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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-HOSP-28641; PPMWMWROW2/PMP00UP05.YP0000]

RIN 1024-AE50

Hot Springs National Park; Bicycling

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends the special regulations for Hot Springs National Park to allow bicycle use on a new trail connection between the Park and property owned by the City of Hot Springs, Arkansas. The new 0.65-mile trail will provide local residents and visitors with access in and across the Park to an extensive network of recreational trails in the City's Northwoods Urban Forest Park. The new natural surface, multi-use trail connection will be open to both pedestrian and bicycle use. National Park Service regulations require promulgation of a special regulation to designate new trails for bicycle use off park roads and outside developed areas.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tokey Boswell, Chief of Planning and Compliance, Serving DOI Unified Regions 3, 4, and 5, 601 Riverfront Drive, Omaha, Nebraska 68102. Phone: 402 661-1534, Email: tokey_boswell@nps.gov.

SUPPLEMENTARY INFORMATION:

Background.

People have long recognized the unique thermal waters that flow from the base of Hot Springs Mountain in Hot Springs, Arkansas. For thousands of years before it became a favored vacation destination in the 18th century, and prior to the arrival of early European explorers journeying west of the Mississippi River, Native Americans from around the region traveled to the springs and surrounding rocky mountain slopes, quarrying novaculite from the hilltops for their tools and weapons, and drinking and bathing in the mineral rich waters bubbling from the ground. The first permanent settlers to reach the Hot Springs area in 1807 were quick to realize the springs' potential as a health resort, and a bustling town grew up around the hot springs to provide services for health seekers.

To protect this unique national resource and preserve it for the use of the public, Congress set aside the springs and adjoining mountains as a Federal reservation in 1832, making it the oldest unit of the National Park System. Over the next 50 years, the area transformed from a rough frontier town to an elegant and thriving spa city. In 1921, Congress designated the reservation as Hot Springs National Park (the Park). Today, the 5,500-acre Park contains vegetation, thermal waters, cold-water springs, bathhouses and associated cultural features, nearly 26 miles of hiking and equestrian trails, and prehistoric and historic novaculite quarries. The National Park Service (NPS) preserves and manages the natural and cultural resources of the Park for more than 1.5 million annual visitors. The City of Hot Springs, with an approximate population of 37,000, is located next to the Park.

Pullman Avenue Trail Connection / Environmental Assessment.

The NPS will create a new 0.65-mile natural surface trail within the Park. This new Pullman Avenue Trail Connection will extend north from a trailhead at Pullman Avenue and

connect the Park with ongoing trail development on City property at the Park's northern boundary. The NPS will build the trail using sustainable trail construction techniques and designate it for both pedestrian and bicycle use. The trail will follow the natural contours of the site, winding around obstacles such as trees, large rocks, and bushes; and will feature shallower grades and wider turns to support user safety, reduce water pooling and erosion, and reduce the overall maintenance costs associated with more complex trail features. This gently-graded bare soil and bedrock trail connection will (1) better connect the Park with the adjacent City and county trail networks for the benefit of visitors and residents of the City; (2) expand recreational trail use opportunities for hikers and bikers; and (3) enhance visitor experience and safety while protecting natural and cultural resources. The NPS will implement measures to promote safe use of the trail, such as signage and trail maintenance. This trail will serve as a formalized entry point into the Park for hikers and bicyclists where currently there is none. This will increase access to the Park, which helps the NPS meet its mandate to manage the hot springs for public health, wellness, and enjoyment.

On February 1, 2019, the NPS published the Pullman Avenue Trail Connection/ Environmental Assessment (EA). The EA presents two alternatives for future trail opportunities at the Park, and identifies one of the alternatives as the NPS preferred alternative. Under the preferred alternative, the NPS will construct the Pullman Avenue Trail Connection and designate it for pedestrian and bicycle use. The EA evaluates (1) the suitability of the Pullman Avenue Trail Connection for bicycle use; and (2) 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 in compliance with 36 CFR 4.30(e)(2). The EA contains a full description of the purpose and need for taking action, the

alternatives considered, maps, and the environmental impacts associated with the project. After a public review period, the Acting Regional Director, Interior Regions 3, 4, and 5 (formerly the Midwest Region) signed a Finding of No Significant Impact (FONSI) on July 28, 2019 that identified the preferred alternative (Alternative B) in the EA as the selected alternative.

Concurrently, the Acting Regional Director signed a Written Determination to assure that bicycle use on the new trail is consistent with the protection of the Park's natural, scenic, and aesthetic values, safety considerations and management objectives, and that it will not disturb wildlife or park resources. The EA, FONSI, and Written Determination may be viewed online at <http://parkplanning.nps.gov/PullmanConnection>, by clicking on "Document List."

Final Rule.

This rule implements the selected alternative in the FONSI and authorizes the Superintendent to designate bicycle use on the Pullman Avenue Trail Connection. This rule does not include any existing park trails, which are not and will not be opened to bicycles by this rule.

This rule complies with the requirement in 36 CFR 4.30 that the NPS must promulgate a special regulation in order to designate a new bicycle trail that requires construction activities outside of developed areas. The rule adds a new paragraph (c) to 36 CFR 7.18 – Special Regulations, Areas of the National Park System for Hot Springs National Park. After the trail is constructed, the rule requires the Superintendent to notify the public prior to designating 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 at Park visitor centers and on the Park website (www.nps.gov/hosp). Where the trail crosses or intersects other Park trails closed to bicycle use, signage will clearly indicate allowed uses and restrictions at those intersections. The rule also authorizes the superintendent to establish closures, conditions, or restrictions for bicycle use on

the trail after considering public health and safety, resource protection, and other management activities and objectives, provided public notice is given under 36 CFR 1.7(a). E-bikes will be allowed on the new trail in accordance with NPS Policy Memorandum 19-01 – Electric Bicycles.

Summary of Public Comments

The NPS published a proposed rule in the Federal Register on May 15, 2019 (84 FR 21738). The NPS accepted public comments on the proposed rule for 60 days via the mail, hard delivery, and the Federal eRulemaking Portal at <http://www.regulations.gov>. Comments were accepted through July 15, 2019. A total of 15 comments were submitted and reviewed. A majority of commenters supported the proposed rule. A summary of the pertinent issues raised in the comments and NPS responses are provided below.

1. Comment: Some commenters raised general concerns about impacts to natural resources from mountain biking, including soil erosion, habitat degradation, and wildlife disturbance. One commenter suggested that the NPS construct the trail surface to support bicycles without leaving ruts or damaging natural resources.

NPS Response: The NPS is aware of the potential for erosion and other disturbances to natural conditions that could be caused by constructing the new trail and allowing hiking and biking on the trail. The EA and FONSI determined that these impacts would not be significant, and could be mitigated by using appropriate construction techniques. The NPS will work with experts in trail design to minimize impacts to natural resources.

2. Comment: Several commenters raised general concerns about impacts to other visitors from mountain biking, including impacts to hikers and equestrians who seek a non-motorized and quiet experience in national parks. One commenter objected to the building of the trail because although it improves access for one recreational activity, it does not maximize the visitor

experience for the broader visiting public.

NPS Response: The NPS acknowledges the potential for conflict among trail user types. The EA and FONSI determined that visitor conflicts would not be significant. The new trail will not change the use patterns or opportunities for recreation on existing trails. The new trail and new uses allowed on it expand options for recreation within the Park.

3. *Comment:* Some commenters raised concerns about visitor safety on the trail. One commenter requested the NPS establish right-of-way rules to protect pedestrians from bicycles. Another commenter requested the NPS enforce a bicycle speed limit of five miles per hour.

NPS Response: The NPS acknowledges the potential for conflicts among visitors on the trail. Similar conflicts currently exist within the Park where equestrians and hikers share trails. The EA and FONSI determined that the potential impact to visitor safety was not significant, and could be minimized through signage and education. The NPS will mark trails with signs identifying rules about yielding to other user groups. The natural surface of the trail would make it difficult to establish lanes for different types of uses. Existing trails within the Park do not have speed limits and the terrain of the new trail will naturally limit speeds. The NPS will monitor use on the trail and the Superintendent may implement measures, including speed limits, that may become necessary to promote safe use of the trail by all user groups.

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.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

Enabling regulations are considered deregulatory under guidance implementing E.O. 13771 (M-17-21). This rule authorizes the Superintendent to designate a trail for bicycle use at the Park, which will create an opportunity for recreation and access that would otherwise be prohibited.

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 Draft Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Special Regulations to Designate a New Trail Connection for Bicycle Use at Hot Springs National Park. The document may be viewed at <http://parkplanning.nps.gov/PullmanConnection>, by 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 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, in support of the Department of Interior and NPS commitment for government-to-government consultation, through the EA process, the NPS initiated consultation with the four Indian tribes traditionally associated with the Park.

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 of 1969 (NEPA).

The NPS has prepared the EA to determine whether this rule will have a significant impact on the quality of the human environment under the NEPA. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed

statement under the NEPA is not required because of the FONSI. A copy of the EA and FONSI can be found online at <http://parkplanning.nps.gov/PullmanConnection>, by 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.

Drafting Information

The primary authors of this regulation are Julia Larkin and Jay Calhoun, National Park Service, Division of Regulations, Jurisdiction, and Special Park Uses.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 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. Amend § 7.18 by adding paragraph (c) to read as follows:

§ 7.18 Hot Springs National Park.

* * * * *

(c) *Bicycle use.* (1) The Superintendent may designate all or a portion of the following trail as open to bicycle use:

(i) Pullman Avenue Trail Connection (full length of the trail approximately 0.65 miles).

(ii) [Reserved]

(2) A map showing trails open to bicycle use will be available at park visitor centers and posted on the park website. The Superintendent will provide notice of all trails designated for bicycle use 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.

Rob Wallace,
Assistant Secretary
for Fish and Wildlife and Parks.

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