

March 13, 2025

To: Jay Calhoun, National Park Service, Division of Regulations, Jurisdiction and Special Park Uses, MS-2472, 1849 C Street NW, Washington, DC 20240. Comments Filed Electronically. Regulation Identifier Number (RIN) 1024-AE79

From: Public Employees for Environmental Responsibility, Washington, D.C. and Wilderness watch, Missoula, Montana.

Public Employees for Environmental Responsibility (PEER) and Wilderness Watch submit the following comments on the regulations proposed by the National Park Service (NPS) at 36 CFR Parts 1, 2, and 4 on January 16, 2025. The proposed rule would govern the use of "Powered Micromobility Devices" throughout the national park system.

General Comments

The proposed rule suffers from a critical defect by conferring too much latitude on individual park superintendents to decide when and where to permit the use of Powered Micromobility Devices.

This approach follows the pattern employed by the NPS for bicycles in the rulemaking of July 6, 2012 at 36 CFR 4.30. That pattern allowed each park to decide what trails outside of developed areas could be open to mountain bicycles. Only mountain bicycle use on "new" (i.e. not yet constructed) trails would require a special regulation for that park. Otherwise, only a simple designation by the park manager under 36 CFR 1.5 was required. That lax, open-door, approach on bicycles was then made more problematic by a Secretarial Order of Interior Secretary David Bernhardt on August 29, 2019 that mandated that all trails open to bicycles also be opened to electric-powered bicycles (e-bikes). The loose approach to allowing bicycle use on trails outside of developed areas led to a wide divergence of how the NPS manages bicycles, and then e-bikes, across the system. This proposed rule of January 16, 2025 on Powered Micromobility Devices will result in the same kind of inconsistency and potential abuse.

PEER recognizes that the national park system is a collection of over 400 areas, distinct in attributes, size and statutory emphases. PEER recognizes that each national park area is governed by a specific enabling legislation and, to the extent there is no conflict, by the Act of August 25, 1916 – the Organic Act. That act prescribes but a single purpose to the national park system – namely conservation of natural and historic resources, and provides for the enjoyment of those resources "...in such manner and by such means as will leave them unimpaired...."

Subsequent enactments of Congress have defined the national park system as one system, united by a single purpose (P.L. 91-383). This proposed rule instead treats the parks as a collection of disparate areas governed by the judgment of individual park managers. It is true that the structure of the current NPS rules, adopted in 1983, allows individual park managers to make closures, public use limits and designations in that park area for a limited class of minor decisions, for example, designating where a park visitor may smoke (see 36 CFR 2.21(a)).

The park managers' designation authority for Powered Micromobility Devices must be constrained so as not to lead to the lowest common denominator across the system. One constraint cited in the proposed regulation points out that a local park manager cannot allow Powered Micromobility Devices in designated wilderness. But that proscription is a matter of law – the Wilderness Act of 1964 - and beyond the reach of the proposed regulation or of any park manager.

The proposed rule affords insufficient protection. The single most important park characteristic that

must not be subjected to individual park manager discretion are the areas of the system that are lands and waters recommended, proposed or determined to be eligible for wilderness.

(PEER notes that, besides wilderness quality lands, other park features must not be compromised by Powered Micromobility Devices, but PEER's comments defer to others to comment on these other resources. Among such resources to be protected from Powered Micromobility Devices are wildlife, critical habitat, natural quiet, historic properties - listed or eligible for listing - that may be adversely affected, such as battlefields or more broadly, cultural landscapes.)

Wilderness and Wilderness Eligible

Again, PEER recognizes that the proposed rule limits the discretion of individual park managers to authorize Powered Micromobility Devices in portions of the national park system designated as wilderness. That is a matter of strict law and these areas are already protected. The proposed rule fails to protect the other roadless areas of the parks. The NPS, in the final rule, must also preclude individual park managers from authorizing Powered Micromobility Devices within areas officially recommended by the President, through the Secretary, to Congress as wilderness and potential wilderness. There are 17 such areas of the national park system. We attach that list in our comments below.

The 17 parks with wilderness recommendations before Congress total over 5 million acres. They are some of the most pristine wild areas in the nation and many are within the crown jewels of the park system from Glacier National Park in Montana to Big Bend National Park in Texas. The fact that Congress has not acted on these recommendations, almost all from the 1970's, does not relieve the NPS from the responsibility to safeguard them.

The final rule must *also* restrain an individual park manager from authorizing the use of Powered Micromobility Devices in those areas of six national park system units that the NPS has *proposed* as wilderness. Those parks with *proposed* wilderness are: Bighorn Canyon, Cape Lookout, Glen Canyon, Grand Canyon, Lake Mead (the Arizona portions) and Voyageurs. These parks have undergone extensive NPS wilderness review but the areas proposed as wilderness by the NPS were not ultimately transmitted as a recommendation either to the Secretary or to the Congress.

Lastly, the final rule must *not* allow a park manager to authorize the use of Powered Micromobility Devices in parts of parks where the NPS, in formal agency planning processes, has determined that areas of lands and waters are "eligible" for wilderness. This class of parks currently numbers at least a dozen. Among these parks are Fort Pulaski, Valles Caldera and Wupatki.

PEER and Wilderness Watch recommend this protection for two reasons. First, such protection is consistent with NPS Management Policies (2006) that all such above areas be managed to protect their wilderness character.

Second, once an NPS manager authorizes the use of Powered Micromobility Devices on lands and waters in the national park system, the users of those devices form a cohort that will inevitably oppose ultimate wilderness designation for the recommended, proposed or eligible lands and waters. It is axiomatic that no park user group gladly or willingly surrenders a use that they have come to enjoy.

In addition, park managers, and their successors, who authorize the use of Powered Micromobility Devices will inevitably be disinclined to suffer the criticism or controversy of eliminating that use. It is only human managerial nature to avoid controversy. This rule, when made final, must therefore remove this burden from the shoulders of present and future park managers.

Summary

The final rule must not grant park managers the discretion to authorize Powered Micromobility Devices in not only designated and designated potential wilderness but also recommended wilderness, recommended potential wilderness, proposed wilderness and those lands and waters found eligible for wilderness through a formal NPS planning process. These lands amount to several million acres of the national park system that must be protected for future generations in an untrammelled state. To do otherwise would effectively establish a use that is incompatible with (and illegal within) wilderness should the area ultimately be designated.

PEER and Wilderness Watch recommend that the Final Rule, at an appropriate location, states:

“Under this rule, or any other, National Park Service officials shall not authorize the public’s use of Powered Micromobility Devices in park system areas of land and/or water recommended by the President or the Department of the Interior to the Congress as wilderness or potential wilderness, or proposed as wilderness or potential wilderness by the NPS after completion of a formal wilderness study, or found eligible for wilderness in a notice of wilderness eligibility assessment published in the FEDERAL REGISTER.”

**RECOMMENDED NPS WILDERNESS
TRANSMITTED TO CONGRESS BY
PRESIDENTS NIXON, FORD, CARTER, BUSH & BUSH
ON WHICH CONGRESS HAS TAKEN NO FINAL ACTION¹**

PARK

	<u>WILDERNESS</u>	<u>POTENTIAL Wilderness</u>	<u>DATE</u>
Arches NP, UT	61,547	8,461	05/11/78
Assateague Island NS, MD	440	4,760	12/04/74
Big Bend NP, TX	538,250	44,750	05/11/78
Bryce Canyon NP, UT	20,810	--	05/11/78
Canyonlands NP, UT	260, 150	18,270	05/23/77
Capitol Reef NP, UT	179,815	4,050	05/23/77
Cedar Breaks NM, UT	4,830	--	01/12/76 ²
Colorado NM, CO	13,842	937	05/11/78
Crater Lake NP, OR	127,058	--	05/11/78
Craters of the Moon NM/PR, ID	346,800	--	10/13/91 ³
Cumberland Gap NHP, KY,TN	12,191	1,900	05/11/78
Dinosaur NM, CO	205,672	5,055	05/11/78
El Malpais NM, NM	82,267	11,161	04/18/02
Glacier NP, MT	927,550	3,360	06/13/74 ⁴
Grand Teton NP,WY	122,604	20,850	05/11/78
Great Smoky MTN NP,	390,500	400	12/04/74
Yellowstone NP	2,032,721	--	05/11/78
TOTAL			
	5,327,047	123,954	5,451,001

¹ Acres/dates shown are the last official transmittal of a wilderness recommendation from the President to Congress.

² Reaffirmed, unchanged in Secretary's message of May 11, 1978.

³ BLM Great Rift Wilderness Study Area added to monument by Proclamation of November 9, 2000. The WSA was recommended by the President to Congress in 1991.

⁴ Reaffirmed, unchanged in Secretary's message of May 11, 1978