

REQUIREMENTS, GUIDELINES AND PROCEDURES FOR DEVELOPMENTS, ENCROACHMENTS AND CROSSINGS

AS PREPARED BY

DRAINAGE DISTRICT NO. 2

ANY DEVIATION FROM THE FOLLOWING MUST RECEIVE
WRITTEN PERMISSION FROM THE DISTRICT'S BOARD.

Revised: April 2023

A. SUMMARY

Ada County Drainage District No. 2, sometimes known as Consolidated Drainage District No. 2 of Ada County (hereinafter “DD#2” or “District”) is a drainage district organized and existing under Chapter 29, Title 42 of the Idaho Code. The District was organized in the early 1920s and currently consists of more than 30,000 acres in Ada and Canyon Counties. The District owns, operates and maintains a drainage system, which consists of drains and easements/rights-of-way therefore for the benefit of its landowners. Because of various legal duties owed by the District, including those under Idaho Code Sections 42-1201 through 42-1204, among others, and pursuant to written permission requirements of Idaho Code Sections 42-1102, 42-1207, and 42-1209, any developer/landowner proposing to encroach upon a District easement or facility, including crossing the same, or proposing to relocate, realign, modify, or pipe a District facility shall submit a written request to do so in the form of the District's Land Use Change/Encroachment Application form. All such requests/proposals are subject to the District's license agreement requirements, and some requests/proposals may be subject to additional requirements imposed by the District's Board. These Guidelines are intended to provide a summary of the requirements, procedures and process for review and approval of projects affecting the District's drains, easements or rights-of-way.

B. LAND USE CHANGE/ENCROACHMENT APPLICATION

Prior to, or at the time of, presenting plans or proposals to the District for review and approval, the Applicant must submit a Land Use Change/Encroachment Application to the District's Secretary. A copy of the current Land Use Change/Encroachment Application is attached hereto as **Exhibit A**. The purpose of the Land Use Change/Encroachment Application

is to provide basic information for the District's review and to also provide contacts for the Applicant and Applicant's engineers.

C. DESIGN REVIEW FEES

The District has determined that the following fees are imposed to cover the District's costs related to encroachment procedures, consultations with the District's Board and/or representatives, plan and easement review, site visits, and correspondence with the Applicants and Applicant's engineers. The fees are subject to change on an annual basis. Further, the fees are based upon typical projects. Larger and more complex projects may exceed these amounts. The District also reserves the right to waive fees for smaller projects. All appropriate fees shall be paid to the District in advance of any consideration for approval of the development plans. Additionally, if it is deemed necessary that any plans require a review from a third-party engineer, those costs will be imposed/billed to the Applicant/Developer. Plans will not be approved or signed until all fees/costs are paid in full. (**note:** Once and if the plans are approved by the District, there will be additional fees charged by the District's attorney for the fees to prepare the License Agreement. *See Section K below*).

- General Projects/Developments – There will be a **\$750.00** Land Use Change/Encroachment Application Fee payable to the District for General Projects/Developments.
- Utility Projects/Crossings – There will be a **\$100.00** Crossing Review Fee for proposed utility crossing agreements payable to the District for Utility crossings. This fee may include multiple crossings if submit within the same project location.
- Site Visits – A designated representative of the District will be available to meet with Developers/Landowners and/or Engineers to review plans and for on-site inspections and design evaluations. There will not be a charge to the Developer/Landowner for the first such on-site meeting. However, any and all subsequent meetings with the District's designated representative will be bill for time spent and services rendered at a rate of **\$50.00** per hour.
- Special or Multiple Meetings with the Board - The initial Land Use Change/Encroachment Application Fee shall cover the initial meetings with the Board to review and consider plans/proposals for General Projects/Developments. However, any subsequent meetings, special or otherwise, with the District's Board will be billed at a rate of **\$250.00** per hour.

D. BOARD MEETINGS

The District's Board typically meets the 2nd Wednesday of every month and an Applicant/Engineer should contact the District's Secretary to be placed upon the District's agenda.

The District's Secretary, Gloria Stokes, can be reached at (208) 585-3207 or by e-mail at: drain.dist.2@gmail.com

E. EASEMENTS/RIGHTS-OF-WAY OF THE DISTRICT

For those Drains which are operated and maintained by the District, the District has an easement or right of way to access, operate, maintain and repair the Drain. The easement is confirmed when the District was created by Court Decree and the rights have been codified by Idaho Code. Idaho Code section 42-1102 provides that the right of way includes the right to access with personnel and equipment as is reasonable adapted to operate, maintain and repair the Drain.

- Open Drains. The District's policy is that the necessary easement is 100 feet, 50 feet to either side for open sections. This policy and these easement widths were confirmed by the Court when the District was formed in the early 1920s.
- Piped or Closed Drains. The District's policy is that the necessary easement for piped or closed drains is 50 feet, 25 feet to either side for open sections. Again, this policy and these easement widths were confirmed by the Court when the District was formed.
- Right to Deposit Spoils/Debris. Idaho Code section 42-1102 further provides that the right of way includes the right to deposit spoils and vegetation on the banks of the Drain. This right includes the right to remove trees and other vegetation which may interfere with the District's access but does not include the obligation to maintain the vegetation for the benefit of the landowner.
- No Encroachments without Written Consent. Idaho Code sections 42-1102 and 42-1209 provide that no person shall construct any encroachments, including roads, fences, trees, vegetation or objects within the District's right of way without the District's written consent. Thus, any encroachments constructed in the right of way, whether approved in writing or not are the responsibility of the landowner to maintain and the District is not responsible for them so long as it is reasonable in its access and conduct in operating and maintaining the Drain.
- Common Lots. Unless otherwise agreed in writing by the District's Board, all easements of the District shall be in a common lot (piped or open drain). Common Lots shall be owned and maintained by the Developer or Homeowner's Association.
- Staking. Where a drain goes through or adjacent to a proposed development, the easement of the District must be staked out so that the easement can be clearly identified and said stakes must remain in place until any and all construction/development is completed so that there is no mistake as to the easement lines.
- Changes or modifications to easement widths. Any changes or modifications to the District's easement widths shall be at the sole discretion of the District's Board. That said,

the District's policy is not to reduce the easement widths but as circumstances may allow, the District will retain its easement widths and allow certain encroachments within said easement via an approved License Agreement. Further, the District may, as circumstances allow, for the District's easement to be off-set (i.e. 65 feet and 35 feet of the centerline for open drains and/or 30 feet and 20 feet of the centerline for piped drains).

- Access Roads. All access roads utilized by the District shall be kept open and passable at all times. Access roads utilized by the District shall have a surface of gravel. No paving of access roads will be approved.

F. PLANS, STANDARDS AND SPECIFICATIONS

The plans, standards and specifications provided herein and/or submitted by any applicant, developer or engineer shall, unless otherwise provided by the District, be in accordance with the standards and specifications pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction, or other standards recognized by the City or County where the project is located. Per Idaho Code Section 54-1218, a licensed professional engineer must prepare the plans and specifications for public works projects as well as supervise or conduct construction observation. It is the responsibility of any engineer using these guidelines to ensure the standards, specification and drawings are appropriate for the specific use and use appropriately under all circumstances in order to prepare final specifications, drawings or plans for any given project. Further, as provided below, any discharge of water, stormwater or otherwise, shall meet the standards and requirements of the Idaho Division of Environmental Quality (IDEQ) and of any county highway district.

G. PIPING OF DISTRICT DRAINS

Piping of the District's drains shall be allowed pursuant to Idaho Code Section 42-1207 and via an approved License Agreement.

- Open Gasket/Perforated Pipe. Unless otherwise agreed in writing, all pipes installed in the District's drain shall be open gasket if reinforced concrete pipe (RCP) or perforated if plastic pipe to allow the continued flow of drain water into the pipe. Further, the pipe shall be gravel packed and include filter fabric above the pipe to allow for the continued flow of water into the pipe.
- Type and Size of Pipe. The size and type of pipe shall be at the sole discretion of the District. The District typically prefers RCP and typically requires the developer/landowner to match the size of pipe upstream of the proposed piping. Adequate fall and slope must be maintained to promote the natural scouring of the pipe. The use and requirement for headwalls and cement abutments is at the sole discretion of the District.

- Manholes. If the District approves piping of its drain, there shall be a manhole and cover at every corner or change in direction for said pipe. In addition, there shall be a manhole and cover every four-hundred feet (400').
- Relocations. If a drain is proposed to be relocated, then the landowner/developer must provide a new legal description for the relocated portion (including an exhibit showing the new easement location) and must grant to the District a new Easement for the relocation section. The new Easement will be included as part of the District's License Agreement process.
- Weed Racks. Installation of trash or weed racks is strictly prohibited without the written consent of the District.
- Responsibility for Pipes. Unless otherwise agreed in writing, the landowners/developer which installs the pipe shall be responsible for the future maintenance and repair of said pipe, including rehabilitation and replacement. This obligation shall be binding on the future homeowner's association and lot owners of the proposed development.

H. ENCROACHMENTS

- Road Crossings. All road crossings shall include curb cuts on each side to allow necessary vehicles and equipment to continue to access the District's drain and easement. The District will not be responsible for damage to curbs or sidewalks from equipment crossing roads or accessing the District's easement.
- Landscaping/Fences. No landscaping, shrubs, fences or permanent structures will be allowed within the District's easement without approval via a License Agreement. The District does not allow trees within its easement. Any fence crossing the District's easement must have a gate, a minimum of 20 feet in width, to allow for the District's vehicles and equipment to travel through said gate and access the District's easement.
- Pathways. The District has entered into Master Pathway Agreements with various Cities. Any proposed pathway must be approved via a License Agreement with the landowner/developer to allow the construction and must also include a separate agreement with the respective City to provide for the operation and maintenance of said pathway by the City.

I. STORMWATER DISCHARGE

The District will accept stormwater from a proposed development so long as there is sufficient capacity in the District's drain to allow for the stormwater. Any stormwater allowed shall be approved via a License Agreement with the landowner.

- Pre-Development Rates. Stormwater shall be calculated based upon pre-development rates which means that the amount discharged shall not exceed the amount of water which would drain to the District's drains prior to urban development. The rate shall be calculated based upon the 25-year storm event. If necessary, the developer/landowner should design and install a retention basin to meter or limit the discharge to the District's drain at pre-development rates.
- Sand and Grease Traps/Filtration Device. Any stormwater allowed into the District's drain must first pass through a sand and grease trap or similar filtration device approved by the local highway district and/or IDEQ. The sand and grease trap/filtration device shall be located outside of the District's easement and if public roadways are being installed then within the public roadway so that such traps/devices are cleaned and maintained by the local highway district.
- Drain Pipes. All drain pipes to the District's drain shall be constructed so as to prevent erosion or subsidence of soil within the District's drain and may require rip rap or other measures to prevent such erosion. The District shall not be responsible for any damage to the drain pipe constructed within its easement.

J. UTILITY CROSSINGS

The District recognizes that utility or crossings which meet the District's standards and requirements may involve little review by the District and thus the District reserves the right to waive the fees provided in Section C above on a case by case basis. Utility crossings which involve encroachments, multiple crossings or complex circumstances will need to submit fees provided above.

- Underground Crossings. All crossings, unless otherwise agreed in writing, shall be located a minimum of three feet (3') below the bottom of the District's drain and, where feasible, within the public road right-of-way. Depending upon the type of utility crossing the District may require the crossing to be in a conduit or steel casing. This requirement shall be followed unless specific circumstances do not allow for such depth. If the crossing is outside of the public road right-of-way then the District will be required to require the crossing to be a minimum of five feet (5') below the bottom of the District's drain. Crossings shall be installed by directional boring or in a conduit previously installed by the landowner/developer. Open trench crossings shall not be allowed except in exceptional circumstances.
- Overhead Crossings. Overhead crossings shall be a minimum of 18 feet above ground level, span the entire length of the District's easement and shall attach to existing poles when possible. New poles and/or utility appurtenances should be located outside of the District's easement and outside of the District's access roadways.

- Crossing Agreements. Utility companies or their representatives shall submit a location drawing of the proposed crossing and a profile showing the depth of the proposed crossing for each proposed crossing to the District for review and approval. Once approved, the District shall direct that such drawings and profile be submitted to the District's attorney for preparation of a License Agreement as provided in Section K below.

K. LICENSE AGREEMENT/APPROVAL PROCESS

In order to protect the District's interests, to provide written consent as may be required by Idaho Code Sections 42-1102, 42-1209 and/or 42-1207, and to describe the District and landowner/developers rights and responsibilities relative to any proposed encroachment, crossing, modification, discharge or piping a License Agreement shall be prepared by the District's attorney as final approval.

- Approval by the District First. The landowner/developer or utility must first obtain the approval of the proposed project by the District's designated representative and/or Board prior to the drafting and preparation of the License Agreement. Once approved, then the landowner/developer or engineer may contact the District's attorney and request the preparation of said License Agreement.
- License Agreement Requirements and Fees. The District's attorney will notify the landowner/developer or engineer of the requirements to prepare the license agreement, but these will generally include the following:
 - Deed and Legal Description for the Property. The License Agreement is recorded and thus the Deeded owner must sign the License Agreement and the name must match the name on the last deed.
 - Approved Plans. This may be submitted as a pdf and should be limited to the relevant approved plans (this means only the plans which are relevant to the District). The plans should also have the same date or stamp as approved by the District.
 - A Narrative Description of the Project as it relates to the District. This may include the size, type and length of piping, the proposed encroachments within the easement; stormwater discharge and crossings.
 - A new legal description if it involves a relocation of the District's drain.
 - A separate plan for any pathway which will involve a City Pathway Agreement.
 - Fees to prepare the License Agreement and related documents. The general fees for a License Agreement are \$600.00, payable to Sawtooth Law. If the project

involves relocation or a pathway there will be additional fees of \$300.00 for the preparation of a new Easement or the preparation of a Pathway Agreement with the City. Further, the fees are based upon typical projects. Larger and more complex projects and/or additional time spent negotiating or editing such Agreements may exceed these amounts and such additional time will be billed to the landowner/developer.

- Signatures and Recording. Once the License Agreement and related documents are completed they will be e-mailed to the landowner/developer or engineer for signatures by the landowner. This must be notarized and the original must be returned to Sawtooth Law. If the project involves a new Easement or a City Pathway then originals of those documents must also be returned to Sawtooth Law. Sawtooth Law will then submit the document to the District for review and approval. Once approved, Sawtooth Law will record the documents and provide recorded copies for the landowner/developer's records. The recorded License Agreement is the written approval of the District which may be submitted to any City or County demonstrating approval and authorization to commence construction.
- Performance Bond. At the sole discretion of the Board of the District, a performance bond may be required as a condition of approval of any license/crossing agreement. A performance bond would generally be required when the project will significantly modify or alter or drain and/or where the construction may disrupt the flow or function of the drain for a significant amount of time.
- Unauthorized Construction. In the event the District is made aware of any construction or work being performed within the District's easement or affecting the District's drain without the written consent of the District in the form of a signed document and/or License/Crossing Agreement there will be a cease of work document issued until such time as the proper documents are presented and approved by the District.

L. WATER RIGHTS

The District owns water rights for the water captured in the drainage system and returned to the Boise River and such rights provide a credit to the Ditch Companies within the District's boundaries for delivery to the Ditch Companies' shareholders. In addition, various Ditch Companies also own water rights to divert water from the drainage system into the Ditch Company's ditches to deliver irrigation water to the Ditch Company shareholders. Thus, the water in the drains is appropriated and new water rights to divert from the District's drain will likely be protested and denied. Furthermore, while the District owns water rights for the water captured in its drainage system, the District is not a water delivery entity and does not deliver irrigation water to any landowners. Those rights to receive irrigation water, either via the credit from the District's rights or the diversions from the District's drain, must be from the Ditch Company and the landowner must be a shareholder of the Ditch Company. In limited circumstances, and at the sole

discretion of the Board, the District may allow a landowner to utilize the District's drain as a carriage facility to carry the landowner's shares to the proposed pump or diversion. Such an allowance will require a license agreement between the landowner and the District to divert water from the District's drain, approval of the Ditch Company to spill the shares into the District's drain, and measuring devices to ensure that any diversion from the drain is equal or less than the shares spilled into the drain. Such an allowance by the Board to spill shares and divert from the drain is must involve unique and special circumstances and is again only allowed in the sole discretion of the Board.

M. ASSESSMENTS

The District is a quasi-public entity under Chapter 29, Title 42 of the Idaho Code and its rights include the right to assess its landowners for the operation and maintenance of the drainage system. The boundaries of the District, which were created and confirmed over one-hundred years ago, provides that all lands within the boundaries are benefited as either high lands or low lands by the construction, maintenance and repair of the drainage system. It is not necessary for a parcel to have a drainage ditch coursing through the property for the parcel to be benefited because the District's drains capture and collect both surface and subsurface drainage and carry said drainage away from the lands and back to the Boise River. Accordingly, the District assesses all lands within the boundaries of the District regardless of the assessed value and/or whether the property is "exempt" from other County taxes. The District's assessments also include assessments for parcels belonging to the state, county, school district or other public entities. This is because the drainage benefits apportioned to the lands within the District's boundaries applies to all lands regardless of value or whether the land is publicly owned.

The District's assessments include its personnel and equipment to operate and maintain the drainage system as well as its administrative and other expenses, including, but not limited to, insurance, accounting and legal expenses. The assessments of the District are collected by the county in which the lands are located. For instance, Canyon County assesses and collects for lands located in Canyon County and Ada County assesses and collects for lands located in Ada County. Both Counties charge an administrative fee, currently \$2.00 per parcel, for the service and administrative cost of assessing and collecting the assessments. The assessments are then added to the County tax bill for each parcel (**note:** the District's assessments do not appear on the County assessment notices but only show up on the actual assessment bill from the County). If a landowner (or title company) wants to review and confirm the amount of the assessment for a specific parcel the landowner will need to review the property tax bill at the Treasurer's website and not the assessment records at the Assessor's website. If the County taxes are paid in full for the parcel then the District's assessments are also paid in full.