



File Code: 1950

Date: September 12, 2011

Supervisor Ray Nutting
330 Fair Lane, Building A
Placerville, CA 95667

RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY
8:50 am, Sep 13, 2011

Dear Supervisor Nutting,

Thank you for forwarding the agenda item and associated materials, related to the Rubicon Trail for consent by the El Dorado County Board of Supervisors on Tuesday, September 13, 2011. I would like to submit to you this letter for the record.

I am responding in particular to Attachment A - Rubicon Trail Status Report, dated September 1, 2011. The response addresses the following topics: status of the Rubicon Easement NEPA schedule, 2010 maintenance authorizations, 2011 maintenance authorizations, 1992 Forest Road Agreement between the Eldorado National Forest and El Dorado County, Programmatic Agreement, and Attachment C - Francis Cow Camp/El Dorado County Easement request.

The Eldorado National Forest continues to assist the County in addressing the Cleanup and Abatement Order issued by the Central Valley Water Quality Control Board. In support to this effort, on Friday September 2, 2011 a Notice of Intent to prepare an Environmental Impact Statement (EIS) for issuance of an easement to El Dorado County for the Rubicon Trail was published in the Federal Register. This notice initiates the public involvement process and the overall analysis for the easement. A Public Scoping Letter was also completed on September 2, 2011. The Forest has scheduled an Open House for September 28, 2011, to give the public an opportunity to ask questions concerning the proposed activities. The Forest is on schedule to complete the EIS as well as signing of a Record of Decision in April 2012.

2010 Maintenance Authorizations

In 2010 the following activities were authorized:

June 10, 2010 – Authorized Rubicon Trail Foundation to establish small campsite at Ellis Creek and Buck Island Reservoir on National Forest System lands near and adjacent to the Rubicon Trail. Volunteers conducted use counts and maintained equipment on NFS lands to support the counts.

August 18, 2010 – Authorized El Dorado County DOT the use/maintenance of existing kiosk near Wentworth Springs Campground, previously owned by Rubicon Trail Foundation by amendment to Special Use Permit (SUP) dated 6/27/2008.

September 1, 2010 – Authorized El Dorado County DOT temporary access to the Rubicon Trail by crossing NFS lands from Forest Road 14N05 to the county road known as Rubicon Trail.

September 30, 2010 – A Decision Memo was signed to issue a new special use authorization to El Dorado County to construct and maintain a toilet and septic transfer vault located north of the Ellis Creek crossing on the Rubicon Trail. In addition, the authorization included a service road for pumping the waste transfer between the end of 14N05 and the Rubicon Trail.

October 1, 2010 – Authorized El Dorado County DOT to install and maintain a toilet facility and septic transfer vault near the Ellis Creek crossing of the Rubicon Trail. El Dorado County operated and maintained the toilet. In addition, a service road and two gates also owned and operated by the county were authorized with this permit.

Eldorado National Forest staff participated in the Rubicon Oversight Committee (ROC) and met frequently with County DOT staff. Eldorado National Forest staff also provided patrols and monitoring along the Rubicon Trail and adjacent areas, in order to address public use and sanitation along the Trail.

Installation of BMPs from Wentworth Springs to Walker Hill, in response to the CAO, was not authorized by the Forest Service. The work was completed without analysis under the NEPA.

2011 Maintenance Authorizations

Currently the following activities are authorized for the 2011 field season:

July 7, 2011 – Authorized El Dorado County DOT to install temporary improvements for a base camp near Airport Flat for Rubicon Trail maintenance activities during the 2011 work season. This location is preferred for activities on the County maintained road from Airport Flat to Wentworth Springs.

June 20, 2011 – Authorized El Dorado County to remove 1000 short tons of rock from the Gerle Creek Adit spoil pile.

June 30, 2011 – Authorized California State Parks, OHV Division to store and use a self-contained travel trailer on NFS lands at Schlein Station to assist in law enforcement patrols. Access will be through a locked gate, which will be secured at all times.

July 14, 2011 – Authorized El Dorado County DOT to stockpile materials at log landings at the end of 14N05, Loon Lake Rubicon Trailhead and Wentworth Springs Campground.

August 12, 2011 – A decision was signed to maintain, repair and modify existing road features along the Rubicon Trail from Wentworth Springs Campground east to Walker Hill.

August 19, 2011 – A decision was signed to maintain and repair two segments of the Rubicon Trail (Airport Flat to Wentworth Springs and Walker Hill to Little Sluice). Work includes

pulling side cast that is created by traffic pushing soil from the traveled way back into the traveled way and use of a stockpile location on the segment from Airport Flat to Wentworth Springs in the vicinity of Rocky Basin.

August 31, 2011 – Letter to El Dorado County summarizing work authorized to complete during the 2011 field season.

Approval for use of stockpiles #4, #6, and #7 will occur when all parties have signed the PA.

1992 Forest Road Agreement

On October 6, 1992, a Forest Road Agreement between the USDA-Forest Service and El Dorado County was executed. The purpose of the agreement was “for the cooperative planning, survey, design, construction, reconstruction, improvement, and maintenance of certain Forest Development Roads in El Dorado County...” Schedule A is an attachment to the agreement, listing 35 roads or segments of roads that are “within the Forest development road system and are maintained by El Dorado County.” County Road 63 is listed twice. The second listing is shown as Wentworth Springs Road, with an accompanying description that starts at Airport Flat Campground and continues to the Forest boundary near Rubicon Springs. A portion of this section of Wentworth Springs Road is commonly referred to as the Rubicon trail.

A portion of the Forest Road Agreement addresses cooperation between the two parties. “It is the intention of the parties under this agreement to cooperate as follows: (f) Provide for appropriate jurisdictional status of roads through transfer of easements and acquisition of easements by the appropriate party.” Later in the document it spells out a process for allocating costs of obtaining easements. “The costs of such easements or other interests in land are to be at the expense of the acquiring party”. We have not found any documentation that would indicate the County had requested an easement over the section of Wentworth Springs Road, including the Rubicon, until the completion of the easement request that was made by the County within the past year. The Forest Service recognized that issuance of an easement would clear up the jurisdiction issue on the Rubicon, and has agreed to waive the cost of granting this easement to the County.

It should also be noted that there is a section of this Agreement that states “Nothing herein contained shall be construed to obligate the Forest Service or the Cooperator (El Dorado County) beyond the extent of available funds allocated or programmed for this work, or contrary to applicable laws, rules and regulations.” I bring this to your attention, as one of the concerns expressed by Supervisor Sweeney is the length of time to complete NEPA associated with issuing the easement.

We are required by regulation to complete the necessary environmental analysis and associated timeframes in order to issue the easement as requested by the County. We have established a very aggressive and shortened timeline afforded under our regulations to support the County and reach a decision for the easement in April of 2012.

We are very interested and invested in supporting the County in their work to address the CAO and we are making this work a priority for the Forest. However, we do have a process that we are required to follow, and while acknowledging that this can be a source of frustration for the County, we are not authorized to short-cut our responsibilities.

Programmatic Agreement

As a federal agency, the Forest Service is required to comply with the National Historic Preservation Act (NHPA). Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (Council) an opportunity to comment on such undertakings. The Council's implementing regulations for Section 106 (36 CFR 800) outline the process Federal agencies follow to meet these statutory responsibilities. In addition to identification of historic properties, assessment of effects, and resolution of adverse effects, the regulations also require consultation with the State Historical Preservation Officer and other affected agencies, as well as other interested parties and organizations interested in a particular resource (e.g. tribes, historic societies, etc.).

An undertaking as defined in § 800.16(y), "is any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval". If an activity meets this definition, the agency must then determine whether it is a type of activity that has the potential to cause effects on historic properties. Compliance with Section 106 must be concluded prior to the approval (e.g. NEPA decision or permit issuance) or the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.

The proposed Programmatic Agreement (PA) is an alternative to the process identified in 36 CFR 800. It allows for a phased approach to the process. As soon as the PA is executed, the Section 106 process is concluded, provided terms are implemented. The PA will allow the Forest Service and Corps of Engineers to issue its NEPA decisions and authorizations, even though additional work may need to be concluded prior to implementation of an activity.

The proposed Programmatic Agreement is not limited to the activities in support of the proposed easement and other related projects. It also intended to facilitate any other activities potentially affecting the historic values of the Rubicon Trail alignments within the APE which may, in the future, be conducted or authorized by the Forest Service. Therefore, participating in the proposed Programmatic Agreement, the Forest Service will not need to re-initiate Section 106 compliance process for each undertaking.

The physical location of the historic route alignments, combined with proposed and foreseeable federal actions, define the APE. At present, the APE terminates at the El Dorado and Placer County line. However, in the future the PA may be extended to include the remainder of the

route to its eastern terminus so all federal actions along the route that may affect the historic property are managed in a consistent manner. At present, pending final review and comment by the Advisory Council on Historic Preservation, the proposed PA is ready for signature and execution. The Forest Service is ready to sign. The Forest Service completed inventory and recordation of the historic alignments of the route this field season in support of planned activities and in support of the upcoming evaluation.

The Forest Service has the funding in place and will be contracting the National Register of Historic Places (NRHP) evaluation of the Rubicon Trail this October (start of the federal fiscal year) with a proposed deliverable date for the evaluation by **March 1, 2012**. The evaluation will determine whether or not the route is eligible for inclusion into the NRHP. If the route is determined to be eligible for inclusion into the NRHP, those segments which have contributing and non-contributing historic features or values will be identified for future management. Given the proposed contract schedule, the evaluation will not delay any planned implementation such as construction of the Ellis Bridge. However, if for any unforeseen reason the evaluation has not been finalized prior to construction, the PA allows for mitigation (Historic American Engineering Record documentation) to resolve any potential adverse effects, which can be conducted prior to implementation.

Francis Cow Camp Acquisition

The County is requesting an easement for what the County is describing as its “historic prescriptive use” for a road across Francis Cow Camp. The request describes that an easement for the existing Wentworth Springs Road in a width of 25 feet on each side of the existing centerline be granted to the County of El Dorado before the United States takes title to the property.

We have researched whether the United States has any interests, such as an existing easement, that it could transfer prior to the acquisition of the land within the parcel to be purchased. It currently does not appear so. We could only grant an easement after acquiring the parcel, and following our usual procedures in authorizing an easement to the County. The United States cannot convey an interest that it does not have for the Francis Cow Camp parcel

I appreciate the opportunity to provide this information and we will continue to work with the County in a positive manner.

Sincerely,

/s/ Michael A. Valdes
MICHAEL A. VALDES
Acting Forest Supervisor

