



#### 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](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 15, 2024*

~~Deleted this section because the guidance is already covered in [FDM Chapter 26](#).~~