comment recommends 2 points for 1-2 skill levels to allow change (increase) in OHV opportunity scores of 2 points for 5-8 months and 3 points for 9 – 12 months. – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

The points awarded to the different criteria sections were carefully weighted in an attempt to balance the various components of a quality OHV program and the diverse nature of the applicants. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 3a - "The number of facilities or areas with a single skill level are very rare. It would be hard to guess at any specific skill level on BLM lands- so I guess we would always get maximum points." – Bureau of Land Management

***Department's Response to Comment***

The BLM does, indeed, offer a variety of skill levels at most or all of their facilities. Some other applicants do not. These criteria were intentionally weighted to reward those applicants that provide more diverse opportunities to represent the diversity in California's OHV enthusiast population. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 1, Item 3b and 3c – “Most of the Federal Lands are always open- but they certainly have desirable seasons- depending on weather and scheduling. Except for a few parks, most everyone can score full points- not a good criteria.” – Bureau of Land Management

**Department’s Response to Comment**

While it is true that most BLM lands are always open, other lands are being closed in some seasons. Applicants who have seasonal closures may lose some points on this criterion. This is intentional to reward applicants who staff and maintain their OHV routes in a manner that allows for all-season recreation. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 1, Item 3c – The comment recommends that “dirt bike” be changed to “motorcycle.” – Karen McKinley, Los Padres National Forest

**Department’s Response to Comment**

The criterion uses the more colloquial of the two in an attempt to capture the unique attributes of an OHV program. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 1, Item 4 – The comment quotes the first line, ““Show your agency's performance...” The comment asks, “Aren't you asking for the specific applicant's or office performance?” – Bureau of Land Management

**Department’s Response to Comment**

“Agency” was used here to refer to the applicant to allow the use of the second person rather than third person. To clarify, the Department will replace “your agency” with “the Applicant” and make any necessary related adjustments.

**Comment**

OHV Form K, Evaluation Criteria, Part 1, Item 4 – “These comments apply to all the project types as this is a common format. Past Performance scoring needs to apply to EACH grant received. The way it is set up now, a problem with one grant would negatively affect the ratings for all of the grants. Please expand.” – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

Public agencies are given broad discretion to establish rules to implement a program when the Legislature has left the details of such implementation to the agency, as here where the Division is charged with implementation of all aspects of the OHV Program. It was the intent of the Division to evaluate the 'program-wide" past performance, not the past performance on a specific project type. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 4a – “While agency performance has not been up to internal or external standards yet, the partnership with the grant program at OHMVR is not yet functioning well enough yet for this level of expectation. Additional issue, the grants are now being allocated in February or March, and it is difficult to be accountable for funding that is so variable. Best case, these grants will be submitted in August, and the Hearings are in December. A lot will happen during that 4 months, especially in the Desert, where the field season starts in September.” – Bureau of Land Management

### ***Department's Response to Comment***

The challenges and issues addressed by the commenter would affect all the applicants equally, allowing for the comparison of applicants under these criteria to be valid. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 4b – “The specific deliverable format is new this year, so it will be difficult to quantify % completion.” – Bureau of Land Management

### ***Department's Response to Comment***

The issue addressed by the commenter would affect all the applicants equally, allowing for the comparison of applicants under these criteria to be valid. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 4c – The comment recommends the title be changed to “Partner Contribution” to account for volunteer contributions. “If we need to document and display the cost of volunteer work, a narrative section should be added to #4 and to the other project specific criteria that include ‘Agency Contribution.’” – Elizabeth Norton, Lassen National Forest

### ***Department's Response to Comment***

This criterion is measuring an agencies cash contribution to the overall OHV program, which would be documented by the agencies financial statements. Time donated by volunteers while valuable would not figure into this criterion, it is measured within the specific project criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 4c – “Without specific criteria to assure consistent approaches, we suspect the answers will be all over the board. With multiple projects in one office, it is difficult to apportion overhead costs for OHV management into one project- and identify an appropriate level of costs for each. Any project that is not funded will increase costs in the ones that are.” – Bureau of Land Management

### ***Department's Response to Comment***

The Evaluation Criteria were developed in an attempt to compare a very diverse set of applicants. It is expected that there will be a wide variance in responses and scores with some applicant scoring better in some criteria and worse in others. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Items 5 & 6 – The comment recommends putting a caveat in each scoring section of every project type (as in Section 3), that the narrative needs to address the items being scored following the narrative. This caveat is missing from several of the project type sub sections.” – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

The Department will clarify by inserting the caveat where needed.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 5a – “The automatic 10 points gives a strong advantage to (the few) facilities that are fenced- and provide a small very limited amount of opportunity” – Bureau of Land Management

### ***Department's Response to Comment***

Actually, facilities that are not fenced can also get the full ten points for well-managed programs that can show that they qualify for the maximum points available on scoring items b and c. This gives the advantage to well-managed programs, whether or not they are fenced. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 1, Item 5b – “During the active season, we may get 100 officers in one day in some areas, but when it is 110 in the (no) shade, we may patrol monthly. Not an efficient criteria” – Bureau of Land Management

**Department’s Response to Comment**

The Evaluation Criteria were developed in an attempt to compare a very diverse set of applicants, not just those residing in the desert. Some applicants, because of geographic conditions, will be able to score better than others in some criteria and worse in others. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 1, Item 5c – “This is an area where you need several possible ways of achieving some points, and a maximum total, rather than restricting the possible points to 2. – Bureau of Land Management

**Department’s Response to Comment**

The maximum points available for Item 5 are 10. It can be achieved either by scoring item a or items b and c. The Evaluation Criteria were developed in an attempt to compare a very diverse set of applicants. Some applicants because of geographic conditions will be able to score better than others in some criteria and worse in others. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 1, Item 7 – “The score value of natural resource protection is only 7 points (10%) and does not adequately reflect focus on ecological balance in the PRC.” – CORE

**Department’s Response to Comment**

A project score is determined by a combination of these General Criteria and the Project Specific Criteria. Within the individual project type natural resource protection is more applicable and as such weighted more heavily. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 1, Item 7 – “The evaluation criteria regarding natural resources should be expanded to allow for a determination of the ecological balance achieved by the project, not just impacts to special status species or species in general. Habitat preservation and/or enhancement should be included in the scoring.” – CORE

***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable. The degree to which “ecological balance” is achieved is highly subjective. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 7a – “The phrasing of question No. 7a, with a “Yes” answer meaning no presence of Special status species is confusing. Suggest rephrasing.” – CORE

***Department's Response to Comment***

The commenter's proposed edit does not appear to be superior to the version in the proposed regulations. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 7c – “Evaluation of noise and dust impacts should not be limited to special status species.” – CORE

***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable, thus the reference to special status species, which is a well documented quantifiable measure. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 8 – “This criteria is only 3 of 63 possible points, so it may be relatively unimportant, but we suspect that it will prove difficult for some offices.” – Bureau of Land Management

***Department's Response to Comment***

Noise is one of the most common complaints regarding OHV recreation. Noise enforcement is a priority for the Department. Noise enforcement training is provided by the Division in various locations around the state each year at no cost. Sound meters have been funded through grants and cooperative agreements. Local and federal agencies can work together and with volunteers and enthusiast groups to provide sound testing. This criterion was intended to reward those applicants that provide sound level testing as part of their well-managed OHV recreation program. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 1, Item 8a – “Some offices check races and other organized events, and should receive credit. At least one office has made a voluntary program available by request at the office, and this should receive points as well.” – Bureau of Land Management

***Department’s Response to Comment***

Both of the described situations would be eligible for points with the existing criteria. If the organized events occur more than 50% of the holidays and weekends, the applicant would be eligible for full points. The same would apply if personnel are available for testing on request more that 50% of the holidays and weekends. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 2, Item 1 – “10 of 40 possible points (25%) of the Acquisition scoring is now based on the agency contribution, and another 5 on the level of agency contribution toward managing the land. Seems like a lot of weight, with an internal bias toward smaller projects. There are no uniform standards to measure agency contribution.” – Bureau of Land Management

***Department’s Response to Comment***

The Evaluation Criteria were developed in an attempt to compare a very diverse set of applicants. For the purposes of the OHMVR grant program, in which the grant application amounts routinely surpass the available grant funds, it is certainly reasonable to provide preferential scoring to projects in which the applicant is also participating financially. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 2, Item 2 – “The numbers of special status species and the values assigned are arbitrary and have no meaning. Suggest that the impacts (or lack therefore) on the viability of the species be used as a criterion instead.” – CORE

***Department’s Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable, thus the reference to special status species which is a well documented quantifiable measure. The degree to which the project has impact on the viability of the species is highly subjective. The Department is therefore taking no action on this comment.

**Comment**

OHV Form k, Evaluation Criteria, Part 2, Item 2 – “Social impacts, such as proximity to homes, other recreation, etc. are not included and need to be addressed.” - CORE

**Department’s Response to Comment**

The criterion in question was developed to be responsive to the statutory intent of the program of protecting natural and cultural resources. Social impacts while an important subject are not being evaluated by these criteria. The Department is therefore taking no action on this comment.

**Comment**

OHV form K, Evaluation Criteria, Part 2, Item 2a – “This seems punitive to areas with SS species- 1/4 of the points for the project depend on absence of issues. By this criteria, many existing areas would not be open- including SVRA's.” – Bureau of Land Management

**Department’s Response to Comment**

The commenter seems to hold that not earning full points on this section equates to closing the riding area which is simply not the case. This criterion was intended to give priority to acquisition projects for property that does not have special status species. Special status species on the property may prevent the use of the property in the future. The Department would rather invest funds on property that is not known to contain special status species. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 2, Item 2b – “Scoring chart for b seems to be a duplicate of a, and redundant. No credit is available for any mitigation.” – Bureau of Land Management

**Department’s Response to Comment**

Scoring item a addresses species; item b addresses habitat. For acquisition projects, the Department feels this is appropriate. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 2, Item 2c – The comment recommends that the instructions for this section include “List potential impacts, and possible mitigations to prevent impacts to cultural sites.” The comment also suggests, “Change scoring criteria to similar language- Project has no potential of impacts to cultural resources...” – Bureau of Land Management

***Department's Response to Comment***

The commenter's proposed edit does not appear to be superior to the version in the proposed regulations. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 2, Item 3 – This comment refers to the previous comment and indicates that this section has a “ Heavy score bias for agency contribution as opposed to project benefits” – Bureau of Land Management

***Department's Response to Comment***

The criterion in Item 3 has a total possible score of five points. The next criterion, Item 4, measures the project benefits for a total possible score of ten points. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 2, Item 4 – “ We really should be looking at the benefit to the enthusiast. That is the purpose of the overall program.” – Bureau of Land Management

***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable. The criterion section identified by the commenter has several items relating to benefits to the applicants OHV program which in turn would benefit the enthusiast utilizing the facility. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 2, item 4 – “I think we can identify additional criteria for more points- acquiring key parcels or easements to maintain or improve trail continuity; acquiring key inholdings to improve or enhance existing opportunity; and others- would like to see more points, and more variety of ways to achieve them.” – Bureau of Land Management

***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable. The additions suggested by the commenter are subjective. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 3, Item 1 – The comment indicates that this section has a “ Heavy score bias for agency contribution as opposed to project benefits” – Bureau of Land Management

**Department’s Response to Comment**

Item 1, “Agency Contribution” has a maximum point total of 10. Item 2 evaluates project benefits and has total maximum points of 12. It is not clear what bias the commenter is referring to. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 3, Item 2 – “The category scoring as proposed pits one activity against another- to achieve full funding, a research project would need to benefit Soils, Water Quality, at least 3 SS species, and a cultural site. Some projects may benefit only 1, but be important anyway.” – Bureau of Land Management

**Department’s Response to Comment**

Full funding is not dependant on receiving full points on the scoring criteria. The criteria are used to evaluate a project’s merits compared to other proposed projects. Thus, it is certainly reasonable to give preference to proposed projects which provide more benefits to natural and cultural resources than another. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 3, Item 3 – “I have a difficult time tracking what checklists are to be filled out for which project, and an even more difficult time figuring out how the scoring works. Categories 1,3,5&6 have no total score figure at the bottom of the box-2&4 do.” – Bureau of Land Management

**Department’s Response to Comment**

The evaluation criteria instructions have a chart to assist applicants in determining which sections to complete depending on the project type. The commenter also notes the need for total score figures in several categories. A total score notice will be added at the bottom of the sections identified by the comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 3, Item 4 – “Suggest adding re-vegetation, water bars, or erosion-control equivalent features to Section 4.” – CORE

***Department's Response to Comment***

The criterion in question is evaluating a project's ability to reduce the need for the measures identified in the comment. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 3, Item 6 – "... this scoring pits one activity against another- some valuable projects may focus on one- and lose many points" – Bureau of Land Management

***Department's Response to Comment***

The criteria are used to evaluate a project's merits compared to other proposed projects. It is reasonable to give higher scores to proposed projects which document the widest variety of potential effects of, or to, OHV Recreation into their scientific research. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 4, Item 1 – The comment indicates that 10 points of 46 possible points of the Development scoring is based on agency contribution. "Heavy score bias for agency contribution as opposed to project benefits" – Bureau of Land Management

***Department's Response to Comment***

The other criteria in this section measure project benefits, with total possible points of 36, which is 78 percent of the total possible points for the project type. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 4, Item 2 – "The numbers of special status species and the values assigned are arbitrary and have no meaning. Suggest that the impacts (or lack therefore) on the viability of the species be used a criterion instead." – CORE

***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable, thus the reference to special status species which is a well documented quantifiable measure. The degree to which the project has impact on the viability of the species is highly subjective. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 4, Item 2 – “Social impacts, such as proximity to homes, other recreation, etc. are not included and need to be addressed.” – CORE

**Department’s Response to Comment**

The criterion in question was developed to be responsive to the statutory intent of the program of protecting natural and cultural resources. Social impacts while an important subject are not being evaluated by these criteria. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 4, Item 4 – “Clear criteria- I think, however, that without a publicly adopted plan, no project should proceed, five point deduction is rather slight punishment. There could be criteria related to demonstrated public support for the grant proposal.” – Bureau of Land Management

**Department’s Response to Comment**

Grants and cooperative agreements must conform to established local or federal plans (PRC § 5090.50(d). This provision does not require such plans in order for a project to go forward. However, if plans exist, the project must conform to the plan. Thus, it is up to the applying agency whether or not to have a plan. It is the Department’s position that a well managed program should have plans in place and that applicants that do have plans be rewarded with more points. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 4, Item 5 – “This could be difficult for some project types to achieve. Might be better to ask for a broader "green construction" approach. Recycling, water savings, heating/cooling efficiency etc. for buildings- low maintenance design for roads and trails. Could utilize 500 word essay format.” – Bureau of Land Management

**Department’s Response to Comment**

The Evaluation Criteria were developed to be objective and quantifiable, thus the reference to percent of recycled materials which is a well documented quantifiable measure. Also, the criteria were carefully drafted to allow for the diversity of California’s OHV recreational opportunities with the understanding that every project may not be able to earn full points on every criterion. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 5, Item 1 – “10 of 40 possible points of the Facilities Operations and Maintenance scoring is now based on the agency contribution. “Heavy score bias for agency contribution as opposed to project benefits” – Bureau of Land Management

**Department’s Response to Comment**

In a grants program where the requested amount routinely exceeds the available funding it is certainly acceptable to weigh agency contribution at 25 percent of the total possible points. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 5 – “FO&M criteria should have a bigger focus on the viability of the facility and improving its long-term sustainability.” – CORE

**Department’s Response to Comment**

The Evaluation Criteria were developed to be objective and quantifiable. The viability and sustainability of a project are highly subjective. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 5, Item 2 – “Additional value should be assigned to Item 2. Natural and Cultural Resources, which should be more important than the type of labor used, to be consistent with the focus on managed and ecologically balance recreation (PRC 5090.2)” – CORE

**Department’s Response to Comment**

Item 4 in this section also provides points and is associated with managed and ecologically balanced recreation. These two sections together provide proper weight to the statutory intent of the program identified by the commenter.

**Comment**

OHV Form K, Evaluation Criteria, Part 5, Item 2 - “5 points seems pretty small compared to other issues. List could be far more inclusive: onsite interpretation; regular LE and Visitor Services patrol and staff available during peak use times, availability of emergency services etc. – Bureau of Land Management

***Department's Response to Comment***

Item 2, along with Item 4 provide sufficient scoring weight to ensure a proposed project represents a well managed approach to resource protection. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K , Evaluation Criteria, Part 5, Item 3 – “The only criteria here is full time versus part time dedication to a project. A NO answer still gets 3/5 of the total score. In some cases, a bigger staff can provide additional services for peak times, and not be committed to a program that is in an off-season.” – Bureau of Land Management

***Department's Response to Comment***

The points for this section were weighted in an attempt to address the diverse nature of the program applicants. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 5, Item 3 – “Many well managed OHV programs do not have paid staff solely dedicated to the OHV program. Applicants should not lose 2 points because of this.” - Elizabeth Norton, Lassen National Forest

***Department's Response to Comment***

The points for this section were weighted in an attempt to address the diverse nature of the program applicants. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 5, Item 4 – “Recycling is a good thing, but many well managed, remote OHV areas require only pack in/pack out. It takes time and money to collect and manage a recycling program. It is not a good indicator of overall project performance, and well deserving applicants will lose points.” – Elizabeth Norton, Lassen National Forest

***Department's Response to Comment***

The criteria were developed to address a diverse set of applicants and different geographical conditions. It is not expected that all applicants will be able to receive full points on every criteria. The criteria are a way to compare the merits of one well managed OHV program/project against other well managed OHV program/project. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 5, Item 4 – “ Although a laudable goal, not achievable in all cases. I think a solid waste plan (500 word essay) is a good idea, but the criteria should be broader to allow a wider variety of points. 10 points seems pretty weighty.” – Bureau of Land Management

**Department’s Response to Comment**

The criteria were developed and weighted in an attempt to address a diverse set of applicants and different geographical conditions. It is not expected that all applicants will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 5, Item 5 – “Do you want maintenance and/or and operations plan? These tasks are different. An O&M plan for each facility may or may not exist. ...Scoring is unclear on this point. Perhaps a point per facility? Or a portion of max points for a ratio of plans to facilities?” – Karen McKinley, Los Padres National Forest

**Department’s Response to Comment**

The criteria and terminology were developed to address a diverse set of applicants. Regardless of the terminology used to define the plan, its existence will earn the points under this criterion. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 5, Item 5 – The comment indicates that this idea is critical. The comment further suggests a format and a required plan. – Bureau of Land Management

**Department’s Response to Comment**

It is the desire of the Division for applicants to possess a plan as identified in this criterion. The absence of it will earn the applicant no points. Due to the diverse nature of our applicants, a standard format is not feasible. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 1 – “ According to page 42 of the appendix, consideration of contribution (points?) will not be given to an application until they show OVER 25%. Recommend change to 25+%” – Karen McKinley, Los Padres National Forest

***Department's Response to Comment***

The criterion was developed to give the least possible points to those applicants just meeting the 25 percent requirement. Agency contribution in excess of 25 percent would entitle the applicant to higher points. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 6, Item 1 The comment indicates that a possible 10 points for agency contribution for law enforcement projects seems high. – Bureau of Land Management

***Department's Response to Comment***

In a grants program where the requested amount routinely exceeds the available funding it is certainly acceptable to weigh agency contribution at approximately 10 percent of the total possible points. The Department is therefore taking no action on this comment.

***Comment***

OHV form K, Evaluation Criteria, Part 6, Item 2 - " Better scored in this category- 16 points rather than 5- Other potential criteria might be- Are non-law enforcement staff trained/utilized to support mission of Law Enforcement program; does signing, maps, kiosk displays, and desk staff, clearly articulate the law enforcement mission, and underlying need for visitor compliance." – Bureau of Land Management

***Department's Response to Comment***

It is not clear if the commenter feels that this criterion warrants more or less points. The points for this section were weighted in an attempt to address the diverse nature of the program applicants. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 6, Item 3 – "The phrase "Applicant actively supports legal OHV Opportunity within their jurisdiction" must be struck. Law enforcement must be neutral and enforce the law and neither support nor discourage OHV recreation." – CORE

***Department's Response to Comment***

The criterion in question complies with the statutory intent of the program which is to promote well managed sustainable OHV opportunity. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 3 – “There is no control that law enforcement has on the availability of legal OHV opportunity and this should not weigh in scoring the application. If there is a need to enforce the law to prevent illegal OHV activity, this need deserves equal opportunity for funding.” – CORE

**Department’s Response to Comment**

This criterion goes to the statutory intent of the program to promote well managed sustainable OHV opportunity. The absence of legal OHV activity does not prevent the applicant from receiving funding; it simply favors applicants that do. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 3 – “Many agencies will not be able to meet several of these criteria, should have more opportunities for scoring- including previous criteria, and ones mentioned in #52 above” – Bureau of Land Management

**Department’s Response to Comment**

The criteria were developed and weighted in an attempt to address a diverse set of applicants and different geographical conditions. It is not expected that all applicants will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 4 – “In past years, this information was provided by OHMVR grant staff- I think it would be more objective if it is. I think this process, as proposed relies too highly on self rating- rather than utilizing OHMVR staff expertise. If you see things in the rating process that are misstated, the only challenge you have is during the commission meeting, and then it is a battle of wills. In addition, the grants are usually prepared well in advance of the Hearings, and the information is pretty stale by then.” – Bureau of Land Management

**Department’s Response to Comment**

The information provided by the applicant in the scoring criteria will be verified by OHMVR staff during the application evaluation process. The program does allow for the Commission to adjust scores based on public comments relative to information as submitted in the original application. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 4 - “Many projects have a longer performance period than 1 year, and with allocations as late as halfway into the year, this is pretty punitive to recipients, and not a good measure of applicant's real performance.” – Bureau of Land Management

**Department's Response to Comment**

The circumstances indicated by the comment would affect all applicants equally hence providing an accurate measure to compare applicants. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 4 –The comment states that agency contribution is already covered in item 1 of Part 6. – Bureau of Land Management

**Department's Response to Comment**

Part 6, Item 1 evaluates the agency contribution specific to the proposed project as identified on the PC/D Form. Part 6, Item 4 evaluates the agency contribution relative the applicant's entire OHV program. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 5 – “Something is wrong with the formatting of this section- the checkbox section has no heading, and no footer. I did not understand that the scoring comes from the checkboxes and the table above is just for data. Should be clearer somehow.” – Bureau of Land Management

**Department's Response to Comment**

The format is consistent with other criterion requesting a narrative. The first scoring section is a yes/no decision which then specifies how to proceed with the balance of the section. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 5 – The comment indicates that law enforcement programs to prevent intrusion do NOT necessarily require patrols 5 days/week and applicants will lose points. “ – Elizabeth Norton, Lassen National Forest

### ***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and different geographical conditions. It is not expected that all applicants will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 6, Items 5 & 6 – “Sections 5 and 6 provide points for facility configuration, such as barriers, and separation of uses, that are not in the control of law enforcement personnel and need to be struck. Law enforcement cannot be expected to develop maps of OHV areas. These section unfairly treat those applicants who apply for only law enforcement grants and do not have control over the OHV facilities they patrol.” – CORE

### ***Department's Response to Comment***

The applicants that will be scored under this section of the criteria will all be affected equally by the issues raised by the commenter, allowing for these criteria to provide an accurate measure to compare applicants. The criteria were developed and weighted in an attempt to address a diverse set of applicants and different geographical conditions. It is not expected that all applicants will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 6, Item 5a – “Pretty heavy point reward for very few facilities statewide.”– Bureau of Land Management

### ***Department's Response to Comment***

Actually, facilities that are not fenced can also get the full ten points for well-managed programs that can show that they qualify for the maximum points available on scoring items b and c. This gives the advantage to well-managed programs, whether or not they are fenced. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 6, Item 5b – “Days/week is not a very good metric for overall effectiveness, and doesn't allow for the very seasonal nature of OHV recreation in many sites.” – Bureau of Land Management

***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable, hence the use of day/week measures. In addition, the criteria were developed and weighted in an attempt to address a diverse set of applicants and different seasonal schedules. It is not expected that all applicants will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 6, item 5c – “Far more possibilities for criteria than barriers or educational measures.” – Bureau of Land Management

***Departments Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and different geographical conditions. It is not expected that the criteria represent a complete list of all possible scenarios. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 6, Item 6 – “An applicant does not always have to provide separate opportunities to prevent conflicts. – Elizabeth Norton, Lassen National Forest

***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and different geographical conditions. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 6, Item 6b – “Pretty good range of possible criteria- could you have a line with points for "other" ?” – Bureau of Land Management

***Department's Response to Comment***

It is not expected that the criteria represent a complete list of all possible scenarios. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 7a – “Good range of possibilities, but the metric of training levels is weak. Other criteria include- cooperative work and joint training with Fire, EMS or other S&R agencies; S&R and medivac Contingency planning.” – Bureau of Land Management

**Department’s Response to Comment**

The criteria were developed and weighted in an attempt to address a diverse set of applicants and different geographical conditions. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 7b – The comment indicates that this is another subjective standard. “Applicants may not have to patrol on a daily basis to have a good OHV program, but would lose points if they did not. Points for this daily patrol also seem redundant (or confusing) with the points awarded for patrols for OHV intrusion.” – Elizabeth Norton, Lassen National Forest

**Department Response to Comment**

The Evaluation Criteria were developed to be objective and quantifiable hence the frequency of patrol as a measure. This section is evaluating frequency of patrol in the project area. The previous section, Item 5, is relative to boundary patrols to prevent intrusions. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 6, Item 7b – “Redundant with, and same comments as comment 59. During use season several patrols on heavy days may be more effective than regular patrols when the area is almost empty” – Bureau of Land Management

**Department’s Response to Comment**

Comment 59 refers to the criteria for FO&M Projects. The criterion is specific to Law Enforcement Projects. Each project is considered independently, so it would not be redundant. While it may be more cost-effective to limit patrols to high use periods, this criterion is not intended to evaluate cost-effectiveness. Violations occur even during slow periods and violators learn when areas are not patrolled and ride in those times. This criterion is intended to give priority to applicants based on the number of days that the applicant provides OHV patrol. The Department is therefore taking no action on this comment.

**Comment**

OHV form K, Evaluation Criteria, Part 7 – The comment indicates that no narrative is required and asks if this is an oversight. The comment recommends a narrative for this section. – Karen McKinley, Los Padres National Forest

**Department's Response to Comment**

No narrative is required for this section. Applicants are directed to provide documents supporting their responses. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 7, Item 1 – The comment indicates that a possible 10 points seems high for agency contribution for OHV Safety and/or Education Program Projects. – Bureau of Land Management

**Department's Response to Comment**

In a grants program where the requested amount routinely exceeds the available funding it is certainly acceptable to weigh agency contribution at 15 percent of the total possible points. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 7, Item 2 – The comment recommends that this information be provided by OHMVR Division staff to make the evaluation more objective. – Bureau of Land Management

**Department's Response to Comment**

The information provided by the applicant in the scoring criteria will be verified by OHMVR staff during the application evaluation process. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 7, Item 3 – “Safety as listed here may not be NEEDED in some grants that are purely educational and within the intent of the regs. Can this be reworked to NOT PENALIZE projects that don't require this component?” – Karen McKinley, Los Padres National Forest

**Department's Response to Comment**

The criteria were developed and weighted in an attempt to address a diverse set of applicants. It is not expected that every applicant will be able to receive full points on every

criteria. There are some criteria in this section that are more applicable to purely educational projects and as such those projects will score higher in those sections. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 7, Item 3 – “This criteria does not apply to education projects, and has a 10 point total.” – Bureau of Land Management

***Department’s Response to Comment***

A well-managed OHV education program will have instructors and presenters trained and equipped to provide first aid. The criteria were developed and weighted in an attempt to address a diverse set of applicants. It is not expected that every applicant will be able to receive full points on every criteria. There are some criteria in this section that are more applicable to purely educational projects and as such those projects will score higher in those sections. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K , Evaluation Criteria, Part 7, Item 3a - The comment indicates the scoring points seem overweighed. – Bureau of Land Management

***Department’s Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants. The section in question represents roughly 9 percent of the total possible score in the project type. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 7, Item 3b – “Needs more metrics see additional criteria suggestions in 62” – Bureau of Land Management

***Department’s Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 7, Item 4 – “A higher focus should placed on user conflict avoidance and safety via education. 2 points for safety is too low and 2 points for proper trail ethics is too low.” – CORE

***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and proposed projects. The item in question has a total point value of 10, which represents roughly 17 percent of the total points in this project type. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 7, Item 4 – “This appears to be the criteria for an education project- suggest an either/or with #4. Have we even funded a safety project in the last few years- most projects seem to have a safety project incorporated with LE or FO&M. The Gold Rock project is safety education, but not a real safety project in an agency management sense.” – Bureau of Land Management

***Department's Response to Comment***

The Department considers each item listed as an important element of a well-managed education or safety project. The statute PRC 5090.50(f) specifically mentions “off-highway vehicle safety or education” as available to nonprofits and educational institutions. Since these applicants are not eligible for Law Enforcement or FO&M projects, they must apply in this project type. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Part 7, Item 4b – “Big score with a very simplistic metric. What about Sand Rails?” – Bureau of Land Management

***Department's Response to Comment***

This criterion is intended to give priority to projects that provide for diverse uses. Sand rails would be included in “Other.” The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 7, Item 4d – “Not a very important metric” – Bureau of Land Management

***Department's Response to Comment***

This criterion is intended to give priority to projects that provide services to a greater variety of patrons. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 7, Item 5 – “Poor metric of cost effectiveness- a poor, cheap program with wide circulation can easily outscore a very small, effective program targeted to one group or community” – Bureau of Land Management

**Department’s Response to Comment**

The criteria were developed and weighted in an attempt to address a diverse set of applicants and proposed projects. This criterion would certainly benefit a program, which reaches a larger audience which would constitute an effective use of OHV funds. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 8, Item 1 – The comment indicates that a possible 10 points for agency contribution seems high for planning projects – Bureau of Land Management

**Department’s Response to Comment**

In a grants program where the requested amount routinely exceeds the available funding it is certainly acceptable to weigh agency contribution accordingly. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 8, Item 2 – “Focused projects may not incorporate all of these elements- otherwise pretty good criteria” – Bureau of Land Management

**Department’s Response to Comment**

The criteria were developed and weighted in an attempt to address a diverse set of applicants and proposed projects. It is not expected that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 8, Item 3 – ““Potential impact to relationships between OHV Recreation and local residents” requires rephrasing. Suggest potential impact on local residents.” – CORE

***Department's Response to Comment***

The reference to OHV recreation is necessary to maintain the statutory intent of the program. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 8, Item 3 – The comment indicates that this item could use an 'Other ' category with additional points available. – Bureau of Land Management

***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 8, Item 4 – “Most of Section 4 is incomprehensible. 25% of the points come from administrative tasks. The effectiveness of the planning application should not be measured by the administrative coordination, but by a reasonable schedule, list of deliverables, budget, and alignment with the OHMVR mission. There should also be a value assigned to a well-articulated need for the planning activity.” – CORE

***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects (including statewide coordinator positions). Many of the commenter's suggested criteria are addressed in the other items under this project type. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 8, Item 4 – “I think this is an attempt to provide criteria for OHV program management- suggest a bifurcated approach with two tracks- like the one you utilized in Conservation. With single set of criteria, projects in one track are penalized for not complying with the requirements for the other track.” – Bureau of Land Management

***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects (including statewide coordinator positions). It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The approach suggested by the commenter is not

warranted due to the small number of possible applicants who might apply for the OHV program management track. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 8, Item 5 – “Poor metric of program effectiveness- and overall need.” – Bureau of Land Management

***Department’s Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 8, Item 6 – “Most projects will be focused on one or two of these criteria. A poor project that hits all four will outscore a better more focused project that concentrates on one.” – Bureau of Land Management

***Department’s Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 9, Item 1 – The comment indicates that a possible 10 points for agency contribution seems too high for restoration projects. – Bureau of Land Management

***Department’s Response to Comment***

In a grants program where the requested amount routinely exceeds the available funding it is certainly acceptable to weigh agency contribution as in this criterion. The Department is therefore taking no action on this comment.

***Comment***

OHV form K, Evaluation Criteria, Part 9, Item 2 – “Over simplistic Metric- Restoration deserves more than a 4 point score in N &C resources” – Bureau of Land Management

### ***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K Evaluation Criteria, Part 9, Item 3 – “While all could apply, the applicant is only allowed to check one. Who decided, and under what statutory authority, that closed areas (for example, Wilderness areas, or land closed to provide for non-motorized or protection of residents) deserve fewer points than cultural sites? Management decisions are not made in a vacuum, as suggested by the criteria. What if the restoration is to protect a stream; is that less valuable than protecting a special-status species? How were these points determined? Why can an applicant only get points for one criterion? Where is the statutory authority for awarding points in this manner?

In its attempt to remove all potential for subjectivity by the OHV Commission, the Division has set the bar for objectivity so high that its own criteria fail the test.” – Karen Schambach, Center for Sierra Nevada Conservation

### ***Department's Response to Comment***

Public agencies are given broad discretion to establish rules to implement a program when the Legislature has left the details of such implementation to the agency, as here where the Division is charged with implementation of all aspects of the OHV Program. In light of the emphasis on sustaining OHV Recreation and providing ecological balance, it is reasonable for the scoring to give more emphasis on special-status species and cultural sites than on other factors. This item is one of six and provides a maximum of just less than 10% of the total points available. The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 9, Item 3 – “The focus on special status species should be limited. The focus should be on protection of ecological balance. Habitat and watershed restoration should be included in the criteria. Assigning value to the incorporation of alternate OHV routes to ensure that OHV activities will not reoccur in restored area does not have bearing on the restoration project itself and should not be a criterion.” – CORE

### ***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable, thus the reference to special status species which is a well documented quantifiable measure. The degree to which the ecological balance will be achieved is highly subjective. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 9, Item 3 – “There are more reasons for restoration than these, and they shouldn't be scaled for descending point values. Overall, this metric also needs more than a 4 point value” – Bureau of Land Management

### ***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 9, Item 3 – “ Why would there be more points for protecting special status species or a cultural site vs. restoring a road in a semi-primitive non-motorized or roadless area?” – Elizabeth Norton, Lassen National Forest

### ***Department's Response to Comment***

The OHMVR Act requires expenditures to relate to sustaining OHV Recreation. Restoring a road in a non-motorized or roadless area that has no connection to OHV Recreation is not allowed. The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 9, Item 4 – “The restoration value of the project (e.g. restoring to natural or near-natural condition, returning habitat functions) should be measured. The duration of the effort versus the amount of damage to be repaired should also be measured.” – CORE

### ***Department's Response to Comment***

If a project does not restore to conditions that existed prior to OHV use, it will not be considered. The criteria cited reference the conditions necessary for a well managed

successful project. The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV form K, Evaluation Criteria, Part 9, Item 4 – “Could be a longer list with more options for scores- other categories could include: disguise technique; project documentation- before and after project; Incorporation of volunteers and user groups; parallel educational efforts and others.” – Bureau of Land Management

***Department’s Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 9, Item 4 – “What do we mean by barriers” – Bureau of Land Management

***Department’s Response to Comment***

Barrier is a common term that includes fences and anything else that blocks movement or prevents access. It is intended to be used in its broadest, most inclusive sense, so no definition was considered necessary. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 9, Item 4 – “Many projects do not incorporate planting of materials- a reason for more criteria” – Bureau of Land Management

***Department’s Response to Comment***

The criterion is not specific to planting. “Use of native plants and materials” would include materials used to disguise a restored route. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 9, Item 4 – “Are there Universally recognized BMPs? Better criteria would be to present the BMPs that will be followed in the project” – Bureau of Land Management

**Department’s Response to Comment**

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 9, Item 4 – “Both of these criteria vary depending on the project. Better metric would be to explain the methodology for each, and the rationale for utilizing the chosen methods.” – Bureau of Land Management

**Department’s Response to Comment**

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 9, Item 5 – “Would a project be consistent for funding if it weren’t incorporated in a management plan?” – Bureau of Land Management

**Department’s Response to Comment**

The project would still be considered for funding, but would receive no points for this criterion. The wording will be changed from “no score” to “zero points.”

**Comment**

OHV Form K, Evaluation Criteria, Part 9, Item 6 – “Delete “Combination of any of these (3 points) If applicant can check only one, why would they check “Combination”?” – Bruce Brazil

**Department’s Response to Comment**

Applicants must choose the one most appropriate. The scoring for each item is intended to award more points for the most reliable plan for future operational expenses. A combination

of funding sources is more reliable than depending on future grant funding alone. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 9, Item 6 – “Should incorporate user fees or gate fees as a potential revenue source in criteria” – Bureau of Land Management

***Department’s Response to Comment***

Such fees would be part of the “Applicant’s operational budget.” The Department chose not to prioritize projects based on whether or not they collect fees. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 1 – The comment indicates that a possible 10 points for agency contribution seems too high for trail maintenance projects. – Bureau of Land Management

***Department’s Response to Comment***

In a grants program where the requested amount routinely exceeds the available funding it is certainly acceptable to weigh agency contribution as in this criterion. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 2 – The comment indicates that natural and cultural considerations “may rate more than 3 points max score. This metric does not really capture the full range of considerations and preparations. No site (trail) design can fully overcome natural or cultural resource issues: possible additional criteria: Project plan completed; NEPA/CESA available, signed off by specialists.” – Bureau of Land Management

***Department’s Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 3 – “As valued, the trail maintenance activities seem to focus on the staff performing the work, rather than the quality of the outcome. Inventory of trails counts for double the points of maintaining the same trails. The

values must be shifted to reflect the need to properly maintain trails to soil conservation standards. Soil rating standards should be reflected in these criteria. The long-term sustainability of the activity should be reflected in the scoring.” – CORE

***Department’s Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable, thus the reference to staffing which is a well documented quantifiable measure. The measures suggested by the comment are highly subjective. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 3 – “Years of experience by project director is a very poor metric of program quality. There are so many variables, that a applicant-reported answer would be almost meaningless.” – Bureau of Land Management

***Department’s Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

***Comment***

OHV form K, Evaluation Criteria, Part 10, Item 3b – “Is [sic] there any known instances where the Paid staff is solely dedicated to OHV program? Does this include ANY staff member that may work on the project? This may give unfair advantage to the large agencies like the BLM that cover a much larger territory than a smaller agency like a county Parks and Rec. or a USFS regional district with one of the national forests.” – Bruce Brazil

***Department’s Response to Comment***

Yes, many applicants, both federal and local, have personnel devoted solely to their OHV program. Federal agencies have OHV techs and OHV Program Managers. Local agencies with OHV parks have staff assigned to the park. The Department is therefore taking no action on this comment.

***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 3b – “Suggest moving narrative requirement before the Supervision section, and asking for a more comprehensive description of the makeup and roles of the project staff.” – Bureau of Land Management

### ***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable, thus the reference to staffing which is a well documented quantifiable measure. The measures suggested by the comment are highly subjective. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 4 – The comment suggests that the following scoring criteria be added to the Trail Maintenance criteria:

“Will trail be improved to reduce future damage? (5 points)

“Will trail be repaired to the same state previous to the damage? (2 points)

Explain how improvements will be made.” – Bruce Brazil

### ***Department's Response to Comment***

The Evaluation Criteria were developed to be objective and quantifiable, thus the reference to staffing which is a well documented quantifiable measure. The measures suggested by the comment are highly subjective. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 4- “Recommend changing ‘list of document name and date of publication, as well as...’ to ‘list the document name and date of **survey/inventory**, as well as...’ We don’t PUBLISH surveys/inventories.” – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. For this reason the language has been left somewhat generic. As such, “published” as defined is intended to refer to the date such documents are finalized or adopted for use by the applicant, not necessarily that the document is published in the usual sense of being made available for third party public use or consumption. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 3b – “The only criteria here is full time versus part time dedication to a project. In some cases, a bigger staff can provide additional services for peak times, and not be committed to a program that is in an off-season.” – Bureau of Land Management

### ***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation Criteria, Part 10, Item 4 – “We do not understand this context for the word inventory. As far as I know, the USFS does have a condition survey process, that is being applied to trails. At this point, BLM does not have a parallel process. BLM is in the process of inventorying all roads and trails statewide, but I don't think this data is what you are requesting for this question. It seems reasonable to ask for a maintenance plan, and request the information about what we already know, but an inventory is not the vehicle- or at least the term is so generic as to be meaningless.” – Bureau of Land Management

### ***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV form K, Evaluation Criteria, Part 10, Item 5 – “This section could be N/A depending on the work to be accomplished. Can this be reworked to not penalize a project that is N/A in this category?” – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form K, Evaluation, Criteria, Part 10, Item 5 – “Most trail projects will not utilize materials that can be recycled, and quantification could be difficult.” – Bureau of Land Management

### ***Department's Response to Comment***

The criteria were developed and weighted in an attempt to address a diverse set of applicants and projects. It is not expected that the criteria represent a complete list of all possible scenarios or that every applicant will be able to receive full points on every criteria. The Department is therefore taking no action on this comment.

### ***Comment***

OHV Form M, Trail Maintenance Plan – “Please change format to LANDSCAPE.” – Karen McKinley, Los Padres National Forest

### ***Department's Response to Comment***

Document is presented as “portrait” for publishing purposes.

**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 any subsequent soil conservation standards in accordance with PRC § 5090.35(b).

### **Comments Not Specifically Directed at the Proposed Regulations**

While the following comments are not pertinent to the regulations as proposed, they are summarized below with the Department's response.

### ***Comment***

Several comments were received regarding the procedure and timeframe for the consent calendar. One comment suggested the public should be notified ten days in advance regarding the contents of the consent calendar. Another comment suggested that the procedure for including or excluding approved applications on the consent calendar should be explained. – Tom Tammone, Todd Schamberger

### ***Department's Response to Comment***

The requirements for noticing the Commission meetings and posting the agendas are provided in statute and, thus, are not covered in the regulations. Therefore, comments pertaining to the conduct of public meetings are not pertinent to the proposed regulations. Nevertheless, the Department provides its response as follows.

Public meeting statutory requirements already provide for ten day notice to the public for agendas, which include notice of any agenda items that will be taken up on a Consent Calendar. Pursuant to the Bagley-Keene Open Meeting Act (California Government Code (CGC) § 11125(a)), the Commission meeting agenda, including any consent calendar items, must be posted ten days in advance. CGC § 11125.7(a) requires that the Commission

provide the opportunity for public comment on each agenda item. These protections provide the public with adequate notice and opportunity to request an item be removed from consent. The Department is therefore taking no action on this comment.

***Comment***

The comment indicates, “In 5090.64 of the California Public Resources Code thirty percent of the Revenue and Taxation Code is mandated to be used for restoration activities as defined in Section 5090.11.” The comment recommends that restoration should also include repairs of the system that is in place; currently there is not adequate funding for this purpose. – Narvell Conner

***Department’s Response to Comment***

Resolution of the problem raised by this comment would require a change to statute by the Legislature with approval of the Governor. The regulations must be consistent with existing statute and any changes to statute are beyond the scope of this regulatory process. The Department is therefore taking no action on this comment.

***Comment***

The comment states, “The Commission members and the Division are strategically misaligned. I saw several examples in the last grant cycle in which Division recommendations were basically ignored by the Commission.” The comment recommends that the Commission and the Division should work together. It further states, if this is not possible, one of them should be eliminated. – Todd Schamberger

***Department’s Response to Comment***

Both the Commission and the Division are aware of the need to work together. The strategic planning process underway is a mechanism to develop a common direction that is consistent with the Division and Department missions and the legislative intent for the program. Both the Division and Commission are authorized by statute. Revisions to statute are beyond the scope of this process. The Department is therefore taking no action on this comment.

***Comment***

The comment indicates that the Commission and Division should work more closely together and the Commission should fund more projects that provide OHV opportunities and less projects that provide conservation and enforcement. – Albert L.

***Department’s Response to Comment***

As noted above, the development of a strategic plan is underway. That process is being done jointly with the OHMVR Commission and will attempt to address many of the issues

that are raised by these various comments. The regulations have been refined and clarified in an attempt to implement current law in as accurate a manner as possible. The OHMVR Commission, by statute, is responsible for the final approval of grant projects and the issuance of project agreements. Thus, the concerns raised by these comments are beyond the scope of the current regulatory process.

***Comment***

The comment indicates, “The biggest problem we have is the program is unstable....we need to pick a spot and stay there.” The comment states that the agencies (grantees) would then be able to figure out what they need to do. – Tom Tammone

***Department’s Response to Comment***

This comment is beyond the ability or the regulatory process in light of current statutory requirements. The Division and the Commission are jointly working on a statewide strategic plan, which is intended to address such issues as stability of a long-term sustainable program. The Department is therefore taking no action on this comment.

***Comment***

Subsection 4970.72 - “This section of the regulations has been changed from previous versions. The OHMVR Auditor, BLM and USFS have all requested coordination meetings with the OHMVR Division, and so far this has not happened. Prior to this rewrite, we strongly request an opportunity to develop a fair and mutually beneficial process for all parties.” – Bureau of Land Management

***Department’s Response to Comment***

The Division is given full statutory authority for implementation of all aspects of the program (PRC § 5090.32 (d)). It must do so in compliance with appropriate law. The program audit requirements have been developed in accordance with applicable auditing standards and in an attempt to improve the program accountability on the part of grantees and the Division. It would be a unique grant program if the grantees were involved in the development of the program audit requirements. The Department is therefore taking no action on this comment.

***Comment***

The comment indicates that there is no problem with the requirement of retaining records for three years. The comment recommends that the Division also retain historical records of all grantees and utilize them in the funding and the audit processes. – Ed Waldheim, CORVA

### ***Department's Response to Comment***

Applicants are required to provide specific information on previous funded projects in OHV Form K. An audit is limited to the specific project being audited. The Department is therefore taking no action on this comment.

### ***Comment***

"I am pleased to see the PAR reporting requirements have been deleted from the LE applications. It was just too much information to attempt to gather, and it was not accurate no matter how you gathered the information." - Jeff Sanford

### ***Department's Response to Comment***

The comment does not seek any action. The Department is therefore taking no action on this comment.

### ***Comment***

"We strongly suggest that the Division consult with State Parks OGALS (Office of Grants and Local Services) on measures they use for developing regulations, Procedural Guides and Grant Applications. Their process for creating applications, instructions and regulations is superb. Their materials are easily understood, clear, concise, and accurately reflect the funding legislation(s) requirements. Their applications are streamlined and can be completed without inordinate amounts of research and detailed documentation. OGALS periodically hold focus group meetings with previous and potential grant applicants to review their draft guides and applications. Because of this, they generate superior documents for both State Staff and Grantee use. " – Santa Clara County Parks and Recreation

### ***Department's Response to Comment***

The Division continues to work with OGALS. However, this is a very diverse program governed by different statutes. OGALS does not fund operations or federal applicants. This program requires more specific regulations and more detailed applications. The current proposed permanent regulations are the result of a process that began in 2003 to make the program more accountable. The Department has gone through the proscribed process for the emergency regulations and now the permanent regulations. There proposed permanent regulations represent the results of all of that valuable input and a tremendous effort by staff to address as many concerns as possible. The Department recognizes the need for continuous improvement, and expects to continue to make minor changes to the regulations annually in an effort to be responsive to applicants and the public. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria Part 9, Item 4 – “I would like to see some examples of score-worthy incorporations of Law Enforcement for this item. LE funding has been scarce for several years- but the restoration projects keep getting funded.” – Bureau of Land Management

**Department’s Response to Comment**

This comment does not provide a specific recommendation. The Department is therefore taking no action on this comment.

**Comment**

OHV Form K, Evaluation Criteria, Part 7, Item 4c “See Comment 63” – Bureau of Land Management

**Department’s Response to Comment**

“Comment 63” does not appear to relate to this issue. The Department is therefore taking no action on this comment.

**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.