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**Bureau of Land Management's Proposed Rule for the Management of Electric Bikes
Analysis and Discussion, International Mountain Bicycling Association
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The following is the International Mountain Bicycling Association's (IMBA) recommendations, review, and analysis of the Bureau of Land Management's (BLM) Proposed Rule on electric bikes (e-bikes), as it pertains to mountain bike interests and electric mountain bikes (eMTBs). This is a Proposed Rule (Rule), therefore the public's comments can still shape the final rule.

Summary of IMBA's Recommendations

Overall, the BLM has done a commendable job at navigating the complex e-bike issue in the Proposed Rule. In brief summary, IMBA supports the majority of this Rule but urges the BLM to make the following changes:

1. Remove terms and phrases from the final Rule that carry a pre-decisional undertone, when the National Environmental Protection Act (NEPA) serves as the objective and legal process for making informed decisions. For example, "Direct authorized officers to generally allow...." Instead, The BLM should point to NEPA as the required mechanism to make travel management decisions.
2. Restrict the use of the motorized exemption for non-motorized trails to Class 1 e-bikes only, to better ensure pedal-assisted use and appropriate speeds are maintained where e-bikes are allowed on non-motorized trails. Class 2 and class 3 e-bikes are not appropriate for non-motorized mountain bike trails.
3. Limit non-motorized singletrack trails to two-wheeled bicycles to prevent resource degradation through trail widening. The Rule as written could lead to three-wheeled e-bike use on narrow singletrack under the e-bike definition.
4. Requiring NEPA planning for exempted e-bike access was the correct decision, but the BLM must now demonstrate it will make a concerted effort to take on e-bike planning in a timely manner. Travel management plans often have a 10–15 year lifespan and many, if not most, were completed in the last 10 years. New plans or smaller, more manageable, landscape-specific plans should be embarked upon where possible to provide a pathway for e-bike access decisions to be pursued and resolved.

5. Provide better clarity on how the Rule will treat e-bikes, and particularly eMTBs, once they have been exempted from the motorized category. In order to avoid collateral impacts to all bike uses, once exempted, the BLM must manage eMTBs independently of class and independently of traditional bikes. This will ensure access management decisions continue to be made specific to the type of bike and not joined together as one bike category. Potential future restrictions or access modifications should avoid creating access losses for other bike categories where possible.

Background of eMTB management on BLM land

Federal policy directs the BLM to manage the public lands it administers in part for multiple uses and to provide for outdoor recreation. The BLM recognizes how the improving technology and growing popularity of electric bikes, including electric mountain bikes or eMTBs, has opened up new opportunities and broadened the appeal of utilizing bicycles on public lands for transportation, recreation and utilitarian uses. E-bikes encompass a broad spectrum of categories, from urban pavement-based commuters, gear haulers, fat-tire bikes, to full suspension eMTBs. The BLM rule applies to all e-bikes, including but not limited to eMTBs.

Currently, e-bikes are not explicitly addressed or defined in the BLM's regulations for use on public lands. In the BLM Manual, however, they are considered and managed as off-road vehicles (ORVs) and limited to routes open to ORV use due to the presence of a motor. This means while e-bikes are not specifically referenced in the regulations, the BLM has the tools to currently manage them and can even add eMTBs to mountain bike trails through a decision process. The BLM notes "under current land use plans and travel management plans, the use of off-road vehicles, (and, therefore e-bikes) is currently allowed on the majority of roads and trails of BLM-administered public lands." (p. 6) But once an e-bike, such as an eMTB, is added to a non-motorized trail, that trail must then be reclassified as a "limited motorized" trail. This amounts to a fairly drastic change to a trail's status, as it can no longer be considered non-motorized.

Equally important, because e-bikes are currently managed as ORVs, e-bikes are required to follow all the laws and regulations governing use and operation of ORVs on federal lands. This puts them at odds with many state regulations that have formally defined e-bikes as bicycles in their respective state statutes. This creates a regulatory conundrum for issues like land management but also for ORV registration, titling, licensing and fee collection ORV owners are required to do, but states do not require and often do not allow for bicycles. Having opposing definitions creates enforcement discrepancies for states and federal law enforcement officers, and has led to nonenforcement. For example, Colorado requires all ORVs like 4x4s, ATVs and dirt bikes to be registered with the state before being used on public lands—state, county and federal. Colorado state statutes define e-bikes in the 3-Class system (Class 1, 2 and 3 e-bikes) as bicycles, including eMTBs. Technically speaking, since the BLM defines e-bikes as motorized vehicles, one would normally be required to register the motorized vehicle with the state, even if

it is an e-bike, in order to operate it on federal BLM lands. Yet, the state of Colorado will not allow registration of e-bikes because it is defined as a bike within state code. Therefore, federal agencies need an e-bike policy.

IMBA's current eMTB position

Access to natural surface trails for traditional non-motorized mountain bikes is critical to the future of our sport. As technologies evolve, we understand the need to examine access for Class 1 eMTBs and the unique characteristics they possess compared to traditional mountain bikes. We support trail access for Class 1 eMTBs and support shared use on trails as long as access is not lost or impeded for traditional mountain bikes. IMBA recommends Class 1 eMTBs be managed independently from traditional mountain bikes and we encourage land managers to develop separate regulations. IMBA will continue to engage all stakeholders on this issue in an effort to reach outcomes that best suit all users.

BLM Proposed Rule – Key Findings

1. The Rule implements the DOI Order.

On April 10, 2020, the Bureau of Land Management (BLM) published a Proposed Rule to implement the Department of Interior (DOI) Order 3376 – Increasing Recreational Opportunities through the use of Electric Bikes, which was issued in August of 2019. This action is required by all DOI agencies in response to the DOI Order.

Public Comment: DOI Order 3376 made it clear public comment would be collected on changing the regulations around e-bikes. The BLM’s “Proposed” Rule and its 60-day comment period satisfies that requirement and is the formal scoping process for public comments on this Rule. It gives the public the opportunity to provide feedback on the proposed Rulemaking or Rule change in order to shape the final outcome. A hard look at the issues and impacts through the National Environmental Policy Act (NEPA) remains the process for any site-specific travel management decisions.

2. The Rule does not change current access.

Nothing in the Rule would have an immediate effect. All current access designations and prohibitions remain in place and unchanged. Any change in eMTB access would require and follow a specific land use planning NEPA review. As expected, the Rule also will prohibit e-bike and eMTB access in areas where non-motorized bicycles are also prohibited, such as designated wilderness areas or other specific trail restrictions. The Rule merely defines e-bikes with an exemption and defers to an established process for management. See #8 below for more detailed analysis regarding NEPA planning. Public lands are managed on behalf of the public and decisions on access—whether open or closed—must include public involvement.

3. The Rule defines e-bikes under the motorized category.

The Rule amends the BLM's off-road vehicle (ORV) regulations at 43 CFR part 8340 by adding an e-bike definition under the motorized ORV category. This means "motorized vehicle" is the underlying definition for all e-bikes, regardless of class. This is a key outcome of the Rule. It was anticipated the BLM would potentially define e-bikes as the same as a bike and make them synonymous with all other bikes. IMBA's recommendation is for e-bikes to remain independent of traditional bikes even if they share access to many trails in the future. IMBA believes this will allow for a more tailored approach to management and minimize the pitfalls of a one-size-fits-all approach. IMBA recognizes that despite the small electric motor, Class 1 e-bikes are closer relatives of a bicycle than a motorcycle and the desired experiences of riders are better served by bike paths and trails. While the BLM generally defines e-bikes as a motor vehicle, they provided an exception so managers are not forced to limit e-bikes to motorized routes.

4. The Rule provides e-bikes a conditional exemption from motorized definition.

The Rule creates a process to exempt certain e-bikes or operation thereof from the ORV definition when certain criteria are met. This conditional exemption is not an agency-wide decision. Instead, it is implemented at the field office level when an authorized land management officer "expressly determines through a formal decision process that e-bikes should be treated the same as non-motorized bicycles," and exempt from the ORV definition.

Why define e-bikes as motorized and then create an exemption? Because not all e-bikes are equal and some, or some uses of, will be out of compliance with the conditional exemption as described. For e-bikes that don't qualify, they will be managed as ORVs and not eligible for the exemption. On page 10 of the Rule, the BLM provides a few examples where motorized e-bikes might not be appropriate. One notable example is where, "legislation or a presidential proclamation may restrict motorized use of a trail." IMBA can only assume this would suggest in such scenarios it might be inappropriate to apply the e-bike exemption for use on these trails. IMBA supports this assertion.

The solution of defining e-bikes as motorized and providing an exemption is a simple yet effective outcome that works to address the diverse interests of the public. It appropriately places access decisions at the local level with public input on potential social and physical trail impacts, and provides e-bike advocates a well-known process for access to non-motorized trails. It also achieves this without jeopardizing the historical non-motorized status of the trails for existing visitors. Opinions on e-bikes vary. The combination of issues described in #2, 3, and 4 above all work well together to navigate this process and provide a fair opportunity for the public to comment.

5. E-bikes that qualify under the Rule.

In the proposed Rule, this exemption is conditional and can only be applied to e-bikes in the “3-Class” system as long as:

- The e-bike is 750 watts or less.
- The e-bike has fully operable pedals and power is applied as an assist to the pedalling rider.
- A NEPA decision authorizes the exemption and use of certain trails, routes or pathways.

Note: Class 1 and class 3 e-bikes are pedal-assisted only and therefore qualify. (Class 1 and class 3 e-bikes only differ in their maximum speed, 20mph and 28mph respectively, at which the motor stops assisting with power.) Class 2 e-bikes have a throttle, but also can often be pedalled as well, or the rider can toggle between the two. In other words, class 2 e-bikes operated in a fully motorized mode without pedaling would not be eligible for the exemption and would remain a motorized vehicle.

IMBA views the determination of which e-bikes qualify for the exemption as the most complicated aspect of the Rule and the most difficult to resolve in a manner that makes adequate enforcement plausible. IMBA can only assume the DOI order and the BLM wanted to treat all e-bikes the same to simplify the enforcement, however, the challenges remain. Banning certain classes and deciphering specific classes of e-bike in the field is difficult and requires training and visible demarcation. Even banning all e-bikes from trails would be hard to enforce as technology advances the integration of the motor and battery design aesthetics. Therefore, when looked at as a collective, the likely least-prevalent problem to contend with would be enforcing the class 2 rider to pedal the bike instead of relying solely on the throttle. Not because this is the easiest to detect or prove in the field, but rather because it likely becomes the lowest common denominator of all the possible scenarios of use or abuse. While this may seem to be the lesser of the enforcement challenges, it is not necessarily the best and it is not without its social challenges as discussed more in #10 below.

6. Bike vs. cycle under the Rule.

Because the Rule is addressing e-bikes collectively, it inevitably complicates matters in a few ways when it is applied to more trail-focused eMTBs versus the urban pathway e-bike the 3-Class classification definitions had in mind when created with the Consumer Product Safety Commission (CPSC). While the use of urban e-bikes is primarily on paved or improved surfaces, eMTB use on BLM lands will trend more towards natural surface dirt, rock and gravel. Often, these trails are narrow singletrack or rural two-track routes. The Rule adopts the CPSC definition and applies to any two or three-wheeled cycle. Three-wheeled e-bikes are fairly common for creating stability for commuting or utilitarian purposes or when used as a mobility device. But, three-wheeled eMTBs are relatively rare. These are mostly seen in two configurations: 1. As the aforementioned three-wheeled mobility device designed for a rider with a disability, or 2. As a

three-wheeled recumbent-style tri-cycle. Regardless of their purpose, the tread width of a three-wheeled cycle is often as wide as 36 inches. If care is not taken, these three-wheeled tricycles could inadvertently be allowed on singletrack trails, leading to a host of social and environmental impacts. **IMBA recommends the BLM be acutely aware of this potential challenge and avoid any unintended consequences through thoughtful and clear planning decisions, or simply proactively prohibit three-wheeled cycles from using singletrack trails.**

7. The Rule provides for independent management.

As discussed above in #3, IMBA's recommendations were very clear: eMTBs need to remain independent of traditional bikes so management decisions could be tailored to the needs and desires of the local community for each trail in question. The Rule specifically allows BLM managers the flexibility to manage e-bikes and traditional bikes independently. The Rule also allows BLM managers to manage any of the classes of e-bikes independently. Nothing in the Rule ties the hands of the BLM, forces a decision, or dictates an outcome. However, a planning decision made to exempt any combination of e-bikes from motorized category for a route, trail or path, will give those e-bikes "the same rights and privileges of a traditional, non-motorized bicycle and will be subject to all of the duties of a traditional, non-motorized bicycle" (p.10). In other words, the proposed Rule would allow local BLM land managers to consider allowing class 1, class 2 and/or class 3 eMTBs on select non-motorized trails open to mountain bikes and treat them like a bike, or, deem any combination of eMTB classes inappropriate based on local planning and treat them as motorized. As a result, non-motorized trails opened to e-bikes via the exemption will still be considered non-motorized. **IMBA supports this and appreciates this careful navigation of this issue.**

8. The role of National Environmental Policy Act (NEPA) under the Rule.

The BLM claims (p. 18) because this Federal Rulemaking does change the existing allowances for e-bike access or usage, the proposed Rule doesn't, in and of itself, significantly alter the human environment. Therefore the BLM contends the Rule itself does not require or invoke the National Environmental Policy Act (NEPA) of 1969. It uses a categorical exclusion under 43 CFR 46.210(i) to exclude the Rulemaking from further NEPA analysis. Instead the BLM assures any impacts of allowing or disallowing e-bikes will be analyzed under NEPA at the field office level and through site-specific or landscape-level planning. Essentially, this rulemaking is considered a policy and regulatory directive only.

The BLM states (p. 7) it expects this Rule to result in an increase in recreational opportunities and e-bike ridership, which the DOI order set out to ensure. Importantly, the BLM also acknowledges here the appeal of BLM roads and trails to cyclists is they often offer a challenging experience which can lead to an inherently remote and desired experience. The BLM understands this Rule "could cause increased ridership on these

roads or trails” (p.7) and the site-specific NEPA review process will be the appropriate place to address issues and impacts of such an increase. The BLM specifically requests public comments “on the potential social and physical impacts of e-bike use on public lands” (p.7).

The type of NEPA and manner in which NEPA will take place in the future to address e-bikes is not discussed in the Rule. This is left to the BLM offices to determine. Many BLM offices have undergone new Resource Management Plans (RMPS) or Travel Management Plans (TMPS) in recent years. These included significant Environmental Impact Studies and Environmental Assessments (EIS/EA). The BLM will likely take one of three paths for analyzing future e-bike access decisions:

1. A new Environmental Assessment to analyze trail-by-trail use;
2. A Determination of NEPA Adequacy (DNA) utilizing recent NEPA to make an abbreviated decision on e-bike use; or
3. A Categorical Exclusion (CE) that waives further necessary NEPA when making trail decisions.

IMBA speculates the DNA will be used most often where relatively recent NEPA was performed and can be relied on to inform new e-bike designations. New EAs are expensive and time-consuming. A CE is likely not an appropriate level of NEPA, but could possibly be used in unique circumstances.

9. Is the Rule predecisional?

Under III. Discussion of the Proposed Rule (p. 5), the BLM states the Rule would “direct” officers to “generally allow” e-bikes. The use of these terms have predecisional undertones. It has led to claims that this rule is a violation of NEPA and leads to all e-bikes being allowed on all bike routes and trails. However, IMBA believes while this points to some intent to meet the DOI order which expressly serves to increase recreational opportunities for e-bikes, the BLM does clearly include in the statement the following caveats or qualifiers that must be met to prevent pre-decision (p.17):

- “Through subsequent decision-making”
- “Where considered appropriate”
- “Such decisions would be made in accordance with NEPA”
- “Only Class 1, 2 or 3 where motorized features are being used as an assist”
- “On roads and trails upon which mechanized, non-motorized use is allowed”
- “This rulemaking does not commit the agency to undertake any specific action, and the BLM retains the discretion to authorize e-bike use where appropriate”

These qualifiers negate any predecisional nature of this Rule or the order it is implementing. Despite this, IMBA recommends these predecisional undertones be removed from the final Rule.

10. The 3-Class system under the Rule.

The Rule chose not to differentiate between classes and instead provided a process for exemption for all three classes when certain criteria were met.

IMBA's position has evolved as e-bike technology has evolved. As stated above, IMBA only supports trail access for Class 1 eMTBs and supports shared use on trails as long as access is not lost or impeded for traditional mountain bikes. IMBA chose to make a distinction between class 1, class 2 and class 3 eMTBs for a few reasons. Class 3 eMTBs have a higher top-end speed threshold (28mph) which is inappropriate on most trails. While riders of any bike can surpass 28mph on descents, and an e-bike does not assist when not pedalling, the percentage of people who could achieve those speeds on flats and ascents when pedalling would lead to unacceptable social impacts that could lead to access losses for all bikers. **IMBA believes the BLM should amend its Rule to limit the application of the special exemption on any non-motorized routes or trails to Class 1 e-bikes only. Importantly, this would not ban class 2 and class 3 e-bike use, rather limit it to the “majority of roads and trails of BLM-administered public lands” that currently allow motorized ORV use, and therefore, e-bikes.**

IMBA also found allowing class 3 e-bikes on non-motorized trails was counter to the recommendations of the bike industry itself. One of the most prominent makers of e-bike motors, Bosch, states on its website, “Class 3 eBikes are typically allowed on roads and on-road bike lanes (“curb to curb” infrastructure), but restricted from bike trails and multi-use paths. While a 20-mph maximum speed is achievable on a traditional bicycle, decision makers and agencies consider the greater top-assisted speed of a Class 3 eBike too fast for most bike paths and trails that are often shared with other trail users.”¹ **IMBA agrees with Bosch on this and recommends Class 3 e-bikes be prohibited from using the motorized exemption for non-motorized trails.**

While Class 2 eMTBs have operable pedals, they also have a throttle that can be used solely to power the bike without pedalling. Throttle-based biking exceeds the threshold of what is acceptable. It is counter to the spirit of mountain biking and the integrity of the non-motorized category, as well as being too difficult to enforce. Additionally, IMBA found allowing class 2 e-bikes on non-motorized trails is also counter to the recommendations of the industry itself. Again, on the Bosch website, it states, “Class 2 may not be suitable for singletrack mountain bike trails—it has been shown that they pose greater physical damage to trails due to the throttle-actuation. Class 2 may be better suited for multi-use OHV trails designed for more rugged off-road vehicles.”² **IMBA agrees with Bosch on this and recommends Class 2 e-bikes be prohibited from using the motorized exemption for non-motorized trails.**

¹ <https://www.bosch-ebike.com/us/everything-about-the-ebike/stories/three-class-ebike-system/>

² <https://www.bosch-ebike.com/us/everything-about-the-ebike/stories/three-class-ebike-system/>

Consequences of the Rule

1. Registration Discrepancies.

In background above, IMBA presented a Colorado example where federal lands require ORVs to register with the state and pay a \$25.25 fee to apply for an annual ORV sticker. Yet Colorado does not recognize e-bikes as motorized and therefore does not allow bikes or e-bikes to register. This Rule does not solve this challenge. In fact, it codifies it. The BLM defines e-bikes as ORVs unless they are exempted for use on non-motorized trails, only through a specific decision and after meeting certain criteria. The underlying definition remains a motorized vehicle. States are increasingly discussing recreational use or mountain bike sticker programs as funding mechanisms for trail development and maintenance. These issues will need to be resolved fairly and consistently.

2. Game Retrieval.

Game Retrieval is an off-route travel issue managed by BLM field offices. Specific allowances for motor and non-motorized (game cart and bike) game retrieval are largely seen as unaffected by this rule as the tools currently exist to manage e-bikes for game retrieval in whichever configuration, class or definition, they fall under. Some manufacturers make fat tire e-bikes that exceed the 3-Class system and those would simply be treated as motorized vehicles for game retrieval policies.

3. Stipulated Trail Funding.

a. Recreation Trail Program (RTP)

The Federal Highway Administration (FHWA) currently defines e-bikes under 23 U.S. Code § 217 (j) 2 as '*electric bicycle' means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.*' RTP grants are administered by FHWA under 23 U.S. Code § 206. Recreational trails program. Under 23 U.S. Code § 217 (h), the RTP unequivocally prohibits motorized vehicle use of non-motorized trails for recreational purposes. However, roughly 70% of RTP funding goes to motorized (40%) and diversified (30%) and the remaining 30% of RTP funding is administered for non-motorized recreation. Therefore, for past and future funding projects, approximately 70% of RTP funds could be used to fund trails that could allow e-bikes and not be in violation of the FHWA regulations. For trails which have been funded by the 30% of funds stipulated for non-motorized recreation, no e-bikes of any kind would be allowed on those trails even if utilizing the exemption from the BLM Proposed Rule.

Based on the best available data, IMBA research found only a handful of BLM trails have utilized RTP funds stipulated for non-motorized recreation. There are likely more.

These are: the Hyatt-Howard Trail in Oregon, Buckskin Passage of the Arizona National Scenic Trail in Arizona, the North Trail and All Seasons Regional Trail in Nevada, the Red Fleet Flow Trail in Utah, and the Meadowood Mason Neck Trails in Virginia.

Many other mountain bike trails exist on BLM lands that have likely utilized RTP funding, but they fall under other categories that do not limit them to non-motorized use. These trails could be designated to allow eMTBs without violating FHWA and RTP rules.

b. **Land and Water Conservation Fund (LWCF).**

Trails exist on BLM lands that have likely utilized LWCF funding. The state side of LWCF is administered by the State and Local Assistance Programs Division. This is likely the source of funding for trails for recreation, as the federal side is primarily focused on land acquisitions. As of this writing, it remains unclear what impact this rule may have on the variety of trails that exist thanks to LWCF.

4. Special Designations.

Some BLM land designations are created by congressional or presidential actions. Some examples include National Recreation Areas, Wilderness, Special Recreation Areas, Special Wildlife or Management Areas, and National Monuments. The regulations that govern these areas are defined in their enacting documents such as proclamation, legislation, or agency plans. Some areas are established to prohibit motorized recreation. For areas like this it remains unclear if an e-bike that has been exempted from the BLM's motorized category through a plan decision would be allowed or would continue to be prohibited. IMBA speculates that once exempted from the motorized category, the e-bike would be treated as a non-motorized bike and afforded the same rights and privileges of other bikes. However, the BLM retains the discretion to prohibit e-bikes from bike trails in plan decisions. The BLM should provide more clarity to this aspect of the Rule so the public will be clear on how such special designations will be treated.

5. Future Decisions.

Under NEPA, the e-bike Rule should result in fair access decisions. IMBA feels all interests have an opportunity to realize benefits and ensure they have diverse recreational access opportunities. The process will take time but there are efficient mechanisms to minimize the time it takes to make access decisions on BLM lands.