



June 18, 2023

Electric Bicycle Programmatic EA
National Park Service
Filed at: <https://parkplanning.nps.gov/e-bikes>

Re: Programmatic Environmental Assessment (PEA) on Use of Electric Bicycles Within the National Park System, June 2023

Thank you for the opportunity to comment on the above referenced PEA. PEER is a non-profit, tax-exempt corporation headquartered in Silver Spring, MD. We work nationwide with government scientists, land managers, environmental law enforcement agents, rangers, and other resource professionals committed to responsible management of America's public resources, including National Parks and other public lands. PEER and our clients were the plaintiffs in the legal case that led the Park Service to prepare this PEA. (*Pub Emps. For Env't Responsibility v. Nat'l Park Serv. (PEER v. NPS)*, 605 F. Supp. 3d 28 (D.D.C. 2022).) The other plaintiffs who also endorse this comment are: **Wilderness Watch, Environmental Action Committee of West Marin, Marin Conservation League, Save Our Seashore, Amy Meyer, Phyllis Koenig, and David Perel.**

Rescind Secretarial Order 3376

First, the Secretary of the Interior should promptly rescind former Secretary David Bernhardt's Aug. 29, 2019, Secretarial Order (SO) 3376, on e-bikes. It directed that e-bikes must be allowed wherever traditional bikes are allowed Interior-wide. Specifically, the EO stated, under "Sec. 4 Policy":¹

b) E-bikes shall be allowed where other types of bicycles are allowed;

However, the formal e-bikes regulation adopted in 2020 by the National Park Service (NPS), provides that Superintendents "may" allow e-bikes where traditional bicycles are allowed, at their discretion, rather than that they "shall" allow them.² The mandatory default "shall" language in SO 3369 now conflicts with the adopted NPS e-bikes regulation, which is

¹ At: https://www.doi.gov/sites/doi.gov/files/elips/documents/so_3376_-_increasing_recreational_opportunities_through_the_use_of_electric_bikes_-508_0.pdf.

² NPS Final Rule, Federal Register / Vol. 85, No. 212 / Monday, November 2, 2020, pp. 69175 – 69188.

permissive. Further, SO 3376 has no legal effect due to its inconsistency with the more recent regulation; there is no reason to keep it.³

Rescission is supported by and flows from the NPS's statement in the new PEA under "2.3 Alternatives Considered but Not Carried Forward for Detailed Analysis" (p. 9). There, the PEA rejects the default approach expressed in SO 3376, as:

... examples of alternative regulatory approaches that would allow the use of e-bikes in certain respects as the default regulatory position, placing the onus on superintendents to close areas or restrict use when necessary to prevent unacceptable impacts to resources and visitors.

For the reasons discussed above, the NPS prefers a regulatory approach that allows superintendents to exercise discretion and judgment about where e-bike use may be appropriate or not.

Because the agency's own PEA outrightly rejected the alternative expressed in SO 3376 from further environmental impact analysis, it would be illogical and unreasonable for SO 3376 to remain as a continuing Department of the Interior policy. We note that the Biden Administration has rescinded at least five pre-existing Interior SOs in recent years.⁴ SO 3376 should be next.

Improper "No-action" Alternative

Many of the problems in the PEA stem from the improper comparison drawn between Alternative 1, the "No Action" Alternative (pp. 4-5), and Alternative 2, the "Proposed Action (Preferred Alternative)". (pp. 6-7). The current comparison is improper because the No Action alternative is not accurately based on the *status quo ante* prior to the Park Service's initial actions that approved e-bikes, that is, before August 30, 2019, as described at the top of p. 3 in the PEA. Prior to then e-bikes were flatly disallowed on non-motorized roads within the National Park system. The prior NPS regulation at 36 C.F.R. § 4.30 governed the use of bicycles. It provided that "[T]he use of bicycles is prohibited except on park roads, in parking areas and on routes designated for bicycle use...". The 1987 regulation imposed a strict standard for designating routes for bicycle use outside of "developed areas". A Park Superintendent could designate such routes only by adoption of a special regulation for that park at 36 C.F.R. Part 7.

E-bikes in contrast were not treated by the NPS as "bicycles" because the definition of the latter was "...every device **propelled solely by human power** upon which a person or persons may ride on land, having one, two, or more wheels". 36 C.F.R. § 1.4 (emphasis added). Because e-bikes have motors they clearly were not propelled solely by human power. They fit the NPS

³ Sec. 6 of the SO contains this standard provision that indicates it must be disregarded to the extent that it is inconsistent with any DOI regulations:

Sec. 6 Effect of the Order. This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

⁴ See <https://www.doi.gov/elips/browse> .

definition there of “motorized vehicle” and were restricted solely to routes designated for motorized transportation.

Yet, the PEA does not use the *status quo ante* of no lawful e-bike use on non-motorized trails as the No Action Alternative. Instead, it injects the vague notion that some unspecified level of e-bike use would have occurred anyway even under the No Action Alternative because of undescribed ambiguity perceived by some Park superintendents prior to August 30, 2019.

Thus, the analysis of the “Environmental Consequences of the No-Action Alternative” under each of the four impact categories in the PEA includes this phrasing: “**as discussed in section 2.1, e-bike use could occur on some administrative roads or trails in some park units.**” That same phrase occurs in the No Action Alternative analysis for: Soils (p. 15), Vegetation (p. 21), Visitor Use and Experience (p. 26), and Wildlife (p. 32). This inclusion of some unspecified pre-2019 e-bikes use under the PEA’s analysis of No Action fatally muddied the comparison between Alternatives 1 and 2. It allowed an easy “exit ramp” for the PEA to claim that there will be uncertain impacts from increased e-bike permission from “some” to “more” use on non-motorized trails, rather than comparing “zero” (i.e., no action) to “more” e-bike use on such trails as it should have done.

Here again, as was found in the U.S. District Court order on the NPS’s initial NEPA violation that compelled the writing of the current PEA, the Service has “fudged” by adopting an improperly elevated action baseline for its effects comparisons. A revised PEA should be written that assesses the true “no action” alternative of no e-bikes being allowed on non-motorized trails as was the situation before the Bernhard EO and the subsequent August 30, 2019, Policy Memorandum issue by P. Daniel Smith, which entirely changed the prior NPS regulatory landscape.

Inadequate Description of the Affected Environment

Despite the PEA being written three years after-the-fact of allowing the Proposed Action to occur via its 2020 implementation of the NPS e-bikes regulation across the Park system, the PEA fails to describe the Affected Environment. It merely repeats this phrase, which was accurate three years ago: “As noted in section 3.2.1, at the time the 2020 rule was published, approximately 130 of the more than 400 park units in the National Park System allowed e-bikes on specific administrative roads or trails in those park units.”

It provides no current information on the actual number of roads and trails in which 130 Park units are now approved for e-bikes, or even whether 130 units remains accurate in 2023. It provides zero indication of how many backcountry trails, i.e., the most significantly impacted trails in the system, have been approved or where they are. A revised PEA must at least provide an appendix with current information showing where the impacts are actually occurring, instead of repeating an incomplete three-year old description.

Inadequate Consideration of Key Impact Literature

Throughout the document the PEA inadequately supports its “Environmental Consequences” conclusions with citations to scientific literature. This is most apparent in its failure to even once refer to the NPS’s own 2021 Electric Bicycle Literature Review, at:

[file:///C:/Users/PeterJenkins/Downloads/LITERATURE_REVIEW_20210800_NPS%20EBikes%20wAppx_FINAL_508%20\(1\).pdf](file:///C:/Users/PeterJenkins/Downloads/LITERATURE_REVIEW_20210800_NPS%20EBikes%20wAppx_FINAL_508%20(1).pdf) . That 45-page Review contains more than 150 literature cites, many of which provide information that is missing from the PEA, such as on trail design features for reducing user conflicts. The Literature Review was directly attached to a Memo from Sean Benge, the former Deputy Director of Operations, Exercising the Delegated Authority of the Director, sent on August 13, 2021, to all Superintendents, Regional Directors, and others with directions to review it and apply its lessons. Other official guidance to the Park units refer the Superintendents to it. The failure of the PEA to even cite once to the agency’s own highly-touted Literature Review demonstrates the PEA’s perfunctory nature.

Inadequate User Conflict Analysis

None of the groups or individuals endorsing this comment are flatly opposed to all e-bikes use in National Parks. However, our leading concern with the PEA is that the section on “Visitor Use and Experience” fails to adequately assess the conflicts created by the NPS’s approval of e-bikes. It does not meaningfully quantify how e-bikes can climb more elevation faster without stopping; maintain higher overall velocity; and pass other trail users more frequently which, when executed improperly (as is foreseeable), can disrupt single-track traffic and increase the risk of collision. Also because e-bikes (typically 50-60 lbs.) weigh more than non-motorized trail bikes (typically 25-30 lbs.), any such collision carries a greater risk of serious injury.

The PEA contains no detailed analysis of the resulting safety and disturbance risks when pedestrians, traditional bicyclists, and equestrians are on the same trails at the same time. Further, there is no discussion, of the type that a PEA would be expected to provide, of the trail design features necessary to mitigate the user conflicts.⁵ The PEA hints, at pages 29-30, at the conflicts, but it avoids analysis by just claiming that “Superintendents would have the ability to actively manage user conflicts” without stating how mitigation could occur. It goes on to state that Park visitors who do not want to be exposed to such risks can simply avoid the trails on which e-bikes are allowed, again with no analysis and putting the burden of conflict avoidance on non-e-bike riders.

Remarkably, the effects analysis for allowing e-bikes emphasizes a claimed benefit to all users. Thus, on p. 30, the PEA’s analysis goes so far as to say:

Because the NPS would implement the 2020 rule there would be specific rules about the use of e-bikes on trails in park units where bicycles are allowed, which would represent a beneficial impact to all visitors compared to the no-action alternative.

⁵ For example, the PEA makes no mention of the American Association of State Highway and Transportation Officials (“AASHTO”) Guide for the Development of Bicycle Facilities (Guide. 2012, <https://njdollocalaidrc.com/percli/resources/aashto-gbf-4-2012-bicycle.pdf>) or the American Trails Shared Use Path Design guidelines (Chapter 14, <https://www.americantrails.org/images/documents/sharedpath14.pdf>) both of which recommend the paved tread on shared use paths should be at least 10 ft wide, with a graded shoulder at least 2 ft wide on either side of the path. On shared use paths with heavy volumes of users, tread width should be increased to a range from 12 to 14 ft. In addition, shared use paths should not exceed a grade of 5%. The PEA does not address whether any of the approved e-bikes trails actually meet these safety guidelines. It is generally known that many NPS shared use paths in fact do not meet the widely-accepted AASHTO design guidelines. The PEA should address this topic.

It is odd and self-serving to allege this “beneficial impact to all visitors *compared to the no-action alternative*”. The proper No Action Alternative, as discussed above, is no lawful e-bikes use in Parks. Therefore, that Alternative would, by comparison, be more beneficial for those Park users who are put at safety risk or otherwise disturbed by e-bikes use under the Proposed Action. The PEA gets it backwards by perversely claiming that “all visitors” including those who want to avoid motorized e-bikes were benefitted by the 2020 rule that allowed them.

Relatedly, the discussion of the Proposed Action’s impacts on Visitor Use and Experience also inadequately assesses cumulative impacts across the National Park system. Not only do e-bikes allow deeper penetration into backcountry than a typical traditional bicycle would, but they also facilitate more frequent trips. The obvious significant cumulative impact here is on Park visitors who do not wish to recreate on shared trails that allow motorized vehicles, that is, who view the National Park System as a peaceful escape from motorized society. Now there are many fewer trails nationwide where they can do that – in at least 130 fewer units per the PEA, as discussed above, but the PEA is opaque on which units and which trails. It is well-known that many NPS visitors enjoy many more than just one Park unit; they travel nationally to enjoy as many as they wish. The systemwide reduction of non-motorized recreation opportunities affects Americans individually and as a whole. It is the epitome of a cumulative impact, in which the whole exceeds the sum of its parts.

A revised PEA should address this cumulative impact after being specific about which NPS trails, as of mid-2023, are motorized now that were not before the agency’s August 2019 e-bikes regulatory change. Only then will the agency be taking the “hard look” required by NEPA.

Inadequate Assessment of Wildlife Impacts

As with its user conflicts assessment, the PEA’s assessment of impacts of the Proposed Action on wildlife is inadequate (pp. 34-36). It stresses that impacts will occur on just a limited number of trails and that there are many other Park units in which the conflicts will not occur. It cites no cases of e-bikes use needing to be restricted to protect wildlife despite known cases from other jurisdictions. For example, on November 10, 2022, eight months prior to issuance of the PEA, the Utah Division of Wildlife Resources (DWR) restricted e-bikes on all wildlife and waterfowl management areas in the State because of their impacts. Its official newsletter stated:⁶

“E-bike use, as a recreational activity, has increased dramatically in the past five to 10 years,” DWR Capt. Chad Bettridge said. “As a result, we are seeing increased use on our waterfowl and wildlife management areas. In areas where there is a lot of e-bike use, notable habitat damage is occurring”

Similar waterfowl (and human use) conflict concerns resulted in the closure by the city of Palo Alto, California, of the popular Baylands Trail to e-bikes.⁷ Damage to NPS habitat areas

⁶ “DWR reminds of new rule after increase in illegal e-bikes ruining habitat on wildlife, waterfowl management areas,” *Utah Wildlife News*, November 10, 2022, online at: <https://wildlife.utah.gov/news/utah-wildlife-news/1544-new-rule-after-increase-in-illegal-e-bikes-ruining-habitat-on-wmas.html> .

⁷ “E-bikes are an environmental dream — except out in nature,” *The Mercury News*, Mar. 3, 2023, online at: <https://www.detroitnews.com/story/life/2023/03/03/e-bikes-are-an-environmental-dream-except-out-in-nature/69967492007/> .

systemwide comparable to that seen in Utah and south San Francisco Bay is potentially foreseeable, yet the PEA does not address harm to waterfowl at all. Particularly because waterfowl are migratory, cumulative impacts could result if habitat damage or disturbance is inflicted across multiple Park units within a flyway. A revised PEA should address, not avoid, this key environmental impact.

Other PEA Inadequacies

1. No Provision for Ensuring Mitigation.

The PEA, at p. 35, minimizes any potential impacts from e-bike introduction on trails with this assurance:

Similar to the no-action alternative, impacts to wildlife would be mitigated by superintendents incorporating aspects of sustainable trail design features, conducting trail maintenance activities in their specific park unit, and/or implementing trail or area closures or other restrictions authorized under 36 CFR 4.30. In addition, impacts to wildlife on or around new trails would be mitigated because new trails would be developed and constructed in accordance with appropriate sustainable trail design principles and guidelines and would avoid sensitive wildlife habitat.

Yet, no provision is made in the Proposed Action to require sustainable trail design – or even to guide Superintendents on what constitutes such design. Nor does the PEA give any guidance to superintendents on how to identify and route trails to avoid harming “sensitive wildlife habitat.” In addition, no effort is made to assess how much additional trail maintenance, signage, and monitoring/enforcement across the Park System will be required to effectively cope with e-bike impacts. These are indirect environmental effects that the Council on Environmental Quality’s NEPA-implementing regulations require to be addressed in an EA, per 40 CFR § 1508.1 Definitions. (in pertinent part):

(g) Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:

(1) Direct effects, which are caused by the action and occur at the same time and place.

(2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

.....

(4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

2. Misplaced Reliance on User Education.

The PEA, also at p. 35, declares:

Educating visitors regarding proper etiquette with regard to wildlife viewing and Encounters can also be highly effective for mitigating impacts to wildlife (Marion and Wimpey 2007). Park units that allow e-bike use on administrative roads and trails could establish monitoring protocols to collect data regarding e-bike impacts, which could provide park unit specific data that could help park managers adjust management strategies as needed, thereby further mitigating impacts.

Yet, the NPS's Proposed Action makes no provision for user education or monitoring and certainly has no provision for funding such activities in the scores of Park units impacted.

3. No Discussion of Enforcement.

Much of the EA's Proposed Action analysis is premised on individual Park units enforcing restrictions on user actions, such as against excessive speed or the use of non-pedal-assisted motorized e-bikes, or the failure to regularly pedal actively, which violates the NPS e-bikes regulation (PEA, p. 7). It is completely unreasonable to expect enforcement personnel, many of whom are volunteers and will not be riding e-bikes themselves, to stop, and sanction an e-bike rider who is speeding, riding an unapproved class of machine, or otherwise in violation of the Park's rule. However, the EA does not discuss or assess how these restrictions could in reality be enforced - or by whom?

As PEER has documented, "Despite record levels of visitation, skyrocketing search and rescue operations, and rising crime, the number of law enforcement rangers in our national parks has steadily shrunk. While overall NPS staffing is down, the drop in law enforcement ranks is even more acute. Since 2005, the ranks of permanent law enforcement rangers fell by more than one-seventh (15%) while seasonal law enforcement rangers deployed during peak seasons has dropped by almost one-third (30%)." <https://peer.org/national-park-ranger-ranks-spread-dangerously-thin/>

The PEA's assessment of the Proposed Action should have included the indirect effects on the already stretched-thin human resources of the National Park System that would result from the need to enforce the restrictions in the Proposed Action.

4. No discussion of fire risks or energy demands.

In the modern era of often tinder-dry forests and grasslands and numerous Park units having been burned in forest fires, it was a gross oversight to not even mention the now notorious fire risks from e-bike batteries. Numerous tragic cases exist of deaths associated with urban fires from improper battery charging.⁸ But, the cases are not restricted entirely to urban areas and improper

⁸ "E-bikes Are Going to Keep Exploding - We are stuck in battery purgatory." *The Atlantic*, July 5, 2023, online at: <https://www.theatlantic.com/technology/archive/2023/07/e-bike-battery-lithium-ion-fire/674622/>, which notes: "New York City has been rattled by more than 100 battery fires so far in 2023, according to its fire commissioner, killing 13 people."

charging – some fires have resulted during e-bike use away from urban centers.⁹ A revised PEA should take this issue seriously, particularly in the context of global warming risks. It also should briefly address the approximate amount of energy required to charge e-bike batteries for use across the Park System.

5. No Analysis of Impacts on Maintenance Requirements.

The PEA glosses over the point that the heavier e-bikes will have a greater impact on the condition of unpaved trails, especially trails suffering from added weather stresses, such as higher fire exposure and greater rainfall. In addition, the PEA repeatedly cites “trail maintenance” as a key mitigation measure to lessen impacts ranging from wildlife disturbances to user conflicts. Yet, nowhere does the PEA address what will be required for scores of parks to implement mitigative maintenance measures. While in individual parks, a greater maintenance burden may be localized, system-wide these greater maintenance demands will trigger greater budget demands. The NPS maintenance backlog has ballooned in recent years from \$12 billion to more than \$20 billion, according to revised agency estimates. In other words, any policy change, such as allowing e-bikes on unpaved trails, that adds to the NPS’s already large maintenance backlog is a national issue that the PEA is remiss in failing to assess.

6. No discussion of impacts on Parks’ carrying capacities.

The National Park and Recreation Act of 1978 established a statutory requirement, at 54 U.S.C. §100502(3), that Park unit general management plans include “identification of and implementation commitments for visitor carrying capacities for all areas of the System unit.”

Numerous important provisions in the NPS Management Policies apply here (at <https://www.nps.gov/policv/mp/policies.html>). Specifically, § 8.2 - Visitor Use, § 8.2.1 - Visitor Carrying Capacity, and § 8.2.2.1 - Management of Recreational Use, all must be considered regarding the impacts of e-bikes. Yet, the PEA includes zero discussion of the laws and policies regarding the carrying capacity of Parks to handle e-bikes. That must be corrected.

7. Failure to Identify Agencies and Persons Consulted.

The CEQ’s NEPA regulation on EAs specifically requires that they shall: “include a listing of agencies and persons consulted” 40 CFR § 1501.5(c)(2). Yet, in keeping with the overall perfunctory and inadequate approach in the PEA, at p. 37 it simply claims that various personnel from different unnamed NPS and Interior offices “were consulted,” while failing to provide “a listing” of those actual people, as the regulation mandates. This failing must be corrected.

Conclusion

The Proposed Action’s reduction in non-motorized recreational trails and the potential harms to wildlife contravene the NPS’s conservation mission stated in its Organic Act, 54 U.S.C. § 100101:

⁹ “E-Bike Battery Explodes, Burning 79-Year-Old Cyclist and Causing Bushfire,” *Bicycling*, Jan 14, 2019, online at: <https://www.bicycling.com/news/a25890860/electric-bike-explodes/>

(a) In General.—The Secretary, acting through the Director of the National Park Service, shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

The impairments that motorized e-bikes cause to those organic values across the System, particularly regarding user conflicts on backcountry trails (and ways to mitigate those conflicts), as well as impacts to waterfowl habitat and the other values discussed above, should have been assessed in detail in the PEA. As they were not, a revised PEA or a PEIS should be issued. The improper “No Action Alternative,” the inadequate description of the Affected Environment, the inadequate literature citing, and the failure to list the “agencies and persons consulted,” all require correcting. However, first the NPS should publicly issue a response to the numerous public comments on the current PEA.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter T. Jenkins". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

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