

SB 249 (Allen) Off-highway motor vehicle recreation (As Amended 6/26/17)
Section-by-Section Comments by the Off-Highway Vehicle (OHV) Community

SECTION 1.

OHV Community Comments on Section 1: We have no concerns with this definition.

Section 5090.10 of the Public Resources Code is amended to read:

5090.10.

“Conservation” ~~means~~ and “conserve” mean activities, practices, and programs that *protect and sustain soils, plants, wildlife, habitats, and their habitat cultural resources* in accordance with the standards adopted pursuant to Section 5090.35.

SEC. 2.

OHV Community Comments on Section 2: We have no concerns with this definition.

Section 5090.11 of the Public Resources Code is amended to read:

5090.11.

“Restoration” ~~means~~, and “restore” mean, upon closure of the unit or any portion thereof, the restoration of land to the contours, the plant communities, and the plant covers comparable to those on surrounding lands or at least those that existed prior to off-highway motor vehicle use.

SEC. 3.

OHV Community Comments on Section 3: Monitoring is a necessary component of management practices. While this section is necessary, the focus of the monitoring is very narrow. The proposed text states “assess the adequacy of conservation and restoration actions to inform adaptive management strategies.” In reality, this is limited (conservation and restoration actions) and only accounts for a portion of the activities involved in the management of a recreation unit. To be successful the monitoring program must account for all components in managing the SVRA unit.

Additionally, while there is direct application of this to State Park SVRA units, the verbiage indicates a totality of the OHMVR “system” which is inclusive of local and federal partners.

Levying new regulatory mandates and related compliance requirements places the entire program (SVRAs and units managed by the FS/BLM/Counties) in both legal and fiscal jeopardy.

Lastly, the verbiage states “program adopted by the department.” That is in error, as the “division” (a subset of the department) is tasked with managing the program.

Section 5090.13 is added to the Public Resources Code, to read:

5090.13.

“Monitoring program” means a program adopted by the department that provides periodic evaluations of monitoring results to assess the adequacy of conservation and restoration actions to inform adaptive

management strategies. A monitoring program includes, but is not limited to, all of the following at each individual system unit:

- (a) Surveys to determine the status of natural and cultural resources.
- (b) Periodic assessments of the effectiveness of protection and restoration measures currently in place.
- (c) Progress reports on the implementation of conservation and restoration measures, the designation and management of sensitive areas with cultural and natural resources, and alternative management strategies.
- (d) A schedule for conducting monitoring activities.

SEC. 4.

OHV Community Comments on Section 4: Adaptive management has been introduced into the OHMVR legislation. Based on 25-plus years of experience working with “adaptive management,” the definition provided does not reflect comprehension of what actually constitutes adaptive management. Adaptive management is an iterative, ongoing process that requires a monitoring component.

The proposed definition (“*use the results of information gathered through a monitoring program or scientific research and regulatory standards to adjust management strategies and practices*”) is incorrect from a professional and academic perspective. To focus on management changes based on scientific research negates the rationale to adopt an adaptive management strategy. Scientific research is a snapshot in time and results are relevant only for the conditions affecting the research.

Additionally, “regulatory standards” are marks describing a desired condition. As such, they are a fixed goal to achieve. The definition in the proposed legislation indicates “regulatory standards” as flexible. This is incorrect. Like “scientific research,” “regulatory standards” are a fixed point (condition) that describes a goal to achieve.

Monitoring is conducted to evaluate the consistency and appropriate progress of management actions to achieve the desired condition – compliance with regulatory standards.

Adaptive management is about change and adjusting management prescriptions based on evaluation of monitored data to achieve a desired condition. Use the following as a definition of “adaptive management” as it is a formal definition supported by academia and scientific/research groups: “*Adaptive management is a structured, iterative process of decision making in the face of uncertainty, with an aim to reduce uncertainty over time via system monitoring and evaluation.*”

As with “monitoring” (Sec. 3, 5090.13) levying new regulatory mandates and related compliance requirements places the entire program (SVRAs and units managed by the FS/BLM/Counties) in both legal and fiscal jeopardy.

Section 5090.14 is added to the Public Resources Code, to read:

5090.14.

“Adaptive management” means to use the results of information gathered through a monitoring program or scientific research and regulatory standards to adjust management strategies and practices to ensure conservation and protection of natural and cultural resources.

SEC. 5.

OHV Community Comments on Section 5: We thank you for the changes that have been made in this section, and we have no further comments.

Section 5090.15 of the Public Resources Code is amended to read:

5090.15.

(a) There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of nine members, five of whom shall be appointed by the Governor and subject to Senate confirmation, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(b) ~~In order to be~~ *Persons* appointed to the ~~commission, a nominee shall represent~~ *commission shall have expertise, or work or volunteer experience, or both, in* one or more of the following ~~groups~~ *areas*:

(1) Off-highway vehicle ~~recreation interests~~ *recreation*.

(2) Biological or soil ~~scientists~~ *sciences*.

(3) ~~Groups or associations of predominantly rural landowners~~ *Practical experience with rural landownership and management*.

(4) Law enforcement.

(5) Environmental ~~protection organizations~~ *and cultural resource protection or management*.

(6) Nonmotorized ~~recreation interests~~ *outdoor recreation*.

(c) It is the intent of the Legislature that appointees to the commission represent all of the ~~groups~~ *primary qualifications* delineated in paragraphs (1) to (6), (6) of subdivision (b), inclusive, to the extent ~~possible~~ *possible, at all times. It is further the intent of the Legislature that the commissioners reflect the geographic diversity of California as well as the diversity of all Californians, including, but not limited to, the special needs of Californians who participate in off-highway vehicular recreation pursuant to this chapter.*

(e) ~~Whenever a reference is made to the State Park and Recreation Commission pertaining to a duty, power, purpose, responsibility, or jurisdiction of the State Park and Recreation Commission with respect to the state vehicular recreation areas, as established by this chapter, it is a reference to, and means, the Off-Highway Motor Vehicle Recreation Commission.~~

SEC. 6.

OHV Community Comments on Section 6: We thank you for the changes in language, as Section 6 is amended to be mostly satisfactory. We believe that the author made a good faith effort to improve access by all Californians to the Off-Highway Motor Vehicle Recreation Commission (OHMVR) by reinstating the four meetings per year schedule.

We would like to see the author be more positive in the commission report requirements, such as reporting on the division efforts to improve safety and education and expansion of appropriate recreation opportunities.

Section 5090.24 of the Public Resources Code is amended to read:

5090.24.

The commission has the following ~~particular~~ duties and responsibilities:

- (a) Be fully informed regarding all governmental activities affecting the program.
- (b) Meet at least four times per year at various locations throughout the state to receive comments on the implementation of the program. Establish an annual calendar of proposed meetings at the beginning of each calendar year. The meetings shall include a public meeting, before the beginning of each grant program cycle, to collect public input concerning the program, recommendations for program improvements, and specific project needs for the system.
- (c) Hold a public hearing to receive public comment regarding any proposed substantial acquisition or development project at a location in close geographic proximity to the project, unless a hearing consistent with federal law or regulation has already been held regarding the project.
- (d) Consider, upon the request of any owner or tenant, whose property is in the vicinity of any land in the system, any alleged adverse impacts occurring on that person's property from the operation of off-highway motor vehicles and recommend to the division suitable measures for the prevention of any adverse impact determined by the commission to be occurring, and suitable measures for the restoration of adversely impacted property.
- (e) Review and comment annually to the director on the proposed budget of expenditures from the fund.
- (f) Review *and comment on* all plans for new and expanded local and regional vehicle recreation areas that have applied for grant funds.

We believe that adding "comment" to this commission requirement adds undue burden to a voluntary commission, and the sentence should revert to its former language.

(g) Review and comment on ~~the strategic plan~~ *plans periodically* developed by the ~~division pursuant to Section 5090.32.~~ *division.*

(h) Prepare and submit a program report to the ~~Governor, the Assembly Water, Parks, and Wildlife Committee, the Senate Committee on Natural Resources and Water, and the Committee on Appropriations~~ *Governor and the appropriate policy and fiscal committees* of each house of the Legislature on or before January 1, ~~2011, and every three years thereafter.~~ 2022. The report shall be adopted by the commission after discussing the contents during two or more public meetings. *One of the public meetings shall be held in northern California and one shall be held in southern California.* The report shall address the status of the program and off-highway motor vehicle recreation, including all of the following:

- (1) ~~The results~~ *A summary of the strategic planning process completed* ~~process and protocols developed~~ pursuant to subdivision ~~(4) (a)~~ of Section ~~5090.32.~~ 5090.39.
- (2) The condition of natural and cultural resources of areas and trails receiving state off-highway motor vehicle funds and the resolution of conflicts of use in those areas and trails.
- (3) The status and accomplishments of funds appropriated for restoration pursuant to paragraph (2) of subdivision (b) of Section 5090.50.
- (4) A summary of resource monitoring data compiled and restoration work completed.

(5) Actions taken by the division and department since the last program report to discourage and decrease trespass of off-highway motor vehicles on private property.

(6) Other relevant program-related environmental issues that have arisen since the last program ~~report.~~ *report, including, but not limited to, conflicts with federal and state Endangered Species Acts, local air quality laws and regulations, federal Clean Water Act and regional water board regulations or permits, and other environmental protection requirements.*

We believe this addition is an example of piling on by the environmental community. The commission will address a variety of division issues and successes without being given a checklist of requirements. Current law language is adequate.

(i) Make other recommendations to the deputy director regarding the off-highway motor vehicle recreation program.

SEC. 7.

OHV Community Comments on Section 7: We cannot understand why Section 507.1 was omitted, as it was placed into law to discourage the elimination or reorganization of the OHMVR Division because the division was created by law, not department policy. If it has anything to do with the efforts of the Department of Parks and Recreation (DPR) to reorganize, such changes in the law are premature and unwarranted.

Section 5090.30 of the Public Resources Code is amended to read:

5090.30.

There is in the department the Division of Off-Highway Motor Vehicle Recreation. Whenever any reference is made to the Office of Off-Highway Motor Vehicle Recreation, it shall be deemed to be a reference to, and to mean, the division. ~~Section 507.1 does not apply to the division.~~

SEC. 8.

OHV Community Comments on Section 8: We cannot understand why the author is changing current law to dilute the Deputy Director's powers. The Deputy Director needs to act in a timely and independent manner to be effective in a multi-faceted and specialized program. If this is due to future DPR reorganization efforts, the amendment is premature and unwarranted.

Section 5090.31 of the Public Resources Code is amended to read:

5090.31.

The division shall be under the direction of a deputy director appointed by the director. The deputy director shall ~~have no responsibilities other than directing and managing the division and the program.~~ *be part of the department's management team.*

SEC. 9.

OHV Community Comments on Section 9: This section recasts some of the general duties the Division is required to perform and requires the Division to prepare new reports concerning activities that take place on lands administered by federal agencies and local governments where the information that the Division will be required to compile may not be readily available in the format that this section requires. It would place a new burden upon the Division and the federal and local agencies to develop statistics that may or may not be maintained and for no apparent

purpose other than to demonstrate that participation in OHV recreation can be a recreational pastime with some risk of injury to the participants.

The amendment additionally removes the existing duty of the Division to prepare and regularly update a strategic plan to identify future needs for recreation opportunities, particularly where they may exist in underserved communities, and to develop plans to serve those unmet demands for opportunities within existing demographic or environmental constraints consistent with local planning processes.

We are at a loss to understand why the proponents propose to eliminate the strategic planning duty of the Division. Having a cohesive strategic plan in place ensures that future decisions will be based upon well thought out and vetted processes and ensure that future project proposals will fit into an organized and logical development process. This is counterproductive to the environmental objectives stated by the stakeholders in prior proceedings. This approach would suggest to many Californians and recreational enthusiasts that the supporters of this bill want to destroy the OHV program in its entirety.

This is also inconsistent with the Legislature's desire to require oversight over state programs and diminishes information that could be most useful in the Legislature's oversight responsibilities.

Section 5090.32 of the Public Resources Code is amended to read:

5090.32.

~~The~~ Under the general direction of the director, the division has the following duties and responsibilities:

- (a) Planning, acquisition, development, conservation, and restoration of lands in the state vehicular recreation areas.
- (b) Direct management, maintenance, administration, and operation of lands in the state vehicular recreation areas.
- (c) Provide for law enforcement and appropriate public safety activities.
- (d) Implementation of all aspects of the program.
- (e) Ensure program compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)) in state vehicular recreation areas.
- (f) Provide staff assistance to the commission.
- (g) ~~Prepare and implement~~ Prepare, implement, and periodically update plans for lands in, or proposed to be included in, state vehicular recreation areas, including new state vehicular recreation areas. However, a plan ~~shall need~~ not be prepared or updated in any instance specified in subdivision (c) of Section 5002.2. For purposes of subdivision (c) of Section 5002.2 and this subdivision, unauthorized or otherwise unintended off-highway trails that were not created for the purpose of emergency repair or restoration work authorized by the division, or expansion areas shall not be considered an existing facility or use.

We are curious about why the author includes this amendment. All of the current state vehicular recreation areas (SVRAs) have OHV use previous to state operations, so there may be “unauthorized or unintended off-highway trails” in existing or proposed SVRAs that could be considered existing facilities. Many of the existing routes in Carnegie were put in by the owners,

and you are purposely excluding use of those routes by OHV. This new language is problematic and should be deleted.

(h) Conduct, or cause to be conducted, surveys, and prepare, or cause to be prepared, studies that are necessary or desirable for implementing the program.

(i) Recruit and utilize volunteers to further the objectives of the program.

(j) Prepare and coordinate safety and education programs.

(k) Provide for the enforcement of Division 16.5 (commencing with Section 38000) of the Vehicle Code and other laws regulating the use or equipment of off-highway motor vehicles in all areas acquired, maintained, or operated by funds from the fund; however, the Department of the California Highway Patrol shall have responsibility for enforcement on highways.

(l) Ensure protection of natural and cultural resources, including by setting unit capacity limits pursuant to Sections 5001.96 and 5019.5.

(m) Prepare and submit program and strategic planning reports to the department and the Natural Resources Agency, including annually reporting the number and type of injuries and accidents and the number and type of citations and other enforcement actions taken at system units, disaggregated by individual unit.

We believe this requirement is not currently being reported at all 280 state park units, and the SVRAs should not be singled out. It would require a significant increase in manpower and program cost. Is it the author's intent to require this reporting at all "system units" as written? DPR should be consulted before such a system-wide change is placed in law. Are grantees included here as in the PRC 5090.09 system definition? If so, such a requirement of local, county and federal agencies is onerous and will not be popular with other agencies.

~~(l) (n) Complete by January 1, 2009, a strategic planning process that will identify future off highway motor vehicle recreational needs, including, but not limited to, potential off highway motor vehicle parks in urban areas to properly direct vehicle operators away from illegal or environmentally sensitive areas. This strategic planning process shall take into consideration, at a minimum, environmental constraints, infrastructure requirements, demographic limitations, and local, state, and federal land use planning processes. The strategic plan shall be reviewed by the commission and updated periodically. Post on the department's Internet Web site all plans, reports, and studies related to off-highway vehicle recreation or otherwise developed pursuant to this chapter, including those regarding conservation, restoration, monitoring, and adaptive management of system units, disaggregated by individual unit.~~

The division provides a plethora of plans, reports and studies already on line. The adaptive management term is problematic as commented on earlier. Does the author mean department or division website?

(o) Report on any closure implemented pursuant to Section 5090.35 at the next commission meeting following the closure.

(p) Complete other duties as determined by the director.

SEC. 10.

OHV Community Comments on Section 10: Overall we are satisfied with the language as written in this section, and we appreciate the author's willingness to drop the initially proposed mandatory guidebook requirement and instead provide for a more flexible option as funding is available.

Section 5090.34 of the Public Resources Code is amended to read:

5090.34.

(a) In cooperation with the commission, the division shall make available on the division's Internet Web site information regarding off-highway motor vehicle recreation opportunities, pertinent laws and regulations, and responsible use of the system. At a minimum, the *Internet* Web site shall include the following:

- (1) The text of laws and regulations relating to the program and operation of off-highway vehicles.
 - (2) A statewide map and regional maps of federal, state, and local off-highway vehicle recreation areas and facilities in the state, including links to maps of federal off-highway vehicle routes resulting from the route designation process.
 - (3) Information concerning safety, education, and trail etiquette.
 - (4) Information to prevent trespass, damage to public and private property, and damage to natural resources, including penalties and liability associated with trespass and damage caused.
- (b) The division shall ~~create~~ *create, and update when appropriate*, a guidebook of federal, state, and local off-highway vehicle recreation opportunities that includes ~~contact~~ information where current specific maps and information for each facility can be located. Contact information ~~may include~~ *shall be provided and shall include available Internet* Web site addresses, telephone numbers, and addresses of offices where maps can be accessed. The guidebook shall also include the address of the *Internet* Web site where the information in subdivision (a) may be found. *The division may publish the guidebook when funds are provided in the annual budget process.*
- (c) ~~The division shall work with retailers of off highway motor vehicles and off highway recreation associations to distribute the guidebook developed under subdivision (b) and to increase awareness of the resources available on the division's Internet Web site.~~

SEC. 11.

OHV Community Comments on Section 11: Including 5090.09 means all grantees are included and the division cannot set another agency's priorities. In addition, we believe the adaptive management team to be problematic, as commented on previously.

Mandating increased consultations with new agencies will increase program costs and personnel workloads. This is an unnecessary amendment

Section 5090.35 of the Public Resources Code is amended to read:

5090.35.

(a) The protection of public safety, the appropriate utilization of lands, and the conservation of ~~land~~ *natural and cultural* resources are of the highest priority in the management of the state vehicular recreation areas; ~~and, accordingly, the~~ *areas and other areas in the system, as defined in Section 5090.09. Accordingly, the* division shall promptly repair and continuously maintain areas and trails, anticipate and prevent ~~accelerated erosion~~ *and unnatural erosion, other impacts*, and restore lands

damaged by erosion to the extent possible, and other impacts. The division shall take steps necessary to prevent damage to natural and cultural resources in these areas. When damage occurs in any portion of a state vehicular recreation area that is inconsistent with natural and cultural resources protection plans or this section, the division shall undertake protective and restoration measures which may include closure. Any area or portion of an area that is closed shall remain closed until it is repaired and effective adaptive management measures are implemented to prevent repeated or continuous damage.

This bill attempts to change the mission statement for the OHMVR and by extension the mission for the entire DPR by reordering priorities in such a manner as to discriminate against active forms of recreation. DPR contains numerous types of units; to single out vehicular recreation areas with conservation as the number one priority fails to recognize differences in management strategies between State Reserves and State Vehicular Recreation Areas. This is the incorrect vehicle to use for this change because it sets up the division for failure and intentionally creates a false premise.

The bill fails to make a distinction between natural erosion and erosion caused by OHV use, potentially requiring closure and restoration of a facility because of factors other than OHV use. It is impossible for the Division to prevent erosion, regardless of the cause. Elimination of the qualifying statement, “to the extent possible,” makes this section impractical. The following wording “state vehicular recreation areas and other areas in the system” is unclear as to the meaning. Because state vehicular recreation areas are separated out from other areas in the system, it would seem the author wishes DPR and OHMVR to be responsible for all damage, weather-related or man-made, in all system areas eligible for program grants. This would include at a minimum Forest Service, BLM, and city and county areas that commonly receive grants throughout the state. The costs associated with this requirement would be unfathomable.

The term “minimize” is used in Section 12, 5090.39 Sec. (a)(1) which discusses similar issues as Sec. 11, 5090.35(a), yet “minimize” is not used in the discussion of similar environmental conditions. Terminology is being used inconsistently throughout the bill, which would make it difficult to determine correct management strategies.

This section is also inconsistent with the generally held principle of minimizing erosion to the extent feasible, as stated in the federal minimization criteria pursuant to Executive Order 11644. This executive order established “minimization criteria” for impacts to natural and cultural resources that are permissible for areas where OHV use is allowed.

The “OHV minimization criteria” are accepted by both environmental and OHV communities. Case law makes a clear distinction between minimizing impacts which may be feasible and eliminating them, which is rarely feasible.

(b) (1) The division, in consultation with the United States Natural Resource Conservation Service, the United States Geological Survey, the United States Forest Service, the United States Bureau of Land Management, and the United States Fish and Wildlife Service, the California Department of Fish and Wildlife, and the California Department of Conservation shall update the 1991 2008 Soil Conservation Guidelines Standard and Standards Guidelines to establish a generic and measurable soil conservation standard by March 1, 2006, at least sufficient to allow restoration of off-highway motor vehicle areas and trails. The 1991 Soil Conservation Guidelines and Standards shall remain in effect until they are updated pursuant to this subdivision. December 31, 2020, and shall review and, as appropriate, update the standard at least every five years thereafter.

DPR already consults with the appropriate agencies during planning processes. There has been no mention as to the need to include agencies with concurrent responsibilities when other park units have no such requirement, and would serve to confuse all involved. There has been no statement

that addresses the need for these changes, as current code required DPR to adhere with all applicable standards in all 280 units. This would add complication and confusion when no need for such has been established.

(2) ~~Upon a determination-~~ *If the division determines* that the soil conservation standards and habitat protection plans are not being met in any portion of any state vehicular recreation ~~area area~~, the division shall temporarily close the noncompliant portion to repair and prevent ~~accelerated~~ erosion, until the soil conservation standards are ~~met~~. *met pursuant to subdivision (a).*

(3) ~~Upon a determination-~~ *If the division determines* that the soil conservation standards cannot be met in any portion of any state vehicular recreation ~~area area~~, the division shall close and restore the noncompliant portion pursuant to Section 5090.11.

(c) (1) ~~The division shall make-~~ *In consultation with the Department of Fish and Wildlife, by December 31, 2020, the division shall compile, and update at least every five years thereafter,* an inventory of wildlife ~~populations and their habitats~~ *and native plant populations, including wildlife habitats and vegetation communities* in each state vehicular recreation area and shall prepare a wildlife habitat protection ~~program plan~~ *to sustain* ~~conserve~~ a viable species composition specific to each state vehicular recreation ~~area by July 1, 1989.~~ *area.*

These are arbitrary studies that would cause considerable cost impacts to the state with little to be achieved. Studies of this kind are already conducted by the division, and nothing has been indicated to show the existing methodologies are insufficient. Instead of saying “update at least every 5 years,” say “periodically update, or as new information becomes available.” This would allow periodic updating of species lists which are presently maintained.

(2) If the division determines that the *wildlife* habitat protection ~~program plan~~ is not being met in any portion of any state vehicular recreation area, the division shall close the noncompliant portion temporarily until the *wildlife* habitat protection ~~program is met.~~ *plan is met pursuant to subdivision (a).*

(3) If the division determines that the *wildlife* habitat protection ~~program plan~~ cannot be met in any portion of any state vehicular recreation area, the division shall close and restore ~~that the~~ noncompliant portion pursuant to Section 5090.11.

(d) The division shall ~~monitor~~ *implement a monitoring program to evaluate* the condition of ~~soils and wildlife habitat~~ *soils, wildlife, and vegetation habitats* in each state vehicular recreation area each year in order to determine whether the soil conservation standards and *wildlife* habitat protection ~~programs plans~~ are being met.

We’re not sure that this is different from 5090.35 which calls for a wildlife protection program (c), a habitat protection program (2), and soils conservation standards (d). What is the difference between a monitoring program and a protection program? Doesn’t protection require monitoring? We suggest that paragraph (d) be removed unless it serves a specific purpose.

(e) The division shall not fund trail construction unless the trail is capable of complying with the conservation specifications prescribed in ~~subdivisions (b) and (c).~~ *this section.* The division shall not fund trail construction where conservation is not feasible.

(f) The division shall ~~monitor~~ *identify* and protect ~~cultural~~ *natural, cultural,* and archaeological resources within the state vehicular recreation areas.

Damage can and does occur to lands by many kinds of NATURAL causes that are completely unrelated to any OHV use. Lightning-caused fires destroy flora and habitat and indirectly may

result in accelerated erosion. Once again, this requirement places a responsibility upon the Division to promptly repair damage resulting from NATURAL events, such as lightning fires, earthquakes, etc. and they must do it regardless of whether the Division even has access or the authority to perform these kinds of actions. Once again, the lack of consultation with ALL stakeholders, not just OHV users, but the agencies that have the actual stewardship responsibility for these areas is evident.

SEC. 12.

Section 5090.39 is added to the Public Resources Code, to read:

5090.39.

(a) The division shall ensure that the program meets the requirements of this chapter. No later than July 1, 2019, the division shall, through a public process, develop protocols and practices to ensure all of the following:

OHV Community Comments on Section 12: Section 12 (5090.39) creates a new administrative regulatory (legal) construct which is not supported by other legislation defined in state law. This is excessive administrative regulation overreach which would adversely impact federal partners in participation in a managed statewide OHMVR program. These proposed regulations cause confusion in the defined intent of the OHMVR program and the guidelines for the management of the program.

Within this context, Section 12 is duplicative of existing law and would actually hamper implementation of existing law by modifying existing law or creating regulation not supportable by existing law. This level of administrative regulatory action is not applied to other divisions of program within DPR.

‘Public Process’ is not defined and would seem to indicate a more stringent process than holding public hearings that leave decision-making responsibility with the Division, who would then accumulate the data and develop protocols, etc. This undefined public process seems to imply the public would be the determiners rather than the division.

Section 12 (a) defines that management of SVRAs and other areas of the system (as described by “program”) will meet the requirements of this chapter. The SVRA application is clear, but the “other” areas bears clarification as it is inclusive of local/county OHV parks and trails and OHV trail systems on federal lands managed by the Forest Service and BLM. For clarity, this includes Imperial Sand Dunes, Rubicon Trail, Johnson Valley, Stoddard Wells, and other areas around the state under management of federal land managers and federal requirements to meet mandated environmental standards.

(1) Soil conservation standards and measures are adequate to minimize erosion damage.

(2) Wildlife and habitat assessment and inventory methodologies incorporate the best available science.

(3) Soil conservation and habitat protection standards are capable of protecting, conserving, and restoring natural and cultural resources, including sensitive species.

(4) Monitoring and evaluation efforts comply with this chapter, and adaptive management practices address reasonable foreseen and unanticipated circumstances that may occur at units of the system.

What are unanticipated circumstances, and how could the division possibly be responsible for something unanticipated? This inserts a regulatory burden that is excessive as clairvoyance is required to address “unanticipated circumstances and creates a conundrum as it is impossible to determine “unanticipated circumstances.”

(5) Management plans and soil conservation and wildlife habitat protection plans are consistent with other relevant resource protection plans, including, but not limited to, the state wildlife action plan, natural community conservation plans, regional conservation investment strategies, and wildlife corridor plans. Management plans and soil conservation and wildlife habitat protection plans shall appropriately consider regional land use and resource conservation plans prepared by a local agency pursuant to state law.

(6) The acquisition of land intended for off-highway motor vehicle use, to the maximum extent feasible, avoids lands on which motorized recreation would be inconsistent with this chapter.

(b) As part of the public process referenced in subdivision (a), the division shall conduct at least two public workshops, one in northern California and one in southern California. Thirty days prior to the workshop dates, the workshops shall be noticed on both the department's and the commission's Internet Web sites.

(c) Not later than January 1, 2020, the department shall complete a review of the practices and protocols developed pursuant to subdivision (a). The director shall solicit and consider comments and recommendations from the public, scientists with expertise in related fields of investigation, and others. By July 1, 2020, the director shall either determine in writing that the protocols and practices are adequate to meet the requirements of this chapter or the director shall modify any aspects of the protocols and practices that are inadequate.

(d) The director shall ensure that Section 5090.35 is implemented consistent with the practices and protocols.

(c) and (d) seem to require duplicative work to be performed by the deputy director and repeated by the director. Since the deputy director is a member of the department management team as written in Sec. 8 5090.31 and responsible to the director, the director is inherently part of the decision-making process.

SEC. 13.

Section 5090.43 of the Public Resources Code is amended to read:

5090.43.

(a) State vehicular recreation areas ~~shall~~ may be established on lands where there are quality recreational opportunities for off-highway motor vehicles and vehicle recreation and shall be managed in accordance with the requirements of Section 5090.35, this chapter. Areas ~~shall~~ may be developed, managed, and operated for the purpose of making the fullest providing appropriate public use of the outdoor recreational opportunities present. The present while protecting natural and cultural elements of the environment may be managed or modified to enhance the recreational experience consistent with the requirements of Section 5090.35, resources.

(b) Lands

for state vehicular recreation areas shall be selected for acquisition so as to minimize the need for establishing sensitive areas. ~~areas to protect natural and cultural resources.~~

(c) All unavoidable impacts to natural or cultural resources in new, expanded, and existing state vehicular recreation areas shall be fully mitigated by implementing appropriate mitigation measures, including permanently protecting lands that provide comparable natural and cultural resources and values. State vehicular recreation areas shall incorporate all mitigation and permit recommendations or requirements of the Department of Fish and Wildlife, the United States Fish and Wildlife Service, and all other responsible or trustee agencies.

OHV Community Comments on Section 13: Full mitigation may not be achievable. This is another instance where environmental requirements are written in an absolute manner, which in land use issues is impossible to achieve. As the requirement for adaptive management as a component of land use management as proposed in Sec. 9, 5090.32 (n) would indicate, absolute achievements are never possible; otherwise adaptive management strategies would not be needed. Land use strategies do not conform to a black/white scenario, and setting this expectation as a requirement would predetermine a failure situation. This section also could potentially eliminate the use of CEQA statements of overriding consideration making this a jurisdictional issue.

The OHMVR program has CEQA defined as the fundamental guidance law for compliance (Sec 9, Section 5090.32 (e) Ensure program compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)) in state vehicular recreation areas.) While other laws have an impact, CEQA is the basis for management action that has an impact on the natural environment.

CEQA is environmental policy that defines minimum requirements that state agencies must adhere to in making management decisions and document decisions when impacts to the natural environment are involved. CEQA carries a mandate to “disclose” impacts, not “mitigate” nor “analyze” impacts. Insertion of “mitigate” into the legislation equates to a higher standard than the law requires.

The mention of trustee agencies brings forth a scenario of never-ending analysis as more and more agencies are consulted without need but because this requirement is only to make the decision-making process more elaborate and costly without justification.

(d) The department shall manage, or collaborate with another public entity or nonprofit organization to manage lands acquired for state vehicular recreation areas that are determined to not be appropriate for off-highway vehicle recreation. These lands shall be managed for park purposes, open space purposes, or conservation purposes. The department may dispose of, consistent with applicable provisions of law, lands acquired for state vehicular recreation areas that are determined to not be appropriate for off-highway vehicle recreation. If lands are sold, any revenue that results from the sale shall be reverted back to the fund originally used to purchase the lands.

This section seeks to resolve a dispute between an adjacent private landowner and the state by inappropriately creating law specific to a certain situation. It is customary for land that cannot be used for the purposes for which it was acquired to be sold. Therefore this section restates existing practice and is not needed.

~~(e)~~ (e) After January 1, 1988, no new cultural or natural preserves or state wildernesses shall be established within state vehicular recreation areas. To ~~protect~~ ensure consistent protection of natural and cultural values, ~~sensitive areas~~ resources across all state parks, including state vehicular recreation areas, sensitive areas shall be established within state vehicular recreation areas ~~may be~~

~~designated where determined~~ by the division ~~if the Off Highway Motor Vehicle Recreation Commission holds a public hearing and makes a recommendation therefor~~ *to be necessary to protect natural and cultural resources.* These sensitive areas shall be managed by the division in accordance with Sections ~~5019.71~~ 5019.65, 5019.71, and 5019.74, which define the purpose and management of natural and cultural preserves. *The division shall not create designations, other than sensitive areas, for lands containing natural or cultural values that the division determines need protection.*

(f) If off-highway motor vehicle use results in damage to any natural or cultural ~~values~~, *values or damage within sensitive areas*, appropriate measures shall be *promptly* taken to protect these lands from any further damage. These measures ~~may include the erection of physical barriers and shall include the restoration of natural resources and the repair of damage to cultural resources~~. *shall include restoration of damaged lands and resources and measures to prevent future damage, which may include the erection of physical barriers.*

Natural and cultural values are not defined and indeed may be subject to different interpretations by different entities, including a wide variety of points-of-view. Since all members of the public are entitled to their own interpretation of values, these inherent differences would be difficult if not impossible to define.

SEC. 15.~~SEC. 14.~~

Section 5090.61 of the Public Resources Code is amended to read:

5090.61.

Moneys in the fund shall be available, upon appropriation by the Legislature, as follows:

- (a) An amount, not to exceed 50 percent of the annual revenues to the fund, shall be available for grants and cooperative agreements pursuant to Article 5 (commencing with Section 5090.50).
- (b) (1) The remainder of the annual revenues to the fund shall be available for the support of the division in implementing the off-highway motor vehicle recreation program and for the planning, acquisition, development, *mitigation*, construction, maintenance, administration, operation, restoration, and conservation of lands in the system.

OHV Community Comments on Section 14: We believe the addition of mitigation in (b)(1) is overkill. Restoration is already included and appropriate.

(2) As used in this subdivision, "support of the division" includes functions performed outside of the division by others on behalf of the division, including *a prorated share of the department's common overhead and other* costs incurred on behalf of the division for personnel management and training, accounting, and fiscal analysis, records, purchasing, public information activities, consultation of professional scientists and reclamation experts for the purposes of Section 5090.35, and legal services. ~~"Support of the division" does not include costs incurred by, or attributable to, the director or the director's immediate staff, or their salaries.~~

We believe the OHMVR program was placed into law to be deliberately independent of the state parks operation as the mission is different. If this deletion is related to the proposed DPR reorganization, it should be delayed at least until the plan is made public for comment.

SEC. 16.~~SEC. 15.~~

OHV Community Comments on Section 15: We have many concerns about a five-year sunset. This is the only division in state parks with a sunset. The previous ten-year sunset was based upon a bipartisan bill and should not be short-circuited. Ten years should be absolute minimum, and a permanent program is preferred and warranted.

This bill was written with no input from OHV Stakeholders before release, so it is absolutely one-sided with no possible fair compromise on the short timeline. A one-year extension of the sunsets and a comprehensive review of the program by a stakeholders' group is the preferred course of action.

This bill was written with no input from DPR (according to author and DPR). But this bill makes law changes that have a suspicious connection to the DPR reorganization which has had no public announcement whatsoever. Such amendments are premature and unwarranted.

This bill contains no positive references or amendments to recreation.

This bill places costly program changes into law without reference to a new funding source, resulting in program cuts and likely loss of recreation opportunities. Has DPR weighed in on these costly program changes, and how will they be implemented with the current funding stream?

Separating the two sunsets is disingenuous, an obvious ploy to pass the bill on a simple majority and flies in the face of SB 742, an honestly bipartisan bill.

Amendments from negotiations have been incremental at best and, when compared to current law, are biased against recreation.

The resource law sections are extremely complicated and convoluted and introduce new policies, procedures and definitions without vetting by the division or the department.

The program was established as part of, but independent from, the regular 280 state park system (different laws and completely separate part units, SVRAs), because the activity is always morphing due to changing types of vehicles. The division has to be able to react quickly and decisively to these changes.

While this type of recreation might seem unusual to those who do not understand it, it is legal, a multibillion dollar industry in California, and actually helps to keep trespass and damage to private property and other park lands at a minimum given the over one million registered OHVs, two-thirds of which reside in Southern California.

The OHMVR Division operates an impressive education and outreach program to encourage safe, legal and sustainable recreation.

The program is completely self-funded with gas tax paid by users and user registration and park fees.

Section 5090.70 of the Public Resources Code is amended to read:

5090.70.

This chapter shall remain in effect only until January 1, ~~2018~~, 2023, and as of that date is repealed, unless a later enacted statute, ~~statute~~ that is enacted before January 1, ~~2018~~, 2023, deletes or extends that date.