

**Delaware Department of Transportation
Division of Transportation Solutions
Design Guidance Memorandum**

Memorandum Number 1-23

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|-----------------------|----------------------------|----------------------------------|
| 1. Road Design Manual | 2. Bridge Design Manual | 3. Utilities Design Manual |
| 4. Real Estate Manual | 5. Standard Specifications | 6. Standard Construction Details |
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Title: Tax Ditches Effective date: February 1, 2010

Sections to Implement:

<u>X</u> Project Development,	<u>X</u> Bridge,	<u>X</u> Design Support,	<u> </u> Utilities,	<u>X</u> Planning,	<u>X</u>
Quality,	<u>X</u> Maintenance & Operations,	<u>X</u> Construction Districts,	<u>X</u> DART,	<u> </u> Other	
<u>X</u> Project Development	<u>X</u> Planning	<u> </u> DTC			
<u>X</u> Bridge	<u>X</u> Quality	<u> </u> Traffic			
<u>X</u> Team Support	<u>X</u> Maintenance &	<u> </u> Other _____			
<u>X</u> Utilities	Operations				

I. Purpose

To give guidance on right-of-way issues when tax ditches are involved.

II. Design Guidance

Ditches basically exist on the following types of property:

1. Federal lands – An example of federal lands is Prime Hook National Wildlife Refuge. The Delaware Department of Transportation (DelDOT) does not have the right to trespass on federal lands without permission and possibly even environmental permits.
2. State right-of-way
3. State lands other than rights-of-way – Examples of this would be schools and property of the Department of Natural Resources and Environmental Control (DNREC) such as parks. Arrangements need to be made with the controlling state agency.
4. Private property – In order for DelDOT to access a ditch on private property, there must be made an agreement with the property owner – a temporary agreement to trespass, an easement, etc.
5. Private property with a DelDOT-procured easement for maintenance – There is already an existing easement so DelDOT is able to access the ditch without any other arrangements, but such access must be within the limits of the easement.
6. Tax Ditches - Tax ditches are private property owned jointly by the adjacent property owners who have formed an organization on a watershed basis to construct and maintain a drainage system. These organizations are managed by officers elected by the owners. (See Title 7, Chapter 41 of the Delaware Code.) Unless there is already an easement for a portion of a tax ditch or some other sort of agreement, performing work on a tax ditch is trespassing.

As with any other work, one must research the right-of-way and property owners in order to determine under which category an existing ditch belongs. Contact the Team Support section for assistance in this research.

Maintenance Work

For maintenance or repair of pipes/structures owned by DelDOT, there should be notification coordinated by the Team Support section to DNREC and the Tax Ditch Managers to get permission for the work which will be taking place. The Real Estate section will coordinate with property owners. If work extends beyond the existing right-of-way (including any temporary erosion and sediment control measures), the permission of the landowner(s) needs to be obtained through a right of entry, temporary or permanent easement, or right-of-way acquisition.

Note: If a proposed bridge with culvert/pipe with or without riprap being replaced by Maintenance and Operations personnel will now extend permanently beyond DelDOT's right-of-way, then a Permanent Easement or Right-of-Way needs to be acquired so that maintenance can occur in the future to the new permanent structure. The property owner is to be properly compensated for the new permanent structure placed on their land. A Tax Ditch easement is only an easement. The underlying land belongs to the adjacent property owners. Acquisition needs to proceed as with any other DelDOT project.

DelDOT Projects

For DelDOT contracts, easements or right-of-way need to be acquired as part of the established right-of-way process. Temporary construction easements need to be shown on the plans and negotiated regardless of the tax ditch easement limits. Permission is needed for all Temporary Construction/Access Easements.

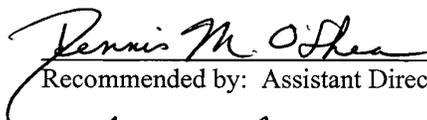
Tax ditch easements need to be submitted for approval through the Team Support Section which will prepare and submit Tax Ditch agreements for approval. (Note that for projects designed by a consultant, the consultant will write the agreement and submit it to the Team Support Section for review and distribution.) An example agreement is attached.

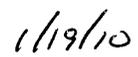
III. Justification

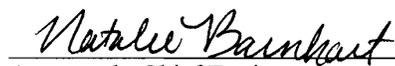
To avoid delays in maintenance or projects by taking the proper right-of-way actions for tax ditches.

Prepared by: Quality Section

Date: January 19, 2010


Recommended by: Assistant Director – Design


Date


Approved: Chief Engineer


Date

Distribution:
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December 30, 2002

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Mr. Doug Jones
6962 Ray Road
Bridgeville, DE 19933

**RE: Contract No. 22-036-01
Bridge 3-146 on Main Street, Bridgeville, Retaining Wall
Use of Tax Ditch Easement**

Dear Mr. Jones,

The Department of Transportation (DelDOT) has been authorized to do a bridge replacement to Bridge 3-146 over Bridgeville Branch. Prior to proceeding with this work, DelDOT needs the concurrence of the Tax Ditch Manager to use the existing tax ditch easement in order to construct the project.

The Tax Ditch Commissioners recognizes the need to maintain and improve structures as required for the operation of ditch systems and have made that part of their report to Superior Court.

DelDOT is asking permission to use the Tax Ditch easements to provide the necessary bridge or culvert replacement and will also perform the following tasks:

1. Tax Ditch managers and landowners know when and what work will be done.
2. Work will be scheduled to not interfere with crops.
3. Side pipes will be installed to allow access to Tax Ditch for maintenance.
4. Invert stream elevation as shown on Tax Ditch plans.

The existing tax ditch easement is identified from left and right looking upstream as the channel flows, therefore, the parcel information received from Mr. John Bister is the following:

Tax Parcel Number 1-31-10.12-125
Carmen and Luisa Hernandez
Easement Width is 28'

Mr. Jones
December 30, 2002
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Tax Parcel Number 1-31-10.12-126
Raymond A. Horney, Jr.
Easement Width is 66'

The tax ditch officers on Bridgeville Branch Tax Ditch are Doug Jones, Manager, (302) 337-7498; and John F. Ray, Secretary-Treasurer, (302) 337-7563.

If you have any questions, please give me a call.

Sincerely,

Dennis O'Shea
Assistant Director,
Transportation Solutions

By signing and returning this letter, I am giving approval for DelDOT to use the existing tax ditch easement in order to construct the project.

Attest:

Doug Jones, Tax Ditch Manager

Attachment / plan

Cc: John Bister, DNREC
V. Wayne Rizzo, Chief, Real Estate