

Building Permit Issuance Policy For Lots on Dirt Roads

UPDATED MAY 2009

- Temecula Municipal Code Chapter 15.16 requires an all-weather driving surface with a minimum A.C. thickness of 0.25 feet prior to building construction
- Dirt roads constitute a hazard to public health and welfare by reducing access by emergency vehicles, increasing their response times, and during periods of inclement weather can prevent their use entirely
- Dirt roads require a high degree of maintenance and are subject to erosion and damage during inclement weather
- Dirt roads exist within the City, but by issuing additional Building Permits on vacant parcels the situation worsens
- City Municipal Code Ordinance has required since 1994 that any second unit requires that paved access be provided
- State law required the adoption of the California Fire Code by local governments in 1995. Since then there shall be no deviation from the basic state law minimums which is to provide "All Weather Access" for all new habitable buildings

The City has determined that habitable structures having access from dirt roads presents a clear threat to the public health and safety due to a lack of reliable and/or timely access by emergency vehicles. In addition, the Temecula Municipal Code and the California Fire Code requires "All Weather Access" be provided prior to building construction of any structure. Allowing people to build individual dwelling units without making the road improvements as required of subdivision tracts continues to exacerbate this potentially life threatening problem. Once structures are built on these dirt roads, residents are typically hesitant to contribute to paved street improvements citing that they were allowed to build, but not understanding that it is not the City's responsibility to make the road improvements to enhance their property.

California Fire Code Chapter 5 also requires an acceptable water source be provided prior to construction. Underground utilities and drainage structures are much more expensive to install after road improvements are made. Although individual water tanks are permitted, they are not always practical and the cost is high and cannot be shared between properties. These other improvements should be considered at the time of road paving to maximize cost effectiveness.

With the above facts in mind, the following is effective immediately:

POLICY:

Prior to any Building Permit being issued by the City of Temecula, the applicant will make all required road improvements to provide all weather access both onsite and offsite to the nearest improved, acceptable paved intersection. It is also recommended that the parties consider any needed underground utilities and drainage structures to avoid compounding costs later.

This policy applies to all new habitable structures, or major additions which would increase the number of expected occupants (as determined by fixture counts/bedrooms per the Building Official). Exceptions to this are only for (1) non-habitable structures, i.e. barns, out buildings; (2) repairs, remodeling or additions to existing structures not to exceed 25% of the existing square footage of habitable space or 600 square feet, whichever is less; (3) replacement due to damage such as fire or flood, or where the structure is determined uninhabitable by the Building Official; and (4) an existing dwelling unit can be replaced once and built not to exceed 25% of the existing square footage of habitable space or 600 square feet, whichever is less.

In these cases, the applicant would be required to sign an agreement ("Agreement to Obtain Grading Permit For Lots on Dirt Roads Affecting Real Property") agreeing not to oppose and to participate in any future financing district formed to make the necessary road improvements.

The requirements/standards for these improvements are as follows:

ONSITE:

On-site driveways are to be built to provide all weather access for fire equipment and must support an imposed load of 80,000 pounds GVW. Residential driveways must normally be a minimum of 20' in width. Plans signed by a licensed California Civil engineer verifying these requirements must be submitted.

OFFSITE ROADS:

Public Roads – Intended for public acceptance:

Roads must be built to City of Temecula Public Rural Road Standard No. 104B. This includes a paved street section of 28' in a 60' Right-of-way, with a minimum structural section of 3"AC/6"AB, with actual section determined by a geotechnical report.

Private Roads – not offered for acceptance by the City of Temecula:

Roads that will not be offered for acceptance by the City of Temecula for purposes of maintenance are required to be a minimum of 28' wide. The road must be built to support an imposed load of 80,000 pounds GVW and designed and certified by a licensed California civil engineer. A road not intended to be accepted by the City will only be acceptable for access purposes if an association of property owners is formed to ensure perpetual maintenance of the paved road.

RECORDED AT REQUEST
OF AND WHEN RECORDED
RETURN TO:

CITY OF TEMECULA
Susan W. Jones, MMC
City Clerk
P.O. Box 9033
43200 Business Park Drive
Temecula, CA 92589-9033

EXEMPT FROM
RECORDER'S FEES
PURSUANT TO
GOVERNMENT CODE
SECTIONS 6103 AND 273838

Space above this line for Recorder's Use Only

**AGREEMENT TO OBTAIN GRADING AND BUILDING PERMITS FOR LOTS
ON DIRT ROADS
AFFECTING REAL PROPERTY**

THIS AGREEMENT is made and entered into as of _____, 20____, between the CITY OF TEMECULA, a municipal corporation, hereinafter referred to as "City" and _____ hereinafter referred to as "Owner." In consideration of the mutual promises and covenants contained herein, the parties hereto mutually agree as follows:

Section 1. RECITALS. This Agreement is made and entered into with respect to the following facts, which are acknowledged as true and correct by the parties hereto:

Owner is the owner of real property located at _____, Temecula, California, which is more particularly described on Exhibit A, Legal Description, attached hereto and incorporated herein as though set forth in full ("Property").

A. Owner is desirous of obtaining approval of a Grading Permit _____ from the City to grade a _____ on the Property.

Owner is desirous of obtaining approval of a Building Permit _____ from the City to construct a _____ on the Property.

The General Plan along with City Improvement Standard Drawings classify streets and provide for construction standards, respectively that affect those streets dedicated to the City in the general area of Property.

B. The City has determined that habitable structures having access from dirt roads present a clear threat to the public health and safety due to a lack of reliable and or timely access by emergency vehicles. In addition, Section 503 of the California Fire Code 2007 Edition (Section 15.04.020 of the Temecula Municipal Code) requires "All Weather Access" be provided prior to construction of any structure. " In order to implement this provision, the City has adopted a "Dirt Road Policy." Allowing people to build individual dwelling units without making the road improvements as required of subdivision tracts continues to exacerbate this potentially life threatening problem. Once structures are built on these dirt roads, residents are typically hesitant to contribute to paved street improvements citing that they were allowed to build, but not understanding that it is not the City's responsibility to make the road improvements to enhance their property.

The Property consists of _____ . Owner desires to _____ .
The City's Dirt Road Policy states that "an existing dwelling unit can be replaced once and built not to exceed 25% of the existing square footage of habitable space or 600 square feet, whichever is less. The City has determined that _____ .

C. At the request of the Owner and in order to fairly and equitably apply the Dirt Road Policy to the Property, the City is willing to permit the Owner to _____ , subject to the conditions of this Agreement. Under these circumstances and upon execution of this Agreement, the City finds that the new home on the Property of _____ square feet complies with the City's Dirt Road Policy.

Owner warrants and represents that it is the sole owner of the Property and that no other person or persons hold any legal or equitable interests in the Property, including deeds of trust or liens.

Section 2. AGREEMENT TO ISSUE GRADING PERMIT. In consideration of the City issuing the grading permit and the building permit, as described in Paragraphs 1.B. and 1.C. above, the Owner agrees to comply with the following requirements in order implement the solution to the unique situation described in Paragraph 1, :

A. Owner shall sign an Agreement to Participate in Assessment District Affecting Real Property for the construction of _____ in a form approved by the City Attorney.

B. Owner acknowledges and agrees that the City Council may establish an assessment district, community facilities district, bridge and thoroughfare fee district, or a similar fair and appropriate financing mechanism that may include the construction of _____ at some time in the future.

C. Owner acknowledges and agrees that the issuance of a grading permit does not obligate the City to construct the all weather access road or to establish an assessment district, community facilities district, bridge and thoroughfare fee district, or a similar fair and appropriate financing mechanism for the construction of _____ .

D. (add as needed)

Section 4. GENERAL MATTERS

A. **Integration** This Agreement contains the entire understanding between the parties relating to the subject matter of this Agreement, all prior or contemporaneous agreements, understandings, representations and statements, oral or written, concerning the subject matter of this Agreement are merged into this Agreement and shall be of no further force or effect

B. **Investigation.** Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts and legal research such party deems material. Each party warrants and represents to the other that it has had the opportunity to review this Agreement with legal counsel and financial consultants and to receive the advice of legal counsel, tax counsel and financial consultants prior to its approval and execution of the Agreement.

C. **Timing.** This Agreement shall be fully executed by all parties prior to and as a condition of issuance of a grading permit. Time is of the essence of each provision of this Agreement of which time of performance is a factor.

D. **Waiver.** Waiver by any party hereto of any term, condition, or covenant of this Agreement shall not constitute the waiver of any other term, condition, or covenant hereof.

E. **Binding Effect.** Of the covenants which have been established pursuant to this Agreement, the same shall be deemed to be covenants running with the land for the benefit of the City in carrying out its statutory responsibilities under California law and to enforce the provision of the Temecula General Plan and the Temecula Municipal Code. The covenants contained in this Agreement shall be binding for the benefit of the City and its successors and assigns, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. This Agreement shall be recorded in the office of the County Recorder for the County of Riverside.

F. **Attorney's Fees.** If litigation is reasonably required to enforce or interpret the provisions of this Agreement, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees, in addition to any other relief to which it may be entitled.

G. **Notices.** Any notices or other correspondence between the parties shall be sent to the following unless either party gives the other notice of a change of address:

CITY OF TEMECULA
Shawn D. Nelson, City Manager
P.O. Box 9033
43200 Business Park Drive
Temecula, California 92589-9033

OWNER

Notice shall be effective upon personal delivery, delivery by courier service or three business days following deposit in the United States Mail, postage prepaid, certified.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF TEMECULA

Shawn D. Nelson
City Manager

ATTEST:

Susan W. Jones, *MMC*
City Clerk

APPROVED AS TO FORM:

Peter M. Thorson
City Attorney

OWNER

Name:
Title:

ACKNOWLEDGMENT

State of California
County of Riverside

On _____, 20__, before me, _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

Witness my hand and official seal.

[Seal]

SIGNATURE OF NOTARY

RECORDED AT REQUEST OF AND
WHEN RECORDED RETURN TO:

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SECTIONS 6103 AND 27383

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AGREEMENT TO PARTICIPATE IN ASSESSMENT DISTRICT AFFECTING REAL PROPERTY

THIS AGREEMENT is made and entered into as of _____, 20____, between the CITY OF TEMECULA, a municipal corporation, hereinafter referred to as "City" and _____ hereinafter referred to as "Owner." In consideration of the mutual promises and covenants contained herein, the parties hereto mutually agree as follows:

Section 1. RECITALS. This Agreement is made and entered into with respect to the following facts, which are acknowledged as true and correct by the parties hereto:

- a. Developer is the owner of real property (the "Property") located at _____, Temecula, California, which is more particularly described on Exhibit A, Legal Description, attached hereto and incorporated herein as though set forth in full ("Property").
- b. Owner is desirous of obtaining approval of a Grading and/or Building Permit _____ from the City to grade and/or construct a _____ located at _____.
- c. The General Plan along with City Improvement Standard Drawings classify streets and provide for construction standards, respectively that affect those streets dedicated to the City in the general area of Property.
- d. Owner warrants and represents that it is the sole owner of the Property and that no other person or persons hold any legal or equitable interests in the Property, including deeds of trust or liens.

Section 2. CONSENT TO PARTICIPATION IN ASSESSMENT DISTRICT OR SIMILAR FINANCING MECHANISM. The City Council may establish an assessment district, community facilities district, bridge and thoroughfare fee district, or a similar fair and appropriate financing mechanism that may include the construction of Liefer Road at some time in the future. Owner, on behalf of itself, its successors and assigns, hereby acknowledges that its Property and the improvements to be constructed thereon will benefit from the construction of Liefer Road and therefore agrees and offers to participate in, and waives all rights to object to the formation of an assessment district, community facilities district, a bridge and thoroughfare fee district, or similar fair and appropriate financing mechanism for the possible construction of Liefer Road. The City Council, on behalf of such a district or other financing mechanism, shall at some future time also determine and assess the appropriate assessments or contributions of the participants in the district or other financing mechanism to Liefer Road contingent on it being in the district. The appropriate assessments and contributions shall be determined in accordance with such laws as are applicable to the mechanism chosen to fund the Project and all other applicable laws.

Section 3. GENERAL MATTERS

A. Integration This Agreement contains the entire understanding between the parties relating to the subject matter of this Agreement, all prior or contemporaneous agreements, understandings, representations and statements, oral or written, concerning the subject matter of this Agreement are merged into this Agreement and shall be of no further force or effect.

B. Investigation. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts and legal research such party deems material. Each party warrants and represents to the other that it has had the opportunity to review this Agreement with legal counsel and financial consultants and to receive the advice of legal counsel, tax counsel and financial consultants prior to its approval and execution of the Agreement.

C. Timing. This Agreement shall be fully executed by all parties prior to and as a condition of issuance of a grading permit. Time is of the essence of each provision of this Agreement of which time of performance is a factor.

D. Waiver. Waiver by any party hereto of any term, condition, or covenant of this Agreement shall not constitute the waiver of any other term, condition, or covenant hereof.

E. Binding Effect. Of the covenants which have been established pursuant to this Agreement, the same shall be deemed to be covenants running with the land for the benefit of the City in carrying out its statutory responsibilities under California law and to enforce the provision of the Temecula General Plan and the Temecula Municipal Code. The covenants contained in this Agreement shall be binding for the benefit of the City and its successors and assigns, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. This Agreement shall be recorded in the office of the County Recorder for the County of Riverside.

F. Attorney's Fees. If litigation is reasonably required to enforce or interpret the provisions of this Agreement, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees, in addition to any other relief to which it may be entitled.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF TEMECULA

Shawn D. Nelson
City Manager

ATTEST:

Susan W. Jones, *MMC*
City Clerk

APPROVED AS TO FORM:

Peter M. Thorson
City Attorney

OWNER

By _____

Title _____

ACKNOWLEDGMENT

State of California
County of Riverside

On _____, 20____, before me, _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

Witness my hand and official seal.

[Seal]

SIGNATURE OF NOTARY