

DANIEL F. GALLERY
JESSE W. BARTON

GALLERY & BARTON
A PROFESSIONAL LAW CORPORATION
1112 I STREET, SUITE 240
SACRAMENTO, CA 95814-2865

P: (916) 444-2880
F: (916) 444-6915
WWW.GALLERYBARTONLAW.COM

WRITER'S E-MAIL: jbarton@gallerybartonlaw.com

April 18, 2014

Ms. Carol Roland-Nawi
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

RE: Rubicon Trail

Dear Ms. Roland-Nawi:

This office represents the Rubicon Trail Foundation (RTF) and the purpose of this letter is to inform your office that RTF opposes both the eligibility and any possible nomination of the Rubicon Trail (Trail) to the National Register of Historic Places (NRHP). The reasons for RTF's position are outlined below.

With respect to eligibility, the December 12, 2012, cover letter from Kathryn Hardy, Forest Supervisor of the Eldorado National Forest, and the Par Environmental Services study (Par Study) attached to Ms. Hardy's cover letter, claim that two segments of the Trail are eligible for inclusion under the NRHP under criteria A, B, C, and D (36 CFR 60.4), under three different periods. Not all criteria are met in all three periods.

Criterion A requires that aspects of the Trail "are associated with events that have made a significant contribution to the broad patterns of our history." Yet the Trail was merely a pack road for settlers that in spite of the exhaustive documentation of the Par Study, fails to show any significant contribution to our Nation's history. While important to a select few, there is no evidence the Trail contributed anything more than a vacation destination for adventurous-minded individuals. Under this criterion, then nearly every road or hiking trail in this nation would become eligible for listing under the NRHP.

Criterion B requires that aspects of the Trail "are associated with the lives of persons significant in our past" yet the Par Study fails to name a single significant person outside of Mark Smith, who is only of local interest.

Criterion C requires that aspects of the Trail "embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction." Despite the Par Study's best efforts, there is no evidence of any of the construction elements of the original Trail. Many portions of the "original" Trail are believed to have either been eroded (Page 44-46), modified (Figures 17, 28; Pages 62-69, 81, 82, 85), or rerouted (Page 48, 82; Figures 27, 31, 36, 38, 39, 41, 43, 44). The Par Study does correctly note

that the Trail has been extensively used as a four wheel drive route from 1946 to the present day. The use of the Trail in this manner has removed any semblance the Trail may have to past “distinctive characteristics” or historical “methods of construction.” The Par Study asserts the presence of historical attributes, but no proof or documentation is provided. For example, Figures 33 and 42 show nothing more than smooth cobble that was recently placed to address erosion concerns and some fragments of decomposed granite. To suggest in Figure 33 that one granite rock was dynamited is sheer conjecture. Even further, the locations marked in Figures 18 and 45 as “blast sites” are simply one person’s belief of blasting activity, with no documented proof of when or why such blasting may have occurred. Our personal experience is that Jeepers Jamboree/JJUSA/Mark Smith were blasting on the Trail from the 1970s through the mid-1990s on a regular basis to make the Trail easier for stock jeeps.

Criterion D requires that the Trail “have yielded, or may be likely to yield, information important in prehistory or history.” Similar to Criterion C, the Par Study asserts these attributes are present, but no real support is provided. Since it is being used as an off-road experience, the only likely “artifacts” to be found on the Trail are broken axles and teeth from transmissions, transfer cases, and differentials. Further, blazed trees, narrow cobble-covered trails, or abandoned portions of the Trail are common throughout California (Page 115). It is unclear what important information these items may provide to a researcher.

These issues we have identified remove the Trail from eligibility. “Criteria considerations” include the following:

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. (36 CFR 60.4, emphasis added.)

The fact that portions of the Trail have been moved or recently reconstructed and that the Jeepers Jamboree is held each year as a commemorative event should therefore disqualify the Trail from eligibility.

While we certainly agree that the Par Study is an excellent documentary product, and that the Trail does have R.S. 2477 status (Page 1), this does not necessarily mean that any element of the Par Study actually validates a finding of eligibility. Par was hired to conduct an historical analysis of the Trail, but unfortunately it appears that when Par was hired to perform the study, some bias crept into the analysis. The old adage of “when you’re a hammer, everything tends to look like a nail” came to mind when this office reviewed the Par Study. Thus, when an historian reviews a situation, everything tends to appear to be historical. We therefore see no objective basis to determine the Trail to be eligible for inclusion in the National Register.

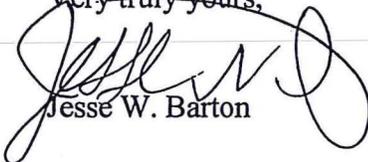
If your office still determines the Trail to be eligible, we have additional concerns with any actual inclusion of the Trail on the National Register. The National Historic Preservation Act (NHPA) (16 U.S.C. 470 et seq.) requires that before inclusion in the National Register, private property owners affected by the inclusion must be notified and given the opportunity to object to the listing (16 U.S.C. 470a(a)(2), (6)). Further, we do note the existence of the Programmatic

Agreement among the United States Forest Service, Pacific Southwest Region, the United States Army Corps of Engineers, the California Department of Transportation, the California State Historic Preservation Officer and the Advisory Council on Historic Preservation Regarding Undertakings Affecting the Rubicon Trail, and El Dorado County, California (Agreement), but that agreement was adopted under 36 CFR 800.14(b)(3), dealing with certain limited adverse effects. The Agreement has no application to eligibility or inclusion into the National Register. If it does, then that Agreement is in violation of law because it does not provide for the protections enumerated in the NHPA. Briefly summarized, the Agreement does not provide for any of the process or notice protections provided by the NHPA.

Thus, while your office may be reviewing the Par Study, we are putting your office on notice that the entire review process of the Trail has been inconsistent with the NHPA. There has been no public notification of the review process, and none of the private property owners who could be affected by the eligibility or the listing have been notified, as required by the NHPA, by the USFS, or your office. The Trail traverses a wide variety of both public and private properties and not a single person has been contacted. Interestingly, we note that the map of the Trail attached to the Agreement and the maps attached to the Par Study do not even agree on the portions of Trail subject to either review or eligibility. So we, as the public, are unsure of what is actually being evaluated by your office. Further, the County of El Dorado holds two easements to only portions of the Trail within El Dorado County. There are large sections of the Trail where the County holds no easement at all. Lastly, while the County has signed the Agreement, the County has taken no formal position on whether it supports or opposes the eligibility or listing which we believe is required by the NHPA. We strongly encourage your office to start following the process for determining eligibility and listing as required by the NHPA.

RTF believes the Trail is not eligible under any criteria and that current review of the Trail is a violation of the NHPA. If your office determines eligibility, or does not take substantial action to address the review deficiencies, then we may involve the courts. Further, 16 U.S.C. 470w-4 of the NHPA provides for attorney fees to prevailing plaintiffs, which will be sought in any action.

Very truly yours,



Jesse W. Barton

cc. RTF
Ron Briggs (County of El Dorado)
Vickie Sanders (County of El Dorado)
Ed Knapp (County of El Dorado)

Rubicon Soda Springs, Inc.
P.O. Box 413
Georgetown, Ca. 95634

Ms. Carol Rowland-Nawi, Ph.D
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento Ca. 95816

April 30, 2014
Via Certified Mail

re: Rubicon Trail PA

Dear Ms. Rowland-Nawi:

I am Frank Maguire, Board President of **Rubicon Soda Springs, Inc. (RSSI)**. RSSI is a group of 20 families who came together nearly 30 years ago to purchase the 340 acres that is known as the Rubicon Soda Springs. It is the centerpiece parcel of the Rubicon Trail. We purchased the property with the expressed commitment to keep it open and available as a recreational resource in perpetuity.

The original partners included the founder of the Jeepers Jamboree, our Congressman, the Mayor of South Lake Tahoe, a Founding Director of the Green Sticker Fund, the El Dorado County Director of Environmental Health, and the Director of Operations of the GPUD. All of those shares, some now in the second generation, are still represented. I am writing to you at the direction of the Board of Directors of this organization.

Although we had no knowledge of the proposal to register the Rubicon Trail on the National Registry of Historic Places, we were made aware of the proposal on March 3, 2014 when it appeared as an agenda item on the El Dorado County Board of Supervisor's docket for the next day. After that meeting, which I attended, Ms. Parr provided us with a copy of the proposed Programmatic Agreement (PA) and I distributed that document to both our Board of Directors and Counsel for their review and comment.

The Board met this morning by Conference Call to take a formal position on the proposed designation. After extensive deliberation the Board concluded that the proposal would unduly complicate RSSI's ability to proactively manage and maintain the resource with which we have been entrusted. We are an all volunteer organization, with every dollar of revenue going right back into the property (in 30 years we have never paid a dividend) and adding 3 (or more) levels of decision makers to the process of managing the resource would require more financial and human resources than we can muster. Accordingly, the Board of RSSI has directed me to convey to your office our opposition to the proposed designation.

For The Board of Directors of RSSI,

Frank C. Maguire, President

Christine Cowan
7972 Dorado Canyon Rd.
Somerset, CA 95684
ksclc@cal.net

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

May 7, 2014

Dear Supervisor Ron Briggs,

I am writing to register the strongest possible objection to the proposed historical designation for the

- 1) I don't need or want bureaucratic delays like what happen at Ellis Creek Bridge, delaying the project for a year.
- 2) I'm concerned that once the designation is in place, the rules for a designated object or place may change, and we don't want the trail in that potential jeopardy. Right now, designation won't stop travel on the road, but it could in the future...who knows what will change in future historical designation and or regulations
- 3) In spite of the ENF's claims, there has never been a "use" associated with an historical designation, except in the case of cultural and religious tribal uses. OHV use is NOT protected by designation. Currently, the only things that can be protected are objects, architecture, and evidence and artifacts of famous people or events.
- 4) It is likely that designation will do nothing except give environmental groups basis for another challenge. The County has already spent hours of time and many dollars satisfying unfounded environmental complaints. They shouldn't go about providing a new platform from which the environmentalists can complain or sue the county. The Act has been used this way in the recent past on multiple occasions.
- 5) The act calls for both protection and maintenance, but doesn't define who makes a decision between the two when they are at odds.
- 6) One disadvantage of local historical designation is red tape with State and Federal agencies with maintenance or protection.
- 7) Most trails in the national historic trails are thousands of miles long, and provide some very specific historical significance. Like the 3,700 mile long Lewis and Clark Trail, or the 2,300 mile long Pacific Crest Trail. The 22 mile long Rubicon Trail does not meet SHPO criteria to be registered as a historical trail.
- 8) The required cost to the county and tax payers out weight any benefit that would be realized.

Thank you for your support!

Sincerely,

Chris Cowan

Sherry Stortroen
154 Plaza Circle
Danville, CA 94526
209-602-4788 (cell)
e-mail: sherry.s@comcast.net

May 12, 2014

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

Re: Rubicon Trail proposed historic designation

Dear Board of Supervisors:

I am writing to register my strong opposition against the proposed historic designation for the Rubicon Trail for the following reasons:

1. The Rubicon trail's historic OHV motorized use cannot be separated from the Rubicon trail.
2. OHV motorized use is NOT protected by a historical designation, any changes in SHPO rules could adversely affect continued maintenance and motorized access.
3. A historic designation will add another layer of bureaucracy, add delays in completing necessary maintenance on the trail, or disallow future maintenance. The County has spent many hours and many dollars to address and satisfy unfounded environmental complaints.
4. The County, Forest Service, individuals and many volunteers (Friends of the Rubicon) have arrangements for maintenance and protection for continued motorized access.

I appreciate what the State Historic Preservation Office does in preserving historic sites; however the Rubicon Trail is already being protected.

Thank you for your support in not designating the Rubicon trail with a historic designation. I'm not a voter in your district, but I do recreate on the Rubicon trail, and this proposed designation could affect future OHV access to this valuable trail.

Sincerely,

Sherry Stortroen

8 May 2014

Nancy DeRodeff

10489 Wentworth Springs Rd

Georgetown, CA 95634

Supervisor Ron Briggs

El Dorado County Board of Supervisors

330 Fair Lane

Placerville, CA 95667

Dear Supervisor Briggs,

This letter is in response to information I have received concerning the eligibility of the Rubicon Trail to be included in the National Register of Historic Places. I am the principal owner of the property known as Wentworth Springs, all of section 31 T14N R15E, through which the Rubicon Trail runs. I am also a resident of District 4. I spoke to the Board at the March 4 meeting.

I wish to express to you that I strongly object to this eligibility and to a nomination to include the Trail in the Register. There does not appear to be any advantage to this designation, either to the county or to the users of the trail. There is the liability of increased governmental regulation, uncoordinated decision making and financial loss due to litigation. For example, property owners along the trail were not given notice of this process by SHPO or of the meetings scheduled by the El Dorado County Board of Supervisors in which this topic has/will be discussed. Other property owners along the trail may not yet be aware of these developments. This lack of disclosure creates the distrust and animosity which plagues the trail users and property owners in regards to the bureaucracies overseeing the trail.

The Rubicon Trail is a well known off road destination which already falls under the jurisdiction of numerous government agencies. Users of the trail have been subjected to a confusion of regulations, closures, re-openings and enforcement of rules and laws. I want to see the trail stay open for future generations of families to enjoy. I want to see it protected from more red tape and bureaucracy. I especially want to protect Wentworth Springs from agencies who do not know it or care about it.

If there is any further information you need to make my objection more complete, please let me know. I would like to be kept informed of any decisions or new developments during the process. Thank you for your time and consideration.

Sincerely,

Nancy DeRodeff

8 May 2014

Nancy DeRodeff

10489 Wentworth Springs Rd

Georgetown, CA 95634

Ms. Carol Roland-Nawi, Ph.D

State Historic Preservation Officer

Office of Historic Preservation

1725 23rd Street, Suite 100

Sacramento, CA 95816

Dear Ms. Roland-Nawi,

This letter is in response to information I have received concerning the eligibility of the Rubicon Trail to be included in the National Register of Historic Places. I am the principal owner of the property known as Wentworth Springs, all of section 31 T14N R15E, through which the Rubicon Trail runs.

I wish to express to you that I strongly object to this eligibility and to a nomination to include the Trail in the Register. There does not appear to be any advantage to this designation, either to the county or to the users of the trail. There is the liability of increased governmental regulation and uncoordinated decision making. For example, property owners along the trail were not given notice of this process by SHPO or of the meetings scheduled by the El Dorado County Board of Supervisors in which this topic has/will be discussed. Other property owners along the trail may not yet be aware of these developments. This lack of disclosure creates the distrust and animosity which plagues the trail users and property owners in regards to the bureaucracies overseeing the trail.

The Rubicon Trail is a well known off road destination which already falls under the jurisdiction of numerous government agencies. Users of the trail have been subjected to a confusion of regulations, closures, re-openings and enforcement of rules and laws. I want to see the trail stay open for future generations of families to enjoy. I want to see it protected from more red tape and bureaucracy. I especially want to protect Wentworth Springs from agencies who do not know it or care about it.

If there is any further information you need to make my objection more complete, please let me know. I would like to be kept informed of any decisions or new developments during the process. Thank you for your time and consideration.

Sincerely,

Tim & Heidi Green
4944 Virginia Way
Sacramento, CA 95822

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

re: Rubicon Trail PA
May 2nd 2014

Dear Supervisors: Ron Briggs, Norma Santiago, Brian Veerkamp, Ray Nutting, Ron Mikulaco,

As property owners located very close to the Rubicon Trail I have to say having to hear of something of this magnitude being brought forth to the Eldorado County Board of Supervisors with out notice to the public and or private property owners was and is alarming at the very least. While the Rubicon Trail does not pass through our property we do access our property directly from the Rubicon Trail. Therefore it stands to reason that from our point of view we are in fact "Stakeholders" with a vested interest in all things related to the Rubicon Trail. It is also worth mention that the historical document that I received after being made aware of this situation makes clear note of areas of our property in regard to it's proximity to the Wentworth Springs area, again giving us a vested interest in the out come of this proposal.

I would be of the opinion that this action will only add another layer of complication to already, overly complex situations and processes. My family and myself wish to formally inform you of our strong opposition to this proposed designation.

Respectfully,

Tim & Heidi Green.



Rubicon Trail Historical Designation

Kate Overmeyer <kateover66@yahoo.com>

Wed, May 7, 2014 at 9:29 AM

Reply-To: Kate Overmeyer <kateover66@yahoo.com>

To: "bosone@edcgov.us" <bosone@edcgov.us>, "bostwo@edcgov.us" <bostwo@edcgov.us>, "bosthree@edcgov.us" <bosthree@edcgov.us>, "bosfour@edcgov.us" <bosfour@edcgov.us>, "bosfive@edcgov.us" <bosfive@edcgov.us>, "vickie.sanders@edcgov.us" <vickie.sanders@edcgov.us>

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

Dear Supervisors:

I am writing to register the strongest possible objection to the proposed historical designation for the Rubicon trail for the following reasons:

In spite of the ENF's claims, there has never been a "use" associated with an historical designation, except in the case of cultural and religious tribal uses. OHV use is NOT protected by designation. Currently, the only things that can be protected are objects, architecture, and evidence and artifacts of famous people or events.

It is likely that designation will do nothing except give environmental groups basis for another challenge. The County has already spent hours of time and many dollars satisfying unfounded environmental complaints. They shouldn't go about providing a new platform from which the environmentalists can complain or sue the county. The Act has been used this way in the recent past on multiple occasions.

The act calls for both protection and maintenance, but doesn't define who makes a decision between the two when they are at odds.

One disadvantage of local historical designation is red tape with State and Federal agency's with maintenance or protection.

The required cost to the county and tax payers out weight any benefit that would be realized.

Thank you for your support.

Sincerely,

Kathleen Howell
P.O. Box 484
El Dorado, CA 95623
(530) 642-2450



Brenda Bailey <brenda.bailey@edcgov.us>

Fwd: Rubicon Trial - Historical Designation

1 message

Vickie Sanders <vickie.sanders@edcgov.us>
To: Brenda Bailey <brenda.bailey@edcgov.us>

Fri, May 16, 2014 at 8:13 AM

Vickie Sanders
Parks Manager
County of El Dorado
Chief Administrative Office
530-621-7538
FAX: 530-642-0301

**Parks
Make
Life
Better!**

——— Forwarded message ———

From: **Rubicon Trail Tours** <sean@rubicontrailtours.com>
Date: Mon, May 5, 2014 at 11:58 AM
Subject: Rubicon Trial - Historical Designation
To: vickie.sanders@edcgov.us

Dear Vickie,

I am adamantly opposed to the Rubicon Trail being considered for eligibility for The Historical Land Mark Registry or added to the registry. I believe this will only encumber the our county's jewel further and provide the anti trail environmental groups the ability to force closure under the guise of "protection" of a historical land mark.

Respectfully,

Sean Russell

Rubicon Trail Tours-Owner

Rubicon Trail Foundation-Director

530-417-0031