

# CHAPTER 7 - GUIDELINES FOR CONSERVATION WORKS OF IMPROVEMENT

Conservation Works of Improvement (CWI) are projects to conserve soil resources, control and prevent soil erosion, flood prevention, and the conservation, development, utilization, and disposal of water within a district. Any landowner located in a Soil and Water Conservation District may petition for construction of CWI. The following guidelines describe step-by-step procedures for planning and constructing improvements for natural resource conservation and development.

## PLANNING AND CONSTRUCTING CONSERVATION WORKS OF IMPROVEMENT

The Soil and Water Conservation District Law [{Chapter 940 of the Ohio Revised Code \(ORC\)}](#) enables local Soil and Water Conservation Districts (SWCD), in addition to their other responsibilities, to construct improvements for natural resource conservation and development. Such improvements are:

- Flood protection impoundments;
- Flood protection by channel improvement;
- Channel improvement for drainage;
- Water quality control;
- Irrigation water supply;
- Community water supply;
- Recreation;
- Fish and wildlife; and
- Erosion control.

The purpose of this legislation was to enable local people and local units of government to initiate, construct and maintain natural resource works of improvement through the legal authority of Soil and Water Conservation Districts working cooperatively with the boards of county commissioners. The authorities in [Chapter 940](#) may be utilized to accomplish a project whether or not state funds are used in the project.

### **Two funding opportunities are provided for use by districts:**

1. **Advance of moneys from soil and water conservation fund; repayment.** [\(Section 940.16\)](#)
  - A board of county commissioners may apply to the Ohio soil and water conservation commission for an advance of moneys from the soil and water conservation fund, which is hereby created in the state treasury, to enable a soil and water conservation district to pay all or part of the cost of surveys and plans, appraisals, estimates of cost, land options, and other incidental expenses of constructing works of improvement for the district. The commission shall consider the application and shall recommend an amount of moneys reasonably needed for that purpose.
  - The order of the commission recommending the amount of the moneys needed shall be certified to the controlling board. The controlling board shall then determine the amount to be advanced to the county and shall certify its action to the director of budget and management for payment.

- All such amounts received by any such district shall be repaid by the board of county commissioners to the state immediately upon the receipt by the board of funds from the sale of bonds or from other sources that may be used for that purpose, or in such number of equal annual installments, not exceeding five, and commencing at such time, as shall be specified in the order of the commission.
- If an unfavorable referendum or court decision has denied the work of improvement, the controlling board, upon receipt of sufficient and satisfactory evidence that the board and district have proceeded in good faith and the recommendation of the commission, shall relieve the board or district of its repayment obligation.
- [CWI-4 Application for Advance of Monies | Ohio Department of Agriculture](#)
- Currently there are no funds available; contact the OSWCC for more information.

2. **Sharing costs of improvement by conservation district.** ([Section 940.17](#))

- The director of agriculture, upon recommendation by the Ohio soil and water conservation commission, may enter into agreements with boards of county commissioners under which the state shares the cost of construction of works of improvement constructed by the county for a soil and water conservation district. The state share shall be paid from moneys appropriated for such purposes. The state share authorized under this section shall not exceed fifty per cent of the nonfederal cost of the project.
- [CWI-5 Application for State Cost Share | Ohio Department of Agriculture](#)
- Currently there are no funds available; contact the OSWCC for more information.

## **AN OUTLINE OF THE CWI PROCESS [\(Section 940.19\)](#)**

### **1. A problem is identified by a landowner or group of landowners, a unit of government, or other entity who owns land in the project area. [\(Section 940.19\)](#)**

(A) An owner of land that is located in a soil and water conservation district may file a petition with the board of supervisors of the district requesting the construction of a conservation work of improvement. Prior to filing a petition, the petitioner shall consult with the district to discuss the proposed drainage improvement and to determine the proper forms and procedures for filing the petition.

(B) The petition shall include all of the following:

- (1) A statement of the nature of the work for which a petition is filed, including locating, cleaning, removing obstructions from, constructing, reconstructing, straightening, deepening, widening, altering, boxing, tiling, filling, walling, or arching any ditch, drain, watercourse, floodway, creek, run, or river; changing the course, location, or terminus thereof; or constructing a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the control of water;
- (2) A description, including location, of the course and termini of the proposed improvement and the branches, spurs, or laterals, if any are petitioned for;
- (3) A statement that the construction of the improvement is necessary and will benefit the petitioner; and
- (4) A statement that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land.

(C) The board shall make a preliminary determination to accept or reject the petition at the board's next scheduled meeting.

***ODA-DSWC Comments – Complete the [CWI-1 Request for Assistance Form](#) with all required information.***

### **2. SWCD Board makes preliminary determination to accept or reject the petition during the next scheduled Board Meeting [\(Section 940.19\)](#).**

(D)(1) The board may reject the petition for any of the following reasons:

- (a) The board determines that the information that the petition contains about the proposed improvement is insufficient to enable the board to proceed with the petition under this chapter.
- (b) The petition appears to be frivolous.

(c) The district lacks sufficient staff or other resources to proceed with the improvement in accordance with this chapter.

(2) If the board rejects the petition, it shall notify the petitioner in writing of the reasons for the rejection. The petitioner may amend a petition that is rejected due to insufficient information and may subsequently file the amended petition with the board.

(E) If the board accepts the petition for a proposed improvement, the board shall do both of the following:

(1) Establish a date and time for a view of the proposed improvement. The date shall be not fewer than thirty nor more than ninety days after the date on which the petition was accepted. The board shall designate a convenient location at which the view shall occur.

(2) Establish a date and time on and at which and designate a location at which the board will hold a hearing on the proposed improvement. The hearing shall occur not fewer than thirty nor more than ninety days after the date established for the view.

(F) If a petitioner proposes an improvement that would be located in two or more adjoining soil and water conservation districts, the board of supervisors that receives the petition shall provide notice of the petition to the board of supervisors of each other county in which the proposed improvement would be located. The boards then shall create a joint board of supervisors under section [940.34](#) of the Revised Code and proceed in accordance with that section.

***ODA-DSWC Comments - Complete and submit the [JB-1 Request for a Joint Board Form](#) to the OFSWCC.***

**3. A "Joint Board" of the local Soil and Water Conservation Districts involved must be formed if the project exceeds county boundaries at the next scheduled OFSWCC Commission Meeting. ([Section 940.34](#))**

(A) Upon receiving a petition pursuant to section [940.19](#) of the Revised Code for a proposed improvement that would be located in two or more adjoining soil and water conservation districts, the board of supervisors of the adjoining districts shall, with approval of the Ohio soil and water conservation commission, create a joint board of supervisors. Each district shall have the same number of supervisors on the joint board. However, if the membership of the joint board would be an even number, an additional supervisor from the lead county shall be designated.

(B) A joint board of supervisors shall exercise the same powers, execute the same duties, and follow the same procedures in connection with an improvement under this chapter as the board of supervisors of a single soil and water conservation district with the following conditions:

(1) For purposes of making a preliminary determination to accept or reject a petition in accordance with section [940.19](#) of the Revised Code, the joint board shall make the determination within sixty (60) days of the approval of the creation of the joint board.

(2) For purposes of a petition, the joint board shall do both of the following:

(a) Send the petition and accompanying information to the board of county commissioners of the lead county; and

(b) Send notification of the need for the creation of a joint board of county commissioners under section [940.35](#) of the Revised Code to the board of county commissioners of each county in the area to be benefited by the proposed improvement.

(C) Upon the creation of a joint board of supervisors, the elected officials in the lead county, including the engineer, recorder, auditor, prosecutor, treasurer, judges, and clerk of the board of county commissioners, shall serve as the administrative officers for the joint board of supervisors.

***ODA-DSWC Comments – Organize the Joint Board by submitting [JB-2 Joint Board of Supervisor Organization Report](#) after the initial Joint Board Meeting. The [JB-3 Joint Board of Supervisors Annual Report](#) in due annually to the OFSWCC after the formation until the [JB-4 Joint Board Dissolution Request](#) form is submitted to the OFSWCC at the projects conclusion.***

**4. If Petition is approved, the board or joint board begins and finalizes the preliminary report prior to the SWCD Supervisor hearing. ([Section 940.22](#))**

(A) Upon acceptance of a petition requesting the construction of an improvement, the board of supervisors of a soil and water conservation district shall begin to prepare a preliminary report regarding the proposed improvement. The board shall present the completed preliminary report at the hearing that is held on the proposed improvement.

(B) The board shall ensure that the preliminary report includes all of the following:

(1) A preliminary estimate of the cost of construction for the proposed improvement;

(2) Comments on the feasibility of the proposed improvement;

(3) A statement of the board's opinion as to whether the benefits from the proposed improvement are likely to exceed the estimated cost;

(4) A list of all factors identified by the board, both favorable and unfavorable to the proposed improvement, so that the petitioners may be informed concerning what is involved with the construction of the proposed improvement.

(C) In addition to preparing a preliminary report on the improvement as petitioned, the board may submit alternate proposals to accomplish the intent of the petition.

(D) The preliminary report and all alternate proposals shall be reviewed and receive concurrence from an engineer who is employed by the department of agriculture or by the natural resources conservation service

in the United States department of agriculture and who is responsible for providing technical assistance to the district or from any other registered professional engineer selected by the board of supervisors.

***ODA-DSWC Comments – If Petition is not approved, the Petitioner must be notified.***

## 5. Notice of the view and hearing dates shall be established. [\(Section 940.20\)](#)

(A) At least twenty-one days prior to the date established for the view, the board of supervisors of a soil and water conservation district shall send a written notice of the view and the hearing to all landowners within the area to be benefited by the proposed improvement and to the board of county commissioners and the county engineer. The board shall ensure that the notice contains all of the following:

- (1) The date, time, and location for the view and the subsequent hearing;
- (2) A description of the proposed improvement and its location as stated in the petition, a map indicating the location of the proposed improvement or information on where to access the map, and an explanation of how to obtain additional information or ask questions about the proposed improvement;
- (3) A statement that all costs of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land;
- (4) A statement that a landowner may file, not more than twenty-one days after the date of the view, an amendment to the original petition that expands the length of the proposed improvement, provided that the amendment does not expand the area to be benefited by the proposed improvement;
- (5) A statement that any landowner receiving the notice may comment on the proposed improvement in writing before or in person at the hearing on the petition;
- (6) The address at which to file an amendment to the petition or submit written comments on the proposed improvement.

(B) The board shall notify all landowners that are adjacent to the proposed improvement either by certified mail or, if the board has record of an internet identifier of record associated with such a landowner, by ordinary mail and by that internet identifier of record and shall notify all others by certified mail or first-class mailings. The written notice shall have the words "Legal Notice" printed in plain view on the face of the envelope or, in the case of service by an internet identifier of record, in conspicuous typeface at the top of the notice.

(C) The board shall invite to the view and the hearing the staff of the soil and water conservation district and the staff of the natural resources conservation service in the United States department of agriculture that is involved with the district together with any other people that the board considers to be necessary to the proceedings.

(D) As used in this section, "internet identifier of record" has the same meaning as in section [9.312](#) of the Revised Code.

***ODA-DSWC Comments – Notice must be sent out at least 21 days prior to the view date.***

## **6. The board or joint board of supervisors holds the view of the proposed improvement. [\(Section 940.21\)](#)**

(A) On the date established for the view of a proposed improvement, the board of supervisors of a soil and water conservation district or its designee shall present an overview of the proposed improvement. In the presentation, the board or its designee shall use methods and means that the board determines will adequately inform those attending the view about the proposed improvement's location and the drainage issues intended to be addressed by the proposed improvement.

(B) Upon the request made at the view of a member of the board or of a landowner in the area to be benefited by the proposed improvement, the board or its designee shall recess the view and reconvene at a site along the proposed improvement for the purpose of gaining additional information about the drainage issue intended to be addressed by the proposed improvement. If the area to be viewed is extensive, the board or its designee may conduct the view on more than one day and may adjourn from day to day, or a longer period, until the view is completed.

***ODA-DSWC Comments – The view requirements are the same for a single county board and a joint board.***

## **7. The board or joint board of supervisors hold the hearing of the proposed improvement and objections from opposing landowners. [\(Section 940.23\)](#)**

(A) On the date and at the time established by the board of supervisors for the hearing on a petition for a proposed improvement, the board shall conduct the hearing. At the hearing, the board shall do both of the following:

- (1) Present the board's preliminary report on the proposed improvement;
- (2) Hear any comments or evidence offered by any landowner for or against the proposed improvement.

(B) If necessary, the board may recess and continue the hearing on subsequent days as may be reasonable to consider additional information about the proposed improvement or so that all interested landowners may have an opportunity to comment on the proposed improvement.

(C) At the conclusion of the hearing, the board shall vote to decide whether to proceed with a project survey and design or to dismiss the petition. In making its decision, the board shall take into consideration all of the following:

- (1) The petition;
- (2) The preliminary report;
- (3) Comments on the proposed improvement;
- (4) The protection of environmentally significant areas when those areas could be adversely affected by the construction of the proposed improvement and, if necessary, alternative plans providing for that protection and for construction of the proposed improvement.

(D) The board may proceed with the project survey and design for a proposed improvement if both of the following apply:

- (1) The board finds that a proposed improvement is necessary and is conducive to the public welfare.
- (2) The board is reasonably certain that the benefits of the proposed improvement will outweigh its costs.

***ODA-DSWC Comments – The hearing requirements are the same for a single county board and a joint board.***

## **8. Survey, Design and Plans after a vote by the supervisors to proceed with the project.** **[\(Section 940.24\)](#)**

After a vote of the board of supervisors of a soil and water conservation district to proceed with a project survey and design for a proposed improvement, the board or its designee shall conduct all necessary surveys for the proposed improvement. In addition, the board or its designee shall prepare plans for constructing the improvement. The plans shall include all of the following:

- (A) Specifications for construction of the improvement;
- (B) Dimensions of any temporary easement that is necessary for construction purposes;
- (C) In the case of an improvement that is a ditch or similar structure for the disposal of water, provisions for all of the following:
  - (1) Spreading and leveling of spoil banks;
  - (2) Erosion and sediment control through the establishment of a sod or seeded strip or other such controls if suitable vegetative cover is not present. With regard to sod or seeded strips, the board shall ensure that the plan provides that such strips will be not fewer than ten feet nor more than fifteen feet wide, measured at right angles to the top of the ditch bank on both sides of the ditch. Sod or seeded strips or other such controls are considered part of the permanent improvement. The board or its designee shall report to the county auditor the total acreage of sod or seeded strips or

other such controls that are established and maintained in accordance with this chapter. The county auditor shall remove the total acreage of sod or seeded strips or other such controls from the taxable valuation of the property of which they are a part.

(D) An analysis of all fences, floodgates, culverts, bridges, and other structures that will be removed or adjusted in constructing the improvement;

(E) An analysis of any gates that need to be installed in existing fences in order to provide access to the improvement for maintenance purposes. The plan shall require gates to be locked when requested by the owner of the fence. Gates are part of the original improvement and subject to maintenance along with the improvement.

***ODA-DSWC Comments – The petition is dropped if the board does not vote to proceed with the project.***

## 9. The supervisors or the joint board of supervisors along with their designee develop schedule of damages. ([Section 940.25](#))

(A) After preparing the project survey, design, and plans for constructing the proposed improvement, the board of supervisors of a soil and water conservation district shall prepare a schedule of damages as part of the estimate of the total cost of constructing the proposed improvement.

(B) The schedule of damages shall include both of the following:

(1) An estimate of the value of land or other property necessary to be acquired through purchase or voluntary transfer or appropriated in accordance with sections [163.01](#) to [163.62](#) of the Revised Code and a description of that land or other property;

(2) An estimate of the total damages to be sustained by any landowner as a result of the construction and subsequent maintenance of a proposed improvement, along with the name and address of each landowner that is alleged to be damaged, the amount of each landowner's estimated damages, and an explanation of each landowner's damages.

***ODA-DSWC Comments – Schedule of damages need to be completed prior to final cost estimate being completed.***

## 10. The supervisors or the joint board of supervisors along with their designee develop a final cost estimate ([Section 940.26](#))

After preparing a schedule of damages, the board of supervisors of a soil and water conservation district or its designee shall make an estimate of the cost of the proposed improvement. The estimate shall include all of the following:

(A) Actual construction costs, including costs of addressing the construction specifications set forth in section [940.24](#) of the Revised Code;

(B) The estimated costs included in the schedule of damages prepared under section [940.25](#) of the Revised Code;

(C) Any expenses incurred in investigations, consulting services, and notifications related to the proposed improvement, and any other incidental costs.

***ODA-DSWC Comments – Final cost estimate must include actual construction cost, cost of the estimated damages and all other costs related to the project.***

## 11. The supervisors or the joint board of supervisors along with their designee develop a schedule of estimated assessments [\(Section 940.27\)](#)

(A) After preparing an estimate of the cost of a proposed improvement, the board of supervisors of a soil and water conservation district or its designee shall prepare a schedule of estimated assessments on land within the area that will be benefited by a proposed improvement. The board shall include in the schedule the name and address of each landowner whose parcel of land will be benefited by the proposed improvement and a description of each landowner's parcel. The board shall obtain the names and addresses from the tax duplicates of the county. The board shall obtain the descriptions from the county recorder's office. For purposes of the description the county recorder shall not require a mete and bounds survey.

(B) In determining the estimated assessment on a parcel of land, the board or its designee shall do both of the following:

(1) Use the information compiled in accordance with sections [940.24](#) to [940.26](#) of the Revised Code;

(2) Consider, and incorporate when applicable, the following factors in the calculations:

(a) Acreage of the parcel;

(b) Volume of water produced by the parcel;

(c) Distance of the parcel from the proposed improvement;

(d) Percentage of the proposed improvement to be used by the parcel;

(e) The construction of works that are determined to solely benefit the particular parcel;

(f) Soil types of the parcel;

(g) The county auditor's land value or current agricultural use value, if applicable, of the parcel;

(h) Existing drainage infrastructure that can be incorporated into the proposed improvement and associated cost savings;

(i) Any other factors pertinent to the proposed improvement and the watershed that will be affected by the proposed improvement;

(j) Any benefits as defined in section [6131.01](#) of the Revised Code.

(C) Unless the board determines for good cause that a lower amount is appropriate, the board shall not establish an estimated assessment for a parcel of land in an amount less than twenty-five dollars, including the cost of preparing and mailing the notice required under section [940.32](#) of the Revised Code. If a dwelling is located on a lot that comprises two or more contiguous parcels of land, the board may establish an estimated assessment of not less than twenty-five dollars for all of the parcels, including the cost of preparing and mailing the notice required under section [940.32](#) of the Revised Code.

(D) The board shall ensure that the total of the estimated assessments, including the total estimated assessments allocated to public corporations and the state, is not greater than the estimated cost of the proposed improvement.

***ODA-DSWC Comments – Estimated per parcel assessments is calculated ensuring the total is equal to the estimated project cost.***

## 12. The supervisors or the joint board of supervisors submit the petition and information to the county commissioners. ([Section 940.28](#))

After a board of supervisors of a soil and water conservation district completes the schedule of estimated assessments, the board shall submit the petition, preliminary report, surveys, plans, specifications, schedule of damages, cost estimates, estimated assessments, and any other information obtained or prepared for the petition to the board of county commissioners of the county in which the proposed improvement is to be located.

***ODA-DSWC Comments – All required paperwork submitted to the County Commissioners.***

## 13. Formation of the Joint Board of County Commissioners. ([Section 940.35](#))

(A) If a proposed improvement would affect more than one county, the board of county commissioners from each of the counties that would be affected by the proposed improvement shall meet on a date fixed by the clerk of the board of county commissioners of the lead county. The boards shall meet in the lead county to organize a joint board of county commissioners and elect a president, which shall be the first order of business at the hearing.

(B) A joint board of county commissioners shall exercise the same powers, execute the same duties, and follow the same procedures in connection with an improvement under this chapter as the board of county commissioners of a single county.

(C) The clerk of the board of county commissioners of the lead county shall do all of the following:

- (1) Act as clerk and administrator of the joint board;
- (2) Enter the findings of the joint board in the journal of the board of county commissioners of the lead county;
- (3) Make the final record of the improvement in the lead county;
- (4) Provide copies of all proceedings to the clerks of the boards of all affected counties.

(D) A majority of the county commissioners constituting the joint board shall constitute a quorum. All decisions of the joint board shall be made by a majority vote of the quorum present at a meeting of the joint board.

(E) The director of natural resources shall be an ex officio member of the joint board and may participate, in person or through a designated representative, in deliberations and proceedings of the joint board. The director shall have no vote on any proceedings of the joint board except in the case of a tie for or against an improvement. If the director or the director's designee is not present at the proceeding, the director shall review the proceedings and cast the deciding vote within thirty days of the proceeding. A failure to cast a vote for or against the improvement within thirty days constitutes an affirmative vote for the improvement. The clerk shall record the final resolution of the tie.

(F) Upon the creation of a joint board of county commissioners, the elected officials in the lead county, including the engineer, recorder, auditor, prosecutor, treasurer, judges, and clerk of the board of county commissioners, shall serve as the administrative officers for the joint board of county commissioners.

***ODA-DSWC Comments – This section only applies if a Joint Board of County Commissioners is required.***

#### 14. Joint Board of County Commissioners lead county responsibilities. ([Section 940.36](#))

(A) The auditor of the lead county shall certify to the auditor of the other counties a schedule of any taxes or assessments to be levied for the improvement, and the auditor of such other county immediately shall place such tax or assessment upon the duplicates. Taxes or assessments so certified for collection to an auditor of another county are a lien on the land within such county from the date such certificate is received by the auditor of such other county.

(B) The treasurer of each county shall collect any taxes or assessments levied for the improvement pursuant to the orders made in the proceedings of the joint board of county commissioners, and such taxes or assessments when collected shall be paid to the treasurer for the joint board.

(C) The auditor and treasurer of the lead county shall receive and account for any taxes or assessments levied for the improvement in the same manner as they would for taxes or assessments collected within their county. The treasurer and auditor of the lead county with their bondspersons are liable on their official bonds for any misappropriation of such funds. All warrants for the payment of costs in connection with the

improvement shall be drawn by the auditor of the lead county, on the treasurer of the lead county, payable out of the fund designated by the joint board to receive moneys for the improvement.

***ODA-DSWC Comments – This section only applies to a Joint Board of County Commissioners.***

## **15. Board or Joint Board of County Commissioners scheduling and notice of hearing on the proposed improvement. (Section 940.29)**

(A) Upon receiving the information submitted by a board of supervisors of a soil and water conservation district under section [940.28](#) of the Revised Code, the board of county commissioners shall establish the date, time, and location of a hearing regarding the proposed improvement.

(B) At least twenty-one days prior to the date established for the hearing, the clerk of the board of county commissioners shall send a written notice of the hearing by certified mail to all landowners that are adjacent to the proposed improvement. The clerk shall send such notice by certified or first-class mail to all other landowners within the area to be benefited by the proposed improvement, the board of supervisors of the applicable soil and water conservation district, and the county engineer. The clerk shall include all of the following in the notice:

- (1) The date, time, and location of the hearing;
- (2) A description of any easement on the landowner's property that is necessary for purposes of the improvement;
- (3) A landowner's estimated assessment;
- (4) A statement that a landowner may file comments on the proposed improvement and exceptions to the estimated assessment in writing before the hearing or in person at the hearing;
- (5) The address at which to submit written comments on the proposed improvement and exceptions to the estimated assessment.

(C) The clerk shall include printed words in plain view on the envelope containing the notice that read "Legal Notice of Proposed Drainage Improvement."

***ODA-DSWC Comments – All landowners adjacent to the proposed improvement shall receive the notice by certified mail.***

## **16. Board or Joint Board of County Commissioners hearing on the proposed improvement. ([Section 940.30](#))**

(A) On the date established for the hearing, the board of county commissioners shall conduct the hearing by doing both of the following:

(1) Presenting the project design, construction plans, schedule of damages, cost estimates, and estimated assessments for the proposed improvement as submitted by the board of supervisors of the applicable soil and water conservation district;

(2) Hear any comments offered by any landowner regarding the estimated assessments and proposed improvement.

(B) If necessary, the board of county commissioners may adjourn and continue the hearing on subsequent days as may be reasonable to consider additional information about the proposed improvement, make changes that will better accomplish the purpose and object of the proposed improvement, or allow all interested landowners to have an opportunity to comment on the proposed improvement.

***ODA-DSWC Comments – All interested landowners must have the opportunity to comment on the proposed improvement.***

## **17. Board or Joint Board of County Commissioners approval or disapproval on the construction of the improvement. [\(Section 940.31\)](#)**

(A) At the conclusion of the hearing conducted under section [940.30](#) of the Revised Code, the board of county commissioners shall vote to approve or dismiss the petition.

(B) The board may approve the petition if the board is reasonably certain that:

(1) The benefits of the proposed improvement outweigh the costs.

(2) The proposed improvement is necessary.

(3) The proposed improvement will be conducive to the public welfare.

(4) The proposed route and mode of construction of the improvement will improve water management and development in the county in which the district is located to the advantage of lands located in it.

(5) The proposed improvement will aid lands in the area by promoting the economic, environmental, or social development of the area.

(C) When, in the opinion of the board of county commissioners, it is necessary for the board to acquire real property or a right-of-way or other easement for an improvement project under this chapter, the board may make the acquisition through purchase or voluntary transfer, or the board may appropriate the real property or right-of-way or other easement in accordance with sections [163.01](#) to [163.62](#) of the Revised Code.

(D) If the board approves a petition for an improvement, the county engineer shall file with the county recorder all of the following:

(1) A property plat showing the landowners of record and parcel numbers along the improvement;

- (2) The location of the improvement;
- (3) The width of any permanent easement that is necessary for maintenance of the improvement granted in section [6137.12](#) of the Revised Code;
- (4) An affidavit listing the landowners of record, complete property descriptions, and parcel numbers subject to the permanent easement. The county engineer shall note the property plat in the affidavit.

The county engineer shall include the permanent easement in the county's geographic information systems or other mapping system, if available.

In the case of an improvement that is an open ditch, provisions that govern the permanent easement for maintenance of the ditch that are established in section [6137.12](#) of the Revised Code apply.

(E) A board of county commissioners shall follow competitive bidding requirements in sections [307.86](#) to [307.91](#) of the Revised Code in constructing an improvement. However, the board may designate the board of supervisors of a soil and water conservation district as the contracting agency. The board of supervisors shall follow division (H) of section [940.06](#) of the Revised Code. If the improvement is being undertaken through the joint efforts and cooperation of the board of county commissioners or board of supervisors and another state or federal agency, and if the state or federal regulations or procedures are in conflict with those sections with respect to the procedures for the preparing of contracts, the issuing of bids, the making of awards, and generally the administering of the contracts, the board of county commissioners or board of supervisors may adopt the state or federal regulations or procedures in those areas where conflict exists and proceed with the improvement in accordance with the requirements of the state or federal regulations or procedures.

(F) If a board of county commissioners does not approve a petition for a proposed improvement, the applicable board of supervisors may revise the proposed improvement and submit the revision to the board of county commissioners for reconsideration of the petition.

***ODA-DSWC Comments – If the Commissioners do not approve the petition, refer to 940.31 (F).***

## **18. Board or Joint Board of County Commissioners procedure for assessments. ([Section 940.32](#))**

(A) If the board of county commissioners approves a petition under section [940.31](#) of the Revised Code, the board shall adopt a resolution levying upon the property within the area to be benefited by an improvement a uniform or varied assessment rate as necessary to pay the cost of construction of the improvement not otherwise funded and to repay advances made for purposes of the improvement from the fund created by section [940.16](#) of the Revised Code. In adopting the resolution, the board shall take into consideration the estimated assessments prepared by the board of supervisors of the soil and water conservation district under section [940.27](#) of the Revised Code.

(B) The board of county commissioners shall give notice by first class mail to every public and private property owner whose property is subject to assessment, at the tax mailing or other known address of the owner. The notice shall contain all of the following:

- (1) A statement of the amount to be assessed against the property of the addressee;
- (2) A description of the method used to determine the necessity for and the amount of the proposed assessment;
- (3) A description of any easement on the property that is necessary for purposes of the improvement;
- (4) A statement that an owner may file written exceptions to the amount of the assessments with the clerk of the board of county commissioners within thirty days of the date of the notice.

(C) If the residence of any owner cannot be ascertained, or if any mailed notice is returned undelivered, the board shall publish the notice to all such owners in a newspaper of general circulation within the area to be benefited by the improvement, once each week for three weeks or as provided in section [7.16](#) of the Revised Code. The notice shall include the information contained in the mailed notice.

(D) If an owner files an exception to the estimated assessment, the board, within thirty days of the date of the filing, shall establish a date and time for hearing the exception to the estimated assessments. The board may hear each owner's exception in an individual hearing or hear all exceptions in a single hearing. Not less than fourteen days prior to the hearing date, the clerk of the board shall notify each owner who filed an exception of the date and time of the owner's exception hearing. Upon hearing the objector's exceptions, the board may adopt a resolution amending and approving the final schedule of estimated assessments and shall enter it in the journal.

If the board amends the final schedule of estimated assessments after hearing exceptions, the clerk of the board shall send by certified, or first class mail a written notice of the revised final schedule of estimated assessments to all owners within the area to be benefited by the improvement. The notice shall contain both of the following:

- (1) The amount of the final estimated assessment for the owner's property;
- (2) A statement that an owner may appeal the final estimated assessment to the applicable court of common pleas pursuant to section [940.38](#) of the Revised Code within twenty-one days of the notice of final estimated assessment.

(E) The board shall certify the schedule of final estimated assessments to the county auditor, who shall certify the assessments to the county treasurer. The collection of the assessments shall be made in accordance with Chapter 323. of the Revised Code.

(F) The county treasurer shall deposit the proceeds of the assessment in the fund designated by the board and shall report to the county auditor the amount of money from the assessment that is collected by the treasurer. Moneys shall be expended from the fund for purposes of the improvement.

(G) Any moneys collected in excess of the amount needed for construction of the improvement and the subsequent first year's maintenance may be maintained in a fund to be used for maintenance of the improvement. In any year subsequent to a year in which an assessment for construction of an improvement levied under this section has been collected, and upon determination by the board of county commissioners that funds are not otherwise available for maintenance or repair of the improvement, the board shall levy on the property within the area to be benefited by the improvement an assessment for maintenance at a uniform percentage of all construction costs based upon the assessment schedule used in determining the construction assessment. The assessment is not subject to the provisions concerning notice and petition contained in this section. An assessment for maintenance shall not be levied in any year in which the unencumbered balance of funds available for maintenance of the improvement exceeds twenty per cent of the cost of construction of the improvement, except that the board may adjust the level of assessment within the twenty per cent limitation, or suspend temporarily the levying of an assessment, for maintenance purposes as maintenance funds are needed.

(H) For the purpose of levying an assessment for maintenance of an improvement, a board may use the procedures established in Chapter 6137. of the Revised Code regarding maintenance of improvements as defined in section [6131.01](#) of the Revised Code in lieu of using the procedures established under this section.

(J) The board of county commissioners may issue bonds and notes as authorized by section [131.23](#) or [133.17](#) of the Revised Code.

***ODA-DSWC Comments – Individual exception hearings must be held by the County Commissioners and individuals must be notified not less than 14 days prior to the hearing date.***

## 19. Board or Joint Board of County Commissioners procedure for tax levy resolution.

### [\(Section 940.33\)](#)

(A) A board of county commissioners may declare by resolution that it is necessary to levy a tax upon the property within the area to be benefited by an improvement in order to pay the costs of the improvement not otherwise funded.

The resolution shall specify all of the following:

- (1) The rate that it is necessary to levy;
- (2) The purpose of the tax levy;
- (3) The number of years during which the increase is in effect, which may include the current year.

(B) A copy of the resolution shall be certified to the board of elections for the county not less than ninety days before the general election in any year and the board shall submit the proposal to the electors within the area to be benefited by an improvement at the succeeding November election in accordance with section [5705.25](#) of the Revised Code. For purposes of that section, the subdivision is the area to be benefited by an improvement.

(C) If the per cent required for approval of a levy as set forth in section [5705.26](#) of the Revised Code vote in favor thereof, the board of county commissioners may levy a tax within the area to be benefited by an improvement, outside the ten-mill limitation, during the period and for the purpose stated in the resolution, or at any less rate or for any less number of years.

(D) The board may issue bonds and notes in anticipation of the collection of taxes levied under this section, and notes in anticipation of the issuance of bonds.

***ODA-DSWC Comments – A resolution is required by the Board of County Commissioners.***

## **20. Affected landowners appeals to the court of common pleas. ([Section 940.38](#))**

Any affected landowner may appeal to the appropriate court of common pleas any action or determination of a board of supervisors, joint board of supervisors, board of county commissioners, or joint board of county commissioners under this chapter. The affected landowner shall make the appeal within thirty days of the date of the action or determination. The appeal may be based on, but is not limited to, any of the following questions:

(A) Is the improvement necessary?

(B) Will the improvement be conducive to the public welfare?

(C) Is the cost of the improvement greater than the benefits conferred?

(D) Is the route, termini, or mode of construction the best to accomplish the purpose of the improvement?

(E) Are the assessments levied according to benefits?

(F) Is the award for compensation or damages just?

***ODA-DSWC Comments – Appeal must e filed with 30 days of the date of action or determination.***

## **21. Board or Joint Board of County Commissioners maintenance of the improvement.**

### **[\(Section 940.37\)](#)**

The board of county commissioners, or, if a joint board of county commissioners has been created under section [940.35](#) of the Revised Code, the joint board, shall maintain the improvements constructed under this chapter. For that purpose, the board of county commissioners or joint board may use procedures and requirements established in Chapter 6137. of the Revised Code and may contract with or authorize the board of supervisors or joint board of supervisors of a soil and water conservation district to perform maintenance of such works of improvement.

***ODA-DSWC Comments – Improvement shall be maintained under section 6137***

## 22. Videoconferencing and teleconferencing of meetings. ([Section 940.39](#))

(A) For purposes of this section, references to a "board of supervisors of a soil and water conservation district" or a "board" includes a joint board of supervisors of a soil and water conservation district.

(B) Notwithstanding any other provision of law to the contrary, a board of supervisors of a soil and water conservation district, when practicable, may conduct meetings by video conference or, if video conference is not available, by teleconference. The board of supervisors shall make provisions for public attendance at any location involved in such a meeting. The board shall establish the board's main office or board room as the primary meeting location for the video conference or teleconference. The conference shall be held at that location in an open meeting at which the public is allowed to attend.

(C) Before convening a meeting of a board of supervisors by video conference or by teleconference, designated staff shall send, via electronic mail, facsimile, or United States postal service, a copy of meeting-related documents to each member of the board.

(D) The minutes of each drainage improvement meeting shall specify who was attending by teleconference, who was attending by video conference, and who was physically present. Any vote taken in a meeting held by teleconference that is not unanimous shall be recorded as a roll call vote.

(E) Nothing in section [121.22](#) of the Revised Code prohibits a board of supervisors from conducting a meeting in a manner authorized by this section.

***ODA-DSWC Comments - The board of supervisors shall make provisions for public attendance per section 940.39 (B).***