DEPARTMENT: Board of Supervisors  BY: Supervisor Turpin  PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Discussion and Action regarding Resolution asserting County Road Rights-Of-Way Created Under United States Revised Statute 2477 Throughout Mariposa County

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The United States Congress, intending to promote the settlement of the Western United States by establishment of highways, granted the right-of-way for the construction of highways over public lands, not reserved for public uses in Section 8 of the Mining Act of 1866, re-enacted and re-codified as revised Statutes 2477 (R.S. 2477) 43. U.S.C. Section 932; and Mariposa County, when established in 1850, included considerable areas for ranching, farming, and mining with intensive prospective and exploration for valuable minerals, forest and agricultural products. During this time much of the mountains and valley areas of the county became laced with networks of wagon roads, trails, horse and footpaths constructed, maintained and used to facilitate such activities. Many of these roads, trails and paths have been in general use by the public since that time, and many have been further developed into mining roads, logging roads, and access roads for the removal of minerals, forest products, and agricultural products. These roads, trails and paths have continued in use by the general public for hunting, fishing, hiking, horseback riding, and other recreational uses. There now exists in Mariposa County a network of roads, mining roads, logging roads, horse trails, hiking trails and footpaths, all of which provide access to and throughout National Parks and National Forests and Bureau of Land Management lands representing a substantial portion of the land within Mariposa. These rights-of-way are essential to the county’s transportation and public access systems and the public has relied on and continues to rely on them. Search and rescue, resource management, fire protection, health and law enforcement personnel rely on these access routes to carry out important functions. Public access to these routes of travel are essential to the economic, social and political well-being of the communities within the county. These rights-of-way are also important to the free flow of commerce in the United States. The County’s right, title, and interest in these rights-of-way include the right, but not the obligation, to perform construction and maintenance, which is reasonable and necessary for safe passage for the uses established prior to the repeal of R.S. 2477, and as those uses may increase over time based upon currently applicable safety standards. This resolution will affirmatively assert the County’s position in this matter.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? [ ] Yes [ ] No  Current FY Cost: $  Annual Recurring Cost: $  List Attachments, number pages consecutively
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded  Formal Resolution
Amount in Budget: $  
Additional Funding Needed: $  
Source:
Internal Transfer
Unanticipated Revenue  4/5's vote  
Transfer Between Funds  4/5's vote  
Contingency  4/5's vote  
( ) General ( ) Other

Revised Dec. 2002
The foregoing instrument is a correct copy of
the original on file in this office.
Date:
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: Deputy

CAO:
TO: CHAIR TURPIN

FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: Discussion and Action Regarding Resolution Asserting County Road Rights-Of-Way Created Under United States Revised Statute 2477 Throughout Mariposa County

RESOLUTION 08-441

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on September 9, 2008

ACTION AND VOTE:

Discussion and Action Regarding Resolution Asserting County Road Rights-Of-Way Created Under United States Revised Statute 2477 Throughout Mariposa County (Supervisor Turpin)

**BOARD ACTION:** Supervisor Turpin initiated discussion and County Counsel provided input.

Input from the public was provided by the following:

Paul Chapman stated he feels this is a poorly veiled attempt to help Hazel Green, and he feels that this opens issues with miles of old trails, etc.

Discussion was held, and Supervisor Bibby asked how this would work with old trails that were used to cross private property. County Counsel advised that this deals with road rights-of-way on federal government land.

Anita Starchman Bryant, Starchman & Bryant Law Offices, asked for further clarification that this only involves federal land and not private land. County Counsel responded relative to the intent of this action.

(M)Pickard, (S)Fritz, Res. 08-441 was adopted, with a change to reflect Public Works Road Commissioner/Ayes: Aborn, Turpin, Fritz, Pickard; Noes: Bibby.

Cc: Dana Hertfelder, Public Works Director

File
MARIPOSA COUNTY RESOLUTION NO. 08-441

RESOLUTION ASSERTING COUNTY ROAD RIGHTS-OF-WAY CREATED UNDER
UNITED STATES REVISED STATUTE 2477 THROUGHOUT MARIPOSA COUNTY

WHEREAS, the United States Congress, intending to promote the settlement of the
Western United States by establishment of highways, granted the right-of-way for the
construction of highways over public lands, not reserved for public uses in Section 8 of the
Mining Act of 1866, re-enacted and re-codified as revised Statutes 2477 (R.S. 2477) 43. U.S.C.
Section 932; and

WHEREAS, Mariposa County, when established in 1850, included considerable areas
for ranching, farming, and mining with intensive prospective and exploration for valuable
minerals, forest and agricultural products; and

WHEREAS, much of the mountains and valley areas of the county became laced with
networks of wagon roads, trails, horse and footpaths constructed, maintained and used to
facilitate such activities; and

WHEREAS, many of these roads, trails and paths have been in general use by the public
since that time, and many have been further developed into mining roads, logging roads, and
access roads for the removal of minerals, forest products, and agricultural products; and

WHEREAS, other of these roads, trails and paths have continued in use by the general
public for hunting, fishing, hiking, horseback riding, and other recreational uses; and

WHEREAS, there now exists in Mariposa County a network of roads, mining roads,
logging roads, horse trails, hiking trails and footpaths, all of which provide access to and
throughout National Parks and National Forests and Bureau of Land Management lands
representing a substantial portion of the land within Mariposa; and

WHEREAS, these rights-of-way are essential to the county’s transportation and public
access systems and the public has relied on and continues to rely on them since prior to October
21, 1976; and

WHEREAS, search and rescue, resource management, fire protection, health and law
enforcement personnel rely on these access routes to carry out important functions; and

WHEREAS, public access to routes of travel are essential to the economic, social and
political well-being of the communities within the county; and

WHEREAS, these rights-of-way are important to the free flow of commerce in the
United States; and

WHEREAS, other property owners may have succeeded the United States as owners of
servient estates traversed by rights-of-way acquired by the County and the public pursuant to the
grant in R.S. 2477 and the rights of those property owners in the servient estates is limited by the
obligation to honor the rights-of-way accepted by the public pursuant to the grant offered under R.S. 2477; and

WHEREAS, the County’s right, title, and interest in these rights-of-way include the right, but not the obligation, to perform construction and maintenance, which is reasonable and necessary for safe passage for the uses established prior to the repeal of R.S. 2477, and as those uses may increase over time based upon currently applicable safety standards; and

WHEREAS, rights-of-way acquired pursuant to R.S. 2477 have not been abandoned or waived except for when formal procedures provided under State law have been followed; and

WHEREAS, it is the policy of the County to ensure that all rights-of-way acquired pursuant to R.S. 2477 be retained in perpetuity for the use and the benefit of the public unless abandoned in accordance with applicable law;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Mariposa as follows:

1. That all of the above facts are true and that this Board has jurisdiction over the subject matter of this Resolution.

2. The County and the public have acquired rights-of-way pursuant to R.S. 2477 as provided by California and Federal law, including but not limited to, the following:

   A. Use by the County or public with the intention of creating a public highway over public lands.
   B. Construction or maintenance of a highway.
   C. Inclusion of the right-of-way in a state, county, or municipal road system, plat, description, or map of County roads.
   D. Expenditure of any public funds on the highway.
   E. Execution of a Memorandum of Understanding or other agreement with any other private entity or agency of the Federal Government that recognizes the right or obligation of the County to construct or maintain a highway or portion of a highway.
   F. Any other act by the County or the public consistent with State or Federal law indicating acceptance of a right-of-way.
   G. Used by the public for a period required by the California Civil Code.

3. The County hereby finds that any roads located in the County which fall in the purview of the conditions above set forth, are R.S. 2477 rights-of-way and the County expects all Federal agency actions to be consistent with this assertion.

4. The County shall not be deemed to consent or have consented to the exchange or abandonment of any R.S. 2477 rights-of-way unless a formal written resolution specifically so stating has been passed at a duly called public meeting of the County Board of Supervisors. No employees or agents of the County have been given authority to abandon, waive, or exchange any R.S. 2477 rights-of-way and any prior action by an employee or agent purporting to take such action was void when taken,
unless in the case of exchange later ratified by formal action of the Board of Supervisors.

5. Where an R.S. 2477 right-of-way has been acquired through public use, the failure by the County to conduct mechanical maintenance of said right-of-way shall not affect in any way the status of said right-of-way as a highway acquired by the public pursuant to R.S. 2477.

6. The omission of any right-of-way from any plat, description, or map of County roads or highways, whether required by State law or otherwise, shall not be deemed to waive or be failure to acquire the grant offered R.S. 2477.

7. Scope of Right-of-Way:
   A. Scope of the R.S. 2477 right-of-way is that which is reasonable.
   B. The scope of R.S. 2477 right-of-way includes the right to widen highways necessary to accommodate the increased travel associated with all accepted uses, up to where applicable, improving a highway so travelers can safely pass each other, and to modify or change horizontal alignment, and/or vertical profiles where the roads require for public safety and to meet current design standards.

8. This resolution is not intended to include any street or highway into the County maintained road system, nor affect any roads previously included in such system, and the County does not accept any obligation or responsibility for maintenance of any roads not already in the County maintained system.

9. Inclusion of roads in the County maintained road system shall be solely in accordance with the Streets and Highways Code section 941 et seq.

10. The Public Works Department Road Commissioner shall annually bring this Resolution before the Board of Supervisors for review and identification of any additional covered roads that may be of concern.

11. The Clerk of the Board shall also cause copies of this resolution to be sent to the following:
   A. County Administrative Officer
   B. County Counsel
   C. Roads Commissioner
   D. Director Planning Department
   E. Sheriff
   F. Fire Chief
   G. U.S. Senator Barbara Boxer
   H. U.S. Senator Dianne Feinstein
   I. U.S. House of Representative, George Radanovich
   J. Bureau of Land Management, California State Office
   K. Bureau of Land Management, California District Office
   L. Secretary of the Interior, U.S. Department of the Interior
   M. Secretary of Agriculture, U.S. Department of Agriculture
   N. Michael J. Tollefson, Superintendent, Yosemite National Park
O. Edward C. Cole, Forest Supervisor, Sierra National Forest
P. Susan Skalski, Forest Supervisor, Stanislaus National Forest

PASSED AND ADOPTED this 9th day of September 2008 by the following vote:

AYES: ABORN, TURPIN, FRITZ, PICKARD
NOES: BIBBY
ABSENT: NONE

LYLE TURPIN, Chair
Mariposa County Board of Supervisors

ATTEST:
MARGIE WILLIAMS, Clerk of the Board

APPROVED AS TO FORM:
THOMAS P. GUARINO, County Counsel
September 18, 2008

To the recipients on the following list:

At its meeting on September 9, 2008, the Mariposa County Board of Supervisors adopted Resolution No. 08-441 asserting county road rights-of-way created under United States Revised Statute 2477 throughout Mariposa County.

Enclosed you will find a copy of Resolution No. 08-441 for your reference.

Should you have any questions please contact me at (209) 966-3222.

Sincerely,

Lyle Turpin, Board of Supervisors Chair

Enclosure
Mariposa County, County Administrative Officer
Mariposa County, County Counsel
Mariposa County, Roads Commissioner
Mariposa County, Planning Department Director
Mariposa County, Sheriff
Mariposa County, Fire Chief
U.S. Senator, Barbara Boxer
U.S. Senator, Dianne Feinstein
U.S. House of Representative, George Radanovich
Bureau of Land Management, California State Office
Bureau of Land Management, California District Office
Secretary of the Interior, U.S. Department of the Interior
Secretary of Agriculture, U.S. Department of Agriculture
Michael J. Tollefson, Superintendent, Yosemite National Park
Edward C. Cole, Forest Supervisor, Sierra National Forest
Susan Skalski, Forest Supervisor, Stanislaus National Forest