

Citizen Guide to the Drain Code

This information is being provided to help you better understand the process, funding and other implications of a drainage project in your neighborhood.



What is a Drainage Project?

A drainage project is the creation or expansion of a drain designed to prevent flooding and provide better drainage for agricultural lands, residential lands or other development. A “drain” may include roadside ditches, agricultural drains, tiling/enclosed systems under agricultural or developed land, and may include creeks, rivers and lakes.

Who is in charge of Drains and Drainage Projects?

Drainage activities are generally governed by the Michigan Drain Code and administered by the Ottawa County Drain Commissioner, the elected official in charge. The Drain Commissioner has jurisdiction over the established county drains in all of Ottawa County and performs the duties set forth in the State of Michigan Drain Code. Basically, the Drain Commissioner administers the construction, maintenance and improvement of county drains, and is responsible for the assessment of the costs incurred.

How Does a Drain Project Begin?

Drain projects are started when a "petition" is submitted to the Drain Commissioner. The petition states that a drainage problem exists and the petitioners would like the Drain Commissioner to solve the issue. A petition can be filed on an existing drain for maintenance or improvements to be undertaken, or it can be filed for the creation of a new drain.

For an existing drain, a petition must be signed by at least five property owners whose land is located in the drainage district and would be liable for a portion of the costs.

For a new drain, an application to establish a drainage district is required before you can petition to establish a County Drain. A drainage district is the area of land that benefits from the drain. The application must be signed by at least ten property owners—five of whom must own land in the drainage district. After the application is received, the Drain Commissioner works with an engineer to determine the area which would be drained by and receive benefit from the new drain. If determined practical, the Drain Commissioner then formally establishes the drainage district boundary. A petition to locate, establish and construct the new drain is now required. The petition must be signed by 50% of the property owners whose property would be traversed by the new drain.

Who Can Petition for a Drain Project?

A petition can be filed by property owners in the Drainage District, a Township/City, the County Road Commission, or the Michigan Department of Transportation.

Who Decides Whether to Do a Drain Project?

Once petitioned, a "Board of Determination" convenes. The Board of Determination is a three-member board appointed by the Drain Commissioner, the members must be residents of Ottawa County but cannot own property in the Drainage District or in the Township/City. The role of the Board of Determination is to receive testimony and evidence at a public hearing to determine:

a) whether a project is necessary and conducive to the public health, convenience or welfare; b) whether a portion of the project benefits the municipalities in the district for the protection of public health; and c) lands to be included in or added to a drainage district.

The Board of Determination does not determine the scope of the project, the cost of the project, and does not determine how much property owners and municipalities will be assessed for the project. The Drain Commissioner makes these decisions after the engineering is performed, but before construction occurs.

Who Receives Notice of a Board of Determination Hearing?

Notices for the Board of Determination hearings are sent to all property owners who own land within a current drainage district, whose lands are proposed to be added to the drainage district or whose lands are proposed to be included within a new district. All interested persons may testify at the Board of Determination, or may send written testimony to the Drain Commissioner prior to the Board of Determination hearing.

Can the Public Appeal the Board's Decision?

If the Board of Determination determines a drain project is necessary, the public has 10 days to appeal. The public may only appeal the finding of necessity, since that is the only issue the Board of Determination is acting upon. After this 10 day appeal period is over, the Drain Commissioner takes control of the project. After that, the only method for those signing the petition to object or to stop a project is to file a civil action against the Drain Commissioner in the Circuit Court.

Can the Project Grow?

Since the scope of the project may not be fully defined at the time of the Board of Determination meeting, drain projects may change in scope. The project may get larger or smaller.

Who Determines What Needs to Be Done?

If the Board of Determination determines a drain project is necessary, the Drain commissioner decides how to solve the problem. He may contract out various parts of the project, including engineering analysis, project management, and construction.

Who Pays for Drain Projects?

Land owners within a given Drainage District pay for drain projects within the district. The cost of the project is split up and shared by all the property owners within the district. Each property will be assigned its share, which is calculated on the "benefit" received by each property. The methods for determining benefits can be based on a variety of factors such as acreage and zoning/land use that treat all property owners fairly.

It is important to note that portions of drain project costs are also assigned to the Township/City for public health benefit and to Ottawa County and the Ottawa County Road Commission for benefit to county roads.

The Drain Commissioner will also determine the terms of payment for any assessment. Large projects may be financed by the issuance of notes or bonds, with the costs spread out over many years. The Drain Commissioner will also determine the length of time that each property owner has to repay any assessment.

What is the Drain Commissioner allowed to do without a petition?

Michigan Drain Code allows the Drain Commissioner to expend, without petition, up to \$5,000 per mile per drain in any 1 year for maintenance and repair.

What's Next?

If you believe that an official county drain would be beneficial to your property or would like to request maintenance of an existing county drain, please feel free to contact the Drain Commissioner's Office for additional information and guidance:

Ottawa County Drain Commissioner's Office
12220 Fillmore Street, Room 141
West Olive, MI 49460
616-994-4530

E-mail: draincommissioner@miottawa.org