

RESOLUTION No. 2012-027

**A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
APPROVING A JOINT PETITION TO THE COLORADO PARKS AND WILDLIFE REGARDING
OHV REGULATIONS IN OURAY COUNTY, COLORADO AND NEIGHBORING COUNTIES**

WHEREAS, the Board of County Commissioners of Ouray County, Colorado ("Board") is empowered under Title 33, Article 14.5, Part 1 of the Colorado Revised Statutes to promulgate regulations pertaining to the operation of unlicensed off-highway vehicles (OHV) on designated county roads, consistent with state statutes and regulations; and

WHEREAS, the Board adopted Ordinance 07-01 providing for the regulation of OHVs on county roads; and

WHEREAS, neighboring counties have also adopted similar ordinances or regulations governing the operation of OHVs; and

WHEREAS, the Colorado Parks and Wildlife (CPW) has taken the position that such regulations are not consistent with regulations adopted by the state in that they are more stringent; and

WHEREAS, the Board believes that the provisions and requirements of Ordinance 07-01 reflects the difficult terrain and mountain conditions encountered on county roads used by OHVs in Ouray County; and

WHEREAS, the Board would like the CPW to recognize the validity of the provisions and requirements of Ordinance 07-01 so that the County, and neighboring counties coordinating on road maintenance, enforcement and emergency services for OHV operators and riders will be eligible for grants and funds available through the United States Forest Service; and

WHEREAS, the Board believes that local control on regulation of use of county roads is in the best interests of the public.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, that it will participate with neighboring counties in a petition to the Colorado Parks and Wildlife for such recognition of the provisions and requirements enacted in Ordinance 07-01, which petition is attached hereto as Exhibit A.

APPROVED AND ADOPTED THIS 11th DAY OF SEPTEMBER 2012.

Voting for: Commissioners Fedel, Padgett and Willits
Voting against: None



Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

F. Mike Fedel
F. Mike Fedel, Chair

Lynn M. Padgett
Lynn M. Padgett, Vice-Chair

Patrick Willits
Patrick Willits, Commissioner

CITIZEN-PROPOSED ISSUE PAPER

Date:

ISSUE:	This petition, jointly sponsored by the Boards of County Commissioners of Hinsdale, Ouray, San Juan, and San Miguel Counties, respectfully requests that the Parks and Wildlife Commission Amend #504 of its Off-Highway Vehicle Regulations to recognize the validity of the Petitioners' adopted Off-Highway Vehicle Ordinances
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DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):

During the past several years the Boards of County Commissioners of Hinsdale, Ouray, San Juan and San Miguel Counties ("BOCC") have enacted ordinances pursuant to their authority under §33-14.5-108 and 110, C.R.S., regulating the operation of Off-Highway Vehicles ("OHV") on public roads under their jurisdiction. A copy of each county's adopted OHV ordinances is attached to this petition and incorporated herein by reference. These county ordinances apply to the operation of OHVs on designated county public roads located within the San Juan Mountains of southwest Colorado that include numerous extremely rugged, primitive, and hazardous four wheel drive high mountain pass roads. These county designated OHV routes include the Alpine Loop roads between Ouray, Silverton and Lake City (Engineer and Cinnamon Passes) , as well as Imogene, Black Bear, and Ophir Pass roads located in San Miguel, Ouray, and San Juan counties.

In response to concerns over public safety arising from several serious accidents involving both motor vehicles and OHVs that occurred on the high mountain pass road located in these counties, beginning in 2001 the Hinsdale, Ouray, San Juan, and San Miguel BOCCs have enacted ordinances requiring that the operators of OHVs possess a valid motor vehicle operator's license and/or maintain at least the minimum level of liability insurance coverage required by the Colorado Motor Vehicle Financial Responsibility Law, Title 42, Article 7, C.R.S. Ouray and San Miguel Counties enacted the OHV ordinances following consultation with the USDA Forest Service, the federal agency responsible for administering much of the public land that the county designated OHV routes traverse. Both Ouray and San Miguel Counties have entered into agreements with the USDA Forest Service authorizing it to patrol those designated OHV routes located on land it administers and to enforce their OHV ordinances. A copy of those agreements is attached to this petition and incorporated herein by reference.

Several years following the counties' enactment of their OHV ordinances, Division officials advised county representatives that the county adopted OHV ordinances are inconsistent with the Division's OHV regulation #504 (2CCR 405-1, Chapter 5). Regulation #504 authorizes persons age ten or older, who are not eligible for a motor vehicle operator's license, to operate OHVs on public roads in Colorado that have been designated as OHV

routes, provided the OHV operator is accompanied by and under the immediate supervision of a person possessing a valid driver's license. The regulation defines the phrase "under immediate supervision to mean that, "at a minimum, the unlicensed operator is within direct visual contact of the licensed supervisor."

The Division's adopted OHV regulations do not either address or require OHV owners to maintain motor vehicle liability insurance coverage that complies with Colorado statutory requirements for motor vehicles when their OHV is operated on county designated public road OHV routes. Division officials have advised county representatives that county ordinances imposing such liability insurance requirements are inconsistent with regulation #504.

Section 33-14.5-110, C.R.S. provides that counties may adopt OHV regulations that are "not inconsistent with the provisions of this article and the rules and regulations promulgated pursuant thereto." In order for the Division to find that the county OHV ordinances are consistent with regulation #504 the counties request that the Commission amend the regulation to provide a limited exception permitting the counties' OHV ordinances, specifically including the requirement that OHV operators have a valid driver's license and OHV liability insurance in effect that satisfies the Colorado Motor Vehicle Financial Responsibility statute. The grounds for recognizing these county adopted ordinances is that they apply to county roads in mountainous areas with extremely dangerous and steep terrain, in sharp contrast to the terrain of other plains areas of the state where Regulation #504 is more suitable.

The following statistical information pertains to public safety issues associated with OHV operations on high mountain pass roads in the San Juan Mountains of Southwest Colorado that occurred in San Juan and Hinsdale counties, both of which directly employ seasonal Alpine Rangers.

Hinsdale County (2007-2011)

Summons Issued

7 – Drove ATV where prohibited; 4 – Fictitious plates on ATVs; 2 – No mandatory minimum liability insurance (both vehicles involved in accidents); 1 – Drove ATV while license under restraint.

Accidents

13 ATV accidents; 2 Fatalities.

Warnings-Written

11 – Minor allowed to operate ATV; 12 – No Colorado State Parks sticker; 17 – No proof of insurance; 43 – Operated ATV where prohibited.

San Juan County (2011)

Summons/Citations Issued – 3; Verbal Warnings – 15; Written Warnings – 7; Total Contacts – 2,404.

Accidents (Serious Bodily Injuries – 2, Fatalities – 1.

Ouray – San Miguel Counties (USDA – FS Alpine Ranger Program)

<p>Attached are statistics regarding USDA FS Alpine Ranger Programs OHV related contacts, summons/citations/warnings issued, and accidents responded to, compiled by USDA FS Ouray Ranger District, the agency that currently administers the program that has been in effect since 2005.</p>	
<p>WHO MIGHT BE INTERESTED IN THIS ISSUE? HAVE YOU COMMUNICATED WITH ANY OTHER INTERESTED PARTIES? WHAT INPUT HAVE YOU RECEIVED? The Petitioners have consulted with officials of the USDA Forest Service regarding this petition. In recent years Forest Service officials have applied for grants from Division's OHV State Trail grant fund to assist in paying for the costs associated with their agency's Alpine OHV Ranger program. This program includes patrolling the high mountain pass roads that are subject to the county's OHV ordinances. The Forest Service has indicated that the Division has refused to fund those grant applications. Among the reasons the Division has given for not approving the grant application is that the Alpine OHV Ranger Program is associated with the counties' OHV ordinances that the Division maintains are inconsistent with its regulation #504 and, therefore, exceed the county's statutory authority.</p> <p>The Petitioners have also consulted with the following OHV user's groups regarding this issue:</p>	
<p>These OHV user groups have indicated that they support the petitioning counties OHV ordinances and the requested amendment to regulation #504.</p>	
<p>ALTERNATIVES: PLEASE INDICATE THE PROBABLE OUTCOME IF THIS PETITION IS ACCEPTED, AS WELL AS THE IMPACT OF ALTERNATIVES TO THIS PETITION: Increased cooperation and collaboration between the petitioners, the USDA FS, and the DPW with regard to various OHV issues, including, but not limited to, being determined eligible to receive grant funding to support the USDA FS Alpine OHV Ranger Program</p>	
<p>PETITION PROPOSED BY: Hinsdale, Ouray, San Juan, and San Miguel Counties, acting by and through their Boards of County Commissioners</p>	
<p>PETITION WRITTEN BY: Steven J. Zwick, San Miguel County Attorney, in consultation with Michael O'Loughlin, Hinsdale County Attorney; Martha Phillips Whitmore, Ouray County Attorney, and Paul Sunderland, San Juan County Attorney</p>	
<p>DATE SENT TO THE COMMISSION:</p>	

**ALPINE RANGER DATA
2005-2011**

Year	No. Contacts	No. Citations	Reasons for Citations	No. Accidents	No. Fatalities
2005	800-1000	20-25	<ul style="list-style-type: none"> • OHV Underage Operators • OHV Unlicensed Operators • OHV Careless Driving • OHV Driving Off Designated Routes • Camping in Non Designated Camping Areas • County Ordinance Violations 	5-10	0
2006	Over 1000	20-25	<ul style="list-style-type: none"> • OHV Underage Operators • OHV Unlicensed Operators • OHV Careless Driving • OHV Driving Off Designated Routes • Camping in Non Designated Camping Areas • County Ordinance Violations 	6-8	0
2007	Over 1000	20-25	<ul style="list-style-type: none"> • OHV Underage Operators 	6-8	0

**ALPINE RANGER DATA
2005-2011**

Year	No. Contacts	No. Citations	Reasons for Citations	No. Accidents	No. Fatalities
			<ul style="list-style-type: none"> • OHV Unlicensed Operators • OHV Careless Driving • OHV Driving Off Designated Routes • County Ordinance Violations • Camping in Non Designated Camping Areas 		

**ALPINE RANGER DATA
2005-2011**

2008	Over 1000	20-25	<ul style="list-style-type: none"> • OHV Underage Operators • OHV Unlicensed Operators • OHV Careless Driving • OHV Driving Off Designated Routes • County Ordinance Violations 	6-8	0
2009	Over 1500	25-30	<ul style="list-style-type: none"> • OHV In Restricted Areas • OHV Underage Operators • County Ordinance Violations • OHV Careless Driving • Camping in Non Camping Permitted Areas 	6-8	0
2010	Over 1500	25-30	<ul style="list-style-type: none"> • OHV Underage Operators • OHV Unlicensed Operators • OHV Careless Driving • OHV Driving Off Designated Routes • County Ordinance Violations 	6-10	1
2011	Over 1500	25-30	<ul style="list-style-type: none"> • OHV Expired Registration • OHV Current Permit issues • OHV Expired License Plate Issues • OHV Careless Driving • OHV Driving Off Designated Routes 	6-10	0

Other Misc. Facts

- Please note that numbers are approximate
- Most Violations are Colorado Residents
- Rangers said that many accidents go unreported because the parties take private vehicles to the hospital and official reports are not made