



**Colorado
Legislative
Council
Staff**

Attachment A

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MEMORANDUM

August 14, 2015

TO: Members of the Off-Highway Vehicle Interim Committee

FROM: Matt Kiszka, Research Analyst, 303-866-6275
Erin Reynolds, Fiscal Analyst, 303-866-4146

SUBJECT: Summary of Presentations to the Off-Highway Vehicle Interim Committee

Summary

Following is a summary of the main points covered by presenters to the Off-Highway Vehicle (OHV) Interim Committee during the 2015 Interim.

July 20, 2015

Colorado Counties, Incorporated (CCI)

Representatives:

- Eric Bergman, CCI
- Tony Lombard, CCI

Main Items of Discussion:

- Of paramount importance: Preserving the agricultural exemption for OHV registration through Colorado Parks and Wildlife (CPW); maintaining OHV trails program; and safety.
- Local governments want to set rules about road use, age limits, and insurance requirements.
- The environmental community wants licenses on OHVs for the purposes of enforcement.

Colorado State Patrol (CSP), Department of Public Safety (DPS)

Representative:

- Sergeant Dave Hall, CSP

Open records requirements: Pursuant to Section 24-72-202 (6.5)(b), C.R.S., research memoranda and other final products of Legislative Council Staff are considered public records and subject to public inspection unless: a) the research is related to proposed or pending legislation; and b) the legislator requesting the research specifically asks that the research be permanently considered "work product" and not subject to public inspection. If you would like to designate this memorandum to be permanently considered "work product" not subject to public inspection, or if you think additional research is required and this is not a final product, please contact the Legislative Council Librarian at (303) 866-4011 within seven days of the date of the memorandum.

Main Items of Discussion:

- Public safety should trump issues of local control, particularly in terms of children operating OHVs.
- OHVs are not designed for use on paved roads, and do not offer much in the way of safety equipment.
- Enforcement mechanisms CSP would like to see include: clearly legible license plates; the requirement of driver's licenses and insurance for OHV operators; and a proficiency test.
- Last year, CSP compromised on House Bill 15-1054 at driver's licenses and no OHV operation on paved roads.
- On a data collection note, DR2447 crash reports cannot be filled out for OHV accidents, since OHVs are not treated as motor vehicles.

Colorado Municipal League (CML)

Representatives:

- Mark Radtke, CML
- Tom Acre, South Fork Interim Town Administrator, CML

Main Items of Discussion:

- Suggested that the committee model OHV legislation after Senate Bill 09-075, which defined and regulated the use of low-speed electric vehicles and golf carts on roads.
- Specifically highlighted that SB 09-075 left it as a local decision whether to allow these vehicles on county roads, set a speed limit at 35 MPH, prohibited their use on state highways, and outlined safety rules to be followed.

See Attachment A for SB 09-075.

Division of Motor Vehicles (DMV), Department of Revenue (DOR)

Representative:

- Tony Anderson, Titles and Registration Section, DMV

Main Items of Discussion:

- Provided definitions of OHVs, snowmobiles, and ATVs.
- Title is required, effective July 1, 2014, for OHVs bought or sold by licensed powersports vehicle dealers; title is optional for private party sales.
- There is some difficulty in assessing the number of OHVs in the state due to the subset of OHVs that do not register with the CPW for use of designated trails.

See Attachment B for DOR's presentation on OHV definitions and title requirements.

American Insurance Association (AIA)

Representative:

- Robert Fern, AIA

Main Items of Discussion:

- OHVs should not be subject to the same auto insurance laws as on-road vehicles.

August 13, 2015

County Sheriffs of Colorado

Representatives:

- Sheriff Fred McKee, Delta County
- Sheriff Ronald Bruce, Hinsdale County
- Sheriff Anthony Mazzola, Rio Blanco County

Main Items of Discussion:

- State should maintain local control for counties to allow and regulate OHVs on county roads.
- Counties have seen successes in allowing OHVs to operate on county roads and have had a low incidence of accidents involving OHVs on these roads that they do not expect to increase.
- If a minimum age limit has to be put in place for OHV use on county roads, 13 is appropriate, and guardians of minors operating OHVs should be issued with guidelines for safe vehicle operation by the minor.

Associated Governments of Northwest Colorado (AGNC)

Representatives:

- Richard Orf, Orf and Orf PC
- Commissioner Jeff Eskelson, Rio Blanco County
- Commissioner Rose Pugliese, Mesa County

Main Items of Discussion:

- Local control over the regulation of OHVs is paramount because of unique terrains and driving conditions across counties.
- The counties have proven their safety record and the viability of allowing the use of OHVs on county roads.
- OHVs are a major economic driver for some counties, so their operation should not be limited.

See Attachment C for the Mesa County Ordinance allowing the operation of OHVs on county roads.

Trout Unlimited

Representative:

- Shane Cross, Trout Unlimited

Main Items of Discussion:

- Current OHV registration identification needs to be more visible.
- OHVs can have a negative impact on public land health, such as vegetation and wetlands damage, soil erosion, deterioration of water quality, and the spreading of invasive weeds.
- Programs that designate appropriate routes for OHV use, encourage education for responsible operation, and enforce rules and regulations are important.

Children's Hospital of Colorado

Representatives:

- Zach Zaslow, Government Affairs Manager, Children's Hospital of Colorado
- Dwayne Smith, Injury Prevention Manager, Children's Hospital of Colorado

Main Items of Discussion:

- Ideally, OHV operation would be limited to license-carrying adults only.
- The growing number of national OHV-related fatalities can be linked to the increasing use of OHVs on public roads.
- Effective OHV injury prevention comes down to education, engineering, and enforcement.

Off-Highway Vehicle Coalition

Representative:

- Jerry Abboud, Off-Highway Vehicle Coalition

Main Items of Discussion:

- Counties can already allow OHV users to drive on county roads through an ordinance, but a clear mandate from the state is needed to identify the exact authority of counties to set OHV operation requirements such as the possession of driver's licenses or liability insurance.
- Do not pull OHVs into the definition of motor vehicles because this would cause confusion over where OHVs can be driven and where they cannot.
- Regulatory uniformity is critical across counties, as differing regulations are confusing for users, especially on forest service land, which does not have signage on trails to indicate county lines.
- The Uniform Traffic Code does not currently apply to OHV users, which can lead to traffic enforcement challenges for local law enforcement.

Colorado Parks and Wildlife (CPW), Department of Natural Resources (DNR)

Representatives:

- Margaret Taylor, Parks and Recreation Assistant Director, CPW
- Thomas Morrissey, State Trails Program Manager, CPW

Main Items of Discussion:

- CPW's OHV program provides designated trails for OHV users on public lands and funds much of the cost of maintaining these trails. It registered 170,000 OHVs in FY 2015 (approximately 130,000 of these were in-state) and granted \$4.2 million for on-the-ground trail projects.
- The OHV program is a statewide program – anyone who wishes to use an OHV on an OHV-designated trail or on public lands must register the vehicle with CPW.
- CPW enforces OHV rules on its trails and has seen a recent increase in registration compliance.

Colorado Auto Dealers Association

Representative:

- Tim Jackson, Colorado Auto Dealers Association

Main Items of Discussion:

- Licensed motor vehicles must maintain emissions and safety standards as required by the federal government, but some OHVs do not have to comply with these standards even though they nearly fit the definition of a motor vehicle.
- Two-tiered emissions and safety standards could develop between motor vehicles and OHVs.

County Commissioners

Representatives:

- Tony Lombard, CCI
- Commissioner Lynn Padgett, Ouray County
- Commissioner Cindy Dozier, Hinsdale County

Main Items of Discussion:

- Their top priority in managing the Alpine Loop is increasing safety by being able to require driver's licenses and liability insurance for all OHV operators, as the Alpine Loop is technical, dangerous, and is not suitable for young riders.
- A state program that requires a visible license plate on OHVs would be beneficial to counties and local law enforcement.
- One size does not fit all for regulation of OHVs across counties, and the various OHV issues need to be addressed through separate and prioritized pieces of legislation.

See Attachment D for Commissioner Padgett's supporting documentation, including the CPW explaining its decision not to grant funding to the Alpine Loop's Alpine Ranger Program and the counties' legal analysis.

Colorado Cross-Disability Coalition (CCDC)

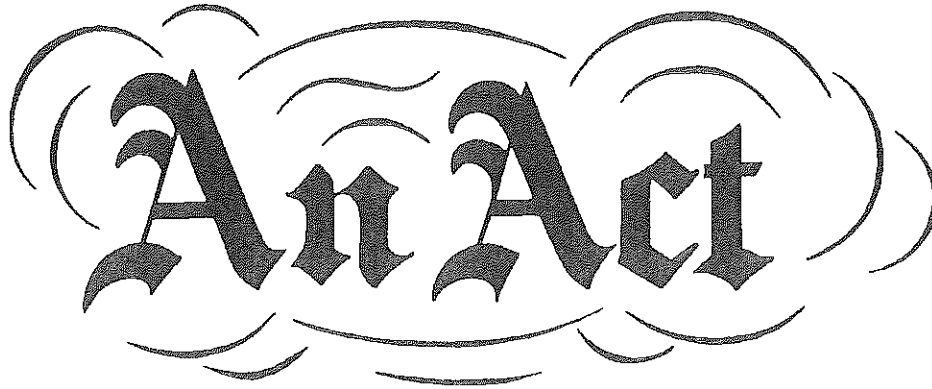
Representative:

- Jaime Lewis, Community Liaison, CCDC

Main Items of Discussion:

- An exemption from OHV trail permit fees for veterans and persons with disabilities (PWD). The community uses vehicles in lieu of walking therefore should not be charged for using trails with their mobility device. This could be achieved through an exemption sticker that would help rangers identify OHV operators with disabilities while they are using trails.
- There are concerns that PWD cannot get to trailheads without using a county road. The sticker would ensure they could use the county road to access trail heads.
- OHV operation training for those in the disability community who do not have driving licenses would be beneficial.

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 09-075

BY SENATOR(S) Schwartz, Gibbs, Williams, Heath, Boyd, Carroll M., Foster, Hudak, Kester, King K., Kopp, Morse, Newell, Penry, Shaffer B., Tapia, White;

also REPRESENTATIVE(S) Marostica, Curry, Kerr A., Levy, McFadyen, Primavera, Scanlan, Vigil, Court, Fischer, Gardner B., Green, Labuda, Looper, Massey, Peniston, Priola, Rice, Roberts, Ryden, Schafer S., Solano, Summers, Todd.

CONCERNING THE OPERATION OF LOW-SPEED ELECTRIC SELF-PROPELLED
VEHICLES ON PUBLIC RIGHTS-OF-WAY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-6-120 (1), Colorado Revised Statutes, is amended
BY THE ADDITION OF A NEW PARAGRAPH to read:

12-6-120. Unlawful acts. (1) It shall be unlawful and a violation
of this part 1 for any manufacturer, distributor, or manufacturer
representative:

(t) TO SELL OR OFFER FOR SALE A LOW-SPEED ELECTRIC VEHICLE, AS
DEFINED BY SECTION 42-1-102, C.R.S., FOR USE ON A ROADWAY UNLESS THE
VEHICLE COMPLIES WITH PART 2 OF ARTICLE 4 OF TITLE 42, C.R.S.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 24-38.5-102 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-38.5-102. Governor's energy office - duties and powers.

(1) The governor's energy office shall:

(q) ADMINISTER THE ELECTRIC VEHICLE GRANT FUND.

SECTION 3. Article 38.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-38.5-103. Electric vehicle grant fund - creation - administration. (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE ELECTRIC VEHICLE GRANT FUND, REFERRED TO IN THIS SECTION AS THE "FUND". THE FUND SHALL BE USED TO PROVIDE GRANTS TO LOCAL GOVERNMENTS TO INSTALL RECHARGING STATIONS FOR ELECTRIC VEHICLES. THE GRANTS SHALL BE PRIORITIZED BASED UPON THE LOCAL GOVERNMENT'S COMMITMENT TO ENERGY EFFICIENCY.

(2) THE GOVERNOR'S ENERGY OFFICE IS AUTHORIZED TO SEEK AND ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION. ALL PRIVATE AND PUBLIC FUNDS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY. ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSES OF THIS SECTION MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

SECTION 4. 42-1-102 (55), (58), and (60.5), Colorado Revised Statutes, are amended, and the said 42-1-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

42-1-102. Definitions. As used in articles 1 to 4 of this title, unless

the context otherwise requires:

(39.5) "GOLF CAR" MEANS A SELF-PROPELLED VEHICLE NOT DESIGNED PRIMARILY FOR OPERATION ON ROADWAYS AND THAT HAS:

- (a) A DESIGN SPEED OF LESS THAN TWENTY MILES PER HOUR;
- (b) AT LEAST THREE WHEELS IN CONTACT WITH THE GROUND;
- (c) AN EMPTY WEIGHT OF NOT MORE THAN ONE THOUSAND THREE HUNDRED POUNDS; AND
- (d) A CARRYING CAPACITY OF NOT MORE THAN FOUR PERSONS.

(48.6) "LOW-SPEED ELECTRIC VEHICLE" MEANS A VEHICLE THAT:

- (a) IS SELF-PROPELLED UTILIZING ELECTRICITY AS ITS PRIMARY PROPULSION METHOD;
- (b) HAS AT LEAST THREE WHEELS IN CONTACT WITH THE GROUND;
- (c) DOES NOT USE HANDLEBARS TO STEER; AND
- (d) EXHIBITS THE MANUFACTURER'S COMPLIANCE WITH 49 CFR 565 OR DISPLAYS A SEVENTEEN-CHARACTER VEHICLE IDENTIFICATION NUMBER AS PROVIDED IN 49 CFR 565.

(55) "Motorcycle" means ~~every~~ A motor vehicle THAT USES HANDLEBARS TO STEER AND THAT IS designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term "farm tractor" and except a motorized bicycle as defined in paragraph (b) of subsection (59) of this section.

(58) "Motor vehicle" means any self-propelled vehicle ~~which~~ THAT is designed primarily for travel on the public highways and ~~which~~ THAT is generally and commonly used to transport persons and property over the public highways ~~but OR A LOW-SPEED ELECTRIC VEHICLE~~. The term does not include motorized bicycles as defined in paragraph (b) of subsection (59) of this section, wheelchairs as defined by subsection (113) of this section, or vehicles moved solely by human power. ~~"Motor vehicle" includes a~~

~~neighborhood electric vehicle operated pursuant to section 42-4-111 (1) (aa):~~ For the purposes of the offenses described in sections 42-2-128, 42-4-1301, and 42-4-1401 for farm tractors and off-highway vehicles, as defined in section 33-14.5-101 (3), C.R.S., operated on streets and highways, "motor vehicle" includes a farm tractor or an off-highway vehicle ~~which~~ THAT is not otherwise classified as a motor vehicle.

(60.5) ~~"Neighborhood electric vehicle" means a self-propelled, electrically powered motor vehicle that:~~

~~(a) Meets the equipment standards set forth in part 2 of article 4 of this title; and~~

~~(b) Has a speed attainable in one mile that does not exceed twenty-five miles per hour.~~

SECTION 5. 42-4-109.5, Colorado Revised Statutes, is amended to read:

42-4-109.5. Low-speed electric vehicles. (1) Except as provided in section 42-4-111 (1) (aa), no person shall operate a neighborhood electric vehicle on a highway. A LOW-SPEED ELECTRIC VEHICLE MAY BE OPERATED ONLY ON A ROADWAY THAT HAS A SPEED LIMIT EQUAL TO OR LESS THAN THIRTY-FIVE MILES PER HOUR; EXCEPT THAT IT MAY BE OPERATED TO DIRECTLY CROSS A ROADWAY THAT HAS A SPEED LIMIT GREATER THAN THIRTY-FIVE MILES PER HOUR AT AN AT-GRADE CROSSING TO CONTINUE TRAVELING ALONG A ROADWAY WITH A SPEED LIMIT EQUAL TO OR LESS THAN THIRTY-FIVE MILES PER HOUR.

(2) No person shall operate a ~~neighborhood electric~~ LOW-SPEED ELECTRIC vehicle on a limited-access highway.

(3) Any person who violates any provision of subsection (1) or (2) of this section commits a class B traffic infraction.

(4) ~~The department of revenue shall not register or issue title for a neighborhood electric vehicle until after such time as the federal department of transportation through the national highway transportation safety administration has adopted a federal motor vehicle safety standard for such vehicles.~~

(5) THE COLORADO DEPARTMENT OF TRANSPORTATION MAY REGULATE THE OPERATION OF A LOW-SPEED ELECTRIC VEHICLE ON A STATE HIGHWAY LOCATED OUTSIDE OF A MUNICIPALITY. THE REGULATION SHALL TAKE EFFECT WHEN THE COLORADO DEPARTMENT OF TRANSPORTATION PLACES AN APPROPRIATE SIGN THAT PROVIDES ADEQUATE NOTICE OF THE REGULATION.

SECTION 6. Part 1 of article 4 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

42-4-109.6. Class B low-speed electric vehicles - effective date - rules. (1) A CLASS B LOW-SPEED ELECTRIC VEHICLE MAY BE OPERATED ONLY ON A ROADWAY THAT HAS A SPEED LIMIT EQUAL TO OR LESS THAN FORTY-FIVE MILES PER HOUR; EXCEPT THAT IT MAY BE OPERATED TO DIRECTLY CROSS A ROADWAY THAT HAS A SPEED LIMIT GREATER THAN THIRTY-FIVE MILES PER HOUR AT AN AT-GRADE CROSSING TO CONTINUE TRAVELING ALONG A ROADWAY WITH A SPEED LIMIT EQUAL TO OR LESS THAN THIRTY-FIVE MILES PER HOUR.

(2) NO PERSON SHALL OPERATE A CLASS B LOW-SPEED ELECTRIC VEHICLE ON A LIMITED-ACCESS HIGHWAY.

(3) ANY PERSON WHO VIOLATES SUBSECTION (1) OR (2) OF THIS SECTION COMMITS A CLASS B TRAFFIC INFRACTION.

(4) FOR THE PURPOSES OF THIS SECTION, "CLASS B LOW-SPEED ELECTRIC VEHICLE" MEANS A LOW-SPEED ELECTRIC VEHICLE THAT IS CAPABLE OF TRAVELING AT GREATER THAN TWENTY-FIVE MILES PER HOUR BUT LESS THAN FORTY-FIVE MILES PER HOUR.

(5)(a) THE DEPARTMENT OF REVENUE SHALL NOT REGISTER OR ISSUE A TITLE FOR A CLASS B LOW-SPEED ELECTRIC VEHICLE UNTIL AFTER THE UNITED STATES DEPARTMENT OF TRANSPORTATION, THROUGH THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, HAS ADOPTED A FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR LOW-SPEED ELECTRIC VEHICLES THAT AUTHORIZES OPERATION AT GREATER THAN TWENTY-FIVE MILES PER HOUR BUT LESS THAN FORTY-FIVE MILES PER HOUR.

(b) AFTER THE UNITED STATES DEPARTMENT OF TRANSPORTATION, THROUGH THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, HAS

ADOPTED A FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR LOW-SPEED ELECTRIC VEHICLES THAT AUTHORIZES OPERATION AT GREATER THAN TWENTY-FIVE MILES PER HOUR BUT LESS THAN FORTY-FIVE MILES PER HOUR, THE DEPARTMENT OF REVENUE SHALL PROMULGATE RULES AUTHORIZING THE OPERATION OF CLASS B LOW-SPEED ELECTRIC VEHICLES IN COMPLIANCE WITH THIS SECTION AND SHALL NOTIFY THE REVISER OF STATUTES IN WRITING. UPON THE PROMULGATION OF RULES AUTHORIZING THE OPERATION OF SUCH VEHICLES, SUBSECTIONS (1) TO (3) OF THIS SECTION SHALL TAKE EFFECT.

(6) THE COLORADO DEPARTMENT OF TRANSPORTATION MAY REGULATE THE OPERATION OF A CLASS B LOW-SPEED ELECTRIC VEHICLE ON A STATE HIGHWAY LOCATED OUTSIDE OF A MUNICIPALITY. THE REGULATION SHALL TAKE EFFECT WHEN THE COLORADO DEPARTMENT OF TRANSPORTATION PLACES AN APPROPRIATE SIGN THAT PROVIDES ADEQUATE NOTICE OF THE REGULATION.

SECTION 7. The introductory portion to 42-4-111 (1) and 42-4-111 (1) (aa), Colorado Revised Statutes, are amended, and the said 42-4-111 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

42-4-111. Powers of local authorities. (1) ~~The provisions of This~~ article shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, except those streets and highways ~~which~~ THAT are parts of the state highway system ~~which~~ THAT are subject to the provisions of section 43-2-135, C.R.S., from:

(aa) ~~Authorizing and~~ Regulating the operation of ~~neighborhood electric~~ LOW-SPEED ELECTRIC vehicles, INCLUDING, WITHOUT LIMITATION, ESTABLISHING A SAFETY INSPECTION PROGRAM, on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if such regulation is consistent with the provisions of this title; ~~except that~~

~~(f) Local authorities are prohibited from establishing any requirements for the registration and licensing of neighborhood electric vehicles; and~~

~~(ff) local authorities are prohibited from authorizing the operation~~

~~of neighborhood electric vehicles on limited-access highways.~~

(bb) AUTHORIZING AND REGULATING THE OPERATION OF GOLF CARS ON ROADWAYS BY RESOLUTION OR ORDINANCE OF THE GOVERNING BODY, IF THE AUTHORIZATION OR REGULATION IS CONSISTENT WITH THIS TITLE AND DOES NOT AUTHORIZE:

(I) AN UNLICENSED DRIVER OF A GOLF CAR TO CARRY A PASSENGER WHO IS UNDER TWENTY-ONE YEARS OF AGE;

(II) OPERATION OF A GOLF CAR BY A PERSON UNDER FOURTEEN YEARS OF AGE; OR

(III) OPERATION OF A GOLF CAR ON A STATE HIGHWAY.

SECTION 8. 42-4-206 (3), Colorado Revised Statutes, is amended to read:

42-4-206. Tail lamps and reflectors. (3) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp, ~~or tail lamps~~, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted. ~~This subsection (3) shall not apply to neighborhood electric vehicles.~~

SECTION 9. 42-4-210, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

42-4-210. Lamps on parked vehicles. (5) THIS SECTION SHALL NOT APPLY TO LOW-SPEED ELECTRIC VEHICLES.

SECTION 10. 42-4-216 (1.5), Colorado Revised Statutes, is amended to read:

42-4-216. Multiple-beam road lights. (1.5) Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted for ~~neighborhood electric~~ LOW-SPEED ELECTRIC vehicles in lieu of multiple-beam, road-lighting equipment

specified in this section if the single distribution of light complies with ~~the requirements of subsection (1) (b)~~ PARAGRAPH (b) OF SUBSECTION (1) of this section.

SECTION 11. 42-4-217 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

42-4-217. Use of multiple-beam lights. (1) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 42-4-204, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(c) A LOW-SPEED ELECTRIC VEHICLE MAY USE THE DISTRIBUTION OF LIGHT AUTHORIZED IN SECTION 42-4-216 (1.5).

SECTION 12. 42-4-226 (2), Colorado Revised Statutes, is amended to read:

42-4-226. Mirrors - exterior placements. (2) Whenever any motor vehicle is not equipped with a rear window and rear side windows or has a rear window and rear side windows composed of, covered by, or treated with any material or component ~~which~~ THAT, when viewed from the position of the driver, obstructs the rear view of the driver or makes such window or windows nontransparent, or whenever any motor vehicle is towing another vehicle or trailer or carrying any load or cargo or object ~~which~~ THAT obstructs the rear view of the driver, such vehicle shall be equipped with an exterior mirror on each side so located with respect to the position of the driver as to comply with the visual requirement of subsection (1) of this section. ~~This subsection (2) shall not apply to neighborhood electric vehicles.~~

SECTION 13. 42-4-227 (4), Colorado Revised Statutes, is amended to read:

42-4-227. Windows unobstructed - certain materials prohibited - windshield wiper requirements. (4) This section shall apply to all motor vehicles; EXCEPT THAT SUBSECTION (2) OF THIS SECTION SHALL NOT APPLY TO LOW-SPEED ELECTRIC VEHICLES.

SECTION 14. 42-4-234(1), Colorado Revised Statutes, is amended to read:

42-4-234. Slow-moving vehicles - display of emblem. (1) (a) All machinery, equipment, and vehicles, except bicycles and other human-powered vehicles, designed to operate or normally operated at a speed of less than twenty-five miles per hour on a public highway shall display a triangular slow-moving vehicle emblem on the rear.

(b) THE DEPARTMENT SHALL SET STANDARDS FOR A TRIANGULAR SLOW-MOVING EMBLEM FOR USE ON LOW-SPEED ELECTRIC VEHICLES.

(c) Bicycles and other human-powered vehicles ~~and neighborhood electric vehicles~~ shall be permitted but not required to display the emblem specified in this subsection (1).

SECTION 15. Part 2 of article 4 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

42-4-240. Low-speed electric vehicle equipment requirements.

A LOW-SPEED ELECTRIC VEHICLE SHALL CONFORM WITH APPLICABLE FEDERAL MANUFACTURING EQUIPMENT STANDARDS. ANY PERSON WHO OPERATES A LOW-SPEED ELECTRIC VEHICLE IN VIOLATION OF THIS SECTION COMMITS A CLASS B TRAFFIC INFRACTION.

SECTION 16. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item,

section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

Colorado Legislative Council Staff Fiscal Note

FINAL FISCAL NOTE

Drafting Number: LLS 09-0164
Prime Sponsor(s): Sen. Schwartz
 Rep. Marostica

Date: June 22, 2009
Bill Status: Signed into Law
Fiscal Analyst: David Porter (303-866-4375)

TITLE: CONCERNING THE OPERATION OF LOW-SPEED ELECTRIC SELF-PROPELLED VEHICLES ON PUBLIC RIGHTS-OF-WAY.

Fiscal Impact Summary	FY 2009-2010	FY 2010-2011
State Revenue		
Cash Funds		
Electric Vehicle Grant Fund	Cannot be quantified	Cannot be quantified
License Plate Cash Fund	<\$ 2,500	<\$ 2,500
Multiple Funds – Penalties and Surcharges	< 2,500	< 2,500
State Expenditures		
Cash Funds		
Electric Vehicle Grant Fund	Cannot be quantified	Cannot be quantified
Auto Dealers License Fund*	\$ 3,708	
Highway Users Tax Fund – CSTAR Account*	15,452	
FTE Position Change		
Effective Date: The Governor signed the bill into law on June 4, 2009, and unless a referendum petition is filed, the bill will take effect August 5, 2009.		
Appropriation Summary for FY 2009-2010: None.		
Local Government Impact: See Local Government Impact section.		

* No separate appropriation for this cost is required because of ongoing appropriations to the Department of Revenue for computer programming provided in the Long Bill for new legislation.

Summary of Legislation

SB09-075 defines two types of vehicles, low-speed electric vehicles and golf cars. The definitions replace and expand upon the current regulation of neighborhood electric vehicles.

A low-speed electric vehicle is identified as follows:

- ▶ electricity is its primary source of energy for propulsion;
- ▶ it has at least 3 wheels;
- ▶ it is steered by something other than handlebars; and
- ▶ it has a manufacturer's vehicle identification number (VIN).

Under the bill, low-speed electric vehicles can be operated on roadways with speed limits up to 35 miles per hour and can cross roads with higher speed limits. "Class B low-speed electric vehicles," a subcategory of low-speed electric vehicles, can travel on roads with speeds up to 45 miles per hour once the U.S. Department of Transportation issues safety standards for them. These vehicles cannot be driven on limited-access highways. The Colorado Department of Transportation may regulate the use of the vehicles outside of municipalities, but must provide signage to that effect.

Low-speed electric vehicles must be registered with the Department of Revenue. The bill stipulates mechanical requirements of the vehicles, such as lighting, mirrors, and markings. It is a class 1 misdemeanor to sell a low-speed electric vehicle unless the vehicle complies with the bill's requirements. Operating a low-speed electric vehicle that does not meet the mechanical requirements specified by the bill or driving the vehicle on roads other than those with a 35 mile per hour speed limit is a class B traffic infraction.

A golf car is identified as a vehicle that isn't for use on roadways with the following characteristics:

- ▶ it cannot reach speeds above 20 miles per hour;
- ▶ it has at least 3 wheels and weighs no more than 1,300 pounds; and
- ▶ it carries no more than 4 people.

Finally, the bill creates the Electric Vehicle Grant Fund in the Governor's Energy Office. The fund is designated for grants to local governments for the installation of electric recharging stations. The office is authorized to accept gifts, grants, and donations and the fund is subject to annual appropriations.

State Revenue

SB09-075 is expected to increase state revenue due to registration, license plates, tabs, and penalties and surcharges. The amount of revenue cannot be quantified but is expected to be less than \$5,000.

Registrations. At the time of writing this fiscal note, the number of low-speed electric vehicles that will register has not been estimated. Revenue from registration fees is based on weight, age, and vehicle value. Revenue from registration decals (\$0.25 each) and license plates (\$1.63 each) is not expected to exceed \$5,000.

Penalties, Surcharges, and Fines. Low-speed electric vehicle violations in this bill are a class B traffic infraction. The penalty for a class B traffic infraction is \$15 and the surcharge is \$4. Penalty revenue from citations issued by both state patrol officers and local law enforcement is credited to the HUTF and distributed to the state, counties, and municipalities for highway purposes. Surcharge revenue is split evenly between the Victims and Witnesses Assistance and Law Enforcement Fund and the Crime Victim Compensation Fund and is distributed to victims and witnesses. The number of violations have not been quantified but are expected to result in less than \$5,000 in revenue.

Selling a noncompliant low-power vehicle is a class 1 misdemeanor. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined, but it is expected to be minimal.

Gifts, grants, and donations. The Governor's Energy Office can solicit and accept gifts, grants, and donations for the Electric Vehicle Grant Fund. At this time, no funding from these sources is identified.

State Expenditures

State expenditures of \$19,160 are expected in FY 2009-10 only. Expenditures are in the Department of Revenue as discussed in the next section.

Department of Revenue (\$19,160). DOR costs are to program the registration and licensure system and to purchase registration stickers. The following are the cost components:

- ▶ *Colorado State Titling and Registration System (CSTARS – \$15,452)* – CSTARS programming to add a new type of vehicle to the registration database will require 400 hours at \$38.63 per hour. Included in this cost is the addition of the new traffic infractions.
- ▶ *Auto Industry Dealer (\$3,708)* – Including low-speed vehicles to the types of vehicles sold by dealers and salespersons will require 96 hours of programming at \$38.63 per hour.

The DOR will develop rules, procedures, and application materials for both low-speed electric vehicles and for the auto industry dealer licenses. The DOR receives a Long Bill appropriation for programming costs that result from legislation and no appropriation is necessary.

Department of Transportation (Conditional). Under the bill, the Department of Transportation regulates the use of low-speed electric vehicles on state highways. At this time, the department has not identified sections of state highway to restrict low-speed electric vehicle operation. However, the department could incur costs associated with studying which sections of the highway are appropriate and safe for vehicle access. The department may also incur costs associated with placing signs on the restricted portions of the highway system. Any new costs will be paid from the State Highway Fund.

Governor's Office of Energy. The Governor's Office of Energy will be able to administer the Electric Vehicle Grant Fund within existing appropriations. As this fiscal note has not identified revenue to the fund, no appropriation is made from it. The office will need to seek an appropriation through the budget process in the event that sufficient funds materialize.

Local Government Impact

Due to the possible penalties, this bill may increase HUTF fine revenue distributions to local governments. Counties and municipalities receive 35 percent of HUTF fine revenue for highway purposes.

The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

Departments Contacted

Revenue
Public Safety

Local Affairs
Transportation

Governor's Office

Definitions

Term	Title Definition	Registration Definition
Off-Highway Vehicle	<p>42-6-102(11.5)(a), C.R.S. "Off-Highway Vehicle" means a self-propelled vehicle that is: (I) Designed to travel on wheels or tracks in contact with the ground; (II) Designed primarily for use off of the public highways; and (III) Generally and commonly used to transport persons for recreational purposes (b) "Off-Highway Vehicle" includes vehicles commonly known as all-terrain vehicles and snowmobiles but does not include: (I) Toy vehicles; (II) Vehicles designed and used primarily for travel on, over, or in the water; (III) Military vehicles; (IV) Golf carts or golf cars; (V) Vehicles designed and used to carry persons with disabilities; (VI) Vehicles designed and used specifically for agricultural, logging, or mining purposes; or (VII) Motor vehicles</p>	<p>42-1-102(63), C.R.S. "Off-Highway Vehicle" shall have the same meaning as set forth in section 33-14.5-101(3), C.R.S. 33-14.5-101(3), C.R.S. "Off-Highway Vehicle" means any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally and commonly used to transport persons for recreational purposes "Off-Highway Vehicle" does not include the following: (a) Vehicles designed and used primarily for travel on, over, or in the water; (b) Snowmobiles; (c) Military vehicles; (d) Golf carts; (e) Vehicles designed and used to carry individuals with disabilities; (f) Vehicles designed and used specifically for agricultural, logging, or mining purposes; or (g) Vehicles registered pursuant to Article 3 of Title 42, C.R.S.</p>
Snowmobile	<p>42-6-102(18.5), C.R.S. "Snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice off of the public highways and supported by skis, belts, or cleats "Snowmobile" does not include machinery used for the grooming of snowmobile trails or ski slopes</p>	None
All-Terrain Vehicle	<p>42-6-102(1), C.R.S. "All-Terrain Vehicle" means a three- or four-wheeled vehicle that travels on low-pressure tires with a seat that is straddled by the rider and with handlebars for steering control</p>	None

Title Requirements (SB 13-280)

- Required
 - If the off-highway vehicle or snowmobile is bought or sold by a licensed Colorado Powersports Vehicle Dealer or Auctioneer on or after July 1, 2014
- Optional
 - If the off-highway vehicle was sold or transferred prior to July 1, 2014
 - Private party to private party sale
- Proof of Ownership
 - Manufacturer's Certificate of Origin / Manufacturer's Statement of Origin; or
 - Certificate of Title; or
 - Current Colorado Parks and Wildlife registration
- Off-Highway Vehicles and Snowmobiles may not be issued Salvage Titles

Overview

C.R.S. 42-6-102(11.5), 42-6-102(18.5), and 42-6-148

- ◆ SB 13-280 allows for titling of off highway vehicles.
- ◆ Title is required for powersports vehicle dealers and auctioneers who are licensed dealers to buy or sell on or after July 1, 2014.
- ◆ Titling is optional for private party to private party sales.
- ◆ All forms can be found at www.colorado.gov/revenue
- ◆ For questions please contact the Title and Registration Section, Customer Service Center at 303-205-5608.



Titling

Off-Highway Vehicles

Senate Bill 13-280—Effective 07/01/14

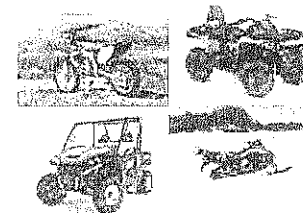
Colorado Revised Statutes

42-6-102(11.5), 42-6-102(18.5), 42-6-148

Information for Powersports Dealers

and

Auctioneers



Colorado Department of Revenue
Division of Motor Vehicles
Title & Registration Section

1881 Pierce Street
Lakewood, CO 80214
303-205-5608

Revised 11/7/2014

Titling Off Highway Vehicles

Definitions

Off-Highway Vehicle (OHV) - C.R.S. 42-6-102 (11.5)

A self-propelled vehicle that is:

- ♦ Designed to travel on wheels or tracks in contact with the ground.
- ♦ Designed primarily for use off of the public highways and generally and commonly used to transport persons for recreational purposes.
- ♦ Off-highway vehicles include vehicles commonly known as all-terrain vehicles and snowmobiles.
- ♦ Off-highway vehicles **do not include**:
 - ◊ Toy vehicles (any vehicle with wheels and is not designed for use on the public highways or for off-road use)
 - ◊ Vehicles designed and used primarily for travel on, over, or in the water
 - ◊ Military vehicles
 - ◊ Golf carts or golf cars
 - ◊ Vehicles designed and used to carry persons with disabilities
 - ◊ Vehicles designed and used specifically for agricultural, logging, or mining purposes
 - ◊ Motor vehicles

Snowmobile - C.R.S. 42-6-102 (18.5)

- ♦ A self-propelled vehicle primarily designed or altered for travel on snow or ice off of the public highways and supported by skis, belts, or cleats.
- ♦ Snowmobile **does not include** machinery used for the grooming of snowmobile trails or ski slopes.

Exceptions

- ♦ Odometer disclosure is optional.
- ♦ OHV is exempt from titling if used exclusively for agricultural purposes on private land.
- ♦ Cannot be a "Salvage Vehicle".

Titling Requirements for Dealers

All current titling laws, processes, and procedures apply.

- ♦ Dealers have 30 days to deliver title to customers.
- ♦ Owner's address of residence is used unless the OHV is permanently maintained at a different address. Businesses will use the address where the vehicle is principally operated and maintained.

How to Acquire a Title

Complete a Title/Registration Application (Form DR 2395) and submit with one of the following supporting documents:

- ♦ Manufacturer Certificate of Origin (MCO) / Manufacturer Statement of Origin (MSO)
- ♦ Certificate of Title
- ♦ If in inventory prior to July 1, 2014, a Statement of Fact (Form DR 2444) for each OHV. In the statement section write or type:

Prior to July 1, 2014, the off-highway vehicle detailed above was held as inventory by:

Dealer Name

Address

City, CO Zip

Phone Number

Dealers purchase from, or trade with, an individual on or after July 1, 2014:

C.R.S. 42-6-148 requires an individual to obtain title prior to selling an OHV to a dealer.

Individual may obtain title by providing **one** of the following:

- ◊ Certificate of Title
- ◊ MCO/MSO
- ◊ Current Colorado Parks and Wildlife Registration (Registration Card, **Computer Generated 60 Day Temporary Registration** form & **Computer Generated Record Print** form are acceptable from Colorado Parks and Wildlife or any State Park with the exception of Chatfield State Park)

Note: Dealers may obtain title on behalf of the customer by Power of Attorney (Form DR 2174 or DR 2175). After the title has been established in the individual's name, the dealer may make the assignment by POA on the title.

Dealers Establishing Ownership

Establishing Title by Surety Bond

Dealers unable to provide acceptable proof of ownership documents may obtain title by following the bond process outlined in the Title or Salvage Title Established by Surety Bond Checklist (Form DR 2922).

Exceptions to the Purchase of the Surety Bond

No surety bond is required if any of the following apply:

- ♦ OHV is 25 years or older (A certified VIN inspection and notarized bill of sale within 24 months of purchase are required).
- ♦ OHV was used by a dealer, manufacturer, or authorized designee for an OHV operator education or safety program.
- ♦ OHV was used and held as inventory by a powersports dealer.

Note: Dealer must submit a Statement of Fact (Form DR 2444) attesting to ownership of the vehicle and specifying which of the bond exemptions apply.

Lien Verification

- ♦ If a Colorado Title exists, request a title search using Form DR 2489A.
- ♦ If a Colorado Title does not exist, verify through the Uniform Commercial Code (UCC).

Taxes and Fees

Taxes and Fees are the same as with motor vehicles.

- ♦ Dealer collects any taxes that are in common with the dealer's address and the buyer's address.
- ♦ Dealer titles processing timeframe and fees:
 - ◊ State office \$25 (one day turn around)
 - ◊ County office \$7.20 (verify turn around with county)

RECEPTION #: 2707488, BK 5662 PG 848
11/19/2014 at 12:56:16 PM,
1 OF 4, R \$0.00 S \$0.00
Sheila Reiner, Mesa County, CO CLERK
AND RECORDER

OR 012**ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF MESA, STATE OF COLORADO****ORDINANCE NO. 12****AN ORDINANCE ALLOWING THE OPERATION OF OFF-HIGHWAY
VEHICLES ON ALL COUNTY ROADS LOCATED IN UNINCORPORATED
AREAS OF MESA COUNTY, COLORADO AND PROVIDING PENALTIES FOR
VIOLATION OF SUCH ORDINANCE**

***BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MESA
COUNTY COLORADO:***

REFERENCES:

- A. C.R.S. § 33-14.5-108(1)(f) authorizes the Board of Commissioners (the "Board") to allow, through written resolution or ordinance, the establishment of off-highway vehicle ("OHV") routes to permit the operation of OHVs on designated county roads which are not part of the state highway system.
- B. C.R.S. § 33-14.5-110 authorizes the Board to regulate the operation of OHVs on County property and on streets and highways within its boundaries.
- C. C.R.S. § 30-15-401(1)(h) authorizes the County to control and regulate the movement and parking of vehicles and motor vehicles on public property, except state highways.
- D. Authorizing the operation of OHVs on certain additional county roads will assist in promoting economic development within Mesa County and the operation of OHVs on such designated roads can be undertaken in a safe and prudent manner.

ORDINANCE:

Section 1. Definition. The County hereby adopts the statutory definition of OHV from C.R.S. § 33-14.5-101(3) as: any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally and commonly used to transport persons for recreational purposes. "OHV" does not include the following: (a) Vehicles designed and used primarily for travel on, over, or in the water; (b) Snowmobiles; (c) Military vehicles; (d) Golf carts; (e) Vehicles designed and used to carry disabled persons; (f) Vehicles designed and used specifically for agricultural, logging, or mining purposes; or (g)

Vehicles registered pursuant to Article 3 of Title 42, C.R.S.

Section 2. Designation of Routes. OHV travel shall be allowed, subject to the restrictions listed in this Ordinance, on all county roads located in unincorporated Mesa County.

Restrictions and Prohibited Acts.

Section 2.01 Any person operating an OHV in the unincorporated areas of Mesa County shall comply with all rules and regulations applicable to such vehicles adopted by the State of Colorado and or the Federal Government, including but not limited to Article 14.5 of Title 33, C.R.S.

Section 2.02 Any person operating an OHV on a county road pursuant to this Ordinance shall be in possession of a valid motor vehicle operator's license and be at least 16 years of age.

Section 2.03 OHVs operating on Mesa County roads shall be equipped with:

- (a) a muffler in constant operation and properly maintained;
- (b) a spark arrestor in good working order which has been approved by the U.S. Forest Service as evidenced by the bona fide permanent marking of "qualified" or "approved" on the spark arrestor;
- (c) a braking system that may be operated by hand or foot, capable of producing deceleration of 14 feet per second on level ground at a speed of 20 miles per hour; and
- (d) At least one lighted head lamp and one lighted tail lamp, each having the minimum candlepower prescribed by regulation of the Division of Parks and Wildlife while being operated between the hours of sunset and sunrise.

Section 2.04 It shall be unlawful to operate an OHV on Mesa County roads in any of the following manners:

- (a) On any portion of any street except the far right portion of the street;
- (b) To ride together in any pattern except in single file;
- (c) On any public or private property or roads without express consent of the owner.

Section 2.05 OHVs operating on Mesa County roads shall be considered to be motor vehicles for purposes of maintaining at least the minimum liability insurance coverage required by the Colorado Motor Vehicle Financial Responsibility Law, Title 42, Article 7, C.R.S.

Section 2.06 All ordinances and regulations pertaining to vehicles or motor vehicles, including without limitation the Model Traffic Code adopted in Mesa County, shall be applicable to the operation of OHVs on County roads, except to those which, by their nature, can have no application. In the event of a conflict between such ordinances and regulations and this Ordinance, this Ordinance shall govern.

Section 2.07 On county roads, OHVs shall not exceed 35 miles per hour or the posted speed limit, whichever is less.

Section 3. Limitations. This Ordinance does not authorize or designate the use of OHV's on lands, roads or trails under the jurisdiction of municipalities or state or federal agencies or on other lands or roads not under the jurisdiction of Mesa County as set forth in Section 1. Nothing in this Ordinance shall prohibit the use of OHVs for agricultural purposes on any public road.

Section 4. Penalties. The following penalties shall apply to this ordinance:

Section 4.01. The provisions of C.R.S. §42-4-1701 are adopted by this reference (references to Article 4 of Title 42 shall refer to the corresponding part of the Model Traffic Code), except that any fine or penalty and the surcharge shall be paid to the County; the penalties and applicable Court surcharges and administrative fees shall be consistent with those applied under the Model Traffic Code adopted in Mesa County.

Section 4.02. With respect to violations of this Ordinance not covered by the Model Traffic Code, criminal prosecution may be brought against a violator in accordance with Sections 30-15-402 C.R.S. and under the penalty assessment procedure provided in Section 16-2-201 C.R.S. Such violations shall be a class 2 petty offense, and, upon conviction or confession of guilt thereof, shall be punished by a fine of not more than one thousand dollars for each separate violation, plus a surcharge of ten dollars (\$10.00), under Section 30-15-402(2) C.R.S. and any applicable Court surcharges and administrative fees.

Section 4.03. Each violation of this Ordinance shall be deemed separate and distinct from any other violation of this Ordinance or of any other federal, state, or local law, rule, order or regulation.

Section 5. Application. The restrictions on operation of OHVs contained in this Ordinance shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way or public place or public parking area, either within or outside the corporate limits of this County, the use of which this County has jurisdiction and authority to regulate. The provisions of Sections 1401, 1402, 1413, and part 16 of the adopted Model Traffic Code, respectively concerning reckless driving, careless driving, eluding a police officer, and accidents and accident reports shall apply not only to public places and ways but also throughout this County.

Section 6. Reevaluation. The Board will periodically re-evaluate this Ordinance to

determine the propriety of the terms and conditions herein.

Section 7. Validity. If any part or parts of this Ordinance are for any reason held to be invalid such decision shall not affect the validity of remaining portions of this Ordinance. The Board hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 8. Repealer. All resolutions or ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that this repealer shall not repeal the repealer clauses of such resolutions nor revive any resolution thereby.

Section 9. Safety. The adoption of this Ordinance is in the best interest, safety and welfare of the citizens of and visitors to Mesa County.

Section 10. Publication and Effective Date. The foregoing text is the authentic text of Ordinance No. 12. The first reading of said Ordinance took place on October 27, 2014 at a regular Board of County Commissioners Meeting. It was published in full in the Grand Junction Daily Sentinel on October 31, 2014. The Ordinance was adopted on second reading at a regular Board of County Commissioners Meeting on November 17, 2014 and shall take effect on November 30, 2014.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS this 17th day of November, 2014.

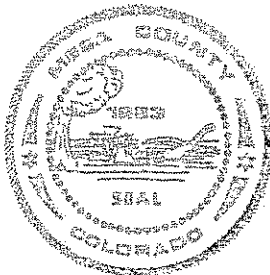
MESA COUNTY BOARD OF COUNTY COMMISSIONERS


By and through its Chair, John Justman

STATE OF COLORADO
MESA COUNTY

ATTEST:


Mesa County Clerk





COLORADO PARKS & WILDLIFE

1313 Sherman Street, Room 518 • Denver, Colorado 80203
 Phone (303) 866-3437 • FAX (303) 866-3206
wildlife.state.co.us • parks.state.co.us

November 12, 2013

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RE: Colorado Parks and Wildlife's Off-Highway Vehicle Program

Dear Commissioners and Counsel:

In lieu of the continued correspondence and apparent confusion regarding Colorado Parks and Wildlife's ("CPW") Off-Highway Vehicle ("OHV") grant program and the status of state regulations and local county ordinances regarding OHV use in Colorado, both the Executive Director of the Department of Natural Resources and the Chairman of the Parks and Wildlife Commission (the "Commission") requested that we elaborate on the issues or questions that appear to remain despite the numerous conferences and communications that have been occurring between the Division of Parks and Wildlife (the "Division") and county staff since Hinsdale, Ouray, San Juan and San Miguel Counties (the "Counties") first approached the Commission last January and petitioned the Commission to recognize the validity of certain OHV ordinances adopted by the Counties.

In that regard, there are two questions that continue to arise. First, some uncertainty remains regarding the basis for the Division's decision not to recommend and the Commission's decision ultimately not to grant funding for the Alpine Ranger Program collectively proposed by Hinsdale, Ouray, San Juan and San Miguel Counties. Second, some uncertainty remains regarding the status of the Counties' proposal to allow for a "carve out" for the local ordinances such that the ordinances would be recognized as controlling law over existing statewide standards regarding the operation of OHVs in Colorado, at least

STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources
 Steven M. Yamashita, Acting Director, Colorado Parks and Wildlife
 Parks and Wildlife Commission: Robert W. Bray • Chris Castilian • Jeanne Home
 Bill Kane, Vice-Chair • Gaspar Perricone • James Pribyl • John Singletary, Chair
 Mark Smith, Secretary • James Vigil • Dean Wingfield • Michelle Zimmerman
 Ex Officio Members: Mike King and John Salazar

within the Alpine Loop roads between Ouray, Silverton and Lake City (Engineer and Cinnamon Passes), as well as Imogene, Black Bear and Ophir Pass roads in San Miguel, Ouray and San Juan Counties.

As will be discussed in more detail below, both of these questions are best answered by review of or reference to the provisions of the OHV Act (§§ 33-14.5-101 to 113, C.R.S.) and in particular § 33-14.5-110, C.R.S. ("Regulation by political subdivisions"), which in relevant part provides:

"Any county ... may regulate the operation of off-highway vehicles ... **if such regulation is not inconsistent with the provision of this [OHV Act] and the [state] rules and regulations promulgated pursuant thereto.**"

(emphasis added).

In Colorado, OHVs are not required to be titled or registered as motor vehicles pursuant to Title 42, C.R.S. ("Motor Vehicles and Traffic"), rather they can be operated on OHV routes in Colorado provided they have been registered as OHVs with the Division and the appropriate registration fee has been paid pursuant to the OHV Act. See § 33-14.5-102, C.R.S. And pursuant to the OHV Act, the Commission has plenary authority to otherwise regulate the use of OHVs in Colorado. See § 33-14.5-107, C.R.S.

With regard to the operation of OHVs in Colorado, state regulations currently provide that any person ten years of age or older can operate an OHV on a public street, road or highway of the state or city street or county road open to such use provided the person possesses a valid driver's license or the person is accompanied by and under the immediate supervision ("within direct visual contact") of a person who possesses a valid driver's license. See Parks Regulation No. 504.B, 2 CCR 405-1. As such, state OHV regulations currently do not require operators to possess a driver's license to operate an OHV in Colorado.

In addition, there is no state regulatory requirement that OHV operators obtain and maintain any liability insurance coverage as a condition of operating an OHV on OHV routes in Colorado. Certainly, operators of OHVs may voluntarily choose to secure such insurance, but it is not a requirement of the current state regulations applicable to the operation of OHVs in Colorado.

However, the Counties, collectively or individually, have independently adopted local OHV ordinances that require all operators of OHVs to possess a driver's license and to carry at least the minimum level of liability insurance coverage required by the Colorado Motor Vehicle Financial Responsibility Act, Title 42, Article 7, C.R.S., for the operation of motor vehicles. And it is these differences between the state regulations and the county ordinances that in large part form the basis for the position of the CPW regarding the grant funding and "carve out" questions.

The CPW OHV Grant Program

All fees collected from the registration of OHVs in Colorado are required to be "used for the administration of the [OHV Act]," which includes enforcement of the OHV Act. See §§ 33-14.5-106 and 111, C.R.S. Such funds can be used for no other purpose. Historically, the Commission has used a portion of the registration fees the Division collects to fund an OHV grant program to support a variety of local and regional OHV activities and programs in Colorado. This OHV grant program is discretionary in nature - no applicant is entitled to nor has any right to such funding - and the Division recommends and the Commission funds those grant requests that they believe best fit within the intent and purposes of the OHV Act and the policies and goals of the Commission.

For a number of years, the Counties have requested funding for their Alpine Ranger program to support the administration and enforcement of their local OHV ordinances within county designated OHV routes, including the Alpine Loop roads between Ouray, Silverton and Lake City (Engineer and Cinnamon Passes), as well as Imogene, Black Bear and Ophir Pass roads in San Miguel, Ouray and San Juan Counties. Such requests have been consistently not recommended by the Division for funding and all have been denied for funding by the Commission because they seek funds to support, at least in part, the

enforcement of local ordinances that either directly conflict with, or seek to apply substantive requirements in addition to those that the Division and the Commission have to date chosen to include in current state regulations.

These local ordinances, which require all OHV operators to possess driver's licenses and liability insurance when state regulation do not, are by their very nature unquestionably "inconsistent" with state regulations promulgated by the Commission pursuant to the OHV Act. See § 33-14.5-110, C.R.S. In that regard, state OHV regulations do not need to affirmatively state that no driver's license or no liability insurance is required to operate an OHV in Colorado for there to be an inconsistency with the local ordinances under the statute.

And given this apparent inconsistency between the state OHV regulations and the local OHV ordinances, it is inconceivable how the funding of such inconsistent local ordinances could be considered the appropriate "administration of the [OHV Act]," which is the statutory requirement for the expenditures of any registration fees under the OHV Act. See § 33-14.5-106, C.R.S. And it is on this basis that the grant requests for the funding of the Counties' Alpine Ranger program have not been recommended for funding by the Division and have been denied by the Commission.

However, while funding for the Counties' Alpine Ranger program has been consistently denied, the Division and the Commission believe it is important to also note that over \$2 million in OHV grants have been awarded to the Alpine Loop region over the past four years to support OHV activities and programs in the region. It is only where the Counties have directly sought funding for the administration and enforcement of the inconsistent local ordinances has there been any issue with regard to funding for the Alpine Loop region.

Lastly, in the most recent communications received regarding this issue, representatives of the Counties have raised questions with regard to possible state OHV funding of enforcement programs or activities of the U.S. Forest Service and the Bureau of Land Management. However, we are unaware that either of those federal agencies has adopted substantive OHV use requirements that conflict with or add to existing state regulatory requirements. Current federal substantive requirements regarding the use of OHVs, including the age limit for OHV operation, no license requirements and no liability insurance requirements, are consistent with current state regulatory requirements and simply don't present the same issue as the local ordinances do.

The Counties' "Carve Out" Proposal

In January of 2013, after the most recent funding request for the Alpine Ranger program was denied, the Counties proposed, by way of a rule-making petition, to have the Commission allow for a state regulation "carve out" for the local ordinances such that the ordinances would be recognized as controlling law over existing statewide standards regarding the operation of OHVs in Colorado, at least within the Alpine Loop roads between Ouray, Silverton and Lake City (Engineer and Cinnamon Passes), as well as Imogene, Black Bear and Ophir Pass roads in San Miguel, Ouray and San Juan Counties. After discussing the matter, the Commission chose not to move forward with such a carve out for the local ordinance, and it is our recollection that Commission requested the Division and its Attorney General representative to give the matter further consideration to see if there was some creative solution that would assist in the Counties' desire to receive OHV funding that did not highlight or otherwise run afoul of the inconsistency between the statewide OHV regulations and the local ordinances. The only such solution identified to date has been to continue to try to focus state OHV funding on activities and programs in the Alpine Loop region that do not involve the administration or enforcement of the inconsistent local ordinances.

We do not recall any specific direction to the Division to propose a regulatory carve out as requested by the Counties, and the Division is not working on any such proposal. The Division cannot support, nor does it believe that CPW's other OHV constituencies would support a state regulatory "carve out" for the currently inconsistent local ordinances. As a matter of policy, the Division believes the regulation of OHVs is best served by consistent statewide standards that OHV users can rely upon in recreating in Colorado. Recognizing local ordinances as is suggested by the proposed "carve out" conceivably opens

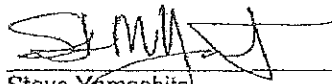
the door to 64 different sets of local OHV ordinances and simply creates an untenable situation for any OHV operator crossing from county to county and trying to keep abreast of the applicable local ordinances.

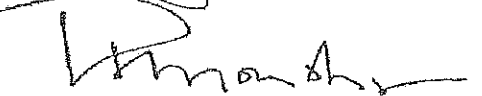
In that regard, OHV regulation is not only best served by consistent state regulation as a matter of policy, but consistent statewide regulation also finds support in the OHV Act itself. While the Commission has plenary authority to regulate the use of OHV and certainly should be able to adopt regional requirements when necessary, by including 33-14.5-110, C.R.S., and otherwise prohibiting inconsistent local ordinances, the General Assembly has stated a clear preference for statewide standards in the regulation of OHV use in Colorado and the burden for any deviation from that preference should be quite high.

That is not to say, however, that the issues raised by the Counties regarding operator age, licensing and liability insurance aren't perhaps worthy of further conversation, only that those conversations should be in the context of possible amendments to statewide standards, not the adoption of more regional or local standards, and those conversations should reasonably include all affected counties and other OHV constituencies. There may be common ground among all the parties that might result in statewide proposals acceptable to all.

The Commission certainly prefers to work by such consensus whenever possible and likely would look favorably on any proposal that had the support of all its OHV constituencies. We are unaware of any concerted effort to bring the Counties' issues to such a larger discussion group, but would be willing to assist in bringing the necessary parties together to begin such discussions with the hope of reaching some consensus conclusion. Such an inclusive and comprehensive process would be the best way of attempting to address the issues raised by the Counties.

Please let us know how you would like to proceed in that regard.



Steve Yamashita
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Division of Parks and Wildlife

Tim Monahan
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Counsel to the Division of Parks and Wildlife
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cc: Mike King, Executive Director, DNR
John Singletary, Chair, PWC
Ken Brink, DPW
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Analysis of State Parks' contention that County OHV regulations are preempted by State OHV statute and State Parks' OHV regulations

In a letter dated November 12, 2013 from Colorado Parks and Wildlife to the Commissioners of Ouray, Hinsdale, San Juan and San Miguel Counties, Acting Director Steven Yamashita takes the position that all County regulation of OHVs on County roads is preempted by State Parks' OHV regulations. The purpose of this analysis is to determine whether that interpretation is consistent with Colorado law.

1. 33-14.5-108(1) closes all roads to OHV use unless expressly opened by the appropriate governing entity:

“No off-highway vehicle may be operated on the public streets, roads, or highways of this state except in the following cases: (a) When a street, road, or highway is designated open by the state or any agency or political subdivision thereof; *** (f) When local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes to permit the operation of off-highway vehicles on city streets or county roads, but no street or road which is part of the state highway system may be so designated.”

By virtue of this provision, the legislature has recognized that local governments have ultimate authority over OHV use of local roads because only by affirmative act of a local government are any local roads open to OHV use. Of course, just as local governments can designate roads as OHV routes, they can withdraw that designation thereby closing county roads to use by OHVs.

2. 33-14.5-110(1) expressly authorizes local regulation of the operation of OHVs: “Any county, city and county, city, or town acting by its governing body may regulate the operation of off-highway vehicles on public lands, waters, and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice thereof if such regulation is not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto.”

3. 33-14.5-110 contains only two express prohibitions against specific local regulation: 33-14.5-110(2) states: “No county, city and county, city or town acting by its governing body may adopt an ordinance *which imposes a fee for the use of public land or water* under the jurisdiction of any agency of the state or for the use of any access thereto owned by the county, city and county, city, or town; *nor shall it require an off-highway vehicle to be licensed or registered in such political subdivision.*”

4. 33-14.5-107 grants State Parks Commission limited authority [not plenary authority as claimed by State Parks in their letter] to adopt regulations pursuant to the statute:

“The commission shall adopt rules in the manner provided by article 4 of title 24, C.R.S., concerning the following:

- (a) Registration of off-highway vehicles and display of registration numbers;
- (b) Procedures and requirements to implement and administer the off-highway use permit program, including guidelines in connection with the exemptions therefrom;

- (c) Formulation, in cooperation with appropriate federal agencies, of guidelines for uniform maps and signs for use by the state, counties, cities, city and counties, and towns to control, direct, or regulate the operation and use of off-highway vehicles;
- (d) The use of off-highway vehicles, but such regulations shall not be inconsistent with the provisions of this article in any way."

Nothing in the statute suggests that State Parks may, by regulation, repeal or supersede the express authorization for local regulation contained in 33-14.5-110(1). Nothing in the statute suggests that the legislature ever intended to authorize State Parks to adopt rules allowing children to operate OHVs on public roads. Nothing in the statute prohibits a local government from requiring a driver's license or insurance in order to operate an OHV on a public road.

5. Statutory silence does not constitute authorization to adopt a rule. Under the Administrative Procedure Act, "[n]o rule shall be issued except within the power delegated to the agency and as authorized by law. A rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to the specific provisions of a statute." 24-4-103(8)

6. "Any rule or amendment to an existing rule issued by any agency ... which conflicts with a statute shall be void." 24-4-103(8); La Plata County v. Colorado Oil and Gas Conservation Commission, 81 P.3d 1119, 1125 (Colo.App. 2003); Ettelman v. Colo Bd. of Accountancy, 849 P.2d 795, 798 (Colo.App. 1992)

7. In communications with the four San Juan mountain counties, State Park representatives have asserted that no County can regulate OHV use within its jurisdiction but that the State Parks regulations are the only permissible regulations of OHVs. Thus, it appears that State Parks' interpretation of its own regulations is that they supersede the express statutory authorization of local regulation of the use of OHVs. To the extent that the State Parks' interpretation of its regulations is that they preclude local regulation, that interpretation is in conflict with the express language of the statute and is therefore void.

8. To the extent that the State regulations may permit 10 year olds to operate OHVs on public roads, they exceed the authority conferred on the State Parks Board by the OHV statute. Unlike the snowmobile statute (CRS 33-14-101 et seq) on which the OHV statute is based, nothing in the OHV statute expressly sets any age limits on OHV operation.

9. The State Parks regulations are completely silent with regard to insurance for operation of OHVs. Because neither the statute nor the State Parks regulations prohibit local governments from requiring insurance as a condition of operating OHVs on public roads, such a local regulation cannot be inconsistent with state law or regulations.

10. Rule 504 of the State Parks rules governing OHVs establishes an absolute minimum age limit for operation of an OHV (age 10): "b. Where the State, the United States, or any agency thereof, has designated any public street, road, or highway of this state open to off-highway vehicles or where local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes to permit the operation of off-highway vehicles on

city streets or county roads pursuant to the authority granted in C.R.S. 33-14.5-108(1), *no person under the age of ten years may operate an off-highway vehicle on such public street, road, or highway of this state or on such city street or county road.*" The regulation imposes no educational, experiential, or training requirements for operation of OHVs.

11. Contrary to the State Parks letter, Rule 504 does not expressly authorize anyone 10 years old or older to operate an OHV. Instead, it expressly prohibits anyone 10 years old or older from operating an OHV unless certain conditions are met: either the person possesses a valid driver's license or is accompanied by, and under the immediate supervision of, a licensed person:

"No person ten years of age or older may operate an off-highway vehicle on such public street, road, or highway of this state or on such city street or county road unless:

1. The person has in his possession a valid driver's license issued by the State of Colorado or another state; or
2. The person is accompanied by and under the immediate supervision of a person who has in his possession a valid driver's license issued by the State of Colorado or another state. The phrase "under immediate supervision" shall mean that, at a minimum, the unlicensed operator is within direct visual contact of the licensed supervisor."

12. Merely because state regulations exist with regard to a particular subject does not mean that all local regulation of the same subject is automatically preempted. Preemption exists only if a court finds express, implied or operational preemption. La Plata County Commissioners v. Bowen/Edwards Assoc., 830 P. 1045, 1056 - 57 (Colo. 1992).

"The purpose of the preemption doctrine is to establish a priority between potentially conflicting laws enacted by various levels of government. A state statute may preempt a local regulation in three ways: (1) the express language of the statute may indicate state preemption of all local authority over the subject matter; (2) preemption may be inferred if the state statute impliedly evinces a legislative intent to completely occupy a given field by reason of a dominant state interest; and (3) a local law may be partially preempted where its operational effect would conflict with the application of the state statute. CDOT v. City of Idaho Springs, 192 P.3d 490, 495 (Colo.App. 2008), quoting Bowen/Edwards at 1056-57.

13. If a state statute expressly prohibits local regulation in a particular area, there is express preemption. "Accordingly, in cases involving statutory counties, we have applied the ordinary rules of statutory construction to determine whether a state statute and a local ordinance can be construed harmoniously or whether the state statute preempts the local ordinance. If a conflict exists and the state statute contains a specific provision addressing the matter, the state statute controls over the statutory county's general land use authority." Colorado Mining Assoc. v. Summit County, 199 P.3d 718, 724 (Colo. 2009). Where the subject at issue "is a matter of shared state and local interest, we will recognize a legislative intent to preempt local authority only if that intent is expressed in unequivocal language." CDOT v. City of Idaho Springs, 192 P.3d 490, 495 (Colo.App. 2008). Here, there is no express preemption because the state statute expressly authorizes, rather than prohibiting, local regulation of OHV use and the state statute is silent on the question of age or other requirements for operating OHVs.

14. Implied preemption “may be inferred if the state statute impliedly evinces a legislative intent to completely occupy a given field by reason of a dominant state interest.” CDOT v. City of Idaho Springs, 192 P.3d 490, 495 (Colo.App. 2008). If the statute expressly grants local regulatory authority, one cannot find implied preemption because the express authorization necessarily negates any implication of a legislative intent to ban local regulation so there can be no implied preemption here.

15. “Operational conflict arises when a local interest is implemented in a way that materially impedes or destroys a state interest. When this occurs, local regulations may be partially or totally preempted to the extent that they conflict with the achievement of the state interest.” CDOT v. City of Idaho Springs, 192 P.3d 490, 496 (Colo.App. 2008). In order to find operational preemption, it must be clear from the record that implementation of the local regulation materially impedes or destroys a dominant state interest and that conflict is irreconcilable. Colorado Mining Assoc. v. Summit County, 199 P.3d 718, 724 (Colo. 2009); La Plata County Commissioners v. Bowen/Edwards Assoc., 830 P. 1045, 1058 (Colo. 1992); CDOT v. City of Idaho Springs, 192 P.3d 490 (Colo.App. 2008). There is no operational conflict between the state OHV statute and the local county regulations.

16. The provisions of the State Parks’ Rules governing operation of OHVs are not in conflict with the four county San Juan mountain region local regulations for two reasons: first, there is no dominant state interest with regard to either the age for operation of OHVs on these counties’ roads or with regard to the question of whether or not OHV operators should have insurance before operating on local roads and second, it plainly is possible to comply both with the State Rules and with the local regulations. In other words, complying with the local regulation does not preclude compliance with the state regulation. As demonstrated by the express provisions of the OHV statute which authorizes both state and local regulation, OHV operation is a matter of both state and local interest and the local interest appears to be dominant (at least with regard to conditions under which OHVs may use local roads) in that local governments can ban OHV operation within their jurisdiction completely while State Parks has no such power. Uniformity of regulation statewide has not been identified by the legislature in the statute as a matter of critical importance. On the contrary, because the legislature expressly authorized local regulation, it clearly contemplated that there would be no uniformity of regulation at least with regard to certain conditions of use.

OHV STATUTE AND REGULATIONS

Talking Points – 4-17-2014

- C.R.S. 33-14.5-101, et seq. provides the authority for off-highway vehicles to be used in Colorado.
- The statute provides for a registration system to be administered by the state.
- Off-road vehicles are generally prohibited on all streets, roads and highways, except as a local government or the state may designate streets, roads or highways to be open to OHV travel. C.R.S. 33-14.5-108 (emphasis added)
- “Any county, city and county, city or town acting by its governing body may regulate the operation of off-highway vehicles on public lands, waters and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice thereof if such regulation is not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto.”
- The commission (CPWC) is authorized to adopt regulations concerning registration of OHV vehicles, and display of registration; procedures and requirements to implement and administer the permit program, guidelines for uniform maps and signs, and “...the use of off-highway vehicles, but such regulations shall not be inconsistent with the provisions of this article in any way.” C.R.S. 33-14.5-107. (emphasis added)
- Nowhere in the statute is there any reference to age requirements for operation of an OHV or whether an OHV must be insured. This is in sharp contrast from the snowmobile statute, C.R.S. 33-14-101, et seq., after which the OHV statute was modeled. See C.R.S. 33-14-109 which specifically provides for “restrictions on young operators.” No comparable section is included in the OHV statute. The OHV statute is, essentially, a permitting and registration system.
- CPWC Regulation 504, Operation of Off-Highway Vehicles, provides that “...no person ten years of age or older may operate an off-highway vehicle...unless: 1. The person has in his possession a valid driver’s license issued by the State of Colorado or another state; or 2. The person is accompanied by and under the immediate supervision of a person who has in his possession a valid driver’s license issued by the State of Colorado or another state...”
- The OHV regulations are silent on any requirement for insurance.
- All four counties (San Miguel, San Juan, Hinsdale and Ouray) have adopted local regulations designating certain streets, roads, highways and trails as open to OHV use.
- As part of those regulations opening roads to OHV use, three of the four counties have adopted a requirement that operators be licensed drivers.
- All four counties have adopted a requirement that all OHVs be insured.
- CPWC has denied grants to the four counties for the Alpine Ranger program based upon an opinion by Tim Monahan that the counties’ regulations are “inconsistent” with the CPWC regulations, specifically Reg. 504.
- The counties have not been provided with any written explanation or legal analysis of that opinion other than as presented in the letter from Steve Yamashita (See letter dated November 12, 2013).

- The counties allege that Reg. 504 is inconsistent with the statute, specifically C.R.S. 33-14.5-107(1)(d) which provides that state regulations shall not be inconsistent with the statute in any way. Since the statute is silent as to operator age, Reg. 504 is inconsistent if CPWC is essentially mandating that non-licensed driver's be permitted to operate OHVs on county roads.
- Given that both the statute and Reg. 504 are silent with respect to insurance, there is no inconsistency between the counties' regulations requiring insurance and the statute or Reg. 504.
- Particularly in light of the fact that the statute gives total discretion to the counties (or local jurisdiction) to open, *or not open*, roads within its jurisdiction and boundaries to OHVs, and to adopt regulations for the operation of OHVs, the more reasonable interpretation of the statute is that the counties have authority to require an operator to have a driver's license and insurance.
- The policy argument is compelling as well. The OHV designated roads and trails in these four counties are characterized by steep inclines, rugged terrain, sharp drop-offs and ledges. These OHV roads and trails are unforgiving of mistakes in judgment or lack of experience and skills. Unlike terrain in flat counties, these are mountainous conditions, with rapid changes in weather conditions that can also affect the terrain and driving conditions. These four counties are relatively small counties with limited resources for search and rescue or recovery operations. The three counties that require operators to have a driver's license are looking to protect the public from unskilled and inexperienced OHV operators, and, to some extent, to prevent child injuries, including fatalities such as the one that occurred in the recent past. It is perhaps ironic that counties are required by statute ("Child Fatality Prevention Act") C.R.S. 25-20.5-401 et seq. to expend resources to investigate and recommend means of preventing child fatalities, but would not be permitted to prevent a child from driving an OHV off a mountain side. The insurance requirement of all four counties is designed to ensure that anyone injured by an OHV operator, or property damaged by an OHV operator can be assured of appropriate reparations or compensation. It also provides some assurance to the counties that if they are called upon to use county resources to extract an OHV and/or its operator from the bottom of a cliff, that there will be reimbursement available. Lest that seem trivial, the recent experience of Ouray County with a plane crash, and the resources required to respond to that incident, have demonstrated the importance of having an insurance company bear the primary financial responsibility for recovery of victims and wreckage. Simply put, as much as the CPWC would like to have "one-size fits all" regulations for OHVs, and certainly can with respect to registration, display of permits, and so on, it is clear that there are differences in terrain throughout the state. That is why the statute clearly contemplated each county or local jurisdiction having the authority to adopt regulations that would suit the terrain being opened to OHV use.

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RESEARCH MEMORANDUM

TO: Representative Lois Court

FROM: Jery Payne

DATE: August 14, 2015

SUBJECT: A Summary of Off-Highway Vehicle Laws.

Research Memorandum

This memorandum sets forth the laws that concern the issues raised by the Off-Highway Vehicle Interim Committee.

1. Article 14.5 of title 33, C.R.S.

Article 14.5 of title 33, C.R.S., is the main set of statutes addressing the use of off-highway vehicles. This article contains rules addressing these topics:

- A requirement that these vehicles register with the Division of Parks and Wildlife to use public property;
- Proof of ownership and transfer of ownership;
- The creation and use of the off-highway vehicle recreation fund;
- Authority for the parks and wildlife commission to adopt rules;
- Rules for when an off-highway vehicle can cross or be used on roads, including the authority for state and local governments to open their roads;
- Equipment requirements;
- A grant of authority to local governments to regulate the operation of off-highway vehicles on public lands, waters, and property under its jurisdiction and on streets and highways within its boundaries;

- Enforcement;
- Administration; and
- A requirement that users of off-highway vehicles notify a peace officer after an accident that causes significant damage.

Here are the actual statutes in article 14.5:

33-14.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail in this state.

(2) "Direct services" includes, but is not limited to, the activities and expenses associated with law enforcement, capital equipment, rescue and first aid equipment, off-highway vehicle facilities, and division and contract services related to clearing parking lots and providing trail maintenance.

(3) "Off-highway vehicle" means any self-propelled vehicle which is designed to travel on wheels or tracks in contact with the ground, which is designed primarily for use off of the public highways, and which is generally and commonly used to transport persons for recreational purposes. "Off-highway vehicle" does not include the following:

(a) Vehicles designed and used primarily for travel on, over, or in the water;

(b) Snowmobiles;

(c) Military vehicles;

(d) Golf carts;

(e) Vehicles designed and used to carry individuals with disabilities;

(f) Vehicles designed and used specifically for agricultural, logging, or mining purposes; or

(g) Vehicles registered pursuant to article 3 of title 42, C.R.S.

(4) "Off-highway vehicle route" means any road, trail, or way owned or managed by the state or any agency or political subdivision thereof or the United States for off-highway vehicle travel.

(5) "Owner" means any person, other than a lienholder, having a property interest in an off-highway vehicle and entitled to the use and possession thereof.

(6) "Possession" means physical custody of an off-highway vehicle by any person or by any owner of a motor vehicle or trailer on or in which an off-highway vehicle is placed for the purpose of transport.

(7) "Staging area" means any parking lot, trail head, or other location to or from which any off-highway vehicle is transported by truck, trailer, or other motor vehicle so that it may be placed into operation or removed from operation. "Staging area" does not include any location to which an off-highway vehicle is transported primarily for the purpose of service, maintenance, repair, storage, or sale.

33-14.5-102. Off-highway vehicle registration - nonresident-owned or -operated off-highway vehicle permits - fees - applications - requirements - exemptions. (1) (a) Except as provided in subsection (6) of this section, and except as provided for nonresident-owned and -operated off-highway vehicles in subsection (9) of this section, no person shall operate, nor have in his or her possession at any staging area, any off-highway vehicle within the state unless such off-highway vehicle has been registered and numbered in accordance with the provisions of this article. The division is authorized to assign identification numbers and register off-highway vehicles.

(b) The division shall employ off-highway vehicle agents, including dealers and licensing agents serving as such for the division, for off-highway vehicle registration pursuant to section 33-12-104. Upon receiving a registration application, an agent shall collect the fee specified pursuant to section 33-10-111 (5) and issue a temporary registration and shall forward the application to the division, which shall issue the registration. An agent may retain a commission of not in excess of one dollar, as authorized by the division, for each registration issued. Any dealer is authorized to issue a temporary registration when a person purchases an off-highway vehicle from such dealer.

(2) (a) Every dealer shall require a purchaser of an off-highway vehicle to complete a registration application and pay the registration fee

before the vehicle leaves the dealer's premises, except for those off-highway vehicles purchased for use exclusively outside of this state.

(b) Each off-highway vehicle owned by a lessor for rental purposes shall be registered pursuant to this article upon the payment of a registration fee, as provided in paragraph (a) of subsection (3) of this section.

(3) (a) For each year, or portion thereof, beginning April 1 and ending the following March 31, the original and each renewal registration fee by an owner shall be the fee specified pursuant to section 33-10-111 (5).

(b) The fee for the replacement of a lost, mutilated, or destroyed registration certificate shall be the fee specified in section 33-12-101.

(4) (a) For each year, or portion thereof, beginning April 1 and ending the following March 31, for which such registration is made, the registration fee for all off-highway vehicles owned by a dealer or manufacturer and operated solely for demonstration or testing purposes shall be a fee specified pursuant to section 33-10-111 (5).

(b) Dealer and manufacturer registrations are not transferable and shall be distinguished from the registration required for owners.

(5) A registration certificate shall be issued without the payment of a fee for any off-highway vehicle owned by the state of Colorado or a political subdivision thereof upon application therefor.

(6) No registration under this article is required for any:

(a) Off-highway vehicle owned by any agency of the United States or another state or a political subdivision thereof when such ownership is clearly displayed on such vehicle;

(b) Off-highway vehicle owned by a resident of another state or country if such off-highway vehicle is covered by a valid license or registration of such other state or country and such off-highway vehicle has not been within this state for more than thirty consecutive days;

(c) Off-highway vehicle used strictly for agricultural purposes;

(d) Off-highway vehicle used strictly on private property;

(e) Off-highway vehicle operated in an organized competitive or noncompetitive event on publicly or privately owned or leased land; except that this exemption shall not apply unless the agency exercising jurisdiction over such land specifically authorizes the organized competitive or noncompetitive event;

(f) Off-highway vehicle used by a dealer or manufacturer, or an authorized designee thereof, for off-highway vehicle operator education or safety programs.

(7) Any person who operates an off-highway vehicle in violation of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

(8) Any dealer who does not comply with paragraph (a) of subsection (2) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of one hundred dollars.

(9) (a) Notwithstanding the provisions of subsections (1) to (8) of this section, on and after April 1, 2000, no person shall operate, nor have in his or her possession at any staging area, any nonresident-owned or -operated off-highway vehicle within the state of Colorado unless such off-highway vehicle is covered by a valid license or registration of another state or country and such nonresident-owned or -operated off-highway vehicle has not been within this state for more than thirty consecutive days, or such nonresident-owned or -operated off-highway vehicle has been issued a permit pursuant to this subsection (9).

(b) The division is hereby authorized to issue permits to nonresident-owned or -operated off-highway vehicles.

(c) (I) Nonresident off-highway vehicle permits shall be sold by the agents designated pursuant to section 33-12-104, and the fee for said permits shall be the fee provided pursuant to section 33-10-111 (5).

(II) Nonresident off-highway vehicle permits shall be valid for one year or until the following March 31, whichever comes first.

(III) The fee for the replacement of a lost, mutilated, or destroyed nonresident off-highway vehicle permit shall be the fee specified in section 33-12-101 for replacement of passes and registrations.

(d) Nonresident off-highway vehicle permits shall be displayed as required by the division.

(e) The following nonresident off-highway vehicles shall be exempt from the requirements of this subsection (9):

(I) Vehicles owned by the United States or another state or political subdivision thereof if such ownership is clearly displayed on such vehicles;

(II) Vehicles operated in an organized competitive or noncompetitive event on publicly or privately owned or leased land; except that this exemption shall not apply unless the agency exercising jurisdiction over such land specifically authorizes the organized competitive or noncompetitive event;

(III) Vehicles used strictly on private property.

(f) Any person who violates the provisions of this subsection (9) is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of thirty-five dollars.

33-14.5-103. Proof of ownership for registration purposes.

(1) The division shall require proof of ownership for an off-highway vehicle prior to the initial registration required under this article, but the division shall not issue a certificate of title for the vehicle.

(2) The division shall keep a record of the manufacturer's numbers of all off-highway vehicles registered pursuant to this article and shall provide the department of revenue with a copy of said record monthly. The department of revenue shall maintain a computerized list of such record in order to aid in the recovery of stolen off-highway vehicles.

33-14.5-104. Issuance of registration. (1) (a) Upon the receipt of a sufficient application for registration of an off-highway vehicle, as required by section 33-14.5-102, the division shall assign a distinctive number to the vehicle and shall enter upon its records the registration of such off-highway vehicle under the distinctive number assigned to it pursuant to this section.

(b) A number assigned to an off-highway vehicle at the time of its original registration shall remain with the off-highway vehicle until such off-highway vehicle is destroyed, abandoned, or permanently removed

from the state or until such registration number is changed or terminated by the division.

(2) The division shall, upon assignment of such number, issue and deliver to the owner a registration in such form as the division shall prescribe. In the event of the loss, mutilation, or destruction of any registration, the owner of the registered off-highway vehicle shall file a statement containing such facts as the division shall require for the issuance of a replacement registration, together with the fee specified in section 33-12-101.

(3) At the time of the original registration and at the time of each annual renewal thereof, the division shall issue to said registrant a validation decal indicating the distinctive number assigned to such vehicle, as provided in subsection (1) of this section, and the validity of the current registration and the expiration date thereof, which validation decal shall be affixed to the off-highway vehicle in such manner as the division may prescribe. Notwithstanding the fact that an off-highway vehicle has been assigned an identifying number, it shall not be considered as validly registered within the meaning of this article unless a validation decal and current registration have been issued.

(4) In the event that an off-highway vehicle sought to be registered or reregistered does not comply with the provisions respecting equipment established by the regulations of the division, the division may deny the issuance of a current registration.

(5) The registration number assigned to an off-highway vehicle shall be displayed on the vehicle at all times in such manner as the division may, by regulation, prescribe.

(6) Every person, while operating an off-highway vehicle in this state which is required to be registered under this article, shall have on his person or in the off-highway vehicle the registration therefor and shall, upon demand of any peace officer authorized to enforce this article, produce for inspection the registration for such off-highway vehicle.

(7) (a) Any person who violates subsection (5) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of twenty-five dollars.

(b) Any person who violates subsection (6) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

33-14.5-105. Transfer or other termination of ownership. (1) If there is a change of ownership of an off-highway vehicle for which a registration has been issued, the new owner shall apply for a new registration from a dealer employed as a licensing agent or from the division. Such application shall set forth the original number issued and shall be accompanied by the old registration properly signed by the previous owner and by the required fee for registration, pursuant to section 33-10-111 (5).

(2) In the event that an off-highway vehicle was purchased through a dealer, such application must be accompanied by a dealer's form, as prescribed by the division, numbered, completed, and signed by the dealer or his agent and by the new owner.

33-14.5-106. Off-highway vehicle recreation fund - creation - use of moneys. (1) All fees collected from the registration of off-highway vehicles and all fees collected from the sale of off-highway use permits, plus all interest earned on such moneys shall be credited to the off-highway vehicle recreation fund, which fund is hereby created, and shall be used for the administration of this article, for information and awareness on the availability of off-highway vehicle recreational opportunities, for the promotion of off-highway vehicle safety, for the establishment and maintenance of off-highway vehicle routes, parking areas, and facilities, and for the purchase or lease of private land for the purposes of access to public land for uses consistent with the provisions of this article; however, any moneys collected in excess of four dollars per original or renewal registration shall be used exclusively for direct services and not administrative costs. The general assembly shall make annual appropriations from the off-highway vehicle recreation fund for the purposes enumerated in this subsection (1).

(2) All moneys collected for fines imposed pursuant to the provisions of this article shall be distributed as follows:

(a) One-half of such amount collected shall be transferred to the state treasurer for credit to the general fund; and

(b) One-half of such amount collected shall be distributed as follows:

(I) If the citing officer is a park officer, the amount shall be transferred to the state treasurer and credited to the off-highway vehicle recreation fund; or

(II) If the citing officer is a wildlife officer or special wildlife officer, the amount shall be transferred to the state treasurer and credited to the wildlife cash fund; or

(III) If the citing officer is any other peace officer, such amount shall be transferred to the treasurer of the local jurisdiction in which the violation occurred to be credited to the appropriate fund.

(3) Repealed.

33-14.5-107. Rules. (1) The commission shall adopt rules in the manner provided by article 4 of title 24, C.R.S., concerning the following:

(a) Registration of off-highway vehicles and display of registration numbers;

(b) Procedures and requirements to implement and administer the off-highway use permit program, including guidelines in connection with the exemptions therefrom;

(c) Formulation, in cooperation with appropriate federal agencies, of guidelines for uniform maps and signs for use by the state, counties, cities, city and counties, and towns to control, direct, or regulate the operation and use of off-highway vehicles;

(d) The use of off-highway vehicles, but such regulations shall not be inconsistent with the provisions of this article in any way.

33-14.5-108. Off-highway vehicle operation prohibited on streets, roads, and highways. (1) No off-highway vehicle may be operated on

the public streets, roads, or highways of this state except in the following cases:

(a) When a street, road, or highway is designated open by the state or any agency or political subdivision thereof;

(b) When crossing streets or when crossing roads, highways, or railroad tracks in accordance with section 33-14.5-108.5;

(c) When traversing a bridge or culvert;

(d) During special off-highway vehicle events lawfully conducted pursuant to the authority granted to local political subdivisions in this article;

(e) During emergency conditions declared by the proper state or local authority;

(f) When local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes to permit the operation of off-highway vehicles on city streets or county roads, but no street or road which is part of the state highway system may be so designated;

(g) When using an off-highway vehicle for agricultural purposes;

(h) When authorized under subsection (3) of this section; and

(i) When a public utility, as defined in section 40-1-103 (1), C.R.S., or a cooperative electric association, as defined in section 40-9.5-102, C.R.S., or any agent thereof designated specifically for the purpose of meter reading or repair, is using an off-highway vehicle for business purposes.

(2) Any person who violates subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

(3) (a) Except as otherwise provided in paragraph (d) of this subsection (3), it is unlawful for a person to operate a motor vehicle on any federal public land, trail, or road unless the federal public land, trail, or road is signed or otherwise authorized for such use. A peace officer shall not enforce this paragraph (a) within an administrative unit of federal public land until the controlling land management agency identifies whether a route is available for motorized travel by maps, route

markers, or signs that are available to the public and provide information to determine whether the route is authorized. Except for violations occurring within a federal wilderness area, a person who violates this paragraph (a) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars. A person who violates this paragraph (a) within a federal wilderness area is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars.

(b) A person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred fifty dollars if the person, without authorization, takes either of the following actions with regard to a sign located on federal public land that affects whether motor vehicle travel is or purports to be authorized:

(I) Removes, defaces, or destroys such a sign that was installed by the controlling land management agency; or

(II) Installs such a sign.

(c) A peace officer may enforce this subsection (3).

(d) (I) The prohibition and penalties expressed in paragraphs (a) and (b) of this subsection (3) do not apply to a peace officer in the performance of his or her official duties, a person acting at the direction of a peace officer, or a person otherwise authorized to operate a motor vehicle on the federal public land, trail, or road by legal right or by permission of the controlling land management agency, including administrative and emergency access, facility maintenance, ski area operations, oil and gas operations, logging operations, and motor vehicle use that is authorized under permits, including for special events, recreational uses, firewood gathering, and livestock operations and activities.

(II) Nothing in this subsection (3) affects any authority that the parks and wildlife commission has pursuant to law other than this subsection (3) to regulate motor vehicle travel on lands subject to the commission's jurisdiction.

33-14.5-108.5. Crossing roads, highways, and railroad tracks.

(1) The driver of an off-highway vehicle may directly cross a roadway,

including a state highway, at an at-grade crossing to continue using the off-highway vehicle on the other side; except that a person shall not cross a state highway within the jurisdiction of a municipality.

(2) A person shall not cross a highway while driving an off-highway vehicle unless the crossing is made in accordance with the following:

(a) The crossing must be made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing.

(b) The off-highway vehicle must be brought to a complete stop before crossing the shoulder or, if none, the roadway before proceeding.

(c) The driver must yield the right-of-way to all motor vehicle traffic on the roadway that constitutes an immediate hazard to the crossing.

(d) A driver of an off-highway vehicle must cross a divided highway at an intersection of the highway with another road or highway.

(3) A person who violates this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

33-14.5-109. Required equipment - off-highway vehicles. (1) No off-highway vehicle shall be operated upon public land unless it is equipped with the following:

(a) At least one lighted head lamp and one lighted tail lamp, each having the minimum candlepower prescribed by regulation of the division while being operated between the hours of sunset and sunrise;

(b) Brakes and a muffler and spark arrester which conform to the standards prescribed by regulation of the division, which shall be applicable in all cases except for off-highway vehicles being operated in organized competitive events held on private lands with the permission of the landowner, lessee, or custodian of the land, on public lands and waters under the jurisdiction of the division with its permission, or on other public lands with the consent of the public agency owning the land.

(2) A person who violates subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of

fifty dollars; except that the fine for a violation relating to a spark arrester is one hundred fifty dollars.

33-14.5-110. Regulation by political subdivisions. (1) Any county, city and county, city, or town acting by its governing body may regulate the operation of off-highway vehicles on public lands, waters, and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice thereof if such regulation is not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto.

(2) No county, city and county, city or town acting by its governing body may adopt an ordinance which imposes a fee for the use of public land or water under the jurisdiction of any agency of the state or for the use of any access thereto owned by the county, city and county, city, or town; nor shall it require an off-highway vehicle to be licensed or registered in such political subdivision.

33-14.5-111. Enforcement - federal, state, and local cooperation.

(1) Every parks and recreation officer, every peace officer of this state and its political subdivisions, and every person commissioned by the division has the authority to enforce the provisions of this article.

(2) The division is authorized to enter into cooperative agreements with federal land management agencies for the purpose of regulating off-highway vehicle use on federal lands.

33-14.5-112. Off-highway use permit - fees - applications - requirements - exemptions. (1) (a) No later than January 1, 1990, the division of parks and recreation shall devise a plan for implementation of the off-highway use permit program.

(b) On and after January 1, 1991, the owner of every vehicle required to be registered pursuant to article 3 of title 42, C.R.S., and the owner or operator of every motor vehicle and off-highway vehicle from another state or country, when such vehicle is being used for recreational

travel upon designated off-highway vehicle routes, shall obtain and display on such vehicle an off-highway use permit.

(2) Off-highway use permits shall be sold by the agents referred to in section 33-12-104, and the fee for said permits shall be the fee provided pursuant to section 33-10-111 (5).

(3) Off-highway use permits, when issued on April 1, shall be valid for a one-year period, which runs from April 1 through the following March 31. All permits issued during the year at any time after April 1 shall expire on the following March 31.

(4) Off-highway use permits shall be displayed as required by the division.

(5) The following vehicles shall be exempt from the requirements of this section:

(a) Vehicles owned by the United States or another state or political subdivision thereof if such ownership is clearly displayed on such vehicles;

(b) Vehicles operated in an organized competitive or noncompetitive event on publicly or privately owned or leased land; except that this exemption shall not apply unless the agency exercising jurisdiction over such land specifically authorizes the organized competitive or noncompetitive event;

(c) Vehicles operated on public land for purposes other than recreational use, which purposes shall include but not be limited to logging, mining, grazing of livestock, firewood-cutting, and the taking of trees for noncommercial purposes.

(6) Any person who violates paragraph (b) of subsection (1) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of fifty dollars.

33-14.5-113. Notice of accident. (1) The operator of an off-highway vehicle involved in an accident resulting in property damage of fifteen hundred dollars or more or injuries resulting in hospitalization or death, or some person acting for the operator, or the owner of the off-highway vehicle having knowledge of the accident shall immediately, by

the quickest available means of communication, notify an officer of the Colorado state patrol, the sheriff's office of the county wherein the accident occurred, or the office of the police department of the municipality wherein the accident occurred.

(2) Any law enforcement agency receiving a report of accident under this section shall forward a copy thereof to the division, which shall compile statistics annually based upon such reports.

(3) Within forty-eight hours after an accident involving an off-highway vehicle, the accident shall be reported to the Denver office of the division. The report shall be made on forms furnished by the division and shall be made by the owner or operator of the vehicle or someone acting for the owner or operator.

(4) Any person who violates subsection (1) or (3) of this section is guilty of a class 2 petty offense and, upon conviction, shall be punished by a fine of seventy-five dollars.

2. The Rules Adopted by the Parks and Wildlife Commission.

Here are the rules promulgated under article 14.5 of title 33:

2 CCR 405-5 .

ARTICLE I - Pursuant to the authority vested in the Parks and Wildlife Commission by Article 14.5 of Title 33, C.R.S., the following regulations concerning required equipment, off-highway use permits, and the registration of off-highway vehicles are hereby adopted:

500 - Registration information required on the application:

a. Information to be furnished by the applicant:

1. Vehicle make
2. Vehicle model
3. Vehicle identification number
4. Model year
5. Cubic centimeters displacement
6. Date purchased
7. Proof of ownership or valid transfer registration certificate

8. Name and address of applicant
 9. Date of birth
 10. How the machine is used
- b. Additional information set forth on the registration certificate:
1. Registration number
 2. Expiration date of registration
 3. Notice to owner of procedure to follow when owner changes address
 4. Notice to owner of procedure to follow when the machine is transferred, destroyed, abandoned or permanently removed from the state
 5. Notice to owner that the operator must carry the certificate of registration while operating the off-highway vehicle
- c. Pending registration of an off-highway vehicle, a temporary registration or a dated bill of sale, in the possession of the operator, permits the operator of the newly purchased off-highway vehicle to operate in the State of Colorado for a period not to exceed thirty (30) days from the date of purchase.

501 - Display of validation decals

- a. Validation decals shall be permanently affixed in a location on the upper forward half of the off-highway vehicle to assure good visibility of the decals.
- b. Dealers and manufacturers may display validation decals on a detachable plate.
- c. Prior to issuing validation decals, the distinctive registration number assigned by the Division shall be permanently marked upon the validation decal.

502 - Display of Off-Highway Use Permits

- A. When owners or operators of vehicles identified in C.R.S. 33-14.5-112 are required to obtain and display off-highway use permits, such permits shall be displayed as follows:

1. Off-highway use permits shall be permanently affixed to the extreme lower right-hand corner of the windshield of the vehicle in a position where the permit may be observed and identified.
2. Any vehicle without a windshield shall be treated as a special case and the operator of such vehicle shall have on his person or in the vehicle the off-highway use permit and shall, upon demand of any peace officer authorized to enforce this law, produce the off-highway use permit for inspection.

503 - Safety Equipment

- A. Except as provided in section 33-14.5-109 C.R.S., no person shall operate an off-highway vehicle upon public land in this state unless:
 1. The off-highway vehicle is equipped with a muffler that is properly maintained and in good working order.
 2. The muffler must conform to noise abatement standards set forth in 25-12-110, C.R.S. as amended.
- B. Except as provided in section 33-14.5-109 C.R.S., no person shall operate an off-highway vehicle upon public land in this state unless the off-highway vehicle is equipped with a spark arrester in good working order which has been approved by the U.S. Forest Service as evidenced by the bona fide permanent marking of "qualified" or "approved" on the spark arrester. A spark arrester is a device which traps or pulverizes exhaust particles as they are expelled from an internal combustion engine exhaust system and is effective in reducing exhaust sparks and protecting against exhaust spark fires.
- C. No off-highway vehicle shall be operated upon public land in this state between the hours of sunset and sunrise unless it is equipped with at least one headlamp having minimum candlepower of sufficient intensity to reveal persons or objects at a distance of at least 100 feet ahead under normal atmospheric conditions. Such headlamp shall be aimed so that glaring rays are not projected into the eyes of operators in oncoming vehicles when operated on a straight level surface.
- D. No off-highway vehicle shall be operated upon public land in this state between the hours of sunset and sunrise unless it is equipped with at least one red tail lamp having a minimum candlepower of sufficient

intensity to exhibit a red light plainly visible from a distance of 500 feet to the rear under normal atmospheric conditions.

- E. Except as provided in section 33-14.5-109 C.R.S., no person shall operate any off-highway vehicle upon public land in this state unless the off-highway vehicle is equipped with a braking system that may be operated by hand or foot, capable of producing deceleration of 14 feet per second on level ground at a speed of 20 miles per hour. The braking system must be adequate to control the movement of, and to stop and to hold the off-highway vehicle stationary on any grade upon which operated.

504 - Operation of Off-Highway Vehicles

- A. Where the State, the United States, or any agency thereof, has designated any public street, road, or highway of this state open to off-highway vehicles or where local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes to permit the operation of off-highway vehicles on city streets or county roads pursuant to the authority granted in C.R.S. 33-14.5-108(1), or upon public land in this state, no person shall operate an off-highway vehicle while carrying any person or riding in any position that will interfere with the operation or control of an off-highway vehicle or the view of the operator.
- B. Where the State, the United States, or any agency thereof, has designated any public street, road, or highway of this state open to off-highway vehicles or where local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes to permit the operation of off-highway vehicles on city streets or county roads pursuant to the authority granted in C.R.S. 33-14.5-108(1), no person under the age of ten years may operate an off-highway vehicle on such public street, road, or highway of this state or on such city street or county road. No person ten years of age or older may operate an off-highway vehicle on such public street, road, or highway of this state or on such city street or county road unless:
1. The person has in his possession a valid driver's license issued by the State of Colorado or another state; or
 2. The person is accompanied by and under the immediate supervision of a person who has in his possession a valid driver's

license issued by the State of Colorado or another state. The phrase "under immediate supervision" shall mean that, at a minimum, the unlicensed operator is within direct visual contact of the licensed supervisor.

3. Other Relevant Traffic Code Provisions

I am also attaching traffic code statutes that are important to the testimony. Section 42-4-110, C.R.S., requires the "rules of the road" to be applicable throughout the state.

42-4-110. Provisions uniform throughout state. (1) The provisions of this article shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein. Cities and counties, incorporated cities and towns, and counties shall regulate and enforce all traffic and parking restrictions on streets which are state highways as provided in section 43-2-135 (1) (g), C.R.S., and all local authorities may enact and enforce traffic regulations on other roads and streets within their respective jurisdictions. All such regulations shall be subject to the following conditions and limitations:

(a) All local authorities may enact, adopt, or enforce traffic regulations which cover the same subject matter as the various sections of this article and such additional regulations as are included in section 42-4-111, except as otherwise stated in paragraphs (c) to (e) of this subsection (1).

(b) All local authorities may, in the manner prescribed in article 16 of title 31, C.R.S., or in article 15 of title 30, C.R.S., adopt by reference all or any part of a model traffic code which embodies the rules of the road and vehicle requirements set forth in this article and such additional regulations as are provided for in section 42-4-111; except that, in the case of state highways, any such additional regulations shall have the approval of the department of transportation.

(c) No local authority shall adopt, enact, or enforce on any street which is a state highway any ordinance, rule, or resolution which alters or changes the meaning of any of the "rules of the road" or is otherwise in conflict with the provisions of this article. For the purpose of this section, the "rules of the road" shall be construed to mean any of the regulations on the operation of vehicles set forth in this article which drivers throughout the state are required to obey without the benefit or

necessity of official traffic control devices as declared in section 42-4-603 (2).

The other issue is how off-highway vehicles are categorized under the traffic code. The short answer is that they are not included in the traffic code, article 4 of title 42, C.R.S. This is because the traffic code typically applies to either “motor vehicles” or “vehicles.” This is how those terms are defined under articles 1 to 4 of title 42:

42-1-102. Definitions. As used in articles 1 to 4 of this title, unless the context otherwise requires:

(58) "Motor vehicle" means any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle; except that the term does not include low-power scooters, wheelchairs, or vehicles moved solely by human power. For the purposes of the offenses described in sections 42-2-128, 42-4-1301, 42-4-1301.1, and 42-4-1401 for farm tractors and off-highway vehicles, as defined in section 33-14.5-101 (3), C.R.S., operated on streets and highways, "motor vehicle" includes a farm tractor or an off-highway vehicle that is not otherwise classified as a motor vehicle. For the purposes of sections 42-2-127, 42-2-127.7, 42-2-128, 42-2-138, 42-2-206, 42-4-1301, and 42-4-1301.1, "motor vehicle" includes a low-power scooter.

(112) "Vehicle" means a device that is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks. "Vehicle" includes, without limitation, a bicycle, electrical assisted bicycle, or EPAMD, but does not include a wheelchair, off-highway vehicle, snowmobile, farm tractor, or implement of husbandry designed primarily or exclusively for use and used in agricultural operations or any device moved exclusively over stationary rails or tracks or designed to move primarily through the air.

Reading those statutes closely, one sees that a motor vehicle is “designed primarily for travel on the public highways,” which is categorically the opposite of an “off-highway vehicle.” Off-highway vehicles are considered motor vehicles for the purposes of three types of statutes:

- **42-2-124**, which revokes a person’s license for vehicular homicide;
- **42-4-1301 & 42-4-1301.1**, which address driving while using alcohol or drugs (DUI, DWAI, etc.); and

- **42-4-1401**, which is reckless driving.

Off-highway vehicles are also specifically addressed in section 42-2-138, C.R.S., which prohibits driving while a person's license has been suspended or revoked. Other than these, off-highway vehicles are not governed by the traffic code.

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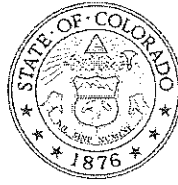
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RESEARCH MEMORANDUM

TO: Representative Lois Court
FROM: Jerry Payne
DATE: August 17, 2015
SUBJECT: The Attorney General's Letter Concerning Off-Highway Vehicle Ordinances

Research Memorandum

On November 12, 2013, the attorney general sent a letter on behalf of the Colorado Parks and Wildlife Commission and the Department of Natural Resources to four counties: Ouray, Hinsdale, San Juan, and San Miguel Counties.¹ The letter concerned off-highway vehicle ordinances. The counties believe that the purpose of this letter was to inform them that these ordinances were preempted by state regulations.

This memorandum clarifies the content and purposes of the letter.

1. The context of the letter is a decision to not award a grant.

These four counties asked for a grant to implement their ordinances, and the grant was not awarded. The letter arose as an explanation for the denial. The letter explains: "First, some uncertainty remains regarding the basis for the division's decision not to recommend and the commission's decision ultimately not to grant funding for the Alpine Ranger Program...." The context of the letter was an explanation of a decision not to make a grant to these four counties.

¹ The letter and the county's response is an addendum to this memo.

As such, anything said in the letter must be understood in light of the purpose for which it was sent. Although the letter explains that the ordinances are inconsistent with state regulations, this is given as a reason to not make the grant: "And it is these differences between the state regulations and the county ordinances that in large part form the basis for the position of the CPW regarding the grant funding and 'carve out' questions."

2. The letter explains the attorney general's judgment as to whether the ordinances are inconsistent with state rules.

Section 33-14.5-110, C.R.S., authorizes local governments to regulate off-highway vehicle use:

Any county, city and county, city, or town acting by its governing body may regulate the operation of off-highway vehicles on public lands, waters, and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice thereof if such regulation is not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto.

These four counties have passed ordinances requiring an off-highway vehicle user to be insured and to hold a driver's license. But rule # 504² of the commission merely requires off-highway vehicle users to be ten years of age and either have a driver's license or be supervised by a licensed driver:

... no person under the age of ten years may operate an off-highway vehicle on such public street, road, or highway of this state or on such city street or county road. No person ten years of age or older may operate an off-highway vehicle on such public street, road, or highway of this state or on such city street or county road unless:

1. The person has in his possession a valid driver's license issued by the State of Colorado or another state; or
2. The person is accompanied by and under the immediate supervision of a person who has in his possession a valid driver's license....

The letter explains that the ordinances have required every off-highway vehicle driver to have a driver's license and to have liability insurance: "... the counties ... have independently adopted local OHV ordinances that require all operators of OHVs to possess a driver's license and to carry at least the minimum level of liability insurance coverage..." The letter argues that these standards are inconsistent with state

² 2 CCR 405-5

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standards: These local ordinances, which require all OHV operators to possess driver's licenses and liability insurance, when state regulations do not, are by their very nature unquestionably 'inconsistent' with state regulations."

3. Beyond the grant program, courts would decide if an ordinance is consistent with state rules.

Although these agencies have the authority to make grant decisions, the courts ultimately decide if an ordinance is inconsistent with state statute. The issue would arise if a county attempted to punish a violation of its ordinances. In that case, the defendant may argue that the local ordinance was inconsistent with the state regulation. The judge would then decide if the ordinance was inconsistent with the rule.

The letter says that any differences between a commission rule and a county ordinance are inconsistent. But given that this would make the delegation of authority to the county of little consequence, I doubt a court would use such a strict standard. A court would most likely try to harmonize the two parts of the provision. And yet, it is not clear what standard a court would apply.

Conclusion

The context of the letter is the denial of a grant application. Under section 33-14.5-106, C.R.S., the commission has the authority to oversee the grant program, so the commission may use the grant program to establish its policy of a uniform set of standards. But that does not mean that a county may not pass and enforce an ordinance. So long as the ordinance is not inconsistent with a state statute or rule, section 33-14.5-110, C.R.S., grants counties the authority to regulate off-highway-vehicle use.



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November 12, 2013

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RE: Colorado Parks and Wildlife's Off-Highway Vehicle Program

Dear Commissioners and Counsel:

In lieu of the continued correspondence and apparent confusion regarding Colorado Parks and Wildlife's ("CPW") Off-Highway Vehicle ("OHV") grant program and the status of state regulations and local county ordinances regarding OHV use in Colorado, both the Executive Director of the Department of Natural Resources and the Chairman of the Parks and Wildlife Commission (the "Commission") requested that we elaborate on the issues or questions that appear to remain despite the numerous conferences and communications that have been occurring between the Division of Parks and Wildlife (the "Division") and county staff since Hinsdale, Ouray, San Juan and San Miguel Counties (the "Counties") first approached the Commission last January and petitioned the Commission to recognize the validity of certain OHV ordinances adopted by the Counties.

In that regard, there are two questions that continue to arise. First, some uncertainty remains regarding the basis for the Division's decision not to recommend and the Commission's decision ultimately not to grant funding for the Alpine Ranger Program collectively proposed by Hinsdale, Ouray, San Juan and San Miguel Counties. Second, some uncertainty remains regarding the status of the Counties' proposal to allow for a "carve out" for the local ordinances such that the ordinances would be recognized as controlling law over existing statewide standards regarding the operation of OHVs in Colorado, at least

STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources
Steven M. Yamashita, Acting Director, Colorado Parks and Wildlife
Parks and Wildlife Commission: Robert W. Bray • Chris Castilian • Jeanne Horne
Bill Kane, Vice-Chair • Gaspar Perricone • James Pribyl • John Singletary, Chair
Mark Smith, Secretary • James Vigil • Dean Wingfield • Michelle Zimmerman
Ex Officio Members: Mike King and John Satazar

within the Alpine Loop roads between Ouray, Silverton and Lake City (Engineer and Cinnamon Passes), as well as Imogene, Black Bear and Ophir Pass roads in San Miguel, Ouray and San Juan Counties.

As will be discussed in more detail below, both of these questions are best answered by review of or reference to the provisions of the OHV Act (§§ 33-14.5-101 to 113, C.R.S.) and in particular § 33-14.5-110, C.R.S. ("Regulation by political subdivisions"), which in relevant part provides:

"Any county ... may regulate the operation of off-highway vehicles ... **if such regulation is not inconsistent** with the provision of this [OHV Act] and the [state] rules and regulations promulgated pursuant thereto."

(emphasis added).

In Colorado, OHVs are not required to be titled or registered as motor vehicles pursuant to Title 42, C.R.S. ("Motor Vehicles and Traffic"), rather they can be operated on OHV routes in Colorado provided they have been registered as OHVs with the Division and the appropriate registration fee has been paid pursuant to the OHV Act. See § 33-14.5-102, C.R.S. And pursuant to the OHV Act, the Commission has plenary authority to otherwise regulate the use of OHVs in Colorado. See § 33-14.5-107, C.R.S.

With regard to the operation of OHVs in Colorado, state regulations currently provide that any person ten years of age or older can operate an OHV on a public street, road or highway of the state or city street or county road open to such use provided the person possesses a valid driver's license or the person is accompanied by and under the immediate supervision ("within direct visual contact") of a person who possesses a valid driver's license. See Parks Regulation No. 504.B, 2 CCR 405-1. As such, state OHV regulations currently do not require operators to possess a driver's license to operate an OHV in Colorado.

In addition, there is no state regulatory requirement that OHV operators obtain and maintain any liability insurance coverage as a condition of operating an OHV on OHV routes in Colorado. Certainly, operators of OHVs may voluntarily choose to secure such insurance, but it is not a requirement of the current state regulations applicable to the operation of OHVs in Colorado.

However, the Counties, collectively or individually, have independently adopted local OHV ordinances that require all operators of OHVs to possess a driver's license and to carry at least the minimum level of liability insurance coverage required by the Colorado Motor Vehicle Financial Responsibility Act, Title 42, Article 7, C.R.S., for the operation of motor vehicles. And it is these differences between the state regulations and the county ordinances that in large part form the basis for the position of the CPW regarding the grant funding and "carve out" questions.

The CPW OHV Grant Program

All fees collected from the registration of OHVs in Colorado are required to be "used for the administration of the [OHV Act]," which includes enforcement of the OHV Act. See §§ 33-14.5-106 and 111, C.R.S. Such funds can be used for no other purpose. Historically, the Commission has used a portion of the registration fees the Division collects to fund an OHV grant program to support a variety of local and regional OHV activities and programs in Colorado. This OHV grant program is discretionary in nature - no applicant is entitled to nor has any right to such funding - and the Division recommends and the Commission funds those grant requests that they believe best fit within the intent and purposes of the OHV Act and the policies and goals of the Commission.

For a number of years, the Counties have requested funding for their Alpine Ranger program to support the administration and enforcement of their local OHV ordinances within county designated OHV routes, including the Alpine Loop roads between Ouray, Silverton and Lake City (Engineer and Cinnamon Passes), as well as Imogene, Black Bear and Ophir Pass roads in San Miguel, Ouray and San Juan Counties. Such requests have been consistently not recommended by the Division for funding and all have been denied for funding by the Commission because they seek funds to support, at least in part, the

enforcement of local ordinances that either directly conflict with, or seek to apply substantive requirements in addition to those that the Division and the Commission have to date chosen to include in current state regulations.

These local ordinances, which require all OHV operators to possess driver's licenses and liability insurance when state regulation do not, are by their very nature unquestionably "inconsistent" with state regulations promulgated by the Commission pursuant to the OHV Act. See § 33-14.5-110, C.R.S. In that regard, state OHV regulations do not need to affirmatively state that no driver's license or no liability insurance is required to operate an OHV in Colorado for there to be an inconsistency with the local ordinances under the statute.

And given this apparent inconsistency between the state OHV regulations and the local OHV ordinances, it is inconceivable how the funding of such inconsistent local ordinances could be considered the appropriate "administration of the [OHV Act]," which is the statutory requirement for the expenditures of any registration fees under the OHV Act. See § 33-14.5-106, C.R.S. And it is on this basis that the grant requests for the funding of the Counties' Alpine Ranger program have not been recommended for funding by the Division and have been denied by the Commission.

However, while funding for the Counties' Alpine Ranger program has been consistently denied, the Division and the Commission believe it is important to also note that over \$2 million in OHV grants have been awarded to the Alpine Loop region over the past four years to support OHV activities and programs in the region. It is only where the Counties have directly sought funding for the administration and enforcement of the inconsistent local ordinances has there been any issue with regard to funding for the Alpine Loop region.

Lastly, in the most recent communications received regarding this issue, representatives of the Counties have raised questions with regard to possible state OHV funding of enforcement programs or activities of the U.S. Forest Service and the Bureau of Land Management. However, we are unaware that either of those federal agencies has adopted substantive OHV use requirements that conflict with or add to existing state regulatory requirements. Current federal substantive requirements regarding the use of OHVs, including the age limit for OHV operation, no license requirements and no liability insurance requirements, are consistent with current state regulatory requirements and simply don't present the same issue as the local ordinances do.

The Counties' "Carve Out" Proposal

In January of 2013, after the most recent funding request for the Alpine Ranger program was denied, the Counties proposed, by way of a rule-making petition, to have the Commission allow for a state regulation "carve out" for the local ordinances such that the ordinances would be recognized as controlling law over existing statewide standards regarding the operation of OHVs in Colorado, at least within the Alpine Loop roads between Ouray, Silverton and Lake City (Engineer and Cinnamon Passes), as well as Imogene, Black Bear and Ophir Pass roads in San Miguel, Ouray and San Juan Counties. After discussing the matter, the Commission chose not to move forward with such a carve out for the local ordinance, and it is our recollection that Commission requested the Division and its Attorney General representative to give the matter further consideration to see if there was some creative solution that would assist in the Counties' desire to receive OHV funding that did not highlight or otherwise run afoul of the inconsistency between the statewide OHV regulations and the local ordinances. The only such solution identified to date has been to continue to try to focus state OHV funding on activities and programs in the Alpine Loop region that do not involve the administration or enforcement of the inconsistent local ordinances.

We do not recall any specific direction to the Division to propose a regulatory carve out as requested by the Counties, and the Division is not working on any such proposal. The Division cannot support, nor does it believe that CPW's other OHV constituencies would support a state regulatory "carve out" for the currently inconsistent local ordinances. As a matter of policy, the Division believes the regulation of OHVs is best served by consistent statewide standards that OHV users can rely upon in recreating in Colorado. Recognizing local ordinances as is suggested by the proposed "carve out" conceivably opens

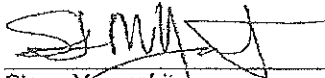
the door to 64 different sets of local OHV ordinances and simply creates an untenable situation for any OHV operator crossing from county to county and trying to keep abreast of the applicable local ordinances.

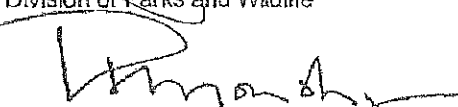
In that regard, OHV regulation is not only best served by consistent state regulation as a matter of policy, but consistent statewide regulation also finds support in the OHV Act itself. While the Commission has plenary authority to regulate the use of OHV and certainly should be able to adopt regional requirements when necessary, by including 33-14.5-110, C.R.S., and otherwise prohibiting inconsistent local ordinances, the General Assembly has stated a clear preference for statewide standards in the regulation of OHV use in Colorado and the burden for any deviation from that preference should be quite high.

That is not to say, however, that the issues raised by the Counties regarding operator age, licensing and liability insurance aren't perhaps worthy of further conversation, only that those conversations should be in the context of possible amendments to statewide standards, not the adoption of more regional or local standards, and those conversations should reasonably include all affected counties and other OHV constituencies. There may be common ground among all the parties that might result in statewide proposals acceptable to all.

The Commission certainly prefers to work by such consensus whenever possible and likely would look favorably on any proposal that had the support of all its OHV constituencies. We are unaware of any concerted effort to bring the Counties' issues to such a larger discussion group, but would be willing to assist in bringing the necessary parties together to begin such discussions with the hope of reaching some consensus conclusion. Such an inclusive and comprehensive process would be the best way of attempting to address the issues raised by the Counties.

Please let us know how you would like to proceed in that regard.



Steve Yamashita
Acting Director
Division of Parks and Wildlife

Tim Monahan
First Assistant Attorney General
Counsel to the Division of Parks and Wildlife
and the Parks and Wildlife Commission

cc: Mike King, Executive Director, DNR
John Singletary, Chair, PWC
Ken Brink, DPW
Tom Morrissey, DPW

Analysis of State Parks' contention that County OHV regulations are preempted by State OHV statute and State Parks' OHV regulations

In a letter dated November 12, 2013 from Colorado Parks and Wildlife to the Commissioners of Ouray, Hinsdale, San Juan and San Miguel Counties, Acting Director Steven Yamashita takes the position that all County regulation of OHVs on County roads is preempted by State Parks' OHV regulations. The purpose of this analysis is to determine whether that interpretation is consistent with Colorado law.

1. 33-14.5-108(1) closes all roads to OHV use unless expressly opened by the appropriate governing entity:

“No off-highway vehicle may be operated on the public streets, roads, or highways of this state except in the following cases: (a) When a street, road, or highway is designated open by the state or any agency or political subdivision thereof; *** (f) When local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes to permit the operation of off-highway vehicles on city streets or county roads, but no street or road which is part of the state highway system may be so designated.”

By virtue of this provision, the legislature has recognized that local governments have ultimate authority over OHV use of local roads because only by affirmative act of a local government are any local roads open to OHV use. Of course, just as local governments can designate roads as OHV routes, they can withdraw that designation thereby closing county roads to use by OHVs.

2. 33-14.5-110(1) expressly authorizes local regulation of the operation of OHVs: “Any county, city and county, city, or town acting by its governing body may regulate the operation of off-highway vehicles on public lands, waters, and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice thereof if such regulation is not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto.”

3. 33-14.5-110 contains only two express prohibitions against specific local regulation: 33-14.5-110(2) states: “No county, city and county, city or town acting by its governing body may adopt an ordinance *which imposes a fee for the use of public land or water* under the jurisdiction of any agency of the state or for the use of any access thereto owned by the county, city and county, city, or town; *nor shall it require an off-highway vehicle to be licensed or registered in such political subdivision.*”

4. 33-14.5-107 grants State Parks Commission limited authority [not plenary authority as claimed by State Parks in their letter] to adopt regulations pursuant to the statute:

“The commission shall adopt rules in the manner provided by article 4 of title 24, C.R.S., concerning the following:

- (a) Registration of off-highway vehicles and display of registration numbers;
- (b) Procedures and requirements to implement and administer the off-highway use permit program, including guidelines in connection with the exemptions therefrom;

- (c) Formulation, in cooperation with appropriate federal agencies, of guidelines for uniform maps and signs for use by the state, counties, cities, city and counties, and towns to control, direct, or regulate the operation and use of off-highway vehicles;
- (d) The use of off-highway vehicles, but such regulations shall not be inconsistent with the provisions of this article in any way."

Nothing in the statute suggests that State Parks may, by regulation, repeal or supersede the express authorization for local regulation contained in 33-14.5-110(1). Nothing in the statute suggests that the legislature ever intended to authorize State Parks to adopt rules allowing children to operate OHVs on public roads. Nothing in the statute prohibits a local government from requiring a driver's license or insurance in order to operate an OHV on a public road.

5. Statutory silence does not constitute authorization to adopt a rule. Under the Administrative Procedure Act, "[n]o rule shall be issued except within the power delegated to the agency and as authorized by law. A rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to the specific provisions of a statute." 24-4-103(8)

6. "Any rule or amendment to an existing rule issued by any agency ... which conflicts with a statute shall be void." 24-4-103(8); La Plata County v. Colorado Oil and Gas Conservation Commission, 81 P.3d 1119, 1125 (Colo.App. 2003); Ettelman v. Colo Bd. of Accountancy, 849 P.2d 795, 798 (Colo.App. 1992)

7. In communications with the four San Juan mountain counties, State Park representatives have asserted that no County can regulate OHV use within its jurisdiction but that the State Parks regulations are the only permissible regulations of OHVs. Thus, it appears that State Parks' interpretation of its own regulations is that they supersede the express statutory authorization of local regulation of the use of OHVs. To the extent that the State Parks' interpretation of its regulations is that they preclude local regulation, that interpretation is in conflict with the express language of the statute and is therefore void.

8. To the extent that the State regulations may permit 10 year olds to operate OHVs on public roads, they exceed the authority conferred on the State Parks Board by the OHV statute. Unlike the snowmobile statute (CRS 33-14-101 et seq) on which the OHV statute is based, nothing in the OHV statute expressly sets any age limits on OHV operation.

9. The State Parks regulations are completely silent with regard to insurance for operation of OHVs. Because neither the statute nor the State Parks regulations prohibit local governments from requiring insurance as a condition of operating OHVs on public roads, such a local regulation cannot be inconsistent with state law or regulations.

10. Rule 504 of the State Parks rules governing OHVs establishes an absolute minimum age limit for operation of an OHV (age 10): "b. Where the State, the United States, or any agency thereof, has designated any public street, road, or highway of this state open to off-highway vehicles or where local political subdivisions have authorized by ordinance or resolution the establishment of off-highway vehicle routes to permit the operation of off-highway vehicles on

city streets or county roads pursuant to the authority granted in C.R.S. 33-14.5-108(1), *no person under the age of ten years may operate an off-highway vehicle on such public street, road, or highway of this state or on such city street or county road.*" The regulation imposes no educational, experiential, or training requirements for operation of OHVs.

11. Contrary to the State Parks letter, Rule 504 does not expressly authorize anyone 10 years old or older to operate an OHV. Instead, it expressly prohibits anyone 10 years old or older from operating an OHV unless certain conditions are met: either the person possesses a valid driver's license or is accompanied by, and under the immediate supervision of, a licensed person:

"No person ten years of age or older may operate an off-highway vehicle on such public street, road, or highway of this state or on such city street or county road unless:

1. The person has in his possession a valid driver's license issued by the State of Colorado or another state; or
2. The person is accompanied by and under the immediate supervision of a person who has in his possession a valid driver's license issued by the State of Colorado or another state. The phrase "under immediate supervision" shall mean that, at a minimum, the unlicensed operator is within direct visual contact of the licensed supervisor."

12. Merely because state regulations exist with regard to a particular subject does not mean that all local regulation of the same subject is automatically preempted. Preemption exists only if a court finds express, implied or operational preemption. La Plata County Commissioners v. Bowen/Edwards Assoc., 830 P. 1045, 1056 - 57 (Colo. 1992).

"The purpose of the preemption doctrine is to establish a priority between potentially conflicting laws enacted by various levels of government. A state statute may preempt a local regulation in three ways: (1) the express language of the statute may indicate state preemption of all local authority over the subject matter; (2) preemption may be inferred if the state statute impliedly evinces a legislative intent to completely occupy a given field by reason of a dominant state interest; and (3) a local law may be partially preempted where its operational effect would conflict with the application of the state statute. CDOT v. City of Idaho Springs, 192 P.3d 490, 495 (Colo.App. 2008), quoting Bowen/Edwards at 1056-57.

13. If a state statute expressly prohibits local regulation in a particular area, there is express preemption. "Accordingly, in cases involving statutory counties, we have applied the ordinary rules of statutory construction to determine whether a state statute and a local ordinance can be construed harmoniously or whether the state statute preempts the local ordinance. If a conflict exists and the state statute contains a specific provision addressing the matter, the state statute controls over the statutory county's general land use authority." Colorado Mining Assoc. v. Summit County, 199 P.3d 718, 724 (Colo. 2009). Where the subject at issue "is a matter of shared state and local interest, we will recognize a legislative intent to preempt local authority only if that intent is expressed in unequivocal language." CDOT v. City of Idaho Springs, 192 P.3d 490, 495 (Colo.App. 2008). Here, there is no express preemption because the state statute expressly authorizes, rather than prohibiting, local regulation of OHV use and the state statute is silent on the question of age or other requirements for operating OHVs.

14. Implied preemption “may be inferred if the state statute impliedly evinces a legislative intent to completely occupy a given field by reason of a dominant state interest.” CDOT v. City of Idaho Springs, 192 P.3d 490, 495 (Colo.App. 2008). If the statute expressly grants local regulatory authority, one cannot find implied preemption because the express authorization necessarily negates any implication of a legislative intent to ban local regulation so there can be no implied preemption here.

15. “Operational conflict arises when a local interest is implemented in a way that materially impedes or destroys a state interest. When this occurs, local regulations may be partially or totally preempted to the extent that they conflict with the achievement of the state interest.” CDOT v. City of Idaho Springs, 192 P.3d 490, 496 (Colo.App. 2008). In order to find operational preemption, it must be clear from the record that implementation of the local regulation materially impedes or destroys a dominant state interest and that conflict is irreconcilable. Colorado Mining Assoc. v. Summit County, 199 P.3d 718, 724 (Colo. 2009); La Plata County Commissioners v. Bowen/Edwards Assoc., 830 P. 1045, 1058 (Colo. 1992); CDOT v. City of Idaho Springs, 192 P.3d 490 (Colo.App. 2008). There is no operational conflict between the state OHV statute and the local county regulations.

16. The provisions of the State Parks’ Rules governing operation of OHVs are not in conflict with the four county San Juan mountain region local regulations for two reasons: first, there is no dominant state interest with regard to either the age for operation of OHVs on these counties’ roads or with regard to the question of whether or not OHV operators should have insurance before operating on local roads and second, it plainly is possible to comply both with the State Rules and with the local regulations. In other words, complying with the local regulation does not preclude compliance with the state regulation. As demonstrated by the express provisions of the OHV statute which authorizes both state and local regulation, OHV operation is a matter of both state and local interest and the local interest appears to be dominant (at least with regard to conditions under which OHVs may use local roads) in that local governments can ban OHV operation within their jurisdiction completely while State Parks has no such power. Uniformity of regulation statewide has not been identified by the legislature in the statute as a matter of critical importance. On the contrary, because the legislature expressly authorized local regulation, it clearly contemplated that there would be no uniformity of regulation at least with regard to certain conditions of use.

OHV STATUTE AND REGULATIONS
Talking Points – 4-17-2014

- C.R.S. 33-14.5-101, et seq. provides the authority for off-highway vehicles to be used in Colorado.
- The statute provides for a registration system to be administered by the state.
- Off-road vehicles are generally prohibited on all streets, roads and highways, except as a local government or the state may designate streets, roads or highways to be open to OHV travel. C.R.S. 33-14.5-108 (emphasis added)
- “Any county, city and county, city or town acting by its governing body may regulate the operation of off-highway vehicles on public lands, waters and property under its jurisdiction and on streets and highways within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice thereof if such regulation is not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto.”
- The commission (CPWC) is authorized to adopt regulations concerning registration of OHV vehicles, and display of registration; procedures and requirements to implement and administer the permit program, guidelines for uniform maps and signs, and “...the use of off-highway vehicles, but such regulations shall not be inconsistent with the provisions of this article in any way.” C.R.S. 33-14.5-107. (emphasis added)
- Nowhere in the statute is there any reference to age requirements for operation of an OHV or whether an OHV must be insured. This is in sharp contrast from the snowmobile statute, C.R.S. 33-14-101, et seq., after which the OHV statute was modeled. See C.R.S. 33-14-109 which specifically provides for “restrictions on young operators.” No comparable section is included in the OHV statute. The OHV statute is, essentially, a permitting and registration system.
- CPWC Regulation 504, Operation of Off-Highway Vehicles, provides that “...no person ten years of age or older may operate an off-highway vehicle...unless: 1. The person has in his possession a valid driver’s license issued by the State of Colorado or another state; or 2. The person is accompanied by and under the immediate supervision of a person who has in his possession a valid driver’s license issued by the State of Colorado or another state...”
- The OHV regulations are silent on any requirement for insurance.
- All four counties (San Miguel, San Juan, Hinsdale and Ouray) have adopted local regulations designating certain streets, roads, highways and trails as open to OHV use.
- As part of those regulations opening roads to OHV use, three of the four counties have adopted a requirement that operators be licensed drivers.
- All four counties have adopted a requirement that all OHVs be insured.
- CPWC has denied grants to the four counties for the Alpine Ranger program based upon an opinion by Tim Monahan that the counties’ regulations are “inconsistent” with the CPWC regulations, specifically Reg. 504.
- The counties have not been provided with any written explanation or legal analysis of that opinion other than as presented in the letter from Steve Yamashita (See letter dated November 12, 2013).

- The counties allege that Reg. 504 is inconsistent with the statute, specifically C.R.S. 33-14.5-107(1)(d) which provides that state regulations shall not be inconsistent with the statute in any way. Since the statute is silent as to operator age, Reg. 504 is inconsistent if CPWC is essentially mandating that non-licensed driver's be permitted to operate OHVs on county roads.
- Given that both the statute and Reg. 504 are silent with respect to insurance, there is no inconsistency between the counties' regulations requiring insurance and the statute or Reg. 504.
- Particularly in light of the fact that the statute gives total discretion to the counties (or local jurisdiction) to open, *or not open*, roads within its jurisdiction and boundaries to OHVs, and to adopt regulations for the operation of OHVs, the more reasonable interpretation of the statute is that the counties have authority to require an operator to have a driver's license and insurance.
- The policy argument is compelling as well. The OHV designated roads and trails in these four counties are characterized by steep inclines, rugged terrain, sharp drop-offs and ledges. These OHV roads and trails are unforgiving of mistakes in judgment or lack of experience and skills. Unlike terrain in flat counties, these are mountainous conditions, with rapid changes in weather conditions that can also affect the terrain and driving conditions. These four counties are relatively small counties with limited resources for search and rescue or recovery operations. The three counties that require operators to have a driver's license are looking to protect the public from unskilled and inexperienced OHV operators, and, to some extent, to prevent child injuries, including fatalities such as the one that occurred in the recent past. It is perhaps ironic that counties are required by statute ("Child Fatality Prevention Act") C.R.S. 25-20.5-401 et seq. to expend resources to investigate and recommend means of preventing child fatalities, but would not be permitted to prevent a child from driving an OHV off a mountain side. The insurance requirement of all four counties is designed to ensure that anyone injured by an OHV operator, or property damaged by an OHV operator can be assured of appropriate reparations or compensation. It also provides some assurance to the counties that if they are called upon to use county resources to extract an OHV and/or its operator from the bottom of a cliff, that there will be reimbursement available. Lest that seem trivial, the recent experience of Ouray County with a plane crash, and the resources required to respond to that incident, have demonstrated the importance of having an insurance company bear the primary financial responsibility for recovery of victims and wreckage. Simply put, as much as the CPWC would like to have "one-size fits all" regulations for OHVs, and certainly can with respect to registration, display of permits, and so on, it is clear that there are differences in terrain throughout the state. That is why the statute clearly contemplated each county or local jurisdiction having the authority to adopt regulations that would suit the terrain being opened to OHV use.



Colorado
Legislative
Council
Staff

ISSUE BRIEF

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STATE ENTERPRISES

by Greg Sobetski

This *issue brief* provides information on state enterprises, a special category of government entities created in the Colorado Constitution. The Taxpayer's Bill of Rights (TABOR) specifically defines an "enterprise" as:

...a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of annual revenue in grants from all Colorado state and local governments combined.

Colo. Const. art. X, § 20 (2) (d).

An enterprise is a self-supporting, or largely self-supporting, government-owned business that receives its revenue in return for the provision of a good or service. Because the share of revenue that an enterprise may receive from state and local government sources is capped at 10 percent, enterprises are largely financially independent of core government agencies. Enterprises cannot levy taxes. They must be able to support themselves much like private businesses, by providing goods or services in exchange for monetary compensation.

TABOR limits the amount of money that can be collected by the state government and all local governments within the state. However, revenue collected by enterprises is not subject to these constraints. Because enterprise programs are primarily user-funded, they can increase fee revenue over time at rates sufficient to pay for expenses without contributing to the state's TABOR surplus and thereby affecting the General Fund budget. For information on the TABOR limit and refunds, see Issue Brief 14-03A, "Colorado's Constitutional Spending Limit."

Enterprises by type. A broad array of entities satisfy the constitutional criteria to qualify as an enterprise, including:

- most public colleges and universities;
- college finance programs, including College Assist and CollegeInvest;
- the state unemployment insurance program;
- the state lottery;
- the state parks and wildlife system;
- the correctional industries program, which employs inmates at state prisons; and
- state nursing homes.

Entities lose enterprise status if they cease to satisfy the constitutional criteria; likewise, entities can be redesignated as enterprises if and when they meet the criteria. When an entity becomes an enterprise, its revenue is exempted from the state TABOR limit, and a corresponding downward adjustment is made to the level at which the TABOR limit is set. When an entity loses enterprise status, its revenue becomes subject to the state TABOR limit, and a corresponding upward adjustment is made to the TABOR limit.

The largest segment of enterprise revenue is attributable to institutions of higher education and the higher education finance enterprises. For FY 2013-14, the higher education enterprises collected approximately \$9.0 billion, or about 84 percent of state enterprise revenue. The next largest shares were attributable to the state unemployment insurance program, which collected \$0.8 billion, and the state lottery, which collected \$0.5 billion.

Enterprise revenue over time. Taken in the aggregate, enterprises have grown more quickly than state government since the adoption of TABOR in 1992. For FY 1993-94, the first year in which TABOR limited state spending, revenue to enterprises totaled \$742.3 million, or approximately 8.3 percent of total state revenue. Nearly half of this revenue was collected by institutions of higher education, and an additional 40 percent was attributable to the state lottery.

For FY 2013-14, revenue to enterprises totaled \$10.7 billion. Revenue to enterprises grew at a compound average annual growth rate of 14.3 percent over the 20-year span between FY 1993-94 and FY 2013-14. By contrast, state TABOR revenue grew at an average of 4.0 percent annually, and non-enterprise TABOR-exempt revenue grew at an average of 6.0 percent. Figure 1 illustrates the change in the composition of state revenue by source.

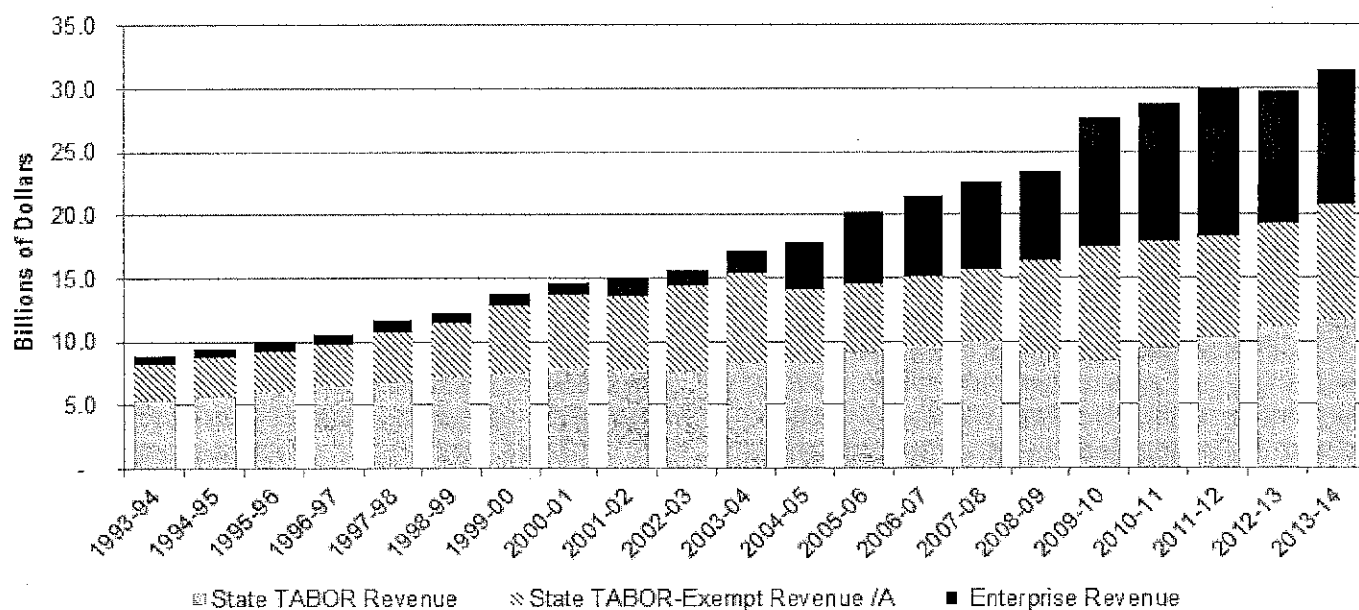
A list of current state enterprises organized by the fiscal year in which they first received revenue as an enterprise is compiled in Table 1.

Table 1. Current State Enterprises

Year	Enterprise
1994	Higher Education Enterprises (various dates)
1994	State Lottery
1994	College Assist (Student Loan Program)
1994	Correctional Industries
1994	State Nursing Homes
2001	CollegelInvest (Student Bond Authority)
2002	Parks and Wildlife (Division of Wildlife)
2003	Clean Screen Authority
2005	Brand Board
2005	Capitol Parking Authority
2006	Petroleum Storage Tank Fund
2009	High-Performance Transportation Enterprise
2010	Unemployment Insurance
2010	Statewide Bridge Enterprise

Source: Office of the State Controller.

Figure 1. State and Enterprise Revenue by TABOR Status, FY 1993-94 to FY 2013-14
Nominal Dollars in Billions



Source: Office of the State Controller, TABOR Schedules of Computations.

/A Includes federal funds, property sales, gifts, damage awards, and voter-approved revenue changes. Does not include revenue retained under Referendum C, which is subject to the Referendum C cap and is included in state TABOR revenue.

COLORADO PARKS & WILDLIFE



Off-Highway Vehicle Registrations



Off-highway vehicles must be registered with Colorado Parks and Wildlife. Off-highway vehicles (OHVs) include motorcycles, dirt bikes, three-wheelers, ATVs, and dune buggies that are operated on public land or trails in Colorado. To register your OHV in your name for the first time, complete the OHV Registration Form and return it to:

Colorado Parks and Wildlife - Registration Unit
13787 South Highway 85
Littleton, CO 80125
303-791-1920

You may also register your vehicle at various OHV dealers or many Colorado Parks and Wildlife offices. View our OHV Registration Agent Locations List to find the registration location nearest you. Always call ahead to ensure services are available.

Effective July 1, 2014, Title is required for all power sports vehicle dealers and auctioneer sales. OHV titling is optional for private party to private party sales. For titling information, see Titling Off Road Vehicles SB13-280 on the Department of Revenue website.

Who Needs to Register

Colorado OHV Registration requirements:

"All OHVs owned and operated in Colorado (including motor vehicles and motorcycles that are not licensed for public road access) must display current Colorado OHV registration stickers when in a person's possession in an OHV staging area or operated on designated OHV trails or routes in Colorado.

Colorado OHV Use Permit requirements:

“All OHVs and motor vehicles (including motorcycles) that display a valid Colorado or out-of-state license plate must also display a current Colorado OHV use permit sticker when operated on designated OHV trails in Colorado.”

“All out of state OHVs (including OHVs that display an out of state OHV registration) must also display a current Colorado OHV use permit sticker when operated on designated OHV trails or routes in Colorado.”

Registration Fees

The annual registration fee is \$25.25. Registrations are valid from April 1 through March 31 each year. This is a flat administrative transaction fee - it cannot be prorated for a partial year's registration, and will not be subject to refund if the vehicle is sold or stolen.

OHV Registration Renewals

Registration renewal cards for OHVs are mailed to currently registered owners each March. You may also renew your registration online. You **MUST** have your registration number to renew online. If you need your registration number or more information, call 303-791-1920.

Purchasing an OHV

Dealers are required by law to complete the registration application for you and collect the registration fee before the vehicle leaves their premises. The dealer will forward the application to our office where we will process the request. Colorado residents who purchase an OHV from a private party may use their dated bill of sale as a temporary registration for 30 days during the registration application process. The Bill of Sale must be carried on the OHV while riding until the decals and registration card get to you in the mail.

Sorry, at this time, on-line registrations for a new machine is not available.

Out-of-state OHVs

Out-of-state residents who bring OHVs into Colorado must purchase a Colorado Non-Resident OHV permit which is valid from the date of purchase through the following March 31. These permits can be purchased anywhere you get your hunting/fishing licenses in Colorado, via mail-in request, or you can order one online.

Once purchased, this sticker should be placed on the vehicle's outside face of the right front fender or fork. Since this is only a use permit, no renewal notice will be sent to non-resident permit holders; you must purchase a new permit each year you come to Colorado with your OHV.

Decal Placement

Registration decals must be affixed permanently on the upper forward-half of the OHV in a location where the decal can be easily seen. Suggestions: On ATVs the decals could be placed on the outer side of the fenders, on the tank or on the cowl. On bikes, place a decal on each of the outside faces of the upper end of the forks or on the tank. OHV operators must carry their registration card and show it to any peace officer on request. For general decal placement instructions for all types of OHVs and boats, see the Registrations Decal Placement Brochure. View the specific decal placement illustrations for these vehicles:

- All-Terrain Vehicle (ATV)
- 3-Wheeler
- Dirt Bike
- Jeep
- Dune Buggy

Where the money goes: Benefits of the OHV Program

The Colorado OHV Registration Program fees fund trail maintenance, construction, trailheads, parking areas, trail signs, maps, and land acquisition. It also enables law enforcement personnel to identify and return stolen vehicles, encourages safe and responsible OHV use, and promotes respect for public lands.

Many groups benefit from OHV registration, including:

- OHV owners and operators;
- Towns and counties that want to attract OHV recreators to enhance their local economies; and
- The general public; educated OHV enthusiasts are more conscientious and better stewards of the land.

Registration funds also enable local, state and federal land managers to better manage our natural resources.

Annually, this direct benefit to enthusiasts funds over \$4 million in trail opportunities and improvements. Read more about the OHV grants program.

OHV Permits

Whether you purchase your non-resident OHV permit through the E-Store or through the Total Licensing System, it covers your vehicle in the same way. However, the OHV permit will look different.

If you purchase your non-resident OHV permit from the E-Store, it will look like:



If you have any questions or concerns about an OHV permit purchased through the E-Store, please call 303.866.3203 x4656

If you purchase your non-resident OHV permit through the Total Licensing System, it will come with a clear sticker and will look like:

Colorado Division of Wildlife

Transmitted: 7/23/2009
 Received: 08/05/2009 14:58
 Agent: 555902 Terminal: 4207008
 CID: 793255019 NR
 ELUS ELX
 1234 FAKE STREET
 PITTSBURGH, PA 15104
 (702)512-4154 Mtd: 501 15558
 Data Origin: 00000000 Lk
 Request Information On This Item

License(s) Expires 03-31-2015
 5 807 CO OHV PERMIT. PWD
 VAL 04-01-2013 THRU 03-31-2014

Search & Seizure	PAID
Witness Ed Fund Surcharge	PAID
TOTAL AMOUNT	PAID



1. The first step is to identify the problem. In this case, the problem is that the company is not meeting its sales targets. The second step is to analyze the data. The third step is to develop a plan. The fourth step is to implement the plan. The fifth step is to evaluate the results.

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COLORADO STATE PARKS

Transaction: 110200002
 Issued: 06/06/2014 14:58
 Agent: 529045
 Amount: 400000

Customer ID: 793255019
 807 CO OHV PERMIT
 Vehicle Make: YAMAHA

Detach and keep with vehicle at all times

If you have any questions or concerns about an OHV permit purchased through the Total Licensing System, please call 303.297.1192

Additional OHV Resources

Find out more information on the [Things to Do > Trails](#) and [Learn > Trails](#) pages.

COLORADO PARKS & WILDLIFE



OHV Grant Program



The Annual (OHV) Trail Grant Program

The Colorado Parks and Wildlife Division's (CPW) Trails Program, a statewide program within CPW, administers grants for trail-related projects on an annual basis. Local, county, and state governments, federal agencies, special recreation districts, and non-profit organizations with management responsibilities over public lands may apply for and are eligible to receive non-motorized and motorized trail grants.

The OHV Program seeks to improve and enhance motorized recreation opportunities in Colorado while promoting safe, responsible use of OHVs. The grant program combines OHV registration and permit fees with federal Recreation Trails Funds (RTP) to fund the annual OHV trail grant process. OHV Grants are available for projects related to recreational use of Off-Highway Vehicles (OHVs) on lands open to the public.

The Annual OHV Trails Grant Application and Review Process

OHV trail grant applications are sent out by e-mail, ground mail, and are posted on the CPW's Trails Program website each year. Trail grant opportunities are publicized annually through press releases, newsletters, the state website, and e-mail information networks. Technical assistance for grant preparation is provided by CPW Trails Program staff to potential applicants. The submission deadline for OHV grant applications is the first business day of December each year. CPW's offers two types of OHV Trail Grants; Good Management Trail Crew Grants and Programmatic (competitive) Project Grants.

To solicit public comment, all grant applications are posted on the CPW Trails Program's website and every public comment is evaluated as part of a subcommittee's grant review and ranking process. CPW's trail grant application review and ranking process follows a four-tiered review and approval protocol. All grant applications are first reviewed by CPW's regional field staff. This process allows CPW to flag potential environmental or wildlife issues prior to the review by the subcommittees. While concerns may be identified during this review, CPW's field staff will make every attempt to resolve these concerns with the applicant prior to the subcommittee's review.

Next, applications are evaluated by the OHV Grant Review and Ranking Subcommittee. The subcommittee evaluates OHV Good Management trail crew grant applications as a first priority then the subcommittee scores and ranks the OHV competitive grant applications in order of their recommended funding priority. The Good Management and ranked grant applications are then passed to the State Recreational Trails Committee to evaluate and recommend funding strategies for the Parks and Wildlife Commission. The Commission provides the final approval to the funded projects.

This process invites public review and comment at four separate stages; upon submission, before the subcommittees, before the State Recreational Trails Committee and before the Commission. The 2016 Off-Highway Vehicle (OHV) Grant application process closed on December 1, 2014. To see the 2015-2016 OHV Grant applications, where they are located, and which projects received funding please view the 2016 Colorado State Trails Program OHV Grant Applications Map.

Good Management OHV Grants

(CPW's policy on the Good Management Program)

In 1985, the new federal Travel Management Rule (36 CFR 212) was adopted to provide resource protection by eliminating open, cross-country motorized travel on federal lands nationwide. The Travel Rule directed the Forest Service and the Bureau of Land Management to designate roads, trails and areas for public motorized use. The intent of the Travel Rule was to insure long-term sustainable use of federal lands by eliminating unmanaged OHV travel.

The OHV Good Management Program was borne out of a need to proactively maintain these newly designated, high-use, motorized recreation areas and to aggressively implement adopted travel management plans for those areas. The OHV Good Management Program was formally initiated with the execution of a Memorandum of Understanding titled "Good OHV Management: A Program for Continual Operations and Maintenance" between Colorado's Division of Parks and Outdoor Recreation and the USDA Forest Service in 2001. The agreement acknowledged the need to actively manage motorized recreational opportunities in Colorado and the benefits in addressing those needs when and where they occurred.

The OHV Good Management Program institutionalized OHV grant funding mechanisms for federal grantees and their direct supporters who demonstrated an exceptional ability in the managing, operating and maintaining Colorado's most popular OHV riding areas. The program provides a consistent and predictable level of funding so that federal agencies can attract and retain experienced trail crews for the operation and maintenance of their OHV riding areas. Since its inception in 2001, the trail crews supported by the OHV Good Management Program have grown from three (3) to seventeen (17).

Eligibility Requirements for CPW's Good Management Program

Successful OHV Good Management Program grant applicants must demonstrate, over a consecutive period of three or more years, their ability to fulfill the fiscal and field objectives as presented in their annual OHV grant proposals and achieve all aspects of a Good Management Program. Good Management crews must take a holistic management approach that preserves riding opportunities while protecting sensitive resources within the areas they service. Service includes trail and support facility maintenance, and reconstruction, monitoring, signing, trail and signage inventory, education, mapping, compliance checks, and, in the case of the Forest Service, law enforcement. These trail crews use "best practices" to maintain and restore OHV riding areas.

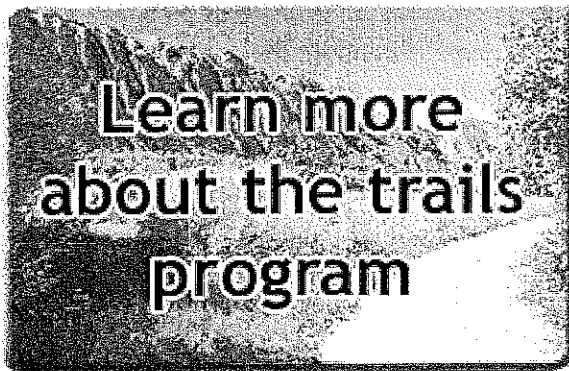
Review of Good Management Program by the State Trails Program

CPW audits and reviews at least four OHV Good Management crews each year. The review generally includes an audit of the condition of the riding areas, trails, and support facilities serviced by that OHV Good Management crew. ICPW also reviews the grant management practices practiced by the OHV Good management crew to insure the grant funds, equipment purchased and required reports have been managed efficiently and conform to all applicable state and federal fiscal rules. CPW will conduct random inspections of Good Management projects as the need arises.

Programmatic (competitive) OHV Project Grants

OHV programmatic or competitive project grants address the full spectrum of OHV recreation support needs in Colorado. Eligible grant funded activities include:

- Construction, reconstruction or maintenance of OHV routes or multi-use trails that allow for motorized use
- Crossing structures, bridges, railings, ramps, and fencing
- Bank stabilization and retaining structures
- OHV trail corridor re-vegetation and erosion control
- Trailhead development and/or support facilities related to OHV or multi-use trails including parking areas, restrooms, and related facilities
- Project Materials, Tools and Supplies
- Equipment needed to build or maintain OHV trails
- Fleet vehicle(s) for trail crew members - fixed and variable expenses, fuel and fluids.
- Normal maintenance and repairs on trail machines (trail bikes, ATV's) and equipment (dozers, chainsaws, generators, etc.), fuel and fluids.
- Signs - directional, regulatory, and interpretive signage for OHV routes
- Printing - maps/guides, safety and educational materials, Programs, publications and videos on safety and OHV recreation
- OHV trail or system planning, engineering, or design
- Land acquisition or easement projects. NEPA review and environmental compliance work required under NEPA or other statutes
- Restoration of closed trails or damaged areas where a nexus exists between OHV misuse and needed repairs
- Salary, compensation and benefits for crew members or project employees
- Employment-required immunizations, background checks
- Law enforcement wages for enforcing State OHV Law (CRS 33-14.5)
- OHV Education and safety programs
- Liability and Workers Compensation Insurance required for OHV projects.
- Insurance coverage for physical damage and theft on equipment purchased with OHV funding that is valued at over \$10,000

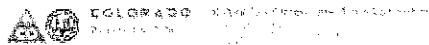


Trails Grant Selection Process

The Colorado State Trails Committee is responsible for the review process for the trail grant applications and makes recommendations to the Colorado Parks and Wildlife Commission and Great Outdoors Colorado (GOCO) Board regarding funding for grants.

[>>Read More](#)

Upcoming 2015 Meetings



2015 Meeting Schedule

- January 14, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- February 11, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- March 11, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- April 8, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- May 6, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- June 3, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- July 1, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- August 5, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- September 2, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- October 7, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- November 4, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications
- December 2, 2015** - Colorado State Trails Committee Meeting
10:00 AM - 12:00 PM
Colorado State Capitol, Room 300
Agenda: Review of 2014 Trail Grant Applications

[Download a PDF version of 2015 State Trails Committee Meeting Schedule.](#)