



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[BLM_CA_FRN_MO4500173363]

Final Supplementary Rule for Public Lands in the Cotoni-Coast Dairies Unit of the California Coastal National Monument in Santa Cruz County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) is finalizing a supplementary rule for all public lands within the Cotoni-Coast Dairies (C-CD) unit of the California Coastal National Monument (CCNM) in Santa Cruz County, California. The final supplementary rule will allow the BLM to manage recreation, address public safety, and provide resource protection on BLM-managed public lands within the C-CD unit of the CCNM. The supplementary rule is needed to enforce the BLM's decisions established in the CCNM Resource Management Plan, as amended.

DATES: These supplementary rules are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

Mail: Bureau of Land Management, California State Office, 2800 Cottage Way Suite W1623, Sacramento, CA 95825. Electronic mail: BLM_CA_Web_SO@blm.gov

FOR FURTHER INFORMATION CONTACT: Sky Murphy, Planning and Environmental Coordinator, BLM Central Coast Field Office; telephone: (831) 582-2200, email: smurphy@blm.gov.

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telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM completed the C-CD Resource Management Plan (RMP) amendment on June 23, 2021, to establish land use decisions that protect the objects and values of the C-CD unit of the CCNM and to support responsible recreation opportunities. Public participation during planning for the use and enjoyment of the C-CD unit indicates that it will be a popular area for recreating, and a supplementary rule is needed to allow for law enforcement to enforce land-use decisions for managing recreation and to protect cultural and natural resources.

This final supplementary rule will apply to all the BLM-managed lands in the C-CD unit. Persons performing essential operations central to the BLM's mission will be exempt. Such persons include, for example, members of any organized law enforcement, rescue, or fire-fighting force.

The final supplementary rule is needed to provide consistency and uniformity for visitors to BLM-managed lands, prevent resource damage and user conflicts, and provide greater safety to the visiting public.

Resource Damage: Presidential Proclamation 9563 added the C-CD unit to the CCNM and identified objects to be protected. To ensure protection of the objects identified in Proclamation 9563, particularly biological and cultural objects, the final rule prohibits use and occupancy of the C-CD from ½ hour after sunset to ½ hour before sunrise. The final supplementary rule requires visitors to stay on roads and trails designated open for non-motorized and mechanized use. The supplementary rule requires pets to be on a leash at all times, and visitors are prohibited from leaving a pet unattended

or allowing pet feces to remain on C-CD, other than within trash receptacles provided for such purposes.

Public Safety: As visitation increases among all types of recreational users, so do the conflicts between user groups. In crowded areas, conflicts among users increase risk to visitor safety. Other recreationists and nearby landowners also have concerns for their personal safety, as well as damage to property. To ensure public safety and reduce the risk of wildfire, the final supplementary rule prohibits recreational target shooting, camping, and fires of any kind. To minimize other visitor-use conflicts, the final supplementary rule prohibits leaving property unattended for more than 24 hours, building any structure, placing signs of any kind, and the possession or use of metal detecting devices. The supplementary rule prohibits taking off or landing of aircraft, including unmanned aircraft systems, paragliding, hang-gliding, and similar recreational uses within the C-CD unit of the CCMN.

At present, no supplementary rules are in effect for BLM-managed public lands in the C-CD unit. Therefore, this supplementary rule is needed to address management issues and concerns with respect to public use of this area.

The authority for this supplementary rule is set forth at sections 303 and 310 of the Federal Land Policy and Management Act, 43 U.S.C. 1733 and 1740. The BLM is issuing this supplementary rule under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources.

II. Discussion of Public Comments and Rationale for Final Supplementary Rule

On November 29, 2022, the BLM published a proposed supplementary rule (87 FR 73276), initiating a 60-day public comment period that ended on January 29, 2023.

The BLM received 16 unique comments signed by 54 individuals and organizations on the proposed supplementary rule.

Eleven of the unique comments did not specifically address the proposed supplementary rule. The BLM made no changes to the final supplementary rule based on these unrelated comments.

The remainder of the comments provided suggestions for how the BLM could make the final rule clearer and provide additional protection of resources.

Public comments expressed support for the supplementary rule and the importance of adhering to the BLM's policy and guidance for lands within the National Landscape Conservation System.

Public comments suggested the BLM clarify Rules 3, 7, 19, and 21. The BLM did not make changes to Rules 3, 7, 19, or 21 in response to these comments. The BLM disagrees with the commenters that the language needs clarifying. The proposed and final rules are written in plain language and need no further explanation.

Public comments also recommended that the BLM change Rule 17 to prohibit "unlawfully taking or possessing wildlife, plants, or plant communities, or portions thereof, listed as Objects of the Monument." However, BLM law enforcement already has authority to issue citations for removal and destruction of plants, except as permitted, under 43 CFR 8365.1-5(a)(2). No changes were made to Rule 17 because the purpose of this rule is to allow the BLM to enforce hunting restrictions that are consistent with California Department of Fish and Wildlife (CDFW) regulations. As noted by the comments on Rule 17, the BLM plans to seek approval from CDFW to allow archery hunting at C-CD.

Public comments suggested that the BLM should also revise Rule 18 so that it mirrors the language of the Endangered Species Act (ESA), which would prohibit "disturbing, harming, or harassing wildlife, plants, or plant communities, or portions

thereof, listed as objects of the Monument.” Another comment asked that proposed Rule 18 be revised to prohibit disturbing wildlife in any manner and by any means. Final Rule 18, however, is intended to address impacts from sustained loud noises because that is the particular issue that BLM believes needs to be addressed at this time. The agency does not currently believe that it is necessary to promulgate a rule that penalizes the disturbance of wildlife in any manner, and no changes were made to Rule 18. The BLM could promulgate additional wildlife-related supplementary rules in the future if the need arises.

Public comments also requested additional rules that would address problems related to fireworks; unauthorized release of translocated animals, plants, or organisms; and public interference with authorized livestock and grazing operations. The BLM did not incorporate any of these suggested additional rules into the final rule because other portions of the final rule and existing regulations already address these concerns. For example, Rule 12 will allow the BLM to enforce restrictions on fires of any kind, including fireworks. Under 43 CFR 9212.1, the BLM can also prohibit sources of ignition through its fire management and prevention rules at C-CD. Knowingly introducing weeds or pathogens is prohibited by 43 CFR 8365.1-4(a)(2) (creating a hazard or nuisance) and 43 CFR 9264.1(h). California state law CPC 597s prohibits the willful abandonment of an animal. Under 43 CFR 9264.1(e) the BLM can issue citations for molesting livestock; and 43 CFR 8365.1-5(a)(1), 43 CFR 8365.1-5(a)(2), and 43 CFR 8365.1-5(a)(3) provide additional protections for structures, natural objects, and minerals.

Ultimately, there were only two substantive changes, to proposed Rules 6 and 14, based on public comments. Proposed Rule 6 said, “established parking areas are for the use of visitors to Cotoni-Coast Dairies unit of the California Coastal National Monument only.” A commenter stated that those using parking lots are, by definition, visitors to the C-CD property by virtue of using a parking lot. To avoid having visitors use the lots to

access beaches that are not in the C-CD, the commenter suggested Rule 6 be revised to say “visitors leaving vehicles in parking areas shall not depart from the Cotoni-Coast Dairies unit of the California Coastal Monument while their vehicles remain in those parking areas.” The BLM agrees with the commenter that the potential for pedestrians crossing State and County roads near the C-CD to use nearby beaches at un-marked locations is a risk to public safety. Rather than adopt the language recommended by the commenter, final Rule 6 has been reworded to clarify that “*members of the public are prohibited from leaving the C-CD unit of the C-CD while their vehicle is parked in BLM-managed parking areas*” Rule 6 will be prominently incorporated into the BLM’s outreach and education for C-CD to inform the public that the BLM-managed parking areas are not designed to support coastal access for beach-going visitors; and the BLM’s law enforcement officers will have the authority to issue citations to persons violating the rule. This change will improve public safety by reducing the frequency of visitors crossing roads at un-marked locations while attempting to use BLM-managed parking areas to access coastal beaches or adjacent lands. Similarly, another commenter suggested the BLM add a rule that would prohibit unpermitted trail improvements. Rather than include a new rule, the BLM made a minor change to final Rule 14, to explain that “construction or building of any structure, including trails, is prohibited.” This change will improve public awareness that unauthorized improvements to recreation facilities, including trails, would be a violation of the supplementary rule for C-CD unit of the C-CD.

The BLM determined that the remaining comments from individuals related to management of C-CD do not warrant changes to the final supplementary rule. For example, one commenter requested the addition of subheadings to the regulations, which is unnecessary because the final rule is already relatively short and is arranged in a logical order.

In another example, one commenter asked that the BLM include a definition for “electric mobility products,” which is used in Rule 3. The definition provided for Rule 3, which can be found in 43 CFR 8340.0-5(j), will allow the BLM to restrict the use of electric bikes. The BLM determined a definition for “electric mobility products” is not needed because it is written in plain language and encompasses a wide range of motor-powered personal mobility devices used for transporting an individual at speeds that do not normally exceed 20 miles per hour. Nothing in the final rule will diminish the BLM's responsibility to provide reasonable modifications for access in accordance with Section 504 of the Rehabilitation Act and ensure that persons with disabilities receive the benefits and services of BLM programs and activities.

Restrictions on feeding wild animals can be enforced under 43 CFR 8365 (creating a hazard or nuisance).

Commenters suggested that instead of Rule 7 prohibiting the use of public lands within the C-CD starting ½ hour after sunset and ending ½ hour before sunrise, Rule 7 should prohibit use before “sunrise” and after “sunset,” or add a definition for these two terms. Neither of these changes would make Rule 7 more effective because sunrise and sunset fluctuate daily, depending on the time of the year and the latitude and longitude of a specific location. The BLM also anticipates many visitors who enjoy watching the sunrise (or sunset) will arrive (or depart) during the ½ hour grace period. The plain language of Rule 7 is simple and easy to understand, and it is common for land management agencies to restrict occupancy and use of outdoor recreation areas starting 30 minutes after sunset and ending 30 minutes before sunrise.

Similarly, one comment requested that we add a definition for “service animal” to Rule 8. A definition of “service animal” that is similar to the definition in the Americans with Disabilities Act of 1990, as amended, has been added.

One commenter asked for an additional rule that would prohibit unauthorized commercial activities. The BLM did not include this change in the final rule because unauthorized commercial activities are already prohibited under 43 CFR 2932.57.

Commenters asked the BLM to clarify the types of persons that would be exempt from this final rule and how the public would be informed of such exemptions. The BLM did not make changes in response to this request because the language of the final supplementary rule plainly states that exempt persons include 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. Based on the standard exemption language, the BLM's authorized officer can provide written approval to persons that support operations necessary to pursue the BLM's goals and objectives for C-CD. Examples include, but are not limited to, livestock operators, scientists and other researchers, Tribal members, contractors, volunteers, and existing rights holders.

Comments related to development of BLM management plans and resource inventories are outside the scope of this final supplementary rule. Accordingly, the BLM made no changes in response to those comments. As stated earlier, this final supplementary rule is based on management actions listed in the Decision Record for the C-CD RMP amendment, approved on June 23, 2021, and the original CCNM RMP completed in 2005, both of which involved extensive public involvement.

The final supplementary rule will allow the BLM to enforce portions of the C-CD RMP amendment and other existing policies that guide management and protection of monument objects and values identified in Presidential Proclamation 9563, signed January 12, 2017. The public will be informed of these restrictions with signs posted along roads, in parking areas, and other important locations. Additional public notice of

the BLM final supplementary rule will be provided through local news releases, social media, and information published on maps, brochures, educational materials, and websites. As a result, the final supplementary rule is expected to promote stewardship of the public lands and increase appreciation and understanding of the resource objects and values of the C-CD unit of the CCNM.

The BLM's final supplementary rule decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR part 4.

III. Procedural Matters

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

This final supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866, as amended by E.O. 14094. The final supplementary rule will not have an annual effect of \$200 million or more on the economy. It is not intended to affect commercial activity, but rather impose rules of conduct on recreational visitors for public safety and resource protection reasons in a limited area of public lands. This final supplementary rule will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. This final supplementary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This final supplementary rule will not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the right or obligations of their recipients, nor does it raise novel legal or policy issues. It merely strives to protect public safety and the environment.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA), 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 final supplementary rule does not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, the BLM has determined that under the RFA the final supplementary rule will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

This final supplementary rule does not meet the criteria of 5 U.S.C. 804(2). This final supplementary rule merely contains rules of conduct for recreational use of public lands. This final supplementary rule will not affect business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

This final supplementary rule will not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector, of more than \$100 million per year; nor will it have a significant or unique effect on small governments. This final supplementary rule does not require anything of State, local, or Tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 et seq.

Governmental Actions and Interference with Constitutionally Protected Property Rights – Takings (E.O. 12630)

This final supplementary rule will not affect a taking of private property or otherwise have taking implications under E.O. 12630. This final supplementary rule will not address property rights in any form and will not impair any property rights. Therefore, the BLM has determined that this final supplementary rule will not cause a

taking of private property or require further discussion of takings implications under this E.O.

Federalism (E.O. 13132)

This final supplementary rule will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This final supplementary rule will apply to a limited area of land in only one State: California. This supplementary rule contains rules of conduct for recreational use of BLM-managed public lands to protect public safety and the environment. Therefore, the BLM has determined that this final supplementary rule will not have sufficient federalism implications to warrant preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

Under E.O. 12988, the BLM has determined that this final supplementary rule will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. More specifically, this final rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This final rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Consultation and Coordination with Indian Tribal Governments (E.O. 13175 and Departmental policy)

The Department 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. The BLM evaluated this final rule under the Department's consultation policy and under the criteria in E.O. 13175 to identify possible effects of the rule on federally recognized Indian Tribes. The

BLM has found that this final supplementary rule will have no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required. This final supplementary rule will not affect lands held in trust for the benefit of Native American Tribes, individual Indians, Aleuts, or others.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This final supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The final supplementary rule will facilitate implementation of management direction established in CCNM RMP, as amended, and the C-CD RMP amendment. The environmental impacts of the final supplementary rule were analyzed in the Environmental Impact Statement supporting the CCNM RMP and the environmental assessment (EA), dated September 25, 2020, supporting the C-CD RMP amendment. Therefore, additional NEPA analysis is not necessary.

Effects on the Energy Supply (E.O. 13211)

This final supplementary rule will not comprise a significant energy action. This supplementary rule will not have an adverse effect on energy supplies, production, or consumption. It only addresses rules of conduct for recreational use of BLM-managed public lands to protect public safety and the environment and has no connection with energy policy.

Author

The principal author of the final supplementary rule is Nicholas Lasher, BLM Law Enforcement Officer for the Central Coast Field Office, California.

V. Final Rule

For the reasons stated in the preamble, and under the authority for supplementary rules at 43 U.S.C. 1740 and 43 CFR 8365.1-6, the California State Director, Bureau of Land Management, establishes a final supplementary rule for all public lands included in the Cotoni-Coast Dairies (C-CD) unit of the California Coastal National Monument (CCNM) to read as follows:

Definitions

Designated roads and trails means any road or trail that the BLM has posted as open for public use.

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

Public lands means any lands or interest in lands managed by the BLM.

Public road means any road, dirt or otherwise, on which public motorized vehicular traffic is permitted.

Recreational target shooting means shooting a weapon for recreational purposes when game is not being legally pursued. Weapon includes any firearm, cross bow, bow and arrow, paint gun, fireworks, or explosive device capable of propelling a projectile either by means of an explosion or by string or spring.

Service animal means a dog, or other animal, that is individually trained to do work or perform tasks for people with disabilities.

Traffic control devices means markers, signs, and signal devices used to inform, guide, and control traffic, including pedestrians, motorists, cyclists, or electronic mobility products.

Unattended pet means any pet that is unaccompanied by an owner or handler, even if on a tether, within a crate, or within an unoccupied motor vehicle.

Unmanned aircraft system means any aircraft without a human pilot on board (e.g., drones).

Restrictions on public lands in the C-CD unit of the CCNM:

1. All public use is restricted to designated roads and trails.
2. Bicycles and bicycle riding are prohibited except on designated roads and trails that are posted as open for bicycle and bicycle riding use.
3. Electric bicycles, as defined in 43 CFR 8340.0-5(j), are prohibited except on roads designated for such use in accordance with applicable law. All other electric mobility products are prohibited except within established parking areas and public roads, and in accordance with applicable law.
4. Horseback riding is prohibited except on designated roads and trails that are posted as open for horseback riding use.
5. Violating any posted sign, rule, or notification, including any traffic control device, is prohibited.
6. Members of the public are prohibited from leaving the C-CD unit of the CCNM while their vehicle is parked in BLM-managed parking areas.
7. Use and occupancy of all lands within the C-CD are prohibited from ½ hour after sunset to ½ hour before sunrise.
8. Pets are prohibited except on designated roads and trails that are posted as open for their use. Service animals are exempt from this rule.
9. All pets must be physically restrained, or on a leash or cord not to exceed 6 feet in length, at all times.
10. Visitors are prohibited from leaving a pet unattended.
11. It is unlawful for the owner or person having custody of any pet to allow pet feces to remain on C-CD, either willfully or through failure to exercise due care or control, other than within trash receptacles provided for such purposes.
12. Fires of any kind are prohibited, including open fire, wood, charcoal, and gas.

13. Abandoning property or leaving property unattended for more than 24 hours is prohibited. The BLM may remove and appropriately dispose of unattended property.
14. Construction or building of any structure, including trails, is prohibited.
15. Placing flagging, markings, or signs of any kind is prohibited.
16. Possession or use of a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or sub-bottom profiler is prohibited.
17. The taking of wildlife, except for authorized hunting activities in accordance with California Department of Fish and Wildlife regulations, and possessing unlawfully taken wildlife or portions thereof, is prohibited.
18. Knowingly or willfully disturbing wildlife with audio devices, including speakers, air horns, and musical instruments, is prohibited.
19. Taking off or landing of aircraft, including unmanned aircraft systems, is prohibited.
20. Taking off or landings a paraglider, hang-glider, or similar recreational equipment is prohibited within the C-CD unit of the CCNM.
21. Recreational target shooting is prohibited.

EXEMPTIONS

The following persons are exempt from these final 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 part of the final supplementary rule 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 and local law.

(Authority: 43 CFR 8365.1-6)

Gordon Toevs,

Acting California State Director.

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