

Doug Ducey Governor



**Bob Broscheid**Executive Director



# NOTICE OF PUBLIC MEETING of THE OFF-HIGHWAY VEHICLE ADVISORY GROUP of THE ARIZONA STATE PARKS AND TRAILS

Pursuant to A.R.S. §38-431.02, notice is hereby given to members of the Off-Highway Vehicle Advisory Group ("OHVAG" or "Group") and the public that OHVAG will hold a meeting on Friday, April 1, 2022 beginning at 11:30am. OHVAG members may attend the meeting in person or participate telephonically. The public may attend and listen to the meeting at the Arizona State Parks Trails office located at 1110 W Washington, Suite 100, Phoenix, AZ 85007. Members of the public may also listen/view the meeting via telephone by calling 1.415.917.3297 and entering PIN: 102.855.016# or via Google Meet: meet.google.com/wcs-ejwt-qhn

In person or telephonic public comment will be taken. If choosing to speak in person, the speaker will be asked to complete a form which will be made available at the Arizona State Parks and Trails office on the meeting day and submit to staff. If choosing to speak via telephone, persons who wish to make statements to the Group will be asked to identify themselves each time they are speaking. Please ensure phones are muted when not speaking.

This meeting is open to the public; however, the Group may elect to hold an Executive Session for any agenda items at any time during the meeting to discuss or consult with its legal counsel for legal advice on matters listed on this agenda pursuant to A.R.S. §38-431.03(A)(3). Items on the agenda may be discussed out of order unless they have been specifically noted to be set for a certain time. Public comment will be taken.

#### **AGENDA**

(The Chair reserves the right to set the order of the agenda.)

- A. CALL TO ORDER
- **B. PLEDGE OF ALLEGIANCE**
- C. MEMBER ROLL CALL
- D. AGENDA ITEMS
  - 1. Consideration of Action to Approve Minutes of the March 4, 2022 OHVAG Meeting
    The Group will review and may consider action to approve the OHVAG meeting minutes from March 4, 2022.
  - 2. Presentation on Arizona Open Meeting Law and Conflict of Interest Laws. (Presenter: Matthew Eberhart, State Off-Highway Vehicle Coordinator)

    The Group will be updated on Open Meeting Law and Conflict of Interest
  - 3. Table Mesa OHV Concerns: (Presenter: Jason Cobb, OHVAG Member)

    Member Cobb will lead the Group in a discussion regarding OHV concerns that have come forward out of the BLM managed Table Mesa OHV Area. This agenda item is for information only.
  - 4. Tread Lightly! Partnership Update: (Presenter: Matt Caldwell, Executive Director Tread Lightly!)
    Members will be educated on Tread Lightly! and their growing partnerships in Arizona including Arizona State Parks and Trails. This agenda item is for information only.
  - **5. OHV Coordinator Updates (Presenter: Matthew Eberhart, State Off-Highway Vehicle Coordinator)** Members will be provided updates on Senate Bill 1377 and Senate Bill 1596, Arizona State Parks and Trails Legislative Day, and upcoming events.

#### E. FUTURE AGENDA ITEMS

Group members may identify items or issues they wish to be considered for inclusion on a future agenda.

#### F. CURRENT EVENTS

Group members may present a summary of current events and /or recent experiences of interest to the outdoor recreation community and/or the status of any projects with which they may be involved. The Group will not discuss or take any action on any current event summary.

#### G. CALL TO THE PUBLIC

The Chair will recognize those wishing to address the Group. It is probable that each presentation will be limited to one person per organization and the time allotted by the Chair. Action taken because of acknowledgement of comments and suggestions from the public will be limited to directing staff to study the matter or scheduling the matter for further consideration and decision at a later date.

#### H. FUTURE MEETING DATES

Group members will discuss potential future meeting dates.

#### I. ADJOURNMENT

A copy of this agenda and any background material provided to Group Members is available for public inspection at Arizona State Parks & Trails, 1110 W. Washington Street, Suite 100 Phoenix, AZ 85007. For additional information, contact Mickey Rogers at (602) 542-6942.

Pursuant to Title II of the Americans with Disabilities Act (ADA), Arizona State Parks & Trails does not discriminate based on a disability regarding admission to public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the ADA Coordinator Thomas Beranek at (602) 542-7389; or email <a href="teberanek@azstateparks.gov">teberanek@azstateparks.gov</a>. Requests should be made as early as possible to allow time to arrange the accommodation. For technical difficulties during the teleconference meeting, please contact Jeff Schmidt at (602) 542-7124 or via email <a href="jestcommodation-jestco

Posted at: Arizona State Parks and Trails

1110 W. Washington Street, Suite 100 Phoenix, AZ 85007

And at: https://azstateparks.com/ohvag

Bob Broscheid: Executive Director

Doug Ducey Governor



**Bob Broscheid**Executive Director



#### **Draft Minutes**

# of THE OFF-HIGHWAY VEHICLE ADVISORY GROUP of THE ARIZONA STATE PARKS AND TRAILS

#### Friday, March 4, 2022

#### A. CALL TO ORDER

OHVAG Vice-Chair Chuck Wood called the meeting to order at 10:02a.m.

#### **B. PLEDGE OF ALLEGIANCE**

OHVAG Vice-Chair Chuck Wood lead the Group in the reciting of the Pledge of Allegiance

#### C. MEMBER ROLL CALL

<u>Members Present:</u> Geoff Chain (virtual), Jason Cobb (virtual), Pat Headington, Holly Irwin (virtual), Tom Murphy (virtual), Charles Wood

<u>Staff Present:</u> Matthew Eberhart, State OHV Coordinator, Mickey Rogers, Chief of Grants and Trails (virtual), Dawn Collins, Office of Continuous Improvements

#### D. AGENDA ITEMS

#### 1. New OHVAG Members

Pat Headington, Arizona Wildlife Federation, introduced himself to the members.

#### 2. Election of 2022 OHVAG Chair and Vice-Chair.

Jason Cobb made a motion to nominate Todd Davis as Chair, Holly Irwin seconded the motion. Geoff Chain, yes, Jason Cobb, yes, Pat Headington, yes, Holly Irwin, yes, Tom Murphy, yes, Chuck Wood, yes. Motion passed

Jason Cobb made a motion to nominate Holly Irwin as Vice Chair, Chuck Wood seconded the motion. Geoff Chain, yes, Jason Cobb, yes, Pat Headington, yes, Holly Irwin, yes, Tom Murphy, yes, Chuck Wood, yes. Motion passed

#### 3. Consideration of Action to Approve Minutes of the November 29, 2021 OHVAG Meeting

Tom Murphy made a motion to approve the minutes, Chuck Wood seconded. Geoff Chain, yes, Jason Cobb, yes, Pat Headington, yes, Holly Irwin, yes, Tom Murphy, yes, Chuck Wood, yes. Motion passed

# 4. OHVAG Will Consider and May Take Action on A Recommendation to the Arizona State Parks Board to Approve, Modify, Or Deny Funding for The Submitted 2022 Motorized Grant Application. (Presenter: Matthew Eberhart, State Off-Highway Vehicle Coordinator)

Matthew Eberhart discussed the project in detail with a recommendation from staff to fully approve funding \$106,017.00. This is to relocate an existing OHV trailhead which is located at a dangerous curve. The project was originally approved by staff as an emergency and mitigation grant. However, the total cost when it went out to bid exceeded \$100,000 and therefore is being brought forward as a Competitive Motorized Grant. There was a question whether this grant requires a match. Staff stated that Competitive Motorized Grants using Off-Highway Vehicle Recreation Fund do not require match. There was a question as to whether this trailhead was recently closed. The sponsor stated that the trailhead that was closed was Hayfield Draw which is a USFS trailhead, not Camp Verde, and was closed due to COVID but is back open. Geoff Chain made a motion to fund the Camp Verde Box T Remediation Project at \$106,017.00. Holly Irwin seconded. Geoff Chain, yes, Jason Cobb, yes, Pat Headington, yes, Holly Irwin, yes, Tom Murphy, yes, Chuck Wood, yes. Motion passed

### 5. State Comprehensive Outdoor Recreation Plan (SCORP) Update: (Presenter: Dawn Collins, Office of Continuous Improvement.)

Dawn Collins gave an update on the progress of Arizona's 2023-2027 SCORP. There is currently a draft document on Arizona State Parks website for the public to comment on. The final version will be posted on the park's website and OHVAG members will have one final chance to comment on this plan before it is sent to the National Park Service for their approval.

- 6. Legislative updates: (Presenter: Matthew Eberhart, State Off-Highway Vehicle Coordinator)

  Matthew Eberhart updated OHVAG on Senate Bill 1596 and Senate Bill 1377. Senate Bill 1596 sets up a study committee to collect and study information from the public and stakeholders regarding OHV issues in Arizona and submit an annual report on their activities and recommendations for administration and legislative action.

  Senate Bill 1377 is a bill to reallocate funding from the OHV Recreation Fund that is currently allocated to Arizona Department of Transportation, Arizona State Lands and Arizona Game and Fish. It would require reporting on OHV injuries, and require education for those who use will register an OHV.
- 7. OHV Coordinator Updates (Presenter: Matthew Eberhart, State Off-Highway Vehicle Coordinator)

  Matthew Eberhart updated OHVAG on the OHV ambassador program and the dealership program to distribute backpacks with OHV information which include maps, education cards, information on State Land Permits, Arizona Tourism ACERT maps, and tread lightly materials. A lot of discussion about getting more education materials to the public and getting youth involved with the program. Matthew also talked about several partnerships and groups that our grant staff are involved with including actively working with Tread Lightly. Also working with the Red Rock OHV Conservation Crew which is a group in the Sedona Area to address OHV use. There was a discussion on how effective this information agencies are distributing. Member Cobb emphasized a need to provide more materials in Spanish and see about bringing on bilingual Ambassadors. In addition, Member Cobb suggested the Group and its partners work to better provide information to second hand purchasers that aren't buying their machines in dealerships. There was a question if we provide information to dealers and what would that be. Matthew discussed possibly increasing available funds up to \$100,000 to law enforcement and are seeing more emergency and mitigation projects.

#### E. FUTURE AGENDA ITEMS

Tread Lightly, Game and Fish, Coconino National Forest Collaboration Trail Closures in the Black Canyon City area

#### F. CURRENT EVENTS

Matthew gave an update on the Box Canyon OHV cleanup with the Wickenburg Conservation Council and attended the most recent outreach event. Member Wood talked about the Arizona Alpine Trail and several meetings with stakeholders. Payson requested if they could apply for funds for a staging area near the Jim Jones shooting area. Alpine area hopes to hold a Show Me Ride near Memorial Day. Pat looked at some possible mitigation to be done along the border wall in the Camino area including the military and Ajo. Also discussed a wildlife water site in the Ouartzsite area with a grant from Yamaha.

#### G. CALL TO THE PUBLIC

There were none.

#### H. FUTURE MEETING DATES

April 1, 2022

#### I. ADJOURNMENT

Meeting adjourned at 12:01p.m..

#### ARIZONA HOUSE OF REPRESENTATIVES



Fifty-fifth Legislature Second Regular Session

**Senate**: APPROP DPA 8-2-0-0 | 3<sup>rd</sup> Read 18-10-2-0

House: TRANS DP 9-3-0-0

SB 1377: off-highway vehicles; fund; instruction; operation Sponsor: Senator Kerr, LD 13 Caucus & COW

#### Overview

Changes the distribution of monies in the Off Highway Vehicle Recreation Fund (Fund) and how monies in the Fund must be used.

#### <u>History</u>

An off-highway vehicle (OHV) is defined as a motorized vehicle that is operated primarily off of highways and that is designed, modified or purpose-built primarily for recreational non-highway all-terrain travel (A.R.S. § 28-1171). The fund consists of monies from legislative appropriations, OHV user indicia fees, motor vehicle fuel taxes, federal grants and private gifts. Monies from the Fund are distributed, based on specified percentages of the monies in the Fund, to the Arizona Game and Fish Department, the Arizona State Land Department, and the Arizona State Parks Board (Board) (A.R.S. § 28-1176).

#### **Provisions**

- 1. Changes the prohibited acts for a driver of an OHV to now relate to an operator of the vehicle as well as someone allowing the operation of an OHV. (Sec. 2)
- 2. Clarifies the Arizona Department of Game and Fish is responsible for the administration of the OHV user indicia program. (Sec. 3)
- 3. Changes the amount of OHV law enforcement from 7 to up to 14 full-time employees. (Sec. 3)
- 4. Increases the required percentage of Fund monies the Arizona State Land Department must spend on trails from 5% to 15% and requires the monies to address the impact on the State Land Department Lessees. (Sec. 3)
- 5. Lessens the amount of monies in the Fund that will be spent on OHV activities from 60% to 50%. (Sec. 3)
- 6. Decreases the monies appropriated to fund staff support to plan and administer the Fund from 12% to 10% of the Fund. (Sec. 3)
- 7. States that any designation or acquisition of land for OHV trails and facilities must be approved at a public meeting of the Board. (Sec. 3)
- 8. Requires the Board to spend at least 10% of monies from the Fund for enforcement of OHV laws. (Sec. 3)
- 9. States the Board must spend at least 10% of Fund monies for state land lessee impacts. (Sec. 3)

- 10. Includes projects that address impacts to state land lessees, non-federal projects and projects where federal entities work with state and local entities with the projects that the Board gives priority to. (Sec. 3)
- 11. Requires the annual OHV report to include the number and status of OHV vehicle injury claims filed in this state. (Sec. 3)
- 12. Requires the Director of ADOT to deposit all OHV user fees into the Fund, rather than 70% to the Fund and 30% into the Highway User Revenue Fund. (Sec. 4)
- 13. States all OHV operators and passengers owe a duty of ordinary care in the recreational use of an OHV. (Sec. 5)
- 14. States landowners and their authorized lessees, unless they are grossly negligent, do not have a duty to keep lands safe for entry and use by recreational users. (Sec. 5)
- 15. States that before a person may rent or sell an OHV vehicle to a customer, the person must provide the customer with approved OHV safety and environmental educational materials. (Sec. 5)
- 16. Defines pertinent terms. (Sec. 1, 6)
- 17. Makes technical and conforming changes. (Sec. 2, 3, 6)

#### **ARIZONA HOUSE OF REPRESENTATIVES**



Fifty-fifth Legislature Second Regular Session

**Senate**: TAT DP/SE 9-0-0-0 | 3<sup>rd</sup> Read 27-0-3-0

House: TRANS DP 10-0-0-2

SB 1596: off-highway vehicles Sponsor: Senator Kerr, LD 13 Caucus & COW

#### Overview

Establishes the Arizona Off-Highway-Vehicle Study Committee (Committee).

#### **History**

An off-highway-vehicle (OHV) is defined in statute as a motorized vehicle that is operated primarily off of highways and that is designed, modified or purpose-built primarily for recreational nonhighway all-terrain travel and includes a tracked or wheeled vehicle, utility vehicle, all-terrain vehicle, motorcycle, four-wheel drive vehicle, dune buggy, sand rail, amphibious vehicle, ground effects or air cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind. The off-highway-vehicle definition does not include vehicles that are primarily used on water (A.R.S. § 28-1171).

#### **Provisions**

- 1. Establishes the Committee, consisting of the following members:
  - a) two members of the Senate who are appointed by the President of the Senate and who are members of different political parties with one member being designated as a Cochairperson;
  - b) two members of the House of Representatives (House) who are appointed by the Speaker of the House and who are members of different political parties with one member being designated as a Co-chairperson:
  - c) the Director of the Arizona Game and Fish Department or the Director's designee;
  - d) the Director of ADOT or the Director's designee;
  - e) the Director of the Arizona State Parks Board or the Director's designee;
  - f) the Commissioner of the State Land Department or the Commissioner's designee;
  - g) one law enforcement officer who enforces OHV laws and who is appointed by the Governor;
  - h) one representative of an organization representing hunting, fishing or a similar outdoor sports activity in Arizona who is appointed by the Governor;
  - two members who represent an OHV organization or recreational group in Arizona, one
    of whom is appointed by the President of the Senate, and one of whom is appointed by
    the Speaker of the House;
  - j) one representative of an OHV rental company in Arizona who is appointed by the President of the Senate:
  - k) one representative of an OHV manufacturer or retailer in Arizona who is appointed by the Speaker of the House:
  - one representative of the farming and agriculture industry in Arizona who is appointed by the Governor; and

- m) two members of the public who are appointed by the President of the Senate and who are knowledgeable about outdoor recreation issues in Arizona and about trails used by OHV operators, one of whom represents holders of federal grazing permits or other land use permits. (Sec 1)
- 2. Asserts appointed members serve at the pleasure of the person who made the appointment. (Sec. 1)
- 3. Asserts committee members may not be paid but appointees appointed by the Governor may be eligible to be reimbursed for certain expenses. (Sec. 1)
- 4. Requires the Committee to meet to collect and study information from the public and stakeholders regarding OHV issues in this state. (Sec. 1)
- 5. Asserts the Committee must, on or before January 1 of each year, submit a report regarding the Committee's activities and recommendations for administrative or legislative action to the Governor, the President of the Senate and the Speaker of the House of Representatives and provide a copy of this report to the Secretary of State. (Sec. 1)
- 6. Repeals the Committee on May 31, 2024. (Sec. 1)

☐ Prop 105 (45 votes)	☐ Prop 108 (40 votes)	☐ Emergency (40 votes)	☐ Fiscal Note



# Off-Highway Vehicle Advisory Group (OHVAG)

Friday, April 1, 2022

Geoff Chain, Jason Cobb, Todd Davis, Pat Headington, Holly Irwin, Tom Murphy, Charles Wood



## AGENDA – A



## **AGENDA - B**

Pledge of Allegiance



## AGENDA - C

# **Member Roll Call**

Geoff Chain
Jason Cobb
Todd Davis
Pat Headington
Holly Irwin
Tom Murphy
Charles Wood



## AGENDA - D1

# **Meeting Minutes**

The Group will review and may consider action to approve the Group meeting minutes from March 4, 2022.



### AGENDA - D1

## **Motion:**

I move to approve the meeting minutes of the March 4, 2022 meeting.



### AGENDA - D2

# Open Meeting Law and Conflict of Interest Laws

Matthew Eberhart, State OHV Coordinator



# Arizona's Open Meeting Law Basics

NANCY H. JASCULCA ARIZONA ATTORNEY GENERAL'S OFFICE

# Disclaimer

- Views and opinions expressed in the following slides are those of the individual presenter
- The following slides are presented for educational purposes and do not constitute legal advice

# Legislative Intent: Openness in Government

- Arizona's public policy requires that official deliberations and proceedings be conducted openly
- Any uncertainty should be resolved in favor of open and public meetings

A.R.S. § 38-431.09

# Legal Resources

- ▶ A.R.S. §§ 38–431 through 38–431.09
- Arizona Agency Handbook
  - www.azag.gov
  - Chapter 7 (Open Meetings)
- Arizona Ombudsman website
  - www.azoca.gov
- Arizona Attorney General Opinions
  - www.azag.gov

# WHO is subject to the Open Meeting Law?

# "Public Body"

- Arizona Attorney General Opinion 107–001
- "Public Body" means:

The Legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision.

 All quasi judicial-bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.

A.R.S. § 38-431(6)

# **Advisory Committees & Subcommittees**

- "Advisory Committee" or "Subcommittee" means:
- Any entity, however designated;
- Officially established on motion or order of the public body or by the presiding officer;
- Appointed to make a recommendation concerning a decision to be made or considered by the public body.

A.R.S. §38-431(1)

# Advisory Committees & Subcommittees

- Must comply with all requirements of the Open Meeting Law
- Must take minutes or make recordings of their meetings

# WHEN does the Open Meeting Law apply?

# What is a "meeting"?

- Gathering, in person
- Or through technological devices
  - Phone, email, fax
- Of a quorum, that
- Discusses, proposes or takes legal action
- Including deliberations

A.R.S. § 38-431(4)

# What is a quorum?

- Generally in Arizona, a quorum is a majority of a board or commission.
- Look to your statutes and rules.
- Vacancies DO count toward the number of members of a board unless your statutes/laws say otherwise.

# What if you don't have quorum?

You don't have a "meeting" and you can't meet

## **BUT**

- Beware of serial communications
- Beware of "wheel and spoke" communications
  - Meeting with individual members
  - Reporting what other members said
  - Polling the members

# Discussing, Proposing or Taking Legal Action

- Normal use and meaning of these words will apply.
- Proposing legal action = "put forward for consideration, discussion, or adoption."
- Includes deliberations = discussion of facts and opinions re: potential board business.
- RULE: If this occurs among a quorum of the Board IT IS A MEETING.

# AG Opinion on E-Mail

- No. 105-004 (R05-010)
- E-mail communications among a quorum of a public body are subject to the same restrictions that apply to all other forms of communication among a quorum.
- E-mails among a quorum that involve discussions, deliberations or taking legal action on matters that may reasonably be expected to come before the board constitute a meeting through technological means.
- Does not have to be simultaneous
- One-way e-mail communication by one member to a quorum of members that proposes legal action is a violation even if there is no discussion, deliberation or legal action taken.

# Proposing an Agenda Item?

- Proposing an item for the agenda via e-mail is allowed if you do not propose legal action.
- Communicate the TOPIC only NOT the legal action you want the board to take.
- Do not discuss, deliberate or take legal action regarding the proposed agenda item.

# "Propose" – EXAMPLES in the Opinion

- "Councilperson Smith was admitted to the hospital last night"
  - Does NOT propose legal action
- "We should install a crosswalk at First and Main"
  - Does propose legal action
  - It's more than a topic for the agenda because it urges or suggests an outcome

# One-Way E-mail from Staff

- Passive receipt of information from staff, without more, does not violate OML
- Staff may send e-mail to board members
- Staff may send agenda packets to board members

# Suggestions for E-Mail

If staff send e-mails to board members, you may want to include a notice that advises members not to forward the email to other board members or copy other board members in their reply to staff.

# Improper Staff Communication

- Staff may NOT send opinion or substantive communication about board business from a board member to enough other members to constitute a quorum
- Cannot use a third person to violate the OML
- A third person can now be charged with a violation and pay penalties

# E-Mails are Public Records

▶ E-mail communications of board members related to their official duties are public records that must be maintained for public inspection and reproduction.

# **Avoiding OML Violations**

- DO NOT discuss, propose, deliberate or take legal action on any potential board business between a quorum of the board outside a properly noticed public meeting.
- "Board business" read broadly! Includes anything that may foreseeably come before the board for action.
- Never Reply "All"

# In Summary . . .

- E-mail is a useful technological tool,
- But it must be used in a manner that follows the OML's mandate that all public bodies propose legal action, discuss, deliberate, and make decisions in public.

# By Telephone Conferencing

- Allowed if the public body has approved this practice.
- The notice and agenda should indicate telephone participation.
- The public must be able to hear.
- Minutes should identify telephonic participants and describe public access.

#### What about social events?

- If more than a quorum may be present
  - 1. Post a "courtesy notice" announcing social event where a quorum may be present
  - Include statement that no business of the public body will be discussed & no action will be taken
  - 3. Board members should avoid talking with each other or have a witness!

# HOW do you comply with the Open Meeting Law?

# Find a good location

- Meetings must be accessible
- Discourage procedures that obstruct or inhibit public attendance such as:
  - Remote or inadequate location
  - Required sign in sheets
  - Unreasonable time

#### Give them notice

Public bodies of the State, counties and school districts shall:

- Conspicuously post a statement on their website stating where all public notices of their meetings will be posted
  - Include physical and electronic locations
  - Give additional public notice as is reasonable and practicable
- Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings.
- A technological problem or failure that prevents posting or use of the website does not preclude the holding of the meeting if the public body complies with all other notice requirements.

A.R.S. §38-431.02(A)

# Physical posting location

- Post in a location where the public has reasonable access (unlocked building; geographically accessible)
- Post during normal business hours
- Make sure front and back can be read if inside a locked display case

- PRACTICAL POINTER if you list multiple locations (website and physical, or multiple physical locations) the Agendas on each MUST be the same and you MUST post at all the locations.
- If you want to post in multiple places do so, but only list **ONE** as your official location.
- Think about marking the "unofficial" notices so that the public won't be confused.

# Notice of Meetings

- Notice required at least 24 hours in advance of a meeting
- To all members of the public body
- To the public

A.R.S. § 38-431.02(C)

#### **Contents of Notice**

- The public body
- Date, time, place (address, room number)
- Agenda or how to obtain agenda
- Executive Session if applicable (cite specific statutory authority)
- Accommodations under the ADA

# Agenda content

- Agendas must include matters to be
  - Discussed,
  - Considered or
  - Decided
  - At the meeting
- Must contain information reasonably necessary to inform the public

# Agendas must be understandable

- No acronyms
- Statutory cite is not enough without explanation
- No legalese
- No agency slang

# Agenda Items

- Needs to include "specific" items to be discussed, considered or decided
- NOT GOOD ENOUGH without details:
  - "New business"
  - "Old business"
  - "Personnel"
  - "Announcements"

# If it's not on the agenda

- You cannot discuss
- All discussion must be reasonably related to an adequately-described agenda item
- Add new items to the agenda for future meeting

# What if there is an emergency?

- In the case of an actual emergency, a meeting may be held with such notice as is appropriate.
- May be either an open session, or executive session, or both.
- To use emergency exception, public body must do several things, including posting a notice within 24 hours declaring that an emergency session has been held and what was discussed.

ARS § 38-431.02(D), (H), (I), and (J)

## **Backup Materials**

- Members' packets
- State on the agenda where they will be available for public inspection
- Must be available 24 hours before the meeting
- Can charge reasonable public record fee for copies

#### Minutes

- Must have them
- In writing or
- Recorded audio or video tape

A.R.S. §38-431.01(B)

# Changes in Agenda

- Post and distribute same as original
- 24 hour rule still applies

#### **Contents of Minutes**

- Date, time, place
- Members present/absent
- General description of matters discussed or considered
- Accurate description of legal actions proposed, discussed or taken, including a record of how each member voted.
- Name of members who propose each motion
- Name of each person making statements or presenting material and a reference to the legal action addressed
- See also A.R.S. § 38-431.02(J) and A.R.S. § 38-431.05(B)(3)

#### Contents of Executive Session Minutes

- Date, time, place
- Members present/absent
- General description of matters discussed or considered
- Accurate description of instructions given to attorneys or designated representatives per A.R.S. 38-431.03(A)(4), (5) and (7) regarding contracts, litigation or settlement options
- Such other information as public body deems appropriate

#### Public Access to Minutes

- Minutes or a recording shall be available for public inspection 3 working days after the meeting
- Can stamp as "draft"

A.R.S. § 38-431.01(D)

# Public Access to Executive Session Minutes

# Executive session minutes or recordings shall be kept confidential

A.R.S. § 38-431.03(B)

### Separate Recordings and Minutes

- Use separate public sessions and the executive sessions
- Makes prompt disclosure possible without redaction

### Public's Rights

- Must be permitted to attend and listen to public meetings
- Open Meeting Law does not establish a right for the public to participate in the discussion or ultimate decision of the public body (Ariz. Att'y Gen. Op. 78-1)
- Cannot require them to sign in unless person intends to speak at meeting (required for Minutes)
- Public body may include a call to the public on a meeting agenda (Can limit speaking time of each speaker)
- Cannot disrupt proceedings (but make a good record before removing someone)

#### Meeting "Etiquette"

#### Discourage the Following:

- Whispering to other Board members
- Passing notes between Board members
- Letting members of the public talk to each member before the meeting starts with their hands over the microphone
- If it's about business of the public body, this could become a violation
- In any event, it looks like a violation

#### Calls to the Public

- Optional
- Be fair
- Avoid getting into a discussion of matters not on the agenda
- Public body's response is limited:
  - Direct staff to study the matter
  - Respond to criticism
  - Schedule matter for future meeting

A.R.S. §38-431.01(H)

#### **Executive Sessions**

"gathering...from which the public is excluded..." (A.R.S § 38–431)

- Must include in the notice that you may go into executive session if you plan to do so (cite specific statutory provision and subject matter)
- Executive Session is only allowed for specific types of items

#### **Executive Sessions**

- Must first vote (in public session) to go into executive session
- Chair asks members of the public to leave the room; or members adjourn to another room
- Chair is required to remind members that the matters discussed and minutes of the executive session are confidential
- DO NOT vote to exit executive session

#### **Executive Sessions**

- Only certain subjects are allowed
- Restrict discussion to purpose for which adjourned
- No ACTION permitted
- Must return to public session for a vote
- Must have Minutes

#### **Executive Session Categories**

- Personnel matters
- Confidential records
- Legal advice
- Litigation, contracts and settlement discussions involving attorney consultation
- Employee salary discussions
- International, interstate and tribal negotiations
- Purchase, sale or lease of real property

A.R.S. §38–431.03(A)(1)–(7)

#### Who may attend Executive Session?

- Members of the public body
- Officers, appointees and employees but only as allowed in A.R.S § 38-431.03
- Auditor general in performance of official duties (A.R.S § 41–1279.04)
- "Only individuals whose presence is reasonably necessary in order for the public body to carry out its executive responsibilities

A.R.S § 38-431(2)

## Legal Advice

- Discussion or consultation with attorneys for the public body
- Exchange of communication between lawyer and client
- Members may NOT discuss between themselves what action to take
- Members may NOT debate over what action to take pros and cons; policy implications; alternatives
- Mere presence of an attorney does not make it legal advice
- Distinguished from legal consultation regarding litigation, contracts or settlement agreements
- ONLY provision where a general notice at top of agenda that board may go into executive session for any matter on the agenda is acceptable.

A.R.S. § 38–431.03(A)(3)

#### Personnel

- Must be someone the public body has the authority to hire and fire
- Cannot use for groups of people, for example "Executive session to discuss reductions in pay for all employees."
- Must give employee individual notice of executive session and opportunity to have it in open session
- Employee does not have to be present, but is entitled to minutes

A.R.S. § 38-431.03(A)(1)

# Taking Legal Action

- CANNOT do this in executive session
- Must return to public session to vote
- NO STRAW POLLS IN EXECUTIVE SESSION

#### **Executive Session Pitfalls**

- Failure to keep executive session discussion confidential
- Failure to advise persons about the confidentiality requirement A.R.S § 38-431.03(C)
- Individuals present who are not "reasonably necessary"

#### **Executive Session Minutes**

- Must be kept confidential
- Keep separate tapes and minutes for public and executive sessions
- Consider more detail may be better

### Who may have access to executive session minutes?

- Members of the public body, including members who did not attend meeting
- Officer, appointee or employee who was the subject of the meeting authorized by A.R.S. §38–431.03(a)(1)
- Attorney for the public body
- Auditor general
- Attorney general or county attorney investigating open meeting law violations
- The court when open meeting law violations have been alleged

# WHAT happens if there is a problem?

## What to do if you know you have a violation

- Ratify (A.R.S. § 38–431.05(B))
- Consider self-reporting
- Cooperate with County Attorney, AG, or Ombudsman's Office and move early to remedy the problem
- Consider training and changes to policy to prevent violations in the future
- Think about the public perception

## What can the AG or County Attorney do?

- Investigation
- May issue "investigative demands"
- May conduct examinations under oath
- May require written statements under oath
- May file enforcement action in Superior Court

A.R.S. § 38-431.06

#### **AGO Enforcement**

- Investigates violations and seeks enforcement of the Open Meeting Law
- Assists public body attorneys in complying with the Open Meeting Law
- Will open an investigation after receipt of a signed complaint

#### Arizona Ombudsman's Office

- Can investigate Open Meeting Law and Public Records complaints
- Can take anonymous complaints
- Offers training
- www.azoca.gov

#### **Private Parties**

- Open Meeting Law allows private rights of action.
- AG will defer to the court if matter is filed in Superior Court
- May have to pay attorneys fees and costs
- If court finds "intent to deprive the public of information or opportunity to be heard" could require the board member to pay out of his or her own pocket

A.R.S. § 38-431.07

#### Ratification

- Must take place within 30 days after discovery of the violation or after discovery should have been made
- Clear indication in agenda and notice of ratification
- Detailed written description of action to be ratified and all associated deliberations, consultations and decisions available to the public (to also be included in minutes)
- Notice, agenda, and written description available at least 72 hours before the meeting

#### **Penalties**

- Action is null and void
  - A.R.S. § 38–431.05
- AG May Commence Suit and Court Impose Civil Penalties
  - Against anyone who commits a violation
  - Against anyone who knowingly aids, agrees to aid or attempts to aid another in committing a violation
  - Individual, not public body, pays penalty

#### Removal from Office

If intent to deprive the public of information or opportunity to be heard

Court may remove the public officer from office

A.R.S. § 38-431.07

## Arizona Conflict of Interest Law A Basic Primer

NANCY H. JASCULCA ARIZONA ATTORNEY GENERAL'S OFFICE

#### Legal Resources

- ▶ A.R.S. §§ 38-501 to -511
- Arizona Agency Handbook
  - www.azag.gov
  - Chapter 8 (Conflict of Interest)

## What is the Purpose of the Conflict of Interest Statutes?

"The object of conflict of interest statutes is to remove or limit the <u>possibility</u> of personal influence which might bear upon an official's decision."

Yetman v. Naumann, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972).

## Do Conflict of Interest Laws Apply to Me?

The conflict of interest prohibitions "apply to all public officers and employees of incorporated cities or town, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards."

A.R.S. § 38-501(A)

Members of advisory commissions, boards, councils, and committees are public officers as that term is used in the conflict of interest laws.

Ariz. Att'y Gen. Op. 175–211; see also Ariz. Att'y Gen. Ops. 182–105, 188–014, 189–067

## When Does a Conflict of Interest Arise?

- A conflict of interest arises where the public officer's interest in a decision or contract is "substantial." A.R.S. § 38-503
- A substantial interest means "any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. § 38-502(11)
- A.R.S. § 38-502(10) specifically lists remote interests. (These are certain economic interests that the Legislature has determined are so remote that they do not impermissibly influence a person's decisions or actions.)

Example: If the public officer or employee or a relative is a non-salaried officer of a nonprofit corporation, he or she has a remote interest in any decision affecting that corporation. A.R.S. §38-502(10)(a)

## To determine whether a substantial interest exists, the Three Fact-Specific Questions to

- **Ask:** public officer should ask:
  - Could the decision affect, either positively or negatively, an interest of the officer or, employee or the officer's or employee's relative?
  - Is the interest a pecuniary or proprietary could it affect a financial interest or ownership interest?
  - ➤ Is the interest something that is not statutorily designated
    - as a remote interest?

## What If I Believe I Have a Conflict of Interest?

- Must provide written disclosure of that interest
  - See Arizona Agency Handbook, Appendix 8.1 (Sample Disclosure Memorandum).
- Must refrain from participating in any manner in discussions or decisions relating to the matter
- Must not communicate about that matter with anyone involved in the decision-making process
- There are civil and criminal penalties for violating conflict of interest laws. See A.R.S.§ 38-510(A)(1) and (A)(2).
- Note: There are other restrictions that may apply after leaving public service. See A.R.S. §§ 38–504 and 38–505.

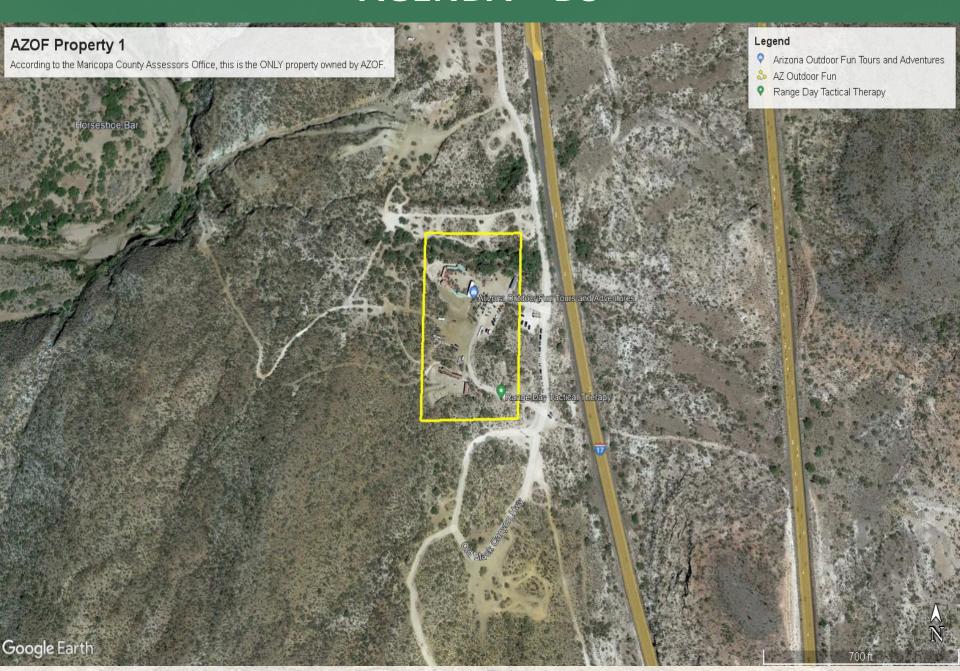
## Questions?

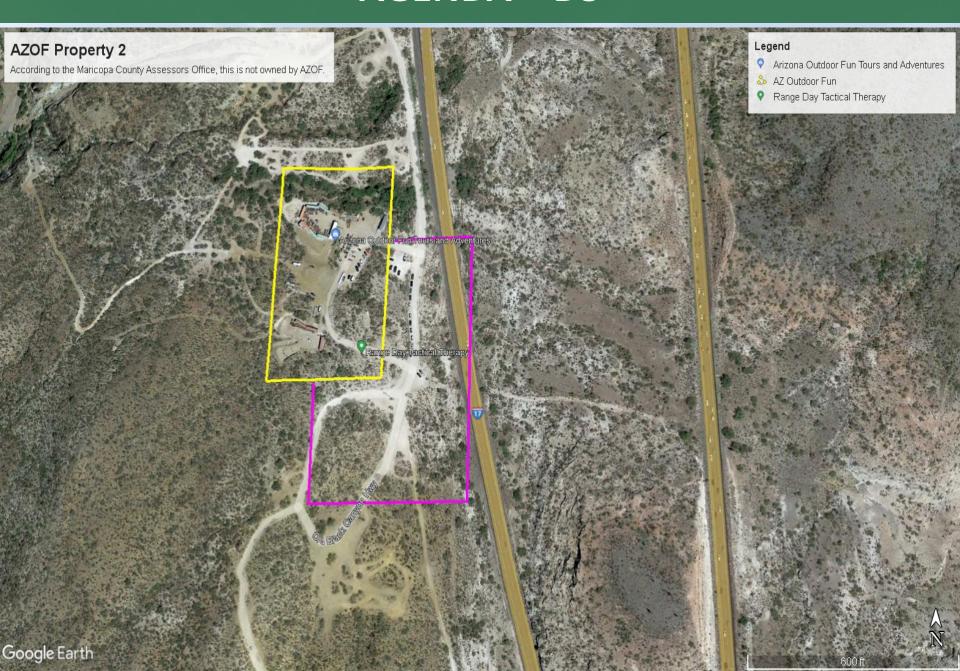
#### **Table Mesa OHV Concerns**

Member Cobb will lead the Group in a discussion regarding private land ownership and BLM trail closures impacting the BLM managed Table Mesa OHV Area. This agenda item is for information only.

- Jason Cobb, OHVAG Member











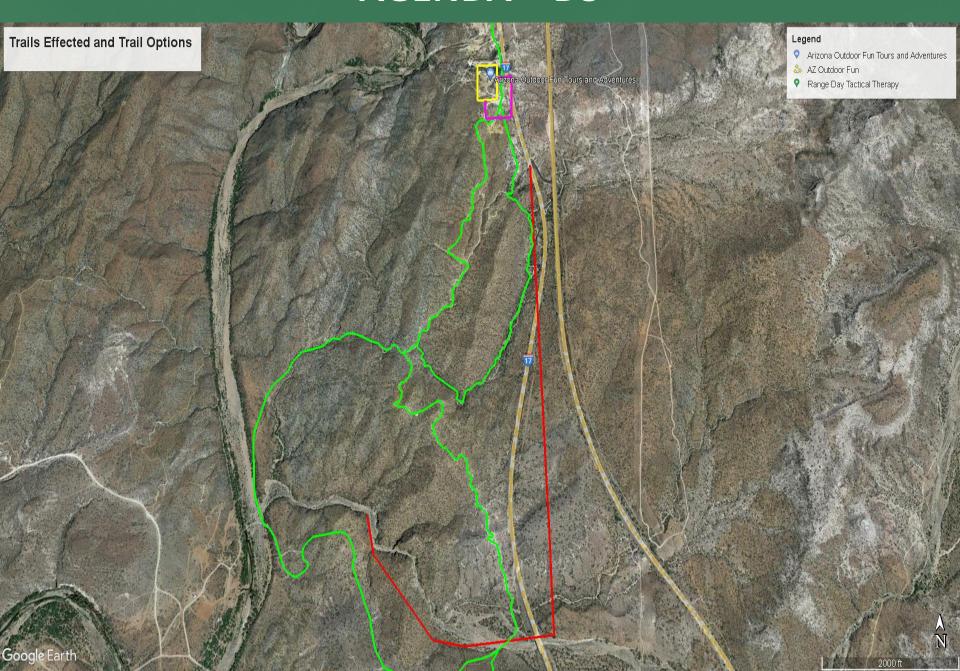


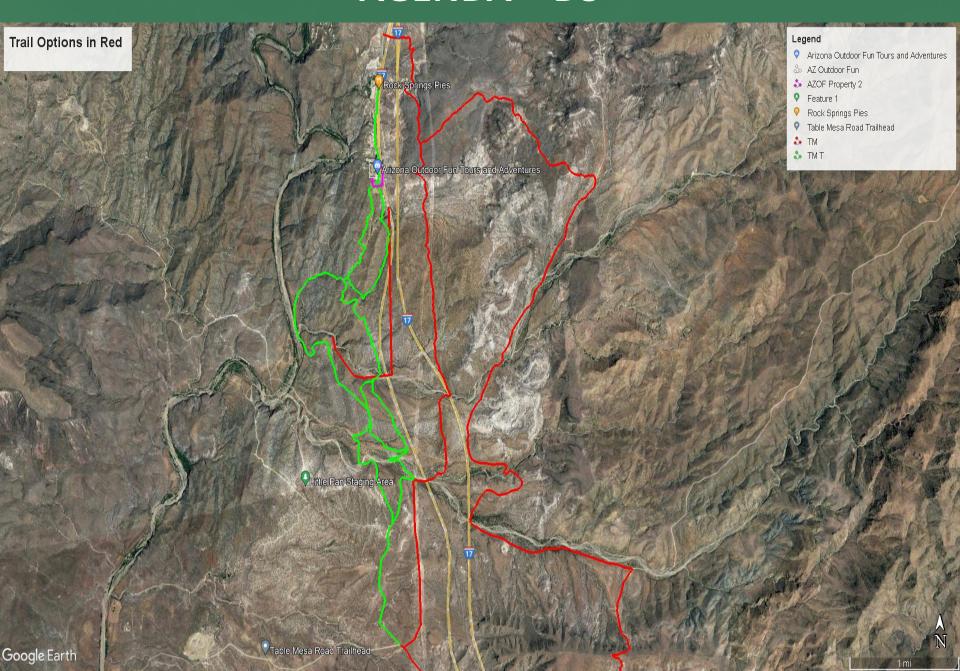


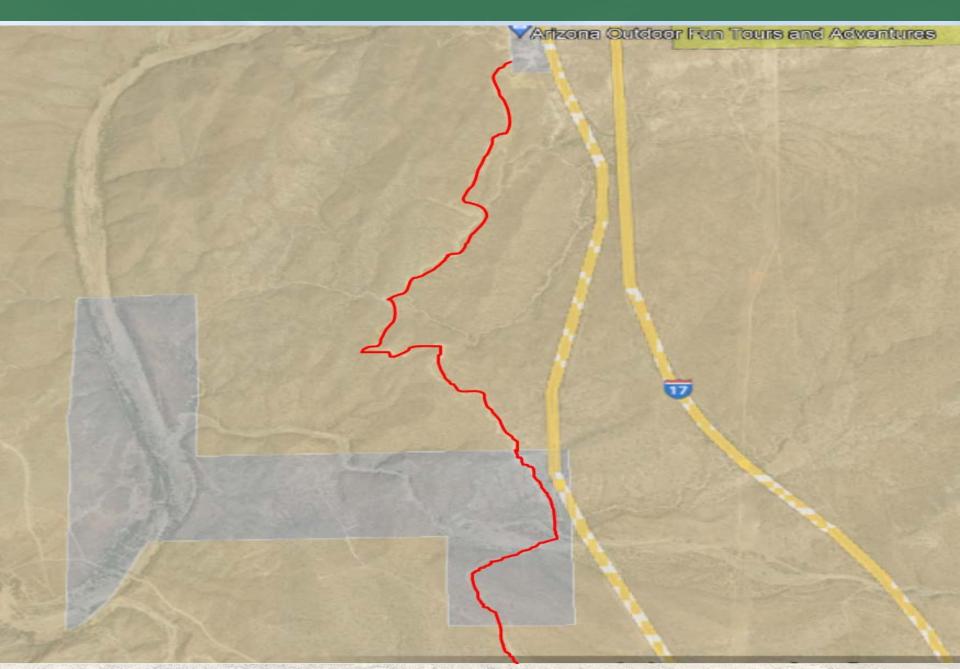












#### AGENDA - D4

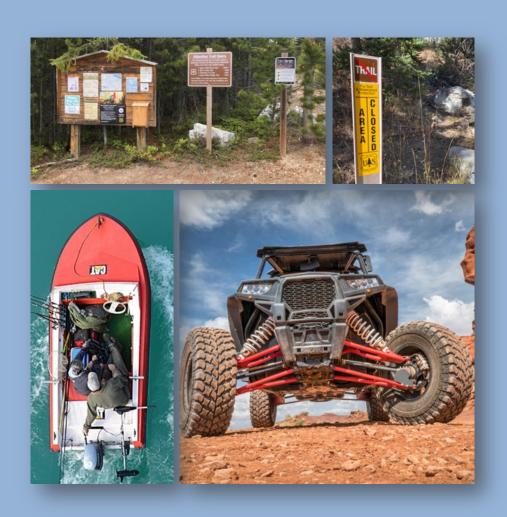
#### **Tread Lightly! Partnership Update**

Members will be educated on Tread Lightly! and their growing partnerships in Arizona including Arizona State Parks and Trails. This agenda item is for information only.

– Matt Caldwell, Executive Director: Tread Lightly!







#### BEING RESPONSIBLE DOESN'T MEAN BEING BORING

Tread Lightly! keeps America's outdoor recreation areas beautiful, healthy and accessible.



#### **MISSION**

Tread Lightly! and its partners lead a national initiative to protect and enhance recreation access and opportunities by promoting outdoor ethics to heighten individuals' sense of good stewardship. Our goal is to balance the needs of people who enjoy motorized recreation with the need to maintain a healthy environment through minimum impact education and on-the-ground public land stewardship.

#### How We Do It?

Education campaigns, event outreach, on-the-ground public land projects and communication efforts that address today's pressing recreation issues.

#### Why We Do It?

To maintain access to America's public lands and instill a sense of outdoor ethics in current and future outdoor enthusiasts.

#### Where We Do It?

All across the United States to minimize impacts on America's public and private land.





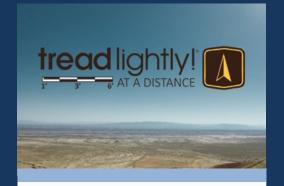
#### **STEWARDSHIP**

Together with partners and volunteers, Tread Lightly! has organized trail maintenance projects, public land cleanups and restoration efforts to enhance public land and improve access.



#### **EDUCATION**

We offer a library of resources and training opportunities, both online and in-person, to educate about outdoor ethics.



#### OUTREACH+ COMMUNICATION

We promote our message and custom, public service announcements through online and offline media channels to reach our target audience.

What treadlightly! does for OUTDOOR RECREATION!



#### RIDE ON DESIGNATED ROADS-TRAILS-AREAS A Tread Lightly! Campaign







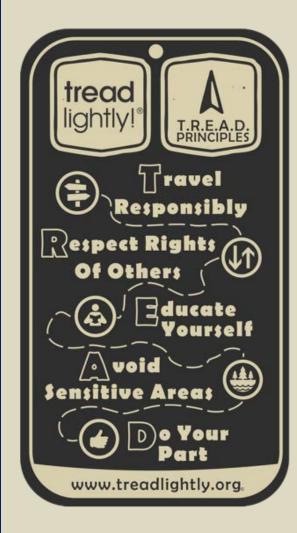
TREAD LIGHTLY!
CARES (TLC) PERIODE AT Tread Lightly! Campaign



TLIKIDS
A Tread Lightly! Campaign



RESPECT PROTECT DE A Tread Lightly! Campaign







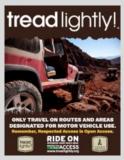






WHEN TRAILS CLOSE























### EDUCATIONAL MATERIALS + RESOURCES



























#### 2021 TREAD LIGHTLY! IMPACT REPORT

Fiscal Year 2021, Oct 1, 2020-Sept 30, 2021

#### STEWARDSHIP

- 40 STEWARDSHIP PROJECTS
- 680 MILES OF OFF-ROAD TRAIL ENHANCED
- 39,127 POUNDS OF TRASH REMOVED FROM PUBLIC LANDS
- 940 VOLUNTEERS
- 4,525 VOLUNTEER HOURS (\$108,627 VALUE)

9,706 NEW OR RENEWING MEMBERS

#### 139,366,528 IMPRESSIONS

FROM SOCIAL MEDIA, WEBSITE, DIGITAL ADS, MEDIA PLACEMENTS, BILLBOARDS AND MORE

#### **EDUCATION**

- 1,061 ONLINE COURSE PARTICIPANTS
- 94 COURSES OFFERED
- 88 NEW TRAINERS
- 48 EVENTS ATTENDED
- 74,586 OUTREACH IMPRESSIONS
- 70 VOLUNTEERS
- 1,546 VOLUNTEER HOURS (\$38,020 VALUE)



# 2022 TREAD LIGHTLY! IMPACT REPORT

REPORTING PERIOD: OCT 1, 2021-DEC 31, 2021

## **STEWARDSHIP**

- 5 STEWARDSHIP PROJECTS
- 83 MILES OF OFF-ROAD TRAIL ENHANCED
- 36,085 POUNDS OF TRASH REMOVED FROM PUBLIC LANDS
- 578 VOLUNTEERS
- 2,297 VOLUNTEER HOURS (\$68,410 VALUE)

### **EDUCATION**

- 216 ONLINE COURSE PARTICIPANTS
- 16 COURSES OFFERED
- 10 NEW TRAINERS
- 19 EVENTS ATTENDED
- 1,292 OUTREACH IMPRESSIONS
- 18 VOLUNTEERS
- 443 VOLUNTEER HOURS (\$12,650.35 VALUE)

# 899 NEW OR RENEWING MEMBERS

# 27,419,719 IMPRESSIONS

FROM SOCIAL MEDIA, WEBSITE, DIGITAL ADS, BILLBOARDS AND MORE







treadlightly.org









#### COCONINO National Forest



# tread

#### BEING RESPONSIBLE DOESN'T MEAN BEING BORING

TREAD LIGHTLY KEEPS SEDONA'S OUTDOOR RECREATION AREAS BEAUTIFUL, HEADTHY AND ACCESSIBLE.

For more recreation tips and to join, please visit treadlightlyorg



















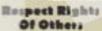
## T.R.E.A.D.































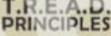




























#### Partners









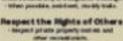












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Travel Responsibly

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Constitution only a designated provings

#### Educate Surself

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#### Avoid Sensitive Arms

HAIT AS FRANCISCO SCHOOLSEN, MICHAELE from the 8-80's hotelest and constitute code from durings - State delays harteston, archaeological by a server respical refree.

#### Do Your Part

Model appropriate responsible behavior Laws at area better than you found it. Properly Repose of south. Avail the spread of transition species

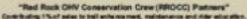




#### For More Info

















# **TL! Arizona Opportunities**















# treadlightly!®

Matt Caldwell – Executive Director matt@treadlightly.org 801.627.0077 ext. 113



TREAD LIGHTLY! HELPS
KEEP THE OUTDOORS
ACCESSIBLE and
OPEN, will YOU

PARTNER WITH US?

# **State OHV Coordinator Updates**

Members will be provided updates on Senate Bill 1377 and Senate Bill 1596, Arizona State Parks and Trails Legislative Day, and upcoming events.

Matthew Eberhart, State OHV Coordinator



# **Legislative Updates**

- SB 1377: Makes changes to OHV Recreation Fund
  - Passed the entire Senate including subcommittees
  - Passed House sub committees and is awaiting a read on the House Floor.
- SB 1596: Established OHV Study Committee
  - Passed the entire Senate including subcommittees
  - Passed House sub committees and is awaiting a read on the House Floor.



# **Arizona State Parks and Trails Legislative Day**







# **Upcoming Evens**







Memorial Day Camp and Ride Big Lake, AZ



## AGENDA – E

# **Future Agenda Items**

Group members may identify items or issues they wish to be considered for inclusion on a future agenda.



#### AGENDA - F

# **Current Events**

Group members will discuss current events and/or recent experiences of interest to the outdoor recreation community and/or the status of any projects with which they are currently involved.



## AGENDA - F

# **NOHVCC Mechanized Equipment Training**

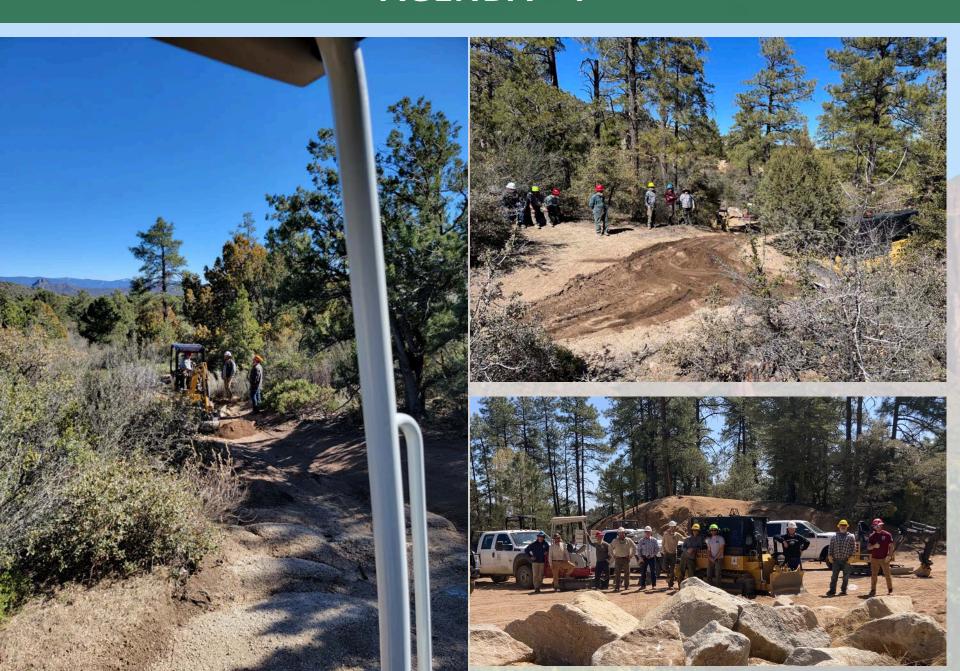








# AGENDA – F



# AGENDA – G



## AGENDA – H



**TBD** 



# THANK YOU!

ARIZONA STATE PARKS & TRAILS