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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

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Proposed Supplementary Rules for Fort Ord National Monument, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: The California State Director of the Bureau of Land Management (BLM) is proposing to establish new supplementary rules related to dog management and public safety on public lands at Fort Ord National Monument (FONM), California.

Furthermore, these proposed rules would clarify some of the existing restrictions that have been in place on the FONM since 1996. These proposed rules are consistent with the national monument proclamation of 2012 (i.e. Proclamation 8803), and the BLM's 2007 Resource Management Plan.

DATES: Interested parties may submit written comments regarding the proposed supplementary rules until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by mail, hand-delivery, or electronic mail.

Mail: FONM Manager, BLM, Central Coast Field Office, 940 2nd Avenue, Marina, CA 93933. Electronic mail: blm_ca_fonm_dog_mgt_plan@blm.gov.

FOR FURTHER INFORMATION CONTACT: Eric Morgan, FONM Manager, Bureau of Land Management, Central Coast Field Office, 940 2nd Avenue, Marina CA

93933, at (831) 582-2200, or emorgan@blm.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1-800-877-8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

You may mail or email comments to the Central Coast Field Office, at the addresses listed above (See **ADDRESSES**). Written comments on the proposed supplementary rules should be specific and confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the commenter is addressing. The BLM is not obligated to consider or include, in the Administrative Record for the final supplementary rules, comments delivered to an address other than those listed above (See **ADDRESSES**) or comments that the BLM receives after the close of the comment period (See **DATES**), unless they are postmarked or electronically dated before the deadline.

Comments, including names, street addresses, and other contact information for respondents, will be available for public review at 940 2nd Avenue, Marina, CA 93933, during regular business hours (7:30 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your 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.

II. Background

The BLM California State Director is proposing to establish new supplementary rules related to dog management and other public safety issues for public lands on the FONM in Monterey County, California. Furthermore, the State Director is supplementing some of the existing land restrictions that have been in place on the monument since December 5, 1996 (61 FR 64530), that are consistent with the national monument proclamation of 2012 (i.e. Proclamation 8803), and the BLM's 2007 Resource Management Plan. The proposed supplementary rules are necessary to support the mission of the BLM by protecting the natural resources and enhancing the health and safety of those using and enjoying the public lands.

These proposed rules would implement restrictions prescribed within the FONM Dog Management Plan that was approved on July 5, 2016. The plan was analyzed under environmental assessment DOI-BLM-CA-C090-2016-0021-EA (Fort Ord National Monument Dog Management Plan), and associated Decision Record and Finding of No Significant Impact. The plan considered various dog management prescriptions across the monument within four different planning units. One of the planning units, the Inland Range Planning Unit, contains extremely hazardous military munitions and public use opportunities are greatly limited.

III. Discussion of Proposed Supplementary Rules

When the former Fort Ord military installation closed in 1994, the Secretary of the Army transferred administration of approximately 7,205 acres to the BLM via a letter of transfer to the Secretary of Interior on October 18, 1996. Those lands are now part of the 14,651 acre FONM that was designated by President Obama under Proclamation 8803. The Army currently manages approximately 7,446 acres of the FONM and will transfer those lands to the BLM for administration following a munitions cleanup being performed under the Comprehensive Environmental Response, Compensation, and Liability Act.

The BLM issued a notice of emergency closure and established restrictions on use of public lands on the former Fort Ord on December 5, 1996 (61 FR 64530). Since that time, the BLM has applied those restrictions as they pertain to public use, but those restrictions did not address management of dogs on these public lands. On September 7, 2007, the BLM State Director approved a Record of Decision for the Southern Diablo Mountain Range and Central Coast of California Resource Management Plan (RMP) that directed the BLM's Central Coast Field Office to develop a dog management plan for FONM due to conflicts between visitors, attacks on livestock, and impacts to wildlife. On April 8, 2015, the BLM notified the public of its intent to develop a dog management plan and, using the 1996 emergency closure, initiated an interim dog leash restriction on public lands at FONM due to increasing conflicts between visitors, attacks on livestock, hazards from munitions, and impacts to wildlife. The BLM held three public scoping workshops (July 28 and 29, 2015, and August 5, 2015) to solicit public input on the development of the draft dog management plan. The proposed supplementary rules are the logical conclusion of the dog management planning process.

On May 17, 2016, the BLM released the Draft FONM Dog Management Plan and associated environmental assessment (DOI-BLM-CA-C090-2016-0021-EA) for a 30 day comment period. The proposed supplementary rules were included with the draft plan and were analyzed within the environmental assessment. One comment was made on the proposed supplementary rules that resulted in a minor editorial change regarding the definition of “yield” as is described in the proposed rule text.

On July 5, 2016 the BLM approved the Final FONM Dog Management Plan and associated environmental assessment (DOI-BLM-CA-C090-2016-0021-EA). The proposed supplementary rules (when approved) will supplement some of the December 1996 restrictions and April 2015 restrictions under 43 CFR 8364.1 and 43 CFR 8341.2 and enact new rules that are specified in the Final FONM Dog Management Plan. The proposed supplementary rules also would implement existing Monterey County ordinances germane to dog use under 43 CFR 8365.1-6, 43 U.S.C. 1733(a), 16 U.S.C. 670h(c)(5), and 43 U.S.C. 315a that were disclosed and analyzed within the approved plan.

The proposed supplementary rules are broken into three categories. Proposed supplementary rules numbered 1 through 9 are new and would implement new direction from the approved dog management plan. Proposed supplementary rules 10 through 15 are not new, but would implement previous restrictions that were established in 1996 (see 61 FR 64530) and that are consistent with the national monument proclamation of 2012 (i.e. Proclamation 8803), and the BLM 2007 Resource Management Plan. Finally, proposed supplementary rules 16 and 17 are existing Monterey County ordinances that

the BLM proposes to adopt as supplementary rules in order to facilitate cooperation between BLM rangers and local law enforcement officials.

IV. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

The proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563. They would not have an effect of \$100 million or more on the economy. The proposed supplementary rules would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health and safety, or State, local, or tribal governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. They would merely impose rules of conduct and impose other limitations on certain recreational and commercial activities on certain public lands to protect natural resources and human health and safety.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the supplementary rules clearly stated?

- (2) Do the supplementary rules contain technical language or jargon that interferes with their clarity?
- (3) Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
- (4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?
- (5) Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the rule to the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) that analyzed different dog management alternatives on FONM under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). On July 5, 2016, the BLM approved the Final FONM Dog Management Plan and associated environmental assessment (DOI-BLM-CA-C090-2016-0021-EA). The proposed supplementary rules are also consistent with the Record of Decision for the Southern Diablo Mountain Range and Central Coast of California RMP approved in 2007.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601-612, to ensure that government regulations do not unnecessarily or

disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules would merely impose reasonable restrictions on certain recreational or commercial activities on public lands in order to protect natural resources and the environment, and provide for human health and safety. Therefore, the BLM has determined under the RFA that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The proposed supplementary rules are not a “major rule” as defined under 5 U.S.C. 804(2). The proposed supplementary rules would merely revise the rules of conduct for public use of limited areas of public lands and would not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

The proposed supplementary rules would not impose an unfunded mandate of more than \$100 million per year; on State, local, or tribal governments in the aggregate; or on the private sector; nor would they have a significant or unique effect on small governments. The proposed supplementary rules would have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The proposed supplementary rules would merely revise the rules of conduct for public use of limited areas of public lands and would not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement

containing the information required by the Unfunded Mandates Reform Act at 2 U.S.C. 1531.

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the proposed supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the proposed supplementary rules would not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that the proposed supplementary rules would not unduly burden the judicial system, and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that the proposed supplementary rules do not include policies that would have tribal implications. The proposed supplementary rules would merely revise the rules of conduct for public use of limited areas of public lands.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that these proposed consolidated supplementary rules would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources. The rules would properly accommodate local participation in the Federal decision-making process, and would provide that the programs, projects, and activities are consistent with protecting public health and safety.

Information Quality Act

In developing these proposed supplementary rules, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554). In accordance with the Information Quality Act, the DOI has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on the DOI's Web site at http://www.doi.gov/ocio/information_management/iq.cfm.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined that the proposed supplementary rules would not comprise a significant energy action, and that they would not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

The proposed supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521. Moreover, any information collection that may result from Federal criminal investigations or prosecutions conducted under the proposed supplementary rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

Author

The principal author of these proposed supplementary rules is Eric Morgan, Monument Manager, Central Coast Field Office, 940 2nd Avenue, Marina, CA 93933.

Proposed Supplementary Rules

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 CFR 8365.1-6, 43 U.S.C. 1733(a), 16 U.S.C. 670h(c)(5), and 43 U.S.C. 315a, the BLM California State Director proposes to issue supplementary rules for public lands managed by the BLM within the boundaries of the FONM, to read as follows:

Definitions

Designated route means any road or trail that the BLM has signed and shown on trail maps where public use is authorized.

Dog means any domestic dog that is not classified as a “service animal.”

“Off-leash-opportunity-route” means a specific road or trail on FONM that has been designated by the BLM to allow some opportunities for dogs to be off leash under specific circumstances.

Service animal means a dog that is individually trained to do work or perform tasks for people with disabilities as covered under the Americans with Disabilities Act.

Street-legal vehicle means a vehicle, such as an automobile, motorcycle, or light truck, that is equipped and licensed for use on a public street and/or highway and that is subject to registration under the California Vehicle Code 4000(a)(1).

Unattended dog means any dog that is unaccompanied by an owner and/or handler whether on tether or otherwise.

Yield means slowing or stopping forward progress to a point where it is possible to safely pass another visitor without injuring, startling, or surprising that visitor. For bicycles, the passing speed shall be no greater than 10 mph on roads, and 5 mph on single-track trails.

Prohibited Acts

Unless otherwise authorized by the BLM, the following prohibitions apply to all BLM-managed public lands on the Fort Ord National Monument (FONM):

Proposed Supplementary Rules from the Dog Management Plan

1. You must not bring a dog into the Inland Range Planning Unit. Service animals accompanying a disabled person as accommodated by the Americans with Disabilities Act are excluded from this provision.

2. You must physically restrain, or keep your dog(s) on a leash or cord not to exceed 6 feet in length, at all times while you are on a road or trail that has not been designated as an “off-leash-opportunity-route.”

3. You and/or your dog must not walk or roam off a designated route, including any route designated as an “off-leash-opportunity route.”

4. You must physically restrain, or keep your dog on a leash or cord not to exceed 6 feet in length, on a designated “off-leash-opportunity-route” when you are within 100 feet of another person and/or dog that is not with your party.

5. You must not allow your dog to roam over 50 feet away from you while on a designated “off-leash-opportunity-route.”

6. You must not allow your dog to enter any vernal pool or pond, or roam within 20 feet of any such area, unless you and your dog are on a route designated for public use.

7. You must carry a leash for each dog you have with you.

8. You are prohibited from leaving a dog unattended, even if on tether, within a crate, or within an unoccupied motor vehicle.

9. Visitors must yield the path, on both roads and trails, to other visitors in the following manner: bicycles must yield to pedestrians and equestrians; and pedestrians must yield to equestrians. For bicycles, the passing speed shall be no greater than 10 mph on roads, and 5 mph on single-track trails.

Proposed Supplementary Rules That Clarify Existing Restrictions Established in 1996 and Direction from the 2007 Record of Decision

10. Motorized vehicles and other motorized devices, including electronic bicycles, are prohibited on all roads and trails excluding Creekside Terrace Road and Badger Hills Driveway. Motorized vehicle use on these two roadways is restricted to highway licensed street-legal vehicles.

11. Use and/or occupancy of all lands within the FONM, including leaving personal property unattended, is prohibited between ½ hour after sunset and ½ hour before sunrise.

12. All use (including pet use) is restricted to designated routes and trails. Open routes and trails are indicated on BLM maps and signed with route or trail markers. Any unsigned route which does not appear on the most current BLM map is closed to all uses.

13. Campfires and other open flame fires are prohibited.

14. Possession or discharge of fireworks, including “safe and sane” fireworks, is prohibited.

15. Wood cutting and the collection of downed wood are prohibited.

Proposed FONM Supplementary Rules That Are Currently Monterey County Ordinances

16. It shall be unlawful for the owner or person having custody of any dog, either willfully or through failure to exercise due care or control, to allow said dog to defecate and to allow the feces thereafter to remain on FONM other than within trash receptacles provided for such purposes. This includes bagged feces - Reference Monterey County ordinance, 8.36.030.

17. All dogs under four months of age shall be kept under physical restraint by the owner, keeper, or harborer when on FONM - Reference Monterey County ordinance, 8.20.020.

18. Dogs on FONM shall wear a license tag with or without a chip implant at all times. The tag shall be attached at all times to a collar, harness, or other suitable device upon the dog for which the license tag was issued - Reference Monterey County ordinance, 8.08.040.

Exemptions

The following persons are exempt from these supplementary rules: Any Federal, State, or local officer or employee in the scope of their duties; members of any organized law enforcement, rescue, or fire-fighting force in performance of an official duty; and any person whose activities are authorized in writing by the BLM.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0-7, or both.

In accordance with 43 CFR 8365.1-7, State or local officials may also impose penalties for violations of California law.

Jerome E. Perez

State Director, California

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