

MARIPOSA COUNTY

Merced River Trail Community Working Group

MEETING MINUTES

DATE: May 28, 2024
TIME: 12:00 PM
LOCATION: Development Services Conference Room
5100 BULLION STREET, MARIPOSA, CA

1. **CALL TO ORDER:** Martin called the meeting to order on 12:02PM

Members Present: Michael Martin, Wendy Brown, Bill King, Jeff Jenkins
Ex-Oficio Members Present: Rosemarie Smallcombe
Members Absent: Kristina Rylands, Susie Clark, Miles Menetrey (ex officio)
Visitors: Kevin Briggs, Vince Kehoe, Steve Dahlem
Staff: Hannah Harrison, Will Fassett

2. **APPROVAL OF MINUTES FROM THE March 24th 2024**
The minutes were passed by Jenkins, Brown, and Martin.

3. **PUBLIC COMMENT ON NON-AGENDA ITEMS**
No public comment.

4. **WELCOME NEW MEMBER**

Martin welcomed Kristina Rylands as a new member. She stated her appreciation for being a part of the group and mentioned that the The Upper Merced River Watershed Council Board, which she serves on, has been following the process for a long time and looks forward to collaborating.

5. **MERCED RIVER TRAIL UPDATES**

- a. **From County**
 - i. Miller Gulch site and legality

Smallcombe restated the question before the group: “Can we claim ownership of the Trail based on the action that was taken by the Board of Supervisors in the 19th

century?” Smallcombe invited County Counsel to share what steps would be needed to explore perfecting a historic easement.

Kehoe shared why he is attending the meeting. He wrote a memo over a year ago in which he talked about the valuation of the property. He raised concerns, in the memo, about the County accepting liability for a property with known hazards, as detailed in an EPA report. He emphasized that we need to examine what is possible from a legal standpoint and what steps do we need to pursue, asking “If we required ownership of the trail, what would that mean about taking on some of the liability that was evidenced in the EPA study”

Dahlem said that their office didn’t have the capacity to perfect the easement. If the County chooses to move forward, he sees a need for quiet title to perfect an easement.

Briggs said he reviewed the Street and Highways Code. He asked a question about which trail/road declaration is being discussed. Martin clarified the geography of the trail. He said that “particularity” is the important issue – “Will the historic documents suffice for proving particularity under Street & Highway Code. There is no survey or leaps and bounds description, as would be required today.

Smallcombe said that her understanding is that the hierarchy for land use concerns is the federal government, state government, and then local government. Martin says that the road was designated before these other entities could have claimed the land. Smallcombe asked “When the Forest Service claimed it, did they have anything that said explicitly, this is a County road?”

Biggs advised because of the questions about liability that the group move slowly.

Martin says we would want to look at the preliminary title report Schedule B Item 7, He suggested there is an easement for ingress and egress for “parking, fishing, picnicking, public protection, policing, and erosion control.” He talked to the preparer of the title report and that individual said that “Any properties adjacent to streams/rivers in Mariposa County, that language is included.”

Kehoe said this language has to do with insurance: “They’re protecting themselves if there is an easement---in that case, the insurance company does not to insure that as part of the coverage.” They’re saying it’s definite maybe.

King asked “To what extent does a quiet title achieve our purposes?”

Dahlem says that it would guarantee title. Baggett said the title would predate the contamination done to the County road and would presumably mean that the County would not have liability.

Brown asked how the Wild & Scenic River Designation ($\frac{1}{4}$ mile from the River)--tie into this project. Rylands said the boundary is $\frac{1}{4}$ mile from the banks of the River—and any action would have to protect the free flowing / wild and scenic condition of the River.

Kehoe said the presence of hazardous materials on the site supersedes everything. Kehoe said that online the EPA report final analysis is 175 pages and the procedure details is over 10,000 pages. Kehoe said that how to remove these hazardous materials was not a focus of any of the Board presentations/discussions. He said we may be talking about \$1 million-plus to do this mitigation work. Kehoe says that, when the property is valued, and you take into account the hazardous materials that exists there, it could end up having a negative value.

Martin shared his history and experience working on superfund sites as the statewide Superfund Project Manager, California Department of Fish & Wildlife. He emphasized that mitigation efforts focus on (1) the impact on wildlife and humans on the site and (2) the intended use of the site. Based on these assessments, there are different levels of remediation required. He said that a trail through that area – in his opinion – represents very little exposure and very little threat. If the County proceeds ahead, he suggested that you could do a thumbnail analysis contracted by a reputable firm to give you additional estimates of risk. Martin talked about some past examples of projects that he has seen.

Martin said, generally, when a site has hazardous materials and physical hazards one should carefully evaluate the risks and potential liabilities before considering acquisition. Smallcombe expressed that there is concern among some of the board members of the associated liability. She suggested that we needed additional expert opinion to make board members more comfortable with an action at the site. She suggested a possible option be that we hire an outside expert to evaluate the risk were the County to secure some right-of-way to that property and how to mitigate risk on the property.

Kehoe asked that, based on what he understood from the County Surveyor, there are 17 other private parcels that the Railroad Grade goes through: “Do we need to get quiet title on all of these?” Dahlem responded affirmatively. Kehoe also said that the company sprayed arsenic along the grade: “What would the liability from those other properties be?” Baggett points out that Incline Road was likely included in this. Kehoe asked, “What is the acceptable risk?”

Baggett mentioned that he has contacts with multiple attorneys who specialize in easements and trusts for public lands. He said that these questions of historic, public access extend throughout the Sierra and there are land use attorneys who are well-

versed in the nuances. Baggett talked about past work he had done in collaboration with the Nature Conservancy.

Smallcombe said that if an item, related to this topic, were to go before the Board we would want to approve a certain amount of money for outside counsel. It would be a Discussion and Direction item to approve a budget. The attorney would evaluate the situation, review the documentation, and make a recommendation.

Baggett said that we could encourage as many landowners as possible to stipulate – and not have multiple individual cases. He provided examples of landowners, who would likely be willing to do this in the river corridor. Dahlem emphasized that this process would be toward the end of receiving granted access to the private parcels.

King says we're talking about two different topics: 1) hazards; and 2) title and legal use. Smallcombe said if we got the right attorney then they could evaluate both. Kehoe said the evaluation of the hazards has been done.

King says that he believes the historic trail under discussion was above the current railroad grade. Martin shared the history of the horse-pack trail and the railroad.

Baggett will provide names of counsel who he knows who specializes in these questions. That way, we can get an idea of the budget for a preliminary evaluation to share with the Board. Smallcombe said that this outside counsel would drive the timeline (i.e. when a recommendation could be prepared).

Martin says that, if we were making a recommendation to the Board, it should say– “a perfected access right-of-way is essential and that the Board and County Counsel proceed ahead and take appropriate action to see if we can perfect the right-of-way.” Baggett asked, when the Board considers this, would be it be in a private session.

King asked “Would it make sense to ask the [Millers Gulch] property owner if they will stipulate?” Dahlem said that this has already been done and that they've expressed an interest in selling the property. Smallcombe detailed a memorandum exchange between the landowners and Mariposa County. Baggett suggested that one of the owners may donate her interest in the property. Dahlem said that he couldn't recommend that the County take full or partial ownership in the property.

At the end of this discussion, it was established that staff will forward along documents to County Counsel. Dahlem said that they then they could discuss and see if we wanted to engage a firm and get an idea of what a fee might be.

ii. FERC relicensing & Meeting with BLM

Martin shared that an agreement with Merced Irrigation District, along with BLM, has been settled and that the FERC license is now going to be completed. The agreement includes MID's commitments related to the Merced River Trail and a bridge over the main stem. The ad hoc committee is setting up a meeting with David Greenwood's supervisor, Jeff Horn, to discuss more. Martin explained the FERC re-licensing process.

Jenkins asked about the details of the bridge. Martin said that the details of the bridge can be negotiated. Jenkins asked what incentives existed for BLM to construct a bridge over the North Fork. Martin explained that the current path is covered during highwater, necessitating the construction of an alternative.

Brown says that she's honored to be on the ad hoc committee. She suggested that equestrian use be included on the bridges that are being imagined by BLM.

iii. AmeriCorps and future plans for trail work

Fassett said we are once again considering applying for a crew from January to April in partnership with Camp Krem. We would have the crew for six-ish weeks. Our goal would be to have them partnered with BLM once again for a week to work on the Forest Service section. This would be a partnership with Alison Deak in UC Extension. He said they are also exploring the possibility of working with the Forestry Corps out of the Yosemite Adult School as an alternative (don't need to house those individuals).

Smallcombe asked "Have you talked to Outward Bound?" King pointed out that if it was a smaller crew, Outward Bound might work. Fassett mentioned the limitations with Outward Bound facilities, as he remembered, from a previous conversation (they could house only a maximum of 8 in two possible bedrooms in their heated facility).

iv. Meeting with USFS and SNF

Baggett said that he is convinced that unless, we resolve this Miller's Gulch piece, there is no reason to involve the other land management agencies. He said –by perfecting the easement— it will create momentum to get the Forest and Park Service's support for this project. He said, in the past, he had gotten Park Service support from administrative staff and that the Forest Service didn't have problems bypassing Forestra.

Fassett said follow-up item from last meeting was to ask Stanislaus NF if they sent a crew to do an assessment of the railroad grade that is within FS boundary (seven miles). They did in January.

From the end of Incline to the Ferguson slide, they say “very little brushing is needed. And besides two recent small rock slides, which they recommend using mechanized equipment to clear, that section would require little work”

Fassett said, for the Caltrans portion, Stanislaus National Forest scouted a reroute. They said it would probably require a .75 or 1 mile re-route, with some steeper slope grades. They thought that it might be possible to construct that reroute without needing to close the highway with danger of debris falling on the road.

The final and third section of the trail on Forest Service property is “more primitive and not as well maintained” according to the trail assessment. At Ned’s Gulch they suggested that an engineered bridge would be required. 1.3 miles in from the slide (about .5 mile from Ned’s Gulch), the trail is solid rock and railroad grade has been washed away --- SNF suggested that this might need blasting. The trail crew also identified other sections that would need possible drilling splitting of boulders, new culverts, and significant tread work.

Fassett said the message from the Forest Service has been fairly consistent: until you resolve the Millers Gulch easement and the highway realignment challenges, they can’t seriously consider taking next steps. They have also expressed concerns about parking.

King mentioned that he has met with the new District Ranger of Bass Lake – Sierra National Forest and that there may be a new energy there to help support future projects.

6. Committee Business

a. Establish clear objectives and discuss work plans for the Ad Hoc Committees

Harrison said that we could hold off on having another ad hoc. Rylands said that she would be happy to be added to the ad hoc committee focused on Miller’s Gulch. Martin said that the deliverable of this ad hoc is to compile the packet to send to Steve Dahlem. Smallcombe said that, with the items that had been provided, she didn’t feel prepared to draft a board item. The ad hoc needs to provide additional information. She also said that we need to make sure to ask for permission from Kehoe to release the memo about property valuations to external Counsel.

7. Future Agenda Items

8. Adjournment

ADJOURN: Martin adjourned the meeting at 1:34PM.

Minutes Prepared by: Will Fassett