

DEPARTMENT: County Counsel
& Public Works

BY: Thomas P. Guarino
& Dana Hertfelder

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Review, discuss and adopt policy regarding encroachments on the Don Pedro Equestrian/Pedestrian Trails.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

In the late 1960s as part of the creation of the Lake Don Pedro Subdivision the Boise Cascade Company created pedestrian and equestrian ways. These ways (commonly referred to as the Don Pedro Horse Trails) were accepted for public use. It appears from the records and information available that when these trails were created they were created on paper, sometimes without regard to terrain. Subsequent development and installation of roads has in some instances affected the usability of portions of the trails. In other cases, the trails may only be useful for pedestrians. It also appears from the records and investigation that over the years people have purchased lots, constructed homes, fences and other structures, not realizing the existence or location of trails.

While some purchasers of lots may have been unaware of the trails existence, this does not relieve them of the legal requirement that they not encroach on the trail easement. In the past, it appears that the County may have suffered some encroachments to exits or allowed them to continue as long as they did not impair the utility of the trails easements. Recently these matters have been dealt with more formally. The recent example of this was a relocation of the trail due to a home being built across the trail. In the most recent case, this was allowed because it improves the utility of the trail for public use.

The current issue involves how to address the approximate 100 encroachments identified. It is estimated that staff time to implement the proposed policy will cost \$25,000. Staff recommends adopting the policy requiring property owners to pay the encroachment fee cost. Staff after consultation with the District Supervisor and review of past practices is presenting the attached proposed policy to address this problem for Board review.

Financial Impact? () Yes <input checked="" type="checkbox"/> No	Current FY Cost: \$ _____	Annual Recurring Cost: \$ _____
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$ _____		List Attachments, number pages consecutively _____
Additional Funding Needed: \$ _____		_____
Source:		Proposed Policy _____
Internal Transfer _____		_____
Unanticipated Revenue _____ 4/5's vote		_____
Transfer Between Funds _____ 4/5's vote		_____
Contingency _____ 4/5's vote		_____
() General () Other		_____

CLERK'S USE ONLY:

Res. No.: 08-176 Ord. No. _____
Vote - Ayes: 4 Noes: _____
Absent: Bibby
 Approved
 Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
Comments:

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

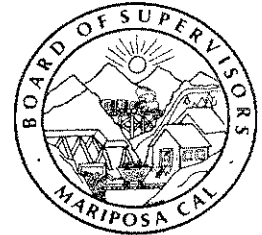


COUNTY of MARIPOSA

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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: THOMAS P. GUARINO, County Counsel
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: Review, Discuss and Adopt a Policy Regarding Encroachments on the Don Pedro Equestrian/Pedestrian Trails and Appropriate Necessary Funding to Implement Policy

RESOLUTION 08-176

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on May 6, 2008

ACTION AND VOTE:

Thomas P. Guarino, County Counsel & Dana Hertfelder, Public Works Director;
Review, Discuss and Adopt a Policy Regarding Encroachments on the Don Pedro Equestrian/Pedestrian Trails and Appropriate Necessary Funding to Implement Policy

BOARD ACTION: Discussion was held with Tom Guarino and Dana Hertfelder.

Input from the public was provided by the following:

Paul Chapman referred to the history of the trails and stated they were originally used to drive cattle.

David Taylor referred to information he provided to the Board on April 22nd relative to his concerns about the location of an equestrian/pedestrian easement in front of his property and of his follow-up with Public Works staff. He stated he feels that all aspects of riders and the horses and capabilities need to be considered.

Further discussion was held. (M)Pickard, (S)Aborn, Res. 08-176 was adopted approving the policy as recommended/Ayes: Aborn, Turpin, Fritz, Pickard; Excused: Bibby.

Cc: Dana Hertfelder, Public Works Director
Chris Ebie, Auditor
File

MARIPOSA COUNTY RESOLUTION NO. 08- 176

DON PEDRO EQUESTRIAN AND PEDESTRIAN TRAILS ENCROACHMENT POLICY

WHEREAS, the Don Pedro Equestrian and Pedestrian Easements (Trails) were established for the enjoyment of the public, and

WHEREAS, the County has identified approximately 100 encroachments into the easements, and

WHEREAS, some of these encroachments are long-standing and would require substantial cost to remove, and

WHEREAS, it would be costly to the County taxpayers to initiate a substantial number of lawsuits to remove such obstructions, and

WHEREAS, in some cases it would not harm the use of the trails by the public or the utility of trails to permit such encroachments to remain as long as they did not impair the use or utility of the trails, and

WHEREAS, in cases where the use and utility of the trail is impaired by the encroachment relocation or realignment of the trail would improve the use and utility of the trail, and

WHEREAS, the Board desires to provide transparent guidance to Public Works and citizens of the county,

NOW, THEREFORE BE IT RESOLVED by the Mariposa County Board of Supervisors, a political subdivision of the State of California, does hereby enact the following policy:

1. This policy is to address the problem of encroachments on the trails.
2. An enactment of this policy is not intended as a waiver of any right of the County to demand or institute legal action to remove any current or future encroachments, rather this policy is to put in place, a voluntary process to resolve a large number of violations.
3. This policy is not to be construed as forgiving, waiving, or providing amnesty for any current or past violation.
4. Any encroachment on the trails shall be initially reviewed by the Public Works Director to determine if in his opinion, the encroachment impairs utility or use of the trail.
5. For those encroachments that do not impair the use of or utility of the trail at the discretion of the Public Works Director he shall as necessary regularly refer for review to the Don Pedro Horse Trails Committee those encroachments which he feels should be

permitted to continue if the property owner is willing to obtain an encroachment permit as set forth in this policy.

6. If the Don Pedro Horse Trails Committee agrees then such permits will be issued by the Public Works Department upon completion of the proper process by the encroaching party. If the Don Pedro Horse Trails Committee does not agree the Public Works Department will bring such recommendations to the Board of Supervisors for review and action.
7. For encroachments that in the sole opinion of the Public Works Director impair the utility or use of the trails, the Public Works Director will work with the landowner to obtain either additional right-of-way or relocation of the trail if it improves the utility and use of the trail to the public's benefit.
8. For any encroachment that impairs or obstructs the utility or use of the trail and does not satisfy the requirements for relocation the Public Works Director refer such encroachments to County Counsel for review and evaluation regarding a recommendation for legal action to remove.
9. Any encroachment eligible for encroachment permit may only remain if a proper encroachment permit is obtained. Any person seeking such a permit shall pay all ordinary encroachment fees (currently \$125) as may exist at the time of the application and all reasonable and necessary staff costs to evaluate the encroachment for processing under the policy if time to review and process exceeds two hours, otherwise a flat fee of \$250 shall be paid in addition to any other regular encroachment fee to offset estimated staff and legal review costs. It is estimated that it will take approximately five hours for staff to review each application and a ½ hour for legal review at a charge of \$75.
10. Any person having an encroachment identified as eligible for an encroachment permit who does not obtain a permit within six months of having been advised in writing of the opportunity to obtain such permit shall be referred to County Counsel for evaluation for legal action.

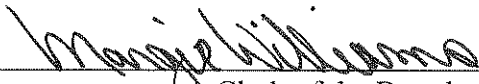
PASSED AND ADOPTED this 6th day of May, 2008, by the Board of Supervisors of Mariposa County by the following vote:

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



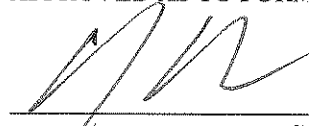
LYLE TURPIN, Chairman

ATTEST:



MARGIE WILLIAMS, Clerk of the Board

APPROVED AS TO FORM:



THOMAS P. GUARINO, County Counsel