



September 8, 2004

Marty Brown, Director
Office of Financial Management
P.O. Box 43113
Olympia, WA 98504-3113

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SEP 10 REC'D

OFM DIRECTOR'S OFFICE

Dear Mr. Brown:

The attached is the Department of Natural Resources' (DNR) detailed response to the recommendations from the Loss Prevention Review Team report on the three off-road vehicle incidents where riders of all-terrain vehicles were killed or seriously injured during 2003. We have extensively reviewed all of the team's recommendations, and categorized the team's recommendations into five groups:

- (1) Recommendations that increase rather than decrease the state's liability exposure (findings G7, 7, 25, 31);
- (2) Recommendations that will require additional funding to implement (G2, G3, G5, 2, 3, 6, 8, 9, 18, 19, 20, 21, 23, 28, 29);
- (3) Recommendations that can be implemented within normal course of business (G1, G4, 1, 2, 4, 5, 10, 11, 12, 13, 15, 16, 17, 27, 34, 36, 38);
- (4) Recommendations beyond scope of three incidents (14, 33, 35); and
- (5) Recommendations that support creation of statewide ORV task force (G6, 22, 24, 26, 30, 32, 37, 39).

The department is deeply committed to working with users for safe use of the state lands we manage, as evidenced by the attached flyer. However, several of the review team's recommendations went beyond the scope and authority the department must operate under. Other recommendations had no relationship to the three incidents reported, and at least one recommendation had nothing to do with ORV user safety (#14 – IAC leases). Incredibly, four of the major recommendations (#7, #25, #31, #33) would actually increase the state's (DNR's) tort liability exposure, rather than reduce it. These recommendations were sustained in the final report in spite of extensive discussions to the contrary from department staff and a representative from the Attorney General's Torts Division. We categorically reject those findings where the state's (DNR's) liability exposure will actually increase, not decrease.

We will submit those recommendations requiring new or additional funding (identified in (2)) as a budget decision package for the 2005-07 Biennium. The third group of recommendations (identified in (3)) will be implemented within existing programs and policies as recommended.

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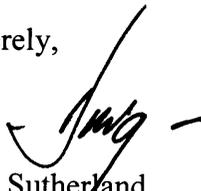
Given the nature of the sport, and the causative factors in these incidents, we believe the creation of a statewide task force is the only practical way to find manageable solutions to problems and issues created by ORV use, including accidents with fatalities or other serious injuries. No one landowner, no matter how large, can solve these issues without all parties with a stake being involved in developing workable solutions on a consensus basis.

In my November 12, 2003, letter to you, I expressed my disappointment with your decision to put this particular loss prevention review team together. Prior to the team's appointment, the department had already spent over \$18,000 to review the three incidents from a loss prevention perspective. During the course of the team's work, an estimated additional \$55,000 in DNR staff time was expended. While the team came up with several helpful suggestions to improve our program relative to safety messages, I do not believe that this effort, in total, has reduced the state's (DNR's) tort liability exposure in the area of providing access for motorized recreation activities. Even the report concludes that DNR has very limited control and influence over the safety of ORV riders.

The department appreciates that the five member review team worked hard on this report, but suggests OFM make changes to the program so that incident reviews stay focused to the subject matter (incidents) being investigated and do not make recommendations that are beyond the scope, and authority of the agency being investigated. Most importantly, the review teams should have sufficient knowledge to understand liability and the issues they are dealing with, or at least pay appropriate respect to the knowledge and advice of the state's legal counsel and other subject matter experts.

I would request that if further discussions on this subject are needed, that this be coordinated through Jim Smego, DNR's Risk Manager, who can be reached at (360) 902-1264.

Sincerely,



Doug Sutherland,
Commissioner of Public Lands

Enclosures

cc: Bonnie Bunning, Executive Director of Policy and Administration
Jim Smego, Risk Manager

**Loss Prevention Review Team – DNR Off-Road Vehicle Incidents
June 2, 2004 Report**

Summary of General Recommendations to DNR (page 3, 4)

- Incorporate User Safety in the Policies and Management Approach Related to Public Use. In the Public Use program, along with environmental protection and preservation of trusts' assets, emphasize user safety when and where motorized recreation is allowed. Reflect this emphasis in agency policies (including the draft interim ORV strategy), implementation procedures, risk management, agency culture, staff training, and outreach/communications to the user community.

Response (G1): DNR has a strong sense of responsibility regarding public safety and it will continue to be an important value of the agency. This sense of responsibility regarding public safety is evidenced by the personal commitment employees make in responding to incidents, working with user groups on trails and maintenance, and reaching out to local law enforcement to coordinate rescue and recovery efforts. User safety is also a factor in the department's enforcement efforts in managing users, user groups and in particular events on DNR managed lands. Nonetheless, improvements can always be made and the department will enhance the prominence of safety in our policies, training and user outreach efforts.

- Adjust the Agency's Risk Management Approach. In addition to the current focus on employee safety and liability protection, make promotion of user safety a valued component of risk management activities at the Public Use program level, and at the agency-wide level as needed to support that focus for the Public Use program.
- Provide Training. Increase coordination and training efforts with local first responders. Train DNR staff to recognize and take appropriate measures regarding potential liability exposures under the state's recreational immunity statute.

Response (G2, G3): The department will request additional funding to provide for a more focused and formal risk management training effort dealing with public access and associated liability issues. Agency managers and staff are cognizant of risk management practices and liability exposures associated with the Public Access program. Department employees; (1) understand the mission of the agency, (2) understand the agency's liability perspective, (3) recognize and understand "known, dangerous, latent and artificial conditions," and (4) take responsibility for safe trails, signs, enforcement, "volunteer" responses to accidents, etc. Department staff routinely respond to accidents when notified and provide assistance to local first responders when and where it is requested. These

efforts will continue. First response is an express responsibility of local jurisdictions, and DNR staff is available when assistance is requested.

- Apply Specific Safety Measures on DNR-managed Lands. Implement specific safety measures on DNR-managed lands to reduce the risks of accidents by ORV users.

Response (G4): DNR has a strong sense of responsibility regarding public safety and it will continue to be an important value of the agency. Safety will be highlighted in policies, signs, brochures and other outreach efforts.

- Address Funding Issues Related to Public Use Demands for DNR-managed Lands.

Response (G5): The department concurs with this recommendation, yet believes that it is a separate issue from the three incidents reported. Despite continued efforts there has been a 50 percent reduction in funding over the last ten years. DNR has aggressively pursued funding for all of its recreation and public access programs/activities with diminishing success over the years.

Recommendation to Governor and Legislature (page 4)

- Appoint a Task force on ORV Use in Washington State to study and make recommendations regarding issues related to ORV use within the state.

Response (G6): The department supports the creation of a statewide ORV Task Force to examine and make recommendations for any issues associated with this activity.

Recommendation to OFM (page 4)

- Coordinate an independent analysis by outside counsel of the public policy of the state in relation to public recreational use of state and private lands, and the protections afforded by the recreational immunity statute and case law, including the sufficiency and scope of its protection for land management agencies and landowners, given varying liability theories and evolving types of use. Provide the results of the analysis to DNR and, where relevant, to other state agencies.

Response (G7): The State's own attorneys have consistently reviewed the issue of recreational immunity and advised the department that this statute and associated case law provide significant protections for the state. The state prevailed in the Davis case at the State Supreme Court based solely on the protections afforded by the recreational immunity statute. DNR does not believe the expense of outside counsel is warranted.

Specific Recommendations – Section 4:

Program Management – refers to how ORV recreation is managed at all organizational levels, including DNR’s structure, policies and procedures, staff roles and enforcement (pages 19 – 22). Recommendations (pages 21-22):

1. Along with environmental protection and preservation of trusts’ assets, emphasize user safety when and where motorized recreation is allowed. Reflect this emphasis in agency policies (including the draft interim ORV strategy), implementation procedures, risk management, training, and outreach/communications to the user community.

Response: DNR has a strong sense of responsibility regarding public safety as evidenced by the personal commitment employees make in responding to incidents, working with user groups on trails and maintenance, training ourselves and volunteers, and reaching out to local law enforcement to coordinate rescue and recovery efforts. User safety is also a factor in the department’s enforcement efforts in managing users, user groups and in particular events on DNR managed lands. Nonetheless, improvements can always be made and the department will enhance the prominence of safety in our policies, training and user outreach efforts.

2. Reconfigure statewide program management to factor in variables such as differing landscapes, terrain, user patterns, and land management activities, while being consistent on signage, maps and brochures, a trail rating system, and basic rules.

Response: The department’s current organization structure does take into account management variables such as landscapes, terrain, land use and activity patterns. DNR’s management model consists of, (1) distributed responsibility and accountability, (2) outcome-based framework of vision, values, mission, policy and procedures bolstered by both written and oral communications, (3) training that is both formal and informal, and (4) focus on “on-the-ground” results.

We concur with the review team’s recommendations on consistency of signs, maps, brochures, trail rating system and rules for using department managed lands, and will be submitting a budget decision package that provides for the resources (staff, funding) to carry out such an effort (see responses to recommendations numbers 18, 19, 20, 23, 24, 25).

3. Engage in a statewide effort to better inform users on safety issues.

Response: The department will request additional funding to provide for a more focused and formal user outreach effort. Currently, DNR’s regional public access program staff meets regularly and discusses topics of mutual interest with user groups and individual users. The department has been

involved, and makes itself available to work with, various interest groups, non-profit organizations and other resource agencies at the statewide level to deal with public access issues on state lands.

4. Develop closer collaboration between Public Use program management staff and other DNR staff (including Enforcement) through establishment and conveying of priorities, especially user safety priorities. The current management model precludes direct Public Use program control of specific enforcement actions and policies to address user safety issues. Development of strong collaboration between the Public Use program and the Enforcement program, or a change in the management model, would address this concern.

Response: The department's current management model has ensured closer coordination between the Public Access and Enforcement programs. Both programs are under the same division manager and executive director, and have direct contact with the Commissioner. Because the law enforcement program has a broad range of department responsibilities, the separation of these functions ensures a productive working relationship without the undue influence of one program (Public Access) to the detriment of others in the agency that utilize the Enforcement program's services.

5. Ensure the Critical Incident Review (CIR) process includes:
 - a. Reviewing all public user accidents resulting in serious injury or death;
 - b. Sharing the lessons learned with all Regions, program management staff, and the enforcement group;
 - c. Program modification in response to the findings. (The Incident Critique process used by DNR for fire-related incidents offers one approach for sharing lessons learned, and for program modification procedures); and,
 - d. Training on topics related to the CIR conclusions where findings indicate it would be materially helpful.

Response: DNR's critical incident review process consists of an initial investigation by trained law enforcement staff of all serious accidents and fatalities we are made aware of. In some cases, the investigating agency (other than DNR) provides a sufficient analysis. In most cases DNR's law enforcement conducts an independent analysis of the incident. The critical incident review team is invoked when their analysis warrants such review. Results of any critical incident review effort will be more systematically shared throughout DNR and incorporated into agency training materials, as recommended.

6. Continue to pursue additional program funding through the budget process and Legislature to restore staffing for functions that can positively affect user safety, such as Trail Wardens and centralized recreation strategic planning staff, and to implement safety-related measures.

Response: The department concurs with this recommendation, yet believes that it is a separate issue from the three incidents reported. DNR has been actively and aggressively pursuing funding for all of its public access programs and activities with diminishing success over the years. Current funding is half (50%) of what it was just ten years ago. Funding reductions have routinely been required in this program area.

The department actively supported the State Parks Outdoor Recreation Funding (SPORF) task force and testified in favor of its recommendations, though those efforts were unsuccessful in the 2004 Legislative session. In addition, DNR initiated legislation (Legacy Trust) twice to develop creative ways to generate non-tax funding its public use activities with no success.

This year the Priorities of Government (POG) process has directed DNR to work collaboratively with State Parks and Department of Fish & Wildlife to develop new ways of carrying out recreation related activities. We are hopeful that these discussions will highlight the issues and lead to restoration of funds to maintain existing public use programs and activities, and perhaps implement the recommendations contained in this report.

7. Analyze and determine the feasibility of:
 - a. Statewide fees to support Public Use program costs (other state agencies, such as State Parks and the Washington Department of Fish and Wildlife (WDFW) have done so while maintaining coverage under the Washington recreation immunity statute); and,
 - b. User fees to support public use program costs, which may also involve accepting exposure to potential liability in certain instances or in specific locations.

Response: Without legislation to ensure recreational immunity comparable to other state agencies, it would be irresponsible to incur additional liability exposure to the state (DNR) by charging fees. While fees might provide a source of limited funding, the amount to be collected and the cost to do so raises questions around the advisability of assessing fees for public access for dispersed recreation opportunities.

The department has supported statewide fees contingent upon a change in the recreational immunity statute (7a), but there is no guarantee that this change to the state's recreation immunity statute can be enacted. During the 2003 session, such a change was proposed as part of the "Evergreen Pass" legislation, with no opposition from the state trial lawyers. This legislative effort was still unsuccessful.

The recommendation in 7b would actually increase DNR's (state's) tort liability exposure, and would not be consistent with the intent of the loss control or other risk management legislation passed in the 2002 session.

Agency Risk Management – refers to agency’s formal risk management activities related to the Public Use program (pages 22 – 24). Recommendations (pages 24):

8. Train DNR’s Region Managers in consistent risk management practices related to the Public Use program, to assist them in their delegated responsibilities.

Response: The department will request additional funding to provide for a more focused and formal risk management training effort dealing with public access and associated liability issues. Currently, DNR operates in a delegated, distributed environment where training is generally informal, but issue specific. Agency managers and staff are cognizant of risk management practices and liability exposures associated with the Public Use program. DNR’s management model consists of, (1) distributed responsibility and accountability, (2) outcome-based framework of vision, values, mission, policy and procedures bolstered by both written and oral communications, (3) training that is both formal and informal, and (4) focus on “on-the-ground” results.

9. Provide formal training to DNR staff to recognize and take appropriate measures regarding potential liability exposures under the state’s recreational immunity statute.

Response: The department will request additional funding to provide for a more focused and formal risk management training effort dealing with public access and associated liability issues. Agency managers and staff are cognizant of risk management practices and liability exposures associated with the Public Access program, but further improvements will be pursued.

10. Seek information regarding ORV accidents on DNR lands:
 - a. Develop systems and procedures to get information from counties, first responders, Department of Health (DOH), hospitals, clinics, and other agencies with relevant information.
 - b. Share “lessons learned” from accident analyses with all the Regions.
 - c. Create a database and use it to develop prevention strategies. Include public user accident information in the database.
 - d. Periodically use accident information and lessons learned to update management plans and safety strategies.

Response: The Department reports and tracks incidents on its land and incidents affecting employees through its internal Initial Incident Report (IIR) system. The system has been revised a couple of times since first implemented in the late 1980’s, and recently we completed an update of the historical data collected in reports from prior years. Depending on the

seriousness of a particular incident, the investigators and other staff will utilize whatever resources are available to document each accident.

DNR has historically and traditionally had informal working agreements with local law enforcement and emergency response entities. Over time many of these are becoming more formalized. However, accident response is essentially a local jurisdiction issue, and notification to DNR of their response actions is not required.

DNR will improve the sharing of “lessons learned” and update management approaches and safety strategies based on those lessons.

11. Clarify and identify the role of specific agency personnel in relation to accidents on DNR land. This would clarify agency personnel’s roles and responsibilities in assisting first responders. For example, the team’s assessment of Incident B identified this as an issue.

Response: Department staff routinely respond to accidents when notified and provide assistance to local first responders when and where it is requested. Clarification of roles and management expectations will be addressed in the training noted in #8.

12. Establish accident reconstruction protocols using expert accident reconstructionists, such as WSP offers, as part of the Critical Incident Review program for all incidents involving serious injuries or fatalities. Share the investigation/review conclusions among the Regions.

Response: Consistent with our risk management approach, described in the response to recommendation #5 above, DNR relies on the State Patrol and our own law enforcement investigators to assess each incident and make the determination of the need for this activity when warranted.

13. Incorporate user safety and other risk management strategies into the final “Recreation and Access Policy for DNR Trust Lands” policy (currently in draft form).

Response: Safety and risk management will be incorporated into the final policy document.

14. Enlist legal counsel and Public Use program assistance to review, and amend as necessary, the easements, leases, licenses, and any other Public Use instruments that place the agency and/or Public Use program in the position of being liable for loss or damage resulting from the use of the premises, or where current agency decision-making practices run counter to the terms and conditions of the documents.

Response: The department believes this recommendation is beyond the scope of the three reported incidents, as there is no indication that any of the three accident sites involved lands under these types of agreements.

Agency Culture – refers to the agency’s pattern of beliefs, values, practices and artifacts that define for DNR staff members who they are and how they do things (pages 25 – 26). Recommendations (pages 26):

15. Promote a culture that fosters proactive agency actions that improve user safety.

Response: The department has been and will continue to be committed toward improving safety, and will take proactive measures in that regard.

16. Promote a culture that fosters working in concert with other agencies that also have recreational programs and learning from each others’ experiences.

Response: In recent years, DNR has made many positive strides in working with other public resource agencies, and will continue to look for opportunities to join forces and accomplish common goals. The recreating public expects cooperation among agencies, and we are enthusiastic in meeting these expectations.

17. DNR employees need to complement the Commissioner of Public Lands’ leadership on recreational opportunities with the supporting work to ensure that use occurs as safely as possible.

Response: The department has been and will continue to be committed toward improving safety, and providing a wide variety of recreation access, safely, to the public.

Trails and Roads – refers to management of the DNR-managed trails and roads used by ORVs (pages 26 – 30). Recommendations for Trails (pages 27 – 28):

18. Develop consistent, statewide signage for ORV trails and trailheads. The need for signs may vary, but where they are used, they should be consistent. This is sometimes referred to as developing a signing or naming convention. At a minimum, signage for trails open to motorized recreation should:
- a. Identify allowed uses,
 - b. Rate the difficulty of the trail,
 - c. Warn trail and road users of road/trail crossings,
 - d. Identify the name of the trail,
 - e. Provide mileage along the trail, and

- f. Include safety messages. One example is the signage posted at Tahuya State Forest indicating the numbers of accidents or fatalities on that system in the recent past.

Response: We concur with the review team's recommendations on consistency of signs, trail rating system, and rules for using department managed lands, and will be submitting a budget decision package that provides for the resources (staff, funding) to carry out such an effort (see responses to recommendations numbers 2, 19, 20, 23, 24, 25).

19. Ensure minimum acceptable maintenance occurs on DNR-managed ORV trails:
 - a. Identify supervisory requirements for volunteer work parties,
 - b. Develop minimum training requirements for unsupervised volunteers,
 - c. Develop a certification system for volunteer crew leaders, and
 - d. Establish a periodic trail maintenance inspection procedure.

Response: We concur with the review team's recommendations on consistency on minimum acceptable maintenance on DNR-managed ORV trails, and will be submitting a budget decision package that provides for the resources (staff, funding) to carry out such an effort (see responses to recommendations numbers 2, 18, 20, 23, 24, 25).

20. Complete individual management plans for all designated ORV trail systems, with a focus on user safety, preservation of trust assets, and environmental protection. The plans need to identify:
 - a. What uses are appropriate on each trail,
 - b. The trail segments that need to be modified to reduce speed,
 - c. Areas of environmental concern,
 - d. Signage needs,
 - e. Trail difficulty ratings, and how to notify users of those ratings,
 - f. New trail opportunities,
 - g. Replacement trails needed to get ORVs off roads, and
 - h. Timeframe for periodic review and update of the plans.

Response: We concur with the review team's recommendations on completing individual management plans for ORV trails systems, and will continue to pursue IAC and other grants to provide funding for this activity, both to complete plans in process and to initiate new planning efforts (see responses to recommendations numbers 2, 18, 19, 23, 24, 25).

21. Review designated ORV trail systems and develop strategies for minimizing interactions between ORVs and other motor vehicles. As a first step, road segments needed to complete ORV riding loops should be identified, and these areas signed to warn all users of the mixed traffic. As funds permit, construct connecting trail segments so that use of these roads by ORVs is discontinued.

Response: The funding to complete, upgrade and modify trail systems will be reviewed and evaluated as part of the planning process (see response to recommendation number 20).

22. In addition to DNR, other land management agencies, recreationists, and the ORV industry would benefit from consistent signage and management of ORV trails and facilities in the State of Washington. For this reason, in addition to DNR's work to create consistent signage, this should be one of the topics discussed by the ORV Task Force that is recommended elsewhere in this report.

Response: The department supports the creation of a statewide ORV Task Force to examine and make recommendations for any issues associated with this activity.

23. Establish a trail designation system to identify permitted ORVs for a given trail. That is, trails would be considered closed to a particular type of ORV unless marked as open for that use. This approach allows DNR to defend the integrity of the constructed trails.

Response: This work will be accomplished as part of the planning and implementation of management plans created under grants awarded by IAC (see response to recommendation number 20).

Recommendations for Roads (pages 29 – 30):

24. Develop a consistent, statewide policy regarding ORV use of DNR-managed roads. Address the unique safety concerns posed by underage, unlicensed ORV riders. The team recommends that the policy:
- a. Declare all DNR-managed roads closed to non-street licensed vehicles and unlicensed operators unless posted otherwise;
 - b. Determine under what specific circumstances any DNR-managed roads should be open to non-street licensed vehicles and/or unlicensed operators; and,
 - c. Determine appropriate signing requirements (e.g., signing requirements if ORVs are allowed on road segments) and develop consistent, statewide signage for ORV use of roads. The need for signs may vary, but where they are used, they should be consistent. This is sometimes referred to as developing a signing or naming convention.

Response: DNR has consistently supported and will continue to support legislative attempts to address these issues on a statewide basis.

25. Develop a consistent, statewide policy regarding motorized vehicle use of DNR-managed roads (ORVs, passenger vehicles, commercial vehicles, etc.). Determine:
- a. If, when, and where speed limits are appropriate, and

- b. What other signing is appropriate (e.g., signs located at the major entrances of road systems stating that DNR roads: are primitive, used by a variety of vehicles for a variety of purposes, and that users have a responsibility to operate their vehicles in a manner appropriate to current conditions).
- c. Include mileage markers on roads to facilitate location of accident sites.

Response: Legal counsel has advised the agency that the state's (DNR's) liability exposure would be significantly increased by the greater expectations created when traffic control measures are placed on forest management roads in a manner that mimics state highways, creating road building and maintenance standards that are not appropriate to these road systems.

26. In addition to DNR, other land management agencies, recreationists, and the ORV industry would benefit from consistent signage and management of roads used by ORVs in the State of Washington. For this reason, in addition to DNR's work to create consistent signage, this should be one of the topics discussed by the ORV Task Force that is recommended elsewhere in this report.

Response: The department supports the creation of a statewide ORV Task Force to examine and make recommendations for any issues associated with this activity.

Users and User Groups – relates to the agency's work and communications with both individual ORV users and their user groups (pages 30 – 32). Recommendations (pages 31 – 32):

27. Be an advocate for user safety. This advocacy needs to be reflected in the agency's policies, rules and regulations, and should be communicated to users and the industry through maps, signs, web pages, user group contacts, direct user contacts, dealer contacts, and other communications methods.

Response: DNR has a strong sense of responsibility regarding public safety and it will continue to be an important value of the agency. Safety will be highlighted in policies, signs, brochures and other outreach efforts. This commitment to safety is evidenced by the personal commitment employees make in responding to incidents, working with user groups on trails and maintenance, and reaching out to local law enforcement to coordinate rescue and recovery efforts.

28. Develop a communication strategy to better ensure information regarding safety information, and rules and regulations, are available to users, dealers, industry, and other recreation managers.

Response: The department will request additional funding to provide for a more focused and formal user outreach effort. This recommendation will be addressed as the outreach efforts identified in budget decision packages are funded and implemented.

29. Further develop user group relationships through the continued use of focus groups and other public involvement methods. Include as assessment of the “lessons learned” and best practices from individual Regions, and implement them statewide as appropriate.

Response: The department will request additional funding to provide for a more focused and formal user outreach effort. This recommendation will be addressed as the outreach efforts identified in budget decision packages are funded and implemented.

30. DNR, as well as other land management agencies, the ORV recreationists, and the ORV industry, and other land management agencies would benefit from a consistent statewide ORV safety program. This should be one of the topics discussed by the ORV Task Force that is recommended elsewhere in this report.

Response: The department supports the creation of a statewide ORV Task Force to examine and make recommendations for any issues associated with this activity.

Equipment – addresses whether DNR should limit aspects of ORV equipment on the land it manages, such as horsepower, size, or types of models (pages 32 – 33).

Recommendations (pages 33):

31. Specify the maximum size of vehicles permitted on various types of trails. Four wheel drive trails, for example, would be defined as being open to vehicles of a maximum size, and not altered to accommodate oversize vehicles. DNR commissioned officers could then cite violators of these rules.

Response: The department has no legal authority to control and/or direct the safety requirements of ORV use. This issue is an appropriate one for the ORV Task Force to deal with and recommend statewide solutions to the Legislature.

32. Since DNR is but one among a number of landowners allowing ORV use, it would be difficult for the agency to attempt to ban ORVs by horsepower or other specifications by itself. Once again, the statewide ORV Task Force recommended elsewhere in this report would be a more appropriate forum to consider such changes. In this case, it may be fruitful for the statewide effort, recommended elsewhere in the report, to consider working with other states and the industry to agree on some set of industry standards for ORV specifications.

Response: The department supports the creation of a statewide ORV Task Force to examine and make recommendations for any issues associated with this activity.

33. Ban the use of 3-wheel ATVs on DNR-managed lands, sending a clear message that these dangerous machines should be retired from use. The statewide ORV Task Force should also address 3-wheeled ATV use in the state.

Response: DNR lacks specific authority to implement this recommendation. The federal government has been unable to ban 3-wheel ATVs. This issues is beyond the scope of the three reported incidents as none of them involved 3-wheel ATVs.

Communications and Interagency Relations – refers to DNR communication and work with other agencies during ORV incident response and program management, communications within DNR regarding ORV incidents, and communications to ORV users regarding their safety (pages 33 – 35). Recommendations (pages 34 – 35):

34. Continue to work with, and increase coordination efforts and incident response training with, local first responders. This includes clarifying the DNR staff's role when an incident occurs such as locating the site of an accident and assisting first aid responders in finding the location of the incident.

Response: Department staff routinely respond to accidents when notified and provide assistance to local first responders when and where it is requested. First response is an express responsibility of local jurisdictions, and DNR staff are available when assistance is requested. Accident response is not an assigned or delegated responsibility of DNR. Unlike fire suppression, accident response is not is governed by statute and funded as an agency responsibility (see response to recommendation #11).

35. Establish communication protocols with local emergency responders for use during incident response (e.g. agreed upon frequencies for radio communications).

Response: Communication protocols among local first responders and DNR can be as varied and individual as there are local entities involved. Radio frequencies assigned by the FCC are in a state of change due to the federally mandated conversion over the next few years from analog to digital equipment, and increasing the number of bands available. Radio is but one form of communication. DNR's law enforcement personnel are equipped with 2-way radios, CB's, cell phones, police frequency monitoring, and walkie-talkies. Communication protocols are established as needed and will

evolve and improve as technology changes and FCC guidelines are implemented over time.

36. Initiate contacts with USFS to jointly review each agency's current rules and policies relating to ORV use, with the goal of agreeing on consistency wherever feasible.

Response: The department values cooperation among land management entities (federal, state, local) and will continue to share jurisdiction where it makes sense. Where DNR managed lands are not adjoining with the USFS, the differences in vision, mission, land management activities, etc. influence the details of our cooperation.

37. Take a leadership role in bringing land managers and other relevant agencies, such as DOH and Department of Licensing, together to establish a cohesive effort to address ORV safety. While it is anticipated the statewide ORV Task Force will address agency interaction, this recommendation recognizes DNR as the leading provider of recreational land for ORV use in the state.

Response: DNR's mission is to manage state lands for specific beneficial purposes. Open access to these lands is available to the public, including trail users of all types, to enjoy the access provided. The responsibility for leadership on ORV issues rightly should be placed with the statewide ORV task force.

38. Identify when and how the agency will contact family members or victims of ORV accidents to express sympathy or otherwise express concern.

Response: Guidance to agency staff will continue to be provided consistent with the statute.

Statewide Factors – (39.) The team recommends the Governor and Legislature appoint an ORV Task Force to study and make recommendations regarding issues related to ORV use (including snowmobiles) within the state. The objective of the Task force would be to propose new legislation and policies regarding ORV use in Washington (pages 35 – 36).

Response: The department supports the creation of a statewide ORV Task Force to examine and make recommendations for any issues associated with this activity.

- Representation on the Task Force should include:
 - a. Land Managers
 - 1. Department of Natural Resources
 - 2. Washington State Parks and Recreation Commission
 - 3. Washington Department of Fish and Wildlife

4. U.S. Forest Service
 5. Bureau of Land Management
 6. Local agencies (e.g. Grant County, Spokane County, City of Richland, City of Anacortes)
 7. Large natural resource based private landowners
- b. Regulators
 1. Department of Licensing
 2. Washington Traffic Safety Commission
 3. Washington State Patrol
 4. Local law enforcement representatives
 - c. Industry Representatives
 - d. ORV recreation funding providers
 1. Interagency Committee for Outdoor Recreation
 2. Washington State Legislature
 3. Governor's Office
 - e. User Group Representatives
- Topics to Study and Make Recommendations
- a. Accident reporting requirements
 - b. Age requirements for ORV riders
 - c. Creation of a landowner/land manager mitigation fund
 - d. Emission standards
 - e. Enforcement options
 - f. Horsepower limits
 - g. Identifying agency roles
 - h. Liability/recreational immunity statute
 - i. License/certification requirements for ORV riders
 - j. Noise regulations
 - k. Personal and property liability insurance
 - l. Program funding sources
 - m. Public information needs
 - n. Safety equipment/personal safety gear
 - o. Training requirements for ORV users or riders
 - p. Use of 3-wheel ATVs
 - q. Use of ORVs on roads