

**Before the Planning Commission in and for the
County of Monterey, State of California**

Resolution No. 13-035

Resolution of the Monterey County Planning Commission recommending that the Board of Supervisors adopt a Resolution of Intent to amend the Local Coastal Program adding Chapter 20.64.320 to the Monterey County Code to establish regulations for the issuance of permits and entitlements for development on properties utilizing private streets, roads and other travelled ways ("Proof of Access"). (PLN130084/Proof of Access, Countywide)

I. RECITALS:

Proposed amendments to Title 20 (Zoning Ordinance) came on for hearing before the Monterey County Planning Commission on November 9, 2011, December 14, 2011, January 25, 2012, and was continued from the August 28, 2013 hearing to September 11, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission hereby makes the following recommendation with reference to the following facts:

WHEREAS, Pursuant to Article XI of the California Constitution, the County of Monterey ("County") may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, The County is charged with, among other tasks, the responsibility of assuring that development is compatible with surrounding neighborhoods and incorporates provisions for adequate access for occupants, residents and emergency services; and

WHEREAS, Many of the streets, roads, and other travelled ways in the County are privately owned ("Private Roads") the use of which is governed by agreements among private parties ("Private Road Agreements"). The County is not a party to such agreements and does not enforce their terms and conditions, nor does the County have jurisdiction to adjudicate a dispute among the parties to such agreements. Applications for development that require discretionary permits or other entitlements have, in some instances, proposed to use Private Roads, and, also in some instances, other parties to the applicable Private Road Agreement, or adjoining landowners, have disputed the legal authority of the applicant to use the Private Road in the manner proposed by the development application; and

WHEREAS, The County wishes to ensure that the issuance of certain land use related permits, licenses, entitlements and other approvals is consistent with any applicable Private Road Agreement, and that any issues that may arise over the use of Private Roads are resolved by the parties to the applicable Private Road Agreement and adjoining landowners prior to the issuance of such permits, licenses, entitlements or other approvals or, if disagreements arise later, prior to the commencement of use pursuant to the applicable land use approval. The County also wishes

to provide certainty to the applicant and the public in the planning process as to the manner in which the County will address disputes among parties to a Private Road Agreement that arise in connection with land use related applications; and

WHEREAS, In view of the foregoing and to protect the public health, safety, and welfare, it is necessary for the County to enact this ordinance to set forth the required proof of access for the use of Private Roads in conjunction with certain land use related applications; and

WHEREAS, The proposed ordinance is attached to this Resolution as **Exhibit B-1** and is incorporated herein by reference; and

WHEREAS, The adoption of the attached ordinance is categorically exempt pursuant Section 15301 of the California Environmental Quality Act (CEQA) Guidelines. This section (Class 1) of the CEQA Guidelines categorically exempts operation, maintenance or minor alteration of existing public or private structures and facilities involving negligible or no expansion of use. The proposed ordinance would require proof of access for the use of existing private roads, but would not involve any physical change to existing conditions.

II. DECISION:

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the definition of "Private Road Agreement" be amended to address situations where no recorded easement exists, and that the Board of Supervisors adopt a Resolution of Intent to amend the Local Coastal Program adding Chapter 20.64.320 to the Monterey County Code (attached) establishing regulations for the issuance of permits and entitlements for development on properties utilizing private streets, roads and other travelled ways (Proof of Access Ordinance).

PASSED AND ADOPTED on this 11th day of September, 2013, upon motion of Commissioner Vandevere, seconded by Commissioner Padilla, by the following vote, to-wit:

AYES: Brown, Vandevere, Getzelman, Rochester, Mendez, Roberts, Padilla, Hert
NOES: None
ABSENT: Salazar
ABSTAIN: None
RECUSED: Diehl



Mike Novo, Secretary

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ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING SECTION 20.64.320 TO THE MONTEREY COUNTY CODE TO ESTABLISH
REGULATIONS FOR THE ISSUANCE OF PERMITS AND ENTITLEMENTS FOR
DEVELOPMENT ON PROPERTIES UTILIZING PRIVATE STREETS, ROADS AND
OTHER TRAVELLED WAYS.**

County Counsel Summary

This ordinance amends Title 20 (Coastal Implementation Plan) of the Monterey County Code to establish regulations governing certain discretionary development or entitlements that may intensify use of a private road. This ordinance requires an applicant to provide certain documentation to the County regarding the use of a private road, street, or other travelled way as part of process by which discretionary permits, licenses or other entitlements for a development are considered by the County. This ordinance applies in the unincorporated, coastal area of the County of Monterey.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Declarations:

1. Pursuant to Article XI of the California Constitution, the County of Monterey ("County") may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.
2. The County is charged with, among other tasks, the responsibility of assuring that development is compatible with surrounding neighborhoods and incorporates provisions for adequate access for occupants, residents and emergency services.
3. Many of the streets, roads, and other travelled ways in the County are privately owned ("Private Roads") the use of which is governed by agreements among private parties ("Private Road Agreements"). The County is not a party to such agreements and does not enforce their terms and conditions, nor does the County have jurisdiction to adjudicate a dispute among the parties to such agreements. Applications for development that require discretionary permits or other entitlements have, in some instances, proposed to use Private Roads, and, also in some instances, other parties to the applicable Private Road Agreement, or adjoining landowners, have disputed the legal authority of the applicant to use the Private Road in the manner proposed by the development application.
4. The County wishes to ensure that the issuance of certain land use related permits, licenses, entitlements and other approvals is consistent with any applicable Private Road Agreement, and that any issues that may arise over the use of Private Roads are resolved

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by the parties to the applicable Private Road Agreement and adjoining landowners prior to the issuance of such permits, licenses, entitlements or other approvals or, if disagreements arise later, prior to the commencement of use pursuant to the applicable land use approval. The County also wishes to provide certainty to the applicant and the public in the planning process as to the manner in which the County will address disputes among parties to a Private Road Agreement that arise in connection with land use related applications.

5. In view of the foregoing and to protect the public health, safety, and welfare, it is necessary for the County to enact this ordinance to set forth the required proof of access for the use of Private Roads in conjunction with certain land use related applications.

SECTION 2. Section 20.64.320 is added to Chapter 20.64 of the Monterey County Code to read as follows:

20.64.320 REGULATIONS RELATING TO APPLICATIONS INVOLVING USE OF PRIVATE ROADS

A. Purpose: The purpose of this section is to establish regulations relating to the issuance of certain discretionary permits or entitlements that may result in the use of a Private Road intensifying. This ordinance requires that an applicant for such permits or entitlements provide certain documentation showing that the issuance of any such permits or entitlements is consistent with any applicable Private Road Agreement, and provide notice of the application to the other parties to the Private Road Agreement, and to adjoining landowners.

B. Applicability: These regulations apply to all properties in the Coastal Zone unincorporated area of the County in all zoning districts. Where a conflict exists between the provisions of this Section and other provisions of County Code, the provisions of this Section prevail.

C. Definitions:

1. "Applicant" means the person or entity submitting an Application to the County of Monterey.
2. "Application" means an application for a Project.
3. "Appropriate Authority" has the meaning set forth in Section 20.06.090.
4. "Final Settlement or Final Judicial Determination" means a written agreement between Interested Parties resolved personally or through other avenues including but not limited to mediation, adjudication or a court.
5. "Interested Party" means persons or entities that either:
 - a. are a party to a Private Road Agreement; or

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b. own property abutting lands subject to a Private Road Agreement.

6. "Notice" means written notice of an Application provided to all Interested Parties with respect to a Private Road that will be used to access a Project, such notice to be personally delivered or deposited in the U.S. Mail, first class postage pre-paid.

7. "Private Road" means any travelled way, avenue, place, drive, lane, street, boulevard, highway, easement, or alley not owned, maintained, nor required to be maintained by the state, county, incorporated city, or other public agency, and that is the subject of a Private Road Agreement.

8. "Private Road Agreement" means any document of record, properly executed and recorded, that is an agreement between parties concerning the right to use private property as access to another parcel of private property. A Private Road Agreement may include, without limitation, a written contract, an easement, grant deed, reservation or a designation on a final subdivision map.

9. "Project" means:

- a. a use for which a discretionary permit, license or other entitlement from the County is required, or
- b. a change in land use from an agricultural designation (Coastal Agricultural Preserve, Agricultural Preservation) to a non-agricultural designation, and, in either case, where access to the property from a public road is, or will be, provided either primarily or subordinately by a Private Road.

10. "Proof of Access" means one or more of the conditions described in Section 20.64.320(D)(3)(a).

D. Regulations:

1. Pre-Application. An Applicant shall:

- a. provide Notice no later than 10 days prior to the submittal of an Application to the County; and
- b. attempt to obtain the written concurrence of all parties to the applicable Private Road Agreement that the Project is consistent with such Agreement.

2. Application. An Applicant shall provide the following with any Application, and an Application will not be deemed complete until the information or documentation required is provided:

- a. A copy of the Private Road Agreement.
- b. Documentation, included on a site plan, showing existing access limits and minimum access requirements from the Project to the primary public road or right-of-way. If access does not meet minimum requirements of the local Fire Authority and Monterey County Public Works Department, Applicant must demonstrate the ability to obtain access necessary to meet the minimum level of improvements required.

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c. A copy of the Notice and documentation of when the Notice was personally delivered or deposited in the U.S. Mail to Interested Parties. A list of Interested Parties provided Notice shall be included with the Application showing each such owner or party, and their last known address.

d. Documentation of efforts by the Applicant to meet with the parties to the applicable Private Road Agreement and obtain the written concurrence that the Project is consistent with such Agreement.

3. Proof of Access

a. In order to approve a Project, and in addition to any other requirements imposed by law, the Appropriate Authority must make a finding that Proof of Access exists. The following shall constitute Proof of Access for purposes of this Section 20.64.320:

- i) Written concurrence of all parties to the Private Road Agreement;
- ii) Existence of a final settlement or final judicial determination that the Private Road may be used to access the Project; or
- iii) The existence of a Private Road Agreement that, in the opinion of the County, demonstrates the right to use private property as access to another parcel of private property consistent with the Project; proof that Notice has been provided; and no objection being made to the use of the Private Road at or prior to the hearing on the Application.

b. If the Appropriate Authority finds, based on substantial evidence in the record, that a substantive dispute exists as to the use of the Private Road, or is otherwise unable to make a finding that Proof of Access exists, said Authority may approve the Project but shall require as a condition of Project approval that the Applicant provide the County with a final settlement or final judicial determination that the Private Road may be used to access the Project, said condition to be satisfied prior to issuance of any other permits in furtherance of the Project.

c. Where an Application proposes only subordinate access to property by a Private Road, a finding of Proof of Access shall not be required where the Applicant agrees to a condition of approval that the Private Road will not provide access to the property and such access is not otherwise required by law.

d. If an Application is denied based upon a failure to find Proof of Access, or if a Project was previously approved with the condition described in Subsection 20.64.320(D)(3)(b) but the permit or entitlement has expired, a new Application for the same Project may be submitted only if Proof of Access is demonstrated by the written concurrence of all parties to the Private Road Agreement or by the submission of a final settlement or final judicial determination that the Private Road may be used to access the Project. Upon submission of such new Application, the Planning Director shall review and determine if Proof of Access is demonstrated satisfying the requirements of this Section in order for the Application to be considered complete.

E. Exemptions:

1. The provisions of this Section are not applicable to:

a. Any action authorized by an emergency permit issued pursuant to Chapter 20.79 of Title 20 of the Monterey County Code provided that such action exists or occurs only so long as the emergency permit is effective;

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b. Private Roads serving properties with Coastal Agricultural Preserve, Agricultural Preservation designations where the Application proposes no changes in the uses to which the property being served is put at the time the Application is deemed complete; or

2. Notwithstanding the foregoing, no Application involving a subdivision shall be exempt from this Section 20.64.320.

3. Nothing in this section affects the authority of the County to exercise the power of eminent domain pursuant to Section 66462.5 of the California Subdivision Map Act.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE:

This ordinance shall become effective on the 31st day after its adoption.

PASSED AND ADOPTED on this ____ day of _____ 2013, upon motion of Supervisor _____, seconded by Supervisor _____, by the following vote, to-wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____, Chair
Monterey County Board of Supervisors

ATTEST:
GAIL BORKOWSKI, Clerk to the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

CHARLES J. MCKEE, County Counsel

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By: _____
Wendy S. Strimling
Senior Deputy County Counsel

APPROVED AS TO FORM

WENDY S. STRIMLING
Senior Deputy County Counsel