

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> August 28, 2013 <b>Time:</b> 1:30		<b>Agenda Item No.:</b> 9 & 10
<b>Project Description:</b> Consider adoption of resolutions to recommend that the Board of Supervisors: <ol style="list-style-type: none"> <li>1) Adopt an Ordinance adding Chapter 21.64.320 to the Monterey County Code to establish regulations relating to proposed development applications involving disputed use of private streets (Proof of Access Ordinance); and</li> <li>2) Consider Resolution of Intent to amend the Local Coastal Program adding Chapter 20.64.320 to the Monterey County Code establishing regulations relating to proposed development applications involving disputed use of private streets (Proof of Access Ordinance).</li> </ol>		
<b>Project Location:</b> Countywide		<b>APN:</b> Countywide
<b>Planning File Number:</b> PLN060127		<b>Owner:</b> N/A <b>Agent:</b> N/A
<b>Planning Area:</b> Countywide		<b>Flagged and staked:</b> N/A
<b>Zoning Designation:</b> Multiple Zoning Designations		
<b>CEQA Action:</b> Categorically Exempt per Section 15301 (Class 1) – Existing Facilities		
<b>Department:</b> RMA - Planning Department		

**RECOMMENDATION:** Staff recommends that the Planning Commission adopt resolutions to recommend that the Board of Supervisors:

- 1) Adopt an Ordinance adding Chapter 21.64.320 to the Monterey County Code to establish regulations relating to proposed development applications involving disputed use of private streets (Proof of Access Ordinance); and
- 2) Consider Resolution of Intent to amend the Local Coastal Program adding Chapter 20.64.320 to the Monterey County Code establishing regulations relating to proposed development applications involving disputed use of private streets (Proof of Access Ordinance).

**PROJECT OVERVIEW:** A substantial amount of unincorporated area of Monterey County has properties that are served by privately owned roads or access easements (a.k.a. "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 the Planning [and Building Inspection] Department to develop ordinance language to address this matter during the application stage in order to avoid access disputes at the public hearings. Policy C-3.6 of the 2010 General Plan (adopted October 2010) requires staff to establish regulations for proof of access as part of any development application. Staff has prepared draft ordinances for inland (Title 21) and coastal (Title 20) areas. The Ordinances were have been discussed and refined at Planning Commission meetings on November 9, 2011, December 14, 2011, and January 25, 2012.

**DISCUSSION:** Private Road Agreements are agreements between parties concerning the right to use private property as access to another parcel of private property. These agreements are usually in the form of a written contract, easement, grant deed, reservation, or a designation on a final subdivision map. Applications through the County for development that require discretionary permits have, in some instances, proposed to use private roads. If any issues arise as a result of the use of the private road, the County does not have jurisdiction to rule on a dispute nor does it have the power to enforce any terms or conditions of the agreement.

A draft "proof of access" ordinance was presented to the Planning Commission on November 9, 2011, December 14, 2011, and January 25, 2012. A number of public comment letters were received and considered at that time. The ordinance has been refined at the direction of the Planning Commission taking into account public comments.

This ordinance 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 (usually in the form of a grant deed or recorded map) and evidence that a notice has been provided to all interested parties to the easement prior to deeming a development project complete. Following the required notification, any one of the interested parties may file a written objection to the use of the Private Road within 30 days of receiving the notice. If an objection is received, a condition requiring a showing of proof that access exists may be added to the permit. Said proof will be required prior to issuance of grading or Building Permits or filling of a final map as applicable. Proof of access includes one or more of the following:

1. Written withdrawal of objections;
2. Written concurrence from all interested parties consenting to the use of each private road;  
or
3. A final and binding judicial determination.

The proof will be subject to review by the Director of Planning in consultation with County Counsel. If adequate proof is not submitted within two years, as may be extended by the Director, the project will be deemed denied due to a lack of compliance with conditions.

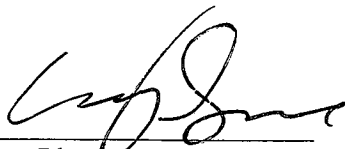
This process was created with the intent to implement the direction of the Planning Commission provided at the January 25, 2012 hearing. The draft ordinances would provide decision makers with tools to address conflicts regarding the use of private roads within the boundaries of the Authority of the County to regulate land use and development (not to resolve civil disputes). Timing of documentation submittal, noticing, and other procedures are proposed in a manner that would not unreasonably delay development projects or unduly provide a burden on the applicant or the objecting party(s).

#### 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 ordinance 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:** A subcommittee of two 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.

/S/ Craig W. Spencer



Craig W. Spencer, Associate Planner  
RMA – Planning Department

August 9, 2013

cc: Front Counter Copy; Planning Commission; Public Works Department; Parks Department; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; Mike Novo, RMA-Director of Planning; Carl Holm, Interim Deputy Director of Resource Management Agency; Jacqueline Onciano, Planning Services Manager; Carol Allen, Senior Secretary; Molly Erickson-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; Planning File PLN060127.

Attachments:

Attachment A	Draft Resolution recommending that the Board of Supervisors adopt the "Proof of Access" Ordinance adding Chapter 21.64.320 to the Monterey County Code Exhibit A-1 – Draft "Proof of Access" Ordinance (Inland)
Attachment B	Draft Resolution recommending that the Board of Supervisors adopt a Resolution of Intent to approve the Ordinance amending the Local Coastal Program adding Chapter 20.64.320 to the Monterey County Code Exhibit B-1 – Draft "Proof of Access" Ordinance (Coastal)

This report was prepared by Craig W. Spencer, Associate Planner and reviewed by Carl P. Holm, AICP, Deputy Director of the Resource Management Agency.

**Attachment A**  
**AMENDMENT TO TITLE 21**

**Before the Planning Commission in and for the  
County of Monterey, State of California**

Resolution No. \_\_\_\_\_  
Resolution of the Monterey County Planning Commission recommending that the Board of Supervisors adopt an ordinance adding Chapter 21.64.320 to the Monterey County Code to establish regulations for the issuance of permits and entitlements for development on properties utilizing private streets, roads and other travelled ways ("Proof of Access"). (PLN060127/Proof of Access, Countywide)

**I. RECITALS:**

Proposed amendments to Title 21 (Zoning Ordinance) came on for hearing before the Monterey County Planning Commission on November 9, 2011, December 14, 2011, January 25, 2012, and August 27, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission hereby makes the following recommendation with reference to the following facts:

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, The proposed ordinance is attached to this Resolution as **Exhibit A-1** and is incorporated herein by reference; and

WHEREAS, The adoption of the attached ordinance is 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 ordinance would require proof of access for the use of existing private roads, but would not involve any physical change to existing conditions.

## II. DECISION:

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Board of Supervisors adopt an Ordinance adding Chapter 21.64.320 to the Monterey County Code establishing regulations for the issuance of permits and entitlements for development on properties utilizing private streets, roads and other travelled ways (Proof of Access Ordinance).

Passed and adopted on this 28<sup>th</sup> day of August, 2013, upon motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

By \_\_\_\_\_  
MIKE NOVO, SECRETARY

**EXHIBIT A-1  
PRIVATE ROAD ORDINANCE - INLAND  
DRAFT**

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,  
ADDING CHAPTER 21.64.320 TO THE MONTEREY COUNTY CODE TO ESTABLISH  
REGULATIONS FOR THE ISSUANCE OF PERMITS AND ENTITLEMENTS FOR  
DEVELOPMENT ON PROPERTIES UTILIZING PRIVATE STREETS, ROADS AND  
OTHER TRAVELLED WAYS.**

**County Counsel Summary**

*This ordinance provides for the resolution of disputes regarding the  
use of a private road, street, or other travelled way as part of process  
by which discretionary permits, licenses or other entitlements for a  
development are considered by the County.*

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

**EXHIBIT A-1**  
**PRIVATE ROAD ORDINANCE - INLAND**  
**DRAFT**

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.

**SECTION 2.** Section 21.64.320 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 use of a Private Road intensifying. This ordinance 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 adjoining landowners.

B. Applicability: These regulations apply to all properties in the inland (non-Coastal Zone) unincorporated area of the County in all zoning districts. Where a conflict exists between the provisions of this Section and other provisions of 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, adjudication or a court.
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 U.S. Mail, first class postage pre-paid.

**EXHIBIT A-1**  
**PRIVATE ROAD ORDINANCE - INLAND**  
**DRAFT**

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.

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 conditions described in Section 21.64.320(D)(3)(a).

**D. Regulations:**

1. Pre-Application. An Applicant shall:

- a. provide Notice no later than 10 days prior to the submittal of an Application to the County; and
- b. attempt to obtain the written concurrence of all parties to the applicable Private Road Agreement that the Project is consistent with such Agreement.

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 U.S. 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.
- d. Documentation of efforts by the Applicant to meet with the parties to the applicable Private Road Agreement and obtain the written concurrence that the Project is consistent with such Agreement.



**EXHIBIT A-1**  
**PRIVATE ROAD ORDINANCE - INLAND**  
**DRAFT**

3. Proof of Access

a. In order to approve a Project, and in addition to any other requirements imposed by law, the Appropriate Authority must make a finding that Proof of Access exists. The following shall constitute Proof of Access for purposes of this Section 21.64.320:

- i) Written concurrence of all parties to the Private Road Agreement;
- ii) Existence of a final settlement or final judicial determination that the Private Road may be used to access the Project; or
- iii) The existence of a Private Road Agreement that, in the opinion of the County, demonstrates the right to use private property as access to another parcel of private property consistent with the Project; proof that Notice has been provided; and no objection being made to the use of the Private Road at or prior to the hearing on the Application.

b. 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, or is otherwise unable to make a finding that Proof of Access exists, said Authority may approve the Project but shall require as a condition of Project approval that the Applicant provide the County with a final settlement or final judicial determination 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.

c. Where an Application proposes only subordinate access to property by a Private Road, a finding of Proof of Access shall not be required where the Applicant agrees to a condition of approval that the Private Road will not provide access to the property and such access is not otherwise required by law.

d. 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)(3)(b) 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 Planning Director 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.

E. Exemptions:

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

a. 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;

b. Private Roads serving properties with Farmland, Permanent Grazing or Rural Grazing designations where the Application proposes no changes in the uses to which the property being served is put at the time the Application is deemed complete; or

2. Notwithstanding the foregoing, no Application involving a subdivision shall be exempt from this Section 21.64.320.

3. Nothing in this section affects the authority of the County to exercise the power of eminent domain pursuant to Section 66462.5 of the California Subdivision Map Act.

**SECTION 3. SEVERABILITY.**

**EXHIBIT A-1**  
**PRIVATE ROAD ORDINANCE - INLAND**  
**DRAFT**

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 4. EFFECTIVE DATE.**

This ordinance shall become effective on the 31<sup>st</sup> day after its adoption.

**PASSED AND ADOPTED** on this \_\_\_\_ day of \_\_\_\_\_ 2013, upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, by the following vote, to-wit:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_, Chair  
Monterey County Board of Supervisors

ATTEST:  
GAIL BORKOWSKI, Clerk to the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

CHARLES J. MCKEE, County Counsel

By: \_\_\_\_\_  
Wendy S. Strimling  
Senior Deputy County Counsel

APPROVED AS TO FORM

WENDY S. STRIMLING  
Senior Deputy County Counsel

**ATTACHMENT B  
AMENDMENT TO TITLE 20**

**Before the Planning Commission in and for the  
County of Monterey, State of California**

Resolution No. \_\_\_\_\_  
Resolution of the Monterey County Planning Commission recommending that the Board of Supervisors adopt a Resolution of Intent to amend the Local Coastal Program adding Chapter 20.64.320 to the Monterey County Code to establish regulations for the issuance of permits and entitlements for development on properties utilizing private streets, roads and other travelled ways ("Proof of Access"). (PLN060127/Proof of Access, Countywide)

**I. RECITALS:**

Proposed amendments to Title 20 (Zoning Ordinance) came on for hearing before the Monterey County Planning Commission on November 9, 2011, December 14, 2011, January 25, 2012, and August 28, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission hereby makes the following recommendation with reference to the following facts:

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, The proposed ordinance is attached to this Resolution as **Exhibit B-1** and is incorporated herein by reference; and

WHEREAS, The adoption of the attached ordinance is 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 ordinance would require proof of access for the use of existing private roads, but would not involve any physical change to existing conditions.

## II. DECISION:

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Board of Supervisors adopt a Resolution of Intent to amend the Local Coastal Program adding Chapter 20.64.320 to the Monterey County Code establishing regulations for the issuance of permits and entitlements for development on properties utilizing private streets, roads and other travelled ways (Proof of Access Ordinance).

Passed and adopted on this 28<sup>th</sup> day of August, 2013, upon motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

By \_\_\_\_\_  
MIKE NOVO, SECRETARY

**EXHIBIT B-1  
PRIVATE ROAD ORDINANCE - COASTAL  
DRAFT**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING SECTION 20.64.320 TO THE MONTEREY COUNTY CODE TO ESTABLISH REGULATIONS FOR THE ISSUANCE OF PERMITS AND ENTITLEMENTS FOR DEVELOPMENT ON PROPERTIES UTILIZING PRIVATE STREETS, ROADS AND OTHER TRAVELLED WAYS.**

**County Counsel Summary**

*This ordinance amends Title 20 (Coastal Implementation Plan) of the Monterey County Code to establish regulations governing certain discretionary development or entitlements that may intensify use of a private road. This ordinance requires an applicant to provide certain documentation to the County regarding the use of a private road, street, or other travelled way as part of process by which discretionary permits, licenses or other entitlements for a development are considered by the County. This ordinance applies in the unincorporated, coastal area of 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

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**PRIVATE ROAD ORDINANCE - COASTAL**  
**DRAFT**

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.

**SECTION 2.** Section 20.64.320 is added to Chapter 20.64 of the Monterey County Code to read as follows:

**20.64.320 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 use of a Private Road intensifying. This ordinance 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 adjoining landowners.

B. Applicability: These regulations apply to all properties in the Coastal Zone unincorporated area of the County in all zoning districts. Where a conflict exists between the provisions of this Section and other provisions of 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 20.06.090.
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, adjudication or a court.
5. "Interested Party" means persons or entities that either:
  - a. are a party to a Private Road Agreement; or

**EXHIBIT B-1**  
**PRIVATE ROAD ORDINANCE - COASTAL**  
**DRAFT**

- 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 U.S. 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.

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 (Coastal Agricultural Preserve, Agricultural Preservation) 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 conditions described in Section 20.64.320(D)(3)(a).

D. Regulations:

1. Pre-Application. An Applicant shall:

- a. provide Notice no later than 10 days prior to the submittal of an Application to the County; and
- b. attempt to obtain the written concurrence of all parties to the applicable Private Road Agreement that the Project is consistent with such Agreement.

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.

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

d. Documentation of efforts by the Applicant to meet with the parties to the applicable Private Road Agreement and obtain the written concurrence that the Project is consistent with such Agreement.

3. Proof of Access

a. In order to approve a Project, and in addition to any other requirements imposed by law, the Appropriate Authority must make a finding that Proof of Access exists. The following shall constitute Proof of Access for purposes of this Section 20.64.320:

i) Written concurrence of all parties to the Private Road Agreement;

ii) Existence of a final settlement or final judicial determination that the Private Road may be used to access the Project; or

iii) The existence of a Private Road Agreement that, in the opinion of the County, demonstrates the right to use private property as access to another parcel of private property consistent with the Project; proof that Notice has been provided; and no objection being made to the use of the Private Road at or prior to the hearing on the Application.

b. 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, or is otherwise unable to make a finding that Proof of Access exists, said Authority may approve the Project but shall require as a condition of Project approval that the Applicant provide the County with a final settlement or final judicial determination 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.

c. Where an Application proposes only subordinate access to property by a Private Road, a finding of Proof of Access shall not be required where the Applicant agrees to a condition of approval that the Private Road will not provide access to the property and such access is not otherwise required by law.

d. 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 20.64.320(D)(3)(b) 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 Planning Director 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.

E. Exemptions:

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

a. Any action authorized by an emergency permit issued pursuant to Chapter 20.79 of Title 20 of the Monterey County Code provided that such action exists or occurs only so long as the emergency permit is effective;



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b. Private Roads serving properties with Coastal Agricultural Preserve, Agricultural Preservation designations where the Application proposes no changes in the uses to which the property being served is put at the time the Application is deemed complete; or

2. Notwithstanding the foregoing, no Application involving a subdivision shall be exempt from this Section 20.64.320.

3. Nothing in this section affects the authority of the County to exercise the power of eminent domain pursuant to Section 66462.5 of the California Subdivision Map Act.

**SECTION 3. 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 4. EFFECTIVE DATE.**

This ordinance shall become effective on the 31<sup>st</sup> day after its adoption.

**PASSED AND ADOPTED** on this \_\_\_\_ day of \_\_\_\_\_ 2013, upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, by the following vote, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_, Chair  
Monterey County Board of Supervisors

ATTEST:

GAIL BORKOWSKI, Clerk to the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

CHARLES J. MCKEE, County Counsel

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**DRAFT**

By: \_\_\_\_\_  
Wendy S. Strimling  
Senior Deputy County Counsel

APPROVED AS TO FORM

WENDY S. STRIMLING  
Senior Deputy County Counsel