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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-ROMO-19562; PPIMROMO6P PPMPSAS1Z.YP0000]

RIN 1024-AE31

Special Regulations, Areas of the National Park System, Rocky Mountain National Park

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; Notice of determination.

SUMMARY: The National Park Service proposes to amend the special regulations for Rocky Mountain National Park to allow bicycle use on a 2-mile segment of the East Shore Trail located within the park. A portion of this 2-mile segment will require trail construction activities to accommodate bicycles and is therefore considered a new trail that will be opened to bicycles. National Park Service regulations require promulgation of a special regulation to designate new trails for bicycle use off park roads and outside developed areas. National Park Service regulations require publication of notice in the Federal Register providing the public at least 30 days to review and comment on a written determination supporting bicycle use on an existing trail.

DATES: Comments on the proposed rule and the notice of determination must be received by 11:59 PM EST on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE31, by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail or hand deliver to:* Superintendent, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, CO 80517.

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the docket number or RIN (1024-AE31) for this rulemaking. Comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Larry Gamble, Chief of Planning and Compliance, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, CO 80517. Phone (970) 586-1320. Email: larry_gamble@nps.gov

SUPPLEMENTARY INFORMATION:

Background.

Rocky Mountain National Park (park) was established in 1915 and is located in north central Colorado. The approximate 265,761-acre park contains spectacular scenery that includes majestic mountains, lakes, rivers, forests, meadows, and abundant wildlife. The East Shore Trail is an existing hiking trail that runs roughly north/south along the east shore of Shadow Mountain Lake near the town of Grand Lake, Colorado. The entire trail is 6.2 miles long and ends at the southern boundary of the park. The East Shore Trailhead is located south of the town of Grand Lake. The trailhead and the first 0.7 miles of the trail are located on land administered by the

U.S. Forest Service as part of the Arapaho National Recreation Area. Bicycle use is currently permitted only on this 0.7-mile section of the trail. The remaining 5.5 miles of the East Shore Trail are located within the park. Hiking and fishing access to the lake are allowed along the trail. The proposed rule applies to the northernmost 2-mile segment of the East Shore Trail within the park extending north from Shadow Mountain Dam to the park boundary. Within this 2-mile segment, livestock (horses, mules, and llamas) are permitted on the northernmost 0.9 mile of the trail, which is also part of the Continental Divide National Scenic Trail. The 2-mile segment of the East Shore Trail corridor within the park is bounded on the west by Shadow Mountain Lake and on the east by designated wilderness.

In January 2014, the National Park Service (NPS) published the East Shore Trail Environmental Assessment (EA). The EA evaluates (i) the suitability of the trail for bicycle use; and (ii) life cycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, and methods to protect natural and cultural resources and mitigate impacts associated with bicycle use on the trail. After a public review period, the Regional Director of the Intermountain Region signed a Finding of No Significant Impact (FONSI) in February 2015 that selected the preferred alternative (Alternative B) described in the EA.

At the same time that the Regional Director signed the FONSI, the Superintendent signed a written determination concluding that bicycle use on the 2-mile trail segment is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and would not disturb wildlife or park resources. This written determination is attached to the FONSI and appears on page 15 of that document. The FONSI concludes that a 1.75-mile section of the trail is an "existing trail" under 36 CFR 4.30 and that bicycle use on that section of the trail will have no significant impacts. Bicycle use therefore may

be authorized on that section of the trail after the written determination is published in the Federal Register with a minimum 30-day public review and comment period, after consideration of any comments submitted on the written determination, and after the Regional Director approves the written determination. The FONSI separately concludes that, due to rerouting and trail modifications, a 0.25-mile section of the trail that has not yet been constructed is a “new trail” under 36 CFR 4.30 and therefore requires promulgation of a special regulation before allowing bicycle use on this portion of the trail. The NPS has determined that, instead of publishing two documents in the Federal Register (notice of the written determination and this proposed rule), it would be more efficient to consolidate both documents into a single one, publish a single document in the Federal Register, and allow the public 60 days to comment at the same time on both the written determination for the 1.75-mile section of existing trail and the proposed rule that would allow the Superintendent to designate all or portions of the 2-mile segment of the East Shore Trail for bicycle use.

The EA, FONSI, and written determination, which contain a full description of the purpose and need for taking action, scoping, the alternatives considered, maps, and the environmental impacts associated with the project, may be viewed on the park’s planning website at <http://parkplanning.nps.gov/romo>, by clicking on the link entitled “East Shore Trail Environmental Assessment” and then clicking on the link entitled “Document List.”

Proposed Rule

This proposed rule would implement the selected action in the FONSI and authorize the Superintendent to designate bicycle use on a 2-mile segment of the East Shore Trail within the park. This segment of the trail extends north from Shadow Mountain Dam to the park boundary. To accommodate bicycle use, a 0.25-mile section of the existing trail will be rerouted to improve

public safety, to avoid sensitive natural and cultural resources, and to provide for sustainability of the trail. NPS regulations at 36 CFR 4.30 require a rulemaking to implement this decision because a portion of the rerouted trail will require trail construction activities and is located in an undeveloped area. Bicycle use would not be authorized by the Superintendent until the rerouted trail segments are completed. Rerouting is expected to be completed by 2017.

The proposed rule would add a new paragraph (f) to section 7.7– Special Regulations, Areas of the National Park System for Rocky Mountain National Park. The proposed rule would require the Superintendent to notify the public of any designation of the trail for bicycle use through one or more of the methods listed in 36 CFR 1.7, and identify the designation on maps available in the office of the Superintendent and other places convenient to the public.

The rule would also authorize the superintendent to establish closures, conditions, or restrictions for bicycle use on designated routes in accordance with 36 CFR 4.30(f).

Compliance with Other Laws, Executive Orders and Department Policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order

13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act.

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled “Benefit-Cost and Regulatory Flexibility Analyses: East Shore Trail at Rocky Mountain National Park” which is available online at <http://parkplanning.nps.gov/romo> by clicking on the link entitled “East Shore Trail Environmental Assessment” and then clicking on the link entitled “Document List.”

Small Business Regulatory Enforcement Fairness Act.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of

national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no

substantial direct effect on federally recognized Indian tribes. Nevertheless, the NPS mailed a letter on April 18, 2013 inviting input specifically from affiliated Native American tribes and offering to arrange a site visit. No response was received.

Paperwork Reduction Act.

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act.

We have prepared the EA to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required because we reached a FONSI. A copy of the EA and FONSI can be found online at <http://parkplanning.nps.gov/romo> by clicking on the link entitled “East Shore Trail Environmental Assessment” and then clicking on the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of this rule.

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information.

The primary authors of this regulation are Larry Gamble of Rocky Mountain National Park, Jay Calhoun, Regulations Program Specialist, National Park Service, and Andee Sears of the Alaska Regional Office.

Public Participation.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public availability of comments.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

National parks, Reporting and Recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

2. Add paragraph (f) to § 7.7 to read as follows:

§ 7.7 Rocky Mountain National Park.

* * * * *

(f) *Bicycle Use on the East Shore Trail.* The Superintendent may designate all or portions of a 2-mile segment of the East Shore Trail, extending north from Shadow Mountain Dam to the park boundary, as open to bicycle use. A map showing portions of the East Shore Trail open to bicycle use will be available at park visitor centers and posted on the park website. The Superintendent will provide notice of all bicycle route designations in accordance with § 1.7 of this chapter. The superintendent may limit, restrict, or impose conditions on bicycle use, or close any trail to bicycle use, or terminate such conditions, closures, limits, or restrictions in accordance with § 4.30 of this chapter.

Dated: November 19, 2015

Karen Hyun

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks
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