

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> January 25, 2012	<b>Time:</b> 11:00 a.m.	<b>Agenda Item No.:</b> 5
<b>Project Description:</b> Consider regulations for new development that would intensify use of a private road or access easement ("Proof of Access"). Continued from December 14, 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 requests Planning Commission direction for developing a "Proof of Access" Ordinance.

**DISCUSSION:** On November 9 and December 14, 2011, the Planning Commission considered this item; however, no action was taken. Staff finds that there are four primary components for drafting an ordinance and requests direction from the Commission.

1. Documentation. There are a couple types of documentation that could be required:
  - a. *Recorded Document.* Currently, staff requests copies of the grant deed as part of the application submittal. If a project requires access via a private road, staff would also request and review existing documentation to assess if the described easement is adequate - staff accepts recorded documents at their face value.
  - b. *Court Order.* It is not the County's role to settle private property/road disputes. If private parties cannot reach an agreement over access rights/maintenance responsibility, a court may need to resolve the civil disputes.
  
2. Timing. There are two points in the process when documentation may be required:
  - a. *Application.* Certain documentation is necessary in order to be able to complete review of an application. Requiring absolute resolution (court order) to prove legal access would remove any doubt during the hearing process; however, it could also potentially add thousands of dollars in legal fees prior to any project coming in the door without any certainty of having a viable project. As an example, an application that involves significant tree removal might be denied for inability to make required findings for the tree removal. This could require them to redesign or abandon the project and potentially not need to prove access.
  - b. *Condition of Approval.* Without requiring absolute resolution, neighbors could dispute right of access during the County hearing process. Applying a condition requiring resolution would place 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).
  
3. Notification. County Code requires notification to property owners within 300 feet of the subject property. A private road easement could affect property owners located further than the 300-foot standard and may not be apparent to County staff and possibly the project applicant as to all parties to the easement.

4. Applicability/Exemptions. Access issues seem to revolve around the expected use of land. A key item is to define what constitutes intensification that would trigger application of this ordinance - uses allowed within a zoning classification (e.g.; permitted, administrative permit, use permit, subdivision) versus a zone change. Staff previously drafted ordinances that exempted agricultural roads used for agricultural purposes, emergency permits, and the first single family home.

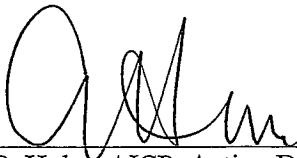
OPTION A-Staff Recommendation: The County encourages owners to communicate and work with neighbors on access solutions before submitting an application in all cases. Disputes over access represent less than 10% of project applications. Staff recommends developing regulations that: a) represent a majority of the situations; and b) avoids giving any one person power to either force an application to proceed or prevent an application from proceeding.

In most cases, providing a copy of existing recorded documentation would be adequate. In order to try to find a balance, staff recommends an ordinance that establishes what constitutes adequate proof (e.g.; a recorded document) and that - once provided - would allow an application to proceed with a standard condition requiring resolution (agreement or court order) if there is a dispute. In order to help assure adequate notification of all affected persons, staff recommends language that public notice is provided to the owner of any property abutting the access easement. Staff believes that these criteria would work in most cases, with an occasional need to apply the condition where use is disputed.

OPTION B-Commissioner Brown: Commissioner Brown submitted a narrative recommending regulation from Los Angeles County. Staff has attached this as an option for the Commission to Consider (**Exhibit A**).

Other options, such as earlier drafts of the ordinance, are also available.

**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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January 15, 2012

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:

A LA County Option

**EXHIBIT A**  
LA County Option

*Narrative from Commissioner Brown:*

Attached are some documents that LA County uses for permit applications. They require various affidavits as "Burden of Proof" applicable to a project. One of these is an "Affidavit of Easement of Record." Note that it requires the applicant to furnish a physical document (title). In the applicants instructions for "Burden of Proof" it states that it is the applicants job (not staff) to verify technical accuracy. Applicant is advised to seek guidance from a land use attorney if necessary.

I do agree that as part of the public noticing that an expanded footprint of those affected by the easement should be given notice by the County as they do normally with other issues. The applicant could also be asked for names and addresses of affected neighbors.

Although we discussed using a title company to verify the access, staff mentioned that the County applying this requirement has had difficulty finding title companies to do it. I can see how that could be the case because it would be out of their norm to declare an easement legally valid. My experience is that if there is an easement, an escrow company will only go as far as to make you aware of it in the title. It would be a huge risk to them to pass legal judgment on it and be wrong.

I like the LA method for the following reasons:

- 1) It does require the applicant to do some due diligence on the easement and to certify to the County that it is real. But, beyond that, the County is not putting itself in the position on passing judgment on the technical correctness. If others dispute the terms it can go to the PC like any other issue. Presumably, at that point, there would be additional legal details given pro or con and adjudication would be eventually possible by either party.
- 2) In contrast with what has been proposed by staff so far, an over zealous group of neighbors can not force the applicant to obtain an attorney and prepare for adjudication just because they don't like the project (for any reason). They can complain through the public process but in order to force the applicant to court they have to be confident and prepared to prevail. This is a big deal because an application that has an easement involved would routinely be challenged and the applicants would be held up at some point in the process (beginning or end). Complainers can force adjudication without spending a penny – resulting in delaying the project for years, and the only way out would be that the applicant is prepared to go to court.

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**AFFIDAVIT OF EASEMENTS OF RECORD**

TENTATIVE MAP NO.: \_\_\_\_\_

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } ss.

I, \_\_\_\_\_, declare under penalty of perjury that all easements of record, [as shown on Preliminary Title Report No. \_\_\_\_\_ dated: \_\_\_\_\_ furnished to this office by (company name): \_\_\_\_\_] are shown on the Tentative Map No.: \_\_\_\_\_ and that if the easements are blanket or indeterminate in nature, that a statement to that effect has been placed on the tentative map. The purpose and ownership of all easements are also stated.

Executed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature of Owner/Subdivider/Agent required):

Print: \_\_\_\_\_ Sign: \_\_\_\_\_  
Print: \_\_\_\_\_ Sign: \_\_\_\_\_  
Print: \_\_\_\_\_ Sign: \_\_\_\_\_

NOTE: The use of that portion of the affidavit in brackets is optional and may be deleted.

**EXHIBIT A**  
LA County Option

**What is the Conditional Use Permit Burden of Proof?**

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It is the obligation of the applicant to clearly establish that the proposed project satisfies the following criteria:

**CRITERIA A: That the requested use at the location will not:**

1. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area.
2. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site.
3. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.

**HINTS...**

- ✓ If you lived next door to the proposed project, what might be your concerns? Discuss how you propose to mitigate those issues.
- ✓ Could your project negatively impact property values? Talk to your neighbors. Your neighbors are the most likely people to oppose. Describe neighbors' concerns and how you propose to address them.
- ✓ Explain why your project is essential or a desirable benefit to the community.
- ✓ Could your project increase noise, odors, dust, glare, create shadows, produce fire hazards, etc.? Explain how you address these concerns. Are there hazardous materials used or produced? Discuss how you will properly handle these materials.

**CRITERIA B:** That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this Title 22, or as is otherwise required in order to integrate said use with the uses in the surrounding area.

**HINTS...**

- ✓ Explain how your request complies with the Zoning Ordinance or the Community Standards District, as applicable. ([planning.lacounty.gov/plans](http://planning.lacounty.gov/plans))
- ✓ Give details how your request supports policies and goals of the General Plan or Community Plan, as applicable. ([planning.lacounty.gov/plans](http://planning.lacounty.gov/plans))
- ✓ Discuss how your project is consistent with the scale, bulk, or density of the surrounding area. Address how the project will be integrated with and complement the neighborhood, including the yards, open space, landscaping, parking and architecture.

**CRITERIA C: That the proposed site is adequately served:**

1. By highways or streets of sufficient width, and improved as necessary to carry the kind and quantity of traffic such use would generate, and
2. By other public or private service facilities as are required

**HINTS...**

- ✓ Often, projects will increase traffic and parking demands. Objections from neighbors and negative testimony frequently results from the applicant's failure to effectively address actual or perceived issues.
- ✓ What are your plans for parking management, vehicular and non-motorized circulation? Discuss how the project will impact existing traffic, parking and the pedestrian environment and your plans to mitigate these impacts.
- ✓ Is your project designed to minimize impacts of traffic on nearby properties? Describe how the project is designed to address these issues.

**EXHIBIT A**  
LA County Option

- ✓ Consider how your project may increase service demands provided by the Sheriff, Fire Dept., or water, sewer, roads, transit, schools, libraries, parks and recreation facilities, etc. Discuss how increased demands for these services are addressed with your project.

**Why are my Burden of Proof statements important?**

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The Hearing Officer or Regional Planning Commission must find, based upon the “Burden of Proof” statements, that the request meets all the criteria listed above. Depending upon the project, there may be additional criteria that should be discussed.

Each conditional use permit application is evaluated upon its own merit, on a case-by-case basis. Therefore, you must provide factual evidence to justify approval. The Hearing Officer or Regional Planning Commission may also consider testimony presented at the public hearing from staff, proponents or opponents.

If you have not provided adequate answers, or enough information to justify approval, your request may be denied. The Hearing Officer or Regional Planning Commission is not obligated to approve your application. The applicant (not staff) must “prove” that the project meets the criteria above. Do not use “yes,” “no,” or “not applicable” as answers.

**Can planning staff help me complete my Burden of Proof statements?**

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Planning staff is available to help understand the General Plan or community plan policies, zoning criteria, application documents, and to assist the applicant.

Staff refrains from providing technical arguments and cannot complete any portion of the application, on behalf of the applicant. Staff is not permitted to assist in preparing arguments for or against a request.

Applicants may wish to consult with a land-use attorney or consultant prior to submitting an application. Use of an attorney or consultant is at the discretion of the applicant. Staff is not permitted to make a recommendation.