

Mackenzie County

TITLE	Road Allowance Use Policy	Policy No:	PW042
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LEGISLATION REFERENCE	Municipal Government Act – Part , Division 2, Section 18
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PURPOSE

To establish guidelines for the use of all municipal road allowances in Mackenzie County, including criteria to determine the best use of a road allowance for municipal purposes.

POLICY STATEMENT

Road allowances are municipal assets that can be utilized for various purposes. Therefore, it is essential to specify the use priorities, criteria and related processes.

DEFINITIONS

The following definitions are used for the purpose of this policy:

Adjacent Landowner – person(s) with property that shares a border with a County road allowance.

Penalties – fines or other penalties that shall be imposed by Mackenzie County, as established in the Fee Schedule Bylaw, for the construction of roads, accesses or agriculture that use or may impact road allowances which do not have the approval of Mackenzie County.

Road Allowance – any public road right-of-way under the jurisdiction of Mackenzie County but does not include any public road right-of-ways under the jurisdiction of the Province of Alberta.

GENERAL PROVISIONS

Mackenzie County's preference is for undeveloped road allowances to remain untouched and to maintain all treed areas as shelterbelts. However, Mackenzie County understands the desire for adjacent landowners to utilize road allowances. If not being used for municipal purposes, there are options for adjacent landowners who wish to make use of these areas.

ROAD ALLOWANCE PRIORITIES

The following general uses are acceptable to occur within a road allowance, in this priority order:

1. Permanent Road or Temporary Road/Trail

The primary purpose of a road allowance is to allow for the movement of goods and people and provide access to property. If expansion of the county road network is required and serves this municipal purpose, permission will be granted to undertake the required work (subject to additional conditions within this, and other county policies and bylaws).

2. Treed Shelterbelt

If a road allowance is not required to form part of the municipal road network, the intent is for road allowances to remain treed in order to create windbreaks and add and/or maintain biodiversity within farmland areas. If the existing trees on a road allowance are older and likely to create an ongoing safety and maintenance challenge, it is acceptable to clear most of the trees. No stumping or other disturbance of the topsoil is permitted.

3. Animal Grazing

The road allowance may be utilized for grazing purposes if adjacent to existing pasture lands, but the road allowance shall remain primarily treed.

4. Field Crop Farming

Clearing road allowances for field crop farming purposes is discouraged, and is included primarily to grandfather in road allowances that are already in this condition.

5. Sale of Road Allowance

The sale of road allowance will be considered on a case-by-case basis, but is a practice that will generally be discouraged.

OTHER SPECIFICATIONS FOR ROAD ALLOWANCE USE

Road Allowance Use Agreement

If a road allowance is not required by Mackenzie County for road or access purposes and an adjacent landowner would like to utilize the road allowance for any of the acceptable uses listed in the above section, they must enter into a road allowance use agreement with Mackenzie County.

1. Use of an undeveloped road allowance shall be established in the following order.
 - a) First priority shall be given to the landowner of the quarter section or subdivision of which the road allowance has been removed from and ONLY for the portion adjacent to the property as outlined in Schedule "A" attached.
 - b) Second priority shall be given to the landowner of the quarter section or subdivision directly West of the road allowance and ONLY for the portion adjacent to the property, as outlined in Schedule "A" attached.

All applications will be subject to consent of first and subsequent priorities for use of the undeveloped road allowance.

2. Mackenzie County may enter into a License Agreement with a landowner for the use of an undeveloped road allowance adjacent to his property provided:
 - a) The undeveloped road allowance is not closed for public use.
 - b) The undeveloped road allowance is not required for any municipal purposes as determined by Mackenzie County.
 - c) Texas gates or another type of security gate must be installed by the adjacent landowner if the undeveloped road allowance is to be used for raising livestock.
3. If a landowner is installing a texas gate or another type of security gate on an undeveloped road allowance:
 - i. The landowner is responsible for all costs, installation and maintenance of the texas gate or other type of security gate.
 - ii. The minimum dimensions of a texas gate must be twenty-four feet in width and six feet in length.
 - iii. If the landowner installs a security gate, it may be closed but must not be locked to allow public access.
 - iv. The landowner, or any successor to the lands involved, shall remove the

texas gate or security gate either temporarily or permanently, at their expense, if the municipality requests that this be done for road improvement or any other purpose.

4. The County may, at its sole discretion, cancel the License Agreement at any time with minimal notice should the road allowance be required for municipal purposes.

Road Construction on Road Allowance

If a landowner would like to construct a permanent or temporary road within an undeveloped road allowance adjacent to their property, a road construction application must be submitted to the County for approval. Refer to Policy PW039 for details on this application process.

The Municipal Government Act (MGA) gives municipalities the responsibility to direct, control and manage all roads within the municipality. Therefore, Mackenzie County reserves the right to deny a road construction application.

Sale of Road Allowance

An undeveloped road allowance may be closed and sold provided Council has passed a road closure bylaw for the specific road allowance, which is approved by the Minister of Transportation.

1. Sale of an undeveloped road allowance shall be established in the following order.
 - a) First priority shall be given to the adjacent parcel of land/quarter section that had provided alternate land for municipal purposes.
 - I. An original landowner, who has provided alternate land for municipal purposes at no cost, shall receive the closed undeveloped road allowance at no cost.
 - II. If the land has transferred ownership, or if there is no proof that the land was exchanged at no cost, the current landowner shall pay the market value as established by the County.
 - b) Second priority shall be given to the adjacent landowner who has cleared, with appropriate approval, and is using the undeveloped road allowance for agricultural purposes. The sale of this land shall be at market value as established by the County.
 - c) Third priority shall be given to the adjacent landowner who has cleared and developed the road allowance for a minimum of 10

years. The sale of this land shall be at market value as established by the County.

- d) Fourth priority shall be given to the adjacent landowner who put in the highest bid on the sale of the undeveloped road allowance.
- 2. Notwithstanding Section 1, no road closure shall be permitted if it leaves and/or creates a fragmented portion of land that is less than 70 meters (230 feet) in width.
- 3. The property transfer must be finalized within 180 days of the acknowledgment or confirmation of the sale. If not, the County retains the right to sell the undeveloped road allowance to the other adjacent landowner.
- 4. All legal and consolidation costs incurred by the road closure and transfer of the undeveloped road allowance shall be borne by the purchaser.

Tree Removal Specifications

Landowners are encouraged to leave or plant shelterbelts along road allowances. Mackenzie County does not permit tree clearing on road allowances; if tree removal is required, a written request must be submitted to the county for consideration. If granted permission for tree removal, the permittee must repair and restore the area where the trees are removed, leaving no holes or debris. Surface disturbances should be kept at a minimum with appropriate measures taken to control wind and water erosion.

Weed Control

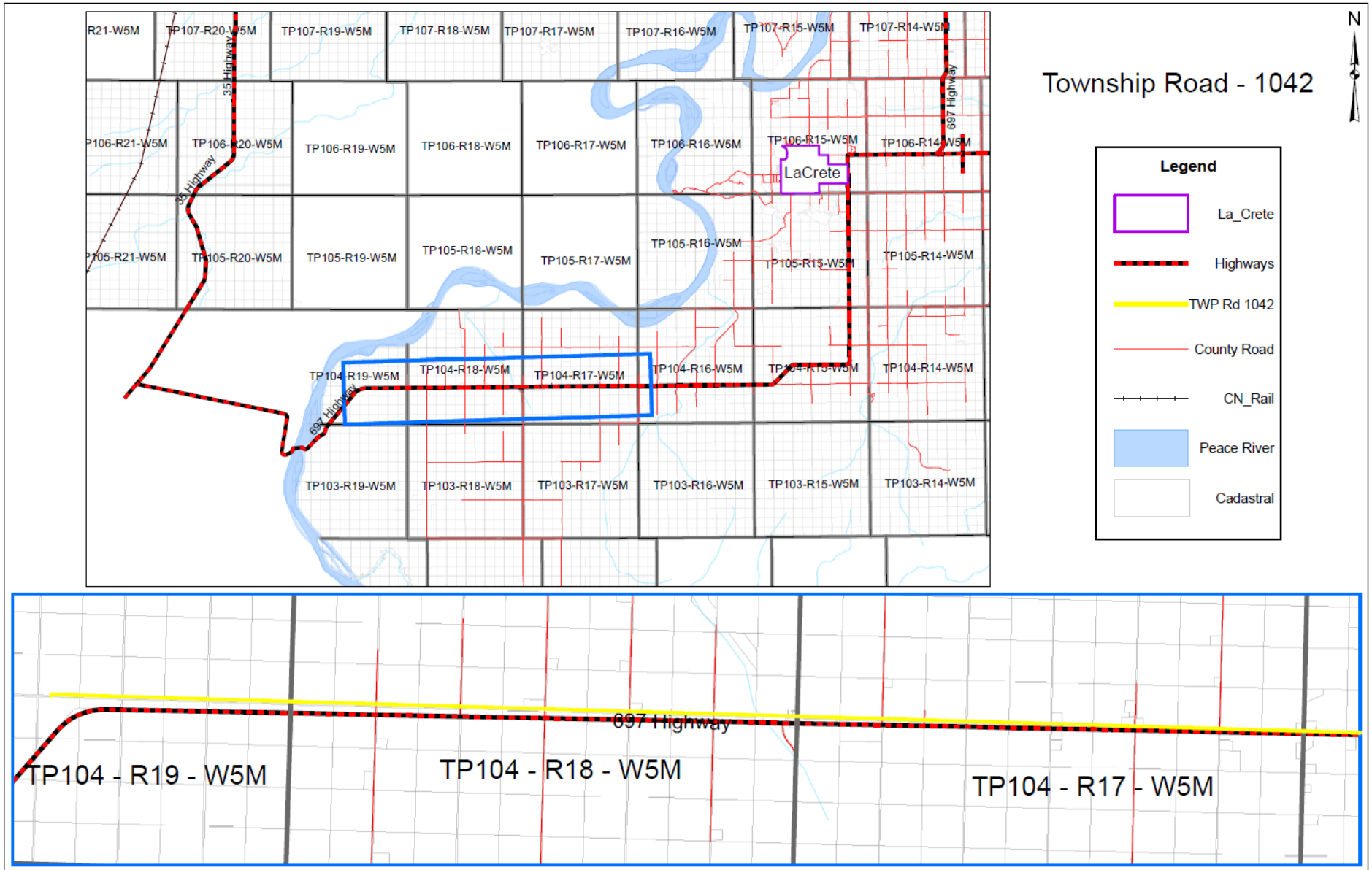
A landowner who has a license agreement with the County shall be responsible for all weed control within that road allowance.

	Date	Resolution Number
Approved	2020-01-29	2020-01-061

SCHEDULE A

Township Road 1042

Mackenzie County will not consider the sale of any portion of Township Road 1042 identified in the following map:



SCHEDULE B

Road Allowance Use Agreement

THIS AGREEMENT made this _____ day of _____, 20_____.

BETWEEN:

MACKENZIE COUNTY

(hereinafter referred to as "the County")

-and-

(hereinafter referred to as "the Applicant")

The County, insofar as it has the right to do so, grants to the Applicant, its, employees, agents, servants, contractors and subcontractors, the nonexclusive right, to use that portion of the County's road allowance as indicated on Schedule "B" (hereinafter referred to as the "Road Allowance") for the purpose described in Schedule "A". From time to time the County and the Applicant may execute additional Schedules and such addendum shall be incorporated into and form part of this Agreement.

Therefore, in consideration of the mutual covenants and conditions contained in this Agreement the parties agree as follows:

1.0 Terms and Conditions

1.1 This Agreement including any attachments comprised of the following Schedules, which are attached hereto and made part hereof, shall be the terms and conditions as agreed to by the County and the Applicant:

Schedule A – Application submitted to the County by the Applicant

Schedule B – Plan of Road Allowance

Schedule C – Contacts and Additional Terms

Schedule D – Approvals Obtained from Other Agencies (i.e. ESRD)

1.2 This agreement expires April 30, _____. A one year extension may be granted upon a written request. The extension request must be submitted at least 30 days prior to the expiration date of the agreement.

2.0 Undertakings

2.1 The Applicant agrees to carry out all construction on road allowances in accordance with the application approved by the County and shall be wholly and solely responsible for all costs relating thereto.

- 2.2** The Applicant agrees to be wholly and solely responsible for the costs relating to the operation and maintenance of any roads and accesses constructed on road allowances until the said roads and accesses have been accepted by the County.
- 2.3** The Applicant agrees to be wholly and solely responsible for the costs relating to the operation and maintenance of any permanent agricultural surface water management channels constructed on road allowances and accepts all liability relating thereto.
- 2.4** The Applicant agrees to be wholly and solely responsible for obtaining any approvals from other levels of government and agrees to provide the County with a copy of the said approvals prior to starting any construction. I.e. Alberta Environment and Sustainable Resource Development.
- 2.5** The County agrees to duly consider all applications received and may issue approvals with or without other conditions.
- 2.6** Due to budgetary and design constraints, the County agrees to consider the provisions of the “Endeavour to Assist” section in the County Policy No. PW039 on a first come, first serve basis.
- 2.7** If the Applicant submitted an application for the use of a road allowance and has not submitted an application to construct a road, by signing this agreement, the County permits the Applicant to clear and brush the road allowance. The Applicant agrees to undertake clearing and brushing to the pin side of the road allowance. Furthermore, the Applicant, at minimum, must windrow the brush to the pin side of the road allowance, and provide a break in the windrow every 200 meters and at every drainage course and/or water course; the Applicant, at minimum, must clear and grub and/or stump a trail that is, at minimum 25 feet wide, which shall allow vehicular access.
- 3.0 Road Restrictions**
- 3.1** The County reserves to itself the exclusive control and operation of all road allowances and the Applicant shall observe restrictions imposed in relation to construction whether imposed by governmental authority or by the County as it reasonably deems necessary to protect the integrity of the road allowance
- 3.2** The County shall endeavor to notify the Applicant when anticipated restrictions are to be imposed.
- 3.3** The County shall not be liable for any loss or damage occurring to the Applicant as a result of the imposition of the said restrictions or of the failure to give reasonable notice thereof to the Applicant.

3.4 The County reserves the right to control the entrances of any accesses connected to the said road allowance and to control the location of signs and culvert installations at such accesses.

4.0 Maintenance

4.1 Notwithstanding anything herein contained the County does not provide any warrant as the suitability of fitness of the road allowance for the Applicant's intended purpose nor does the County give any undertaking to maintain any roads and accesses until they have been accepted by the County.

4.2 The Applicant will remain financially and legally liable for any permanent agricultural surface water management channels constructed within undeveloped road allowances and shall perform all maintenance related thereto.

5.0 Damages

5.1 The Applicant agrees that if damage to the road allowance, as determined by the County acting reasonably, results from the exercise by the Applicant and its servants, agents, employees, contractors and subcontractors of the rights herein granted, the Applicant shall, at the County's request, restore the road allowance to its previous condition. If the Applicant fails to comply with such instruction within a reasonable time, to be determined by the County, the County may restore the road allowance to its previous condition at the expense of the Applicant. In such event, the Applicant shall reimburse the County the County's costs of the restoration within thirty (30) days of receiving the County's invoice. Should the Applicant fail to pay such costs within thirty (30) days, the Applicant shall be subject to interest and collection costs on any outstanding amounts.

6.0 Liability and Indemnity

6.1 The Applicant shall use the road allowance entirely at his/her own risk and shall be liable for any loss, damage or expense suffered by the County as a direct result of the use of the road allowance by the Applicant, his/her employees, agents, servants, contractors or subcontractors, unless such loss, damage or expense is a direct result of the negligence or willful misconduct of the County its employees, agents, servants, contractors or subcontractors.

6.2 The Applicant shall indemnify the County against all actions, proceedings, claims, demands and costs suffered by the County directly resulting from the use of the road allowance by the Applicant, its employees, agents, servants, contractors or subcontractors, unless such action, proceeding, claim, demand or cost is a direct result of the negligence or willful misconduct of the County, its employees, agents, servants, contractors or subcontractors.

7.0 Environmental

- 7.1** The Applicant must notify the County immediately in the event of any environmental, pollution or contamination problems caused by the Applicant's operations on the road allowance or on any adjacent lands as a result of the use of the road allowance (hereinafter referred to as "Environmental Contamination") and the Applicant shall be solely responsible for the cost of all work carried out to correct any/all Environmental Contamination caused by the Applicant.
- 7.2** The Applicant shall comply with the provisions of all applicable federal, provincial and municipal laws' with respect to maintaining a clean environment.
- 7.3** The Applicant shall indemnify and save the County harmless against any and all damages and expenses which may be brought against or suffered by the County and which are incidental to any Environment Contamination, except to the extent that such loss, damage or expense is the result of the County's operations.
- 7.4** Upon termination of this Agreement, the Applicant shall leave the road allowance and any lands adjacent thereto, free of any Environmental Contamination resulting from the Applicant's operation which may adversely affect the land or result in a breach of the duties described in Environment Clause 7.2. The responsibility of the Applicant to the County with respect to the environmental obligations contained herein shall continue to be enforceable by the County notwithstanding the termination of this Agreement.

8.0 Default

- 8.1** If the Applicant is in default of any provisions herein, and such default continues for a period of thirty (30) days after receipt of notice from the County to remedy such default or fails to remedy the default with all due diligence thereafter, the County may without limiting any other remedies it may have, terminate this Agreement and the Applicant shall be deemed to have forfeited any and all right hereunder.

9.0 Insurance

- 9.1** It shall be the responsibility of the Applicant to maintain and keep in force during the term of this Agreement, for the benefit of the Applicant, the following insurance:
- (a) Automobile liability Insurance covering bodily injury (including passenger hazard) and property damage arising from the operation of owned or non-owned vehicles used on the road allowance in the course of operations by the Applicant, with inclusive limits of not less than \$2,000,000 (two million dollars) for any one accident or occurrence.

(b) General Liability Insurance covering the liability of the Applicant for bodily injury and property damage arising from operations of the Applicant in connection with this Agreement. The limits of this insurance shall not be less than \$2,000,000 (two million dollars) for any one accident or occurrence.

9.2 Upon demand by the County, the Applicant shall provide the County a Certificate of Insurance as evidence of the insurance required by the preceding clause. Insurance policies shall include a waiver of subrogation in favor of the County and its agents and employees.

9.3 As an alternative to the insurance policies referred to above, if acceptable to the County, the Applicant may self-insure against the risks normally covered by such policies.

9.4 The Applicant shall use its best efforts to ensure that any of its contractors and agents using the road allowance, that are not covered by the insurance policies set forth above, maintain insurance in accordance with the provisions of this section during those contractors' use of the road allowance.

9.5 The insurance policies shall be endorsed to provide that in the event of any change that could affect the interests of the County, or in the event of their cancellation, the insurers shall notify the County thirty (30) days prior to the effective date of such change or cancellation.

10.0 Notices

10.1 Notices to be given under this Agreement shall be in writing and may be mailed or electronically transmitted, addressed to the parties as follows:

MACKENZIE COUNTY
Attention: Chief Administrative Officer
P.O. Box 640
Fort Vermilion, AB T0H 1N0
Phone (780) 927-3718
Toll-free 1-877-927-0677
Fax (780) 927-4266

THE APPLICANT

10.2 Either party may, from time to time, change its address for service by giving written notice to the other party.

10.3 Any notice, invoice or other communication shall be deemed to be received by the addressee, if delivered personally, or electronically transmitted, on the first business day following delivery or transmission and, if mailed on the fourth business day following the day on which it was mailed.

10.4 In the case of a postal disruption or an anticipated postal disruption, all notices or other communications to be given under this Agreement shall be electronically transmitted or delivered by hand.

11.0 Assignment

11.1 This Agreement is not assignable in whole or in part.

12.0 Termination

12.1 Notwithstanding any provision to the contrary herein contained, this Agreement or any Addendum/Addenda may be terminated upon a minimum of thirty (30) days prior written notice given by either party to the other. Such notice shall state the termination date of the Agreement or Addendum/Addenda. Upon termination of this Agreement or any Addendum/Addenda thereto, all applicable rights and obligations as between the County and the Applicant shall terminate except that the Applicant shall remain liable to the County for all of its obligations and liabilities arising pursuant to this Agreement prior to the date of such termination.

12.2 The County shall inspect the road allowance upon termination of this Agreement and/or any Addendum and shall notify the Applicant of any damage to the road allowance, excluding normal wear and tear.

12.3 Upon termination the Applicant shall, upon the County's request, remove all culverts, installations and fixtures on the road allowance placed for the Applicant's purposes. If they are not removed within thirty (30) days of such a request; the County shall have the right to remove such culverts, installations or fixtures and the County shall invoice the Applicant the actual cost relating thereto.

13.0 Miscellaneous

13.1 This Agreement and the relationship of the parties shall for all purposes be governed by and construed and interpreted according to the laws of the Province of Alberta. Each party irrevocably attorns, for all purposes hereunder, to the jurisdiction of the courts of the Province of Alberta and all courts of appeal there from.

This Agreement, as amended from time to time by agreement in writing of the parties, shall be the entire agreement between the County and the Applicant as to the matters herein and all previous promises, representations or agreements between the parties, whether oral or written, shall be deemed to have been replaced by this Agreement.

The parties have executed this Agreement as of the day and year first above written:

MACKENZIE COUNTY

LANDOWNER

Witness

Witness

Date

Date