

NDCNR OHV PROGRAM



November 19, 2018

AB29 Section 11.5 Rules of Operations Analysis

Evaluate whether the statutory presumption set forth in NRS 490.090 to NRS 490.130, inclusive, that the operation of an off-highway vehicle on a paved highway is prohibited unless authorized by a governmental entity should be amended.

<https://www.leg.state.nv.us/NRS/NRS-490.html>

AB29 SECTION 11.5 RULES OF OPERATIONS ANALYSIS

INTRODUCTION

Assembly Bill 29, passed in 2017 by the Nevada Legislature, directs the Commission on Off-Highway Vehicles, within the Nevada Department of Conservation and Natural Resources, to evaluate the presumption set forth in NRS 490.090 to NRS 490.130 inclusive, that the operation of an off-highway vehicle on a paved highway is prohibited unless authorized by a governmental entity. <https://legiscan.com/NV/text/AB29/id/1630740/Nevada-2017-AB29-Enrolled.pdf>

Included in that direction was a process for bringing any amendments found to be necessary, to the Legislative Bureau for transmission to the 80th Session of the Nevada Legislature. This process was to include the solicitation of input from local governmental entities and other interested parties through a survey. Recommendations are due on or before January 1, 2019.

On July 2, 2018, the Nevada Department of Conservation and Natural Resources Off-Highway Vehicles Program invited the public to assist in meeting the needs of off-highway vehicle users by completing an online survey. Thanks to OHV recreationists and law enforcement throughout Nevada, we were made aware that the current laws in Nevada Revised Statute (NRS 490) are confusing and often interpreted differently across the State. The survey also brought to light the many overlapping jurisdictions and levels of state, local and federal code/resolutions that need to be included and considered in amending the Statutes.

The survey asked that if the statutes were of particular interest to a town, county or department/office, the respondent provide written comments on how the statutes should be revised or clarified. We received no written comments, but grants were applied for to complete local planning as a result of this survey.

Analysis of the statute by NDCNR staff and the Deputy Attorney General found that the presumption “operation of an off-highway vehicle on a paved highway is prohibited unless authorized by a government agency” is correct. It is up to the local government agency/city/county/town that has authority over the building and maintenance of the paved highway to pass resolution stating it is open.

NRS RECOMMENDED CHANGES

1. Interdisciplinary NV OHV roadway statute subcommittee. Staff recommends that a team of subject matter experts and specialists from the following agencies/entities be formed to

develop recommendations regarding the NRS, taking into account all current overlapping statutes, codes, and resolutions.

- Nevada Department of Transportation
- Nevada Department of Public Safety/Highway Patrol
- County and City/Town representatives.
- Nevada Sheriff and Chiefs Association/local law enforcement agencies
- Law Enforcement Commissioner from Commission on Off-Highway Vehicles

2. Nevada Statewide Trails Mapping Collaborative. Staff recommends that the Nevada Mapping Collaborative, currently funded temporarily through state and federal grant sources, be adopted by the Nevada Department of Conservation and Natural Resources as a committed function through the budget process and development of fiscal note. Partners include Travel Nevada, State Parks and the Recreational Trails Program, and the OHV Program. This project should become a Statewide Trail Program within NDCNR to serve the public with statewide trail maps and visitor information for rural economic gain and public safety. This would also include the posting online of all the resolutions, laws and current maps for each jurisdiction as they complete those planning efforts.

Recommendations to the OHV Commission on funding priorities resulting from this analysis that do not require a statutory or administrative code change.

1. Commission should adopt criteria designating priority for funding for “OHV friendly Communities” Fiscal Years 2020 – 2025.

Cities and counties can apply for cost of planning for said resolutions so they may become ‘OHV Friendly Communities’. Allowable costs will include:

- Funding for planning and mapping needed to complete County or City resolutions
- Creation and distribution of maps or other documents setting forth allowable and prohibited roads/areas for operation off-highway vehicles.
- Funding for planning, purchase, installation and maintenance of signs designating roads/areas open or prohibited for operation off-highway vehicles.

SUMMARY OF FINDINGS

Thanks to OHV recreationists and law enforcement throughout Nevada, we were made aware that the current laws in Nevada Revised Statute (NRS 490) are confusing and often interpreted differently across the State. The survey answers illustrated a consistent lack of understanding of the statutes as written. The survey also brought to light the many overlapping jurisdictions and levels of state, local and federal code/resolutions that need to be included and considered in amending the Statute.

Although there were no written comments outside the survey sent to our office, the OHV program was contacted multiple times by sub-political entities to assist in meetings in determining the next steps for either passing their own resolutions or implementing and signing

the resolutions already in place. Several of the entities are applying for grants for this purpose (Lincoln County, City of Elko, City of Ely, and Boulder City).

As stated earlier, analysis of the statute by NDCNR staff and Attorney General Staff interpretation found that the presumption “operation of an off-highway vehicle on a paved highway is prohibited unless authorized by a government agency” is correct. It is up to the local government agency/city/county/town that has authority over the building and maintenance of any said paved highway to pass resolution stating it is open.

Staff believes it is the lack of local resolutions and lack of informing the public and signing/mapping those areas that creates the confusion. Having OHV law and maps online sponsored by the OHV Program on the state Off Road Nevada website would also assist the public in knowing the laws and where to ride safely and lawfully.

Staff also believes that the confusion stems from inconsistencies in the use of undefined terms within the body of the statute, i.e., Paved Highways, open unless closed, and prohibited unless designated open. The public is looking for one or the other “consistency” in the statute to make enforcement, planning and resolutions easier to achieve.

- **NRS 482.045 “Highway” defined.** *“Highway” means the entire width between the boundary lines of every way maintained by a public authority when any part of such way is open to the use of the public for purposes of vehicular traffic.* [Part 1:202:1931; A [1951, 165](#); [1953, 280](#)] — (NRS A [1973, 230](#))
 - The statute appears to use the term “highway” interchangeably with “paved highway,” assuming the reader understands that it is referring to “every way.”
 - The statute refers to county minor and major roads, which also fall in to the “highway” definition, but are already designated as such through another NRS and are not broken out by paved or non-paved.

Level of OHV access on paved roads (highways) is clear in the following three instances from the NRS, and occur without additional levels of authorization from a local government entity.

- 1) OHV use is always prohibited on Interstates. There is no allowance in the NRS for State or other government entity to change this status.
- 2) **All paved “highways” (all paved roads) are closed to OHV travel unless specifically authorized by a government entity as open (*closed until designated open*).** This is the presumption noted in AB29.
- 3) **General and Minor County roads (*no reference to paved or un-paved*) as designated under NRS 35 chapter 403.170: *are open to Large ATV’s unless designated closed* (but not smaller OHVs).** This is in direct conflict with 2) above as it can refer to paved highways if they are designated general or minor as **“open unless closed.”** *This NRS defines the immunity of the State and county from liability resulting from use of minor and general county roads.* These county road designations are detailed and laid out by each county highway commission. There are specific accessories that a large OHV must have in order

to drive on these minor and general roads legally. (These accessories do not constitute “street legal” on any other roads/highways). All traffic laws apply, including helmet and OHV registration.

All other situations require some level of secondary government entity designation.

- In the above mention case of General and Minor County roads: a local government may designate any of these closed through resolution. They are **open to large OHVs until designated closed**.
- In order for smaller OHVs to ride on any paved highway or general/minor road: County/City must designate those as open to those vehicles in a resolution.
- County/City MAY have paper descriptions and map if they desire (not required)
- County/City MAY physically sign areas “prohibited” (not required). Note: this NRS does not address positive wayfinding.
- Counties/cities may impose further driving and traffic laws such as helmet, driver’s license, minor supervision, speed limits, etc.

If designation of OHV use on highways has been completed by the municipality, and that designation allows it, OHVs may ride on them up to 2 miles to connect to “areas **designated** for riding”.

- This assumes that the trail connection has been **officially designated** by a municipality.
- This also assumes that a municipality or landowner has authorized “**a private or public area that is open for use by off-highway vehicles.**” There is an assumption that this pertains to ‘recreational riding areas only, but again, that **must be designated** by the local government. Current statute dictates that the OHV user cannot ride from home to the post office, or grocery store, church, or school unless that route, and that area, are designated by that municipality as open to OHV. Unless, it is a minor or general road under County designation and the user is in a large OHV.

SURVEY PROCESS AND ANALYSIS

The preliminary analysis and a list of survey questions was completed by NDCNR staff and presented to the Commission on June 12, 2018, at a regularly scheduled public meeting. The survey was then distributed by email through multiple avenues:

- OHV Program State Listserv email (multiple times) of over 400 general OHV users and interested parties.
- NV Association of Counties to redistribute to Counties and other municipalities including Law Enforcement.
- Posted on the OHV website at ohv.nv.gov
- Posted on NDCNR social media outlets.
- Hard mailed the request and link to the survey to Nevada municipalities, Federal land management agencies and law enforcement offices.

The final number of survey respondents on September 30th, 2018 was 1,057.

The most requested issues with the public from this survey:

- To make route information easier to get online.
- To make registration easier online.
- To let the local communities decide the fate of transportation planning in their own area, and to get that information online.
- To keep children and the public safe.

FRIENDLY SIGNAGE AND MAPS

