

**STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
P.O. BOX 942896
SACRAMENTO, CA 94296-0001**

**AMENDMENT TO SECTION 4351 AND ADOPTION OF SECTION 4351.1,
TITLE 14, DIVISION 3, CHAPTER 2
CALIFORNIA CODE OF REGULATIONS
REGARDING STATE WILDERNESS**

INITIAL STATEMENT OF REASONS

INTRODUCTION

The State Wilderness Preservation Act of 1974 (Public Resources Code section 5093.30 *et seq.*), officially known as the California Wilderness Act, requires that units of the State Park System classified as state wildernesses be administered so that they will be “unimpaired for future use and enjoyment as wilderness” (PRC 5093.33 (a)). The Act also requires the Department of Parks and Recreation to “provide for the protection of such areas, preserve their wilderness character, and provide for the gathering and dissemination of information regarding their use and enjoyment as wilderness” (PRC section 5093.33 (a)). The Department of Parks and Recreation currently administers 12 areas designated as state wildernesses, encompassing a total of nearly 550,000 acres, all of which are located entirely within the boundaries of larger state parks in the California State Park System.

The California Wilderness Act required the Secretary for Resources to adopt guidelines for the management of state wilderness areas. The guidelines, adopted in 1978, permit State agencies to develop regulations to administer wilderness areas. Subsequently, the Department of Parks and Recreation adopted California Code of Regulations (CCR) section 4351, in order to reconcile the preservation of wilderness values with the use of state wildernesses by the public. This regulation simply echoed existing state law and postponed further implementation of the California Wilderness Act until the Department gained more experience with managing natural resources within state wildernesses. The regulation was not intended to limit necessary management activities of the Department of Parks and Recreation in its protection and preservation of the natural resources contained within state wildernesses administered by the Department.

Recent legislation, Assembly Bill 2945 (Chapter 689 of 2008), amends Public Resources Code Sections 5093.32 and 5093.36 to allow “a state agency with jurisdiction over a wilderness area to authorize measures that address environmental damage or degradation affecting wilderness character and resources if those measures are consistent with the minimum management requirements and only the minimum tools are used.” The bill further requires that the “guidelines for the determination of the minimum management requirements and the minimum tool shall be adopted by regulation.”

SPECIFIC PURPOSE AND FACTUAL BASIS/NECESSITY OF PROPOSED REGULATION:

Proposed Amendment to CCR section 4351. This section currently applies to both state wildernesses and state preserves. The amendment removes the reference to state wilderness from section 4351 so that the section applies only to natural preserves. A new proposed section 4351.1 *et seq.* addresses the regulation of motor vehicles, motorboats or aircraft within the boundaries of state wildernesses (see below).

Proposed Adoption of CCR section 4351.1 (a). Except where it is necessary in an emergency involving the health and safety of persons within a wilderness area, this provision prohibits the use of motorized vehicles, motorized equipment or motorboats, the landing or hovering of aircraft or flying of aircraft lower than 2,000 feet above the ground, other forms of mechanical transport, and permanent structures or installations within any state wilderness unless the Director of the Department of Parks and Recreation, or his/her designee, makes the following findings:

- the use of motorized vehicles, motorized equipment or motorboats, the landing, hovering, or flying of aircraft lower than 2,000 feet above the ground, the use of any other form of mechanical transport, or the placement of a temporary structure or installation must be temporary and meet a minimum management requirement. A minimum management requirement is defined in AB 2945 as “the minimum wilderness management actions that are necessary to administer a wilderness for the purposes of this chapter.”
- the approach proposed to perform the minimum management requirement will make use of the “minimum tool” to best preserve wilderness values under the given circumstances. The “minimum tool” is defined in AB 2945 as “the least intrusive tool, equipment, device, regulation, action, or practice that will achieve the minimum management requirements.”
- the result of the work will be a condition as near as natural as possible and shall leave no permanent trace or permanent structure.

This provision implements the intent of AB 2945 to reconcile the need to manage wilderness areas on one hand while protecting wilderness character on the other by allowing minimum management requirement actions and minimum tools under specified limited conditions.

Proposed Adoption of CCR section 4351.1 (b). This provision permits the Director of the Department of Parks and Recreation, upon making the findings specified in section 4351.1 (a), to authorize occupancy or use of state wildernesses by employees or agents of the Department on a case-by-case basis to conduct minimum management requirements.

By permitting the Director to authorize the use of state wildernesses to conduct minimum management requirements only on a case-by-case basis, this provision balances the need for the Department to carry out its mission and mandates relative to natural resources management with the need to preserve the character of state wildernesses.

Proposed Adoption of CCR section 4351.1 (c). This provision requires that, prior to the Director making the findings specified in CCR section 4351.1 (a), Department staff must make a recommendation to the Director that contains sufficient background, analysis, data, and research to allow the Director to fairly and objectively evaluate the material considerations for the findings. The recommendation prepared by Department staff must include the following:

- an analysis of whether a wilderness management need exists;
- a description of the proposed minimum management requirement and minimum tools to be used, including when, where and the time frame for the proposed action;
- the alternative approaches considered, including a discussion of the pros and cons of the alternatives; and
- any measures that minimize the effects of the proposed activities.

This provision recognizes that the possibility exists that the Department may encounter wilderness management needs that could require use of motorized vehicles, motorized equipment, motorboats, landing or hovering of aircraft, flying aircraft below 2,000 feet above the ground, use of other forms of mechanical transport, or a temporary structure or installation within a state wilderness.

The provision describes the process that Department staff must follow to make recommendations to the Director about findings s/he must make. The process described in this provision requires identification and assessment of a wilderness management need and, once a need is identified, a thorough evaluation of a proposed minimum management requirement, including the use of minimum tools, alternatives to that action, and any measures minimizing the effects of the proposed action. This process is designed to provide the Director with sufficient information to be able to evaluate the proposed action and decide whether or not to make the required findings.

It should be noted that the proposed regulation will mimic well-established Federal regulations (Code of Federal Regulations (CFR), Title 36, Volume 1, Chapter I, parts 1-199; CFR, Title 36, Volume 2, Chapter II, parts 200-299; CFR, Title 43, Volume 1, Chapter I, Subtitle B, parts 200-499; CFR, Title 43, Volume 2, Chapter II, parts 1000-9999) that apply only to wilderness areas designated by the federal Wilderness Act, (16 USC, Chapter 23, sections 1131 to 1136). And, it is the Department's intent to follow the well-established practices adopted by the National Park Service in determining when to employ minimum management actions and minimum tools in wilderness areas. In coming to these findings, the Department will be guided by the comparable policies of the National Park Service:

“All management decisions affecting wilderness must be consistent with a minimum requirement concept... When determining minimum requirement, the potential disruption of wilderness character and resources will be considered before, and given significantly more weight than, economic efficiency and convenience. If a compromise of wilderness resource or character is unavoidable, only those actions that preserve wilderness character and/or have localized, short-term adverse impacts will be acceptable.”

Proposed Adoption of CCR section 4351.1 (d). This provision makes clear that the process described in proposed CCR sections 4351.1 (a), 4351.1 (b), and 4351.1 (c) does not take the place of any evaluation required by the California Environmental Quality Act (CEQA). The process is intended to be used to define a proposed minimum management requirement and the minimum tools to be used for management within a state wilderness. Any CEQA evaluation of such a minimum management requirement would be conducted as required.

SPECIFIC TECHNOLOGIES OR EQUIPMENT REQUIRED: None

STUDIES, REPORTS, OR DOCUMENTS RELIED UPON: National Park Service Reference Manual RM 41: Wilderness Preservation and Management, National Park Service, U. S. Department of the Interior, July 1999. "The Status of the California Wilderness Preservation System and the Secretary for Resources' Recommendations for Additions to the System, a Report to the Governor and Legislature, State of California, Resources Agency, January 1978." Huey D. Johnson, Secretary for Resources.

REASONABLE ALTERNATIVES CONSIDERED: The Department of Parks and Recreation must determine that no alternative considered by it would be more effective in carrying out the purpose of this rulemaking action or would be as effective as, and less burdensome to, the affected parties than this action.

REASONABLE ALTERNATIVES THAT WOULD LESSEN THE IMPACT ON SMALL BUSINESSES: None. No impact on small business would result from the proposed regulation.

INITIAL DETERMINATION THAT THE REGULATION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS: The proposed regulation has no significant impact upon any entity other than the Department of Parks and Recreation since it merely specifies the process the Department must follow prior to authorizing occupancy and use of a state wilderness by Department employees or agents to conduct necessary wilderness management activities within that state wilderness.

INITIAL DETERMINATION THAT THE REGULATION WILL NOT DUPLICATE OR CONFLICT WITH COMPARABLE FEDERAL REGULATIONS: This proposed regulation applies only to California state wildernesses as designated by the California Wilderness Act and does not duplicate or conflict with Federal regulations. This proposed regulation does mimic well-established Federal regulations (Code of Federal Regulations (CFR), Title 36, Volume 1, Chapter I, parts 1-199; CFR, Title 36, Volume 2, Chapter II, parts 200-299; CFR, Title 43, Volume 1, Chapter I, Subtitle B, parts 200-499; CFR, Title 43, Volume 2, Chapter II, parts 1000-9999) that apply only to wilderness areas designated by the federal Wilderness Act, (16 USC, Chapter 23, sections 1131 to 1136).