

PROCEDURES FOR LOCATING, ESTABLISHING AND CONSTRUCTING AN INTERCOUNTY DRAIN

The legal process the Water Resources Commissioner's Office must follow upon receipt of a petition to establish an inter-County Drain Drainage District is dictated by the Michigan Drain Code (Act 40 of 1956). The steps are as follows:

1. Application for laying out and designating a drainage district under Chapter 5 of the Michigan Drain Code, must be filed with the Water Resources Commissioner. It shall be signed by a number of freeholders in said drainage district whose lands would be liable to an assessment for benefits, equal to 50% of any of the freeholders whose lands would be traversed by the drain or drains applied for.
2. Within 20 days of receipt the Water Resources Commissioner forwards the petition to the state director of agriculture and to the county Water Resources Commissioner of each county in which lie lands liable for assessment.
3. The state director of agriculture shall call a meeting not less than 15 days and not more than 60 days from the receipt of such notice. The board shall consist of the drain commissions of each liable county and the director of agriculture or any deputy designated by him.
4. If the drain is found to be practical the board orders a survey to be made. The director prepares an order designating a drainage district and files it in his/her office and the office of the county Water Resources Commissioner of each county within 10 days. This order is to specify the boundaries of the drainage district and a description of the drain to serve the district as recommended by the engineer showing the beginning and ending of the drain, the type of construction and an estimated cost. The director then gives notice of such order in a newspaper of general circulation in each county once in each week for 2 successive weeks.
5. After a drainage district is established, a Chapter 5 petition to locate, establish and construct a drain is filed with any commissioner having jurisdiction of any of the lands identified in the order designating the drainage district. This petition must be signed by a number of freeholders equal to one-half of the number of freeholders whose lands would be traversed by or abut on said drain. This petition shall be accompanied by a description of the lands owned by each signer and a certificate of the County Treasurer as to payment of taxes or assessments. Any signer, whose land certificates show taxes or assessments are unpaid for three years, shall not be counted. In lieu of a petition signed by freeholders, the petition may be signed solely by a city, village or township in each county involved, when duly authorized by its governing body, or by any combination of such municipalities.
6. Upon filing of a petition, within 20 days, the Water Resources Commissioner must submit the petition to the state director of agriculture and to the county Water Resources Commissioner of each county in which lie lands liable for assessment. The director sets a time for a meeting when the Board will determine the necessity or non-necessity of the drain. A minimum of 10 days prior to the meeting date, said notice shall be published in a newspaper of general circulation in each county, sent to the county Road Commission and county clerk for each liable county, and the clerk of each city, village or township in the district via certified mail. Property owners within the district boundaries are also to be notified by first class mail. In districts where the state Highway Department is involved notification must be a minimum of 20 days prior to the meeting date via certified mail. The Notice shall contain a description of land in the district and the proposed drain length.
7. If the Board finds the drain to be necessary to the public health, convenience or welfare, it then files a First Order of Determination, showing the determination of necessity, determination of percentages between the counties, and determination of number of installments. A copy of the order shall be filed in the office of the county Water Resources Commissioner of each county into which the drainage district extends. Any person feeling aggrieved by the decision may institute an action in the circuit court for the county in which the real property is located. Appeal must be made within ten days after the determination of necessity or no necessity.

8. Release of right-of-ways must be secured from each property owner whose land the drain will cross. If any property owner refuses to grant the right-of-way, the drain age board shall proceed under provision of Michigan's Uniform Condemnation Act.
9. After securing the right-of-ways, the Water Resources Commissioner from each county affected shall apportion the benefits for the construction of the drain. The chair of the board then gives notice for receiving bids for construction of the drain and also for holding a public meeting at which the apportionments and assessments may be reviewed. Notice will be published in a newspaper of general circulation and sent to the county Road Commission and county clerk for each liable county, and the clerk of each city, village or township in the district and the state Highway Department, if involved, via certified mail. Property owners within the district boundaries are also to be notified by first class mail.
10. Sealed bids are received and the contract for construction of the drain is let.
11. A computation of costs is prepared and allocated to landowners and affected governmental units according to benefits received.
12. A day of review will be scheduled that property owners may attend to review their apportionment and assessment. At the day of review, interested persons will be advised of the procedure for appeal of special assessments.

The above information is a general guide for persons interested in the petition process to establish an inter-county drain. If you have questions or need any further information, please call the Water Resources Commissioner's Office at (734) 222-6860.

SAMPLE ONLY

**PETITION FOR LOCATING, ESTABLISHING AND CONSTRUCTING
AN INTER-COUNTY DRAIN OR DRAINS OR ANY PORTION THEREOF**

To the County Water Resources Commissioner of the County of Washtenaw:

The undersigned petitioners are freeholders in the Drainage District as Laid Out and Designated in the order of _____, in the County of Washtenaw, State of Michigan, in which District the «NAME_OF_DRAIN» Drain, being applied for is to be located, established and constructed.

The petitioners constitute a number of freeholders in the Drainage District whose lands would be liable to an assessment for benefits equal to 50% of the number of freeholders whose lands would be traversed by the drain or drains applied for, or abut on the part of any highway or street along either side of which the drain extends between the point where the drain enters the highway and the point where it leaves the highway.

The following named persons constitute all the freeholders whose lands would be traversed by the drain or drains applied for or abut on any highway or street along either side of which the drain extends between the point where the drain enters the highway and the point where it leaves the highway:

The locating, establishing and constructing of said Drain or Drains, or any part thereof, is necessary and conducive to the public health, convenience or welfare.

The undersigned petitioners therefore make petition, and ask you to locate, establish and construct, a drain or drains, or any portion thereof, which will properly drain the lands in the district, under the provision of Act No. 40 of the Public Acts of 1956, as amended. The location of the drain or drains, or any portion thereof, are as given in your Order for Laying Out and Designating the «NAME_OF_DRAIN» Drain Drainage District, to be substantially as follows:

(Insert route and course of proposed drain)

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<u>Signatures of Freeholders</u>	<u>Address</u>	<u>Township</u>	<u>Tax Code Number</u>
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AFFIDAVIT OF CIRCULATOR OF PETITION

I Herby Certify that I did personally circulate this petition and the signatures to same were made in my presence and are the genuine signatures of those whose names are affixed.

Dated: _____, 20____

Name of Circulator

Address

Phone Number

STATE OF MICHIGAN)
)ss.
COUNTY OF _____)

On _____, 20____, before me, a Notary Public in and for said County, personally appeared to me known to be the person described in and who circulated the foregoing petition dated _____, 20____.

Notary Public, _____ County, Michigan
My Commission expires: _____

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STATE OF MICHIGAN)
)SS.
COUNTY OF WASHTENAW)

I, _____ hereby certify that I have compared the ownership of property represented by the signatures as signed to the foregoing petition with records in the office of Register of Deeds and find that they are the owners in fee simple of the lands described in this Petition.

For Washtenaw County, Michigan

INSTRUCTIONS FOR PETITION SIGNERS ON A PETITION FOR LOCATING, ESTABLISHING AND CONSTRUCTING A DRAIN OR DRAINS OR ANY PORTION THEREOF:

The Petition shall be signed by a number of freeholders in the drainage district whose lands would be liable to an assessment for benefits, equal to 1/2 the number of freeholders whose lands would be traversed by or is abutted by the drain.

Husband and wife are counted as 2 freeholders and each is to sign in his/her own behalf. Each must sign with a given name, not Mr. or Mrs. _____.

Proof of ownership of property listed for the petition signers must be verified by the Water Resources Commissioner.

The circulator of the petition MUST sign the affidavit included with the petition before a Notary Public. This can be done when it is brought to the Drain Office or may be done before it is brought in.

SAMPLE ONLY