



## Legislation Details (With Board Report)

**File #:** 13-1295      **Name:** Proof of Access  
**Type:** General Agenda Item      **Status:** Scheduled PM  
**File created:** 12/6/2013      **In control:** Board of Supervisors  
**On agenda:** 12/17/2013      **Final action:**

**Title:** 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 - Draft Ordinance Adding Section 21.64.320 (Inland), 2. Attachment B - Draft Resolution (coastal), 3. Exhibit 1 to Attachment B - Draft Ordinance adding Section 20.64.320, 4. Attachment C - Planning Commission Recommendation (coastal), 5. Attachment C - Planning Commission Recommendation (inland), 6. Completed Board Order, 7. Revised Completed Board Order

Date	Ver.	Action By	Action	Result
12/17/2013	1	Board of Supervisors	continued	Pass

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**PROJECT INFORMATION:**

**Planning File Number:** PLN060127 (Inland) and REF130084 (Coastal)

**Owner:** N/A

**Project Location:** County-wide

**APN:** County-wide

**Agent:** N/A

**Plan Area:** County-wide

**Flagged and Staked:** N/A

**CEQA Action:** Categorically Exempt per Section 15301 (Class 1) - Existing Facilities

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 referred this matter to RMA- Planning to develop regulations addressing this matter 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. The Planning Commission considered earlier drafts of ordinances and provided direction to staff for revisions on November 9, 2011, December 14, 2011, and January 25, 2012. On September 11, 2013, the Planning Commission considered the current draft ordinance and adopted a resolution recommending that the Board of Supervisors adopt the draft ordinance for the inland areas, with a minor clarification, and adopt a resolution of intent to adopt a similar draft ordinance in the coastal zone.

DISCUSSION:

Applications through the County for development that require discretionary permits have, in some instances, proposed to use private roads. If any issues or disputes arise as a result of the use of the 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 the agreement. In cases where a dispute arises, these ordinances provide decision makers with a consistent process to address conflicts regarding the use of private roads within the bounds of the authority of the County to regulate land use and development. The ordinance would require an applicant to provide adequate documentation and notification before the County takes action on a land use entitlement affecting a private road.

As drafted, the ordinances would require an applicant for a discretionary permit involving use of a private road to submit a copy of documentation showing a right to access, such as a recorded easement or designation on a recorded subdivision map. An applicant for a discretionary permit will also be required to provide documentation, upon application, that notice has been provided to all Interested Parties to the easement. Following the required notification, any one of the Interested Parties may file a written objection to the use of the Private Road.

If no objection is received the application process can proceed. If an objection is received and the Appropriate Authority finds that a substantive dispute exists as to the use of a Private Road or is otherwise unable to make a finding of proof of access, a condition requiring a showing of proof of access may be added to the permit at the discretion of the Appropriate Authority. The condition would require proof in the form of a written agreement among the interested parties resolved personally or through other avenues, including but not limited to mediation, adjudication, or a court, and such condition would need to be satisfied prior to issuance of grading or building permits or filing of a final map as applicable.

Private Road Agreements are defined in the ordinances as documents of record that are agreements among parties concerning the right to use private property for access to another parcel of private property. These agreements are usually in the form of a recorded written contract, agreement, easement, grant deed, reservation, or a designation on a final subdivision map; however, per the recommendation of the Planning Commission, language has been added to the definition of Private Road Agreement to deal with circumstances in which there is a dispute concerning an unrecorded right of access.

On September 11, 2013, the Planning Commission recommended approval of these ordinances to the Board of Supervisors with the suggestion that they be amended to address private roads that are not subject to a "Private Road Agreement." In response to the Planning Commission suggestion, staff has added a sentence to the definition of "Private Road Agreement" to include an agreement arrived at personally or through alternative dispute resolution or court establishing access in addition to other forms of properly executed and recorded documents.

#### 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.

#### FINANCING:

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

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

<mailto:> 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; Planning

File PLN060127; Planning File REF130084.

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

Attachment A Draft ordinance adding Section 21.64.320 to the Monterey County Code (Inland)

Attachment B 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 C Planning Commission Recommendation