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John Calhoun
Chief, Division of Jurisdiction, Regulations, and Special Park Uses
National Park Service

RE: Electric Bicycles—Proposed Rule; Docket ID: NPS-2020-0001; RIN: 1024-AE61

Dear Mr. Calhoun,

The Environmental Action Committee of West Marin greatly appreciates the opportunity to provide comments on the National Park Service's (NPS) proposed rule on electric bicycles (e-bikes) (Proposed Rule).

Since 1971, EAC has worked to protect and sustain the unique lands, waters, and biodiversity of western Marin County, California. The EAC office is adjacent to the Point Reyes National Seashore (PRNS) in Point Reyes Station. Since EAC's founding, we have supported efforts to protect PRNS park resources including coastal headlands, native forests, and ecologically rich estuaries, including Drakes Estero Marine Wilderness. PRNS is unique among comparable NPS units in that it is located within a major metropolitan region, the San Francisco Bay Area. Due to this proximity, PRNS receives high numbers of visitors every year and is very popular among Bay Area residents. However, PRNS's popularity also creates many challenges to its continued protection.

For these reasons, we are concerned about the NPS Proposed Rule allowing use of e-bikes in all park units. NPS announced the Proposed Rule without developing an environmental review or obtaining public comment. Thus, NPS failed to follow basic procedural requirements of the National Environmental Policy Act (NEPA). Due to NPS's failure to comply with NEPA, the Proposed Rule did not consider the full scope of negative impacts that e-bikes may cause to park resources, including visitation, wilderness areas, wildlife, and habitats.

We request the Proposed Rule be revoked and that NPS conduct a NEPA review on a park-by-park basis.

1. The Proposed Rule fails to comply with the National Environmental Policy Act (NEPA).

NEPA requires, in pertinent part, that agencies “include in every...major Federal action[] significantly affecting the quality of the human environment, a detailed statement by the responsible official on—(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible or and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(C).

The Proposed Rule is a major Federal action with the potential for significant environmental impacts. As such, NEPA requires NPS to prepare an environmental impact statement (EIS) or Environmental Assessment (EA) before approving e-bike use in the National Park system.

However, NPS has indicated a refusal to submit any statement required under 42 U.S.C. § 4332(C). NPS claims that the Proposed Rule is covered by a categorical exclusion under 43 CFR 46.210(i). Many units allowed e-bikes following the August 2019 Smith Directive, which required those units to evaluate the environmental impacts of allowing e-bikes under NEPA. But the NPS argues that traditional bicycles are already allowed in these areas, that e-bikes threaten little-to-no additional impact than traditional bicycles, and that e-bikes are therefore a “pre-existing use” for which a categorical exclusion from NEPA requirements applies. *See* 85 Fed. Reg. 19711 (Apr. 8, 2020).

The categorical exclusion analysis applied by NPS fails to follow federal regulatory requirements, inaccurately equates e-bike impacts to park resources with those of traditional bicycles, and applies an inappropriate policy across all NPS units by failing to consider the unique characteristics, values, and park resources that e-bikes could negatively impact.

By failing to comply with NEPA, NPS ignored the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. We find it deeply troubling that the agency entrusted to care for our nation’s most treasured landscapes has neglected this fundamental tenet of environmental law. For that reason, NPS should defer rulemaking until it has prepared a programmatic NEPA review to evaluate potential adverse impacts of the rulemaking.

2. The Proposed Rule misrepresents facts about e-bikes.

The Proposed Rule implies that e-bikes’ environmental and safety impacts at NPS units will be indistinguishable from those of traditional bicycles. The Proposed Rule does not include an adequate explanation for its reasoning and fails to include evidence in support. Elsewhere, the Proposed Rule cursorily stresses the health, accessibility, and environmental benefits of e-bikes compared to traditional

bicycles, again without evidentiary support, but does not acknowledge any negative impacts that e-bikes might have. 85 Fed. Reg. 19711 (Apr. 8, 2020).

Scientific research does not support NPS's conclusion. A 2019 medical study in New York, based on millions of injuries listed in emergency department data, found that e-bike injury patterns differ from those caused by traditional bicycles. E-bikers were more likely to suffer internal injuries than traditional cyclists. E-bike injuries were three times more likely to involve a collision with a pedestrian than traditional cyclists. People injured by e-bikes were older, on average, than people injured by traditional cyclists.¹ In a news interview, the study's lead author, Dr. Charles DiMaggio, said that e-bikers can easily exceed 20 miles per hour, whereas average speeds among traditional cyclists are less than 10 miles per hour. Dr. DiMaggio believed that the doubling of potential speed may explain why e-bike injuries can be more serious, and stressed the need for jurisdictions to introduce e-bikes in a safe and responsible manner that includes safety regulations and appropriate infrastructure modifications.²

Other studies from Europe, where e-bike use has been more widespread for a longer period of time than North America, show that e-bikes pose greater safety risks than traditional bicycles. A 2018 Dutch study found that "the odds of being treated at an [emergency department] after a bicycle crash [are] significantly greater among [e-bike] riders than among [conventional bike] riders."³ A 2015 Swedish study found greater risk of "conflicts" or accidents involving e-bikes, compared to conventional bikes, and attributed this to e-bike's higher speed and lower maneuverability. The study suggested that e-bikes might require wider bicycle lanes with a higher curve radius in order to minimize risk.⁴

Batteries that supply power to e-bikes may also pose risks. In 2019, rideshare company Lyft pulled its e-bike fleet from San Francisco after some bikes caught fire while in use.⁵ These incidents not only suggest a risk to human safety in crowded National Parks, but a risk to the natural environment. Many NPS units are in areas prone to wildfire. This includes PRNS, whose bishop pine forests are still recovering from the Mount Vision fire of 1995.⁶ With climate change exacerbating environmental conditions that lead to

¹ Charles J. DiMaggio et. al., *Injuries Associated with Electric-Powered Bikes and Scooters: Analysis of US Consumer Product Data*, Inj. Prevention, (November 11, 2019), <http://dx.doi.org/10.1136/injuryprev-2019-043418>.

² Vishwadha Chander, *E-Bikes Show Distinct Pattern of Severe Injuries*, REUTERS (December 25, 2019, 8:49 AM), <https://www.reuters.com/article/us-health-ebike-injuries/e-bikes-show-distinct-pattern-of-severe-injuries-idUSKBN1YT0MV>.

³ Paul Schepers et. al., *The Safety of E-Bikes in the Netherlands*, INTERNATIONAL TRANSPORTATION FORUM, Rountable 168 (2018) (discussion paper), https://www.itf-oecd.org/sites/default/files/docs/safety-e-bikes-the-netherlands_0.pdf.

⁴ Marco Dozza et. al., *Using Naturalistic Data to Assess E-Cyclist Behavior*, 41 Transportation Research Part F 217 (2016), <https://www.sciencedirect.com/science/article/pii/S1369847815000662?via%3Dihub#!>.

⁵ Nick Statt, *Lyft Pulls its Electric Bike from San Francisco Streets after Some Catch Fire*, THE VERGE (July 31, 2019, 7:43 PM EDT), <https://www.theverge.com/2019/7/31/20749396/lyft-electric-bikes-pulled-san-francisco-battery-fires-motivate-bay-wheels>.

⁶ *Vision Fire: Rehabilitation Begins*, NAT'L PARK SERV., https://www.nps.gov/pore/learn/management/firemanagement_visionfire_rehabilitationbegins.htm (last updated Apr. 26, 2019).

wildfire, it defies reason to invite another possible “spark” into NPS units without any formal risk assessment.⁷

Research also suggests that e-bikes may worsen damage to land and wildlife that already result from existing use of traditional bicycles. It is generally recognized that mechanized and motorized recreation often degrades the environment.⁸ A study conducted for Parks Canada (NPS’s Canadian equivalent) found that mountain biking poses a particular risk of wildlife disturbance. The high speed and relative silence of the activity means that a mountain biker may approach an animal without detection until well within the normal “flight response zone.” This may result in a “startle response” by the wildlife with significant consequences to both animal and biker, especially if the species is aggressive.⁹ Electric mountain bikes may exacerbate this risk. A 2019 study found that on average electric mountain bikes travel faster than conventional mountain bikes by 4.1 miles per hour.¹⁰ With faster speeds and mechanized propulsion, it seems reasonable to conclude that e-bikes could pose more of a threat to wildlife and cause greater harm to trails and vegetation, thereby exacerbating the damage that conventional bikes already inflict on natural areas.

The research cited demonstrates enough uncertainty about NPS’s conclusion on the safety and environmental impacts of e-bikes to warrant an EIS or EA under NEPA.

3. The Proposed Rule would have a disparate impact at Point Reyes National Seashore (PRNS).

The Proposed Rule would make the NPS system accessible for e-bikes, and leaves little room for individual units to regulate e-bike use on their own. This wholesale change is especially problematic because some NPS units will experience more acute consequences than others. Units that are in remote locations, or that receive low numbers of visitors, may hardly observe any effects from the Proposed Rule change. In contrast, frequently visited units close to urban areas, where bicycle use is common and new technologies take hold quickly, may struggle to cope with the fallout.

⁷ See Mark Prado, *Drought, Disease Make Mount Vision Burn Area More Flammable than 20 Years Ago*, MARIN INDEPENDENT JOURNAL (October 4, 2015), <https://www.marinij.com/2015/10/03/drought-disease-make-mount-vision-burn-area-more-flammable-than-20-years-ago/>.

⁸ Catherine Marina Pickering et. al., *Comparing Hiking, Mountain Biking and Horse Riding Impacts on Vegetation and Soils in Australia and the United States of America*, 91 J. Envtl. Mgmt. 551 (2010), <https://www.sciencedirect.com/science/article/pii/S0301479709003296?via%3Dihub>; Michael J. Vandeman, *The Impacts of Mountain Biking on Wildlife and People: A Review of Literature*, 4 ARPN J. Sci. & Tech. 418 (2014), <https://savemtcanolassca.files.wordpress.com/2018/09/vanderman-2014-impacts-of-mountainbikes-debate-and-discussion.pdf>.

⁹ Michael Quinn and Greg Chernoff, *Mountain Biking: A Review of the Ecological Effects*, MIISTAKIS INST. (2010) (literature review for Parks Canada—National Office (Visitor Experience Branch)), <https://www.lib.washington.edu/msd/norestriction/b67566091.pdf>.

¹⁰ Cougar Hall et. al., *Pedal-Assist Mountain Bikes: A Pilot Study Comparison of the Exercise Response, Perceptions, and Beliefs of Experienced Mountain Bikers*, 3 JMIR Formative Res. (2019), <https://pubmed.ncbi.nlm.nih.gov/31411139/>.

PRNS is among the NPS units for which the Proposed Rule would have a disparately negative impact. PRNS is easily accessible in short travel times for millions of San Francisco Bay Area residents, making it an ideal site for outdoor recreation. In 2019, PRNS received 2.26 million visitors, ranking number 42 among 378 NPS units in visitation.¹¹ Despite its popularity, PRNS is not even the most-visited NPS unit in Marin County. Adjacent Golden Gate National Recreation Area (GGNRA) is by far the most visited of all NPS units, receiving 15 million visitors in 2019.¹² Marin County's Muir Woods National Monument received more visitors in 2019 than many National Parks, despite its small size.¹³ Many of the visitors who flock to Marin County's NPS units are cyclists. Biking is permitted in both PRNS and GGNRA. Biking is a very popular activity throughout the Bay Area, and many of its urban districts consistently rank among the nation's "top cities for cyclists."¹⁴

The Bay Area is also a technology hub. Over the past two decades, we have seen transportation innovations like rideshare, self-driving cars, and electric skateboards become ubiquitous in our communities before they have even reached other parts of the country, and before the law has had a chance to regulate them. Given these factors, NPS's decision to allow e-bikes, a relatively new technology that has not taken hold outside major cities, has made its Bay Area units canaries in the coalmine.

The Proposed Rule may also compound problems that PRNS already faces with cyclists. The Philip Burton Wilderness Area (PBWA) accounts for nearly half of PRNS's acreage.¹⁵ As a federal wilderness area, cycling is prohibited in PBWA under NPS policy. 36 C.F.R. § 4.30(h)(2). For decades, this policy has drawn the ire of mountain bikers nationwide.¹⁶ In Marin County, local mountain bikers already view trail access as overly restrictive, and took advantage of the absence of enforcement during the 2018-19 government shutdown to "poach" prohibited trails at PRNS and Muir Woods.¹⁷ Furthermore, visitors unfamiliar with PRNS may accidentally bike in restricted areas. The writer of a recent Los Angeles

¹¹ *Annual Park Ranking Report for Recreation Visits (1979-Last Calendar Year)*, NAT'L PARK SERV., [https://irma.nps.gov/STATS/SSRSReports/National%20Reports/Annual%20Park%20Ranking%20Report%20\(1979%20-%20Last%20Calendar%20Year\)](https://irma.nps.gov/STATS/SSRSReports/National%20Reports/Annual%20Park%20Ranking%20Report%20(1979%20-%20Last%20Calendar%20Year)) (last visited June 5, 2020).

¹² *Id.*

¹³ *Id.*

¹⁴ See, e.g., Melanie Curry, *Five California Cities Are Ranked in Top 50 U.S. Bicycling Cities*, STREETS BLOG CAL. (Oct. 12, 2018), <https://cal.streetsblog.org/2018/10/12/five-california-cities-are-ranked-in-top-50-u-s-bicycling-cities/>; Noah Higgins-Dunn, *The 10 Most Bike-Friendly Cities in the US*, CNBC (Dec. 12, 2019, 2:16 PM EDT), <https://www.cnbc.com/2019/12/12/the-10-most-bike-friendly-cities-in-the-us.html>; *Top 13 Cycling Cities in the US*, TRAVEL CHANNEL, <https://www.travelchannel.com/interests/outdoors-and-adventure/photos/top-cycling-cities-in-the-us> (last visited June 5, 2020).

¹⁵ *Philip Burton Wilderness*, NAT'L. PARK SERV., https://www.nps.gov/pore/planyourvisit/philip_burton_wilderness.htm (last updated May 11, 2020).

¹⁶ Aaron Teasdale, *Do Bikes Belong in Wilderness Areas?*, SIERRA (Dec. 20, 2017), <https://www.sierraclub.org/sierra/do-bikes-belong-wilderness-areas>.

¹⁷ Marc Peruzzi, *It's Not OK to Poach Trails in Unstaffed National Parks*, OUTSIDE ONLINE (Jan. 11, 2019), <https://www.outsideonline.com/2381951/illegal-activity-national-parks>.

Times travel article recounted how he illegally rode an e-bike on a GGNRA trail, despite scrupulously researching park rules and the August 2019 Smith Directive beforehand.¹⁸ This story suggests that NPS may have a difficult time communicating the Proposed Rule’s specific directives to even the most well-intentioned members of the public. PRNS already struggles to keep cyclists out of prohibited areas, and permitting a whole new class of cyclists will only add to the confusion.

4. The Proposed Rule imperils Wilderness Act protections.

The likely encroachment of e-bikes into PBWA would also constitute a violation of the Wilderness Act of 1964, which prohibits “use of motor vehicles, motorized equipment...[or] mechanical transport” in federal wilderness areas. 16 U.S.C. § 1133(c). E-bikes are a “motor vehicle” under NPS policy. The Proposed Rule defines an e-bike as “a bicycle with a small electric motor that provides power to help move the bicycle.” 85 Fed. Reg. 19711, 19712 (Apr. 8, 2020). This is inconsistent with NPS’s definition of a “bicycle”, which includes only devices “propelled solely by human power.” 36 C.F.R. §1.4. Rather, it is consistent with NPS’s definition of a “motor vehicle”, which includes “every vehicle that is self-propelled and every vehicle that is propelled by electric power.” *Id.* The Proposed Rule admits that this categorization of e-bikes as motor vehicles is correct, stating that “the definition of bicycle includes only those devices that are ‘solely human powered.’ E-bikes are excluded from this definition because they have an electric motor that helps power the device.” 85 Fed. Reg. 19711, 19714 (Apr. 8, 2020).

It is foreseeable, perhaps probable, that e-bikers will encroach into wilderness areas at PRNS, whether intentionally or accidentally. These repeated violations of the Wilderness Act could damage ecologically vulnerable areas at PRNS, which is particularly at risk because of its high visitor traffic and proximity to the Bay Area. We are fortunate to have federal wilderness areas within an hour of a major city, but we are concerned the Proposed Rule will negatively impact Wilderness areas in PRNS.

5. The Proposed Rule violates the Endangered Species Act (ESA).

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973 directs all federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of these species’ habitats. 16 U.S.C. § 1536(a)(2).

PRNS is home to 30 animal species listed by the federal government as endangered or threatened.¹⁹ Of these, 14 are amphibians, semiaquatic or land mammals, land invertebrates, or birds, all of which would

¹⁸ Christopher Reynolds, *I Had Tons of Fun Riding an E-Bike in a National Park. I Also Broke the Law. Oops*, LOS ANGELES TIMES (Feb. 8, 2020), <https://www.latimes.com/travel/story/2020-02-08/e-bikes-national-parks-can-you-ride>.

¹⁹ *Threatened & Endangered Animal Species of Point Reyes*, NAT’L. PARK SERV., https://www.nps.gov/pore/learn/nature/upload/animalspecieslist_endangered.pdf (last updated Aug. 29, 2007).

face a greater threat of physical danger or habitat destruction from e-bikes. The remaining 16 are aquatic animals, which may face indirect threats from e-bike use, such as trail erosion caused by more frequent use of motorized vehicles. PRNS is also home to 15 additional species listed as “species of concern” by the State of California. NPS has no obligation to these species under the ESA, but NPS rulemaking nonetheless affects their future.

PRNS also hosts four plant species listed as endangered or threatened by the federal government— Sonoma alopecurus, Sonoma spineflower, Beach layia, and Tidestrom’s lupine—and three additional species listed as endangered or rare by the State of California.²⁰ These are particularly vulnerable to the Proposed Rule given the heavy impact that bikes have on trails and vegetation. Unlike animals, plants have no opportunity to flee an oncoming cyclist, and bikers may crush them with little notice or regard. The NPS’s own website recognizes the need to protect rare or endangered plants in order to preserve biodiversity and safeguard against changing environmental conditions.²¹ NPS should have honored this commitment in the Proposed Rule.

The Proposed Rule is an NPS action under the ESA, but NPS provided no indication of how it would ensure e-bikes would not jeopardize endangered or threatened species that make their homes in NPS units. In fact, the Proposed Rule does not mention endangered or threatened species, or the ESA whatsoever. *See* 85 Fed. Reg. 19711 (Apr. 8, 2020). Given the number of endangered or threatened species in PRNS, and the likelihood of harm they would face from e-bike use, this omission is unacceptable. If NPS wishes to make its units acceptable to e-bikes, it must comply with federal law and demonstrate how it would protect endangered and threatened species.

6. The Proposed Rule fails to comply with Park Service carrying capacity assessment requirements, which will have a disparate impact at PRNS.

The National Parks and Recreation Act of 1978 requires that Park unit general management plans include “identification of and implementation commitments for visitor carrying capacities for all areas of the System unit.” 54 U.S.C. § 100502(3). Provisions in NPS management policies for Visitor Use apply in order to ensure that a new use is within a unit’s carrying capacity and will not have an unacceptable impact on the particular unit.²²

The Proposed Rule makes no mention of any law or policy surrounding carrying capacity. It includes no assessment of whether any NPS has the carrying capacity to introduce e-bikes.

²⁰ *Threatened, Rare, and Endangered Plants of Point Reyes (and Golden Gate National Recreation Area)*, NAT’L. PARK SERV., https://www.nps.gov/pore/learn/nature/upload/plantspecieslist_rare.pdf (last updated Mar. 26, 2012).

²¹ *Threatened, Rare, and Endangered Plants*, NAT’L. PARK SERV., https://www.nps.gov/pore/learn/nature/endangered_plants.htm (last updated May 8, 2020).

²² NAT’L. PARK SERV., MANAGEMENT POLICIES 2006 (Aug. 31, 2006) at § 8.2.1, <https://www.nps.gov/policy/mp/policies.html>.

This omission is troubling because of the likelihood that e-bikes will have a disparate impact at PRNS. PRNS frequently receives large crowds of visitors, struggles to keep cyclists off of prohibited trails, and is home to at least 34 endangered or threatened species. PRNS is also a somewhat unusual unit with a diverse array of stakeholders. PRNS is most popular for day-use recreation among Bay Area residents, but also permits backcountry overnight camping. Most notably, PRNS is a “working landscape” with active cattle and dairy ranches within its boundaries.²³ Currently, PRNS is undergoing a comprehensive General Management Plan Amendment where carrying capacity levels are being carefully analyzed for future park planning and management efforts. It is essential to allow individual park units to conduct public plans for intensity of use changes to ensure that they are properly analyzed and integrated into park planning efforts. By failing to address the PRNS’s carrying capacity for e-bikes, the Proposed Rule has overlooked stakeholders’ needs and individual park unit planning.

7. The Proposed Rule fails to consider any alternatives.

The Proposed Rule does not consider any alternative action to system-wide e-bike approval, as NEPA requires. 42 U.S.C. § 4332(C)(iii). Alternatives might include prohibiting e-bikes from NPS units as they were before. Or, each unit might conduct its own special rulemaking, as was done in 1987 for the use of traditional bicycles.

8. A Unit-by-Unit approach is favorable.

The 1987 regulation governing the use of bicycles reflected NPS’s belief at the time that “the designation of a bicycle route outside of...developed areas, in areas whose primary purpose and land uses are related more to the preservation of natural resources and values, would have a much greater potential to result in adverse resource impacts or visitor use conflicts.” 51 Fed. Reg. 21840, 21844 (June 16, 1986). Thus, the regulation would “[provide] for a much more stringent decision-making process for such a proposal by requiring that a bicycle route designated outside of developed areas or special use zones be accomplished through a formal rulemaking. Such a process will provide for a thorough review of all environmental and visitor use considerations and assure a full opportunity for public participation in and review of a decision concerning any such proposed designation.” *Id.*

This approach is reasonably transferable to e-biking, as it would allow for the implementation of e-biking on a unit-by-unit basis. We do not disregard the possibility that e-biking may be an appropriate use in some NPS jurisdictions. However, this letter has provided plenty of reasons for caution, especially in PRNS. We favor a formal, transparent rulemaking process that would thoroughly consider both the

²³ See, e.g., Peter Fimrite, *At Point Reyes, the Contest is Elk vs. Agriculture. The People Vote for the Elk*, S.F. CHRON. (Apr. 23, 2020), <https://www.sfchronicle.com/environment/article/At-Point-Reyes-the-contest-is-elk-vs-15203706.php#photo-19301864>; Laura Alice Watt, *The Paradox of Preservation: Wilderness and Working Landscapes at Point Reyes National Seashore* (Univ. of Cal. Press 2016).

unique needs of our community through public participation, as well as the limitations of Point Reyes' natural environment. Given the incredibly diverse array of units throughout the NPS system—from the Grand Canyon to Gettysburg, and from Ellis Island to Isle Royale—we do not doubt that other localities feel the same.

9. Conclusion

We request that NPS withdraw the Proposed Rule. This letter has given ample reason why. The Proposed Rule failed to provide an EIS or EA, as is required by NEPA. The Proposed Rule erroneously claims a categorical exclusion from NEPA, despite plenty of evidence of e-biking's safety issues and environmental hazards to trigger NEPA review. The Proposed Rule further ignores any adherence to the ESA or the National Parks and Recreation Act.

The Proposed Rule would have a disparate impact on frequently visited units like PRNS that are located close to urban areas. Adherence to formal rulemaking procedures required by environmental law would have given our community an opportunity to voice its concerns about e-biking at PRNS. Going forward, PRNS should have the opportunity to implement its own rules surrounding e-biking. Thank you for the consideration of our comments.

Sincerely,



Morgan Patton
Executive Director



Bridger Mitchell
Board President