

Rev. 1-2003

**DELAWARE COUNTY SECONDARY ROAD DEPARTMENT
POLICY AND PROCEDURE MEMORANDUM****SUBJECT: Cultivating Row Crops in County Right of Way**

County road ditches perform the important functions of providing roadside drainage and snow storage. Ditches are seeded with durable cover vegetation to prevent erosion without impeding the flow of water draining from the roads and adjacent fields. In some areas, the county has observed that adjacent farming operations are encroaching with row crop cultivation within the right of way. The Code of Iowa also requires counties to give utilities access to dedicated road right of way for their use for providing telephone, electric, gas, and other services to rural areas.

Row crop cultivation within the right of way leads to several problems for the county. First, as tall row crops encroach toward the shoulder of the road, sight distance at intersections and driveways becomes restricted, leading to potential safety problems for drivers entering and travelling on the road in question. Secondly, as backslopes and ditches lose their vegetative cover, erosion often occurs. Road stability can be affected as the cultivation and disturbance of the right of way reaches the toe of the foreslope. Finally, cultivation in the right of way can disturb or damage utility lines or facilities. Damage to some of these utilities, such as fiber optic cable, can subject the party damaging the cable to pay expensive loss of service fees that in some cases exceed \$10,000 per hour.

Right of way is county property and has been either purchased by deed or easement or otherwise dedicated to public use for road purposes. Although in most cases adjacent landowners have underlying title to the land within the road easement, landowners are not taxed on road right of way. The cultivation of row crops within the right of way is not conducive to public use for road purposes.

As provided in Section 319.14 of the Code of Iowa, all work within county rights of way requires a permit from the county engineer's office. Delaware County does not allow the planting of row crops within the right of way. No permits will be issued for this purpose. When incidences of cultivation of the right of way are noticed, the county engineer is directed to send the responsible party a letter notifying them to cease cultivation of the right of way and to repair and reseed the right of way to restore it to its condition prior to cultivation. If crops are already planted and allowing the crops to remain in place until harvest does not create a safety hazard, the county engineer may allow the landowner to delay restoring the ditch until after harvest. If a sight distance hazard is present, the county

engineer may direct county staff to immediately mow the crop planted within the right of way. Failure to repair the right of way will result in the county doing the work and billing the cost to the offending farm operation.

If the cultivation of right of way persists into the following year's growing season after notice to cease is given in the prior year, the county engineer will direct the crop to be mowed immediately. The county will repair the damaged right of way and bill the cost of repair to the landowner.

This policy does not prevent the mowing and haying of county rights of way as provided by state law. Livestock may also be tethered, but not fenced, within county rights of way and allowed to graze. This policy prohibits only the cultivation of land within county rights of way.

APPROVED:

Bill Skinner, Chairman-Delaware County Board of Supervisors

Mark J. Nahra, Delaware County Engineer