



# Monterey County

Board of Supervisors  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

## Board Report

Legistar File Number: ORD 19-023

August 27, 2019

**Introduced:** 8/15/2019

**Current Status:** RMA Land Use - Consent

**Version:** 1

**Matter Type:** Ordinance

### **REF190015-PROOF OF ACCESS ORDINANCE**

Introduce, waive reading, and set September 17, 2019 at 1:30 p.m. as the date and time to conduct a public hearing to consider adoption of an ordinance repealing Section 21.64.320 of the Monterey County Code related to regulations for development utilizing private streets, roads, and other travelled ways ("Proof of Access") from the non-coastal zoning regulations and moving the regulations to a new Chapter 16.80 of the Monterey County Code to establish County-wide coastal and non-coastal regulations Proof of Access regulations.

**Location:** County-wide unincorporated Monterey County

**CEQA action:** Not a project pursuant to CEQA Guidelines Sections 15060(c)(3) and 15378(b)(5).

### RECOMMENDATION:

Introduce, waive reading, and set September 17, 2019 at 1:30 p.m. as the date and time to conduct a public hearing to consider adoption of an ordinance repealing Section 21.64.320 of the Monterey County Code related to regulations for development utilizing private streets, roads, and other travelled ways ("Proof of Access") from the non-coastal zoning regulations and moving the regulations to a new Chapter 16.80 of the Monterey County Code to establish County-wide coastal and non-coastal regulations Proof of Access regulations.

### SUMMARY:

In 2014, the Board took actions to: 1) adopt an ordinance establishing regulations for proof of access in the inland areas, and 2) adopt a Resolution of Intent to establish regulations for proof of access in the coastal areas. The regulations created a process and standards for consideration of development applications in unincorporated area where disputes arise between parties over a private road, over rights to use the private road for the purposes of a proposed new use, or development contemplated by the County in a discretionary permit process. The inland regulations are codified in Section 21.64.320 of the non-coastal zoning ordinance (Title 21 of the Monterey County Code). Resolution of Intent No. 14-250 to adopt the coastal regulations was transmitted to the California Coastal Commission ("CCC") staff for certification (Attachment 1). CCC staff determined that this type of regulation is better suited in another area of the Monterey County Code that is not under the purview of the CCC (Attachment 2).

On May 29, 2019, this item was before the Monterey County Planning Commission for recommendation to the Board of Supervisors. The Planning Commission unanimously recommended approval of the subject ordinance moving the "Proof of Access" regulations from Section 21.64.320 (inland zoning code) to Title 16 of the Monterey County Code. (Attachment 3). The Planning Commission also recommended the Board rescind Resolution of Intent No. 14-250 that would have approved the same regulations in the coastal zone.

On September 17, 2019, at a duly noticed public hearing, the Board will consider adoption of an ordinance reestablishing Countywide regulations for consideration of projects located on parcels that are accessed by private roads. Moving the regulations to Title 16 will create one set of regulations applicable to both the inland and coastal areas. The Proof of Access regulations satisfy Policy C-3.6 of the 2010 General Plan in the inland area, which was established to address potential conflicts on using private roads that account for about half of the roadways in unincorporated Monterey County. The Board will also consider rescinding Resolution of Intent No. 14-250.

DISCUSSION:

*Background*

On August 26, 2014, after approximately nine years of developing regulations pertaining to discretionary projects that utilize private roads as access, an inland ordinance (Ordinance No. 5243) amending Title 21 (inland zoning code), was adopted by the Board of Supervisors. On the same date, the Board also adopted Resolution of Intent No. 14-250 to adopt the same regulations in the coastal zone (Title 20- coastal zoning code) with direction to staff to submit the ordinance to the CCC for certification.

On December 15, 2014, staff transmitted the coastal Proof of Access ordinance as a Local Coastal Program (LCP) amendment application to the CCC for certification. On October 21, 2016, the CCC wrote back and strongly encouraged the County to withdraw the LCP amendment application and instead insert the ordinance elsewhere in the County Code in a non-LCP section that pertains to procedural matters. Attachment 2. The CCC stated that although the CCC supports the County desire to ensure civil matters regarding private roads are addressed outside the County and public forum for land use applications, inserting the ordinance in Title 20, would bring a “range of potential issues, unintended consequences and opportunities for misuse that may affect public access policies.” (Attachment 2).

The draft ordinance before the Board now contains the same language which is currently codified in Title 21, apart from updated Code section numbers to be consistent with placement in Title 16 and minor non-substantive technical changes. (Attachment 4). Therefore, since public outreach and previous public hearings have been completed on the content of the regulations, no new public outreach is necessary. The previous public outreach included the following:

- Previous versions of the Proof of Access ordinances were considered by the Planning Commission on November 9, 2011, December 14, 2011, January 25, 2012, and September 11, 2013. On September 11, 2013, the Planning Commission adopted resolutions recommending approval of the ordinances to the Board of Supervisors.
- The Board of Supervisors considered the ordinances on December 17, 2013 and February 25, 2014. At the February 25th hearing, the Board continued the item to a date uncertain and directed staff to work with interested parties to address concerns raised at the hearing. Staff met with interested parties on March 26, 2014 and May 27, 2014 and made major revisions to the ordinance.
- Because the ordinances were substantially revised, staff returned to the Planning Commission for review and recommendation on the revised ordinances. On July 9, 2014, the Planning Commission unanimously recommended adoption of updated draft ordinances with

modifications to address how an objection of 50% or more of parties to a private road will be counted and to address how roads that include a governmental agency and private parties as parties to the road will be addressed within the context of this ordinance. These modifications were ultimately adopted in Title 21.

*Draft Ordinance (Attachment 4)-*

The private road regulations have been drafted recognizing that the County is not a party to disputes that may arise with respect to private roads. However, the County is in a position to make land use and development determinations that may affect disputed private roads. The Proof of Access regulations require the appropriate authority consider evidence in the record and determine if a substantive dispute exists regarding the use of a private road for a project. The ordinance also requires 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 regulations established before a contemplated use commences or development begins.

Proof of Access means written concurrence of all parties to a private road, existence of a final settlement or final judicial determination the private road may be used for the project, or a properly executed agreement.

Regulations relating to applications involving use of a private road are summarized as follows:

1. The Chief of Planning reviews applications to determine if the project can be exempt from regulations relating to use of a private road. Exemptions include:
  - a. The first single family dwelling, accessory dwelling units, and accessory structures;
  - b. Emergency permits;
  - c. All projects with access via public roads;
  - d. Projects that do not result in intensification of the use of a private road as determined by the Chief of Planning;
  - e. Routine and ongoing agricultural uses;
  - f. Federal projects; and
  - g. Private roads that are governed by a homeowner's association or other organization where such organization provides written permission for the use/development proposed.
2. Non-exempt projects are classified into one of four tiers and notice of a permit is provided to parties to the private road:
  - a. Tier 1: No private road agreement or maintenance agreement
  - b. Tier 2: Maintenance agreement but no private road agreement
  - c. Tier 3: Private road agreement but no maintenance agreement
  - d. Tier 4: Both a private road agreement and maintenance agreement.
3. Based on the tier, the following standards apply:
  - a. Tier 1 - Any valid objection from a party to a private road would require denial of the application or approval with inclusion of a "proof of access" condition.
  - b. Tier 2 - Any valid objection from a party to a private road regarding rights to access

- would require denial of the application or approval with inclusion of a “proof of access” condition.
- c. Tier 3 - A valid objection from 50% or more of the parties to a private road agreement regarding proportionate costs for repair and maintenance of a private road would require denial or the application or approval with inclusion of a “proof of access” condition.
- d. Tier 4 - Rely on the plain language of the documents.

*Environmental Review*

Environmental review of the proposed ordinance is not required under the California Environmental Quality Act (CEQA) because the ordinance is not a “project” as defined in Section 15378 of the CEQA Guidelines. Pursuant to CEQA Guidelines section 15060(c)(3), an activity that does not meet the CEQA definition of “project” is not subject to CEQA. Under CEQA Guidelines section 15378 a “project” means, “the whole of an action, which has a potential for resulting in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” and does not include administrative activities of government that will not result in a direct or indirect physical changes in the environment [CEQA Guidelines section 15378(b)(5)]. The proposed ordinance would establish procedures for review of projects involving the use of existing roads and does not authorize nor require any physical changes to the environment.

OTHER AGENCY INVOLVEMENT:

The original ordinances, one of which has been codified (Ordinance No. 5243, adopted on August 26, 2014- Planning File No. PLN060127-inland zoning) and coastal zoning ordinance, which the Board adopted Resolution of Intent No. 14-250 for on August 26, 2014 (Planning File No. REF130084), were developed with the help of a subcommittee of two Board of Supervisors who were appointed to help direct staff in developing regulatory language. Staff from Planning, Public Works and County Counsel developed the previous ordinances. These previous drafts of proposed ordinance language were presented to interested parties.

FINANCING:

Funding for staff time associated with drafting these amendments is included in each Departments FY19-20 adopted Budgets.


Adoption and implementation of these amended regulations is not anticipated to significantly impact services beyond those previously considered in adopting the original “Proof of Access” regulations.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents an effective response to our County customers’ needs. Processing these amendments will allow the County to process applications in a timely manner.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Reviewed by: Brandon Swanson, RMA - Interim Chief of Planning  
Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use and Community Development 

The following Attachment are on file with the Clerk of the Board:

- Attachment 1 - BOS adopted Resolution of Intent No. 14-250, dated 8/26/2014
- Attachment 2 - California Coastal Commission staff letter, dated 10/21/2016
- Attachment 3 - Planning Commission Resolution No. 19-013, dated 5/29/2019
- Attachment 4 - Draft ordinance

cc: Front Counter Copy; California Coastal Commission; Monterey County Board of Supervisors; Brandon Swanson, RMA- Interim Chief of Planning; Wendy S. Strimling, Senior Deputy County Counsel; The Open Monterey Project (Molly Erickson); LandWatch; Carmel Valley Association; John H. Farrow; Janet Brennan; Pam Silkwood; Julie Engell; Margaret Robbins; Patricia Bernardi; Dee Ann Howe; David Dilworth, Michael Weaver; Neal Agron; Dale Ellis; Michael Waxer; Brian Finnegan; Robert Carver; C.W. Freedman; Christian Vanallen; Doug Adams; Janie Rommel-Eichorn; Lloyd Jones; LaVerne McLeod; Carla Martinez; Jacqueline Zischke; Project File REF190015.