

ORDINANCE 5243

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING SECTION 320 TO CHAPTER 21.64 OF THE MONTEREY COUNTY CODE TO ESTABLISH REGULATIONS RELATING TO THE ISSUANCE OF LAND USE PERMITS AND ENTITLEMENTS FOR DEVELOPMENT UTILIZING PRIVATE ROADS.

County Counsel Summary

This ordinance amends Chapter 21.64 of Title 21 (non-coastal zoning) of the Monterey County Code to establish special regulations for the issuance of land use permits and entitlements for development utilizing private streets, roads, and other travelled ways. The ordinance, which would apply in the non-coastal unincorporated area of Monterey County, provides for the resolution of disputes regarding the use of a private road, street, or other travelled way as part of the process by which discretionary permits, licenses or other entitlements for a development are considered by the County of Monterey.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Declarations:

1. Pursuant to Article XI of the California Constitution, the County of Monterey (“County”) may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.
2. The County is charged with, among other tasks, the responsibility of assuring that development is compatible with surrounding neighborhoods and incorporates provisions for adequate access for occupants, residents and emergency services.
3. Many of the streets, roads, and other travelled ways in the County are privately owned (“Private Roads”) the use of which is governed by agreements among private parties (“Private Road Agreements”). The County is not a party to such agreements and does not enforce their terms and conditions, nor does the County have jurisdiction to adjudicate a dispute among the parties to such agreements. Applications for development that require discretionary permits or other entitlements have, in some instances, proposed to use Private Roads, and, also in some instances, other parties to the applicable Private Road Agreement, or adjoining landowners, have disputed the legal authority of the applicant to use the Private Road in the manner proposed by the development application.
4. Issues have arisen during the County’s consideration of discretionary land use permit applications as to whether the issuance of certain land use related permits, licenses, entitlements and other approvals is consistent with any applicable Private Road Agreement, and County desires that any issues that may arise over the use of Private Roads are resolved by the parties to the applicable Private Road Agreement. 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 standards to review the use of Private Roads in conjunction with certain land use related applications. These standards provide guidance for how and when the County may consider requiring additional proof demonstrating legal rights surrounding use of Private Roads as part of the land use entitlement and permitting process.

6. The Board of Supervisors finds that the ordinance is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15060(c)(3) and 15378(b)(5) because the ordinance establishes permit review procedures for development projects utilizing existing private roads and does not authorize nor require any physical change to the environment.

SECTION 2. The Table of Contents of Chapter 21.64 of the Monterey County Code is amended to add Section 21.64.320 to read as follows:

21.64.320 Regulations relating to applications involving use of private roads.

SECTION 3. Section 320 is added to Chapter 21.64 of the Monterey County Code to read as follows:

21.64.320 Regulations relating to applications involving use of private roads.

A. Purpose: The purpose of this Section is to establish regulations relating to the issuance of certain discretionary permits or entitlements that may result in the intensification of use of a Private Road.

B. Applicability: These regulations apply to all properties in the inland (non-coastal) unincorporated area of the County in all zoning districts. Where a conflict exists between the provisions of this Section and other provisions of the County Code, the provisions of this Section prevail.

C. Definitions: In addition to the definitions found in Chapter 21.06 of this Title, the following definitions shall apply to this Section:

1. "Applicant" means the person or entity submitting an Application to the County of Monterey for a discretionary permit.

2. "Application" means an application for a Project.

3. "Final Settlement or Final Judicial Determination" means a written agreement between Interested Parties resolved personally or through other avenues including but not limited to mediation, arbitration, or a document evidencing a binding arbitration decision or final court judgment.

4. "Interested Party" means any person or entity that owns property abutting a Private Road but that is not a Party to a Private Road.

5. "Notice" means written notice of an Application provided to all Parties to a Private Road and Interested Parties 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. “Party to a Private Road” means both: any person or entity that owns the underlying fee interest in land that is subject to and burdened by a Private Road, such as the servient tenement in the case of an easement; and any person or entity that holds an interest in the Private Road and benefits from it, such as the dominant tenement in the case of an easement.

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, except that the term “Private Road” for purposes of this Section shall include quasi-private roads that have all of the following characteristics: the road is under the jurisdiction of a federal governmental agency; it lies on national forest or private land; it is open to public use; and private users bear or contribute directly to the cost of maintenance.

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. A Private Road Agreement also includes a final court judgment documenting an easement or other right of access.

9. “Private Road Maintenance Agreement” means a document of record, properly executed and recorded, that is an agreement between parties to a Private Road concerning the costs and responsibilities of those parties for upkeep and repair of the Private Road.

10. “Project” means:

a. a use for which a discretionary permit, license or other entitlement from the County is required; or a change in land use from an agricultural designation (Farmland, Permanent Grazing, Rural Grazing) to a non-agricultural designation; and

b. 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.

11. “Proof of Access” means one or more of the following:

a. Written concurrence of all Parties to a Private Road; or

b. Existence of a Final Settlement or Final Judicial Determination that the Private Road may be used to access the Project; or

c. A properly executed Private Road Agreement.

D. Application review and procedures:

1. Application Requirements. An Applicant shall provide the following with any Application, and an Application will not be deemed complete until the information or documentation required is provided:

a. A copy of the Private Road Agreement, if applicable;

b. A copy of the Private Road Maintenance Agreement, if applicable;

c. Written permission to use a Private Road for the Project from a Private Road governing structure, if applicable;

d. A Site Plan that includes, but is not limited to, documentation showing existing access limits and minimum access requirements from the Project to the primary public road or right-of-way. If access does not meet minimum requirements of the local Fire Authority and Monterey County Resource Management Agency--Public Works Department, the Applicant must demonstrate the ability to meet the minimum level of improvements required.

2. Application Review. Upon submittal of an Application, the Director of Planning shall:

- a. Review the Application to determine if the Project is exempt pursuant to Subsection 21.64.320 (D) (4) of this Section;
 - b. Provide Notice pursuant to Subsection 21.64.320(D)(3) of this Section;
 - c. If the Application is not exempt pursuant to Subsection 21.64.320 (D) (4), the Director of Planning shall classify the Project as belonging within one of the following categories:
 - i. Tier 1: The Project is not subject to a Private Road Agreement or a Private Road Maintenance Agreement;
 - ii. Tier 2: The Project is not subject to a Private Road Agreement but is subject to a Private Road Maintenance Agreement;
 - iii. Tier 3: The Project is subject to a Private Road Agreement but not a Private Road Maintenance Agreement; or
 - iv. Tier 4: The Project is subject to a Private Road Agreement and a Private Road Maintenance Agreement.
3. Notice Requirements.
- a. The Director of Planning shall provide Notice of a Project to all Parties to a Private Road and Interested Parties within 10 working days of submittal of an Application for a Project except Notice is not required for the following types of Projects:
 - i. The first single family dwelling on a legal lot of record;
 - ii. Any action authorized by an emergency permit issued pursuant to Chapter 21.75 of this Title provided that such action exists or occurs only so long as the emergency permit is effective;
 - iii. Projects with access via public road(s) only;
 - iv. Projects whose use of a Private Road is limited to emergency access only;
 - v. Routine and Ongoing agricultural uses;
 - vi. Accessory Dwelling Units, Guesthouses, and/or other subordinate uses that are accessory to the primary use of the property; and
 - vii. Projects with access via a Private Road(s) that are subject to a legally established Private Road governing structure such as a homeowners' association or similar organization where said governing structure is authorized to make determinations regarding the use, maintenance, and related matters regarding the Private Road(s) and where such governing structure has provided written permission to use the Private Road(s) for the Project. Examples of Projects within this exception may include but are not limited to projects considered allowed uses within the Del Monte Forest area, the Monterra and Tehama subdivisions, and similar subdivisions with previously contemplated allowed uses and Private Road governing structures. This exemption does not apply if access to the Private Road(s) subject to the governing structure is accessed by another Private Road(s) not subject to the governing structure. In such a case, Notice shall be provided to Interested Parties outside of the jurisdiction of the governing structure.
 - b. The Notice shall provide the opportunity for any Party to a Private Road to object to the use of the Private Road, for purposes of the Project, within 30 days from the mailing of the Notice. The purpose of this early Notice and objection is to provide an opportunity for resolution of disputes prior to consideration of the Project by the Appropriate Authority or for staff to consider a recommendation following the provisions of this Section. For the purposes of this Section, objections from Interested Parties who own land abutting a Private Road shall be

considered on a case by case basis. Objections from Interested Parties shall not provide a basis for applying the conditions described in subsection F of this Section.

c. The Notice may include notification of the Land Use Advisory Committee meeting where the Project will be considered if such consideration is required pursuant to the Land Use Advisory Committee Procedures adopted by the Board of Supervisors.

4. Exemptions: The following types of Projects shall be exempt from the regulations contained in Subsections E and F of this Section:

a. The first single family dwelling on a legal lot of record;

b. 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;

c. Projects with access via public road(s) only;

d. Projects whose use of a Private Road is limited to emergency access only;

e. Projects that, in the opinion of the Director of Planning, do not result in intensification of the use of a Private Road(s);

f. Projects with access via a Private Road(s) that are subject to a legally established Private Road governing structure such as a homeowners' association or similar organization where said governing structure is authorized to make determinations regarding the use, maintenance, and related matters regarding the Private Road(s) and where such governing structure has provided written permission to use the Private Road(s) for the Project. This exemption does not apply if access to the Private Road(s) subject to the governing structure is accessed by another Private Road(s) not subject to the governing structure. In such a case, the Project is not exempt from the regulations contained in Subsections E and F of this Section;

g. Routine and Ongoing agricultural uses;

h. Accessory Dwelling Units, Guesthouses, and/or other subordinate uses that are accessory to the primary use of the property;

i. Federal project on a Private Road.

5. In all cases, Applicants are encouraged to provide early notification of a Project to Interested Parties and Parties to the Private Road and to work collaboratively with all parties to resolve issues. For Projects falling within Tier 1, Tier 2, or Tier 3, Applicants are encouraged to prepare or cause to be prepared, executed and recorded, Private Road Agreements and/or Private Road Maintenance Agreements, as the case may be.

E. Regulations. For all nonexempt Projects, the following standards, based on substantial evidence in the record, shall apply:

1. Tier 1 Projects: The Appropriate Authority shall consider any objection from a Party to a Private Road regarding access a substantive dispute and shall either deny the Project on that basis or approve the Project subject to the Proof of Access condition described in Subsection 21.64.320 (F) (1) and/or the Private Road Maintenance condition described in Subsection 21.64.320 (F) (2).

2. Tier 2 Projects: The Appropriate Authority shall consider any objection from a Party to a Private Road regarding the legal rights to use a Private Road for the Project a substantive dispute and shall either deny the Project on that basis or approve the Project subject to the Proof of Access condition described in Subsection 21.64.320 (F) (1). Matters of proportionate costs for repair and maintenance of such roads shall be subject to the terms of the Private Road Maintenance Agreement.

3. Tier 3 Projects: The Appropriate Authority shall rely on the plain language of the Private Road Agreement regarding rights of access. If an objection is made involving proportionate costs for repair and maintenance of the Private Road(s), the Appropriate Authority shall consider an objection of fifty percent or more of the parties to a Private Road Agreement a substantive dispute and in this case, shall either deny the Project on that basis or approve the Project subject to the Private Road Maintenance condition described in Subsection 21.64.320 (F) (2). An objection of fifty percent or more of the Parties to a Private Road Agreement shall be determined on a one vote per lot basis.

4. Tier 4 Projects: The Appropriate Authority shall rely on the plain language of the Private Road Agreement and Private Road Maintenance Agreement regarding rights of access and proportionate costs for repair and maintenance. Unless a Project proposes a use that is clearly inconsistent with the plain language of the Agreements, the Appropriate Authority may approve a Project without applying conditions to the Project outlined in this Section.

5. The “Tiers” described above are intended to provide standards that the Appropriate Authority will apply when considering an Application for a Project that is not exempt from the requirements of this Section pursuant to Subsection 21.64.320.D.4 and that involves a substantive dispute over the Private Road as described within the applicable Tier. Generally where a legally executed document exists, the County will consider such documentation to be adequate evidence to demonstrate access for the purposes of this Section and conditions of approval will not typically be warranted where such documentation exists. In all cases, regardless of whether the Appropriate Authority elects to apply a condition of approval to a Project, Interested Parties, Parties to a Private Road, and/or Applicants may have legal rights under the California Civil Code, and nothing in this Section is intended to preclude their exercise of rights under the Civil Code.

F. Project Conditions.

1. Proof of Access Condition

If the Appropriate Authority finds, based on substantial evidence in the record, that a substantive dispute exists regarding the use of a Private Road for a Project, said Authority may approve the Project but shall require as a condition of Project approval that the Applicant provide the County with Proof of Access demonstrating that the dispute has been satisfactorily resolved, in accordance with the Tier standards set forth above.

2. Private Road Maintenance Condition

If the Appropriate Authority finds, based on substantial evidence in the record and in accordance with the Tier standards set forth above, that a substantive dispute exists regarding the costs of repairing or maintaining a Private Road as it relates to a Project, said Authority may approve the Project but shall require as a condition of Project approval that the Applicant provide the County with adequate documentation demonstrating that the dispute has been satisfactorily resolved. For the purposes of this Section, adequate documentation may include written withdrawal of objections, a properly executed Private Road Maintenance Agreement, a final settlement or final judicial determination, or written documentation showing that a majority of the Parties to a Private Road have agreed to repair and maintenance terms in light of the Project.

a. Maintenance of any Private Road will be subject to a Private Road Maintenance Agreement, or if no such Agreement exists, then County recognizes that parties may have recourse pursuant to California Civil Code Section 845. The County is not a party to such Private Road Maintenance Agreement and does not interpret or enforce their terms and

conditions, nor does the County have jurisdiction to adjudicate a dispute among the parties as to the maintenance of any Private Road.

3. If a condition of approval is added to a Project pursuant to this Section, said condition shall be satisfied prior to issuance of any other permits in furtherance of the Project or recordation of a final map, whichever occurs first and as applicable.

4. If a Project is approved subject to one or more of the conditions provided in this Section, the Director of Planning shall, in his or her discretion, have the authority to stay the expiration of the entitlement for the Project for a period no greater than the number of days from initial filing of judicial proceedings to the final judicial determination or settlement regarding the access dispute.

G. Nothing in this Section:

1. Affects the authority of the County to exercise the power of eminent domain pursuant to Government Code Section 66462.5 of the California Subdivision Map Act; or
Diminishes or in any way alter or lessen the effect of the California Civil Code.

Where a conflict exists between these provisions and the provisions of State or Federal laws, the State or Federal law shall prevail.

SECTION 4. 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 5. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this 26th day of August 2014, by the following vote:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter

NOES: None

ABSTAIN: None

ABSENT: None

/s/ Louis R. Calcagno

Chair, Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By: /s/ Gail T. Borkowski

APPROVED AS TO FORM

/s/ Wendy S. Strimling

WENDY S. STRIMLING
Senior Deputy County Counsel