

MONTEREY COUNTY PLANNING COMMISSION

Meeting: November 9, 2011	Time:	Agenda Item No.: X 2
Project Description: Consider Ordinances to establish regulations for new development that would intensify use of a private road or access easement ("Proof of Access").		
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 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.

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 of a final subdivision map. Applications through the County for development that require discretionary permits have, in some instances, proposed to use private roads, and, also in some instances, the applicant to use the private road in a manner proposed by the development application. 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.

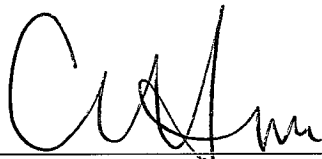
In order to ensure that that the issuance of certain land use related permits, licenses, entitlements and other approvals are consistent with any Private Road Agreement, the County proposes to adopt regulations requiring the submittal of documentation of existing access prior to deeming a discretionary permit complete. This shall also include documentation that a notice has been

delivered to all parties to the Private Road Agreement. Furthermore, in order to approve a project, the decision making body must make a finding that proof of access exists.

Environmental Review

Staff determined that the proposed Ordinances may be 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.



Carl Holm, AICP, Interim Deputy Director of
Resource Management Agency
(831) 755-5103, holmcp@co.monterey.ca.us
October 21, 2011

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; The Open Monterey Project; LandWatch; Pam Silkwood; Planning File PLN060127.

Attachments:

Exhibit A Resolution – Proof of Access Ordinance/Title 21
 1 Draft Ordinance for adopting Zoning Ordinance amendments adding Chapter 21.64.320 to the Monterey County Code

Exhibit B Resolution Proof of Access Ordinance/Title 20
 1 Draft Ordinance for amending the Local Coastal Program adding Chapter 20.64.320

This report was prepared by Anna V. Quenga, Associate Planner and reviewed by Carl P. Holm, AICP, Acting Deputy Director of the Resource Management Agency.

**EXHIBIT 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 relating to
proposed development applications involving
disputed use of private streets (Proof of
Access Ordinance).
(PLN060127/Proof of Access, Countywide)

I. RECITALS:

Proposed amendments to Title 21 (Zoning Ordinance) came on for hearing on November 8, 2011 before the Monterey County Planning Commission. 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:

1. At a duly notice public hearing on or about November 8, 2011, the Planning Commission adopted a resolution to recommend that the Board of Supervisors consider a resolution of intent to amend Title 21 (Zoning).
2. The proposed ordinance is attached to this Resolution as **Attachment 1** and is incorporated herein by reference. In connection with its consideration of the Ordinance Amendments, the Planning Commission reviewed the proposed amendments to Title 21 (Zoning) of the Monterey County Code to add Chapter 21.64.320 to establish regulations for the issuance of permits and entitlements for development on properties utilizing private streets, roads, and other traveled ways; and incorporates by reference herein the findings and declarations set forth in the proposed ordinance.

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 to establish regulations relating to proposed development applications involving disputed use of private streets (Proof of Access Ordinance).

Passed and adopted on this ____ day of _____, 2011, upon motion of Commissioner _____, seconded by Commissioner _____, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

By _____
MIKE NOVO, SECRETARY

COPY OF THIS DECISION MAILED TO APPLICANT ON:

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING SECTION 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 amends Title 21 (Non-Coastal Zoning) 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, non-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 have, in some instances, proposed to use Private Roads, and, also in some instances, some of the parties to the applicable Private Road Agreement 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 at the time an application is submitted to the County 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 21.64.320 is added to 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 governing certain discretionary development or entitlements that may intensify use of a Private Road. This ordinance authorizes the County to require that an applicant for such development or entitlement provide proof that such development or entitlement is consistent with any applicable Private 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:

The following definitions shall apply for purposes of this Section:

1. "Applicant" means the person or entity submitting an Application.
2. "Application" means an application for a Project.
3. "Appropriate Authority" has the meaning set forth in Section 21.06.090.
4. "Interested Party" means a party to a Private Road Agreement.
5. "Notice" means written notice of the 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 United States mail, first class postage pre-paid.

6. "Objecting Party" means an Interested Party that files an objection as described in Section 21.64.320(D)(2).

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, for a specific parcel of property, a) a use for which a discretionary land use permit from the County is required, or b) a request for 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. Documentation of Access. 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. (i) Documentation of existing access along a Private Road meeting minimum requirements of the local fire district, or (ii) if not meeting such minimum requirements, documentation from the local fire official and Monterey County Public Works Department regarding the minimum level of improvements to the Public Road that would be required in order to provide access to the Project; such documentation is to be included on a site plan showing the Project and the existing or proposed access.

b. A copy of the Notice and documentation of when the Notice was personally delivered or deposited in the United States mail. An Application shall not be deemed complete until 10 days after all such Notices were either personally delivered or deposited in the United States mail. A list of persons or entities provided Notice shall be included with the Application showing each such owner or party, and their last know address.

c. Documentation of efforts by the Applicant to meet with the parties to a Private Road Agreement and obtain a signed concurrence among all such parties acknowledging that the Project is consistent with the Private Road Agreement.

2. Objections. Any Interested Party may file with the County a written objection to the use of the Private Road within 20 days of the date Notice to that party was either personally delivered or deposited in the United States mail. A written objection must include all of the following:

a. The name, address and telephone number of the Objecting Party;

b. Documentation of the Objecting Party's interest in the Private Road Agreement;

c. A copy of the Private Road Agreement; and

d. A written statement setting forth, in detail, the factual basis upon which the Objecting Party asserts that the Project is in violation of or is inconsistent with the Private Road Agreement.

The County shall forward to an Applicant a timely objection filed by an Objecting Party. If a timely objection is filed, the Applicant must provide Proof of Access as set forth in Subsections 21.64.320(D)(3)(a)(ii) – (iv).

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. One or more of the following shall constitute Proof of Access for purposes of this Section 21.64.320:

i) The absence of any timely objection filed pursuant to Section 21.64.320(D)(2);

ii) Written withdrawal of all timely objections by Objecting Parties;

iii) A written concurrence from all Interested Parties consenting to the use of the Private Road as proposed by the Project; or

iv) A final and binding judicial determination concerning access to the Project or use of the Private Road.

b. If the Appropriate Authority is unable to make a finding that Proof of Access exists pursuant to Subsection 21.64.320(D)(3)(a), the Application shall be denied.

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, a new Application for the same Project may be submitted only if Proof of Access is demonstrated by

the Applicant as described in Subsections 21.64.320(D)(3)(a)(ii) – (iv). Upon submission of such new Application, the Director of Planning 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

c. The first single family dwelling and lawful accessory uses on a lot of record where the Applicant can provide documentation of access to the property from a public road to the satisfaction of the Director of Planning.

2. Notwithstanding the foregoing, no Application requesting 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. 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 following its adoption.

PASSED AND ADOPTED on this ___ day of _____ 2011, by the following vote:

AYES: Supervisors

NOES:

ABSTAIN:

ABSENT:

Jane Parker, Chair
Monterey County Board of Supervisors

A T T E S T:
GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM

WENDY S. STRIMLING
Deputy County Counsel

**EXHIBIT 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 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).
(PLN060127/Proof of Access, Countywide)

I. RECITALS:

Proposed amendments to Title 20 (Zoning Ordinance) came on for hearing on November 8, 2011 before the Monterey County Planning Commission. 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:

1. At a duly notice public hearing on or about November 8, 2011, the Planning Commission adopted a resolution to recommend that the Board of Supervisors consider a resolution of intent to amend Title 20 of the Local Coastal Program (Zoning).
2. The proposed ordinance is attached to this Resolution as **Attachment 1** and is incorporated herein by reference. In connection with its consideration of the Ordinance Amendments, the Planning Commission reviewed the proposed amendments to Title 20 (Zoning) of the Monterey County Code to add Chapter 20.64.320 to establish regulations for the issuance of permits and entitlements for development on properties utilizing private streets, roads, and other traveled ways; and incorporates by reference herein the findings and declarations set forth in the proposed ordinance.

II. DECISION:

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Board of Supervisors 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)..

Passed and adopted on this ____ day of _____, 2011, upon motion of Commissioner _____, seconded by Commissioner _____, by the following vote, to-wit:

AYES:
NOES:
ABSENT:

By _____
MIKE NOVO, SECRETARY

COPY OF THIS DECISION MAILED TO APPLICANT ON:

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 have, in some instances, proposed to use Private Roads, and, also in some instances, some of the parties to the applicable Private Road Agreement 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 at the time an application is submitted to the County 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 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 governing certain discretionary development or entitlements that may intensify use of a Private Road. This ordinance authorizes the County to require that an applicant for such development or entitlement provide proof that such development or entitlement is consistent with any applicable Private Road Agreement.

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:

The following definitions shall apply for purposes of this Section:

1. "Applicant" means the person or entity submitting an Application.
2. "Application" means an application for a Project.
3. "Appropriate Authority" has the meaning set forth in Section 20.06.090.
4. "Interested Party" means a party to a Private Road Agreement.
5. "Notice" means written notice of the 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 United States mail, first class postage pre-paid.

6. "Objecting Party" means an Interested Party that files an objection as described in Section 20.64.320(D)(2).

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, for a specific parcel of property, a) a use for which a discretionary land use permit from the County is required, or b) a request for 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 20.64.320(D)(3)(a).

D. Regulations:

1. Documentation of Access. 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. (i) Documentation of existing access along a Private Road meeting minimum requirements of the local fire district, or (ii) if not meeting such minimum requirements, documentation from the local fire official and Monterey County Public Works Department regarding the minimum level of improvements to the Public Road that would be required in order to provide access to the Project; such documentation is to be included on a site plan showing the Project and the existing or proposed access.

b. A copy of the Notice and documentation of when the Notice was personally delivered or deposited in the United States mail. An Application shall not be deemed complete until 10 days after all such Notices were either personally delivered or deposited in the United States mail. A list of persons or entities provided Notice shall be included with the Application showing each such owner or party, and their last known address.

c. Documentation of efforts by the Applicant to meet with the parties to a Private Road Agreement and obtain a signed concurrence among all such parties acknowledging that the Project is consistent with the Private Road Agreement.

2. Objections. Any Interested Party may file with the County a written objection to the use of the Private Road within 20 days of the date Notice to that party was either personally delivered or deposited in the United States mail. A written objection must include all of the following:

a. The name, address and telephone number of the Objecting Party;

b. Documentation of the Objecting Party's interest in the Private Road Agreement;

c. A copy of the Private Road Agreement; and

d. A written statement setting forth, in detail, the factual basis upon which the Objecting Party asserts that the Project is in violation of or is inconsistent with the Private Road Agreement.

The County shall forward to an Applicant a timely objection filed by an Objecting Party. If a timely objection is filed, the Applicant must provide Proof of Access as set forth in Subsections 20.64.320(D)(3)(a)(ii) – (iv).

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. One or more of the following shall constitute Proof of Access for purposes of this Section 20.64.320:

i) The absence of any timely objection filed pursuant to Section 20.64.320(D)(2);

ii) Written withdrawal of all timely objections by Objecting Parties;

iii) A written concurrence from all Interested Parties consenting to the use of the Private Road as proposed by the Project; or

iv) A final and binding judicial determination concerning access to the Project or use of the Private Road.

b. If the Appropriate Authority is unable to make a finding that Proof of Access exists pursuant to Subsection 20.64.320(D)(3)(a), the Application shall be denied.

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, a new Application for the same Project may be submitted only if Proof of Access is demonstrated by

the Applicant as described in Subsections 20.64.320(D)(3)(a)(ii) – (iv). Upon submission of such new Application, the Director of Planning 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;

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

c. The first single family dwelling and lawful accessory uses on a lot of record where the Applicant can provide documentation of access to the property from a public road to the satisfaction of the Director of Planning.

2. Notwithstanding the foregoing, no Application requesting 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 following its adoption or the day certification by the California Coastal Commission becomes final and effective, whichever occurs later.

PASSED AND ADOPTED on this ___ day of _____ 2011, by the following vote:

AYES: Supervisors

NOES:

ABSTAIN:

ABSENT:

Jane Parker, Chair
Monterey County Board of Supervisors

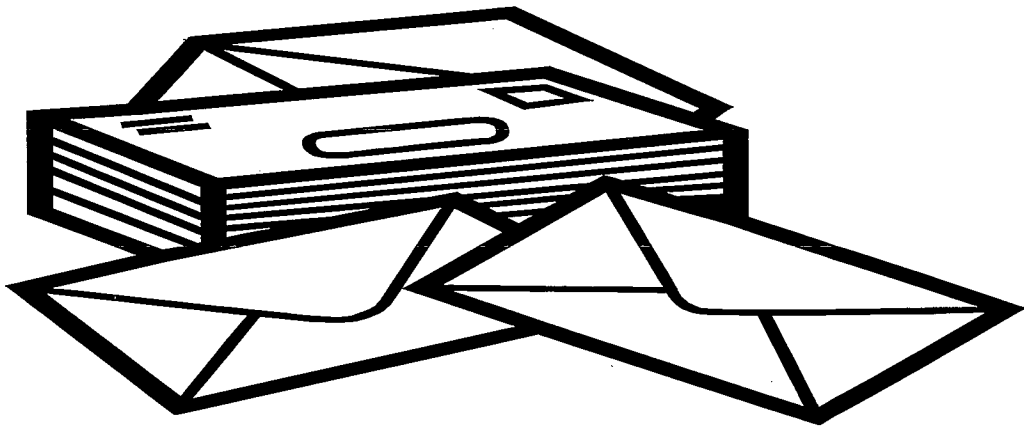
A T T E S T:
GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

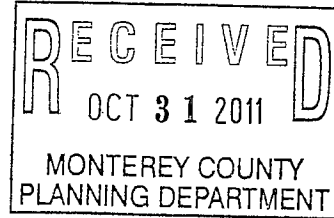
APPROVED AS TO FORM

WENDY S. STRIMLING
Deputy County Counsel

Comment Letters



PLN060127



-----Original Message-----

From: Neil Agron [mailto:nagron@comcast.net]

Sent: Monday, October 31, 2011 1:03 PM

To: Holm, Carl P. x5103

Subject: Adoption of Proof of Access Ordinance

Dale Agron
Executive Committee
Ventana Chapter
Sierra Club

Dear Mr. Holm,

This letter is a statement of support for the adoption of Section 20.64.320, Proof of Access Ordinance, on unincorporated coastal areas of Monterey County. I am a voting member of the Executive Committee of Ventana Chapter and a member of the chapter Conservation Committee. I have been a homeowner in unincorporated areas of the county since 1967. For the last 34 years, I have lived on Carmel Knolls off of Carmel Valley Road. The land use permit is of particular concern to me because of the high percentage of private roads in Carmel Valley near my home.

With the existing process of applying for permits to develop land, past and present conflicts between applicants and concerned neighbors are frequent. The lengthy disputes have resulted in a great waste of resources, time and money for all parties involved and for the county planning staff with little or no resolution.

The Proof of Access Ordinance is is clearly necessary to regulate the planning process more efficiently and effectively in unincorporated coastal areas. The added ordinance will reduce wasted resources and provide indirect benefits for all Monterey County residents.

Thank you for your consideration.

Sincerely,

Dale M. Agron
26122 Carmel Knolls Dr.
Carmel CA 93923
831 624 3038

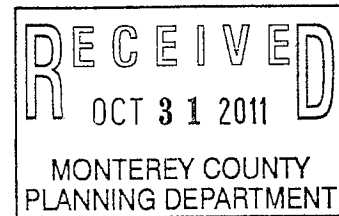
-----Original Message-----

From: MARGIE17K@aol.com [mailto:MARGIE17K@aol.com]

Sent: Monday, October 31, 2011 6:42 AM

To: Holm, Carl P. x5103

Subject: Please include in PC agenda packet for November 9th meeting



October 31, 2011

Dear Carl,

Regarding:

**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.**

I am reviewing the full draft language of the above for both the Coastal and NonCoastal Zones that have been forwarded to me for my review.

Since 1976, I have lived on a property that only has access from a private road.

Also, I heard many complaints or concerns during seven years as a past committee member of the North County Coastal Land Use Advisory Committee.

With much experience of the problems that can be associated with, I support the language for the new ordinance being proposed. It is critical that the county have all the private road issues addressed to the satisfaction of all owners before an application is accepted.

Please accept this email of support to be included in the Planning Commission packet for the November 9th meeting when this proposed language will be discussed.

Margie Kay
5319 Starr Way
Royal Oaks, CA 95076

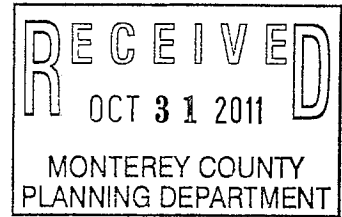
Carmel Valley Association

P.O. Box 157, Carmel Valley, California 93924

www.carmelvalleyassociation.org



Since 1949



Monterey County Planning Commission
Paul Getzelman, Chair
168 W. Alisal Street
Salinas, CA 93901

October 29, 2011

RE: Private Road Ordinances

Chair Getzelman and Commissioners,

The Carmel Valley Association is in its 63rd year of representing residents up and down the Carmel Valley. We have hundreds of members, and operate exclusively as an all-volunteer group, funded by membership fees and donations only. In fact, we represent nearly 10% of the voting population of the entire Valley.

The Carmel Valley Association is in support of the Private Road Ordinance. Since almost 50% of the roads in the County are private, it would seem wise to have a way to deal with incoming development that would impact a private road and the residents along it, before issues develop.

As you know, people are rather protective of their way of life, and their property, especially if they live on a private road. The wear and tear repairs on those roads come out of the pockets of the residents living there. Rather than have a project get through all the various steps that are required to get to a hearing, and *then* have the public weigh in, can be problematic. It makes more sense to have this step dealt with before an application is complete. It benefits the project applicant, the neighbors, and the County staff, saving both time and costs.

The draft of the private road ordinances appears to have covered all the bases, protecting both the residents on the road, as well as the project applicant. The process is clearly spelled out, with opportunity to find common ground and deal with objections.

Please support the Private Road Ordinances, and recommend passage by the Supervisors.

Thank you for your work on our behalf and your consideration.

Sincerely,

Christine Williams

Christine Williams, President

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

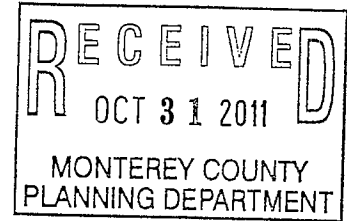
-----Original Message-----

From: NAGRON [mailto:nagron@comcast.net]

Sent: Saturday, October 29, 2011 3:14 PM

To: Holm, Carl P. x5103

Subject: Proof of Access Ordinance



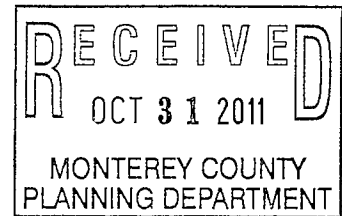
Dear Mr. Holm,

As a newly appointed member of the Carmel Valley Road Committee, I would like to express my support of the Proof of Access Ordinance.

Since 50 percent of the roads in Monterey County unincorporated areas are privately owned, the proposed ordinance will avoid potential disputes which notoriously culminated in the infamous Grimes incident. In addition, disputes as to access needlessly consume staff time which should be directed to more meaningful tasks.

Sincerely,

Neil Agron



-----Original Message-----

From: deeanehowe@aol.com [mailto:deeanehowe@aol.com]
Sent: Friday, October 28, 2011 2:54 PM
To: Holm, Carl P. x5103
Subject: Private Road Ordinance

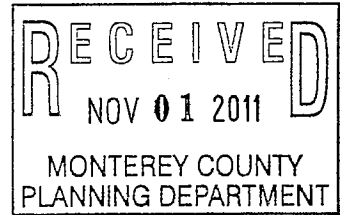
To the Monterey County Planning Commissioners:

I fully support the immediate adoption of an ordinance, adding section 21.64.320 to the Monterey County Code, to establish regulations for the issuance of permits for potential development involving a private road. I believe it is imperative that existing private roads be taken into consideration in determining if development is compatible with the prevailing neighborhood uses. It is important to assure existing residents on a private road that development will not unduly intensify the usage; nor unduly burden those that are co-owners of the road. Potential development on a private road should be constrained by the existing zoning, unless unanimous agreement exists among the property owners involved to allow intensification or rezoning. Proof of access should be required at the time of application submittal so the resources of County departments are not wasted in processing applications that do not meet this standard.

Thank you for taking my comments into consideration. This is an issue that effects the quality of life of everyone who is a property owner on a private road.

Sincerely,

DeeAnne Howe
26525 Val Verde Drive
Carmel, CA 93923



Monterey County Supervisors
c/o Jane Parker, Board Chair

Monterey County Planning Commission
c/o Paul Getzelman, Chair

Monterey County RMA
c/o Carl Holm, AICP, Acting Deputy Director

Monterey County Counsel's Office
c/o Wendy Strimling, Deputy County Counsel

Regarding:

QuickTime™ and a
TIFF (LZW) decompressor
are needed to see this picture.

October 31, 2011

Dear Ms. Parker, Mr. Getzelman, Mr. Holm, and Ms. Strimling,

The Highway 68 Coalition supports the proposed Proof of Access Ordinance amending Title 20 and Title 21. This proposed Ordinance goes a long way toward eliminating surprises in residential neighborhoods throughout unincorporated Monterey County. However, there are a few things that need to be taken into consideration. The following are suggestions for your consideration.

- 1) We support written notice to all affected residences about potential changes to a private road, street, or other traveled way.
 - a) The written notice should include the entirety of a new County Ordinance.
 - b) The notice should name a specific contact person in the County to call or write to for clarification or more information.
 - c) The notice should warn that failure to respond may mean increased traffic and other impacts to the existing neighborhood.
 - d) The notice should state that while not necessary to consult with an attorney, it might be a good idea.

Page 2

e) Other affected neighbors contact information should be included in the mailing so as to facilitate communication in a timely manner.

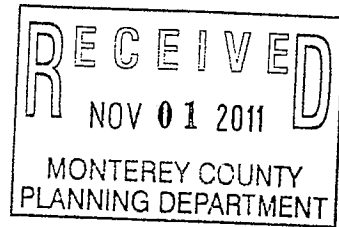
2) Twenty days is too short a window for response to notification. Twenty days may be workable on a small private road. But, what of a private road serving fifteen or more residences? People travel; people can be gone for periods of time. Thirty days should be the minimum, preferably sixty days.

3) Language should be included that if a resident on a private road misses commenting or objecting during the window of time for doing so, it does not eliminate the resident or resident's rights to later comment on, or object to a project, because of traffic, noise, or cost concerns.

Thank you for considering the above concerns in any new Ordinance. Addressing these suggestions in the body of the Ordinance and in the staff report will go a long way toward increasing credibility on the part of the County in its relations with the unincorporated areas of Monterey County.

Sincerely,
/s/ Mike Weaver

Mike Weaver, Chair
The Highway 68 Coalition
Phone: 831-484-6659
Email: highway68coalition@yahoo.com



-----Original Message-----

From: Ed Mitchell [mailto:edmitchell70@hughes.net]

Sent: Monday, October 31, 2011 5:49 PM

To: Holm, Carl P. x5103

Cc: Bill, Chair Theyskens - PPA

Subject: Private Road Ordinance - Public input

Mr. Holm,

Please provide the below comments and recommendations to the reviewing Board/Commission considering approving changes to County Ordinance Title 21 for Proof of Access to Private Roads.

My name is Ed Mitchell representing the Prunedale Neighbors Group and Prunedale Preservation Alliance. The majority of our membership resides in North County which has many private roads that have or will be impacted by new developments. Therefore we have experience with the negative impacts from developments that push loads of traffic onto existing private roads. We have seen some instances where a developer seeks the entitlement to build and sell a number of homes yet maneuvers to avoid providing any improvements to the private road so it can handle the new heavy traffic or avoids agreeing to annual maintenance fees or procedures to maintain the ingress/egress route.

Therefore, we support establishing the recommended ordinance wording with the following minor addition: Please modify the ordinance to require the applicant to include written explanation in the notice to interested parties that the interested parties only have 20 days to object in writing, the date the 20 day period begins, along with explanation of to whom the objection must be sent to, and what information must be supplied in an objection.

*PNG/PPA Representative
Ed Mitchell
Prunedale CA*

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MONTEREY COUNTY
PLANNING DEPARTMENT

Bringing you HOPE -
Helping Our Peninsula's Environment
Box 1495, Carmel, CA 93921 Info7 at 1hope.org
831/ 624-6500 www.1hope.org

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Road Access Required Before Application is Complete

Science Advisors
Herman Medwin, Ph.D.
(deceased) - *Acoustics*

Chair Getzelman and Commissioners:

Susan Kegley, Ph.D.
- *Hazardous Materials*
 & Pesticides
Arthur Partridge, Ph.D.
 Forest Ecology

HOPE supports requiring Private Road Access Proof before deeming a subdivision application complete.

Currently after the Planning Department has spent potentially many months of time and effort moving a project through the application process, Private Road access is disputed.

The proposed ordinance requires that access proof is settled before the County spends scare resources on the application.

Because there is no right to subdivide, HOPE supports this ordinance if limited to subdivisions.

However, we cannot yet support this ordinance if it is expanded to all discretionary development.

**Thank you,
David Dilworth,
for the Board of Trustees**

Founded in 1998, and known for helping with hundreds of environmental and democracy successes including stopping both "Dirty Harry" and "The Terminator," H.O.P.E. is a non-profit, tax deductible, public interest group protecting our Monterey Peninsula's natural land, air, and water ecosystems and public participation in government, using science, law, education, news alerts and advocacy.