



**OHMVR COMMISSION MEETING
Mammoth Lakes, CA 93546**

September 25, 2015

STAFF REPORT: Grants and Cooperative Agreements Program

STAFF: Sixto J. Fernandez, Grants Manager

SUBJECT: Grants Program Update

Summary

This Grants and Cooperative Agreements Program update will provide information on four topics that are of interest to the public and the Commission. For sake of clarity, the four topics are discussed separately.

1. Time Extensions for Agreements.
2. Agreement Defaults.
3. Status of Revisions to Grant Program Regulations.
4. Recreation Trails Program (RTP).

Discussion

Time Extensions for Agreements

The OHMVR Division allows as much flexibility to the Grantees as possible when time extensions are requested. OHMVR Division staff work closely with the Grantee to evaluate the situation necessitating the time extension. The decision is ultimately guided by keeping the best interest of the State of California at the forefront of any decision making process. Section 4970.19.2 (Amendments) of the 2008 Grants and Cooperative Agreements Program Regulations (Rev.1/14) (Regulations) addresses Amendments. The relevant language regarding time extension requests in this section states:

An amendment is required if a modification to the Project Description or extension of the Project performance period (time extension) is needed to accomplish the intent of the original Project Agreement. Time extensions for programmatic Project Agreements (e.g., Ground Operations, Law Enforcement, and Education and Safety) may be denied. Requests may be approved when circumstances exist beyond the Grantee's control that would otherwise result in the Project not being completed.

Additionally, the Regulations provide a written process for requesting an amendment to the agreement to allow for a time extension. The process requires the Grantee submit a

time extension request form to the OHMVR Division at least 30 calendar days prior to the end date specified in the Project. The grant administrator overseeing the Grantee's project reviews and analyzes the request for time extensions and submits a recommendation to the Grants Manager. Based on the analysis, and considering the circumstances necessitating the request for a time extension, the Grants Manager will either approve or deny the request. If the request is approved, the amendment for the time extension is processed. If the request is not approved by the Grants Manager, the grant administrator will provide written notice to the Grantee explaining why the request was denied. The Grantee may elevate their request to the OHMVR Division Chief and ultimately the OHMVR Division Deputy Director for reconsideration on any time extension denial.

Breach of Contract

Current statute and regulations for the Grants and Cooperative Agreements Program do not specifically address the topic of agreement defaults by a Grantee. However, a Grantee may be found in breach of contract. Since the complete revision of the Grants Program in 2008, the OHMVR Division has not found a Grantee in breach of contract. If issues are brought to the attention of the OHMVR Division, staff will work with legal counsel on resolution. Section 4970.19.4 (Project Breach-Termination) of the regulations states:

Failure of a Grantee to comply with the terms and conditions of the Project Agreement may be treated by the OHMVR Division as a breach of contract. If the OHMVR Division shall give the Grantee written notification that the Grantee has thirty (30) calendar days to cure the breach. If the Grantee does not cure the breach or commence actions to cure the breach within thirty (30) calendar days or show diligent progress to cure the breach, the OHMVR Division may terminate the Project Agreement and void the OHMVR Division's obligations. If the OHMVR Division determines breach was due to no fault of the Grantee, the OHMVR Division may waive reimbursement of funds paid or advanced or make payment for any work performed up to the date of termination. In the event of a breach that the OHMVR Division waives, such waiver shall not serve to excuse the future performance of the breached term that was waived or performance of any other term of the Project Agreement. The Project shall remain subject to all record keeping and Audit requirements contained in these regulations.

Regulation Changes

On June 12, 2015, pursuant to the requirements of Government Code Section 11346.8(C), and Section 44 of Title 1 of the California Code of Regulations, the OHMVR Division provided notice to the Office of Administrative Law (OAL) and the public of changes being proposed to various sections within the Grants Program Regulations. That notification opened a 45-day public comment period that ended on August 3, 2015. Additionally, the OHMVR Division held public meetings on August 4 and 6, 2015, in Sacramento and Bakersfield respectively.

The OHMVR Division reviewed all the submitted comments and made a determination to accept some comments and reject others. Due to changes made after the initial 45-day public comment period, the OHMVR Division proceeded with a 15-day public comment period highlighting the revisions. The 15-day public comment period ended on September 2, 2015. The OHMVR Division received two public comments. No additional revisions will be made to the proposed Regulations. Attached is an overview of the changes submitted to the OAL for approval.

Recreational Trails Program

The Recreational Trails Program is a federal assistance program of the United States Department of Transportation's Federal Highway Administration (FHWA). The program provides funds to States to develop and maintain recreational trails and trail-related facilities for both motorized and non-motorized recreational trail uses. The OHMVR Division oversees the motorized portion of the program, while the Office of Grants and Local Services administers the non-motorized component for the State of California

The OHMVR Division is currently accepting applications for the Recreational Trails Program. Approximately \$4.8 million is available for OHV recreational trail projects. Applications are due September 30, 2015; final awards will be determined during the summer of 2016.

Commission Action

For information only

Attachments

Overview of Regulation changes

Key Changes to the Regulations

January 2016

4970.01. DEFINITIONS

- “Good Standing” means that the Grantee is at all times adhering to the statues and regulations governing the Grants and Cooperative Agreements Program.
- "Project" means the activities and Deliverables described in the Project Application to be accomplished with funding, which includes both Grant funds and matching funds, through a Project Agreement

4970.05. GENERAL APPLICATION REQUIREMENTS

- Public comments received shall be submitted no later than 5:00 pm Pacific standard time on the first Monday in April.
- All items of expense applied towards match must directly further the activities and Deliverables described in the Project Application and be accomplished with funding through a Project Agreement and shall be documented the same as any other item of expense.
- An Applicant applying for a Grant involving activities on any public lands not managed by the Applicant shall include written permission from the Land Manager authorizing the Applicant to conduct the proposed Project and a description of how the Project fits with the land management goals of the area.
- Nonprofit organizations shall provide IRS Form 990 (or something to the equivalent) from the previous year

4970.06.1. California Environmental Quality Act (CEQA) Requirements

- Other than from CEQA and NEPA activities no Project Deliverables will be funded until a CEQA review has been completed for the entire Project.

4970.08. ELIGIBLE PROJECT COSTS

- Stipends paid as per diem costs to volunteers only when a volunteer is working at a remote location for three or more consecutive days. A remote location is considered to be further than 50 miles from volunteer’s home/headquarters. Per diem allowances shall be as stated in Section 4970.08(b)(4).
- Travel expenses and per diem for federal agencies shall follow the policies of the federal agency requesting the funds with regard to travel reimbursement and shall not exceed the established federal rates. All non-federal agency Applicants shall follow the policy established by the State of California for its employees with regard to travel reimbursement and shall not exceed the rates paid to Exempt, Excluded, and Represented State of California employees. The rates are posted at <http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm>.

- Transportation costs for moving Equipment, material, and personnel from base of operations to project sites (excluding moving and relocation expenses resulting from changes in assignments),
- Rent or lease of facilities or Equipment to directly complete the Project, provided that the lease shall be fair market value or Grantee's actual cost, whichever is less and shall be proportionate to the area of the facility used for the Project. Utilities to operate these facilities are eligible provided the utilities are documented separately from any rent or lease costs. Facilities not required in order to directly complete the Project shall only be eligible as an indirect cost.
- The cost of equipment by a Grantee shall be necessary for, materials to, and appropriate for the length of anticipated use for the Project and shall not exceed the minimum requirements necessary to successfully accomplish the Project.

4970.09. INELIGIBLE PROJECT COSTS

- Any Project cost more appropriately funded by other Division programs or reimbursed by any other funding source. No grant funds and/or match funds shall be expended at any property owned and/or managed by the Department of Parks and Recreation,
- Replacement or repair of Equipment not properly used, secured or maintained; or, where the OHMVR Division determines that the cause of the damage was the fault of the Grantee,

4970.10.4 Acquisition

- With the exception of federal agencies, the Applicant shall cause to be inserted in the acquisition deed or other recorded transfer of title document a condition that the property shall be used for OHV Recreation purposes as defined in these Regulations and that the State of California is granted Power of Termination pursuant to California Civil Code Section 885.010 et seq. providing that, in the event the property is not used for OHV Recreation, title to the property shall be transferred to the State of California. Federal agencies, to the maximum extent consistent with federal law, shall use and manage the property for OHV Recreation in accordance with the controlling Federal Agency's and use plan; if the property is not used for the purpose of OHV Recreation, the Federal Agencies shall use reasonable efforts to request appropriations necessary to reimburse the State its pro-rata share of the acquisition costs of the property.