

DEPARTMENT: Board BY: Supervisor Balmain PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___ No_X)

Adopt this resolution to oppose new proposed rights-of-way regulations published August 1, 1994, in the Federal Register by the Bureau of Land Management in the matter of R.S. 2477.

These regulations may revoke County rights-of-way across lands administered by the Bureau of Land Management and the National Park Service and/or force the County to expend large sums to prove rights-of-way.

Attached is a draft letter to Bruce Babbitt, Secretary of the Interior, concerning this matter.

The new deadline for submitting comments is January 20, 1995.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On November 15, 1994, the Board took action to oppose these regulations and requested an extension of the comment period (copy of said action is attached). The Public Works Director sent a similar letter previously.

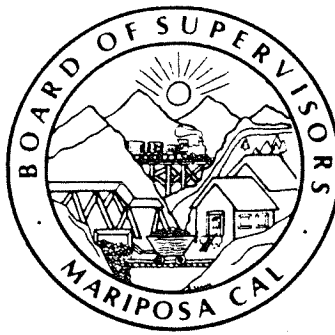
LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- 1) Continue to oppose the regulations.
- 2) Take no action and comply with the regulations. Costs are unknown, but could be in the tens or hundreds of thousand dollars.

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| COSTS: (x) Not Applicable A. Budgeted current FY \$ _____ B. Total anticipated costs \$ _____ C. Required additional funding \$ _____ D. Internal transfers \$ _____ | | SPECIAL INSTRUCTIONS: List the attachments and number the pages consecutively: 1. Draft letter _____ 2. Copy of Previous action _____ |
| SOURCE: () 4/5ths Vote Required A. Unanticipated revenues \$ _____ B. Reserve for contingencies \$ _____ C. Source description: _____ Balance in Reserve for Contingencies, if approved: \$ _____ | | |

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| CLERK'S USE ONLY: Res. No.: <u>95-29</u> Ord. No. _____ Vote - Ayes: _____ Noes: _____ Absent: _____ Abstained: _____ Approved () Denied Minute Order Attached () No Action Necessary | ADMINISTRATIVE OFFICER'S RECOMMENDATION: This item on agenda as: <input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended <input type="checkbox"/> For Policy Determination <input type="checkbox"/> Submitted with Comment <input type="checkbox"/> Returned for Further Action Comment: _____ A.O. Initials: <u>MB</u> |
| 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 | |

Mariposa County Board of Supervisors



District 1.....PATTI A. REILLY
District 2.....DOUG BALMAIN
District 3.....ROBERT C. STEWART
District 4.....GARRY R. PARKER
District 5.....GERTRUDE R. TABER

MIKE COFFIELD
County Administrative Officer

MARGIE WILLIAMS
Clerk of the Board

P.O. Box 784
MARIPOSA, CALIFORNIA 95338
(209) 966-3222
1-800-736-1252

FAX (209) 966-5147

January 17, 1995

Honorable Bruce Babbitt
Secretary of the Interior
Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Re: Proposed RS-2477 Rights-of-Way Regulations

Dear Secretary Babbitt:

The Mariposa County Board of Supervisors has taken further action this date to oppose new proposed regulations published August 1, 1994, in the Federal Register by the Bureau of Land Management in the matter of R.S. 2477. On November 15, 1994, the Board took action to oppose these regulations and requested an extension of the comment period (see our attached letter dated November 15, 1994).

As previously stated by C. F. "Budge" Campbell, National Association of County Engineers' President, "the regulations are so restrictive that few rural counties would be able to meet the demands, and rights-of-way would be threatened. Specifically:

All rights-of-way across Department of Interior land would have to be claimed within two years. Failure would constitute relinquishment of the rights-of-way.

Rights-of-way previously recognized by the Department will have to be resubmitted for approval and will have to go through the same process as any other road.

All of the burden for proving the validity of the existing right-of-way is placed upon the local government, a claim shall contain at least ten "maps in sufficient detail to allow location on the ground by a competent engineer or surveyor". This may be interpreted to mean a centerline survey.

Even if you prove the validity of your right-of-way, actions taken after October 21, 1976, resulting in new disturbance are deemed a trespass.

The construction of many of these roads went undocumented and occurred over a number of years as traffic demanded. Attempting to locate construction records that don't exist, provide detailed information regarding many of the roads in your



R.S. 2477 Rights-of-Way Regulations
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system, and proving the validity of the rights-of-way will be an expensive and time consuming process."

The proposed regulations would unfairly and illegally shift the entire burden (a large unfunded mandate) of establishing R.S. 2477 rights-of-way to local governments; which, as the Department of Interior is aware, do not have sufficient resources to complete such a task. These are public roads on public land and should be grandfathered. Local government should be able to provide these roads (i.e., this service to the public) without the unnecessary burden of S.R. 2477. Furthermore, the regulations may be in violation of the Tenth amendment to the U. S. Constitution since they will require a subdivision of the state to carry out federal regulations.

Approximately fifty-two percent of the land within Mariposa County is owned by the Federal, State and local governments.

We respectfully request that the regulations be withdrawn and that the Department of the Interior begin working with local government.

Sincerely,



GARRY R. PARKER, Chairman
Mariposa County
Board of Supervisors

DB:GRP:mw

Attachment

cc: Congressman George Radanovich
Senator Dianne Feinstein
Senator Barbara Boxer
Deane Swickard, Bureau of Land Management
Mike Edwards, Mariposa County Public Works Director

Mariposa County Board of Supervisors

District 1 ARTHUR G. BAGGETT, JR.
District 2 DOUG BALMAIN
District 3 ERIC J. ERICKSON
District 4 GARRY R. PARKER
District 5 GERTRUDE R. TABER



MIKE COFFIELD
County Administrative Officer

MARGIE WILLIAMS
Clerk of the Board

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November 15, 1994

U.S. Department of the Interior
Main Interior Building
1849 C Street, N.W., Room 5555
Washington, D.C. 20240

Gentlemen:

Today the Board of Supervisors took an action to oppose the proposed "Revised Statute 2477 Rights-of-Way". This proposed statute contains some requirements that would be difficult if not impossible for a small, rural county like ours to meet. We strongly recommend that this proposed statute not be adopted in its published form.

The proposed statute would require us to prepare maps of sufficient detail to allow location on the ground by a competent engineer. This would, in turn, require a survey of each county road that crosses public lands. This would be a time consuming, costly and onerous task. The time that would be required for this task alone might preclude us from filing a timely claim under the proposed statute.

This is a small rural county. Many of our county roads may not meet the definition of a "highway" under the proposed statute. If a liberal interpretation is used, the rural roads that we have been maintaining for many years may qualify as "highways". If, however, a road must be paved and at least two travel lanes wide to qualify, then many of our county roads will not qualify under the proposed statute.

In conclusion, the Board of Supervisors would like to reiterate our strong objection to the proposed statute. Having limited manpower and funds, it will be nearly impossible for Mariposa County to meet the proposed requirements. The proposed statute could have the effect of closing many of our county roads. This could leave access for many of our county residents to their private property in question. Thank you for this opportunity to comment on this matter.

Sincerely,

Garry R. Parker
Vice Chairman,
Mariposa County Board of Supervisors

cc Dianne Feinstein, U.S. Senate
Arthur G. Baggett Jr., Mariposa County Board of Supervisors

MARIPOSA COUNTY RESOLUTION NUMBER 95-29

A RESOLUTION OPPOSING THE SECRETARY OF THE INTERIOR'S PROPOSED RULES CONCERNING REVISED STATUTE (R.S.) 2477

WHEREAS, the Mariposa County Board of Supervisors has reviewed the Secretary of the Interior's Proposed Rules concerning Revised Statute (R.S.) 2477 -- Rights-of-Way, as published in the August 1, 1994, Federal Register; and

WHEREAS, this Board finds that compliance with the following provisions as proposed in the aforementioned Proposed Rules would be detrimental to the public interest and create an extreme financial hardship on Mariposa County:

1. Long standing and previously accepted public property rights could be legislatively extinguished, as the rule requires that all public rights-of-way across lands administered through the Bureau of Land Management, National Park Service, and Fish and Wildlife Service would have to be re-claimed within two years. Failure to do so would constitute an automatic relinquishment of the rights-of-way.

2. The burden for proving the validity of all existing public rights-of-way is placed upon the local government. The proposed rules would require local governments to initiate an immediate labor intensive and time-consuming validity process. Considering the fact that most rural governmental agencies would not have sufficient staff or funding to comply with the proposed federal validity requirements; this would most likely result in a loss of many public rights-of-way.

3. Where a valid right-of-way is subsequently recognized by the Department of the Interior, maintenance or reconstruction activities associated with the right-of-way which occurred after October, 1976, may be deemed as an unauthorized use or trespass.

4. The determination of validity will be vested in the "Authorized Officer" which is defined as one or a combination of the following Federal Officials - State Bureau of Land Management Director, Regional Director of the United States Fish and Wildlife and/or Regional Director of the National Parks Service. Compliance and interpretation of validity requirements (as may be established by three separate Federal agencies) will most likely result in a bureaucratic processing nightmare for local governmental agencies.

5. During the validity determination process, routine maintenance activities could be denied as they will be subject to review and approval by the appropriate Federal agency. Should accidents occur, this could result in serious liability issues for the local government previously responsible for maintenance of the right-of-way.

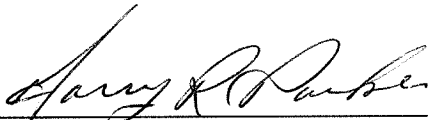
Res. 95-29

6. R.S. 2477, Rights-of-Way, constitutes another significant unfunded Federal Mandate, and illustrates the problems created by the proliferation of such unfunded mandates. Counties would be required to engage in time-consuming, labor intensive efforts to verify previously established rights-of-way to the satisfaction of the Department of the Interior or forfeit those rights-of-ways. The costs incurred as a result of the verification process would not be reimbursed by the Federal Government and the process could result in forfeiture of rights-of-way by those counties unable to bear the costs of verification.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Mariposa County, a political subdivision of the State of California, hereby joins with many other professional organizations and local jurisdictions and requests that further consideration of the proposed Rule Change concerning R.S. 2477 be withdrawn immediately.

PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 17th day of January, 1995, by the following vote:

AYES: Reilly, Balmain, Stewart, Parker, and Taber
NOES: None
ABSENT: None
ABSTAIN: None




GARRY R. PARKER, Chairman of the
Board of Supervisors

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



MARGIE WILLIAMS
Clerk of the Board



JEFFREY G. GREEN
County Counsel