

# **County Road Ditch Drainage Policy**

## **BENTON COUNTY BOARD OF COMMISSIONERS**

### **RESOLUTION 2019 - #30**

**WHEREAS**, the County of Benton, in its role as road authority, from time to time receives requests for installation of drainage tile along or through a road right-of-way, for a ditch or drain connection to a road right-of-way ditch, and for road ditch cleaning; and

**WHEREAS**, pursuant to Minn. Stat §160.20, subject to reasonable regulation by the road authority, an owner of land whose natural drainage runs to a roadway may install drain tile along or across the road right-of-way along the general course of the natural drainage; and

**WHEREAS**, prior to installing a drain or ditch connection or tiling, the statute requires, to the extent that the road authority has adopted a permitting program, an owner to first acquire a written permit from the road authority. The permitting program must comply with the requirements of Minn. Stat. § 160.20, subd. 4; and

**WHEREAS**, the permitting program may establish conditions and standards for the proposed work in order to protect the public road system and avoid landowner conflicts; and

**WHEREAS**, failure to obtain a written permit as required by Minn. Stat. § 160.20 is a misdemeanor crime; and

**WHEREAS**, in addition to a permitting program for the purposes described above, the County desires to establish a policy addressing maintenance of county road ditches, including: authorizations, conditions and standards for private parties to clean and remove perceived obstructions from the road ditches; establishment of a maintenance fund for such work to be performed by the County; and the development of standards by which the County will evaluate the need for such work; and

**WHEREAS**, the requirements and conditions prescribed for permits required under Minn. Stat. § 160.20 can also apply to individuals requesting permission and a permit to clean a public right-of-way ditch, and as a result the County chooses to include cleaning permits into its policy for private drainage utilization of public right-of-way ditches; and

**WHEREAS**, decisions to clean public right-of-way ditches is discretionary and the County is not required to approve an application for a private party to clean a public right-of-way ditch, the County may approve such application if the requirements of its policy and other applicable laws and regulations are complied with; and

**WHEREAS**, the County is not mandated to approve an application to clean a public right-of-way ditch even if the requirements of its policy are met; and

**WHEREAS**, in addition to Minn. Stat. §160.20, if a ditch is deemed to be a portion of the public drainage system, the requirements of Minn. Stat Ch. 103E and any other applicable law and regulations will also need to be complied with; and

**WHEREAS**, it is desirable to define the policy and procedure of the County for connection of private drains to roadway drains, installation of drain tile along or across a County right-of-way, and cleaning of public right-of-way ditches; and

**THEREFORE, BE IT RESOLVED**, that the following policy and regulations be adopted in Benton County:

1. The recitals set forth in the whereas clauses above are incorporated by reference as if fully set forth herein.
2. The County may approve an application for a permit connecting a drain or ditch with any drain or ditch constructed along or across the highway, installing drain tile along or across the highway right-of-way roadway ditch, or the cleaning of a roadway ditch provided that the parties requesting the permit shall comply with federal and state laws and regulations and these adopted policies and regulations.
3. The applicant shall submit a completed Drainage and Cleaning Permit application to the Public Works director and shall comply with any provisions described therein.
4. Before any permit is approved and/or any work is started, the individual/contractor responsible for the project (applicant) shall provide a certified check or performance bond in the amount deemed appropriate by the County engineer for the scope of work included under the permit. The maximum amount of the required check or performance bond is set forth in the adopted current County Fee Schedule. A fee will be charged for the required permit. The fee for the permit is also set forth in the County Fee Schedule.

Upon completion of the work the applicant shall notify the County Engineer's office to obtain final inspection. If the work is determined acceptable, and after 60 calendar days have elapsed (to determine if any settlement occurs), the certified check or performance bond will be returned.

If the work is deemed unacceptable by the County Engineer, notification will be given to the applicant, who shall complete all necessary corrective action within 30 days. If corrective action is not completed by the applicant within the allotted time frame, the performance bond or certified check funds will be used by the County to correct any deficiencies in the project. The remainder (if any) of the performance bond or certified check funds will be returned to the applicant upon completion of the corrective action.

5. For all Drainage and Cleaning Permits the parties requesting the permit shall comply with the following regulations:
  - a. First complete all ditching needed below the outlet end of the connection to ensure proper drainage.

- b. Any work done on highway right-of-way ditches or on slopes shall be done in a manner to meet current geometric standards.
  - c. All backfill material and the method of compaction shall comply with 2451.3D of the Minnesota Department of Transportation Standard Specifications (latest version).
  - d. Wherever topsoil and sod are disturbed, they shall be replaced and maintained satisfactorily until the turf is established, and otherwise restore the county highway right-of-way to its original condition.
  - e. Upon completion of an installation, the applicant shall then notify the office of the County Highway Engineer of the completion of the work so that inspection can be made to determine its acceptability.
  - f. When working within the right-of-way limits of the county highway, the contractor shall erect and maintain all barricades, signs and lights needed to protect the traffic, including all warning signs specified under Minnesota Statute 160.16, and in compliance with the current Minnesota Manual of Uniform Traffic Control Devices (MN MUTCD).
  - g. The highway shall not be closed to traffic on Sundays or on legal holidays, and shall not be closed for more than 5 hours on any project.
  - h. The installation shall not interfere with any existing utility facilities on the county highway right-of-way. Interruption, interference or damages to any utility shall be restored and/or paid for by the applicant. It is the applicant's responsibility to complete a Gopher State One-Call ticket 48 hours prior to any excavation.
  - i. The installation shall be made in conformity with all applicable laws, regulations, and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public.
6. Any additional right-of-way required for the above work shall be obtained at the expense of the owner or applicant requesting the work.
7. The County may establish a maintenance fund pursuant to statutes section 160.201 for the purpose of paying all or a portion of the cost of cleaning and maintenance of right-of-way ditches.
8. If a maintenance fund is established, the County may participate in funding the requested work. Cost share funding of private cleaning or maintenance work in a right-of-way ditch shall not exceed 50% of prior documented costs of the work if in the judgment of the County Highway Engineer, a Benton County highway, or the traveling public receives a direct benefit for such maintenance or cleaning. The amount and percentage of funding shall be at the discretion of the County Highway Engineer. It shall otherwise be the responsibility of Benton County to maintain roadways in a manner to provide what would otherwise be a natural drainage condition upon consideration of policy factors including but not limited to (1) is the maintenance required to eliminate or prevent harm to the road and (2) is the maintenance required to eliminate or prevent an objective harm to public or private interests adjacent to the roadway.

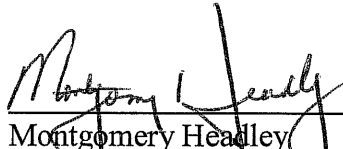
9. Each permit application and/or project will be reviewed on its own merits and specific circumstances by the County Highway Engineer. County financial considerations will govern participation in all project costs. No guarantee of issuance of a permit or county participation in the project is implied by county participation in any other project or issuance of any other permit.
10. Written notification shall be made to the County Engineer if drainage ditching or other utility work will affect drainage to/from county facilities and/or right-of-way even if the work is to be accomplished outside of the existing of the existing right-of-way. Modifications to the existing county facilities, including to ditch/drainage systems made necessary by drainage, ditching, or other utility work, will require financial contribution from the responsible party. If the responsible party refuses to provide financial contribution, the cost of the required modification and/or alteration may be assessed to the responsible parties' property tax.
11. Other Permits and Agency Notification The applicant shall notify all appropriate agencies of the scope and nature of the work to be performed. Appropriate agencies may include but may not be limited to Benton County Department of Development, Soil and Water Conservation District, Minnesota Department of Natural Resources, U.S. Army Corps of Engineers, and other notifications as are appropriate to the specific project. Any permits required from outside agencies shall be obtained prior to commencing work. Required notifications and initial responses shall be included with the permit application.
12. By signing this permit the responsible party agrees to give permission for the county to enter onto any properties requiring corrective action associated with the work included in this permit.
13. The applicant shall indemnify and hold harmless the county, its agents and employees from and against all claims, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the applicant, anyone directly or indirectly employed by the applicant, or anyone for whose acts the applicant may be liable.

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Approved and adopted this 3<sup>rd</sup> day of September, 2019.

  
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A. Jake Bauerly, Chair  
Benton County Board of Commissioners,

ATTEST:

  
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Montgomery Headley  
Benton County Administrator