

A Guide for Property Owners

involved with the
Drainage Act in Ontario

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*Cette publication est aussi disponible
en français.*

Front Cover: A rural property with a
drainage ditch between two fields.

Back Cover: A rural road with corn fields on
either side and a drainage ditch.

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A Guide for Property Owners involved with the Drainage Act in Ontario

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Overview of the Guide

The *Drainage Act, 1990* (the Act) in Ontario is legislation that helps property owners find solutions to their drainage needs. The processes described within the Act may appear complex and involve many stakeholders. This guide is designed to assist property owners understand the *Drainage Act, 1990* and navigate through the various processes.

The guide is presented in eight chapters:

- **Chapter 1** presents background information on drainage law (both the Common Law and statute law), watercourses and drains and the *Drainage Act, 1990*.
- **Chapter 2** provides details on the creation of a new drain by petition from a property owner perspective.
- **Chapter 3** provides details on making improvements to existing drains.
- **Chapter 4** provides information on the management of drains including maintaining and repairing drains, changes to properties served by an existing drain, abandoning drains and changes to the original maintenance and repair assessment schedule.
- **Chapter 5** provides information about appeal opportunities available to property owners.
- **Chapter 6** discusses the grants available under the Act.
- **Chapter 7** provides information on the responsibilities of the property owner involved in a drainage project under the Act. It covers opportunities to incorporate features into a drain that could address climate change, fish and wildlife habitat, water quality and quantity enhancements, wetlands and water retention.
- **Chapter 8** provides resources to assist property owners with navigating the *Drainage Act, 1990* processes.
- **Appendix A** guides property owners through the process of completing a “Petition for Drainage Works by Owner” form before submitting it to the municipality.

Note: The use of the words “ministry” and Act throughout the document refers to the Ontario Ministry of Agriculture, Food and Agribusiness (OMAFRA) and the *Drainage Act, 1990* respectively. Other government ministries/agencies and legislation/regulations are referred to by their full names.

DID YOU KNOW?

This is the third publication in the Guide to the Drainage Act series from OMAFA available at Ontario.ca and Publications Ontario including:

- Publication 852, *A Guide for Engineers working under the Drainage Act in Ontario*
- Publication 859, *A Guide for Drainage Superintendents working under the Drainage Act*

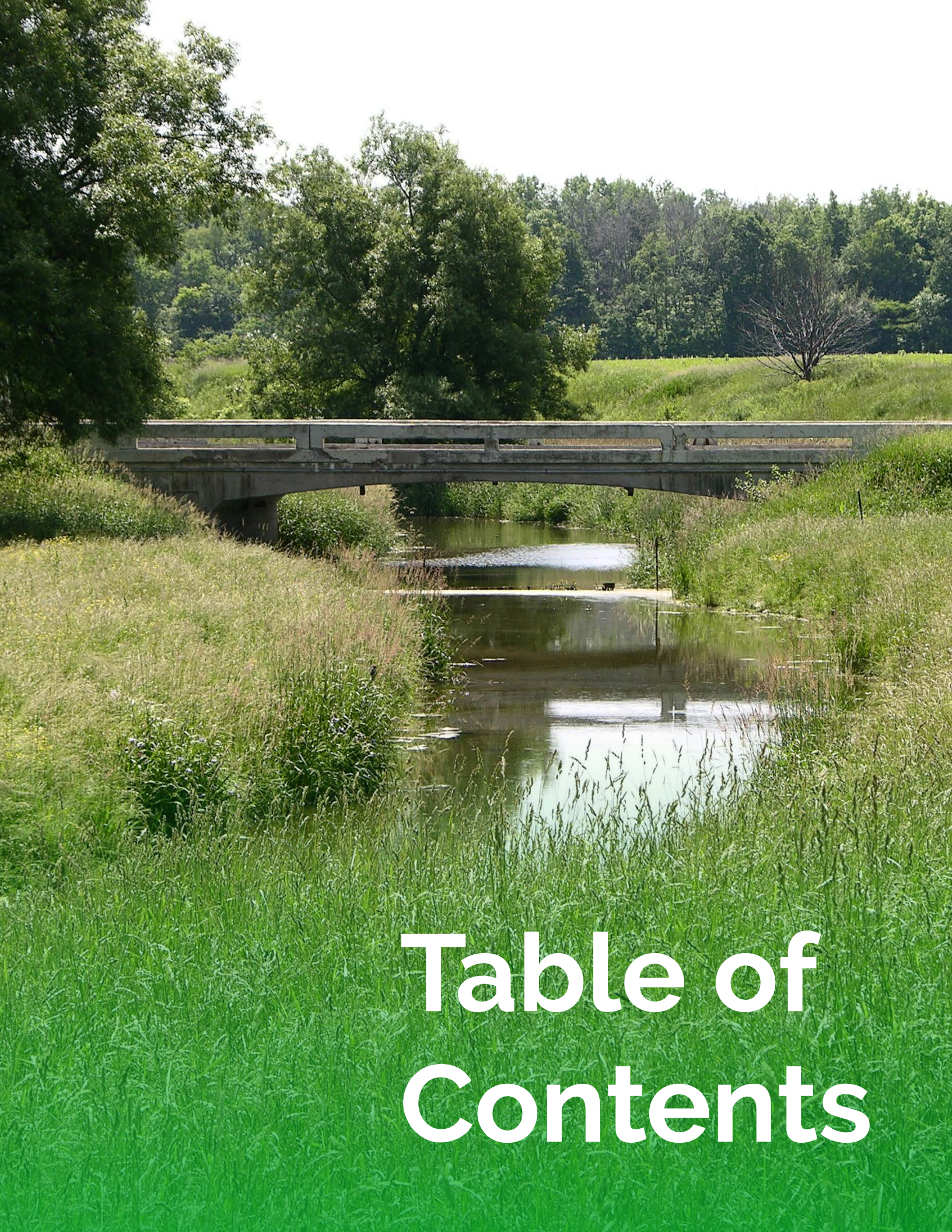


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Chapter 1

1. Introduction

Ontario receives an abundance of precipitation which means most land requires drainage. Drainage systems were constructed to improve all lands since the early 19th century. The first organized drainage projects began around the 1840s and used ditches to remove excess water away from agricultural fields. These early projects were a crucial step in the development of organized water management practices.

Today, drainage in Ontario is a comprehensive and organized system that plays a critical role in managing water resources. Drainage systems include private and communal systems that ultimately provide outlets to natural watercourses.

To understand the framework of drainage law in Ontario, an understanding of the Common Law as it relates to drainage is needed.

evolved from English Common Law, except in Quebec where the law evolved from Roman civil law and the French civil code.

Ontario uses a mixed system of law that includes two principal sources of written law:

- Common Law –the legal rules developed from previous cases before the courts (i.e., case law).
- Statutory Law –regulations made under the authority of an act (e.g., *Drainage Act, 1990*).

Common Law is the bedrock that statute law is built on, and always applies unless overwritten by statute laws (Figure 1–1).

1.1 Common Law

Originally established in England, Common Law includes the rules, principles and customs established by the courts based on specific past cases. Canadian law

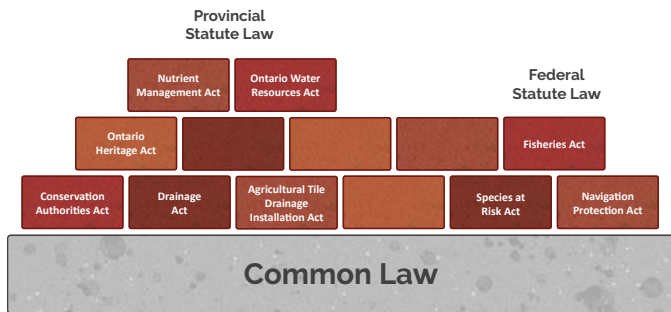


Figure 1–1. Relationship between Common Law and Statute Law.

DID YOU KNOW?

All of Ontario's statutory laws (i.e., acts and regulations) are found online at [e-Laws](#)



DID YOU KNOW?

One source of publicly available court decisions involving drainage issues is found online through the [Canadian Legal Information Institute \(CanLII\)](#). A lawyer may be able to access decisions not found on CanLII.



While the ministry understands the Common Law principles as they relate to drainage, it has no authority to administer or enforce Common Law, only the courts have this authority.

1.1.1 Natural Watercourses and Surface Water

Common Law divides drainage into two categories: natural watercourses and surface water.

1.1.1.1 Natural Watercourses

Principles

Under Common Law, the general principle relating to a natural watercourse is that “water flows naturally and should be permitted to flow accordingly.”

A natural watercourse is generally defined by the courts as a natural stream of water that flows along a defined channel, with bed and banks, for sufficient time to give it substantial existence. The flow of water does not need to be constant, but the channel definition, or characteristics, must be a permanent feature on the landscape. The watercourse may also spread over a level area without defined banks for a distance, before flowing again in a defined channel. This may also include streams that dry up periodically.

Rights and Responsibilities

Water in a natural watercourse has the right of drainage. Riparian property owners (Figure 1–2) have property that borders a natural watercourse. They have several rights and responsibilities under the Common Law:

- the right of drainage
- the right to use water for domestic or natural purposes
- the responsibility or liability for any impacts if they modify/interfere/dam a natural watercourse
- the responsibility to accept the water, even if flooding occurs

Riparian property owners do not have a duty to manage or maintain natural watercourses for the benefit of their neighbours. An example is a [court case](#) in British Columbia where the court supported a lower property owner who refused to remove a beaver dam, even though it was causing damage to an upstream property owner.

Municipalities and regulatory agencies, conservation authorities and Fisheries and Oceans Canada, also do not have a duty to manage or maintain natural watercourses.



Figure 1–2. Riparian property owners have property on either side of a natural watercourse.

Source: Tulloch Engineering, Espanola, Ontario

Liability

Water collected in ditches and subsurface drains and discharged into a natural watercourse can result in an increased volume of water, rate of flow or, flooding or damage to downstream properties. A non-riparian property owner that collected and discharged the water may be liable under the Common Law. Regardless of how water is collected and discharged, liability for damages could result if water is brought from one watershed into another watershed.

DID YOU KNOW?

A watershed is the area of land where all the water drains into a common waterway like a river, lake, stream or a drain under the *Drainage Act, 1990*.



1.1.1.2 Surface Water

Principles

Surface water is any water that falls as precipitation but does not flow in a natural watercourse. Surface water runoff may move as sheet flow (Figure 1–3) across the land or concentrated in small depressions (Figure 1–4). Despite gravity, there is no right to drain surface water other than by a riparian owner.



Figure 1–3. Sheet flow of water flowing across a farm field.

Source: Dietrich Engineering Ltd., Kitchener, Ontario.



Figure 1–4. Surface water flowing in a shallow depression.

Source: Dietrich Engineering Ltd., Kitchener, Ontario

Rights and Responsibilities

Property owners are responsible for managing the surface water on their property. They can let surface water flow naturally or collect and discharge it to a legal and sufficient outlet.

A legal and sufficient outlet is a location where collected water is discharged legally in a location with sufficient capacity to ensure the discharged water does not damage properties at a lower elevation. Examples of legal outlets include:

- a natural watercourse on your property
- a drain under the *Drainage Act, 1990*
- drainage systems constructed privately may be a legal outlet if:
 - permission is received from the property owner to access the drain as an outlet, and
 - the private drain has a sufficient outlet to ensure collected surface water does not damage downstream properties

Liability

Under the Common Law, surface water:

- has no right of drainage
- that is uncollected and allowed to flow naturally is not typically grounds for a lawsuit
- does not have to be accepted by an owner of a property at a lower elevation (i.e., a lower property owner can protect their property by building berms or dykes)
- that is collected and discharged onto a lower property can form the basis for a lawsuit and the courts can order damages to be paid

Although surface water has no right of drainage, it may acquire a **prescriptive right** –the right a property owner gains to use other properties where the use was allowed uncontested for at least 20 years. The prescriptive right is limited to the use of the property that was originally allowed (i.e., does not and cannot be expanded beyond that use). A prescriptive right can bind future property owners when they purchase a property that is subject to any existing prescriptive rights.

The *Land Titles Act, 1990* has eliminated the creation of new prescriptive rights. But prescriptive rights that existed prior to the *Land Titles Act, 1990*, remain legally binding. This includes already established prescriptive rights (i.e., a court has already found the prescriptive right existed) and any non-established prescriptive rights, provided the right existed for at least 20 uncontested years before the *Land Titles Act, 1990* came into force.

Where a prescriptive drainage right exists (i.e., a person has collected and discharged water on or through other properties in an unchanged and uncontested manner for at least 20 years), that right allows for the continued drainage of collected surface water in the same manner as it was originally established. There cannot be an increase in the volume and rate of flow of the water over time from what was originally established and there cannot be any future improvements to the existing drainage system.

DID YOU KNOW?

Only a judge can determine whether water is flowing as surface water or a natural watercourse under the Common Law. A prescriptive right can only be found to exist by a judge. Property owners should seek legal advice when dealing with matters of prescriptive rights.

DID YOU KNOW?

Water collected with a subsurface agricultural tile drainage system is considered surface water.

1.1.2 Drainage Issues

Drainage issues are among the most common disputes between neighbours, often arising from water flowing across property boundaries or the need for a legal and sufficient outlet for surface water. These disputes typically fall under the Common Law, unless modified by statute law.

Common Law drainage disputes are disagreements between property owners over legal rights or responsibilities. There is no government agency responsible for resolving drainage issues between property owners. The *Drainage Act, 1990* exists to resolve drainage issues without the Common Law court process.

If property owners cannot reach a mutual resolution, consider these options to resolve the issue.

Situation #1

Lower property owner receives free flowing surface water (not collected) from higher property owner (Figure 1–5).

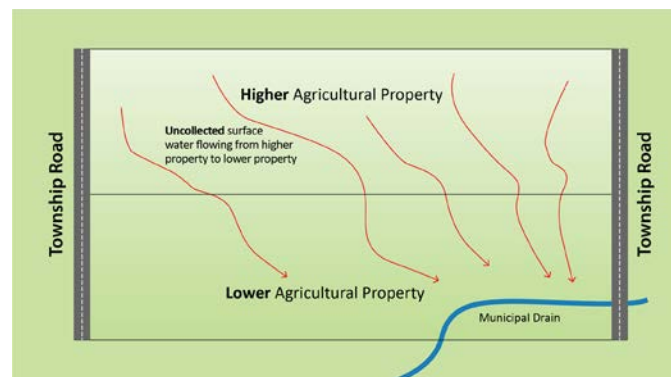


Figure 1–5. Lower property owner receives uncollected surface water from higher property.

Options

- property owners negotiate a mutual resolution
- resolve using the *Drainage Act, 1990*:
 - develop a mutual agreement drain
 - petition the local municipality for a drain
- lower property owner considers using dykes, berms, etc. to block the flow of water (seek legal advice before implementing a solution)

For more information, refer to OMAFA factsheet, [Drainage Legislation and Common Law in Ontario](#).



Situation #2

Lower property owner receives collected surface water from higher property owner (Figure 1–6).

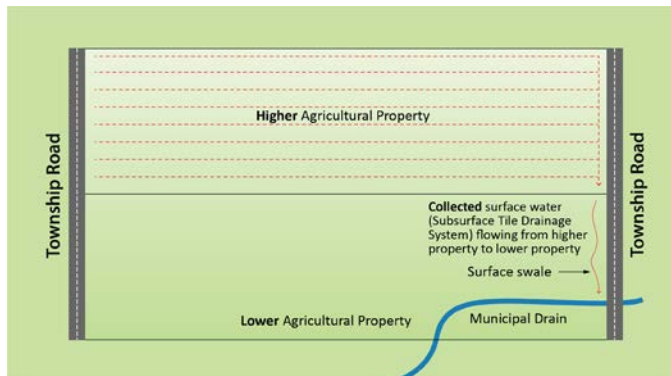


Figure 1–6. Lower property owner receives collected surface water from higher property owner.

Options

- property owners negotiate a mutual resolution
- resolve using the *Drainage Act, 1990*:
 - develop a mutual agreement drain
 - petition the local municipality for a drain
- if a prescriptive right of drainage is established through the courts:
 - the upper property owner has the right of drainage across the lower property, but only in accordance with the prescriptive right that has been established (i.e., it cannot be changed over time)
 - the lower property owners may negotiate a mutual agreement drain or petition the local municipality for a drain
- if no prescriptive right is established through the courts, the lower property owner may consider using dykes, berms, etc. to block the flow of water (seek legal advice before implementing a solution)
- lower property owner may consider initiating a lawsuit against the higher property owner (seek legal advice before implementing this option)

Situation #3

Higher property owner's collected surface water is blocked by lower property owner (Figure 1–7).

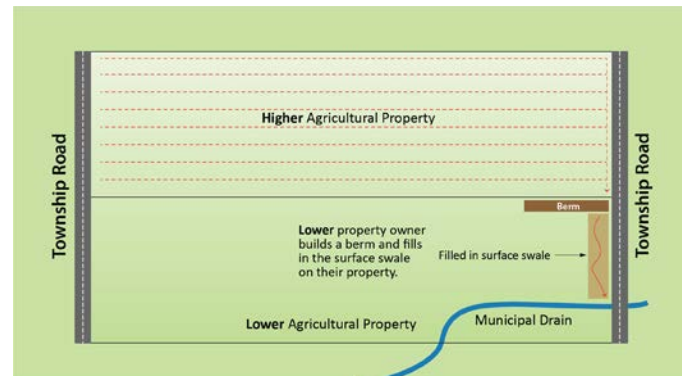


Figure 1–7. Higher property owner's collected surface water is blocked by lower property owner.

Options

- property owners negotiate a mutual resolution
- resolve using the *Drainage Act, 1990*:
 - develop a mutual agreement drain
 - petition the local municipality for a drain
- if a prescriptive right of drainage is established through the courts:
 - the upper property owner has the right of drainage across the lower property, but only in accordance with the prescriptive right that has been established (i.e., it cannot be changed over time)
 - the upper property owners may negotiate a mutual agreement drain, petition the local municipality for a drain or take legal action through civil courts after seeking legal advice

Situation #4

Higher property owner's surface water (not collected) is blocked by lower property owner (Figure 1–8).

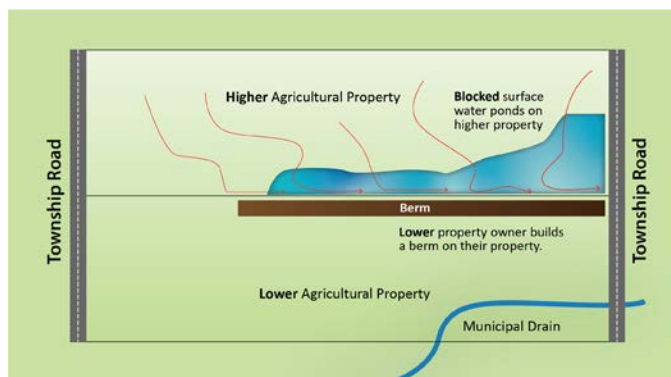


Figure 1–8. Higher property owner's surface water (not collected) is blocked by lower property owner.

Options

- property owners negotiate a mutual resolution
- resolve using the *Drainage Act, 1990*:
 - develop a mutual agreement drain
 - higher property owner may petition the local municipality for a drain

Situation #5

Higher property owner's land is flooded due to a natural watercourse blocked by lower property owner (Figure 1–9).

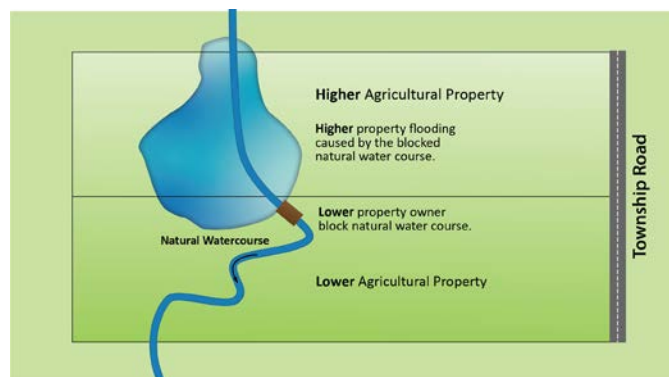


Figure 1–9. Higher property owner's land is flooded due to a natural watercourse blocked by the actions of a lower property owner.

Options

- property owners negotiate a mutual resolution
- resolve using the *Drainage Act, 1990*:
 - develop a mutual agreement drain
 - petition the local municipality for a drain
- higher property owner may take legal action through civil courts after seeking legal advice
- contact the [Ministry of Natural Resources](#) to determine if there is recourse under the [Lake and Rivers Improvement Act, 1990](#)
- Contact the [local conservation authority](#) to determine if the watercourse is regulated under the [Conservation Authorities Act, 1990](#)

Situation #6

Higher property owner's land is flooded due to natural activities (e.g., beaver dam, debris, sedimentation) on a natural watercourse on a lower property owner's property (Figure 1–10).

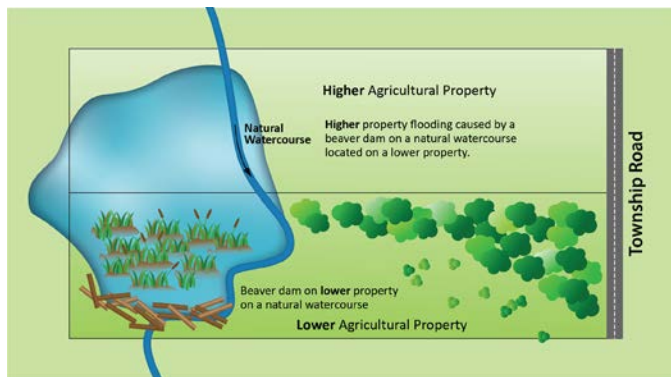


Figure 1–10. Higher property owner's land is flooded due to natural activities on a natural watercourse on a lower property owner's property.

Options

- property owners negotiate a mutual resolution
- resolve using the *Drainage Act, 1990*:
 - develop a mutual agreement drain
 - petition the local municipality for a drain

Situation #7

Property owner activities in the upper part of a watershed of a natural watercourse result in flooding on a lower riparian property owner's property (Figure 1–11).

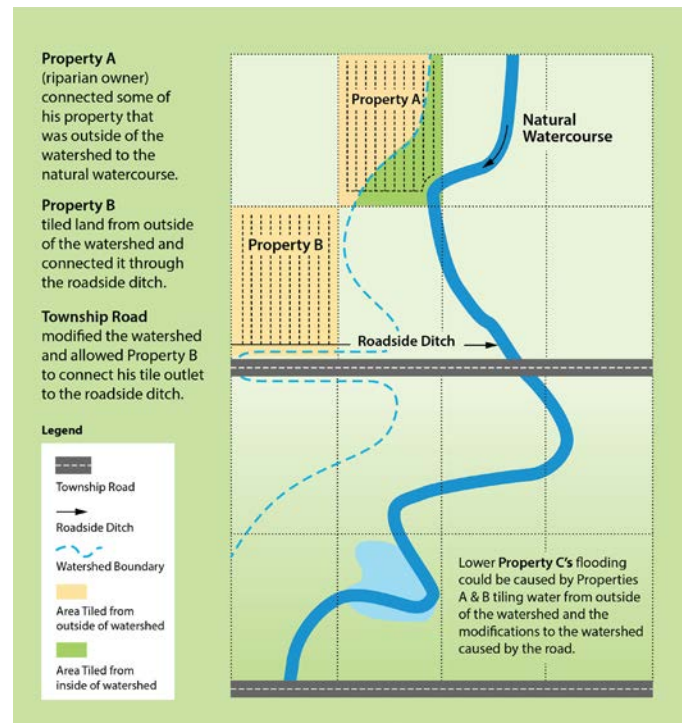


Figure 1–11. Property owner activities in the upper part of a watershed of a natural watercourse result in flooding on a lower riparian property owner's property.

Options

- property owners negotiate a mutual resolution
- resolve using the *Drainage Act, 1990*:
 - develop a mutual agreement drain
 - petition the local municipality for a drain
- lower riparian property owner may take legal action through civil courts after seeking legal advice

1.1.3 Types of Drains

A variety of drains can be constructed privately or through statute law. Drains constructed under statute law include mutual agreement drains, award drains and petition drains (commonly referred to as municipal drains). Some drains are constructed and owned privately.

1.1.3.1 Private Drains

Private drains are channel or pipe drains constructed privately by one or more property owners. The Act does not apply to these types of drains. Property owners are responsible for managing the privately owned drain on their own property, but no owner is legally obligated to undertake any work.

Unless a prescriptive right of drainage has been acquired, adjoining property owners have no right to:

- drain into a private drainage system – permission to outlet water must be obtained from the owner of the drainage system
- perform work on a private drainage system on a neighbouring property – permission to work must be obtained from the owner of the drainage system
- demand the owner of a drainage system maintain or repair the system for the benefit of the adjoining property owner(s)

Even with a prescriptive right, a property owner may need to apply to a court if a neighbouring property owner does not maintain or allow the drainage system to be maintained.

Most roadside ditches are private ditches. They are owned by the road authority and designed to provide drainage to the road and protect the road from flooding or safety issues during storm events. In some cases, roadside ditches may be a mutual agreement drain or a petition drain under the Act.

If the roadside ditch is **not** a drain under the Act, adjoining property owners may not be able to use it as an outlet for their private drainage systems. Municipalities have no obligation to accept water or

allow connections to the private roadside ditch. Contact your local municipality to find out if a connection to the roadside ditch is allowed and the specific requirements.

1.1.3.2 Mutual Agreement Drains

Mutual agreement drains are private drainage systems established between two or more property owners. They are constructed, owned and maintained through an agreement under [Section 2](#) of the Act. The written agreements may or may not be registered on property title. If not registered on title, the agreement is only binding on original signatories. If registered, the agreement is binding on all future property owners. If property owners are not compliant with the agreement, enforcement of the agreement can be made through the court system.

Refer to OMAFA factsheet, [Mutual Agreement Drains](#) for additional information.



1.1.3.3 Award Drains

Award drains were created under the [Ditches and Water Courses Act, 1950](#) and named because construction was "awarded" to persons that owned property along the drain. Award drains were constructed for nearly a century under the *Ditches and Water Courses Act, 1950* until it was repealed on June 1, 1963. While no new award drains can be constructed, many still exist and have legal status. Property owners must maintain the drain in accordance with the award. When a property owner does not maintain the drain, there are no statutory provisions to enforce compliance. An upstream property owner affected by the lack of maintenance can:

- initiate legal proceeding for remedy and/or damages
- petition the local municipality to convert it to a drain under the Act

Refer to OMAFA factsheet, [Award Drains](#) for additional information.



1.1.3.4 Petition Drains

A petition drain (commonly known as a municipal drain) is a drainage works constructed under [Section 4](#) of the Act. Municipal drains are communal drainage systems constructed, financed and maintained with the following broad principles.

Public consultation. Petition drains are initiated by a road authority, property owner or a community of property owners through a petition submitted to their local municipality¹. The petition drain process includes one or more public meetings to address property owners' needs, concerns and desires.

Development of an engineer's report. If council decides to proceed with the petition, it appoints an engineer to prepare a report to identify the proposed solution to the drainage problem and how the costs will be shared.

Assessing costs. The engineer estimates the costs for the entire drainage project and these costs are divided among the property owners in the watershed. These are called assessments in the engineer's report.

Formalizing legal existence. Following the submission of the engineer's report to the municipality, involved property owners have various rights of appeal. After all appeals have been dealt with, the municipality passes a bylaw adopting the engineer's report, giving the municipality the legal authority and responsibility to construct the drain.

Adoption as a municipally managed infrastructure. Once the drain is constructed, the municipality is responsible for its management, which is usually completed through the drainage superintendent. Any future costs for maintenance and repair are paid by the property owners in accordance with the assessment schedule in the engineer's report.

1.1.4 Finding Municipal Drains

To determine if an existing municipal drain affects your property, contact the municipal drainage superintendent or clerk in your municipality.

There are several reasons why you might contact the municipality:

- If you are thinking of buying or recently bought a property, refer to OMAFA factsheet, [Property Sales and the Drainage Act](#) for more information (Figure 1–12)
- You have been told your property has been assessed into a municipal drain
- You received a drainage assessment for drain maintenance and repair
- Your property is experiencing drainage issues and you are seeking resolution or information



Municipalities keep the official documents for municipal drains which include an engineer's report, adopted by bylaw.



Figure 1–12. A rural property for sale with a drain located nearby.

¹ [Section 4\(1\)\(d\)](#) of the *Drainage Act, 1990* authorizes the Director to petition a municipality to construct a drain where a drain is required for land used for agricultural purposes. However, the ministry has never relied on Section 4(1)(d) of the *Drainage Act, 1990* to petition a municipality to construct a drain.

DID YOU KNOW?

AgMaps has a “constructed drain” layer as a resource to show the location of municipal drains, award drains and some mutual agreement drains. Drains are included in AgMaps based on information provided by the municipality and may not show all drains in Ontario. If there is a discrepancy between the information on AgMaps and the municipality's information (e.g., engineer's report adopted by bylaw) prevails.

1.2 Drainage Act, 1990

Drainage legislation was established in the 1800s to overcome the challenges of constructing communal drainage systems under the Common Law. The legislation provides a process for a municipality to establish and maintain a legal and sufficient outlet for surface water from non-riparian properties (i.e., properties that do not border a natural watercourse). Once established, property owners within the watershed of the municipal drain are responsible for construction, maintenance and repair costs.

Many municipal drains are constructed to improve the drainage of agricultural land by serving as the outlet for private agricultural tile drainage systems. These drains may also remove excess water collected by roadside ditches, residential lots, subdivisions, churches, schools, industrial lands, commercial lands and any other properties. Municipal drains are a vital component of the local infrastructure – without them, many areas of the province would experience regular flooding, reduced production from agricultural land and increased public health risks.

1.2.1 Definition of a Municipal Drain

A municipal drain is a drainage system constructed under [Section 4](#) of the Act (Figure 1–13). Most municipal drains are ditches or closed systems such as pipes or tiles buried in the ground. They can also include structures such as dykes or berms, pumping stations, buffer strips, grassed waterways, storm water detention ponds, culverts, bridges and environmental features. Some creeks and small rivers are also incorporated as municipal drains. Municipal drains are mostly located in rural agricultural areas of the province but are also found in urban areas.

The legal definition of a drain is defined in Section 1 of the Act:

“drainage works” includes a drain constructed by any means, including the improving of a natural watercourse, and includes works necessary to regulate the water table or water level within or on any lands or to regulate the level of the waters of a drain, reservoir, lake or pond, and includes a dam, embankment, wall, protective works or any combination thereof.



Figure 1–13. An aerial view of a municipal drain located adjacent to agricultural fields, a road and residential property.

1.2.2 Stakeholders

The Act identifies different roles and responsibilities for various stakeholders including property owners, the local municipality, engineers, drainage superintendents, contractors, public utilities and roads, appeal bodies and the ministry (Figure 1–14).

Property owners are critical stakeholders in the Act. They may petition for the construction of new drains and request improvements or maintenance and repair of existing drains. Property owners in the watershed of a drain under the Act share the costs for any work completed on the drain. They should monitor existing drains under the Act located on their property and immediately report any problems to the drainage superintendent of the local municipality.

The council of the **local municipality** is responsible for overseeing many of the Act processes including the creation of new drains, improvement of existing drains and maintaining and repairing existing municipal drains on behalf of the community of property owners. Council exercises its responsibilities through the clerk, treasurer, appointed engineers and drainage superintendent.

An **appointed engineer** has several responsibilities – preparing a report for a new petition drain or for the improvement of an existing municipal drain, including distributing costs of the drainage project between property owners. Under the Act, an engineer must be registered under the [Professional Engineers Act, 1990](#) or the [Surveyors Act, 1990](#).

The **drainage superintendent** is responsible for the ongoing management of municipal drains – inspection, responding to property owners’ requests for maintenance, and initiating and supervising any required maintenance and repairs. They also provide information to property owners who have *Drainage Act, 1990* or Common Law questions. The drainage superintendent is either a municipal employee or a consulting firm. Property owners can contact their local municipality to find their drainage superintendent or search a [list of drainage superintendents](#).

Contractors are hired by the municipality to construct, improve, maintain and repair drainage systems according to the engineer’s report.

Public utilities and roads are found in most watersheds across the province. They may be on land owned by property owners or be an easement across other properties. Public utilities and roads are responsible for any increased costs to the drainage system because of their infrastructure. Refer to Chapter 2.10.5, Special Assessments to Public Utilities and Roads for more information.

Appeal bodies are established under the Act to hear appeals from property owners (and others) when a drain is being proposed, constructed, improved or modified. Refer to Chapter 5, Appeals for additional details.

The **Ontario Ministry of Agriculture, Food and Agribusiness (OMAFRA)** has legislative responsibility for the Act, provides information to municipalities, property owners and other stakeholders, and administers grants under the [Agricultural Drainage Infrastructure Program \(ADIP\)](#).



Figure 1–14. Stakeholders discuss a drainage concern.

1.2.3 Drainage Act, 1990 Process

The Act provides a framework for local municipalities to create and manage communal drainage systems that benefits everyone in the watershed². The costs incurred by the municipality to create and manage these drains are assessed and paid for by all the property owners (lands and roads) in the watershed of the drain. The Act also provides authority and responsibility for future maintenance and repair of the drain by the municipality.

The construction of new drains is initiated by property owners or road authorities through a petition process (Chapter 2). Once created, existing drains can be improved to reflect land use changes, increase drainage capacity, improve drain bank stability, add buffer strips, install additional crossings, etc. (Chapter 3). New drains and improvements to existing drains are designed by an engineer. These processes can occur simultaneously as one project. For example, a project authorizing the improvement to an existing drain may also include the construction of a new branch drain by petition.

A drain constructed under the Act is authorized by a municipal bylaw that adopts an engineer's report. Drains have legal recognition as part of a municipality's infrastructure. The Act authorizes entry onto private property for the purposes of constructing, improving, maintaining or repairing the drain. The Act allows for property owner input during the development of the engineer's report and provides a process to raise concerns to independent appeal bodies (Chapter 5).

² This publication provides information related to the use of the *Drainage Act, 1990* in areas of the province with an organized municipal. The ministry can construct drainage works for property owners in territories without municipal organization under [Section 123](#) of the *Drainage Act, 1990*. For more information, contact OMAFA's Agricultural Information Contact Centre (AICC) at 1-877-424-1300 or e-mail ag.info.omafa@ontario.ca.

Chapter 2

2. Creation of a New Drain by Petition

The *Drainage Act, 1990* provides a process (Figure 2–2) for creating a new drain (Section 4). A property owner or a road authority may petition for a new drain to solve a drainage issue (Figure 2–1) they are having but everyone in the watershed of the proposed drain has the opportunity to be involved in the process.



Figure 2–1. In field flooding with no drainage system in place.

Source: R.J. Burnside & Associates Limited, Wingham, Ontario.

2.1 Submitting a Petition

A property owner petition starts by filling out a [Petition for Drainage Works by Owners – Form 1](#). The form must be completed correctly in accordance with property ownership (e.g., sole ownership, partnership or corporation). This is a legal document binding the properties listed on the form to the *Drainage Act, 1990* process. Petitioner(s) become financially responsible for the drainage project by signing the petition. For additional information on filling out the petition, refer to Appendix A.

The project costs following construction of the drain are assessed to all the property owners in the watershed. However, the petitioners are the only ones financially responsible if the petition becomes invalid prior to construction of the project.

If there is more than one property that requires drainage, property owners can either complete, sign and submit their own petitions, or they can sign the petition jointly with their neighbours.

Petition drain procedures under the Drainage Act (Section 4)

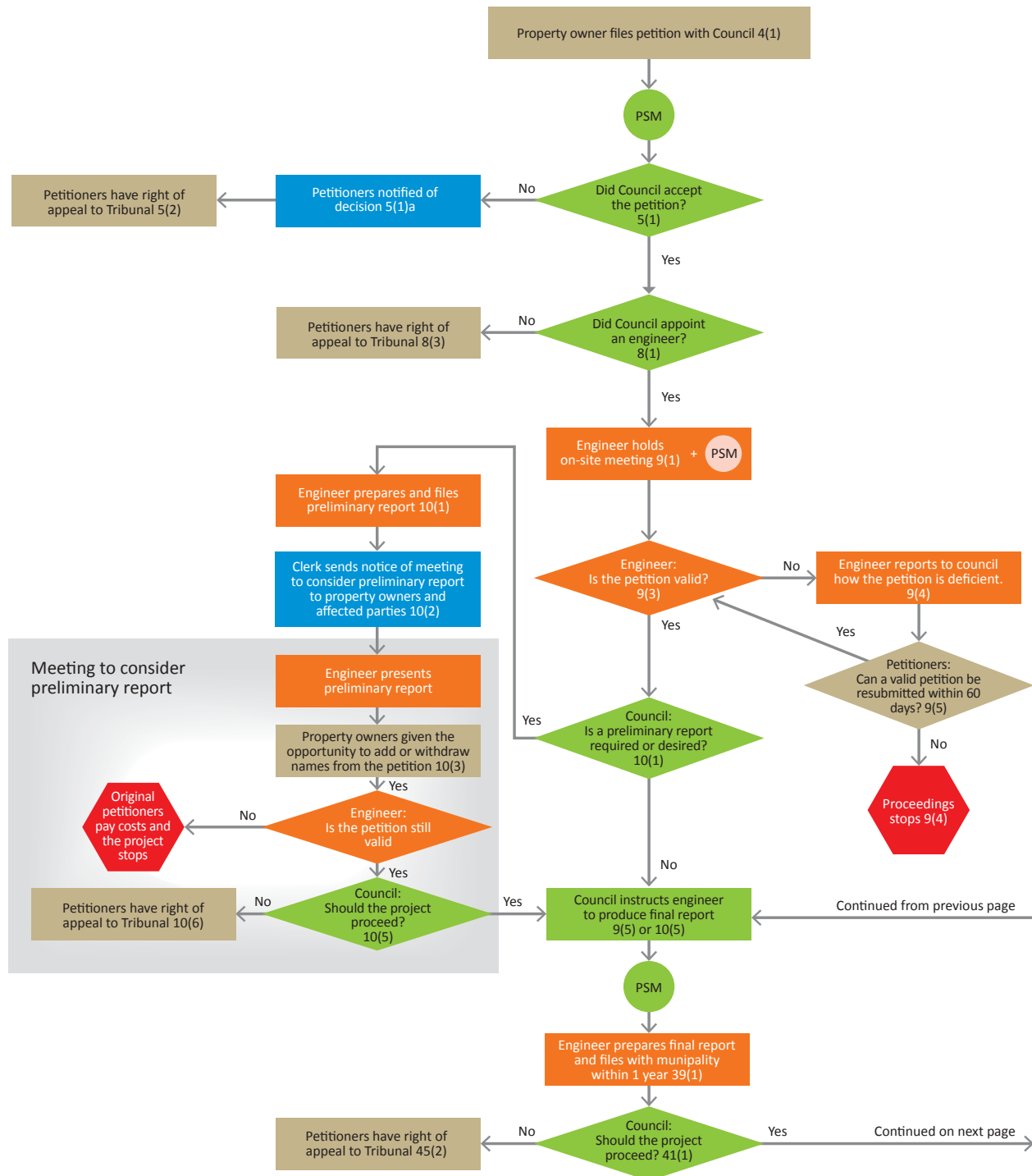
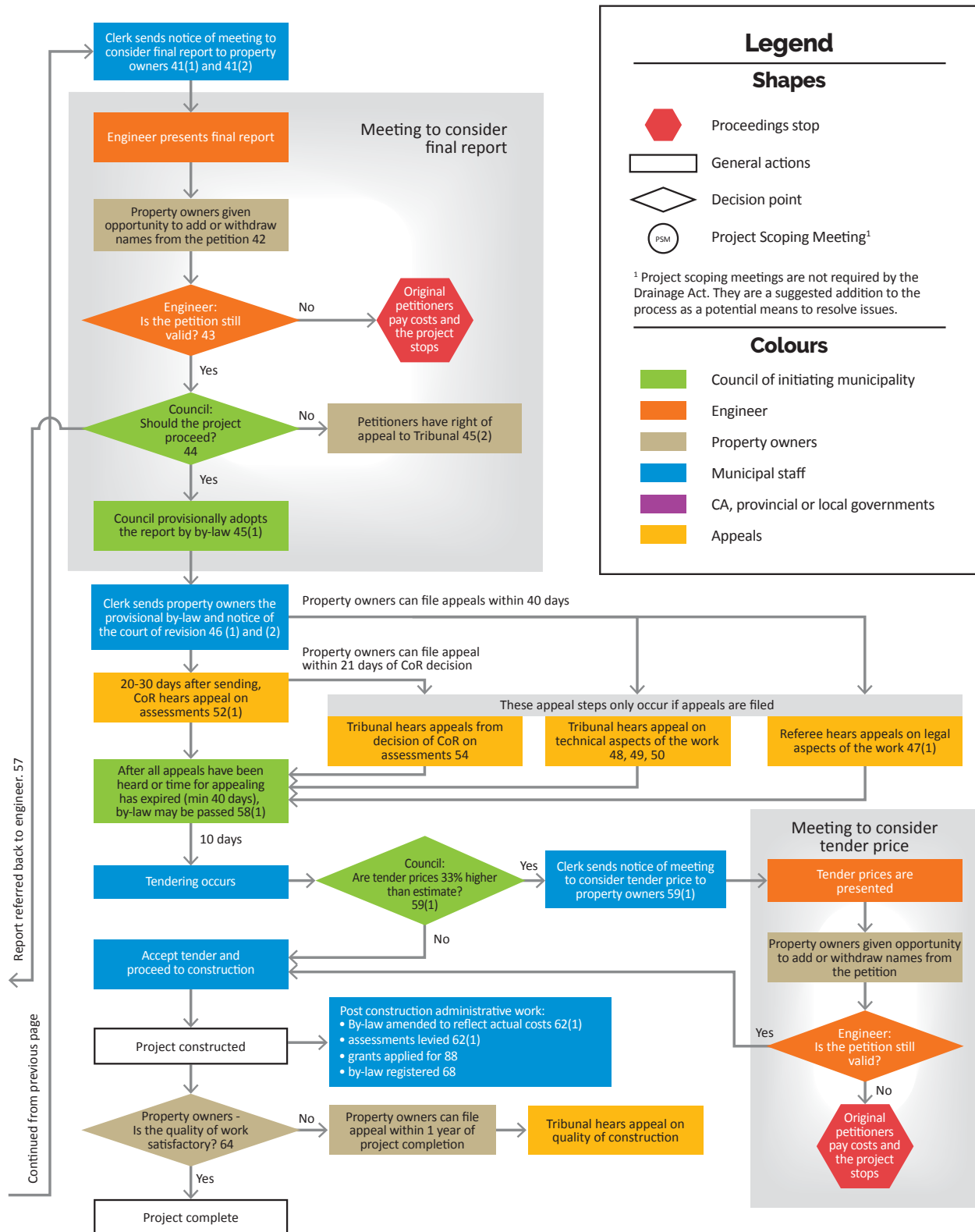


Figure 2–2. Petition drain procedures.



DID YOU KNOW?

If a petitioner sells their property to another owner, the original owner's signature continues to bind the property (and the new owners) for the purposes of the petition.

Completed forms are submitted to the clerk of the local municipality. The clerk signs the petition indicating they have received the form and it has been filed. The clerk should provide a copy of the filed petition to the petitioners.

Council must consider the petition and decide whether to accept it. If accepted, the project is initiated through a resolution of council, followed by the appointment of an engineer. The municipality sends out notices to property owners stating they have appointed an engineer.

Alternatively, council may not accept the petition and notify the petitioners of their decision. Petitioners have the right to appeal council's decision to the [Agriculture, Food and Rural Affairs Appeal Tribunal](#) (Chapter 5.2).

If you are not the petitioner, but your property is within the watershed of a proposed drain project, be sure to understand:

- where the petitioning properties are located
- the overall *Drainage Act, 1990* process including opportunities to provide information and input and how to appeal

Once the project is complete, all property owners within the watershed are required to contribute their share of the project costs as defined in the engineer's report.

2.2 Appointing an Engineer

The municipality appoints a project engineer based on its policies for obtaining engineering services. The engineer is responsible for carrying out the project on behalf of the property owners in the watershed and providing a fair and impartial report ([Section 11](#)). The appointed engineer has the authority to enter onto private property to complete the project.

2.3 Project Scoping Meeting (Optional)

Though not identified in the Act, some municipalities or appointed engineers use project scoping meetings to ensure all issues have been identified, and provide information that determines how the project moves forward.

These meetings can occur before or after the on-site meeting (Chapter 2.4). Project scoping meetings give the municipality, property owners, regulatory agencies and other stakeholders the opportunity to identify concerns and effective, collaborative solutions to solve the drainage issue. These meetings are used to determine if a complex project is economical or environmentally viable to keep costs as low as possible.

Project scoping meetings may be held for projects that:

- involve wetlands or environmentally sensitive habitats
- involve road or public utility crossings
- involve land uses other than agricultural
- are expected to have higher costs due to the size of the project
- are regulated by legislation such as the [Lakes and Rivers Improvement Act, 1990](#) (dams) and [Ontario Heritage Act, 1990](#) (heritage sites)
- may be in an area of Indigenous interests or where an archaeological study is required

There are two possible outcomes from the meeting related to economics and being environmentally viable:

- **Council decides the project is viable** and instructs the engineer to:
 - prepare a benefit cost statement or an environmental appraisal, or
 - prepare a preliminary report to investigate options more thoroughly, or
 - proceed with the development of a final report
- **Council decides the project is not viable** and:
 - recommends property owners or the road authority withdraw their petition ([Section 4](#)), or
 - withdraws acceptance of the petition ([Section 4](#))

Regulatory agencies may identify studies that are required to get legislative approvals and develop terms of reference and associated timelines.

2.4 On-Site Meeting

The Act requires an on-site meeting for all construction and improvement projects (Figure 2–3). Property owners receive notification of an on-site meeting from the municipality. There are two main purposes for the meeting:

- provide a forum for property owners and agencies (local drainage superintendent, road authority, conservation authority, etc.) to present the goals, objectives and constraints of the drainage project to the engineer
- confirm if the project can proceed – the appointed engineer must define the area requiring drainage and evaluate the validity of the petition for a new drain



Figure 2–3. An engineer leading an on-site meeting at the edge of an agricultural field.

DID YOU KNOW?

For a proposed drain, only the property owners within the area requiring drainage are required to be notified of the on-site meeting ([Section 9\(1\)](#)). However, municipalities and engineers are encouraged to consider inviting other property owners within the watershed, as appropriate.

Property owners should review the following questions in advance of the on-site meeting:

- Does your property need drainage?
- Is your property receiving surface water from a neighbouring property?
- Are you considering installing new tile drainage or improving the existing tile system?
- Do you have a preferred location for the drain on your property?

- What are the financial and farm management implications of having a ditch drain versus a pipe drain constructed through your property?
- Can you solve your drainage outlet needs with an agreement with your neighbour (e.g., through a mutual agreement drain)?
- Are there environmental features you would like included in the drain design (Section 4.2)?

The engineer may ask property owners the following questions:

- Are you aware of any private utilities on your property?
- Do you have any concerns regarding unstable soils, high groundwater table or standing water on your property?
- Do you have any maps or records for private drainage systems on your property?
- Do you have any plans to install a new private tile drainage system on your property?
- Can you provide any general observations of the drainage patterns in the area?

Participating in an On-Site Meeting

Property owners are strongly encouraged to attend the on-site meeting to share their drainage needs and concerns. If attendance is not possible, designate a representative and inform the engineer in advance. The engineer may require written confirmation to ensure your interests are properly documented.

At the meeting, the engineer or the drainage superintendent often starts with introductions and allows participants to identify themselves and their properties. An attendance sheet should be available to enable follow-up communication or to gather additional information. The *Drainage Act, 1990* process is explained in Figure 2-2 and property owners unfamiliar with the Act or unsure about their role are encouraged to ask questions. The engineer may provide a meeting agenda, a map of the area, and details of any existing municipal drains.

At the conclusion of the on-site meeting, the engineer determines if the petition is valid (Chapter 2.5) – a valid petition provides the authority for the project to proceed. If the engineer determines the petition is invalid, there is the opportunity to add names to an invalid petition.

Property owners may wish to sign a new petition for an adjoining area requiring drainage and submit it to council for consideration. If accepted, council can initiate a separate project or instruct the engineer to join the two petitions together into the same project.

If additional work by the engineer is required to determine if there is authority for the project to proceed, the engineer may adjourn and reconvene the meeting at a future date.

The engineer may inspect the proposed project site. As a property owner, you may want to show the engineer the issues on your property. Property owners do not have the same authority under the Act as the engineer to enter onto a property. To enter someone else's property with the engineer, the property owner must give permission.

After the on-site meeting, a survey crew visits the site to collect field information in order to design the drainage system.

DID YOU KNOW?

The appointed engineer, support staff and survey crew are authorized to enter private land for the purposes of completing the project (Section 12).

2.5 Assessing the Validity of a Petition

The petition's validity is determined by the engineer at the on-site meeting. Chapter 2.4 provides detailed information about the on-site meeting.

For a petition to be valid, it must contain the signatures from property owner(s) that satisfies at least one of the following conditions:

- the majority (over 50%) of owners in the area require drainage (Figure 2–4)
- the owners represent at least 60% of the area requiring drainage (Figure 2–5)
- a signature from a road authority where a road requires drainage (Figure 2–6)

At the on-site meeting, other property owners in the watershed may add their names and sign the petition. An additional signature from a property owner in the area requiring drainage may make the petition valid even if it was not originally valid.

DID YOU KNOW?

The area requiring drainage is not defined in the Act. It is the responsibility of the engineer to determine the area requiring drainage based on the information provided on the petition form, their observations at the on-site meeting and existing case law. Case law decisions are found at [Canadian Legal Information Institute: Ontario Court of the Drainage Referee – Ontario](#).

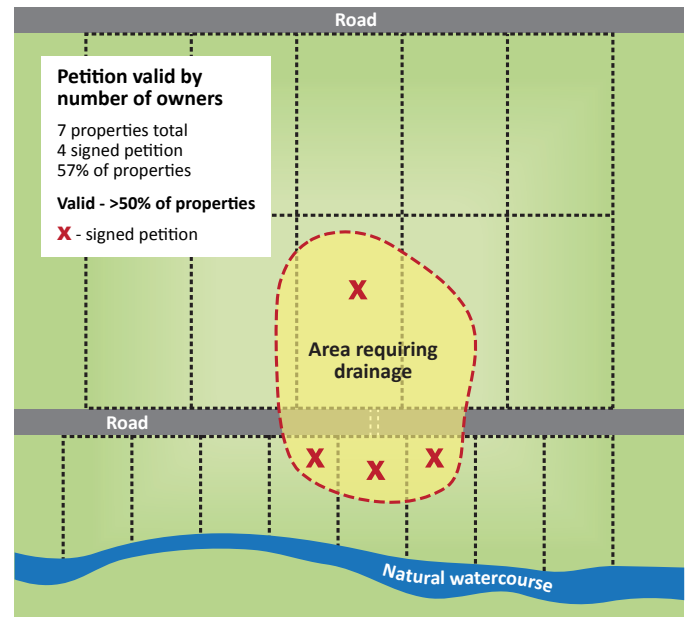


Figure 2–4. An example where a petition is valid based on the percentage of owners.

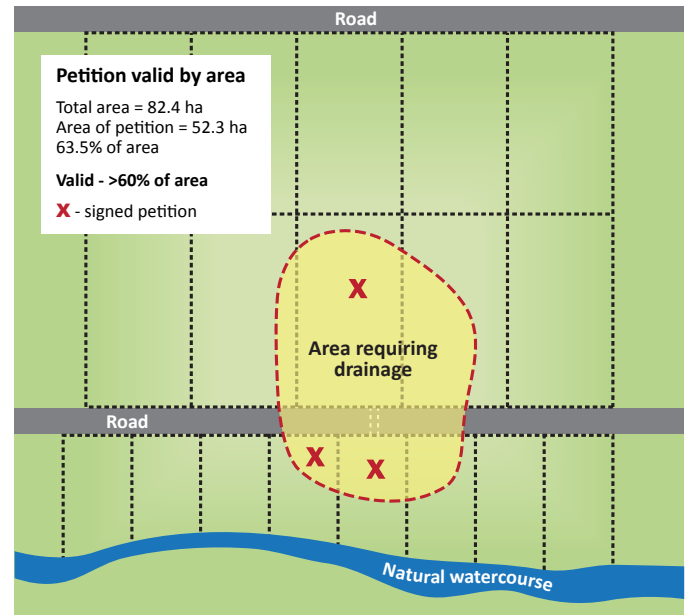


Figure 2–5. An example where a petition is valid based on the percentage of area.

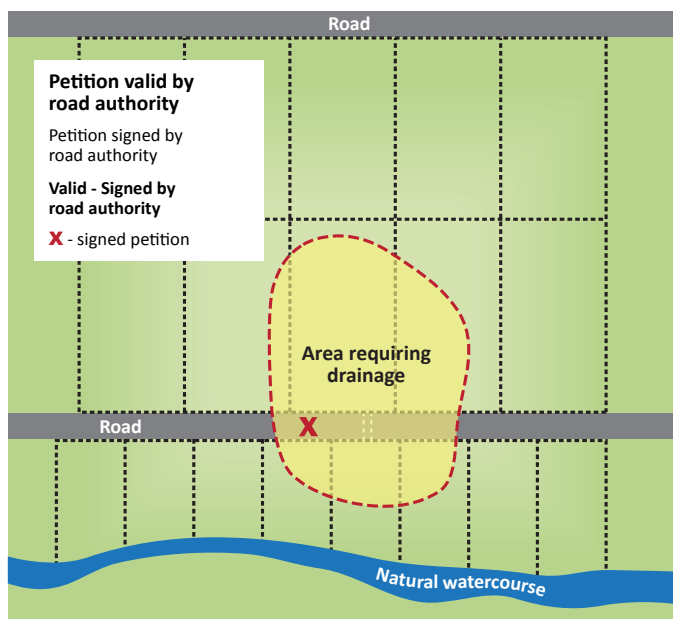


Figure 2-6. An example where a petition is valid based on the signature of a road authority.

DID YOU KNOW?

The petition is a legal document that initiates the process under the *Drainage Act, 1990* to develop a municipal drain. If you want to challenge the authority of the project through the validity of a petition, you are advised to seek legal advice.

2.6 Preliminary Report (Optional)

Preliminary reports are optional, but council may instruct the engineer to complete one. A preliminary report outlines the potential solutions to the drainage

problem without incurring substantial engineering costs. The report is used to help reduce overall project costs by evaluating different options in advance of a final report.

The preliminary report process allows:

- the engineer to evaluate options and provide recommendations
- the engineer to develop high level cost estimates for the options – but the Act does not allow for assessments to individual properties to be calculated for preliminary reports
- owners and council to review options and recommendations
- owners and council to determine which option, if any, should proceed to a final report

DID YOU KNOW?

A preliminary report is required if an environmental appraisal or benefit cost statement has been requested by the municipality or a regulatory agency.

Some situations may warrant a preliminary report, if:

- there are various solutions to the drainage problem (e.g., drain form, construction techniques or routes)
- regulatory approvals may be difficult to obtain
- technical, environmental or archaeological issues are complex
- a drainage project may not be economically feasible (e.g., land values or improved crop yields are marginal)
- the project is complex (e.g., urban development, new or altered road construction, natural channel design)

The process to consider a preliminary report is similar to the final report process, including the addition/withdrawal of names from the petition and some appeal rights (Figure 2–2).

2.7 The Engineer's Report

Following the on-site meeting and survey of the site, the engineer prepares a report that becomes the basis for the drainage system design, construction and future maintenance and repair.

The engineer is required to prepare an unbiased drainage report based on information collected including the site survey, visual inspection and property owner input. The report must be in accordance with currently accepted design criteria and regulatory requirements. For example, the local conservation authority may identify requirements that must be addressed for the project to proceed.

The engineer's report provides the following details:

- history and background of the drain and the drainage issue
- where the drain will be located on each property and the boundary of the watershed
- the technical design details:
 - drain capacity
 - drawings showing the plan view and profile of the drain and details
 - material and construction specifications
- allowances provided to the property owners to compensate for the use of land and crop damage
- cost estimate for the project
- how the project costs are divided and assessed to each property following the construction of the drain (Chapter 2.10)
- instructions on how the cost of future maintenance and repair are assessed to each property

The engineer's report may also contain the following:

- meeting notes that include input from property owners
- supplemental studies and reports prepared for regulatory agencies
- letters of support or approvals/permits from regulatory agencies

2.8 Allowances

Allowances are a one-time payment to property owners impacted by the drainage project. They are provided at the time of the initial construction but not for any future maintenance and repair activities.

There are different types of allowances under the Act:

- loss of land and use of land for rights-of-way ([Section 29](#))
- damage to crops, lands, fences, etc. ([Section 30](#))
- incorporating a previously constructed private drain ([Section 31](#))
- a drainage system, by design, that is not carried to a sufficient outlet ([Section 32](#))
- loss of access if the drainage system cuts off access to part of the owner's property and does not provide the owner with a new crossing ([Section 33](#))

Allowances are found in the engineer's report in the allowance schedule and show each property that receives allowances. The type and dollar value for allowances provided is different for each property involved in the drainage project, and must be fair to:

- the property owners that receive the allowance
- the property owners within the watershed that are contributing to the payment of the allowances

2.8.1 Allowances for Land and Right-of-Way (Section 29)

The engineer provides an allowance to property owners to compensate them for the permanent use of the land by the drain or the periodic use of the land for access or future maintenance and repair.

If there is a permanent loss of land, the allowance is usually based on the market value of the land. Permanent loss of land can be due to a new channel drain, significant widening of an existing channel drain, or lands designated as a permanent buffer, vegetated berm or grassed waterway. Allowances are not typically paid for existing natural watercourses.

The value of allowances may vary depending on the use of the land, such as:

- installation of a closed tile drain
- allowances for right-of-way access
- allowances for the placement of spoil

In most cases, property owners retain the right to plant and harvest crops in areas where the allowance was provided for the right-of-way. The engineer's report should include a statement regarding who is responsible and how the spoil will be managed. In most cases, property owners are responsible for the work required to allow them to plant crops on the area where the spoil was placed.

An allowance for right-of-way compensates a property owner for land that will be used periodically for future maintenance and repair, including:

- access to a drainage system for construction or improvement of a drain
- a working space along a channel or over a pipe

The engineer's report should specify the location of the right-of-way, including the length and width of the access and the land value (e.g., \$/hectare) used to calculate the allowance for the right-of-way.

DID YOU KNOW?

With the passage of a bylaw adopting the engineer's report, the municipality acquires a form of easement for the permanent location of the drain and access for future maintenance and repair, however the ownership of the land does not change.

2.8.2 Allowances for Damages (Section 30)

[Section 30](#) provides allowances for damages to ornamental trees, lawns, fences, lands and crops that occur during a drainage project.

Ornamental Trees

Ornamental trees are not defined in the Act, but generally refers to all trees on the property. Any trees that are removed or damaged must be noted in the engineer's report to be eligible for an allowance. Allowances for fruit trees in producing orchards, Christmas trees and woodlots managed for commercial production may be calculated as a crop.

Lawns

If lawn areas are disturbed by the construction of a drainage system, the contractor restores the lawn or an allowance is provided to the property owner to have the lawn restored. The report should clearly identify the dimensions of the area the allowance is based on.

Fences

Fences are often encountered during drainage projects and often restored as part of the project, but allowances for the value of existing fences may be provided instead. The report should identify the exact location of fences to be removed so the property owner knows how the allowance was determined.

Property owners are encouraged to erect fences to keep livestock out of the drain. The owner should ensure fences do not interfere with future maintenance and repair work. If the fence is damaged during future improvements or maintenance and repair, the drain holds no responsibility to repair the fence.

Lands and Crops

Allowances are provided for damages to lands and crops caused by disruption of productivity for use of the affected land (Figure 2–7). This can be either during construction of the drain or continue for a few subsequent years after construction.



Figure 2–7. Damage to a soybean field resulting from drain construction.

Any land eligible for an allowance must be clearly defined (extent, depth and quality) in the engineer's report. The damage allowance for the spreading of excavated material is based on the area of land affected, the depth of material placed on the land and the quality of the material. Allowances are reduced when topsoil is stripped and replaced after construction because less future crop damage occurs. The specifications must clearly define the area affected by the spreading and levelling work, and the depth of the material.

2.8.3 Allowances for Existing Drain (Section 31)

[Section 31](#) allows the engineer to incorporate a private drain into a new drainage system under the Act and compensate the owner for its value. The valuation of a private drainage system depends on its condition and value to the new drainage system. An allowance is provided that is fair to the owner(s) of the private drain who paid the original capital costs and also to the other property owners in the watershed who will make use of the drain and contribute towards the cost of the project. An allowance for an existing drain is not provided for a natural watercourse located on private property.

If the engineer intends to incorporate a private drain with very little remaining value or service life, the report should include a nominal allowance reflecting its depreciated value.

2.8.4 Allowances for Insufficient Outlet (Section 32)

A sufficient outlet for a drainage system is a point where water is discharged safely and does no damage to lands or roads. Drainage systems must be taken to a sufficient outlet ([Section 15](#)). However, if the engineer finds the costs of continuing the drainage system to a sufficient outlet is greater than the amount of damage caused, they may provide the affected property owner(s) with an allowance ([Section 32](#)).

There are situations where it may be less expensive to provide an allowance to compensate property owners for damages rather than to construct a drain to a sufficient outlet for situations where:

- a drain would continue through a wetland or woodlot
- a drain would require addressing conditions imposed by regulatory agencies
- land is periodically used for water storage by design or agreement

Allowances for insufficient outlet are provided once to affected properties unless further improvements on the upstream drainage works are done. When drain improvements are considered, only the incremental increase in potential damages is compensated.

Compensation for insufficient outlet is usually not more than the market value of the land subject to increased flooding. The frequency and extent of incremental flooding, land use and crop loss values are important considerations in determining compensation.

Allowances for an insufficient outlet can address:

- an outlet related to an existing drainage works or,
- an anticipated insufficient outlet resulting from a new upstream project

2.8.5 Allowances for Loss of Access (Section 33)

The Act requires the engineer to provide property owners with access to their land through the construction of bridges and culverts (Section 18) – with one exception. An allowance may be provided to a property owner for the loss of access to their land caused by the drain (Section 33).

An allowance for loss of access is only provided once. When determining this allowance, the engineer considers:

- the cost of constructing a suitable bridge or crossing of the drain
- the value of the land cut off from the rest of the property by the new drain
- the reduction in the market value of the entire property once the new drain is constructed

DID YOU KNOW?

When allowances are provided for Insufficient Outlet (Section 32) and Loss of Access (Section 33), the municipality must register on title, a copy of the bylaw adopting the engineer's report and a statement of the amount of allowance paid and a description of the land that received the allowance(s).

DID YOU KNOW?

Property owner appeals on allowances are addressed by the Ontario Agriculture, Food and Rural Affairs Appeal Tribunal (the Tribunal). Refer to Chapter 5 for more information on appeals.



2.9 Cost Estimate for the Drainage Project

The cost of the proposed drainage system is estimated by the engineer before they are assigned to individual properties and estimated total project costs are included in the engineer's report.

The cost estimate for a drainage system has five broad components:

- allowances – refer to Chapter 2.8
- construction – estimated based on current market pricing
- engineering fees – includes incurred costs such as meetings, drain survey, design, report preparation and future expenses for meetings, contract administration and construction supervision
- eligible municipal administration – financing, legal and permitting fees, applicable taxes, office expenses and costs of non-council court of revision members, etc.
- contingencies – unforeseen items during the period of time needed to complete the project

2.10 Assessments

The portion of the estimated total project costs assigned to the individual properties are called assessments. Once the project is completed, municipalities use the assessments to proportion the actual project cost to all properties.

The Act allows for the following types of assessments:

- benefit ([Section 22](#))
- outlet and injuring liability ([Section 23](#))
- special benefit ([Section 24](#))
- block assessment ([Section 25](#))
- special assessments to public utilities and roads ([Section 26](#))

Costs for a drainage project are usually prorated which means they are assessed as a percentage of the estimated total project costs. The engineer may decide that certain costs are not to be prorated. Non-prorated assessments usually deal with specific items in the project and are assessed on the actual total cost of the item. The engineer bases this decision on the value and uniqueness of the drainage feature and generally assesses these costs as a special benefit to certain properties. The report should clearly identify prorated and non-prorated assessments.

Property owners can appeal their assessments (Chapter 5).

2.10.1 Benefit Assessment (Section 22)

Benefit – as defined by the Act – means the advantages to any lands, roads, buildings, utilities or other structures from the construction, improvement, repair or maintenance of a drainage system ([Section 22](#)). The benefit results in:

- a higher market value
- increased crop production
- improved appearance
- better control of surface and subsurface water
- reduced water flowing from a neighbouring property
- easier and reduced maintenance or repair
- other advantages

The engineer determines the benefit to each property and includes it in the report. The benefit is to the land, even if the current property owner may not consider it a benefit.

2.10.2 Outlet and Injuring Liability Assessments (Section 23)

Properties in the watershed are assessed for outlet liability as they are connected to the drain directly or indirectly. Outlet liability assessments ([Section 23](#)) are the cost assigned to a property for the right of drainage into a drainage system based on:

- which section(s) or length of the drain are used downstream of the property
- volume of water generated based on drainage area of the property
- rate of flow based on the physical features of the property

Injuring liability assessments are used when an upstream property owner collects surface water and causes it to flow on and injure any other land or road. Under the Common Law, the property owner may be liable for damages. But when a drainage system is constructed under the Act, this upstream property owner may instead be assessed for injuring liability.

Most engineer's reports combine both outlet and injuring liability assessments into the outlet assessment as a single value.

Properties assessed an outlet liability assessment acquire the right to have their water in the drain. This does not give the property owner the right to directly connect to the drain if it is located on a neighbouring property. Permission is required to cross someone else's property or consider petitioning for a branch drain which directly connects to the municipal drain.

2.10.3 Special Benefit Assessment (Section 24)

Special benefits – as defined by the Act – are any additional works or features included in the drainage system that have no effect on the functioning of the drainage system (Section 24). The engineer may assess a property for a special benefit where a feature only provides value to the individual owner and not the entire watershed, and/or where the feature is not required for normal function of the drain (Figure 2–8). The engineer should clearly state in the report what features are assessed as special benefits.

In some situations, the following items may be considered special benefits:

- an extra-long crossing
- special surface treatment over a crossing
- aesthetic features – decorative crossing end walls, coloured stone, plantings
- lawn piping – enclosing an existing drain through a lawn
- relocation or realignment of the drain for the benefit of one specific property
- additional private connections – surface water inlets, rock chutes, tile outlet pipes
- extra structures to allow for future private connections to a piped drain
- private utilities



Figure 2–8. A crossing with decorative end walls.
Source: Municipality of Chatham-Kent, Ontario

2.10.4 Block Assessment (Section 25)

To save on engineering costs, a block assessment may be used to assess a built-up area (subdivision or hamlet) as one block. Council must direct the engineer to complete a block assessment (Section 25). The total costs for the block are divided between roads and properties. The roads portion is paid by the road authority, and the property portion should be divided proportional between each property based on their assessed value compared to the total assessed value of the entire block.

DID YOU KNOW?

Road authority is defined in [Section 1](#) of the Act and includes all public roads such as municipal, county, regional and provincial roads – but does not include private roads.

2.10.5 Special Assessment to Public Utilities and Roads (Section 26)

Road authorities and public utilities that own land are assessed the same as other property owners. However, public utilities and road authorities are also assessed the increase in cost of the drainage works where the existence of the road or public utility causes an increase in the project costs (Section 26). Property owners – farmers and residential owners – are not assessed under this section as they are not a public utility as defined by the Act.

For example, if it costs \$100/m to construct a drain across a farm property and \$300/m to construct the drain across the road, the road authority is responsible for the additional \$200/m as a special assessment (Figure 2–9).



Figure 2–9. Example of increased costs required at a road crossing due to hydro excavation of utilities.
Source Streamline Engineering Inc.

DID YOU KNOW?

Public utility is defined in Section 1 of the Act and includes services such as railways, telephone, natural gas, electricity, water, sewers or any other works that supply the general public with necessities or conveniences (e.g., cable TV) – but does not include private utilities.

2.10.6 Assessment Schedule

The engineer's report may contain two types of assessment schedules (tables) – one for the construction of the drain and one for the future maintenance and repair of the drain. The tables itemize project costs by the various assessment types for each property with a row for each property and a column for each assessment type. Where a report only contains one assessment schedule for construction, a maintenance and repair statement is provided in the report to show the drainage superintendent how to modify the construction assessment schedule for use with future maintenance and repair. Table 2–1 is an example of an assessment schedule used in an engineer's report.

Table 2–1. Example assessment schedule

Concession	Lot or Part	Roll Number	Property Owner	Affected Area (ha)	Benefit (Section 22)	Outlet Liability (Section 23)	Special Benefit (Section 24)	Special Assessment (Section 26)	Total Assessment
3	Part 5	(55-001)	A. Robertson	15.4	–	\$4,523	–	–	\$4,523
3	Part 5	(55-002)	A. Kester	35.2	\$8,000	\$10,339	–	–	\$18,339
3	Part 6	(55-004-01)	K. Ataw	2.3	–	\$676	–	–	\$676
3	Part 6	(55-004)	T. Brook	22.9	\$5,000	\$6,726	–	–	\$11,726
4	5	(11-226)	Langmuir Farms Ltd.	55.4	\$11,500	\$16,271	\$15,000	–	\$42,771
4	6	(11-203)	Awesome Farm Ltd.	61.3	\$12,500	\$18,004	–	–	\$30,504
Total Assessment on Lands					\$37,000	\$56,539	\$15,000	\$0	\$108,539
Gore Road — Township of Nice Farms				2.4	\$5,000	\$3,635	–	\$7,526	\$16,162
Twp. Road 3 — Township of Nice Farms				1.1	–	\$1,615	–	–	\$1,615
Total Assessment on Roads					\$5,000	\$5,251	\$0	\$7,526	\$17,777
Total Assessment on Lands and Roads					\$42,000	\$61,790	\$15,000	\$7,526	\$126,316

2.11 Information Meetings (Optional)

Once the draft report is complete, some engineering firms hold information meetings with property owners so they can review the proposed drainage report and raise any concerns prior to the report being finalized and submitted to the local municipality.

When the drainage report and meeting notice are received, property owners are encouraged to review the report and attend or be represented at the meeting. For assistance in understanding the report, contact the local drainage superintendent or other knowledgeable persons.

At the meeting to consider the report, the engineer provides an overview of the project and answers questions in a public forum. If there was not a previous information meeting, this is the first opportunity for property owners to comment on the report.

Property owners within the area requiring drainage are given the option to add or withdraw their names from the petition at this meeting.

If the petition is no longer valid because petitioner(s) removed their name(s), the project stops. The project costs to date are paid proportionately by the original petitioners.

If the petition remains valid, council has the right to make one of the following decisions:

- proceed with the report and project by provisionally adopting by bylaw (i.e., giving two readings to the bylaw)
- refer the report back to the engineer for review and resubmission to address issues raised at the meeting

2.12 Processing the Engineer's Report and the Meeting to Consider the Report

The completed engineer's report is filed with the local municipality and council hosts a Meeting to Consider the Report. Property owners within the watershed and involved agencies are invited to attend. The purpose of the meeting is to present the report, respond to questions about the report and determine outcomes. The details of individual assessments are not covered during this meeting but can be appealed to the Court of Revision (Chapter 5.1).

Prior to the meeting, the report and a notice for the meeting are provided to the assessed property owners either by mail or online. The meeting is held no less than 10 days after the notice is sent to the property owners.

- do nothing, the project stops because council did not provisionally adopt the report by bylaw. This decision can be appealed by property owners to the Tribunal (Chapter 5.2), and there is no authority for council to recover the engineering costs for the project

Other property owners (not in the area requiring drainage) who attend and participate in the meeting have the right to make their views known about the project. Property owners affected by the drainage system should ensure the proposed location and design meet the current and foreseeable future needs of their property or farming operation. Property owners should review the assessment schedules to understand their share of the drain construction costs and the costs associated with future maintenance and repair.

Property owners should also review the compensation provided as allowances to their property. If dissatisfied with their allowance, property owners can raise their concern at the Meeting to Consider. The engineer can then provide information on how allowances were calculated and council may refer the report back to the engineer, if required.

2.13 Appeal Rights and Opportunities

If council decides to proceed with the project, the period for appealing the engineer's report starts when the clerk sends out the provisional bylaw adopting the report along with a notice of the Court of Revision to property owners.

Property owners may appeal the report to the:

- Court of Revision
 - on assessment matters only ([Section 52](#))

Note The Court of Revision has no authority to modify allowances
- Tribunal
 - on allowances provided that are inadequate or excessive ([Section 48](#))
 - on technical matters ([Section 48](#))
 - on assessment matters, when a property owner appealed to the Court of Revision and is dissatisfied with the decision from the Court of Revision ([Section 54](#))
- Drainage Referee
 - on legal matters ([Section 47](#))

There are specific timeframes to appeal a project under the Act. If a timeframe for an appeal is missed, the opportunity to appeal may be forfeited.

2.13.1 Appeal of Assessment to the Court of Revision

- The municipality establishes the date for the Court of Revision, which must be between 20 to 30 calendar days after the mailing of the provisional bylaw and notice of the Court of Revision.
- The property owner receives a notice of the Court of Revision and copy of the provisional bylaw. This notice includes the date of the Court of Revision, the deadlines and procedures for appealing.
- To appeal, a property owner must give notice to the clerk of the initiating municipality.
- The deadline to appeal is 10 days prior to the sitting of the Court of Revision.
- Appeals are submitted in writing using [Form 003-0196, Notice of Appeal to Court of Revision](#).
- At the meeting, the Court of Revision uses its discretion to hear appeals from any assessed property owner who has not previously submitted an appeal.
- If the Court of Revision modifies the assessment of any property whose owner is not in attendance, the meeting will adjourn and reconvene when the affected property owner(s) can present their concerns on the modified assessment.

DID YOU KNOW?

The Court of Revision can modify the assessments on individual properties but cannot modify the overall estimated project costs to be assessed. If the Court of Revision modifies assessments and decreases the assessment of a property, the reduction must be added to the assessment of another property or split among multiple properties.



2.13.2 Appeals to the Agriculture, Food and Rural Affairs Appeal Tribunal

- Appeals on the technical aspects of the project ([Section 48](#)):
 - must be filed within 40 days after the municipality sends the notice of the provisional bylaw and Court of Revision
 - property owners who want to make an appeal use [Form 003-0185, Generic Notice of Appeal to Tribunal By Petitioner\(s\) or Property Owner\(s\)](#) and file with the clerk of the initiating municipality
- Appeals of the Court of Revision decision on assessments ([Section 54](#)):
 - must be filed within 21 days after the decision of the court has been issued
 - property owners who want to make an appeal use [Form 003-0198, Notice of Appeal to Tribunal from the Court of Revision](#) and file with the clerk of the initiating municipality

2.13.3 Appeals to the Drainage Referee

- Appeals on the legal aspects of the project:
 - must be filed within 40 days after the municipality sends the provisional bylaw and the notice of the Court of Revision

- property owners who want to make an appeal to the Drainage Referee should consider getting a lawyer to assist with filing legal documents
- refer to [O.Reg.232/15, Rules of Practice and Procedure in Proceedings before the Referee](#)

The appeal timeframes are shown in Figure 2–10.

To prepare to file and/or present an appeal, it may be helpful to refer to previous decisions issued by the various appeal bodies.

Court of Revision decisions may be available by contacting the local municipal office or may be available online.

The decisions from the Agriculture, Food and Rural Affairs Appeal Tribunal and the Court of the Drainage Referee are found at the [Canadian Legal Information Institute \(CanLII\)](#).

Appeals may add costs and time delays to the project. Property owners should review the report and carefully consider the value of appeals relative to the overall cost of the drainage project. The municipal cost of responding to appeals is generally added to the cost of the drainage project and assessed in accordance with the assessment schedule. However, the Tribunal and/or the Court of the Drainage Referee may order costs to be handled differently.

After all appeals have been heard or the timeframe for appeals has expired without any appeals being filed, the municipality may pass the final bylaw (third reading). The project is now authorized for construction and the municipality can tender the project consistent with municipal procurement policies.

Refer to Chapter 5 for more details on the appeal opportunities through the various *Drainage Act, 1990* processes.

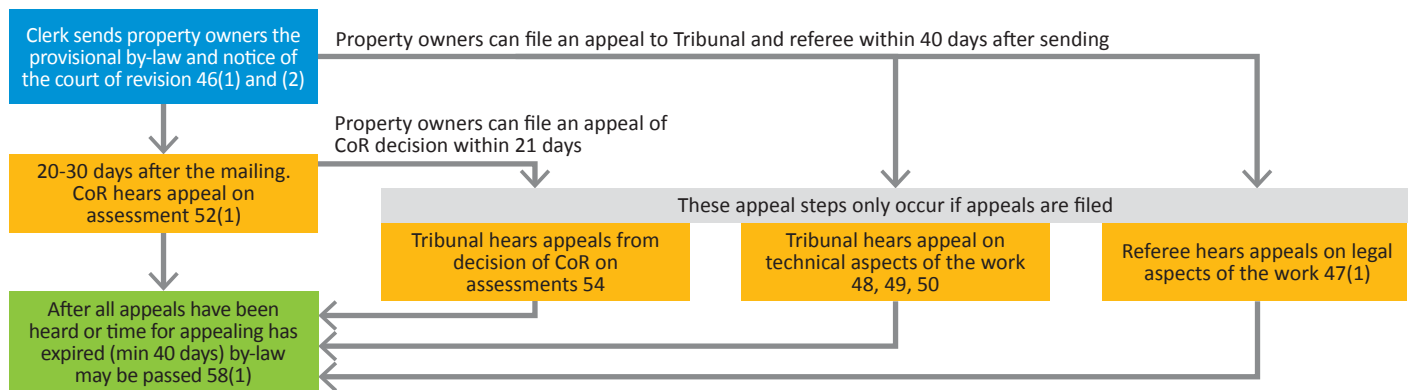


Figure 2–10. Timelines for appealing an engineer’s report.

2.14 If Tender Prices Are Too High

During the tender process, if the price for drain construction exceeds the engineer’s estimate by more than 33%, the municipality must hold a meeting (Section 59) to inform all parties of the increased cost and obtain agreement to continue the project.

At this point, the engineer’s report has been adopted by bylaw and cannot be modified to make the project less expensive. Property owners could request council put the project on hold by rejecting the tender. There may be a legal risk at a later date in hopes the new tender price is reduced due to changing market conditions.

Tender prices are presented and property owners may add or withdraw names from the petition. For projects where the petition is modified, the engineer determines if the petition is still valid:

- If the petition is no longer valid, the project stops and the original petitioners pay the project costs.
- If the petition is still valid, the project proceeds to construction.

2.15 Quality of Work Appeals

During project construction, the engineer or drainage superintendent is responsible for ensuring the work meets the project specifications detailed in the engineer’s report. If a property owner has concerns about the project during construction, they should contact the assigned person. There is a 1-year appeal period from the date the project is certified complete (Section 64) where property owners dissatisfied with the quality of construction can appeal to the Tribunal to have their concerns heard.

To make an appeal, property owners use [Form 003-0185, Generic Notice of Appeal to Tribunal by Petitioner\(s\) or Property Owner\(s\)](#) and file with the clerk of the initiating municipality.

2.16 Post Construction Administrative Processes

After construction is complete, (i.e., certified complete by the engineer), actual project costs are determined and assessed to the property owners. The actual cost of a drainage works will differ from the cost estimated by the engineer, and the cost difference is generally applied proportionately to all assessed properties based on the assessment schedule in the engineer's report. This practice is known as prorating the cost. If an engineer's report has identified non-prorated costs, these items are assessed to an individual property as a fixed cost or the actual costs of the work.

The municipality amends the bylaw that adopted the engineer's report with the actual project costs and sends an invoice to each property owner for their share of the costs.

The municipality applies to the Ontario Ministry of Agriculture, Food and Agribusiness (OMAFRA) for any applicable grants for farm properties that are assessed as part of the project. Refer to Chapter 6 for additional information on ministry grants.

Assessments are charged to each property similar to property taxes after the project construction is complete. In many cases, the municipality invoices property owners for their net assessment (gross assessment minus the anticipated OMAFA grant, if applicable). Billing practices may vary – check with the local municipality on their billing practices.



Chapter 3

3. Improving an Existing Drain

[Section 78](#) of the Act contains a process for improving an existing drain. Improvements are required when the drain requires more work than can be legally done under maintenance and repair (Chapter 4). All improvement projects require council to appoint an engineer to complete the design and develop a new engineer's report that is adopted by bylaw.

Under [Section 78](#), improvements are separated into major and minor projects. A property owner may request a minor improvement if the project is only located on their property, they are willing to pay all project costs and meets all other requirements.

Some projects may meet the criteria for a minor improvement, but the property owner can request the project be completed as a major improvement (to have upstream property owners contribute the cost of the project). If improvements to an existing drain do not meet the criteria for a minor improvement project, it must be completed as a major improvement.

There are a variety of improvements that may be proposed for an existing drain including:

- adding a wider or additional crossing
- increasing the capacity of a drain
- relocating a drain
- enclosing a drain
- adding environmental features such as buffers
- restoring a wetland
- extending a drain downstream

Anyone affected by the drain (property owners, road authorities or the local drainage superintendents) can request improvements to the drain. However, the decision to proceed with a drain improvement project rests solely with council.

DID YOU KNOW?

Regulatory agencies may not approve enclosing an existing ditch drain with a pipe if it negatively impacts fish habitat, drain capacity or flood plain capacity.

Some projects cannot be completed as improvements and require a petition ([Section 4](#)) to be submitted to council. Examples include:

- the extension of an existing drain upstream
- the addition of a new branch to an existing drain

3.1 Minor Improvements

Minor improvement projects address the specific needs of one property and not the entire drain. The process allows projects to be completed in a timely and cost-effective manner.

The following projects could be included as minor improvement projects:

- a request for a wider crossing to accommodate larger equipment (Figure 3–1)
- the construction of additional access crossing(s)
- a relocation of a drain on an individual property (Figure 3–2)
- the incorporation of a buffer along a drain on an individual property



Figure 3–1. A wider crossing recently installed on a drain.
Source: Dietrich Engineering Limited, Waterloo, Ontario

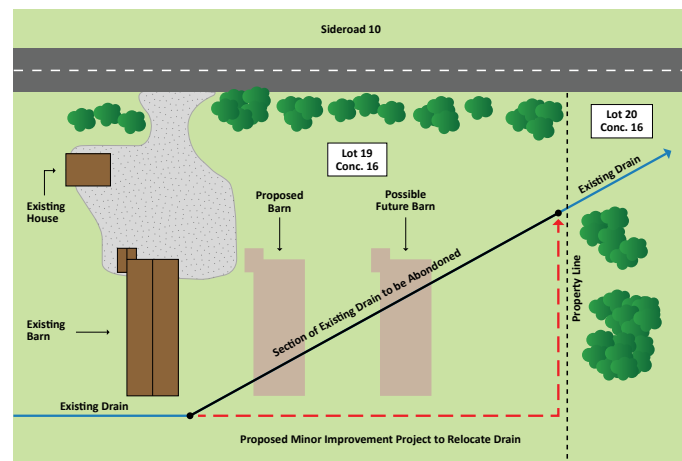


Figure 3–2. Relocation of a drain on an individual property.

There are several criteria required for a project to be classified as a minor improvement:

- The project is initiated by the owner of an individual property, or two or more adjacent properties owned by the same individual or related parties.
- The initiating property owner is paying all project costs.
- OMAFA grants may be available for a property that is receiving the [Farm Property Class Tax Rate \(FPCTR\)](#) – refer to Chapter 6, Grants under the Drainage Act.
- The project does not require access from neighbouring properties, or written consent has been received from the owners of the neighbouring properties. Proof of consent must be provided to the municipality when the project is requested.
- The project will not:
 - result in changes to how future repair and maintenance costs are allocated to other property owners in the watershed
 - change the drainage capacity or erosion potential
 - result in the drain being enclosed
 - take place within any wetlands

Refer to [O.Reg.500/21](#) under the Act for the complete list of criteria for a minor improvement project.

Property owners interested in having a minor improvement project completed on their property can initiate the process by submitting [Form #ON00264E, Notice of Request for Drain Minor Improvement](#) to the local municipality.

A property owner is responsible for all project costs when they sign a request and it is accepted by council as a minor improvement project.

There may be situations where the municipality receives a minor improvement request but decides to complete the work as a major improvement project. This happens when there are similar needs or issues to be addressed on other parts of the drain.

The process for a minor improvement project is shown in Figure 3–3.

DID YOU KNOW?

Additional information on the minor improvement process is found in the OMAFA factsheet, *Minor Improvement Projects under the Drainage Act, 1990*.



3.2 Major Improvements

The process for a major improvement project (Figure 3–4) is similar to the process for the creation of a new drain, except there is no petition ([Section 84\(4\)](#)).

Major improvement projects can be requested by:

- property owner(s)
- drainage superintendent
- road authority

Property owners can initiate the process by making a request to council and use [Form 003-0203, Notice of Request for Drain Major Improvement Drainage Act, R.S.O. 1990, c. D.17, subs. 78 \(1.1\)](#).

Drainage superintendents can request an improvement project when they have received a request for maintenance or repair and they determine the drain requires more work than what can legally be done under maintenance and repair.

Improvements made to roads (e.g., widening) may require the drain to be moved from the road right-of-way or increase the drain capacity.

Since there is no formal petition, council evaluates the submitted request and decides if the project should proceed.

The same general steps are followed for a major improvement project as for the creation of a new drain by petition (Chapter 2), with several exceptions.

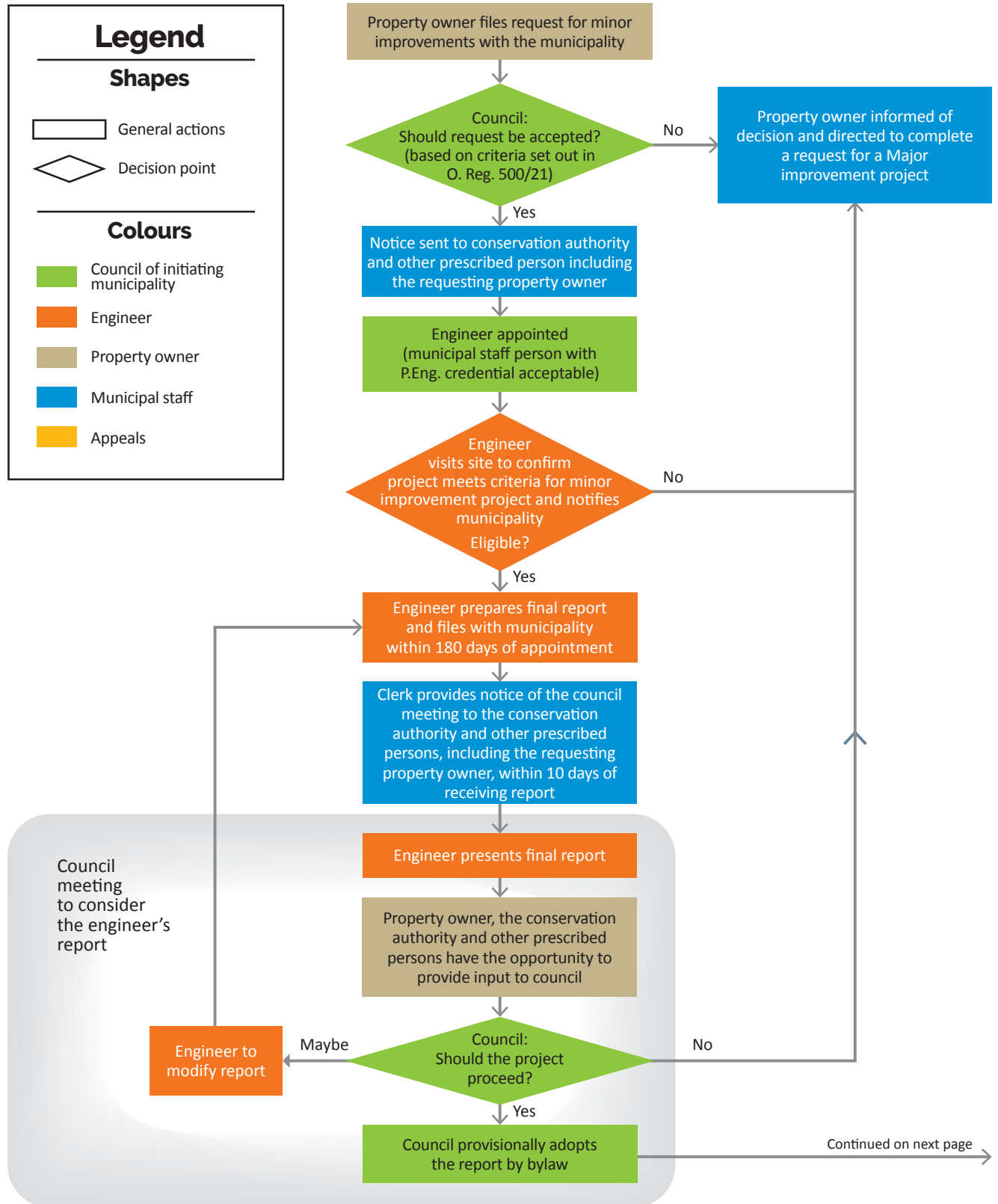
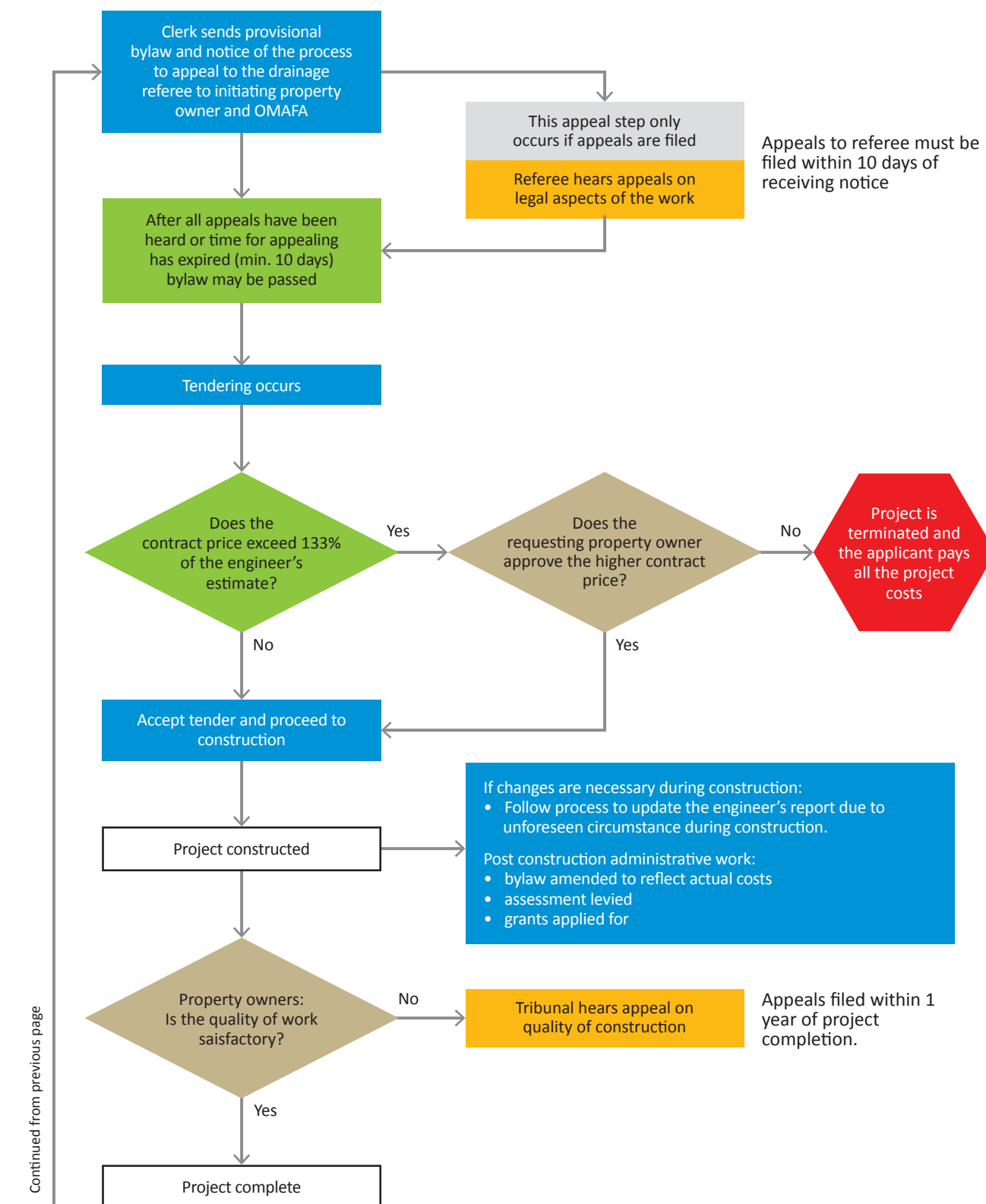


Figure 3–3. Minor improvement process.



Major drain improvement procedure under the Drainage Act, 1990 (Section 78)

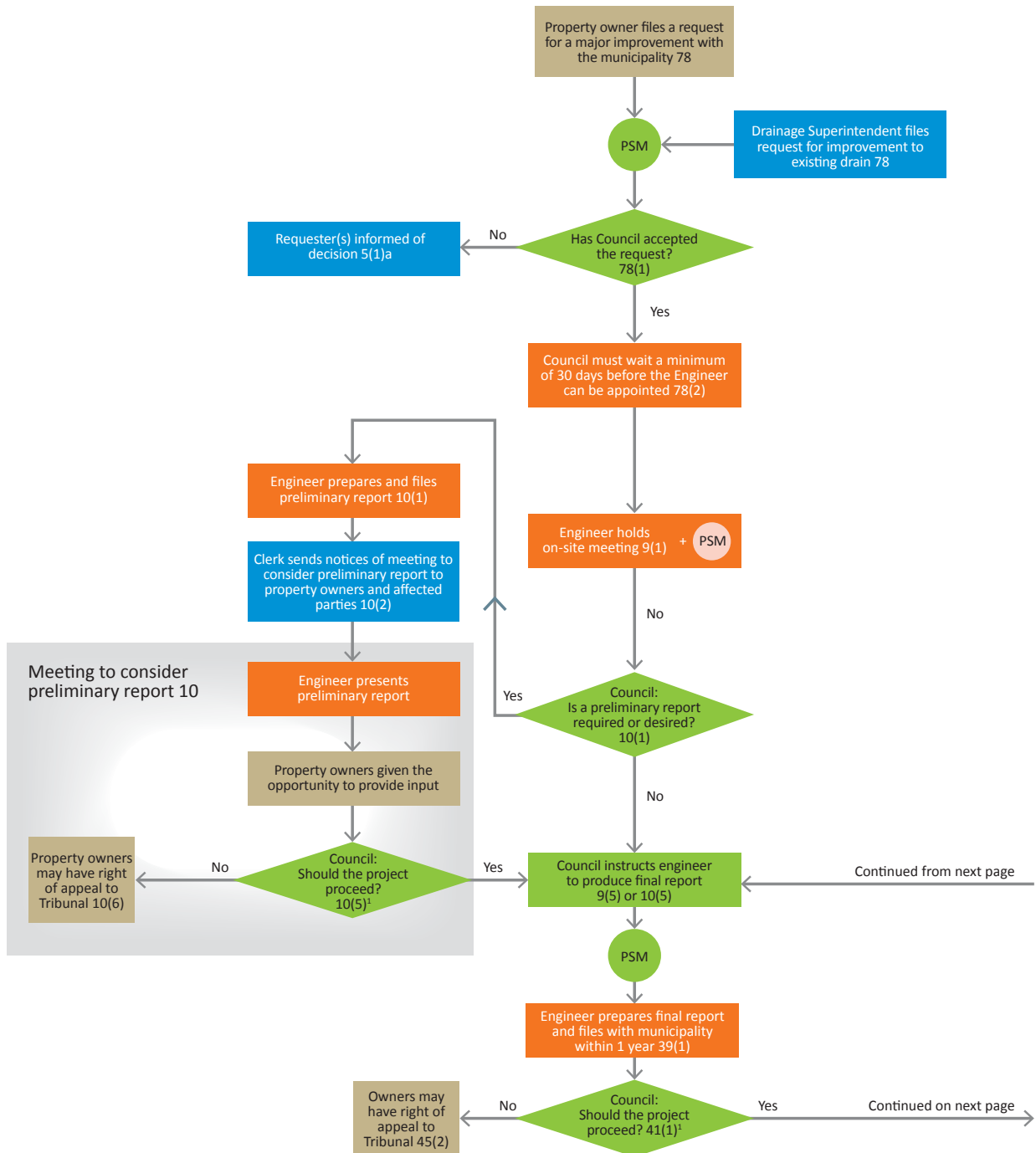
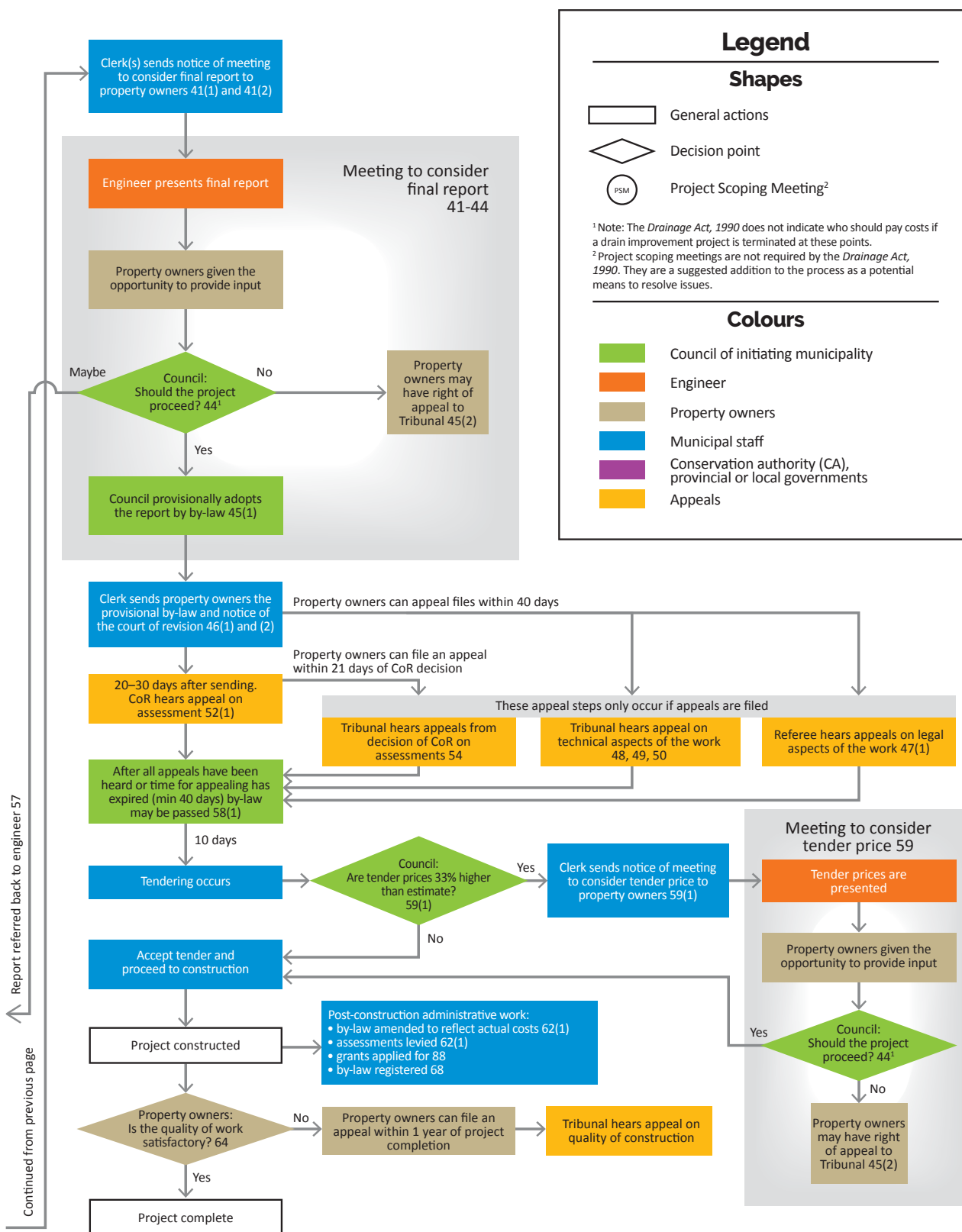


Figure 3–4. Drain improvement procedures.



3.2.1 Appointing an Engineer

Council can appoint an engineer after at least 30 days have passed following the notices being provided to the local conservation authority (or the Ministry of Natural Resources where there is no conservation authority) and the council of the band of each reserve affected by the project.

3.2.2 On-Site Meeting

Property owners should prepare for the meeting by determining if the current drainage system meets their needs.

A property owner may request the following improvements:

- increase the drainage capacity
- deepen the drain for improved tile drainage outlet
- relocate or change the alignment of a drain
- enclose a portion of an open drain
- create a wider or add an additional crossing
- add a buffer strip along the edge of a drain

At the conclusion of the on-site meeting – since there is no petition – the engineer determines if there is authority for the project to proceed within the scope of the work listed in [Section 78\(1.1\)](#) of the Act.

3.2.3 Allowances

Allowances for major improvement projects differ from those provided during the creation of a new drain. Right-of-way allowances are generally not provided unless the project needs additional land designated for the purposes of the drain.

- If an allowance for Land and Right-of-Way ([Section 29](#)) was previously provided for the use of land for an existing drain, new allowances are only provided if additional land is required for the drain improvement project (wider channel width, addition of a riparian buffer, etc.).
- For projects that relocate the drain on the same property, new allowances are only provided if the drain and working corridor require more land than was required for the drain in its original location.

3.2.4 Processing the Engineer's Report and the Meeting to Consider the Report

For improvement projects, there is no petition by property owners and no opportunity to add or withdraw names. Once a request for an improvement is made and initiated/accepted by council, there is no defined process for a property owner to stop the project. If a property owner chooses to withdraw their support for the project, their only recourse is to encourage council to stop the project.

In this situation, council can make one of the following decisions:

- proceed with the report and project by provisionally adopting by bylaw (i.e., giving two readings to the bylaw)
- refer the report back to the engineer for review and resubmission to address issues raised at the meeting
- not to adopt the report by bylaw, council stops the process and terminates the project

When the council stops a project initiated under [Section 78](#), the Act does not provide any direction on how costs are recovered. Without clear direction from the legislation, council must determine how to legally recover any costs to date using the principle of fairness to the community of property owners on the drain and to the other taxpayers in the municipality.

3.2.5 Appeal Rights and Opportunities

There are references to both “petitioners” and “owners of land” (property owner) pertaining to appeals. It is generally accepted that “owners of land” can be substituted for “petitioners” for improvement projects ([Section 78\(4\)](#)). Since there are no petitioners for improvement projects, property owners may have a right of appeal under sections of the Act that refer to petitioners.

3.2.6 If Tender Prices Are Too High

For improvement projects, there is no petition by property owners and no opportunity to add or withdraw names. If a property owner chooses to withdraw their support for the project due to the increased construction costs, they may encourage council to stop the project.

Council can make one of the following decisions:

- accept one of the submitted tenders and proceed with drain improvement project
- retender the project if there is reason to believe that a subsequent tender may result in reduced pricing – but the engineer’s report has been adopted by bylaw and cannot be modified to make the project less expensive.
- repeal the bylaw – council can’t recover costs that have been incurred for the project

Chapter 4

4. Drain Management

Municipalities have the responsibility to manage existing drains constructed under the Act on behalf of the property owners in the watershed of the drain under Sections 65, 74 through 84, 93 and 95.

4.1 Drain Maintenance and Repair

Maintenance and repair are crucial for ensuring drainage systems continue to function effectively for the benefit of all property owners within the watershed. Sections 74, 79 and 81 of the Act address maintenance and repair of existing drains. Each municipality is responsible for maintaining and repairing drains under the Act that are located within their municipal boundaries.

The drainage superintendent oversees the management of these drains on behalf of the local municipality (Figure 4-1). Maintenance and repair work must be done according to the existing engineer's report, which was previously adopted by bylaw. If the work cannot be completed in accordance with the existing report, a new engineer's report is required. Property owners are not permitted to carry out any work on a drain without prior approval from the municipality.

DID YOU KNOW?

Drain maintenance is defined in the Act (Section 1) as preserving the function of an existing drain, and repair means restoring an existing drain to its original condition as stated in the engineer's report.



Figure 4–1. A drain maintenance project.
Source: R.J. Burnside & Associates Limited, Stratford, Ontario

Maintenance and repair projects are initiated by a request from a property owner affected by the drain or a drainage superintendent. Superintendents can initiate the process if they become aware of an issue that needs to be addressed during an inspection of the drain. Some municipalities conduct regularly scheduled inspections to identify maintenance and repair needs – others only inspect a drain following the receipt of a request for maintenance or repair.

Every drainage system has unique maintenance or repair requirements. It is often more economical for property owners to have the municipality conduct maintenance or repair on the entire drain in a single year rather than spread the work over several years.

Property owners can request maintenance or repair in writing to the clerk of the local municipality to initiate the municipality's obligation to investigate the request. Use [Form 0202 Notice of Request for Drain Maintenance and/or Repair](#) to ensure all important information is provided to the municipality. For urgent or emergency situations, such as a failed culvert, property owners should ensure the municipality is aware of the significance of the issue (e.g., potential loss of access to their property).

When a maintenance or repair request is received from a property owner, the drainage superintendent has a duty to investigate the request and determine if work is required.

To decide if maintenance and repair should be completed (Figure 4–2), the drainage superintendent should:

- determine if the request is for a drain constructed under the Act – if not, a petition may be needed to create a new drain (Chapter 2)
- review the drain file to understand the drain's maintenance and repair history
- determine if the engineer's report can be used to effectively maintain or repair the drain – if not, an improvement project may be required (Chapter 3)
- determine if the existing maintenance and repair assessment schedule is fair and useable – if not, it may be necessary to develop a new assessment schedule before maintenance and repair are completed (Chapter 4.3)
- determine if land use changes, subsequent connections to the drain, property severances or subdivisions have already been addressed – if not, it may be necessary to update the assessment schedules (Chapter 4.2)
- physically inspect the drain which may include a survey of the drain

If maintenance and repair is required – and can be completed using the existing engineers report – the drainage superintendent should complete the following steps:

1. Notify property owners as a best practice. There is no requirement under the Act for the municipality to notify property owners. Some municipalities have policies that provide guidance to the drainage superintendent on how notification is performed.

DID YOU KNOW?

If the costs of the drain maintenance and repair project are assessed upstream to more than one municipality, all municipalities must be notified prior to the work starting.

2. Meet with all property owners to understand the nature of the drainage problem, their concerns and expectations. Property owner(s) should identify the need for an improvement project rather than a maintenance and repair project.
3. Develop the scope of work for the project, prepare documents to allow contractors to bid on the project and complete the required permit applications with regulatory agencies ([local conservation authority](#), [Fisheries and Oceans Canada](#) and [Ministry of Environment, Conservation and Parks](#)). Regulatory agencies may limit the type of work completed on a drain. They may also restrict the time of year when the work can be completed, resulting in the project being completed the following calendar year.
4. Supervise the work once the contractor is hired. The drainage superintendent and contractor have the authority to enter on the land where the work is being completed (Sections [63](#) and [95\(3\)](#)).

DID YOU KNOW?

It is a property owner's responsibility to cooperate with the drainage superintendent and contractor to allow maintenance to be performed regardless if the municipality or a property owner requested the work.

The cost for maintenance and repair is distributed to properties upstream of the work according to the maintenance statements and assessment schedule in the current engineer's report adopted by bylaw.

Allowances are not provided for maintenance and repair projects, but only to property owners during the construction of a new drain or the improvement of an existing drain with a new engineer's report.

There are no rights of appeal on assessments for drain maintenance or repair. If a property owner feels the municipality did not comply with the Act, they have a right to appeal to the Drainage Referee (Chapter 5.3).

Maintenance and repair projects are typically billed to property owners within a year of completion.

DID YOU KNOW?

Section [75\(3\)](#) of the Act states if the cost of the maintenance and repair project does not exceed \$5,000, it can be billed within a five-year period.

Drain Maintenance or Repair Procedures

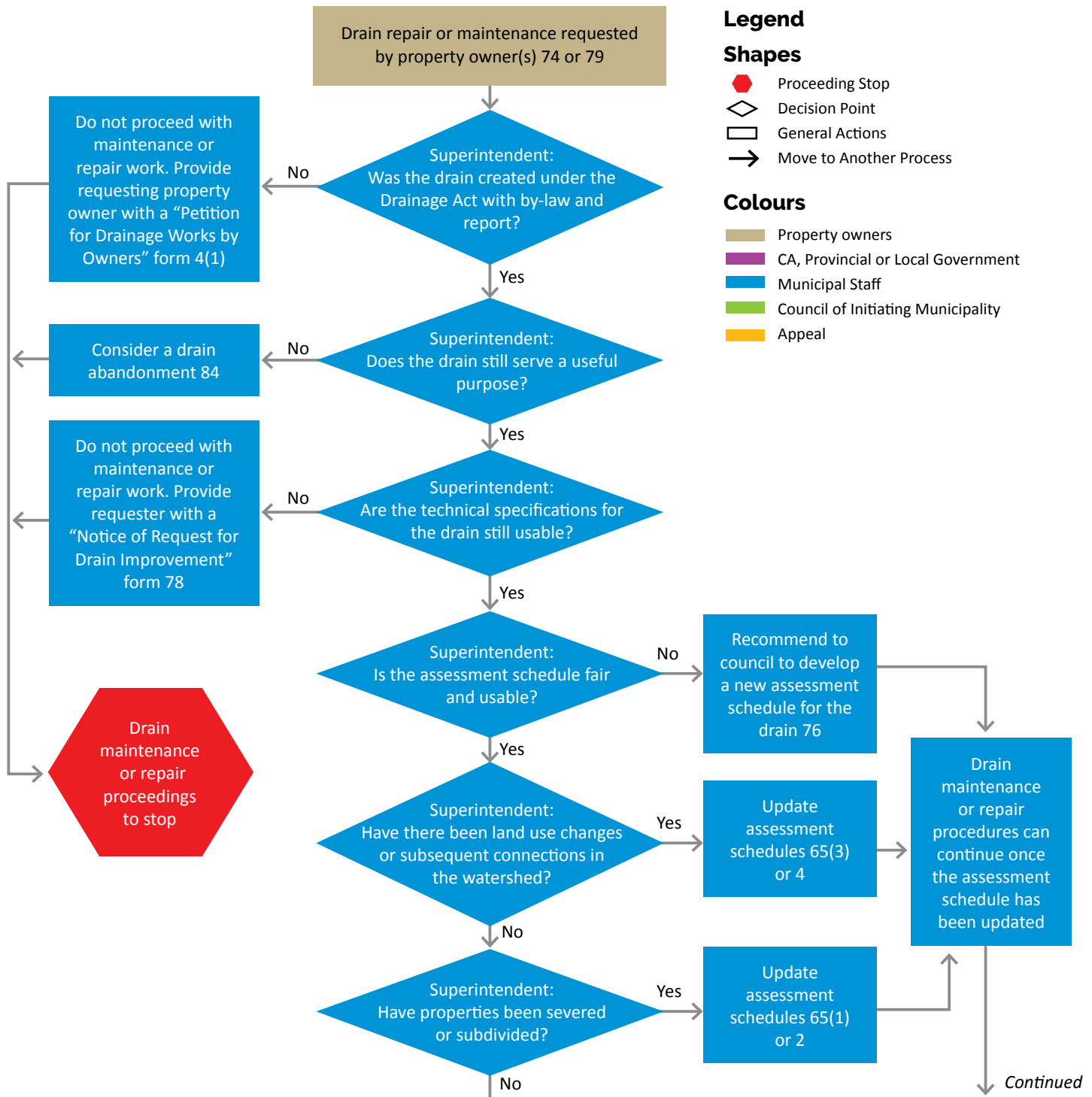
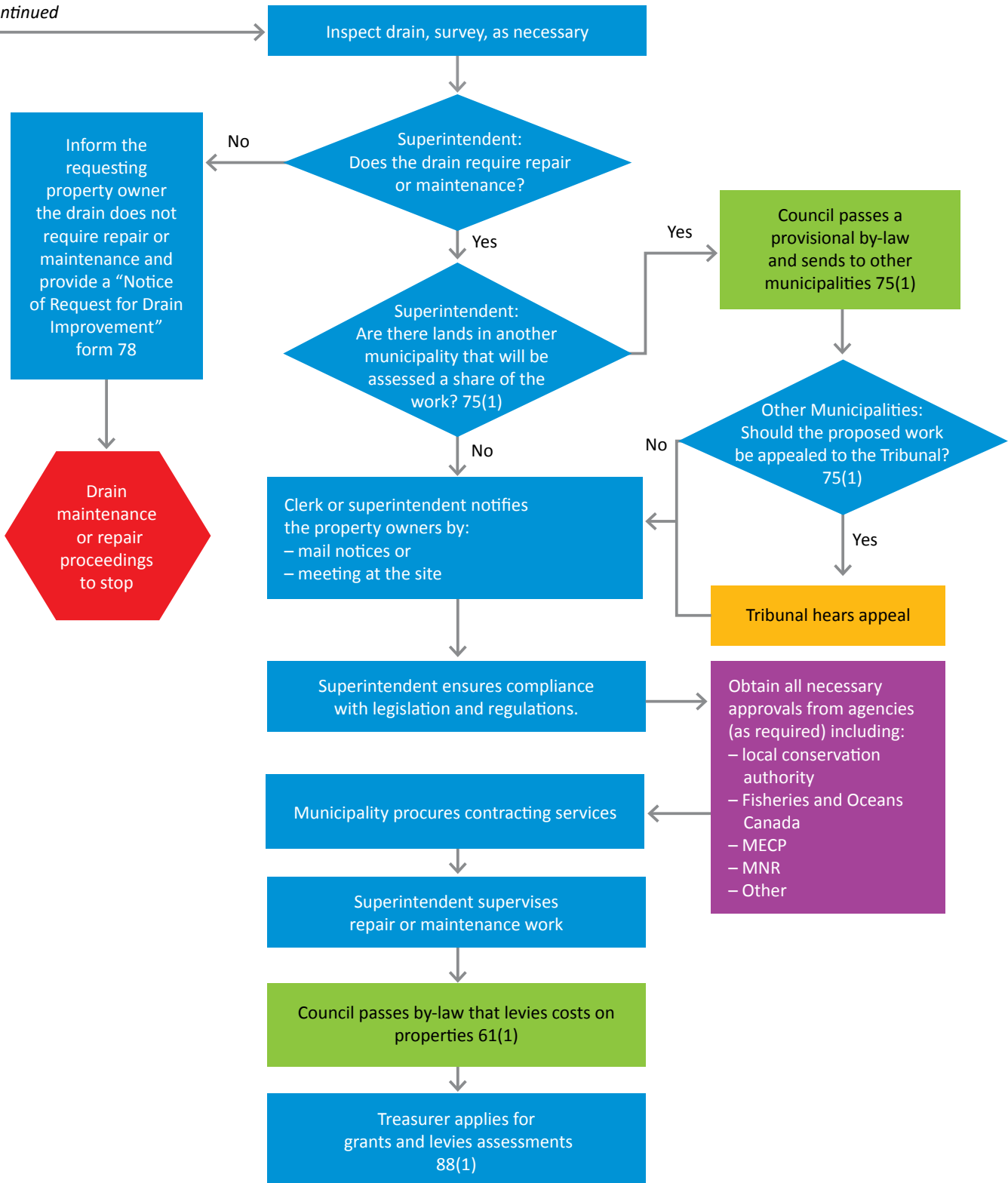


Figure 4–2. Maintenance and repair process.

Continued



4.1.1 *Municipal Obligations*

Once notice of maintenance has been served to the municipality by a property owner, it triggers the start of a 45-day timeline for the municipality to investigate the issue identified ([Section 79](#)). [Form 0202 Notice of Request for Drain Maintenance and/or Repair](#) helps property owners document their submission of notice to the municipality.

If 45 days have passed since the form was submitted to the municipality, a property owner can contact the local drainage superintendent to find out the status of the maintenance and repair project. Maintenance and repair work does not have to be completed in 45 days, but the municipality must be actively working (obtaining approvals, tendering the project, etc.) to complete any necessary work.

If the municipality is not actively working to resolve the issue and a property owner believes the drain needs maintenance or repair, they may apply to the Court of the Drainage Referee (Chapter 5.3) for an order:

- to compel the municipality to maintain and repair the drain
- for damages to be paid to the affected property owner

When snow or ice causes overflow of water out of the drain, the municipality cannot usually be held liable for damages to adjacent properties ([Section 79\(3\)](#)).

A property owner wishing to make an application to the drainage referee should consult with legal counsel since it is a legal, court-based process.

4.1.2 *Obstructions and Damages to the Drain*

The engineer's report should define the access and working corridors to allow the drain to be maintained and repaired. These corridors can be used by property owners for planting annual crops, lawn/buffers, gardens, etc., but not for permanent uses such as tree plantings, garden sheds or other outbuildings. Do not store

excess soil, garbage and old equipment in these areas, especially right beside the drain as they can accidentally enter the drain and cause an obstruction to the flow and function of the drain or an environmental spill.

Engineer's reports for older municipal drains may not identify or define the access and working corridors. Past decisions by the Court of the Drainage Referee have suggested that even though access and working corridors are not defined, they still exist. The municipality must have access to the drain to perform the necessary maintenance and repair work.

If a property owner or occupant obstructs an access or working space on the drain, the drainage superintendent or council notifies the responsible property owner. The notice describes the obstruction to be removed and provides a timeline for its removal by the property owner.

If a property owner does not remove the obstruction within the specified time, the municipality can remove it and charge the cost to the property owner in the same way as property taxes ([Section 80](#)).

DID YOU KNOW?

A municipality can initiate legal action to the Court of the Drainage Referee against anyone who destroys or damages a drain. The person who damaged the drain may be fined or imprisoned. Any fines ordered by the referee are paid to the municipality and used for the construction, improvement, maintenance or repair of the damaged drain ([Section 82](#)).

4.2 Changes to Properties Served by an Existing Drain (Section 65)

Section 65 of the Act allows the municipality to modify an assessment for a property where the quantity of water entering an existing drain has changed.

The design and costs of a drain are based on the land use in the watershed at the time the report was developed. Changes in the watershed can occur over time and make the existing assessment schedule unfair to some property owners for future maintenance and repair projects. Watershed changes that merit review include:

- land severances
- changes in land use
- connection of new properties
- disconnection from the drain

Land use changes or future connections to a drain require permission from the local municipality to ensure the drain can accommodate any change in water flow.

Council appoints an engineer to modify the assessment for the drain under the new, proposed conditions. The engineer develops a report that assesses the costs to the new or modified properties, and may include:

- the allocation of future maintenance and repair costs
- the cost to purchase the right to have the water in the drain
- engineering fees to develop the report

4.2.1 Land Severances

When a property within a watershed is divided after the construction of a drain, the owners of the newly divided properties have two options:

1. Council appoints an engineer to apportion the original assessment between the divided properties.
2. A written agreement can be developed with all the divided properties:
 - the agreement splits the original assessment between the new properties
 - the new assessments to the divided properties are based on the relative use of the drain for each property
 - the agreement must be filed with the municipal clerk
 - if accepted by council, property owners approve it by resolution
 - if not accepted by council, property owners appoint an engineer to apportion the original assessment

4.2.2 Changes in Land Use

When a property assessed in an engineer's report is converted to a different land use, the changes may cause:

- an increase in the amount of water going to the drain that would increase the assessment for the land (e.g., subdivision, addition of greenhouses, clearing of forested land for agriculture) (Figure 4–3)
- a decrease in the amount of water going to the drain that would decrease the assessment for the land (e.g., conversion of agricultural land to wetlands or other natural area)

4.2.3 Connection or Disconnection of Properties

When a new property connects to an existing drain, they must purchase the right to have their water flowing in the existing drainage system (e.g., connecting a new tile drainage system from outside of the original watershed).

If a property is connecting to a drain, the property owner must contact the local drainage superintendent to determine:

- if there are specific locations for connecting their tile drainage system to the drain
- the required vertical distance between the water level in a drain and the connection (i.e., freeboard) for connecting to a ditch drain
- any other connection specific requirements according to municipal policy and/or the current engineer's report

Property owners planning to drain land should determine if the property to be drained is assessed into a drain under the Act. Connecting to a drain requires the permission of the local municipality. In some cases, the connection may result in the disconnection of the land from another existing drain.



Figure 4–3. Agricultural properties to be developed into a subdivision.

Source: Owen Brook, Guelph, Ontario

4.3 Changes to the Original Maintenance and Repair Assessment Schedule (Section 76)

[Section 76](#) allows a municipality to make changes to develop a new maintenance and repair assessment schedule for an existing drain. A municipality might initiate this process when the existing maintenance and repair assessment schedule is unfair or unusable from any of the following situations:

- numerous property divisions or subdivisions have occurred without the splitting of the assessments under [Section 65](#) (Chapter 4.2)
- a watershed has been expanded, reduced or altered but the schedule of assessment was not revised under [Section 65](#) (Chapter 4.2)
- municipal boundaries have changed
- it is appropriate to create or expand an area that is block assessed ([Section 25](#))
- it is appropriate to create separate assessment schedules for each main drain, branch drain or designated segment of an existing drain
- clarity is needed to provide assessment instructions for work components that may be subject to special benefit assessments ([Section 24](#)) or special assessments ([Section 26](#))

The municipality appoints an engineer to complete the assessment schedule and write a report that follows the process outlined in Figure 4–4. Property owners and municipalities have the right to appeal their respective assessments (Chapter 5).

DID YOU KNOW?

Appeals on a [Section 76](#) report are restricted to assessment matters only.

4.4 Abandonment of a Drain

Abandonment of all or part of an existing municipal drain can be initiated by council or property owners under [Section 84](#), or the appointed engineer under [Section 19](#).

If the drain is abandoned, the municipality no longer has any obligation to manage and maintain the drainage system. If there are drainage issues following the abandonment of the drain, Common Law applies (Chapter 1.1).

4.4.1 Section 19

An engineer appointed for the construction of a new petition drain under [Section 4](#), or for the improvement of an existing municipal drain under [Section 78](#), can determine if the existing drain or part of the drain is no longer needed and should be abandoned. This is documented in the new engineer's report developed and adopted by council through a bylaw.

4.4.2 Section 84

[Section 84](#) outlines the process for abandoning all or part of an existing drain.

There are a few reasons why a property owner may consider requesting a drain abandonment:

- consolidation of farm properties can eliminate the need for a drain under the Act and convert it to a private drain
- cost of maintaining or repairing the drain may be greater than the benefits provided by the drain
- changes in land use away from agriculture or shift in agricultural practice may remove the need for a drain
- inability to get the required permits from regulatory agencies make maintenance and repair unfeasible to complete

Council can initiate the process based on advice from the drainage superintendent or a property owner's request. If initiated by property owners, the municipality must determine if the request is valid. If the request is not valid, the process for abandonment stops and the drain remains under the Act.

If a valid petition is received or a request from the drainage superintendent is accepted, council provides a notice of its intention to abandon the drain to all property owners. Property owners can request that council appoint an engineer to complete an abandonment report. The appointed engineer examines the drain and provides recommendations on whether the drain should be abandoned or not.

The process to abandon a drain under [Section 84](#) is shown in Figure 4–5.

New Assessment Schedules

Section 76

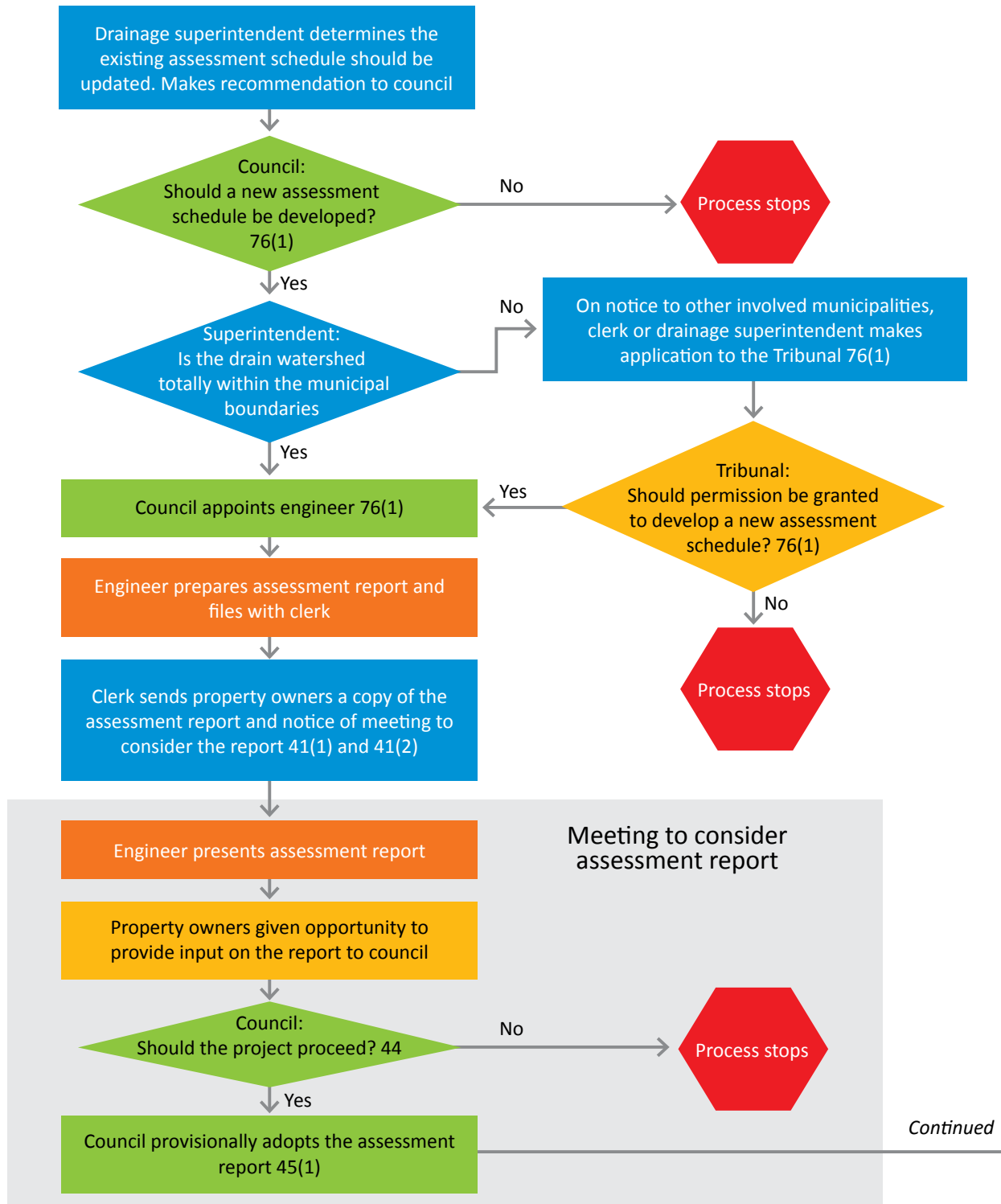


Figure 4–4. Process for a new maintenance and repair assessment schedule.

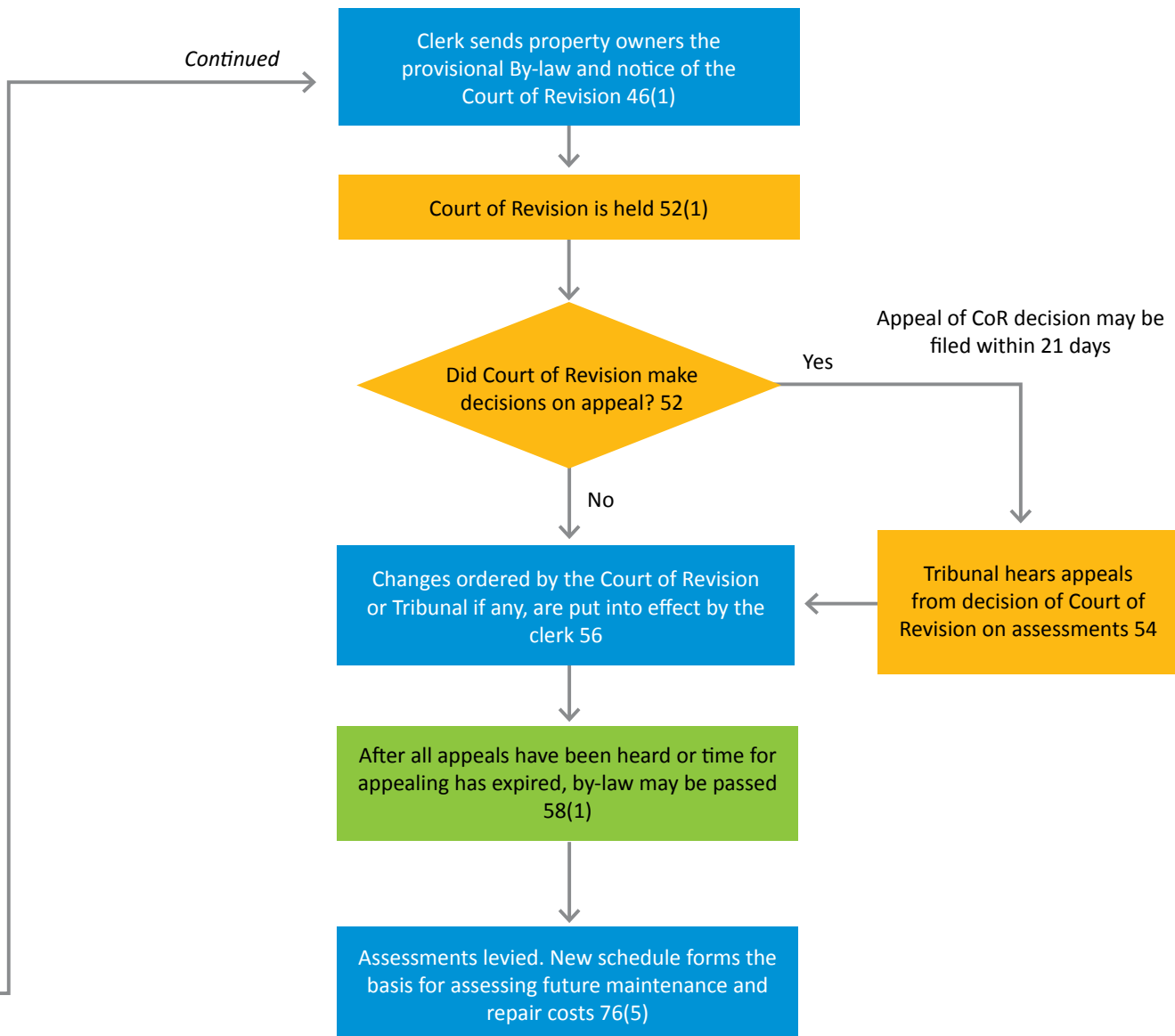
Legend

Shapes

-  Proceeding Stop
-  Decision Point
-  General Actions
-  Move to Another Process

Colours

-  Property Owner
-  Engineer
-  Municipal Staff
-  Council of Initiating Municipality
-  Appeal



Process to abandon a drain

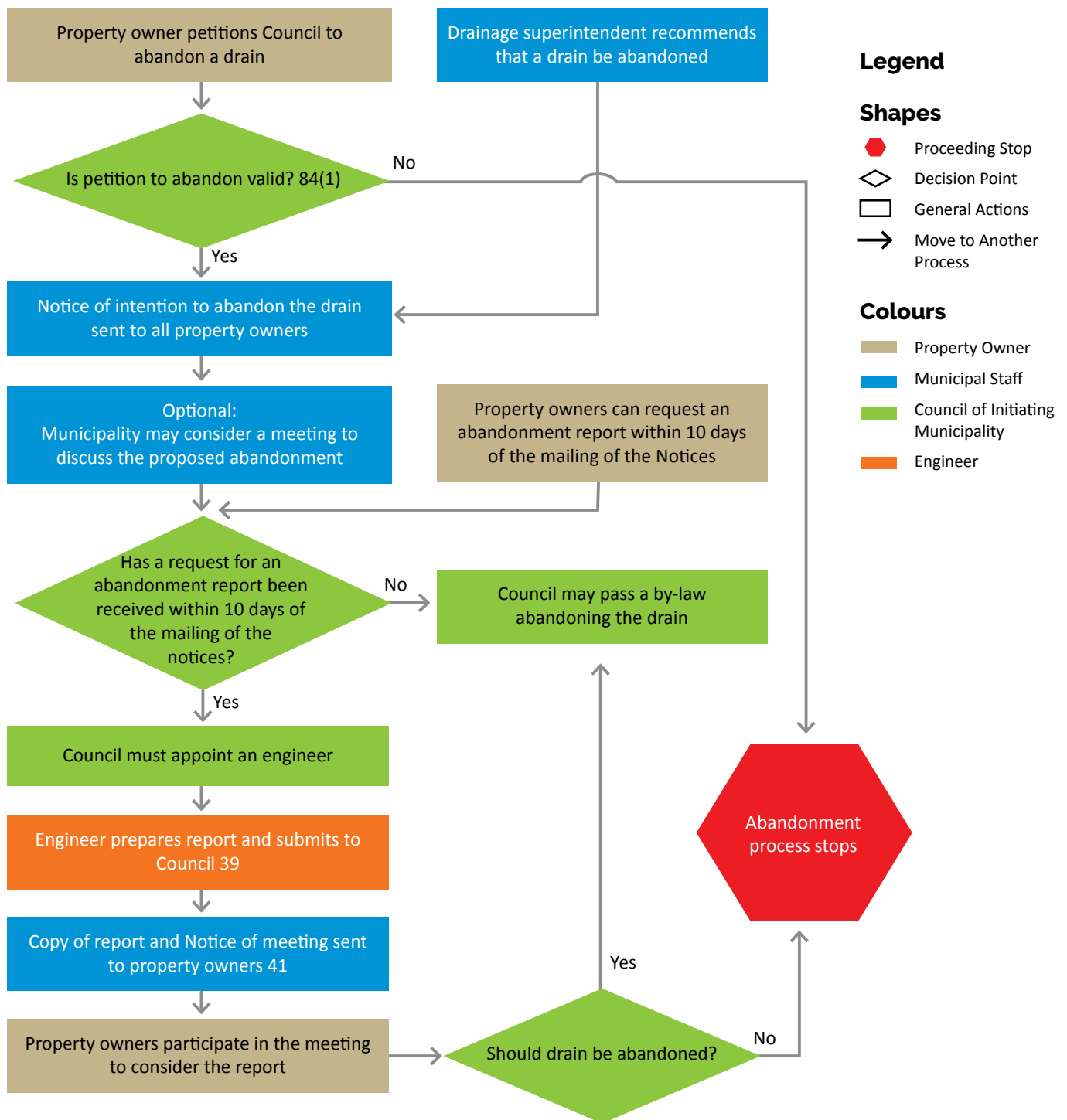


Figure 4–5. Drain abandonment process.

Chapter 5

5. Appeals

The Act provides three appeal bodies a property owner may appeal to when a drain is being proposed, constructed, improved or modified:

- Court of Revision
- [Agriculture, Food and Rural Affairs Appeal Tribunal](#)
- Court of the Drainage Referee

For property owners, there are appeal opportunities through the various *Drainage Act, 1990* processes. These are discussed in detail in this section and are identified in figures throughout this guide.

- Figure 2–2. Petition drain procedures
- Figure 2–10. Timelines for appealing an engineer’s report
- Figure 3–4. Drain improvement procedures
- Figure 4–4. Process for a new maintenance and repair assessment schedule

5.1 Court of Revision

A Court of Revision is held for every project initiated under the following sections of the Act:

- [Sections 4 – construction of new drains](#)
- [Section 76 – revision of assessment schedules](#)
- [Section 78 – major improvement to existing drains](#)

The Court of Revision is a municipally-appointed appeal body that hears appeals ([Section 52](#)) related only to assessments – the portion of the project costs collected from each property owner. When council members are appointed to the Court of Revision, they are acting as members of the appeal body, independent of council, and should only consider the appeals before them.

The Court of Revision consists of:

- three or five members from the initiating municipality, where only one municipality is involved or
- two members from the initiating municipality and one member appointed by the council from each of the other municipalities involved, if applicable

Appeals related to any assessment schedules included in the engineer's report can only be made during the processes for the construction of a new drain ([Section 4](#)) or the improvement to an existing drain ([Section 78](#)). Once the assessment schedule for maintenance and repair has been accepted by the Court of Revision, it remains valid for any future work on the drain unless modified through a decision following an appeal to the Tribunal or one of the *Drainage Act, 1990* processes that modifies assessments (e.g., Sections [65](#), [76](#) and [78](#)).

The development of a [Section 76](#) report allows a municipality to make changes or develop a new maintenance and repair assessment schedule for an existing drain, and appeals to the assessment schedule can be made at this time.

5.1.1 Appeal Process to the Court of Revision

To appeal to the Court of Revision, a property owner assessed for the drainage system must give a written notice of appeal to the clerk of the initiating municipality.

Property owners must send their appeal notices at least 10 days before the first sitting of the Court of Revision. Property owners can use [Form 003-0196e, Notice of Appeal to Court of Revision](#), available from the municipal clerk or from the [Central Forms Repository](#).

The notice must identify the property and rationale for the appeal:

- a property is assessed too high or too low
- a property was not assessed that should have been
- property use has not been appropriately considered, for example:

- agricultural property assessed as non-agricultural
- a property with plan of subdivision is assessed as agricultural property
- property used for intensive agriculture (e.g., greenhouses) assessed at the same rate as other agricultural properties
- forestry property assessed at the same rate as agricultural properties

The Court of Revision may pass a resolution to hear appeals filed late with the municipality or where the property owner made an appeal without notice. The Court of Revision may need to be adjourned for the engineer to prepare a response when late appeals are accepted.

The Court of Revision carefully reviews each appeal and decides whether to confirm or adjust the assessment schedules, based on its merits. In the absence of any appeals, the assessment schedules are confirmed as presented in the engineer's report.

If the Court of Revision is considering an appeal that proposes to affect the assessment of one or more properties (and the owners of those properties are not present at the hearing), the Court of Revision:

- must adjourn the current meeting
- set a date for a reconvened meeting – have the clerk send notice to the property owners who may be affected by the results of the appeal being considered, this is not an opportunity for property owners to file new appeals to the Court
- reconvene the meeting to hear from the property owners who were not present at the first hearing
- make a decision

If property owners do not appear at the reconvened meeting, the Court of Revision may make a decision in their absence.

A property owner who appealed to the Court of Revision, or a property owner affected by the decision of the Court of Revision, may appeal the decision to the Tribunal. They may also appeal the court's omission,

neglect or refusal to hear or decide an appeal. Appeals to the Tribunal must be made within 21 days of the decision of the Court of Revision.

DID YOU KNOW?

Property owners appealing an assessment to the Court of Revision should provide a proposed modification to their assessment. Since the estimated cost of the project cannot change, the Court of Revision must redistribute any reduction in assessment from one property to other properties in the watershed. Property owners may propose to the Court how assessment changes should be redistributed.

DID YOU KNOW?

To appeal the decision of the Court of Revision to the Tribunal, a property owner must have appealed initially to the Court of Revision.

The Tribunal is usually made up of a panel of three members. On drainage matters, one of the panel members is a lawyer, one is usually an engineer with experience under the Act, and the third panel member is selected based on the specific nature of the appeal.

The Tribunal has guidelines designed to assist property owners preparing to present a case before the Tribunal. The documents provide answers to common questions received by Tribunal staff and include:

- [Drainage Act appeals](#)
- [Preparing for your hearing](#)
- [Rules of procedure](#)

5.2 Agriculture, Food and Rural Affairs Appeals Tribunal

The [Agriculture, Food and Rural Affairs Appeal Tribunal](#) is constituted under [Section 14](#) of the *Ministry of Agriculture, Food and Rural Affairs Act, 1990*. The Tribunal provides an independent, accessible avenue of appeal for agricultural issues under a number of provincial statutes including the *Drainage Act, 1990*, allowing appeals to be heard by an impartial and knowledgeable tribunal.



The Tribunal hears appeals on the technical aspects of drainage projects and on the assessment decisions of the Court of Revision.

5.2.1 Appeal Process to the Tribunal

To appeal to the Tribunal, a property owner must give the initiating municipality written notice, stating the grounds for the appeal. The clerk of the initiating municipality records the appeal and sends a copy to the Tribunal and each person assessed for the drainage project. The Tribunal receives the appeal and notifies the municipality and the appealing property owner(s) of the next step in the process.

The municipality often has a lawyer representing its interests and the engineer who authored the report is present to defend the report. Property owners are not required to hire a lawyer or engineer to represent their interests, but it is an option. Property owners need to prepare their case in advance of the Tribunal hearing to best represent their appeal.

At the Tribunal hearing, the engineer is required to give evidence before the appealing property owner(s) present their appeal ([Section 55](#)). The engineer's evidence may include:

- an overview of the proposed project
- how the project costs were distributed or assessed to all the property owners
- how the appellant's specific assessment was calculated
- why the appellant's assessment is fair, compared to other assessments
- why assessments on drain improvement projects for a particular property may differ from assessments in a previous report for the same drain

Many Tribunal decisions are final ([Section 101](#)) and binding on the particular report/drain, but not binding on any future reports or drains. Possible outcomes of a Tribunal hearing include:

- dismissal of the property owner's case
- alterations to the assessments or allowances
- modifications to the technical specifications
- referral of the report back to the engineer for amendment
- in rare cases, the Tribunal may order the report to be set aside and the project stops or order the creation of a new report

The Tribunal has the power to extend the time frame for appeals ([Section 100](#)) and assign costs against one or more parties involved with the hearing.

Tribunal decisions are found on the [Canadian Legal Information Institute \(CanLII\)](#) website. The Tribunal decisions do not set precedence for future cases but provide good general guidance to property owners preparing for a hearing.

5.2.2 Types of Appeals Made to the Tribunal

A Court of Revision only hears appeals on assessment matters ([Section 52](#)). A property owner affected by a hearing of the Court of Revision may appeal a decision to the Tribunal under [Section 54](#). They may also appeal the Court of Revision's omission, neglect or refusal to hear or decide an appeal.

Any property owner or public utility affected by the proposed drain may appeal to the Tribunal on technical matters under [Section 48](#). There are four grounds for these appeals:

- **The benefits from the drain are not proportionate with the estimated cost.** The benefits of a drainage project must outweigh the costs of undertaking the work. If a property owner believes this is not the case, they may file an appeal to the Tribunal.
- **The drain should be modified.** The grounds for a property owner to request the drain to be modified are very open-ended, and the preparation for the hearing is dependent on the nature of the request.
- **The compensation is unfair.** The allowances provided for damages are not enough in the view of the property owner, or the allowances provided to some of the properties are excessive in the view of other property owners.
- **The engineer has determined the drain is not required or is impractical** (i.e., appealing a [Section 40](#) report). A property owner may appeal a [Section 40](#) engineer's report recommending the termination of a project if the property owner believes the project still has value and the drain should proceed to construction.

Property owners dissatisfied with the quality of construction can appeal to the Tribunal during construction and up to one year from the date the project is certified complete under [Section 64](#).

5.3 Court of the Drainage Referee

The drainage referee(s) is appointed by the Lieutenant Governor in Council for a specified term. They are not appointed based on individual cases. The referee is a Justice of the Supreme Court of Ontario or a barrister with at least 10 years standing at the bar of Ontario.

The drainage referee has the authority to hear all matters of law, and their authority is defined in [Section 106](#) of the Act to cover:

- appeals on the report of the engineer ([Section 47](#))
- appeals on the validity of the petition or on any resolution or bylaw of the council
- applications regarding claims or disputes
- applications for orders directing action
- applications for orders restraining activities
- appeals on any Tribunal decisions that are not final ([Section 101](#))
- any other matters related to the Act

Referee decisions may set precedents for future cases but may be appealed to Divisional Court. Actions brought before other courts can be transferred to the referee where the Court Judge is of the opinion that the relief sought is properly the subject of a proceeding under the Act. Where decisions of the referee may be appealed, the appeal is heard by the Divisional Court.

[O. Reg. 232/15](#) of the Act sets out the rules of practice and procedures in proceedings before the referee. Property owners wishing to appeal to the Court of the Drainage Referee should consider seeking legal advice since it is a court process.

The referee holds hearings in the local courthouse within the initiating municipality or online.

5.4 Appeals Summary

There are several appeal opportunities available to property owners under the Act (Table 5–1). The appeals are organized by category including assessment, benefits and costs, construction and design, legal and procedural, and includes the process used to file an appeal and the [forms](#) needed.



Table 5–1. Appeal opportunities for property owners under the *Drainage Act, 1990*

Grounds For Appeal	Who Can Appeal	Drainage Act Section	Time Limit for Appeal	Appeal Body	How to Make an Appeal ¹
Assessment Appeals					
that any land or road has been assessed too high or too low					
that any land or road that should have been assessed has not been assessed	any property owner	52(1)	at least 10 days before the first sitting of the Court – a late appeal given before the first sitting of the Court might be accepted	Court of Revision	complete Form 0196, Notice of Appeal to Court of Revision and submit to the clerk of the initiating municipality
due consideration has not been given to the use being made of the land					
decision of Court of Revision	any party to an appeal to the Court of Revision	54(1)	21 days from the pronouncement of the Court of Revision's decision	Tribunal ²	complete Form 0198, Notice of Appeal to Tribunal from the Court of Revision and submit to the clerk of the initiating municipality
land is subdivided and the assessment of a parcel of land may be appealed if the amount is over \$500	any property owner affected by the subdivision of land	65(11)	within 40 days of sending apportionment by clerk	Tribunal ²	complete Form 0185, Generic Notice of Appeal to Tribunal By Petitioner(s) or Property Owner(s) and submit to the clerk of the local municipality

Grounds For Appeal	Who Can Appeal	Drainage Act Section	Time Limit for Appeal	Appeal Body	How to Make an Appeal ¹
Assessment Appeals (continued)					
assessment on a report to vary original assessments	any assessed property owner	76(4)	at least 10 days before the first sitting of the Court of Revision – a late appeal given before the first sitting of the Court of Revision might be accepted	Court of Revision	complete Form 0196, Notice of Appeal to Court of Revision and submit to the clerk of the local municipality
Benefits and Cost Appeals					
benefits are not commensurate with cost as estimated	any property owner	48(1)a	within 40 days of mailing of the provisional bylaw	Tribunal ²	complete Form 0193, Notice of Appeal to Tribunal by Owner of Land or Public Utility Re: Engineer's Report and submit to the clerk of the initiating municipality
compensation or allowances provided by the engineer are inadequate or excessive	any property owner	48(1)c	within 40 days of mailing of provisional bylaw	Tribunal ²	complete Form 0193, Notice of Appeal to Tribunal by Owner of Land or Public Utility Re: Engineer's Report and submit to the clerk of the initiating municipality

Grounds For Appeal	Who Can Appeal	Drainage Act Section	Time Limit for Appeal	Appeal Body	How to Make an Appeal ¹
Benefits and Cost Appeals (continued)					
the engineer has reported that drainage works is not required or is impractical or cannot be constructed on a requisition	any property owner	48(1)d	within 40 days of mailing of the report	Tribunal ²	complete Form 0193, Notice of Appeal to Tribunal by Owner of Land or Public Utility Re: Engineer's Report and submit to the clerk of the initiating municipality
Construction and Design Appeals					
the engineer has reported that the works cannot be constructed because a petition is not valid	any property owner	47(1)	within 40 days of mailing of the provisional bylaw	Referee	seek legal advice and refer to O.Reg.232/15 Rules of Practice and Procedure in Proceedings before the Referee
drainage works should be modified on grounds to be stated	any property owner	48(1)b	within 40 days of mailing of the provisional bylaw	Tribunal ²	complete Form 0193, Notice of Appeal to Tribunal by Owner of Land or Public Utility Re: Engineer's Report and submit to the clerk of the initiating municipality
Quality of construction	any owner of land	64	any time up to one year after drain certified complete	Tribunal ²	complete Form 0185, Generic Notice of Appeal to Tribunal By Petitioner(s) or Property Owner(s) and submit to the clerk of the initiating municipality

Grounds For Appeal	Who Can Appeal	Drainage Act Section	Time Limit for Appeal	Appeal Body	How to Make an Appeal ¹
Legal and Procedure Appeals					
against council's decision not to accept petition					
council has accepted a petition but has not appointed an engineer within 30 days of receipt of petition	any petitioner	5(2)	none specified	Tribunal ²	complete Form 0185, Generic Notice of Appeal to Tribunal By Petitioner(s) or Property Owner(s) and submit to the clerk of the initiating municipality
council has accepted a petition but has not appointed an engineer within 60 days of notice to petitioners accepting petition	any petitioner	8(3)	none specified	Tribunal ²	complete Form 0185, Generic Notice of Appeal to Tribunal By Petitioner(s) or Property Owner(s) and submit to the clerk of the initiating municipality
the municipality obtains a preliminary report and then does not instruct the engineer to prepare a final report	any petitioner	10(6)	at any time after the receipt of the preliminary report	Tribunal ²	complete Form 0185, Generic Notice of Appeal to Tribunal By Petitioner(s) or Property Owner(s) and submit to the clerk of the initiating municipality
the report does not comply with the requirements of the Act	any property owner	47(1)	within 40 days of mailing of the provisional bylaw	Referee	seek legal advice and refer to O.Reg.232/15 Rules of Practice and Procedure in Proceedings before the Referee

Grounds For Appeal	Who Can Appeal	Drainage Act Section	Time Limit for Appeal	Appeal Body	How to Make an Appeal ¹
Legal and Procedure Appeals (continued)					
omission, neglect or refusal of Court of Revision to hear or decide an appeal	any party to an appeal to the Court of Revision	54(1)	21 days from the pronouncement of the Court of Revision's decision	Tribunal ²	complete Form 0198, Notice of Appeal to Tribunal from the Court of Revision and submit to the clerk of the initiating municipality
council fails to provisionally adopt the final report for the drainage works after the meeting to consider the final report	any petitioner	45(2)	none specified	Tribunal	complete Form 0185, Generic Notice of Appeal to Tribunal By Petitioner(s) or Property Owner(s) and submit to the clerk of the initiating municipality
application to quash a bylaw	any owner of land within the initiating municipality	58(2)	within 10 days of passing of the bylaw	Referee	seek legal advice and refer to O.Reg.232/15 Rules of Practice and Procedure in Proceedings before the Referee
council does not proceed with the construction of the work after passage of the bylaw	any petitioner	58(5)	none specified	Tribunal	complete Form 0185, Generic Notice of Appeal to Tribunal By Petitioner(s) or Property Owner(s) and submit to the clerk of the initiating municipality

Grounds For Appeal	Who Can Appeal	Drainage Act Section	Time Limit for Appeal	Appeal Body	How to Make an Appeal ¹
Maintenance					
an application for an order for maintenance can be obtained if notice is given to the municipality stating a drain is out of repair and is affecting the land	any property owner	79(1)	Application can be made 45 days after giving the municipality written notice that the drain is out of repair. The Notice must describe with reasonable certainty the alleged lack of maintenance and repair of the drainage works.	Referee	seek legal advice and refer to O.Reg.232/15 Rules of Practice and Procedure in Proceedings before the Referee
Improvements					
appeal of report for major improvement on the same grounds as appeals on the construction of a works	property owners, petitioners, etc. as specified above	78(4)	as specified above	as specified above	as specified above

¹ The forms are not mandatory but are provided to property owners for their convenience.

² Tribunal decisions are final

Chapter 6

6. Grants Under the Drainage Act, 1990

The Act authorizes the ministry to pay grants for certain work performed under the Act. Grants may be provided towards the project costs assessed to property owners of agricultural land for drain construction, improvement, maintenance and repair work. Not all drainage work is eligible for grants including drain enclosures, multiple crossings or removal of excavated material from a property. For more information on grant eligibility, refer to [Sections 85–90 of the Drainage Act](#) and the [Agricultural Drainage Infrastructure Program Administrative Policies](#).



The municipality applies directly to the ministry for a grant on behalf of the agricultural property owners. To be eligible for a grant, the property must be receiving the [Farm Property Class Tax Rate \(FPCTR\)](#). Ensure your agricultural property is receiving the FPCTR each year to avoid missing out on the receipt of the grant.

If you are unsure whether your property is receiving FPCTR, check using [AgMaps](#) under the “Farm Property Class Tax Rated Parcels” layer or confirm the information with the municipality.



Chapter 7

7. Property Owner Responsibilities and Opportunities

Property owners play a central role under the Act, they:

- petition for the construction of new drains
- identify issues and requesting maintenance and repair to existing drains
- request improvements to existing drains
- identify and support environmental opportunities within the drainage systems
- pay the portion of the project costs assessed to their property, when the project is complete

Property owners should determine if there is a drain under the Act located on their property, or if they are assessed into a drain under the Act, by contacting the local drainage superintendent. Contact the local municipality to find a drainage superintendent or review the list of [drainage superintendents](#).

A drainage superintendent can provide information about drains that affect a property. They have a copy of the engineer's report that has valuable information including:

- type and location of all drains
- location and size of access and working corridors on the property
- schedule for future maintenance and repair assessments

It may be possible to view or obtain a copy of the engineer's report. Photocopies of the report may require a fee, and some municipalities may have a digital version.

A property owner with a drain on their property can expect the municipality to periodically enter the property to inspect the drain and perform any necessary maintenance and repair work. While the maintenance and repair work is in progress, the

working space along the drain is used by equipment, and land and crops may be disturbed and/or damaged. Allowances are paid at the time of construction of the drain under an engineer's report and there are no new allowances provided at the time that maintenance and repair projects are completed.

After a maintenance and repair project is completed, property owners are billed for their share of the cost. There may also be a bill for work that occurred before a property was purchased.

DID YOU KNOW?

Before making an offer to purchase a property, potential owners should investigate if there are any drains where recent work has been done that may not have been assessed. Ask the real estate agent or contact the local municipality. Refer to the OMAFA factsheet, **Property Sales and the Drainage Act** for additional details.



7.1 Obligations of Property Owners within the Watershed of a Drain

Property owners within the watershed of a drain have certain responsibilities.

Notify the municipality if you plan to drain land into an existing drain. The drainage superintendent should determine if:

- the land being drained is assessed into the drain ([Section 65\(3\)](#))

- the land being drained will be disconnected from another drain ([Section 65\(4\)](#))
- there are specific locations for connecting to pipe drains
- there is required freeboard for connecting to ditch drains
- there are any other specific requirements for connections

Ensure any drain features (buffer strips and sediment control devices) identified in the engineer's report are not damaged.

Do not complete work or alter any part of a drainage system including grassed waterways, buffers and berms. If you perform unauthorized work on a drain that results in damages to the drain or to the property of others, you may be held responsible for paying the cost of repairing the damages.

Notify the municipality if maintenance or repair is needed, including beaver and beaver dam removal.

Ensure activities completed on your property do not obstruct the drain.

Report any obstructions to the drainage superintendent as soon as you see them. As property owner, you may address minor obstructions, such as removing debris from catch basins or inlets to reduce the possibility of property damage occurring during a storm event.

Ensure all connections to the drain discharge only clean water (e.g., septic tank effluent, milk house waste, manure yard waste or other pollutants are not permitted in the drain).

Allow the drainage superintendent, engineer and contractors access to the drain and the working corridor of the drain.

Ensure the access and working space adjacent to the drain is clear of structures, fences and planted trees. You may be held responsible for the cost of removing these features if necessary to allow drain maintenance or repair.

Store materials (brush, lumber or floatable materials) away from the drain as they can float away or obstruct the drain during a storm event.

7.2 Innovative Drainage Options

The Act was traditionally used to support land drainage in the most efficient way for settlement, transportation, farming, disease control, etc. At the time, quickly removing water from the land was the primary focus. The impacts of this practice and the design and construction of drains on the environment were unknown. Drainage remains essential to agriculture, but other resources or interests in the watershed must be considered – such as incorporating climate change adaptation measures, fish and wildlife habitat, water quality and quantity enhancements, wetlands and water retention features.

Property owners can request a drain design that considers these enhanced functions during the creation of a new drain under [Section 4](#) (Chapter 2) or as part of a minor or major improvement project to an existing drain under [Section 78](#) (Chapter 3).

The definition of drainage works under the Act is broad enough to include innovative techniques that balance innovative options into the design, improvement and construction of the drainage system. Some of these techniques are:

- alternative channel design
- incorporating buffers along the edge of drains
- channel enhancements
- storage of water on the landscape
- constructed wetlands

7.2.1 Alternative Channel Design

Drainage systems have usually been designed as straight, trapezoidal channels that enable efficient drainage. Alternative designs mimic channels that exist naturally. These designs are more complex and require someone with specialized knowledge, and field observations and

measurements of similar natural watercourses. These designs can be more expensive to construct and require a larger area than a traditional drain, but there are many advantages. Alternative channel design can reduce future maintenance and repair costs, reduce the impact of flooding from larger storm events, enhance aquatic and terrestrial habitats, improve water quality and be more aesthetically pleasing.

Ask the engineer appointed to the project about the feasibility and costs associated with incorporating an alternative channel design. (Figure 7–1).



Figure 7–1. South Innisfil Creek drain with a curved natural channel design.

Source: Town of Innisfil, Ontario

7.2.2 Incorporating Buffers Along the Edge of Drains

Riparian buffers are vegetated strips of land along drainage ditches or natural watercourses and are sometimes referred to as buffers or buffer strips (Figure 7–2). Riparian buffers establish a permanently vegetated area between cultivated fields and watercourses.



Figure 7-2. South Innisfil Creek drain with riparian buffers along the watercourse.

Source: Town of Innisfil, Ontario

Riparian buffers provide benefits to the environment, agriculture and the drainage system by retaining soil on the land, stabilizing channel banks, reducing nutrient transport, providing ecological improvements and reducing drain maintenance and repair.

Riparian buffers are most important in sensitive habitats and areas prone to erosion. They should also be along the full length of the drain to set back agricultural activities from the drain (Figure 7-3).



Figure 7-3. An example of a wide buffer.

Source: Ausable Bayfield Conservation Authority, Ontario

Property owners can install buffers on their own property along the drain. But when buffers are incorporated into an engineer's report, they are systematically constructed along the entire length of the drain and are protected by bylaw to remain on the landscape.

Ask the appointed engineer about the options available to incorporate buffers along the drain.

7.2.3 Channel Enhancements

Channel enhancements are features that can be incorporated directly into most drainage systems that improve the drain by:

- conserving soil to improve water quality and reduce nutrient transport
- improving fish and wildlife habitat
- providing grade control and energy dissipation

These channel enhancements have been incorporated into drainage projects in Ontario:

- Littoral shelves are flat shelves beneath the water surface that encourage the growth of emergent aquatic vegetation (Figure 7-4).
- Gravel is added to create fish spawning locations for certain species (e.g., smallmouth bass) (Figure 7-5).
- Newbury weirs are rock structures that simulate natural riffles and pools in channels to enhance diversity of habitat and prevent channel movement. The riffles also improve water quality by increasing dissolved oxygen concentrations (Figure 7-6).
- Root wads are tree roots and trunk that are embedded into the channel bank or bottom. Root wads may be placed individually or in groupings to provide bank stabilization and fish habitat (Figure 7-7).
- Deep pools are created within the channel to provide variable depths for fish habitat and to promote localized sediment deposition.
- A live cribwall is a retaining wall made from logs, soil, rocks and live, woody plant cuttings that establish active roots. This structure protects the channel bank from erosion, provides long-term bank stabilization and provides habitat for wildlife (Figure 7-8).

Ask the appointed engineer if there are opportunities to incorporate some of these channel enhancements into the drain design.



Figure 7-4. A dewatered channel with a littoral shelf on the right side of the channel.

Source: K. Smart & Associates Ltd., Kitchener, Ontario



Figure 7-5. A dewatered channel with gravel substrates on a littoral shelf.

Source: K. Smart & Associates Ltd., Kitchener, Ontario



Figure 7-6. Newbury weir.

Source: Ian D. Smith, Lydian Environmental Consulting



Figure 7-7. A close-up of a root wad.



Figure 7-8. Construction of a live crib wall.

Source: Ian D. Smith, Lydian Environmental Consulting, Niagara Falls, Ontario



Figure 7-9. A depressional area to temporarily store water.

Source: Dietrich Engineering Limited, Waterloo, Ontario

7.2.4 Storage of Water on the Landscape

Weather patterns and the climate are changing, resulting in shifts in the intensity, duration, and frequency of extreme weather events. With increasing storm intensities, drainage systems must be designed with greater capacity or to temporarily store water on the landscape to reduce the downstream flow of water. A drain designed to address increased precipitation with storage reduces the frequency of future maintenance or repair and the need for drain improvements, resulting in sustainability and longevity of the drain.

Examples of storm water storage include:

- depressional area(s) at strategic locations (Figure 7-9)
- constructed berm(s) designed to store water and control its flow downstream (Figure 7-10)
- water control structure(s) that limits the flow of water entering the downstream section of the drain (Figure 7-11)
- pond(s) – stored water in ponds may be used as a water source for irrigation, livestock watering, etc.



Figure 7-10. A water control structure.

Source: Dietrich Engineering Limited, Waterloo, Ontario



Figure 7–11. A constructed berm with multiple outlets designed to temporarily store water on the landscape.
Source: Streamline Engineering Inc.

7.2.5 Constructed Wetlands

A constructed wetland is designed to mimic natural wetlands using plants and soil to filter and clean water on your property. These features are usually built in deliberate locations within a watershed to enhance flood control, improve water quality and create wildlife habitat. They are different from existing, restored or enhanced wetlands as they are constructed in areas that are not currently wetland. The [Conservation Authorities Act, 1990](#) may apply to a constructed wetland. Property owners considering the construction of a wetland, or neighbouring property owners, should understand what limitations may be imposed on the surrounding area.

Property owners can build and construct wetlands on their own property. However, when constructed wetlands are incorporated into an engineer's report, they are protected by bylaw to remain on the landscape.

Ask the appointed engineer if your property has a strategic location for a constructed wetland that would be beneficial to the drain.

Chapter 8

8. Resources

There are several resources available to help property owners navigate the *Drainage Act, 1990* processes.

8.1 General Drainage Resources

- [Agricultural drainage](#) – Resources on construction, maintenance and repair, grants, resolving disputes and more. This information is for drainage engineers, drainage superintendents, drainage contractors, municipalities and the public.



- [Find your local drainage superintendent](#) – A list of drainage superintendents appointed by the local municipality to manage drains constructed under the *Drainage Act, 1990*.



- [AgMaps](#) – Learn about soil drainage properties and determine the location of agricultural tile drainage systems and drains constructed under the *Drainage Act, 1990* using this interactive mapping website. Identify which properties are receiving the Farm Property Class Tax Rate. Licensed contractors can also use AgMaps to create Tile Drainage Records as part of the requirements for the renewal of business licenses under the *Agricultural Tile Drainage Installation Act, 1990*.



- [Drainage forms](#) – A list of forms related to tile drainage and municipal drains for municipalities, contractors and the public.



- [Find your local conservation authority](#) – An interactive map listing conservation authorities by region with contact information.



8.2 Legislation Resources

- [Drainage Act, R.S.O.,1990](#)



- [O.Reg.500/21: GENERAL](#)



- [O. Reg. 381/12: FORMS](#)

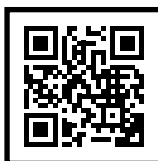


8.3 Drainage Industry Stakeholders

- [OSPE Land Drainage Committee](#) – The Land Drainage Committee is affiliated with the Ontario Society of Professional Engineers (OSPE). Their prime objective is to improve the practice of drainage engineering under the *Drainage Act, 1990*. Their website contains information for anyone in the drainage industry or with an interest in municipal drainage works.



- [Drainage Superintendents Association of Ontario](#) – The Drainage Superintendents Association of Ontario (DSAO) is an organization dedicated to advancing and improving the knowledge of drainage through the exchange of ideas and information. DSAO unites drainage superintendents and drainage support staff for the promotion of better maintenance, repair and improvement of drainage works in Ontario.



- [Land Improvement Contractors of Ontario](#) – The Land Improvement Contractors of Ontario (LICO) is an association of professional contractors, suppliers of drainage pipe and equipment, engineers and municipal drainage superintendents principally concerned with agriculture and the land drainage industry of Ontario.



Appendix A

Completing the “Petition for Drainage Works by Owners – Form 1”

Introduction

The Act is a legislative tool used to initiate and develop communal drainage systems, with costs shared among the lands and roads in the watershed of a drainage system. The Act can force a drainage system across the lands of owners that may be opposed to the project and force them to contribute financially to it. The process authorized by this legislation is initiated by completing a petition form and submitting it to the municipality. The petition form is a legal document and must be completed. The following are instructions for completing the “Petition for Drainage Works by Owner” form.

Completing Page 1 of the Petition

Only complete one copy of page 1 of the petition form (Figure A1–1).

- a** Identify the municipality receiving the petition (e.g., Township of Langmuir).
- b** Describe the “area requiring drainage” or the area experiencing drainage problems. This could be a single property but is more likely to be multiple, adjacent properties. Some examples of the description of an area requiring drainage include:
 - [Lots 13-16, Concession 3, Township of Ataw; or](#)
 - [the area identified in the attached plan](#)

- c** Provide the information for the contact person. This section is normally completed by one of the petitioners but can be completed by an agent of the petitioner(s) (e.g., tile drainage contractor, real estate agent or a spokesperson).
- d** Identify the type of work required to give the drainage superintendent, members of council or agencies receiving a copy of the petition a better understanding of the expectation of the petitioner(s). Identifying the type of work required does not bind the engineer to implement the requested work as a solution to the drainage issue.
- e** Provide a general description of the work and/or the work area.
 - “Name of watercourse” is the name of the watercourse where the petitioner(s) suggest that work be performed. Examples might include:
 - Brook Award Drain
 - Private ditch on the west side of Lot 32 and 33.
 - Birch Creek
 - none

- “Estimated length of project” is an estimate of the length of drain required to achieve a solution to the issues.
- “General description of the soils in the area” is only intended to provide a broad description such as “silty clay” or “sandy loam” or “clay loam”.
- “Purpose of the proposed work” – check the appropriate box.

f This section is completed by the municipal clerk after the petition form is submitted to the municipality.

Completing Page 2 of the Petition

Page 2 is used to add two additional properties to the petition (Figure A1–2).

- Each copy of this page allows the owner(s) of two additional properties to sign the form.
- If more than three properties are petitioning, add additional copies of page 2. The box indicating “Check here if additional sheets are attached” should be checked.
- Complete one box for each petitioning property. If an individual, company or partnership owns multiple properties and intends to include more than one of these properties on the petition form, a separate box must be completed for each property.
- Each property box on Page 2 of the petition consists of two parts:
 - property information
 - ownership type

g Property information – Complete this section for each property being included on the petition, regardless of ownership type. Some of the property information can be obtained from the property tax bill or from the municipal office.

The owner of the property must complete one of the three ownership types.

h Sole proprietorship – The property being included on the petition is owned by a single individual. For a property owned by a sole owner to legally count in a petition, the sole owner of the property must sign and date the petition.

i Partnership – The property being included on the petition is owned in partnership. For a property owned in partnership to legally count in a petition, all partners must sign and date the petition.

j Corporation – The property being included on the petition is owned by a corporation. For a property owned by a corporation to legally count in a petition, the person(s) who can legally bind the corporation must sign and date the petition.

When the Petition is Complete

- The Clerk must:
 - sign and date Page 1 of the petition form (bottom of Page 1)
 - initial, in the appropriate box (lower right hand), each copy of Page 2 of the petition form
 - insert the page numbers in the page number box on each copy of Page 2, located in the upper right-hand corner



**Ministry of Agriculture,
Food and Rural Affairs**

**Petition for Drainage Works by Owners
Form 1**
Drainage Act, R.S.O. 1990, c. D.17, clause 4(1)(a) or (b)

This form is to be used to petition municipal council for a new drainage works under the *Drainage Act*. It is not to be used to request the improvement or modification of an existing drainage works under the *Drainage Act*.

a To: The Council of the Corporation of the of

The area of land described below requires drainage (provide a description of the properties or the portions of properties that require drainage improvements)

b

In accordance with section 9(2) of the *Drainage Act*, the description of the area requiring drainage will be confirmed or modified by an engineer at the on-site meeting.

As owners of land within the above described area requiring drainage, we hereby petition council under subsection 4(1) of the *Drainage Act* for a drainage works. In accordance with sections 10(4), 43 and 59(1) of the *Drainage Act*, if names are withdrawn from the petition to the point that it is no longer a valid petition, we acknowledge responsibility for costs.

c

Purpose of the Petition (To be completed by one of the petitioners. Please type/print)			
Contact Person (Last Name)	(First Name)	Telephone Number	ext.
Address			
Road/Street Number	Road/Street Name		
Location of Project			
Lot	Concession	Municipality	Former Municipality (if applicable)

d

What work do you require? (Check all appropriate boxes)

☐ Construction of new open channel
☐ Construction of new tile drain
☐ Deepening or widening of existing watercourse (not currently a municipal drain)
☐ Enclosure of existing watercourse (not currently a municipal drain)
☐ Other (provide description ▼)

e

Name of watercourse (if known)

Estimated length of project

General description of soils in the area

What is the purpose of the proposed work? (Check appropriate box)

☐ Tile drainage only
 ☐ Surface water drainage only
 ☐ Both

f

Petition filed this day of , 20

Name of Clerk (Last, first name)	Signature

Figure A1–1. Page 1 of the petition form.

Property Owners Signing The Petition			Page of
- Your municipal property tax bill will provide the property description and parcel roll number. - In rural areas, the property description should be in the form of (part) lot and concession and civic address. - In urban areas, the property description should be in the form of street address and lot and plan number if available. - If you have more than two properties, please take copy(ies) of this page and continue to list them all.			
g	Number	Property Description	
h	Ward or Geographic Township	Parcel Roll Number	
	I hereby petition for drainage for the land described and acknowledge my financial obligations.		
i	Ownership		
	☐ Sole Ownership		
j	Owner Name (Last, First Name) (Type/Print)	Signature	Date (yyyy/mm/dd)
i	☐ Partnership (Each partner in the ownership of the property must sign the petition form)		
	Owner Name (Last, First Name) (Type/Print)	Signature	Date (yyyy/mm/dd)
j			
j	☐ Corporation (The individual with authority to bind the corporation must sign the petition)		
	Name of Signing Officer (Last, First Name) (Type/Print)	Signature	
j	Name of Corporation	I have the authority to bind the Corporation.	
	Position Title	Date (yyyy/mm/dd)	
j	Number	Property Description	
h	Ward or Geographic Township	Parcel Roll Number	
	I hereby petition for drainage for the land described and acknowledge my financial obligations.		
i	Ownership		
	☐ Sole Ownership		
j	Owner Name (Last, First Name) (Type/Print)	Signature	Date (yyyy/mm/dd)
i	☐ Partnership (Each partner in the ownership of the property must sign the petition form)		
	Owner Name (Last, First Name) (Type/Print)	Signature	Date (yyyy/mm/dd)
j			
j	☐ Corporation (The individual with authority to bind the corporation must sign the petition)		
	Name of Signing Officer (Last, First Name) (Type/Print)	Signature	
j	Name of Corporation	I have the authority to bind the Corporation.	
	Position Title	Date (yyyy/mm/dd)	
Note	☐ Check here if additional sheets are attached		
	Clerk initial		
Petitioners become financially responsible as soon as they sign a petition.			
- Once the petition is accepted by council, an engineer is appointed to respond to the petition. <i>Drainage Act</i>, R.S.O. 1990, c. D. 17 subs. 8(1). - After the meeting to consider the preliminary report, if the petition does not comply with section 4, the project is terminated and the original petitioners are responsible in equal shares for the costs. <i>Drainage Act</i>, R.S.O. 1990, c. D. 17 subs. 10(4). - After the meeting to consider the final report, if the petition does not comply with section 4, the project is terminated and the original petitioners are responsible for the costs in shares proportional to their assessment in the engineer's report. <i>Drainage Act</i>, R.S.O. 1990, c. D. 17 s. 43. - If the project proceeds to completion, a share of the cost of the project will be assessed to the involved properties in relation to the assessment schedule in the engineer's report, as amended on appeal. <i>Drainage Act</i>, R.S.O. 1990, c. D. 17 s. 61.			
Notice of Collection of Personal Information			
Any personal information collected on this form is collected under the authority of the <i>Drainage Act</i> , R.S.O. 1990, c. D.17 and will be used for the purposes of administering the Act. Questions concerning the collection of personal information should be directed to: where the form is addressed to a municipality (municipality to complete)			
and where the form is addressed to a territory without municipal organization, the Drainage Coordinator, Ministry of Agriculture, Food and Rural Affairs, 1 Stone Rd W, Guelph ON N1G 4Y2, 519 826-3552.			
0173E (2022/11)			

Figure A1–2. Page 2 of the petition form.

Notes

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Notes

[illegible]



