



## Legislation Text

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**File #:** 10-1118, **Version:** 1

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Department of Transportation recommending that the Board consider recommendations regarding easements on both public and private land for the Rubicon Trail alignment adopted by the Board on January 26, 2010. (Refer 1/26/10, Item 25) (Est. Time: 1 Hr.)

**FUNDING:** Since the proposed easements satisfy the obligations of both the County and the USFS under the Cleanup and Abatement Order, it is anticipated that the County will absorb the cost of preparing the easement application, and preparing a survey of the Board-adopted preferred route, and the U.S. Forest Service will absorb the cost of processing the County's easement application, including the environmental analysis.

**Background:**

On April 30, 2009, the Central Valley Regional Water Quality Control Board (CVRWQCB) issued a Clean Up and Abatement Order (CAO) No. R5-2009-0030, which requires the County and the United States Forest Service (USFS) to take a number of actions on the Rubicon Trail to cleanup and abate some of the problems that vehicular travel has created over the years.

The CAO noted that a legal easement for the Rubicon Trail has not been recorded except for the Ellis Creek Intertie, and the exact location and width of the Rubicon Trail has not been fully defined (CAO page 6, par. 21). The CAO specifically orders the "Responsible Parties" (i.e., both County and the USFS) to document the actual location of the Rubicon Trail within El Dorado County, including the centerline and an agreed-upon width from each side of that line that shall be easily understood by both the public and law enforcement officials (CAO pages 9-10, Order par. 6(d)). The CAO also orders both the County and the USFS to reach a "clear definition of each party's responsibilities for the Rubicon Trail, including maintenance activities . . ." (CAO page 9, Order par 6(a)). The CAO also orders the County to continue with preliminary engineering and environmental review for the construction of bridges at Gerle Creek and Ellis Creek (CAO page 9, Order par. 3(d)).

At the January 26, 2010 regular Board meeting, the Department of Transportation presented the Rubicon Trail Route Recognition matter to the Board of Supervisors, Board Item #10-0049. This item provided three options related to the Rubicon Trail location. The Board selected and approved a "modified option 2" as the preferred route along which the County would expend its maintenance efforts as mandated by the CAO. This preferred route was selected for the purpose of complying with the CAO and for maintenance only, and was not intended to supplant, replace, diminish or alter any rights-of-way that might exist, including under Revised Statutes section 2477.

At the June 29, 2010 regular Board meeting (Board Item #10-0686) the Department of Transportation received approval from the Board to undertake maintenance and other work on the Rubicon Trail. During the summer of 2009, the Department of Transportation initiated a number of activities related to the CAO, including ground operations, site surveys, Rubicon Trail route survey and marking efforts, quarterly progress reports, maintenance reporting, and increased coordination efforts with the USFS. Various Best Management Practices (BMPs) were installed and have been monitored during the fall storms that have occurred to date. The DOT will report to your Board in December, 2010,

regarding progress on the Trail this year.

In this current item, the Department of Transportation is requesting permission to apply for an easement on the Rubicon Trail (from the Wentworth Springs Campground to the County line) from the owners of the underlying land over which that portion of the Trail crosses, that is, the Eldorado National Forest and two private landowners. The easement will clarify the location of the preferred route along which the County will be expending its maintenance efforts, and will clarify the roles and responsibilities of El Dorado County and the owners of the underlying land, and will allow the Ellis Creek Bridge to proceed. This process is expected to be similar to the acquisition in 2004 of easements for the portion of the Rubicon Trail called the Ellis Creek Intertie that also traversed federal and privately-owned land. The purpose in applying for easements is to comply with the specific orders in the CAO, and to facilitate and guide the County's maintenance efforts on the preferred route which the Board committed to maintain in January 2010, and are not intended to supplant, replace, diminish or alter whatever rights-of-way may exist, including rights under Revised Statutes section 2477.

The legal authority by which the U.S. Forest Service can grant an easement for a road right-of-way across federal land is the Forest Road and Trail Act (FRTA), 16 U.S.C. §532-538. The County DOT is presently completing its survey of the preferred route adopted by the Board in January, and that survey will form the foundation for the County's application. A standard FRTA easement contains a requirement that the easement holder maintain the right of way, and thus by the USFS granting, and the County accepting, an easement, the County and the USFS will each be complying with three specific orders from the Water Board in the CAO: (1) clarifying each party's responsibilities for maintaining the Rubicon Trail, (2) documenting the actual location of the Rubicon Trail, and (3) proceeding with the proposed new bridge across Ellis Creek. The precise nature and extent of that maintenance obligation will have to be worked out between the County and the USFS as the application process continues.

The processing of the County's application by the USFS will include an environmental analysis under the National Environmental Policy Act (NEPA) plus assessments under the Antiquities Act and other applicable federal statutes. This process will produce information that may effect any resulting easement. It is anticipated that the USFS will take approximately 1 year to perform all of the work it has to do in order to approve an easement. This comprehensive inspection and analysis over the entire Trail will mean that these tasks will not have to be done in the future on a piecemeal basis as each discrete maintenance task is proposed and then undertaken, and each party will benefit from that increased efficiency.

The County's application for a FRTA easement for the entire Trail from Wentworth Springs to the County line will include the portion of the Trail that crosses Ellis Creek. The USFS has previously expressed its disinclination to approve a short easement which the County requested for the proposed new Ellis Creek Bridge that would permit the bridge to be constructed in an environmentally-preferred location about 75 feet downstream from the existing grade crossing, and allow the degradation at the current crossing to be remediated. The USFS has indicated that it will not grant an isolated section of easement for a bridge that is not connected to another roadway system by easements. By applying for an easement for the entire Trail, the County will obviate the USFS concerns and allow the Ellis Creek Bridge project to proceed. It is hoped that the easement process can be phased, so that the easement for the bridge segment can be granted first in order to preserve

the current grant funding for bridge construction.

In addition to the application for an easement from the USFS, the Department of Transportation is requesting permission to take the steps necessary to obtain an easement from the owners of the private property over which the Rubicon Trail passes. Once again, this is expected to proceed in a manner similar to the easement the County obtained in 2004 from the owners of private land under the Ellis Creek Intertie. This easement over private land is not intended to supplant, replace, diminish or alter whatever rights-of-way may currently exist, under Revised Statutes section 2477, or by prescriptive easement, or any other manner.

Since the FRTA easement will solve the obligations in the CAO of both the USFS and the County, it is anticipated that the County will absorb the costs of preparing a survey of the preferred route and other items necessary to complete the easement application, and the USFS will absorb the cost of processing the application, including the environmental evaluation. The County will incur some costs for title reports and appraisals for the easement over the private land. It is difficult to estimate at this time the total costs that might accrue from the easement applications. DOT will return to the Board with an agenda item concerning those costs.

#### CEQA

The purpose of attempting to obtain easements is so that the Board- adopted preferred route can be maintained in compliance with the CAO, and that the non-selected routes can be restored in compliance with the CAO, the maintenance obligations can be clarified in compliance with the CAO, and so that the Ellis Creek Bridge can be built in compliance with the CAO. The operation, repair, maintenance and minor alteration of existing highways, streets, sidewalks, gutters, bicycle and pedestrian trails and similar facilities, including road grading for the purpose of public safety, is categorically exempt from CEQA under the CEQA Guidelines, California Code of Regulations, title 14, §15301(c). The implementation of a cleanup order issued by a regional water board is also exempt under the CEQA Guidelines, California Code of Regulations, title 14, §15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and §15308 (Actions by Regulatory Agencies for Protection of the Environment). As noted above, the cleanup and abatement order expressly requires the County to provide “Documentation of the actual location of the Rubicon Trail within El Dorado County, including the centerline and an agreed-upon width from each side of that line,” and also orders both the County and the USFS to reach a “clear definition of each party’s responsibilities for the Rubicon Trail, including maintenance activities . . .,” and also orders the County to continue with preliminary engineering and environmental review for the construction of a bridge at Ellis Creek. The CAO further notes that the “implementation of this Order is also an action to assure the restoration of natural resources and/or the environment and is exempt from the provisions of CEQA, in accordance with California Code of Regulations, title 14, sections 15307 and 15308.” Therefore the decisions to be made by the Board of Supervisors outlined in this staff report to authorize DOT to seek an easement for the preferred location of the Rubicon Trail are categorically exempt from CEQA.

Furthermore, under State law, any property grant to the county cannot be recorded unless and until it has been formally accepted by formal board action. That can only take place after the easement process has been completed. The USFS has already commenced an environmental analysis of the preferred location of the Trail under NEPA and other applicable federal statutes such as the Antiquities Act. If and when an easement is offered by the USFS, it will be after the USFS has fully performed an environmental analysis under NEPA. At that time the County can tier off the NEPA analysis and

address any CEQA concerns before formally accepting an easement.

**Reason for Recommendation:**

El Dorado County needs an easement on the Rubicon Trail to satisfy conditions in the CAO, including documenting the centerline, clarifying maintenance obligations between the County and the USFS, and obtaining the necessary right of way for the proposed new Ellis Creek Bridge.

**Action to be taken following Board approval:**

1) Department of Transportation staff will complete the survey and other tasks necessary to prepare a complete application for a FRTA easement to the Eldorado National Forest for the preferred alignment adopted by the Board of Supervisors on January 26, 2010, and submit the easement application to the USFS for processing. County staff will continue to work with the USFS and interested parties to complete the easement process expeditiously. During this time, DOT will address any environmental concerns that are not covered by the categorical exemptions described above. At the completion of the process, DOT will bring the easement to the Board for formal acceptance.

2) Department of Transportation staff will complete a survey, title inspection and other tasks necessary to seek and obtain easements from the private property owners whose land underlies the preferred alignment for the Trail, in the same manner as described above.

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