

**COUNTY OF RIO ARRIBA  
ORDINANCE NUMBER 1996-09**

**AN AMENDMENT TO AN EXISTING ORDINANCE REGULATING  
PROCEDURES FOR DISTURBING AND REPAIRING COUNTY PROPERTY AND  
RIGHTS OF WAY.**

BE IT ORDAINED by the Governing Board of the County of Rio Arriba, New Mexico that:

**Section 1. Short Title.** This Ordinance shall be referred to as the County Road Cut Ordinance.

**Section 2. Statement of Purpose.** The purpose of this Ordinance is to establish and define responsibilities and standards for the use of public property and rights of way, especially regarding excavations and restorations thereof.

**Section 3. Index.**

Section 1.	Short Title
Section 2.	Statement of Purpose
Section 3.	Index
Section 4.	Definitions
Section 5.	Permit
Section 6.	Excavating and Cuts
Section 7.	Restoration of Road Cuts
Section 8.	Liability Insurance or Self Insurance
Section 9.	Location and Relocation of Facilities
Section 10.	Fees
Section 11.	Road Cut Warranty
Section 12.	Routing of Traffic
Section 13.	Noise, Debris, and Working Hours
Section 14.	Preservation of Survey Monuments
Section 15.	Non-Compliance by Permittee
Section 16.	Penalty
Section 17.	Severability
Section 18.	Effective Date
Section 19.	Variance procedures

**Section 4. Definitions.** For purposes of this Ordinance, the following definitions shall apply.

- A) **APPLICANT** means any person required by this Ordinance to apply for a permit to make a road cut.
- B) **BORE DRILLING** means that the applicant is boring underneath the existing road and will not be affecting either the sub-base on said road Boring and receiving pits should be identified work in the application.
- C) **COUNTY** means the County of Rio Arriba, New Mexico as represented by its Board of County Commissioners.
- D) **COUNTY FACILITIES PROJECT** means any road cut undertaken as a part of a project initiated by the County and includes related action taken by the utility company to further the County facilities project.
- E) **EMERGENCY** means any situation or condition existing in which there is an interruption or disruption of gas, electric, water, or telecommunications service to one or more customers being served by a utility company, or any situation or condition in which there is a danger of serious bodily injury, serious property damage, or prolonged disruption of service.
- F) **EXCAVATION** means the act of making a hole, trench, or ditch which penetrates through or under the surface in a public right of way or other public property, resulting in the removal of dirt, asphalt or other material.
- G) **EASEMENT** means the land owned by the County which parallels the existing roadway, thus allowing limited access for utility implementation by a person/utility company.
- H) **FACILITIES** are and include, but are not limited to, plants, works, systems, improvements and equipment of the utility company such as pipes, electric substances, mains, conduits, transformers, wires, cables, poles, underground links and meters.
- I) **LONGITUDINAL** means a cut that is placed lengthwise in its dimension.
- J) **JOINT TRENCHING** where one or more utility company has joined to install its facilities in a common trench.
- K) **PERMIT** means the written form provided by the County in which a person describes the road cut which will be performed on public property and in which are contained any special conditions required of the person by the County in the execution of the work.
- L) **PERMITTEE** means a person that has received a road cut permit from the County. This person/entity will be held responsible for all work described in the application and permit requirements.
- M) **PERSON** means any individual, estate, trust, receiver, cooperative association, club, corporation, utility company, firm, partnership, joint venture, syndicate or other entity.

- N) PUBLIC FACILITY means any designed, engineered or constructed road structures or engineered drainage facilities owned or maintained by the County located on public rights of way.
- O) PUBLIC RIGHTS OF WAY or PUBLIC PROPERTY means those properties or sites within the County for which the County possesses a real property estate or interest, such as fee simple title, prescriptive easement or dedicated easement, and includes easements, rights of ways, highway or roads, paved or unpaved, curbs, gutters, sidewalks, or other paved, unpaved, unsurfaced or concrete property which the County owns or maintains.
- P) PUBLIC WORKS DIRECTOR means the person employed by the County who is designated by the Board of County Commissioners to hold this position, and/or his designee.
- Q) RECLAMATION means returning disturbed soils and vegetation back to the original state prior to disturbance.
- R) ROAD is considered the asphalted/graveled area and the utilization of County right-of-way.
- S) ROAD USE means any activity in or adjacent to the roadway (including easement) that affects traffic and pedestrian flow.
- T) ROAD CUT means:
  1. The act of cutting a hole, trench, ditch or tunnel in, on, under, or through the surface of a public facility; or
  2. The act of drilling, boring or tunneling under or jacking up the surface of a public right of way.
- U) TRAVERSE means a cut that lies across the road.
- V) UTILITY COMPANY means any person, entity, or corporation which provides water, sewer, electric, gas, telephone, or cable television services to five (5) or more hook ups in the County, executed by the utility company, setting forth the name, business address, and business telephone number of the independent contractor as an authorized agent of the utility company.

**Section 5. Permit.**

A. Permit Application:

1. Every person desiring to make a road cut or utilize County right of way is required to obtain a permit, and must be licensed and bonded, or must be a utility company. The person shall make written application on forms provided and approved by the Public Works Director prior to the performance of any road cut work or activity on public property.
2. No person shall make any road cut on public property until the person or designated agent obtains an appropriate permit from the County, except in an emergency. In the event of an emergency, the person may proceed with such activity immediately. An application must be

filed within two (2) business days. The application must state the description of the emergency and a summary of the repairs. The applicant must comply with any reasonable repair directions set forth by the County. The emergency work must be conducted in a manner that will not adversely affect the road condition or cause undue hardship to the residents of said location of work.

3. Submittal(s) must include a site map of the proposed road cut that indicates exact path of cut.
4. Submittal must include pre work photos. Post work photos must be submitted in order to close out work permit. Permit will be considered "out of compliance" if post photos are not submitted.
5. Evidence must be presented that insurance requirements have been met in accordance with Section 8, except for County agencies.
6. Contractors working for area utility companies must be on authorized list provided by such utility company or evidence must be presented that any "tie in" or extension of utilities is authorized. This includes but not limited to sewer, gas, water or electric. The authorization must be from the applicable utility company, provider or utility association that services will be provided to the extension or "tie in".
7. A utility company may file its application for a road cut permit and all supporting information through the use of a telecopy machine located in the County Public Works Department, in accordance with procedures established by the Public Works Director. An approved permit may be sent to the applicant in accordance with similar procedures. The Public Works Director, in his/her discretion, may allow a person to be billed for fees due and payable under the terms of this Ordinance on a monthly basis, provided the account is not more than sixty (60) days delinquent in payments due under this Ordinance. No further permits will be issued if payments are more than 60 days delinquent.
8. When a utility company applies for a permit that borders or is within tribal lands, the site will have to be reviewed for County jurisdiction on a case by case basis.

#### **Section 6. Excavation and Cuts.**

- A. Depth of Cuts: Installation of utility line(s) shall be a minimum of thirty-six inches (36"). Applicant must submit information on all existing culverts, bridges, drainage areas that may be affected with the road cut.
- B. Clearance of Vital Structures: Work under these provisions must be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, bridges, traffic control devices, and all other vital structures or equipment.
- C. Length of cut, Number of cuts, use of R.O.W.: Upon issuance of the road cut permit, the County authorizes the cutting or excavation of a road or right of way by approved methods as listed in the New Mexico Standard Specifications for Public Works Construction and only for the single cut specified on the permit. When the project involves the excavation of the road or right of way in manner that runs roughly parallel to the roadway, the permit shall authorize up to six hundred (600) lineal feet of excavation on an emergency basis.

- D. Maintenance of Traffic and Pedestrian Flow: The permittee must maintain safe and adequate passage of vehicle and pedestrian traffic on all public property on which the permittee is conducting its activities under its permit. When a public facility has been closed or detoured because of the permittee's work, the Public Works Director must be notified by the permittee prior to removal of barricades and other traffic control devices.
- E. Permittee's Obligation to Protect Property: The permittee must, at his own expense, support and protect all utilities which may be in any way affected by the road cut and other permitted work, and does everything necessary to support, sustain, and protect them under, over, along or across said work. Before commencing a road cut, the permittee shall determine the location of all utilities by notifying the New Mexico One Call System at 1-800-321-2537 in or near the area of the proposed cut. One call only notifies the telephone and gas companies, the applicant will need to notify the electric, the cable company, and the respective entity for water and sewer lines on their own. In the event said utilities are damaged, including damage to pipe coating or other encasement devices, the permittee must immediately notify the utility company of the damage. The permittee shall pay the other utility company for all costs associated with the repair if the permittee was negligent and the facilities were properly marked and located. The permittee must also protect the road cut from surface water flows by appropriate diversions or ponding devices. The permittee must repair asphalt or other road surfaces and other public facilities and public property to reasonable construction and engineering standards to approximate the condition that existed before the work.
- F. Protection of Adjoining Property: The permittee must at all times and at his own expense preserve and protect from injury any property adjoining the property on which the road cut work is being performed by taking suitable measures for that purpose. Where in the protection of such property, it is necessary to enter upon private property for the purposes of taking appropriate protection measures, the permittee must, unless otherwise provided by law, obtain appropriate permission from the owner of such private property to enter thereupon. The permittee must at his own expense shore up and protect all structures, facilities, walls, fences or other property that may be affected or damaged during the progress of the road cut work and be responsible for all damages on other property resulting from his failure to properly protect and carry out such work.
- G. Care of Excavated Material: All materials excavated and piled adjacent to the road cut or in any public place by the permittee must be piled and maintained so as to not endanger the public and those working in the excavation, and so as to cause as little inconvenience as possible to those persons using the public place and adjoining property. All material excavated must be laid completely along the side of the cut and kept trimmed so as to cause as little inconvenience as is reasonably possible to vehicle and pedestrian traffic. In order to expedite flow of traffic and to keep dirt and dust from spreading or flying, the permittee shall use guards or other methods and/or shall water the excavated material. Traffic markings removed as a part of the road cut shall be replaced by the permittee with materials similar to those originally displaced, in a place and in a manner satisfactory to the County.

- H. Cleanup: Each permittee must thoroughly clean up from the public place all rubbish, excess earth, rock and other debris resulting from road cut work. All cleanup operations at the location of such cuts are to be accomplished at the expense of the permittee. During the progress of work or immediately after completion of such work, the permittee shall clean up and remove all refuse, dirt and unused materials of any kind resulting from said work. Upon failure to do so, the County may cause to have such work done, and the permittee shall pay for such at reasonable cost.
- I. Protection of Water Course: The permittee must maintain all gutters, easement crossings and related drainage structures free-flowing and unobstructed for the full depth and width of the water course, or provide adequate substitutes for any such water course that are blocked by the road cut. When crossing a watercourse all utilities must be embedded 48 (forty-eight) inches at a minimum. The County may require the utility to be buried at a greater depth, depending on the type of utility and the condition of the watercourse. All State and Federal permits must be obtained prior to the issuance of the road cut permit and must accompany application at the time of submittal, failure to do so will delay permit processing.
- J. Cultural Resource : The permittee must obtain clearance from the New Mexico State Historic Preservation Office (NMSHPO) for any work believed to be located on/near a historic site. Requirements from NMSHPO are the sole responsibility of the permittee. Clearance of said work at these sites must accompany the application at the time of submittal, failure to do so will delay permit processing.

## **Section 7. Restoration of Road Cuts.**

- A. Compaction: Any person holding a road cut permit shall undertake to restore each road cut, in accordance with the reasonable compaction and restoration standards required by the County. This shall include both the backfilling of the cut and the restoration of the surface. All backfill must be compacted to 95% proctor under the road surface, and 90% proctor outside the road surface. **Certified density test results must be submitted to the Public Works Director within five (5) working days of completion of said work.** For any person who does not submit compaction test results to the County in a form and with results acceptable to the County, such person shall not be issued any further permits under this Ordinance until the person complies with this Ordinance, and the County may take such other actions as it deems necessary to assure compliance with this section. The Public Works Director may waive the compaction tests for plow trenching only, provided the utility company demonstrates a method of operation of compaction acceptable to the Public Works Director.
- B. Resurfacing: The permittee shall restore the surface of the cut in accordance with reasonable compaction and restoration standards. In those instances when a permittee cannot resurface a public place with concrete or asphalt because the air temperature or moisture content is below the minimum standards contained in the compaction and restoration standards, or the weather conditions are such that the permittee is unable to resurface the public place within a reasonable time after the County's acceptance of any density tests, the permittee shall immediately check with the Public Works Director concerning how and when the public facility shall be resurfaced. The County may require that the permittee cold patch the road cut on a temporary basis.

- C. Cost: The cost for restoration of the road surface shall be borne by the permittee.
- D. County Performance: If a permittee makes a road cut that is not resurfaced within a reasonable time, and the County has not granted an extension of time, the County may, upon giving notice to the permittee, resurface the road cut and bill the permittee for the reasonable cost. *Unsatisfactory work will result in additional fees of up to \$300.00 per incidence.*
- E. Safety: It shall be the responsibility of the permittee restoring the public place to keep the road cut or surface opening safe for pedestrian and vehicular traffic until the pavement surface or opening has been restored.
- F. Extension of Time: Approval of this permit is valid for a maximum of 28 days. Any time periods may be extended by the County due to weather conditions or other circumstances beyond the control of the permittee, with written permission of the Public Works Director or his/her designee. Extension is not considered approved until permittee has received a written notice signed by the Public Works Director or his/her designee.
- G. State Standards: The permittee shall comply at all times with the appropriate construction standards set forth in New Mexico State Statutes.
- H. Reclamation: The permittee shall restore as practicably as possible, the affected area to the condition it was immediately prior to excavation or development. If the area is fully vegetated, it must be returned to a fully vegetated state. This includes but is not limited to depth of base course or other materials used on road surfaces County will provide standards for materials. Materials maybe obtained from an approved supplier or vendor. The County may require additional seeding and restoration work at sites where soils are typified as “highly erosive soils” through the Natural Resource Conservation Service soils guidelines. The applicant may be required to submit a restoration plan and time frame of activities involved for the reclamation depending on the scope of the work.

## **Section 8. Liability Insurance or Self Insurance and Bonding.**

- A. Certificate of Insurance: No person other than a utility company shall make a road cut or enter a substructure opening or perform road cut work until filing with the County a certificate of insurance establishing that such person is adequately insured according to NM Tort Claims Act, NMSA 41-4-19 as amended against bodily injury or personal injury to any person, and against liability for damages, other than the work itself, because of injury to or destruction of tangible property, including loss of use resulting there from. Each insurance certificate shall provide that the County be given at least thirty (30) calendar days notice of cancellation in writing by the insurance company.
- B. Form and Type: A utility company shall at all times maintain insurance or may self insure against all risks and perils set forth above for the reasonable limits of liability set by the NMSA 41-4-19 and the County, in a form and type acceptable to the County, which approval will not be unreasonably upheld.
- C. Performance bonding: A performance bond in the amount of \$15,000.00 (fifteen thousand) must be kept on file at the Public Works Department along with the contractor’s license and insurance documents. This section shall not apply to franchised utility companies.

**Section 9. Location and Relocation of Facilities.** The County expressly reserves the right to change the grade, install, relocate, or widen the public right of ways within the County and subject to all regulatory approvals. The utility company shall relocate, at its own expense, its facilities and appurtenances in order to accommodate the paving installation, relocation, widening, or changing of the grade or location of any such public right of way, including if necessary, relocation facilities to a sufficient distance within the right of way to permit a reasonable work area for machinery and individuals engaged in such work, or to protect the health, safety or welfare of the public.

**Section 10. Fees.** Fees shall be established by and adopted through resolution by the Board of County Commission. Please refer to Exhibit A for fees. The County is not required to obtain a permit for any of its projects. An applicant may appeal the fee process to the Board of County Commission. Permits will not be issued until Board of Commission determines ruling.

**Section 11. Road Cut Warranty.** Any person, including a utility company making a road cut is required to correct defective materials and workmanship performed under each road cut permit for a period of one (1) year from the date the work performed under such permit is completed.

**Section 12. Routing of Traffic.**

- A. Traffic Conditions: When road cut work is being performed, the person making the road cut must take appropriate measures to maintain traffic conditions as near normal as practicable at all times so as to cause as little inconvenience as possible to the occupants of the abutting properties and to the public.
- B. Notice: The County may require the permittee to notify various public agencies, emergency services, and the public of proposed work prior to issuance of a permit prior to commencement of the proposed work, depending on the scope of work.
- C. Warning Signs No permits will be issued without the submission of a traffic control plan unless waived by the County. Waiver is not considered valid unless it is signed by the Public Works Director or his/her designee. Warning signs must be placed by the permittee near each road cut or substructure opening being entered so as to give adequate warning to vehicular and pedestrian traffic both night and day, and cones or other approved devices must be placed to channel traffic. The traffic controls, including, but not limited to, the number, type, size and location of the signs shall be done in accordance with the Manual on Uniform Traffic Control Devices part VI and reasonable traffic standards as directed, by the Public Works Director or his/her designee.
- D. Identification Signs: The County may require the permittee to place a visible sign at each end of the construction area which is visible from a distance and sets forth the name of the person making the street cut, or in the case of a utility company, the name of the company together with a business telephone number to handle calls from the motoring public.

**Section 13. Noise, Debris and Working Hours.** Each permittee must conduct and carry out road cut work in such manner as to avoid unnecessary inconvenience and annoyance to the public and occupants of neighborhood property and in compliance with the County noise standards. (Emergency conditions may cause exception to this section.)



**Section 14. Preservation of Survey Monuments.** Any survey monument set for the purpose of locating or preserving the lines of the road, property, subdivision, or a permanent survey, or a

permanent survey bench mark within the County may not be removed or disturbed without first obtaining permission in writing from the County. Permission to remove or disturb such monuments, reference point or bench marks will be granted only upon condition that the person applying for such permission pay all expenses incident to the proper replacement of the monument.

**Section 15. Non-Compliance by Permittee.** In the event a permittee fails to comply with the requirements of this Ordinance, the Public Works Director may issue written notice of non-compliance and stop all work until the permittee is in compliance. Written or verbal notice will be issued and a fee of \$300.00 may be assessed for non-compliance of this Ordinance. The Public Works Director is authorized and empowered to suspend, cancel or withdraw any license or permit issued by the County to the permittee, within ten (10) business days of the Public Works Director's written decision. The permittee may appeal the Director's decision to the Board of County Commissioners by filing written notice with the County Manager. Work is required to cease during the time of appeal and will not be considered in compliance until the Board has made its decision.

**Section 16. Penalty.** Any person violating the provisions of the County Road Cut Ordinance shall, upon conviction, be punished by a fine of up to \$300.00 per day for each day of violation.

**Section 17. Severability.** If any section, subsection, sentence, clause, word or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid by any portion of the ordinance. Upon signature by the Commission, the governing body of the County of Rio Arriba, this Ordinance has been passed and accepted each section, subsection, sentence, clause, word, or phrase and paragraph separately. The County of Rio Arriba reserves the right to issue or revoke any permit upon its own discretion for any reason deemed reasonable by the Public Works Director. The County may also deny issuance of a permit to any applicant if there are delinquent compaction test results from previously performed road cuts exceeding 30 days or greater.

**Section 18. Variance procedures.** Where it is shown that strict compliance with the requirements of this Ordinance would result in extraordinary hardship to the applicant and it can be demonstrated that the applicant is a non-profit organization and is acting in the best interest of the public, an applicant may file a written request for a variance.

- A. A variance in no way absolves the parties from repairing the road to its original state of condition.
- B. Conditions of Variances: In granting variances, the Board of County Commission may impose conditions regarding burial of utility lines, reclamation, re-asphalting, re-surfacing and compaction requirements as will ensure that the use of the property to which the variance applies will be as compatible as practicable with and not adversely affect properties within the work area for the requested variance.
- C. An application for a variance shall be submitted to the Director of Public Works in writing by the applicant indicating the subject of the variance request, or by the applicant's agent, by filing a completed copy of the application, submittals which support the request and a non-refundable filing fee of \$75.00 with the Public Works Department.

- D. Hearing Variance Requests: The County Commissioners shall decide all variance requests within 60 days following the request. Decisions on requests for variances shall be approved by a majority vote of the Commissioners.
- E. Required Findings: Before recommending approval of a variance to the Board of Commissioners, the Director and his/her designee shall make findings of fact with the respect to the following:
  - 1. Granting of the variance shall not constitute a grant of special privilege inconsistent with the limitations on other road cuts in the area of notice.
  - 2. Granting of the variance shall not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice.
  - 3. Granting the variance upholds the spirit and intent of this Road Cut Ordinance.
- F. Before recommending approval of a variance to the Board of County Commissioners, the Director shall make conclusions of law with respect to the following:
  - 1. Strict or literal interpretation and enforcement of the specified performance standard or regulation would result in unnecessary physical hardship inconsistent with the purposes of this Ordinance.
  - 2. Exceptional or extraordinary circumstances or conditions are applicable to the site of the variance that do not apply generally to other road-cuts in the vicinity.
  - 3. Strict or literal interpretation and enforcement of the specified performance standard or regulation would deprive the applicant of privileges enjoyed by the applicant or other citizens in the area of the proposed cut.

**Section 19. Effective Date.** This Ordinance shall become effective on the, 23rd day of December, 2002.

PASSED, APPROVED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF RIO ARriba COUNTY, NEW MEXICO THIS 23rd DAY OF December, 2002. TO BE ENACTED UPON RECORDING AND EFFECTIVE FOR USE JANUARY 23, 2003.

BOARD OF COUNTY COMMISSIONERS  
OF RIO ARRIBA COUNTY

\_\_\_\_\_  
ALFREDO L. MONTOYA, Chairman

\_\_\_\_\_  
RAY TAFOYA, Commissioner, District 1

\_\_\_\_\_  
MOISES MORALES, JR., Commissioner, District 3

ATTEST:

\_\_\_\_\_  
County Clerk

(SEAL)

The above and foregoing Ordinance after being duly published was presented, passed, approved, and adopted at a regular meeting of the Board of County Commissioners of Rio Arriba County, New Mexico, on \_\_\_\_\_, 2002.

\_\_\_\_\_  
ALFREDO L. MONTOYA, Chairman

ATTEST:

\_\_\_\_\_  
County Clerk

(SEAL)