

# ***Report to the Legislature***

## ***Nonhighway and Off-Road Vehicle Activities Program***

***December 31, 2003  
State of Washington***



**NOVA Advisory Committee and staff, December 10, 2003.** (L-R): Theresa Julius, Jonathan Guzzo, Dwayne Ratliff, Greg Lovelady, Scott Chapman, Bob Brooke, Doug McClelland, Dee Endelman, Paul Dahmer, Art Tuftee, Jeff Lambert, Ken Irwin, Arlene Brooks, Vladimir Steblina, Rick Dahl, Eli Asher, John Spring, Mike Cooper. Not pictured: Cary Condotta, Karen Fraser, Jerry Homola, and Bob Oke.

***The Advisory Committee may be contacted through IAC:***

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## NOVA Advisory Committee Report to the 2004 Legislature

### INTRODUCTION

On May 9, 2003, the Governor signed SSHB 1698 (Ch.185, Laws of 2003, Appendix 1) directing the Interagency Committee for Outdoor Recreation (IAC) to:

*"...establish the Nonhighway and Off-Road Vehicle Activities Advisory Committee to provide advice regarding the administration of the..." Nonhighway and Off-Road Vehicle Activities (NOVA) Program, chapter 46.09 RCW.*

The Advisory Committee was charged with completing a review of and providing recommendations on:

*"...the existing NOVA distribution formulas and policies in RCW 46.09.020, 46.09.170, and 46.09.280..."*

It was also directed to develop recommendations by January 1, 2004 for statutory changes:

*"...consistent with the results of the most recent fuel use study..." while addressing "...the operation and maintenance needs of existing facilities..."*

**The Advisory Committee met during fall 2003 and unanimously presents this Report of recommendations to the Legislature and to the IAC as program administrator.**

### Members of the Advisory Committee

The Advisory Committee members charged with developing the recommendations in this report are:

- |  |                                  |                                    |
|--|----------------------------------|------------------------------------|
| • Robert Brooke (Spanaway)               | • Jonathan Guzzo (Seattle)       | • Bob Oke (26 <sup>th</sup> Dist.) |
| • Arlene Brooks (Auburn)                 | • Jerry Homola (Oak Harbor)      | • Dewayne Ratliff (Olympia)        |
| • Cary Condotta (12 <sup>th</sup> Dist.) | • Ken Irwin (Yakima Co. Sheriff) | • John Spring (Mercer Is.)         |
| • Mike Cooper (21 <sup>st</sup> Dist.)   | • Theresa Julius (Aberdeen)      | • Vladimir Steblina (Wenatchee)    |
| • Rick Dahl (Longview)                   | • Jeff Lambert (Spokane)         | • Art Tuftee (Seattle)             |
| • Paul Dahmer (Olympia)                  | • Doug McClelland (Olympia)      |                                    |
| • Karen Fraser (22 <sup>nd</sup> Dist.)  |                                  |                                    |

### Legislative Recommendations Overview

1. Amend definitions.
2. Adjust statutory fund distribution proportions.
3. Eliminate redundant environmental review processes.
4. Update Advisory Committee structure and membership.
5. Remove gasoline tax cap instituted in 2003.

Recommendations to IAC: ♦ Instructions for competitive grant funds; ♦ Allow waiver of some allocation criteria; ♦ Further define Advisory Committee charter; ♦ Clarify eligibility criteria; and, ♦ Update policy statements to reflect enactment of the recommendations above.

## Timeline

Key steps to completion of these Recommendations included:

- 5/9/2003..... SSHB 1698 signed by Governor (effective date 7/27/03)
- 6/11..... Constituents meet to develop Advisory Committee membership structure
- 7/10..... IAC adopts Advisory Committee structure
- 7/15..... IAC announces open recruitment for Advisory Committee
- 8/5..... IAC's Director confirms the appointment of 18 Advisory Committee members
- 8/21-12/10.. Advisory Committee completes 8 meetings resulting in unanimous agreement on recommendations to the Legislature and IAC.
- 12/31..... Final Report provided to the Legislature.

## SUMMARY OF RECOMMENDATIONS

The Advisory Committee's recommendations are provided in two parts: to the Legislature and to the IAC. A more detailed summary is in Appendix 2a. In addition, recommended text for modifications to the NOVA statute is also provided in Appendix 2b. Each recommendation was reached by unanimous decision, and the Report addresses all items required in SSHB 1698.

### **Recommendations to the Legislature**

- 1) **Definitions.** To assist with clarity and program administration, the Advisory Committee recommends that the definitions in RCW 46.09.020 be amended.
  - æ Add: "motorized vehicle", "ORV (off-road vehicle) sport park", "nonhighway road recreation facilities", "nonhighway road recreational user", "nonmotorized recreation facility", and "nonmotorized recreational user".
  - æ Delete the terms "ORV use area" and "hunt" in the definition section and re-incorporated them where they are used in the text.
  - æ Simplify the terms: "ORV", "nonhighway vehicle", "ORV recreation facilities", "ORV trail", "nonhighway road", and "highway".
- 2) **Fund distribution.** The Advisory Committee recommends that overall fund distribution described in RCW 46.09.170 to the four state agency participants remain essentially unchanged (affects IAC, Department of Natural Resources, Department of Fish and Wildlife, and Parks and Recreation Commission).

As required in SSHB 1698, the following recommendations are made with an understanding of the results found in IAC's 2003 *Fuel Use Survey* (Appendix 3a and Appendix 3b). Additionally, the Advisory Committee recognizes that many overlaps occur among the fund categories. For example, trails developed with ORV category funds are often used by mountain bicyclists and equestrians. Similarly, trailheads developed with nonmotorized category funds are frequently used by sightseers, hunters, and others. A more detailed summary of the funding recommendations is found in Appendix 4.

- æ The Advisory Committee recommends that direct allocations for land acquisitions, planning, facility developments, maintenance and management to the three participating *land managing* state agencies be as follows:

- ~ Department of Natural Resources = 36% of applicable motor vehicle fuel refunds.
  - ~ Parks and Recreation Commission = 2% of applicable motor vehicle fuel refunds.
  - ~ Washington Department of Fish and Wildlife = 3.5% of applicable motor vehicle fuel refunds.
- æ The Advisory Committee also recommends that IAC receive 58.5% for grants as follows:
- ~ 30% for education and enforcement of all NOVA program activities (ORV, nonhighway road, and nonmotorized). As indicated, the Advisory Committee recommends that this category be broadened to address all recreational NOVA education and enforcement issues. For this reason, the recommendation represents an increase in the amount currently allocated to education and enforcement programs, from approximately 20% of the IAC allocation, to 30%.
  - ~ 70% for projects for ORV (30%), nonmotorized (30%), and nonhighway road recreation<sup>[1]</sup> (30%). The remaining 10% would be allocated to otherwise unfunded ORV, nonmotorized, or nonhighway projects that benefit the greatest number of recreationists.
- 3] **Environmental review clarified.** In order to improve the effectiveness of environmental reviews required under the NOVA statute, the Advisory Committee recommends amendments to RCW 46.09.240(2).
- æ Currently, this section requires applicants to follow an elaborate public hearing newspaper notification procedure for all land acquisition and facility development projects. It also requires that applicants comply with the State Environmental Policy Act (chapter 43.21C RCW), without recognition of whether the agency may have already complied with the National Environmental Policy Act (NEPA).
  - æ To reduce redundancy, the ineffective newspaper notification system is recommended for elimination and the NEPA process is established as an allowed substitute for SEPA. (Both processes include detailed public notification requirements).
- 4] **Advisory Committee Structure** (RCW 46.09.280). Provisions relating to the current NOVA Advisory Committee, which were amended in 2003 in SSHB 1698, are also recommended for update. Specifically, the 2003 Advisory Committee recommends:
- æ In addition to current representatives, that full membership be extended to government representatives that participate in the NOVA Program. In part, this recognizes the unique understanding of budgets and land management issues that these agencies bring to the discussion.
  - æ To help ensure consideration of the results of the fuel use study, that the Committee be charged with advising IAC, DNR, WDFW, and the Parks and Recreation Commission regarding the expenditure of NOVA funds.

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<sup>[1]</sup> "Nonhighway road project" (or "nonhighway road recreation") means a proposal that targets sightseers, hunters, fishers, gatherers, and similar recreationists; in the *Fuel Use Survey* such use is referred to as "other".

æ That these agencies be charged with reporting to the Advisory Committee on the expenditures of their portion of NOVA funds and proactively seek the advisory committee's advice regarding proposed expenditures.

- 5j) **Remove gasoline tax cap.** In 1990, the legislature raised the fuel tax \$.05 (from 18 cents to 23 cents) and, at the same time, amended chapter 46.09 RCW (and related fuel tax refund statutes) to prevent any of the increase from being refunded to the NOVA Program. In effect, this action placed a "cap" on the refund, limiting it to the portion of the fuel tax rate in effect in 1990 and not allowing the NOVA Program community to fully benefit from the portion of the fuel tax they pay when recreating off of gasoline tax supported roads. The 2003 Legislature, as part of the transportation budget, raised the gasoline tax \$.01 per biennium through 2011 while limiting the NOVA Program benefit to \$.05 less than the general gas tax rate. (Ch. 361 § 407, 2003 1st sp.s. c 25 § 922, and by 2003 1st sp.s. Ch. 26 § 920.)

While the Advisory Committee recommends that this 2003 "cap" be removed, it is not included in the "Suggested Changes to Chapter 46.09 RCW" (Appendix 2b) so as not to impede the other proposals.

### **Administrative Recommendations to IAC**

The Advisory Committee provides the following recommendations to IAC:

- Aj) **Competitive dollars.** As noted above, the Advisory Committee recommends that 70% of IAC's grants be allocated among ORV, nonmotorized, and nonhighway road (footnote 1) projects. It is recommended that each of these categories receive at least 30% of the funds. The Committee recommends that the remaining 10% (100% - 30% - 30% - 30% = 10%) be competitively allocated based on an IAC policy dedicating the funds to projects that serve the greatest number of NOVA recreationists, regardless of category.
- Bj) **Waiver of minimums.** IAC should adopt a policy that allows it to waive NOVA fund minimum allocations when grant requests are less than the required 30% minimum provided in the recommended RCW 46.09.170(2)(d)(ii). The waiver policy should also be applicable when individual projects score very poorly on IAC approved evaluation criteria.
- Cj) **Advisory Committee charter.** IAC should further define Advisory Committee policies: number of representatives, terms, per diem and travel allowance, etc.
- Dj) **Project eligibility.** A key factor in determining the eligibility of a project to receive NOVA funding is its relationship to a nonhighway road. That is, because program revenue is generated primarily by vehicles traveling on nonhighway roads, DNR and IAC require that projects they administer be accessible by such roads. This criteria, however, has excluded consideration of some projects that the Advisory Committee would otherwise desire to recommend for funding. In other cases it has caused applicants to re-locate proposals to less desirable sites in order to meet the technical criteria. For this reason, the Advisory Committee recommends that IAC work with participants to discover if there is an acceptable way of adopting eligibility criteria that helps land managers make smart facility placement decisions while still considering the nonhighway road proximity/access issue.
- Ej) **Conform policies.** To achieve consistency with the pending legislative actions summarized in this report, the Advisory Committee recommends that IAC implement an open process for updating the agency's NOVA Program policy manuals.

## REMAINING ISSUE - ORV PERMIT FEES

At the conclusion of the Advisory Committee's final meeting, at least one issue was unresolved: should the manner in which ORV permit fees are administered be changed? While not included among the SSHB 1698 mandates, the question of how ORV permit fee revenue (RCW 46.09.030, 46.09.050, 46.09.070, 46.09.080, 46.09.110) best fits into the NOVA Program funding mix was a question raised several times during Advisory Committee meetings. These vehicle registration fees, collected from ORV retail dealers and ORV recreationists, contribute about \$300,000 a year to IAC administered NOVA grants, about 10% of each year's IAC Program revenues.

All Committee members agreed that these funds should be used only for ORV projects, but were unclear about how the ORV community desires these funds to be administered. For example, would IAC allocate the dollars, and if so, using what criteria? Should the Advisory Committee have a role? Should the fees, unchanged for 30 years (\$5/vehicle), be increased, and if so, by how much?

In the end, the Committee agreed that these questions should remain for the ORV community to address.

## THE ADVISORY COMMITTEE

### **Formation**

The members of the NOVA Program Advisory Committee were selected by IAC based on instructions in SSHB 1698 and an organizational meeting conducted on June 11, 2003. Included in the meeting were IAC staff, a professional facilitator, and an ad hoc group of 15 NOVA recreationists and agency personnel who, in large part, represented the same interests that advised IAC throughout the *NOVA Fuel Use Survey* (2003)<sup>[2]</sup>.

On the advice of this group, on July 10, IAC's board adopted the NOVA Advisory Committee's new structure.

To recruit Advisory Committee members, on July 15 IAC circulated an announcement to over 400 persons on IAC's listing of persons interested in the NOVA Program. The announcement included an application for NOVA Advisory Committee membership, the background summary from the June 11<sup>th</sup> meeting and a draft of proposed *NOVA Advisory Committee Policies/Charter*<sup>[3]</sup>.

In response to this announcement and the resultant applications, on August 5, 2003, IAC's Director appointed 18 committee members.

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<sup>[2]</sup> Developed in accord with SSB 6155 (2001) to determine the relative portion of motor vehicle fuel tax revenues attributable to vehicles operating off-road and on nonhighway roads for various recreational purposes. (Appendix 3a, 3b.)

<sup>[3]</sup> The Advisory Committee Policies and Charter provides purpose, duties, membership, attributes, and selection process information.

### **Members**

The Advisory Committee members charged with developing the recommendations in this report are:

| <b>Legislators</b>                     | <b>Name</b>               | <b>From</b>                           |
|--|---------------------------|---------------------------------------|
| State Representative                   | • Hon. Cary Condotta      | 12 <sup>th</sup> Legislative District |
| State Representative                   | • Hon. Mike Cooper        | 21 <sup>st</sup> Legislative District |
| State Senate                           | • Hon. Karen Fraser       | 22 <sup>nd</sup> Legislative District |
| State Senate                           | • Hon. Bob Oke            | 26 <sup>th</sup> Legislative District |
| <b>Recreationists</b>                  | <b>Name</b>               | <b>From</b>                           |
| Equestrians                            | • Robert Brooke           | Spanaway                              |
| ORV Community                          | • Arlene Brooks           | Auburn                                |
| ORV Community                          | • Rick Dahl               | Longview                              |
| Hikers                                 | • Jonathan Guzzo          | Seattle                               |
| ORV Community                          | • Jerry Homola            | Oak Harbor                            |
| Sightseers etc.                        | • Theresa Julius          | Aberdeen                              |
| Hikers                                 | • Jeff Lambert            | Spokane                               |
| Sightseers etc.                        | • John Spring             | Mercer Island                         |
| Mountain Bicyclists                    | • Art Tuftee              | Seattle                               |
| <b>Agencies</b>                        | <b>Name</b>               | <b>From</b>                           |
| Dept. of Fish & Wildlife               | • Paul Dahmer             | Olympia                               |
| Sheriffs/Law Enforcement               | • Hon. Ken Irwin, Sheriff | Yakima                                |
| Dept. of Natural Resources             | • Doug McClelland         | Olympia                               |
| State Parks                            | • Dewayne Ratliff         | Olympia                               |
| Federal Agencies / USDA Forest Service | • Vladimir Steblina       | Wenatchee                             |

### **Meetings**

Over the course of eight meetings, from August 21, 2003 through December 10, 2003, committee members and IAC staff met with a professional facilitator to work through the issues mandated in SSHB 1698. A summary of each meeting, along with the facilitator's final report, may be found at <http://www.iac.wa.gov/> (click "NOVA" under "News & Events").

## CONSTITUENT INVOLVEMENT

From the beginning, multiple opportunities for keeping the public informed about Advisory Committee progress and soliciting feedback was important. To accomplish this, seven main components were used.

- 1] IAC distributed over 1,000 announcements to potentially interested parties, describing the reasons for establishing the Advisory Committee, its mission, and ways to provide feedback.
- 2] IAC established a widely advertised communications link on its website where Advisory Committee background and meeting information was provided. Included were a summary of each meeting and an email feedback link.
- 3] Advisory Committee members were selected based, in part, on their commitment to communicating with constituents. Several members wrote newsletter articles, reported at club meetings, and held discussion forums.
- 4] All Advisory Committee meetings were announced and open to guests.
- 5] IAC staff was available to meet directly with anyone interested in finding out more about this process.
- 6] Advisory Committee organization, deliberations and progress was an agenda item at three public IAC board meetings.
- 7] A special Advisory Committee panel breakout was presented at the November 2003 State Trails Conference.

## APPENDICES

1. SSHB 1698, Chapter 185, Laws of 2003, 58<sup>th</sup> Legislature
  - 2a. Advisory Committee Recommendations ~ Summary
  - 2b. Advisory Committee Recommendations ~ Draft Bill
  - 3a. NOVA Fuel Use Survey ~ Summary
  - 3b. NOVA Fuel Use Survey ~ FAQs
4. Recommended NOVA Fund Distribution ~ Summary

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*A summary of each meeting and other NOVA-related materials may be found at <http://www.iac.wa.gov/> (click "NOVA" under "News & Events").*



## Appendix 1

SECOND SUBSTITUTE HOUSE BILL 1698  
Chapter 185, Laws of 2003, 58th Legislature

NONHIGHWAY AND OFF-ROAD VEHICLE ADVISORY COMMITTEE  
EFFECTIVE DATE: 7/27/03

By House Committee on Capital Budget (originally sponsored by Representatives Cooper, Anderson, Wood, Jarrett, O'Brien, Murray, Upthegrove, Pflug and Dunshee)

1 AN ACT Relating to outdoor recreation programs; amending RCW  
2 46.09.280; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 46.09.280 and 1986 c 206 s 13 are each amended to read  
5 as follows:

6 The interagency committee for outdoor recreation shall establish  
7 ~~(a committee of nonhighway road recreationists, including~~  
8 ~~representatives of organized ORV groups,)~~ the nonhighway and off-road  
9 vehicle advisory committee to provide advice regarding the  
10 administration of this chapter. The nonhighway and off-road vehicle  
11 advisory committee consists of a proportional representation of persons  
12 with recreational experience in areas identified in the most recent  
13 fuel use study, including but not limited to people with off-road  
14 vehicle, hiking, equestrian, mountain biking, hunting, fishing, and  
15 wildlife viewing experience. Only representatives of organized ORV  
16 groups may be voting members of the committee with respect to  
17 expenditure of funds received under RCW 46.09.110.

1 NEW SECTION. Sec. 2. The nonhighway and off-road vehicle advisory  
2 committee created in RCW 46.09.280 must review the existing nonhighway  
3 and off-road vehicle distribution formulas and policies in RCW  
4 46.09.020, 46.09.170, and 46.09.280 and develop recommendations for  
5 statutory changes. The recommendations should be consistent with the  
6 results of the most recent fuel use study, and address the operation  
7 and maintenance needs of existing facilities. For the review in this  
8 section, the committee must also include representation of county  
9 sheriffs, recreational land managers, the state parks and recreation  
10 commission, the department of fish and wildlife, and the department of  
11 natural resources, and two members of the senate appointed by the  
12 president of the senate, to include one member from each major caucus,  
13 and two members of the house of representatives appointed by the  
14 speaker of the house of representatives, to include one member from  
15 each major caucus. In the senate, members must be selected from the  
16 parks, fish and wildlife committee and ways and means committee. In  
17 the house of representatives, members must be selected from the  
18 fisheries, ecology and parks committee and either the appropriations or  
19 capital budget committee. Recommendations must be submitted to the  
20 appropriate standing committees of the legislature by January 1, 2004.

Passed by the House April 22, 2003.  
Passed by the Senate April 11, 2003.  
Approved by the Governor May 9, 2003.  
Filed in Office of Secretary of State May 9, 2003



## Summary Listing of NOVA Advisory Committee Agreements

1. **Changes to RCW 46.09.020 Definitions.**
  - a) Add "motorized vehicle" - not previously defined but used in definition of a nonhighway vehicle and ORV.
  - b) Update "ORV" – simplify.
  - c) Update "Nonhighway Vehicle" – simplify.
  - d) Add "ORV recreational user" - identifies one the three major contributors to the NOVA account identified in the Fuel Use Survey.
  - e) Update "ORV recreation facilities" – it now plainly includes camping areas, trailheads, and ORV sport parks.
  - f) Update "ORV trail" – simplify.
  - g) Delete "ORV use area" – incorporated into definition of an "ORV recreation facilities".
  - h) Add "ORV sport park" – to differentiate from other racing facilities.
  - i) Delete "Hunt" – moved to the single sentence in the statute where "hunt" is addressed.
  - j) Update "Nonhighway road" – simplify.
  - k) Add "Nonhighway road recreational user" – identifies one the three major contributors to the NOVA account identified in the Fuel Use Survey.
  - l) Add "Nonhighway road recreation facilities" – describes facilities supported by NOVA Program.
  - m) Add "Nonmotorized recreational user" - identifies one the three major contributors to the NOVA account identified in the Fuel Use Survey.
  - n) Add "Nonmotorized recreational facilities" – describes the facilities used by such recreationists.
  - o) Update "Highway" – simplify.
2. **Changes to RCW 46.09.110 Disposition of ORV moneys.** Clarifies that ORV permit fees may be used only for ORV purposes.
3. **Changes to RCW 46.09.130 Additional violations – Penalty.** Defines "hunt".
4. **Changes to RCW 46.09.170 Refunds from motor vehicle fund -- Distribution -- Use.**
  - a) 36% to DNR for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; information programs, and maintenance of nonhighway roads.
  - b) 3.5% WDFW for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, nonhighway road recreation facilities; and the maintenance of nonhighway roads.
  - c) 2% to Parks for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities.
  - d) 58.5% to IAC for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and for education, information, and law enforcement programs. Of the 58.5%:

- Up to 30% for E&E (for ORV, nonhighway road, and nonmotorized recreation).
  - At least 70% for ORV, nonmotorized, and nonhighway road recreation facilities. Of this amount, unless waived by IAC's board due to insufficient requests for funds or, in the case of individual projects, a low score received during the project evaluation process:
    - æ At least 30% for ORV facilities (plus permit fee funds)
    - æ At least 30% for nonmotorized facilities
    - æ At least 30% for nonhighway road facilities.
5. **Changes to 46.09.240 Administration and distribution of ORV monies.**
- a) Adds: IAC shall require NOVA applicants for acquisition or development funds to comply with either SEPA or NEPA.
  - b) Deletes: Language requiring publication for NOVA acquisition or development proposals in newspapers. This method of providing information deemed not effective and is duplicative of the SEPA-NEPA processes.
  - c) Deletes: The applicant shall file NOVA public hearing notices with DOE. This method is not preferred by DOE.
6. **Changes to 46.09.280 NOVA Advisory Committee.**
- a) Updates Advisory Committee membership (of ORV, nonmotorized, and nonhighway road recreationists) to include government representatives and land managers.
  - b) Updates to read that only the ORV recreationists may be voting members with respect to the ORV permit fees.
  - c) Adds that, in determining the allocation of NOVA funds, at least once a year, DNR, IAC, Parks, and WDFW will proactively seek the advice of the advisory committee.
  - d) Adds that the advisory committee shall advise the four participating state agencies on the overall allocation of NOVA funds.
7. **Gasoline tax:** Advisory Committee recommends that the Legislature remove the 2003 gasoline excise tax cap and refund the full 1% tax to the NOVA Program.
8. **IAC to:**
- a) Work with the Advisory Committee to develop an IAC policy on the waiver of NOVA fund allocations when grant requests are less than the required 30% minimum provided in the recommended 46.09.170(1)(iv)(B).
  - b) Work with the Advisory Committee to further define advisory committee policies such as the number of representatives, term lengths, per diem and travel allowance, etc.
  - c) Work with the Advisory Committee to review project eligibility criteria to discover if there is an acceptable way of helping land managers make facility placement decisions while still considering nonhighway road proximity/access criteria.
  - d) Annually advise the State Department of Ecology's Water Quality Section regarding NOVA acquisition and development proposals.

Appendix 2b

| NOVA Adv. Comm. Suggested Changes to Chapt. 46.09 RCW<br>OFF-ROAD AND NONHIGHWAY VEHICLES  | Comments  |
|--|---|
| <p><b>RCW 46.09.020, Definitions.</b><br/> <del>As used in this chapter the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicates: The definitions in this section apply throughout this chapter unless the context requires otherwise.</del></p>   | <p><u>Modified.</u> Suggested by the legislature in a previous version of HB1698. It's also shorter.</p>                  |
| <p><del>"Motorized vehicle" means a vehicle that derives motive power from an internal combustion engine.</del></p>  | <p><u>New.</u> Term used in definition of a "nonhighway vehicle" and "off-road vehicle."</p>                              |
| <p><del>"Off-road vehicle" or "ORV" means any nonhighway non-street licensed motorized vehicles when used for recreational purposes on nonhighway roads, trails, for cross-country travel on trails or on any one of the following or a combination thereof: Land, water, snow, ice, marsh, swampland and or a variety of other natural terrain. Such vehicles include, but are not limited to, all-terrain vehicles (ATV's), motorcycles, four-wheel drive vehicles, and dune buggies.</del></p>  | <p><u>Modified.</u> Simplified the definition.</p>  |
| <p><del>"Nonhighway vehicle" means any motorized vehicle, including an ORV, when used for recreational travel purposes on trails and nonhighway roads, trails, or a variety of other natural terrain, or for recreation cross-country travel on any one of the following or a combination thereof: Land, water, snow, ice, marsh, swampland, and other natural terrain. Such vehicles include but are not limited to, off-road vehicles, two, three, or four wheel vehicles, motorcycles, four-wheel drive vehicles, dune buggies, amphibious vehicles, ground effects or air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.</del></p> <p>Nonhighway vehicle does not include:</p> <ol style="list-style-type: none"> <li>(1) Any vehicle designed primarily for travel on, over, or in the water;</li> <li>(2) Snowmobiles or any military vehicles; or</li> <li>(3) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.36 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.</li> </ol> | <p><u>Modified.</u> Simplified the definition.</p>  |
| <p><del>"ORV recreational user" means a person whose purpose for consuming fuel on nonhighway roads or off-road is primarily for ORV recreational purposes, including but not limited to riding an all-terrain vehicle (ATV), motorcycling, or driving a four-wheel drive vehicle or dune buggy.</del></p>   | <p><u>New.</u> Added to identify one of the three major contributors of NOVA funds identified in the fuel use survey.</p> |
| <p><del>"ORV recreation facilities" includes, but are not limited to, ORV trails, trail heads, campgrounds, ORV sport parks, and ORV use areas designated for ORV use by the</del></p>   | <p><u>Modified.</u> To clarify confusing section in the current statute, this plainly includes camping</p>                |

| NOVA Adv. Comm. Suggested Changes to Chapt. 46.09 RCW<br>OFF-ROAD AND NONHIGHWAY VEHICLES   | Comments   |
|---|--|
| <del>managing authority that are intended primarily for ORV recreational users.</del>   | areas, trailheads, and ORV sport parks as ORV recreation facilities.   |
| "ORV trail" means a multiple-use corridor designated <u>by the managing authority</u> and maintained for recreational travel <u>use by off-road motorized vehicles, that is not normally suitable for travel by conventional two-wheel drive vehicles and is posted or designated by the managing authority of the property that the trail traverses as permitting ORV travel.</u>  | <u>Modified.</u> When current managers designate a trail for a particular use, it is usually posted.   |
| <del>"ORV use area" means the entire area of a parcel of land except for camping and approved buffer areas that is posted or designated for ORV use in accordance with rules adopted by the managing authority.</del>   | <u>Moved.</u> Incorporated into the definition of ORV recreation facilities.   |
| <del>"ORV sport park" means a facility designed to accommodate competitive ORV recreational uses including, but not limited to, motocross racing, four-wheel drive competitions, and flat track racing. Use of ORV sports parks can be competitive or non-competitive in nature.</del>  | <u>New.</u> Designed to identify the type of ORV facilities funded with NOVA funds. IAC has had inquiries regarding the funding of race car facilities.  |
| "Dealer" means a person, partnership, association, or corporation engaged in the business of selling <del>off-road vehicles</del> <u>ORVs</u> at wholesale or retail in this state.   |  |
| "Department" means the department of licensing.   |  |
| <del>"Hunt" means any effort to kill, injure, capture, or purposely disturb a wild animal or wild bird.</del>   | <u>Moved.</u> Is only found once in text of 46.09. Deleted the definition in this section and defined "hunt" in 46.09.130.   |
| "Nonhighway road" means any road owned or managed by a public agency, or any private road for which the owner has granted an <u>permanent</u> easement for public use, <del>of the road, other than a highway generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles</del> and that <del>is</del> <u>was</u> not <u>originally built nor reconstructed in the last 25 years</u> or maintained <u>during the last 4 years</u> with appropriations from the motor vehicle fund. | <u>Moved.</u> Deleted text was moved to the definition of a highway. This definition is needed to describe the road from which the majority of the fuel tax revenues accrue to the NOVA program. |
| <del>"Nonhighway road recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonhighway road recreational purposes, including, but not limited to, hunting, fishing, camping, sightseeing, wildlife viewing, picnicking, driving for pleasure, kayaking/canoeing, and gathering (berries, firewood, mushrooms, etc.).</del>   | <u>New.</u> Added to identify one of the three major contributors of NOVA funds identified in the fuel use survey.   |
| <del>"Nonhighway road recreation facilities" means recreational facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonhighway road recreational users.</del>   | <u>New.</u> Added to describe the facilities used by nonhighway road recreational users.   |
| <del>"Nonmotorized recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonmotorized recreational purposes such as,</del>   | <u>New.</u> Added to identify one of the three major contributors of NOVA funds identified in the  |

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| <u>but not limited to, walking, hiking, backpacking, climbing, cross-country skiing, snowshoeing, mountain biking, horseback riding, and pack animal activities.</u>   | fuel use survey.  |
| <u>“Nonmotorized recreational facilities” means recreational trails and facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonmotorized recreational users.</u>   | <u>New.</u> Add to describe the facilities used by nonmotorized recreational users.   |
| <p>"Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every roadway publicly maintained by the state department of transportation or any county or city <u>with funding from the motor vehicle fund. when any part thereof is generally open to the use of the public for purposes of vehicular travel as a matter of right. A highway is generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles.</u></p>   | <p><u>Modified.</u> We are unclear why it is needed. Are some roads so maintained closed to the public?</p> <p><u>Moved.</u> Last sentence was moved from the definition of nonhighway road. Clarifies that maintenance work is normally done with Motor Vehicle Funds.</p> <p><u>Modified.</u> Also recognizes that other funds could be used to pay WSDOT or city and county crews to maintain the roadway.</p> |
| <p><b>RCW 46.09.110</b><br/><b>Disposition of ORV moneys.</b><br/>The moneys collected by the department under this chapter shall be distributed from time to time but at least once a year in the following manner:<br/>The department shall retain enough money to cover expenses incurred in the administration of this chapter: PROVIDED, That such retention shall never exceed eighteen percent of fees collected.<br/>The remaining moneys shall be distributed <u>for ORV recreation facilities</u> by the interagency committee for outdoor recreation in accordance with *RCW 46.09.170(42)(d)(ii)(A). [1986 c 206 § 6; 1985 c 57 § 60; 1977 ex.s. c 220 § 9; 1972 ex.s. c 153 § 11; 1971 ex.s. c 47 § 16.]<br/><b>NOTES:</b><br/>*<b>Reviser's note:</b> RCW 46.09.170 was amended by 2003 c 361 § 407, changing subsection (1)(d) to subsection (1)(e)(iv).<br/><b>Effective date -- 1986 c 206:</b> See note following RCW 46.09.020.<br/><b>Effective date -- 1985 c 57:</b> See note following RCW 18.04.105.<br/><b>Purpose -- 1972 ex.s. c 153:</b> See RCW 79A.35.070.</p> | <p><u>Modified.</u> This change will ensure that all ORV permit fees distributed by the IAC are only used for ORV recreation facilities.</p>  |

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| <p><b>RCW 46.09.130</b><br/> <b>Additional violations -- Penalty. (Effective until July 1, 2004.)</b><br/>           No person may operate a nonhighway vehicle in such a way as to endanger human life. No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt <u>(that is, any effort to kill, injure, capture, or purposely disturb a wild animal or wild bird)</u> from, any nonhighway vehicle except by permit issued by the director of fish and wildlife under RCW 77.32.237: PROVIDED, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.</p> <p>Violation of this section is a gross misdemeanor.<br/>           [1994 c 264 § 35; 1989 c 297 § 3; 1986 c 206 § 7; 1977 ex.s. c 220 § 11; 1971 ex.s. c 47 § 18.]</p> <p><b>NOTES:</b><br/> <b>Rules of court:</b> Bail in criminal traffic offense cases -- Mandatory appearance -- CrRLJ 3.2.<br/> <b>Effective date -- 1986 c 206:</b> See note following RCW 46.09.020.</p>  | <p><u>Moved</u> text from the definition section.</p> |
| <p><b>RCW 46.09.130</b><br/> <b>Additional violations -- Penalty. (Effective July 1, 2004.)</b><br/>           (1) No person may operate a nonhighway vehicle in such a way as to endanger human life.<br/>           (2) No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt <u>(that is, any effort to kill, injure, capture, or purposely disturb a wild animal or wild bird)</u> from, any nonhighway vehicle except by permit issued by the director of fish and wildlife under RCW 77.32.237: PROVIDED, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.<br/>           (3) Violation of this section is a gross misdemeanor.<br/>           [2003 c 53 § 233; 1994 c 264 § 35; 1989 c 297 § 3; 1986 c 206 § 7; 1977 ex.s. c 220 § 11; 1971 ex.s. c 47 § 18.]</p> <p><b>NOTES:</b><br/> <b>Rules of court:</b> Bail in criminal traffic offense cases -- Mandatory appearance -- CrRLJ 3.2.<br/> <b>Intent -- Effective date -- 2003 c 53:</b> See notes following RCW 2.48.180.<br/> <b>Effective date -- 1986 c 206:</b> See note following RCW 46.09.020.</p> |   |
| <p><b>RCW 46.09.170</b><br/> <b>Refunds from motor vehicle fund -- Distribution -- Use.</b></p>   |   |

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| <p><b>(Expires June 30, 2005.)</b></p> <p>(1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.</p> <p><u>(2)</u> The treasurer shall place these funds <u>(46.09.170 (1))</u> in the general fund as follows:</p> <p>(i) <del>Forty</del><u>Thirty-six</u> percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for <u>acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, nonhighway roads, information programs, and maintenance of nonhighway roads, nonhighway road recreation facilities.</u> The funds under this subsection shall be expended in accordance with the following limitations:</p> <ul style="list-style-type: none"> <li>— (A) <del>Not more than five percent may be expended for information programs under this chapter;</del></li> <li>— (B) <del>Not less than ten percent and not more than fifty percent may be expended for ORV recreation facilities;</del></li> <li>— (C) <del>Not more than twenty-five percent may be expended for maintenance of nonhighway roads;</del></li> <li>— (D) <del>Not more than fifty percent may be expended for nonhighway road recreation facilities;</del></li> <li>— (E) <del>Ten percent shall be transferred to the interagency committee for outdoor recreation for grants to law enforcement agencies in those counties where the department of natural resources maintains ORV facilities. This amount is in addition to those distributions made by the interagency committee for outdoor recreation under (e)(iv)(A) of this subsection;</del></li> </ul> <p>(ii) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of <u>ORV, nonmotorized, nonhighway road recreation facilities and the maintenance of nonhighway roads;</u></p> <p>(iii) Two percent shall be credited to the ORV and</p> | <p><u>Note.</u> Text is written to allow the four NOVA fund recipient state agencies to expend NOVA funds for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities to give the agencies maximum flexibility.</p> |

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| <p>nonhighway vehicle account and administered by the parks and recreation commission solely for the <u>acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation use areas and facilities</u>; and</p> <p><del>(ivd)</del> Fifty <del>eight</del>four and one-half percent, <del>together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110</del>, shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV, <u>nonmotorized, and nonhighway road recreation facilities</u>; <del>and nonhighway road recreation facilities</del>; <u>ORV user and for education, and information</u>; and <u>ORV-law enforcement programs</u>. During the fiscal year ending June 30, 2004, a portion of these funds may be appropriated to the department of natural resources to maintain and operate existing ORV and other recreation facilities, including ORV campgrounds, for the state parks and recreation commission to construct and upgrade trails and trail-related facilities for both motorized and nonmotorized uses, and for other activities identified in this section. The funds under this subsection shall be expended in accordance with the following limitations, except that during the fiscal year ending June 30, 2004, funds appropriated to the committee from motor vehicle fuel tax revenues for the activities in <del>(e2)(ivd)(Bii) and (C)</del> of this subsection shall be reduced by the amounts appropriated to the department of natural resources and the state parks and recreation commission as provided in this subsection:</p> <p><del>(Ai)</del> Not more than <u>twenty</u>thirty percent may be expended for <u>ORV education, information, and law enforcement programs under this chapter</u>;</p> <p><del>(Bii)</del> <u>Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Of this amount, unless waived by the committee due to insufficient requests for funds, or in the case of individual projects, a low score received during the project evaluation process:</u></p> <p><del>(A)</del> <u>Not less than thirty percent, together with the funds the committee receives under 46.09.110, may be expended for ORV recreation facilities;</u></p> <p><del>(B)</del> <u>Not less than thirty percent may be expended for nonmotorized recreation facilities; and</u></p> <p><del>(A)(C)</del> <u>Not less than thirty percent may be expended for nonhighway road recreation facilities.</u></p> <p><del>Not less than an amount equal to the funds received by the interagency committee for outdoor recreation under RCW</del></p> | <p><u>Note.</u> The IAC increase from 54.5% to 58.5% reflects the 10% that DNR would have transferred to IAC under deleted 46.09.170 (1)(i)(E).</p> <p><u>Note.</u> The “not more than” provision for E&amp;E funding provides IAC’s board discretion regarding funding for E&amp;E projects that score low during the IAC evaluation process.</p> <p><u>New.</u> Includes a provision whereby the “not less than” requirement can be waived by IAC’s board if insufficient applications for available funds are requested or if a project scores low during the IAC evaluation process.</p> <p><u>Note.</u> The final ten percent will be competitive among the three categories (A, B, C).</p> |

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| <p><del>46.09.110 and not more than sixty percent may be expended for ORV recreation facilities;</del><br/> <del>— (C) Not more than twenty percent may be expended for nonhighway road recreation facilities.</del></p> <p>(23) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.</p> <p>(34) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the <u>ORV-NOVA</u> account to the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection (42) of this section.</p> <p>[2003 1st sp.s. c 26 § 920; 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]</p> <p><b>NOTES:</b></p> <p><b>Reviser's note:</b> This section was amended by 2003 c 361 § 407, 2003 1st sp.s. c 25 § 922, and by 2003 1st sp.s. c 26 § 920, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).</p> <p><b>Expiration date -- Severability -- Effective dates -- 2003 1st sp.s. c 26:</b> See notes following RCW 43.135.045.</p> <p><b>Severability -- Effective date -- 2003 1st sp.s. c 25:</b> See notes following RCW 19.28.351.</p> <p><b>Findings -- Part headings not law--Severability -- 2003 c 361:</b> See notes following RCW 82.36.025.</p> <p><b>Effective dates -- 2003 c 361:</b> See note following RCW 82.08.020.</p> <p><b>Purpose -- Headings -- Severability -- Effective dates - - Application -- Implementation -- 1990 c 42:</b> See notes following RCW 82.36.025.</p> <p><b>Effective date -- 1986 c 206:</b> See note following RCW 46.09.020.</p> <p><b>Effective date -- 1975 1st ex.s. c 34:</b> "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 34 § 4.]</p> <p><b>Purpose -- 1972 ex.s. c 153:</b> See RCW 79A.35.070.</p> | <p>IAC staff will work with the advisory committee to develop a policy that directs the remaining ten percent to otherwise unfunded projects that serve the greatest number of recreationists.</p> |
| <p><b>RCW 46.09.170</b><br/> <b>Refunds from motor vehicle fund -- Distribution -- Use.</b></p>   |  |

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| <p><b>(Effective June 30, 2005.)</b></p> <p>(1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.</p> <p>(2) The treasurer shall place these funds <u>(46.09.170 (1))</u> in the general fund as follows:</p> <p>(i) <del>Forty</del> <u>thirty-six</u> percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for <u>acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, nonhighway roads, information programs, and maintenance of nonhighway roads.</u> <del>nonhighway road recreation facilities. The funds under this subsection shall be expended in accordance with the following limitations:</del></p> <ul style="list-style-type: none"> <li><del>— (A) Not more than five percent may be expended for information programs under this chapter;</del></li> <li><del>— (B) Not less than ten percent and not more than fifty percent may be expended for ORV recreation facilities;</del></li> <li><del>— (C) Not more than twenty-five percent may be expended for maintenance of nonhighway roads;</del></li> <li><del>— (D) Not more than fifty percent may be expended for nonhighway road recreation facilities;</del></li> <li><del>— (E) Ten percent shall be transferred to the interagency committee for outdoor recreation for grants to law enforcement agencies in those counties where the department of natural resources maintains ORV facilities. This amount is in addition to those distributions made by the interagency committee for outdoor recreation under (e)(iv)(A) of this subsection;</del></li> </ul> <p>(ii) <u>Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, nonhighway road recreation facilities and the maintenance of nonhighway roads;</u></p> <p>(iii) <u>Two percent shall be credited to the ORV and</u></p> |          |

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| <p>nonhighway vehicle account and administered by the parks and recreation commission solely for the <u>acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation use areas and facilities</u>; and</p> <p>(ivd) <del>Fifty-eight</del><u>four</u> and one-half percent, <del>together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110,</del> shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV, <u>nonmotorized, and nonhighway road recreation facilities; and nonhighway road recreation facilities; ORV user and for education, and information;</u> and <del>ORV law enforcement programs.</del> The funds under this subsection shall be expended in accordance with the following limitations:</p> <p>(A) <del>Not more than twenty</del><u>thirty</u> percent may be expended for <del>ORV</del> education, information, and law enforcement programs under this chapter;</p> <p>(B) <u>Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Of this amount, unless waived by the committee due to insufficient requests for funds, or in the case of individual projects, a low score received during the project evaluation process:</u></p> <p>(A) <u>Not less than thirty percent, together with the funds the committee receives under 46.09.110, may be expended for ORV recreation facilities;</u></p> <p>(B) <u>Not less than thirty percent may be expended for nonmotorized recreation facilities; and</u></p> <p><del>(A)(C)</del> <u>Not less than thirty percent may be expended for nonhighway road recreation facilities.</u></p> <p><del>Not less than an amount equal to the funds received by the interagency committee for outdoor recreation under RCW 46.09.110 and not more than sixty percent may be expended for ORV recreation facilities;</del></p> <p><del>—(C) Not more than twenty percent may be expended for nonhighway road recreation facilities.</del></p> <p>(23) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.</p> <p>(34) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the <u>ORV-NOVA</u> account to the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state</p> | <p>Formatted: Bullets and Numbering</p> |

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| <p>parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection (42) of this section.</p> <p>[2003 1st sp.s. c 26 § 920; 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]</p> <p><b>NOTES:</b></p> <p><b>Reviser's note:</b> This section was amended by 2003 c 361 § 407, 2003 1st sp.s. c 25 § 922, and by 2003 1st sp.s. c 26 § 920, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).</p> <p><b>Expiration date -- Severability -- Effective dates -- 2003 1st sp.s. c 26:</b> See notes following RCW 43.135.045.</p> <p><b>Severability -- Effective date -- 2003 1st sp.s. c 25:</b> See notes following RCW 19.28.351.</p> <p><b>Findings -- Part headings not law--Severability -- 2003 c 361:</b> See notes following RCW 82.36.025.</p> <p><b>Effective dates -- 2003 c 361:</b> See note following RCW 82.08.020.</p> <p><b>Purpose -- Headings -- Severability -- Effective dates - - Application -- Implementation -- 1990 c 42:</b> See notes following RCW 82.36.025.</p> <p><b>Effective date -- 1986 c 206:</b> See note following RCW 46.09.020.</p> <p><b>Effective date -- 1975 1st ex.s. c 34:</b> "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 34 § 4.]</p> <p><b>Purpose -- 1972 ex.s. c 153:</b> See RCW 79A.35.070.</p> |   |
| <p><b>RCW 46.09.240</b></p> <p><b>Administration and distribution of ORV moneys.</b></p> <p>(1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the interagency committee for outdoor recreation shall, at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, municipalities, federal agencies, nonprofit ORV organizations, and Indian tribes. Funds distributed under this section to nonprofit ORV organizations may be spent only on projects or activities that benefit ORV recreation on lands once publicly owned that come into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.</p> <p>(2) The committee shall adopt rules governing</p>   | <p><u>Note.</u> Suggest Code Reviser update Chapter Title to read: Administration and distribution of nonhighway and off-road vehicle moneys.</p> |

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| <p>applications for funds administered by the agency under this chapter and shall determine the amount of money distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.</p> <p><del>(3) The interagency committee shall require each applicant for acquisition or development funds under this section to comply with the requirements of either the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA).</del></p> <p><del>—(2) The interagency committee shall require each applicant for land acquisition or development funds under this section to conduct, before submitting the application, a public hearing in the nearest town of five hundred population or more, and publish notice of such hearing on the same day of each week for two consecutive weeks as follows:</del></p> <p><del>—(a) In the newspaper of general circulation published nearest the proposed project;</del></p> <p><del>—(b) In the newspaper having the largest circulation in the county or counties where the proposed project is located; and</del></p> <p><del>—(c) If the proposed project is located in a county with a population of less than forty thousand, the notice shall also be published in the newspaper having the largest circulation published in the nearest county that has a population of forty thousand or more.</del></p> <p><del>—(3) The notice shall state that the purpose of the hearing is to solicit comments regarding an application being prepared for submission to the interagency committee for outdoor recreation for acquisition or development funds under the off-road and nonhighway vehicle program.</del></p> <p><del>The applicant shall file notice of the hearing with the department of ecology at the main office in Olympia and shall comply with the State Environmental Policy Act, chapter 43.21C RCW. A written record and a magnetic tape recording of the hearing shall be included in the application. [1998 c 144 § 1; 1991 c 363 § 122; 1986 c 206 § 9; 1977 ex.s. c 220 § 17.]</del></p> <p><b>NOTES:</b></p> <p><b>Purpose -- Captions not law -- 1991 c 363:</b> See notes following RCW 2.32.180.</p> <p><b>Effective date -- 1986 c 206:</b> See note following RCW 46.09.020.</p> | <p><u>Modified.</u> Item #3 requires applicants to take projects through the appropriate environmental review – SEPA for state and local agencies and NEPA for federal agencies. NEPA was not identified in the previous version of 46.09.240.</p> <p><u>Deleted.</u> Removed the requirement for applicants to complete a public hearing for all acquisition and development projects. SEPA and NEPA already have a public notice requirement. Public notices in newspapers are not effective at informing the public regarding land use decisions.</p> <p><u>Note.</u> The Water Quality Section of the Department of Ecology has asked to be informed of acquisition and development projects considered for IAC NOVA funds. IAC has agreed to provide a listing of all such projects.</p> |

| NOVA Adv. Comm. Suggested Changes to Chapt. 46.09 RCW<br>OFF-ROAD AND NONHIGHWAY VEHICLES   | Comments   |
|---|--|
| <p><b>RCW 46.09.280</b><br/><b>Nonhighway and off-road vehicle advisory committee.</b></p> <p><u>(1) The interagency committee for outdoor recreation shall establish the nonhighway and off-road vehicle activities advisory committee to provide advice regarding the administration of this chapter. This <del>nonhighway and off-road vehicle advisory</del> committee consists of <u>governmental representatives, land managers, and</u> a proportional representation of persons with recreational experience in areas identified in the most recent fuel use study, including but not limited to people with <del>off-road vehicle</del> <u>ORV</u>, hiking, equestrian, mountain biking, hunting, fishing, and wildlife viewing experience.</u></p> <p><u>(2) Only <del>representatives of organized the</del> ORV recreationists groups may be voting members of the committee with respect to expenditure of funds received under RCW 46.09.110.</u></p> <p><u>(3) At least once a year: (a) The interagency committee, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission shall report to the nonhighway and off-road vehicle activities advisory committee on the expenditures of funds received under RCW 46.09.110 and RCW 46.09.170 and shall proactively seek the advisory committee's advice regarding proposed expenditures.</u></p> <p><u>(b) The advisory committee shall advise these agencies regarding the allocation of funds received under chapter 46.09.170 to ensure that overall expenditures reflect consideration of the results of the most recent fuel use study.</u></p> <p>[2003 c 185 § 1; 1986 c 206 § 13.]</p> <p><b>NOTES:</b></p> <p><b>Effective date -- 1986 c 206:</b> See note following RCW 46.09.020.</p> | <p><u>Note.</u> The 2003 NOVA advisory committee recommended the following representation for the new NOVA advisory committee:</p> <p><b>3 state agencies</b> – State Parks, WDFW, and DNR<br/> <b>1 federal government</b> – selected from NPS, USFS, USFWS, BLM<br/> <b>1 local government</b> – selected from county sheriff, police, or a local agency that provides NOVA related facilities<br/> <b>3 ORV recreationists</b> – endeavor to include ATV, 4x4, and motorcycle users<br/> <b>4 nonmotorized recreationists</b> – 2 hikers, 1 equestrian, 1 mountain biker<br/> <b>3 nonhighway road recreationists</b> – one must represent hunters/fishers</p> <p><u>New.</u> The NOVA advisory committee wants to be informed of the NOVA expenditures by DNR, SP, WDFW, and IAC and they want to be consulted regarding proposed funding decisions by those agencies.</p> |

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# Nonhighway and Off-Road Vehicle (NOVA) Fuel Use Study Summary

February 4, 2003

## Study Objective

...to determine the relative portion of motor vehicle fuel tax revenues attributable to vehicles operating off-road and on nonhighway roads for various recreational purposes.

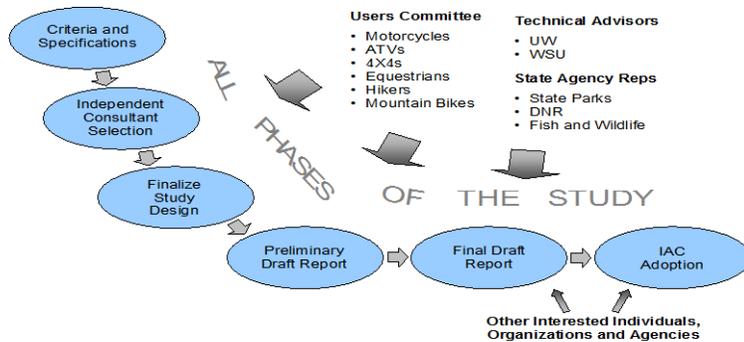
## Background

The Washington State tax on gasoline is used to support the construction and maintenance of state roads and highways. In the early 1970s the State Legislature decided that tax paid on gasoline consumed for recreational purposes on roads not supported by state funds ("nonhighway roads"), such as national or state forest roads, and gasoline consumed for off-road activities should be used to provide facilities and services for these recreational activities. The percentage of fuel attributed to non-highway road and off-road use and the formula for allocating the resulting funds to state agency recreational programs was based on a study of nonhighway recreational fuel consumption done in 1972-73 and on policy decisions made by subsequent legislatures.

In 2001, the State Legislature requested the Washington State Interagency Committee for Outdoor Recreation (IAC) undertake a new study to measure the proportion of gas tax generated by different types of vehicles operating off-road and on nonhighway roads for various recreational purposes. The Legislature asked IAC to contract with an "independent entity" to conduct the study.

In September of 2001 IAC selected Hebert Research of Bellevue, Washington, to conduct the study. The consultant selection and subsequent study design, implementation and analysis was done in consultation with a Technical Advisory Committee (a survey expert from WSU and UW), representatives of the affected state agencies, and a six-member committee representing the major recreational activities.

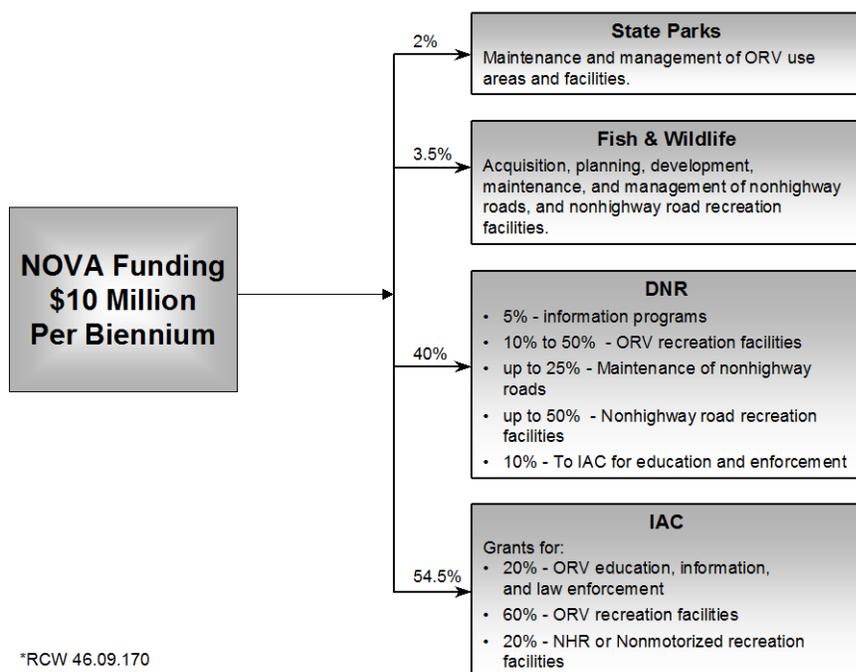
### Fuel Study Stakeholder Involvement



## Survey Results

- Questionnaires were mailed to 42,995 vehicle owners randomly sampled from DOL's database of 5.1 million street-licensed vehicles and registered off-road vehicles.
  - Questionnaires were mailed every two weeks over a one-year period to capture all seasons (December 16, 2001 – December 15, 2002)
  - 7,252 usable responses
- For vehicles using fuel on back roads or off-road, the main recreational activities reported were:
  - 26.6% of the respondents participated in hiking or backpacking
  - 12.1% in ORV use (ATV, motorcycle, 4X4)
  - 8.5% in cross-country skiing or snow shoeing
  - 6.7% in mountain biking
  - 3.8% in equestrian activities
  - 2.1% in snowmobiling
  - 42.0% in other activities (hunting, driving for pleasure, sightseeing, camping, fishing)  
(results add up to more than 100% as some respondents engaged in more than one activity)
- Fuel use: 25.6 million gallons were consumed on nonhighway roads and off-roads during the one-year study period
  - 5.1 million gallons (20.0%) associated with ORV use (ATVs, motorcycles, 4x4s, snowmobiles)
  - 7.8 million gallons (30.4%) associated with hiking and backpacking, mountain biking, cross-country skiing and snowshoeing, and equestrian activities
  - 12.7 million gallons (49.6%) associated with other uses (camping, sightseeing, picnicking, hunting, fishing, berry picking, wildlife viewing, ...)

### Current Distribution of NOVA Revenues\*



### Conclusion

The current formulas allocating NOVA funds to the four agencies and to programs and activities within the agencies are based on information from a study conducted 30 years ago and are oriented at the traditional constituencies of ORV recreationists, hikers, mountain bikers and equestrians. The results of the 2002 NOVA Fuel Use Study demonstrate that more is needed than to make simple adjustments in allocation percentages.

IAC staff will begin immediately to work with the six traditional recreation constituencies and, in addition, county sheriffs, land managers (including an ORV park representative), the three state agencies, and other recreational interests identified in the study to review NOVA program statutes and policies and consider a major revision in the NOVA programs, including statutory changes.

February 4, 2003





## Washington State NOVA Fuel Use Survey, 2002-2003

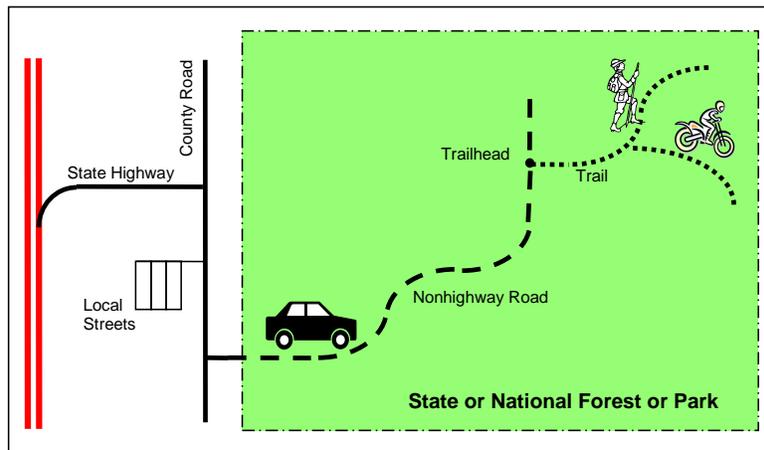
### Frequently Asked Questions

#### ***What was the purpose of the fuel use study?***

Washington's gas tax is intended to support state and local highways, roads and streets. However, gas tax revenues associated with off-road vehicle (ORV) recreation and recreational use of nonhighway roads are used by the state to benefit the recreationists generating the revenue. The purpose of the 2002-03 study was to determine the relative portion of motor vehicle fuel tax revenues attributable to vehicles operating off-road and on nonhighway roads for various recreational purposes.

#### ***What is a nonhighway road?***

A nonhighway road is a road not built or maintained by Washington's gas tax. These roads are typically in state and national forests and parks and are used by recreationists to get to trails, campgrounds and other recreational facilities. In the study, a nonhighway road was called a "back road" to reduce the use of technical jargon.



#### ***Were recreationists involved in designing the fuel study?***

Yes. There was a committee made up of representatives from the Northwest Motorcycle Association, Washington Trails Association, Back Country Horsemen, Pacific Northwest Four Wheel Drive Association, Washington ATV Association, and Backcountry Bicycle Trail. They provided valuable advice on selection of the consultant, design of the study, data analysis, and final report.

#### ***What technical support did the study have?***

The IAC staff person overseeing the study has years of experience in research, surveying and statistical consulting. In addition, IAC hired an economist with experience in statistical analysis and surveying to provide advice on the data analysis and preparation of the final report. The consulting firm that conducted the study, Hebert Research, is an internationally recognized research and survey firm, with a team of experts that were involved in all stages of the study. The consultant was selected from firms responding to an RFP after proposals were reviewed by the advisory committee.

#### ***Was there an independent review of the study by outside experts?***

Yes. Two experts in survey design, one from the faculty of the University of Washington and one from the faculty of Washington State University, reviewed proposals from the consulting

firms, evaluated the proposed methodology, and reviewed the results. Both experts found the methods valid and the results credible.

**Since not every vehicle owner was contacted, how can the study be accurate?**

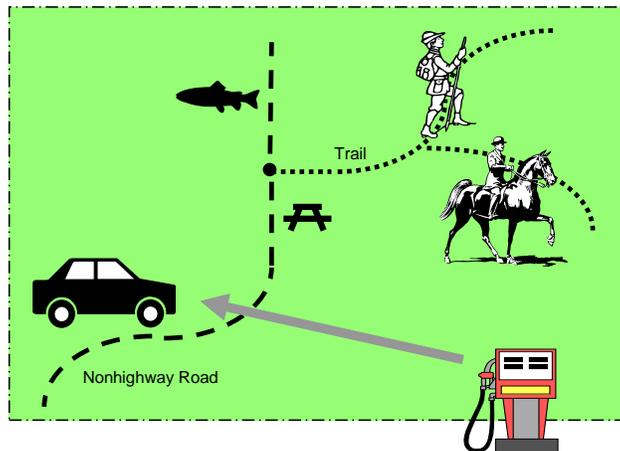
Scientifically designed public opinion and political polls are able to contact a small number of people (typically twelve hundred or less) to make valid estimates about the whole population. Similarly, the random sampling of Washington’s registered street-legal and off-road vehicles and the resulting 7,252 responses allowed the total amount of fuel used on back roads and off-road to be estimated with a high degree of accuracy.

Why didn't you talk to people on the back roads and trails instead of mailing questionnaires to vehicle owners?

Before the survey, Hebert Research tested the questionnaire by contacting people at trailheads. However, it would have been nearly impossible to find an unbiased way to select which trails and back roads to survey and which people to talk to. In addition, this would have had to be done at sites around the state every day for an entire year to capture seasonal differences. This type of study would have cost many times more than the available amount of funding. The advisory committee and technical advisors believed that mailed surveys would produce more accurate, less biased results.

Why was gas used by people engaged in nonmotorized recreational activities counted?

Fuel consumed on back roads and off-road is taxed. Therefore the study included all fuel used on back roads, whether the vehicle was taking hikers to a trailhead, hauling a horse trailer or ORVs, or driving campers to a campground. The amount of fuel consumed on back roads was credited to the recreational activity the respondent checked on the survey.



**Didn't urban areas get more questionnaires than rural areas?**

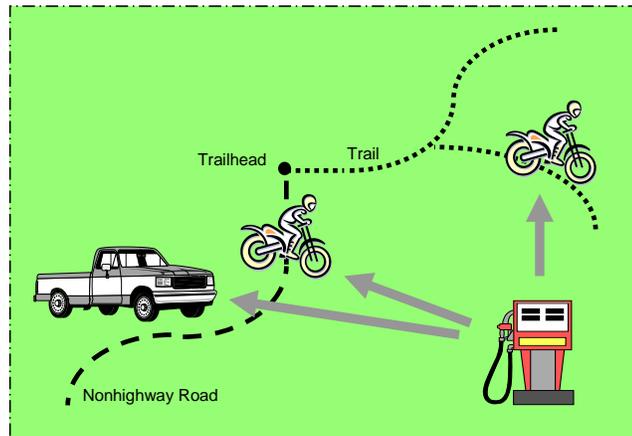
Yes. Since vehicles were selected at random from the state’s registration lists, every vehicle (cars, SUVs, pickup trucks, motorcycles, motor homes, ATVs, 4X4s) had an equal chance of being selected. This is necessary to allow accurate, unbiased estimation of the total amounts of fuel consumed on back roads and off-road. Since about one out of every 120 vehicle owners was sent a questionnaire, parts of the state with more vehicles received more questionnaires. Hebert Research used a statistical technique called “stratified sampling” to ensure that all rural counties received enough questionnaires to get meaningful data.

**Were ORVs licensed as street-legal vehicles included in the study?**

Yes. All ORVs, whether licensed or stickered, had an equal chance of being selected, and the fuel used both on back roads and off-road was counted.

***If I haul a motorcycle to a trailhead in my pickup, is the pickup's fuel counted?***

Every pickup in the state had an equal chance of being selected. If the respondent reported using their pickup on back roads and reported engaging in ORV activities, the pickup's fuel was credited to ORV recreation. It is unlikely, however, that the owner of a pickup and an ORV would have received a survey for both vehicles. The total statewide fuel consumption attributed to ORV recreation is



the sum of the fuel used for hauling ORVs on back roads and operating ORVs on back roads, trails, cross-country, and in ORV riding areas.

Why did I get the survey during the middle of winter when I don't use my ORV or go hiking?

The study was conducted over an entire year to capture winter as well as summer activities. Owners of vehicles had an equal chance of getting a survey any time during the year whether or not their vehicle was used during the two-week survey period.

I have an ORV but did not receive a questionnaire and nobody I know did, either.

A total of 43,000 owners of Washington's 5.1 million registered vehicles and stickered ORVs were selected at random to receive questionnaires. This means that about one vehicle owner out of every 120 was chosen to participate. By sheer chance, several owners received questionnaires for several of their vehicles, while other owners did not receive a questionnaire nor did they know anyone who did.

I received a questionnaire for the ORV I rarely use, not the one I use every weekend.

Because of the random sampling, this can happen by chance. There was an equal chance it could have been the other way around.

***Where can I get a copy of the study?***

You can find a summary of the study and a copy of the full report on IAC's website at [www.iac.wa.gov](http://www.iac.wa.gov)



**NOVA Advisory Committee  
Proposed Funding Distribution Under Chapter 46.09 RCW**

Based on estimated biennial NOVA funding of \$10,260,000

|                              |            |             |                        |           |
|------------------------------|------------|-------------|------------------------|-----------|
| • DNR.....                   | 36.0% .... | \$3,693,600 | Maximum administration | \$369,360 |
| • State Parks.....           | 2.0% ..... | \$205,200   | Maximum administration | \$ 20,520 |
| • WDFW.....                  | 3.5% ..... | \$359,100   | Maximum administration | \$ 35,910 |
| • IAC.....                   | 58.5% .... | \$6,002,100 | Maximum administration | \$600,210 |
| Minimum for IAC grants       |            | \$5,401,890 |                        |           |
| æ IAC E&E .....              | 30% ...    | \$1,620,567 |                        |           |
| æ IAC ORV, NM, NHR ...       | 70% ...    | \$3,781,323 |                        |           |
| - ORV.....                   | 30%.....   | \$1,134,397 |                        |           |
| - NM.....                    | 30%.....   | \$1,134,397 |                        |           |
| - NHR.....                   | 30%.....   | \$1,134,397 |                        |           |
| - Competitive <sup>[4]</sup> | 10%.....   | \$378,132   |                        |           |

Acronyms

|      |  |
|------|--|
| DNR  | Department of Natural Resources                    |
| E&E  | Education-Enforcement NOVA funding category        |
| IAC  | Interagency Committee for Outdoor Recreation       |
| NHR  | Nonhighway Road NOVA funding category              |
| NM   | Nonmotorized NOVA funding category                 |
| NOVA | Nonhighway and Off-Road Vehicle Activities Program |
| ORV  | Off-Road Vehicle NOVA funding category             |
| WDFW | Washington Department of Fish and Wildlife         |

<sup>[4]</sup> Competitive grant allocation: The Advisory Committee recommends that 70% of IAC's grants be allocated among ORV, nonmotorized, and nonhighway road projects. Each of these categories would receive at least 30% of the funds. The remaining 10% would be competitively allocated based on an IAC policy dedicating the funds to projects that serve the greatest number of NOVA recreationists, regardless of category.