

MONTEREY COUNTY PLANNING COMMISSION

Meeting: September 11, 2013 Time: 9:30 A.M.	Agenda Item No.: 4 & 5
Project Description: CONTINUED FROM AUGUST 28, 2013: Consider adoption of resolutions to recommend that the Board of Supervisors:	
<ol style="list-style-type: none"> 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 a 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 Location: Countywide	APN: Countywide
Planning File Number: PLN060127	Owner: N/A Agent: N/A
Planning Area: Countywide	Flagged and staked: N/A
Zoning Designation: Multiple Zoning Designations	
CEQA Action: Categorically Exempt per Section 15301 (Class 1) – Existing Facilities	
Department: 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 a 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: This item was continued from August 28, 2013 to provide additional time for the public to review and comment on the draft ordinance and to address a distribution and noticing deficiency.

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.

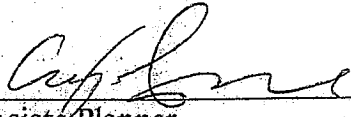
This process was created with the intent to implement the direction of the Planning Commission provided at the January 25, 2012 hearing. The draft ordinances would provide decision makers with tools to address conflicts regarding the use of private roads within the boundaries of the Authority of the 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 29, 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
Attachment B-1 – Draft “Proof of Access” Ordinance (Coastal)
- Attachment C Comment Letters

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

**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 28th 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

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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.

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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 31st 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 28th 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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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

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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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DRAFT

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;

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

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 31st 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

EXHIBIT B-1
PRIVATE ROAD ORDINANCE - COASTAL
DRAFT

By: _____
Wendy S. Strimling
Senior Deputy County Counsel

APPROVED AS TO FORM

WENDY S. STRIMLING
Senior Deputy County Counsel

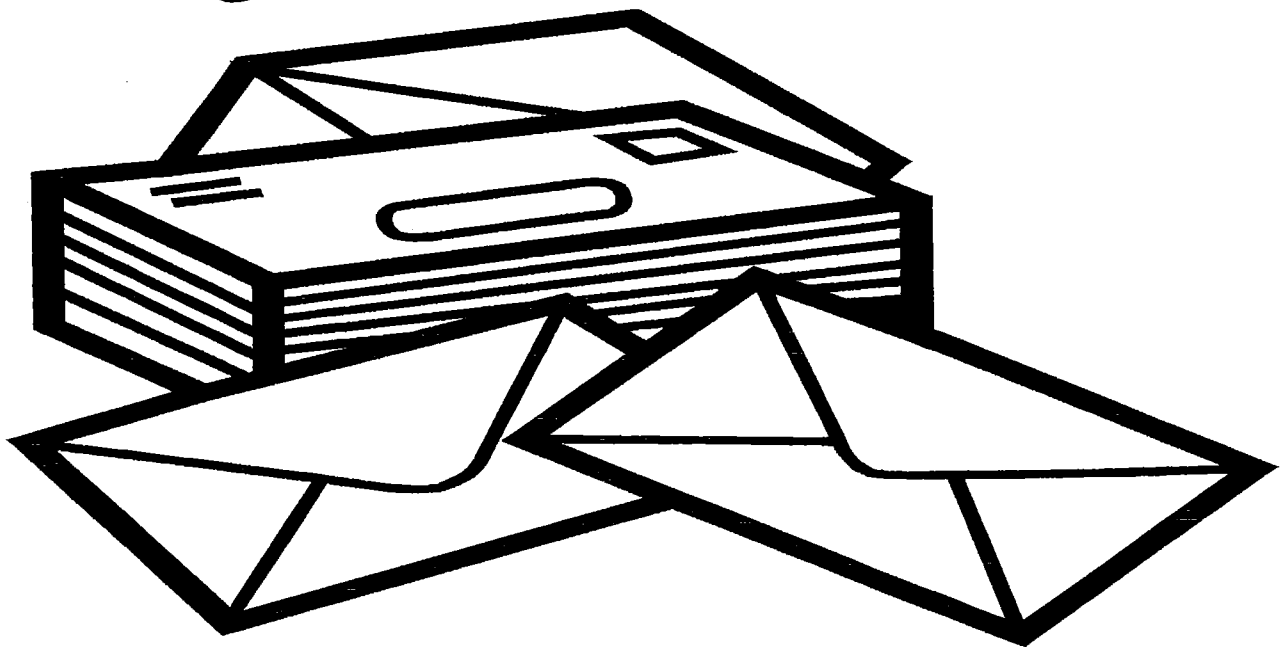
Attachment C

*Comment Letters
for Items #9/10*

PLN060127/

REF130084

August 28, 2013



9/10

Carmel Valley Association
P.O. Box 157, Carmel Valley, California 93924
www.carmelvalleyassociation.org



PLN060127/
REF 130084

Board of Directors

Mibs McCarthy
President

August 26, 2013

Christine Williams
President Emerita

PLN060127

Rich Fox
Vice President

Dear Commissioner Roberts and Planning Commissioners:

Priscilla Walton
Vice President

The Carmel Valley Association, representing hundreds of residents of the Carmel Valley, encourages adoption of PLN 060127, amending Title 21 to establish regulations for the issuance of permits and entitlements for development on properties using private streets.

Sandy Schachter
Secretary

Axel Binneboese
Treasurer

Luana Conley

With the proliferation of new businesses, many with events, we anticipate that Carmel Valley's roads and parking spaces will continue to see increased impacts. New developments of housing or businesses which occur on private roads certainly are of concern. It will be most helpful to require developers to work with those who already live on and use the common private road.

Linda Cope

Charly Franklin

Frank Hennessey

Donna Kneeland

Please adopt this "Proof of Access" ordinance.

Margaret Robbins

Tim Sanders

Thank you.

Dick Stott

Sincerely,

Karin
Strasser Kauffman

Cindy Waller

Mibs McCarthy
President

"To preserve, protect and defend the natural beauty, resources, and rural character of Carmel Valley"



Carmel Valley Women's Network
P. O. Box 557
Carmel Valley, CA 93924

9/10

PLN060127/
REF130084

August 26, 2013

PLN060127

Commissioner Roberts and Planning Commissioners

The Carmel Valley Women's Network understands the importance of this Proof of Access ordinance to improve the process of planning for developers and homeowners.

We believe it is an important step forward to require agreements regarding the use of private roads before permits are issued.

We urge you to adopt this ordinance.

Sincerely,



Darby Moss Worth



MEMORANDUM

TO: Monterey County Planning Commission

FROM: Refinement Group¹ (CHISPA, Monterey County Association of Realtors, Monterey Peninsula Taxpayers Association, Monterey/Santa Cruz Counties Building and Construction Trades Council, Monterey County Farm Bureau, Salinas Valley Water Coalition, Independent Growers Association, Center for Community Advocacy, Central Coast Builders Association, Coast Property Owners Association, Salinas Valley Chamber of Commerce, Monterey Peninsula Chamber of Commerce, Monterey County Hospitality Association)

DATE: August 26, 2013

RE: Comment To Draft Ordinance To Establish Regulations for the Issuance of Permits and Entitlements for Development on Properties Utilizing Private Streets, Roads and Other Travelled Ways

The Refinement Group prepared this memorandum to comment on the draft ordinance related to "private streets, roads and other travelled ways."

1. The County Should Rely on the Four Corners of A Grant or Quitclaim Deed

Monterey County should rely on the express language in a recorded instrument, e.g., easement, rather than requiring judicial determination or concurrence from all easement holders. Because easements must be interpreted in the same manner as a contract (Civ. Code § 1066), any conveyance must be interpreted in the first instance by the language of the document. (*See City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232.) The County must rely on the express language set forth in the four corners of a grant or quitclaim deed if the deed satisfies the requirement of a transfer of real property. Only where there is ambiguity in the language of the grant such as width, location, use, identification of servient or dominant tenements, etc., should there be any need for interpretation using extrinsic evidence.

For example, if a grant deed conveyed a 40-foot wide easement for vehicular travel that benefits a parcel, the County should accept that the property benefits from a 40-foot wide easement for vehicular travel, without requiring judicial determination or an agreement among all easement holders. .

¹ The Refinement Group comprises representatives from diverse organizations who had previously organized to review and comment on the General Plan Update and now have re-assembled to participate in the County process for developing the ordinances to implement the General Plan. The Refinement Group supports a pro-active, public participation process in order to resolve issues upfront rather than in a battle at the end.



If a third party elects to challenge the easement despite the express, unambiguous language in the deed, the third party can file a civil action. The County should not get itself involved in matters of civil disputes.

If the County requires for all administratively challenged deeds a final court judgment before an application is determined complete, there would be (1) a significant and unduly delay in the application process; and (2) the Superior Court system will be overwhelmed.

2. The General Plan Policy Should Not Apply to the Coastal Zone

The draft Ordinances are written pursuant to General Plan Policy C-3.6 which states as follows:

The County shall establish regulations for new development that would intensify use of a private road or access easement. Proof of access shall be required as part of any development application when the proposed use is not identified in the provisions of the applicable agreement.

The County has not properly followed the procedure set forth in the General Plan, which states as follows:

“The General Plan does not amend and is not intended to amend the existing Monterey County Local Coastal Program (LCP). The County will review the LCP after adoption of the General Plan Update. If any of the goals, policies, and standards of the General Plan are to be incorporated into the LCP, such proposals would be subject to all appropriate public review procedures, including noticed public hearings, separate action by the County Board of Supervisors, and submission of major LCP amendments to the Coastal Commission for certification.”

The County should consider such policy/ordinance related to “private streets, roads and other travelled ways” in the coastal zone at the time of the LCP amendment process, which is consistent with the procedure set forth in the General Plan.

3. The scope of the ordinance(s) is far broader than the scope of the problem.

The genesis of the GP policy driving this ordinance comes from the application for the assisted living facility at the entrance to Carmel Valley. A right to use a private road was contested and ultimately resolved. A Board subsequently referred development of an ordinance to address this issue to the Planning Department. An ordinance was drafted with three key points:

- The ordinance would apply only to discretionary permits for a use of land.
- Parameters were set for what constituted a legitimate issue over the use of a private road.
- Requirements for mandatory conditioning of permits and means of resolution where there was a legitimate issue over the use of a private road.

These ordinances are far broader and require that every application for a discretionary permit, license or other entitlement that is served by a private road to prove they have a right to use the road, even when there is not a dispute over that right. By applying these ordinances so broadly, hundreds of applications will be impacted every year.

The Department has presented no data to support an ordinance this broad. In reviewing the ordinance with a number of people it seems that the issue it seeks to address is uncommon, if not rare, in most applications. If there must be an ordinance, it should be directed at how to address proof of access becomes an issue in applications for discretionary land uses, not for every discretionary permit, license or other entitlement in the County.

The ordinance should be directed only to discretionary land permits where there is a legitimate issue over the use of a private road.

3. The proposed ordinances as drafted are confusing, internally inconsistent and far in excess of the intent of the Board and GP policy.

A cursory review of the Title 21 version is attached. As you will see there are a great many questions, based solely on the language of the proposed ordinance, about the practicality and usability of the ordinance.

**PRIVATE ROAD ORDINANCE - INLAND
DRAFT (July 2013)**

C-3.6 The County shall establish regulations for new development that would intensify use of a private road or access easement. Proof of access shall be required as part of any development application when the proposed use is not identified in the provisions of the applicable agreement.

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.**

Comment [DE1]: I assume "roads is intended to be modified by "private;" I have no idea what "other travelled ways" means.

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.

Comment [DE2]: incredibly broad

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

Comment [DE3]: Correct statement but the ordinance puts the County in that role.

**PRIVATE ROAD ORDINANCE - INLAND
DRAFT (July 2013)**

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.

Comment [DE4]: IS there any statistical information to support this?

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 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.

Comment [DE5]: I thought Finding 3 says the County does not enforce the agreements

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.

Comment [DE6]: Which ones? Variances? Admin permits in "S" districts? Design approvals?

Comment [DE7]: What are entitlements? Building permit? Design approvals?

Comment [DE8]: What if there is no road agreement?

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.

**PRIVATE ROAD ORDINANCE - INLAND
DRAFT (July 2013)**

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.

Comment [DE9]: Does this include utilities?

Comment [DE10]: What if there is no PRA? Or, what if the property may be served by numerous private roads (Pebble Beach?)

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 (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.

Comment [DE11]: License? The County issues licenses for many things: dogs, bingo, tobacco sales, etc ...

Comment [DE12]: What does this mean? What is considered to be an entitlement for the purpose of this ordinance?

Comment [DE13]: Not sure what this refers to.

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.

Comment [DE14]: How would this be done? What would be considered ample evidence of this?

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

Comment [DE15]: And if there is no agreement?

Comment [DE16]: Who decides this?

PRIVATE ROAD ORDINANCE - INLAND
DRAFT (July 2013)

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 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.

Ordinance adding section 21.64.320

Page 4 of 5

Comment [DE17]: What will be considered to be enough of an effort?

Comment [DE18]: ?

Comment [DE19]: This would potentially require an extensive court proceeding ahead of even knowing if there were a project to be approved.

Comment [DE20]: I thought the County was not going to judge these things; see Finding 3.

Comment [DE21]: May or shall?

Comment [DE22]: If the Appropriate Authority can approve with a condition for subsequent proof, why go through all of the pre-notice requirements?

Comment [DE23]: What does subordinate access?

Comment [DE24]: So they have to relinquish their rights? Is this interference with a private agreement?

Comment [DE25]: Again, County adjudicating rights?

Comment [DE26]: What does this mean. We have experience the County saying changing from one contractor use to another in a building is a "change of use." I can only imagine how this will be used.

Comment [DE27]: Even a resubdivision?

**PRIVATE ROAD ORDINANCE - INLAND
DRAFT (July 2013)**

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 31st 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

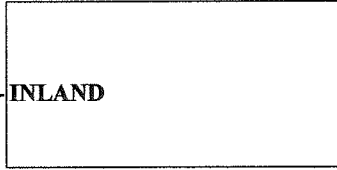
By: _____
Wendy S. Strimling
Senior Deputy County Counsel

APPROVED AS TO FORM

WENDY S. STRIMLING

**PRIVATE ROAD ORDINANCE - INLAND
DRAFT (July 2013)**

Senior Deputy County Counsel



Carla R. Martinez

76346 Bryson Hesperia Road
Bradley, California 93426
(805) 391-3185
carla@andrewpeterson.com

August 16, 2013

Craig Spencer, Associate Planner
Long Range Planning Team
County of Monterey Planning Department
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

RE: Proof of Access Ordinance PLN 060127
GPI Task: 110/Board Referral #2005.01

Dear Mr. Spencer:

After reviewing the above proposed county ordinance, I have some concerns and questions. This proposed ordinance is written in broad terms and is unnecessarily over-burdensome to the Applicants applying for a discretionary use permit. The following are my concerns and suggestions:

Section 1, Paragraph 8 defines a Private Road Agreement in the broadest terms available:

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, a easement, grant deed, reservation or a designation on a final subdivision map. (emphasis added)

Personally, I live on a "private road" and the only "agreement" allowing me access to my home is a grant deed which vaguely describes the easement as the "Roth Easement." There is no metes and bounds description of the road, nor is there even a map. Over the years many property owners have graded a variety of interior roads on their parcels. It is now hard to say what private roads are actually contained within the "Roth Easement". I'm sure there are many examples of this situation within rural Monterey County. I do not believe a mere grant deed can be construed as an "agreement" between property owners. A collective "road maintenance agreement" may be the vehicle that would bind "interested parties" in the usage of their private road. I do believe this is a question for the jury, not something the Planning Department can dictate.

On page 3, under D. Regulations, items 1(b) and 2(c) and (d) is where I take issue with this proposed ordinance being excessively burdensome to the applicant.

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. (emphasis added)

Some of our rural private roads extend for miles. The property owner at the end of the road is not impacted in the same way as the property owners are that are between the “Project” site and the publicly maintained roadway. Burdening the Applicant to even attempt written contact with “all parties to the applicable Private Road Agreement”, let alone obtain concurrence is beyond overly burdensome.

Section D. Regulations, 2(c) and (d) go on to require the Applicant to provide documentation of when the Notice was personally delivered or posted in the U.S. mail as well as documentation as to the attempts to meet with the “parties” to the applicable “Private Road Agreement.” With much of our undeveloped land in Monterey County being under ownership by parties not residing in Monterey County, meeting with all “interested parties” is overly burdensome in itself when long, extensive private roadways are involved.

I believe the County already is obligated to notify all property owners within a defined distance of a site where a discretionary use permit is being sought. Isn't it within the County's ability to extend this notification to “interested parties” along the private roadway who will be directly impacted by the proposed project? Why not just limit the notification to the property owners whose properties are located between the Project site and the publicly maintained roadway?

The main concern I have with this proposed ordinance is the definition used for “Private Road Agreement”. The manner in which it is herein written is far too broad. In defining “Private Road Agreement”, the phrase “without limitation” extends the over-reaching nature of this definition. I reiterate, the definition of “Private Road Agreement” in this instance is one for the courts, not the Building Department of Monterey County. To state a grant deed and/or an easement is an agreement between parties is a stretch.

All of the building and zoning ordinances must consider all the needs of Monterey County. Considering the size of our County, with its many “private roads” in our vast rural areas, this proposed ordinance is too broad reaching and overly burdensome to discretionary use permit applicants.

This is a blatant attempt by the County to make citizens pay for the notification services and do all the work for which the County is currently obligated to do. The County is also overstepping in its attempt to legally define what is and is not an agreement between property owners. I object to this proposed ordinance in its current form.

Respectfully submitted,

Carla R. Martinez
Member, South County Land Use Advisory Committee

cc: South County LUAC Members
Planning Commissioners

#9/10

LAW OFFICES OF
MICHAEL W. STAMP

Michael W. Stamp
Molly Erickson
Olga Mikheeva
Jennifer McNary

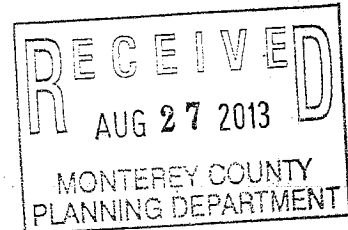
479 Pacific Street, Suite One
Monterey, California 93940

Telephone (831) 373-1214
Facsimile (831) 373-0242

August 27, 2013

Via Email and Facsimile (831) 757-9516

Jose Mendez, Chair
and Members of the Planning Commission
County of Monterey
168 West Alisal Street, 1st Floor
Salinas, CA 93901



Subject: August 28, 2013 1:30 PM - Proof of Access (PLN060127)

Dear Chair Mendez and Members of the Planning Commission:

We have discovered that the County staff has placed on the Planning Commission agenda for August 28 the consideration of a draft ordinance regarding proof of access. We received the staff report yesterday.

This Office has represented Patricia Bernardi and The Open Monterey Project with regard to this matter for at least seven years. We have participated in meetings in 2006, 2010 and 2011 involving County staff and County Counsel Les Girard. We also have written numerous letters to the County and provided detailed comments on draft ordinances (see, e.g., our December 13, 2011 letter to the Planning Commission).

We understand that the County gave early notice to approximately 100 people of the proposed August 28 hearing. However, the County did not give advance notice to our Office, or Mrs. Bernardi, or The Open Monterey Project, despite their longstanding involvement and participation in good faith in the County proceedings. We are disappointed that the County did not provide us with adequate notice of tomorrow's hearing.

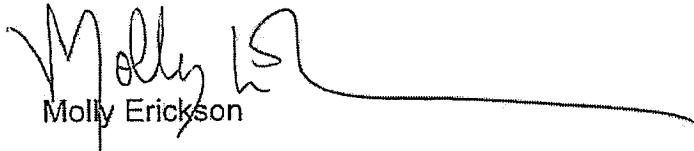
The proposed ordinance has significant gaps, omissions, and ambiguities. We would like to bring your attention to the most critical problems. Due to the late notice, we do not have time to provide written comments on the proposed draft ordinance, and we are unable to rearrange our schedules to appear at the hearing tomorrow.

We urge you to open the public hearing, take comments, and continue the public hearing to the next Planning Commission hearing. We will plan to provide comments by then either in writing or in person at the next hearing.

Thank you.

Jose Mendez, Chair
and Members of the Planning Commission
August 27, 2013
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Very truly yours,

A handwritten signature in black ink, appearing to read 'Molly Erickson', with a long horizontal flourish extending to the right.

cc: Mike Novo
Craig Spencer
Wendy Strimling
Les Girard