



May 30, 2020

US Department of Interior Director,
BLM Mail Stop 2134 LM
1849 C St. NW
ATT: RN 1004-AE72
Washington, DC 20240

Re: Proposed regulations of Electric Bicycles - RN 1004-AE72

Dear Director Pendley:

The above Organizations welcome the opportunity to provide input around the use of electric bicycles on federal public lands ("The Proposal") and we are aware of the long and highly conflicted nature of discussions around e-bikes. There are many aspects of the Proposal that the Organizations can support. The Organizations support the use of electric bicycles on motorized trails, as e-bikes are by definition a motorized off highway vehicle. The Organizations also support one of the foundational conclusions that appears to be driving the e-bike discussion, mainly that there are insufficient opportunities provided for multiple use trails in many locations. We also could support the expansion of the existing trail network for the benefit of all users of these trails and we have to believe these opportunities would be vigorously supported by the OHV programs in western states that are major partners with federal land managers for basic operations.

The Organizations would vigorously oppose the loss of any existing motorized trails for the exclusive use of bicycles or e-bikes or the acceptance of any costs for management of e-bikes in terms of signage or other restrictions around the implementation of a new e-bike regulation. The Organizations would also be opposed to any regulations being prepared that could create the appearance of increased levels of violations from traditional motorized vehicles when e-bikes are used in violation of the proposed exception to the existing Executive Orders. The Organizations are concerned that while the traditional motorized community has avoided this discussion, and obtains no benefits under the current Proposal, these partners will be left to pick up the pieces from a poorly developed proposal. That should be concerning to everyone. The Organizations submit that the foundational issue in the discussion, mainly the lack of authority to create what is really a low power vehicle exception to the Executive Orders for the benefit of the E-bike community.

The Organizations also believe it is critical to clarify that we are assuming the Proposal is excluding the use of e-bikes from winter groomed routes traditionally used by OSVs. If the use of e-bikes on these winter groomed routes is within the scope of the Proposal, we would welcome a discussion of that issue as we have serious concerns around that usage given the challenges this type of recreation has encountered with the USFS over the last decade.

The Organizations would welcome discussions with DOI regarding the management and operation of e-bikes on federal public lands and more importantly how to expand access for all forms of recreation in a more efficient and effective manner.

1. Who we are.

Prior to addressing the specific concerns of the Organizations regarding the Proposal, we believe a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization of approximately 250,000 registered OHV users in Colorado seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and

recreational qualities for future generations. The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to ensure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands. Colorado Snowmobile Association ("CSA") was founded in 1970 to unite the more than 30,000 winter motorized recreationists across the state to enjoy their passion. CSA has also become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through work with Federal and state land management agencies and local, state and federal legislators telling the truth about our sport. The Idaho Recreation Council ("IRC") is a recognized, statewide, collaboration of Idaho recreation enthusiasts and others that will identify and work together on recreation issues in cooperation with land managers, legislators and the public to ensure a positive future for responsible outdoor recreation access for everyone, now and into the future. For purposes of this correspondence TPA, COHVCO, CSA, and IRC will be referred to as "The Organizations".

The Organizations and our members have also partnered with the USFS/BLM/other federal managers and state level parks and recreation programs (generally referred to as "land managers" for purposes of these comments) for decades in addressing trail related maintenance issues of all sizes through the voluntary registration fees for OHVs and OSVs that have been adopted in the several states. These registration programs started around grooming of winter trails for OSV recreation in the 1970's and remain the only source of funding for winter grooming of routes generally on USFS lands. Seeing the success of these programs the OHV community soon adopted similar voluntary registration programs in the 1980s. These programs are some of the longest, largest and strongest partnerships in place with land managers. As an example, the Colorado Parks and Wildlife motorized program provides between \$5 and \$6 million in direct funding to projects that results in almost 60 maintenance crews for summer and winter trails and extensive project specific funding. The California OHMVR program easily provides five times this amount of funding to the land manager offices in California. The State of Idaho program also

provides land managers more than \$1 for every resident of the state to support trail maintenance. Each of these State level partnerships is leveraged with countless volunteer hours and support, in a huge range of roles from volunteer labor on projects, to engineers volunteering time to design bridges and heavy equipment businesses working for the cost of fuel from the programs and many of the programs funded would simply cease to exist without this volunteer support. This volunteer support which multiplies the impact of this funding to have an impact on the ground of spending several times more money that comes from these programs. This intangible benefit is a critical component of the success of these programs and protecting this intangible would be a major benefit of an e-bike policy that avoided conflict and benefitted all uses.

These programs are often becoming the **only** funding that is available for recreational maintenance efforts on many districts/offices and as a result these programs are being asked to do more and more work with a somewhat consistent funding stream. As a result, the efficiency of efforts and expanding partners in these efforts are becoming a larger and larger priority every day in order to continue to provide basic access to all users. The Organizations believe that the Proposal would be a step towards achieving this efficiency and strengthening the partnerships.

2. Executive Summary.

1. The Organizations are not opposed to the use of electric bicycles on motorized trails but cannot overlook the fact that e-bikes are a motorized off-highway vehicle under the definition provided in EO 11644 and 11989 making the current proposal problematic if there should be a legal challenge. The Organizations are simply unaware of any Congressional or Presidential grant or designation of authority to land managers that would allow the creation of a low power vehicle type exception in the EO addressing Travel Management. Courts reviewing rule making under the EO have been very consistent in applying a very strict level of interpretation to the EO, and this simply cannot be overlooked. Unlike Congressional designations for classification of e-bikes as low power vehicles for on road usage, there are no similar provisions provided in the EO.

2. Rather than creating additional user conflict, on an issue that has already been the basis of explosive conflict between many user groups, the Organizations submit the regulations should focus on common grounds between all user groups, which is the lack of high-quality trails in significant portions of the country. From the motorized perspective there are very few areas of the country that provide high quality trail experiences on a large scale. While the Organizations appreciate the use of old roads for motorized opportunities, these simply are not a trail and for our users the experiences are significantly different. In addition to significant demand for more dedicated trail opportunities, the Organizations would note that our users have access to the resources to partner with land managers to build and maintain new trails, unlike many other user groups.

3. The Organizations are opposed to the loss of any motorized trails in an attempt to create e-bike only trail networks in a manner similar to the Tahoe NF.

4. We are unable to support the distinction provided around the use of off-highway vehicles that is proposed in Secretarial Order 3376 based on a consumer product safety commission decision regarding the use of e-bikes on highways. Most traditional OHVs have never been identified as motor vehicles for purposes of on road usage but have never been excluded from the application of the travel management rules. The Organizations submit that the basic definitions of motorized off-highway vehicles provided in the EO must be updated and could possibly include a provision that excluded low power vehicles from the application of the EO moving forward.

5. Any regulation for the use of e-bikes must be simple and easy to use so the public will understand the regulations and the current proposal is neither. This is a significant concern for the Organizations as currently any e-bike being used outside the regulations would be a “motor vehicle off trail” and create the appearance of a significant increase in traditional motorized vehicle improper use, which will immediately renew assertions for needs for further restrictions. This situation is unacceptable to the Organizations.

6. The Organizations support a single definition for e-bikes as it has been our experience that most e-bikes do not conform to the existing classes in some manner or another and often determining the basic information about a particular unit is exceptionally difficult as the information is not provided on the unit. This type of issue will make any enforcement of classes very difficult. The Organizations believe that a simple and consistent definition will help reduce the astronomical user conflict that has surrounded these discussions since it has started. The effective and simple definition of these vehicles avoids the situation where the traditional motorized community is drawn into additional rounds of travel management or enforcement as a result of e-bike usage being outside their class on a particular route being recorded as a motor vehicle off trail.

2a. E-bike discussions to date have created huge amounts of new user conflict.

Prior to addressing more specific concerns the Organizations have around the Proposal, the Organizations would like to address some of the larger landscape level concerns that have been encountered on this issue to date. These are: 1. The huge amounts of user conflicts around e-bikes; 2. Poor engagement of agency leadership on the e-bike issue; and 3. The vigorous desire of the Organizations not to lose existing opportunities in the e-bike efforts.

Historically, the Organizations have avoided the large and ugly fights that have resulted from the mention of possible usage of e-bikes on trails that have historically been “hike or bike” or “bike only” at the local and state levels. These are geographic areas that the motorized community has generally never expect to be providing any access for traditional motorized usage as these areas often have been urban parks or greenway areas. Despite the limited difference between an e-bike and traditional bicycle, we will say the conflict around this issue has been astonishing. Members of the Organizations have been approached by both e-bike advocates and traditional cycling groups in the attempt to build coalitions on the e-bike issue, which we have declined to date. Simply declining to take a position has resulted in conflicts.

The Organizations are concerned about possible impacts to traditional motorized access and would also like to avoid being involved in the large fights that are involving e-bike proposals such as the legal challenges to the NPS proposal and Tahoe NF decisions. While our efforts to engage with the federal decision makers on the e-bike issues have met with little response, the decision-making process around e-bikes has continued. The forest level decision via a Categorical Exclusion ("CE") to treat certain electric motor vehicles differently than traditional motor vehicles is exemplified by the Tahoe National Forest recently proposing to add more than 200 miles of trails for certain classes of e-bikes to their trail network with no public input or analysis. This was highly frustrating to the traditional motorized users for two reasons. The first reason was that when the CE was published our users called the forest and were informed the 200 plus miles of trails were e-bike only trail. Frustration was immediate as a significant portion of these routes were historically motorized routes and been the basis of extensive NEPA analysis. While this was subsequently corrected, the damage to relationships was done.

The second concern around the Tahoe NF use of a CE is this created significant consternation for many in the motorized community given the decades of effort to preserve multiple use access of all forms on the forest. This includes multiple law suits, some of which the Organizations intervened in defense of the agency decision on, the development of multiple forest level EIS that have gone into preserving any motorized access to the forest for summer and winter usage. Conflict between the use of a CE creating an entirely new trail network and the current situation around winter motorized usage on the Tahoe NF is astonishing and creating huge conflict as the very usage of winter motorized equipment on the Tahoe NF has been the subject of decades of litigation and EIS development that remains unresolved. The motorized community submits this basic inequity in process must be avoided in the future and it is often these unintended consequences of e-bike efforts that directly and materially negatively impact the traditional motorized community. We would like to avoid these issues moving forward as strong messages can be sent to groups outside of the direct scope of discussions. Basic fairness should require a consistent application of regulations expanding or restricting access. While the Organizations are

aware that the USFS and DOI are separate agencies, the message was troubling on the e-bike issue and public engagement.

2b. Poor engagement of federal managers to date must change.

The Organizations have also had extensive discussions around the use of e-bikes with local and regional staff in a variety of agencies outside of federal lands, and these discussions have been reasonably open and candid when the conflict between other user groups is removed. While these discussions have been open with state and local government managers, discussions around e-bikes with federal managers addressing this issue has proven to be more difficult, especially moving up the management chains of these agencies. While we have welcomed some discussions with leadership in the last year, these have been highly conceptual and outside formal processes. The Organizations have also been consistently approached by more localized federal land managers, such as Ranger District or Field Office staff, who are seeking to obtain basic information on proposals that might be under development in their agency. This is both unusual and troubling and generally not how the process is supposed to work.

The above Organizations have attempted to engage in the more formalized discussions around this issue for almost 2 years now, including broadly issuing a correspondence to President Trump and various land managers asking to participate in the discussions on this issue. We did not receive any response on this effort.¹ The Organizations were provided information from State Partners around the collaborative efforts that had been ongoing with the Department of Transportation discussing the usage and management of e-bikes. These meetings were seeing wide ranging participation from USFS and DOI representatives. We immediately asked DOT to participate in these efforts and they immediately ceased without explanation. While the Organizations are aware that DOT and DOI are entirely separate agencies, this decision did not alter the unique and troubling course that the e-bike discussions have taken to date.

¹ A copy of this correspondence is attached as Exhibit "1" to these comments.

While the failure of federal decisionmakers to engage partners on the e-bike issue is an anomaly, as the Organizations have enjoyed closer working relationships with federal decision makers on almost all other issues than ever before, this anomaly is highly frustrating none the less. The Organizations would ask to become actively and meaningfully involved in formal efforts around e-bike usage moving forward, as we do have concerns on the issue.

2c. The Organizations are opposed to the loss of any trails for e-bike only opportunities.

The Organizations must clearly state we are vigorously opposed to the loss of **ANY** motorized trails for designated e-bike usage. The traditional motorized community has endured too many decades of trail loss and restriction through the travel management process to support any loss of further trails. While the Proposal clearly states that there are no on the ground changes being made, the Organizations must state this is an overly narrow and short-sited view on this issue. The rulemaking is going to trigger huge amounts of NEPA analysis, extend comically limited federal land manager budgets, often reopen painful decisions previously made around trail networks and create user conflict in areas the motorized community has hoped were settled. The Organizations are opposed to this summary of the Proposal and are very opposed to the possible designation of existing motorized opportunities for the use of e-bikes only.

3a. Definition of an off-highway motor vehicle is VERY broad in EO.

The Organizations believe the first component of common ground is the desire to build a trail network that provides quality trail based opportunities for all. The Organizations believe there is a second component of common ground around resolution of the e-bike discussion and is the need to revise and update the Executive Orders governing the use of motorized off-highway vehicles on federal lands. These Executive Orders are simply out of date in a large number of issues, such as low power vehicles and the minimization criteria. The motorized community has offered to partner on this issue with e-bike advocates but to date these offers have not been accepted. Most parties we have reached out to do not seem to even understand that the

Executive Orders, not agency regulations are the source of the E-bike issues. Rather than partnering to address this foundational challenge, e-bike access has sought to be achieved by trying to “work around” this issue. To date this has not worked and the Organizations do not believe there is a work around for e-bikes on this issue due to the exceptionally broad nature of these definitions. Under current definitions in the EO, an e-bike is an off-highway motor vehicle and the EO lack nay ability to provide for an exclusion for low power vehicles, similar to those often provided for in the federal highway systems or state level vehicle management provisions, such as titling and registration.

The Organizations submit that it is important to start the discussion around e-bikes from the origins of Travel Management as a concept, as the foundation of travel management as a concept is where e-bike challenges must be addressed. Travel Management originated with President Richard Nixon’s issuance of Executive Order 11644 in 1972. EO 11644 provides as follows:

“(3) "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and”²

Given the exceptionally broad and encompassing definition of a motorized off-highway vehicle that is provided in the EO, the Organizations are not able to create a legally defensible path forward for a determination that an e-bike is not a motorized off-highway vehicle. While we could support the concept of a low power vehicle exception for travel management, the current EO have no basis for such a designation.

² See, EO 11644 §2

There has been a lot of effort directed towards finding a path around this definition for e-bikes or relying on an exception that has been created in agency regulations applying the EO, such as BLM travel provisions in 43 CFR 8340, the Organizations are not optimistic on the long-term success of such an effort when the inevitable court challenge to the rule is brought. Courts have been very strict in the interpretation of the EO on Travel Management making any agency-based exceptions, such as those found in BLM travel management regulations, problematic. The Organizations would submit that finding a permanent resolution of this issue is preferred to simply trying to carve an exception to the rule that lack factual basis.

The most recent interpretation of the Executive Orders the Organizations are aware of involves a court challenge to the USFS Winter Travel Management Rule. The USFS winter travel rule sought to carve a very limited exception in the EO that allowed only forests that received enough snow to warrant winter travel management to have to comply with this portion of the rule. In our interpretation, the flexibility of implementation made a huge amount of sense both on the ground and for efficiency. When the implementation of the Winter Travel Rule was challenged, the Court struck the rule down and forced the USFS to prepare a new Winter Travel Rule.³ In the Organizations opinion, the USFS distinction made sense on the ground and was rationally based and had a stronger legal defense than any of the exceptions in the BLM travel management regulations that are being relied on in the e-bike discussions.⁴ Given this strict application of the EO in rulemaking and related interpretations, the Organizations are not optimistic on the success of BLM regulations allowing the agency to declare vehicles not a motor vehicle when the inevitable court challenge starts as there is no provision in the EO that allow such a decision. This is a major basis for concern as the Organizations would like to see a path forward on the e-bike question that has a strong degree of success should there be a court challenge.

³ See, Winter Wildlands Alliance v. US Forest Service; Case No 1:11-CV-586-REB; March 29, 2013. We have enclosed a complete copy of this decision for your reference as Exhibit "2".

⁴ See, 43 CFR 8340.0-5 (a)(3).

The Organizations are aware that there has been a lot of discussion around the e-bike issue and possible resolution of the issues based on a theory that land managers have the authority to carve an exception to the EO in a manner similar to that of the low power scooter exceptions for on road usage. While this might be appealing, this direction also fails to address one critical distinction in the discussion. Management of low power scooters and vehicles has a Congressional authorization for this exception to the general regulation of vehicles.⁵ Low power scooter requirements for on road usage have an extensive legislative delegation of authority to address the registration and usage of a low power scooters for on road usage.⁶ The Organizations are not aware of any similar delegation of authority for the regulation of e-bikes under the EO. This is a foundational issue that again must be addressed. The Organizations support the use of e-bikes on motorized routes but again must express concern over this foundational position in the e-bike discussion.

3b. Creating exceptions to the Executive Order is inferior to the creation of a new Order as there will be extensive unintended consequences to the exceptions model.

Under current proposal, agencies are seeking to create an exception to the Travel Management Rule rather than addressing the restrictions and requirement of the Travel Management EO directly. The unintended consequences of this model of management to other user groups could be significant and must not be overlooked. The impacts of such a management model are very concerning to the Organizations due to the impacts of user attempting to use the exception and then failing to comply with the requirements. The traditional motorized community has little interest in reopening many of the issues in the travel management process that have generally been resolved. This interest is even less when the reopening painful decisions could result in significant unintended consequence of management decisions that are targeting uses that don't identify as motorized and may create the appearance of expanded bad behavior from the traditional motorized community.

⁵ See, 15 USC 2085 et seq.

⁶ <https://www.colorado.gov/pacific/dmv/low-power-scooter>

Currently, the Proposal seeks to create an exception to a very broad rule. The Proposal fails to address the fact that even with the exception that is created, an e-bike remains a motorized off-highway vehicle by definition. This default management position opens the door for significant unintended consequences to other users. If an e-bike user is outside the exception created by the Proposal for whatever reason, they will be managed and recorded as a “motor vehicle off trail.” The Organizations are very concerned that this will create the appearance of a large number of new violations being present in the traditional motorized community and that such a perceived spike in violations will reopen fights and conflicts around areas and issues that we have already resolved.

In addition to the possible spike in perceived violations from e-bikes being operated outside the exception that has been created, education of motorized users to “stay on the trail” has been a priority for the motorized community for decades. These efforts have included partnerships with the Tread Lightly efforts, around their “Ride On” efforts for all motorized users and the role out of the “Are you certifiable?” educational efforts targeting the side by side community, to creating the Stay the Trail Program in Colorado. These partnerships have received millions of dollars directly from the industry, millions more in direct funding from state level OHV programs and huge amounts of volunteer labor from the end users. These efforts have been very successful and as a result we would like to see these positive benefits not eroded or diminished. We would also be hesitant to lead any discussion around management and education of e-bike users as these users simply do not identify as a motorized user. The Organizations are not aware of any other user group that has directed the direct funding and labor towards the education of their users and this partnership has not only been highly valued by land managers but also by users and industry as no other user group has approached this type of partnership.

The Organizations submit that creating a new rule and Executive Order that permit the management of low power type vehicles, in a manner similar to the management of low power vehicles for on road usage, will create a more effective management model that will mitigate

many of these concerns. The Organizations would welcome discussions on this issue, but right not the authority is not provided for in the outdated Executive Orders and as a result could easily create the appearance of issues where there really are none.

3c. CPSC determinations have never had bearing on the scope of an off-highway motor vehicle for travel management purposes.

Throughout the e-bike discussions the have had with advocates and some land managers, the fact that the CPSC has determined e-bikes are not motor vehicles for on-highway usage purposes is frequently identified as dispositive for the management of e-bikes in an off-highway situation. The Organizations are simply not able to identify the relevance of this determination, governing the use of e-bikes in an on-highway situation to the use of off-highway vehicles on federal public lands. These are generally mutually exclusive designations. Most vehicles, such as snowmobiles, ATVs, side by side vehicles and off-road motorcycles that have always been subject to the travel management rules, have also been consistently identified as not being motor vehicles for CPSC management purposes.

The Organizations support the decision that e-bikes are generally outside the traditional requirements of a motor vehicle for on road usage. Any assertion that an e-bike should have windshields, mirrors and crumple zones for use on highway, and emissions requirements in a manner similar to a full motor vehicle, makes little sense. This makes no more sense than requiring a side by side designed for off-highway usage to comply with all emissions and protection equipment required for on-highway usage. They simply are different usages.

Recognition of such an arbitrary decision not only fails to address the underlying issues with e-bikes, which is the lack of Congressional or Executive Authority for the exception proposed. This arbitrary recognition of an on-highway decision governing off-highway usage creates user conflict between the e-bike community and all other trail users. This is a major concern for the Organizations as one of the consistent messages we hear from land managers is the desire to

reduce and avoid user conflict on trails. Here we are presented with a situation that appears to be creating user conflict and the Organizations submit that is an indication that there are better manners to expand access to public lands. This is less than optimal and the Organizations submit that all trails user should be treated similarly under existing law.

3d. State registration programs for OHVs for off-highway is not relevant to decisions around the motorized nature of an e-bike for use on federal public lands.

The Organizations are forced to address the consistent and wildly incorrect summaries of many of the State OHV programmatic requirements for the registration of OHVs for use on public lands. These summaries are often then asserted to be a basis for the designation of an e-bike as a non-motorized vehicle. These summaries are simply offensive to the Organizations and our many member groups that helped craft these OHV registration programs and regulations and we believe must be accurately addressed in these comments to ensure these decisions do not become the basis for inaccurate decision making.

Generally, most state regulations requiring the registration of OHVs for use on public lands do not address the propulsion of the vehicle or if the vehicle is or is not a motorized vehicle with regard to on-highway usage. Most of these programs and statutes create a separate method to register OHVs as “Off-highway motor vehicles” to avoid any discussion about use of these vehicles on federal and state highways regardless of how the vehicle is propelled. Similar to the CPSC, these programs recognize OHVs are motorized vehicles but are only allowed off-highway and are subject to entirely separate regulations from on-highway usage.

The management of OHVs in Colorado, which is frequently identified as an example registration program is a perfect example of where these inaccurate summaries by many interest groups are immediately evident. The Organizations are aware that this model is consistently applied for the management of OHVs in most states with a registration program. In Colorado, usage of e-bikes for on road usage are governed by Colorado Vehicle and Traffic laws pursuant to CRS 42-1-101

et seq. Colorado provisions for the usage of e-bikes do allow them to be recognized as low power vehicles under the statutory provisions for these types of vehicles and requires several provisions of law be complied with for their usage such as insurance and driver's licenses. E-bikes are also specifically identified as a low power motor vehicle and not a motor vehicle for purposes of registration for on road usage. They are a separate class of vehicles for on-road usage.

The registration of OHVs for recreational usage on public lands is an entirely separate statutory process administered by the Colorado Parks and Wildlife agency and governed under CRS 33-14.5-101 et seq. Colorado only requires registrations for recreational usage of these units on public lands and does not require registration for usage on private property or for units that are used for agricultural purposes and many other usages outlined in 33-14.5-102(6). In Colorado, registered OHVs are not required to have insurance and operators are not required to possess a drivers license. It is interesting to note that while there is a low power vehicle exception in provisions for use of vehicles on road, there is no similar provision in the OHV program legislation.

The Organizations are also aware that there have been discussions about the possible registration of e-bikes under the OHV program and the applicability of existing reduced requirements around the registration requirements for E-bikes for on-road usage. These groups and programs have not pursued registration of e-bikes for off-road usage simply due to a desire of our members and state agencies to avoid the massive amounts of user conflicts and fighting that has surrounded e-bikes since their inception. There simply are not registration stickers to be sold to offset the conflict and years of effort that would be required to address the issue. This should not be taken as an acceptance that an e-bike used for recreation on public lands is not a motor vehicle as these are two entirely separate decisions and concerns.

The Organizations submit that inaccurate summaries of the usage of OHVs and associated registration programs created by our members provide a compelling reason for significantly expanded involvement of the motorized community in e-bike discussions moving forward. Often it is our members that have created the OHV programs and can explain the technical nature of

provisions of these programs in great detail. Almost unanimously, the reasons and provisions around the inclusion or exclusion of e-bikes in State registration programs are very different than those outlined in discussions on e-bikes by those not involved with these programs. For this reason alone, the Organizations submit that the involvement of the motorized community in these discussions moving forward. Managers simply need accurate information around why decisions are made in state registration programs for off-highway motor vehicles and our members generally are the experts on the program history and direction.

4. Equity of all electrical usages should be addressed.

As the Organizations have noted throughout these comments, the e-bike discussion has triggered an exceptional amount of user conflict with many groups. While most of this conflict has been centered around the e-bike community and mechanized and foot-based interests, there is one facet of the discussion that touches on the more traditional motorized community. This conflict has been based around the disparate treatment of some forms of electric vehicles when compared to the wide range of electric vehicles on the market currently. Electric forms of many vehicles are available and possess many of the same benefits as an electric bicycle, such as reduced sound, easier maintenance and improved access to public lands for many of the owners. It is worth noting that off road electric golf carts have been around for extended periods of time and we are not aware of any discussion about managing those vehicles outside the travel management requirements.

Electric vehicles are currently present in every form of traditional OHV and despite some being on the market for extended periods of time, the Organizations are not aware of any discussion around altering the travel management requirements to expand access for these e-vehicles. Some of these vehicles have become common place in many areas, where comparable gasoline powered vehicles would be unheard of, such as maintenance operations of urban parks and outdoor shopping centers. These vehicles have included golf cart manufacturers improving suspension on a traditional golf cart:



7

Tesla offers a more off-road targeted vehicle similar to a side by side that is electrically powered:



8

Traditional manufacturers such as Polaris has been in the electric side by side market for an extended period of time.



9

KTM offers an electric off-road motorcycle:

⁷ <https://www.trackeroffroad.com/all-purpose-cart.html>

⁸ <https://nikolamotor.com/powersports>

⁹ <https://ranger.polaris.com/en-us/ranger-ev-avalanche-gray/specs/>



10

Recently electric snowmobiles have come to the marketplace and the viability of these units is being explored by several large ski operations, such as Vail Resorts:



11

The Proposal to allow the expanded use of e-bikes in areas historically closed to motor vehicles or close existing trails open to all to allow for e-bike only usage sets a precedent. The precedent being set is causing conflict, that does not exist currently. The Organizations would ask about the scope of precedent being set; mainly will federal land managers reopen travel management to allow for expanded access for other electric recreational users? Will winter travel decisions be reopened to allow for expanded access for electric snowmobiles? Will we allow expanded access for electric motorcycles or side by side vehicles? We are simply unable to envision a situation where expanded access would only be allowed for e-bikes, as many of the benefits from electric vehicles occur without regard to the type of vehicle is being propelled. While these benefits appear to be only accruing around e-bikes, electric side by sides, atvs, snowmobiles and full size 4x4 vehicles have been present in the market for extended periods of time already without planning for expanded access. Can this distinction be supported based on sound policy and rational?

¹⁰ <https://www.ktm.com/en/e-ride/freeride-e-xc/>

¹¹ <https://taigamotors.ca/snowmobiles/>

5a. One rule for e-bikes on federal land would avoid the complications of the three class e-bike system.

The Organizations were surprised when separate rules were identified for the BLM, Bureau of Reclamation and USFWS, and that there were differences between the rules, such as some agencies specifically recognizing three wheeled versions of e-bikes while others were silent. This is in addition to the efforts that have been already undertaken by the National Park Service, US Forest Service and a multitude of state and local regulations for usage. This situation will result in an e-bike standard that varies widely based entirely on land management agency and that is simply impossible to educate users regarding and simply must be avoided. As the Organizations have noted in other portions of these comments, a simple, understandable and consistent rule for all vehicle is a priority for the Organizations.

Throughout the Proposal, 3 classes of e-bikes defined and are discussed but at no point is there any distinctions made for the application of these classes on the ground. This begs the question of why have classes at all? It has been our experience that most e-bikes are not really in conformity with any of the classes and those that are can be so easily modified as to render the entire class system useless. If the class system is not an important component of the Proposal, why would the additional complexity of the classes be required as the classes will be tough to educate the public regarding and difficult to enforce on the ground.

5B. Strict adherence to characteristics of the proposed classes of E-bikes is often highly variable.

The Organizations have had the opportunity the ride a wide range of e-bikes through our interactions at various trade shows, friends purchasing units and presentations at meetings with land managers or trails-based interests. Generally, the e-bikes we have interacted with have covered a wide range of capability and costs and have evolved quickly over the last several years. These units have ranged from: 1. A traditional bicycle originally created as an e-bike; 2. Kits to adapt an existing bicycle to an e-bike; and 3. Units many of our members thought reminded them of the small to medium sized motorcycle that they might have ridden as a child, when capability

of suspension and size of the unit are compared. While there are a wide range of e-bikes available, this diversity really creates a lot of concern around the hard criteria that are proposed for the management of these units.

In this portion of the comments, we would like to summarize our experiences with these units on the ground and allow for explanation of why these experiences cause concern around the idea of classes of e-bikes as at no point have we found any unit that actually complies with these categories. The Organizations are not intending this list to be exhaustive by any means and would submit that this list is evolving quickly based on technology available. Our experiences are:

1. We are unable to identify the wattage on most units we have seen. It is basically not labeled on the unit, which presents an initial challenge for the class system that appears to rely on a 750-watt maximum. Many manufacturers offer bicycles that look identical but have a wide range of motors, some of which comply with requirements of 750 watts and others that far exceed this limit with minimal visual differences. If wattage is such an important component of the classes, why would this not be clearly labelled on the units?

2. "Pedaling" of these units to create forward motion appears to have a wide range of interpretation when various manufacturers are building units. Most of the units we have encountered rely on pedals in only an academic sense, as an exceptionally small amount of pedal effort allows full use of the electrical assist components of the e-bike. Rather than being an assist to pedaling the pedal set appears to be a switch allowing use of the electrical assist and often the pedal speed in no way relates to the speed of the unit on the ground.

3. The enforceability of the class principals is further complicated by the fact that almost every unit we have encountered can be easily modified in an almost infinite manner, pedals can be added, speed limiters altered or removed entirely, wattages

increased to allow for improved performance at the cost of reduced range etc. Often appearances at trade shows have allowed us to inspect a particular e-bike in one booth and then talk to a vendor modifying that e-bike immediately next to the booth. Sometimes these vendors appear to be related.

4. Numerous e-bike manufacturers are offering multi-speed transmissions for their units.¹² While we can see a valid use of a transmission in these units, as it greatly expands the efficiency of the unit, the insertion of a transmission in the equation complicates management as speed is far less a function of the size of the motor but is more a function of the number of gears and gear ratios available.

While the Organizations are not submitting this list as exhaustive, but rather are using these issues as examples of why we are concerned with the overall class models that are proposed. The Organizations submit that these are generally issues that must be addressed with the e-bike community but the Organizations are concerned this flexibility of the classes can create the appearance of motor vehicles off trail as units operated outside their respective class will be cited as a motor vehicle off trail. The Organizations submit that amending and updating the EO mandating travel management to permit low power vehicles more generally is a better resolution of the expanded usage of these units than the proposed class system.

5c. Education and Enforceability must be priorities moving forward.

Introducing some type of separate e-bike classification system for trails, such as the Tahoe NF proposes, fails to address basic questions such as how would these routes be signed on the ground and who pays for this signage? We are not even aware of an e-bike sign that has been adopted by the USFS. While signage might appear to be a minor issue it is not for the motorized community, who provides extensive funding annually to land managers to ensure appropriate

¹² https://electricboardingco.com/products/himiway-cruiser-electric-bike?variant=31476868022339&utm_medium=cpc&utm_source=google&utm_campaign=Google%20Shopping

signage is available to educate motorized users where they can and cannot go on the ground. Since the motorized community has provided extensive funding for signage, we would like to be involved in discussions proposing a large-scale revision of existing sign standards. This would also be a major factor that is causing us concern around the impacts of a possible spike in the recording of motorized vehicles off trail.

6a. The Organizations are opposed to hard deadlines for completion of e-bike planning.

In section 6 of these comments, the Organizations would like to address a few of the more specific proposals that have been raised in discussions around the DOI E-bike proposals. The Organizations are aware of significant discussion around the need for a hard deadline or timeframe for the completion of NEPA around the e-bike discussion. The Organizations are vigorously opposed to the creation of any timeframe for the completion of e-bike related planning as there are too many variables in such a proposal. The Organizations are aware of significant portion of Department of Interior public lands that have not adopted a travel management plan in any form, and often for good reasons that are localized in nature. The ability of local managers to deal with local issues in a timely and effective manner should not be limited as in some offices the ability to use an e-bike is very limited simply due to topography or other natural conditions, such as Imperial Sand Dunes or St. Anthony Sand Dunes. Imposing an e-bike regulation in these areas would create exactly the type of overly generalized regulation that the DOI and Dept of Agriculture have worked hard over the last several years to avoid.

The Organizations would note that this lack of a timeline for completion of NEPA planning on an issue is not unprecedented. The USFS recently mandated no completion date for the review of winter travel management plans or creation of new winter travel management plans as a result of the settlement of winter travel rule litigation and subsequent rule making. This has been a point of discussion since this rulemaking but the Organizations vigorously support this conclusion and submit the precedent should be applied in e-bike discussions as well.

6b. Limiting motorized trails based on types of propulsion is a violation of the EO.

It has come to the Organizations attention that several groups are asserting that e-bikes should be managed under a limited motorized route, which the Organizations submit is probably a violation of the open closed or restricted to routes mandate of the EO. While the Organizations are aware that some offices have made the decision to restrict access to certain routes based on a natural characteristic, such as narrow terrain or to provide a specific recreational experience, such as a trail width of 36 inches or less to provide a single-track trail experience. The Organizations are not aware of any designations of this type that focus on how a vehicle is propelled.

7. Conclusion.

There are many aspects of the Proposal that the Organizations can support. The Organizations support the use of electric bicycles on motorized trails, as e-bikes are by definition a motorized off highway vehicle. The Organizations also support one of the foundational conclusions that appears to be driving the e-bike discussion, mainly that there are insufficient opportunities provided for multiple use trails in many locations. We also could support the expansion of the existing trail network for the benefit of all users of these trails and we have to believe these opportunities would be vigorously supported by the OHV programs in western states that are major partners with federal land managers for basic operations.

The Organizations would vigorously oppose the loss of **any** existing motorized trails for the exclusive use of bicycles or e-bikes or the acceptance of any costs for management of e-bikes in terms of signage or other restrictions around the implementation of a new e-bike regulation. The Organizations would also be opposed to any regulations being prepared that could create the appearance of increased levels of violations from traditional motorized vehicles when e-bikes are used in violation of the proposed exception to the existing Executive Orders. The Organizations are concerned that while the traditional motorized community has avoided this discussion, and obtains no benefits under the current Proposal, these partners will be left to pick up the pieces from a poorly developed proposal. That should be concerning to everyone. The Organizations submit that the foundational issue in the discussion, mainly the lack of authority to create what

is really a low power vehicle exception to the Executive Orders for the benefit of the E-bike community.

1. The Organizations are not opposed to the use of electric bicycles on motorized trails but cannot overlook the fact that e-bikes are a motorized off-highway vehicle under the definition provided in EO 11644 and 11989 making the current proposal problematic if there should be a legal challenge. The Organizations are simply unaware of any Congressional or Presidential grant or designation of authority to land managers that would allow the creation of a low power vehicle type exception in the EO addressing Travel Management. Courts reviewing rule making under the EO have been very consistent in applying a very strict level of interpretation to the EO, and this simply cannot be overlooked. Unlike Congressional designations for classification of e-bikes as low power vehicles for on road usage, there are no similar provisions provided in the EO.

2. Rather than creating additional user conflict, on an issue that has already been the basis of explosive conflict between many user groups, the Organizations submit the regulations should focus on common grounds between all user groups, which is the lack of high-quality trails in significant portions of the country. From the motorized perspective there are very few areas of the country that provide high quality trail experiences on a large scale. While the Organizations appreciate the use of old roads for motorized opportunities, these simply are not a trail and for our users the experiences are significantly different. In addition to significant demand for more dedicated trail opportunities, the Organizations would note that our users have access to the resources to partner with land managers to build and maintain new trails, unlike many other user groups.

3. The Organizations are opposed to the loss of any motorized trails in an attempt to create e-bike only trail networks in a manner similar to the Tahoe NF.

4. We are unable to support the distinction provided around the use of off-highway vehicles that is proposed in Secretarial Order 3376 based on a consumer product safety commission decision regarding the use of e-bikes on highways. Most traditional OHVs have never been identified as

motor vehicles for purposes of on road usage but have never been excluded from the application of the travel management rules. The Organizations submit that the basic definitions of motorized off-highway vehicles provided in the EO must be updated and could possibly include a provision that excluded low power vehicles from the application of the EO moving forward.

5. Any regulation for the use of e-bikes must be simple and easy to use so the public will understand the regulations and the current proposal is neither. This is a significant concern for the Organizations as currently any e-bike being used outside the regulations would be a “motor vehicle off trail” and create the appearance of a significant increase in traditional motorized vehicle improper use, which will immediately renew assertions for needs for further restrictions. This situation is unacceptable to the Organizations.

6. The Organizations support a single definition for e-bikes as it has been our experience that most e-bikes do not conform to the existing classes in some manner or another and often determining the basic information about a particular unit is exceptionally difficult as the information is not provided on the unit. This type of issue will make any enforcement of classes very difficult. The Organizations believe that a simple and consistent definition will help reduce the astronomical user conflict that has surrounded these discussions since it has started. The effective and simple definition of these vehicles avoids the situation where the traditional motorized community is drawn into additional rounds of travel management or enforcement as a result of e-bike usage being outside their class on a particular route being recorded as a motor vehicle off trail.

The Organizations would welcome discussions with DOI regarding the management and operation of e-bikes on federal public lands and more importantly how to expand access for all forms of recreation in a more efficient and effective manner. Please feel free to contact Don Riggle at 725 Palomar Lane, Colorado Springs, 80906, Cell (719) 338- 4106 or Scott Jones, Esq. at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810 and his email is scott.jones46@yahoo.com.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Scott Jones".

Scott Jones, Esq.
CSA Executive Director
IRC, TPA & COHVCO Authorized Representative

A handwritten signature in blue ink, appearing to read "Don Riggle".

D.E. Riggle
Director of Operations
Trails Preservation Alliance