

**DCR Hearing on Proposed Amendments to
302 CMR 11 and 302 CMR 12
Holyoke Heritage State Park, Holyoke, MA
June 27, 2019**

Marvin J. Ward: Member of People for Bikes, which characterizes the proposed amendments as a prohibition on e-bikes. Likes to hike; does not want to encounter wheeled vehicles on any hiking trails. Common definitions are important (per S.2071 and H.3014). Suggests that DCR not promulgate amendments to regs until bills go through the legislature.

Andrea Newman: Written statement provided. Does not support proposed amendments. Would like to have access to unpaved, multi-use trails (on which cars are not allowed) with a Class 1 e-bike. Queried whether anyone with a physical impairment was involved with formulating the policy reflected in the proposed regulatory amendments – said it would be helpful to understand the backgrounds of those serving on policy committee. Suggests that DCR staff review Boulder, CO website for information re use of e-bikes. Referred to a study (by International Mountain Bicycling Association – IMBA) which shows that e-mountain bikes do not cause damage to mountain bike trails. Finds NEMBA’s opposition to e-bikes on mountain bike trails hypocritical

Gary Briere (Rivers Edge Cycling - Sunderland): Board member of MA Bike Pioneer Valley. Supports the use of e-bikes in more areas; e-bikes enable older people to bike later in life than otherwise might be possible. Referred to S.2071 and H.3014 – bills currently before the legislature: suggests DCR use the definitions for Classes 1, 2, and 3 e-bikes included in the legislation; legislation also provides a good framework for e-bike use. Pedal-assist bikes (those that go no more than 20 MPH) should be allowed wherever traditional bikes are allowed on DCR land. Suggests that DCR make its regulations current by using models from other states.

Kevin Murray: Does not support proposed amendments. Avid mountain biker. Medical condition limits his ability to bike up steep hills – a pedal-assist mountain bike has enabled him to continue mountain biking. E-mountain bikes do not have any effects on trails that are different from effects that traditional mountain bikes have on trails. E-mountain bikes should be permitted wherever traditional bikes are permitted.

Jim Bothwell: Written statement provided. Does not support proposed amendments. H.R.727, Consumer Product Safety Act, classifies low speed e-bikes (“class 1”) as a “bicycle.” Not permitting e-bikes on natural surface trails is draconian. Standard definitions for Classes 1, 2, 3 e-bikes should be used (see pending legislation S.2071 and H.3014) in regulations. Pedal-assist allows older riders to “keep up” with younger riders. It’s hard to reach 20 MPH going uphill, even on an e-bike. DCR will find itself on the wrong side of history if it does not allow e-mountain bikes on natural surface trails. Class 1 e-mountain bikes do not damage trails. NEMBA is spearheading the opposition to e-mountain bikes on DCR natural surface trails. Proposed amendments might violate the Americans with Disabilities Act. California has allowed class 1 e-bikes on mountain bike trails for 4 years. Jefferson County, Colorado conducted a 6-month pilot program in 2018, allowing e-mountain bikes on trails – no ill effects detected; now class 1 bikes are allowed on all trails in CO.

Peter DiGregorio: Does not support proposed amendments. Would like to understand *why* DCR proposes to ban e-bikes from natural surface trails. Proposed amendments will restrict

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public benefit of people accessing public lands and getting exercise. Asks DCR to consider *not* banning Class 1 e-bikes from natural surface trails, and all DCR property.

Galen Mook (Exec. Dir., Massachusetts Bicycle Coalition): Has been trying to get a meeting scheduled with DCR leadership - would like a discussion with DCR, not just a hearing. Advocates and trail stewards generally increase trail usage and advocacy, so including them in policy discussion and development is important. Standard definitions (per bills before legislature) for Class 1, 2, 3 e-bikes should be used in regulations. DCR should be open to allowing e-mountain bikes on natural surface trails. Consider having individual “land managers” (DCR staff) decide how best to use trails/lands under their care. E-bikes are important for transportation and commuting. The policy reflected in the proposed amended regulations is inconsistent in places. DCR should wait to amend regs until legislation has made its way through the process. Allowing more e-bike usage will lead to more people using trails, which is positive. Will send a flyer re “e-bike demo days” to DCR – urge staff to attend; DCR staff who make policy re e-bikes should try them out before banning them.

Jonathan Mauterer (local chapter president of NEMBA): Queries what the reason is behind having a minimum 8 foot wide (paved) path for e-bikes. Studies should inform policy that’s reflected in DCR regulations, not just advocacy (notes that studies have shown that e-mountain bikes do no more damage to natural surface trails than traditional mountain bikes). Classification of e-bikes is very important (standard Class 1, 2, 3 definitions). Restrictions should be based on class of bike and trail type. Worried about e-mountain bikes being viewed as problematic and then all mountain bikes being banned. Regulation should define “mountain bike” and “pedal-assist” bike separately. Trail courtesy is important – signage and rules should be developed for areas where e-mountain bikes are used (on natural surface trails, particularly). Though access via e-bike to every trail should not be considered a “right,” DCR shouldn’t prohibit e-bikes based on opinion. Classify trails by type (including “single track”) and study impacts by various activities and modes of transportation – make policy decisions based on data. NEMBA will be discussing the proposed reg amendments at meetings soon and members are expected to “be out in force” at the 7/2/19 hearing.

6/27/19

Andrea Newman
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Thank you for the opportunity to speak. My name is Andrea Newman, and I live in Amherst.

In 1992 when I was a student at Univ of Colorado at Boulder, I became a serious road and mountain biker. Since 2003, my outdoor activities, including hiking and biking, have been greatly restricted due to having a mobility impairment. I have severe complications from a significant leg length discrepancy that was underdiagnosed in the 1970s due to imaging technology available at that time.

I love being in the outdoors, and it has been difficult to not be able to access it like I once did. This past August, my family went on a trip to Boulder, CO. I rented a pedal-assist e-Bike and was able to join my husband and daughter on the bike paths, both paved and unpaved. I used pedal assist to help go up hills and on longer outings when my legs needed help. *class I*

The state of Colorado classifies pedal assist E-Bikes as Class 1 and allows them on bike paths and trails, with local jurisdictions deciding appropriate access. In Boulder County class I E-Bikes are allowed on certain multi-uses paths and certain regional and open space trails. However, for people experiencing mobility impairments, Boulder County allows Class 1 pedal assist E-Bikes on many additional paths and trails as they want these people to be able to enjoy similar access to the outdoors.

I understand the concerns behind the proposed DCR regulations. I have some concerns about the proposed legislation.

- First, the regulations do not distinguish among the different categories of e-Bikes. For the class I I plan to buy, the power is available only when I am pedaling and the power cuts out above 20mph. By contrast, I see many road bikers going above 20mph like my husband.
- Second, Class 1 E-Bikes should be permitted on appropriate bike paths and trails.
- Third, why is there a restriction on Class 1 e-Bike access to roads that have since become closed to motorized access?
- Fourth, I am wondering if someone on the DCR E-bike policy committee has a mobility impairment. - *so they could speak firsthand on mobility impairments*

I hope that the proposed regulations can be modified to strike a better balance for allowing people to regain access to paths and trails while continuing to sustainably manage them.

6/27/19

My name is Kevin Murray and I have been an avid mountain bike rider for 35 years and have been using MA public trails for over 20 of those. Five years ago, I started to develop tremendous nausea while climbing steep hills and after a workup by a gastroenterologist, I was diagnosed with a hiatal hernia and a precancerous condition called Barrett's esophagitis. She explained that when I'm pushing so hard to climb those hills, a lot of stomach acid is making its way into my esophagus and creating a lot of inflammation. She put me on an acid blocking medication to relieve the inflammation, but she also placed a pH monitor in my esophagus to evaluate when I was having the nausea to see if there was a correlation with foods and/or activity. Sure enough, the pH dropped significantly while I was mountain biking up those hills, even with the medication. I thought I would have to give up my favorite recreational activity, but then I was introduced to eMTBs. With a small 250 watt motor for assist, I could climb those steep hills without creating excessive abdominal pressure, and therefore, no acid irritation. Since then, I have ridden thousands of miles with no nausea, and in addition, on my last endoscopy, the precancerous condition had reverted to normal. The ebike may have had nothing to do with that part, but I can say that without it, I would not be able to be enjoying our beautiful trails the way I have been for decades. I can also say that there is absolutely no difference in the effect on the trails between my normal MTB and eMTB, they even use the same tires. There is no exhaust, no noise, no throttle, no damage and very few people can even tell that it's an ebike. Please keep our trails accessible to those who might have some limitations in their ability to enjoy them.

Thank You,

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6/27/19

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Electric Mountain Bicycles

Thank you for hearing me speak about pedal assist electric mountain bicycles, or eMTBs. I emphasize "bicycle" because the Consumer Product Safety Act HR 727 of 2002 defined them as such. These bicycles can increase peoples' access to the outdoors, reduce obesity and other ailments related to inactivity, and help cyclists of varying skill levels to ride together. They are INCLUSIONARY, which I believe to be one of DCR's goals.

The 3-class electric bike regulations sweeping the country right now also define low-power ebikes as bicycles. Class 1 ebikes have less than 1 hp motors (most are 1/3 hp), no throttle, and fully functional pedals that allow them to be ridden with the power shut off. With Class 1 ebikes, you must pedal to activate assistance, which makes it a "human-powered" or initiated activity (although not 100%). Assistance cuts off at 20 mph, but achieving that speed on most trails requires professional-level skills. Class 2 and 3 ebikes are primarily marketed for road and/or private property use, so I won't address them here.. My references to ebikes and eMTBs will henceforth be Class 1.

According to People for Bikes (dot org), the maximum power of ebikes does not exceed the maximum power of human capability (think professional rider on PEDs). For the most part, it's older riders and folks with ailments like me on them, and we ride them at similar speeds to younger MTBers (so we can keep up!). Many of the same MTBers who chastise eMTBs will themselves ride chairlifts and take van shuttles up mountains so they can blast downhill.

If DCR enacts this Class 1 pedal assist ebike ban from its trails, I believe they'll be on the wrong side of history within a few years. When I began mountain biking in the early 90s, shock absorbers were controversial. "That's not mountain biking, it's *luxury* riding," some would say; now they're on almost all MTBs. When snowboards started hitting the ski slopes in the 80s, people said they were too fast and would be ridden recklessly. Snowboarding became more popular, and now it's widely accepted.

I've taken dozens of people on eMTB rides over the past few years, including a DCR Ranger and a MA Environmental & Energy official. They all concurred that they're *bicycles*, not motorcycles, and that it's ridiculous to categorize and regulate them with ATVs and motocross bikes. A 2015 Soil Dispersion study by the International Mountain Bike Association found that eMTBs cause no more damage to trails than regular mountain bikes, and significantly less than motorbikes.

When state officials and I rode trails on eMTBs at Robinson State Park in Agawam last Summer, a non-electric gravel or cyclocross bike zipped by us. Despite it weighing half of what our ebikes did, it left much deeper ruts in the trail with its skinnier tires. Currently there's a proposal to exclude eMTBs from DCR trails, but not cyclocross bikes, based simply on the motor factor.

I've been riding DCR trails - apparently illegally - for four years to the tune of thousands of hours. 95% of trail users I've interacted with did not know I was on an ebike until I told them. None of them - including mountain bikers - have expressed to me that I was riding a motorbike or told me to get off the trail. Instead, they were either curious, supportive, or indifferent. Over the past few years I've asked several DCR Rangers if anyone has complained about ebikes on trails - to date no one has.

This proposed ebike ban is a violation of the ADA, or at least the spirit of it, and may lead to legal challenges and bad publicity for DCR. eMTBs allow for the inclusion of folks with injuries, impairments and health issues to gain access to the trails we love, enjoy and advocate. As ebikes become more popular and traditional mountain bikers get older, there will surely be an increase in demand for the right to ride them on DCR trails.

I've struggled with Post Treatment Lyme Disease Syndrome since 2012, and can no longer enjoy my old mountain bike on hilly terrain. My anaerobic threshold diminished along with my tolerance for pain. eMTBs, however, can make a steep hill much less so, and allow me to maintain a healthy, aerobic-level workout. In my first few months riding eMTBs, I lost over 40 lbs, and weigh less now than I did in my 30s, the peak of my mountain biking years. Again, they require riders to pedal, and do not exceed the output of professional riders.

Sure, some mountain bikers ride too fast, but fears that eMTBs will increase that tendency are unfounded. Since 2015, California has allowed Class 1 ebikes anywhere bicycles can go on state land, including trails, with no increase in conflicts. Jefferson County Colorado conducted a 6 month pilot program last year that allowed eMTBs wherever mountain bikes could go. After other trail users realized that eMTBs are actually just *bicycles*, they are now allowed permanently.

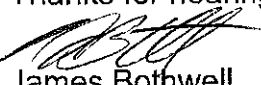
Ebikes are allowed in state parks in Pennsylvania, Delaware, Florida, California, Arizona, Colorado, Nevada, Minnesota, Wyoming, Idaho, Utah, North Dakota... and the list is growing. They've been legal there for as many as 4 years with no reported increase in trail user conflict! And the "slippery slope" fear that hi-power ebikes will rampage their trails has also been proven to be moot.

Ebikes are clearly catching on here as they already have in Europe, where eMTBs have generally had the same trail access as unassisted mountain bikes for many years. Some industry experts predict that, within the next decade, 1 in 3 new mountain bikes will have some sort of pedaling or other assistance available, and that even the most experienced MTBers ^{won't} ~~will~~ be able to see the difference.

The surging popularity of ebikes will eventually lead to more trail volunteers, advocates and stewards, which I believe can only help DCR. I also contend that pedal assist is an "assistive technology" that meets the legal criteria for equal access per the Americans with Disabilities Act. Again, banning them from MTB trails could lead to legal challenges in the future.

DCR's proposed ban on them from ALL of its trails is draconian and disturbing - here's the line from the new code that baffles me most: "Pedal-assist electric bicycles are not permitted on any natural surface trails, regardless of width or other conditions." Apparently, eMTBs have been deemed to be even worse than ATVs and motocross bikes, which are at least allowed on "motorized" natural surface trails.

DCR should at least conduct pilot program and allow eMTBs on some of its trails to see if user conflicts develop before enacting this exclusionary, legally-challenged new code.
questionable

Thanks for hearing me,

James Bothwell
South Hadley, MA