

The Ohio Drainage Laws Petition Procedures ORC 6131/6133

DELAWARE SOIL & WATER CONSERVATION DISTRICT
DELAWARE COUNTY ENGINEER'S OFFICE
HARLEM TOWNSHIP TRUSTEES

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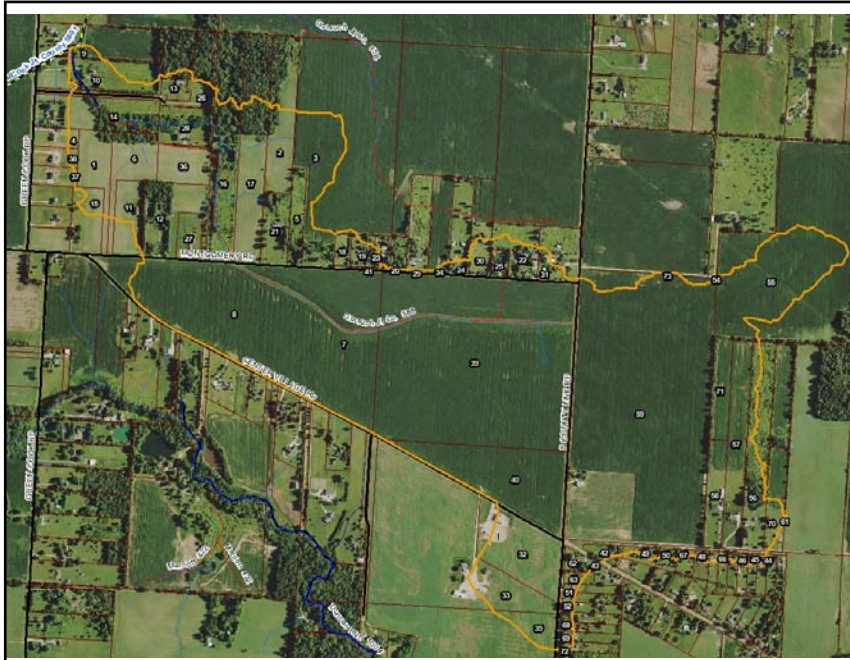
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Gorsuch #588 Joint County Watershed

- Watershed area = Appx. 450 Acres
- Original improvements constructed in 1927 under ORC 6133 process
- No comprehensive maintenance



Gorsuch #588 Joint County Watershed

- Watershed area determined by remote sensing and GIS tools
- Not surveyed or ground-truthed
- Numbers are for ID purposes only

O.R.C. Chapter 6131/6133

- Commonly known as the County Ditch Petition Law
- Intended for multi-property, watershed scale drainage improvements
- Provides a means for all landowners receiving benefits from a drainage improvement project to share in the construction and maintenance costs of the project

ORC 6131/6133: What improvements may be requested?

- Construction, reconstruction, or any change in the course, location, or terminus of any ditch, drain, subsurface drain, watercourse, or floodway
- The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run

ORC 6131/6133: What cannot be requested?

- Breaking watershed
- Punitive actions
- Parcel-specific improvements
- Making a jurisdictional stream straighter-deeper-wider (but we can do logjam removal)

ORC 6133: Joint County Petition Procedures

- Petition filed by landowners or public body
- Joint Board formed by County Commissioners
- View & 1st Hearing
- Preparation of plans and assessment schedule
- 2nd Hearing
- Bidding & Construction
- Levying of Assessments
- Maintenance

ORC 6133: Filing the Petition

- Filed with the Clerk of the Board of County Commissioners in the county that will have the majority of the work
- Requires a \$500 bond (plus \$2 for every parcel over 200 parcels)
- May be amended
- Consultation with County Engineer and SWCD recommended prior to filing any petition
- The petition request is a big factor in setting the scope of a project

ORC 6133: Formation of Joint Board

- Consists of all Commissioners from both Counties
- Decisions require a majority of the Joint Board
- Director of ODNR is a member ex officio; only votes in case of a tie

ORC 6131/6133: View & 1st Hearing

- View allows Commissioners, Engineers, and interested land owners to gather field information on the project
- County Engineers file a preliminary report at 1st Hearing which includes cost estimate, statement of feasibility, and cost/benefit analysis
- Owners may testify
- Joint Board votes to approve or dismiss the petition
- No changes may be made to the petition or the scope of a project after the 1st Hearing

ORC 6133: Preparation of Plans

- County Engineer, or their representative (SWCD), surveys and develops plans and cost estimates for the project
- Joint Board can designate one of the County Engineers to do the field work, and prepare the plans and estimates
- Report and schedules are prepared jointly

ORC 6133: Preparation of Plans

- Engineering done per specifications of the USDA Natural Resources Conservation Service and the Ohio Department of Transportation
- Petition request determines the upstream extent of a project, engineering standards determine the downstream extent

ORC 6131/6133: Schedule of Assessments

- Each parcel in the watershed is assessed a portion of the cost of constructing and maintaining the proposed improvement
- Determined on a parcel-specific basis
- Parcels assessed for the amount of benefit that will be received from the project
- Only assessed for improvement which is downstream
- All parcels assessed including rights-of-way, those owned by local or state government, and utilities

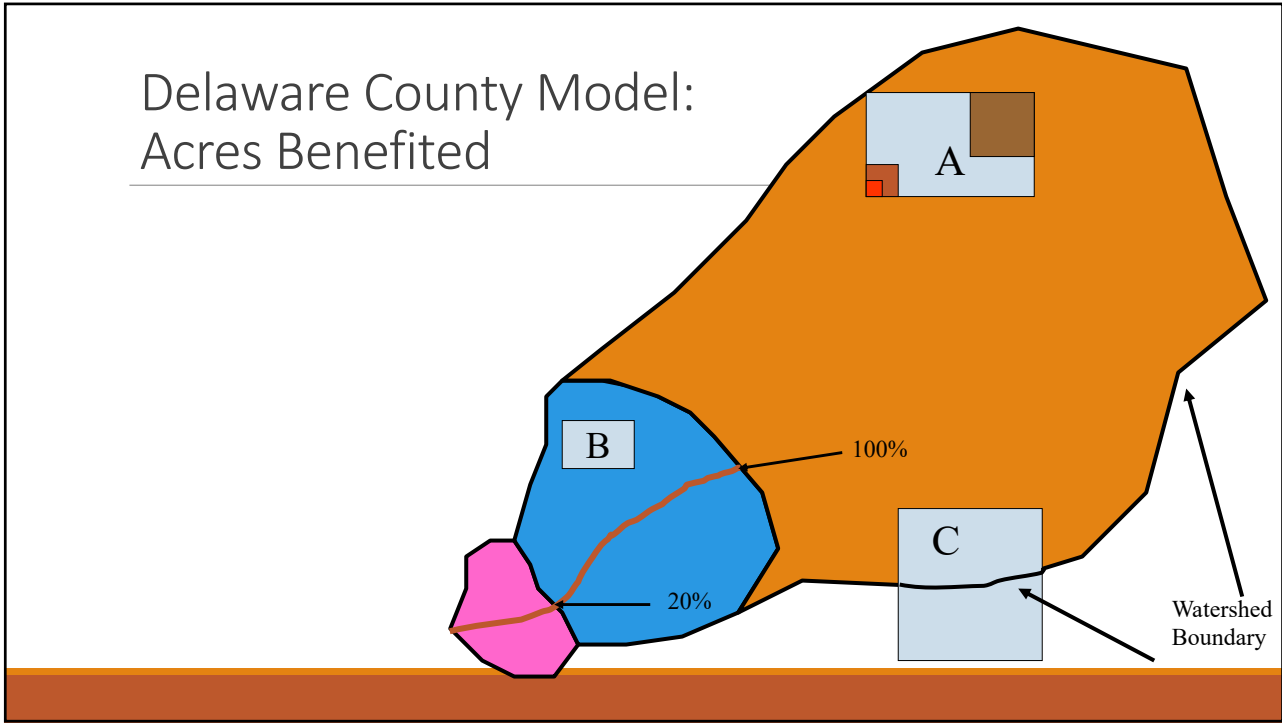
ORC 6131/6133: Benefits

- “advantages to land and owners,...,resulting from drainage, conservation, control and management of water, and environmental, wildlife, and recreational improvements.”
- “Uplands which have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other man-made causes shall be considered as benefited by an improvement required to dispose of the accelerated flow of water from the uplands.”

Delaware County Model: Benefit Factors

- Land Use
- Acres Benefited
- % Use

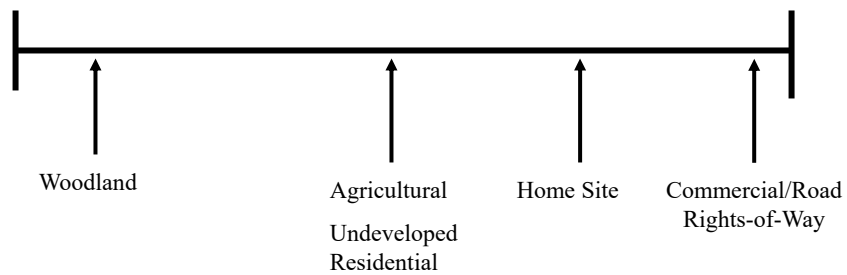
Delaware County Model: Acres Benefited



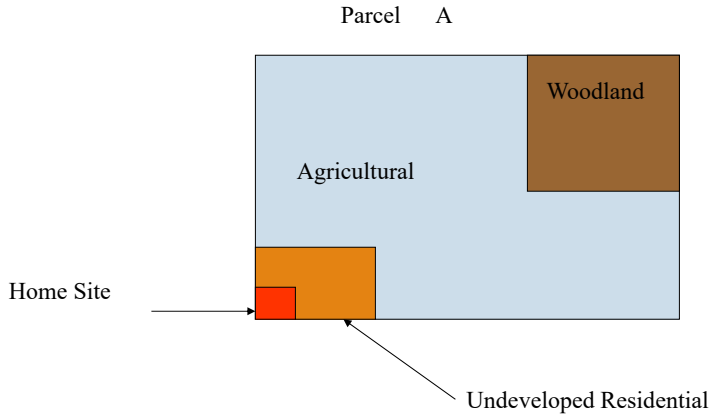
Delaware County Model: Land Use

Least Benefit

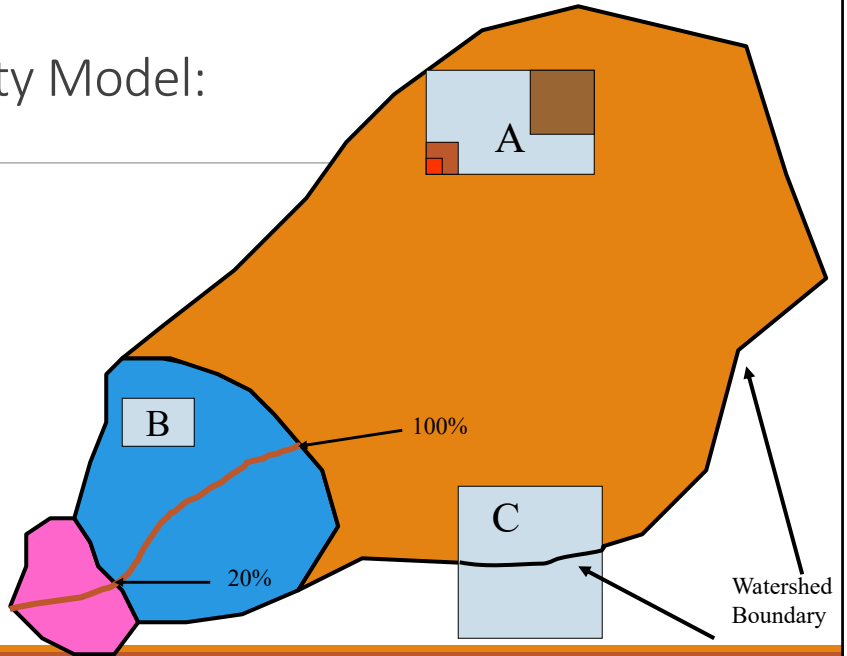
Most Benefit



Delaware County Model: Land Use



Delaware County Model: % Use



ORC 6131/6133: 2nd Hearing

- Joint Board hear all information, plans, and reports submitted by the County Engineers
- Land owners may once again offer testimony
- Joint Board votes to either approve the proposed improvement, including the project plans and schedule of assessments, or to dismiss the petition
- Joint Board is the “judge and jury” – there is no vote taken among the land owners

ORC 6131/6133: Appeals

Any owner opposed to the granting or dismissal of the petition, or any owner who claims that the assessment levied against them is excessive, or is not in proportion to benefits, may make an appeal to the Court of Common Pleas

ORC 6131/6133: Bidding & Construction

- County Engineer who prepared the plans advertises for public bid
- Contract awarded to lowest and best bid
- County Engineer, or their representative (SWCD) supervises the construction of the project to certify that it is being completed according to the approved plans and specifications

ORC 6131/6133: Bidding & Construction

- Bids cannot be accepted in excess of 2nd Hearing estimate
- Projects are not subject to prevailing wage
- Upon completion, the approved schedule of assessments is reduced pro rata by the difference between the estimated and actual cost

ORC 6131/6133: Paying Assessments

- Can be paid in full up-front within 30 days of the 2nd Hearing
- Commissioners can extend payments over 5 or 8 years depending on their chosen payment method
- If they choose to bond, interest is applied to any assessment not paid up-front

ORC 6137: Drainage Maintenance

- All projects completed under ORC 6131/6133 are placed on the County's Drainage Maintenance program following completion
- County Engineer of record for the project has general charge and supervision of the Maintenance program
- Maintenance assessments are levied annually or as-needed and are based on the final schedule of assessments developed for construction of the project

ORC 6137: Drainage Maintenance

- Maintenance funds are project-specific
- All projects on Drainage Maintenance are inspected annually (or more frequently if needed)
- Land owners may make requests for maintenance to the Drainage Maintenance Program
- Delaware SWCD handles design, construction, and maintenance

ORC 6131/6133/6137: Summary

- No petition request has been made at this point
- A cost estimate of a potential project cannot be made yet
- The petition process is entirely landowner-driven and landowner-funded
- Public participation is needed and encouraged throughout the process
- SWCD/County Engineer will not advocate for or against a project

ORC 6131/6133/6137: Summary

- Signing the petition allows for improvements to be designed to a property
- Signing the petition does not obligate you to testify for a petition nor prohibit you from testifying against a petition
- All parcels are assessed regardless of whether they have signed the petition

ORC 6131/6133/6137: Summary

How long does the process take?

- It depends on the complexity of the project, but on average 2-3 years
- Typically 6 months from the time a petition is filed to the 1st Hearing
- Engineering averages 2 years based on workload
- Petitions are addressed on a first-come, first-served basis

ORC 6131/6133: QUESTIONS?

This presentation has outlined the main provisions of the Ohio Drainage Laws Petition Procedure. It is not intended to be a complete transcript of Ohio Revised Code 6131 or 6133. In specific cases, direct reference should be made to ORC 6131, 6133, 6135, and 6137. In many instances, the assistance of a qualified attorney may be necessary.

Sources:

The Ohio Drainage Laws Petition Procedure: Bulletin #428, The Ohio State University Cooperative Extension Service, Nolte, Byron H., Revised April 1985.

Ohio Revised Code, Sections 6131, 6133 and 6137