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Via email

Ms. Lindsey Steinwachs
Pacific Crest Trail National Scenic Trail Administrator
3348 Alpine Blvd.
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Dear Lindsey,

Thank you so much for meeting with us online to discuss the mountain bike ban on the Pacific Crest National Scenic Trail (PCNST). Our legal and historical research—the latter involving review of the PCNST Comprehensive Plan and a number of individual Forest Plans along the PCNST route—tells us that the August 1988 ban on bikes ceased to be valid 90 days after its inception, because establishing a more permanent rule would have required public input under the Administrative Procedure Act (APA). We hope we have persuaded you that this is a concern.

In terms of good policy, we believe that allowing mountain bikes on some sections of the non-Wilderness PCNST would be an appropriate, manageable and sustainable use. Most importantly, the issue of mountain bikes on the PCNST has never had adequate public participation. Clearly, after 34 years, the mountain bike community deserves a thorough, unbiased, fact-based, publicly transparent review of the appropriateness of mountain biking on the trail.

The Pacific Crest Trail Reassessment Initiative has brought attention to this issue since 2010. Other mountain biking advocates approached the USFS on this issue before PCTRI did.

On our July 13 video call, Mr. Villanueva asked for more information regarding the regulatory history of the bicycle closure. Attached is a chronology of legislation and regulations related to this issue. It's also discussed in this letter.

Before turning to the legal aspects, we wish to explain the ban's historical context. The modern mountain bike was invented in the 1970s and became popular in the 1980s. Whether out of fear of the unknown, intrinsic dislike of the idea of bicycles on trails, or other reasons, organized hikers and equestrians tried to persuade land managers, in some cases successfully, to implement trail bicycle bans around the country. The PCNST Advisory Committee's recommendation to close the PCNST to bicycles was exactly that kind of successful effort. The non-agency members of the PCNST Advisory Committee were hiking and equestrian trail advocates who opposed the concept of sharing the PCNST, and perhaps any dirt trail, with bicyclists.

At the time, there were very few organized mountain-biking groups to counter their influence. The International Mountain Bicycling Association (IMBA) was formed in March of 1988 but remained all but unknown during that year. Still, mountain bikers were lawfully riding sections of the PCNST and efforts could have been made to ask for their perspective. Yet, there is no evidence of any public outreach to the bicycling community regarding the impending closure decision.

Since becoming organized through groups like this one, mountain bicyclists have broached this issue with the USFS and each time been met with inaccurate responses that bikes were never allowed, that the matter was settled by the 1988 typewritten order, and that "primarily" means "exclusively" under [36 CFR § 212.21](#) of 1978, which describes the PCNST as "primarily" oriented toward walkers and horseback riders, as opposed to motorized travel. (The regulation does not mention bicycling, either because 1978 was too early for anyone to think about it or because no one thought it might pose a use conflict.)

In any event, 36 CFR § 212.21 predated a law that now applies to the PCNST. That law is [16 USC § 1246\(j\)](#), a 1983 statute that amended the National Trails System Act of 1968 by specifying that mountain biking is a permissible use on most National Scenic Trails, including the PCNST ([16 USC § 1244\(a\)\(2\)](#)). Indeed, "bicycling" is the first permitted use mentioned in section 1246(j), with "trail biking" by "bicycles" also being in the language.¹

Other language in the National Trails System Act provides further support for mountain biking on the PCNST. "National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited" ([16 USC § 1246\(c\)](#).) The law draws a strict line between human-powered uses and motorized ones, meaning that the USFS need not be concerned that opening the PCNST to mountain biking means that e-bike use must soon follow—the law prohibits it.

The USFS understands the difference between primary uses and exclusive uses. In 2009, the Continental Divide National Scenic Trail (CDNST) Comprehensive Plan was updated to describe the CDNST in these terms: "The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and

¹ To see how the 1983 amendments changed the prior version of section 1246, see [Pub. L. 98-11](#), § 207(i).

cultural resources along the CDNST corridor.” ([CDNST Comprehensive Plan of 2009](#), p. 4.) Yet sufficient understanding of how to manage mountain biking enabled the USFS to declare, not inconsistently with the foregoing and consonant with the National Trails System Act, “Bicycle use may be allowed on the CDNST ([16 U.S.C. 1246\(c\)](#)) if the use is consistent with the applicable land and resource management plan and will not substantially interfere with the nature and purposes of the CDNST.” (Id., p. 15.)

Under this language, large portions of the CDNST are open to bicycling. This is the language that PCTRI would like to see implemented at the end of a rulemaking process for the PCNST.

The August 31, 1988 PCNST Closure Order 88-4 (attached) was the kind of temporary order that expires in 90 days unless permanent rulemaking, including public participation, results in a permanent provision. The Forest Service’s own rules require reconsideration of the order excluding bicycles. [36 CFR § 261.70](#) provides:

(a) Pursuant to 7 CFR 2.60, the Chief, and each Regional Forester, to whom the Chief has delegated authority, may issue regulations prohibiting acts or omissions within all or any part of the area over which he has jurisdiction, for one or more of the following purposes:

[¶] . . . [¶]

(3) Protection of property, roads, or trails.

[¶] . . . [¶]

(9) Establishing reasonable rules of public conduct.

[¶] . . . [¶]

(c) In issuing any regulations under paragraph (a) of this section, the issuing officer shall follow 5 U.S.C. 553 [i.e., the rulemaking provision of the Administrative Procedure Act].

(d) In a situation when the issuing officer determines that a notice of proposed rule making and public participation thereon is impracticable, unnecessary, or contrary to the public interest, he shall issue, with the concurrence of the Chief, *an interim regulation containing an expiration date*.

(e) *No interim regulation issued under paragraph (d) of this section will be effective for more than 90 days unless readopted as a permanent rule after a notice of proposed rule making under 5 U.S.C. 553 (b) and (c).* (Italics added.)

In other words, the 1988 bicycle closure was an interim regulation that expired 90 days after its issuance because the Administrative Procedure Act wasn’t followed, and it was not later “readopted as a permanent rule.”² One of us (Ted Stroll) is a lawyer well versed in this aspect of administrative law, and he would welcome an opportunity to discuss it with USFS counsel.

² The APA’s rulemaking requirement contains an exception for “interpretive rules.” ([5 USC § 553\(b\)\(3\)\(A\)](#).) An example of an interpretive rule is something like this: a hypothetical regulation prohibits “unhealthy beverages” to be sold at national parks, and the National Park Service interprets it to include sugary soft drinks but not sugar-free ones. Interpretive rules, however, do not carry the force of law by themselves, [Perez v. Mortgage Bankers Association](#), 575 U.S. 92, 97 (2015), and must rely on some authority that does. We know of none regarding the PCNST closure order.

We understand that there will be opposition to the idea of allowing bikes on the PCNST, but there will also be support. We are committed to working with you and the trail community on a process that returns responsible mountain bike use to the PCNST. We promise to engage with you and the trail community with civility and professionalism.

We suggest a pilot program where bicycle use will be temporarily allowed and monitored on a few modest segments of the PCNST. These segments might have seasonal closures to accommodate through-hikers or weather conditions, odd-even day access, or the like. We expect significant mountain biker contributions to trail repair and maintenance.

The partnership between the USFS and mountain bikers has come a long way since 1988. It is time to initiate a process to review the PCNST for reasonable mountain bike use.

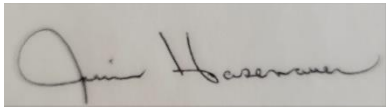
We would like to have another video conference with you at your earliest convenience. Jim will be away from October 18 to November 4 and may have limited online access. But we are generally available.

On behalf of the Pacific Crest Trail Reassessment Initiative, we thank you.

Sincerely,



Ted Stroll



Jim Hasenauer



Daniel Greenstadt

cc: Mr. Garrett Villanueva, Regional Trail and Travel Management Program Manager, USFS Region 5
Mr. James Bacon, Director of Public Services, USFS Region 5