

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> December 14, 2011    Time: 2:30 p.m.		<b>Agenda Item No.:</b> 10
<b>Project Description:</b> Consider Ordinances to establish regulations for new development that would intensify use of a private road or access easement ("Proof of Access"). Continued from November 9, 2011		
<b>Project Location:</b> Countywide		<b>APN:</b> Countywide
<b>Planning File Number:</b> PLN060127		<b>Owner:</b> N/A <b>Agent:</b> N/A
<b>Planning Area:</b> Countywide		<b>Flagged and staked:</b> N/A
<b>Zoning Designation:</b> Multiple Zoning Designations		
<b>CEQA Action:</b> Categorically Exempt per Section 15301 (Class 1) – Existing Facilities		
<b>Department:</b> RMA - Planning Department		

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

- 1) Adopt an Ordinance adding Chapter 21.64.320 to the Monterey County Code (non-Coastal) to establish regulations relating to proposed development applications involving the use of private roads (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 the use of private roads (Proof of Access Ordinance).

**DISCUSSION:** On November 9, 2011, the Planning Commission considered this item and provided direction to staff. Staff received input from various parties including discussion with some other County planning directors:

- Public comments are mixed with many requesting a more absolute proof of access before an application can be deemed complete and others requesting language that allows an application to proceed with adequate documentation. The issue generally seems to come down to a question of who has the burden and when the matter needs to be resolved.
- Staff's interpretation of the experiences relayed from other counties is to keep the requirement for documentation basic (e.g.; a preliminary title report). Some have avoided the issue because of its complexities and wanting to stay out of civil disputes between private parties.

Staff finds that there are four primary issues:

1. Adequate Documentation. Staff would encourage owners to communicate and work with neighbors on access solutions before submitting an application. However, the minimum documentation to prove access is to have a recorded document (e.g. easement). This is not a perfect solution because a ranch road which has been used as access for generations would very likely be considered 'legal' but until they go to court to perfect their prescriptive easement there's no document proving access.
2. Civil Disputes. Staff recommends language that avoids giving any one person power to either force an application to proceed or prevent an application from proceeding. Requiring absolute resolution to prove legal access could potentially add tens of thousands of dollars in legal fees to any project coming in the door. Using the same ranch example as above, it could take years and many thousands of dollars to determine legal access if the underlying fee owner decides to fight.
3. When Proof of Access is Required. In order to try to find a balance, staff drafted ordinances that establish what constitutes adequate proof (e.g.; a recorded document) and

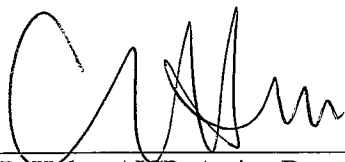
that - once provided – would allow an application to proceed with a standard condition how/when to work out disputes. This would keep the burden of proof with the applicant, but allow them to know they have a project before expending resources into perfecting easement rights (if disputed). In order to help assure notification, staff has included language that public notice is provided to the owner of any property abutting the access easement.

4. What constitutes “Intensification.” The issue that has been raised seems to revolve around what is expected use of the land. There is general agreement that simply building one single family home on a vacant lot should not be subject to this requirement. There also seems to be general agreement that this regulation should apply to a zone change. However, there does not seem to be consensus for the extent the regulation would apply to other uses allowed within a zoning classification - permitted, administrative permit, use permit, subdivision.

Staff has enclosed a draft inland and coastal ordinance (Exhibits A & B respectively) that reflects our recommended changes from the version presented on November 9.

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.



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Carl P. Holm, AICP, Acting Deputy Director  
Monterey County Resource Management Agency  
(831) 755-5103, holmcp@co.monterey.ca.us  
November 30, 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; 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:

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

**EXHIBIT A  
AMENDMENT TO TITLE 21**

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

Resolution No. [REDACTED]  
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 the use of private roads (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 the use of private roads (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 in some cases 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 Person that is a party to or has a legal right in a Private Road Agreement.
5. "Notice" means written notice of the that an Application has been filed with the County that proposes to use a Private Road to access a Project, such Notice to be provided to all Interested Parties and any Person owning real property that immediately abuts the Private Road. The Notice shall with respect to a Private Road that will be used to access a Project, such notice include a brief description of the procedure to file an objection as described in Section 21.64.320(D)(2), and shall to be personally delivered or deposited in the United States mail, first class postage pre-paid to the last known address of each such Interested Party.
6. "Objecting Party" means an Interested Party that files an objection as described in Section 21.64.320(D)(2).
7. "Person" has the same meaning as set forth in Section 21.06.865.
78. "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.
89. "Private Road Agreement" means any properly executed document, whether or not recorded of record, properly executed and recorded, that: a) is an agreement between parties concerning the right to use private property as access to a different another parcel of private property; or b) grants to a party the right to use private property of another as access to a different 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, or similar document.

910. "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 one or more a-Private Roads.

101. "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~~each Private Road meeting minimum requirements of the local fire district ~~for the uses proposed in the Application~~, 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~~each ~~Public~~Private 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 at least 10 days after all such Notices were either personally delivered or deposited in the United States mail. A list of ~~the Interested pPersonsarties or entities~~ provided Notice shall be included with the Application showing ~~each such owner or party, and their~~the last known address for each such Interested Party.

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

2. Objections. Any Interested Party may file with the County a written objection to ~~the~~ use of the Private Road within ~~230~~ 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~~A description of the Objecting Party's interest in ~~an applicable~~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~~any applicable 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. Upon approval of a Project, ~~In order to approve a Project~~, and in addition to any other requirements imposed by law, if a timely objection has been filed by any Interested Party as set forth in Section 21.64.320(D)(2), the Appropriate Authority must impose upon the Project a condition requiring a showing ~~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 each 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 any Private Road.

b. Proof of Access pursuant to this section must be demonstrated to the satisfaction of the Planning Director upon consultation with County Counsel. If a Project has been conditioned as set forth in this section, no further permits for the Project shall be issued, including without limitation building or grading permits, until the required showing of Proof of Access has been made.

An Applicant shall be given a reasonable time, not exceeding two (2) years, to make the required showing of Proof of Access; however, such time may be extended by the Planning Director upon consultation with County Counsel to allow for the completion of any judicial proceedings concerning an applicable Private Road. If a required showing of Proof of Access is not made within the allowed time, the Project shall be deemed denied. 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 findings showing 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 deemed denied based upon a failure to make a required showing of 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 Planning Director of Planning shall review and determine, upon consultation with County Counsel, 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~~ Director; however, Notice of any such Application shall be provided as set forth in Section 21.64.320(C)(5).

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 31<sup>st</sup> 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 the use of private roads (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 the use of private roads (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 in some cases 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 Person that is a party to or has a legal right in a Private Road Agreement.

5. "Notice" means written notice that an of the Application has been filed with the County that proposes to use a Private Road to access a Project, such Notice to be provided to all Interested Parties and any Person owning real property that immediately abuts the Private Road. The Notice shall include a brief description of the procedure to file an objection as described in Section 20.64.320(D)(2), and shall ~~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 to the last known address of each such Interested Party.~~

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

7. "Person" has the same meaning as set forth in Section 20.06.865.

78. "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.

89. "Private Road Agreement" means any property executed document, whether or not recorded, of record, properly executed and recorded, that: a) is an agreement between parties concerning the right to use private property as access to another a different parcel of private property; or b) grants to a party the right to use private property of another as access to a different 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, or similar document.

910. "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 one or more Private Roads.

101. "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 ~~each~~ Private Road meeting minimum requirements of the local fire district ~~for the uses proposed in the Application~~, 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 ~~each the Public Private~~ 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 at least 10 days after all such Notices were either personally delivered or deposited in the United States mail. A list of ~~Interested p~~Interested parties or entities provided Notice shall be included with the Application showing ~~the each such owner or party, and their last known address for each such Interested Party.~~

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

2. Objections. Any Interested Party may file with the County a written objection to the use of the Private Road within ~~230~~ 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~~ A description of the Objecting Party's interest in ~~the any applicable~~ 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 any~~ 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. ~~Upon approval of In order to approve a Project, and in addition to any other requirements imposed by law, if a timely objection has been filed by any Interested Party as set forth in Section 20.64.320(D)(2), the Appropriate Authority must impose upon the Project a condition requiring a showing 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~~each Private Road as proposed by the Project; or
- iv) A final and binding judicial determination concerning access to the Project or use of ~~the~~any Private Road.

b. Proof of Access pursuant to this section must be demonstrated to the satisfaction of the Planning Director upon consultation with County Counsel. If a Project has been conditioned as set forth in this section, no further permits for the Project shall be issued, including without limitation building or grading permits, until the required showing of Proof of Access has been made.

An Applicant shall be given a reasonable time, not exceeding two (2) years, to make the required showing of Proof of Access; however, such time may be extended by the Planning Director upon consultation with County Counsel to allow for the completion of any judicial proceedings concerning an applicable Private Road. If a required showing of Proof of Access is not made within the allowed time, the Project shall be deemed denied. 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 ~~showing~~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 deemed denied based upon a failure to make a required showing of 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)(i) – (iv). Upon submission of such new Application, ~~the Planning Director of Planning~~ shall review and determine, upon consultation with County Counsel, 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~~ Director; however, Notice of any such Application shall be provided as set forth in section 20.64.320(C)(5).

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 31<sup>st</sup> day following its adoption or certification by the California Coastal Commission, 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