



Legislation Details (With Board Report)

File #: ORD 14-002 **Name:** Proof of Access
Type: Ordinance **Status:** Scheduled PM
File created: 2/13/2014 **In control:** Board of Supervisors
On agenda: 2/25/2014 **Final action:**
Title: Continued from December 17, 2013: Public hearing to consider:
a. Adopting an Ordinance 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 in the inland unincorporated areas of Monterey County;
b. Adopting a Resolution of Intent to adopt an ordinance adding Section 320 to Chapter 20.64 of Title 20 (The Coastal Implementation Plan Part 1) of the Monterey County Code to establish regulations relating to the issuance of land use permits and entitlements for development utilizing private roads in the Coastal Zone; and
c. Finding the actions categorically exempt under the California Environmental Quality Act; and
d. Directing staff to submit the Resolution of Intent to amend the Coastal Implementation Plan to the California Coastal Commission for certification.
(Proof of Access, PLN060127/Inland, REF130084/Coastal, County-wide)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Attachment A - Discussion, 2. Attachment B - Draft Ordinance (Inland), 3. Attachment C - Draft Resolution of Intent, 4. Attachment D - Planning Commission Resolutions, 5. Completed Board Order

Date	Ver.	Action By	Action	Result
2/25/2014	1	Board of Supervisors	continued	Pass

Continued from December 17, 2013: Public hearing to consider:
a. Adopting an Ordinance 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 in the inland unincorporated areas of Monterey County;
b. Adopting a Resolution of Intent to adopt an ordinance adding Section 320 to Chapter 20.64 of Title 20 (The Coastal Implementation Plan Part 1) of the Monterey County Code to establish regulations relating to the issuance of land use permits and entitlements for development utilizing private roads in the Coastal Zone; and
c. Finding the actions categorically exempt under the California Environmental Quality Act; and
d. Directing staff to submit the Resolution of Intent to amend the Coastal Implementation Plan to the California Coastal Commission for certification.
(Proof of Access, PLN060127/Inland, REF130084/Coastal, County-wide)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt an ordinance 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 in the inland unincorporated areas of Monterey County;
- b. Adopt a Resolution of Intent to adopt an ordinance adding Section 320 to Chapter 20.64 of Title 20 (The Coastal Implementation Plan Part 1) of the Monterey County Code to establish regulations relating to the issuance of land use permits and entitlements for development utilizing private roads in the Coastal

Zone; and

- c. Finding the actions categorically exempt under the California Environmental Quality Act; and
- d. Direct staff to submit the Resolution of Intent to amend the Coastal Implementation Plan to the California Coastal Commission for certification.

SUMMARY:

A substantial amount of the unincorporated area of Monterey County has properties that are served by privately owned roads or access easements (“Private Roads”). As development proposals that entail the use of Private Roads have been considered, there have been occasions when persons who are parties to private agreements relating to shared use of the access have challenged whether the proposed development is allowed within the terms of the access agreement/easement.

In 2006, the Board of Supervisors requested the Planning Department to develop regulations that would address this issue during the application review stage in order to avoid access disputes at public hearings. While this direction was reinforced in the 2010 General Plan under Policy C-3.6, the issue is not limited to non-coastal areas. Therefore, staff prepared ordinances addressing Private Roads in both the inland and coastal areas.

When issues or disputes arise over the use of a private road, the County does not have jurisdiction to rule on the dispute nor does it have the power to enforce any terms or conditions of a private agreement. These ordinances (Coastal and Inland) provide decision makers with a consistent process to address conflicts regarding the use of private roads within the bounds of the County’s authority to regulate land use and development. In summary, the ordinances would require an applicant to provide adequate documentation and notification on a land use entitlement intensifying the use of private roads. In cases where a dispute arises, the Appropriate Authority must find just cause to impose a condition requiring the applicant to provide “proof of access” in the form of a written agreement among the interested parties resolved personally or through other avenues, including but not limited to mediation, arbitration, or a court judgment. If no condition is applied, the burden of proof shifts to an aggrieved party. This approach reflects compromises reached through multiple community meetings and Planning Commission hearings.

DISCUSSION:

Detailed discussion is provided in Attachment A.

Environmental Review

The proposed ordinances are 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 ordinances would require proof of access for the use of existing private roads, but would not involve any physical change to existing conditions.

OTHER AGENCY INVOLVEMENT:

The ordinances have been drafted with assistance from County Counsel. County Counsel has also approved the ordinances as to form. Staff distributed a memo with suggested revisions to all Land Use Advisory Committees and members of the public that have commented on the ordinance during the process. Staff also met with the Streamlining Task Force. Aside from varying opinions on the three approaches, staff has attempted to incorporate suggested edits to the ordinances for clarification. Suggested edits that staff considered but are not reflected in the ordinances are discussed in Exhibit A.

FINANCING:

Funding for staff time associated with drafting these ordinances is included in the FY13/14 Adopted Budgets for the Planning Department and County Counsel. The ordinances do not require any County financing beyond staff time for drafting and implementation and it will not impact the General Fund.

Prepared by: Craig Spencer, Associate Planner ext. 5233

Approved by: Mike Novo, Director, RMA-Planning, ext. 5192

Benny Young, Director Resource Management Agency

This report was prepared review by Jacqueline R. Onciano, Planning Services Manager

cc: Front Counter Copy; California Coastal Commission; Jacqueline Onciano, Planning Services Manager; The Open Monterey Project; LandWatch; Pam Silkwood; Julie Engell; Margaret Robbins; Dee Ann Howe; Carmel Valley Association; David Dilworth, Michael Weaver; Ed Mitchell; Neal Agron; Dale Ellis; Michael Waxer; Brian Finegan; Robert Carver; Janet Brennan; C.W. Freeman; Christian Vanallen; Doug Adams; Janie Rommel-Eichorn; Lloyd Jones; LaVerne McLeod; Planning File PLN060127; Planning File REF130084.

The following attachments on file with the Clerk of the Board:

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| Attachment A | Discussion |
| Attachment B | Draft ordinance adding Section 21.64.320 to the Monterey County Code (Inland) |
| Attachment C | Draft Resolution of Intent to adopt an ordinance adding Section 20.64.320 to the Monterey County Code (Coastal);
Exhibit 1 to Attachment B - Draft ordinance adding Section 20.64.320 to the Monterey County Code. |
| Attachment D | Planning Commission Resolution No. 13-034 (Inland) and
Planning Commission Resolution No. 13-035 (Coastal) |