



# Commissioners Handbook

County Commissioners Association of Ohio

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## Chapter 29: Drainage and Ditches

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### 1 General Information

Ohio's drainage laws are very broad in nature and detailed in the procedure necessary to bring a drainage improvement project to completion. Ohio Revised Code Chapter 6131, the single county ditch law, is the law most frequently used in agricultural areas, and is commonly known as the "petition ditch law." Other chapters of the Ohio Revised Code that are important include Chapter 6133, Joint County Drainage Improvements; Chapter 6135, Interstate County Drainage Improvements; and, Chapter 6137, Drainage Improvement Maintenance Fund. Chapter 940 contains a drainage procedure under the Soil and Water Commission which is also widely used. Chapter 6151, watercourses, contains useful provisions for dealing with live streams and removing obstructions.

While this chapter will primarily deal with petition ditches and maintenance of petition ditches, drainage improvements can also be achieved under the "mutual agreement" procedure and through the Natural Resources Conservation Service (NRCS). A simplified "ditch repair procedure" is also possible for small projects.

Mutual agreement ditches are usually the most cost-effective method to make improvements. In these projects, property owners voluntarily join together to pay for the costs of the improvement. The county is marginally involved in the project, but the landowners contract for the construction. It is useful, however, only when property owners are in total agreement on the project and its cost.

NRCS projects also involve less county involvement than petition ditches. Engineering work is done by NRCS, although commissioners do hold hearings on these projects.

Finally, ditch repairs can be made if a ditch is of record, but is not on permanent maintenance. These ditch repairs may only be requested if the cost is less than \$24,000. While a hearing is not required, most counties usually hold hearings to be sure property owners know they will have to pay for the work.

### 2 Types of Improvements

Various types of improvements are possible under Ohio's petition drainage law. The following is a general summary of the possible improvements:

1. The location, construction, reconstruction, reconditioning (cleaning) widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location or terminus of any ditch, drain, watercourse or floodway;
2. The deepening, widening, straightening, or any change in the course, location, or terminus of a river, creek, or run;

3. The construction of a wall, levee, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow of any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water;
4. The removal of obstruction such as silt bars, log jams, debris and draft from any ditch drain, watercourse, floodway, river, creek, or run;
5. The vacating of a ditch or drain.

Some years ago, Chapter 6141 of the Revised Code, dealing with the cleaning of ditches, was repealed, and many of its provisions were incorporated into Chapter 6131 of the Revised Code. The term “reconditioning” contained in 6131.01(C)(1) probably means the same thing as cleaning in Section 6131.04. The significance of terms can be important because a cleaning or recondition project may not constitute a taking of land for which damages may need to be paid. Projects that are true improvements, on the other hand, usually involve a taking of land for which compensation usually must be paid.

### 3 Single County Petition Ditches

The following sections discuss the procedures required to make improvements under Chapter 6131 of the Revised Code. Any owner or public body who will benefit may file a petition with the county commissioners to initiate the legal steps necessary to finance, construct, and maintain an improvement.

#### 3.1 The Petition

Petitions are filed with the commissioners’ clerk with the help of the county engineer. Prior to filing a petition, petitioners are required to consult with the appropriate county engineer to discuss the proposed drainage improvement and to determine the proper forms and procedures for filing the petition. Although the petition needs the signature of only one property owner, it is desirable to involve as many as possible. Cities, villages, townships, and even the county may petition for an improvement. If the county is the petitioner, however, the petition is filed with the court of common pleas which then hears the petition. The petition must include the following information or statements:

1. The nature of the work petitioned for, which may include locating, cleaning, removing obstructions from, constructing, reconstructing, straightening, deepening, widening, altering, boxing, tiling, filling, walling, or arching any ditch, drain, watercourse, floodway, creek, run, or river; changing the course, location, or terminus thereof; or constructing a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for control of water;
2. The course and termini of the proposed improvement and the branches, spurs, or laterals;
3. That the construction of the improvement is necessary and will benefit the petitioner;
4. That all costs of engineering, construction and future maintenance will be assessed to benefiting parcels of land;
5. A list of names and addresses of all owners of land that the petitioner or county engineer claims will be damaged or benefited, as determined by the county engineer.

The petition may be amended within 21 days after the date of the view if any benefiting property owner files a written application with the commissioners’ clerk. The amendment may only be filed to expand the length of the proposed improvement, provided the amendment does not expand the area to be benefited by the proposed improvement. If a benefiting landowner seeks to expand the area to be benefited or the number of parcels to be benefited, the owner must file a new petition.

The amendment application must include all the information required in the original petition including the names and addresses of additional owners that the petitioner or county engineer claims will benefit or be damaged by the improvement.

### 3.2 Filing of Bond

A \$1,500 bond must be filed with the petition, plus \$5 for each parcel of land in excess of 200 listed in the petition as benefiting from the proposed improvement.

The bond is made payable to the general drainage improvement fund or a special fund created for the proposed improvement and is conditioned to pay all costs associated in preparing for the view and first hearing if the petition is not granted or if the petition is for any cause dismissed. The bond is released 30 days after the first hearing or at the termination of any appeal.

### 3.3 Establishment of Date of View and First Hearing

The date, hour, and place where the view will start must be set by the county commissioners. The date must be 30-120 days after the petition is filed. At this same time, the commissioners must set the date, time, and place of the first hearing on the petition. This hearing must take place between 30 and 90 days after the viewing date. The view gives the commissioners and the county engineer an opportunity to gather field information about the proposed improvement. Any owner may also comment on how he will be affected by the proposed improvement.

### 3.4 Establishment of Date of View and First Hearing

Written notice of the view and the first hearing must be sent to owners named in the petition as of the date the petition was filed. The notice must contain the following information:

1. The date, time and location for the view and the first hearing;
2. A description of the proposed improvement and its location as stated in the petition, a map indicating the location of the proposed improvement or information on where to access such map, and an explanation of how to access additional information or ask questions about the proposed improvement;
3. A statement that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land;
4. A statement that an owner may file, not more than twenty-one days after the date of the view, an amendment to the petition that expands the length of the proposed improvement, provided that such amendment does not expand the area to be benefited by the proposed improvement;
5. A statement that an owner receiving the notice may comment on the proposed improvement in writing before or in person at the public hearings on the petition;
6. The address at which to file an amendment to the petition or submit written comments on the proposed amendment or the petition.

The notice must be sent at least 21 days before the date of the view. The written notice must be mailed to all owners who are adjacent to the improvement by certified mail. All other owners must be mailed the written notice by either certified mail or first-class mail. The words "Legal Notice of Proposed Drainage Improvement" must be printed in plain view on the face of the envelope.

When the owner is not a natural person, the written notice should be mailed to the chief officer or managing person at the usual place of business in the county. If there is no place of business in the county it is mailed to the nearest regular place of business.

The written notice must be served upon a railroad company by addressing the notice to the property owner of record as listed by the county auditor on the general tax list.

In addition to the mailed notices the commissioners' clerk must publish a legal notice in one newspaper of general circulation stating the name and number, if any, of the proposed improvement; the location and nature of the work proposed in the petition; and, the date, time, and location of the view and first hearing.

If the mailed notices were sent by certified mail, the notice must be published once and not less than 13 days before the view. If the mailed notices were sent by first class mail, the notice must be published twice. The notice must also include a list of owners whose first class notice was returned undelivered. The first notice must be published not less than 13 days before the view, and the second notice must be published not less than six days before the view.

The commissioners' clerk must obtain an affidavit from the newspaper showing publication was made. The clerk must also prepare a certificate showing that written notices were actually mailed to the owners. Both the affidavit from the newspaper and certificate of mailing must be filed with the commissioners' clerk no later than the first hearing date. Any written notices which are returned undelivered or unclaimed as well as the certified mail receipts showing delivery must all be kept on file as part of the permanent record of the project.

### 3.5 Written Comments from Owners

Landowners who did not sign the petition but who are in favor of the improvement or cleaning may file comments requesting that the petition be granted and stating their reasons. Owners opposed may file their comments stating their reasons. These written statements in favor of or against the project may be filed with the commissioners' clerk at any time before the commissioners make a final order on the petition.

### 3.6 Responsibility of County Engineer

When the county engineer is notified that a drainage improvement petition was filed he or she must prepare a preliminary report on the proposed improvement, which includes the following:

1. A preliminary estimate of the costs of the proposed improvement;
2. Comments on the feasibility of the project;
3. A statement of the engineer's opinion as to whether benefits from the project are likely to exceed the estimated cost;
4. A list of factors apparent to the engineer, both favorable and unfavorable to the proposed improvement.

The commissioners may require the engineer to provide and file any additional reports deemed useful.

The engineer's cost in making the preliminary reports may be paid from the bond of the petitioner if the petition is dismissed at the first hearing. Any amount in excess of the bond is paid from county funds. If the engineer's costs are not paid from the bond, they must be paid from county funds.

### 3.7 The View

On the date established for the view, the county engineer or his or her designated representative shall present an overview of the proposed improvement. The overview shall use methods and means that the board of county commissioners determines will adequately inform those attending the view about the proposed improvement's location and drainage issues to be addressed.

Upon a request by a commissioner or owner in the area to be benefited by the proposed improvement, the board of commissioners shall recess the view and reconvene it at a site along the proposed improvement. The board of commissioners may conduct the view on more than one day and may adjourn from day to day, or a longer period, until the view is completed.

### 3.8 The First Hearing

The date and hour of the first hearing must be given in the notice announcing the view. It must be from 30 to 90 days after the date of the view.

At the first hearing, the commissioners shall hear the engineer's preliminary report and any evidence offered by any owner for or against the improvement.

The first hearing may be recessed from day to day for whatever time is reasonable and needed so that all interested owners have an opportunity to be heard. The board can change the route and termini from that in the petition if they find it is necessary and does not add to the benefited area of the improvement.

At the conclusion of the first hearing, the board of commissioners shall vote to determine if the petition shall proceed or be dismissed, taking into considerations the petition, the preliminary report, and comments on the proposed improvement.

### 3.9 Approval or Denial of Petition

The county commissioners may grant the petition if they find at the conclusion of the first hearing:

1. That an improvement is necessary;
2. That the proposed improvement will be conducive to the public welfare; and
3. That the cost of the proposed improvement, with reasonable certainty, will be less than the benefits.

The petition must be dismissed any one of these factors is not met.

The county commissioners must also consider any adverse impacts on environmentally significant areas and give consideration to alternative plans to provide protection to such areas.

After deciding to proceed with a petition, the board of commissioners shall do all of the following:

1. Determine the route and terminus of the project and the branches, spurs and laterals and the manner of construction. The commissioners may change either the route or the terminus of the proposed improvement if they find the change is needed;
2. Order the county engineer to prepare the necessary reports, plans and schedules;
3. Set a date for the filing of reports, plans, and schedules by the engineer, allowing such time as is necessary for the preparation of the reports, plans, and schedules by the engineer, and such time may be extended from time to time by the board.

After the petition is granted and the 30-day appeal period provided under R.C. 6131.25 has expired and no appeal has been filed, the commissioners may order the transfer of funds not otherwise appropriated to the appropriate drainage improvement fund in an amount up to 25 percent of the engineer's preliminary estimated cost.

Any owner affected by the dismissal may appeal to the common pleas court within 30 days pursuant to Section 6131.25 of the Revised Code. If no appeal is filed, the bond shall cover all the costs of the proceedings. Any remaining funds from the bond shall be returned to the petitioner.

### 3.10 Plans, Engineering, and Cost Estimates

If the petition is granted, the county engineer shall do all of the following:

1. Conduct all necessary surveys;
2. Prepare plans for structures;
3. Create maps showing the location of the land to be assessed;
4. Prepare construction drawings of the improvement;
5. Prepare an estimate of the cost of the improvement;
6. Prepare a schedule of damages.

The plans are then reviewed by the Ohio Department of Natural Resources, the Ohio Department of Transportation (where a state highway is affected), and the board of directors of any conservancy district if any lands or streams in the district are affected.

The plans must provide for spreading and leveling of spoil banks and for erosion and sediment control through the establishment of a sod or seeded strip not less than 10 or more than 15 feet wide. The strip shall be provided on both sides of the ditch, except where suitable vegetative cover exists. The strip or other erosion and sediment control measures shall be considered a part of the permanent improvement. Owners shall be compensated for sod or seeded strips by their removal from the tax duplicate.

### 3.11 Assessed Benefits and Damages

The county engineer shall prepare a schedule of assessments that includes all of the following:

1. The name and address of each private landowner and a description of the land to be benefited by the proposed improvement.
2. The amount of the assessment to be assessed to each tract of land.
3. An explanation of each assessment that is for purposes other than drainage.
4. The benefits accruing to political subdivisions and any department, office, or institution of the state. The basis of the assessment shall be based on the benefit to public health, safety, convenience, environment, wildlife, recreation, and welfare; a means to improving any street, road or highway; and any benefit to publicly-owned land.

In calculating the estimated assessments, the county engineer shall use the information compiled pursuant to divisions (B)(5) and (6) of Section 6131.14 of the Revised Code and consider the following factors:

1. Acreage of a parcel;
2. Volume of water produced by a parcel;
3. Remoteness of the parcel to the improvement;
4. Percentage of the improvement used by the parcel;
5. Work determined to benefit that particular parcel only and not the remainder of the parcels in the watershed;
6. Soils;
7. County auditor's land value or current agricultural use value, if applicable;
8. Existing drainage infrastructure;
9. Any other factors pertinent to that particular petition and watershed;
10. Any benefits as defined in section 6131.01 of the Revised Code.

The county engineer must also prepare a schedule of damages that includes both of the following:

1. An estimate of the value of land or other property necessary to be acquired through purchase or voluntary transfer or appropriated in accordance with section 163.01 to 163.62 of the Revised Code, and a description of that land or other property;
2. An estimate of the total damages to be sustained by owners as a result of the construction and subsequent maintenance of a proposed improvement, along with the name and address of each owner that is alleged to be damaged, the amount of each owner's estimated damages, and an explanation of each owner's injury.

### 3.12 Property Tax Levy

As an alternative to the schedule of assessments, the county commissioners may pass a resolution to levy a tax on all the property listed and assessed for taxation in the county. The resolution must be certified to the board of elections 75 days before the election upon which it will be voted. The levy may be for a period up to five years except when it is for payment of debt charges when the levy shall be for the life of the indebtedness.

At least 60 days prior to the passage of the resolution to levy a tax for construction and maintenance of a drainage improvement, the county commissioners must file with the county auditor and board of elections an accurate map showing the locations and types of any proposed improvements, the areas to be benefited and the existing systems of drainage improvements that is to be maintained. The resolution may designate all or part of the county as a drainage improvement district and the proceeds of the levy shall be used only within the district.

### 3.13 Establishment of Final Hearing

After the county engineer files his reports and schedules, the county commissioners fix a date for a final hearing on the improvement. This hearing must be from 25 to 90 days after the plans and schedules are filed with the commissioners.

### 3.14 Notice of Final Hearing

The clerk shall send notice to all the owners whose names appear in the engineer's schedules of assessments and damages. The clerk must give notice of the hearing at least 21 days prior to the final hearing by:

1. Certified mail to all owners who are adjacent to the proposed improvement; and
2. Certified or first-class mail to all others in the area to be benefited.

The clerk shall ensure that the words "Legal Notice of Proposed Drainage Improvement" are printed in plain view on the face of the envelope.

The mailed notices must include the following:

1. An owner's estimated assessment, estimated damages, if any, and any compensation for land or other property to be taken;
2. The date, time and location of the final hearing by the board;
3. A statement that an owner may file an exception to the assessments or claim for compensation or damages with the commissioner's clerk not less than five days before the date of the hearing;
4. A statement stating that if bonds or notes are to be issued the owner must give written notice to the commissioners' clerk within 21 days after the final hearing if the owner intends to pay in cash. The clerk must include with the legal notice to the owner a form that can be used to notify the commissioners of the owner's intention to pay in cash.

The clerk must also publish a legal notice in one newspaper of general circulation stating the name and number, if any, of the proposed improvement, location and nature of the work proposed in the petition, and the date, time and location of the final hearing. The publication must be made once if the mailed notices were sent by certified mail at least 13 days before the final hearing.

If the mailed notices were sent by first class mail, the newspaper notice must be published twice. This notice must also include a list of names of those who were notified by first class mail whose notices were returned undelivered. This notice must also be published at least 13 days before the final hearing.

Proof of publication must be verified by affidavit of the newspaper, and the clerk must prepare a certificate showing the service of the written notices. Both the newspaper affidavit and the clerk's certificate must be filed with the commissioners on or before the day of the final hearing. Certified mail notices

returned undelivered and certified mail receipts showing delivery must be kept on file as a permanent record of the improvement.

### 3.15 Objections to Assessments

An owner may file an exception to the county engineer's schedules of assessments or file a claim for damages or compensation with the clerk of the board of county commissioners not less than five days before the date of the final hearing.

An owner shall include with an exception or claim for compensation or damage the nature of the exception or claim, the amount claimed, if any, and the identity of the property claimed to be taken or damaged.

### 3.16 The Final Hearing

At the final hearing the commissioners hear all evidence offered and consider the schedules and reports filed by the county engineer. It will either reaffirm its former order granting the petition or it will set aside the former order and dismiss the petition.

In addition, the commissioners must hear evidence offered by the owners on the engineer's estimate of damages and upon any claim filed for compensation or damages. After hearing the evidence and reviewing the engineer's schedule of estimated damages and a view of the premises if needed, the commissioners determine the amount of damages and the value of any property to be taken.

If the board of county commissioners awards additional compensation to any owner, the board shall order the county engineer to prepare new assessments for the proposed improvement and the clerk of the board shall notify all owners of the new assessments. An owner may appeal an order of the board of county commissioners concerning a claim for compensation or damages.

The commissioners must also hear any application filed for a change of the route or course of the project. The commissioners may also hear any application to make any change in the nature, kind, or extent of the work to be performed. If the commissioners find that such changes better accomplish the purpose of the project, they may make such change. If the change increases the cost of the improvement, the final hearing shall be continued until the engineer makes property schedules which include the changes. All owners must then be notified of the proposed change.

### 3.17 Final Action on the Petition

After hearing all the evidence and reviewing all the schedules, plans, and reports of the engineer, the commissioners must reconsider the former order and either confirm it and proceed to confirm the assessments and order the letting of the contract or must set aside its former order and dismiss the petition.

In determining whether or not to grant the petition, the board shall consider the following factors:

1. The cost of location and construction;
2. The compensation for land or other property to be taken;
3. The effect on land along or in the vicinity of the drainage improvement;
4. The effect on land below the lower terminus of the improvement;
5. The sufficiency of the outlet;
6. The benefits to public welfare;
7. The benefits to land, public corporations and the state;
8. Another other proper matter that will assist the board in determining its finding.



If the commissioners find that the costs will equal or exceed the benefits, that the improvement is not necessary, or that the improvement will not be conducive to public welfare the commissioners must set aside its former approval and dismiss the petition. A dismissal may be appealed to the common pleas court.

If the commissioners dismiss the petition, all costs for the proceedings including the costs of the engineer in making surveys, plans, reports, and schedules, may be distributed to the benefiting landowners in the same ratio as determined by the engineer in the final estimated assessments presented at the final hearing.

If the petition is not dismissed, the commissioners shall hear evidence offered for or against the proposed assessments and evidence on the question of benefits. From the evidence and the view of the premises, the commissioners must amend and correct the assessments as needed.

The part of the project assessed to the general public and conducive to public welfare is paid from the general fund. The part of the assessment that benefits state roads or highways is assessed against the state and payable from motor vehicle revenues. That part of the assessment that benefits county roads or highways is assessed against the county and payable from motor vehicle revenues. That part of the assessment that benefits the political subdivision of the state is assessed against the political subdivision and paid out of the general fund or motor vehicle revenues of the political subdivision.

The commissioners then approve and confirm the assessments and order the engineer to receive bids for the construction of the project. They also set the date, time, and place for the receiving of bids which must be at least 30 days after the order. Commissioners also determine when the assessments must be paid and whether bonds or notes will be issued.

The commissioners' clerk must immediately transmit to the auditor the schedules listing all assessments as approved by the commissioners. Any owner opposed to the petition, the project, or who claims his assessment is excessive may appeal to the court of common pleas.

### 3.18 Assessments

Assessments are levied on each parcel of land benefited to pay for construction and maintenance. These assessments are paid in semiannual installments when taxes are paid. If bonds or notes are issued, the installments will include interest at the rate the bonds or notes bear. Any owner may avoid paying interest by paying the estimated assessment on his land in cash within 30 days after the final hearing. Notice of intent to pay in cash must be given within 21 days after the final hearing.

If the estimated cost of the improvement is less than \$500, no more than two semiannual installments will be allowed. If the estimated cost of the improvement exceeds \$500, the commissioners may determine the number of installments. If an assessment is \$25 or less, or whenever the unpaid balance of any such assessment is \$25 or less, the assessment must be paid in full when the next installment is due.

Upon completion of the improvement, the assessments are reduced pro rata by the difference between the estimated cost and the final cost. The assessments include the cost of location, engineering, compensation, damages, contingencies and a maintenance assessment for one year.

The original schedule of assessments must be maintained by the county auditor as the permanent assessment base for maintenance. A maintenance assessment is made when the improvement is substantially completed. Assessments will be placed on the next succeeding tax duplicate, to be collected and paid as special assessments. Maintenance assessments are levied annually as a percentage of the estimated benefits for all costs of the improvement. At no time may the maintenance fund have an unencumbered balance greater than 20 percent of the permanent assessment base of the improvement. The minimum maintenance assessment is \$2.

After six annual maintenance fund assessments have been made, the commissioners must review the permanent assessment base and may increase or decrease the respective benefit apportionments in accordance with changes in benefits which have occurred during the past six years. When changes are proposed, the owners must be notified, and a hearing held.

Notice must be sent to each affected owner in the area benefited by the improvement by first class mail in a five day return envelope. The words "Legal Notice" must be printed in plain view on the face of the envelope. The notice must include the amount of the present permanent assessment base, the new proposed base with respect to each owner so changed, and the date of the hearing on the proposed change. The hearing must take place not less than 20 nor more than 30 days after the adoption of the changes.

At the end of six years from the date of the first review of the permanent base of maintenance assessments, and every six years thereafter, the commissioners may review the permanent assessment base and set a hearing on any proposed changes.

Owners along a drainage improvement may form an advisory committee for the purpose of notifying the county engineer of needed repair and maintenance work. Any recommendations shall be submitted to the engineer by May 1 of the year work is needed.

In lieu of the permanent base, the county commissioners may levy assessments apportioned according to the taxable value of benefited property. Prior to change to this method of assessment for maintenance, the county commissioners must give at least 10 days' notice in a newspaper of general circulation of the time and place where the change will be considered. Any owner so assessed may appeal to the court of common pleas the question of whether any such assessment is levied according to benefits. Any increase or reduction of the assessments levied in this manner must be made at the regular sexennial reappraisal.

### 3.19 Appeals

Any owner opposed to the granting of the petition; any owner opposed to further proceedings in the improvement; or any owner who claims that the assessment levied against him is excessive or is not in proportion to benefits, may appeal to the court of common pleas. This appeal must be filed 30 days after the final approval of the petition. No further action is taken on the petition until the 30-day appeal time has passed. If the order is in favor of granting the improvement, the commissioners proceed with the improvement in compliance with the final court order from the point at which they were terminated by the appeal.

### 3.20 Maintenance

The county commissioners must establish and maintain a fund for the repair, upkeep, and permanent maintenance of each improvement constructed. Whenever the county has reason to believe the improvement is in need of repair or maintenance, it will make an inspection and if it finds a need for repair or maintenance, it will make an estimate of the cost of the necessary work and material. The commissioners will determine the most economic and expeditious method of maintenance and repair. This authority may be delegated to the county engineer.

The county engineer has general charge and supervision for repair and maintenance. The engineer must make an inspection of the drainage improvements, and on or before July 1 each year, must report to the commissioners on the condition of drainage improvements and his estimate of the amount of funds required to repair and maintain them. Persons who perform maintenance may go upon land abutting or adjoining drainage improvements, and within the permanent easement, as necessary. In the case of open ditches, the area used must not be more than 25 feet from the top of the bank except in an emergency where 75 feet may be used. For closed ditches not more than 80 feet from the center of the ditch may be used.

When maintenance requires the damage of existing crops beyond the permanently established sod or seeded strip, the owner of the crops shall submit a written request for payment for damages to the county engineer. The county engineer shall award the crop owner damages equal to market value, to be paid from the permanent maintenance fund established for the improvement.

Any owner may make application for reduction in the owner's maintenance assessment due to work the owner proposes to perform on any portion of a public ditch, watercourse, or other improvement.

An application must be filed with the county engineer on or before May 1 and must state the nature of the work. The county engineer recommends the percent reduction of maintenance assessment to be granted, if any. The commissioners must then either confirm or reject the allowances recommended by the county engineer.

The commissioners may grant a reduction of not more than 50 percent of the owner's annual maintenance assessments to any owner who files a certificate of the board of supervisors of the soil and water conservation district certifying that the owner is following the practices in the cultivation or management of agricultural land that will reduce the runoff of surface water and the erosion of sediment and silt into drainage channels. The certificate is filed with the county engineer who has the right to inspect the premises, and may ask the soil and water conservation district to review any certificate on file.

If the cleaning or repair of an improvement becomes necessary by the negligent acts of any owner, the commissioners, after 30 days' notice and subsequent hearing, may increase the maintenance assessment in an amount sufficient to rectify the damage.

The county engineer and county commissioners share the responsibility for maintenance of all ditches petitioned after August 23, 1957. Section 6137.051 covers ditches petitioned prior to August 23, 1957. It provides for repairs costing up to \$24,000 on these improvements. This section can be a helpful tool for small projects.

## 4 Multi-County Petition Ditches

The primary difference between making improvements in one versus two or more counties is that a joint board of county commissioners conducts the proceedings. The procedures for the petition process operate very similarly to that of a single county petition.

An important factor of joint boards is the "lead county." The lead county is the county in which the majority of the initial length of a joint county drainage improvement would be located, as specified in an original petition filed under R.C. 6133. When a joint board is formed, the joint board of commissioners shall be administered by the lead county's elected officials, including the lead county's engineer, county recorder, county auditor, county prosecutor, common pleas judges, county treasurer, and clerk of the board of county commissioners.

The petition for an improvement that is proposed to be located in, or benefits or damages land in, two or more counties may be filed with the commissioners' clerk of the lead county.

The proceedings are conducted by a joint board of county commissioners consisting of the members of the boards of several counties. One member of the joint board is elected president. The commissioners' clerk of the lead county shall act as the clerk and administrator of the joint board.

A majority of the joint board constitutes a quorum. All decisions of the joint board require a vote of a majority of the county commissioners on the joint board.

The Director of the Ohio Department of Natural Resources is an ex-officio member of the joint board. The Director may attend in person or through a designated representative. He or she may vote only in the case of a tie.

The commissioners' clerk from the lead county calls a meeting of the joint board within 30 days after the petition is filed. The meeting is held in the lead county, unless a majority of the joint board agrees to an alternative location.

A joint board may, when practicable, conduct meetings by video conference or, if video conference is not available, by teleconference. The joint board shall make provisions for public attendance at any location involved in such a meeting. The joint board shall establish the joint board's main office or board room as the primary meeting location for the video conference or teleconference. The conference shall be held at that location in an open meeting at which the public is allowed to attend.

The joint board designates the county engineer of the lead county to do the field work necessary to plan the improvement. The engineer of each affected county shall assist in making the reports and schedules

and must sign and approve them.

All applications, remonstrances, claims for compensation or damage, reports, schedules, certificates, statements, contracts, bonds, and other papers must be filed with the commissioners' clerk from the lead county.

## 5 Interstate Procedures

Improvements may involve land in adjoining states. The county commissioners in Ohio may cooperate with the proper authorities in the adjoining state to carry out interstate improvements if their state has authorized such participation. Additional details on this process can be found in Chapter 6135.

## 6 Mutual Agreement Ditches

Where property owners agree to voluntarily join in the construction of an improvement and are willing to pay the cost of construction, the following steps should be followed:

1. The owners involved must submit to the commissioners' clerk the mutual agreement, surveys, and schedule of construction for the improvement. These are reviewed by the county engineer. The engineer may approve them or require amendment prior to approval.
2. The county engineer makes benefit assessment schedules for maintenance purposes. These assessments may include the cost of preparing the schedules.
3. The commissioners hold a hearing on the maintenance assessment schedules. The hearing must be held between 25 and 90 days after the engineer files the maintenance assessment schedule. Notice must be given to property owners. The commissioners hear evidence and amend, correct, and approve the schedules.
4. The owners contract for the construction and pay the cost as provided in the mutual agreement. This cost includes the estimated cost of maintenance for one year which is certified into the county maintenance fund.
5. The construction is inspected and certified to be in accordance with the plans. This must be done in a manner acceptable to the county engineer.
6. The improvements are maintained by the county commissioners and county engineer with funds obtained by an annual assessment upon the benefited owners.

These projects may also involve "cost-sharing" through the USDA's Farm Service Agency.

### Contact Information

Please contact the following Policy Team staff member with any questions:

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