



Kane County Commission
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**Kane County Commission Rescinding Off Highway Vehicle (OHV) Ordinance and
 Removing OHV Open Decals
 December 11, 2006**

The Kane County Commission is taking formal action to rescind the County's OHV Ordinance 0-2005-3 currently in effect and to void its earlier Commission action declaring that all Kane County roads are open to OHV (unlicensed vehicle) travel. This Commission action is consistent with Utah Code 41-22-10.5 and is deemed necessary pending the resolution of certain legal issues and is based on advice from counsel representing the County in federal court. The Commission intends to remove Open OHV decals from county roads consistent with its action rescinding the OHV Ordinance. The following points are intended to further explain the Commission's action and its position in the matter.

I. Litigating county transportation system roads as both a property right and as an OHV management issue in federal court is too big a bite of the apple at one time

1. Federal statutory law, regulations and policy, as well as the 10th Circuit decision in *SUWA v. BLM* and other 10th Circuit case law, is very protective of established rights-of-way granted to Kane County under the provisions of Revised Statute 2477.
2. However, case law regarding OHV travel across federal lands on roads along R.S. 2477 rights-of-way is currently unsettled in some regards.
3. Allegations of OHV impairment and degradation to federal lands and resources, as baseless as they may be, cloud the County's ability to prevail in preserving legal acceptance of its established property rights in roads along established R. S. 2477 rights-of-way.
4. Legally securing the County's authority to specifically manage public highways across federal lands along R.S. 2477 rights-of-way, i.e., OHV use, will be better addressed after, first, securing federal recognition of Kane County's ownership of R.S. 2477 rights-of-way comprising its transportation system and when other related legal issues are more fully resolved.

II. The County will request the State Legislature to consider amending the Utah Code regarding OHV operation on county roads

1. The County is formulating proposals to the State Legislature that would further delineate and support the operation of OHVs on public roads within the state.

2. State law provisions could further address public safety and welfare issues and modify OHV operation on public highways to the benefit of the traveling public.

III. The County will continue to pursue revisions to federal policies regarding OHV use on County Transportation System public highways across public lands.

1. While the Commission acknowledges federal authority to manage OHV use on federally managed lands it intends to pursue its position that federal authority is limited in managing the public's use and type of vehicles allowed on county roads along R.S. 2477 rights-of-way.

2. The federal government is limited to managing and protecting federally managed lands and resources. The federal government is not in the business of managing local transportation systems. The Commission, as the County's Highway Authority, is charged with operating the County's public highway transportation system in the best interests of the safety and welfare of the traveling public.

3. Federal land managers should be knowledgeable of the distinction between federal, state and local authority and should not implement vehicle operation conditions beyond federal authority and in conflict with state and local authority, i.e., unilaterally designating Kane County Transportation System roads open or closed to unlicensed vehicle travel. It is the Commission's position that such unilateral action would be improper because it conflicts with State law and local transportation system management.

The Commission intends to prevail in securing revision of federal policies and additional supportive federal case law protecting R.S. 2477 rights-of-way as property rights. It is our duty and right to manage those rights-of-way in the best interests of the traveling public.

We want to assure the public that we have thoroughly studied this issue with our attorneys in the federal case and ask for your patience regarding our efforts to protect our continued enjoyment of county roads that we have traditionally traveled for forty to one hundred and fifty years, or longer, and that we rely on for our rural quality of life.


Mark W. Habbeshaw, Chairman


Daniel W. Hulet, Commissioner


Duke Cox, Commissioner