

**Law Office of David J. Bowie
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David J. Bowie, Esq.

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March 28, 2012

Carrie Ricci
Iron Horse Corridor Manager
Contra Costa Public Works Department
255 Glacier Drive
Martinez, CA 94553-4825

Mark Esquibel
Right of Way Specialist
2150 Cruz Drive
San Jose, CA 95131

Re: Tom Newlin, 244 Lunada Lane, Alamo, CA 94507

Dear Ms. Ricci and Mr. Esquibel:

I was contacted by Mr. and Mrs. Tom Newlin, the property owners at 244 Lunada Lane in Alamo. Mr. and Mrs. Newlin received by certified mail a Notice from Contra Costa Public Works regarding alleged encroachments within the Iron Horse Corridor. In a meeting held quite recently, they were also provided with an Information Bulletin from the California State Fire Marshall Pipeline Safety Division bearing a date of June 20, 2003. The subject matter of both the communications and the meeting was an apparently an alleged encroachment of the Newlin rear property line fence into a claimed pipeline easement within the vicinity of Iron Horse Trail. Presumably, the alleged encroachment also relates to claims of Contra Costa County as to ownership and operation of the Iron Horse Corridor. On behalf of the Newlins, I am writing to both of you regarding their rights and their property. Should there be any further issues which need to be raised or addressed, please be sure to contact me on their behalf.

The County Public Works Department notification refers to the fence placed at the rear of the Newlin property and their use of the area within the fence as an "illegal encroachment". I must note that such a characterization assumes facts not at all in evidence.

The home in which the Newlins reside was constructed in or about 1972. The fence has been in its current location throughout all of the years of their ownership and had in fact been placed in that location at some time prior to their ownership of the subject property. The Newlins have continuously used all of their property within their fence line for horse riding and care purposes. They have made no secret whatsoever of their use of any and all portions of their property including, but not limited to, any portion which is allegedly currently under legal

ownership by Contra Costa County.

Neighbors of the Newlins who have been in the area since the '60s have indicated that the current fence line dates from at least that point in time. Ironically, I personally delivered newspapers to the Lunada Lane neighborhood and intimately familiar with that neighborhood and the train tracks which formerly occupied what is now the Iron Horse Corridor. To my personal recollection, the rear boundary lines of homes accessed by Lunada Lane remain today in the same location as was the case even in the late '50s when I delivered newspapers. Any rights the County of Contra Costa may have to the Iron Horse Corridor would necessarily be subject to any rights in others which may have intervened prior to the County's ownership. There is certainly no indication that any use by the Newlins, as successors owners of their property, is an "illegal" encroachment in any fashion.


I understand that much was made regarding the urgency and the safety concerns posed by the presence of the Kinder Morgan pipeline which may or may not be within an area fenced as Newlin property. Since I understand the pipeline is approximately four feet deep and since the presence of significant oak trees suggest that the pipeline could not possibly pass beneath those trees, there seems to be some question as to exact location. In any case, they cited state law from the Government Code has been in effect since 1987 and the Information Bulletin bears a date of 2003. Since it is now 2012, I sense that something less than urgency and an emergency is posed by the current circumstances.

Since you visited the Newlin property, you must be aware that there are no structures located on or immediately adjacent to any claimed pipeline easement. There are neither vegetation nor trees other than long standing adjacent oak trees which clearly must not interfere with the pipeline since they must have predated its construction. While there is a fence, there is also a gate which is unlocked and any area within the claimed easement must necessarily be fully accessible. It does not appear to me that the Newlins' use and enjoyment of the surface of the area in question—regardless of their rights to such use—pose any particular unreasonable interference with use and enjoyment of the easement, nor does it pose any violation of the cited sections of the Government Code.

On behalf of the Newlins, I am fully prepared to work with both Public Works and Kinder Morgan to be sure any safety issues are reasonably addressed relative to pipelines and access for purposes of maintenance and/or repair. There is no "illegal" encroachment, however, nor is there any particular need for removal of the rear property line fence at the Newlin property.

I will look forward to hearing from either or both of you.

Very truly yours,


David J. Bowie



Contra Costa County Public Works Department

Julia R. Bueren, Director
Deputy Directors
R. Mitch Avalon
Brian M. Balbas
Stephen Kowalewski

April 4, 2012

Law Office of David J. Bowie
2255 Contra Costa Boulevard, Suite 305
Pleasant Hill, CA 94523

CERTIFIED MAIL
RE: Encroachment in the
Iron Horse Corridor

Dear Mr. Bowie:

As we discussed at the meeting with Mr. and Mrs. Newlin on March 26, 2012, the County and Kinder Morgan are working with property owners that have encroached into the Iron Horse Corridor and Kinder Morgan's pipeline easement. The County owns fee title to the Iron Horse Corridor property.

Enclosed is the following additional documentation:

- Civil Code Section 1007 stating that property owners do not have prescriptive rights of property owned by a public entity.
- Contra Costa County Record of Survey identifying property lines and Kinder Morgan's easement.

As stated in California State Fire Marshall Information Bulletin #003-001 no structures, including fencing are allowed within a pipeline easement. I spoke with Mrs. Newlin by phone on March 16, 2012 and she acknowledged that her fence was on County property and Kinder Morgan's easement.

All encroachments must be removed by June 15, 2012. The County and Kinder Morgan representatives will meet with the Newlins to discuss what approvals will required before the encroachment is removed. Encroachments that remain without County approval will be removed. Thank you for your prompt attention to this matter. If you would like to discuss this further, please contact me at (925) 313-2235.

Sincerely,

Carrie Ricci
Iron Horse Corridor Manager

CR:mw
G:\transeng\Iron Horse Corridor\Encroachments\Alamo\Ltr 2444 Lunada Lane.docx
Enclosure

c: J. Bueren, Public Works Director
S. Kowalewski, Deputy Public Works Director
M. de la O, Transportation
M. Trecek, Real Estate
E. Swan, Maintenance
G. McClellan, Kinder Morgan
D. Maxwell, District II Supervisor's Office
L. Case, District IV Supervisor's Office

CIVIL CODE

SECTION 1006-1009

1006. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession; but the title conferred by occupancy is not a sufficient interest in real property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.

1007. Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all, but no possession by any person, firm or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest or right against the owner thereof.

SHEET 16 OF 27
106-19

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April 11, 2012

Carrie Ricci
Iron Horse Corridor Manager
Contra Costa Public Works Department
255 Glacier Drive
Martinez, CA 94553-4825

Re: Tom Newlin, 244 Lunada Lane, Alamo, CA 94507

Dear Ms. Ricci:

I have reference to your letter dated April 4, 2012. That letter failed to include the attachments to which the letter makes reference. Nonetheless, I certainly have access to Civil Code 1007—if not to the Contra Costa County Record of Survey.

Civil Code Section 1007 has no application in this particular matter. While it is entirely true that easement rights by prescription cannot be acquired in public property, it is also quite true that private property rights which have already ripened before the public's ownership interest arose cannot be defeated by that particular statute. In this case, the rights of the public in the trail arose long after the rights of the Newlins and their predecessors in interest had matured. The cited statute is simply irrelevant to the issue.

I have previously pointed out that this can hardly be deemed to be a matter of urgency given the manner in which it has been addressed. More importantly, the Newlins have no desire to preclude the maintenance of an underground pipeline. Their rights relate to surface use of the property and not the subsurface area required by Kinder Morgan. The Newlins are fully prepared to cooperate as necessary to provide access to the underground pipeline. There should be no need to disrupt the Newlins use and enjoyment of all of their property including the portion thereof subject to their open, hostile and adverse use for a period of decades.

Do not plan on removing the Newlins fence in June. There is no legal right to take such action. Please contact me so that we might work out something of use to both the County and Kinder Morgan on the one hand and the Newlins on the other.

I look forward to hearing from you at your earliest convenience.

Very truly yours


David J. Bowie

Cc: Mr. and Mrs. Newlin



Julia R. Bueren, Director

Deputy Directors

R. Mitch Avalon

Brian M. Balbas

Stephen Kowalewski

Steve Silveira

April 25, 2012

David J. Bowie, Esq.
Law Office of David J. Bowie
2255 Contra Costa Blvd., Suite 305
Pleasant Hill, CA 94523

RE: Encroachment within the Iron Horse
Corridor – Newlin Property

Dear Mr. Bowie:

This letter responds to your letter dated April 11, 2012. The law does not support the position that you and your clients have taken in response to the County's request that your clients remove their illegal encroachments from the Iron Horse Corridor. The County therefore reiterates its demand that those encroachments be removed from the Iron Horse Corridor and Kinder Morgan's easement by June 15, 2012, or it will remove the encroachments or take other necessary actions.

California Civil Code section 1007 provides that no person may obtain a prescriptive right in property that is "dedicated to a public use by a public utility, or dedicated to or owned by a public entity..." For over a century, California courts have recognized that a railroad right of way is one type of dedication to a public use, and that no person can obtain a prescriptive right in a railroad right of way. (See *Southern Pacific Co. v. Hyatt* (1901) 132 Cal.4th 240, 244.)

As you know, until the County acquired the Iron Horse Corridor in the mid-1980s, the corridor was owned, and had been dedicated for use as a railroad right of way, by the Southern Pacific Transportation Company. Your clients therefore could not have acquired a prescriptive right in the Iron Horse Corridor, either before or after the County acquired title to the corridor.

Your clients' fence illegally encroaches within the Iron Horse Corridor. Your clients' fence also interferes with Kinder Morgan's need for unrestricted access to its pipeline within its easement. The County is working with property owners that remove encroachments from Kinder Morgan's easement, but wish to remain on County property through a license agreement. This would require your clients moving the fence back closer to their property line so it is completely out of Kinder Morgan's easement. Your clients would be required to enter into a license agreement, pay a fee of \$500 every 2 years, and provide an insurance certificate naming the County as additional insured.

As we mentioned in our previous letters dated March 15, 2012 and April 4, 2012, representatives of the County and Kinder Morgan are available to meet with you and your clients to discuss this matter, but all of your clients' encroachments must be removed from the Iron Horse Corridor property by June 15, 2012 or have entered into a license agreement and moved the encroachment out of Kinder Morgan's easement.

If you have any questions, please contact me at (925) 313-2235.

Sincerely,

A handwritten signature in black ink, appearing to read "Carrie Ricci", written in a cursive style.

Carrie Ricci
Iron Horse Corridor Manager

CR:mw
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c: Julie Bueren, Public Works Director
Steve Kowalewski, Deputy Public Works Director
Laura Case, Supervisor Mitchoff's office
Donna Maxwell, Supervisor Uilkema's office
Stephen Siptroth, Deputy County Counsel
Grant McClellan, Kinder Morgan



Contra Costa County
Public Works
D e p a r t m e n t

Julia R. Bueren, Director
Deputy Directors
R. Mitch Avalon
Brian M. Balbas
Stephen Kowalewski
Steve Silveira

May 30, 2012

David J. Bowie, Esq.
Law Office of David J. Bowie
2255 Contra Costa Blvd., Suite 305
Pleasant Hill, CA 94523

RE: Encroachment within the Iron Horse
Corridor – Newlin Property

Dear Mr. Bowie:

On April 25, 2012, the County sent you the enclosed letter. As of today, May 30, 2012, the County has not received a response. As we mentioned in our previous letters dated March 15, 2012, and April 4, 2012, representatives of the County and Kinder Morgan are available to meet with you and your clients to discuss this matter, but all of your clients' encroachments must be removed from the Iron Horse Corridor property by June 15, 2012, or they must have entered into a license agreement and moved the encroachment out of Kinder Morgan's easement by that date. If all encroachments are not removed by June 15, 2012, and if your clients have not executed a license agreement by that date, the County will move forward with removal of the encroachments, or take other remedial actions authorized by law.

If you have any questions, please contact me at (925) 313-2235.

Sincerely,

Carrie Ricci
Iron Horse Corridor Manager

CR:mw
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c: Julie Bueren, Public Works Director
Steve Kowalewski, Deputy Public Works Director
Laura Case, Supervisor Mitchoff's office
Donna Maxwell, Supervisor Ulkema's office
Stephen Siptroth, Deputy County Counsel
Grant McClellan, Kinder Morgan

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June 7, 2012

Carrie Ricci
Iron Horse Corridor Manager
Contra Costa Public Works Department
255 Glacier Drive
Martinez, CA 94553-4825

Re: Tom Newlin, 244 Lunada Lane, Alamo, CA 94507

Dear Ms. Ricci:

As you know, I represent the Newlins, the property owners at 244 Lunada Lane. The Newlin property is one of those which abuts the Iron Horse Corridor impacted by the Kinder Morgan easement. The Newlin property is a horse property; apparently, a portion of the arena area is defined by a fence which extends beyond the Newlin property line.

The particular horse use and fence placement has existed at the Newlin property for a period well beyond the 20 years of their ownership. There is no question but that the use and any encroachments precede the County's ownership of the Iron Horse Corridor. I believe that circumstance renders inapplicable the Civil Code section upon which the County has relied pertaining to prescriptive claims and public entities. I might add that the prescriptive use in question relates to the Kinder Morgan dominant tenement and that is clearly not within the scope of the Civil Code statute. That is not necessarily the point of this letter or our earlier telephone discussion, however.

The Kinder Morgan pipeline apparently extends in a subsurface area in the immediate vicinity of a number of very large oak trees. The oak trees obviously constitute an inconvenience in terms of accessing the pipeline for maintenance purposes. The oak trees are not regarded as an insuperable barrier, however. The horse use of any encroachment and fence posts hardly constitute the type of permanent obstruction which might actually pose a problem for access to the underground pipeline for maintenance. In fact, the horses and the Newlins together provide some on level of maintenance of the area, at least in terms of its surface. I

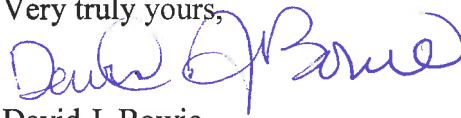
Exhibit E

cannot imagine there is not a means of accommodating the Kinder Morgan access requirements with the use which has defined this particular property for a period in excess of some 30 years.

The Newlins strongly object to removal of their fence posts or any other alleged obstructions. They believe they have legal colorable title to their use and that self help by the County and/or Kinder Morgan would be entirely inappropriate. More importantly, the Newlins maintain horses within this particular area and the removal of fencing could be a threat hazard to both horses and to any workers who might remove the fencing which contains them. It would be most ill-advised to simply proceed in the fashion in which your letters seem to indicate the County plans to do.

I would invite a meaningful dialog to address what should be a fairly simply problem for resolution.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David J. Bowie", is written over the typed name.

David J. Bowie

Cc: Tom Newlins



Contra Costa County
Public Works
Department

Julia R. Bueren, Director

Deputy Directors
R. Mitch Avalon
Brian M. Balbas
Stephen Kowalewski
Steve Silveira

June 20, 2012

David J. Bowie, Esq.
Law Office of David J. Bowie
2255 Contra Costa Blvd., Suite 305
Pleasant Hill, CA 94523

RE: Encroachment within the Iron Horse
Corridor – Newlin Property

Dear Mr. Bowie:

Your letter dated June 7, 2012, states that your clients "believe they have legal colorable title" to a portion of the County-owned Iron Horse Corridor property (the "Property"), which includes the Kinder Morgan easement, adjacent to their property. The County continues to disagree with your clients' position. The County nevertheless desires to understand the basis on which your clients claim "legal colorable title" to the Property. Please provide me with the written documentation on which your clients base their claim of "legal colorable title" to the Property by August 17, 2012. If the County continues to disagree with your clients' allegations after that date, the County will move forward with removal of the encroachments, or will take other remedial actions authorized by law.

If you have any questions, please contact me at (925) 313-2235.

Sincerely,

Carrie Ricci
Iron Horse Corridor Manager

CR:mw
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c: Julie Bueren, Public Works Director
Steve Kowalewski, Deputy Public Works Director
Laura Case, Supervisor Mitchoff's office
Donna Maxwell, Supervisor Uilkema's office
Stephen Siptroth, Deputy County Counsel
Grant McClellan, Kinder Morgan