

Attachment B
Draft Ordinance adding
Section 21.64.320 to the
Monterey County Code (Inland)

PLN060127
REF130084

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ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING SECTION 320 TO CHAPTER 21.64 OF THE MONTEREY COUNTY CODE
TO ESTABLISH REGULATIONS RELATING TO THE ISSUANCE OF LAND USE
PERMITS AND ENTITLEMENTS FOR DEVELOPMENT UTILIZING PRIVATE
ROADS.**

County Counsel Summary

This ordinance amends Chapter 21.64 of Title 21 (non-coastal zoning) of the Monterey County Code to establish special regulations for the issuance of land use permits and entitlements for development utilizing private streets, roads, and other travelled ways. The ordinance, which would apply in the non-coastal unincorporated area of Monterey County, provides for the resolution of 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.

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 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.

6. The Board of Supervisors finds that the ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline section 15301 because the ordinance establishes permit review procedures for development projects utilizing existing private roads and would not involve any physical change to existing facilities.

SECTION 2. The Table of Contents of Chapter 21.64 of the Monterey County Code is amended to add Section 21.64.320 to read as follows:

21.64.320 Regulations relating to applications involving use of private roads.

SECTION 3. Section 320 is added to Chapter 21.64 of the Monterey County Code to read as follows:

21.64.320 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 intensification of use of a Private Road. This Section 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 abutting landowners.

B. Applicability: These regulations apply to all properties in the inland (non-coastal) unincorporated area of the County in all zoning districts. Where a conflict exists between the provisions of this Section and other provisions of the 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 21.06.090.

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

5. "Interested Party" means persons or entities that either:

a. are a party to a Private Road Agreement; or

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 United States 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. A Private Road Agreement also includes a final court judgment documenting an easement or other right to access.

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 (Farmland, Permanent Grazing, Rural Grazing) 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 following:

a. Written concurrence of all parties to the Private Road Agreement; or

b. Existence of a Final Settlement or Final Judicial Determination that the Private Road may be used to access the Project.

11. "Subordinate Access" means a route for ingress and/or egress to/from a parcel of land that is secondary to, or having a less important role than, the primary access route to said parcel. Subordinate Access also means access for emergency purposes only.

D. Regulations:

1. Pre-Application. An Applicant shall provide Notice on the form and in the manner prescribed by the Resource Management Agency, no later than 10 days prior to the submittal of an Application to the County.

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.

c. A copy of the Notice and documentation of when the Notice was personally delivered or deposited in the United States 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.

3. Proof of Access.

In order to approve a Project, and in addition to any other requirements imposed by law, the Appropriate Authority must make one of the following findings:

a. The project is exempt from the Proof of Access requirements pursuant to Section 21.64.320.E.

b. Adequate Notice has been provided to all Interested Parties pursuant to Section 21.64.320(D)(1), adequate documentation demonstrating a right to access has been submitted pursuant to Section 21.64.320(D)(2), and no objection to the use of the Private Road(s) has been received.

c. An objection to the use of the Private Road(s) has been received; however, adequate Notice has been provided to all Interested Parties pursuant to Section 21.64.320(D)(1), adequate documentation demonstrating a right to access has been submitted pursuant to Section 21.64.320(D)(2), and substantial evidence exists that demonstrates the Applicant's right to use the Private Road(s) as proposed.

d. An objection to the use of the Private Road(s) has been received and there is substantial evidence in the record that a substantive dispute exists as to the right to use the Private Road(s) for the proposed Project, and therefore, a condition requiring the Applicant to submit evidence demonstrating Proof of Access has been applied to the project pursuant to Section 21.64.320(D)(4).

4. Proof of Access Condition.

a. 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, and is otherwise unable to make one of the findings contained in Subsection 21.64.320(D)(3)(a), (b), or (c), 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 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 or recordation of a final map, whichever occurs first and as applicable.

b. 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 21.64.320 (D) (4) (a) 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 Director of Planning 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.

c. If a Project is approved subject to the Proof of Access condition, the Director of Planning shall 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.

E. Exemptions:

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

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

b. Any action authorized by an emergency permit issued pursuant to Chapter 21.75 of Title 21 of the Monterey County 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. Private Roads limited to emergency access only;

e. Projects that, in the opinion of the Director of Planning, do not result in intensification of the use of a Private Road(s);

f. Projects with access via a Private Road(s) that is 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, Notice shall be provided to Interested Parties to the Private Road Agreement outside of the jurisdiction of the governing structure;

g. Projects requiring only Subordinate Access to property by a Private Road, and where the Applicant agrees to a condition of approval that the Private Road will not provide anything other than Subordinate Access to the property, and such access is not otherwise required by law; or

h. Routine and Ongoing agricultural uses.

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

F. Nothing in this Section:

1. 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; or

2. Limits the authority of the County to require evidence demonstrating the right to motorized access to a parcel of land prior to approval of a Permit(s).

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 _____, 201__, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

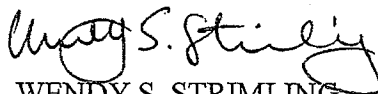
Chair,

Monterey County Board of Supervisors

ATTEST:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

WENDY S. STRIMLING
Senior Deputy County Counsel