



ENGINEERING AND CORPORATE ASSETS  
Box 9000, 322 Kent St W., Lindsay, ON K9V 5R8  
Phone : (705) 324-9411 Ext. 1167 Fax : (705) 324-2982  
Toll Free : 1-888-822-2225  
e-mail : [lfeitler@kawarthalakes.ca](mailto:lfeitler@kawarthalakes.ca)

September 10<sup>th</sup>, 2020  
1915 Pigeon Lake Road  
CON 12 PT LOT 20  
Emily Township

Dear Land Owner:

Re: Municipal and Mutual Agreement Drains

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The Municipal Drainage Superintendent has received an inquiry regarding drainage on property legally described as CON 12 PT LOT 19 (1899 Pigeon Lake Road). The land owners are seeking an outlet to alleviate their flooding issues.

The *Drainage Act, R.S.O. 1990, c. D.17* contains a detailed procedure for land owners obtaining a legal outlet for their water. This can be done by petitioning for a Municipal Drain, or entering into a Mutual Agreement with any involved land owners. Where practical, the City of Kawartha Lakes encourages the use of Mutual Agreement drains between land owners.

After a meeting with the land owner of 1899 Pigeon Lake Rd, and a review of the surveyed land, it was confirmed that the north roadside ditch of Pigeon lake Rd is not a suitable outlet for the subject property.

I have included three factsheets from the Ontario Ministry and Agriculture, Food and Rural Affairs (OMAFRA). For a better understanding of the Drainage Act, I recommend that you read through these, as well as visit OMAFRA's website at <http://www.omafra.gov.on.ca/english/landuse/drain-pub.htm>. This website is a great resource for drainage information and legislation. I highlight and recommend reading over the following additional factsheets from OMAFRA's website; Drainage Act Appeals, Duties of the Landowner Under the Drainage Act, and Municipal Drains and the Land Owner.

I am contacting you today to offer my assistance should you have any questions related to the *Drainage Act, R.S.O. 1990, c. D.17*. Please do not hesitate to contact me.

**Lucas Feitler**

Senior Engineering Technician, Municipal Drainage Superintendent  
Engineering and Corporate Assets, City of Kawartha Lakes  
705-324-9411 ext. 1167 [www.kawarthalakes.ca](http://www.kawarthalakes.ca)







## SO, WHAT'S A MUNICIPAL DRAIN?

S. Vander Veen  
(Reprinted, October 2004)

Perhaps you've just purchased property, and been told by your municipality that you are assessed into a municipal drain. Perhaps you have owned a property for a couple of years and have recently discovered that you are located in the watershed of a municipal drain. You're probably wondering, what does this mean? How does it affect me? What will it cost?

### PHYSICALLY, WHAT IS A MUNICIPAL DRAIN?

Physically, a municipal drain is simply a drainage system. Most municipal drains are either 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 and bridges. Even some creeks and small rivers are now considered to be municipal drains. Municipal drains are primarily located in rural agricultural areas of the province.

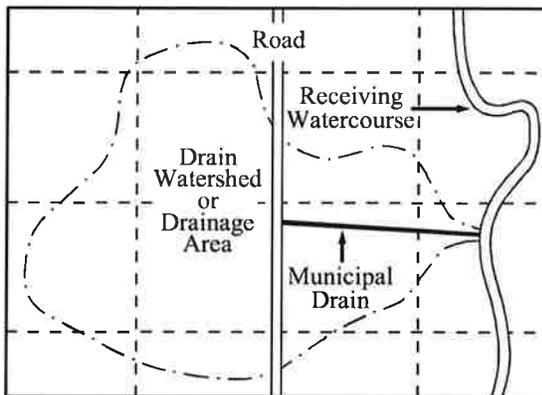


FIGURE 1. Plan of a Municipal Drain

### THE PURPOSE OF MUNICIPAL DRAINS

Municipal drains have been a fixture of rural Ontario's infrastructure since the 1800's. Most municipal drains were constructed to improve the drainage of agricultural land by serving as the discharge point for private agricultural tile drainage systems. However, they also remove excess water collected by roadside ditches, residential lots, churches, schools, industrial lands, commercial lands and any other properties in rural areas.

They are a vital component of the local infrastructure. Without them, many areas of the province would be subjected to regular flooding, reduced production from agricultural land and increased public health risks.

### WHY IS IT CALLED A "MUNICIPAL DRAIN"?

There are many, many drainage ditches and buried pipes in the province, but not all of them are "municipal drains". So what distinguishes a municipal drain?

Municipal drains are created under the authority of the *Drainage Act*. There are 3 key elements of a municipal drain:

1) **Community project** — Landowners who need to solve a drainage problem may submit a prescribed petition under the *Drainage Act* to their local municipality, requesting the establishment of a municipal drain. If certain criteria are met, the municipality appoints an engineer who prepares a report, identifying the proposed solution to the problem and how the costs will be shared. There are various meetings where landowners in the watershed of the municipal drain can voice their desires and concerns. There are also several appeal stages where they can voice their objections. So, the end result of the process is a "communally accepted" project.

2) **Legal Existence** — After all appeals have been heard and dealt with, the municipality passes a by-law, adopting the engineer's report. The municipality then has the authority and the responsibility to construct the project. The cost of the work is assessed to the lands in the watershed in the same ratios as contained within the engineer's report. So for a ditch or a pipe to be a municipal drain, there must be a by-law adopting an engineer's report.

**3) Municipal Infrastructure** — Once a municipal drain has been constructed under the authority of a by-law, it becomes part of that municipality's infrastructure. The local municipality, through its drainage superintendent, is responsible for repairing and maintaining the municipal drain. In certain circumstances, the municipality can be held liable for damages for not maintaining these drains.

**DO'S AND DON'TS FOR PROPERTY OWNERS**

**You should:**

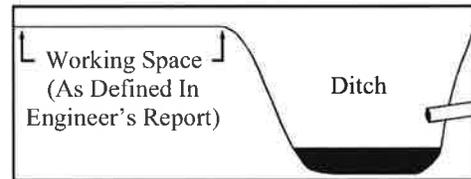
- Find out the name of your local municipality's drainage superintendent.
- If you don't have any information on the municipal drains that affect your property, make arrangements with your municipality to get copies. Please note you may have to pay for the photocopies.
- Find out how the municipal drain affects your property. How much is your property assessed? Are there any buried municipal drains that cross beneath your land? Is there a municipal working space along or above a municipal drain on your property?
- Remove debris from any catchbasins that may be located on your property or the adjoining road. This type of ongoing preventative work can reduce the possibility of property damage during storm events
- As an involved landowner, you have a responsibility for the drains located on your property, so observe them. If you notice any problems, immediately notify the drainage superintendent or the local municipality.
- Before purchasing a property, investigate how municipal drains may affect the property.

**You can expect:**

- Municipalities must maintain their municipal drains. Therefore, if you have a municipal drain located on your property, you can expect that your municipality will periodically arrange to enter onto your property and perform the necessary work. After it is completed, you will be billed for your share of the cost.
- For a period of time while the work is being completed, you can expect the working space along the drain to be accessed by the maintenance equipment and the land to be disrupted to some degree. Because this working space is a form of an easement, you will not be paid for any damages that occur on this land.
- Municipalities have the right to accumulate the cost of maintaining a drain for up to five years or \$5,000. Therefore, it is possible that you may be billed for work that occurred before you owned a property.

**You should NOT:**

- Along every municipal drain is an unregistered working space that the municipality has the right to use to maintain or repair the drain. Keep this working space accessible and do not plant trees or build structures in this area. If you do, and it results in an obstruction to the maintenance equipment, you may have to pay the cost of removing that obstruction.
- Don't store materials such as brush, lumber or other floatable material near the drain, because during storm events, it could float away and block the drain.
- The local municipality is responsible for maintaining municipal drains on behalf of the community of landowners involved in a drain. If you want to install a culvert or bridge on an open ditch municipal drain, or if a municipal drain requires maintenance, don't perform the work yourself; instead notify your municipality. If you do unauthorized work on a drain and that work results in damages to the drain or to other landowners, you could be responsible for paying the cost of repairing the damages.
- Although they are "man-made", all municipal drains eventually connect with the many beautiful lakes, rivers and streams located in Ontario. Do not direct septic system waste, milkhouse wastes, barnyard and manure storage runoff or other pollutants directly to these drains.



**FIGURE 2. Cross-Section of an Open Ditch Municipal Drain**

This Factsheet was written by **Sid Vander Veen**, P. Eng., Drainage Coordinator, Agriculture and Rural Division, OMAFRA, Guelph. It was reviewed by **Andy Kester**, Drainage Inspector, OMAFRA. It has also been reviewed by the **Drainage Superintendents Association of Ontario** and the **PEO Committee on Land Drainage**.

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Agricultural Information Contact Centre  
 1-877-424-1300  
 ag.info@omafra.gov.on.ca  
 www.gov.on.ca/omafra

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# FACTSHEET



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Ontario

Ministry of Agriculture,  
Food and Rural Affairs

AGRICULTURAL  
ENGINEERING

## UNDERSTANDING DRAINAGE ASSESSMENTS

Agriculture and Rural Division  
(Reprinted March 1997)

The *Drainage Act* provides a legal procedure by which an "area requiring drainage" may have an outlet drain constructed to dispose of excess water.

The drainage work is initiated by interested individuals within an "area requiring drainage" who will benefit from the construction of the drain. A petition form, obtained from the municipal clerk, is signed by interested landowners. In order to be valid or sufficient, the petition must be signed by the majority of the owners in the "area requiring drainage" or by owners that represent at least 60% of the lands in this area. The "area requiring drainage" is usually described by lot and concession, or other legal land description. By taking this action, it is presumed that the owners signing the petition have made a decision that the drain will be of benefit to them and that the probable cost will be lower than the anticipated benefits. The initial benefit-cost decision is made at this point by the landowners, not the engineer or Council.

The petition is presented to and considered by Council. If the petition represents a proper "area requiring drainage", that is a real drainage basin, and appears to be valid, the Council may decide to proceed. Council then notifies each of the petitioners of this decision as well as any other municipality affected and the local Conservation Authority and the Ministry of Natural Resources.

Council then appoints an engineer. The engineer is an employee of Council, hired to design this specific drain. Under *The Drainage Act*, Section 9(2), the engineer is required to hold an on-site meeting to determine (1) the area requiring drainage, (2) if the petition is valid, (3) the drainage needs of the area. The engineer is then required "to make an examination of the area requiring drainage as described in the petition and to prepare a report which shall include:

- (a) plans, profiles and specifications of the drainage works;
- (b) a description of the area requiring drainage;
- (c) an estimate of the total cost thereof;
- (d) an assessment of the amount or proportion of the cost of the works to be assessed against every parcel of land and road for benefit, outlet liability and injuring liability;

- (e) allowances, if any, to be paid to the owners of land affected by the drainage works and
- (f) such other matters as are provided for under this Act."

The engineer's report is presented to Council, who then notifies all persons assessed and calls a special meeting where the report is considered. General objections to the report may be raised at this time. At this meeting signatures may be added or removed from the petition and this determines if the project will continue. Unresolved problems, depending on the subject, may be appealed to the Court of Revision, the Ontario Drainage Tribunal or the Drainage Referee. Details on appeal procedures may be found in *The Drainage Act*\* or in Ontario Ministry of Agriculture, Food and Rural Affairs Factsheet, Drainage Legislation.

The engineer's report includes two important items:

1. The estimated cost of the work — No matter how individual assessments are arrived at, this total estimated cost must always be equal to the total amount assessed, otherwise the work cannot proceed.
2. The assessment liability — This may be spread over several pages if an owner owns several parcels of land and if there are branch drains. It may be summarized.

Let us examine the obligations regarding this assessment.

### RESPONSIBILITIES UNDER COMMON LAW

A natural watercourse is defined generally as a stream of water which flows along a defined channel, with bed and banks, for a sufficient time to give it substantial existence. This may include streams that dry up periodically.

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\**The Drainage Act may be found in the Revised Statutes of Ontario 1980, Chapter 126, available in most public libraries. Individual copies may be purchased from the Ontario Government Bookstore, 1-800-668-9938.*

A riparian landowner (owner of lands that abut upon a natural watercourse) has the right to drain his or her lands into the natural stream, but may not bring water in from another watershed. He or she can collect water in ditches and drains and discharge it into the watercourse even though it results in an increase in volume and rate of flow.

Where a natural watercourse becomes a part of a drain, it is no longer a natural watercourse. When this occurs, the riparian rights, as described earlier, are lost.

Surface water not flowing in a natural watercourse (i.e. not having discernible bed and banks) has no right of drainage. An owner of lower land may, at his or her own choice, either allow the water from higher land to flow over it or by dams or banks, keep such water off his or her property. No owner has the right to collect such surface water by ditches or drains and discharge it on lands of another. He or she has a responsibility to take this water to a sufficient outlet, i.e., a natural watercourse or a drain constructed under *The Drainage Act*.

Since there is no right to drain surface water, the owner of each parcel of land in the watershed is generally assessed for "outlet liability". In other words, his or her Common Law liability is removed by paying for the increased size or cost of the drain due to the volume of water which is discharged from his or her property, even though the drain may not provide a direct outlet for this water. The authority for this liability is set out in Section 23(1).

Since, through Common Law, a landowner is also liable for any damage he or she may cause from water which he or she collects in drains and discharges on other land without a sufficient outlet, he or she may be assessed for relief from such "injuring liability" if the new drain serves as an outlet for his or her drains and prevents this injury from occurring. The authority for this liability is set out in Section 23(2).

Injuring liability is frequently difficult to distinguish from outlet liability, consequently many engineers' reports do not contain such an item.

The assessment for outlet liability and injuring liability is based on the volume and rate of flow of the water artificially caused to flow from an owner's property. Generally, the assessment is based upon a unit value per hectare. Owners at higher elevations on a watershed may have a higher unit charge than those owners near the outlet since the water from their land makes use of a greater length of drain. A difference may be made in the unit outlet charge due to varying types of soil or land use, or the distance to the drain.

## RESPONSIBILITY UNDER THE DRAINAGE ACT

In addition to the Common Law responsibility, an owner may also be assessed for benefit.

Benefit will vary between different lands, according to their differences of elevation, quantity of water to be drained from each, distance of undrained land from the course of the proposed ditch, and the presence or absence of existing drains, and other like factors.

To consider whether a parcel of land will receive any benefit from the construction, it is proper to consider whether any enhanced financial value will accrue to it as a result of the drain construction. This may occur through the increased productive power of the land or by rendering it more salable and at a better price, or by preventing water from entering on to it.

If the proposed drainage works can be of no possible benefit to the owner, or is of no commercial or agricultural value, the Act does not authorize a contribution for benefit.

Sometimes, an owner has an undeveloped area that he or she intends to leave in this condition. The owner may feel that he or she should not be assessed since the drain will be of no benefit. However, the property could change hands and the new owner might want to drain and develop it. It is with this in mind that the engineer must make an assessment, regardless of the present owner's intentions.

It is the duty of the engineer to determine whether or not a parcel of land will benefit from the project. When appealing a benefit assessment, the landowner must prove that the land does not benefit from the drain.

An owner has no responsibility for work done upstream from his or her property unless the work provides a benefit by "cutting off" a harmful flow of water across the property.

In some instances, a "special benefit assessment" may be levied against the property. This value usually represents the difference in cost between that which was originally designed and the increased level of design requested by a landowner. Examples include a closed or tile drain where open ditches would ordinarily suffice, or the construction of ponds beside the drain, or other special requests by a landowner specifically for this benefit. The authority for this liability is set out in Section 24.

## **ENGINEER'S REPORT**

The Engineer's report should contain a plan and profile of the drain, as well as details on the drain design and the assessment schedule.

The plan shows the location of drains and the limits of the watershed. The profile shows ground elevations along the drain and the present and proposed drain bottom. The specifications give details on how the drain is to be constructed.

The Schedule of Assessment contains several columns. The first group contains the names of owners with a description of each parcel of land assessed.

The hectarage shown in the schedule for which an owner is assessed is only approximate. No survey is made to accurately establish the watershed boundary or farm areas. Any minor error in hectarage assessed is not a valid basis for appeal nor does it greatly affect the assessment. The other columns in the Schedule set forth the assessment liability for each drain and/or branch drain. These values are only estimates. The final value will not be known until the construction work is finished. The assessment will then be prorated to recover the actual cost.

Allowances to lands injured by the work are set out in a separate schedule by the engineer as authorized in Sections 29 to 33 of *The Drainage Act*.

Damage to crops during construction and disposal of waste material will vary depending on the time of year that the work is constructed. Crop damage due to spreading the spoil on the banks is based on a decreasing yearly loss of crop over several years. All or part of the cost of access bridges from a public road to the property may be assessed to the property owner.

Farm bridges are constructed as a part of the work. In certain circumstances a severance allowance may be paid instead of building the bridge. The allowance will depend upon the value of the land severed, or the cost of the bridge that would be required. The cost, or part of the cost of farm bridges or the severance allowance may be assessed across the property.

Where private drains are incorporated into the new drain, a nominal allowance may be paid based on any saving that may result from using the private drain. These allowances may not be included in the Summary of Assessments but are usually shown in a separate Schedule of Allowances.

## **RELEVANT OMAFRA FACTSHEETS**

### *Drainage Legislation.*

This Factsheet was authored by **Sid Vander Veen, P.Eng.**, Resources Management Branch.

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# Mutual Agreement Drains

T. Brook, P.Eng., and S. Vander Veen, P.Eng.

## Factsheet

FACTSHEET 17-015

AGDEX 555

JUNE 2017

(replaces OMAFRA Factsheet 86-064 of the same name)

### INTRODUCTION

This factsheet provides information on the advantages and disadvantages, steps and content required to develop a mutual agreement drain. It also discusses some common situations where using a mutual agreement drain may be more advantageous than using a municipal drain.

Effective drainage is important to the competitiveness of the rural and agricultural community. A mutual agreement drain can be a cost-effective way to ensure that water from a private drainage system reaches a safe and legal outlet, known as a “sufficient outlet.” A carefully written agreement can protect everyone’s investment, property and access to proper drainage in the future.

Private drainage systems include subsurface agricultural drainage systems, agricultural ditches, piped drains or roadside ditches. They are typically located on a single property and owned and maintained by the property owner. These private systems must be discharged into a sufficient outlet, which may include a municipal drain or a natural watercourse.

To reach a sufficient outlet, a private drainage system may have to cross at least one other property. Property owners in Ontario have two options to get access to a sufficient outlet located on another property:

- petition the local municipality for a municipal drain under the *Drainage Act, 1990*
- construct a mutual agreement drain

### WHAT ARE MUTUAL AGREEMENT DRAINS?

Mutual agreement drains are private drainage systems that are authorized, constructed, improved, financed (owned) and maintained through an agreement between two or more property owners (Section 2 of the *Drainage Act, 1990*). They are based on a written agreement that may or may not be registered on property title. Mutual agreement drains are different from municipal drains, which are constructed, owned and maintained by the local municipality.

### Advantages and Disadvantages of Mutual Agreement Drains

Mutual agreement drains are often compared to municipal drains (see the OMAFRA factsheet, *So What’s a Municipal Drain?* [www.omafra.gov.on.ca/english/engineer/facts/01-059.htm](http://www.omafra.gov.on.ca/english/engineer/facts/01-059.htm)). Mutual agreement drains usually have the following advantages over municipal drains:

- They are usually cheaper to construct.
- The involvement and expense of a professional engineer is not required.
- Construction, future repair and maintenance are performed at a time suitable to all property owners. This activity does not depend on the local municipality to implement.
- Construction, future repair and maintenance are performed quickly.

The disadvantages of having a mutual agreement drain rather than a municipal drain include:

- They may be impractical when major roads, railways or utilities are involved.
- There is no recommended way to determine the costs and how they are to be divided between the property owners. This can lead to disagreement on cost-sharing.

- If a professional engineer or licensed contractor is not involved, the drain may not be properly designed. Parties to the agreement may assume liability for any design flaws.
- The parties to the agreement are responsible for obtaining any necessary permits and approvals. For municipal drains, this work is the responsibility of the municipality.
- There are costs for legal fees and a filing fee for the agreement.
- If one of the parties to the agreement fails to comply with its terms, legal action by the other parties is required to enforce the agreement.
- No grants are payable under the *Drainage Act, 1990*, for construction, future repair or maintenance of mutual agreement drains.

### CREATING A MUTUAL AGREEMENT DRAIN

The first and most important step in developing a mutual agreement drain is to see if the neighbours are interested in working together to negotiate an agreement.

If all property owners agree in principle, the next steps are to determine:

- the form of the mutual agreement (e.g., written only or written and registered)
- the location of the drain
- the form of the drain (e.g., ditch or pipe)
- which of the parties to the agreement will use the drain for their property's drainage needs
- the required capacity of the drain
- the size and material for a piped drain
- the cross-section and elevations for a ditch drain
- construction timing and other details
- how the cost of construction, future repair and maintenance of the drain will be shared between the parties
- if any approvals are required to construct the drain and who will obtain and pay for these approvals

Draft the agreement and, ideally, register it on the title of each property in the land registry office.

### Contents of a Mutual Agreement

Mutual agreement drains must include the seven (7) attributes required by Section 2 of the *Drainage Act, 1990*. These include:

- a reference to the *Drainage Act, 1990*
- legal descriptions of the lands on which the drainage system is constructed

- the estimated cost of the drainage system
- a description of the drainage system, including its design and approximate location
- the proportion of the cost to be paid by each owner of the land for the construction, improvement and future repair and maintenance of the drainage system
- the date the agreement was executed
- an affidavit of a witness to the execution of the agreement

The agreement can also contain other mutually agreed-upon clauses such as:

- property access requirements for the purpose of drain construction and future drain inspection, repair and maintenance requirements
- identification of who will get and pay for any required permits for future drain repair and maintenance activities
- notification requirements for entry onto the property(s) for inspection, repair or maintenance requests
- time restrictions for entering onto the land and how any crop damage will be compensated during construction, future drain repair and maintenance activities
- registration requirements and payment of the registration costs
- indemnity clauses

### Forms

A standard form, *Agreement by Owners — Mutual Agreement Drains*, is available from the Ontario Central Forms Repository as Form Number: 003-0180E ([ontario.ca/forms](http://ontario.ca/forms)).

Complete the form by including contact information, a description of the drain, estimated cost for construction, the proportion of the cost of construction, future repair and maintenance of the drain to be paid by each property, and any additional terms of the agreement.

Property owners must sign the form binding each of the listed properties to the agreement.

The agreement must include legible plans showing:

- parcel/property boundaries
- location of the drain, including points of commencement, course and termination
- depth

- bottom and top width
- size of pipe used
- any bridge, culverts or catch basin, etc.

### **Registering the Agreement**

The agreement or an executed copy is registered at the land registry office. A registered agreement is binding on all properties, regardless of future ownership. An unregistered agreement is binding only on the current property owners and is no longer valid if a property changes hands through sale, death, etc.

Registering the agreement may be the hardest part of the process, since the neighbours may agree to the drain but not want it registered on their property. However, registering the agreement will protect everyone's investment, property and access to proper drainage in the future. There are some additional costs and administration needed to register the agreement on title.

For record-keeping purposes, file a copy of the agreement, plans and schedules of the proposed mutual agreement drain with the clerk of the local municipality.

### **Professional Services**

The *Drainage Act, 1990*, does not require that property owners use a professional engineer for a mutual agreement drain. However, it may be a good idea to hire an engineer to size, design and prepare drawings and specifications for the drain. The engineer will also be able to help estimate the costs, develop and process the agreement, hire a contractor and supervise construction.

Drainage contractors licensed under the *Agricultural Tile Drainage Installation Act, 1990*, are trained to survey, design and install piped agricultural drainage systems. They may also be able to assist in the development and implementation of a mutual agreement drain. It may also be advisable to hire a lawyer to review and register the specific agreement.

### **Approvals**

All construction, repair and maintenance projects must comply with existing federal and provincial legislation where applicable (e.g., *Drainage Act, 1990*, *Conservation Authorities Act, 1990*, *Lakes and Rivers Improvement Act, 1990*, *Fisheries Act, 1985*, *Endangered Species Act, 2007*, etc., and their associated regulations).

Contact the local municipality for mutual agreement drains discharging to a municipal drain — never complete any work on a municipal drain. Contact the local conservation authority or Ministry of Natural Resources and Forestry office for mutual agreement drains discharging to a natural watercourse.

Obtain all the necessary approvals prior to starting any work.

### **DRAIN REPAIR AND MAINTENANCE**

Inspection, repair and maintenance of a mutual agreement drain must be performed in accordance with the terms in the agreement. Usually, the party that is responsible for maintenance would provide notice to the other property owners that they wish to complete inspection, repair or maintenance work and have to access the various properties. Alternatively, a property owner may inform the property owner responsible for repair and maintenance of a situation that should be corrected.

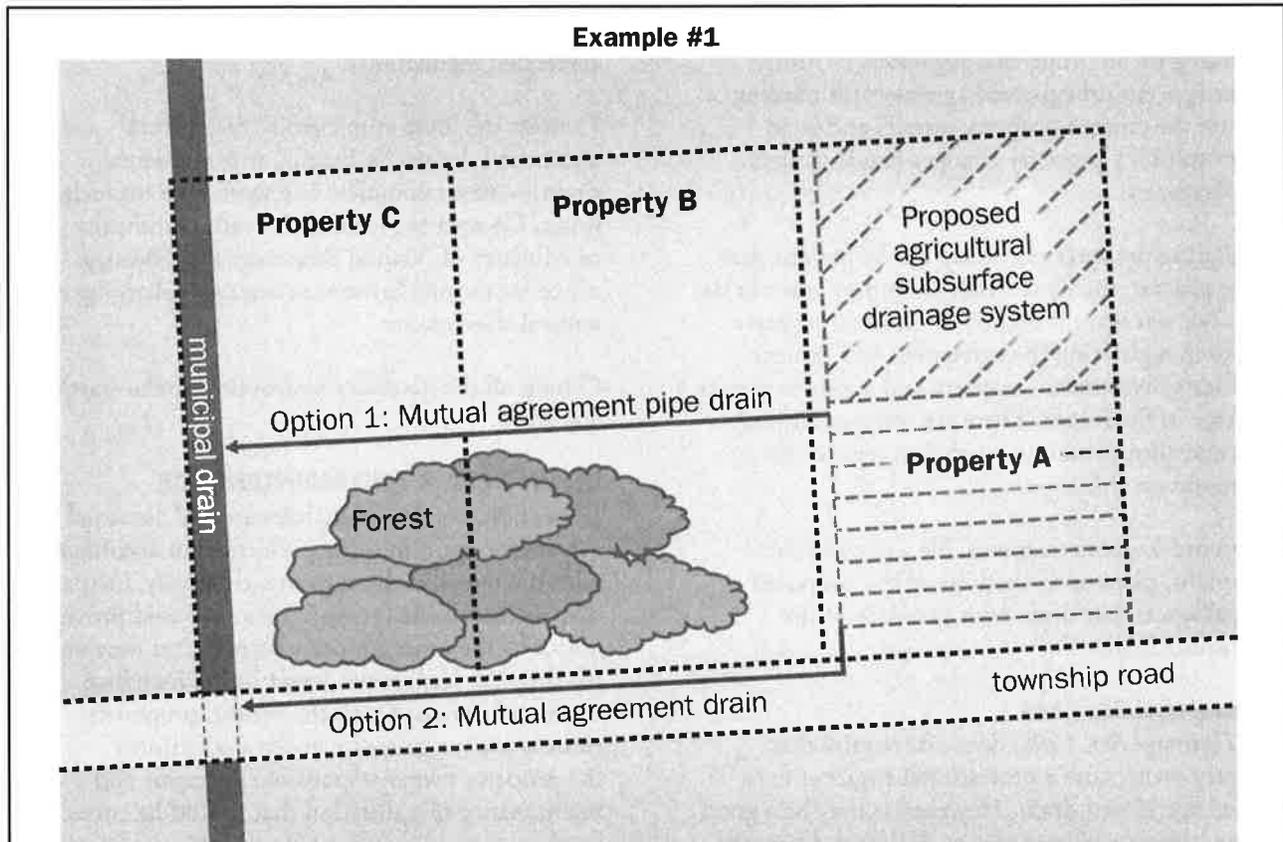
If the repair and maintenance responsibilities are not met or access to a property is denied, there are two options to consider:

- initiate a civil lawsuit for non-compliance of the agreement and obtain a judicial order
- initiate a petition under the *Drainage Act, 1990*, to have the mutual agreement drain made into a municipal drain

## COMMON EXAMPLES OF MUTUAL AGREEMENT DRAINS

There are many different situations where the advantages of a mutual agreement drain outweigh

the disadvantages when compared to a municipal drain. The following situations are presented with suggestions on how to structure the agreement.



**Figure 1.** Property details for Example #1.

### Background

An upper property owner (Property A) wishes to install a subsurface agricultural drainage system on their farm property but does not have a sufficient outlet on the property. The municipal drain, which would act as a sufficient outlet, can be reached by either crossing the neighbour's properties (Properties B and C) or by using the ditch along the township road as shown in Figure 1.

The owner of Property A could approach the neighbouring property owners (Option #1) and/or the municipality (Option #2) about a mutual agreement drain or could initiate a petition for a new branch of the existing municipal drain under the *Drainage Act, 1990* (Option #3).

For a mutual agreement drain, approach the owners of both Properties B and C and the municipality to determine if they are agreeable to a drain located on their properties. It is important to determine if a ditch or piped drain is desired based on their land use and their future drainage needs. These factors will affect the size of the drain, construction costs and structure of the agreement.

### **Option 1: Mutual agreement with the owners of Properties B and C**

#### **Scenario A — Drainage for Property A only**

The owners of Properties B and C are agreeable but they don't want a ditch across their property nor do they wish to use the mutual agreement drain for their drainage needs. The agreement should include the following principles:

- Size the pipe to handle water from Property A only.
- Property A pays the entire costs for the construction of the drain.
- Property A is responsible for inspection, repair, future maintenance and associated costs.
- The agreement should prohibit the use of the drain by Properties B and C.
- Properties B and C grant access to their properties for inspection, construction, repair and future maintenance of the drain.
- Property A shall ensure Properties B and C are restored to their original condition after construction, future repair and maintenance.

#### **Scenario B — Drainage for Property A and other properties**

The owners of Properties B and C are agreeable and one or both wish to use the mutual agreement drain for their drainage needs. The agreement should include the following principles:

- Size the drain in sections to handle water from all properties using the drain.
- All properties using the drain agree on how to share the costs for the construction of the drain.
- All properties using the drain agree on the distribution of future repair, maintenance and associated costs.
- Agreement should prohibit the use of the drain by any properties not contributing to the cost of the drain.
- Properties B and C grant access to their properties for inspection, construction, future repair and maintenance of the drain.
- All properties using the drain agree on how to ensure Properties B and C are restored to original condition after construction, future repair and maintenance.

Water collected on any property must not be diverted to land that would not naturally receive it. Therefore, all property owners would need to verify with the local drainage superintendent that the portion of the property being drained has been assessed into the existing municipal drain. Permission from the municipality to connect the mutual agreement drain to the municipal drain is also required.

### **Option 2: Mutual agreement with the municipality**

The municipality is agreeable to allowing the existing roadside ditch to become a mutual agreement drain and act as an outlet for the private subsurface drainage system. The agreement should include the following principles:

- Confirm or increase the capacity of the existing roadside ditch to accommodate the drainage needs of Property A and the township road.
- The municipality oversees the construction to increase the capacity of the ditch, if necessary.
- Property A pays any necessary costs of construction to increase the capacity of the ditch.
- The municipality and Property A agree on the distribution of future repair, maintenance and associated costs.

#### **Option 3: Municipal drain**

It is not possible to get an agreement for the mutual agreement drain from either the municipality or both Properties B and C. The owner of Property A could initiate a petition for a municipal drain under Section 4 of the *Drainage Act, 1990*.

## Example #2

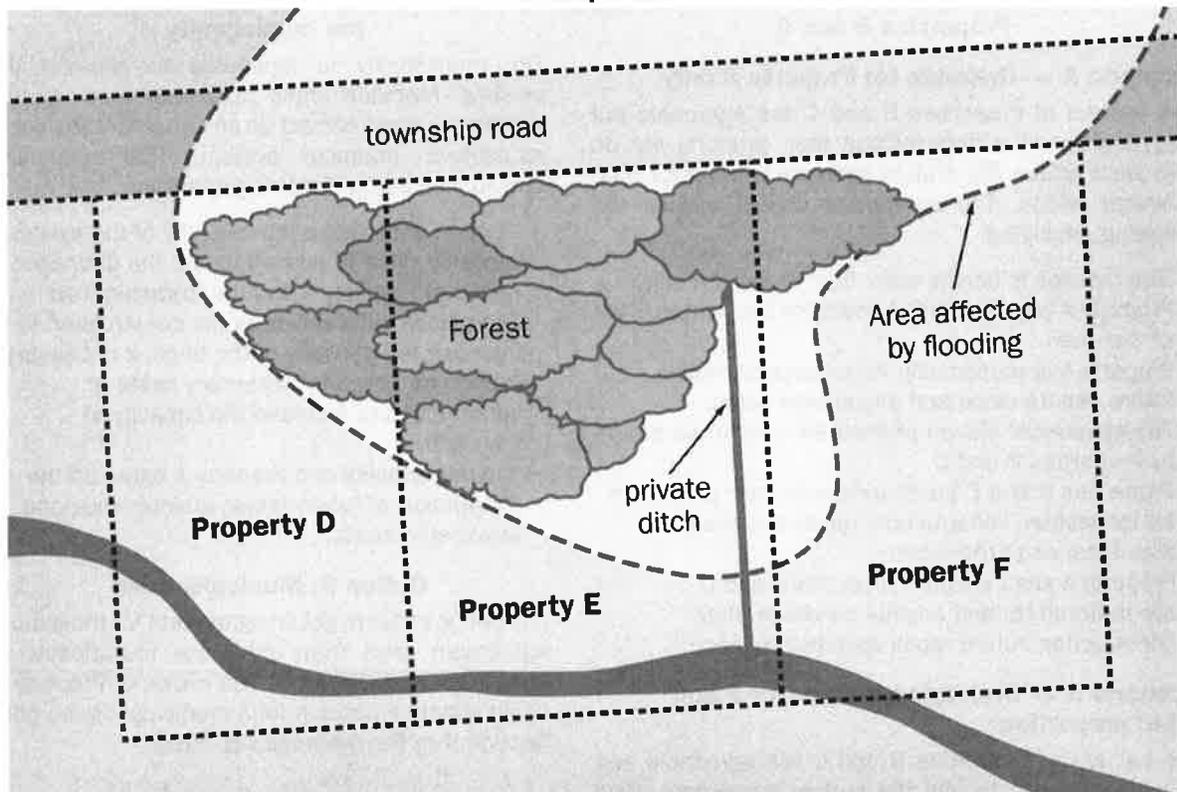


Figure 2. Property details for Example #2.

### Background

A private ditch is located on Property E to drain a forested section of the property. Beavers frequently build a dam near the natural watercourse and block the ditch. During the spring and intense rainfall events, the beaver dams cause flooding to parts of Properties D, E, F and the Township Road as shown in Figure 2. The owner of Property E does not farm the property and does not manage or remove any beaver dams on their property.

To reduce the impact on the road, the municipality could approach the owner of Property E about turning the private ditch into a mutual agreement drain (Option 1) or could sign a petition requiring a new municipal drain under the *Drainage Act, 1990* (Option 2). Both of these options would allow the municipality to manage the drain and the associated beaver activity to reduce the flooding that affects the township road. The municipality would have to follow the environmental requirements of Fisheries and Oceans Canada, the Ministry of Natural Resources and Forestry, and the local conservation authority when completing this activity.

### Option 1: Mutual agreement drain with the owner of Property E

The owner of Property E is agreeable to a mutual agreement drain for the management of the beaver activity. The agreement should define the size and location of the drainage system and include the following principles:

- The municipality is responsible for providing notice to the owners of Property E when beaver management activity is required.
- Property E grants access to the property for beaver management activities, including beaver dam removal.
- The municipality shall ensure that Property E is restored to its original condition if equipment is used to access Property E to manage beaver activity.

### Option 2: Municipal drain

It is not possible to get an agreement for the mutual agreement drain. The municipality can sign a petition for a municipal drain under Section 4 of the *Drainage Act, 1990*.

## **SUMMARY**

A mutual agreement drain can be a cost-effective way to ensure that water from a private drainage system reaches a sufficient outlet. A carefully written agreement can protect everyone's investment, property and access to proper drainage in the future.

## **RESOURCES**

Drainage eReference Tool –  
Mutual Agreement Drains

[www.omafra.gov.on.ca/english/landuse/drain-eref/  
mutual.htm](http://www.omafra.gov.on.ca/english/landuse/drain-eref/mutual.htm)

*Drainage Act, 1990*. Section 2 –  
Mutual Agreement Drains

[ontario.ca/laws/statute/90d17](http://ontario.ca/laws/statute/90d17)

The factsheet was revised by Tim Brook, P.Eng., Water Management Engineering Specialist, OMAFRA, Elora, and Sid Vander Veen, P.Eng., Drainage Coordinator, OMAFRA, Guelph.



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**Agricultural Information Contact Centre:**

1-877-424-1300

1-855-696-2811 (TTY)

**E-mail:** [ag.info.omafra@ontario.ca](mailto:ag.info.omafra@ontario.ca)

**[ontario.ca/omafra](http://ontario.ca/omafra)**