

## CHAPTER 10.08

USE OF UNOPENED PUBLIC  
ROAD RIGHTS-OF-WAY

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10.08.010 DEFINITIONS. As used in this chapter, unless the context indicates otherwise:

- (a) "BCC" means Benton County Code.
- (b) "County" means Benton County, Washington.
- (c) "County Engineer" means County Engineer of Benton County, Washington or designee.
- (d) "County road" means a road open for public travel and maintained by Benton County.
- (e) "Development" means any subdivision, short plat, rezone, construction requiring a building permit, conditional use permit or other project requiring a land use permit or approval from Benton County.

(f) "Engineer" means a professional engineer licensed by the State of Washington.

(g) "Easement" means an interest in land owned by another that entitles the holder of the interest to a specific limited use or enjoyment of the other's land.

(h) "Private road" means a road not dedicated to nor maintained by Benton County.

(i) "Public road" means a road maintained by Benton County.

(j) "RCW" means Revised Code of Washington.

(k) "Rights-of-way" means areas set aside by deed or dedication for present or future use for public road purposes.

(l) "Roadway" means the improved portion of right-of-way, excluding curbs, sidewalks and ditches.

(m) "Trail access" means the authorization for construction and permitted, limited use of a privately maintained road within an unopened, unmaintained county road right-of-way.

(n) "Unopened road or unimproved rights-of-way" means rights-of-way that have been dedicated to Benton County, that have never been improved or opened by the County as public roads, and are held by the county in trust for future public road use.  
[Ord. 186 (1985) § 1; Ord. 271 (1996) § 1]

10.08.030 DEVELOPMENT ALONG RIGHT-OF-WAY. Development which occurs adjacent to unopened road rights-of-way shall utilize such rights-of-way for access in accordance with this chapter and the use of private access easements parallel and adjacent to existing unopened road rights-of-way is prohibited.  
[Ord. 186 (1985) § 3; Ord. 271 (1996) § 2]

10.08.130 TRAIL ACCESS PERMITS. (a) Applications for trail access permits shall be submitted to the County Engineer by parties requesting the use of unopened road right-of-way. The application for the trail access permit shall be accompanied by a nonrefundable fee of one hundred dollars (\$100.00).

(b) The County Engineer may grant a trail access permit if the following criteria is met:

(1) The permit would not constitute a grant of special privileges inconsistent with the limitations put upon other users of unimproved right-of-way; and

(2) The permit will not be materially detrimental to the public welfare and safety.

(c) Trail Access Permits will not be granted for the purpose of subdividing or short platting property. If the access for property being proposed for subdivision is an unimproved right-of-way, the subdivider will be required to build the road to a minimum County standard, on file in the Office of the County Engineer, or bond the same prior to the property being short platted or long platted. [Ord. 271 (1996) 3]

10.08.140 TRAIL ACCESS PERMITS--CONTENTS. A Trail Access Permit shall include but is not limited to the following:

(a) The legal description of each lot or parcel to be served by the permitted road.

(b) A statement regarding the nature of access to each parcel.

(c) A guarantee of the rights of emergency and service vehicles and the general public to use the permitted road.

(d) The responsibility for construction and maintenance of the permitted road rests jointly and equally upon the permittees.

(e) A covenant that the requirements contained in the permit shall run with the land and shall be binding upon the heirs, successors and assigns of the permittee.

(f) A statement that the permittees will obtain all other required permits and approvals including environmental review as specified in Chapter 6.35 BCC.

(g) A statement regarding the use and disposition of timber, soil, rock, vegetation, or other materials found within the right-of-way. If not used in the construction of roadway improvements, such materials shall be disposed of in accordance with directions of the County Engineer. Any affected fences located within the right-of-

way shall be disposed of or relocated in accordance with directions of the County Engineer.

(h) A statement indicating the County Engineer's decision on the necessity for a survey. The County Engineer, in his/her professional opinion, will determine the necessity of a survey. If so directed, the permittees at their own expense will have the right-of-way surveyed by a licensed land surveyor and will record the survey in accordance with the land survey act.

(i) A statement indicating the County Engineer's decision on the necessity for detailed engineering plans and a drainage study. The County Engineer, in his/her professional opinion, will determine the necessity for detailed engineering plans and/or a drainage study. If so directed, the permittees, at their own expense will have the necessary plans prepared and studies conducted by a licensed engineer in accordance with the requirements for plat development.

(j) A statement indicating whether the posting of signs is required.

(k) The acknowledged signatures of the permittees accepting the terms of the permit.

[Ord. 271 (1996) § 4]

10.08.150 TRAIL ACCESS PERMITS--TERMS. (a) Permittee's use shall be confined to direct and indirect access to properties to which it has a right of possession. Access shall be for uses that are consistent with applicable land use controls.

(b) The permit shall not diminish public ownership or grant any exclusive privileges to the permittee.

(c) As a condition of granting the permit, the County Engineer may, in his/her professional opinion, require a bond or other security, or insurance.

(d) The County Engineer may, in his/her professional opinion, require the permittee to provide surfacing material or other construction measures to safeguard the integrity of the unimproved road right-of-way to which the permittee desires trail access, or to provide additional surfacing material as additional permits are granted.

(e) Prior to the permit being granted, the permittee shall grant to the County Engineer irrevocable power of attorney for the formation of a County Road Improvement District (C.R.I.D.). The irrevocable power of attorney shall be in writing with notarized signatures and shall be binding on the permittee, his heirs, successors and assigns. The County Engineer shall require the formation of a County Road Improvement District when the following requirements are met:

(1) On unimproved rights-of-way when the permitted use of adjoining properties exceeds fifty (50) percent as defined by Chapter 36.88 RCW and the traffic requirements of RCW 36.75.300 for a primitive road have been exceeded.

(2) The County Engineer reserves the right to reduce the length of right-of-way being considered for the formation of a C.R.I.D. to correspond to the areas of development.

[Ord. Ord. 271 (1996) ■ 5]

10.08.160 TRAIL ACCESS PERMIT--APPROVAL AND RECORDATION. (a) The completed application including all covenants, statements, plans and studies must be approved by the County Engineer prior to the commencement of construction.

(b) The permittee shall advise the County Engineer of completion of construction in accordance with the permit. Construction of required improvements shall be completed within one year from the date the permit is granted. Prior to the expiration of the permit, the permittee may apply for a one year extension to complete the required improvements. If the construction is acceptable, the County Engineer shall make appropriate notations on the department's county road records and record the permit with the County Auditor.

[Ord. 271 (1996) ■ 6]

10.08.170 APPEALS PROCESS. When the provisions of this ordinance allow approval, conditional approval, or denial of the use of the unopened, unmaintained right-of-way to be made by the County Engineer or his/her designated representative, that decision may be appealed by any person aggrieved to the Benton County Board of Commissioners, and the following procedure shall apply:

(a) Appeals shall be filed within twenty (20) days of the date of the approval or denial. All appeals shall be in writing; shall be

accompanied by a cash bond in the amount of five hundred (500) dollars and shall be filed with the County Engineer. Monies not expended by Benton County in the appeals process shall be returned to the appellant.

(b) Upon the filing of an appeal, the County Engineer shall set the time and place with the Board of County Commissioners at which the matter will be considered. At least a ten (10) day notice of such time and place together with one copy of the written appeal shall be given to the official whose decision is being appealed and to the adverse parties of record, if any. The official whose decision is appealed shall transmit to the Board of County Commissioners all of the records pertaining to the decision, together with such additional written report as deemed pertinent.

(c) Notice shall be given not less than twelve (12) days before the hearing date in the following manner:

(1) By United States Mail addressed to the applicant and to the owners of all property within a distance of three hundred (300) feet in any direction from the subject property. (Notices addressed to the last known address of the person making the latest tax payment shall be deemed proper notice to the owner of such property.)

(2) By publication of a legal notice in a paper of general circulation.

(d) Upon hearing the appeal, the Board of County Commissioners may reverse or affirm, wholly or in part, or may modify the decision appealed, and may make such decision as should be made and to that end, appealed, as to the particular issue.

(e) The County Engineer shall keep, in a written form, a record of the case including the findings of fact upon which the action is based.

[Ord. 271 (1996) ▪ 17]