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ORDINANCE NO. 322-2004

**AN ORDINANCE AMENDING CHAPTER 11.36 KITSAP COUNTY CODE "PERMITS AND STANDARDS FOR USE AND IMPROVEMENTS TO COUNTY RIGHT-OF-WAY"**

**BE IT ORDAINED:**

**Section 1.** Kitsap County Code Section 11.36.040(12), adopted by Ordinance 245 (2000), is amended as follows:

(12) "Category 4 right-of-way use permit" means a temporary permit, issued pursuant to this chapter, authorizing temporary access and use of county right-of-way for limited, short duration activities other than residential access (i.e., logging activities, installation of utilities).

**NEW SECTION. Section 2.** A new section is added to Chapter 11.36.040 Kitsap County Code, "Definitions", as follows:

(15) "Category 5 right-of-way use permit" means a permit issued, pursuant to this chapter, authorizing use of and improvements to an unopened County right-of-way for the specific purpose of providing bike/pedestrian/equestrian access for trail purposes and specifically disallowing any type of motorized use. The Category 5 permit is limited to organized, non-profit, community groups as determined by the County Engineer or designee. Upon the completion of trail improvements approved under a Category 5 permit the maintenance responsibilities for the trail rest with the applicant(s).

**Section 3.** Kitsap County Code Section 11.36.060(4), adopted by Ordinance 245 (2000), is amended as follows:

(4) Category 4 Right-of-Way Use Permit. A Category 4 permit shall be required when temporary use of public right-of-way is desired. Temporary use shall include all uses not intended to last longer than one year in duration.

(a) Required Improvements. A Category 4 permit shall specify minimum improvements required by the county engineer. Permit conditions, at a minimum, will address road construction, safety, erosion control, drainage, and right-of-way restoration requirements. Storm drainage requirements shall comply with the requirements of the Kitsap County Storm Water Management Ordinance (Chapters 12.04 - 12.32 of this code), as it now exists or is hereafter amended. In addition, conditions may be imposed to assure the compliance of the permit with other county-adopted plans, policies, standards and regulations. Construction of the required improvements shall be completed and approved by the department prior to final approval. The applicant shall be responsible for proper notice to the county engineer or designee requesting the necessary inspections and approval. The applicant shall assume sole responsibility for the safe and adequate operation and maintenance of any improvements within or adjacent to the county right-of-way during the period of time the permit is in effect.

(b) Survey. When considered necessary by the county engineer to adequately define the limits of the right-of-way, the applicant shall cause the right-of-way to be surveyed by a state-licensed land surveyor. The cost for the survey shall be borne by the applicant.

(c) Notification to Adjacent Property Owners Required. The department shall obtain certification that all owners of the property abutting on each side of that portion of the right-of-way that has been requested for use or improvement have been contacted. At a minimum, all adjacent property owners shall be notified by certified mail with return receipts being collected by the department. Any objections made by abutting property owners shall be resolved by the applicant to the satisfaction of the department.

(d) Signs. The applicant shall supply, maintain, and pay for all signs required by the county engineer. The signs shall be posted where authorized or directed by the county engineer.

(e) Abandonment and Restoration. Upon termination of the use of the right-of-way, the applicant shall be required to abandon and restore the right-of-way as designated under permit conditions. A surety may be required to insure proper abandonment and restoration.

(f) Application. The permit application shall include, at a minimum:

- (i) The name, address and phone number of the applicant and representative, if applicable;
- (ii) A legal description of the applicant's property to be served by the permit;
- (iii) A statement regarding the purpose of access to the applicant's property;
- (iv) An assessor's map showing all parcels to be accessed;
- (v) Application fees paid per Section 11.36.100;
- (vi) Plans prepared by a professional engineer addressing the road construction, safety, erosion control, drainage, and right-of-way restoration requirements of the permit, when required by county engineer.

(g) Other Permits. Approval and issuance of the permits prescribed in this chapter does not constitute approval of other applicable permits or requirements that may be required by other county ordinances, state or federal laws. It shall be the responsibility of the applicant to obtain all other permits and approvals required by other county, state or federal laws. Examples of additional permits that may be required include hydraulic project approval ("HPA") by the Washington State Department of Fish and Wildlife, construction and industrial discharge permits administered by the Washington State Department of Ecology under the National Pollutant Discharge Elimination System (NPDES) program, SEPA, Critical Areas, Grading, Building, Forest Practice, Site Development Activity Permit, etc.

(h) Extension. The applicant may apply in writing for a one-year extension to the Category 4 permit upon written application for an extension. The county engineer may grant an extension upon making the determination that the applicant

has fully complied with the conditions and requirements of the original permit. The application for extension may only be made after the first six months of the original permit life.

NEW SECTION. **Section 4.** A new section is added to Chapter 11.36.060 Kitsap County Code, "Permit – Type and requirements", as follows:

(5) Category 5 Right-of-Way Use Permit shall be required for use of and improvements to an unopened county right-of-way for the specific purpose of providing bike/pedestrian/equestrian access for trail purposes. Upon the completion of trail improvements approved under a Category 5 permit the maintenance responsibilities for the trail rest with the applicant(s).

(a) **Required Improvements.** Improvements will consist of the construction of soft-surface trail improvements limited generally to the removal of brush and vegetation and generally avoiding tree removal. Removal of trees larger than 4 inches in diameter will require approval of the Department during the permitting process and prior to actual trail construction. In addition, conditions may be imposed to assure compliance of the permit with other County adopted plans, policies, standards and regulations. Construction of the required improvements shall be completed and approved by the Department prior to final approval. The applicant shall be responsible for proper notice to the County Engineer or designee requesting the necessary inspections and approval. The applicant shall assume sole responsibility for the safe and adequate operation and maintenance of any improvements within the County right-of-way.

(b) **Construction Impacts.** Construction of trails shall always be approached from a low impact, multi-use point of view. Trails shall be placed to one side of the right-of-way and always within the framework that would not exceed one-half of the right-of-way with minimal impacts to existing developed adjoining properties.

(c) **Survey.** Prior to construction of the trail, Kitsap County will provide survey centerline markings to ensure proper placement of the trail improvements near or on the edge of the right-of-way.

(d) **Notification to Adjacent Property Owners Required.** The Department shall obtain certification that all owners of the property abutting on each side of the portion of the right-of-way that has been requested for use or improvement have been contacted. At a minimum, all adjacent property owners shall be notified by certified mail with return receipts being collected by the Department. The applicant, to the satisfaction of the Department, shall resolve any objections and/or concerns made by abutting property owners..

(e) **Future Vehicular Access.** At such time that vehicular access may be needed by a landowner, a lane could be added in the unused half of the right-of-way. It would be placed at the right-of-way's extreme edge, preserving a natural barrier between vehicles and pedestrians. Any future vehicular access will require that an additional permit be required of the landowner seeking access and ensuring that further development would always be performed in a low impact manner and compatible with the access trail. Should the County find it necessary

to utilize the right-of-way for any future purpose, the applicant shall not be reimbursed for the removal of any improvements or other costs incurred by the applicant.

(f) Signs. Kitsap County shall supply, maintain, and pay for all required signs identified by the County Engineer. While the County will maintain the signs, it is necessary that a sign be posted which states that the "Trail Not Maintained By The County."

(g) Preliminary Approval. Prior to making improvements the applicant shall receive a letter from Kitsap County authorizing said improvements.

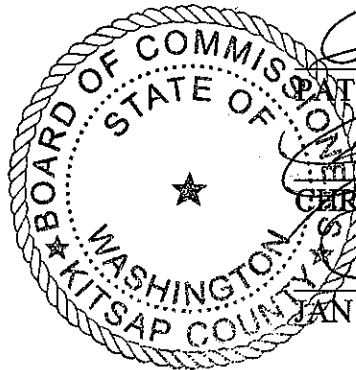
(h) Final Approval. Final approval shall be issued by the Department upon completion of the construction of the required improvements.

(i) Application Permit Fees. For the purposes of this Category 5 Permit, Kitsap County shall have the discretion to waive fees associated with this application. Partnerships between communities and the County enhance cooperation in the realization of bike/pedestrian/equestrian systems at minimal expense to the community and the general public.

**Severability.** If any provision of this ordinance, or its application to any person, entity or circumstance is for any reason held invalid, the remainder of the ordinance, or the application of the provision to other persons, entities or circumstances is not affected.

Enacted this 24<sup>th</sup> day of May, 2004.

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KITSAP COUNTY, WASHINGTON



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