

12/5/92

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Please Reply to: (415) 363-4762

November 12, 1992

James Marsh, Esq.
MidCoast Community Council
Park & Recreation Committee
P. O. Box 64
Moss Beach, CA 94038

Re: Access to McNee State Park Over Corado Property

Dear Mr. Marsh:

This responds to your letter of August 2, 1992, concerning the issue of access to McNee State Park through property owned by Corado, Inc. We have now completed our research into this issue, and offer the following summary of our findings.

The matter arises from recent efforts by Corado, Inc., to gate access across its property. The pertinent facts may be summarized as follows: access across the property has historically been over the deteriorated hard surface of Pedro Mountain Road, the predecessor to Highway One. The portion of Pedro Mountain Road at issue was originally granted to the County as a 60 foot easement for public highway purposes, by predecessors in interest to Corado, Inc., taken over by the State, and subsequently relinquished to the County in 1938, presumably under the provisions of Streets and Highways Code section 73. On the east side of the Martini Creek, the road passes over property owned by Corado, Inc. On the west side of the creek is property owned by State Parks. Although other portions of Pedro Mountain Road were abandoned by the County in past years, the segment at issue here has never been abandoned. This segment has never been formally accepted into the County road system, however, and apparently has never been maintained by the County (at least not in the recent past). Before the early 1970s, the road bridged Martini Creek at a point on the subject property. In the early 1970s, the bridge washed out and has not been replaced. Because of the steepness of the banks at the former location of the bridge, persons using Pedro Mountain Road for access to State Park lands were required to go upstream some distance to cross the creek (apparently using an existing horse trail), returning to the road along the creek bank on the west side

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of the creek. At the time of the washout, no signs, fences, or gates prevented or regulated this practice. Within the last three to five years, Corado, Inc., (or its predecessor in interest) reconstructed some buildings on the property, and gated and signed this trail deviation. An ensuing dispute was apparently settled and continued use of the deviation was allowed with the gate remaining open, but with signs informing the public of private ownership of the land. The owner recently locked the gate, preventing access, in apparent response to public opposition to a proposed stable permit. Corado, Inc. has apparently also gated Pedro Mountain Road at the point it first enters Corado's property.

The MidCoast Community Council posed several questions for our consideration:

1. Does the public have the right to continue to use Pedro Mountain Road easterly of Martini Creek?

Our conclusion is that they do, subject to a possible requirement to provide fencing on either side of the road. The right-of-way was granted as a 60 foot easement for a public highway, subject to the construction of a "good and sufficient fence along each side of the right-of-way hereby granted." As noted, this road is still a County owned right-of-way, never having been abandoned. Prescriptive rights cannot be gained against property "dedicated to or owned by the state or any public entity". (Civil Code section 1007.) No action taken by Corado, Inc., or its predecessors in interest, can ever extinguish the public status of the roadway. If any obstructions have been placed in the right-of-way, the County could compel removal of these obstructions under the authority of Streets and Highways Code sections 1480 et seq., which authorizes the County to remove, or require the removal of, any encroachments on a County highway, and to collect the costs of removal. As noted above, fencing might be required to establish the continued right to use the easement. Whether the use of the road as a trail, as opposed to a highway for vehicular travel, obviates the requirement to install fencing is an open question.

If the County determined to assert the public nature of the easement, consideration could be given to abandoning the highway and reserving a trail easement under the provisions of Streets and

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Highways Code section 8340. The State Department of Parks and Recreation expressed some interest in taking over the road a couple of years ago, but apparently that idea has been temporarily put on hold due to budget constraints.

2. Does the public have the right to continue to use the deviation from Pedro Mountain Road easterly of Martini Creek between Pedro Mountain Road and the creek crossing upstream of the washed out bridge?

Our short answer is no. Gion v. Santa Cruz (1970) 2 Cal.3d 29, affirmed the principle that public use of private land for a period of five or more years can result in an implied dedication of private property for a public use. In response to the Gion decision, however, the Legislature adopted Civil Code section 1009, which effectively abrogates the holding of Gion, with limited exceptions. In pertinent part, the section provides that "no use of {private} property by the public after the effective date of this section shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use... ." The exceptions to this rule include any property upon which visible improvements have been made using public funds (subd. (d)), and coastal lands lying within 1000 yards of the mean high tide line, or between the mean high tide line and the first public road, whichever distance is less. (Subd. (e).) Neither of these exceptions apply here. This section became effective on January 1, 1972. The first use of the "deviation" apparently occurred after the bridge was washed out in the early 1970s. Under these facts, no public right of use in the deviation could be established. This, of course, does not prevent individuals from establishing their own private right to use the deviation by prescription.

3. If the conclusion is that the public has the right to continue to use the road and deviation, will the prevention or attempted prevention of public use of the road and deviation by Corado have any effect on the continuance in the future of public use? Can the right of public use be lost by failure of the public to take appropriate action at the time the right is obstructed or foreclosed?

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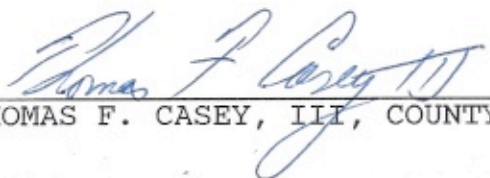
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As noted above, with regard to Pedro Mountain Road, rights that conflict with a public easement can never be perfected by prescription. In the case of the deviation, it appears that there is no public right to lose. For individuals who arguably have perfected a private prescriptive right to use the deviation, that right may be lost if the access is successfully blocked for a period of five years or more.

In summary, the County currently holds an easement over portions of Pedro Mountain Road for a public highway, and could take steps to ensure Pedro Mountain Road remains unobstructed, if it so chooses. If the County asserts its rights, it may be required to install fencing. The County is not in a position to assert public rights in the deviation, however. Because no public right to use the deviation can be established, there is presently no publicly available connection between the road and McNee State Park, absent reconstruction of the bridge.

If you have any questions concerning the matters discussed in this letter, please feel free to call Michael Murphy at 363-4762.

Very truly yours,


THOMAS F. CASEY, III, COUNTY COUNSEL

TFC:MPM:jmm
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cc: Supervisor Anna Eshoo
John Maltbie, County Manager
Robert Sans, Director of Public Works
Paul Koenig, Director of Environmental Management