

Tax Ditch Right-of-Way Task Force Report

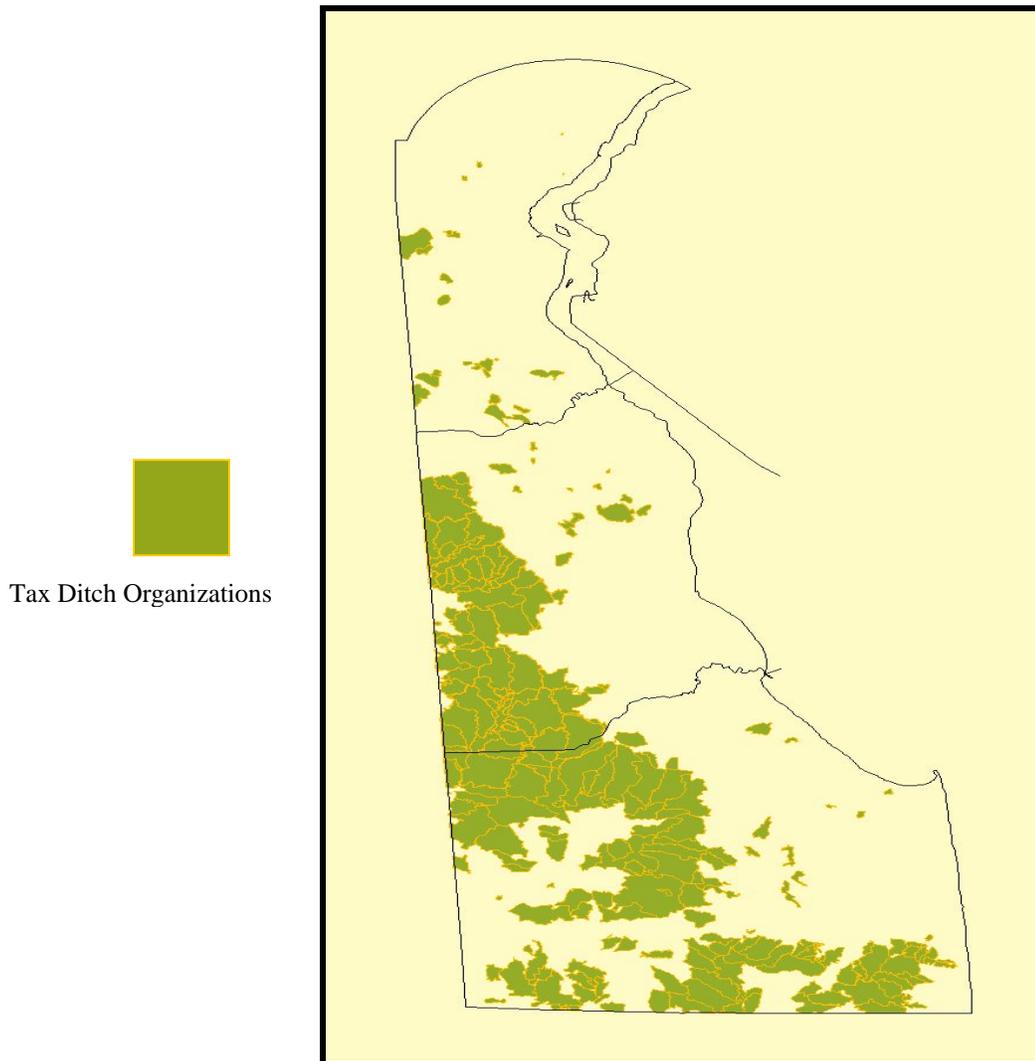
May 27, 2008



A report in response to Senate Concurrent Resolution No. 27,
144th General Assembly

Statewide Tax Ditch Facts

- 233 Tax Ditch Organizations providing benefit to over 37,662 land parcels (over 1/3 of all Delaware lands)
- 15,000+ parcels have a Tax Ditch Right of Way
- 56,000 acres Marshyhope Creek Tax Ditch
- 2 acres Alban Park Tax Ditch
- Over 2,000 miles of tax ditch systems
- Tax Ditches provide benefits to almost one-half of the state maintained roads



Task Force Membership

Appointed by the Speaker of the House

The Honorable Pamela J. Thornburg, Chair
The Honorable V. George Carey
David Toomey, Title Insurance Company Representative

Appointed by Senate President Pro Tempore

William Vanderwende
Douglas Corey

Appointed by the Delaware Farm Bureau

Ed Jestice

Appointed by the Secretary of DNREC

Frederick T. Mott, Delaware Association of Conservation Districts
Richard James, Sussex County Tax Ditch Manager
Carlton Fifer, Kent County Tax Ditch Manager
Frank M. Piorko, Division of Soil and Water Conservation
Michael Brown, Division of Soil and Water Conservation

Appointed by President of Delaware State Bar Association

Gary Dodge Esq., Delaware State Bar Association Real and Personal Property Section

Appointed by President of Delaware Association of Realtors

Lauren Alberti, Delaware Association of Realtors Representative

Appointed by the Chair of the Board of Professional Land Surveyors

Elton Murray PLS, Board of Professional Land Surveyors

Task Force Staff

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TAX DITCH RIGHT-OF-WAY TASK FORCE - PAGE 4

PAMELA J. THORNBURG
STATE REPRESENTATIVE
Twenty Ninth District



HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

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Economic Development,
Banking & Insurance
Gaming & Pari-Mutuels
Housing & Community Affairs
Natural Resources &
Environmental Management
Manufactured Housing
Appropriations (Alt)
Joint Finance (Alt)

May 27, 2008

The Honorable Senator Thurman Adams
President Pro Tempore
411 Legislative Avenue
Dover, DE 19901

Dear Senator Adams:

As chairperson of the Tax Ditch Right-of-Way Task Force it is my pleasure to submit our recommendations. I am proud of the work we did and whole heartedly endorse it. The members of this Task Force have worked diligently to complete the duty assigned to them.

We believe our recommendations are sound and when implemented will preserve and facilitate maintenance of tax ditch channels throughout the State, as well as safeguard and protect individual property rights. We offer a Delaware based answer to present concerns involving tax ditch rights-of-way and will need:

- Cooperation between the various units and subunits of government now involved in our fragmented approach to these issues, from the DNREC all the way down to individual landowners.
- Support from both houses of the General Assembly to revise our current tax ditch legislation.
- Funding is needed for long term solutions we envision.
- The active involvement and support of our citizens, both urban and rural, who will ultimately most benefit from our work.

I thank you for the trust you placed in me and the other members of the Task Force in seeking a solution to a complex situation.

Respectfully,

Pamela J. Thornburg
Chairperson
29th District Representative

PJT:mg

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Acknowledgements

The Chair would like to thank the Task Force members and their employers for their commitment to this intensive effort.

This document was developed by DNREC Division of Soil and Water Conservation.



SPONSOR: Sen. Adams & Rep. Ewing
Sen. McBride & Rep. Carcy & Rep. Thornburg

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 27

ESTABLISHING THE TAX DITCH RIGHT-OF-WAY TASK FORCE.

1 WHEREAS, there are approximately 30,000 land parcels in the State of Delaware affected by tax ditches; and

2 WHEREAS, these tax ditches stretch over 2,000 miles; and

3 WHEREAS, tax ditches may have multiple rights-of-way associated with the tax ditch; and

4 WHEREAS, previous Tax Ditch Task Force efforts focused on improving the recordation process; and

5 WHEREAS, additional research needs to be done to ensure that the tax ditch rights-of-way are suitable, given the
6 land use and size of the tax ditch, and

7 WHEREAS, additional provisions must be made in the Tax Ditch law for permanent structures that have been
8 constructed in existing rights-of-way; and

9 WHEREAS, there needs to be coordination among State agencies, landowners, tax ditch managers and other
10 parties who will be using and relying upon these tax ditch rights-of-way to ensure the future maintenance of tax ditches is
11 consistent and done in a way that respects private property rights.

12 NOW THEREFORE:

13 BE IT RESOLVED by the Senate of the 144th General Assembly of the State of Delaware, the House of
14 Representative concurring therein, that a "Tax Ditch Right-of Way Task Force" be established to develop and submit
15 appropriate procedures for the determination of maximum rights-of-way of tax ditch systems throughout the State of
16 Delaware.

17 BE IT FURTHER RESOLVED that the timeline for the recordation process for certifying rights-of-way as set
18 forth in amendments contained in Section 4195 (b) of House Bill 475 of the 143rd General Assembly be deferred until 90
19 days following the final report of the Tax Ditch Right-of-Way Task Force.

20 BE IT FURTHER RESOLVED that the Task Force shall consist of the following members:

21 1. Two members appointed by the President Pro Tempore of the Senate and two members
22 appointed by the Speaker of the House of Representatives, with the chair to be selected from

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- 23 the members of the Task Force by agreement of the President Pro Tempore of the Senate and
24 Speaker of the House;
- 25 2. One (1) member appointed by the Delaware Farm Bureau;
- 26 3. One (1) representative of the Delaware Association of Conservation Districts, appointed by
27 the Secretary of the Department of Natural Resources and Environmental Control;
- 28 4. One (1) representative of a title insurance company that does a significant amount of business
29 in Delaware, appointed by the Speaker of the House;
- 30 5. One (1) representative of the Delaware State Bar Association Real and Personal Property
31 Section, appointed by the President of the Delaware State Bar Association;
- 32 6. One (1) representative of the Delaware Association of Realtors, appointed by the President of
33 the Delaware Association of Realtors;
- 34 7. One (1) representative of the Board of Professional Land Surveyors, appointed by the Chair
35 of the Board of Professional Land Surveyors;
- 36 8. Two (2) Tax Ditch Managers, one of whom shall represent a tax ditch in Kent County, and
37 one of whom shall represent a tax ditch Sussex County, appointed by the Secretary of the
38 Department of Natural Resources and Environmental Control;
- 39 9. Two (2) representatives of the Division of Soil and Water Conservation, appointed by the
40 Secretary of the Department of Natural Resources and Environmental Control.

41 BE IT FURTHER RESOLVED that the Task Force shall organize and hold its first meeting no more than 30 days
42 following the date this Resolution is enacted and shall submit a report of its findings and recommendations, to include any
43 necessary legislation, to the General Assembly by December 30, 2007.

SYNOPSIS

This Senate Concurrent Resolution establishes the Tax Ditch Right-of-Way Task Force.

Author: Senator Adams

EXECUTIVE SUMMARY

The Tax Ditch Right-of-Way Task Force was convened and authorized by the 144th General Assembly, Senate Concurrent Resolution No. 27 to address updating tax ditch right-of-way widths, provide relief for existing structures within tax ditch rights-of-way, and to develop ways to educate other agencies, landowners, tax ditch managers, and groups that rely on tax ditch information.

Statement of Findings

The “Task Force” formally recognizes and acknowledges the benefits of Tax Ditch Organizations as vital elements of the State’s water management infrastructure to be proactively managed. It is advised that all further recommendations and actions be established with this recognition in mind.

Delaware’s Tax Ditches Researched

The Task Force used research generated by the Department of Natural Resources and Environmental Control, Division of Soil and Water Conservation (DNREC). This research included inventorying the individual designed bottom widths for each tax ditch. Bottom widths were taken from construction plans designed by the USDA Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service (SCS). Engineering calculations were then employed to determine minimal spreading distances. Finally, DNREC looked at maintenance costs associated with tax ditch maintenance. DNREC looked at several tax ditch watersheds as case studies. These watersheds were used to test how proposed changes would affect structures in the right-of-way. DNREC quantified the number of structures in the existing right-of-way. They were then able to estimate the number of existing structures removed by the different right-of-way reduction scenarios discussed by the Task Force.

The Task Force generated 10 recommendations, all of which were approved. The key recommendations include:

Reduction of Rights of Way - The bottom width research completed by DNREC was used to determine reasonable distances needed for the spreading of spoil materials when a tax ditch is cleaned out. The Task Force decided to classify the tax ditches into three groups based on bottom widths and assigned appropriate rights-of-way to each group. The Task Force’s recommendation could reduce rights-of-way on up to 90% of Delaware’s tax ditches. The Task Force believes that it is important to protect private property rights; therefore we do not recommend the increase of any tax ditch right-of-way.

Grandfathering Provision - The Task Force realizes that many landowners since 1951 have built structures unknowingly within tax ditch rights-of-way. Title search rarely disclosed tax ditch rights-of-way and County permitting offices did not restrict or inform landowners of these rights-of-way. It is acknowledged that many of these structures cause difficulty in tax ditch channel maintenance. It was determined by the Task Force that because of the enormity of the unwitting encroachment onto tax ditch rights-of-way the landowners with such structures should have those structures “grandfathered”.

New and Rebuilt Structures - In order to avert the placement of new structures within a tax ditch right-of-way without proper consideration of maintenance needs for the tax ditch, a process for future structures was recommended by the Task Force. The Task Force recognizes that landowners desire to utilize their property to the maximum extent. The Task Force recommends a process for future structures that may need to be placed within a tax ditch right of way.

Appeals Board - The Task Force recommends establishing an Appeals Board for landowners who request a Court Order Change (an amendment to the Ditch Order) or an Agreement with the Tax Ditch and are denied by either the tax ditch organization or DNREC. Present law only allows for a landowner to petition Superior Court in these matters, presenting a potentially long and costly process. An Appeals Board avails the landowner of a more time efficient means for due process. These requests are anticipated to be primarily for the reduction of a tax ditch right-of-way or the permitting of a structure within the right-of-way.

The Appeals Board would be comprised of individuals with knowledge of land use concerns and tax ditch organizations. A landowner would have a choice of taking a grievance to the Appeals Board or Petitioning Superior Court – either entity’s decision would be binding. Areas of responsibility between the State and Appeals Board will need to be clearly defined and coordinated. Compensation of board members may need to be considered.

Additional recommendations of the Task Force include:

- **Deferment of House Bill 475** - allows additional time to file certified lists with Superior Court.
- **Tax Ditch right-of-way point of reference** - establishing a simple means to measure a tax ditch right-of-way for channels affect by proposed tiered system.
- **Maintenance sides** – acknowledges that the Task Force considered current construction and maintenance sides and decided to leave as currently established in the Ditch Order.
- **Education and Outreach** – provides for landowner notification and public education of tax ditch rights-of-way.
- **Developing lands** - lays out options to give landowners choices when they choose to develop property.
- **Definitions** – addresses defining key terms used throughout the tax ditch law.

Background

Tax Ditch Organizations

The Delaware General Assembly enacted the 1951 Delaware Drainage Law to establish ditch companies and to resolve related financial and maintenance issues. As an outgrowth of this Law, the Division of Soil and Water Conservation (the Division) is mandated to carry out a comprehensive drainage program through Title 7, Chapter 41 of the Delaware Code: Drainage of Lands: Tax Ditches.

A tax ditch is a governmental subdivision of the State. It is a watershed- based organization formed by a prescribed legal process in Superior Court. The organization is comprised of all landowners (also referred to as taxables) of a particular watershed or sub-watershed.

Formation of a tax ditch can only be initiated by landowners who petition Superior Court to resolve drainage or flood protection concerns. Governmental agencies do not initiate the formation process. This petition action results in the Conservation District requesting an investigation by the Division to “determine whether the formation of the tax ditch is practicable and feasible, and is in the interest of the public health, safety and welfare.” If so determined, the Conservation District files the petition in Superior Court, and a Board of Ditch Commissioners (as directed by the resident judge) prepares a report on the proposed tax ditch. This report contains all required information per Title 7, Chapter 41, and is the basis for a hearing held for the affected landowners.

At the conclusion of the hearing held by the Board of Ditch Commissioners, a referendum is held for the landowners to approve or disprove formation of the tax ditch. The Board of Ditch Commissioners files the results of the hearing and referendum in Superior Court, and the Court holds a final hearing for any person to object to the formation of the tax ditch organization. The Court Order grants permanent rights-of-way to the tax ditch organization with taxation authority to collect, from all affected landowners, funds to perform this construction and maintenance. Taxation amounts (ditch assessment base) for individual properties are also established through the Court Order.

Ditch managers and a secretary/treasurer oversee the operations of a tax ditch. These officers are landowners within the watershed, and are elected at an annual meeting by the taxables.

To date, 233 individual tax ditch organizations have been formed throughout the State. These organizations range in size from the 56,000 acre Marshyhope Creek Tax Ditch to a two-acre system in suburban Wilmington. These organizations manage over 2,000 miles of channels and provide direct or indirect benefits to approximately 100,000 people and almost one-half of the state-maintained roads.

Since 1951 under Title 7, Chapter 41 of the Delaware Code tax ditch documents which contained the Board of Ditch Commissioners Reports detailing parcels affected by a tax ditch assessment and/or right-of-way were filed in the Prothonotary’s Office of Superior Court. As a result of increased growth and development within the State of Delaware many landowners were encroaching within tax ditch rights-of-way, resulting in maintenance concerns. Many landowners were unaware of the restrictions the tax ditch rights-of-way placed on their parcel.

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It was determined that in most cases title searchers, realtors, attorneys, and landowners, etc. were not searching the tax ditch records at the Prothonotary's Office. To include disclosure of tax ditch effects on a parcel to buyers of real property became a focal point for change. It was determined that some type of record needed to be filed in the Recorder of Deeds Office to make a public record that a parcel was affected by a tax ditch.

The Tax Ditch Recordation Task Force was formed by the 142nd General Assembly by House Bill #499 with House Amendment #1. The charge was to develop and submit appropriate procedures for the implementation of uniform recording of existing and new tax ditches in the Recorder of Deeds Office in each county.

Recommendations by the Tax Ditch Recordation Task Force were enacted into legislation by the 143rd General Assembly by House Bill #475. Certified lists of real property owners and parcels which are subject to a tax ditch, tax lagoon, right-of-way or assessment are now on file in special volumes in the Recorder of Deeds Office of each county.

As a result of increased awareness of tax ditch rights-of-way landowners, legislators, and property rights groups began requesting that the large construction rights-of-way be reduced. Tax Ditch Law allows for landowners to request a reduction of a right-of-way, however, this method is done on a case by case basis and at the request of a landowner. A mechanism to reduce tax ditch rights-of-way on a large scale was requested, leading to Senate Concurrent Resolution No. 27 and the recommendations of this Task Force.

RECOMMENDATIONS OF THE TAX DITCH RIGHT-OF-WAY TASK FORCE

Recommendation 1 – Deferment of HB 475

Previous Charge regarding timeline for filing certified list

Title 7, Chapter 41, Section 4195 (b) established by House Bill 475 of the 143rd General Assembly set forth as follows: *“No later than 180 days after complying with subsection (a) of this section the Department shall certify and file with the Prothonotary of each county a list of all parcels by county tax parcel numbers and all owners of said parcels listed in alphabetical order and designating which parcels are subject to a right-of-way and assessment, and which parcels are subject only to an assessment.”*

SCR NO. 27 of the 144th General Assembly deferred the timeline listed above as follows:

“Be it further resolved that the timeline for the recordation process for certifying rights-of-way as set forth in amendments contained in Section 4195 (b) of House Bill 475 of the 143rd General Assembly be deferred until 90 days following the final report of the Tax Ditch Right-of-Way Task Force.”

There will be legislation necessary to enact this recommendation.

The “Task Force” hereby recommends an additional deferment of the timeline for the recordation process for certifying rights-of-way as set forth in amendments contained in Section 4195 (b) of House Bill 475 of the 143rd General Assembly. SCR NO. 27 deferred the timeline until 90 days following the final report of the Tax Ditch Right-of-Way Task Force. The “Task Force” recommends that the timeline be deferred until 180 days **after legislation reducing tax ditch rights-of-way is signed into law.**

This will allow DNREC time to file certified lists with Superior Court who in turn files these lists in the Recorder of Deeds office as a significant number of parcels will be removed from a tax ditch right-of-way and/or that right-of-way reduced. As presently stated, if no new legislation is passed 90 days after the Task Force’s final report, DNREC would be required to have filed certified lists of existing rights-of-way. If subsequent legislation is passed in June another filing would need to occur. This would place a large burden on DNREC, the Court, and the Recorder of Deeds Office, as well as add confusion to Title searchers.

Recommendation 2 – Reduction of Right of Ways

There will be legislation necessary to enact this recommendation.

Exhibit 1 (Pie Chart) Exhibit 2 (Spoil Spreading)

The “Task Force” hereby recommends a three tiered system of rights-of-way for the larger construction and major maintenance right-of-way of a tax ditch, to be based on the size of the tax ditch. After considering the research performed by DNREC and discussing several options, the “Task Force” recommends adopting a right-of-way structure as demonstrated by the chart below for tax ditch construction and major maintenance rights-of-way. The new rights-of-way are based on original design of the tax ditch. The new Tax Ditch Rights-of-Way will include the entire channel as well as the land area adjacent to the ditch. The “Task Force” does not recommend the increase of any existing tax ditch right-of-ways. This tier system will also apply

to tax ditches where rights-of-way were previously defined as “adequate” or “sufficient”. There shall be no effect of these new rights-of-way that extends either the existing construction and major maintenance or minor maintenance right-of-way.

TIER 1	TIER 2	TIER 3
3’ to 4’ Bottom Width	5’ to 10’ Bottom Width	Over 10’ Bottom Width
80’ from Top of Bank or Existing Construction ROW (whichever is less)	120’ from Top of Bank or Existing Construction ROW (whichever is less)	Existing Construction ROW to remain as filed in Court Order

Recommendation 2A – Tax Ditch Right of Way Point of Reference

The “Task Force” recommends establishing the reference point for all Tax Ditch Rights-of-Way that are established or modified as a result of this legislation or future actions, as the nearest top of ditch bank. This is the point where the side slope of the ditch intersects the existing grade of the land. For ditch sections that have been piped the point of reference would be the centerline of the pipe.

Recommendation 3 – Maintenance Sides

The “Task Force” hereby recommends leaving the rights-of-way as formed regarding one or two sided right-of-way. There are no changes necessary to implement Recommendation 3.

Recommendation 4 – Grandfathering Provision

There will be legislation necessary to enact this recommendation.

The “Task Force” hereby recommends a provision for “grandfathering” existing permanent structures and rendering them exempt from the provisions of Chapter 41 as a legal non-conforming use. This will allow properties that have existing permanent structures in the Tax Ditch right-of-way, to have those structures exempted from the provisions of the tax ditch law. This would apply to permanent structures in the right-of-way after implementation of Recommendation 2.

It is recommended that legal counsel be engaged to define the existing permanent structures that may include: residential, commercial and agricultural buildings, garages, pole barns, in ground swimming pools, sheds on a permanent foundation, decks, patios; and crucial accessory systems such as septic systems, wells, electrical transformers, and propane tanks.

The “Task Force” also recognizes the need for a time frame to be established for the grandfathering of these structures. The effective date of “grandfathering of permanent structures” would coincide with the date legislation is signed into law, and make provisions for any structure already in the permitting process. The “Task Force” agreed that while DNREC shall make use of available resources such as aerial photography to document the pre-existence of permanent structures; the burden of proof that a structure was in place prior to the effective ‘grandfathering’ date will be the responsibility of the landowner.

Recommendation 5 – New and Rebuilt Structures

There will be legislation necessary to enact this recommendation.

The “Task Force” recommends the following provisions be established as changes to the existing law.

1. Permission to build or rebuild a permanent structure, after the legislation is signed into law, where all or a portion of the structure shall be *in a Tax Ditch Right-of-Way* within fifty feet of the top of the bank may only occur where to deny the property owner the ability to so build or rebuild would constitute an undue hardship adversely affecting the landowners currently permitted and existing use of their property. The burden of proof in this instance shall be on the landowner to demonstrate that such hardship would result.
2. Permission to build or rebuild a permanent structure, after the legislation is signed into law, where all of the structure is fifty feet or more from the top of the bank of a tax ditch and some or all of the structure would be constructed within a construction *and major maintenance* right of way, shall be denied only where the size and/or location of the proposed structure would constitute an undue hardship adversely affecting the tax ditch organization’s ability to perform its major maintenance and/or construction obligations for its members. The burden of proof in this instance shall be on the tax ditch organization to demonstrate that such hardship would result.
3. *In any instance where item(s) 1 or 2 are applicable, any agreement granting the permission to build or rebuild a permanent structure in any Tax Ditch Right-of-Way shall be duly recorded and established as part of the permanent record of Tax Ditch documents. These agreements shall be filed both in the Prothonotary’s Office and Recorder of Deeds in the respective County.*
4. Structures built pursuant to any duly recorded agreement resulting from the procedures created by this legislation, or by court order, shall be deemed legal, non-conforming structures, the removal of which can be compelled only pursuant to the terms of the agreement, or court order authorizing its construction. Structures built without a pre-existing agreement, or court order authorizing such construction shall not be afforded the status of a legal non-conforming structure.

5. Any increased costs incurred by a tax ditch organization in the orderly and normal performance of its duties by virtue of the existence of any structure constructed after the legislation is signed into law, in whole or in part in either a maintenance or construction right of way, shall be charged to the property owner(s) on which such structures are constructed. This charge or special assessment shall be levied even in those instances where the property owner has constructed such improvements with the consent of the tax ditch managers.

Recommendation 6 – Appeals Board

There will be legislation necessary to enact this recommendation.

**There will need to be legal discussions regarding the creation of an Appeals Board
See Exhibit 3 – Flow diagram**

The “Task Force” recommends creating an “Appeals Board” for the purpose of hearing and providing a binding decision concerning disputes arising from Tax Ditch issues with landowners, DNREC and Tax Ditch organizations. The “Appeals Board” shall be regularly scheduled at a monthly interval. Legal assistance will be necessary to draft the language under which this “Board” will operate. Compensation for the Appeals Board and support staff is recommended. It was recommended that only a grievance by a landowner should be brought before the “Board” and a filing fee paid by the landowner could assist in administrative costs for the appeals process.

It is recommended that the “Board” be comprised of

- 2 Delaware Farm Bureau / Delaware Grange Member
- 1 Delaware Association of Conservation District Member
- 3 Tax Ditch Commissioners (one from each County)
- 1 Public Member / Member at Large

The “Task Force” recommends that DNREC DSWC assist in drafting legislative language for the “Appeals Board” procedures.

Recommendation 7 – Education and Outreach

Exhibit 4 – E and O Plan

The “Task Force” recommends that DNREC, Division of Soil and Water Conservation with the assistance of the Conservation Districts develop an education and outreach program along with formal training, designed to inform Delaware landowners, real estate professionals, legal professionals, members of the title and lending institutions, engineering and professional land surveying companies, etc. of the multiple elements related to the Delaware Tax Ditch Program.

A strong planning effort will be necessary to work with local building officials and plan approval agencies to integrate the concerns and considerations of these recommendations into existing or new code and permitting requirements.

The elements of this effort shall include personal communication, use of state internet and web site resources, formal training efforts and development of written information and availability of program staff to continue to offer resources to the public regarding tax ditch right-of-way and tax ditch information. As Delaware's land use continues to change, tax ditch managers will need to be trained.

Recommendation 8 – Developing Lands

This recommendation will require additional financial resources (see Appendix #3)

Regarding Tax Ditch Right-of-Way for lands undergoing development, the “Task Force” recommends that DNREC, Division of Soil and Water Conservation along with Conservation Districts where appropriate, integrate tax ditch issues as early into the site design process as possible. DNREC agency staff, Conservation Districts, County Government, local municipalities, tax ditch managers, landowners, developers and consultants, etc. must determine the best options for utilization of the tax ditch right-of-way to ensure that all land rights and maintenance needs are met.

Right-of-way options may be explored that range from no change to the existing right-of-way to reductions in the right-of-way that could increase future maintenance costs. Some modifications to the tax ditch right-of-way or tax ditch alignment may require a change to the court order.

The utilization of the tax ditch as an outlet for developed lands will be in accordance with DNREC's stormwater regulations and policies.

When a future change to the tax ditch including, but not limited to any change that would increase demands or the maintenance costs for that ditch, the assessment base for the parcel or parcels causing the cost of maintenance to increase shall be adjusted to reflect those increased costs.

Changes to the tax ditch requiring a change to the court order, including right-of-way, alignment, tax assessment, or special assessment should be determined prior to the final record plan approval for subdivision of a land parcel. This ensures that the right-of-way and assessment will be a matter of public record prior to the sale of lands, and reflected in individual deeds. Coordination with and cooperation of county and municipal agencies will be necessary to accomplish this objective.

Recommendation 9 – Definitions

There will be legislation necessary to enact this recommendation.

The “Task Force” recommends that Title 7, Chapter 41, subsection 4103 be updated to have the following terms defined for the purposes of Chapter 41.

‘Construction and major maintenance right-of-way’ means the right-of-way created by this Chapter for the purpose of construction/reconstruction of the tax ditch, to allow for the piling of debris and to allow spoil to be leveled as part of the construction operations and major maintenance activities, including “dipping out” and spreading and/or disposal of spoils.

‘Minor maintenance right-of-way’ means the right-of-way created under this Chapter for the purpose of maintenance activities that include but are not limited to inspection, mowing, use of specialized equipment for vegetative management, removal of debris, spoil and obstructions; and the placement of crossings for access .”

‘Permanent Structure’ – Needs to be defined by law.

‘Obstruction’ - Needs to be defined by law for flow in channel and within the right-of-way.

‘Channel’ – Needs to be defined by law.

End Notes (concerns expressed by members of the Task Force after the final meeting of the Task Force):

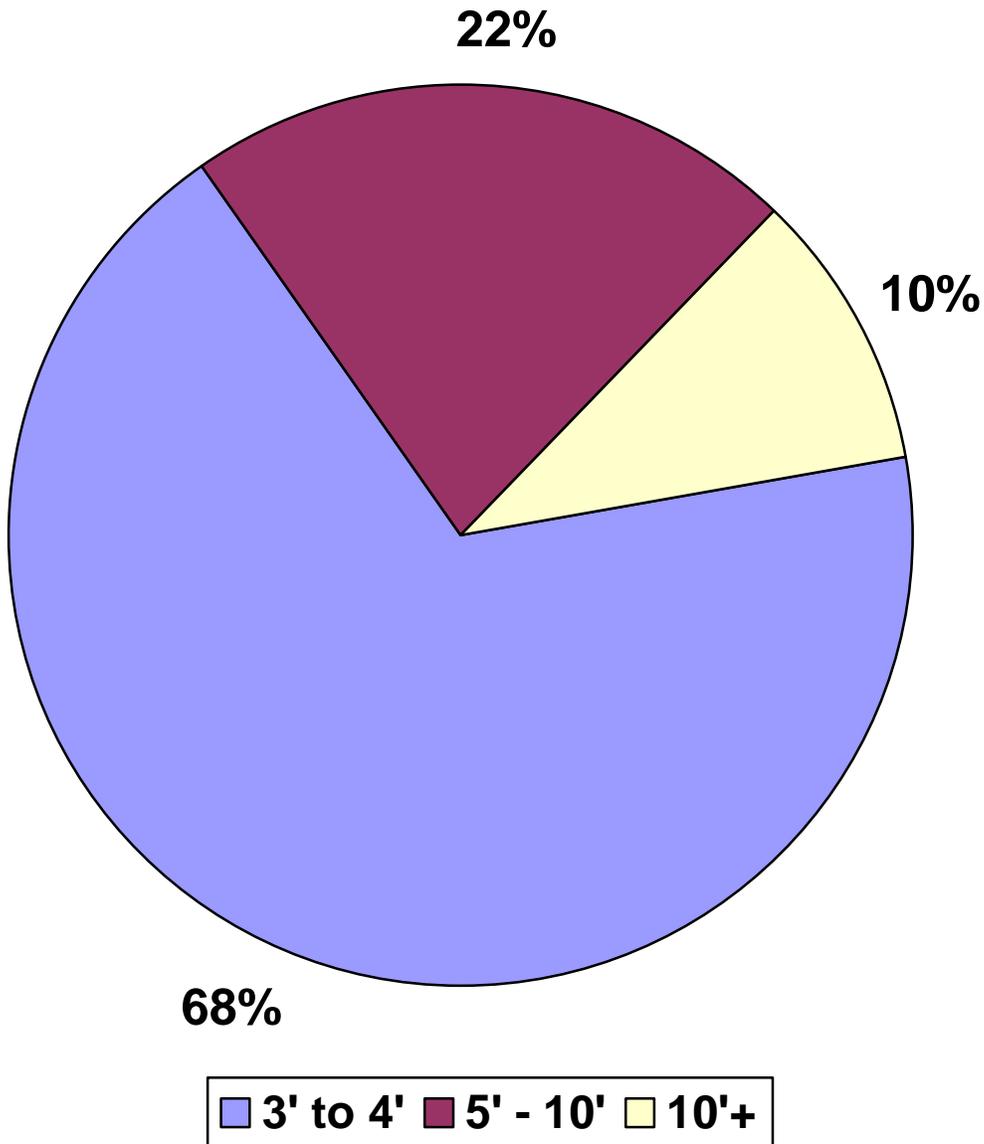
Fred Mott - Recommendation #4, concerns with the elimination of the sentence regarding fences not being grandfathered in. This concern was expressed to the Kent Conservation District Board of Supervisors at their April 28, 2008 meeting. All supervisors were in agreement that fences should specifically not be grandfathered under new legislation. Mr. Mott would prefer that the sentence removed from the recommendations remain in the document to insure that the legislature knows the preference of the Task Force.

Fred Mott - Recommendation #8, 3rd paragraph, requests the addition of the word “drainage” before the word “outlet” (this change would also result in changing the word “an” to “a”).

Gary Dodge - Recommendation #8, 4th paragraph, move comma to proceeding “including” rather than after. Add the word “on” after the word demands.

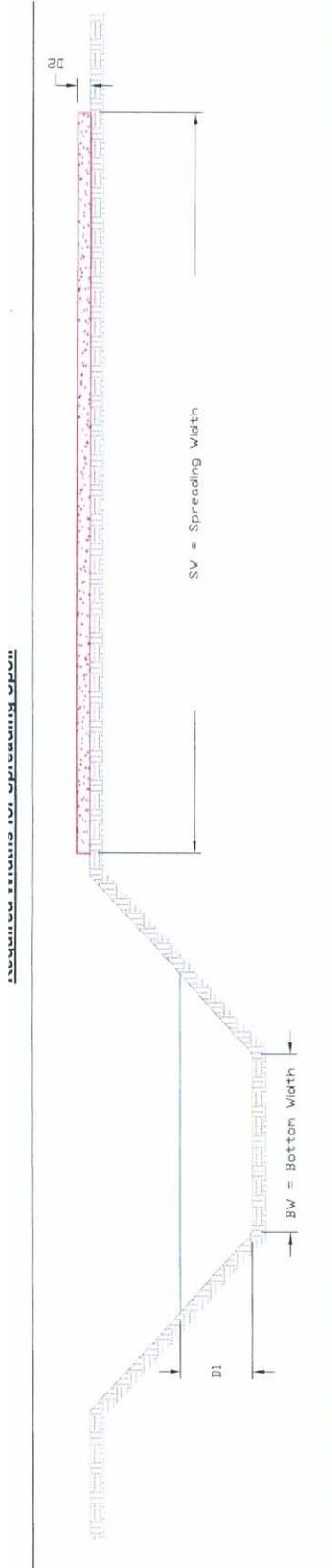
Mike Brown – Recommendation #4, concerns with the removal of the sentence stating that fences are not grandfathered. Mr. Brown does not want fences grandfathered in any legislation that surfaces as a result of this recommendation.

Breakdown of Tax Ditch Channels by Bottom Width



As illustrated in the pie chart, 90% of tax ditch channels could see a significant reduction in existing rights of way.

APPENDIX #1, EXHIBIT #2



Methodology

Volume of Spoil Spread (V_2) = Volume Sedimentation (V_1) * Swell Factor (k)

$$V_2 = k * V_1 \quad \text{Where: } k = 1.2$$

Volume of Sedimentation is a trapezoid having a volume per linear foot equal to:

$$V_1 = \frac{1}{2} * D_1 * (BW + D_1)$$

Where: BW = Bottom Width of the Ditch

D_1 = The Depth of Sedimentation

$$V_1 = D_1 * (BW + D_1)$$

Spoil is spread in a wide width and shallow depth making the volume difference between a trapezoid and a rectangle negligible. Therefore, The Volume of the Spread Spoil equals

$$V_2 = SW * D_2$$

Substituting the individual volume equations in equation 1 and solving for SW give the equation used to compute Spoil Spreading Widths:

$$SW = \frac{1.2}{D_2} * (D_1 + (D_1 + BW))$$

Sedimentation of Ditch (D_1) = 1 foot

D_2 (inches)	Bottom Widths										
	3	4	6	8	10	14	18	20	30	40	60
2	29	36	50	65	79	108	137	151	223	295	439
3	19	24	34	43	53	72	91	101	149	197	293
4	14	18	25	32	40	54	68	76	112	148	220
6	10	12	17	22	26	36	46	50	74	98	146

Sedimentation of Ditch (D_1) = 1.5 feet

D_2 (inches)	Bottom Widths										
	3	4	6	8	10	14	18	20	30	40	60
2	43	54	76	97	119	162	205	227	335	443	659
3	32	40	54	68	83	112	140	155	227	299	443
4	24	30	41	51	62	84	105	116	170	224	332
6	16	20	27	34	41	56	70	77	113	149	221

Sedimentation of Ditch (D_1) = 2.0 feet

D_2 (inches)	Bottom Widths										
	3	4	6	8	10	14	18	20	30	40	60
2	58	72	101	130	158	216	274	302	446	590	878
3	48	58	77	96	115	154	192	211	307	403	595
4	36	43	58	72	86	115	144	158	230	302	446
6	24	29	38	48	58	77	96	106	154	202	298

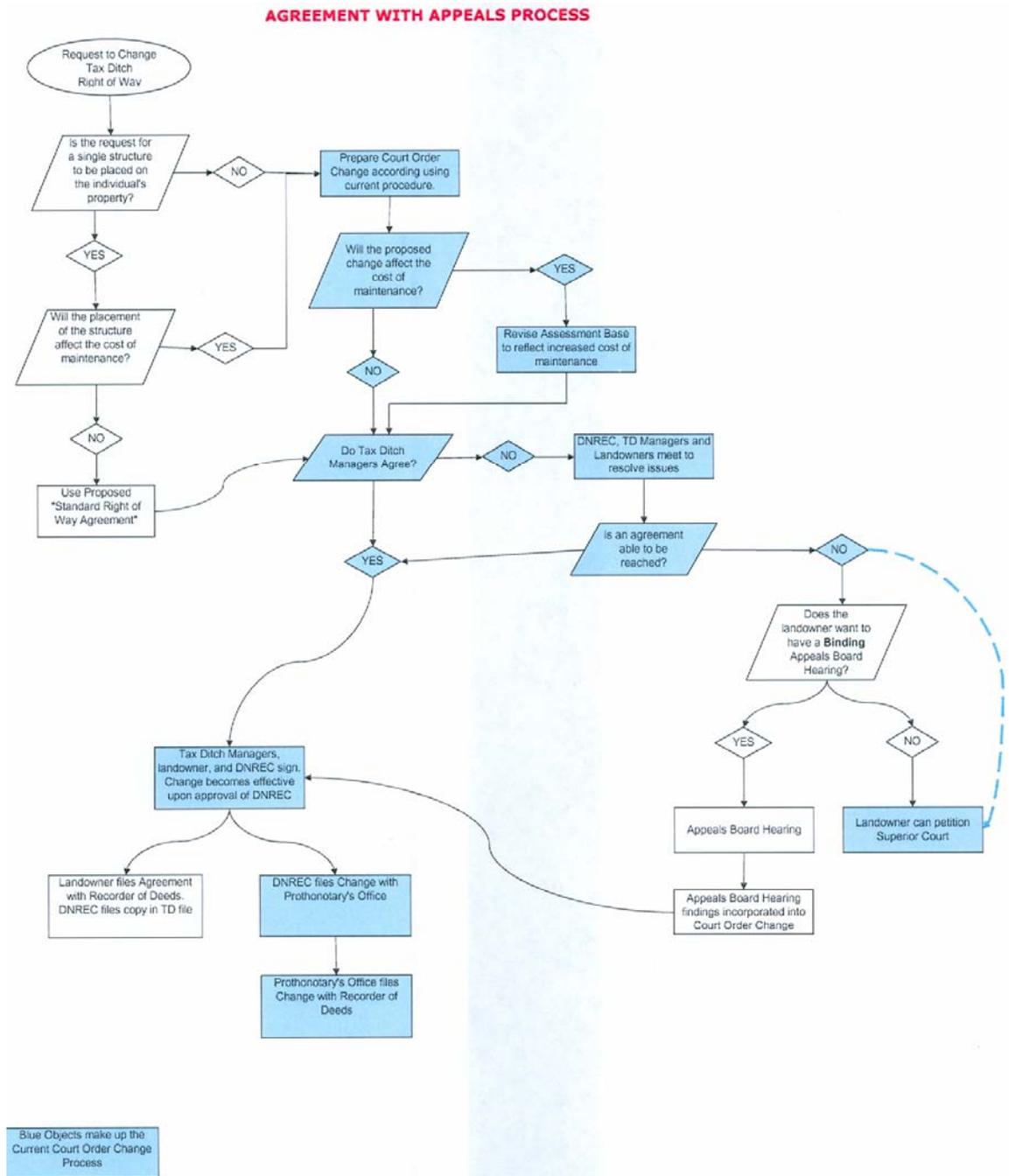


EXHIBIT #4
Tax Ditch Right-of-Way Task Force
Draft Education and Outreach Plan

<u>Affected Party</u>	<u>Outreach Method</u>	<u>Responsible Party</u>	<u>Estimated Cost</u>	<u>Target Date for Completion</u>
Tax Ditch Officers (230 ditches x 3 officers = 690)	Tax Ditch Annual Meeting Presentations	Conservation District Staff	No Additional Staff Time	July 1, 2009
	Direct Mail Campaign (two page letter?)	DNREC - Drainage Program Conservation Districts	No Additional Staff Time Letters Printed - \$745 Postage - \$170 (690 x .246 Bulk Mail) Total = \$915	August 31, 2008
Landowners - approx. 30,000 parcels affected by tax ditches - approx. 15,000 parcels have a ROW	SCD Tax Ditch Managers' Breakfast Presentation	SCD and DNREC - Drainage Program	No Additional Staff Time	December 19, 2008
	Direct Contact	Conservation Districts	No Additional Staff Time	July 1, 2009
	Direct Mail Campaign (one page letter – one-time occurrence)	DNREC - Drainage Program Conservation Districts	Staff Time* Letters Printed (30,000) - \$11,700 Postage - \$7,380 (30,000 x .246 Bulk Mail) Labels - \$325 Total = \$19,405	October 31, 2008
	Tax Ditch Landowners Basic Reference Guide (include w/ direct mail campaign plus 5,000 extra copies for general distribution)	DNREC - Drainage Program Conservation Districts	No Additional Staff Time Brochure Printed - \$4,130 Total = \$4,130	December 31, 2008
Post on DNREC and Conservation District Websites	DNREC - Drainage Program Conservation Districts	No Additional Staff Time	August 15, 2008	

APPENDIX #1, EXHIBIT #4 (PG 2)

<u>Affected Party</u>	<u>Outreach Method</u>	<u>Responsible Party</u>	<u>Estimated Cost</u>	<u>Target Date for Completion</u>
Attorneys Title Searchers Realtors Surveyors Engineers	Power Point Presentation (respectively association meeting at state/county level) Fact Sheet	DNREC – Drainage Program	No Additional Staff Time Fact Sheet Printed (7,500) = \$2,925 Total = \$2,925	July 1, 2009 Presentations October 15, 2008 Fact Sheet
County P&Z Offices	Power Point Presentation (association meeting at state/county level) Fact Sheets	DNREC – Drainage Program	No Additional Staff Time	December 31, 2008
Municipalities (Direct Contact and work through League of Local Governments)	TD Landowners Basic Guide Integrate ROW issues with issuance of building permits	DNREC – Drainage Program DNREC – Drainage Program Counties / Municipalities	Fact sheet cost included above Landowners guide cost included above No Additional Staff Time	October 15, 2008 December 31, 2008 October 15, 2008
General Public	Display at State Fair (basic education about types of ditches and where to go for answers) Develop and make publically available web-based database on tax ditch ROW	DNREC – Drainage Program Conservation Partnership DNREC – Drainage Program	No Additional Staff Time \$2900 (2007 display expenses) Staff Time* Project Cost ???	July 31, 2008 December 31, 2009



SPONSOR: Rep. Carey & Rep. Hocker & Rep. Thornburg & Rep. Outten & Sen.
Bunting;
Reps. Spence, Atkins, Hall-Long, McWilliams, Mulrooney; Sens.
Venables, Simpson

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 475

AN ACT TO AMEND TITLE 7 AND TITLE 25 OF THE DELAWARE CODE RELATING TO RECORDING OF NOTICE OF TAX DITCH, TAX LAGOON RIGHT-OF-WAY, OR ASSESSMENT, AND DEEDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 41, Title 7 of the Delaware Code by adding a new Section to read as follows:

2 "§4195. Notice of right-of-way, or assessment.

3 (a) The Department of Natural Resources and Environmental Control shall certify and file with the Prothonotary
4 of each county a list of all parcels by county tax parcel numbers and all owners of said parcels of real property located in that
5 county which are subject to any portion of a right-of-way or assessment as part of a tax ditch created by this Chapter. The list shall
6 be in alphabetical order by owner. The Department shall also certify and similarly file a list of any changes of parcel numbers
7 subject to such right-of-way or assessment annually. Additionally, the Department shall certify and similarly file a list of any
8 addition or deletion of a parcel or parcels subject to a right-of-way or assessment immediately upon making any such addition or
9 deletion.

10 (b) No later than 180 days after complying with subsection (a) of this section the Department shall certify and
11 file with the Prothonotary of each county a list of all parcels by county tax parcel numbers and all owners of said parcels
12 listed in alphabetical order and designating which parcels are subject to a right-of-way and assessment, and which parcels
13 are subject only to an assessment.

14 (c) The certified list submitted pursuant to subsection (a) or (b) of this Section shall be confirmed by order of the
15 Resident Judge of Superior Court for each county, which order shall:

16 (1) state the name of the tax ditch;

17 (2) state the owner's name(s) and that owner's county tax parcel number for each parcel subject to the
18 right-of-way and assessment and each parcel subject to an assessment only; and

19 (3) direct that the order be recorded in the Office of the Recorder of Deeds in and for that county.

20 (d) There shall be no charge or fee to file the list required by Subsection (a) of this Section.

21 (e) There shall be no charge or fee to record the order pursuant to this Subsection."

22 Section 2. Amend Chapter 43, Title 7 of the Delaware Code by adding a new Section to read as follows:

23 "§ 4389. Notice of right-of-way, or assessment.

24 (a) The Department of Natural Resources and Environmental Control shall certify and file with the Prothonotary
25 of each county a list of all parcels with county tax parcel numbers and all owners of said parcels of real property located in
26 that county which are subject to any portion of a right-of-way or assessment as part of a tax lagoon created by this Chapter.
27 The list shall be in alphabetical order by owner. The Department shall also certify and similarly file a list of any change of
28 parcel numbers subject to such a right-of-way or assessment annually. Additionally, the Department shall certify and
29 similarly file a list of any addition or deletion of a parcel or parcels subject to a right-of-way or assessment immediately
30 upon making any such addition or deletion.

31 (b) No later than 180 days after complying with subsection (a) of this section the Department shall certify and file
32 with the Prothonotary of each county a list of all parcels with county tax parcel numbers and all owners of said parcels
33 listed in alphabetical order and designating which parcels are subject to a right-of-way and assessment and which parcels
34 are subject only to an assessment.

35 (c) The certified list submitted pursuant to subsection (a) or (b) of this Section shall be confirmed by order of the
36 Resident Judge of Superior Court for each county, which order shall:

- 37 (1) state the name of the tax lagoon;
38 (2) state the owner's name(s) and that owner's county tax parcel number for each parcel subject to the
39 right-of-way and assessment and each parcel subject to an assessment only; and
40 (3) direct that the order be recorded in the Office of the Recorder of Deeds in and for that county.

41 (d) There shall be no charge or fee to file the list required by Subsection (a) of this Section.

42 (e) There shall be no charge or fee to record the order pursuant to this Subsection."

43 Section 3. Amend Subchapter II, Chapter 1, Title 25 of the Delaware Code by adding a new Section to read as follows:

44 "§ 135. Tax ditch, tax lagoon, right-of-way, or assessment.

45 Any deed transferring a parcel of real property listed in an order recorded pursuant to § 4195 or § 4389 of Title 7 of this
46 Code shall specifically state in the deed that such parcel of real property may be subject to a tax ditch right-of-way and/or
47 assessment, or a tax lagoon right-of-way and/or assessment pursuant to Superior Court order, and shall state the date of the court
48 order and the order's recording information in the Recorder of Deeds' office of the county."

49 Section 4. This Act shall become effective 180 days after its enactment.

SYNOPSIS

This Act requires the Department of Natural Resources and Environmental Control within 180 days of enactment to prepare and file with the Prothonotary for each county a certified list of real property owners and parcels which are subject to a tax ditch, tax lagoon, right-of-way or assessment in that county.

Once filed with the Prothonotary, the Resident Judge of Superior Court shall confirm and enter an order which will then be recorded in the Recorder of Deeds' office in and for that county.

Further, within 180 days of filing the initial lists of all parcels subject to such right-of-way or assessment, the Department will file such lists designating which parcels are subject to the right-of-way and which are subject only to an assessment.

By recording such rights-of-way or assessments purchasers of such affected real property will have notice of such matters.

Position Needs and Expenses as a result of the Tax Ditch Recordation and Tax Ditch Right-of-Way Task Force

Administrative Specialist I PG 7

This position will be the initial point of contact for right-of-way inquiries. This person will also be trained to do basic right of way research. In addition this position will also be responsible for the administrative aspects of Court Order Changes including writing cover letters, filing in superior court, sending copies to necessary parties, and maintaining electronic and paper filing systems. This person will also provide support to the education and outreach activities. These duties will include helping with mailings, organization of meetings, and preparation of materials for meetings.

Engineering Planning Surveying Technician II PG 8

This technical position will work on the development and maintenance of GIS layers pertinent to the real estate and development community. This process will include applying the recommended three tier approach to tax ditches based on the design bottom widths of the ditches. These layers will also need to be updated as Court Order Changes are implemented. This position would also assist a technical superior in updating tax ditch assessments as a result of court order changes and/or property splits. Additionally this position would also research large or complex right of way inquiries. If needed this position would be able to prepare the documents necessary for a court order change.

Planner III PG 15

This position will handle the coordination with tax ditch managers, developers, conservation districts, and local planning and zoning agencies for development projects when tax ditch right of ways are affected. This will include the development of options for consideration by developers and tax ditch managers when negotiating a reduction of the tax ditch right of way. These options will often include cost analysis to insure the assessment base of the property reflects the increased costs of tax ditch maintenance. The position will also serve a key role in the education and outreach activities recommended by the Tax Ditch Right of Way Tax Force. This will include working with the counties and municipalities to understand tax ditches and affect on the land development process. Additional outreach activities include working with Tax Ditch organizations to find solutions to problems created by obstructed right of ways.

APPENDIX #3

All totals include salary and OEC. Note that the totals for State positions are at 10 months at 80% of midpoint. The totals for the District positions are at a full year since the contractual appropriation would not receive any increase for annualization.

<u>Position</u>	<u>State</u>	<u>District</u>	<u>Contractual Equivalent</u>
Admin. Specialist I PG 7	\$34,500	\$42,600	\$80,000
EPS Tech. II PG 8	\$36,400	\$44,800	\$100,000
Planner III PG 15	\$53,300	\$64,800	\$150,000
	\$124,200	\$152,200	\$330,000

One time costs - \$100,000

GIS system upgrades, ARC View Licenses, Database Development, Legal Fees,

Annual costs – \$40,000

Supplies, Meeting Expenses, Contractual

TAX DITCH RIGHT-OF-WAY TASK FORCE
August 22, 2007
Minutes

John Hughes, Secretary of the Department of Natural Resources and Environmental Control (DNREC) called the meeting to order at 9:06 a.m.

The following Task Force Members were present: Frank Piorko, Dave Toomey, Doug Corey, Ed Jestice, Gary Dodge, Richard James, Lauren Alberti, Rep. Pam Thornburg, Mike Brown, Fred Mott, Bill Vanderwende, Rep. V. George Carey. Also present were the following: Debbie Absher (Sussex Conservation District), Bob Enright, Tom Barthelmeh, Robert Baldwin, and Michele Garner (DNREC). Task Force members absent: Carlton Fifer, Elton Murray.

Secretary Hughes explained his role, the Task Force's role and read the provision of Senate Concurrent Resolution #27. Secretary Hughes stated that Michele Garner would be the Support Staff Coordinator for the Task Force. He also explained housekeeping rules regarding the Task Force, including deadline of 12/30/07 and election of Chair.

Frank Piorko, DNREC Drainage Program Administrator shared with the Task Force a brief history of Tax Ditches and the previous work completed under the Tax Ditch Recordation Task Force.

Secretary Hughes suggested that the Task Force consider categorizing Tax Ditches similar to hurricanes.

A discussion was held regarding the need of education regarding the tax ditch rights-of-way. Education needs to be provided as much as possible to all parties involved – attorneys, title searchers, realtors, surveyors and landowners. Secretary Hughes committed to seeking funding for this type of education and outreach.

The Task Force went to Executive Session in order to deliberate and elect a Chairperson. All guests (non-task force members) left the room.

The regular meeting of the Task Force resumed after the brief Executive Session meeting. Representative Pamela Thornburg had been unanimously elected to be the Task Force Chairperson by those present. Secretary Hughes stated he had the Representative Terry Spence's proxy (Speaker of the House). Secretary Hughes contacted Senator Thurman Adams (Senate Pro-Tem) and received his proxy. Secretary Hughes then cast proxies for Rep. Spence and Sen. Adams for Rep. Thornburg. The final result of the election was a unanimous vote for Rep. Thornburg. Secretary Hughes then congratulated Representative Thornburg on her election as Chairperson of the Task Force.

Frank Piorko informed the Task Force of the status of requests for tax ditch right-of-way inquiries. Michele Garner shared with the Task Force the type of information now on file at the Recorder of Deeds office in each county regarding tax ditches and the process for attorney's, title searchers, landowners, etc. to inquire as to if a parcel is affected by a tax ditch right-of-way.

TAX DITCH RIGHT-OF-WAY TASK FORCE
August 22, 2007 Minutes
Page 2 of 2

A discussion was held on the need to categorize tax ditches and determine just how much right-of-way is needed to spread spoil (based on bottom width). Also discussed, was the concern to make rights-of-way measurement techniques more simple and consistent. Currently they are measured both from centerline of the ditch and the top of the ditch bank, depending on the type of right-of-way (maintenance, construction, disposal limits).

It was decided that the initial effort of the Task Force would be focused on learning more about the specific dimensions for each Tax Ditch and the recommended right-of-way necessary to perform minor and major maintenance for each. DNREC staff will prepare technical information for the Task Force by the next meeting.

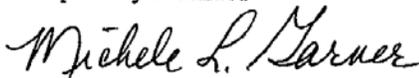
Representative Thornburg also requested recommendations on how tax ditch rights-of-way should be measured. Mr. Dodge (Bar Assoc. Representative); Mr. Toomey (Title Insurance Representative), Mr. Murray (Professional Land Surveyors Representative), Mr. James and Mr. Fifer (Tax Ditch Manager Representatives) – were requested to report back at the next Task Force meeting on which measurement method should be utilized (pros & cons). Others present were encouraged to contribute recommendations as well.

Representative Thornburg suggested a special meeting to discuss education concerns and steps forward.

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Monday, September 17, 2007, 6:00 – 8:00 p.m. in the DNREC Secretary's conference room.

Meeting adjourned at 11:20 a.m.

Respectfully Submitted



Michele L. Garner
Administrative Specialist II

TAX DITCH RIGHT-OF-WAY TASK FORCE

September 17, 2007

Minutes

Representative Thornburg called the meeting to order at 6:09 p.m.

The following Task Force Members were present: Lauren Alberti, Rep. Pam Thornburg, Mike Brown, Fred Mott, Bill Vanderwende, Rep. V. George Carey, Frank Piorko, Gary Dodge, Dave Toomey, Elton Murray, Ed Jestice, Doug Corey, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Tom Barthelmeh, Michele Garner, Bob Enright, and Brooks Cahall (DNREC). Task Force members absent: Carlton Fifer.

A motion was made and passed to approve the agenda for the evening.

A motion was made and passed to approve the minutes of August 22, 2007, as written.

A variety of handouts were distributed by members of the Task Force (easement recommendations, photo of a large tax ditch, spreading widths, slide show presentation, etc.).

A discussion was held regarding measurement techniques for tax ditch rights-of-ways in undeveloped parcels. It was discussed that even though the centerline or the top of ditch bank is a moving target, neither one shifts significantly over time to lend greater weight to utilizing either measurement method. The measurement from top of ditch bank would make it easier for a landowner to measure from. It was asked if there was some type of fixed point of beginning that could be used as a reference line. It was explained that while there is a fixed point of beginning for a tax ditch (stationing), it is not something easy to define for the purpose of placement on a deed such as metes and bounds. A consensus was reached that the group would move forward at this time with a recommendation of all tax ditch rights-of-way to be measured from top of ditch bank. This would include disposal limits, construction, and maintenance. Some type of wording will be added to the final recommendation to include the ditch itself (from top of one bank to the top of the bank on the opposite side).

There was more discussion on the need for education (real estate, legal, landowners, county planning and zoning offices, etc.) regarding tax ditches and their rights-of-ways. Representative Thornburg stated that a first step through this legislation would be a formal "roll out" of the proposed bill when it is ready to be submitted to the legislature.

Frank Piorko presented a slide show on behalf of the Division of Soil and Water Conservation regarding dimensions for tax ditches and recommended right-of-way necessary to perform major maintenance work (dipout and spreading). Information was presented on the dimensions (bottom width) of inventoried tax ditches. The bottom widths were used to calculate the amount of sediment removed during a typical dipout. Pie charts with percentages were used to present the distribution of bottom widths for all inventoried tax ditches. Four options were presented for consideration and discussion in undeveloped parcels:

- Maintain existing rights-of-way
- 2 tier system
- 3 tier system
- 4 tier system

TAX DITCH RIGHT-OF-WAY TASK FORCE

September 17, 2007 Minutes

Page 2 of 2

The tiered systems presented were for tax ditch spreading distances for major maintenance rights-of-ways in undeveloped parcels.

Task Force members were asked to review the handouts and discussion items and to recommend an option preference or alternative.

Representative Thornburg requested that the handouts distributed at the meeting be sent to Mr. Fifer who could not attend the meeting and to Mr. Corey who had to leave early for another commitment.

A discussion was held regarding obstructions within tax ditch rights-of-way that prevent or cause difficulty for routine maintenance to occur. Minimum amount of feet for maintenance was discussed.

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Thursday, October 4, 2007, 10:00 a.m. – 12:00 noon in the DNREC Secretary's conference room.

Meeting adjourned at 7:52 p.m.

Respectfully Submitted



Michele L. Garner
Administrative Specialist II

TAX DITCH RIGHT-OF-WAY TASK FORCE

October 4, 2007

Minutes

Representative Thornburg called the meeting to order at 10:07 a.m.

The following Task Force Members were present: Lauren Alberti, Rep. Pam Thornburg, Mike Brown, Fred Mott, Bill Vanderwende, Carlton Fifer, Rep. V. George Carey, Frank Piorko, Dave Toomey, Doug Corey, Gary Dodge, Ed Jestice, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Tom Barthelmeh, Michele Garner, Bob Enright, and Brooks Cahall (DNREC). Task Force members absent: Elton Murray.

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of September 17, 2007, as written.

A handout was distributed outlining the Tiered Options presented and discussed at the previous meeting.

A discussion was held regarding tax ditch rights-of-way in undeveloped parcels. There was a large amount of dialogue pertaining to the merits of multiple tiered tax ditch rights-of-way. Of concern, was the number of tiers needed and what would work best for tax ditch maintenance as well as, for landowner's maximum benefit/usage of their property. After much discussion, it was voted on and unanimously approved to utilize an Alternative Option (similar to Option 3 with a 3 Tier System) for tax ditch rights-of-way in undeveloped parcels as described below:

TIER 1	TIER 2	TIER 3
3' to 4' Bottom Width	5' to 10' Bottom Width	Over 10' Bottom Width
80' from Top of Bank or Existing Construction ROW (whichever is less)	120' from Top of Bank or Existing Construction ROW (whichever is less)	Existing Construction ROW to remain as filed in Court Order

The above 3 Tiered System addresses the inventoried tax ditches as follows:

- 68% Tier 1 - 3' to 4' bottom width
- 22% Tier 2 - 5' to 10' bottom width
- 10% Tier 3 - Over 10' bottom width

There was concern expressed regarding maintenance rights-of-way on tax ditches and the obstructions which make routine minor maintenance difficult (mowing) as well as, tax ditches which are not being dipped out or having major maintenance/construction work performed when needed. Representative Thornburg stated that the Sunset Committee would evaluate and discuss funding mechanisms to support proper management and maintenance of tax ditches.

It was noted that the recommendation and/or legislation proposed would need to include that the new rights-of-way are based on original design of the tax ditch (note: not all construction plans are filed in Superior Court, however, they are on file at the Division of Soil and Water Conservation).

TAX DITCH RIGHT-OF-WAY TASK FORCE

October 4, 2007 Minutes

Page 2 of 2

The following topics were briefly discussed and will be more fully addressed at the next meeting:

- Defining of Undeveloped parcels/lands.
- Defining of Maintenance (minor maintenance) and Construction (major maintenance) rights-of-way.
- Discussion of one sided and two sided rights-of-way.
- Discussion regarding Rights-of-way in Developed areas.

The recording and education regarding tax ditch rights-of-way will be discussed after the above concerns are addressed.

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Monday, October 29, 2007, 6:00 p.m. – 8:00 p.m. in the DNREC Secretary's conference room.

Meeting adjourned at 11:55 p.m.

Respectfully Submitted



Michele L. Garner
Administrative Specialist II

TAX DITCH RIGHT-OF-WAY TASK FORCE
October 29, 2007
Minutes

Representative Thornburg called the meeting to order at 6:20 p.m.

The following Task Force Members were present: Lauren Alberti, Rep. Pam Thornburg, Mike Brown, Fred Mott, Bill Vanderwende, Carlton Fifer, Rep. V. George Carey, Frank Piorko, Dave Toomey, Doug Corey, Gary Dodge, Elton Murray, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Michael J. Early (PLS), Michele Garner, Bob Enright, and Brooks Cahall (DNREC). Task Force members absent: Ed Jestice

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of October 4, 2007, as written.

A handout was distributed which included a copy of House Bill No. 189 with House Amendment No. 1 introduced during last years legislative session, a printout of Powerpoint slides with agenda items for discussion.

A discussion was held regarding the definitions of Construction (major) and Maintenance (minor) rights-of-way. Draft definitions were presented to the Task Force by Frank Piorko and modifications were made during the meeting to simplify the language. These revised draft definitions will be distributed to the Task Force Members for further evaluation. The Task Force Members were asked to submit recommended changes to Frank Piorko, who will compile all recommendations for presentation and discussion at the next meeting.

One sided and Two sided rights-of-way were discussed. Many opinions were expressed as to why limiting tax ditch rights-of-way to one side exclusively was not feasible including: some tax ditches are too wide to be accessed from just one side, many tax ditches have had two sided rights-of-way since formation, when there is a two sided right-of-way it allows more options regarding working around existing obstructions. Complications involved with changing right-of-way side through legislation involved such issues as: basis of decision on which side to retain right-of-way, equability. If a negotiated process was utilized, thousands of property owners would be involved, etc. It was decided to table the issue until the next meeting and see if a consensus exists to preserve one sided and two sided rights-of-way as presently filed in Court Order.

The defining of Undeveloped / Developed parcels of land was discussed. It was determined that more clarification is needed regarding at what definable point does a parcel change from being undeveloped to developed. Is this restricted to subdivisions or can this include a parcel being split from 100 acres to 98 acres and two 1 acre parcels, etc.? To assist in clarification and to be discussed in more detail at the next meeting legal resources will be conferred with (Bar Association Representative, DNREC DAG, Senate and House DAG). In addition, each County Administrator (Kent, Sussex, New Castle) will be invited to attend (or send a representative) to a future Task Force meeting.

TAX DITCH RIGHT-OF-WAY TASK FORCE

October 29, 2007 Minutes

Page 2 of 2

There was discussion on the reduction of tax ditch rights-of-way in Developed lands. It was suggested that the Three Tiered System agreed upon at the last meeting regarding Undeveloped lands may be adequate for the Developed lands as well. This led to discussion on the complications and financial burden placed on a tax ditch when a subdivision is created adjoining a tax ditch. The change from being able to spread the spoil when a ditch is dipped out to total disposal of spoil creates financial concerns for tax ditches. Presently, Title 7, Chapter 41, does not provide a mechanism for the increase of tax assessment due to a parcel being split or subdivided. The tax ditch can increase their tax warrant to accommodate increased costs for maintenance, however, this places a burden on all landowners within the tax ditch watershed as it is an across the board increase. Presently, when a subdivision is created or a landowner wants to reduce the a tax ditch right-of-way it is possible for DNREC and the Tax Ditch Managers to negotiate an increased assessment (tax collection) to assist with increased costs as a result of the reduction and landuse change. There was discussion on if a formula could be developed to reflect the increased financial costs when total disposal is necessitated. DNREC will investigate this option and present a recommendation at the next meeting.

A proposal to exempt existing structures within tax ditch right-of-ways was discussed. The defining of what type of structures would be exempted included:

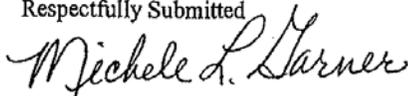
- Structures with permanent foundations – houses, garages, sheds, etc.
- Crucial systems/structures – septic systems, wells

The need for clarification of the exempting of the existing structures (Grandfathered-in) was discussed including: how close to the structure does the exemption include, time-line for exempt structures (when permit obtained, subdivision approved, etc.). This will require consultation with the Task Force's legal resources. What is specifically needed in a recommendation for proposed legislation to allow the marketability of a property to be unhindered by existing structures placed unknowingly within the tax ditch right-of-way prior to the filing of Tax Ditch rights-of-way in the Recorder of Deeds Office (January 2007). This matter will be addressed more fully at the next meeting. Task Force Members are asked to submit suggestions regarding this matter.

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Monday, November 26, 2007, 4:00 p.m. – 7:00 p.m. in the DNREC Secretary's conference room.

Meeting adjourned at 8:15 p.m.

Respectfully Submitted



Michele L. Garner
Administrative Specialist II

TAX DITCH RIGHT-OF-WAY TASK FORCE
November 26, 2007
Minutes

Representative Carey called the meeting to order at 4:05 p.m.

The following Task Force Members were present: Lauren Alberti, Mike Brown, Fred Mott, Bill Vanderwende, Carlton Fifer, Rep. V. George Carey, Frank Piorko, Dave Toomey, Doug Corey, Gary Dodge, Rep. Pam Thornburg, Elton Murray, Ed Jestice, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Michael Early (PLS), Tom Barthelmeh, Bob Enright, and Brooks Cahall (DNREC).

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of October 29, 2007, as written.

Handouts were distributed including PowerPoint presentation to be given by Frank Piorko, Summary of structures in the existing and proposed tax ditch right of way for Gravelly Run Tax Ditch and Little Bay Tax Ditch, and a cost analysis of major maintenance for different land uses.

Frank Piorko gave a presentation that summarized what has been accomplished and what issues remain outstanding.

A brief summary was given of the 2 sided right-of-way discussion from last meeting. A consensus was then reached that the construction and maintenance sides of the tax ditch should remain as originally established in the court order.

A concern was expressed that this task force should not increase tax ditch rights-of-way. It was explained that the smaller of the three tier system right-of-way or the existing right-of-way will be used. This will be clarified in the recommendations.

The Task Force discussed the 16.5' maintenance right of way and the 25' maintenance right of way and the possibility of changing the 16.5' right of way to 25'. It was concluded by all that the tax ditch maintenance right of way will remain as formed on each tax ditch organization.

A recommendation was made that the three tier system should apply to all tax ditches regardless of the land use. A consensus was reached agreeing to this recommendation.

Existing permanent structures within the tax ditch right of way were discussed. It was agreed by all that these structures would need to be grandfathered. The wording and an effective date of the grandfather clause will need to be worked out in the task force recommendations. Proving that the permanent structure was in place prior to the determined date of the grandfathering will be the responsibility of the landowner."

Permanent structures need to be defined. Look into current local ordinances for definitions. This list should include agricultural structures.

TAX DITCH RIGHT-OF-WAY TASK FORCE

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Discussion was held about a variance/appeals process. It was agreed that this should be a panel of informed unbiased people. The Division of Soil and Water Advisory Council was mentioned. Mike Brown will look at the statute that creates the Council and who the present members are.

A consensus was reached that nothing new should be placed within 25' feet from top of bank. However, there could be a hardship variance issued by the appeals/variance group.

A rough DRAFT of the Tax Ditch Right of way Task Force recommendations are due by December 10. Frank will draft recommendations. Draft recommendations will be sent to the Task Force Members prior to the next meeting. This draft should include a draft fiscal note.

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Tuesday, December 18, 2007, 2:00 p.m. – 4:00 p.m. in the DNREC Secretary's conference room.

Meeting adjourned at 6:55 p.m.

Respectfully Submitted



Brooks Cahall

Environmental Program Manager I

TAX DITCH RIGHT-OF-WAY TASK FORCE
December 18, 2007
Minutes

Representative Thornburg called the meeting to order at 2:10 p.m.

The following Task Force Members were present: Lauren Alberti, Mike Brown, Fred Mott, Bill Vanderwende, Carlton Fifer, Rep. V. George Carey, Frank Piorko, Dave Toomey, Doug Corey, Gary Dodge, Rep. Pam Thornburg, Elton Murray, Ed Jestice, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Michael Early (PLS), Bob Enright, and Brooks Cahall (DNREC).

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of November 26, 2007, as written.

Rep. Thornburg briefly discussed the State's financial position and the effect a fiscal note could have on potential legislation.

Frank Piorko began a discussion of the Draft Recommendations that were sent to members. It was decided that the task force would go through the draft recommendation by recommendation (see attached Draft Recommendations).

Definitions

A question was raised about the word "obstruction" in the definition of Minor Maintenance right-of-way. Nothing was concluded.

The definition of permanent structures was discussed and it was decided to get input from the DNREC Deputy Attorney General (DAG).

Recommendation #1

It was discussed as to why there needed to be a delay before filing the certified list that split out the parcels with tax ditch right-of-way from those parcels that only have a tax ditch assessment.

After some discussion, a consensus was agreed to that this recommendation was needed.

Recommendation #2

There was a discussion about whether or not to include the channel cross-section as part of the right-of-way. Different options were brought up including: not changing anything and having a separate definition of the channel. This second option would make the channel a separate right-of-way.

There was discussion about making a recommendation #2B referencing a question by Mike Brown about the ditches that use the terms "adequate" or "sufficient" when defining the right-of-way. How will these cases fit into the three tier system? There was not a consensus on this recommendation.

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Recommendation #3

After some discussion a consensus was agreed to that this recommendation was needed.

Recommendation #4

The grandfather clause should be a "legal non conforming use" clause. There was additional conversation about what kinds of obstructions should be grandfathered. The conversation was centered on fences and was tabled by the Chair.

Recommendation #5

Discussion of the placement of new agricultural structures was brought up however, nothing was finalized.

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Friday, January 25, 2008, 10:00 a.m. – 12:00 p.m. in the DNREC Secretary's conference room.

Meeting adjourned at 4:05 p.m.

Respectfully Submitted


Brooks Cahill
Environmental Program Manager I

TAX DITCH RIGHT-OF-WAY TASK FORCE
January 25, 2008
Minutes

Representative Thornburg called the meeting to order at 10:05 a.m.

The following Task Force Members were present: Lauren Alberti, Mike Brown, Fred Mott, Bill Vanderwende, Carlton Fifer, Frank Piorko, Dave Toomey, Gary Dodge, Rep. Pam Thornburg, Elton Murray, Ed Jestice, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Michael Early (PLS), Bob Enright, Michele Garner, and Brooks Cahall (DNREC). Task Force Members absent: Rep. V. George Carey, Doug Corey.

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of December 18, 2007, as written.

Frank Piorko distributed a summary of the review points discussed at the last meeting for Recommendations #1 – 5. The discussion began on the review of the Draft Recommendations beginning with Recommendation #6. It was determined that Recommendation #5 needed to be re-visited before proceeding with #6.

Discussion resumed on Recommendation #5 regarding replacement of permanent structures “grandfathered” in and new structures permitted within a tax ditch right-of-way. It was determined that replacement of permanent structures within 50’ of top of bank would be reserved for hardship cases. Hardship would be defined as the property owner’s ability to use the property being adversely affected if a structure is not permitted within the 50’ right-of-way. A standard of reasonableness would need to be set. Mr. Dodge agreed to draft these standards.

The replacement of permanent structures “grandfathered” in and new structures permitted outside of the 50’ right-of-way, yet within the maximum construction right-of-way defined in the proposed Tier 1, 2, or 3 was discussed. A standard of reasonableness would need to be set. Mr. Dodge agreed to draft standards.

The Court Order Change process was discussed. A handout was distributed showing that this process is extensive and involves a lot of staff time. It was suggested that a written agreement, signed by the landowner, the Tax Ditch Managers, and recorded in the Recorder of Deeds Office along with a survey or map indicating type and placement of permitted structure, may be an alternative to the Court Order Change process. This “Written Agreement” would be used when the right-of-way is to remain intact, however, a permanent structure is permitted within the right-of-way. This option will need to be included in a Recommendation.

Recommendation #6 and #7 were discussed in more detail. A modification is needed to these recommendations in regards to the type of committee needed. It was noted that an “Advisory” Committee may not be the correct term. An “Appellate” board which can make a binding decision would perhaps be a better fit.

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Part of the recommendation for an appellate (appeals) board would be to include that arbitration before this board would be binding. It was determined that arbitration would not be mandatory due to if a landowner cannot reach agreement through a "Written Agreement" or "Court Order Change", and chooses not to participate in binding arbitration then they can petition Superior Court to have the Board of Tax Ditch Commissioner's investigate per Title 7, Chapter 41, subsection 4189 (3).

The makeup of the proposed Appellate (Appeals) Board was discussed. Three options were initially discussed:

- 1) DNREC Secretary appoints members, some of which could be members of the present Task Force.
- 2) DACD Executive Board appoints members from each county.
- 3) Legislative Appointments - by Senate and House, etc. (similar to present Task Force appointments).

It was determined that options 2 and 3 would be explored further. Option 1 was tabled by the Chair.

A question was raised as to if a hearing officer (appeals board member) could be held liable for decisions. Frank Piorko will check with DNREC's Deputy Attorney General regarding this.

It was brought up that language to protect the Tax Ditch (liability concerns) if grandfathered structures are damaged during maintenance operations needs to be added to Recommendation #4.

For discussion at the next meeting:

- Appeals Board - appointment process and other concerns.
- Appeals Board - determine what authority does Tax Ditch Managers & Board have (will this be binding arbitration?).
- New Development - costs.

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Friday, February 15, 2008, 10:00 a.m. - 12:00 p.m. in the DNREC Secretary's conference room.

Meeting adjourned at 12:22 p.m.

Respectfully Submitted



Michele L. Garner
Administrative Specialist II

TAX DITCH RIGHT-OF-WAY TASK FORCE
February 15, 2008
Minutes

Representative Thornburg called the meeting to order at 10:01 a.m.

The following Task Force Members were present: Rep. V. George Carey, Doug Corey, Lauren Alberti, Mike Brown, Fred Mott, Bill Vanderwende, Carlton Fifer, Frank Piorko, Dave Toomey, Gary Dodge, Rep. Pam Thornburg, Elton Murray, Ed Jestice, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Bob Enright, Michele Garner, and Brooks Cahall (DNREC).

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of January 25, 2008, as written.

Mike Brown gave an update of the National Association of Conservation Districts conference, recently held in Reno, Nevada.

Frank Piorko discussed the legislation which would be necessary regarding "grandfathering" and the definitions of permanent obstructions. Current tax ditch law (Title 7, Chapter 41, Subsection 4186) allows for recourse and penalties for persons who negligently or knowingly obstruct any part of a tax ditch.

Recommendation #5 and its most recent revisions from the January 25th meeting were discussed. It was noted that any increased assessment and/or a special assessment will need to be included with any Agreement or Court Order Change (COC) and recorded. The recording of Agreements between landowners and the Tax Ditch Managers and COC's was discussed. The documents/agreements will need to be filed in the Recorder of Deeds office in order to be a matter of public record and notice. The responsibility of filing Agreements and filing fees would be at the requesting landowner's expense. A copy of any Agreement would need to be kept by the Tax Ditch and the Division of Soil & Water Conservation.

Proposed grandfathered structures were discussed. It was suggested that an increased assessment be assigned to parcels which would have grandfathered structures that cause increased maintenance and cleanout costs to the Tax Ditch. It was noted that to do so would negate the purpose of "grandfathering". Additional cost shared funds to tax ditches which have increased costs associated with grandfathered structures would need to be obtained. This matter will be discussed by the Sunset Committee on Conservation Districts. Grandfathered structures would be considered "conforming structures" and would only include structures within the tax ditch right-of-way prior to enactment of legislation.

Legal non-conforming structures and illegal non-conforming structures were discussed.

- Structures placed or built within the tax ditch right-of-way after legislation is enacted and with a recorded Agreement or Court Order Change would be considered "legal non-conforming structures".

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- Structures placed or built within the tax ditch right-of-way after legislation is enacted and without a recorded Agreement or Court Order Change would be considered “non-conforming structures”.

It was determined that the County (Kent, Sussex, and New Castle) Planning and Zoning Departments need to be included in the process. Presently, landowners obtain building permits and build within tax ditch rights-of-way. It was noted that since notice of Tax Ditch assessment and/or rights-of-way are now recorded in the Recorder of Deeds Office and are “of public record” which leaves the burden of violation of rights-of-way on the landowner, it is acknowledge that the average landowner would not search the public record prior to obtaining a building permit. Municipalities were also determined as needing to be involved in the process. It was decided that each County Administrator and the League of Local Governments would be contacted regarding sending a representative to the next Task Force meeting.

Mr. Vanderwende stated that the Sussex Conservation District would be meeting with the County on February 26, 2008, the tax ditch rights-of-way concerns would be brought up.

Recommendation #8 regarding education was discussed. The Sussex County Association of Towns, League of Local Governments and other such entities that have members who issue building permits will be included in education outreach efforts. A notice to all landowners affected by a tax ditch right-of-way would also be a key education component.

The present Court Order Change process was discussed regarding the signatures of Managers. Present law does not require Tax Ditch Managers sign these documents. The Division of Soil and Water Conservation practice of many years has been to include the Tax Ditch Managers as signers to Court Order Change documents as a matter of courtesy. There has only been a couple of instances in recent years where Managers did not sign these documents. Based on a legal opinion and Task Force members concurrence, that since this practice has been working, the present law regarding signatures to Court Order Change documents should remain as is.

A discussion was held concerning the proposed “Appeals Board”. The discussion included concerns that since the present law already provides landowners access to “appeal” to Superior Court when an agreement cannot be reached through traditional Court Order Change agreement, that an Appeals Board is not necessary and may complicate an already overtaxed system.

Tax Ditch rights-of-way in the new development process was discussed. Presently, as part of the required storm water management plan process, tax ditch rights-of-way are included in the review and approval of plans. The Division of Soil and Water Conservation works with Tax Ditch Managers and Developers in negotiating reduced rights-of-way. It was determined that while an Appeals Board may speed up the process for a developer to pursue a project which was denied a reduction of a tax ditch right-of-way (versus the Petitioning of Superior Court), it has to-date been largely unnecessary.

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The tax ditch statute would need to be amended to include filing requirements regarding Agreements into the Recorder of Deeds office.

It was decided that the feasibility of an "Appeals Board" would be discussed further at the next meeting.

For discussion at the next meeting:

- Appeals Board
- Education

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for March 3, 2008, 10:00 a.m. – 12:30 p.m. in the Majority House Hearing Room, Legislative Hall, 411 Legislative Avenue, Dover. A light lunch will be provided.

Meeting adjourned at 12:15 p.m.

Respectfully Submitted



Michele L. Garner
Administrative Specialist II

TAX DITCH RIGHT-OF-WAY TASK FORCE

March 17, 2008

Minutes

Representative Thornburg called the meeting to order at 1:05 p.m.

The following Task Force Members were present: Rep. V. George Carey, Fred Mott, Frank Piorko, Dave Toomey, Ed Jestice, Rep. Pam Thornburg, Elton Murray, Mike Brown, Bill Vanderwende, Richard James, Gary Dodge, and Lauren Alberti. Absent: Doug Corey, Carlton Fifer. Also present were the following: Debbie Absher (Sussex Conservation District), Bob Enright, Michele Garner, Brooks Cahall, and Michelle Jacobs (DNREC), Robert Mooney (League of Local Governments), Lawrence Lank (Sussex County Planning & Zoning), Kelly Crumpley (Kent County Planning), Terry Higgins (Grey Tax Ditch), Rich Collins (Positive Growth Alliance), and Joseph Day (New Castle County Department of Land Use).

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of February 15, 2008, as written.

Handouts distributed included: Draft Recommendations Amended for 3/17/08 meeting, Draft Education & Outreach Plan, Draft flow charts – Agreement With Appeals Process & Without Appeals Process.

Discussion began on which type of Board would be recommended, if any, an Advisory Board or Appeals Board. It was decided that an Appeals Board would be best suited should the Task Force recommend formation of a Board. There was discussion on whether a “binding” decision would be the avenue to recommend. A consensus was reached that if a landowner sought resolution to a request for a Court Order Change or an Agreement (to allow structure(s) within a right-of-way), the choices would be Appeals Board or Petition Superior Court – both of which would be binding on the landowner.

The flow charts were reviewed – one with an appeals process versus one without. It was proposed that only a landowner can make an appeal to the proposed Appeals Board.

Representative Thornburg gave the guests a brief history of why this Task Force was formed.

The appointing authority and composition of the proposed Appeals Board was discussed. Proposed was a five (5) member appointing authority comprised of: Governor, Senate President pro tempore, Speaker of the House, Senate Minority Leader, House Minority Leader. Also discussed regarding the composition of the proposed Appeals Board was the areas of expertise and geographic balance the appointing authority would utilize when making appointments. This would help insure a balanced Appeals Board with knowledge of tax ditches.

Discussion continued on the composition of the proposed Appeals Board. A proposal was made for a total of seven (7) Appeals Board members comprised of representatives as follows:

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- 2 Delaware Farm Bureau / Delaware Grange Member
- 1 Delaware Association of Conservation District Member
- 3 Tax Ditch Commissioners (one from each County)
- 1 Public Member / Member at Large

The appointment of Tax Ditch Commissioners (also known as: Board of Ditch Commissioners) was discussed. It was explained that prescribed by current tax ditch law there are three (3) Commissioners appointed by Superior Court for each county. Each county Conservation District Board of Supervisors makes recommendations to the resident associate judge of Superior Court.

Filing of Agreements (allowing structures within the right-of-way) were discussed. As shown on the flow charts it would be the responsibility of the landowner to file the Agreements in the Recorder of Deeds office. A concern was raised as to the burden to landowners unfamiliar with the filing process this would cause. It was discussed that the landowner assumes that burden by requesting a structure(s) to be permitted within the right-of-way. To have the Division of Soil and Water Conservation file the Agreements with the landowner paying the filing costs was proposed. There was a question raised as to if the filing fees are waived as before. It was stated that the fee to file in the Recorder of Deeds Office certified lists of parcels affected by a tax ditch assessment and/or a right-of-way were waived by the legislature in 2006. These certified lists are filed in a special volume in each Recorder of Deeds Office and do not give specifics other than the subject parcel is affected by an assessment and/or right-of-way. The proposed Agreements to allow structures within the right-of-way would be individualized (per landowner requests and not a bulk listing of parcels) filings that would include some type of drawing to locate the structures on the parcel.

It was explained that fees were waived to record the certified lists were done to put on public record what was difficult for title searchers to located before. The Agreements would be voluntary and at the request of a landowner therefore the costs should be borne by the landowner.

Representative Thornburg opened the floor for public comment and discussion regarding the Appeals Board appointment, composition, and process.

Rich Collins representing the Positive Growth Alliance brought up the need for the reduction of construction rights-of-way. He was advised of the Task Force's draft recommendations to date to reduce the majority of tax ditch construction rights-of-way. Mr. Collins also inquired about legislation to add assessment / fee costs for structures placed in a tax ditch right-of-way. It was explained that the Task Force's proposal at this time is to "grandfather" existing structures. New structures (after proposed legislation) would need to be approved through the Court Order Change process or by Agreement with the Tax Ditch.

Mr. Higgins and Kelly Crumpley expressed concerns about the proposed Appeals Board.

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There was a consensus reached that the revised draft recommendations (updated after this meeting) be sent to all Task Force members to review prior to the next meeting. The intent of the next meeting would be to vote on the recommendations and finalize for submission to the Legislature. It was also requested that the draft recommendations also be sent to each County representative and League of Local Governments.

An explanation was requested on how the Task Force had selected 50' from Top of Bank as the "new" recommended minimal right-of-way for excluding permanent structures on a property. It was explained that this amount was agreed upon as "reasonable" to allow movement of mowing and excavating equipment. Previous 25' and 16.5' maintenance rights-of-way allowed for minimal movement of equipment, particularly an excavator which would be needed for minor maintenance removal of beaver dams, replacement of pipes, etc.

Fences and their definition as to if a permanent structure or not was discussed. It was determined that fences would be excluded as a permanent structure for "grandfathering" purposes.

Re-assessment costs to landowners requesting approval to permit structures within the right-of-way versus voting rights were discussed. It was explained that to separate assessment cost (other than a one time special assessment) for voting purposes would be difficult to do.

Development of new lots within tax ditch rights-of-way was discussed. It was explained that the present process for stormwater review of new development presently attempts to resolve this issue. Developers are requested to leave areas adjacent to the tax ditch as open space in the planning process. The County could further address this in the land-use planning requirements.

Representative Thornburg opened the floor for public comment and discussion regarding the rights-of-way concerns.

Rich Collins expressed concern as to the lack of disclosure in the past of tax ditch rights-of-way and the DNREC legal opinion regarding construction rights-of-way.

Lawrence Lank stated that Sussex County may have to consider amending their development regulations to include open space adjacent to tax ditches.

Education was discussed. The Task Force Members were asked to review in detail the Draft Education and Outreach Plan and submit suggestions/revisions by the next meeting.

There was discussion on the need to prevent new structures from being placed into the tax ditch rights-of-way. A focal point was the issuance of building permits by the Counties and Municipalities. The County Representatives were asked if they could incorporate into the building permit process a mechanism to prevent the issuance of permits within a tax ditch right-of-way. It was discussed that the easiest method would be a listing of parcels affected by a tax ditch right-of-way along with GIS (Geographic Information System) digital data with right-of-way information. Mr. Crumpley (Kent County), Mr. Lankford (Sussex County), and Mr. Day

TAX DITCH RIGHT-OF-WAY TASK FORCE

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(New Castle County stated that they believed their agency could update their policy and data if DNREC could provide the digital data necessary. It was believed that this could be done without a legislative mandate. The League of Local Governments would also need to be included to assist municipalities which issue building permits.

Task Force members requested that attachments and exhibits to be submitted with proposed legislation be sent along with the latest draft recommendations being sent to them prior to the next meeting. The Division of Soil and Water Conservation will update the draft recommendations and submit to Task Force Members, County Representatives & League representatives by April 7th for review.

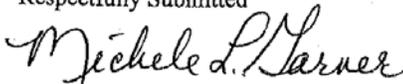
The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for Wednesday, April 23, 2008, 6:00 p.m. – 8:00 p.m. in the Majority House Hearing Room, Legislative Hall, 411 Legislative Avenue, Dover.

Representative Thornburg opened the floor for public comment and discussion regarding any remaining concerns.

Lawrence Lank explained that the Division of Soil and Water Conservation last year and again just a month ago met with members of the Sussex County Council regarding tax ditch rights-of-way. The County was very supportive in working to update disclosure of rights-of-way.

Meeting adjourned at 3:50 p.m.

Respectfully Submitted



Michele L. Garner
Administrative Specialist II

TAX DITCH RIGHT-OF-WAY TASK FORCE
April 23, 2008
Minutes

Representative Thornburg called the meeting to order at 6:12 p.m.

The following Task Force Members were present: Gary Dodge, Lauren Alberti, Rep. Pam Thornburg, Ed Jestice, Dave Toomey, Bill Vanderwende, Carlton Fifer, Richard James, Fred Mott, Frank Piorko, Mike Brown, Elton Murray, and Rep. V. George Carey. Absent: Doug Corey. Also present were the following: Bob Enright, Michele Garner, and Brooks Cahall (DNREC), Robert Mooney (League of Local Governments), Bill Powers (New Castle County 6th District Councilman), and Gary Warren (New Castle County Farm Bureau).

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of March 17, 2008, as written.

Representative Thornburg spoke of the process to introduce recommendations and legislation. Not all recommendations are expected to pass this legislative session. Recommendations with any type of fiscal note could be held up by the finance committee.

The Task Force members reviewed each item presented in the draft recommendation that had been amended as a result of the March 17th meeting. The discussion results are as follows:

Statement of Findings – okay as presented.

Previous Charge – there was discussion that the wording of the previous charge needed correction and clarification. The “Previous Charge” would be updated to reflect the exact wording regarding the timeline for filing of certified list per House Bill 475 of the 143rd General Assembly and for Senate Concurrent Resolution #27 of the 144th General Assembly.

Recommendation #1 –

- remove last word “enacted” and replace with “signed into law”.
- add sentence “This recommendation will require additional financial resources (see attached)”.

Recommendation #2 –

- remove sentence “This recommendation will require additional financial resources (see attached)”. Move to Recommendation #1.
- There was discussion on what will be filed in the Recorder of Deeds Office. It was explained that each tax ditch would have two (2) certified lists filed in the Prothonotary’s Office, which would then be filed into the Recorder of Deeds Office (each county). One certified list would include the owners name & parcel number of all parcels affected by a tax ditch assessment only. The other certified list would include the owners name & parcel number of all parcels affected by a tax ditch right-of-way and assessment.

TAX DITCH RIGHT-OF-WAY TASK FORCE

April 23, 2008 Minutes

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Recommendation #2A –

- addition of the word “nearest” in the sentence describing top of ditch bank. This was suggested to clarify which bank is used for reference point.

Recommendation #3 - okay as presented.

Recommendation #4 -

- 1st paragraph, 2nd sentence, change the word “eliminated” to “exempted”.
- 2nd paragraph, 1st sentence, change the word “would” to “may”.
- 2nd paragraph, last sentence, remove entire sentence.
- There was discussion on the feasibility of leaving this sentence in so that legal staff writing the definitions for permanent structures (Recommendation #9) would not include fences as being grandfathered structures. It was stated by Rep. Thornburg that legal staff would be informed regarding “fences” not being grandfathered by new legislation.
- 3rd paragraph, 2nd sentence, change wording “effective date of legislation” to “signed into law”.

Recommendation #5 –

- Item #1, 1st sentence, change wording “effective date of legislation” to “legislation is signed into law”.
- Item #2, 1st sentence, change wording “effective date of legislation” to “legislation is signed into law”.
- Item #5, 1st sentence, change wording “effective date of legislation” to “legislation is signed into law”.
- Item #5, 1st sentence, change word “assessed” to “charged”.
- Item #5, 2nd sentence, change word “assessment” to “charge or special assessment”.
- remove sentence “This recommendation will require additional financial resources (see attached)”.

Recommendation #6 –

- 1st paragraph, 3rd sentence, remove & replace with “Compensation for the Appeals Board and support staff is recommended.”
- 1st paragraph, 4th sentence, add at the end of sentence “and a filing fee paid by the landowner could assist in administrative costs for the appeals process”.

Recommendation #7 –

- remove sentence “This recommendation will require additional financial resources (see attached)”.
- There was a suggestion that a curriculum could be developed to attract professionals to receive training (surveyors, attorneys, etc.). Many professionals have to attend continuing education classes. DNREC possibly could have some staff become certified trainers and courses/training could be fee based to offset administrative costs.

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Recommendation #8 –

- 4th paragraph, remove “causes an increase to” to “including, but not limited to any change that would increase demands or”.

Recommendation #9 –

- Add to “Obstruction” (definition) additional wording of “for flow in channel and within the right-of-way”.

The changes discussed (above) would be incorporated into a final draft and sent by April 28th to all Task Force Members for their endorsement. Task Force Members were asked to respond to Michele Garner (DNREC) with their endorsement or concerns by May 2nd.

Representative Thornburg opened the floor for public comment and discussion regarding any remaining concerns.

Representative Thornburg thanked the members of the Task Force for their hard work.

Meeting adjourned at 8:35 p.m.

Respectfully Submitted,



Michele L. Garner
Administrative Specialist II