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SB-249 Off-highway motor vehicle recreation. (2017-2018)

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Senate Bill No. 249

CHAPTER 459

An act to amend Sections 5090.10, 5090.11, 5090.24, 5090.30, 5090.31, 5090.32, 5090.34, 5090.35, 5090.43, 5090.50, and 5090.61 of, to amend and repeal Section 5090.15 of, to add Sections 5090.13, 5090.14, 5090.14.1, and 5090.39 to, and to repeal Section 5090.70 of, the Public Resources Code, relating to state parks.

[Approved by Governor October 03, 2017. Filed with Secretary of State October 03, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 249, Allen. Off-highway motor vehicle recreation.

The Off-Highway Motor Vehicle Recreation Act of 2003 creates the Off-Highway Motor Vehicle Recreation Commission and the Division of Off-Highway Motor Vehicle Recreation within the Department of Parks and Recreation. The act gives the division certain duties and responsibilities, including the planning, acquisition, development, conservation, and restoration of lands in state vehicular recreation areas. Existing law requires the division to develop and implement a grant and cooperative agreement program with other agencies funded from no more than $\frac{1}{2}$ of the revenues in the Off-Highway Vehicle Trust Fund, with specified percentages of these revenues to be available, upon appropriation, for various purposes related to off-highway vehicles. Existing law requires the remaining revenues in the Off-Highway Vehicle Trust Fund to be available for the support of the division and for the planning, acquisition, development, construction, maintenance, administration, operation, restoration, and conservation of lands in state vehicular recreation areas and certain other areas. The act is repealed on January 1, 2018.

This bill would revise and recast various provisions of the act. The bill would expand the duties of the division by requiring it to, among other things, (1) prepare and implement management and wildlife habitat protection plans for lands in, or proposed to be included in state vehicular recreation areas, as specified, (2) post on the department's Internet Web site all plans, reports, and studies related to off-highway vehicle recreation developed by the division, (3) in consultation with specified bodies and departments, review, and if deemed necessary, update the 2008 Soil Conservation Standard and Guidelines to establish a generic and measurable soil conservation standard by December 31, 2020, and subsequently review and update that standard when deemed necessary by the department, (4) 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, and (5) protect natural, cultural, and archaeological resources within state vehicular recreation areas. The bill would require the division to take other specified measures to protect natural and cultural resources within state vehicular recreation areas, as specified. The bill would extend the operation of the act's provisions indefinitely, except for the provision establishing the Off-Highway Motor Vehicle Recreation Commission, which the bill would repeal on January 1, 2023.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5090.10 of the Public Resources Code is amended to read:

5090.10. “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.

SEC. 2. Section 5090.11 of the Public Resources Code is amended to read:

5090.11. “Restoration” 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. 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 the condition of resources and informs adaptive management within state vehicular recreation areas.

SEC. 4. 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 to adjust management strategies and practices to conserve cultural resources and provide for the conservation and improvement of natural resources.

SEC. 5. Section 5090.14.1 is added to the Public Resources Code, to read:

5090.14.1. “State vehicular recreation area” means a unit of the state park system established pursuant to Section 5090.43.

SEC. 6. 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 appointed to the commission, a nominee shall represent one or more of the following groups:

- (1) Off-highway vehicle recreation interests.
- (2) Biological or soil scientists.
- (3) Groups or associations of predominantly rural landowners.
- (4) Law enforcement.
- (5) Environmental protection organizations.
- (6) Nonmotorized recreation interests.

(c) It is the intent of the Legislature that appointees to the commission represent all of the groups delineated in paragraphs (1) to (6) of subdivision (b), inclusive, to the extent possible.

(d) 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.

(e) By December 31, 2018, the department shall convene a stakeholder process to make recommendations to the Governor and the Legislature regarding ways to implement this section. The stakeholder process may consider a variety of recommendations, including, but not limited to, ways to achieve a diverse commission, including the geographic diversity of California, as well as the diversity of all Californians, including, but not limited to, the special needs of all who participate in off-highway vehicular recreation, and ways to achieve diverse public participation in the commission process. The department shall submit these recommendations to the Governor and the Legislature on or before January 1, 2020.

(f) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 7. Section 5090.24 of the Public Resources Code is amended to read:

5090.24. The commission has the following 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 all plans for new and expanded local and regional vehicle recreation areas that have applied for grant funds.
- (g) Review and comment on strategic plans periodically developed by the division.
- (h) Prepare and submit a program report to the Governor and the appropriate policy and fiscal committees of each house of the Legislature on or before January 1, 2022, and every three years thereafter. The report required to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code. 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) A summary of the process, standards, and plans developed pursuant to this chapter.
 - (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 at state vehicular recreation areas since the last program report, including, but not limited to, actions undertaken to ensure compliance with federal and state Endangered Species Acts, local air quality laws and regulations, federal Clean Water Act and regional water board regulations, or permits.
- (i) Make other recommendations to the deputy director regarding the off-highway motor vehicle recreation program.

SEC. 8. 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.

SEC. 9. 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.

SEC. 10. Section 5090.32 of the Public Resources Code is amended to read:

5090.32. The division has the following duties and responsibilities:

- (a) Planning, acquisition, development, conservation, and restoration of lands in the state vehicular recreation areas.
- (b) 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 management and wildlife habitat protection plans for lands in, or proposed to be included in, state vehicular recreation areas, including new state vehicular recreation areas. These plans shall be developed in consideration of statutorily required state and regional conservation objectives. However, a plan shall not be prepared in any instance specified in subdivision (c) of Section 5002.2. Trails may only be added or included as components of existing trail systems when developing or updating plans in state vehicular recreation areas, upon completion of full environmental review.

(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) Provide for the conservation of natural and cultural resources, including appropriate mitigation.

(m) Post on the department's Internet Web site all plans, reports, and studies related to off-highway vehicle recreation developed by the division.

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

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

SEC. 11. 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. Where practical, 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 may create, and update when appropriate, a guidebook of federal, state, and local off-highway vehicle recreation opportunities that includes information where current specific maps and information for each facility can be located. Contact information 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.

(c) The division may 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. 12. 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 natural and cultural resources are of the highest priority in the management of the state vehicular recreation areas. Additionally, the division shall promptly repair and continuously maintain areas and trails, and anticipate and prevent accelerated and unnatural erosion and

other off-highway vehicle impacts to the extent possible. The division shall take steps necessary to prevent damage to significant natural and cultural resources within state vehicular recreation areas.

(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, the Department of Fish and Wildlife, and the Department of Conservation shall, by December 31, 2020, review, and if deemed necessary, update the 2008 Soil Conservation Standard and Guidelines to establish a generic and measurable soil conservation standard. The division shall subsequently review and update the standard when deemed necessary by the department.

(2) 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, the division shall temporarily close the noncompliant portion to repair and prevent accelerated erosion, until the soil conservation standards are met.

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

(c) (1) The division shall compile and, when determined by the department to be necessary, periodically review and update an inventory of wildlife populations and prepare a wildlife habitat protection plan that conserves and improves wildlife habitats for each state vehicular recreation area. By December 31, 2030, the division shall compile an inventory of native plant communities in each state vehicular recreation area to inform future plan updates.

(2) If the division determines that the wildlife habitat protection 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 plan is met.

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

(d) The division shall 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.

(e) The division shall not fund trail construction unless the trail is capable of complying with the conservation specifications prescribed in this section. The division shall not fund trail construction where conservation is not feasible. The division shall not fund the maintenance of a trail unless that trail is a component of a state vehicular recreation area road and trail system.

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

SEC. 13. Section 5090.39 is added to the Public Resources Code, to read:

5090.39. (a) The department shall require that:

(1) Any soil conservation standard, wildlife habitat protection plan, or monitoring program, required by this chapter, applies best available science.

(2) All standards, plans, and monitoring programs subject to paragraph (1) shall provide opportunities for public comment, including, but not limited to, written comments and public meetings, as appropriate.

(b) Nothing in this chapter relieves the division from compliance with state and federal laws and regulations, including permit requirements.

SEC. 14. Section 5090.43 of the Public Resources Code is amended to read:

5090.43. (a) State vehicular recreation areas consist of areas selected, developed, and operated to provide off-highway vehicle recreation opportunities. State vehicular recreation areas shall be selected for acquisition on lands where the need to establish areas to protect natural and cultural resources is minimized, the terrain is capable of withstanding motorized vehicle impacts, and where there are quality recreational opportunities for off-highway motor vehicles. Areas shall be developed, managed, and operated for the purpose of providing the fullest appropriate public use of the vehicular recreational opportunities present, in accordance with the requirements of this chapter, while providing for the conservation of cultural resources and the conservation and improvement of natural resource values over time.

(b) After January 1, 1988, no new cultural or natural preserves or state wildernesses shall be established within state vehicular recreation areas. To protect natural and cultural resource values, sensitive areas may be established within state vehicular recreation areas where determined by the department to be necessary to protect natural and cultural resources. These sensitive areas shall be managed by the division in accordance with Sections 5019.71 and 5019.74, which define the purpose and management of natural and cultural preserves.

(c) If off-highway motor vehicle use results in damage to any natural or cultural resources 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.

SEC. 15. Section 5090.50 of the Public Resources Code is amended to read:

5090.50. (a) The division shall develop and implement a grant and cooperative agreement program to support the planning, acquisition, development, maintenance, administration, operation, enforcement, restoration, and conservation of trails, trailheads, areas, and other facilities associated with the use of off-highway motor vehicles, and programs involving off-highway motor vehicle safety or education.

(b) When appropriated by the Legislature for grants and cooperative agreements, available funds shall be awarded in accordance with the following categories:

(1) Operation and maintenance.

(A) Fifty percent of the funds appropriated by the Legislature pursuant to subdivision (a) of Section 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 nonmotorized recreation.

(B) Guidelines developed to implement this paragraph, pursuant to subdivision (d), shall at a minimum:

(i) Give preference to applications that sustain existing authorized off-highway motor vehicle recreation opportunities.

(ii) Give additional consideration to applications that improve facilities that provide motorized access to nonmotorized recreation opportunities.

(C) Applications that would affect lands identified as inventoried roadless areas by the Forest Service of the United States Department of Agriculture are eligible for cooperative agreements under paragraph (1) if the application is for a project that does any of the following:

(i) Realigns a forest system road or trail to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a classified route and that cannot be mitigated by route maintenance.

(ii) Reconstructs a national forest system road or trail to implement a route safety improvement project on a classified route determined to be hazardous on the basis of accident experience or accident potential on that route.

(iii) Maintains a road or trail that is included in the National Forest System Roads and Trails on or before January 1, 2009.

(D) Any unencumbered funds under this paragraph shall only be used in future grant cycles for purposes consistent with this paragraph.

(2) Restoration.

(A) Twenty-five percent of the funds appropriated by the Legislature pursuant to subdivision (a) of Section 5090.61 shall be expended solely for grants and cooperative agreements for projects that restore or repair habitat damaged by either legal or illegal off-highway motor vehicle use.

(B) The division shall develop and implement, in consultation with the Wildlife Conservation Board, a competitive grant and cooperative agreement program which shall be administered in accordance with this paragraph.

(C) Funds identified in this paragraph shall be available for grants and cooperative agreements for projects that restore or repair habitat damaged by both legal and illegal off-highway motor vehicle use.

(D) Eligible projects include:

(i) Removal of a road or trail or restoration of an area associated with the rerouting and subsequent closure of a designated road or trail.

(ii) Removal of roads or trails and the restoration of damaged habitats in any area that is not designated for motorized vehicle use.

(iii) The removal of closed roads or trails, or a portion of a closed road or trail, that will help to prevent off-highway motor vehicle access to closed areas.

(iv) Scientific and cultural studies regarding the impact of off-highway motor vehicle recreation not otherwise required by state or federal laws.

(v) Planning to identify appropriate restoration techniques, strategies, and project implementation, including planning associated with environmental review.

(vi) Restoration projects that generally improve and restore the function of natural resource systems damaged by motorized activities.

(E) Eligible applicants include local, state, and federal agencies, federally or state recognized Native American tribes, educational institutions, certified community conservation corps, resource conservation districts, and other eligible nonprofit organizations.

(F) Guidelines developed to implement this paragraph shall at a minimum do all of the following:

(i) Give additional consideration to applications for projects that will restore areas that have experienced the most damage from motorized use or face the highest threat of significant environmental damage from motorized use.

(ii) Guarantee that no grant will be used for the development or maintenance of trails for motorized use.

(iii) Encourage public agencies managing lands to prepare and implement a management and enforcement plan to prevent reoccurring damage from unauthorized use.

(G) Any unencumbered funds under this paragraph shall be used only in future grant cycles for purposes consistent with this paragraph.

(3) Law enforcement.

(A) Twenty percent of the funds appropriated by the Legislature pursuant to subdivision (a) of Section 5090.61 shall be available for law enforcement grants and cooperative agreements and shall be allocated to local and federal law enforcement entities for peace officers or other personnel who have authority to issue citations or take other official law enforcement action, and related equipment. The amount of the grant or cooperative agreement shall be proportionate to the off-highway motor vehicle enforcement needs under each entity's jurisdiction.

(B) The division shall develop a method to determine the law enforcement needs for each applicant. Forty percent of law enforcement grants and cooperative agreements shall be given to local law enforcement entities, 30 percent to units of the United States Bureau of Land Management, and 30 percent to units of the United States Forest Service.

(C) The division shall develop eligibility guidelines for law enforcement projects. The guidelines, at a minimum, shall require the applicant to do all of the following:

(i) Specify formal and informal cooperation with other appropriate law enforcement entities, including any applicable federal entities.

(ii) Establish a policy on how violations of off-highway motor vehicle laws and regulations will be enforced on federal land, if the applicant is a local law enforcement entity.

(iii) Identify areas with high priority law enforcement needs because of public safety, cultural resources, and sensitive environmental habitats, including wilderness areas and areas of critical environmental concern.

(iv) Explain whether the applicant is recovering a portion of law enforcement costs directly associated with privately sponsored events where sponsors have obtained a local permit.

(v) Establish a public education program that includes information regarding safety programs offered in the area and how to report off-highway motor vehicle operation violations.

(vi) Specify how personnel is trained and educated regarding off-highway motor vehicle safety and resource and cultural protection.

(D) Notwithstanding subdivision (h), law enforcement entities that receive funds allocated pursuant to this paragraph shall be subject to a financial and performance audit at least once every five years. The audits may be conducted in a random order. As part of the audit, the department shall consider whether the law enforcement entity has spent the grant money in accordance with its application.

(E) Any unencumbered funds under this paragraph shall be used only in future grant cycles for purposes consistent with this paragraph.

(4) Education and safety.

(A) Five percent of the funds appropriated by the Legislature pursuant to subdivision (a) of Section 5090.61 shall be available for grants and cooperative agreements that either provide comprehensive education that teaches off-highway motor vehicle safety, environmental responsibility, and respect for private property, or provide safety programs associated with off-highway motor vehicle recreation.

(B) Any unencumbered funds under this paragraph shall be used only in future grant cycles for purposes consistent with this paragraph.

(c) Eligible grant and cooperative agreement applicants include:

(1) Cities, counties, and districts that have approval to apply for grant funds, in the form of a resolution from their governing body.

(2) State agencies for projects under paragraph (2) of subdivision (b).

(3) Agencies of the United States.

(4) Federally and state recognized Native American tribes.

(5) Educational institutions, certified community conservation corps, resource conservation districts, and other eligible nonprofit organizations for eligible projects described in subdivision (f).

(d) Guidelines developed to implement this program shall at a minimum do all of the following:

(1) Distribute grants and cooperative agreements on a competitive basis, except for law enforcement grants allocated in accordance with paragraph (3) of subdivision (b).

(2) Be developed with public input, including focus groups.

(3) Require applications to be in accordance with local or federal plans and the strategic plan for off-highway motor vehicle recreation prepared by the division.

(4) Require grant applicants to comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000)). Applicants for cooperative agreements shall complete environmental review procedures that are at least comparable to those of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(5) Require the applicant to agree to provide matching funds or the equivalent value of services or material used, in an amount not less than 25 percent of the total project cost, except for the category of restoration, which shall not be less than 10 percent of the total project cost.

(6) Require the applicant, if it is a city or county, to disclose how fees collected pursuant to Section 38230 of the Vehicle Code are being used and whether the use of these fees complements the applicant's project.

(7) Fund all eligible applications to the extent feasible.

(e) All grants and cooperative agreements involving ground disturbing activities shall be subject to the uniform application of soil and wildlife habitat protection standards specified in Section 5090.53.

(f) Grants may be awarded to educational institutions and nonprofit organizations. Eligible projects shall be limited to scientific research, natural resource conservation activities, trail and facility maintenance, restoration, and programs involving off-highway motor vehicle safety or education. If the application for grant funds involves activities on any public lands, all of the following shall apply:

(1) The applicant shall include a work plan for the project.

(2) The applicant shall provide written permission from the appropriate land manager to conduct a project, including a description of how the project fits with the land management goals of the area.

(3) The applicant shall provide matching funds or the equivalent value of volunteer services or material used, in an amount not less than 25 percent of the total project cost, except for the category of restoration, which shall not be less than 10 percent of the total project cost.

(4) The applicant shall be fiscally responsible for adhering to the terms and conditions of the grants.

(g) The deputy director of the division shall not participate in the scoring of grants or cooperative agreements.

(h) The department shall conduct an annual financial audit of the grants and cooperative agreements program. During each year, the department shall also conduct, or cause to be conducted, an audit of the performance of a minimum of 20 percent of grant and cooperative agreement recipients.

(i) The division shall establish an administrative appeal process as part of the grants and cooperative agreements program. At a minimum, this process shall do all of the following:

(1) Give applicants the right to appeal on the following grounds:

(A) The division failed to follow regulations established for the award of grants and cooperative agreements.

(B) The division lacked sufficient factual evidence to support or deny the award of a grant or cooperative agreement.

(2) Require the applicant to first appeal to the deputy director of the division. If that appeal is denied, the applicant may then appeal to the director of the division, or the director's appointee.

(3) Require applicants to file their first appeal within 30 calendar days following the notice of award or denial of a grant or cooperative agreement. Notice of the decision or the rejection of the appeal shall be issued within 60 days following the filing of an appeal.

(4) Require applicants to exhaust these appeal rights prior to seeking other legal remedies through the courts.

(j) A grant shall not be made, nor a cooperative agreement entered into, pursuant to this section without the approval of the director.

SEC. 16. 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.

(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.

SEC. 17. Section 5090.70 of the Public Resources Code is repealed.