

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
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AMENDMENTS TO SECTIONS 4360 AND 4351, ADOPTION OF SECTION 4360.1
AND ELIMINATION OF SECTION 4351.1.
TITLE 14, DIVISION 3, CHAPTER 2
CALIFORNIA CODE OF REGULATIONS
REGARDING TRAILS, STATE NATURAL RESERVES, STATE CULTURAL
RESERVES, NATURAL PRESERVES AND CULTURAL PRESERVES IN THE
CALIFORNIA STATE PARK SYSTEM

INITIAL STATEMENT OF REASONS

INTRODUCTION

The California Department of Parks and Recreation (DPR) derives its authority for managing lands within the California State Park System from Public Resources Code, Section 5003. Section 5003 states:

The department shall administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public. Except as provided in Section 18930 of the Health and Safety Code, the department may establish rules and regulations not inconsistent with law for the government and administration of the property under its jurisdiction. The department may expend all moneys of the department, from whatever source derived, for the care, protection, supervision, extension, and improvement or development of the property under its jurisdiction.

Existing California Code of Regulations Sections 4359 and 4360 for trail use are inconsistent with Department Trail Use Policy and with each other. Likewise, guidance for making decisions on what trail uses will be allowed in Natural Preserves, Cultural Preserves, State Natural Reserves, and State Cultural Reserves is needed.

In Natural Preserves and Cultural Preserves limits are needed for when, where and what kind of tool use is appropriate, but currently there is no such guidance in the CCR. There is a need for regulations to make historic and current practices of allowing for permanent structures and installations in wilderness and preserves where such are needed for protection of cultural or natural resources.

Purpose and Benefits

The purpose of these regulations is to provide consistent language in the CCR to guide all trail use decisions in the State Park System including those in Natural

Preserves, Cultural Preserves, State Natural Reserves, and State Cultural Reserves, and to provide guidance on the appropriate use of tools in State Wilderness, Natural Preserves and Cultural Preserves.

These revisions and additions to the CCR are needed to provide fair and consistent approaches to trails use decisions in all units of the California State Park System excluding the State Vehicular Recreation Areas (PRC 5090.09) while providing appropriate protection to resources, and to provide clear and consistent guidance regarding the appropriate use of tools in in State Wilderness, Natural Preserves and Cultural Preserves in the State Park System. The adoption of these regulations will not include retroactive authority and will not change the allowable uses on trails in the California State Park System. All trail uses will continue as currently designated unless and until a change is made in allowable use by order of the District Superintendent.

Proposed Amendment to CCR section 4360

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. 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 the State Park System.

This amendment to CCR section 4360 would provide that all trails are open to pedestrians and that all trails are closed to all other uses unless designated open by the Department.

The adoption of amended section 4360 is not meant to discourage opening trails to equestrian or bicycle uses, but provides the most effective and efficient way to legally designate which trails are open to these uses. It also will not change which trails are open to these uses. A separate action by the District Superintendent after thorough evaluation will be required to make any changes in allowable uses.

Proposed Adoption of CCR section 4360.1

Areas such as Natural Preserves, Cultural Preserves, State Natural Reserves, 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 for which the special designation was made. Detailed direction is available for State Wilderness in the CCR, but no such guidance for trail use in the other classifications is provided.

Natural Preserves, Cultural Preserves, State Reserves, and State Cultural Reserves units 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 inconsistently 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, and 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.

Adoption of CCR section 4360.1 would provide that all trails within Natural Preserves, Cultural Preserves, State Reserves, and State Cultural Reserves are open to pedestrians and that all trails are closed to all other uses unless designated open by the Department. This direction will allow decisions to be made by the District Superintendent regarding trail use within preserves and reserves allowing only those uses which do not significantly impact the primary resources for which the unit was designated.

Proposed Amendments to CCR section 4351 and elimination of section 4351.1

With proposed changes to these two sections, there is no longer a need for section 4351.1 as its content is being moved into 4351 with amendments.

The current CCR 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.

Amendment of CCR section 4351 would provide guidance for minimum tool use in reserves and for structures and installations in wilderness and preserves to provide the highest level of protection to the resource with the least disruptive tools and equipment consistent with completing the work in a feasible manner, in a timely basis and with reasonable costs.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

Not Applicable

ECONOMIC IMPACT ASSESSMENT ANALYSIS.

The proposed amended and new regulations will only affect actions within the California State Park System and will have no economic impact on businesses or private individuals, or governmental organizations.

Changes to regulations regarding trail use in State Parks will not result in any changes in costs or income to the State Park System, or to any business, individual or governmental organization. These regulations only clarify the legal authority for posting which trails are open or closed to the various trail uses within units of the State Park System. These regulations will not change which trails are currently open or closed to uses. Existing allowable uses will continue until and unless a new order is issued by the District Superintendent.

The regulations regarding minimum tool use in Preserves will not result in new costs or savings to the State Park System, or to any business, individual or governmental organization. The regulations only impact the way tools and equipment may be used in Preserves within the State Park System. The changes to the regulations merely clarify the allowable use of tools and equipment to best protect cultural and natural resources using the most appropriate methods. These regulations do not change the cost of doing work in Preserves, but merely make for best practices in managing the Preserves for protection of resources and public enjoyment and education.

The allowance of permanent structures in Wilderness and Preserves make the regulations consistent with long established practice. The regulations allowing for use of permanent structures will not significantly change the way work is done. These structures have long been used where necessary to protect the prime resources for which the Wildernesses and Preserves were set aside. The changes to the regulations will only affect units of the State Park System and will result in no new costs or savings to the State, businesses, individuals, or governmental organizations.

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 managing trail use 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.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS.

Since the CCR amendments affect only rules for managing lands within the California State Park System and actions by its employees within those units, there will be no impacts on business.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTION THOSE ALTERNATIVES.

Proposed Amendment to CCR section 4360 would allow that all trails in units of the State Park System are open to pedestrians and closed to all other uses unless designated open by the District Superintendent.

Alternative 1-This alternative proposes to implement the CCR amendments as proposed in this document.

Analysis: This alternative gives clear direction and requires action by the Superintendent to open trails to non-pedestrian use. This amendment is not meant to discourage equestrian or bicycle use. It merely sets the legal basis for when orders need to be posted to allow or not allow uses other than pedestrians.

Alternative 2-No action with CCR staying the same as they currently are.

Analysis: This alternative would continue the current inconsistent and confusing mix of policy and regulation. For this reason it is not being recommended.

Alternative 3: This alternative would provide that all trails are designated as open to bicycle, pedestrian and equestrian uses unless designated as closed by the District Superintendent and closed to all other uses unless designated open by the District Superintendent.

Analysis: This alternative could function much the same as Alternative 1 except District Superintendents would have to take action on every trail to be closed to bicycle and equestrian uses. If a closure order was not renewed on time or the posting of the order not executed properly, the trails would be legally open to uses that were prohibited by signing and map designations. This could result in the inability to enforce closure rules. This would likely result in resource damage and considerable extra work in parks where staffing shortages are already common. For this reason, this alternative is not being recommended.

Proposed Adoption of CCR section 4360.1 would provide that all trails within Natural Preserves, Cultural Preserves, State Reserves, and State Cultural Reserves are open to pedestrians and that all trails are closed to all other uses unless designated open by the Department.

Alternative 1: This alternative will allow decisions to be made by the Superintendent regarding trail use within preserves and reserves allowing only those uses which do not negatively impact the primary resources for which the unit was designated.

Analysis: This alternative is necessary to provide a consistent and fair decision making process for trail use in these sensitive and important resource areas.

Alternative 2: No Action with CCR not providing any direction on this subject.

Analysis: This alternative would continue the inconsistent and unguided decision making process for these areas.

Proposed Amendments to CCR section 4351 and elimination of section 4351.1 would provide direction for tools and equipment use in Cultural Preserves, Natural Preserves and Wilderness in the State Park System.

Alternative 1-This alternative proposes to implement the CCR amendments as proposed in this document.

Analysis: There are currently no CCR for making decision on appropriate tool use in preserves. Permanent structures and installations are not allowed by current CCR for tool use in wilderness. This amendment would allow for permanent structures and installations in wilderness and preserves where necessary to meet goals of resource protection. This amendment would provide the same rules for minimum

tool use for preserves as for wilderness and will provide needed guidance and consistency to the decision making process while providing for resource protection.

Alternative 2: No Action with CCR not providing any direction on this subject for reserves and leaving inconsistencies with historic and current practice regarding structures and installations in wilderness and preserves.

Analysis: This alternative would continue the inconsistent and unguided decisions making process for these areas and continue with rules that are not consistent with necessary management of wilderness and preserves.

NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS: These regulations will not have a significant economic impact on business since the regulations only impact decisions on the types use allowed on trails and the use of tools within units of the California State Park System. As such they will not affect business in any way.

EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS ADDRESSING THE SAME ISSUES.

Since the proposed CCR apply only to units of the California State Park System they will not overlap federal regulations in any way. There are no federal regulations which would regulate use of trails or tool use within units of the State Park System. These proposed CCR would not exempt California State Parks from complying with federal regulations which protect the environment or cultural or historic resources, and, as applicable, full compliance with federal rules will still be required.

REGULATIONS MANDATED BY FEDERAL LAW: Not applicable.