



County of Monterey

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

Board Report

File #: ORD 14-018, **Version:** 1

Public hearing to consider:

- a. Adoption of an ordinance amending 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 in the non-coastal unincorporated area of Monterey County and including findings that the ordinance is not a project under CEQA; and
- b. Adoption of a Resolution of Intent to adopt an ordinance amending Chapter 20.64 of Title 20 (Part 1 of the Monterey County Coastal Implementation Plan) 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 in the coastal unincorporated area of Monterey County and including findings that the ordinance is not a project under CEQA, with direction to staff to submit the ordinance to the Coastal Commission for certification.

(Proof of Access Ordinance - PLN060127/Inland and REF130084/Coastal)

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

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt an ordinance (Attachment A) amending 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 in the non-coastal unincorporated area of Monterey County and including findings that the ordinance is not a project under CEQA; and
- b. Adopt a Resolution of Intent (Attachment B) to:
 1. Adopt an ordinance amending Chapter 20.64 of Title 20 (Part 1 of the Monterey County Coastal Implementation Plan) 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 in the coastal unincorporated area of Monterey County and including findings that the ordinance is not a project under CEQA.
 2. Certify that the amendment is intended to be carried out in a manner fully in conformity with the Coastal Act; and
 3. Direct staff to submit the ordinance to the California Coastal Commission for certification together with materials sufficient for a thorough and complete review.

SUMMARY:

In 2005, the Board of Supervisors directed RMA - Planning staff to develop regulations for projects with access via a private road in order to avoid access disputes at the public hearings. (Board Referral # 2005.0). In 2010, the 2010 General Plan, which included Policy C-3.6, was adopted. That policy requires establishment of regulations for proof of access as part of any development application in the inland unincorporated area of the County. Staff has prepared draft ordinances for the inland (Title 21) and coastal (Title 20) areas that respond to the Board referral and implement Policy C-3.6 of the General Plan. The coastal ordinance amends the County's Local Coastal Program and therefore require submission to, and certification by, the California Coastal Commission prior to the Board's final adoption of the ordinance.

Previous drafts 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 representing a range of views on March 26, 2014 and May 27, 2014. The discussions resulted in major revisions to the draft ordinance to which the participants generally agreed. 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 these ordinances. These modifications, along with a couple of minor technical clarifications have been incorporated into the draft ordinances.

DISCUSSION:

Since the last Board hearing in February 2014, staff has worked with a small group of concerned citizens representing the spectrum of views on the draft ordinance to address issues raised regarding the previous drafts of the Proof of Access ordinances. The previous versions of the Proof of Access ordinances required an applicant who was applying for a discretionary permit involving the use of a private road to submit a copy of documentation showing a right to access (usually in the form of a grant deed or recorded map) and evidence that the applicant had provided a notice to all interested parties to the easement prior to deeming a development project complete. The required notification provided an opportunity for any one of the interested parties to a Private Road to file a written objection to the use of the road for a development project within 30 days of receiving the notice. If an objection was received, the decision-maker on the permit would consider adding a condition to the project that required a showing of proof that access exists.

Revisions to the ordinance have kept the basic idea of providing an opportunity for parties to a private road to object to a development project and the subsequent consideration by the County to apply a condition of approval. Also still intact in the revised draft is the ability of the County to approve discretionary permits without attempting to resolve legal disputes over access. What has changed are the circumstances and criteria by which the County will consider applying conditions. Consideration of applying a condition due to an objection has been broken down into four categories or "Tiers". Those tiers include:

1. No legal documentation (Tier 1)
2. No Private Road Agreement but there is a written Road Maintenance Agreement (Tier 2)
3. Private Road Agreement but no Maintenance Agreement (Tier 3); and

4. Both a Private Road Agreement and a Maintenance Agreement (Tier 4).

Under the new structure, unless a development project clearly conflicts with the terms of an agreement, the County will rely on written agreements as adequate documentation for the purposes of considering a discretionary permit. Where no private road agreement exists (Tiers 1 and 2), objections regarding access will be subject to a Proof of Access condition. Where no maintenance agreement exists, objections regarding the costs of repairs and maintenance from more than 50% of parties to a private road agreement will be subject to a separate condition specific to road maintenance (e.g., Tier 3). In addition, exemptions from the Proof of Access criteria have been expanded to include most types of single family residential development. The requirement to provide notice to interested parties of a proposed project involving the use of a private road has been shifted from the applicant to the County. These changes have been thoroughly negotiated in meetings with interested parties and the revisions have addressed a number of concerns raised during the hearing process on the previous draft ordinances.

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 which 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 direct or indirect physical changes in the environment (CEQA Guideline section 15378(b)(5).) The proposed ordinance would establish procedures for review of projects involving the use of existing private roads and does not authorize nor require any physical changes to the environment.

OTHER AGENCY INVOLVEMENT:

An ad hoc committee of two Supervisors of the Board of Supervisors was appointed to help direct staff in developing regulatory language. Staff from Planning, Public Works and County Counsel developed draft ordinances. Drafts of proposed ordinance language were presented to interested parties. County Counsel has approved the ordinances as to form.

Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational, policy or other implication to the County of Monterey.

FINANCING:

Funding for staff time associated with this project is included in the FY14-15 Adopted Budget for RMA-Planning.

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

<mailto:> Benny Young, Director Resource Management Agency

This report was reviewed by Jacqueline R. Onciano, RMA - Planning Manager

cc: Front Counter Copy; California Coastal Commission (if applicable); Jacqueline Onciano, RMA Services Manager; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow;

Janet Brennan; Pam Silkwood; Julie Engell; Margaret Robbins; Patricia Bernardi; Dee Ann Howe; Carmel Valley Association; David Dilworth, Michael Weaver; Ed Mitchell; Neal Agron; Dale Ellis; Michael Waxer; Brian Finnegan; Robert Carver; C.W. Freeman; Christian Vanallen; Doug Adams; Janie Rommel-Eichorn; Lloyd Jones; LaVerne McLeod; Project File PLN060127

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 Resolutions No. 14-029 & 14-030