

## **FINAL STATEMENT OF REASONS**

### **UPDATE OF INITIAL STATEMENT OF REASONS**

There have been no changes in, or additions to, the information provided in the original Initial Statement of Reasons. There have been no changes in law, or any public comments received that would create a change in the original Initial Statement of Reasons.

The Department of Parks and Recreation amended proposed Section 4351 to clarify that the language regarding mechanical transport was not meant to govern the use of bicycles in preserves and that those regulations are contained in proposed Section 4360.1. A change was also made to proposed Section 4351 to make the regulations consistent with Federal Aviation Administration guidance. Two words were reinserted into text that had inadvertently been deleted in the draft. Clarification was added that signage and fencing are not considered to be permanent structures in wilderness or preserves. A change was made to allow the Director to assign a designee to act on his or her behalf. An amendment was made to proposed Section 4360 clarifying that speed limits will only be enforced if established.

### **SUMMARY OF AND RESPONSES TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF June 28, 2013 to August 15, 2013.**

Note: Each written comment is marked with a letter or letters at the top of the first sheet of each comment received. These letters correspond to the summaries and responses in the Final Statement of Reasons. Comments received at the public hearing or at other times during the first public comment period are by those speaking at the public hearings are included under Tab E, Public Hearings. All other comments received during the first public comment period are included under Tab D, Written Comments Submitted During the 45-Day Comment Period.

#### **A. Summary of comments received on proposed Section 4360**

Several comments were received regarding the language in Section 4360. Some respondents requested that rather than the current language of "Unless designated by the Department, all trails are open to pedestrians and closed to all other uses" the language be changed to "trails are open unless designated closed by the Department." Others commented that they supported the closure of all trails to certain uses. Comments were received stating that there would be no difference to the Department's ability to enforce trail designations if the language were open unless closed rather than closed unless open.

A comment was received that the removal of language from the CCR under Section 4360 which stated that "No person shall operate an operator or gravity

propelled device in any unit, or portion thereof, when the Department has issued an order prohibiting such activity” would no longer allow the Department a way to enforce user conflict and environmental damage. .

A number of comments were received supporting the proposed language.

### **Response to comments in A**

The proposed changes in the regulations do not change the existing open or closed designation of any trail to any use. Instead, it sets the legal framework for enforcing trail open or closed designations by the District Superintendent through his or her orders. Trail use designation changes can only be made by the order of the District Superintendent through a public process requiring careful analysis of the circumstances of each trail and public input. The Department believes that closed unless open provides the most efficient and effective way of designating which trails are open and closed without any impact on users since the trail designations by the District Superintendent will continue to determine which trails are open to which uses. Closure orders must be reauthorized annually. If one is not renewed in a timely basis, the closure cannot be enforced. On the other hand if an order to open a trail is not renewed, but signs and/or maps show it as open the Department would not be able to enforce what would be an unintended closure.

The new language in Section 4360 prohibiting all but pedestrian use unless designated open by the Department is all inclusive and made the language deleted from Section 4360 unnecessary.

No change in the language of Section 4360 is recommended based on comments received.

### **B. Summary of comments received on proposed Section 4360.1**

A number of comments were received on Section 4360.1. Similar to comments received regarding proposed Section 4360, a number of these comments either support the closure or opening of trails. This proposed language neither opens nor closes the trails in preserves or reserves. Comments were also received supporting the proposed language in Section 4360.1. Some of these comments recommend changing the language to prohibit all trail use other than pedestrian in preserves and reserves.

### **Response to comments in B**

No trail uses will be added or deleted from reserves or preserves as a result of this change in regulations. Rather, the change in regulations sets the legal framework for enforcing orders issued by the District Superintendent. This regulation clarifies that bicycle and equestrian use may be allowed by order of the District Superintendent, but only under specific circumstances as stated and

only where it has been determined that impacts to the special resources for which the area was established will be less than significant.

Section 4360.1 of these proposed regulations was added to provide clarity to when bicycles and equestrians will be allowed on trails in preserves and reserves. Section 4351 has been amended to clarify that Section 4351 is for rules regarding minimum tool and that rules governing bikes in preserves are provided under the language in 4360.1.

No change to the language of Section 4360.1 is recommended based on comments received.

### **C. Summary of comments received related to proposed Section 4351**

Comments were received noting that the language restricting mechanical transport in Section 4351 could be interpreted to exclude trail use by bicycles.

A comment expressed concerns regarding allowing permanent structures in wilderness.

Several comments were received that the proposed Section 4351 restrictions on mechanical devices and the limitations to pedestrians unless designated open language in Section 4360 and 4360.1 would limit use by wheelchairs and other mobility assistance devices.

Comments were received that the proposed 2,000 foot minimum altitude for aircraft flying over preserves and reserves were in conflict with federal regulations, could improperly restrict take off and landings from airfields, and could restrict search and rescue missions..

Comments were received stating that trails in approved general plans should be exempt from Section 4351.

A concern was expressed that the regulations on mechanized equipment could restrict use of motorized tools that are needed to maintain trails.

### **Response to comments in C**

It is not the intent of proposed Section 4351 to limit the use of bicycles in reserves and preserves. As stated above, Section 4360.1 of these proposed regulations was added to provide clarity to when bicycles and equestrians will be allowed on trails in preserves and reserves. Section 4351 has been amended to clarify that Section 4351 is for rules regarding minimum tool and that rules governing bikes in preserves are provided under the language in 4360.1.

The proposed amendment to allow permanent structures in wilderness is to make the regulations conform to the long standing practice of providing trail and erosion prevention structures such as bridges, culverts, and retaining walls. The only structures allowed under the proposed regulations are those necessary to protect the cultural and natural resources.

People using wheelchairs and other mobility assistance devices are considered pedestrians and would not be restricted from using any trail open to pedestrians.

Proposed Section 4351 (a) was amended to bring the proposed regulations consistent with the Federal Aviation Administration's flight restrictions. The change in regulation is designed to be consistent with federal regulations and represent the least restrictive measure.

General Plans are plans and do not have the force of law. Regulations have the force of law. Trails shown in general plans are either planned future trails or existing trails. Changes in conditions, laws or regulations can and will cause a change in how general plans are implemented.

Restrictions on tools allow for motorized tools, but only the minimum tool needed to do the job.

Other than the changes noted above, no changes were made to the regulations based on these comments.

#### **D. Comments received on issues not included in the regulations**

Several comments were received regarding trail safety or were specific to a specific trail or trails. Other comments were received providing the history of trail regulations in units of the State Park System.

##### **Response to comments under item D**

These comments were noted, but are not relative to the proposed rule making process/language and no changes were made to the proposed regulations.

#### **E. Comment**

A statement of concern was expressed that the Initial Statement of Reasons states that no change in existing trail uses will be made by these regulations, but that language is not included in the regulations themselves.

### **Response to Comment E**

The Initial Statement of Reasons becomes part of the permanent rule making file and clarifies intent of the regulations. In this case the Initial Statement of Reasons clearly states that no trails will be opened or closed as a result of the adoption of the proposed regulations. Instead, any changes to any current trail use will be decided by the District Superintendent after careful analysis and public input as is current practice. It is unnecessary and inappropriate to have this language in the regulations. No changes were made to the regulations based on this comment.

### **F. Comment**

A question was raised regarding whether Department rangers would be enforcing State Park regulations on lands managed by other agencies when the Department has been contracted to provide peace officer services.

### **Response to Comment**

In these cases, the rangers would not enforce regulations specific to units of the State Park System since those regulations would not be applicable on those lands. No changes were made to the regulations based on this comment.

### **G. Comment**

A comment was received requesting additional review time.

### **Response to Comment**

A second public review period was provided.

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SECOND PUBLIC REVIEW PERIOD OF February 17, 2014 to April 4, 2014

Summaries and responses to comments received during the second public comment period are listed numerically and correspond to a number or numbers on the comments included under Tab H.

### **General Response to all comments**

Due the large volume of responses with common areas of interest and concern, letters and emails with similar content have been placed in groups for response. It appears that a large number of respondents had not read the Statement of Initial Reasons and in some cases maybe not even the proposed regulations. Instead it seems they commented based on receiving emails which did not always provide an accurate summation of the proposed regulations. The topic of which type of users gets to use which trail can generate very emotional reactions and strong statements were received either in support of or opposition to some types of trail use. The proposed CCR will not direct which use type gets to use which trail, but merely sets a legal basis for enforcing the decisions of which trails are closed as directed by the District Superintendent. Likewise, no trail will be opened to any use or closed to any use if these regulations are adopted. Any changes to any current trail use will be decided by the District Superintendent after careful analysis and public input.

Nevertheless, a large number of respondents presented cases for either limiting use of some types of trail use or expanding allowable trail uses. The majority of these comments were either pro or con mountain bicycle use. Many respondents either supported or opposed the proposed language under the belief that it would close trails to either bikes or horse, or both. These comments are not germane to the current rule making process since no change in allowable uses will occur as a result of the proposed change in regulations.

#### **1. Summary of contents of letters and emails in group 1.**

This group of responses was generally in support of the proposed language. Some were just straight support statements. A variety of other comments were included in some responses. There was a strong concern with safety expressed by some equestrians and pedestrians related to sharing trails with mountain bicyclists. Some wanted a ban on mountain bikes. Concerns were expressed regarding damage to trails and vegetation from mountain bicycles and conflicts with mountain bicyclists. Some wanted better enforcement of rules regarding mountain bikes and stiffer penalties for violations. Others wanted penalties posted on trails. Some mistakenly thought the proposed language would close trails to bicycles and/or equestrians. Some wanted new restrictions on organized training events. There was also a

request for bicycle licensing. Some requested that each trail use type have a separate trail. Some requested that with adoption of the proposed regulations there should be signs only for trails “open to bicycles” and eliminate all “closed to bicycle signs”. One requested that when a change of use is considered that a wider distribution of the notice of such change process be made. One requested that trails be closed to all wheeled users. One felt that bicycles should be banned from reserves and preserves as they are mechanical.

### **Response to comments from group 1**

Statements of support were noted. Comments related to trail safety, enforcement/penalties, trail erosion, damage to vegetation, which trails are open to which uses, signage, events, bicycle licensing, and public notice when District Superintendents consider change of trail uses are outside the scope of this rule making process. The proposed changes in the regulations do not change the existing open or closed designation of any trail to any use. Instead, it sets the legal framework for enforcing trail open or closed designations by the District Superintendent through his or her orders. Trail use designation changes can only be made by the order of the District Superintendent through a public process requiring careful analysis of the circumstances of each trail.

The comment proposing bicycles be banned from preserves and reserves was considered but was not supported since proposed Section 4351 was amended before this comment period to clarify that bicycles are allowed in preserves and reserves but only under the limitations imposed by proposed Section 4360.1.

No changes were made to the proposed regulations based on these comments.

### **2. Summary of comments in group 2**

A second group of responses were primarily in opposition to the proposed language in the regulations and/or requested that the alternative language “Unless designated by the Department, all trails are open to pedestrians and closed to all other uses” the language be changed to “trails are open unless designated closed by the Department” for proposed Section 4360. Many respondents opposed the proposed regulations as they felt the language would close all trails to mountain bicycles or horses or limit their use. Some expressed this as a ban on mountain biking. Comments said that this presented a message that mountain bicyclists were not welcome.

There were comments expressing frustration that there have not been enough trails designated open to mountain bicyclists and that it takes too long to designate additional trails open to mountain bicycles. Others stated that managers have been reluctant to open trails to bicyclists. Some stated that the language in the proposed regulations creates a perception that trails should be closed to other than pedestrians. A number of respondents commented more trails should be open to

bicycles and more or all trails should be multi-use. Arguments were made in favor of opening more trails to mountain bicycles. Some felt not enough attention was being paid to successful examples of multi-use trails. Some stated that mountain bikes did not cause trail erosion and that conflict with other trail users were exaggerated.

Others presented information on trail safety, economic and health benefits of mountain bicycling, volunteerism for trail construction and maintenance by mountain bicyclists, the history of mountain bicycle use and policy, and the social values of mountain bicycling. Some stated that closing trails or not opening trails to mountain bicycling was in contrast to the Parks Forward Commission to be responsive to local communities. Others mentioned that the proposed change in language would be in conflict with the State Park Mission to provide opportunities for high quality recreation. Some mentioned that prohibition of bikes or horses on trails would eliminate their ability to use trails as they use these trail modes since they are no longer able to hike. At least one felt that State Parks does not provide adequate trail maintenance and questioned use of State funds for other facilities. A number of commenters mentioned the value of high school mountain bike leagues and felt that restrictions on bicycle use would be a detriment to those leagues. One commenter wanted a ban on headphones while using trails. One mentioned that dogs should be allowed on trails. Some suggested that bikes should have bells. Some suggested that alternate use days by different use types could reduce trail conflicts and offered successful examples.

A comment stated that proposed Section 4360.1 is unnecessary and would be redundant if Section 4360 was revised to be "trails open unless designated closed" as he and others had proposed. This commenter also felt that the references to proposed Section 4360.1 in amended Section 4351 were not clear that bicycles could be allowed in reserves and preservers and that the language related to reserves and preserves should be in a separate section from the language related to wilderness. One commented that wilderness restrictions on mountain bikes were being tightened and provided information on federal wilderness regulations.

## **Response to comments in group 2**

As mentioned in the general response above most of the responses received in this group are based on the misperception that the proposed regulations will close trails to mountain bicycle and equestrian use, or provide new limitations on their use. The proposed changes in Section 4360 would not change the existing open or closed designation of any trail to any use. Instead, the proposed regulations would provide the legal framework for enforcing trail open or closed designations by the District Superintendent through his or her orders. There is no intent in these proposed rules to create a perception that either trail should be closed or open to any use. Trail use designation changes can only be made by the order of the District Superintendent through a public process requiring careful analysis of the circumstances of each trail as is current practice.

Comments were received supporting alternative language for Section 4360 which would provide that “trails are open unless designated closed” and stating that there would be no difference to the Department’s ability to enforce trail designations if the language were open unless closed rather than closed unless open. This is not true. Closure orders must be reauthorized annually. If one is not renewed in a timely basis, the closure cannot be enforced. On the other hand if an order to open a trail is not renewed, but signs and/or maps show it as open the Department would not be able to enforce what would be an unintended closure. The Department believes that closed unless open provides the most efficient and effective way of designating which trails are open and closed without any impact on users since the trail designations by the District Superintendent will continue to determine which trails are open to which uses.

Comments related to trail safety, user conflict, trail erosion, trail maintenance, volunteerism, history of Department policy regarding mountain bicycle use, statements in favor or additional opportunity for mountain bicycle use of trails, restrictions on use of or closure of trails, multi-use of trails, alternate days of use, bells, dogs, head phones, social value of trail use, economic and health benefits of trail use, use of State funds for trail maintenance versus other facilities, trail access by person with mobility limitations were all noted, but are considered outside the scope of the current rule making process. Amendments to Section 4360 have no impact on which trails are open or closed to any use

No change in the language of Section 4360 is recommended based on comments received.

Prior to this public comment period amendments were made to proposed Section 4351 to clarify that Section 4360.1 would be used to determine when bicycles would be allowed in reserves and preserves. Earlier language in Section 4351 could have been interpreted to prohibited bicycle use as bicycles could have been considered to be mechanical and thus prohibited. The intent of Section 4360.1 is to clarify that bicycles and horses can be allowed on trails in reserves and preserves under strict limitations due to the sensitivity of resources in these areas. After considering comments requesting that wilderness regulations and regulations for reserves and preserves be put in separate sections, it was determined that this proposal is unnecessary and no change is being recommended. Comments related to tightening of rules regarding wilderness are not accurate. Other than the change to allow some permanent structures in wilderness all the language related to wilderness is in the existing regulations.

No change of language of Section 4351 or 4360.1 is recommended based on comments received.

### **3. Summary of comments in group 3**

Two letters were received from members of the legislature. The first was from Senator Joel Anderson. This letter transmitted comments from constituents regarding the proposed regulations. Those comments were similar comments to those in item 2 above. The other letter was cosigned by Assemblywoman Beth Gaines, Assemblyman Brian Dahle, Senator Ted Gaines, and Senator Jim Nielson with similar concerns. Responses to these letters from Director Jackson are included.

### **Response to comments in group 3**

The contents of the letters from the legislators and comments from constituents are similar to the letters summarized in item 2 above. Please refer to responses to Item 2 above.

No change of language in the proposed regulations is recommended based on these letters and comments.

### **4. Summary of comments in group 4**

Comments were received stating that regulation of airspace is the sole responsibility of the Federal Aviation Administration (FAA) and that the proposed regulation would restrict search and rescue operations. Concerns were also expressed regarding how the proposed regulations would be communicated to pilots

### **Response to comments in group 4**

State Parks recognizes FAA's authority to regulate airspace and will cooperate with FAA to prevent duplication of the FAA's authority and minimize impact on aircraft. The final rule is linked to State Park's statutory duty to manage preserves for "endangered plant and animal species and their supporting ecosystems without interference" (Public Resources Code § 5019.71.). Cultural preserves require buffers "large enough to provide for the effective protection of the prime cultural resources from potentially damaging influences." The 500-foot delineation in the proposed regulations is a disturbance threshold for protected species and cultural resources - not a FAA airspace restriction. The appropriate violation would be a natural resource or cultural resource violation - not a flight rule violation. Additionally, this threshold is consistent with the FAA limitations within FAR 91.119, which prohibits flying within 1,000 feet over congested areas, 500 feet over non-congested areas, or operation of aircraft within 500 feet of any person or structure. Proposed Section 4351(a) specifically allows for emergency operations which would include search and rescue. California State Parks will work with the FAA to cooperatively provide information to pilots.

### **5.**

A letter from the California Native Plant Society plant society suggests that amendments to Section 4351 would permit the use of vehicles in state wilderness,

states that the proposed amendments do not define “minimal management requirements,” notes that the commenters and the Department have differing understandings of “no permanent trace,” suggests the addition of a list or description of any permanent structures or changes deemed necessary to protect natural and cultural resources to 4351(c)(5) and suggests adding language to section 43514.5.d that would limit mitigation of damage more than three months after an emergency.

### **Responses:**

Existing regulations allow vehicles in wilderness areas if necessary for emergency situations within the wilderness area or when the Director makes certain findings. The proposed rule does not make changes to the limited situations when vehicles are allowed in wilderness areas. The proposed rules just add these same requirements to reserves and preserves.

“Minimal management requirements” is defined in the existing Section 4351.1. The only change that is proposed to the current definition is the elimination of an improperly formatted citation and renumbering as Section 4351. The original version cited “AB 2945.” The proposed version cites to the Public Resources Code. Otherwise, no change in the existing definition is proposed.

The “no permanent trace” requirement was established in the original version of Section 4351. The proposed amendment does not change the meaning of no permanent trace.

The Department does not believe that the suggested addition of a list of descriptions of permanent structures or changes deemed necessary to protect natural and cultural resources to Section 4351(c) (5) is prudent as the recommendation to the Director or his designee must already contain background, data, analysis, and research and already requires a description of the proposed minimum management requirement and minimum tools to be used. Therefore, the Director is already provided with such information and descriptions. The suggested language would be duplicative.

It is unclear where the commenter proposes to add new language regarding emergency mitigation. The department is unable to locate a section 43514.5.d, or locate a section 4351.4(d) (5). Neither the existing or proposed rules address projects undertaken to address work after emergencies. The only reference to emergencies is an exception for motorized vehicles to respond to emergencies. It appears that the commenter may be confusing the minimal tool use regulation with the emergency exemption to the California Environmental Quality Act (CEQA).

No changes to the regulations are recommended based on these comments.

**6.**

An email from Lauren Terk asking whether the change in regulations would repeal Section 4359 and a response from Alexandra Stehl clarifying that this Section would remain unchanged.

**7.**

An email from Brandon Liddell questioning whether these proposed regulation changes require review under the California Environmental Quality Act (CEQA).

**Response to comment**

The amendments to regulations proposed under this rule making changes to conform language to be consistent for similar types of activities do not trigger CEQA since there is no possibility that the change in regulations may have a significant effect on the environment. This is in keeping with the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment per CEQA Guidelines Section 15061(b)(3).

No changes to the regulations are recommended based on this comment.

**8.**

A letter from Ted Craddock, Chief Hydropower License Planning and Compliance, California Department of Water Resources questions whether the proposed changes in regulations will impact Settlement Agreement Recreation and Management Plan by changing allowable trail uses.

**Response to comment**

The change in regulations will not change allowable trail uses. The designation of which trails are open and closed to which trail uses remains the responsibility of the District Superintendent. All trails currently open or closed to any trail use will remain the same if the regulations are enacted until and unless the District Superintendent issues an order changing allowable uses after careful analysis including public input. The proposed regulations will not require changes to the Settlement Agreement Recreation and Management Plan.

No changes to the regulations are recommended based on this comment.

**9.**

A letter from the Brian Albright, Director, Department of Parks and Recreation, County of San Diego requesting that California State Parks coordinate with County Parks when any change in use is being considered for State Park Trails that connect to County Park trails or regional trail traversing multiple jurisdictions. The letter recognizes that no changes in trail use will occur if the proposed regulations are enacted.

**Response to comment**

The letter requests coordination with State Parks which should be a normal part of any consideration of change in use by the District Superintendent. This comment while noted is not requesting a change in language to the proposed regulations.

No changes to the proposed regulations are recommended based on this comment.

10.

An email from Don Amador to Chief Deputy Director, Aaron Robertson, commenting on proposed restrictions on mountain bikes and a response from Mr. Robertson clarifying that no changes to which trails will be open to mountain bikes will occur if the regulations are enacted.

No change to proposed regulations is recommended based on this comment.

#### ALTERNATIVES DETERMINATION

The Department of Parks and Recreation has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the actions is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy and other provision of law.

#### LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.