



STAFF REPORT

DATE June 15, 2021

TITLE:

Proposed Off-Road Vehicle Rule Changes, Electric Bicycle Regulation and Other Noted Changes

RECOMMENDATION:

By Motion:

The board of directors approves for publication the proposed changes to the Off-Road Vehicle rule for 45-day member notification and member comment period. Publication of the 45-day notice will be delivered to the members by a special general delivery mailer.

BACKGROUND

Pursuant to Tahoe Donner Covenants and Restrictions Article III Section 7 “the board may, from time to time, propose, enact, amend rules and regulations of general application to the Owners of Separate Interests within the Properties.” Article III Section 7 (b) states, “...no association rule shall be adopted until the proposed rule or amendment thereof has been published to the members at least 45 days prior to the date when the board is scheduled to act on the proposal...”

This Staff Report addresses the need for changes to the Off-Road Vehicle rule following an extensive board discussion, feedback and member outreach starting in November 2020 through May 2021. For a more thorough background on the process to this point please reference Exhibit A.

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 current rule needs to be updated to address and clarify motorized and motor-propelled vehicle use on Association Common Areas, and other Association Real Property, on which the trails and fire road system (“trail system”) are encompassed.

The proposed changes aim to address:

- Ambiguity of the existing rule language: Due to changes to state motor vehicle regulations and advances in bicycle technology, many members believe the existing rule is ambiguous regarding e-bikes. Daily staff interaction and feedback with members and guests on the trail, and observation of e-bike usage attest to the apparent ambiguity.
- Update the rule to match modern terminology: The existing rules was adopted in 1997 and has not been updated over the last 25+ years to adjust to modern terminology of off-road and motorized vehicles.
- Update the rule to address technological advances and emerging off-road vehicle trends including but not limited to electric bicycles.



- Changing needs of the membership: through the e-bike regulation member outreach process this year, themes of changing member needs and member experience when using the trail system were evident. This rule change is one piece of the management plan to improve and sustain the trail system and user experience.

In the May 28, 2021 staff report, staff presented a working draft of the proposed rule change, along with suggested concurrent implementation of Phase 2 of the drafted Adaptive Management Pilot Program, based on legal counsel providing options to explore the rule change. Phase 2 included provide access for e-bikes on double-track/fire roads and some single-track trails. Staff is no longer proposing running Phase 2 of the Adaptive Management Pilot Program concurrently with the 45-day notice period. Running an e-bike phase poses legal challenges, and further dilutes the focus of the rule change process. Thus, staff is of the opinion that presenting the members with the rule change alone is the best path forward.

Assuming the board authorizes publication of the rule change for 45-day notice and the board of directors adopts the proposed rule changes making them effective on the day of adoption, staff recommends immediate authorization of Class 1 e-bikes on all fire roads/double track for the remainder of 2021. In 2022 any further access for e-bikes will be evaluated based on information gained in 2021 and applied in a pilot program to include member outreach and codified in open space and trails policies.

In the presented proposed rule changes, you will find articulation of board feedback including

1. Affirmative Class 1 electric bicycle use language
2. Broad governance giving certainty that Class 1 e-bike access will be governed through Association policy

The Tahoe Donner Restated Bylaws Article VII and IX state that the board of directors approves rules and policy regulations to be implemented by staff, and at times delegates authority on policy regulation to officers of the organization including the General Manager. As with the case of e-bike use, future policies will be approved through the Open Space and Trails Master Plan which is a Strategic Plan initiative and 2021 and 2022 Work Plan project.

The draft proposed rule is as follows:

2.2 Off-Road Vehicles. *Snowmobiles; off-highway vehicles (e.g., ATV's, UTV's, SXS's); ~~motor-powered bikes, all terrain vehicles (ATV's), off-road motorcycles; motorized bicycles (i.e. mopeds); Class 2 and 3 electric bicycles; motor-propelled scooters or boards; electric unicycles;~~ and off-road use of any other motor-propelled ~~motorized~~ vehicle is prohibited on Common Areas, and other Association-owned properties, with the following exceptions; ~~except that~~ First, the Association may use such vehicles in the furtherance of its operations. Second, Class 1 electric bicycle usage is authorized on the Association trail and fire road system segments designated and regulated for their use through Association open space and trails policies.- The California Vehicle Code definitions of any terms used herein shall apply to any interpretation of this rule.*

Note:

Red text signifies new or amended language. Strikethrough text signifies deletions.



To summarize staff is recommending the following next steps,

1. The board take action to authorize publication of the proposed changes to the Off-Road Vehicle rule for 45-day member notification period.
2. The publication of the 45-day notice will be a special general delivery mailer to the members to expedite the notice period start date.
3. Future discussion item: Board will hear member comments on the proposed rule change at the July 23, 2021 board meeting.
4. Future action item: Board action to adopt the rule change to be on the August 27, 2021 board meeting.
5. Future action item: Following board adoption of the rule, Class 1 e-bikes will be allowed on double track/fire roads in 2021. In 2022 any further access for e-bikes will be evaluated based on information gained in 2021 and applied in a pilot program to include member outreach and codified in open space and trails policies.

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

Estimated \$3,000-6,000 in operational expense for direct mailing of 45-day notice to the members.

ALTERNATIVES:

The board has several alternatives:

1. The board may choose to direct staff to modify the proposed modified off-road vehicle rule and bring the proposed rule change back to the board at a future board meeting.
2. The board may 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 (August edition).
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 Staff Report E-bike Regulation and Adaptive Management
- EXHIBIT B Draft 45-day Notice to Members and Comment Period
- EXHIBIT C TD Trail Map – Demonstrating double track/fire road e-bike access

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Board Meeting Date: June 25, 2021

General Manager Approval to Place on the Agenda: _____