

**BEFORE THE OWYHEE COUNTY BOARD OF COUNTY COMMISSIONERS**

**IN RE THE:**

**MODIFICATION OF OWYHEE  
COUNTY ORDINANCE 10-03  
RE: ROADS CLOSED TO "OHV" USE**

---

)  
)  
)  
)  
)  
)

**FINDINGS,  
CONCLUSIONS,  
AND ORDER**

**FINDINGS OF FACT**

**If any of Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law section accordingly.**

1. The 34 currently closed roads were closed under the provisions of Owyhee County Ordinance 10-03, which was enacted pursuant to Idaho Code, § 49-426 (3) after Owyhee County scheduled, noticed and held a public hearing so that citizens could provide input into the decision as to whether any public roads within the Owyhee County Highway system should be closed to use by all terrain vehicles, utility type vehicles and motorbikes.
2. Ordinance 10-03 was necessary to enact in response to a change in Idaho Code which reversed previous code in that prior to January 1, 2009 Counties had to specifically post as "open" those roads allowed for travel by all terrain vehicles, utility type vehicles and motorbikes.
3. The Idaho Code change effective January 1, 2009 required Counties to post notice as to roads closed to all terrain vehicles, utility type vehicles and motorbikes.
4. Owyhee County Ordinance 10-03 was enacted to comply with the Idaho Code change and was enacted properly as to notice and public participation, effective December 13, 2010.
5. In 2020 Owyhee County Clerk Angela Barkell having determined that there were numerous errors within Owyhee County Ordinance 10-03 or between the language of the Ordinance and the accompanying map drawn to depict the roads closed, sought relief in the form of action by the Board of County Commissioners (hereinafter "BOCC").

6. BOCC directed staff work be performed by the Owyhee County Community Development Department to attempt to identify errors within the ordinance or between the ordinance and the map.
7. The BOCC set a public hearing for July 7, 2020 to allow members of the public to provide comments on the 34 currently closed roads to all-terrain vehicles (ATV), utility type vehicles (UTV), specialty off-highway vehicles (OHV) and motorbikes (referred to in the Document Heading and hereinafter as "OHV").
8. The BOCC included in the Notice of Hearing that it may also consider other roads to be closed to use by all-terrain vehicles (ATV), utility type vehicles (UTV), specialty off-highway vehicles (OHV) and motorbikes.
9. The Public Hearing on July 7<sup>th</sup> was properly noticed and conducted via a combination of persons present at the Hearing and persons participating via Zoom video conferencing. (A Certificate of the Public Notice is present in the Case File)
10. Jim Desmond served as Hearing Officer for the BOCC to manage the proceedings and the record.
11. Hearing Officer outlined the sequence of events for the hearing to be: Presentation by Community Development Director Mary Huff on the roads currently closed, and apparent errors within Owyhee County Ordinance 10-03.
12. Hearing Officer informed those present that following the presentation by Director Huff, there would be public comment for those who indicated a desire to comment via either the sign-in sheets for those physically present or via notice on the Zoom "chat" feature by those participating remotely.
13. Hearing Officer admitted "Commissioner Exhibits 1, 2, and 3" and did so subject to potential dispute during the hearing.
14. By the conclusion of the Hearing, none of the admitted exhibits were objected to and were confirmed as part of the record.
15. Testimony and written comments provided at Hearing by persons present at the Hearing site and via Zoom connection contained both requests for continued closure of the routes, with

explanations as to why such should be done, and requests to open all or a large number of routes, also with explanations as to why such should be done.

16. During the Hearing 24 persons attended the hearing in person and others via the Zoom connection. Many of those provided testimony either in person or via the Zoom connection.
17. During the Hearing Mr. Clarence Orton and Mr. Brian King testified with requests for the BOCC to consider closing additional roads not noticed on the Hearing Notice, under the provision in the Notice to "consider other roads for closure."
18. All three Commissioners responded to the request for consideration of other roads, not named in Ordinance 10-03, by denying the request to address other roads during this Hearing.
19. The BOCC, in denying the consideration of other roads not currently addressed in Ordinance 10-03, made clear that the persons requesting consideration of other roads for closure could request such consideration by the BOCC with a separate request for such action.
20. At the conclusion of testimony, Hearing Officer advised Board of their option of making a decision at that time or taking the matter under advisement for a decision at a later date.
21. By a Motion, Second, and Vote, the Board opted to take the matter under advisement and make a decision at a later date.
22. Commissioners made the decision to set a later date for deliberation and decision on the basis of the number of witnesses presenting, the presentation of conflicting requests as to "open" or "closed" from the witnesses, and the need for additional information which was not available at the Hearing.
23. At the conclusion of the Hearing, Hearing Officer left the record open for the delivery of additional exhibits as follows: Owyhee Sheriff's Office Dispatch Records regarding OHV accidents, information regarding "whether OHV accidents on paved surfaces were greater risk to injury or caused more severe injury, and information from BLM regarding whether the closure of any of the 34 roads would adversely impact OHV travel on existing BLM travel routes.

24. In the days and weeks following Hearing, Mrs. Huff worked with Managers in the Boise District BLM to obtain information in regard to “whether the closure of any of the 34 roads would adversely impact OHV travel on existing BLM travel routes.”
25. Mrs. Huff also worked with Owyhee County Sheriff’s Dispatch Coordinator to obtain records regarding OHV accident calls in the county.
26. Hearing Officer Desmond provided the Board a web link showing the results of a google search on the search question “whether OHV accidents on paved surfaces were greater risk to injury or caused more severe injury” to the Commissioners and staff.
27. In the days and weeks following the Hearing, Mrs. Huff worked to more specifically identify simple or typographical errors within the Ordinance 10-03 or where the written language of the Ordinance conflicted with the depiction on the map.
28. A “workshop session” was conducted by the Board, with staff assistance from Mrs. Huff, on August 10, 2020 to clarify various segments of the roads as part of the request for information from BLM.

### **BOARD’S DELIBERATION**

**If any of the following are deemed to be Conclusions of Law or to be Findings of Fact, they are incorporated into the Conclusions of Law and/or Findings of Fact section accordingly.**

29. At 10:00 am on November 16, 2020, during their regular Board Meeting and operating under an agenda item “OHV Ordinance Deliberations,” the Board deliberated.
30. Prior to the beginning of Deliberations Hearing Officer Desmond confirmed that the Board had received the additional exhibits addressed at the conclusion of the July 7<sup>th</sup> Hearing and admitted them as “Commissioners Exhibits 4, 5, and 6.”
31. On the basis of the time available, the Board agreed at the onset of deliberations to make their decisions on each road by a simple “discussion and vote” versus addressing each individual road with their normal process of “ discussion followed by motion, second, and vote”.

32. In taking this approach, the Board specified that the final decision on the roads would be done via “motion, second, additional discussion if needed, and vote” on the decision document which would be prepared by staff to document the deliberations and decisions made on November 16.
33. At the onset of the November 16th deliberations, the Board also addressed, following a presentation by Mrs. Huff, the correction of errors found within Ordinance 10-03 or between the Ordinance and the map.
34. The Board by voice vote confirmed that the identification and/or corrections of errors was accurate and complete.
35. Those identified errors and/or corrections of errors were discussed again as the Board considered each of the 34 roads in their deliberations.
36. The Board discussed among themselves each of the 34 roads individually, after having stated for the record that they had not had prior discussions on the decision to be made on the various roads.
37. During the Board’s deliberations and decisions they considered their knowledge of the background and decisions for the Ordinance 10-03, the current need to correct various errors found within that ordinance, and the testimony and exhibits presented at, or following, the July 7, 2020 Hearing.
38. During deliberations on November 16, 2020, the Board decided to leave the following roads closed as they currently are with no changes.

**A&A Road**

**Davis Road**

**Alma Road**

**Lemley Road**

**Bailey Road**

**Oreana Loop Road**

**Beet Dump Road**

**Quail Lane**

**Black Sands Road**

**River Road**

**Clover Three Creek Road**

**Strike Dam Cut Off Road**

**Colyer Road**

**Vista Road**

**Dairy Road**

39. The Board decided to change the administrative, surface type, and typographical errors in the descriptions of the following roads but otherwise leave them closed as they currently are.
- 20 Mile Road** – Remove word paved since there is no paving, leave two (2) miles closed.
- Bates Creek Road** – Leave 3.1 miles closed as is but show on map.
- Cattle Drive Road** – Correct typo from %E to 5E, remove word paved since there is no paving, leave five (5) miles closed as is.
- China Ditch Road** – Correct typo “S12-1” and clarifying information – “Beginning at Hwy 78 in Section 12 T1S R3W westerly into Section 11 for .9 miles” and leave closed as is.
- Crane Falls Road** – Correct description from “T6S R5E Section 18 to T5S R5E Section 5” to “Beginning at Highway 51/78 in T6S R6E Section 18 to the north end of section line between Sections 2 and 3 in T6S R5E” with four (4) miles remaining closed.
- Hot Creek Road** – Remove word paved, correct typo from “Section 27” to “Section 26” and add clarifying description “Beginning at Highway 51/78 in T6S R5E Section 26 to T7S R6E Section 26 at Hot Springs Rd”.
- Hot Springs Road** – Correct typo from “Section 27” to “Section 26” and add clarifying description “Beginning at Hwy 51/78 in T6S R6E Section 19 to T7S R6E Section 26 at Hot Creek Rd”.
- Millet Lane** – Remove word paved since road is gravel and leave closed.
- Mormon Boulevard** – Correct typo “R43” to “R4E” and leave closed as is.
- Parkinson Road** – Fix typo “R4S” to “T4S” and remove word paved since there is no paving. Leave one (1) mile closed.
- Pleasant Valley Road** – Add clarifying description “from Oregon state line in Section 27 of T5S R6W to the Pleasant Valley School in Section 13 of T6S R6W”, otherwise leave closed as is.
- Silver City Road** - Add clarifying description “Beginning at Highway 78 in Section 18 of T3S R1W to Diamond Basin/Old Stage Road in Section 5 of T4S R2W”.
- Wilson Creek Road** – Correct typo to remove “E” in “RE3W” to “R3W”, otherwise leave closed as is.
40. The Board made changes to the following roads with the changes listed after each road name:

**Bachman Grade Road** – Close three (3) miles beginning at Oreana Loop Road near the NE corner of section 36 in T4S R1W southwesterly to the south line of section 34 also in T4S R1W.

**Missile Base Road** – Remove reference to pavement, close 1.2 miles of road from Hwy 78 in Section 2 of T5S R2E to the north line of Section 11 of T5S R2E.

**Mud Flat Road** – Close first 12.5 miles from Hwy 78 on the section line between 26 and 27 in T5S R3E to the east line of Section 14 in T7S R2E.

**Reynolds Creek Road** – Remove the word “Upper” due to road name change, add clarifying description “Beginning at Highway 78 on the section line between sections 17 and 20 of T1S R2W to the section line between Section 36 of T2S R4W and Section 31 of T2S R3W at the cemetery”. The BLM’s Murphy Travel Plan established 4 specific OHV crossings of the Reynolds Creek Road. These 4 designated crossings are found between mile points 2 and 2.4 from the intersection of Reynolds Creek Road and Idaho Highway 78 as shown on Exhibit A to this decision. This decision document does not restrict those OHV crossings at the identified locations when those crossings are a brief presence upon the road as the OHV crosses the road. These crossings were intended to provide access to and from the Hemingway Butte OHV Area on one side of the road and BLM designated trails on the other side. Entering the road via one of the crossings and then continuing to travel upon the road would be a violation subject to enforcement action.

**Shoofly Cut Off Road** – Fix typo to change “SRE” to “R5E”, add description “from Highway 51 between Section 18 and 19 of T7S R5E to Mud Flat Road in Section 34 of T6S R3E”.

**Trout Creek Road** – Add word “paved” leaving two (2) miles closed from Pleasant Valley Road in Section 26 of T5S R6W to the end of pavement in Section 30 of T5S R5W.

## CONCLUSIONS OF LAW

**If any of the Conclusions of Law are deemed to be Findings of Fact, they are incorporated into the Findings of Fact section accordingly.**

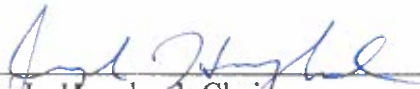
41. The actions by previous BOCC of Owyhee County in enacting Ordinance 10-03 were a proper response to both the changes of Idaho Code and concerns regarding public safety.
42. Ordinance 10-03 was enacted in accordance with requirements of public notice and participation.
43. Review by staff confirmed Clerk Barkell's belief that numerous errors existed within the Ordinance 10-03 or between the Ordinance and the map depicting the roads addressed within the ordinance.
44. Staff provided numerous corrections of typographical and other minor errors during or after the "Workshop" held on August 10, 2020.
45. BOCC accepted and approved those corrections during the deliberations on November 16, 2020.
46. BOCC approved other corrections on specific roads during their deliberations on November 16, 2020 as reflected in paragraphs 38, 39, and 40 of this document.
47. The BOCC declined to close additional roads beyond the 34 named roads listed in Ordinance 10-03 and published in the public notice for the July 7, 2020 Hearing.
48. The BOCC acted on the closure of the various roads on the basis of the earlier decision by BOCC to enact Ordinance 10-03, on the basis of the Exhibits and public testimony at Hearing, and on the basis of the Exhibits provided after Hearing regarding 911 Dispatch response calls, OHV accidents on paved roads, and BLM's response to questions regarding impacts of closures on established BLM trail systems.
49. The BOCC concluded on the basis of the evidence that the closures listed in paragraphs 38, 39, and 40 of this document are appropriate and necessary actions of the BOCC.



ORDER

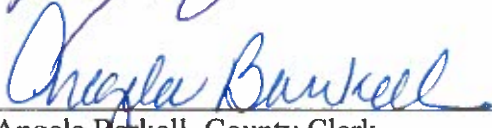
As Ordinance 10-03 now exists as a codified section of Owyhee County Code, The Board directs the Owyhee County Clerk to revise Title 6, Chapter 6, 6-6-8 of the Owyhee County Code with the road decisions contained within this document.

Dated this 28<sup>th</sup> Day of December 2020.

  
\_\_\_\_\_  
Jerry L. Hoagland, Chairman

  
\_\_\_\_\_  
Kelly Aberasturi, Commissioner

  
\_\_\_\_\_  
Joe Merriek, Commissioner

Attest:   
\_\_\_\_\_  
Angela Barkell, County Clerk

Date: 12-28-2020

**EXHIBIT A**  
**Green circles indicate designated crossing points.**

