

# NOTICE OF PROPOSED RULEMAKING

## CHAPTER 736

## PARKS AND RECREATION DEPARTMENT

FILING CAPTION: Allowing Electric Assisted Bicycles on select trails and parts of the oceans shore.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/18/2018 5:00 PM

### HEARING(S):

DATE: 04/23/2018

TIME: 6:00 PM - 8:00 PM

OFFICER: Katie Gauthier

ADDRESS: Hood River Public Library  
502 E State Street

Hood River, OR 97031

SPECIAL INSTRUCTIONS:

In order to comment please sign in by  
6:30 PM.

DATE: 04/25/2018

TIME: 6:00 PM - 8:00 PM

OFFICER: Katie Gauthier

ADDRESS: North Mall Office Building  
725 Summer Street, Room 124

Salem, OR 97303

SPECIAL INSTRUCTIONS:

In order to comment, you must sign in by  
6:30 PM.

DATE: 04/24/2018

TIME: 6:00 PM - 8:00 PM

OFFICER: Katie Gauthier

ADDRESS: Deschutes County  
Fairgrounds- Ochoco Room

3800 SW Airport Way

Redmond, OR 97756

SPECIAL INSTRUCTIONS:

In order to comment, you must sign in by  
6:30 PM.

DATE: 05/01/2018

TIME: 6:00 PM - 8:00 PM

OFFICER: Katie Gauthier

ADDRESS: Newport Public Library  
35 NW Nye Street

Newport, OR 97365

SPECIAL INSTRUCTIONS:

In order to comment, you must sign in by  
6:30 PM.

DATE: 04/30/2018

TIME: 6:00 PM - 8:00 PM

OFFICER: Katie Gauthier

ADDRESS: Bandon Public Library  
1204 11th St. SW

Bandon, OR 97411

SPECIAL INSTRUCTIONS:

In order to comment, you must sign in by  
6:30 PM.

DATE: 05/07/2018

TIME: 6:00 PM - 8:00 PM

OFFICER: Katie Gauthier

ADDRESS: Warrenton Community  
Center

170 S W 3rd S

Warrenton, OR 97146

SPECIAL INSTRUCTIONS:

In order to comment, you must sign in by  
6:30 PM.

### NEED FOR THE RULE(S):

Current rules do not allow for use of electric assisted bicycles on Oregon Parks and Recreation Department Trails and roads. As use of electric assisted bicycles has increased, riders have expressed desire to utilize trails and roads under ORPD management. Opening trails and roads that are eight feet and over and the ocean shore will allow electric assisted bicycles to ride in places that have greater space available to reduce conflict with existing visitors. Existing trail users including equestrians, bicyclists and pedestrians have expressed concerns with increased trail conflicts as user groups are expanded. We are proposing restricting use of electric assisted bicycles to wider trails where greater space is available for multiple types of user groups. If a park manager determined a narrower trail was appropriate for electric assisted bicycles, the proposed rule provides the flexibility to allow for it be signed as open to electric assisted bicycles. The proposed rule would also allow electric assisted bicycles on the ocean shore in areas where other bicycles are currently allowed. Riders would need to follow current rules regarding speed and manner of operations. As with all vehicles, electric assisted bicycles would not be allowed to harass wildlife or ride in snowy plover nesting areas.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

ORS 801.258, 2017 Oregon Revised Statutes

**FISCAL AND ECONOMIC IMPACT:**

This rule is anticipated to have a positive economic impact on electric bicycle rental businesses in areas near OPRD properties. It is also possible that by expanding areas open to electric bicycles that bicycle shops may see increased sales of electric bicycles, as well. The fiscal impact to the agency is minimal. There will be an increased cost for new signage on trails.

**COST OF COMPLIANCE:**

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) No other state agencies or local governments would be impacted by this rule. (2) Numerous independent bicycle shops that rent or sell electric bicycles across the state could benefit from this rule due to an expansion of places to ride electric assisted bicycles. 2 (b) there would not be an increase in costs for reporting, record keeping or administrative costs for small businesses associated with these rule changes. 2 (c) There are no increases in costs for professional services, equipment, labor or supplies for small businesses associated with these rules.

**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

Small businesses were included as members of the Rule Advisory Committee.

**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES**

**CONTACT:**

Katie Gauthier

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725 Summer St. NE, Suite C

Salem,OR 97301

**RULES PROPOSED:**

736-010-0015, 736-010-0026, 736-021-0030, 736-021-0065

**AMEND:** 736-010-0015

**RULE TITLE:** Definitions

**RULE SUMMARY:** Adds definition of electric assisted bicycle

**RULE TEXT:**

As used in this division, unless the context requires otherwise:

- (1) "Day Use Area" is a park property or portion of a park property that the department has designated for day use only.
- (2) "District Manager" means the immediate supervisor of park managers within a specified geographic region of the state.
- (3) "Closed Area" means a park or portion of a park that the public is prohibited from entering. Closures will be identified by signs in the park and notices placed on the state park website.
- (4) "Commission" means the Oregon State Parks and Recreation Commission.
- (5) "Dawn" means 30 minutes prior to sunrise as calculated by the U.S. Naval Observatory.
- (6) "Department" means the Oregon State Parks and Recreation Department.
- (7) "Director" means the department director.
- (8) "Domestic Animals" are those animals whose food and shelter are provided by a human custodian.
- (9) "Dusk" means 30 minutes after sunset as calculated by the U.S. Naval Observatory.
- (10) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported state park rule violations and to issue oral or written warnings or citations to enforce state park rules.
- (11) "Handler" means any person who either brings a domestic animal into a park property or keeps a domestic animal at a park property.
- (12) "Motorized Vehicle" means any vehicle being powered by an engine or motor which is capable of transporting a person.
- (13) "Other power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning defined in section (26) below.
- (14) "Park Property" means any state park, natural area, wayside, corridor, scenic area, monument, historic structure or area, trail, or recreation area under the jurisdiction of the department.
- (15) "Park Employee" means an employee of the department while on duty.
- (16) "Park Manager" means the supervisor or designated employee in charge of a park property.

(17) "Park Resource" means any natural feature, wildlife, vegetation, water, cultural artifact, archaeological remains, or human-made structure or feature of a park area.

(18) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(19) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality, or a non-profit entity.

(20) "Public" includes all persons visiting or intending to visit a park property that are not park employees.

(21) "Service Animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

(22) "State Park Rules" mean the rules, regulations, restrictions, prohibitions, or limitations established by this division for the use or protection of park properties.

(23) "State Park Website" means the internet resource with the host name <http://www.oregon.gov/OPRD/Parks/> and its associated links.

(24) "Violate" includes failure to comply.

(25) "Visitor" means any member of the public who arrives at or is present at a park property.

(26) "Wheelchair" means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.

(27) "Electric Assisted bicycle" means vehicle defined under ORS 801.258

STATUTORY/OTHER AUTHORITY: ORS 390.124

STATUTES/OTHER IMPLEMENTED: ORS 390.050, 390.111, 390.124

AMEND: 736-010-0026

RULE TITLE: Non-Motorized Vehicles, Cycles or Similar Devices

RULE SUMMARY: Adds ability to operate electric assisted bicycles on roads or trails 8 feet and over.

RULE TEXT:

(1) A person operating a bicycle, electric assisted bicycle, skateboard, scooter, roller- or inline skate, or other wheeled, operator-propelled equipment that transports the operator on land must comply with the following:

(a) Motor vehicle and bicycle regulatory signs posted in park properties,

(b) Persons under 16 years of age are required to wear protective headgear,

(A) In the event that a person under 11 years of age violates this subsection, the notice of violation shall be issued to the person's parent, legal guardian or person with legal responsibility.

(B) In the event that a person between 11 and 16 years of age violates this subsection, the notice of violation may be issued to the violator or that person's parent, legal guardian or person with legal responsibility.

(c) Restrict speed and manner of operation to a reasonable and prudent practice relative to terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other park users. This includes:

(A) Yielding the right-of-way to pedestrians and animals;

(B) Dismounting and walking in congested areas and posted walk zones;

(C) Slowing down and making presence well known in advance and using caution when overtaking other persons or animals;

(D) Displaying adequate lighting during the hours of darkness, in compliance with ORS chapters 814 to 816;

(E) Using caution when approaching turns or areas of limited sight distance;

(F) Not disturbing or harassing wildlife as provided in OAR 736-010-0055; and

(G) Operating in compliance with any additional requirements identified in ORS 814.488 when on public roads accessible by motor vehicles.

(2) A person may operate non-motorized cycles or similar devices on roads and trails at any park property, except where posted to specifically prohibit or conditionally restrict such activity.

(3) A person may operate an electric assisted bicycle on roads and trails eight feet or wider unless otherwise posted to restrict or permit such activity.

(4) The director or designee may open or close roads and trails to the operation of non-motorized cycles or similar devices, based on an evaluation of factors related to the use of these devices including, but not limited to, the degree of conflict with other users, public safety, or damage to park resources.

(5) A person may not operate non-motorized cycles, electric assisted bicycles, scooters, or similar devices in those portions of a park property listed below, except where authorized by the director and posted specifically or conditionally to allow such activities:

(a) Off roads or off trails;

(b) Within designated natural areas, natural forest areas, or natural area preserves except on roads open for motor vehicles;

(c) On docks, piers, floats and connecting ramps; and

(d) In areas specifically designated as free from this use.

(6) Individuals with mobility disabilities can use wheelchairs and manually-powered mobility aids, designed for use by individuals with mobility disabilities, to access any areas open to pedestrian use.

STATUTORY/OTHER AUTHORITY: ORS 390.124

STATUTES/OTHER IMPLEMENTED: ORS 390.111, 814.400 - 814.489, 814.600

AMEND: 736-021-0030

RULE TITLE: Definitions

RULE SUMMARY: Adds definition of electric assisted bicycle

RULE TEXT:

For purposes of this division, the definitions in ORS 358.905 and ORS 390.605 shall apply. In addition, the following definitions apply, unless the context requires otherwise:

- (1) "ATV" means All-Terrain Vehicle as described and defined in OAR 736-004-0015. ATV may also be referred to interchangeably as Off-Highway Vehicle (OHV).
- (2) "Cobble" means a rock fragment between about 2.5 inches and 10.2 inches wide, especially one that has been naturally rounded.
- (3) "Commission" means the Oregon Parks and Recreation Commission.
- (4) "Department" means the Oregon Parks and Recreation Department.
- (5) "Director" means the director of the Oregon Parks and Recreation Department.
- (6) "Domestic animal" means those animals whose food and shelter are provided by a human custodian.
- (7) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations and to issue oral or written warnings or citations to enforce the ocean shore state recreation area rules.
- (8) "Habitat Conservation Plan for Western (Coastal) Snowy Plovers" is a multi-agency, multi-jurisdictional recovery effort for the Western Snowy Plover. The full text of the "Habitat Conservation Plan for Western (Coastal) Snowy Plovers" is available from the State Parks and Recreation Department.
- (9) "Handler" means a person who brings a domestic animal onto the ocean shore state recreation area.
- (10) "Holdfast" means the part of a seaweed by which it fastens to the surface on which it grows.
- (11) "Marine Protected Area" means any area of the marine environment within Oregon's Territorial Sea that has been reserved by the state to provide lasting protection for part or all of the natural and cultural resources in it. A marine protected area is an area established by the State Land Board and identified in OAR chapter 141, division 142.
- (12) "Marine Reserve" is an area within Oregon's Territorial Sea or adjacent rocky intertidal area that is protected from all extractive activities, including the removal or disturbance of living and non-living marine resources, except as necessary for monitoring or research to evaluate reserve condition, effectiveness, or impact of stressors. A marine reserve is an area established by the State Land Board and identified in OAR chapter 141, division 142.

(13) “Motorized vehicle or device” means any self-propelled means moving on wheels, runners, tracks or the like by which a person could travel or carry something, whether or not designed exclusively to transport or typically used on roads. This definition includes but is not limited to a motor vehicle as defined in ORS 825.005(6), motorized bicycles, motor scooters, ATVs, OHVs, recreational vehicles, trailers and other mobile equipment.

(14) “Natural Product” means living and non-living natural products on the ocean shore, including but not limited to marine plants, minerals, shells, rocks, and sand.

(15) “Non-Traditional Park Use” means any organized activity, gathering or use conducted in whole or in part within the boundaries of the ocean shore state recreational area, that is not a recreational use allowed by the posted park regulations or permitted under the provisions of this rule or divisions 10, 15 and 20 and which requires a special use permit under division 16.

(16) “Occupied site” means a department-owned or leased area, a privately or locally-owned area or an area adjacent to federal lands that has at least one nest or nesting attempt as identified by the department at the beginning of each western snowy plover nesting season in accordance with the Habitat Conservation Plan for Western (Coastal) Snowy Plover.

(17) "Ocean shore state recreation area" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line or the line of established upland vegetation, whichever is farther inland, under the jurisdiction of the department that is used by the public for recreational purposes per ORS 390.605 (2) and (3).

(18) "Ocean shore resources" means any natural or human-made property, material, product, feature or structure in the ocean shore state recreation area.

(19) “OHV” means Off Highway Vehicle, also called ATV, see definition (1).

(20) "Park Employee" means an employee of the department.

(21) “Park Manager" means the supervisor or designated employee in charge of an ocean shore state recreation area.

(22) “Peace Officer” means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(23) “Person” includes an individual, a public or private corporation, an unincorporated association, a partnership, a government or a governmental unit, or a non-profit entity.

(24) “Personal Use” means use that is directly by the individual for purposes other than monetary reward and not involving sale, barter, resale, or exchange of money.

(25) “Territorial Sea” as defined in ORS 196.405(5) means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.

(26) "Unoccupied sites" means actively managed department-owned or leased areas, privately or locally-owned areas or areas adjacent to federal lands that have been identified as potential nesting sites for western snowy plovers in concurrence with the Habitat Conservation Plan for Western (Coastal) Snowy Plover.

(27) "Upland" means the land lying shoreward or generally easterly of the ocean shore state recreation area.

(28) "Violate" includes failure to comply.

(29) "Wet sand" means the area seaward of symbolic fencing (roping), signs, or both that are placed on the dry sand area.

(30) "Electric Assisted Bicycle" means vehicle defined under ORS 801.258 and are not considered motorized vehicles as used in this section.

STATUTORY/OTHER AUTHORITY: ORS 390.660

STATUTES/OTHER IMPLEMENTED: ORS 390.124, 390.635, 390.660

AMEND: 736-021-0065

RULE TITLE: Non-Motorized Vehicles, Cycles, Unpowered Aircraft, Sails and Other Similar Devices

RULE SUMMARY: Adds electric assisted bicycle as a vehicle that may be operated on the ocean shore.

RULE TEXT:

(1) A person may operate a bicycle, electric assisted bicycles, skateboard, scooter, rollerblades or inline skate, or other wheeled, operator-propelled equipment that transports the operator on land, as provided in section (3).

(2) A person may operate a wind-powered aircraft or vehicle, such as a land sail, kite-buggy or other similar items on the ocean shore state recreation area as provided in section (3).

(3) A person operating any vehicle described in sections (1) or (2) on the ocean shore state recreation area must:

(a) Observe all posted signs, including the signs that restrict the operation of such vehicles, aircrafts and devices, and

(b) Restrict speed and manner of operation to reasonable and prudent practice considering the terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other ocean shore state recreation area users, natural resources, and wildlife.

(4) A person operating any vehicle described in sections (1) or (2) on the ocean shore state recreation area may not:

(a) Disturb or harass wildlife or other natural resources as provided in OAR 736-021-0090; or

(b) Block access, use, or the safe and uninterrupted passage of others on the ocean shore state recreation area.

STATUTORY/OTHER AUTHORITY: ORS 390

STATUTES/OTHER IMPLEMENTED: ORS 390

