

Attachment 4

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ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 16.80 TO THE MONTEREY COUNTY CODE AND REPEALING
SECTION 21.64.320 OF THE MONTEREY COUNTY CODE RELATING TO
DEVELOPMENT APPLICATIONS UTILIZING PRIVATE ROADS**

County Counsel Summary

This ordinance adds Chapter 16.80 to the Monterey County Code and repeals Section 21.64.320 (inland zoning) of the Monterey County Code to change the location in the County Code of regulations relating to the issuance of land use entitlements for development utilizing private streets, roads, and other travelled ways. The ordinance provides a uniform, consistent, reasonable and fair manner for addressing disputes regarding the use of a private road, street, or other travelled way as part of the process by which discretionary permits, licenses or other entitlements for a development are considered by the County of Monterey. For the inland unincorporated area of the County, this ordinance, which moves the regulations from Title 21 to Title 16 of the County Code with minor modifications, does not result in substantive change from existing regulations. This ordinance would result in enactment of new regulations in the unincorporated coastal zone of the County. The regulations were not previously adopted in the coastal zone because they were not certified by the California Coastal Commission. On advice of staff of the Coastal Commission, the County is consolidating the regulations into Title 16 of the County Code, which concerns environmental matters irrespective of zoning and would not in this case require certification by the Coastal Commission. Adoption of this ordinance, enacting these regulations as part of Title 16 of the County Code, would enact consistent regulations applicable to both the inland and coastal unincorporated areas of the County. This ordinance will take effect on the thirty-first day after adoption.

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

SECTION 1. Findings and Declarations.

A. 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.

B. 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.

C. Many of the streets, roads, and other travelled ways in the County are privately owned (“Private Roads”) and are 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. 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.

D. Issues have arisen during the County's consideration of discretionary land use permit applications as to whether the issuance of certain land use related permits, licenses, entitlements and other approvals are consistent with any applicable Private Road Agreement. The County wants any issues that may arise over the use of Private Roads to be resolved by the parties to the applicable Private Road Agreement. The County also wants to provide certainty to the applicant and 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.

E. On August 26, 2014, the Monterey County Board of Supervisors ("Board of Supervisors") adopted inland zoning regulations to establish special regulations for the issuance of land use permits and entitlements for development utilizing private streets, roads, and other travelled ways in the inland area (Ordinance Number 5177, adding Section 21.64.320 to Title 21 of the Monterey County Code ("MCC")). At the same hearing, the Board of Supervisors adopted a Resolution of Intent (Resolution No. 14-250) to adopt coastal zoning regulations to establish special regulations for the issuance of land use permits and entitlements for development utilizing private streets, roads, and other travelled ways in the coastal area, and directed staff to submit the draft coastal regulations to the California Coastal Commission for certification.

F. On November 21, 2014, County staff submitted the coastal zoning regulations to the Coastal Commission for certification. On October 21, 2016, Coastal Commission staff provided County staff with a letter suggesting that the County withdraw the application to amend the LCP and instead insert the regulations elsewhere in the County Code. On October 24, 2016, the County submitted a letter to the Coastal Commission withdrawing its application. As such, this ordinance moves the proof of access regulations to Title 16 of the MCC. In moving the regulations to Title 16, the adopted regulations contained in Section 21.64.320 must be repealed.

G. 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 standards to address the use of Private Roads in conjunction with certain land use related applications for both the inland and coastal areas. These standards provide guidance and a uniform, consistent, reasonable and fair manner for addressing the use of Private Roads when disputes about the use of Private Roads arise in the land use entitlement and permitting process.

H. The Board of Supervisors finds that the ordinance is not a project under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15060(c)(3) and 15378(b)(5) because the ordinance establishes permit review procedures for

development projects utilizing existing private roads and does not authorize nor require any physical change to the environment.

SECTION 2. Chapter 16.80 is added to the Monterey County Code to read as follows:

Chapter 16.80
REGULATIONS RELATING TO APPLICATIONS INVOLVING USE OF PRIVATE
ROADS

Sections:

16.80.010 – Purpose.

16.80.020 – Applicability.

16.80.030 – Definitions.

16.18.040 – Application Review and Procedures.

16.18.050 – Regulations.

16.18.060 – Project Conditions.

16.18.070 – Reservation of Authority.

16.80.010 – Purpose.

The purpose of this Chapter is to establish regulations relating to the issuance of certain discretionary permits or entitlements pursuant to Titles 20 or 21 of this Code that may result in the intensification of use of a privately-owned road.

16.80.020 – Applicability.

These regulations apply to the unincorporated area of Monterey County. Where a conflict exists between the provisions of this Chapter and other provisions of the Monterey County Code, the provisions of this Chapter shall prevail.

16.80.030 – Definitions.

The following definitions shall apply to this Chapter:

- A. “Applicant” means the person or entity who submits an application to the County for a discretionary permit pursuant to Titles 19, 20 or 21 of this Code.
- B. “Application” means an application for a land use project requiring a discretionary permit.
- C. “Appropriate Authority” means that person, official, or body designated to hear, grant, deny, modify, condition, revoke or otherwise act on permits required by Titles 20 and 21 of this Code.
- D. “County” means the County of Monterey.

E. “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, arbitration, or a document evidencing a binding arbitration decision or final court judgment.

F. “Interested party” means any person or entity that owns property abutting a private road, but that is not a party to a private road.

G. “Notice” means written notice of an application provided to all parties to a private road and interested parties that will be used to access a project, such notice to be personally delivered or deposited in the United States Mail, first class postage pre-paid.

H. “Party to a private road” means:

1. Any person or entity that owns the underlying fee interest in land that is subject to and burdened by a private road, such as the servient tenement in the case of an easement; and

2. Any person or entity that holds an interest in the private road and benefits from it, such as the dominant tenement in the case of an easement.

I. “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, except that the term “private road” for purposes of this Chapter shall include quasi-private roads that have all of the following characteristics: the road is under the jurisdiction of a federal governmental agency; it lies on national forest or private land; it is open to public use; and private users bear or contribute directly to the cost of maintenance.

J. “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. A private road agreement also includes a final court judgment documenting an easement or other right of access.

K. “Private road maintenance agreement” means a document of record, properly executed and recorded, that is an agreement between parties to a private road concerning the costs and responsibilities of those parties for upkeep and repair of the private road.

L. “Project” means:

1. A use for which a discretionary permit, license or other entitlement from the County is required; or a change in land use from an agricultural designation (Farmland, Permanent Grazing, Rural Grazing) to a non-agricultural designation; and

2. 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.

M. "Proof of access" means one or more of the following:

1. Written concurrence of all parties to a private road;
2. Existence of a final settlement or final judicial determination that the private road may be used to access the project; or
3. A properly executed private road agreement.

16.80.040 - Application Review and Procedures.

A. An applicant shall provide the following, if applicable, with any application submitted pursuant to Titles 19, 20 or 21 of this Code, and an application will not be deemed complete until the information or documentation required is provided:

1. A copy of the private road agreement;
2. A copy of the private road maintenance agreement;
3. Written permission to use a private road for the project from a private road governing structure; and
4. A site plan that includes, but is not limited to, documentation 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 Resource Management Agency, the applicant must demonstrate the ability to meet the minimum level of improvements required.

B. Upon submittal of an application, the Chief of Planning, or his or her designee, shall:

1. Provide notice pursuant to Subsection C of this Section;
2. Review the application to determine if the project is exempt pursuant to Subsection D of this Section;
3. If the application is not exempt pursuant to Subsection D, the Chief of Planning, or his or her designee, shall classify the project as belonging within one of the following categories:
 - a. Tier 1: the project is not subject to a private road agreement or a private road maintenance agreement;

b. Tier 2: the project is not subject to a private road agreement, but is subject to a private road maintenance agreement;

c. Tier 3: the project is subject to a private road agreement, but not a private road maintenance agreement; or

d. Tier 4: the project is subject to a private road agreement and a private road maintenance agreement.

C. Upon submittal of an application, the Chief of Planning, or his or her designee, shall meet the following notice requirements:

1. Provide notice of a project to all parties to a private road and interested parties within ten (10) working days of submittal of an application for a project, except notice is not required for the following types of projects:

a. The first single family dwelling on a legal lot of record;

b. Any action authorized by an emergency permit issued pursuant to Chapters 20.79 or 21.75 of this Code, provided that such action exists or occurs only so long as the emergency permit is effective;

c. Projects with access via public road(s) only;

d. Projects whose use of a private road is limited to emergency access only;

e. Routine and ongoing agricultural uses;

f. Accessory dwelling units, guesthouses, and/or other subordinate uses that are accessory to the primary use of the property; and

g. Projects with access via a private road(s) that are subject to a legally established private road governing structure such as a homeowners' association or similar organization where said governing structure is authorized to make determinations regarding the use, maintenance, and related matters regarding the private road(s) and where such governing structure has provided written permission to use the private road(s) for the project. Examples of projects within this exception may include but are not limited to projects considered allowed uses within the Del Monte Forest area, the Monterra and Tehama subdivisions, and similar subdivisions with previously contemplated allowed uses and private road governing structures. This exemption does not apply if access to the private road(s) subject to the governing structure is accessed by another private road(s) not subject to the governing structure. In such a case, notice shall be provided to interested parties outside of the jurisdiction of the governing structure.

2. The notice shall provide the opportunity for any party to a private road to object to the use of the private road, for purposes of the project, within thirty (30) days from the mailing of the notice. The purpose of this notice and objection is to provide an opportunity for resolution of disputes prior to consideration of the project by the Appropriate Authority, or for staff to consider a recommendation following the provisions of this Chapter. For the purposes of this Chapter, objections from interested parties who own land abutting a private road shall be considered on a case by case basis. Objections from interested parties shall not provide a basis for applying the conditions described in Section 16.80.060 of this Chapter.

3. The notice may include notification of the Land Use Advisory Committee meeting where the project will be considered if such consideration is required pursuant to the Land Use Advisory Committee Procedures adopted by the Board of Supervisors.

D. The following types of projects shall be exempt from the regulations contained in Sections 16.80.050 and 16.80.060 of this Chapter:

1. The first single family dwelling on a legal lot of record;
2. Any action authorized by an emergency permit issued pursuant to Chapters 20.79 or 21.75 of this Code, provided that such action exists or occurs only so long as the emergency permit is effective;
3. Projects with access via public road(s) only;
4. Projects whose use of a private road is limited to emergency access only;
5. Projects that, in the opinion of the Chief of Planning, do not result in intensification of the use of a private road(s);
6. Projects with access via a private road(s) that are subject to a legally established private road governing structure such as a homeowners' association or similar organization where said governing structure is authorized to make determinations regarding the use, maintenance, and related matters regarding the private road(s) and where such governing structure has provided written permission to use the private road(s) for the project. This exemption does not apply if access to the private road(s) subject to the governing structure is accessed by another private road(s) not subject to the governing structure. In such a case, the project is not exempt from the regulations contained in Sections 16.80.050 and 16.80.060 of this Chapter;
7. Routine and ongoing agricultural uses;
8. Accessory dwelling units, guesthouses, and/or other subordinate uses that are accessory to the primary use of the property; and

9. A federal project on a private road.

E. In all cases, applicants are encouraged to provide early notification of a project to interested parties and parties to the private road and to work collaboratively with all parties to resolve issues. For projects falling within Tier 1, Tier 2, or Tier 3, applicants are encouraged to prepare or cause to be prepared, executed and recorded, private road agreements and/or private road maintenance agreements, as the case may be.

16.80.050 – Regulations.

For all nonexempt projects, the following standards, based on substantial evidence in the record, shall apply:

A. Tier 1 Projects: the Appropriate Authority shall consider any objection from a party to a private road regarding access a substantive dispute and shall either deny the project on that basis or approve the project subject to the proof of access condition and/or the private road maintenance condition described in Section 16.80.060 of this Chapter.

B. Tier 2 Projects: the Appropriate Authority shall consider any objection from a party to a private road regarding the legal rights to use a private road for the project a substantive dispute and shall either deny the project on that basis or approve the project subject to the proof of access condition described in Section 16.80.060 of this Chapter. Matters of proportionate costs for repair and maintenance of such roads shall be subject to the terms of the private road maintenance agreement.

C. Tier 3 Projects: the Appropriate Authority shall rely on the plain language of the private road agreement regarding rights of access. If an objection is made involving proportionate costs for repair and maintenance of the private road(s), the Appropriate Authority shall consider an objection of fifty percent (50%) or more of the parties to a private road agreement a substantive dispute and in this case, shall either deny the project on that basis or approve the project subject to the private road maintenance condition described in Section 16.80.060 of this Chapter. An objection of fifty percent (50%) or more of the parties to a private road agreement shall be determined on a one (1) vote per lot basis.

D. Tier 4 Projects: the Appropriate Authority shall rely on the plain language of the private road agreement and private road maintenance agreement regarding rights of access and proportionate costs for repair and maintenance. Unless a project proposes a use that is clearly inconsistent with the plain language of the agreements, the Appropriate Authority may approve a project without applying conditions to the project outlined in this Chapter.

E. The “Tiers” described above are intended to provide standards that the Appropriate Authority will apply when considering an application for a project that is not exempt from the requirements of this Chapter pursuant to Section 16.80.040 and that involves a substantive dispute over the private road as described within the applicable Tier. Generally, where a legally executed document exists, the County will consider such documentation to be

adequate evidence to demonstrate access for the purposes of this Chapter and conditions of approval will not typically be warranted where such documentation exists. In all cases, regardless of whether the Appropriate Authority elects to apply a condition of approval to a project, interested parties, parties to a private road, and/or applicants may have legal rights under the California Civil Code, and nothing in this Chapter is intended to preclude their exercise of rights under the California Civil Code.

16.80.060 – Project Conditions.

A. If the Appropriate Authority finds, based on substantial evidence in the record, that a substantive dispute exists regarding the use of a private road for a project, said authority may approve the project but shall require as a condition of project approval that the applicant provide the County with proof of access demonstrating that the dispute has been satisfactorily resolved, in accordance with the Tier standards set forth above.

B. If the Appropriate Authority finds, based on substantial evidence in the record and in accordance with the Tier standards set forth above, that a substantive dispute exists regarding the costs of repairing or maintaining a private road as it relates to a project, said authority may approve the project but shall require as a condition of project approval that the applicant provide the County with adequate documentation demonstrating that the dispute has been satisfactorily resolved. For the purposes of this Chapter, adequate documentation may include written withdrawal of objections, a properly executed private road maintenance agreement, a final settlement or final judicial determination, or written documentation showing that a majority of the parties to a private road have agreed to repair and maintenance terms in light of the project.

C. Maintenance of any private road will be subject to a private road maintenance agreement, or if no such agreement exists, then County recognizes that parties may have recourse pursuant to California Civil Code Section 845. The County is not a party to such private road maintenance agreement and does not interpret or enforce their terms and conditions, nor does the County have jurisdiction to adjudicate a dispute among the parties as to the maintenance of any private road.

D. If a condition of approval is added to a project pursuant to this Chapter, said condition shall be satisfied prior to issuance of any other permits in furtherance of the project or recordation of a final map, whichever occurs first and as applicable.

E. If a project is approved subject to one or more of the conditions provided in this Chapter, the Chief of Planning shall, in his or her discretion, have the authority to stay the expiration of the entitlement for the project for a period no greater than the number of days from initial filing of judicial proceedings to the final judicial determination or settlement regarding the access dispute.

16.80.070 – Reservation of Authority.

A. Nothing in this Chapter affects the authority of the County to exercise the power of eminent domain pursuant to Government Code section 66462.5 of the California Subdivision Map Act.

B. Nothing in this Chapter diminishes or in any way alters or lessens the effect of the California Civil Code. Where a conflict exists between these provisions and the provisions of state or federal laws, the state or federal law shall prevail.

SECTION 3. Section 21.64.320 of the Monterey County Code is hereby repealed.

SECTION 4. 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 5. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ___ day of _____, 2019, by the following vote:

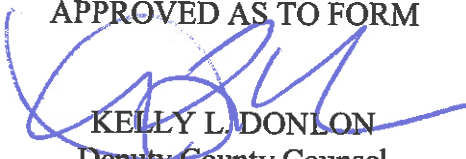
AYES:
NOES:
ABSTAIN:
ABSENT:

John M. Phillips, Chair
Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

KELLY L. DONLON
Deputy County Counsel