



Board Report

File #: PC 19-037, **Version:** 1

REF190015 - PROOF OF ACCESS ORDINANCE

Public hearing to consider recommendations that the Board of Supervisors: 1) rescind a Resolution of Intent to adopt an ordinance adding Section 20.64.320 for coastal areas; and 2) adopt an ordinance repealing Section 21.64.320 for inland areas and adding Chapter 16.80 establishing regulations for development utilizing private streets, roads, and other travelled ways in the unincorporated areas of Monterey County.

Location: County-wide unincorporated Monterey County

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

RECOMMENDATION:

It is recommended that the Planning Commission adopt a resolution (Exhibit A) to recommend that the Board of Supervisors:

1. Find that adoption of the ordinance is not a project pursuant to Section 15060 and 15378 of the CEQA Guidelines;
2. Adopt an ordinance (Attachment 1 to Exhibit A) repealing Section 21.64.320 of Monterey County Code establishing regulations for development utilizing private streets, roads, and other travelled ways in the non-coastal unincorporated areas of Monterey County; amending Title 16 of the Monterey County Code to add Chapter 16.80 establishing regulations for development utilizing private streets, roads, and other travelled ways in the unincorporated areas of Monterey County; and
3. Rescind an adopted Resolution of Intent (Board Resolution No. 14-250; Attachment 2 to Exhibit A) to approve draft ordinance adding Section 20.64.320 of Monterey County Code establishing regulations for development utilizing private streets, roads, and other travelled ways in the coastal unincorporated areas of Monterey County.

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. Coastal Commission staff determined that this type of regulation is not subject to Coastal Commission certification so suggested placing the regulations in a Title of Monterey County Codes that are not reviewed by the Coastal Commission. Moving the regulations from the zoning codes (Titles 20 and 21) to the environment codes (Title 16) has been reviewed and discussed with Coastal Commission staff.

While the Planning Commission does not have authority over Title 16, this action requires rescinding actions that affected Titles 20 and 21 that were acted upon by the Commission. Therefore, staff has scheduled this matter for the Commission's consideration before the Board of Supervisors considering adoption of an ordinance (re)establishing Countywide regulations for consideration of projects located on parcels that are accessed by private roads (also known as "Proof of Access") in Title 16. These regulations are the same as what the Board approved in 2014, which includes a process and standards for consideration, or delay in consideration, of development applications in unincorporated Monterey County where disputes arise between parties to 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. 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 ½ of County roads.

The subject ordinance adds Chapter 16.80 to apply county-wide in both the inland and coastal unincorporated areas of the County, effective 30 days after adoption. In the inland unincorporated areas, subject ordinance repeals Section 21.64.320 of the zoning code (Title 21), effective 30 days after adoption. In the coastal unincorporated areas, the Board will consider rescinding a Resolution of Intent to adopt an ordinance adding Section 20.64.320 to the Monterey County Code, adopted in 2014 (see Attachment 2 to Exhibit A). This Resolution of Intent forwarded the coastal draft ordinance for certification by the Coastal Commission, which mirrored the inland ordinance.

DISCUSSION:

As it currently exists, regulations relating to applications involving use of private roads have been adopted in the inland zoning ordinance at Section 21.64.320 of the Inland Zoning ordinance, Title 21 and a resolution of intent was adopted by the Board of Supervisors to add Section 20.64.320 to the coastal zoning ordinance, Title 20; however, the coastal zoning ordinance has not been certified by the Coastal Commission and is not in effect in the coastal unincorporated areas. County staff has coordinated with Coastal Commission staff on the matter and is now proposing the repeal of the existing section of the inland zoning (see Attachment 1 to Exhibit A), rescind the resolution of intent to approve draft ordinance in the coastal zone and to move the regulations to Title 16 of the Monterey County Code, making the one set of regulations in Title 16 applicable to both the inland and coastal areas. This recommendation is the culmination of a long process that is described in more detail below.

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 California Coastal Commission (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 for the certification of the Proof of Access ordinance and instead insert the ordinance elsewhere in the County code in a non-LCP section of the code that pertains to procedural matters. See Exhibit B. The CCC stated that although the CCC supports the County’s desire to ensure civil matters regarding private roads are addressed outside the County’s and the public’s forum for land use applications, inserting the ordinance in Title 20, which will require an LCP amendment, would bring a “range of potential issues, unintended consequences and opportunities for misuse that may affect public access policies.” To address CCC staff concerns RMA staff has drafted an ordinance that will take the regulations out of the zoning ordinances.

The Draft Ordinance is almost identical to what is currently codified in Title 21, with the exception of Monterey Code section numbers to be consistent with Title 16 and therefore, no new public outreach was necessary, since the outreach and previous public hearings have been completed, resulting in the codification of “Proof of Access” regulations in Title 21. This 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. Those modifications were ultimately adopted in Title 21.

Draft Ordinance (Attachment 1 to Exhibit A)-

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 private road 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 would also require 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 categories (or 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.

See the draft ordinance (**Attachment 1 to Exhibit A**) for the full text and regulations of the ordinance.

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:

This ordinance contains almost identical language as the previous inland and coastal zone ordinances that were developed. 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.

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Reviewed by: Brandon Swanson, RMA - Interim Chief of Planning

John M. Dugan, FAICP, RMA Deputy Director of Land Use and Community Development

Approved by: Carl P. Holm, RMA Director

The following attachments are on file with the RMA:

Exhibit A - Draft Planning Commission Resolution with:

- Attachment 1-Draft Ordinance (CLEAN version)
- Attachment 2- Adopted Resolution of Intent (Board Resolution No. 14-250)- to be rescinded

Exhibit B - California Coastal Commission Letter dated October 21, 2016

cc: Front Counter Copy; California Coastal Commission; Planning Commission; 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.