



August 22, 2024

California Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
Attn: Scott Soares, Senior Environmental Scientist
P.O. Box 942896
Sacramento, California 94296-0001
Sent Via email to: OHV.Grants@parks.ca.gov; Scott.Soares@parks.ca.gov

Re: Proposed amendments to the Grants and Cooperative Agreements Program Regulations

Dear Mr. Soares:

Thank you for the opportunity to review and comment on the proposed amendments to the Grants and Cooperative Agreements Program regulations. This letter is submitted by Defenders of Wildlife (Defenders) on behalf of its 2.1 million members and supporters in the U.S., including 316,000 in California, and by the Desert Tortoise Council (Council), which is proactive in promoting tortoise conservation throughout the Southwest.

Background Information

The California Department of Parks and Recreation proposes to amend the California Code of Regulations (CCR) governing the Grants and Cooperative Agreements Program administered by the Off-highway Motor Vehicle Recreation (OHMVR) Division. Proposed revisions include changes to information required in the Environmental Review Data Sheet Form, Habitat Management Program (HMP) and Soil Conservation Plan (SCP).

Comments

Defenders and the Council submit the following comments. Some of our comments include specific examples of off-highway vehicle (OHV) use issues at specific areas

managed by the Bureau of Land Management (BLM) in the California Desert Conservation Area (CDCA) but these are only examples and these and other issues may be applicable in other areas where OHV recreation is supported by grants, especially on other BLM-managed lands and National Forests managed by the U.S. Forest Service.

1. California Environmental Quality Act (CEQA). CEQA requires that an Environmental Impact Report (EIR) be prepared if the proposed activity or project poses a potentially significant impact to the environment or meets any of the tests for mandatory findings of significance under CEQA. Under CEQA, a project means the whole of an action, which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and that is undertaken by persons, including federal, state and local agencies, which are supported in whole or in part through a public agency, such as grants from the California Department of Parks and Recreation, OHMVR Division.

Pursuant to CCR Section 15300.2, a categorical exemption may not be used and an EIR is required if any of the following six exceptions apply:

- The project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; or substantially reduce the number or restrict the range of an endangered, rare or threatened species.¹
- The project has possible environmental effects that are individually limited but cumulatively considerable.

Comment: An EIR is required if the California Department of Parks and Recreation intends to grant funding to a qualifying entity that facilitates and supports OHV recreation that has the potential to impact (reduce) the habitat for fish and wildlife and substantially reduce the number or restrict the range of an endangered or threatened species.

As an example, the desert tortoise is listed as a Threatened species under the Federal Endangered Species Act and, in April 2024, the California Fish and Game Commission

¹ A lead agency need not prepare an EIR solely because of such an effect, if: (A) the project proponent is bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan or natural community conservation plan; (B) the state or federal agency approved the habitat conservation plan or natural community conservation plan in reliance on an environmental impact report or environmental impact statement; and (C) 1. such requirements avoid any net loss of habitat and net reduction in number of the affected species, or 2. such requirements preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species to below a level of significance.

found uplisting the species from Threatened to Endangered under the California Endangered Species Act (CESA) is warranted. A full account of the status of the desert tortoise is available from the California Department of Fish and Wildlife (CDFW) at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=219814&inline>.

CDFW published the following findings in its status report:

- Substantial reductions in Mojave desert tortoise abundance have occurred in large areas of their range, and the abundance has continued to decline since the species was listed as Threatened under CESA in 1989.
- The factors that affect the survival and reproduction of the Mojave desert tortoise, include land uses (ranching, mining, agriculture, urbanization, military operations, transportation networks, recreation, and utility corridors), weather impacts (storms, drought, availability of natural water), predation from artificially high predator populations, and factors associated with climate change.
- The minimum viable tortoise population density is 3.9 adults per square kilometer, or approximately 10 per square mile. The density estimates in nine of the 10 California Mojave desert tortoise sampling units were below the minimum viable density to sustain populations in 2014.
- Density estimates in the Western Mojave Recovery Unit appear to have declined by 85% to 95% since the earliest density information was collected in the late 1970s.
- The petition to list the desert tortoise as Endangered² and other relevant information indicates there is sufficient scientific information to indicate that the action to change the status of the desert tortoise from Threatened to Endangered may be warranted.

Desert tortoises have been killed by OHVs as documented by the BLM. BLM biologists with expertise in desert tortoise ecology and management surveyed for and analyzed desert tortoise carcasses encountered during field surveys in the West Mojave planning area from 1998 through 2000. They were able to identify causes of mortality for 148 of 1,779 carcasses found. Of the 148, the cause of mortality attributed to OHV use was 42, or 28 percent.

BLM's California Desert District Office submitted a desert tortoise mortality report to the U.S. Fish and Wildlife Service on September 11, 2020, covering observed mortalities for years 2016-2020. BLM reported 15 mortalities on designated open OHV routes on BLM-managed public land in the western Mojave Desert, all of which were the result of crushing

² Defenders of Wildlife and the Desert Tortoise Council were co-petitioners and the petition can be found at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=178621&inline>

by OHVs. Of the 15 dead tortoises, six were located within the Ord-Rodman Critical Habitat Unit (CHU), three in the Fremont-Kramer CHU and six in non-critical habitat.

Below is a photograph of a desert tortoise crushed on a BLM-designated open route in the Ord-Rodman Critical Habitat Unit.



Comment: An EIR is required if the California Department of Parks and Recreation intends to grant a qualifying entity (i.e., BLM) funding that facilitates and supports OHV recreation because BLM has documented that OHV use has resulted in the mortality of numerous desert tortoises in the Western Mojave Recovery Unit for. This is contrary to the purposes of the Grants and Cooperative Agreements Program, which includes maintaining viable populations of Special Status Species, including the desert tortoise.

In managing OHV recreation in the CDCA, including the western Mojave Desert, BLM has not required any mitigation measures to avoid, minimize or compensate for significant adverse impacts to the desert tortoise and its critical habitat. For example, there are no limits on the number of OHV users or seasonal use restrictions and, as their name implies, BLM-designated Open Areas are open to all forms of cross-country vehicle travel with no science-based monitoring of tortoise mortalities to document the numbers of those crushed or injured. Absent such measures, an EIR is necessary, and a project or activity cannot be mitigated to qualify as categorically exempt from CEQA. Although BLM has restricted OHV use to designated open routes, monitoring has shown that impacts to desert tortoises continue to occur both on and adjacent to these routes, OHV use continues to occur on closed routes and new unauthorized routes have been created. We are unaware that the OHMVR Division of State Parks has required any impact mitigation

measures as a condition attached to grants awarded to BLM to facilitate and sustain OHV recreation on public lands.

2. National Environmental Policy Act (NEPA) and CEQA: Proposed regulatory changes to CCR Section 4970.06 requires the federal agency to demonstrate it has complied with NEPA without being overly explicit on what the OHMVR Division requires as proof of NEPA compliance. A NEPA document prepared by a federal agency requires that impacts associated with an activity or project be mitigated whereas CEQA requires that such impacts be mitigated to the extent that residual impacts are insignificant. In addition, impacts to species listed as Threatened or Endangered under CESA must be fully mitigated under CEQA.

Comment: When considering the adequacy of a federal agency NEPA analysis of the impacts of an activity or project, State Parks staff should determine if impacts to Threatened or Endangered species have been or would be fully mitigated. If not, the NEPA analysis cannot satisfy the requirements of CEQA and State Parks should prepare an EIR that includes mitigation measures, including compensatory mitigation, that fully offsets all adverse impacts.

3. Amend Environmental Review Data Sheet (ERDS) Item 6: This proposed amendment would extend the response date for applicants to submit additional information on the ERDS to 20 days. This proposed amendment would also change the reference from Project Site to Project Area and add language requiring grant applicants to identify designated critical habitat existing in the Project Area.

Comment: We support this proposed amendment. Effects of OHV recreation supported by grants in all Project Areas that overlap critical habitat for Threatened and Endangered species is essential in determining if OHV use affects such habitats. Applicants should also be required to identify the Threatened or Endangered species for which such critical habitat was designated and provide supporting documentation.

Below is a Google Earth Satellite image taken in 2024 showing an OHV camping and staging area within desert tortoise critical habitat located east of Highway 395 and south of Red Mountain.



In 2023, a crushed Mohave ground squirrel, which is a CDFW-designated Threatened species, was found on Cuddeback Road within a half mile of this unauthorized, BLM-fenced OHV staging area. If OHV recreation supported by grants adversely impacts any listed species or its designated critical habitat, an EIR should be prepared by State Parks because the grant would support OHV use that cannot be categorically exempt from CEQA.

4. Amend Habitat Management Program Part 1: This proposed amendment would combine HMP Part 1 with SCP Part 1. It would also require grant applicants to identify OHV recreation in the Project Area that affects Special Status Species and their habitats and soils. Soils are essential in supporting habitats and their associated species. The requirement that the SCP identify the potential to cause erosion or sedimentation that exceeds restorability within the Project Area is among the most important aspects of the SCP.

In addition, this proposed amendment would require grant applicants to identify Ground Disturbing Activities for both the HMP and SCP.

Comment: We support this proposed amendment. As noted in previous comments to the OHMVR Division on SCPs, we have observed that OHV recreation within the BLM-designated Jawbone Canyon and Dove Spring Canyon OHV open areas has caused severe soil erosion and sediment to be delivered off-site and into drainages. It appears that BLM has not implemented any measures to reduce this erosion, control sediment transport or restore soil and close areas so that native vegetation can be restored. Below are Google

Earth Satellite images taken in 2024 showing areas within the Dove Spring Canyon and Jawbone Canyon OHV open areas showing areas impacted by OHV use, resulting in loss of vegetation and soil erosion in what was once suitable habitat for desert tortoises.

Dove Spring Canyon OHV Open Area



Jawbone Canyon OHV Open Area



We recommend that State Parks carefully review applicants' SCPs so that the issues, identified above, are addressed in SCPs and include corrective measures required as conditions for any grant.

We recommend that the term Ground Disturbing Activities include the continued use of OHVs on roads and trails rather than limited to new construction. OHV use typically results in widening of roads and trails, and downcutting due to soil displacement.

5. Amend Habitat Management Program Part 2 Section 2: This proposed amendment would require grant applicants to identify OHV recreation occurring in Project Areas and assess risk factors to Special Status Species and their habitats, which supports the purpose of HMPs, which is to ensure a Viable Species Composition is maintained in Project Areas. The amendment also removes language that inaccurately portrays routine maintenance activities as having no risks to Special Status Species or their habitats.

Comment: We support this proposed amendment because it would require grant applicants to identify how OHV use impacts Special Status Species and their habitats within the Project Area as a whole rather than at a particular site. In addition, it clarifies that routine maintenance activities (e.g., road and trail grading) can pose risks to Special Status Species, such as direct mortality from motorized equipment when such species travel on or across roads and trails.

6. Amend Habitat Management Program Part 2 Table 2 Superscript 3 - Examples of reasons to exclude species from the HMP: This proposed amendment would identify when species can be excluded from the HMP and clarifies that such species are those occurring within the Project Area. It would require grant applicants to state that both Project activities and OHV recreation in the Project Area do not overlap in time with species occurrence, and that there are no risk factors affecting Special Status Species. It would require that such species can be excluded from the HMP only if there are no records of their occurrence in the Project Area during the past 30 years.

Comment: We support this proposed amendment. Temporary absence of some species may occur within a Project Area due to the effects of disease, fire, floods, and natural movements, so the 30-year timeframe should allow for the effects of these factors to end and allow species to recolonize otherwise suitable habitat.

We recommend that grant applicants provide credible documentation prepared by qualified individuals with the appropriate expertise to make such determinations. We have found instances in some HMPs where a Special Status Species is stated as occurring in a Project Area but incorrectly stated there were no risk factors. OHV recreation often poses

risks to Special Status Species, but those risks vary according to species and their sensitivity to human activity and noise.

7. Amend Habitat Management Program Part 2 Section IV - Known Information: This proposed amendment would clarify that the HMP is required to address Special Status Species and their habitats and remove the term 'sensitive habitats,' which is not defined or used in the HMP.

Comment: We support this proposed amendment because the term 'sensitive habitats' is not applicable to the HMP.

8. Amend Habitat Management Program Part 2 Section IV – Concerns, Risks and Uncertainties: This proposed amendment would clarify that the HMP addresses the effects of OHV recreation activities rather than OHV management, on Special Status Species and their habitats.

Comment: We support this proposed amendment because use of the term OHV management would likely lead to grant applicants stating that OHV management poses no risk to Special Status Species and their habitats.

9. Amend Habitat Management Program Part 2 Tables 4a and 4b: Applicable Monitoring Instructions: This proposed amendment would ensure that grant applicants know that the wildlife monitoring and surveys described in the HMP must be performed by or supervised by an individual with the appropriate biological expertise in the affected Special Status Species and their habitats.

Comment: We support this proposed amendment because it will resolve specific issues we have identified in our review of some HMP monitoring reports for Special Status Species and their habitats submitted by the BLM. Those monitoring reports were superficial, omitted specific survey and monitoring procedures used, omitted documented impacts to Special Status Species and their habitats, and often concluded there were no known impacts resulting from OHV recreation. The purpose of the HMP is to ensure a Viable Species Composition is maintained and this proposed amendment will improve the scientific rigor of the HMP.

10. Amend Habitat Management Program Part 2 Table 4b - Validation Monitoring Instructions: This proposed amendment would require grant recipients to list the year monitoring took place so that OHMVR Division staff can verify that grant recipients are held accountable for performing the monitoring described for the appropriate year. This will resolve the issue of grant recipients using outdated monitoring results and will improve the validity and accuracy of the HMP.

Comment: We support this proposed amendment. We have found this to be an issue in reviewing previous HMP monitoring reports submitted by the BLM where no monitoring procedure or date was provided. In fact, we found that the exact language was repeated in multiple years of monitoring reports, which suggests that monitoring had not actually occurred on an annual basis .

11. Amend Soil Conservation Plan Part 1: This proposed amendment would help in making the grant application process more efficient by combining the requirements for HMPs and SCPs in the general application rather than separately.

Comment: We support this proposed amendment for the reasons given.

Conclusion

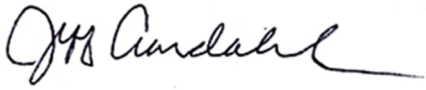
Defenders and the Council have reviewed the proposed amendments to the Grants and Cooperative Agreements Program and fully support them. The proposed amendments will resolve many of the issues we have found in previous HMPs and SCPs submitted by grant applicants.

Regarding HMP requirements, the proposed amendments will require grant applicants to fully account for and use science-based documentation in determining which Special Status Species and their habitats are affected by OHV recreation within and surrounding areas where such use occurs, the extent and significance of those threats, and commit to actions to reduce or eliminate them to achieve the purposes of the Grants and Cooperative Agreements Program, which includes sustaining viable populations of Special Status Species.

Regarding SCP requirements, we recommend that OHMVR Division staff carefully review SCPs and make sure they include measures to mitigate soil erosion and transport, require that soils lost from intense use of OHVs are restored, and that treated areas be closed until natural vegetation is restored.

We have included additional recommendations for preparing EIRs covering OHV use in Project Areas that results in mortality to Special Status Species and impacts to their habitats. When such mortality and habitat impacts occur, the OHMVR Division should not determine that a categorical exemption applies, but instead proceed with preparing an EIR.

Please contact us if you have any questions or would like additional information regarding our comments.



Jeff Aardahl
Senior California Representative
Defenders of Wildlife
P.O. Box 401
Folsom, CA 95763
jaardahl@defenders.org



Ed LaRue, Jr.
Chair, Ecosystems Advisory Committee
Desert Tortoise Council
3807 Sierra Hwy #6-4514
Acton, California 93510
eac@deserttortoise.org