

AN ORDINANCE AMENDING THE SEMINOLE COUNTY CODE; PROVIDING FOR THE ADOPTION OF AN ORDINANCE TITLED "THE SEMINOLE COUNTY TRAILS PROTECTION ORDINANCE"; PROVIDING FOR STANDARDS AND PROCEDURES FOR THE PERMITTING, CONSTRUCTION AND MAINTENANCE OF TRAIL CROSSINGS AND OTHER USES; PROVIDING FOR A TITLE; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING A GENERAL PROCEDURE; PROVIDING STANDARDS OF REVIEW; PROVIDING FOR PERMIT CONDITIONS AND OTHER INFRACTIONS; PROVIDING FOR USE OF THE PERMIT AREA; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Seminole County has actively supported the preservation of trail corridors and the construction of a trails system throughout Seminole County; and

WHEREAS, the citizens of Seminole County have actively supported such efforts and have supported the Natural Lands 2000 "Completing the Trails Connection" referendum to further develop the County's Trails System; and

WHEREAS, the Board of County Commissioners of Seminole County finds that the Seminole County Trails System provides a safe, viable transportation alternative for bicyclists, in-line skaters, pedestrians, equestrians and other users of the trail, where applicable, in addition to providing accessible recreational opportunities; and

WHEREAS, one of the many benefits of the Seminole County Trails System is that a user may continue moving in one direction for long distances, without the necessity of frequent stopping for cross traffic, traffic control devices, construction or maintenance, thus providing increased safety and health benefits to the citizens of Seminole County and an overall better trail experience with fewer impediments; and

CERTIFIED COPY
MARYANNE MORSE
CLERK OF CIRCUIT COURT
SEMINOLE COUNTY, FLORIDA

WHEREAS, the Seminole County Trails System, much of which has been developed from historic railway corridors, runs adjacent to existing and proposed development throughout the County; and

WHEREAS, some property owners living adjacent to railway corridors may have held no legal right to cross or make use of railway corridors; and

WHEREAS, Seminole County or the State of Florida is the successor in interest to the rights held by the railroad; and

WHEREAS, the railroad granted certain adjacent property owners license agreements providing certain property owners with the right to construct and maintain private roads and/or driveways across the track or tracks and the railway corridor for annual fees and subject to numerous limitations, including the right of the railroad to cancel the license upon thirty (30) days notice; and

WHEREAS, it is the desire of the Board of County Commissioners of Seminole County to minimize traffic flows across the Seminole County Trails System, while at the same time providing reasonable access commensurate with the zoning classification and/or the designation under the Comprehensive Land Use Plan to properties located along the trail system; and

WHEREAS, an economic impact statement has been prepared and is available for public review in accordance with the provisions of the Seminole County Home Rule Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

Section 1. Title and Legislative Findings. This Ordinance shall be known as the "Seminole County Trails Protection Ordinance." The foregoing whereas clauses are

incorporated herein and serve as the Board of County Commissioners of Seminole County's legislative findings in support of this Ordinance.

Section 2. Purpose and Intent. The purpose and intent of this Ordinance is to provide standards and procedures for the applications, permitting, construction and maintenance of crossings and other uses within the Seminole County Trails System in order to achieve the following:

(a) Provide for a continuous regional alternative transportation and recreational network within Central Florida.

(b) Preserve the function of each trail, which is to provide a safe facility for recreation and non-motorized transportation, including but not limited to single person battery operated devices utilized by persons with disabilities.

(c) Provide for smooth, logical traffic-flow patterns.

(d) Reduce conflicts between trail and vehicular traffic.

(e) Allow for the application of safe geometric-design principles.

(f) Provide for bicyclist, pedestrian, in-line skater, equestrian and other users' safety and enjoyment, where applicable.

(g) Provide for environmental compatibility.

(h) Protect trail corridors from private encroachments and detrimental or disruptive uses.

(i) Protect the County's interest in properties owned or managed by the County that have been designated as trail corridors.

(j) Provide a mechanism for owners of private property located along the trail system to have reasonable access to enter and exit such properties.

Section 3. Authority. The County's authority to process applications for and, in some situations, approve permits for authorized activities within the Seminole County Trails System derives, in part, from the County's ownership and/or management of those corridors which form the Seminole County Trails System. The Seminole County Trails System is comprised of corridors owned by Seminole County, (i.e., Old State Road 13 (now known as the Flagler Trail)), corridors co-owned by Seminole County, (i.e., Seminole Wekiva Trail co-owned by the Florida Department of Transportation and Seminole County), and corridors owned by a State agency but managed by Seminole County, (i.e., the Cross Seminole Trail which is owned by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, leased to the Florida Department of Environmental Protection, Office of Greenways and Trails, and subleased to, and managed by, Seminole County).

Section 4. Definitions.

(a) Application review by the County consists of review by the County Engineer, the Planning and Development Department Director, and the Library and Leisure Services Department Director, or their designees.

(b) Trail corridor refers to State or County owned, leased, or managed natural or man-made linear feature, such as a river, stream, rail-trail, canal, stormwater way, or other route for passive recreation, education and scenic purposes and for connecting active or passive recreation, park land or open spaces.

(c) Trail refers to the paved or unpaved path on which travel is directed and permitted within the trail corridor, by non-motorized vehicles and single person battery operated devices utilized by those with disabilities.

(d) Encroachment refers to any physical structure without an appropriate permit, license, or written permission from the County Engineer, or the owners or managers of the trail corridor which crosses into a trail corridor from an adjacent property.

(e) Access refers to an approved entry, exit or crossing of the Seminole County Trails System that conforms to this Ordinance.

(f) Seminole County Trails System refers to lands owned in full or in part or managed by Seminole County and designated as a trail corridor on the *Seminole County, Florida Trails, Greenways, and Bikeways Master Plan*, as same may hereafter be amended from time to time, a copy of which is on file with the Clerk of the Board of County Commissioners of Seminole County and incorporated herein by this reference.

(g) Access Permit is a non-exclusive, conditional permit providing for the construction and maintenance of one or more accesses into or across the Seminole County Trails Corridor.

(h) ADA refers to the Americans with Disabilities Act of 1990, as amended, and accompanying regulations and requirements.

(i) Acknowledged Access refers to an access of the existing or future trail corridors which are agreed to by Seminole County, permitted, or in active use on October 1, 2001. Residential lots shall be permitted to claim as acknowledged access only one existing access per lot.

(j) Acknowledged Utilities refer to utilities located within an existing or future Trail Corridor which have been previously approved by Seminole County.

Section 5. Applicability. All persons, firms, corporations, governmental units and other entities must obtain a permit for the construction, installation, or maintenance of any use specified herein. Nothing herein shall limit Seminole County's use of the Seminole County Trails System for recreational purposes or the use thereof by the State agencies that are owners or co-owners of the Seminole County Trails System for any use which will directly benefit the trail system. To this extent, any department or division of Seminole County other than the Engineering Division or the Parks and Recreation Division must have its proposed use of the trail area approved by the County Engineer.

Section 6. General procedure. For those portions of the Seminole County Trails System owned in fee by Seminole County, or over which it has permitting authority, the permit application review and approval process shall be final upon the completion of the County's review and approval. For all other parts of the Seminole County Trails System, County and State approval is required by submittal of an application to the County Engineer to determine compliance with the policies set forth in this Ordinance, applicable management plans and the Seminole County Comprehensive Plan. If the application meets these standards, the application shall be forwarded on to the appropriate State agency for its consideration. The permit shall issue upon receipt of concurrence from the applicable state agency.

Section 7. Access Permit Application to the County Engineer.

(a) Each Access Permit Application shall be accompanied by the appropriate fee as set by Resolution of the Board of County Commissioners of Seminole County and shall be submitted to the County Engineer. Trail Access Permits shall meet the specifications and guidelines set forth in the Land Development Code of Seminole County,

the Seminole County Comprehensive Plan, the Seminole County Transportation Standards and all other applicable rules and regulations including design standards for trail crossings and use as determined by the County Engineer.

(b) Prior to approval of a permit, an applicant must provide, at the applicant's own expense, a boundary and topographic survey within the limits of the construction area to include locations within the construction area of trees of three inch (3") diameter breast height (dbh) or greater, wetland delineation, if any, and locations of any known threatened or endangered species, signed and sealed by a Professional Surveyor/Mapper and appropriate environmental specialist licensed in the State of Florida and conceptual plans of the proposed use.

(c) Applicants must attach to the Permit Application any other permits which are necessary to construct the proposed access. Any permit issued shall be conditioned on the applicant's obtaining said permits.

Section 8. Application review by the County Engineer.

(a) The County Engineer shall be responsible for administering the permitting process set forth in this Ordinance and shall make permit applications available to interested applicants.

(b) An applicant for a permit shall submit four (4) copies of an application to the County Engineer, or his or her designee. Upon receipt of the completed applications, the County Engineer shall immediately forward one (1) copy of the application to the Planning and Development Department Director, one (1) copy to the Library and Leisure Services Department Director and shall retain two (2) copies of the application for his or her review. The County Engineer, the Planning and Development

Department Director, and the Library and Leisure Services Department Director or their designees shall inspect the proposed permit area for site specific liability issues and potential impacts to natural, cultural, historic and archeological resources, and provide comments on areas of concern. The Planning and Development Department Director and the Library and Leisure Services Department Director shall, within fifteen (15) working days of receipt of the application, submit any comments in writing to the County Engineer for consideration. If the property involved is within the limits of a municipality, a copy of the application shall be forwarded to the appropriate municipality.

(c) After the County Engineer has completed the review, considering the comments of the Planning and Development Department Director and the Library and Leisure Services Department Director, and determined that the application meets the standards set forth in this Ordinance, the County Engineer shall complete a list of Trail Access Permit Conditions which shall be a part of the permit to be issued. All permits to use trail corridors that are owned or co-owned by a State Agency shall state as follows: "This permit shall not become effective until such time that the appropriate State agency has concurred in this permit consistent with the agreements governing the management of the applicable Trail. The permittee further understands that County approval of this permit does not entitle the permittee to begin construction of any access if other permits are required."

(d) The County Engineer shall prepare duplicate originals of the Trail Access Permit for execution by the applicant prior to the County Engineer's execution. Upon the applicant returning the executed originals, the County Engineer shall execute the Trail Access Permit on behalf of the County if the application meets the requirements

set forth in this Ordinance. The County Engineer shall have final County approval authority over permit applications; provided, however, that an applicant may appeal the County Engineer's denial or conditional approval of an application to the Board of County Commissioners of Seminole County within thirty (30) days of the date of the decision.

(e) Following the County Engineer's issuance of a permit relating to a trail corridor owned or co-owned by a State agency, both original copies of the permit application shall be forwarded to the appropriate State agency with a request for concurrence. If the State agency denies or wishes to modify the permit, the issuance of the permit will be withheld until such time as the County and the State agency can reach an agreement. No permit will be issued until all parties agree on the terms of the permit. If approved by the State agency, the agency shall retain one original copy and forward the other original copy to the County for distribution to the applicant.

Section 9. Standards of review. The County Engineer shall apply the following standards in determining whether to grant or deny a Trail Access Permit Application:

(a) Acknowledged Access. Accesses in active use as of October 1, 2001 are exempt from the permitting provisions of this Ordinance. If a residential property contains more than one access, the County Engineer shall require the affected property owner to designate one access which shall become the acknowledged access. Any additional accesses must be permitted in accordance with this Ordinance.

(b) Access Crossings. Permits may be granted to provide access for a property when there are no reasonable access alternatives other than the proposed

access. Owners of property adjacent to a designated trail corridor and on which there is a trail crossing necessary to access the property or a portion of the property who are seeking to change their land use or zoning to a more intense category than the existing comprehensive plan contemplates as of the date this Ordinance is adopted shall be required to submit plans as part of the development review process for review and discussions of crossing alternatives. The County Engineer shall not grant a Trail Access Permit to any property that has reasonable alternate access elsewhere on the boundary of the property or to property that was subdivided to eliminate access to right-of-way. Adjacent properties that each have a need for one (1) or more accesses shall be encouraged to create one (1) combined access providing joint access to, from, or across the trail.

(c) Access Structures. Applications for a permanent trail access structure or installation other than driveways, i.e., footbridges or boardwalks, may be approved if the following determinations are made:

- (1) The proposed structure will not unreasonably impede flow on the trail corridor,
- (2) The proposed structure will not have a negative impact on the public safety, welfare, or use of the trail corridor,
- (3) The proposed structure will result in only minimal removal of any trees or vegetated screening materials in the trail corridor, and
- (4) The proposed structure will not adversely impact or disturb flood prone areas.
- (5) All approved access structures must meet ADA requirements.

(d) Utilities. Public or private utilities of any kind may not be located within any designated trail corridor, but will be permitted to cross the trail as necessary to service properties where the designated trail corridor runs between the property and the utility. Utility crossings shall be underground, if practicable from an engineering and environmental standpoint. Appeals of a denial of permission to cross shall be made to the Board of County Commissioners within thirty (30) days of denial of permission by the County Engineer.

(e) Historic and Environmental Preservation. Applications may not be approved if important historic or environmental resources within the trail corridor are determined to be adversely affected by the proposed access. Applicants may be required to complete a survey of plants and wildlife including those species designated as endangered, threatened, or species of special concern pursuant to *Rules 39-27.003, 39-27.004 and 39-27.00, Florida Administrative Code*, utilizing the most current wildlife methodology guidelines published by the Florida Fish and Wildlife Conservation Commission and current information from the Florida Natural Areas Inventory. If an endangered or threatened species of special concern is determined to exist on site, then development may not proceed until the applicant obtains the necessary approvals from the appropriate jurisdictional agencies. Additionally, applicants must provide documentation from the Department of State identifying the presence of any listed historic or archaeological sites that may be adversely affected by the access. A site will be considered historic if it is so defined or listed under Florida law.

Section 10. Conditions.

(a) In addition to the conditions deemed necessary for permit approval by the County Engineer, each Trail Access Permit granted by the County Engineer shall be deemed to include the following terms and conditions:

(1) A new permit application shall be required if, in the determination of the County Engineer, there has been a change in the use of the property to which the permit provides access. These changes would include, but are not limited to, changes in zoning or land use designations controlling the property (except those initiated by governmental entities), submission of development plans to the appropriate governmental jurisdiction indicating an increase in density or intensity in the use of the property, and other similar circumstances.

(2) The term of the permit ends upon revocation of the permit by the County; on the date specified by the State, if any; or on the termination of the lease to the County by the Trustees of the Internal Improvement Fund. Permits are revocable by the County upon damage caused by the permittee to the trail corridor or any violation of the permit agreement resulting from use of the permit area not rectified by the permittee with four (4) weeks of notification of such damage or violation by the County. Upon the County Engineer's written notification to the permittee, a permit is subject to cancellation and automatic termination by the County upon failure to correct the situation set forth in the written notice of damage or violation. Upon termination of a permit, unless waived by the County, the permittee shall restore, at the permittee's own cost the permit area to a condition like or better than the condition of the permit area upon the execution date of the permit. Upon termination of the permit, all authorization granted by the permit terminates. Upon a change to a more intensive land use, zoning, or development (unless initiated by a

governmental agency), the permittee shall be required to reapply for a new permit, and said application shall only be required to address the access issues raised by the change of use of the property.

(3) Any construction shall be constructed at the cost and expense of the permittee, but in a manner and of materials as set forth in the Seminole County Land Development Code.

(4) Prior to construction of approved uses, the permittee must submit construction plans signed and sealed by a professional engineer licensed in the State of Florida to the County Engineer for approval. Plans shall include locations of trees of three inch (3") diameter breast height (dbh) or greater, if any, wetland delineation, and locations of any threatened or endangered species, if any.

(5) The permittee shall perform all construction at such times and in such a manner as to interfere to the least possible extent with the public's use of the trail. At all times a through-route of a minimum eight-foot (8') width shall be provided for trail users. All construction within the trail corridor pursuant to a permit shall be completed within thirty (30) days of commencement.

(6) Where Seminole County constructs improvements to an existing trail facility or a new trail facility which impacts accesses, Seminole County shall design such improvement or new facility so as to not to adversely impact the access, if practical, or to minimize the impact, if some impact is unavoidable.

(7) Prior to construction of an approved access, the permittee shall have its surveyor mark the trail boundary line with highly visible tape and County-

approved signage, at the permittee's expense, to ensure that the trail corridor is not damaged.

(b) Joint Access. If adjacent property owners agree to execute a joint construction and use document, the property owners need only pay equal shares of the appropriate trail access permit fee(s) that would have been charged for the property with the highest intensity classification. Any trail access permit application fees required by the County may be waived when three (3) or more adjacent property owners agree to share one access if the County Engineer finds and determines that the public interest is benefited thereby and that the public interest is commensurate with the granting of a fee waiver.

Section 11. Use of the Permit Area by a Permittee.

(a) Permit uses shall be limited to the specific activities approved by the County in the permit.

(b) No trimming or removal of any vegetation, excluding normal grass mowing, within the Trail Corridor shall take place prior to permit approval or execution of a maintenance agreement.

(c) The permittee is solely responsible for all costs related to design and development of the public or private road/driveway crossing. No development shall take place prior to written County approval of the development plan. The County retains the right to enter into the permit area for trail development and management purposes.

(d) The permittee shall maintain the permit area in a safe and attractive manner, acceptable to the County. The permittee is fully responsible for all costs associated with the permitted use of the area.

(e) The permittee shall save and hold harmless and indemnify the County and the State of Florida against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to or death of any person or persons and from loss or damage to any property resulting from the use, service, operation or performance of work under the terms of this permit, resulting from the negligent acts of the permittee, its contractor or invitees, or any of the employees, agents or representatives of the permittee, its contractor or invitees to the extent allowable by law.

(f) Permittees shall not do or permit anything to be done which purports to create a lien, encumbrance, or encroachment not identified in the permit of any nature against the Trail Corridor including, but not limited to, mortgages or construction liens against the Trail Corridor or against any interest of the County therein.

(g) Upon the County's discovery of unpermitted encroachments on a trail corridor owned or managed by the County, the adjacent property owner(s) will be notified by certified mail of the discovery and will be permitted to submit a trail access permit application within sixty (60) days of notification. If the application process is not initiated within this time frame, the County will move forward with removal of the encroachment. Costs of encroachment removal and administration of the removal process shall be borne by the encroachment owner. If the County denies the application, the applicant must remove the encroachment within thirty (30) days of the denial date. If the applicant wishes to appeal staff's decision to deny an application to the Board of County Commissioners of Seminole County, the removal period may be extended until the Board of County Commissioners of Seminole County reaches a decision.

If an encroachment is located on a trail corridor owned or co-owned by another agency, the permittee will be required to follow any additional approval process designated by that agency.

Section 12. Oversight of Trail Fund.

(a) The Public Works Department, Engineering Division is charged with the oversight of the Trail Fund. The Director of the Fiscal Services Department shall deposit the following monies into such fund:

(1) All fees collected pursuant to this Ordinance.

(2) All monies collected by the County during the development approval process in lieu of sidewalk construction on roads abutting planned trails.

(3) All monies collected by the County during the development approval process for trail construction or maintenance.

(b) The County Engineer may spend deposited monies for trail design, construction, or maintenance purposes only.

Section 13. Penalties.

(a) Violations of this Ordinance shall be prosecuted in accordance with the provisions of *Section 125.69(1), Florida Statutes (2000)*.

(b) Violations of this Ordinance are hereby declared to constitute irreparable harm, unable to be remedied at law, and therefore the County may seek injunctive relief if necessary to abate violations of this Ordinance.

(c) Where a violation of this Ordinance consists of tree damage or removal, the County may seek as a remedy that the offending party shall plant canopy trees approved by the County of four inch (4") diameter at breast height (dbh), at a distance of forty feet

(40') on center. Where a violation of this Ordinance consists of damage to or removal of the vegetative buffer, the County may seek as a remedy that the offending party shall replace the vegetative buffer with mixed native evergreen species approved by the County at a distance of five feet (5') on center.

(d) In addition to the foregoing, the dumping or discarding of trash or litter upon any part of the trail system shall constitute a violation of this ordinance, and Seminole County shall impose a fine of up to the maximum amount permissible by law. Additionally, the Board of County Commissioners may from time to time impose schedules of fines for other violations of this Ordinance.

Section 14. Codification. It is the intention of the Board of County Commissioners of Seminole County that the provisions of this Ordinance shall become and be made a part of the Seminole County Code and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase and the sections of this Ordinance may be renumbered or relettered to accomplish such intention; providing, however, that Sections 14, 15, and 16 shall not be codified.

Section 15. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners of Seminole County that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 16. **Effective Date.** This Ordinance shall take effect upon filing a copy of this Ordinance with the Department of State by the Clerk of the Board of County Commissioners of Seminole County.

ENACTED this 22nd day of January, 2002.

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____

DARYE McLAIN, Chairman

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