

**California Native Plant Society – California Wilderness Coalition –  
Center for Biological Diversity – Defenders of Wildlife – Desert Tortoise Council  
– Desert Tortoise Preserve Committee – Friends of the Inyo – Friends of Tesla  
Park – Sierra Club/California and Nevada Desert Committee –  
The Wildlands Conservancy**

June 8, 2020

California Department of Parks and Recreation  
Off-Highway Motor Vehicle Recreation Division  
Attn: Sixto Fernandez, Grants Manager  
Grants and Cooperative Agreements  
1725 23rd Street, Suite 200  
Sacramento, California 95816-7100  
Sent via email to: [OHV.Grants@parks.ca.gov](mailto:OHV.Grants@parks.ca.gov)

Re: Comments from conservation organizations on the Notice of Proposed Rulemaking: Title 14. Natural Resources. Grants and Cooperative Agreements Program Regulations

Dear Mr. Fernandez:

Thank you for the opportunity to provide comments on the proposed rulemaking under Title 14, Natural Resources, Grants and Cooperative Agreements Program Regulations. Comments included in this letter are submitted by the 10 conservation organizations noted above, which have millions of members and supporters in the U.S., including California, all of which are dedicated to the protection and conservation of natural and cultural resources.

Our organizations' comments are as follows, with items of particular importance underlined:

**1. Section 4970.02 (Program Purpose):** The California Department of Parks and Recreation (DPR) proposes to amend Section 4970.02 to state:

“The purpose of the Grants program is to provide well managed OHV Recreation by providing financial assistance to eligible agencies and organizations that develop, maintain, operate, expand, support, or contribute to well managed high quality OHV recreation areas, roads, and trails, and to responsibly maintain the wildlife soils and habitat of project areas in a manner that will sustain long term OHV Recreation in accordance with the legislative provisions and intent of the act commencing at PRC Section 5090.10.”

**Comment:** This statement of Program Purpose is not just misleading in how it is worded, it does not comply with the governing statutory provisions relating to management of OHV recreational uses and turns the intent of the Public Resources Code (PRC) provisions relating to management of OHV recreational uses on its head. The intention of the statute is to require the “conservation of significant natural and cultural resources” in connection with OHV recreational uses and to manage OHV use areas in a manner that “conserves natural and cultural resources and improvement of natural resources over time.” PRC § 5090.43(a). See also, §§ 5090.35(a), 5090.10 (definition of “conservation”).

As amended in 2017, PRC Section 5090.10 provides: “Conservation” and “conserve” mean activities, practices, and programs that protect and sustain soils, plants, wildlife, habitats, and cultural resources in accordance with the standards adopted pursuant to Section 5090.35. PRC Section 5090.35(a) requires the Off-Highway Motor Vehicle Recreation Division (Division) to provide for “the protection of public safety, the appropriate utilization of lands, and the conservation of natural and cultural resources.” These management prescriptions are described as “of the highest priority.” PRC § 5090.35(a). Further, “The Division shall take steps necessary to prevent damage to significant natural and cultural resources within state vehicular recreation areas,” PRC § 5090.35(a). Section 5090.35(c)(1) further requires the Division to prepare a wildlife habitat protection plan that conserves and improves wildlife habitats for each state vehicular recreation area.” PRC § 5090.35(d) requires the Division to “monitor annually in each state vehicular recreation area to determine whether soil conservation standards are being met and the objectives of wildlife habitat protection plans are being met.” PRC § 5090.43 (a) provides “Areas shall be developed, managed and operated for the purpose of providing the fullest appropriate public use of the vehicular recreational opportunities present...while providing for the conservation of cultural resources, and the conservation and improvement of natural resources values over time.”

The Program Purpose, as stated in Proposed Section 4970.02, under the above referenced statutory provisions, must not be to promote and manage OHV use for the purpose of sustaining “long term OHV recreation” but rather to manage OHV recreational uses in a manner that will ensure sustainability (conservation) of cultural and natural resources, including vegetation and wildlife, over time. The OHMVR Division's mission statement cannot be carried out in connection with the grants program unless the applicant will implement “conservation” through “activities, practices, and programs that sustain soil, plants, and wildlife and their habitation in accordance with the standards adopted pursuant to §5090.35.” PRC Sections 5090.10, 5090.43(a), 5090.35(a). Stating that the goal of the grants program is to “responsibly maintain the wildlife, soils, and habitat of project areas” is a considerably lower standard than

the mandate to “conserve natural and cultural resources” and to ensure “sustainability of cultural and natural resources” over time. To “responsibly maintain the wildlife, soils, and habitat of project areas” is a lesser degree of protection than ensuring “conservation of natural and cultural resources in a sustainable manner over time.”<sup>1</sup> To “maintain” implies to keep the wildlife, soils, and habitat in a non-deteriorating condition, but is not the same as “sustaining and conserving those resources over time.”

The basic legal error is that the OHMVR Division has, in its proposed revision of the Program Purpose regulation, inverted the qualifying phrases contained in the governing statute. Pursuant to the PRC provisions cited above, it is absolutely clear that the purpose of the statute is not to provide “sustainable long term OHV Recreation” but instead to guarantee that OHV Recreational uses will be regulated and managed in a manner that conserves natural and cultural resources, including wildlife and wildlife habitat in a sustainable manner over time. PRC Sections 5090.10, 5090.43(a), 5090.35(a).

PRC Section 5090.50(a) provides “The Division shall develop and implement a grant and cooperative agreement program to support the planning, acquisition, development,

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<sup>1</sup> The definition of “conservation” and “conserve” in PRC Section 5090.10 states that grants and cooperative agreements must be carried out “in accordance with the standards adopted pursuant to PRC Section 5090.35.” The standards include the 2008 Soil Conservation Standard and Guidelines. This standard is itself a “conservation” measure that has a “sustainability” management requirement. See PRC Section 5090.35(b)(1)-(3). The 2008 Soil Conservation Guidelines for Off-Highway Vehicle Recreation Management contain the following Soil Conservation Standard: “Off-highway vehicle recreation facilities shall be managed for sustainable long term prescribed use without generating soil loss that exceeds restorability, and without causing erosion or sedimentation which significantly affects resource values beyond the facilities.” (2008 Standard at 1).

“Sustainability” in environmental science means “the quality of not being harmful to the environment or depleting natural resources, and thereby supporting long-term ecological balance.” (Dictionary.com.) “Sustainability” refers in ecology to “how biological systems remain diverse and productive over time.” (Environment and Ecology.) “Sustain” means to provide what is needed for something to exist, continue.” (Merriam-Webster.) “Sustain” means “to strengthen or support physically” or “to cause to be prolonged for an extended length of time without interruption.” (Oxford Dictionaries.) “Sustainability” is “the ability of the ecosystem to keep diverse and productive through time despite of humans deriving their needs from natural resources.” (Biology Online.)

maintenance, administration, operation, enforcement, and restoration, and conservation of trails, trailheads, and other facilities associated with the use of off highway motor vehicles and programs involving off highway motor vehicle safety or education.” The Grants and Cooperative Agreements Program is required to include provisions relating to management of trails, trailheads, and other facilities according to the “conservation” standard.

PRC Section 5090.50 (b)(1)(A) iterates this conservation standard when it provides that 50% of the funds appropriated pursuant to 5090.61 “shall be expended solely for grants and cooperative agreements for the acquisition, maintenance, operation planning, development or conservation of authorized trails and facilities associated with the use of off highway motor vehicles for recreation or motorized access to non-motorized recreation.”

The OHMVR Division is also not authorized to “fund trail construction unless the trail is capable of complying with the conservation specifications prescribed” in the statute, and the OHMVR Division “shall not fund trail construction where conservation is not feasible.” PRC § 5090.35(e).

Further the proposed Program Purpose statement introduces the terms “well-managed” and “high quality” which have no statutory basis and are not defined in the document.

The Program Purpose, proposed Section 4970.02, must therefore be rewritten to state:

“The purpose of the Grants and Cooperative Agreements Program is to 1) provide financial assistance to eligible agencies that acquire, maintain, operate, develop OHV recreation areas, roads and trails, including the conservation of such areas, and 2) to responsibly sustain and conserve the wildlife, soils, and habitat of Project areas in accordance with the legislative provisions and intent of the act commencing at PRC Section 5090.10.”

**2. Additional Recommendations:** Section 4970.10(d) of the proposed regulations provides that “Projects that affect lands identified as inventoried roadless areas by the U.S. Forest Service shall certify that the Project complies with PRC Section 5090.50(b)(1) (C).” We believe that it is necessary to include as well in proposed Section 4970.10(e), the following provisions of PRC 5090.50(b)(1)(B)(i-ii):

- (B) (i) Give preference to applications that sustain existing authorized off highway motor vehicle recreation opportunities.
- (B) (2) Give additional consideration to applications that improve facilities that provide motorized access to non-motorized recreation opportunities.

This will ensure consistency with PRC Section 5090.50(b)(i)(a) that provides for grants and cooperative agreements for facilities that “provide motorized access to non-motorized recreation.” It is important that applicants for grants are informed that grants are available for motorized access to non-motorized recreational opportunities. It is likewise important to emphasize that the Grants and Cooperative Agreements Program is not to give preference to applications that propose new roads or trails for OHV recreational uses.

**3. Comments on Grants to Federal Agencies:** The two primary federal agencies receiving funding for off-highway vehicle activities are the Bureau of Land Management (BLM) and U.S. Forest Service (USFS). These two agencies allow various types of off-highway vehicle recreation on millions of acres of land they manage in California, and annually receive millions of dollars in grant funding to maintain off-highway vehicle recreation, restore habitat damaged by unauthorized vehicle use and support law enforcement and monitoring.

The proposed regulations should clearly state that in order to be eligible to receive funding under the Grants and Cooperative Agreements program, the BLM and USFS off-highway vehicle recreation programs must conform to state law, including the requirement to manage OHV use areas in a manner that “conserves natural and cultural resources and improvement of natural resources over time.” PRC § 5090.43(a). This also includes the requirement to comply with the soil conservation standards, and development and implementation of a wildlife habitat protection program. A team of subject matter experts should be established by the DPR to review the off-highway vehicle use programs of the BLM and USFS to determine if they conform to state law and, if not, to identify changes that need to be made in order for these agencies to be eligible to apply for and receive funding under the Grants and Cooperative Agreements Program.

**4. Conclusion:** Our comments and recommendations are intended to ensure that changes to the regulations conform to current California statutes governing the Grants and Cooperative Agreements Program, including the purpose of the program and federal agency compliance with those laws and regulations. The Proposed Program Purpose regulation is grossly misleading and inconsistent with the governing statutory provisions. Other significant provisions relating to how the grants and cooperative agreements program are required to be administered are omitted. The proposed changes should be withdrawn and replaced with language that accurately aligns with current statutes and that fully sets out funding constraints and opportunities and then recirculated for further public review and comment.

Sincerely,



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