



STAFF REPORT

DATE May 20, 2021

TITLE:

Off-Road Vehicle Rule Change, Electric Bicycle Regulation and Adaptive Management Pilot Program

RECOMMENDATION:

No action. Staff is seeking feedback from the board on the draft proposed Off-Road Vehicle rule and the phased approach to the Adaptive Management Pilot Program.

BACKGROUND

Beginning in the fall of 2020, staff reported to the board of directors about the need to address the Off-Road Vehicle rule as it relates to electric bicycle (e-bike) regulation. The current rule is neither tenable nor desirable because its language is ambiguous, and it is out of sync with evolving bicycle technology and changing trail use. Additionally, the existing rule is a challenge to enforce because it is neither widely understood nor fully accepted as reasonable. In sum, the Off-Road Vehicle rule language has become a barrier to management's ability to responsively address issues relating to advances in bicycling technology and evolving recreational demands.

Staff's opinion was that the rule should be evaluated and addressed prior to both the 2021 summer season, and the completion and adoption of the Open Space and Trails Master Plan (a 2021 and 2022 Work Plan objective).

At the November 2020 board Meeting, management presented a formal and transparent process to review and evaluate e-bike use and regulation. This process included a robust outreach plan to engage the membership and to obtain meaningful information to assist in the evaluation and decision-making process. Any rule change recommendation would be expected to be widely accepted, sensible, sustainable, and built on an informed foundation.

With the Board's support, staff implemented the plan starting with an information campaign launched at the beginning of the year, followed by member outreach through forums, feedback forms and a survey. Management reported on the outreach process and touched on themes staff were seeing at the February 2021 board meeting.

At the March 2021 board meeting staff presented their findings, which included a process summary, an e-bike regulation review and evaluation, a literature review, completed benchmarking, member survey results, themes from the forums, and other relevant research. Staff also presented a spectrum of options for e-bike regulation at Tahoe Donner: 1) enhance the existing rule, 2) amend the rule to allow for adaptive management, 3) allow full access for e-bikes on all trails. The board's feedback generally favored an adaptive approach to e-bike regulation which would allow staff the flexibility to actively manage the trail system as use evolves. The board supported staff drafting a rule to permit adaptive management Class 1 e-bikes, while excluding Class 2 and 3 e-bikes from the trail system.



ANALYSIS:

Current Off-Road Vehicle Rule:

2.2 Off-Road Vehicles. Snowmobiles, motor-powered bikes, all-terrain vehicles (ATV's), off-road motorcycles and off-road use of any motorized vehicle is prohibited on Common Areas, and other Association-owned properties, except that the Association may use such vehicles in the furtherance of its operations.

The Off-Road Vehicle rule has existed in its present form at least since 1997. By 2012, Tahoe Donner had 22 miles of double track/fire road and approximately 15-20 miles of single track. The fire road construction standards were based on vehicle loads and needs for fire and logging trucks. The single-track trails built between the inception of the development and 2003 were built or established focused on hiker and equestrian. Mountain biking was not part of the planning as few members were actively participating, and those that were tended to be early adopters of what is now a very popular recreational activity.

Following the purchase of open space starting in 2010, and the adoption of the Trails Master Plan in 2012, new trails have been built to the hiker/biker and equestrian design and construction standards described in the Trails Master Plan. Cinnamon Twist, Mother Lode, Mustang Sally and True Grit were planned, designed, and constructed for hiker and biker standards. Rawhide, Giddy Up and EQ Wild West were planned, designed, and constructed for equestrian standards.

As new lands were purchased, new trail building techniques were developed, and new trails were constructed, operational rules on the trail system have evolved over the years to address advances in bicycling and its technology, increased use and popularity of the trail system, and other issues and needs like trail etiquette, more dogs on trails etc. Certain operational changes made were to promote member enjoyment, to improve user experience, to foster responsible trail use, and to improve trail etiquette.

However, the Off-Road Vehicle rule has not been updated to address e-bikes, which have now become very popular and widely used. The problem with the existing rule is that it is outdated and ambiguous. This ambiguity is highlighted by the 2015 passage of AB 1096, which amended California Motor Vehicle Code 312.5. This changed clarified the definition of a "motorized electric bicycle" specifically to mean "moped," and added new separate definitions for three classes of electric bicycles based on their propulsion method and top speed. Because the state defined "motorized electric bicycle" specifically as a moped, and because the Off-Road Vehicle rule language uses the phrase "motor-powered bicycle," many members believed the existing rule was either ambiguous regarding e-bikes, or that the existing rule actually permits e-bikes.

In contrast to these clear definitions, the TDA Off-Road Vehicle rule prohibits the use of "motor-powered bikes" on the trails. This could be interpreted in a variety of ways when applied to advances in bicycling technology. For instance, many otherwise conventional mountain bikes have electronic gear shifters controlled by small motors. The existing rule could be construed to suggest that mountain bikes equipped with electronic gear shifters are also banned from Tahoe Donner trails. A second interpretation might be that it only applies to "[a] 'motorized bicycle' or 'moped'" which is defined as "... a two-wheeled or three-wheeled device having fully operative pedals for propulsion by human power, or having no pedals if powered solely by electrical energy, and an automatic transmission and a motor that produces less than 4 gross brake horsepower and is capable of propelling the device at a maximum speed of not more than 30 miles per hour on level ground." (See Veh. Code, § 406).



Member interpretation, understanding, and acceptance of the current rule remains varied. This was evident when facilitating the initial member outreach this winter. Many members voiced that they did not know there was a prohibition against e-bikes and did not see that the current rule applied to e-bikes. Similarly, members voiced a strong interest in finding a reasonable approach to allowing some access to e-bikes. However, a large portion of hikers are concerned about sharing single-track trails with bicycles in general and worry that permitting e-bike access to those trails will only amplify their concerns. All of which should and is considered by staff when analyzing changes to rules, as well as construction, that adapt to the changing needs of the trail and users.

Finally, staff research, including in person interviews with other land management entities, benchmark, literature review and new analysis on trail use between e-bikes and mountain bikes, demonstrates that all land management entities are addressing e-bike regulation and are modifying ordinance/codes as they make their determinations whether to allow access or not.

Indeed, the recent decision notice released by the United States Forest Service, Tahoe National Forest and Humboldt-Toiyabe National Forest, Truckee Ranger District and Carson Ranger District, which allow e-bikes on 35 miles of single track including the Overland Emigrant trail which abuts the Tahoe Donner trail system, was an important factor in staff rule change and pilot program considerations. The USFS's decision notice includes a comprehensive report examining and answering many of the concerns raised about permitting e-bikes on Tahoe Donner lands. A similar review and process is being implemented in the Lake Tahoe Basin and Western side of the Sierra Crest.

Importantly, while the rule is ambiguous as to e-bikes, the Association itself has and continues to interpret the current rule and prohibition on motor powered bikes as a prohibition on e-bikes. Our website content related to the pilot program and e-bikes confirms that “[u]nder the current Tahoe Donner Covenants Rules, the association prohibits motor-powered bikes on common area and other association-owned property.” While it is arguable as to whether the pilot program is a change to the rule, or merely a temporary modification to study whether and how to change the rule, legal counsel and staff will be recommending that in conjunction with launching phase 2 of the pilot program, the Board can approve publishing the proposed revised Off Road Vehicle Rule above for the 45-day member review period, and thereafter adopt the revised rule at a duly noticed Board meeting.

The draft proposed rule is as follows:

***2.2 Off-Road Vehicles.** Snowmobiles, motorized bicycles (aka mopeds), Class 2 and 3 electric bicycles ~~powered bikes~~, all-terrain vehicles (ATV's), off-road motorcycles and off-road use of any motorized vehicle is prohibited on Common Areas, and other Association-owned properties, except that the Association may use such vehicles in the furtherance of its operations. Class 1 electric bicycles may be used off road on those trails or common areas designated by the Association for their use. The Association, from time to time, may adopt an active adaptive management process that may include pilot programs, and in so doing may adopt additional rules, such as designating certain trails for certain uses and not other uses. The California Vehicle Code definitions of any terms used herein shall apply to any interpretation of this rule.*



Adaptive Management Pilot Program

Adaptive management will provide a systematic approach to trail management that promotes flexible decision making which can be adjusted, based on feedback from all stakeholders and trail users. It allows for an iterative process which includes member participation throughout, reduces uncertainty for members, and increases responsiveness to the changing needs of the users and environment.

The pilot program benefits members by:

- Exploring different ways to address issues members have expressed during the initial member outreach
- Improving understanding of member perspective and ideas for solutions
- Introducing concepts to begin testing ways to enhance user experience
- Improving safety and trail flow
- Improving recreational options for more members

The proposed Adaptive Management Pilot Program for this summer is structured in a phased approach to address the varying needs, most notably planning, resource allocation, communication, and education material development, and 45-day Notice for proposed rule change publication. The program is a sensible approach to

engage and measure member acceptance. The Pilot Program is not a rule change in itself, but is part of the process to develop rule, policy, and management changes.

Adaptive Management Pilot Program

- Phase 1:
 - Phase 1 to begin in June and run through October 2021.
 - Implement pilot testing changes to hiker, biker, equestrian trails to designate usage. Implement directional only on one or more trails.
- Phase 2:
 - Phase 2 to begin in August and run through October 2021.
 - Publication of proposed rule: Board approval of 45-day notice for rule change and publication of notice must occur to initiate Phase 2 implementation.
 - Current plan is for the board to approve the 45-day notice at the June 25 meeting and publication of notice to occur in the August TDNews.
 - Implement temporary e-bike access to all double-track and some designated single-track

Specific to E-bike temporary access, the following special conditions will be established as part of the Pilot Program:

- Only Class 1 e-bikes allowed on designated trails and fire roads
- Class 2 and 3 e-bikes not permitted
- E-bikes and all traditional bicycles should slow speed to less than 5 mph when passing
- Commercial e-bike operations are not authorized on TDA property, with the exception of management planned and invited representation/demo at pilot program event(s).
- Aftermarket kits installed are not permitted

A description of the phases of the program is provided below and in more detail in Exhibit A May 28, 2021 Board Meeting E-bike Regulation and Adaptive Management Presentation Slide Deck.



The concepts proposed in the pilot program aim not only to address e-bike regulation, but also issues raised during the initial member outreach process including,

- Members are generally open-minded and want to find practical solutions improve the trail experience for all users.
- Hiker experience has degraded over the last decade as mountain biking has increased in popularity.
- Support for e-bike access on double-track and strong divergence of opinion for single-track access based on user type (hiker or biker respondent).
- Current TDA member e-bike users peak between 50-59 years old and those who are interested in purchasing are 50+ years old.

Monitoring and Feedback

The pilot program is design to control demands of staff and implement a monitoring and evaluation of the pilot program through cooperation of internal departments and an ambassador program. In tandem with the monitoring and evaluation of the pilot program, continued robust member outreach and feedback will occur, similar to the initial feedback earlier this year. Members will be informed about the pilot program and be enlisted to participate in a variety of ways, including field surveys, online feedback forms, forums, and event(s) days. Ultimately, staff wants the members to weigh in during and after the pilot, not merely because members can and should weigh in with their personal opinions regarding the pilot program and rule and policy changes, but also because members are the best eyes we have on the trails, and they can be part of the “team” that will be monitoring the effects and reception of the pilot program elements.

Reporting

Staff will provide regular updates to the board throughout the pilot program. Following the conclusion of the pilot program in the fall, staff will provide a pilot program report to the board of directors and membership.

Implementing the proposed pilot program this summer not only allows for responsiveness to member needs now, but also provides staff and the future consultant with real data and information to further inform the Open Space and Trails Master Plan. In the next phase of trail system development and management (which will begin after the Open Space and Trails Master Plan is complete and adopted - 2021 and 2020 Work Plan objective), staff anticipates we will move away from a “system of multi-use trails” to a “multi-use trail system that will include designated use trails”. These designated use trails will be designed to deliver specific types of experiences to specific user groups.

Further, by means of improved system design (one-way trails, bypass trails, and so forth), the flow of user traffic will be altered to distribute usage away from currently congested portions of the system. Additional trailheads and trail access points will also reduce user density by distributing users more evenly across the entire trail system.

Finally, all user groups and all trails will be subject to “adaptive management” techniques that will enable management to fine-tune the system to ever-changing user demands and usage patterns, while optimizing the user experience for each user group. Therefore, staff is recommending implementation of the Adaptive Management Pilot Program for the 2021 summer season and seeking feedback from the board on any additional changes to the proposed Off-Road Vehicle rule, or other rules, as necessary.



OUTREACH:

Staff performed an initial member outreach on e-bike regulation between January and March 2021. Ongoing board of directors updates and discussions at the February, March, and April board meetings. Monthly discussion or updates took place with the Trails and Open Space GPC Subcommittee.

Staff has completed due diligence with legal counsel and insurance carriers specific to e-bike access on the trail system. Tahoe Donner’s insurance carrier does not see any difference in risk associated with an e-bike versus a mountain bike on the trail system.

FISCAL IMPACT

Operational expense relating to program rollout estimated to be within 2021 operating budget.

ALTERNATIVES:

The board has several alternatives:

1. The board may choose to direct staff to modify the proposed modified off-road vehicle rule, and/or components and timing of the pilot program based on board feedback.
2. The board may also choose to take action to approve publication to the members for the 45-day notice for proposed changes to the Off-Road Vehicle rule in the next available Tahoe Donner News (July edition) at a special board meeting in early June to meet publication deadlines, and put the adoption of the proposed revised rule on the agenda of a duly notice board meeting thereafter.
3. The board may choose to postpone any portion of the initiative and provide staff with feedback or direction.

ATTACHMENTS:

- EXHIBIT A May 28, 2021 Board Meeting E-bike Regulation and Adaptive Management Presentation Slide Deck
- EXHIBIT B Adaptive Management Pilot Program Plan
- EXHIBIT C Decision Notice United States Forest Service, Tahoe National Forest and Humboldt-Toiyabe National Forest, Truckee Ranger District and Carson Ranger District

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Board Meeting Date: May 28, 2021

General Manager Approval to Place on the Agenda: _____