



INFORMATION ON COMMERCIAL DRIVEWAY PERMITS AND COUNTY ROAD AGENCIES

The silviculture industry and commercial driveway permits

Driveway permits are an important responsibility of county road agencies and recent changes in Michigan law have impacted some traditional practices in issuing them.

In April 2017, PA 456 added a new section to the County Road Law (MCL 224.19b) – Section 5 – that exempted many industries from permit requirements. In April 2018, PA 97 further modified the new law (now Sec. 8, see “The Relevant Law,” back side) to clarify that it only exempted the logging industry (silviculture) from road commission driveway requirements.

Commercial driveway permit authority

One of the lingering questions is whether the Driveways, Banners and Parade Act (MCL 247.324) or any other Michigan statute regarding “driveway access or permit authority” supersede Section 8. CRA’s legal counsel has weighed in on this:

“...Enactment of 2018 PA 97 which amended 224.19b eliminated the problematic language of the former Section (5). The new Section (8) narrowly limits the road commissions’ authority to require silvicultural operations that are otherwise permissible under the laws of this state to obtain driveway permits or permits for routine maintenance within the right-of-way. The most recent revision to MCL 224.19b eliminates much of the uncertainty as to the extent of the road commissions’ permit authority.”

- CRA Legal Counsel, May 2018



Legal sidebar

While county road agencies cannot mandate the pulling of driveway permits from loggers, they do have the authority as well as the obligation to recover damages for destruction of public right-of-way.

Annual routine maintenance of existing logging driveways

- Loggers are authorized to maintain driveways, adding gravel and proper materials without obtaining a permit from the road agency. This is no different than a residential property owner working on a driveway. Loggers are required to follow proper signage procedures according to the *Michigan Manual of Traffic Control Devices* when doing such work. The county road commission retains the authority to monitor and require driveway changes because of drainage issues, to keep water flowing properly at the site.
- The county road commission may work out local, time-specific agreements with the logger that allow him/her to make certain, limited repairs to the roadway. These must be discussed ahead of time with the county road agency responsible for that road.

For more information, contact:

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New or improving from recreational to commercial or temporary driveways by loggers

- County road commissions are on firm ground when working with loggers/timber haulers to designate the best locations for driveways, how the driveway should be constructed to ensure proper site drainage and signage placement to warn motorists.
- Road commissions are also on firm ground when requesting that loggers and haulers provide advance notice of a cut, so the road agency may ensure the preferred route is in usable condition.
- The county road commission may request information from a logger on a driveway location, but may not mandate that he pull a permit nor require him to pay for it.
- Road agencies and loggers are encouraged to discuss best practices, best haul routes, etc., for particular times of the year before the cut begins, recognizing that road and bridge conditions may have deteriorated since the last time a route was successfully used.
- Road agencies and loggers should also discuss at what point the road agency must be notified that road conditions have begun to deteriorate; routine maintenance is always less expensive than the alternative. And road agencies are fully within their rights to assess tickets and fines when the public's infrastructure has been significantly damaged.

What about safety?

While PA 97 (Sec. 8) prohibits a county road commission from mandating the logging industry apply for a driveway permit, the road agency should still work with loggers and haulers. It is a mutual benefit of safety and liability to the motoring public and the industry to have the county road commission review the location of its driveway (no permit nor fee required).

The location is one benefit of working together. Other benefits are: Agreeing on proper signage to warn the motoring public of work ahead; and identifying driveway material requirements to avoid water backing up in the ditch and overflowing onto the roadway.

County road commissions have complete control of the public right-of-way, and must manage it for safety and road preservation – unless specifically directed otherwise by Michigan law. The silviculture Section 8 described here is the only exception to the road agency's responsibility to permit commercial driveways.

The relevant law

224.19b (Section 8)

This section does not allow "a county road commission to require a permit for a driveway or routine maintenance in silvicultural operations that are otherwise permissible under the laws of this state. A county road commission shall not be held liable for the failure of a person performing work for which a permit is not required on a county road right-of-way to post a sign that gives advance warning of the work being performed in the right-of-way. As used in this subsection, "silvicultural operations" means silvicultural practices as that term is defined in Section 51101 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.51101."



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