

## APPENDIX G

### Draft Supplementary Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Supplementary Rules for Fort Ord National Monument in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

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SUMMARY: The California State Director of the Bureau of Land Management (BLM) is proposing to establish new supplementary rules related to dog management on public lands at Fort Ord National Monument (FONM), California. Furthermore, the State Director is clarifying some of the existing rules that have been in place on the FONM since 1996, and that are consistent with the BLM's 2007 Resource Management Plan.

DATES: Interested parties may submit written comments regarding the proposed supplementary rules until XXXXXX XXXXX, 2016.

ADDRESSES: You may submit comments by mail, hand-delivery, or electronic mail. Mail: FONM Manager, BLM, Central Coast Field Office, 940 2<sup>nd</sup> Avenue, Marina CA. 93933.

Electronic mail: [emorgan@blm.gov](mailto:emorgan@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](mailto:emorgan@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual.

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 2<sup>nd</sup> Avenue, Marina CA 93933, during regular business hours (7:30 a.m. to 4:00 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 for public lands that it manages on the FONM in Monterey County, California. Furthermore, the State Director is clarifying some of the existing rules that have been in place on the monument since 1996 that are consistent with the BLM's 2007 Resource Management Plan and have some relevance to dog use. 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. The proposed supplementary rules are being released concurrently with the issuance of the Draft Fort Ord National Monument, Dog Management Plan.

## III. Discussion of Proposed Supplementary Rules

When the former Fort Ord military installation closed in 1994, the Secretary of the Army transferred administration over 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 BLM for administration following a munitions cleanup being performed under the Comprehensive Environmental Remediation, Compensation and Liability Act (CERCLA).

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, BLM has applied those restrictions as they pertain to public use, but there was little clarity on how those restrictions were applicable to pet use. On September 7, 2007 the BLM State Director approved a Record of Decision for the Southern Diablo Mountain Range and Central Coast of the 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 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 28th and 29th, and August 5<sup>th</sup> of 2015) to solicit public input with the development of the draft dog management plan. The proposed supplementary rules are the logical conclusion of the dog management planning process.

Furthermore, the proposed supplementary rules (if adopted) will clarify some of the December of 1996 restrictions and April of 2015 restrictions under 43 CFR 8364.1 and 43 CFR 8341.2 that have some relevance to dog management, and enact new direction as specified within the draft dog management plan. The proposed supplementary rules also codify 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.

#### 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 or 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 Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 43 CFR 46.205(b) and 46.210(i). The BLM has also developed a draft finding of no significant impact (FONSI) and draft decision record (DR) that identifies the proposed action that is the basis of the proposed supplementary rules. The proposed supplementary rules are also consistent with the Record of Decision for the Southern Diablo Mountain Range and Central Coast of the California Resource Management Plan (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 cooperation 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](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.

#### V. 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

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

“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 (ADA).

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

“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.

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

“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).

“Yielding” user 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 Draft 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, or 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; 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 Rules Established in 1996 and Direction from 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 use.

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/or the collection of down wood is 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 harbinger 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.

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.

#### Penalties

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than \$100,000, imprisoned no more than 12 months, or both, in accordance with 18 USC 3571(b), 43 U.S.C. 1733(a), and 43 CFR 8360.0-7. Such violations may also be subject to the enhanced penalties provided by 18 U.S.C 3571 and 3581. In accordance with 43 CFR 8365.1-7, State or local officials may also impose penalties for violations of California law.