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October 15, 2010

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

2010 OCT 15 PM 2:14
RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY

By electronic and First Class mail

RE: Easement for the Rubicon Trail

Dear Board Members:

This office represents the Rubicon Trail Foundation (RTF) and this letter will serve as RTF's written comments on agenda item #3 for the upcoming October 19, 2010, meeting, regarding applying for an easement from the United States Department of Agriculture (USDA) and local private property owners for the Rubicon Trail. RTF directors attempted to contact you personally and by phone yesterday and today, but were told that you were in a workshop for today and most of Monday. Very briefly, RTF would support the County applying for an easement for the Rubicon Trail from the USDA if the County supports RTF applying for the same easement. As will be discussed below, an easement held by two different entities would be in the best interest of the trail and the best way to ensure the Rubicon Trail will remain open for future users.

Based upon conversations with County staff, we understand that the USDA has been advocating the concept of an easement for the whole trail for some time, but these discussions came to a head a few weeks ago when the USDA held a meeting and strongly encouraged the County to apply for an easement under the Federal Roads and Trails Act (FRTA). The USDA's reason for calling the meeting is unknown, but based upon what was discussed, it appears as though the USDA is eager to find an entity that will formally agree to operate and maintain the trail.

After this meeting, we were informed and we understand the County has been discussing the matter internally and is leaning toward applying for the easement. Obtaining the easement would provide the County with several benefits. One, an easement will prevent the need for the County to adjudicate its rights under RS2477 should a legal question ever arise as to who has the right to operate and maintain the trail. Two, the USDA has indicated it will include within the easement language that it is not intended to supersede, supplant, or abrogate any rights the County may have to the trail under RS2477. Three, the USDA has indicated the easement will cover the new location for the bridge over Ellis Creek, which is a requirement in the Cleanup and Abatement Order issued by the Regional Water Board. Four, the USDA has indicated that the new easement could be wider in some areas than others, which could cover current bypasses and variances. And five, the USDA has indicated it may be willing to cover the cost of the easement, as long as the County applies for it on a timely basis.

These are persuasive reasons to apply for an easement. However, RTF is concerned, and has been

concerned for some time, that if the easement is held only by the County, similar to the rights held under RS2477, the future of the trail is entirely up to the County. While the County has been an exceptional and valuable partner in keeping the trail open, RTF is concerned this may not always be the case. RTF is concerned that there may come a time, whether it be two years from now or ten years from now, when the County may lose interest in the trail. This could be the result of changing political conditions, financial conditions, or the simple lack of County resources. If this were to occur, the trail could be in jeopardy and because the County would hold the only property interest in the trail, there would be little RTF could do about it.

However, if RTF held an easement to the trail, RTF could step in place of the County to maintain the trail to keep it open. While RTF does not have the resources that the County does, it has been raising money and organizing work parties for the trail for years. There is no reason to believe that RTF will not be able to continue to do this, especially if the future of the trail is at risk.

In addition to being a backstop, if RTF held an easement along with the County, RTF could serve as an important partner to the County if the operation or maintenance of the trail was ever to be challenged again. As of right now, RTF is classified as a "user group" which provides it with little standing in an administrative or legal action. If it held a property interest, RTF could stand shoulder to shoulder with the County and assist the County in defense of the trail.

In sum, RTF believes that holding a formal easement to the trail would provide the County with many benefits, but a broader look at the big picture of what would benefit the *trail* the most, reveals that RTF should also hold an easement. We understand that the USDA is anxious to give the County an easement, which means this can be an opportunity for the County and RTF. We think that if the County told the USDA the County will apply for an easement, but only if RTF can be included, we have a better chance to accomplish this. RTF has already, by a unanimous vote of the directors, decided to apply for an easement, and County support should help make it happen. If we do not take advantage of this opportunity, and RTF were to apply for an easement at a later date, the USDA would have no incentive to grant another easement, since the County already holds one. Therefore, we strongly encourage the Board, if it decides to apply for an easement, that RTF be included in the application, or at the very least that it support RTF filing a separate application.

Lastly, with respect to the private property owners along the trail, RTF has very close relationships with these owners. If easements are sought from these owners, it is possible RTF could assist the County in acquiring these easements. This would, of course, depend upon the private property owners, but it is possible an agreement could be made under which there will be a charitable donation of the easement property that would benefit the private property owners, the County and the users of the Rubicon Trail.

If you have any questions, please feel free to contact me.

Very truly yours,


Jesse W. Barton

cc. RTF Board of Directors (by email)
Ed Knapp (by email)