

**PETITION FOR RULEMAKING**  
**PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 553(e)**

**BEFORE THE ALLEGHENY NATIONAL FOREST SUPERVISOR**

**FOR THE AMENDMENT OF THE 2007 ALLEGHENY NATIONAL FOREST LAND  
AND RESOURCE MANAGEMENT PLAN**

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Respectfully submitted by:



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## Section I: Introduction

Pursuant to § 553(e) of the Administrative Procedure Act (APA) and 7 C.F.R. § 1.28, the Friends of Allegheny Wilderness (Petitioners) petition the Allegheny National Forest Forest Supervisor to amend the 2007 Allegheny National Forest Land and Resource Management Plan (the Plan or Plan).<sup>1</sup> Currently, the Plan allows mountain biking on most non-motorized trails throughout Allegheny National Forest. Petitioners hereby petition the Allegheny National Forest Forest Supervisor to amend the Plan to prohibit all mountain biking on non-motorized trails, excluding the Jakes Rocks Overlook and Mountain Bike Trail (Jakes Rocks). Petitioners also request that pedestrians are prohibited from using the Jakes Rocks. Specifically, the amendment must edit the Design Criteria section to insert a new standard prohibiting all bicycles on non-motorized trails and prohibiting hikers from Jakes Rocks. Petitioners also request that for safety reasons pedestrians are prohibited from using Jakes Rocks.

Removing all bicycle use from non-motorized trails in Allegheny National Forest (ANF) is critical in order to uphold the integrity of the land and trails according to the Plan. The increased popularity of electric motorbikes, known as e-bikes, makes this action even more critical. Due to the indistinguishable nature of regular bicycles and e-bikes, it is necessary to implement a ban of both types. E-bikes look identical to regular bicycles; however, they can reach speeds of almost thirty miles per hour and as a result, users can ride for more miles with less effort.<sup>2</sup> The capability to reach this speed raises substantial safety, land degradation, and trail conflict concerns. Prohibiting only e-bikes will lead to practical enforcement problems for

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<sup>1</sup> 5 U.S.C. § 553(e) (“Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.”).

<sup>2</sup> International Mountain Bicycling Association, eMTB Education, <https://www.imba.com/education/emtb> (last visited Oct. 11, 2020.).

authorities. Banning all bicycles from non-motorized trails will provide a pragmatic solution to this pressing problem.

A key goal for trails in ANF is developing trail systems that minimize user conflicts.<sup>3</sup> In non-motorized areas, hikers conflict with mountain bicyclists, especially users on e-bikes who can cover more area quicker and with more of an impact on the trail. Trail systems must respond to changing social needs.<sup>4</sup> With the explosion of e-bike use over the past few years, and the explicit intent of the USFS to expand e-bike use, a “technological hierarchy” is created on trails, exacerbating the conflict experienced by hikers.<sup>5</sup>

Petitioners stress that prohibiting bicyclists on non-motorized trails would not impact bicyclists’ right to bike on other trails and roads throughout ANF. Bicyclists must have unfettered access to trails that are built and maintained for biking. As such, Jakes Rocks Overlook and Mountain Bike Trail must be reserved solely for bicyclists. To complement the biking ban on non-motorized trails hikers and pedestrians in general must be prohibited from using Jakes Rocks. In addition to Jakes Rocks, bicyclists can take advantage of all of ANF’s logging roads and ATV trails.

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<sup>3</sup> United States Forest Service, United States Department of Agriculture, Allegheny National Forest Land and Resource Management Plan (March 2007), 13.

<sup>4</sup> Land Management Plan, *supra* note 3, at 13.

<sup>5</sup> See Aaron Teasdale, *Do Bikes Belong in Wilderness Areas?*, SIERRA (Dec. 20, 2017), <https://www.sierraclub.org/sierra/do-bikes-belong-wilderness-areas>.

## Section II: Factual Background

Petitioner's mission is to foster an appreciation of wilderness values and benefits, and to work with local communities to ensure that increased wilderness protection is a priority of the stewardship of ANF.

Human impact in ANF is extensive, and in order to allow the remaining, largely untrammelled wild areas to fully recover from that impact, the United States Forest Service (USFS) must act to regulate the land. The bicycle prohibition will apply to all non-motorized trails, which includes the proposed Tracy Ridge and Morrison Run wilderness areas, and many others. Prohibiting the use of bicycles on all non-motorized trails is an easy and obvious step towards hiker safety and encouraging the enhancement of the wildness of the wilderness.

A rule prohibiting bicycles on non-motorized trails would impact a minority of the trails that bicyclists are currently allowed to ride. The new Jakes Rocks Overlook and Mountain Bike Trail was designed, engineered, and constructed specifically to accommodate the rigors of continued mountain biking. Over forty miles of trails were recently added to Jakes Rocks for the express purpose of providing more trail mileage for mountain bicyclists. Thus, continuing to allow mountain biking on Jakes Rocks is entirely appropriate. Jakes Rocks would be excluded from the Plan amendment and further, pedestrians would be prohibited from using Jakes Rocks.

Additionally, mountain bicyclists would still enjoy the motorized trails including Rocky Gap, Willow Creek, Marienville, Timberline, and Penoke. Mountain bicyclists currently have 189.3 miles of trail to use in ANF whereas prohibiting bikes in the non-motorized areas would remove forty-five and one half miles from that total. With this amendment, mountain bicyclists

would have 143.8 miles available for their use. ANF also includes several thousands of miles of logging roads networking throughout its land. There are more logging roads per acre in ANF than in any other National Forest in America. These roads provide remote destinations for mountain bicyclists as well as appropriate, durable surfaces for their bicycles. When these logging roads are taken into account, it is even more obvious that mountain bicyclists need not expropriate cherished hiking trails as well.

### Section III: Legal Background

Petitioners bring this petition under 5 U.S.C. § 553(e), which provides interested persons with the right to petition for the issuance, amendment, or repeal of a rule. Further, in accordance with APA § 553(e), USDA regulations provide interested persons an analogous right to petition for rulemaking.<sup>6</sup> Per the USDA regulations, Petitioners have a right to a prompt consideration and response to this Petition.<sup>7</sup> Petitioners call upon the ANF Forest Supervisor to initiate the amendment process for the 2007 ANF Plan, per her authority under USFS regulations.<sup>8</sup>

A change to the standards and guidelines in the Design Criteria is cognizable as a plan amendment.<sup>9</sup> The Plan mentions specifically that amendments are used for “any other changes that cannot be addressed through administrative corrections or site-specific plan amendments.”<sup>10</sup> Prohibiting biking on non-motorized trails goes beyond the scope of an administrative correction, which is reserved for edits such as corrections of clerical errors or bringing a plan

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<sup>6</sup> 7 C.F.R. § 1.28.

<sup>7</sup> *Id.* (“All such petitions will be given prompt consideration and petitioners will be notified promptly of the disposition made of their petitions.”).

<sup>8</sup> 36 C.F.R. § 219.2(b)(3).

<sup>9</sup> Land Management Plan, *supra* note 3, at 5.

<sup>10</sup> *Id.*

into conformity with a new statutory requirement.<sup>11</sup> The proposed change is not site-specific as Petitioners assert that biking must be prohibited on all non-motorized trails throughout ANF (excluding Jakes Rocks), not limited to a particular area or areas. The Plan further states that any changes to the forest-wide standards and guidelines in the design criteria section must be “preceded by a Forest Plan amendment.”<sup>12</sup>

This petition is required because there are changed conditions that necessitate the need for amending the plan. To initiate an amendment, the responsible official first must identify a preliminary need for a change in the plan.<sup>13</sup> The Supervisor’s preliminary identification of the need for a change may come from documentation of new information or changed conditions, per USFS regulations.<sup>14</sup> While the regulations provide no definition of documentation, the Forest Service Handbook delineates several examples.<sup>15</sup> Pertinent to this Petition is “[o]ther documentation of new information, changed conditions, or changed circumstances on the plan area, *from any source*.”<sup>16</sup> The Forest Service Manual additionally provides that changed physical, social, or economic conditions may necessitate the need for a change prompting a plan amendment.<sup>17</sup>

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<sup>11</sup> 36 C.F.R. § 219(c).

<sup>12</sup> Land Management Plan, *supra* note 3, at 2.

<sup>13</sup> 36 C.F.R. § 219.13(b)(1); 36 C.F.R. § 219.5(a)(2)(ii).

<sup>14</sup> 36 C.F.R. § 219.13(b)(1).

<sup>15</sup> See Forest Service Handbook 1909.12\_20 § 21.21.

<sup>16</sup> *Id.* at 1909.12\_20 § 21.21(2)(d) (emphasis added).

<sup>17</sup> Forest Service Manual 1926.5.

As discussed below in Section IV, the USFS's intention to allow e-bikes wherever bicycles are allowed, as set forth in its Federal Register notice, is a clear changed social condition that must be addressed by amending the Plan.<sup>18</sup> Additionally, this Petition serves as documentation of changed conditions and changed circumstances in ANF since the Plan's adoption in 2007.

## Section IV: Need for the Change

E-bikes are bicycles that have a concealed embedded electric motor, and the motor can either assist while the user is pedaling or can propel the bike without pedaling.<sup>19</sup> Federal law, under the Consumer Product Safety Act, refers to e-bikes as a "low-speed electric bicycle" and defines them as "a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor [. . .] is less than 20 mph."<sup>20</sup> This definition, however, does not consider the maximum speed of an e-bike when the motor is assisted by human propulsion.

Recently, the Bureau of Land Management adopted regulations aligning the definition of e-bikes with typical manufacturer classifications.<sup>21</sup> A class 1 e-bike is "an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour."<sup>22</sup> In comparison, a

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<sup>18</sup> See Notice of Availability for Public Comment, 85 Fed. Reg. 60129 (Sept. 24, 2020).

<sup>19</sup> National Conference of State Legislatures, State Electric Bicycle Laws: A Primer, <https://www.ncsl.org/research/transportation/state-electric-bicycle-laws-a-legislative-primer.aspx#intro> (Aug. 25, 2020).

<sup>20</sup> 15 U.S.C. § 2085(b).

<sup>21</sup> See *generally* PeopleForBikes, eMTB Land Manager's Handbook 3, [https://wsd-pfb-sparkinfluence.s3.amazonaws.com/uploads/2017/11/eMTB\\_Book\\_11.7.17\\_lowrez.pdf](https://wsd-pfb-sparkinfluence.s3.amazonaws.com/uploads/2017/11/eMTB_Book_11.7.17_lowrez.pdf).

<sup>22</sup> 43 C.F.R. § 8340.0-5(j)(1).



Class 2 e-bike is “an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.”<sup>23</sup> Last, Class 3 is distinguished from the previous classes by “a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.”<sup>24</sup>

As e-bikes grow more popular, it is necessary for USFS to take action to protect lands that are not amenable to this heavy and sustained recreation. E-bike use in the United States has grown by 450% since 2013.<sup>25</sup> Between May 2017 and May 2018, e-bike sales increased by 83%.<sup>26</sup> E-bikes also totaled 10% of all bicycle sales in that same period.<sup>27</sup> Given that e-bikes are indistinguishable from regular bicycles, it is imperative that all forms of bicycles are prohibited from the non-motorized trails in ANF. Allowing regular bicycles, while prohibiting e-bikes, presents a practical enforcement challenge. The two types of bicycles are indistinguishable and therefore USFS employees in ANF would find it difficult to differentiate between a rider on a regular bicycle and one on an e-bike. Biking, and mountain biking particularly, is growing as a popular form of recreation.<sup>28</sup> As more bicyclists take to the trails in ANF, e-bike users can more

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<sup>23</sup> 43 C.F.R. § 8340.0-5(j)(2).

<sup>24</sup> 43 C.F.R. § 8340.0-5(j)(3).

<sup>25</sup> PeopleForBikes, *supra* note 20, at VI.

<sup>26</sup> Doug McClellan, *E-Bikes See Strong Sell-In and Sell-Through in U.S. Market*, BICYCLE RETAILER, Aug. 15, 2018, at 15.

<sup>27</sup> *Id.*

<sup>28</sup> SAUSER WIND, MOUNTAIN BIKE (MTB) INDUSTRY STATISTICS, <https://www.sauserwind.com/mountain-bike-mtb-industry-statistics/> (last visited Oct. 11, 2020) (stating that bicycle sales have grown from 15.3 million in 1992 to 20.2 million in 2015, with mountain bikes making up 24% of such growth.); Tim Newcomb, *Amid Cycling Surge, Sport of Mountain Biking Is Seeing Increased Sales and Trail Usage*, Forbes (Jul. 13, 2020), <https://www.forbes.com/sites/timnewcomb/2020/07/13/amidst-cycling-surge-sport-of-mountain-biking-seeing-increased-sales-trail-usage/#55091cb43ddf> (stating that NPD Sports found a 117% increase in mountain bike sales in April and May compared to 2019.).

easily blend in, evading enforcement of the prohibition. Banning all bicycles mitigates this enforcement issue.

Recently, the federal government has acknowledged that e-bikes are becoming increasingly popular in the United States. USFS itself published a notice in the Federal Register on September 24, 2020 stating that it is seeking public comment on its proposal to revise its directives and clarify guidance on e-bikes.<sup>29</sup> USFS explicitly notes that “[e]-bikes have become increasingly popular nationwide[.]”<sup>30</sup> The proposed change in USFS directives seeks to amend the Forest Service Manual (FSM) 7702 to include promoting e-bike use as an objective.<sup>31</sup> Further changes to the FSM include defining “bicycle,” and “e-bike,” including the different classes – “Class 1,” “Class 2,” and “Class 3 e-bike.”<sup>32</sup> Currently, e-bikes are considered motorized vehicles and e-bike use is prohibited on National Forest System roads and trails that are not designated for motorized vehicle use; however, the proposed changes also seek to change guidance on designating trails for motor vehicle use.<sup>33</sup>

The USFS notice states that its changes will align with Department of Interior (DOI) e-bike policy. The notice cites specifically to a proposed rule from the Bureau of Land Management (BLM) that promotes e-bike use on Department of Interior (DOI) lands.<sup>34</sup> The

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<sup>29</sup> 85 Fed. Reg. 60129.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*; Increasing Recreational Opportunities Through the Use of Electric Bikes, 85 Fed. Reg. 20229, 20230 (Apr. 10, 2020) (“The BLM expects that the changes directed by the proposed rule would result in an increase in e-bike ridership on public lands.”).

notice of proposed rulemaking stated that BLM plans to generally allow e-bike use on roads and trails where regular, non-motorized bicycles are allowed.<sup>35</sup> Since USFS published its notice seeking comments, BLM finalized the rule that USFS referenced, retaining the essential components from the notice of proposed rulemaking.<sup>36</sup> The final rule allows e-bikes to be treated the same as mechanized, non-motorized bicycles on roads and trails under BLM jurisdiction.<sup>37</sup> The amended regulations state that e-bikes are excluded from the definition of off-road vehicles when used on trails where regular bicycle use is permitted, in a manner in which the motor is not exclusively propelling the e-bike, and where an officer determined that e-bikes should be treated the same as non-motorized bicycles.<sup>38</sup> This change means that theoretically e-bikes could be used on any BLM land where regular bicycle use is permitted.

Notably, BLM's rule gives officials discretion.<sup>39</sup> Officials may determine, through land-use planning, that e-bikes should, or should not, be treated the same as non-motorized bicycles.<sup>40</sup> When an official expressly determines that e-bikes are appropriate in a given land use plan, e-bikes will be treated the same as non-motorized bicycles.<sup>41</sup> This rule is not a green light to allow e-bikes on any BLM lands; rather, it opens up the possibility of e-bike use depending upon whether such use would be appropriate given the circumstances.

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<sup>35</sup> 85 Fed. Reg. 20229, 20231.

<sup>36</sup> Increasing Recreational Opportunities Through the Use of Electric Bikes, 85 Fed. Reg. 69206 (Nov. 2, 2020) (codified at 43 C.F.R. 8340.0-5).

<sup>37</sup> *Id.* at 69223.

<sup>38</sup> 43 C.F.R. § 8340.0-5(a)(5)(i)-(iii).

<sup>39</sup> *See* 43 C.F.R. § 8340.0-5(a)(iii).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

USFS's choice to reference the BLM rule strongly suggests that USFS plans to take similar if not identical actions on e-bikes applicable to land under its jurisdiction. As it stands, the USFS notice for public comment on revising e-bike guidance does not contain specific plans, but the BLM rule provides some insight into what USFS might do after this comment period ends. Much like the land-use planning under BLM, USFS land management plans serve as a tool for creating customized and unique approaches to managing and using USFS land. As the BLM rule states, e-bikes can be dealt with under land use plans and responsible officials maintain discretion in deciding whether to allow e-bikes in certain areas.<sup>42</sup> In the USFS context, land management plans can function comparably. Plans under USFS authority develop unique and situational goals and actions that can differ greatly from one National Forest to the next. This means that while e-bike use will likely be promoted as a general policy by USFS soon, it is not necessarily appropriate for every National Forest or every area within a National Forest. For ANF, non-motorized trails should be protected from vehicles that rely upon more than just human propulsion. Increasing e-bike use is inappropriate in ANF non-motorized areas.

A broad, nationwide goal of promoting e-bike use on USFS lands is not suitable for all USFS lands. In fact, USFS's explicit acknowledgment of the rapid growth in e-biking makes Petitioners requested actions even more imperative. ANF includes sixteen separate Management Areas, each with its own distinctive objectives and suitable or unsuitable activities.<sup>43</sup> Applying a federal policy that generally expands e-bike use does not align with the stated conditions and objectives of specific areas within ANF. For example, ANF's Management Area 7.2, Remote

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<sup>42</sup> *Id.*

<sup>43</sup> *See generally* Land Management Plan, *supra* note 3.

Recreation Area, “provide[s] habitat conditions for wildlife species that are sensitive to human disturbance.”<sup>44</sup> While recreation, such as hiking or camping, is allowed in this Management Area, e-bike use is growing nationally and could potentially increase the amount of people on trails within Management Area 7.2 generally.<sup>45</sup> This uptick in individuals participating in recreational activities could work against the desired conditions and disturb the species that are already sensitive to human disturbance. In addition, the Plan explains that in Management Area 8.2 “[v]egetation management is limited and emphasizes maintenance of the natural, undeveloped character of these areas while providing high quality scenic and recreational opportunities for the public.”<sup>46</sup> While recreation is available in 8.2 in mostly primitive forms, allowing technological advancements, like e-bikes, would disturb the mostly “natural, undeveloped character” and undercut the “high quality scenic” attributes.<sup>47</sup> Even mountain bicyclists are concerned with the environmental impacts e-bikes may have. One national survey of attitudes toward e-bikes found that major concerns were trail widening and unauthorized trail development.<sup>48</sup> These types of impacts could greatly disturb the character of Management Area 8.2 and ANF land generally, which the Plan aims to protect. Overall, applying a broad policy of e-bike promotion is inappropriate due to ANF’s varied nature.

The unique character of ANF warrants increased protections for its land. ANF contains only two designated wilderness areas under the Wilderness Act of 1964, amounting to less than

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<sup>44</sup> *Id.* at 137.

<sup>45</sup> *Id.* at 138.

<sup>46</sup> *Id.* at 28.

<sup>47</sup> *See id.*

<sup>48</sup> INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION, *Experiences and Perceptions of Mountain Bicyclists Regarding eMTBs: User Survey Results*, 8, [https://b.3cdn.net/bikes/1e7ebf1906be7477f3\\_6fm6bibgu.pdf](https://b.3cdn.net/bikes/1e7ebf1906be7477f3_6fm6bibgu.pdf).

two percent of its total acreage. Also, ANF is the only National Forest in Pennsylvania but it is within a day's drive from many large urban centers, like Buffalo, Detroit, Cleveland, Pittsburgh, Washington, D.C., and Philadelphia. ANF is easily accessible to a large segment of the United States' population yet those visitors have limited access to undisturbed wilderness. Even the 1986 ANF Land Management Plan highlighted this acute wilderness shortage, stating that "it seems obvious that the demand for wilderness designation on the Forest is high, and the available supply in the regional area is low."<sup>49</sup>

The Eastern Wilderness Areas Act of 1975 similarly realized ANF's lack of wilderness, recognizing that "in the more populous eastern half of the United States there is an *urgent need* to identify, study, designate, and preserve areas for addition to the National Wilderness Preservation System." More than 30,000 acres of ANF were proposed to be included as a part of the Senate version of that bill; however, none made the final act. Considering ANF's unique position, it is critical to keep land, including its trails, mostly undisturbed to cultivate the possibility of future wilderness designation.

E-bike use also creates a grave risk to hikers on non-motorized trails. E-bikes have the potential to reach upwards of thirty miles per hour, making them a dangerous threat to those walking in their way.<sup>50</sup> This is especially true for vulnerable populations, such as the elderly or children under the ages of ten, who do not have the reflexive capabilities to dodge an incoming e-bike. In order to avoid serious safety concerns, all bicycles must be prohibited from the non-

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<sup>49</sup> United States Forest Service, United States Department of Agriculture, Allegheny National Forest Land and Resource Management Plan (March 1986), 2-5.

<sup>50</sup> International Mountain Bicycling Association, eMTB Education, <https://www.imba.com/education/emtb> (last visited Oct. 11, 2020).

motorized trails in order to ensure that e-bikes are not blending in among other, non-motorized bicycles.

ANF's Plan asserts that one goal for trails is to "[m]anage the trail system to support a wide variety of recreation opportunities and settings."<sup>51</sup> But even with the proposed amendment to the Plan, recreation is plentiful. The prohibition of bicycles would only apply to about forty-five miles of trails. To put that number in perspective, mountain bicyclists would still enjoy almost 144 miles in trails. Additional miles are available to bicyclists on logging roads that exist all throughout ANF. Removing bicycles from these areas only changes the recreation scene slightly but the environmental impacts could be extremely beneficial for future wilderness designation.

Competing types of recreation leads to a conflict between users. These conflicts extend beyond motorized and non-motorized users, expanding to equestrians and hikers, hunters and non-hunters, and most relevant, mountain bicyclists and hikers.<sup>52</sup> Recreational conflict refers to either interpersonal conflict or social values conflict.<sup>53</sup> The type of conflict that occurs between users on ANF trails is interpersonal. Interpersonal conflict occurs when the presence or behavior of an individual or group interferes with the goals of another individual or group.<sup>54</sup> This issue is

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<sup>51</sup> Land Management Plan, *supra* note 3, at 13.

<sup>52</sup> Pate Neuman & Courtney W. Mason, *Managing Land Use Conflict Among Recreational Trail Users: A Sustainability Study of Cross-Country Skiers and Fat Bikers*, 28 J. OUTDOOR RECREATION & TOURISM, May 2019, at 1, 2.

<sup>53</sup> Pam Carothers, Jerry J. Vaske, & Maureen P. Donnelly, *Social Values versus Interpersonal Conflict among Hikers and Mountain Bikers*, 23 LEISURE SCIENCES 47, 47 (2001).

<sup>54</sup> *Id.*

particularly troublesome when new forms of recreation are allowed on trails but not managed appropriately.<sup>55</sup>

The growth in both mountain biking and e-biking threatens to eliminate the harmonious multi-use nature of ANF trails. Social science research has established that conflict exists among hikers and bicyclists, and e-bikes threaten to exacerbate this conflict.<sup>56</sup> Increasing conflicts between types of recreationists due to the rapid increase in e-bikes nationwide is a changed social circumstance with an urgency warranting an amendment to ANF's Plan. Further, when trails are shared by several forms of recreation, a hierarchy is established.<sup>57</sup> This "technological hierarchy" begins with hikers at the top, then equestrians, mountain bicyclists, and motorists or ATV users.<sup>58</sup> The higher numbers – mountain bicyclists or motorists – are not bothered by the lower numbers (hikers), but the lower numbers are disturbed by the presence of the higher numbers. In general, recreationists using less developed technology, i.e. hikers, have their experience disturbed by those using technology – bicyclists or motorists.<sup>59</sup> This theory is supported by research indicating that hikers were more likely to experience conflict than mountain bicyclists.<sup>60</sup> E-bikes exacerbate this problem as they are a faster and heavier form of the regular mountain bike.<sup>61</sup>

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<sup>55</sup> Neuman, *supra* note 52.

<sup>56</sup> See Neuman, *supra* note 52; Carothers, *supra* note 53, at 57.

<sup>57</sup> Aaron Teasdale, *Do Bikes Belong in Wilderness Areas?* SIERRA (Dec. 20, 2017), <https://www.sierraclub.org/sierra/do-bikes-belong-wilderness-areas>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Carothers, *supra* note 53, at 57.

<sup>61</sup> Easy E-Biking, How Much Does an E-Bike Weigh?, <https://easyebiking.com/how-much-does-an-e-bike-weigh/> (stating that e-bikes weigh about 45-50 pounds while regular bicycles weigh about 30-35 pounds.).



Due to conflict and safety concerns, Petitioners also request that the amendment address hikers and other pedestrians on Jakes Rocks Overlook and Mountain Biking Trail. It is patent that mountain biking on non-motorized trails is unsafe, thus it axiomatically follows that hiking on mountain biking trails is also unsafe. Hikers must be prohibited from Jakes Rocks to ensure a safe and conflict-free experience for bicyclists. The Draft Decision Notice (Draft Decision), part of the project process for the development of Jakes Rocks, highlights the need to remove hiking from the trail system. The Draft Decision cited public demand for a “sustainable backcountry singletrack mountain biking experience” in order to reduce conflict between mountain bicyclists and other trail users.<sup>62</sup> The Draft Decision explicitly stated that one primary purpose of the Jakes Rocks trail is to “[r]educe user experience conflicts between mountain bikers and other recreational trail users[.]”<sup>63</sup> To give this purpose its true effect, pedestrians must not be allowed on Jakes Rocks. This demand is even more relevant today than in 2015 as e-biking is rapidly growing in popularity and is being promoted by the federal government.<sup>64</sup> As biking and e-biking grow, conflict will continue to increase.

The Draft Decision noted that if ANF does not create a trail system meant for biking, bicyclists’ use of hiking trails will increase and lead to more conflict.<sup>65</sup> USFS recognized this issue in 2015 and must now recognize that it is growing worse, even with the completion of Jakes Rocks. Conflict between all bicyclists, especially e-bicyclists, and other users is dangerous.

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<sup>62</sup> United States Forest Service, United States Department of Agriculture, Jakes Rocks Epic Mountain Bike Trail Project: Draft Decision Notice (February 2015), 3.

<sup>63</sup> *Id.* at 2.

<sup>64</sup> *See* 85 Fed. Reg. 69206.

<sup>65</sup> Draft Decision Notice, *supra* note 58, at 3.

In order to accommodate mountain bicyclists in ANF, hikers must be banned from Jakes Rocks. Jakes Rocks was designed specifically for mountain biking and this intended use must be protected.

In a 2015 study conducted by the International Mountain Bicycling Association, members of the organization and the broader mountain bicycling community responded to questions regarding perceptions of e-bike use.<sup>66</sup> Two major findings were that 76% of respondents believed that e-bikes were a form of motorized recreation and that 72% believe e-bikes will threaten access for traditional mountain bicyclists.<sup>67</sup> The latter finding is particularly interesting because it goes to the heart of Petitioners mission – prohibiting all biking on non-motorized trails because the two types of bicycles are indistinguishable. Regarding conflict, 70% of respondents noted that they were moderately concerned or highly concerned about the interplay and potential conflicts between trail users and users with e-bikes.<sup>68</sup>

In terms of environmental issues, survey respondents were similarly concerned. 65% of respondents indicated that they were moderately or highly concerned about the environmental impacts of e-bikes.<sup>69</sup> The top two most concerning aspects of environmental impacts were trail degradation and trail widening.<sup>70</sup> The third and fourth most concerning issues were unauthorized trail development and wildlife disturbance.<sup>71</sup> 71% of respondents disagreed or strongly disagreed

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<sup>66</sup> See INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION, *Experiences and Perceptions of Mountain Bicyclists Regarding eMTBs: User Survey Results*, [https://b.3cdn.net/bikes/1e7ebf1906be7477f3\\_6fm6bibgu.pdf](https://b.3cdn.net/bikes/1e7ebf1906be7477f3_6fm6bibgu.pdf).

<sup>67</sup> *Id.* at 4.

<sup>68</sup> *Id.* at 8.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

with the statement that e-bikes have similar environmental impacts as traditional mountain bicycles and therefore should have similar access.<sup>72</sup>

These environmental concerns are not unfounded. Even without considering e-bikes, the Jakes Rocks Draft Decision Notice imagined injury to land due to mountain biking. Although this issue was being addressed in another context – creating a mountain biking trail – it is equally applicable in this case. The Draft Decision stated that “unauthorized trails for mountain bicycle use have been created throughout the country on land managed by all types of government agencies. These trails frequently require intervention and rehabilitation due to resource damage and unsafe conditions that may result in injury to cyclists and other public land users.”<sup>73</sup> When mountain bicyclists ride on trails primarily designed for pedestrians, or go off of a designated trail, environmental and safety concerns arise. In the case of Jakes Rocks, the trail was created in order to alleviate any future environmental, safety, and trail conflict issues by giving mountain bicyclists their own dedicated trail. The same preventative attitude must be adopted now to avoid future issues caused by the increasing popularity of e-bikes. By foreseeing problems associated with e-bikes on USFS trails and addressing the problems now, future harm to the land and its users can be avoided. All bicycles must be removed from non-motorized trails before e-bikes become commonplace and destroy trails and hiking experience throughout ANF.

In addition to problems on the ground in ANF, there is a bureaucratic obstacle in the way of properly managing recreation on trails in ANF. Per the National Forest Management Act and subsequent USDA regulations, land management plans must be revised at least every fifteen

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<sup>72</sup> *Id.* at 10.

<sup>73</sup> Draft Decision Notice, *supra* note 58, at 4.

years.<sup>74</sup> As of December 1, 2020, USFS has not provided notice to begin the planning process for ANF.<sup>75</sup> The most recent Plan is from 2007, meaning that the revised Plan for ANF must be finished by 2022 at the latest to adhere to the statutory and regulatory timeline. Given the extensive process that a plan revision requires, this timeline is nearly impossible to meet. However, the threat that e-bikes pose to ANF cannot be ignored until USFS revises the Plan. Alternatively, a plan amendment requires less process, is more limited in scope, and can more timely meet the current needs of ANF. With no concrete timeline for revising ANF's Plan, an amendment will serve the purpose of keeping the 2007 Plan current in the midst of changed social conditions during anticipation of a new, revised Plan.

In non-motorized areas, hikers reasonably expect a tranquil and intimate experience with their natural surroundings. Further, individuals seeking recreation in National Forests like ANF expect an undisturbed and natural area free of technology, especially in designated non-motorized areas. E-bikes interfere with this experience for other trail users. Because bikes and e-bikes are virtually indistinguishable, both must be prohibited from non-motorized areas.

## Section V: Proposed Regulatory Change

Part 3: Design Criteria in the Plan describes standards and guidelines that create limitations on activities and uses in ANF for environmental protection, public safety, and risk

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<sup>74</sup> 16 U.S.C. § 1604(f)(5)(A) (“Plans developed in accordance with this section shall be revised from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years”); 36 C.F.R. § 219.7(a) (“A plan must be revised at least every 15 years”).

<sup>75</sup> See LMP Revisions Currently Underway (December 1, 2020) (available at: [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd862582.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd862582.pdf)).

reduction reasons.<sup>76</sup> Compliance is required for standards in design criteria whereas guidelines expect compliance but imagine situations in which compliance is not possible or desirable.<sup>77</sup>

Petitioners request that the proposed amendment add a new standard under Design Criteria for trails.<sup>78</sup> Petitioners seek a standard that states:

“Bicycle travel on non-motorized trails is prohibited to protect public health and safety and trail integrity, excluding bicycle travel on Jakes Rocks Overlook and Mountain Bike Trail. Pedestrian use on Jakes Rocks Overlook and Mountain Bike Trail is prohibited to protect public health and safety.”

Petitioners ask for a new standard because standards demand full compliance.<sup>79</sup> The gravity of the issue of mountain biking necessitates compliance in all situations. Petitioners ask for the design criteria of the Plan to be amended because it “guides the design and implementation of suitable uses and management activities” forest-wide and in all situations.<sup>80</sup> Thus, banning biking on non-motorized trails applies throughout all of ANF and effectuates Petitioners’ desire to maintain the integrity of trails, preserve areas for future wilderness designation, make trail use safer for all users, and minimize conflict on trails.

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<sup>76</sup> Land Management Plan, *supra* note 3, at 53.

<sup>77</sup> *Id.*

<sup>78</sup> *See id.* at 60.

<sup>79</sup> *Id.* at 53.

<sup>80</sup> *Id.*

## Section VI: Conclusion

Nature provides opportunities for recreation and relaxation necessary for citizens' basic needs. The peaceful ambience provides escapism, while simultaneously inducing feelings of peacefulness and calm. Non-motorized trails grant individuals moments of harmonious repose. Mountain biking, whether e-biking or regular biking, jarringly disrupts the tranquil, sacred atmosphere of a non-motorized trail — it diminishes the hiking experience, and does not enhance it. It forces the modernity of man's mechanical influences onto the wilderness and into the consciousness of the hiker, shattering the atmosphere of allowing hikers to escape said influence. Likewise, pedestrians disrupt the mountain biking experience on designated biking trails. ANF lies within a days' drive from many metropolitan areas, offering a huge swath of the country's population access to nature. Visitors to ANF deserve undisturbed trail access and due to the problems posed by mountain biking, all biking should be removed from non-motorized trails in ANF and likewise, pedestrians should be removed from the Jakes Rocks trail system.

The increased popularity of e-bikes makes this task of utmost importance. E-bikes are indistinguishable from regular bikes and cause considerably more damage to the environment. E-bikes can reach speeds fit for only motorized trails while simultaneously causing irreparable degradation to the land. Due to the enforcement challenges inherent in prohibiting only e-bikes, all bicycles must be prohibited from the non-motorized trails in ANF.

In order to safeguard the land from further abuse, all bicycle use must be prohibited on non-motorized trails in ANF. This is especially critical to protect land that may be designated for wilderness in the future, such as the proposed Tracy Ridge and Morrison Run wilderness areas,

and many other untrammelled ANF areas. FAW hereby petitions the ANF Forest Supervisor to amend the 2007 ANF Land and Resource Management Plan by editing the Design Criteria to include a new standard prohibiting all bicycles on non-motorized trails and a prohibition of pedestrians on the Jakes Rocks Overlook and Mountain Bike Trail.