INTRODUCTION

A proposal to construct a new drainage system under the *Drainage Act* is initiated by a petition of landowners (s. 4). A proposal to make improvements to an existing drainage system is initiated by municipal council (s. 78). In both of these situations before an engineer is appointed, the municipality is required to notify the local conservation authority or Ministry of Natural Resources of the proposed project. Through this notice, these agencies investigate the application of the provincial Conservation Authorities Act and Endangered Species Act and the federal Fisheries Act and Species at Risk Act.

The project notification provides resource agencies with the general location of the project and very little other information. If the engineer appointed by the municipality proceeds with the project without fully knowing or understanding the problems of the property owners and the concerns of the resource agencies, it can result in significant problems. Often these issues come to the forefront late in the development of the engineer’s report and by that time, the project can become extremely controversial. On occasion, strong emotional reactions are generated because of the high cost or delay of the project. Proceeding with the project can be costly and even terminating the project can be costly to the petitioners because of the engineering costs incurred.

For situations where the drainage project and resource interest may or will conflict, it is recommended that a project scoping meeting be held.

**Initiating a Project Scoping Meeting:**

A project notification form has been developed that will be used to notify regulatory agencies of drain construction and/or improvement projects under the Drainage Act. Upon review of the form, these agencies have the ability to identify the need for a Project Scoping meeting. However, projects under the Drainage Act are municipal projects. As such only a municipal representative can initiate a project scoping meeting. The municipal representative should consider a project scoping meeting for the following situations:

- When a new drain is proposed in a regulated wetland;
- When a proposed drain improvement project will modify an existing drain in a wetland;
- When the project involves species at risk and/or habitat;
- When the project involves significant fish habitat.

**Meeting Participants:**

- Municipal representative (likely the drainage superintendent)
- A property owner representative, ideally an individual who was involved in the initiation of the petition or improvement request
- Depending on the issues, one or more of:
  - CA representative, for Conservation Authorities Act interests
  - DFO representative, for Fisheries Act and Species at Risk Act interests
  - MNR representative for Endangered Species Act and Lakes & Rivers Improvement Act interests.
- Optional participants may include:
  - OMAFRA representative – contact the Drainage Coordinator for a local representative.
  - A municipal council member
When the Meeting Should Be Held:

**Petition for New Drain (Section 4 of the Drainage Act)**
- *Drainage Act Process Summary*: When a petition has been submitted, council has 30 days to consider that petition and make a decision. Council must have a valid reason to reject a petition; their decision can be appealed to the Drainage Tribunal. If council accepts the petition, the petitioners and the CA/MNR are notified and have 30 days to respond. After receiving response from the CA/MNR, council has 60 days to appoint an engineer.
- *It is recommended that the Project Scoping Meeting be held after the petition has been accepted by council, but before the engineer is appointed.*

**Request for Drain Improvement (Section 78 of the Drainage Act)**
- *Drainage Act Process Summary*: A landowner request for improvement or modification of a drain is submitted to council. There is no time limit for council to make their decision. After a decision is made, a notice must be sent to the conservation authority and an engineer must be appointed no sooner than 30 days after the notice has been sent.
- *It is recommended that the Project Scoping Meeting be held after council makes a decision on the improvement request but before an engineer is appointed.*

**Suggested Meeting Agenda:**
- Meeting participants share all available information (maps, plans, studies) for the area
- Property owner and/or municipal representative identify the drainage issue
- Resource agencies identify resource interests and legislative requirements
- Considering the legislative responsibility to protect the resource(s), the need for drainage and the fact that project costs are assessed to property owners:
  - Identify options of resolving the drainage problem; for each option:
    - Identify the resource concerns and legislative requirement
    - Estimate the degree to which the drainage problem will be addressed
  - Based on the discussion and information, determine the next steps:
    - Project proceeds as normal under the Drainage Act; or
    - Recommend to council to instruct the engineer to prepare a benefit cost statement or a preliminary report to more thoroughly investigate options;
    - Recommend to the property owner(s) to withdraw the petition or request for drain improvement
  - If the project proceeds, the resource agency(s) must clearly define the studies that will be required to obtain legislative approvals; a suggested terms of reference and associated timelines should be developed.
- Determine if the project scoping meeting should be continued as a project steering committee that meets periodically with the engineer.

**Note:**

Section 11 of the Drainage Act states:

*The engineer shall, to the best of the engineer’s skill, knowledge, judgment and ability, honestly and faithfully, and without fear of, favour to or prejudice against any person, perform the duty assigned to the engineer in connection with any drainage works and make a true report thereon.*

In the past, councils have been criticized for interfering with the independence of the engineer by directing the engineer toward a specific solution. The recommendations resulting from the project scoping meeting must not interfere with the independence of the engineer.