

The Ohio Drainage Laws Petition Procedures ORC 6131/6137

DELAWARE SOIL & WATER CONSERVATION DISTRICT
DELAWARE COUNTY ENGINEER'S OFFICE

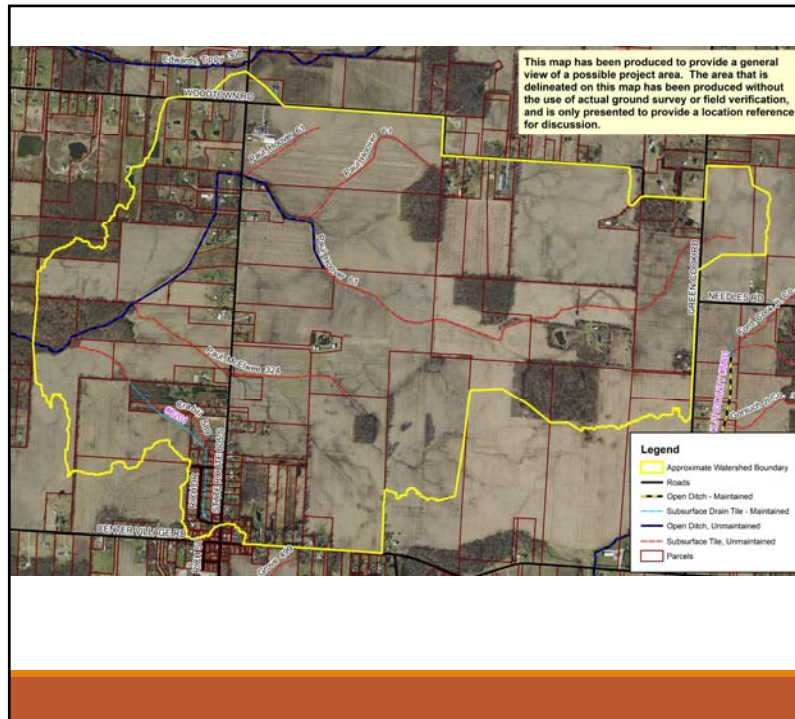
Contact Information

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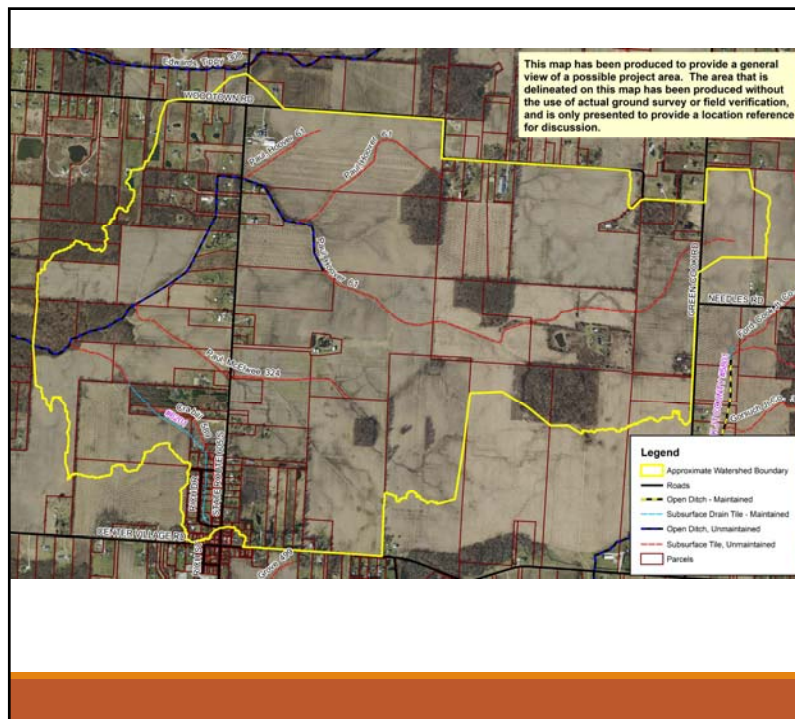
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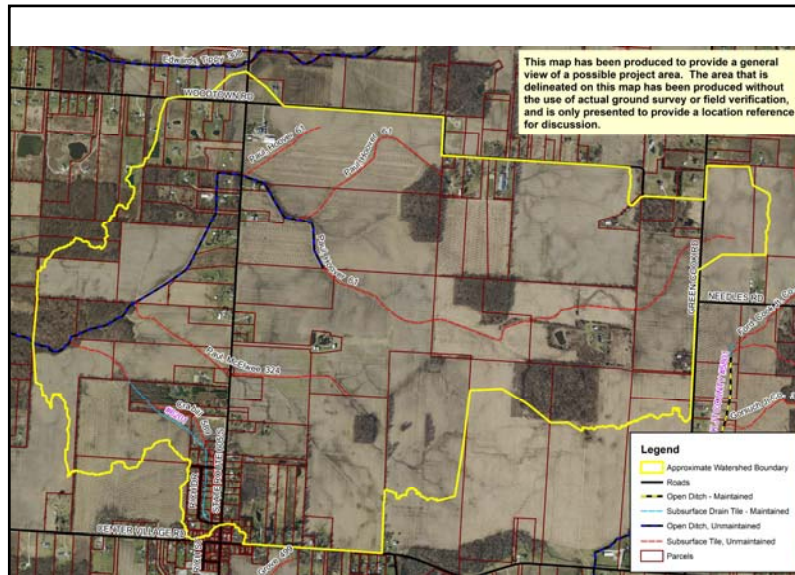
Hoover #61 Watershed

- Watershed area = Appx. 1,429 acres
- Work has been performed on various parts of the system in 1878, 1906, 1911, 1918, 1919, 1927, 1945, and 1962



Hoover #61 Watershed

- Encompasses the McElwee #324 and Crabill #6201 projects as laterals
- Only 1962 work (Crabill project) is on maintenance – No comprehensive maintenance on other parts of the watershed



Hoover #61 Watershed

- Watershed area determined by remote sensing and GIS tools
- Not surveyed or ground-truthed
- Watershed verification is part of the engineering process

O.R.C. Chapter 6131

- 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
- There are separate sections that address multi-county and multi-state projects

ORC 6131: 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: 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 6131: Single County Petition Procedures

1. Petition filed by landowners or public body
2. View & 1st Hearing
3. Preparation of plans and assessment schedule
4. 2nd Hearing
5. Bidding & Construction
6. Levying of Assessments
7. Maintenance

ORC 6131: Filing the Petition

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

<p>Form A Page 1</p> <p style="text-align: center;">Delaware County Ditch Petition ORC 6131.04; 6133.02, 03</p> <p style="text-align: center;">Single County <input type="checkbox"/> Joint County <input type="checkbox"/></p> <p style="text-align: right;">RECEIVED 2018 MAY 15 PM 1:06 DELAWARE COUNTY COMMISSIONERS</p> <p style="text-align: right;">May 8, 2018</p> <p>Petitioner(s) _____ Date _____</p> <p>To the Board of County Commissioners of Delaware County, Ohio:</p> <p>The undersigned hereby petition your honorable body to: (Locate, clean, remove obstructions from, construct, reconstruct, straighten, deepen, widen, alter, box, tile, fill, etc. ORC Section 6131.04) on the course hereinafter set forth.</p> <p>The Construction of the improvement is necessary, will benefit the petitioner(s), and will be conducive to the public welfare.</p> <p>The following is the course and termini of said proposed improvement, to wit:</p> <p>Commencing In Delaware County, Brown & Berlin Twps within English 346 Watershed and generally following, but not limited to the course and termini of the existing improvement.</p> <p>All cost of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land, except as ordered, under Section 6131.31 of the Revised Code.</p>	<p>Form A Page 2</p> <p>The following is the nature of the work petitioned for:</p> <p>To generally improve the drainage, both surface and subsurface, to a good and sufficient outlet, by replacing, repairing or altering the existing improvements as required and/or creating new surface and subsurface drainage mains or laterals as requested, by this petition.</p> <p>A list of the names and addresses, where known, of all the owners of the land which the petitioner or the County Engineer claims will be benefited or damaged by the construction of the proposed improvement is as follows:</p> <p>(See Attached Sheet)</p> <p>Service of notice of the filing of the Petition shall be obtained by (Here insert "mating notices and publication as provided in Sec. 6131.07 R. C.)</p> <p>(See Attached Sheet)</p> <p>Petitioners</p> <table border="1"> <thead> <tr> <th>Name/</th> <th>Address</th> </tr> </thead> <tbody> <tr> <td>[Redacted]</td> <td>Vanoy S. Old St. Rd Delaware, OH 43015</td> </tr> <tr> <td>[Redacted]</td> <td>N. OH State Rd Delaware, OH 43015</td> </tr> <tr> <td>[Redacted]</td> <td>Frontown Pl Delaware, OH 43015</td> </tr> <tr> <td>[Redacted]</td> <td>St. Rt. 37 E Delaware, OH 43015</td> </tr> <tr> <td>[Redacted]</td> <td>St. Rt. 37 E Delaware, OH 43015</td> </tr> <tr> <td>[Redacted]</td> <td>St. Rt. 37 E Delaware, OH 43015</td> </tr> <tr> <td>[Redacted]</td> <td>St. Rt. 37 E Delaware, OH 43015</td> </tr> <tr> <td>[Redacted]</td> <td>St. Rt. 37 E Delaware, OH 43015</td> </tr> <tr> <td>[Redacted]</td> <td>St. Rt. 37 E Delaware, OH 43015</td> </tr> </tbody> </table>	Name/	Address	[Redacted]	Vanoy S. Old St. Rd Delaware, OH 43015	[Redacted]	N. OH State Rd Delaware, OH 43015	[Redacted]	Frontown Pl Delaware, OH 43015	[Redacted]	St. Rt. 37 E Delaware, OH 43015	[Redacted]	St. Rt. 37 E Delaware, OH 43015	[Redacted]	St. Rt. 37 E Delaware, OH 43015	[Redacted]	St. Rt. 37 E Delaware, OH 43015	[Redacted]	St. Rt. 37 E Delaware, OH 43015	[Redacted]	St. Rt. 37 E Delaware, OH 43015
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ORC 6131: View & 1st Hearing

- View allows Commissioners, Engineers, and interested land owners to gather field information on the project
- County Engineer files a preliminary report at 1st Hearing which includes cost estimate, statement of feasibility, and cost/benefit analysis
- Owners may testify at 1st Hearing but not at the View
- Commissioners vote 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 6131: Preparation of Plans

- County Engineer, or their representative (SWCD), surveys and develops plans and cost estimates for the project
- 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
- Goal is to develop the “Best, Least-cost solution” that meets the request of the petition

ORC 6131: 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: 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.”

ORC 6131: Benefits

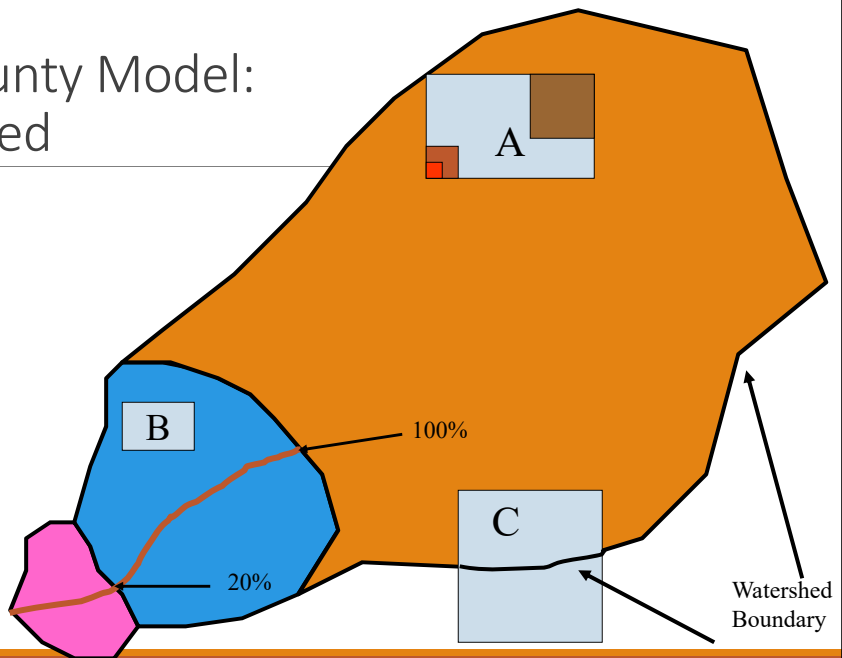
According to the Ohio Revised Code

BENEFIT = USE

Delaware County Model: Benefit Factors

- Land Use
- Acres Benefited
- % Use

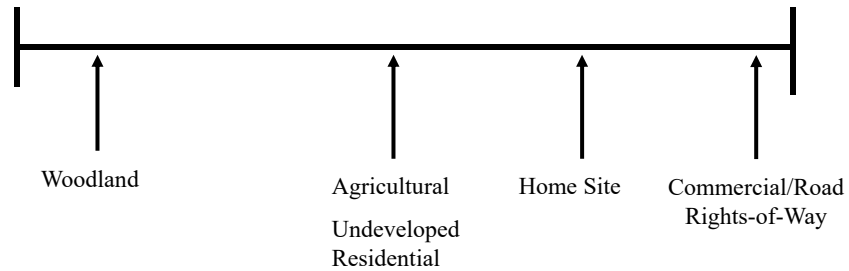
Delaware County Model: Acres Benefited



Delaware County Model: Land Use

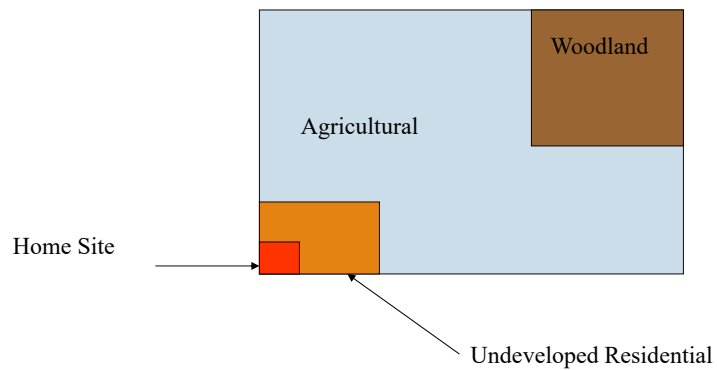
Least Benefit

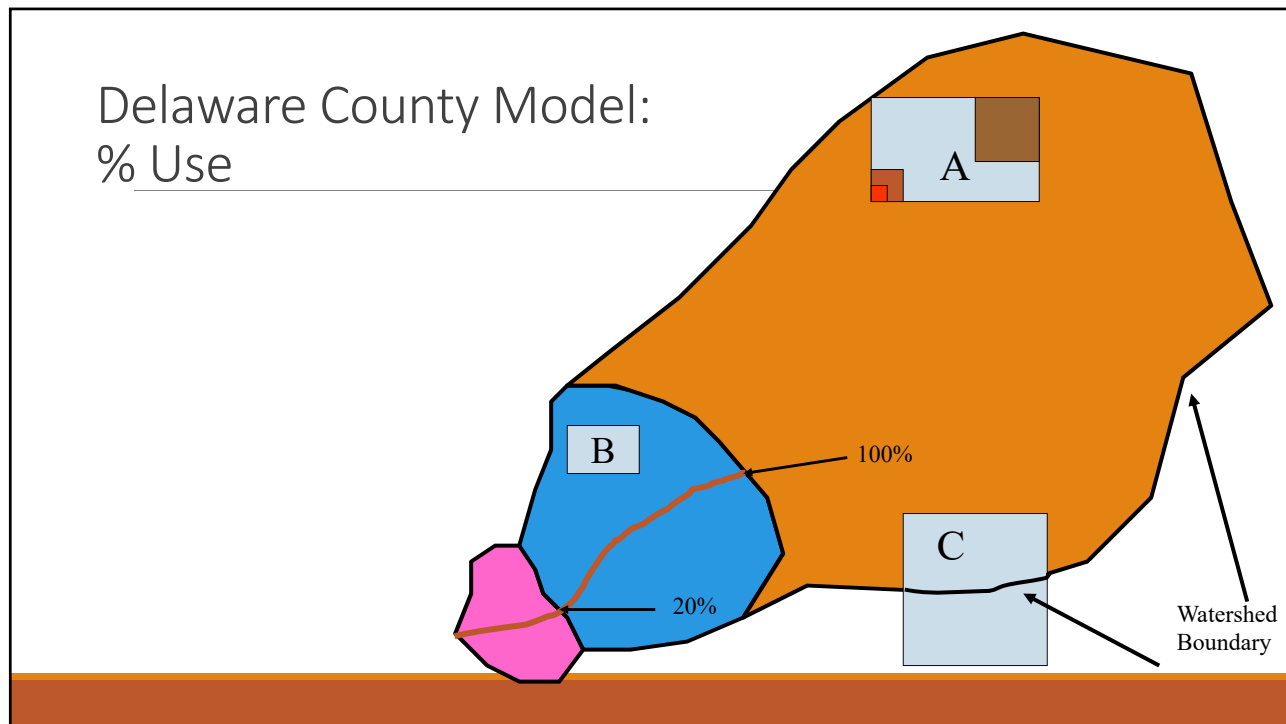
Most Benefit



Delaware County Model: Land Use

Parcel A





Delaware County Model: Assessment Formula

Acres Benefited x Landuse Factor x % Use = Parcel Assessment Factor

Parcel Assessment Factor / Total of Assessment Factors = % Share

Parcel Assessment = % Share x Total Cost

ORC 6131: 2nd (Final) Hearing

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

ORC 6131: 2nd Hearing

Commissioners decision is based on 3 factors specified in the ORC:

- Is the project necessary?
 - (Is it needed, can it be solved without the petition process?)
- Is the project conducive to the public welfare?
 - (Is there a community benefit to be accomplished by improving the drainage)
- Do the benefits of the project outweigh the costs?

ORC 6131: 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: Bidding & Construction

- County Engineer 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: 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
- Projects are not allowed, by law, to exceed the estimate presented at the 2nd Hearing

ORC 6131: 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 6131: Paying Assessments

- Why the 30-day period to pay upfront?
 1. It's what the law tells us to do.
 2. Allows the Commissioners to know the amount of Bond or General Funds needed to build the project.

ORC 6137: Drainage Maintenance

- ORC 6137 enacted in 1957
- All projects completed under ORC 6131 are placed on the County's Drainage Maintenance program following completion
- County Engineer has general charge and supervision of the Maintenance program
- Maintenance assessments are levied annually and are based on the final schedule of assessments for the constructed 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
- SWCD handles design, construction, and maintenance in partnership with the County Commissioners and County Engineer
- Purpose of Drainage Maintenance is to keep the project operating at its original design capacity



Drainage Maintenance: Crabill Project

- Only what is shown in yellow was constructed post-1957
- Project only consisted of subsurface drain replacement
- Project did not extend to an open channel outlet
- Only what was part of the project can be maintained – Drainage Maintenance cannot expand the scope of a project

ORC 6131/6137: 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 6131/6137: 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 6131/6137: 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 generally addressed on a first-come, first-served basis

ORC 6131/6137: 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 6137. 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