

**Sierra County
Board of Supervisors'
Agenda Transmittal &
Record of Proceedings**

MEETING DATE: FEBRUARY 5, 2019	TYPE OF AGENDA ITEM: X Regular Timed Consent
--	---

DEPARTMENT: Board of Supervisors
APPROVING PARTY: Lee Adams, Supervisor – District One
PHONE NUMBER: 530.289.3506; hangman@sierracounty.ca.gov

Item: Discussion/direction to staff regarding combined use roadway legislation allowed pursuant to AB 628 (2011) and SB 1345 (2016) and inclusion of Sierra County into any continuation of this pilot project.

SUPPORTIVE DOCUMENTS ATTACHED: X Memo Resolution Agreement Other

BACKGROUND INFORMATION: Combined use pilot project dates to 2011 in Inyo County and Sierra County attempted to join the pilot project in 2016. Project up for renewal in 2020 and this discussion to see if wish to attempt to add Sierra County to this proposed legislation.

FUNDING SOURCE:
GENERAL FUND IMPACT: NA
OTHER FUND:
AMOUNT: NA

ARE ADDITIONAL PERSONNEL REQUIRED? <input type="checkbox"/> Yes, -- -- X No	IS THIS ITEM ALLOCATED IN THE BUDGET? Yes X No IS A BUDGET TRANSFER REQUIRED? Yes X No
--	---

SPACE BELOW FOR CLERK'S USE

BOARD ACTION: <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2017- _____ Agreement 2017- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
---	---	---

COMMENTS:

CLERK TO THE BOARD DATE

In 2011, AB 628 (Conway) was signed into law and allowed as a pilot project a limited number of county roads in Inyo County to be used as combined use roads shared for licensed vehicles and OHV green sticker vehicles for lengths for up to three miles. Inyo County had attempted such legislation previously but it was vetoed by the Governor. This attempt was successful as a pilot project and required a report to the legislature by January 2017.

In 2016, SB 1345 (Berryhill) was introduced following Inyo County's report to the legislature and sought to extend these combined routes to lengths of up to ten miles and to continue the program until January 2020. This board agreed to the concept of extending the pilot program to include a limited number of Sierra County roads and the bill's sponsor agreed to include Sierra County as a second pilot project, but in a transportation committee hearing the bill was limited to Inyo County. RCRC was helpful in this effort to include Sierra County and is again being helpful in any new effort.

As it is believed that Inyo County might likely seek continuation of this program beyond 2020, this item is to seek this board's opinion as to once again try to gain approval of extending this pilot program within Sierra County. There are any number of Forest Service approved OHV routes that are isolated and the addition of this program in Sierra County would allow for safe and environmental respectful use of public lands by the OHV community. Such connectivity of routes would allow for an economic opportunity within the county. Like in the Inyo County effort, we would suggest that the sections of county roads be limited to a maximum of up to ten miles each and no more than 12 such segments countywide under a pilot project.

- 1) Develop procedures for selecting and removing combined use designations from road segments;
- 2) Establish uniform signage for combined use road segments to control OHV traffic and advise pedestrians and regular traffic that OHVs may be present;
- 3) Require OHVs to comply with the same state and federal safety laws that apply to OHV drivers on traditional combined-use road segments under three miles in length;
- 4) Prohibit OHVs from exceeding 35 miles per hour on combined-use segments;
- 5) Provide an opportunity for public comment at a hearing to evaluate the pilot project;
- 6) Agree to defend and indemnify the state against claims for any safety-related losses or injuries arising from combined use; and
- 7) Not approve a road segment for combined use if the CHP finds that doing so would create a potential traffic safety hazard.

Inyo County is also required, by January 1, 2016, to submit a report to the legislature that:

- 1) Describes the road segments designated for combined use under the program;
- 2) Evaluates the effect of the pilot program on safety, traffic flow, off-highway vehicle usage on existing trails, incursions into areas not designated for off-highway vehicle usage, and nonmotorized recreation; and
- 3) Describes the public comments received in the public hearing.

This bill:

- 1) Expands the authority to establish a pilot program for combined use of road segments up to 10 miles in length, as described in existing law, to Sierra County.
- 2) Requires Sierra County to submit a report to the legislature, subject to the same requirements Inyo County must meet under existing law, by January 1, 2019.

- 3) Authorizes both Sierra and Inyo Counties to operate their respective pilot programs until January 1, 2020.

COMMENTS:

- 1) *Purpose.* According to the author, this bill supports Inyo County in better regulating, managing, and analyzing its OHV trail system by extending the existing combined-use pilot program. The author states that Inyo County has unique circumstances that warrant the pilot project, as less than 2% of its 10,000 square miles is privately owned and many of its nearly 18,000 residents use OHVs as a common mode of transportation. In addition, the author notes that tourism is the largest contributor to the county's economy, and expects that this project will help visitors use ATVs responsibly. The author explains that the bill will affect roughly graded gravel roads in an unincorporated area of the county, and notes that these roads also play an important role in staging OHV vehicles. By allowing staging to occur in parking lots closer to town, the author argues that the bill could spare narrow forest trails from being disturbed by trucks and trailers unloading. The author also notes that the report on the Inyo County pilot program indicated that additional time and designated routes are needed to fully evaluate this change in public policy, and that preliminary evaluation did not suggest any detrimental results (e.g., deaths, injuries, public safety complaints, etc.) of the pilot program to date.
- 2) *What's covered.* The category of OHVs encompasses a variety of vehicle types, including motorcycles, snowmobiles, sand buggies, dune buggies, all-terrain vehicles, Jeeps, and recreational utility vehicles (also known as utility terrain vehicles or side-by-sides) that are intended to be operated or used exclusively off the highways. They are therefore not subject to the same registration and safety equipment requirements as vehicles that are routinely used on public streets.
- 3) *No new trails.* This bill authorizes two counties to allow OHVs on roads used by regular traffic. It does not establish any new trails or OHV recreation areas.
- 4) *Legislative history.* In 2010, the Governor vetoed a bill (AB 2338, Conway) that would have allowed Inyo County to permit combined use on road segments longer than three miles, citing concerns about state liability in the event of an accident. The following year, the Legislature passed and the Governor signed AB 628 (Conway, Chapter 532, Statutes of 2011), which allowed Inyo County to designate road segments up to 10 miles in length for

combined use on a pilot basis, and subject to several conditions. The bill addressed the liability issue by (a) prohibiting Inyo County from designating a road for combined use if the CHP finds that the designation would create a potential safety hazard, and (b) requiring the County to indemnify the state against claims in the event of an accident on a combined use segment.

- 5) *Implementation delays.* The pilot program was initially controversial in Inyo County, and the Board of Supervisors did not approve any routes until January 2015. At that point, it authorized seven combined-use segments totaling 44 miles in length. Shortly thereafter, the Center for Biological Diversity (CBD) and Public Employees for Environmental Responsibility (PEER) sued the county, arguing that the environmental impact report (EIR) for the project was inadequate. The suit was settled in May 2015. Four of the seven approved routes have still not been opened due to ambiguity regarding the County's authority to maintain roads when the underlying land is owned by another party. The County is currently working with Inyo National Forest to resolve this issue, and the remaining three routes were opened between July 14 and August 5, 2015.
- 6) *Safety concerns.* While many states allow OHVs to be operated on public roads under some circumstances, opponents of the bill argue that these vehicles cannot safely share the road with regular traffic because they are not equipped with the safety features required in traditional cars (e.g., airbags). As such, OHVs may leave occupants extremely vulnerable in on-road accidents. Additionally, the U.S. Consumer Products Safety Commission, ATV manufacturers, and ATV safety organizations agree that ATVs in particular are not designed to operate on paved roads and can only be operated safely in an off-road setting. This is due in part to specific features of vehicle design that make some maneuvers, such as turning, difficult on pavement. These concerns do not apply equally to all OHVs: Some are inherently more stable and protective of occupants than others, and may even have been designed for road use. However, the bill does not make any distinctions between types of OHVs that are allowed on combined-use roads.
- 7) *Regulated use versus increasing use.* Supporters of this bill argue that making it easier for OHV users to legally access trails and services makes it less likely that these individuals will access trails and services illegally, in ways that are more likely to damage the environment or threaten public safety. Opponents point out that increasing the convenience of OHV recreation may attract additional OHV users to the existing trail system, resulting in greater damage to the environment and potential for injury.

- 8) *What do the data show?* With respect to safety, OHV use of existing trails, OHV incursions into areas not designated for their use, and impact of OHVs on non-motorized recreation, neither Inyo County staff nor the Bureau of Land Management (BLM), which manages the affected OHV trails, have observed any changes since the combined-use segments were opened. However, Inyo County submitted its report on the pilot program on December 15, 2015, less than six months after the opening of the three combined-use routes currently authorized under the program. Supporters of this legislation argue that extending the sunset and authorizing an additional county to conduct a pilot program is necessary to obtain a more complete picture of the effect of longer combined-use segments on traffic safety, the behavior of OHV drivers, and the experiences of other recreationalists.
- 9) *Why add a second county?* Most of Inyo County's population is concentrated in arid valleys east of the Sierra Nevada, and all of the combined use routes approved as part of the existing pilot program follow relatively straight, flat roads. Supporters of the bill argue that including Sierra County, where existing OHV trails are located in mountainous terrain, will provide topographic and geographic balance to any evaluation of the effects of longer combined use road segments. However, this also means that the program could be expanded to areas with windy roads that provide drivers less opportunity to notice and avoid OHVs, and present riskier operating conditions for ATVs.
- 10) *Ten miles how many times?* Neither this legislation nor the bill that established the pilot program limits the number of combined-use segments a county may designate under the program. In Inyo County, the CBD/PEER lawsuit settlement capped the number of road segments that could be designated in the absence of additional environmental review at the seven routes currently approved. It is possible that future controversy might be avoided or limited by amendments that restrict the number of combined-use segments that can be instituted under the pilot program. At 962 square miles, Sierra County is much smaller than Inyo County (10,227 square miles), suggesting that the number of OHV trails and services — and, by extension, the number of combined-use segments truly needed to connect them — may be smaller to begin with.
- 11) *More time, more routes, more reporting?* This bill does not require Inyo County to undertake any evaluation or reporting beyond what was already completed in 2015 under existing law. The bill therefore misses an opportunity to capture data from the Inyo County program as it matures — in spite of the fact that the need for additional data is one justification for

extending the pilot in Inyo County. The author and committee may wish to consider amendments that require Inyo County to issue a second report to the Legislature by January 1, 2019, when the bill requires Sierra County to issue its first report to the Legislature.

- 12) *Gauging change.* The December 2015 report on the Inyo County pilot program notes that the BLM, which manages the OHV trails at the end of all three currently open combined-use roads, is tracking use of these areas with grant funds that did not become available until this year. Because there is no data on OHV use of these areas prior to the implementation of the pilot program, it will not be possible to determine whether OHV use increased once the program was initiated. This example illustrates the difficulty of drawing meaningful conclusions about how this type of policy affects OHV user behavior, since the OHV trails that are linked via combined-use roads are likely not to be the subject of robust monitoring, and in many cases are not under the jurisdiction of the state.

RELATED LEGISLATION:

AB 2338 (Conway, 2010) — would have allowed Inyo County to designate road segments over three miles in length for combined use. *This bill was vetoed by the Governor.*

AB 628 (Conway, Chapter 532, Statutes of 2011) — allowed Inyo County to designate road segments up to 10 miles in length for combined use on a pilot basis.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, April 13, 2016.)

SUPPORT:

Inyo County Board of Supervisors
Rural County Representatives of California
Sierra County Board of Supervisors

OPPOSITION:

Center for Biological Diversity
Center for Sierra Nevada Conservation
Sierra Club California
1 individual

-- END --