

COUNTY OF MARIN
PRIVATE PROPERTY DRAINAGE ASSISTANCE
PILOT PROGRAM PHASE II

Approved by the Marin County BOS on September 28, 2021

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ABSTRACT

"aqua currit et debet currere ut currere soledat"

"water runs and ought to run as it is accustomed to run"

The proper conveyance of drainage waters is one of the major considerations in any development project. Historic drainage patterns must be recognized and maintained by any development such that upstream and downstream property owners are not adversely affected by the development.

Over the years, as development has occurred in unincorporated Marin County, culvert pipes were installed within natural water courses. In most cases, these pipes were installed to simply provide all-weather road access to the development. In other, more rare cases, long stretches of natural water courses were buried in pipes to provide larger areas for building purposes. In either case, these culvert pipe improvements can deteriorate over time and, if not properly repaired, can create significant problems to downstream properties. These culvert pipes are predominately located within private property and are the private property owner's responsibility to maintain. However, costs to properly repair deteriorating culverts may be prohibitive and therefore, simply not done, which can heighten risks of damage to public infrastructure.

In an effort to assist private property owners in the repair of deteriorating culverts, Marin County has developed a Pilot Program for drainage improvement projects on private property, which was approved by the Marin County Board of Supervisors on December 2, 2019. Since inception of the pilot program, a total of nine applications were received. Two of the nine applications were approved and received reimbursement. After reviewing the efficacy of the pilot program through nearly two years, the Department of Public Works recommends modifying the pilot program's conditions of approval to improve our ability to assist as many property owners as possible. Phase II would include the following changes, while keeping all other existing criteria unchanged;

1. Expand the acceptable scope of work to include excavation and replacement of culvert pipes with equal or increased diameter pipe.
2. Clarify that driveway culverts are excluded from the pilot program.
3. Keep reimbursement rate at fifty percent (50%) of the total cost of the improvements; however, lower the maximum reimbursement amount to \$30,000 per parcel, with an exception for condo units, which will have a maximum reimbursement amount of \$50,000 per parcel.

4. To account for emergency situations, include conditions for approval of retroactive applications if work is completed within ninety (90) days of application submittal and with proper documentation.

RESOLUTION

The Marin County Board of Supervisors adopted the following resolution on September 28, 2021

**BOARD OF SUPERVISORS
COUNTY OF MARIN**

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF SUPERVISORS SETTING A PILOT PROGRAM PHASE II
FOR COUNTY ASSISTANCE TOWARDS DRAINAGE IMPROVEMENT PROJECTS
ON PRIVATE PROPERTY**

WHEREAS, there are drainage facilities in the unincorporated area of the County of Marin (County) that fall into disrepair;

WHEREAS, property owners may improve drainage facilities on their private property or join together with neighbors to raise funds and make arrangements to improve drainage facilities in their neighborhood;

WHEREAS, there is a community interest in encouraging the improvement of drainage facilities in neighborhoods;

WHEREAS, Government Code section 26227 authorizes the Board of Supervisors to expend County funds to support programs deemed by the Board of Supervisors to be necessary to meet the social needs of the population of the county, including but not limited to, the areas of health, public safety, and welfare; and

WHEREAS, County has determined the need to keep drainage facilities throughout the unincorporated area in good working condition is necessary for the health, public safety and welfare of the community.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors as follows:

County, through the Department of Public Works, will establish a pilot program phase II and criteria to consider applications by property owners in the unincorporated area of County for financial assistance in making improvements to drainage facilities in their neighborhood or on their private property where the proposed project serves the public interest. To streamline the approval process, the Director of Public Works or his/her designee shall have the authority to approve and allocate funds to these drainage improvement proposals.

BE IT FURTHER RESOLVED that County assistance in the improvements of drainage facilities on non-County maintained roads or private property in the unincorporated area of County does not obligate County to perform maintenance on these improvements or impose liability for any consequences of these improvements.

BE IT FURTHER RESOLVED that County contribution is contingent upon the availability of funds and applicability of, at a minimum, the criteria in this resolution to the proposed drainage improvement project.

BE IT FURTHER RESOLVED that the pilot program phase II shall require that any proposed project at a minimum meet the following criteria to qualify for County financial assistance:

1. Proposed project serves the public interest.
2. Proposed project consists of in-place repairs (i.e. slip lining) or excavation and replacement of culvert pipes with a new equal or increased diameter pipe. All driveway culverts are excluded from this pilot program.
3. Property owner agrees to accept a cash contribution, not to exceed fifty percent (50%) of the total cost of the improvements and shall in no case exceed \$30,000 per parcel, with the understanding that County will not design, contract, administer, or exercise dominion or control of the proposed project. Condo units, which does not include apartment units, will be reimbursed at a rate not to exceed fifty percent (50%) of the total cost of the improvements and shall in no case exceed \$50,000 per parcel.
4. Property owner agrees to obtain all necessary permits and pay all permit fees associated with the proposed project assessed by County or any other agency.
5. Property owner agrees that all ongoing maintenance responsibility remains with the property owners.
6. Property owner agrees to indemnify the County against any claim or litigation related to the proposed project and to hold the County harmless for any actions, or lack thereof, related to the submission of a proposal for County contribution, whether or not the proposal is funded.
7. Retroactive applications will be considered if work was completed within the last 90 days of application submittal.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin this ___ th day of _____ 2021 by the following vote:

AYES: SUPERVISORS

NOES:

ABSENT:

DESCRIPTION

The Marin County Board of Supervisors has authorized the Marin County Public Works Department to initiate the Pilot Program Phase II to assist private property owners in the improvement of private drainage facilities within unincorporated Marin County. This program will provide financial assistance to private property owners for the improvement of existing drainage facilities that are in need of repair. The Board of Supervisors set aside \$400,000 in one-time allocations for this pilot program in December 2019. Any remaining funds since then will roll over to this Pilot Program Phase II. The Program, through an application process, will provide funding (not to exceed 50% of the cost of improvements and shall in no case exceed \$30,000 per parcel, or for condo units shall not exceed \$50,000 per parcel) provided the following criteria are met:

1. The proposed project serves the public interest.
2. The proposed project consists of in-place repairs (i.e. slip lining) or excavation and replacement of culvert pipe with a new equal or increased diameter pipe. All driveway culverts are excluded from this pilot program.
3. The property owner agrees to accept a cash contribution (not to exceed fifty percent (50%) of the total cost of improvements and shall in no case exceed \$30,000 per parcel) with the understanding that the County will not design, contract, administer, or exercise dominion or control of the proposed project. Condo units, which does not include apartment units, will be reimbursed at a rate not to exceed fifty percent (50%) of the total cost of the improvements and shall in no case exceed \$50,000 per parcel.
4. The property owner agrees to obtain all necessary permits and pay all permit fees associated with the proposed project assessed by the County or any other agency.
5. The property owner agrees that all ongoing maintenance responsibility remains with the property owner.
6. The property owner agrees to indemnify the County against any claim or litigation related to the proposed project and to hold the County harmless for any actions, or lack thereof, related to the submission of the proposal for County contribution, whether or not the proposal is funded.
7. Retroactive applications will be considered if work was completed within the last 90 days of application submittal.

In order to be considered for County assistance under this Pilot Program Phase II, the following additional criteria will be evaluated:

1. PUBLIC INTEREST
 - a. How large is the watershed area for the facility that needs improvement?
 - b. How many parcels will benefit from the proposed improvement?
2. PARTICIPATION
 - a. Are other property owners participating financially towards these improvements?
 - b. Are other agencies participating financially towards these improvements?
3. CONDITION OF EXISTING FACILITY
4. COST OF REPAIR
5. IS THE FACILITY LOCATED WITHIN AN UNACCEPTED DRAINAGE EASEMENT?

Factors identified in the above criteria will be used to evaluate which projects will be recommended to be funded. Those projects which are deemed to provide the greatest benefit to County residents and properties and include the greatest participation will be given priority. In addition, the County's desire is to fund the greatest number of projects as practicable. As such, greater emphasis will be given to lower cost projects in order to spread limited funds over a greater geographical area.

Program Implementation

All property owners wishing to utilize this program must first complete an application and submit it to the Marin County Public Works Department for evaluation (Exhibit "A"). The completed application will be evaluated on a number of categories including, but not limited to, condition of the existing culvert facility, size of area contributing storm water to the culvert location, how many different property owners are affected, overall cost of the improvements and the level of financial participation being brought to the project by other sources. Projects with the greatest overall benefit (value versus cost) will be given greater weight in the evaluation process. Funding for this program is limited and therefore not all projects or applications will be funded in any given fiscal year. After the initial application is received and accepted by the County, applicants will be notified of next steps. Please reference the PROCEDURE section of this document for a step-by-step description of the program.

Permits

All Federal, State and Local laws regarding work within natural water courses must be

adhered to. This includes securing any and all necessary permits from the various Resource Agencies that exercise jurisdiction over these matters.

County Obligation

This pilot program is not intended to, nor will it, impose on the County any duty to maintain or repair the private non-County maintained culverts. Further, the County will not be liable for the condition of the private non-County maintained improvements.

PROCEDURE

Step 1 - Application Submittal

Property owner completes and submits an application (Exhibit “A”) to the Marin County Public Works Department (DPW) along with any supporting documentations, i.e. video inspection, photos, contractor’s scope of work/quote, etc.

Step 2 - Completeness Review

DPW will review the application for completeness, ensuring all necessary information is provided.

Step 3 - Completeness Determination

An application will be deemed complete when the property owner submits all the necessary information to evaluate the application. If an application is determined to be incomplete, the property owner will have 30 days following the date DPW provides written notice that the application is incomplete to resubmit the required information; otherwise, the application will expire. The property owner may request an extension prior to the expiration date of an additional 30 days, if granted by DPW.

Step 4 - Notification to Property Owner

DPW will provide written notice to the property owner following review of the application that:

- a. The application is complete and moving forward with a site inspection, if applicable.
- b. The application is incomplete and that additional information, specified in the written notice, shall be provided by the property owner.

Step 5 - Site Inspection, if applicable

DPW will perform a site inspection, if applicable, as part of the evaluation process. Property owner must provide access to DPW to their private property as part of the inspection.

Step 6 - Decision

DPW will issue a decision on whether the application is feasible to fund. If application is feasible to fund, property owner will be provided with the next steps. If application is not feasible to fund, property owner will be provided a reason why. DPW will issue a final approval decision whether to fund the project upon reviewing the cost estimate in Step 8.

Step 7 - Permits

Property owner shall be responsible to obtain all necessary permits from State, Federal, and Local agencies that may have jurisdiction over the water course being improved upon.

Step 8 - Contractor

Property owner to select contractor and provide DPW with documentation of project costs and the amount of funds being requested as part of this program. DPW's director or his/her designee will review the request and issue a final approval decision on whether to fund the project contingent upon the availability of funds and property owner submitting required indemnity agreement in Step 9.

Step 9 - Indemnity Agreement

Property owner shall complete and submit to DPW the Indemnity Agreement (Exhibit "B").

Step 10 – Record Indemnity Agreement

DPW will record the Indemnity Agreement with the Marin County Recorder's Office.

Step 11 - Construction

Property owner to secure contractor and commence construction of the improvements.

Step 12 - Final Verification

For slip-line repairs, property owner shall provide a post-installation video inspection to DPW. For excavation and replacement of culvert pipe, property owners shall provide adequate photo documentation and/or video of new culvert pipe being installed and connected. Property owner shall also provide documentation (i.e. invoices, payment receipts) demonstrating that the agreed Marin County funding ratio was maintained.

Step 13 - Release of Funds

DPW will authorize the release of the approved funds in full to the property owner following final verification.

FREQUENTLY ASKED QUESTIONS (FAQ)

Question: I have a pipe and/or drainage inlet on my property. How did they get there and who owns them?

Answer: Over the years, as development occurred on your property, improvements were likely installed by the previous owners of the property or developer. These improvements are actually owned by the current property owner.

Question: Whose responsibility is it to maintain the drainage system on my property?

Answer: Unless a utility or drainage easement was accepted by the County, it is the individual property owner's responsibility to maintain all improvements within their property boundaries including all drainage facilities.

Question: Can I remove, abandon or fill the pipes?

Answer: It is possible to remove, abandon or fill culvert pipes as long as historical drainage patterns are maintained. In order to remove, abandon or fill these pipes, an analysis must be performed by a licensed Civil Engineer, experienced in hydrologic and hydraulic analysis, who can determine if historic drainage patterns can be maintained after the culvert pipe modification is performed.

Question: The pipes on my property convey water that comes directly from County-maintained roadways. What responsibility does the County have for the pipes on my property?

Answer: Historical drainage patterns must be maintained, even if drainage waters come directly from County maintained roads. County has no responsibility to maintain or repair facilities on private property.