



FDM 5-15-1 Local Drainage Boards

December 5, 2017

1.1 Brief History

Prior to January 1, 1965, drainage organizations consisted of three different types: 1) farm drainages, 2) town drains, and 3) drainage districts. Each organization existed independently and each was governed by its own board of officers (farm drainages and town drains) or drainage commissioners (drainage districts).

Chapter 88, Wisconsin Statutes, which became effective January 1, 1965, did away with farm drainages and town drains, per se. As a result, two types of drainage districts existed in counties and operated under different sections of ch. 88, Wis. Stats.:

1. Drainage districts governed by their own drainage boards, and
2. Drainage districts in a county collectively governed by the county drainage board.

In 1991, the legislature revised ch. 88, Wis. Stats., requiring all drainage districts to come under the jurisdiction of the county drainage board and requiring the creation of a board if none existed in the county. County drainage boards are responsible for operating drainage districts in compliance with ch. 88, Wis. Stats., and ATCP 48, Wis. Admin. Code, which first became effective in 1995. The Department of Agriculture, Trade and Consumer Protection (DATCP) monitors county drainage board compliance with drainage law and code and provides technical assistance to boards.

1.2 Basis for Coordination

Coordination with county drainage boards is required by Section 86.075, which states in part:

Whenever a highway crossing any drainage ditch of a drainage district governed by Chapter 88 is being constructed or reconstructed or a culvert in any such ditch is being replaced, the highway authority in charge of such work shall consult with the drainage board having jurisdiction of such district for the purpose of determining the depth at which such drainage ditch was laid out. (Emphasis added.)

Stated differently, the WisDOT coordinates with county drainage boards when constructing or reconstructing bridges and when constructing, reconstructing or lining culverts crossing any drainage ditch within a particular board's jurisdiction to ensure that the structure is installed at the proper elevation. The importance of this elevation is discussed under [FDM 5-15-1.4](#) (Specific Results Intended).

Section 88.68, Wis. Stats., requires coordination:

1. Between a county drainage board and “the officers in charge of maintenance of the highway” when a drain being constructed across a public highway “makes necessary the construction or reconstruction of a bridge”,
2. When a “unit of government in charge of maintenance of a highway decides to construct a new bridge across a drain”, and
3. When “the cleaning out, deepening or reconstruction of a drain crossing a public highway requires the lowering of a culvert through such highway to provide effective drainage.”

Coordination with county drainage boards is also required by ATCP 48.34, which stipulates DATCP approval for construction projects and drainage alterations in districts. Under ATCP 48, county drainage boards are required to formally establish drainage district specifications for each district in their jurisdiction. Specifications are the foundation for nearly all drainage district operations, including landowner rights and responsibilities as prescribed in drainage law and evaluation of the effects of proposed drainage modifications. Provided certain conditions are met, boards have the right under ATCP 48.34 to authorize others to construct or modify drainage. This section also states that boards must seek DATCP approval to:

- a. Construct or modify any district drain, or authorize any person to construct or modify a district drain.
- b. Install or modify any structure in a district drain, or authorize any person to install or modify a structure in a district drain.
- c. Authorize any person to connect a private drain to a district drain.
- d. Take any action...that changes the formally established cross-section, grade profile or alignment of a

district drain, regardless of whether that action involves any physical alteration to a district drain or structure.

1.3 Coordination Process

For any drainage district, contact the county drainage board having jurisdiction over that drainage district. This is normally done at the Transportation Region level. The following DATCP website provides a GIS-based map of the location of all drainage districts in the state, a directory of county drainage board members, and DATCP contacts:

https://datcp.wi.gov/Pages/Programs_Services/DrainageDistricts.aspx

A number of districts, though inactive, have not followed through with dissolution procedures (as allowed by Chapter 88, Wisconsin Statutes when a drainage district is no longer desired) and therefore are still legal entities with which to coordinate. Other sources for information on drainage districts are DATCP and the county treasurer's office, since, by statute, the treasurer of each county is also treasurer of all drainage districts in that county. Drainage district specifications should be available from the county drainage board, county zoning administrator, and DATCP.

It is preferable for Transportation Region personnel to personally meet with the drainage board to consider the project at hand, thereby causing the board to convene. The drainage board secretary, by statute, must keep minutes of each board meeting. A convenient record of coordination is thus available by requesting a copy of those minutes. Staff should share relevant project plans, designs and specifications with the drainage board. If the board identifies potential concerns, the board and WisDOT should notify and communicate potential concerns with DATCP. The county drainage board and DATCP will work with WisDOT to resolve any identified concerns. If formal county drainage board action is required, WisDOT will work with the drainage board to apply, under ATCP 48.36, for DATCP approval of the proposed action under ATCP 48.34.

1.4 Specific Results Intended

Coordination with county drainage boards is for the specific purpose of determining when a proposed road project alters a drainage district such as to require DATCP approval. This includes evaluating:

1. The depth at which a drainage ditch was originally laid out. Drainage ditch depth is vital information in that the highway authority would be responsible for future lowering of a culvert or similar opening that was installed at an elevation higher than the drainage ditch as originally laid out, unless misled by the drainage board.
2. The conditions surrounding the construction or reconstruction of a bridge across a district drain, or the conditions surrounding a need to construct, reconstruct, alter or adjust a culvert to provide effective drainage in a district drain crossing a highway.

The DATCP approval process requires board authorization, public notice and board hearing on the action, a joint board-WisDOT application, possible completion of an environmental assessment by DATCP, and a written decision from DATCP. The process includes pre-determined timelines that should be considered in the development of the proposed roadway project.

Evidence of coordination with drainage boards should be included in environmental documents.

FDM 5-15-5 Floodplain Zoning Authority

February 15, 1988

5.1 Basis for Coordination

Natural Resources Rule, Chapter 116, requires local units of government to adopt reasonable and effective floodplain zoning ordinances within their jurisdiction to regulate floodplains where serious flood damage might occur. Further, NR 116 specifies that for any construction that will cause an increase of 0.01 foot or greater in the height of the regional flood, the local unit of government is required to amend its zoning ordinance to reflect the increased elevation and assure that appropriate legal arrangements have been made with all property owners affected by the increased flood elevations.

The WisDOT-WDNR Cooperative Agreement specifies that the WisDOT will provide the WDNR and local units of government with criteria used in the design and placement of structures regarding the regional flood. (Refer to [FDM 20-5-15](#) for information on NR 116 and the Cooperative Agreement itself).

5.2 Coordination Process and Results Intended

1. For construction in areas having a potential for flooding associated with a defined stream channel, the WisDOT computes the 100 year regional flood discharge and elevations defined in NR 116 and NR 320. Floodplain management standards of NR 116 and relevant local zoning ordinances are

considered when determining structure size and placement. Transportation Regions will provide the appropriate local units of government (i.e., zoning authority) with a copy of the predicted water surface elevations and calculations submitted to the WDNR by the WisDOT's Bureau of Structures.

2. For construction in areas having a potential for flooding but not associated with a defined stream channel (e.g., areas known to be subject to intense sheet runoff, etc.), the WisDOT provides the WDNR and local units of government with information indicating the criteria used in the design and placement of structures, and cooperates fully with local efforts to minimize the effects of flooding. However, 100 year flood elevation calculations and consideration of their effects on local zoning will only be made when they appear relevant to carrying out the spirit and intent of NR 116.

In areas which have no zoning authority, coordination with the affected landowners is required and evidence of this coordination must be supplied to WDNR.

In general, it is the WisDOT's responsibility to coordinate with local units of government and decide whether construction that creates a change in the regional flood is in the overall public interest. The WisDOT must notify the local unit of government of the increase in backwater that would result from proposed construction. In instances of increased regional flood elevation, the status of the local Floodplain Zoning Authority notification shall be included in the environmental document (Basic Sheet 3, item no. 7).

FDM 5-15-10 Native American Tribal Governments

February 25, 2011

10.1 Introduction

Section 106 of the National Historic Preservation Act requires Native American involvement when "Historic Properties" (archaeological, traditional cultural properties, mounds) may be affected by a project. The WisDOT coordinates with the 11 federally recognized Wisconsin Native American tribes and six out-of-state tribes that have had a presence in Wisconsin, and the Great Lakes Intertribal Council. Coordinate as early as possible in the project development stage, usually during the scoping process.

Native American tribes are sovereign nations and this status requires other governments to relate to them on a government-to-government level. Relations should be between officials of equivalent authorities. This status provides them the same status as federal agencies and local units of government in the project development process. A Native American mailing list and counties of tribal interest for project notification information is provided on the environmental website:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/cultural-resources.aspx>

10.2 Basis for Coordination

Section 106, 36 CFR 800.2 (c)(2), of the National Historic Preservation Act (Act) stipulates that Native American tribes be provided a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties (including those of traditional religious and cultural importance), articulate their views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.

Section 101(d)(6)(B) of the Act requires the Agency Official to consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. Such Indian tribe shall be a consulting party.

It is the responsibility of the Agency Official to make a reasonable and good faith effort to identify Indian tribes that shall be consulted in the Section 106 process.

10.3 Coordination Process

Coordination with the tribes is undertaken for all WisDOT projects and is not limited to projects occurring on tribal or trust lands.

Notification of Native American tribes should commence early in the planning/scoping process in order to identify and discuss relevant preservation issues and resolve concerns. Consulting tribal representatives shall be invited to scoping meetings, meetings with other agencies and local officials, public information meetings, and public hearings.

Initial coordination consists of a letter on WisDOT stationery from the regional project manager to the Tribal Historic Preservation Officer (THPO) or to the director of the tribal historic preservation office of each tribe. Tribes have specified the areas of the state for which they desire project notification. An example of the coordination letter and the names and addresses for each tribe are available on the environmental website:

<https://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/default.aspx>

The project manager shall begin initial coordination for projects requiring an environmental impact statement, environmental assessment, or environmental report.

The project manager may delegate authority to the consultant for the initial coordination. The notification letter shall be on WisDOT stationery with the project manager's name as signatory. The project manager's name may be typed as signatory and the consultant may initial the letter.

If tribal response indicates an interest in the project, the tribe becomes a consulting party. The region then notifies consulting tribes of public hearings/ meetings and other information pertinent to cultural resources. Provide copies of tribal response letters the Bureau of Environment. This can be done prior to the submittal of the Section 106 packet or letters can be attached to the Section 106 packet when submitted to the Bureau of Environment for review.

The Bureau of Equity and Environmental Services shall initiate the consultation process with the appropriate tribal representatives, FHWA, SHPO, other agencies, regional representatives, and archaeologists when there will be an effect upon a 'Historic Property' (usually an archaeological site). The consultation process will consist of alternatives to avoid affecting the site; describing mitigation measures; participating in assessing effect and eligibility of the site; and reaching agreement about treatment of the resource.

The Bureau of Equity and Environmental Services shall be responsible for providing consulting tribes with copies of the archaeological reports.

The Bureau of Equity and Environmental Services shall make arrangements for consulting tribal representatives to be invited to observe evaluation studies and data recovery projects.

10.4 Specific Results Intended

The end results for the Section 106 process are described fully in Chapter 26. Early coordination, information sharing, and consultation on mitigation measures will ensure and facilitate tribal involvement in the WisDOT project development process, achieve compliance with federal law, and assist in maintaining project schedule.

10.5 Follow-Up Action Required

The environmental document (EIS, EA, ER) shall include documentation of Native American involvement in the project development and Section 106 process.