

TITLE 14. CALIFORNIA DEPARTMENT OF PARKS AND RECREATION
June 28, 2013

NOTICE OF PROPOSED RULEMAKING

The California Department of Parks and Recreation (DPR) proposes to adopt the proposed regulations described below after considering all comments, objectives, and recommendations regarding the proposed action.

PUBLIC HEARINGS

DPR will hold two public hearings each starting at 6 p.m. The first hearing will be held at the Adult Recreation Center, 201 E. Colorado, Glendale, CA on August 1, 2013 starting at 6 pm and ending when either testimony has completed or no later than 8 pm. The second hearing will be held at the Sacramento Recreation Equipment (REI) store, Community Room, 1790 Expo Parkway, Sacramento, CA on August 15, 2013 starting at 6 pm and ending when either testimony has completed or no later than 8 pm. The meeting rooms are wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed actions described in the Information Digest. DPR requires that persons making oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interest person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DPR. Comments may also be submitted by facsimile (FAX) at (916) 324-0301 or by email to Alexandra.Stehl@parks.ca.gov. The written comment period closes at **5:00 p.m. on August 15, 2013**. DPR will consider only comments received at DPR offices by that time. Submit comments to:

Major General Anthony L. Jackson, Director
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296

AUTHORITY AND REFERENCE

Public Resources Code Section 5003 authorizes DPR to adopt these proposed regulations. The proposed regulations implement, interpret and make specific Public Resources Code Sections 5001.8, 5008, 5019.65, 5019.71, and 5019.74.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the authority for regulating trail uses and users on trails in the State Park System and what tools may be used and under what circumstances in Cultural Preserves and Natural Preserves. It also clarifies that permanent structures and installations are allowed in wilderness and preserves where necessary for natural or cultural heritage protection. These regulations are not required by federal law or regulations and there is no overlap with federal law or regulation.

CONSISTENCY AND COMPATABILITY WITH EXISTING STATE REGULATIONS

After conducting a review of existing regulations, the DPR has concluded that these are the only regulations dealing with Trail Use and Tool Use within DPR. Therefore, the DPR has determined that the proposed regulations are consistent and compatible with existing state regulations.

Trail Use

Public Resources Code Section 5008 (c) provides DPR the authority to protect and manage trails in the State Park System. Existing California Code of Regulations (CCR) rules for trail by various use types are inconsistent with Department Trail Use Policy and with each other.

CCR Sections 4359 (Riding or Pack Animals) and 4360 (Bicycles. Operator Propelled Devices) provide different guidance of how to make decisions regarding where each use is allowed on trails within units of the California State Park System. Generally, these regulations provide that bicycles are allowed unless an order is posted to prohibit them and that horses are not allowed unless an order is posted to allow them. This distinction is not supported by current practice or policy and could erroneously be interpreted to favor one use type over the other.

Department trail use policy, regulations and statutes have evolved over a long period of time. During this process, inconsistency between these various governing directions has gradually occurred. Also, at the time that mountain bikes became available and popular, the State Park System, like most agencies, had no rules regarding their use. The Department responded by creating a mountain bike policy which provided guidance which was later amended. What is now needed is consistent language in the CCR for all trail use decisions.

The Public Resources Code does not specifically address what trail uses are allowed in Natural Preserves, State Reserves, Cultural Preserves and State Cultural Reserves in Units of the State Park System, nor does the CCR.

Areas such as Natural Preserves, State Reserves, Cultural Preserves, State Cultural Reserves and State Wilderness are set aside with primary consideration for protection of unique and special resources. Use in these areas must be limited to that necessary for public enjoyment and education without negative impacts on the resources. Detailed direction is available for State Wilderness in the CCR, but no such guidance for trail use in the other units is provided.

Natural Preserves, Cultural Preserves, State Reserves, and State Cultural Reserves have unique, sensitive and important natural and cultural resources. Existing governance is designed to protect these areas, but provides little guidance for which types of trail uses may be allowed. Currently, pedestrians are allowed on all trails, and many are open to equestrians. Bicycle use is less commonly allowed. Districts have used their discretion in deciding which uses will be allowed. There is a need for consistent guidance in making these decisions.

Within Natural Preserves, Cultural Preserves, State Reserves, State Cultural Reserves there are areas where equestrian and bicycle use may be appropriate when such use can be accommodated without impact on the prime resources for which the area is designated. Public use of these areas is primarily for observation by and education of the public. Such use, when it can be properly managed, can raise public awareness of these resources and the need to protect them. Since there is a demand by the public to see these areas and make connections to existing or proposed trails, access needs to be designed with careful planning so any impacts on the resources will be less than significant. Unplanned and unmanaged use such as user made trails can have more deleterious impacts.

Tool Use in Preserves and Structures and Installations in Wilderness and Preserves

The current regulations for tool use in wilderness allow for temporary structures and installations, but do not allow for permanent structures or installations. This is inconsistent with current and historical practice since retaining walls, bridges and other structures are sometimes needed to protect the resources. Installation of such structures can prevent erosion, minimize sedimentation of streams, protect public health and safety and prevent collapse of historic structures. Historic structures in wilderness have been allowed in accordance with laws and policy protecting such structures. The CCR for State Wilderness need to be amended to make regulations consistent with current and appropriate practices for protection of natural and cultural resources.

The Public Resources Code does not provide direction for tool and equipment use in Natural Preserves and Cultural Preserves in the State Park System. The designation as a preserve provides clear direction that the resources in these areas are worthy of a high level of protection similar for those for wilderness. Preserves have unique, sensitive and important natural and cultural resources. Public Resource Code Sections 5019.71 and 5019.74 provide statutory guidance for management decisions for preserves. While these Statutes provide direction on

resource protection and public use, they do not establish guidance for appropriate equipment or tool use consistent with best management practices for these areas.

The Department must manage these areas in a manner to provide them such protection. Managing these areas means more than just leaving them alone. Active measures are sometimes needed to provide the best protection to the resources or in some cases to provide the rehabilitation or restoration required. Current rules, regulations, and policies are largely silent on the issue of what type of tools and equipment may be used in these areas and under what circumstances. Rules for minimum tool use in Wilderness have been adopted by the Department, but as mentioned above do not allow for permanent structures or installations.

There is a need to create regulations to provide Department guidance for preserves in the State Park System. These rules will generally be modeled after the Department's guidance for tool and equipment use in State Wildernesses as amended by these regulations. Such processes must provide for resource protection and enhancement as the primary factors while recognizing time and economic considerations.

There is a need for additional regulation allowing for permanent structures and installations where necessary for natural or cultural resource protection in wilderness, cultural preserves and natural preserves.

Benefits of the Proposed Actions: The proposed actions will eliminate conflicts within the current CCR's for trail management and create a process for determining the tools that can be used in Natural Preserves and Cultural Preserves. This action will also clarify that permanent structures and installations are allowable in wilderness and preserves where such are necessary for resource protection. This process will create an effective and efficient way to manage tool use in these sensitive areas while providing for adequate protection, management, and restoration as needed.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DPR has made the following initial determinations:

Documents incorporated by reference: Not applicable.

Mandated by Federal Law or Regulations: Not applicable.

Other Statutory Requirement. None

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other state, and individuals: None.

Results of the economic impact assessment/analysis:

- a) The creation or elimination of jobs within California - No jobs will be created or eliminated.
- b) The creation of new businesses or the elimination of existing businesses within the State of California - No businesses will be created or eliminated within the State of California
- c) The expansion of businesses currently doing business within the State of California - There will be no expansion of businesses currently doing business within the State of California
- d) The benefits of the regulations to the health and welfare of California residents, worker safety, and the State's environment - The proposed actions will eliminate conflicts within the current CCR's for trail management and create a process for determining the tools that can be used in Natural Preserves and Cultural Preserves. This action will also clarify that permanent structures and installations are allowable in wilderness and preserves where such are necessary for resource protection. This process will create an effective and efficient way to manage tool use in these sensitive areas while providing for adequate protection, management, and restoration as needed. Complying with the proposed regulation benefits the environment by protecting natural and cultural resources in units of the State Park System through clarity of regulations effecting trail use and minimum tool use while offering public enjoyment of trails and natural and cultural resources.

Cost impacts on representative private person or businesses: None. The DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Business Report: The regulations do not require a report.

Small Business Determination: DPR has determined that the proposed regulations will not affect small businesses. The amendments and additions to the CCR will affect only management of trail uses and tool use within the California State Park System and will not affect small businesses in any way.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code section 11346.5, subdivision (a)(13), the DPR must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affect private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The DPR invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Major General Anthony L. Jackson, Director
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296
(916) 653-8380

The backup contact person for these inquiries is:

Alexandra Stehl, Statewide Trails Program Manager
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296
(916) 324-0370

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Stehl at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The DPR will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons.

Copies may be obtained by contacting Ms. Stehl at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearings and considering all timely and relevant comments received, the DPR may adopt the proposed regulations substantially as described in this notice. If the DPR makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the DPR adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Alexandra Stehl at the address indicated above. The DPR will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Stehl at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at www.parks.ca.gov.

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