

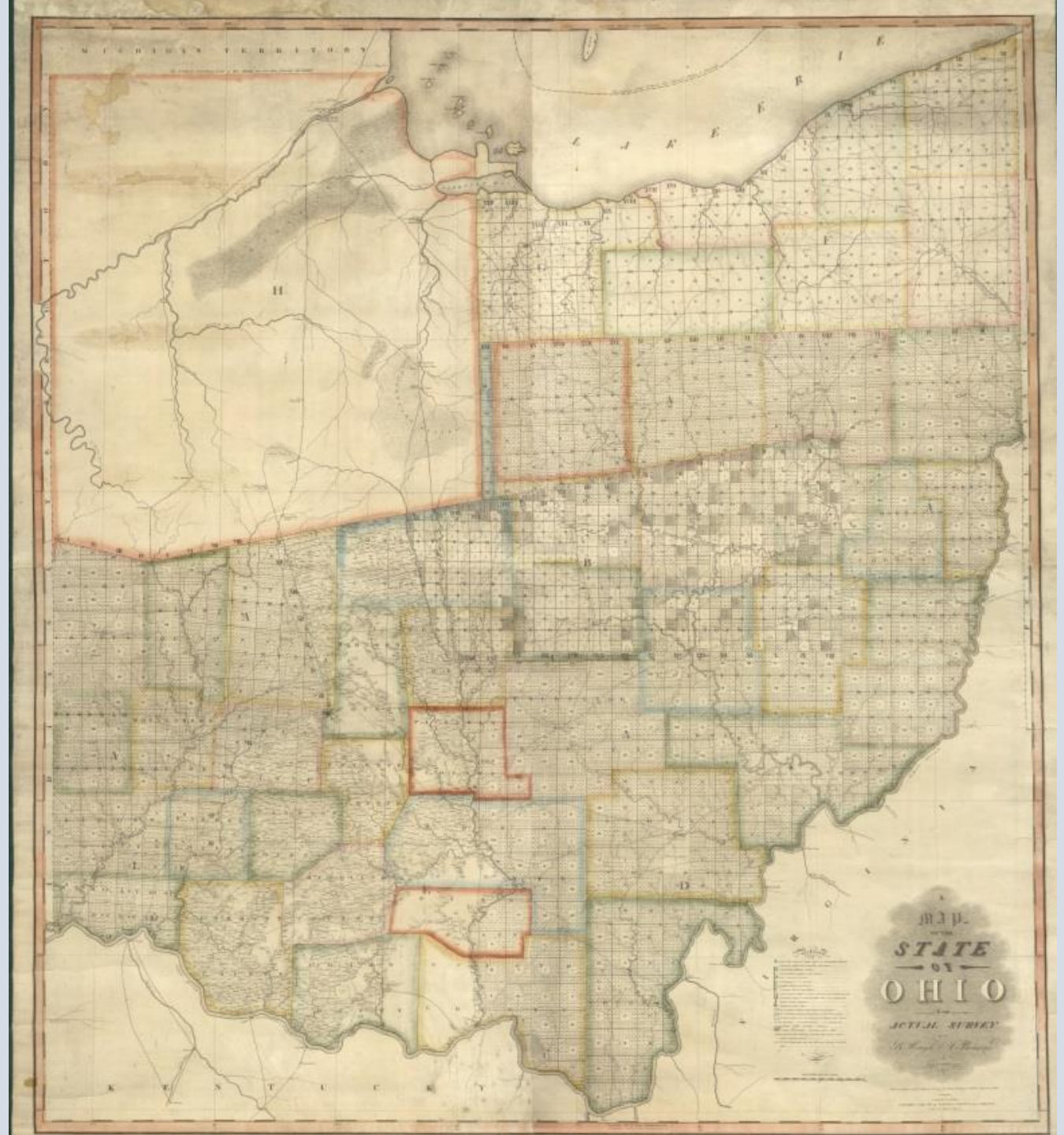
Ditch Petitions 101

Discussion on Laws and Procedures for
Ohio Ditch Petition Process

Andrew Baumer, P.E., P.S., Auglaize County Engineer

Mike Pniewski, P.E., P.S., Lucas County Engineer

Ohio 1814



Ohio 1814

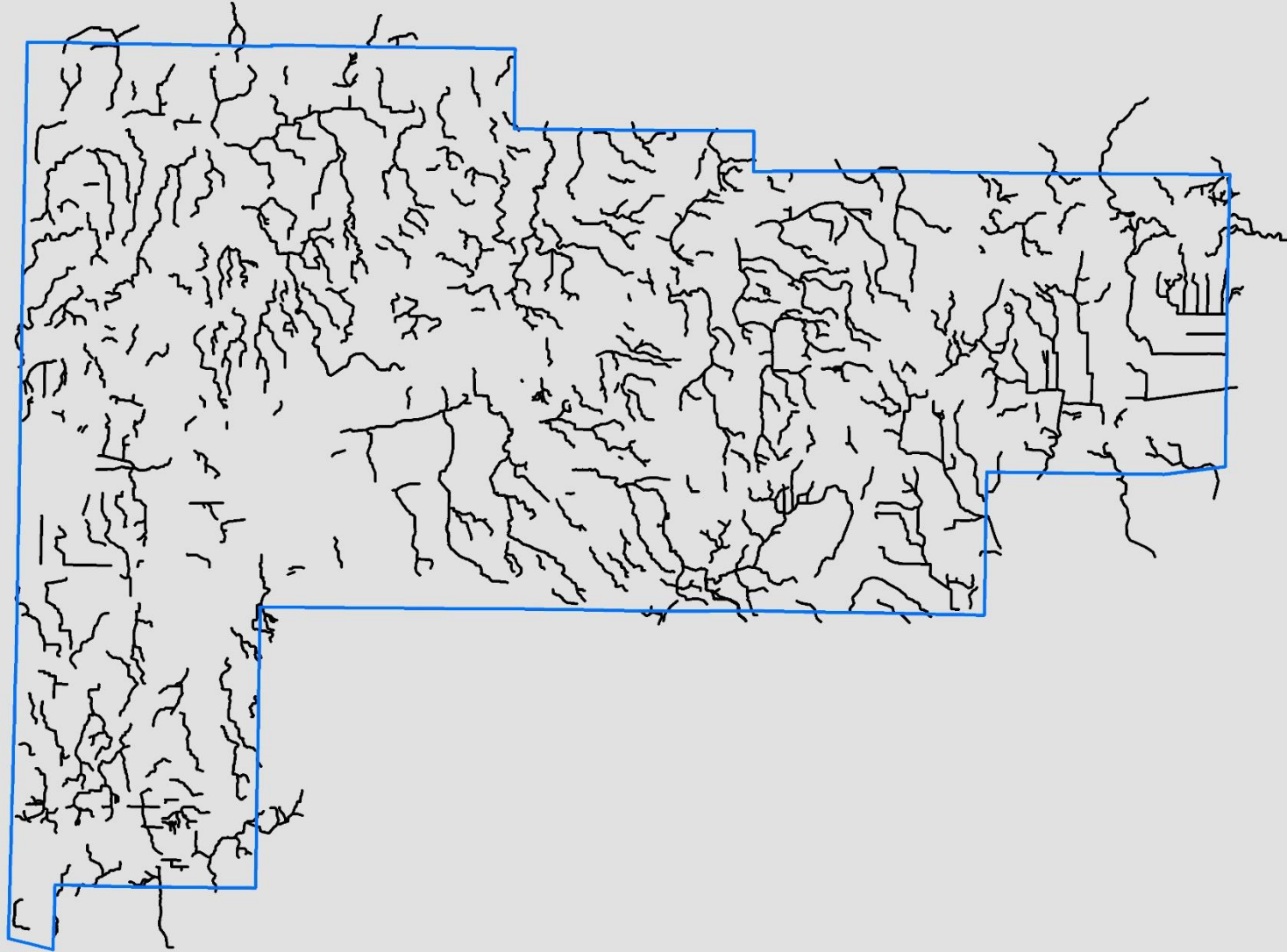
- Great Black Swamp
- Great Prairie
- 3 Mile Prairie
- Sandusky Plains
- “Marsh”



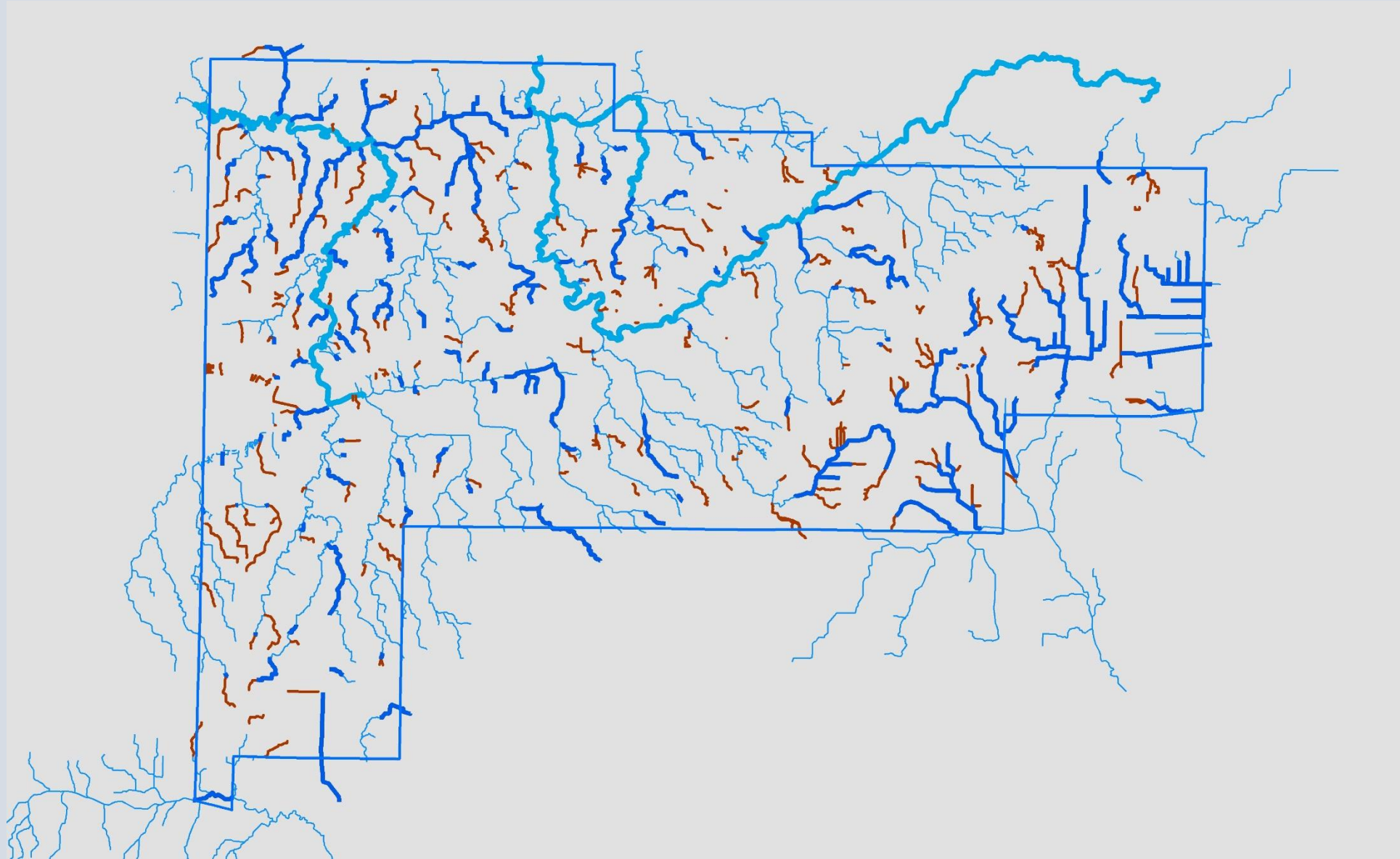
History of Ohio Drainage Laws

- 1ST Public Ditch Laws 1850's-1860's
(Mirrored Road Petition Law)
- August 23, 1957 - Permanent Maintenance Amendment
Became Effective
- Late 1960's - Senate Bill 160; ORC Section 1515; Petitions
Through SWCD

Auglaize County Petitioned Ditches on Record

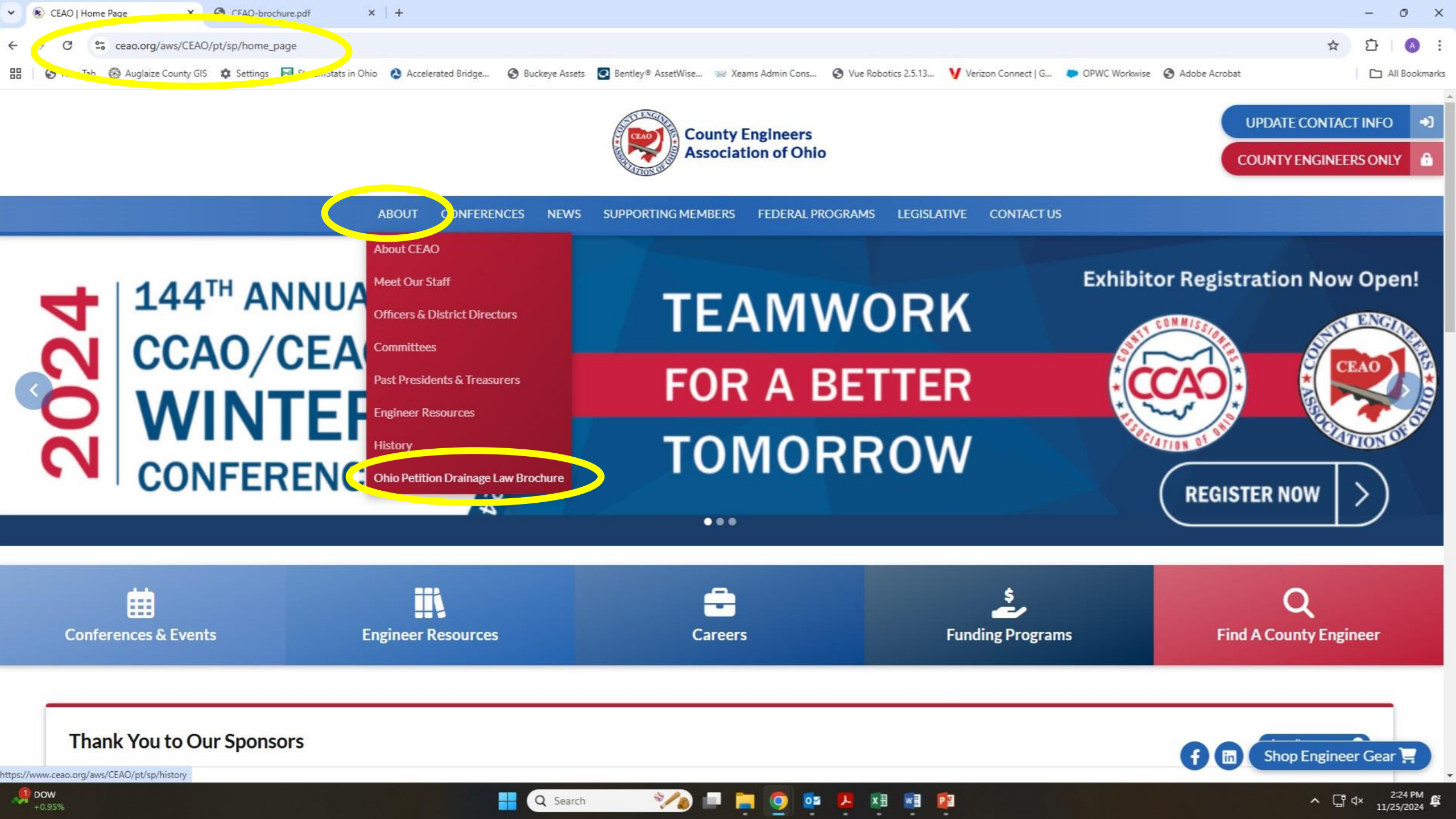


Auglaize County Ditch Maintenance Map



OHIO REVISED CODE SECTIONS

- **ORC 940: Soil and Water Petitions
(formerly ORC 1515)**
- **ORC 6131: Single County Ditch Petitions**
- **ORC 6133: Joint County Ditch Petitions**
- **ORC 6137: Permanent Maintenance of Ditches**



ceao.org/aws/CEAO/pt/sp/home_page



UPDATE CONTACT INFO
COUNTY ENGINEERS ONLY

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- Ohio Petition Drainage Law Brochure

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County Engineers
Association of Ohio



THE OHIO DRAINAGE LAWS PETITION PROCEDURE

Ohio drainage laws are very broad in scope and apply to a wide variety of improvements. They are administered by the board of county commissioners and their purpose is to provide for the better utilization of Ohio's soil and water resources.



BULLETIN 842
AS WRITTEN BY BYRON NOLTE -
OSU COOPERATIVE EXTENSION SERVICE (1981)
AND UPDATED BY THE CEAO DRAINAGE AND ENVIRONMENTAL COMMITTEE (2024)

Ohio Petition Drainage Law Brochure

Published in August 2024

Ditch Petition Law

- Chapters 6131-6137, inclusive
- Ditches are an “improvement” under the code (O.R.C. 6131.01)
 - 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.
 - The deepening, widening, straightening, or any change in the course, location, or terminus of a river, creek, or run
 - 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.
 - The removal of obstructions such as silt bars, log jams, debris and drift from any ditch, drain, watercourse, floodway, river, creek, or run.
 - The vacating of a ditch or drain

The Petition

- Filed by any benefitting landowner (O.R.C. 6131.04)
 - Includes private property owners (individuals or corporate) and public corporations
- Must consult with County Engineer prior to filing
 - Discuss scope of petition
 - Ensure proper forms and procedures are followed
 - Develop list of benefitting landowners
 - Calculate appropriate bond amount
- Only one landowner needs to sign the petition
- Filed with the Clerk of the Board in County where petition is located
 - If County is petitioner, filed with the Clerk of Courts

The Petition

- Amendments to the Petition (O.R.C. 6131.05)
 - May be filed by any benefitting landowner.
 - Cannot expand the area benefitted
 - If benefitted area is expanded, requires new petition
 - Must be filed not more than 21 days after the View
- Petitions and Amendments to the Petition heard by Board of County Commissioners in accordance with provisions of Chapter 6131 of O.R.C.
 - If County is Petitioner, Petition heard by three disinterested individuals appointed by Court of Common Pleas.

The Petition

- Bond must be filed with Petition (O.R.C. 6131.06)
 - Amount
 - \$1,500
 - Plus \$5 per parcel in excess of 200 parcels
 - Pays for costs of work for View and First Hearing if Petition is not granted or dismissed
 - Bond is released after 30 appeal period has passed after First Hearing or at termination of appeal.

Setting Dates for Hearing

- Setting Dates for View and First Hearing (O.R.C. 6131.07)
 - Clerk gives Notice to Commissioners and Engineer
 - Commissioners establish Date and Hour of View of First Hearing
 - View date set between 30 and 120 days after filing date
 - First Hearing date set between 30 and 90 days after View
- Changed from Prior Law
 - View was 25 to 90 days after Filing
 - First Hearing was 10 to 90 days after View

Notices for Hearing

- Property Owners given notice 21 days prior to View and includes:
 - Date, Time and Location of View and First Hearing
 - Description of Proposed Improvement
 - Map, or Information on where to locate Map
 - Explanation of how to access additional information or ask questions about improvement
 - Statement that owner may file amendment to petition
 - Statement that owner may comment on improvement in writing before or in person at the public hearings
 - Address which to file an amendment and/or written comments
- Sent by Certified Mail to Property Owners adjacent to improvement
- Sent by Certified or First Class Mail to other benefitting landowners

Notices for Hearing

- Publish Legal Notice
 - Newspaper of General Circulation
 - Includes Name and Number of Petition, Location and Nature of Work in Petition, and Time, Date and Location of View and First Hearing
 - Published 13 days prior to View
 - Second notice required 6 days prior to view if notices sent by First Class Mail
 - Includes Names of Property Owners whose notices were returned
- Affidavits
 - Publication required by Newspaper
 - Certificate of Mailing Notices by Clerk of Board
- Returned Notices to be kept in Record

Preliminary Engineer Report

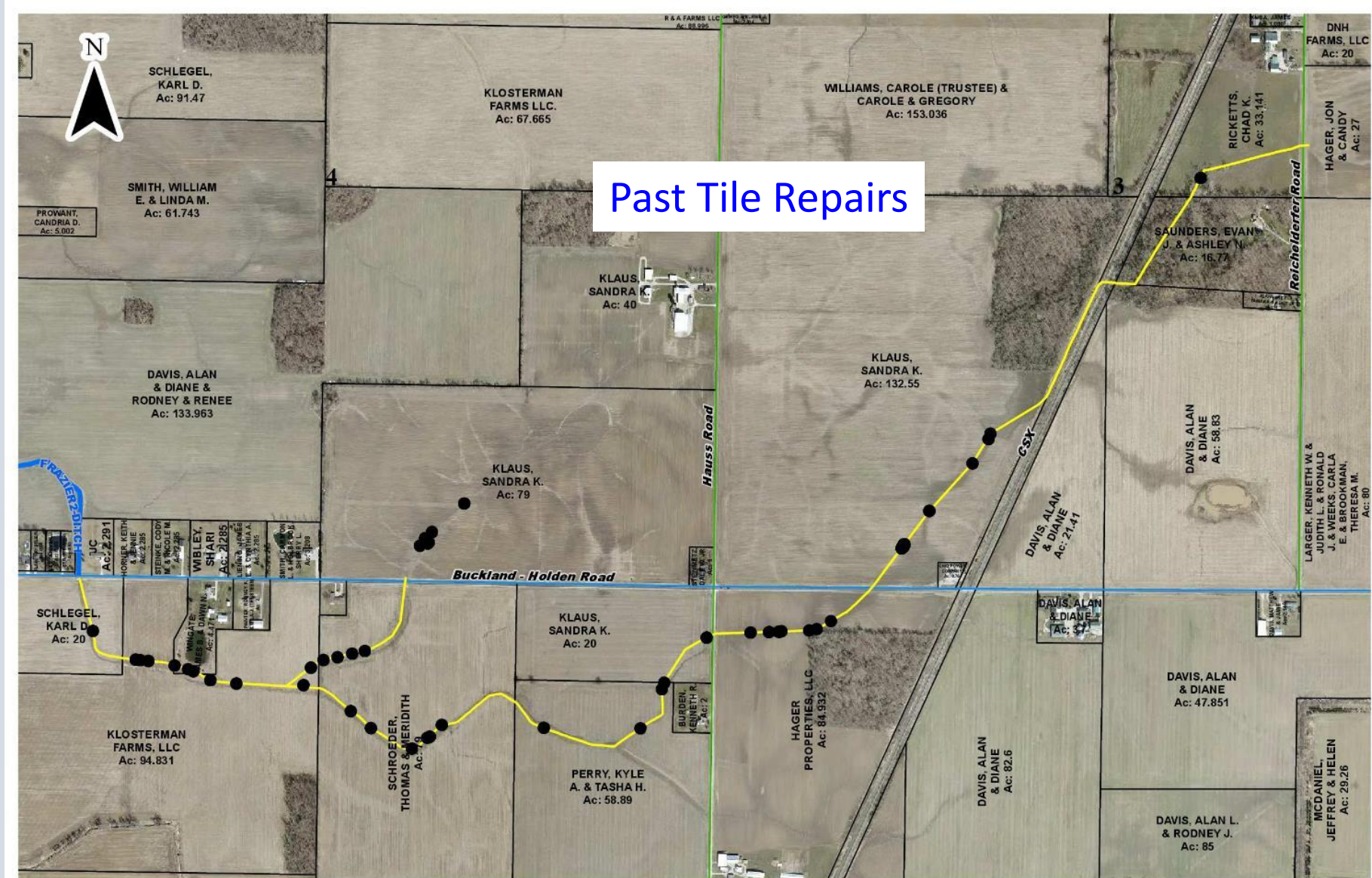
- Prepared prior to First Hearing (O.R.C. 6131.09)
- Includes the following:
 - Preliminary cost estimate
 - Comments on feasibility of improvement
 - Engineer's opinion on whether benefits of improvements will exceed costs
 - List of factors, both favorable and unfavorable, to the proposed improvement
- Can submit alternative proposals to accomplish intent of petition
- Commissioners can request additional information and reports to guide decision to grant petition.

View

- Can be at “virtual” or on site (O.R.C. 6131.10)
- Engineer presents overview of petition and improvement
 - Inform on location, nature, and issues to be addressed
 - Answer questions by the public and Commissioners on the nature of the petition and on the existing conditions to be addressed.
- If a Commissioner or landowner requests to be on-site, Commissioners shall continue the View to a location on site.
- Commissioners may conduct the View on more than one day until view is completed

2. The View

Present issues known and allow discussion with landowners



2. The View

Show the project is necessary and will benefit public welfare



2. The View

Show the project
is necessary and
will benefit public
welfare



2. The View

Owner submitted pictures of issues



First Hearing

- Hear Preliminary Engineer Report (O.R.C. 6131.101, 6131.11)
- Hear evidence by any benefitting landowner for or against the petition or any proposed amendment
- Can recess and continue hearing to subsequent days
 - Consider additional information
 - Provide additional opportunity for comment by benefitting landowners
- At end, Commissioners shall vote to order engineer to proceed with design or to dismiss the petition

First Hearing

- Dismissal of Petition

Commissioners to dismiss petition if:

- Improvement is not necessary
- Improvement is not conducive to the public welfare
- Estimated cost is greater than benefits

- Grant of Petition

Commissioners to grant petition if:

- Improvement is necessary
- Improvement is conducive to the public welfare
- Estimated benefits is greater than costs

First Hearing

Resolution granting Petition includes:

- Statement on why petition (and amendments) granted
- If environmentally significant areas impacted, the Commissioners can order alternative plans to protect the areas
- Delineate the route and termini of improvement (and amendments granted)
 - Board can change the route and termini from that in the petition if they find is necessary and does not add to the benefitted area of the improvement.
- Order the engineer to begin design of improvement and to prepare benefit schedules
- Set date of filing of design plans and schedules
- Order funds not already appropriated to drainage improvement fund
 - Not to exceed 25% of the cost estimate in preliminary report
- If performing work in coordination with State or Federal agencies and rules are in conflict with Chapter 6131, can adopt other agency rules and regulations.

Tips for First Hearing

- Present all evidence collected from the View and Preliminary Engineering to show the need
- Communicate directly with as many adjacent property owners before the hearing(s)
 - Individual issues/problems
 - What they are seeing
 - Requests/concerns for the project
- Ensure the cost estimate is all-encompassing.
 - A reduced cost at the final hearing makes for an easier presentation

Between the Hearings

- Engineer prepares Plans, Specifications, and Cost Estimate
 - Project must include a seeded buffer strip – 10' minimum, 15' maximum
 - Width of Buffer Strip excluded from taxable value
- Engineer prepares Schedule of Benefits
 - Based on
 - Acreage
 - Volume of Water Produced
 - Soil Composition
 - Remoteness of Parcel
 - Percentage of Parcel Draining to Improvement
 - Work determined to only benefit parcel
 - Land Value
 - Existing Drainage Infrastructure
 - Improved Property Value
 - Other factors apparent to Engineer
- Engineer prepares Schedule of Damages
 - Value of Land to be acquired
 - Other Damages caused to Property from Construction

Between the Hearings

- Required Coordination
 - After Plans completed, required to be sent to:
 - Department of Natural Resources
 - environmentalreviewrequest@dnr.state.oh.us
 - ODOT
 - If impacting State Highway
 - Emailed to District Planning Manager
 - Conservancy District
 - If project is in area covered by District
 - Each has 30 days to Respond
 - After response, incorporate comments into the plans
- Submit Plans, Specifications, Benefit Schedule, and Damages Schedule to Clerk of Board to set Final Hearing Date

Between the Hearings

- Municipalities
 - Municipalities can choose to assume assessments for their residents under their home rule authority
 - Municipalities can forward assessments or recalculate
 - Municipalities can pay all or a portion of assessments
 - Municipalities can receive credit for work performed by their forces
 - Municipalities elect to assume prior to filing of Engineer's Plans with Board
 - Election is permanent
 - If Municipalities choose to assume assessments, only municipality and residents along improvement are required to be noticed for Final Hearing

Final Hearing

- Commissioners set date of Final Hearing
 - 25 to 90 days after Engineer Filing
- Required Notice
 - 21 Days prior to Final Hearing
 - Certified Mail to those who are on the improvement
 - First Class Mail to all others
 - Includes Amount of Benefit and Damages if Any
 - States that exceptions to the Benefits and Damages must be filed with the Board no later than 5 days prior to Hearing
 - Statement that owners may pay in cash no later than 21 days after hearing if they want to avoid interest charged on assessment
 - Publication in Newspaper of General Record
 - Only 1 required if all notices sent by certified mail
 - Second notice required with returned names if first class mail used
 - First publication no later than 13 days prior to Final Hearing

Final Hearing

- At the Final Hearing:
 - Commissioners hear testimony on damages and benefits values from Benefitting Owners
 - Commissioners hear testimony on:
 - Changes to Damages and Benefits
 - Changes to the plan proposed by Engineer
 - Route or Course
 - Nature of Work
 - If changes are made to the plan, or if changes to damages exceed original damage total, hearing must be continued and benefitting owners must be noticed on changes
 - Commissioners review former order based on Engineer Plans, Cost Estimate, and Schedules
 - Can confirm the granting of petition, order the assessments, and bid project
 - Determine number of installments in which assessments must be paid
 - Maximum of 15 years
 - If improvement to be bonded, interest can be added to assessments
 - If owner pays in full within 30 days, no interest is charged
 - Can dismiss petition and assess for work performed since First Hearing or pay through County funds

Final Hearing

- At the Final Hearing:
 - Factors to consider in granting petition:
 - Location and Nature of Improvement
 - Cost of Construction
 - Compensation for land to be acquired or taken
 - Effect on Land In and Around Improvement
 - The effect on land below the lower terminus of the improvement that may be caused by constructing the improvement
 - The sufficiency or insufficiency of the outlet
 - The benefits to the public welfare
 - The benefits to land, public corporations, and the state needing the improvement
 - Any other proper matter that will assist the board in finding for or against the improvement
 - Commissioners must dismiss petition if they find:
 - That the cost of the improvement will be equal to or greater than the benefits that will be derived from the improvement if constructed
 - Does not benefit the public welfare
 - Improvement is not necessary

After Final Hearing

- Bids Received
 - Engineer Advertises Bids
 - Engineer Opens and Tabulates Bids after Bid Date
 - Engineer Makes Recommendation to Commissioners for Award
 - Commissioners Award if Bid Amount Less than Construction Estimate
 - If greater, Commissioners can order re-estimate and re-bid
- Engineer to Inspect Work
- Engineer to File with Recorder after improvement constructed
 - Shows owners of Record and Parcel Numbers along Improvement
 - (For Recorder, Deed Numbers are helpful)
 - Location of Improvement
 - Width of Permanent Easement
 - Affidavit to include
 - Owners of record
 - Parcel ID
 - Legal Description (Deed Numbers)
 - Statement of Easement for permanent maintenance referencing drawing and Section 6137.12 ORC

Agreement Petitions

- Allowable if all benefitting land owners agree to share costs of improvement and wish for County to maintain
- Submit Agreement to Clerk of Board and Engineer
- Engineer determines if scope of work is acceptable
- Engineer prepares benefit schedule for proportion of maintenance assessments
- Engineer files certificate of approval within 60 days of receipt of agreement
- Commissioners to set hearing 25 to 90 days after filing of certificate of approval
 - Can waive hearing if all owners agree
- At hearing, Commissioners hear testimony on benefit schedule and can make changes and order improvement to be placed under permanent maintenance

Joint County Petitions

- If benefitting lands in more than one county, the petition and decisions on maintenance assessments must be heard by a Joint Board of Commissioners
- Composed of Commissioners from each county with benefitting landowners
- Quorum is a majority of the Commissioners (i.e. 4 members for a two county board, 5 members for a three county board, etc.)
- If there is a tie vote, Director of Natural Resources breaks the tie. Has 30 days to make a decision.
- Joint Board may meet via phone and video conferencing, but must make provisions for public to observe proceedings (i.e. each county may meet in own chambers, but connect to each other via teleconference)

Permanent Maintenance

- **Only for ditches petitioned after August 23, 1957.**
- Before July 1 each year, the Engineer shall make a Report to the Commissioners (or Joint Board) outlining:
 - Condition of Petition Ditches
 - Funds necessary to perform maintenance the following year
- On or before 2nd Monday in September, the Commissioners shall determine the maintenance assessments and shall certify to the Auditor
- Commissioners, upon the recommendation of the County Engineer, may combine improvements into a drainage maintenance district
- Owners may form an advisory committee to recommend projects for maintenance to the County Engineer
- Rotary fund for the purchase and upkeep of equipment may be established and maintenance project charges rental fee for equipment
 - Drainage Equipment may be purchased for drainage maintenance
 - Engineer to provide a report regarding condition and need for purchase and cost for drainage equipment prior to 2nd Monday in January each year.

Permanent Maintenance

- Maintenance Fund may be kept for any improvement
 - Balance cannot be more than 20% of maintenance base
- Owner may make application for reduction in assessment for performing work
 - Must be made by May 1 of each year and state nature of work to be performed
 - Engineer inspects work performed and in Report to Commissioners determines extent of work performed and recommends how much to be granted
 - Commissioners approve or deny reduction at same time as confirming assessments by 2nd Monday in September
 - Owner can also make application for 50% reduction by presenting certificate from Soil and Water District of owner performing practices to reduce runoff and erosion

Permanent Maintenance

- Permanent Easement
 - Open Ditch – up to 25' from top of either or both banks
 - For Log Jam projects – from top of bank up to 25' outside tree line
 - Closed Conduit - up to 80' centered on improvement
- Contract with Soil and Water Districts
 - Upon Recommendation by County Engineer, Commissioners may contract with Soil and Water Districts for maintenance under general supervision of County Engineer
- Maintenance for Ditches petitioned before August 23, 1957
 - Repairs can be conducted upon complaint of benefitting owner
 - Maximum cost is \$24,000
 - Engineer prepares assessment schedule
 - Order by Commissioners by Resolution
 - Payable over up to 5 years

Permanent Maintenance

- Assessments are allocated based on Permanent Base of Benefits
- Can be Increased /Decreased every six years based on changes, i.e.
 - Property Splits
 - Changes in Drainage Patterns
 - Changes in Land Use
 - Other Changes that Are Apparent
- Commissioners Approve Changes
- Hold Hearing 20 to 30 days from date changes are adopted
- Notice Required
 - Prior Value, New Value, Hearing Date and Time
- Permanent Base of Assessments can also be by Tax Value
 - Process is located in ORC 6137.111

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