

The Ohio Drainage Laws Petition Procedures ORC 6131/6137

Butler Run Watershed

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

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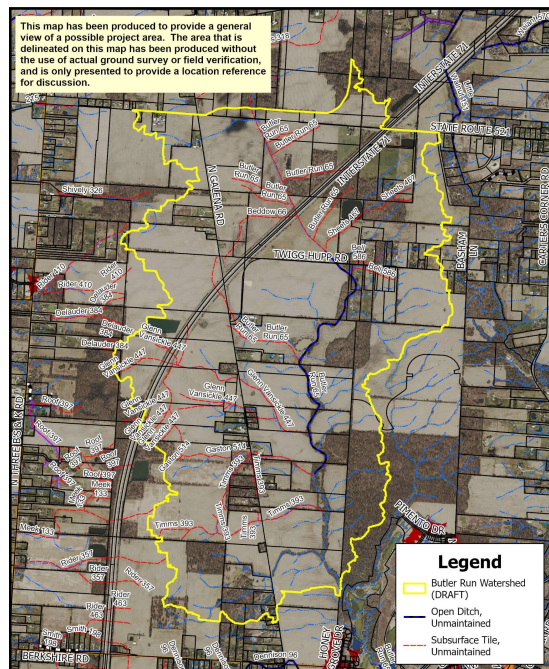
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Why are we here?

- Landowners contacted SWCD seeking assistance with solving drainage problems
- The likely solution to the known drainage problems would require work on more than just a single property
- No project has been requested or proposed, and any potential scope is not known at this time
- This meeting is strictly informational in nature

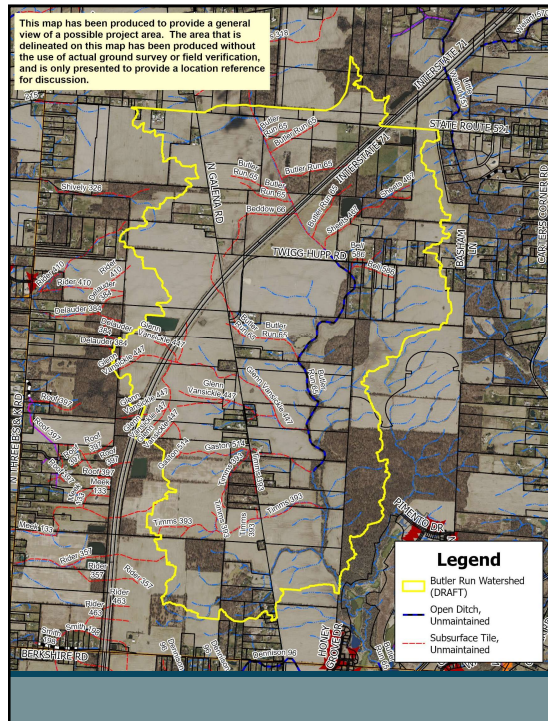
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Watershed

- Appx. Watershed area = 2,300 acres
- Work originally done on the “Main” via the ORC petition process in 1880, 1892, 1904, 1910, 1918 & 1943
- No comprehensive maintenance on the majority of the drainage system

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Watershed

- Watershed determined by remote sensing and GIS tools
- It has not been surveyed or field verified
- Final watershed determination is part of the engineering process

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Drainage vs. Flooding: “What’s the difference?”

- Drainage systems often consist of both surface and subsurface components
- Surface drainage features are meant to capture and convey overland flow
- Subsurface drains (or tile) are meant to drain water from the soil after the surface runoff has finished
- Tile are not designed to have the capacity to handle surface water runoff (storm sewer in an urban/suburban capacity would be the exception to this)

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Drainage vs. Flooding: “What’s the difference?”

- Example: Open Channel, 6' bottom width & 5' deep = 187 cfs
30" Smooth Interior Tile = 17 cfs
- The above open channel example would contain the runoff from a nominal storm in the Butler Run watershed
- A 1-year storm is statistically likely to occur on an annual basis and is a measure of rainfall occurring over a 24-hour period (appx. 500 cfs)
- Flooding occurs when the capacity of the surface drainage system (or storm sewer) is exceeded by the amount of flow
- This can occur because of long extended periods of rain or shorter higher intensity storms, often called microbursts

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Drainage vs. Flooding: “What’s the difference?”

- Flood control projects are often very expensive and are large in scope
- Eliminating flooding is typically not possible and projects mostly focus on reducing the frequency of out of bank flows and/or directing them to more desirable locations

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Drainage vs. Flooding: “What’s the difference?”

- Good drainage consists of both functional surface and subsurface drains with a good and sufficient outlet
- A functional surface drain eliminates pockets of standing, or ponded, water in the watershed and allows surface flows to be unimpeded
- A functional subsurface drain tile system drains the saturated soil condition that exists after the surface runoff has ended

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What are the options for addressing drainage problems?

- The State of Ohio treats drainage on private property as a civil matter between landowners – Precedent case law governs, No “Drainage Police”
- To solve a drainage problem requires:
 1. Access (right of entry)
 2. Funding Source

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What are the options for addressing drainage problems?

1. Landowners work together on a cooperative group basis to enact a solution.
2. File a civil lawsuit.
 - Typically done to recover monetary damages from willful acts of negligence
 - Doesn't necessarily provide a fix for a problem
3. Utilize the ORC 6131 petition procedure

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What are the options for addressing drainage problems?

- ORC 6131 and its companion statutes are the only sections within the Revised Code that speak to drainage on private property
- It is the only section of Ohio law that gives any unit of state, county, or local government the authority to undertake drainage projects to benefit private properties
- It provides the County the necessary Access and permits the Funding

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ORC 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

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ORC Chapter 6131

- There are separate sections that address multi-county (6133) and multi-state (6135) projects
- Only deals with construction, not maintenance, of an improvement
(More to come on that later)

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ORC Chapter 6131

- Is an entirely landowner driven, landowner funded process
- County is reactive to a petition request
- County Commissioners, County Engineer, and SWCD all have roles in the process as outlined in the statute

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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

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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)

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ORC 6131: Single County Petition Procedures

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

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ORC 6131: Filing the Petition

- Consultation with SWCD and County Engineer required prior to filing any petition
- 1 valid signature is necessary to initiate the process
- The petition request is a big factor in setting the scope of a project

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ORC 6131: Petition Scope

- Landowners set the upstream extent of a petition project, engineering sets the downstream extent
- Only by signing the petition can a landowner specifically request for the improvement to be brought to their property
- Signing the petition does not obligate you to testify in favor of the petition if you change your mind

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ORC 6131: Petition Filed

- View is scheduled not less than 30 nor more than 120 days after the date the petition is filed
- 1st Hearing is scheduled not less than 30 nor more than 90 days following the View
- Notices are sent via certified mail and official legal notice placed in the Delaware Gazette
- Notices are sent to address on record with County Auditor

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ORC 6131: View

- View allows Commissioners, Engineer, and interested landowners to gather field information on the project
- Typically, is done by drone video but can occur on-site as well
- No testimony is taken
- Landowners are permitted to point out specific points of interest or concern

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ORC 6131: 1st Hearing

- County Engineer/SWCD files a report which includes a description of existing conditions, cost estimate, statement of feasibility, and general cost/benefit analysis
- Testimony is taken from those both for and against the petition
- Owners may also submit written comments
- You **must be a deeded owner** of a property to testify (per ORC)
- Commissioners vote to proceed with project survey and design or to dismiss the petition

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ORC 6131: 1st Hearing

- Bond is returned if the project is approved at the 1st Hearing
- The scope of a project is set at the 1st Hearing based on the original petition, any filed amendments, and the decision of the Commissioners

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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
- Goal is to develop the “Best, Least-cost solution” that meets the request of the petition

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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
- Only assessed for improvement which is downstream
- All parcels assessed including road rights-of-way, those owned by local or state government, utilities, schools, churches, etc.
- ORC directs us to assess parcels for the amount of benefit that will be received from the project

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ORC 6131: Benefits

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

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ORC 6131: Benefits

According to the Ohio Revised Code

BENEFIT = USE

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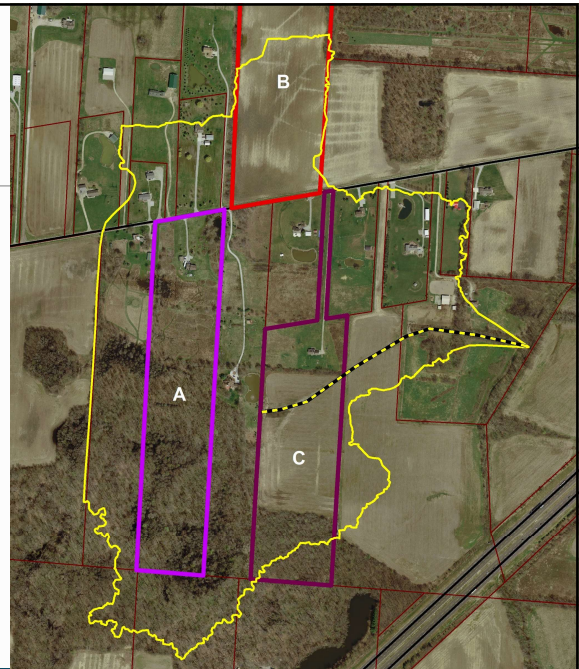
Delaware County Model for Assessments

- ORC does not specify the methodology for calculating assessments, only that the assessments be reflective of the benefits
- Delaware County uses a 4-factor method widely used throughout the state
- Acres Benefited, Land Use, Percent Use, Remoteness
- Factors applied on a parcel-specific basis

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Delaware County Model: Acres Benefited

- Parcel A: 24 Ac, all in the watershed
- Parcel B: 25 Ac, but only 12 in the watershed
- Parcel C: 22 Ac, 20 of which are in the watershed

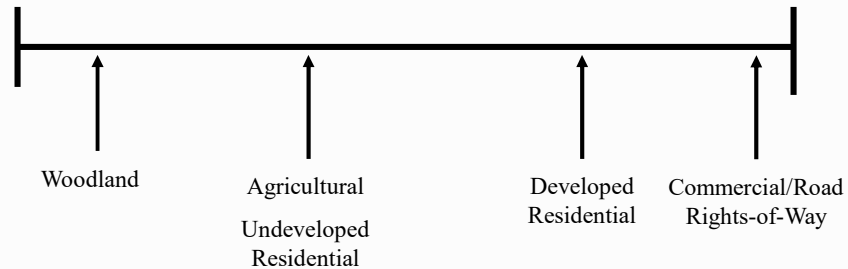


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Delaware County Model: Land Use

Least Benefit
& Contribution

Most Benefit &
Contribution



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Delaware County Model: Land Use

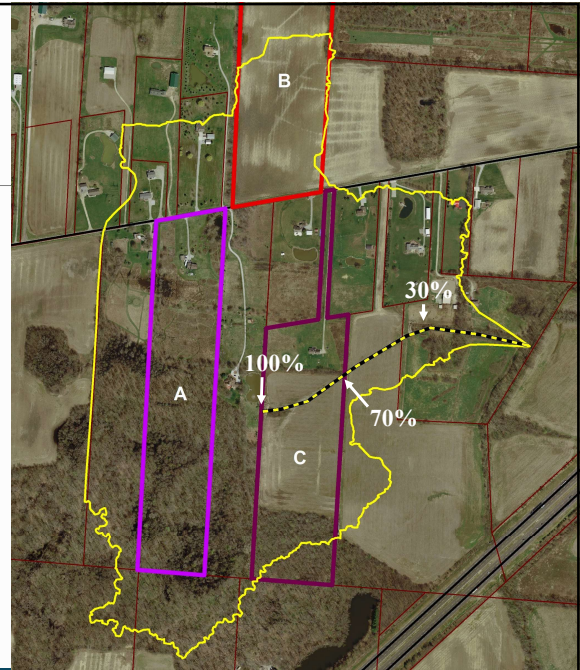
- Parcel C: 20 Ac benefited
- 5 Acres Homesite
 - 1 Ac Developed Residential
 - 4 Ac Undeveloped Residential
- 11 Acres Agricultural
- 4 Acres Woods



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Delaware County Model: % Use

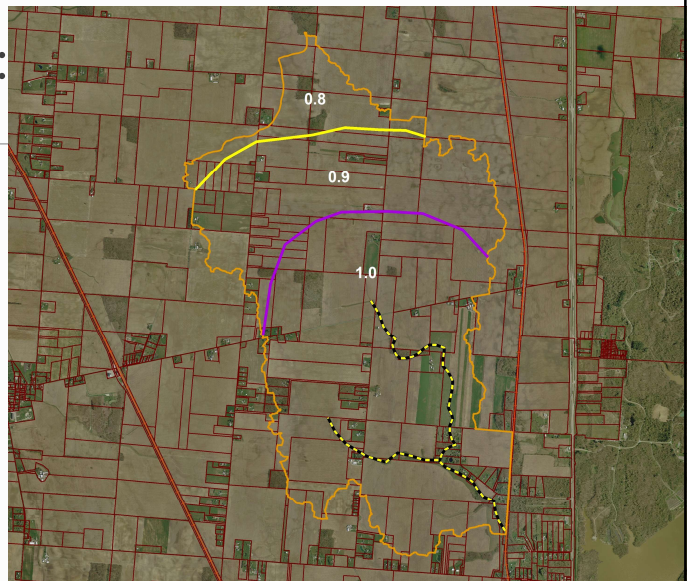
- Parcel A uses 100% of the improvement
- Parcel C uses 70% based on their downstream property line
- Parcel B's drainage enters further downstream thus it only uses 30% of the total improvement



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Delaware County Model: Remoteness Factor

- Gives a reduction in assessments for parcels located further away from the constructed improvement
 - Assigned in ½ mile increments
- 0 – 0.5 miles: Remote = 1.0
 0.5 – 1.0 miles: Remote = 0.9
 1.0 – 1.5 miles: Remote = 0.8



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Delaware County Model: Assessment Formula

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

Parcel Assessment Factor / Total of Assessment Factors = % Share

Parcel Assessment = % Share x Total Cost

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ORC 6131: 2nd (Final) Hearing

- Commissioners hear all information, plans, and reports submitted by the County Engineer & SWCD
- Testimony is again taken from owners both for and against the project
- Commissioners vote to either approve the proposed improvement, including the project plans and schedule of assessments, or to set aside their original order and dismiss the petition
- Commissioners are a quasi-judicial body – there is no vote taken among the landowners

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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?

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ORC 6131: Appeals

- Any owner opposed to the decision of the Commissioners may appeal that decision to the Court of Common Pleas
- An attorney is often employed for an appeal

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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

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ORC 6131: Bidding & Construction

- Projects are not allowed, by law, to exceed the estimate presented at the 2nd Hearing
- Projects are not typically subject to prevailing wage
- Upon completion, the approved schedule of assessments is reduced pro rata by the difference between the estimated and actual cost

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ORC 6131: Paying Assessments

- Can be paid in full up-front within 30 days of the 2nd Hearing
- Commissioners can extend payments up to 15 years – typically the repayment period in Delaware County is 8 years
- If they choose to use bonds to pay for the project, interest, financing fees, and Auditor/Treasurer collection fees are applied to any assessment not paid up-front

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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.

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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 and easements for maintenance are created by Commissioners' resolution and recorded
- 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 – generally 3-5% of construction assessment

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ORC 6137: Drainage Maintenance

- Maintenance funds are project-specific
- All projects on Drainage Maintenance are inspected annually (or more frequently if needed)
- Landowners may make requests 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

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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
- One signature and the bond is required to initiate the petition process
- Public participation is needed and encouraged throughout the process

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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 nor prohibit you from testifying against a project
- All parcels are assessed regardless of whether they have signed the petition
- SWCD/County Engineer will not advocate for or against a project

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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, 7 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

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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 Ohio Revised Code 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

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