

2021 Tax Ditch Modernization Workgroup Report

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Executive Summary

Delaware has 234 individual Tax Ditch Organizations which manage over 2,000 miles of channel and provide drainage benefits to 46,292 properties in Delaware and almost one-half of the state-maintained roads. The Uniform Drainage Law also known as the Tax Ditch Law was passed in 1951 to create a system of watershed-based organizations to maintain drainage ditches throughout the state in perpetuity. Delaware has changed a lot in the last 70 years and approximately 90% of tax ditch systems are at least 35 years old. The historic intention of Tax Ditch Organizations and their designs versus current expectations and conditions has resulted in confusion as to the purpose of these ditches or concerns with the legally defined operations of tax ditches in today's society. To fully identify and address issues relating to these concerns and provide feedback for the Joint Legislative Oversight and Sunset Committee (JLOSC) Sunset report, the Delaware Department of Natural Resources and Environmental Control (DNREC) Tax Ditch Program used workgroups to garner feedback related to the following topics: operational issues, changing land use, insufficient funds, and officer retention and turnover.

Across all workgroup sessions common themes identified related to a need for design changes to tax ditch systems to account for changing land uses and environmental factors, increased efforts for education and outreach to the public and partner agencies about responsibilities, increase in funding sources for sustaining and improving tax ditches and their rights-of-way, and changes in Delaware Law to simplify the ability for partner agencies to assist tax ditch organizations in their operations.

The following report identifies the key findings and recommendations from the DNREC Tax Ditch Program and associated outcomes from each of the workgroup sessions.

Key Findings & Recommendations

The following are tables that summarize the key findings and recommendations for the Tax Ditch Modernization Workgroup. The tables are grouped by the following topics: education and outreach, funding changes, design changes and law changes.

The key finding and recommendation, a Summary which explains the outcome of what the recommendation would accomplish, what the action Currently Requires to take place, Recommended Changes to allow the recommendation to occur, potential Funding Implications, acknowledgement of any Workgroup Supporting Documentation that provides just cause for making the recommendation, and if DNREC can implement the finding now.

[INSERT CORRESPONDING TABLES WHEN READY TO FINALIZE]

Education and Outreach

Funding Changes

Design Changes

Law Changes

Workgroup Details

Overview of Workgroup Tasks

The Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Watershed Stewardship, Conservation Programs Section (CPS), Tax Ditch Program established the Tax Ditch Modernization Workgroup to discuss concerns regarding tax ditch operational issues to include specifically funding and officer recruitment and retention as well as impacts from external pressures such as changing landuse. The Workgroup engaged participants in identifying causes of these concerns and issues, determining existing processes, and proposing potential solutions that would benefit the diverse range of stakeholders. Stakeholders to include were determined based upon their knowledge and/or responsibilities within the tax ditch discussion. The first two workgroups and last workgroup were informational and open to all workgroup participants. All other workgroup sessions were structured into focus groups to allow for intimate discussion and input by only a select group of workgroup members.

Operational Issues

Two introductory sessions were held virtually to ensure all participants had the same foundational knowledge regarding operations of the Tax Ditch Organization and systems: Tax Ditch Law 101 and Tax Ditch Function 101. These sessions were held on Wednesday June 9 and June 23, 2021, respectively. All members of the Tax Ditch Modernization Workgroup (Appendix A) were asked to attend these two sessions (Figure 1).

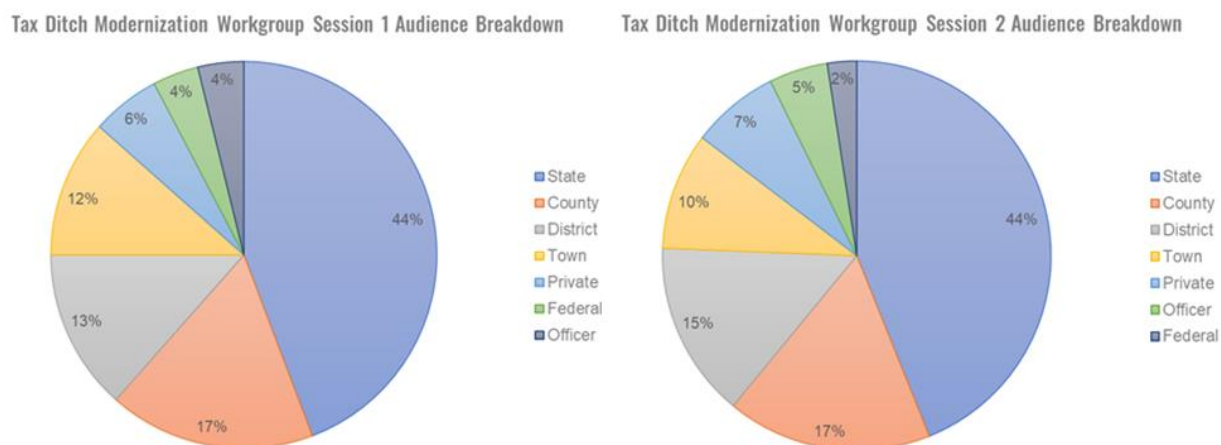


Figure 1. Tax Ditch Modernization Workgroup Sessions 1 & 2 audience by affiliation.

Session 1: Tax Ditch Law 101

Workgroup Finding 1.0: Tax Ditch Law 101 presentation to be posted on the DNREC Tax Ditch Program webpage and incorporated into DNREC staff and new officer training to increase education and outreach.

Workgroup Finding 1.1: DNREC Tax Ditch Program to provide personalized trainings to officers and associated agencies to ensure roles and responsibilities of all are clear.

A total of 57 individuals attended the Tax Ditch Law 101 session. This session provided an overview of DE Code Title 7, Chapter 41 Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands or the “Tax Ditch Law” to review fundamental operating and management principles, including limitations of tax ditch organizations. Tax ditch organizations operate with the assistance and/or supervision of multiple agencies. As a result, clarity regarding roles, responsibilities, and legal authorities of tax ditch organizations and affiliated entities are not well understood (Figure 2).

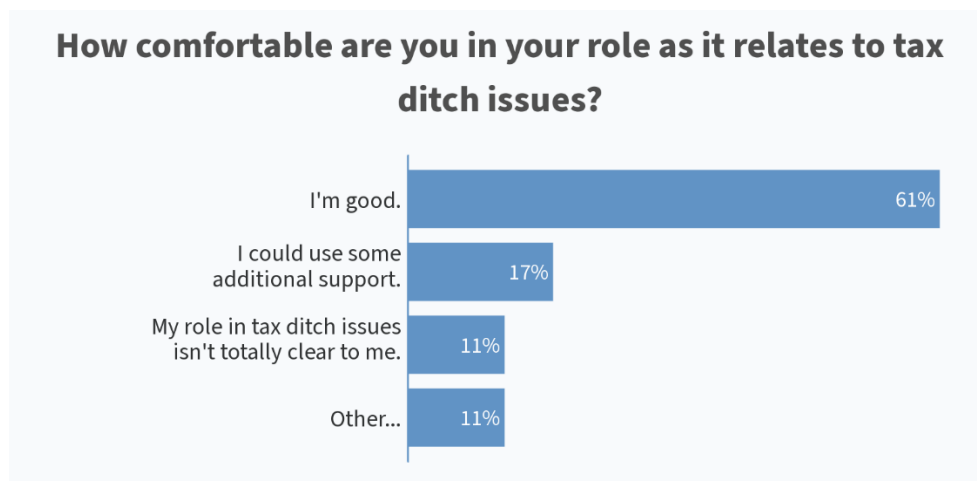


Figure 2. Results of polling question regarding workgroup attendees' comfort with their role in tax ditches.

The information presented during this session was shared to clarify roles and responsibilities as defined by the Tax Ditch Law including those of the organization, officers, taxables or the landowners who comprise the organization, and the most closely affiliated partner agencies to include the Delaware Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship and county Conservation Districts. This presentation (Appendix B) was recorded and will be shared and utilized as a training resource for new hires to the DNREC Drainage Program, partner agencies, and those who are new or interested in becoming tax ditch officers.

Members of the workgroup were also solicited for feedback regarding any missing challenges facing Tax ditch organizations that were not included in the topics for discussion through the workgroup effort. The attendees offered the following concerns and/or questions which were then incorporated and addressed in subsequent workgroup sessions.

- Are landowners being taxed by the county on tax ditch right-of-ways? If the tax ditch association “owns” the right to construct or maintain a ditch the landowner’s ability to use that right-of-way is reduced but may be paying property tax?
- You have already identified lack of resources/funding and ditch maintenance as two challenges, yet DNREC has recently implemented a permit fee for tax ditch organizations to perform dipouts that maintain the ditches. This is clearly counterproductive.
- Right-of-way issues like tree planting

- Right-of-ways that were infringed upon causing lack of maintenance
- Infrastructure best practices
- Creating new tax ditches to cure private drainage insufficiencies
- Design specifications (designing to 10-year storm) vs stormwater needs including impervious surface
- DelDOT coordination
- General public awareness of tax ditches
- Changing land use- they are no longer agricultural
- Officer recruitment and retention
- Capacity of systems

Session 2: Tax Ditch Function 101

A total of 46 individuals attended the Tax Ditch Function 101 workgroup session. This session provided both an overview of tax ditch design criteria, considerations, and assumptions, overview of tax ditch considerations for permit agencies, and covered tax ditch maintenance practices and activities. Through this session any additional ideas or considerations for improvements to tax ditch designs, permitting coordination, and maintenance responsibilities were encouraged and received.

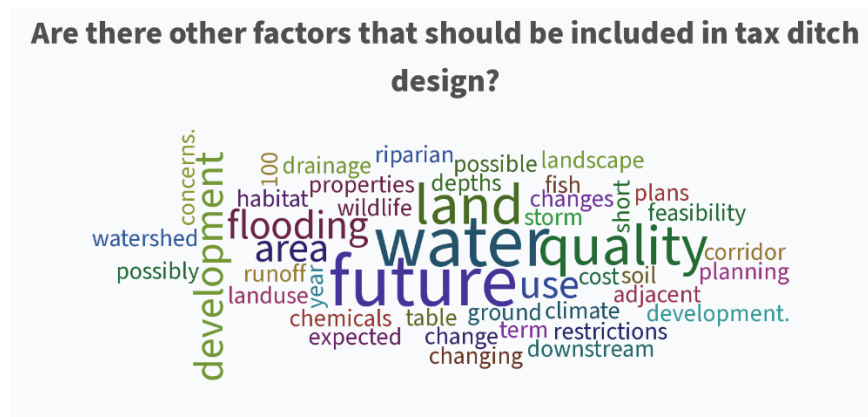
Design

Workgroup Finding 2.0: Develop a plan to consider modern and future factors during the design of new or changes to existing tax ditches.

Workgroup Finding 2.1: Update and/or create a Tax Ditch Best Management Practice (BMP) handbook. The handbook should include design details that can be replicated to address tax ditch maintenance issues under typical tax ditch site conditions. The handbook must provide operation and maintenance details for each practice for clarity of expectations.

Delaware's environment has changed drastically since the inception of tax ditch organizations. However, the methodology of designing new tax ditch channels and/or making improvements to existing tax ditch channels has been changing at a much slower pace. Throughout the discussion many factors were suggested for incorporation into tax ditch designs (Figure 3). The factors that are not currently considered are noted below for future incorporation in project planning and tax ditch design.

- Design for 100-year storm
- Climate Change
- Water quality
- Wildlife habitat
- Riparian corridor planning
- Anticipated land development and/or landuse changes



To further explore some of the tax ditch design factors, a portion of Session 2 highlighted the natural design practices and approaches that can be used to address tax ditch maintenance issues. These types of techniques help to improve environmental and water quality, reduce the frequency of tax ditch maintenance activities, and typically allow for the leveraging of additional sources of funding for implementation. The workgroup was asked “would you like to see more natural techniques installed in your tax ditch systems?” with a unanimous response of “yes”. As a follow-up question, the workgroup members were asked, “what benefit of natural techniques is most important to you?” (Figure 4). Changes to improve water quality was the most desired reason for the implementation of natural design techniques. These results will be utilized to prioritize standards and designs in the recommended update and development of a Tax Ditch Best Management Practice (BMP) handbook.

Tax Ditch and Development Impacts

Workgroup Finding 3.1: Ensure that the location of digital tax ditch data is easily accessible and marketed to appropriate agencies.

Workgroup Finding 3.2: Recommend external agencies have tax ditch data “on” by default for use in their web-based mapping applications.

Workgroup Finding 3.3: Distribute printed copies of the “Land Development Request Form” and “Tax Ditch ROW Change Request” to the agencies requested for participation in the workgroup that issue permits and approvals.

Accounting for tax ditch impacts prior to issuing permits or approvals is inconsistent across government entities. As a result, the workgroup members were asked, “What does your agency need to better account for tax ditch impacts?” and the following items were noted:

- Clarity on what is within their jurisdiction
- Clear guidance regarding what and how to review submittals
- Education/training of those performing the reviews
- Enforcement with a specific suggestion that this be provided by DNREC

The simplest thing that external agencies can do prior to issuing approvals on requested projects is to determine whether the property in question contains a tax ditch channel and/or right-of-way (ROW). To assist with this determination, the web-based application found here: de.gov/taxditchmap can be searched by tax parcel ID and/or street address. Tax ditch channel and right-of-way data is also available for digital download for use in external agency applications through Delaware First Map, this data is updated regularly as changes are frequently processed.

If a property in question is affected by a tax ditch channel and/or right-of-way and the requested activity is proposed to be erected within these designations, the requestor should be forwarded to the DNREC Tax Program for consultation to ensure the activity does not result in negative tax ditch impacts. To limit confusion for constituents, it is suggested agencies do not issue approvals until concurrence is obtained from the DNREC Tax Ditch Program when a request falls into this type of situation.

To provide support to landowners and government agencies as well as expedite obtaining concurrence from the DNREC Tax Ditch Program, the Program has developed a “Land Development” Plan Review process, guidance document, and submission form made available on the Program’s webpage; de.gov/taxditch. The process developed was reviewed during the session to educate the workgroup members of this resource. Utilization of these resources by external agencies prior to issuing approvals, should limit the need for enforcement actions taken by tax ditch organizations to address access and channel obstructions and damages.

Maintenance

Workgroup Finding 4.0: Development of a digital tax ditch infrastructure and conditions inventory.

***Workgroup Finding 4.1:** Development of a checklist and/or timeline for tax ditch officers and contractors of items that must be addressed for various maintenance activities to occur.*

***Workgroup Finding 4.2:** Tax Ditch Function 101 presentation to be shared and utilized as a training resource for new hires to the DNREC Drainage Program, partner agencies, and tax ditch officers who are interested.*

***Workgroup Finding 4.3:** Develop training for officers and contractors on natural tax ditch designs and maintenance.*

To conclude Session 2, an overview of tax ditch maintenance activities was presented. The overview highlighted how tax ditch organizations determine their “Program of Operations”, typical maintenance activities completed, and the recommended frequency of maintenance to ensure adequate drainage is maintained. A challenge regarding tax ditch maintenance across the state has been the limited number of contractors that are willing and able to perform tax ditch maintenance activities. In an attempt to address this issue, workgroup participants were asked, “Do you have any suggestions for additional/improved resources for contractors?” The responses are below:

- Updated Geographic Information System (GIS) resources
- Maintenance plans
- Past maintenance scheduled with reviews of scope of work completed
- Checklist or step by step guide for process of getting work approved and ready for implementation
- Training on following what’s on a plan
- Training on natural design
- Certification for performing work

To improve in the understanding of how tax ditches are functioning in today’s landscape (Figure 5), the DNREC Drainage Program is working on a digital “tax ditch inventory.” This effort will improve the GIS resources available to better assist tax ditch officers and partner agencies in developing maintenance plans. This inventory will build off existing tax ditch channel and ROW data to add; designation of major versus minor ROWs, obstruction and damage locations, pipe crossing locations, designation of maintenance responsibility of features/infrastructures as assigned at formation or subsequent Court Order Changes (COC), and the date of last known maintenance activity completed.

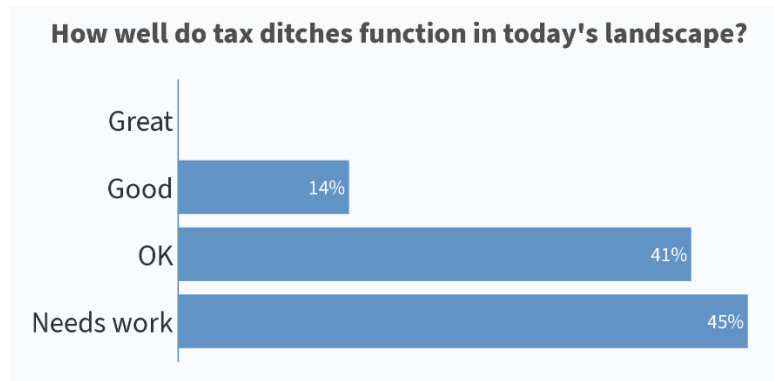


Figure 5. Results of polling question to garner thoughts on how well tax ditches function in today's landscape.

The DNREC Tax Ditch Program will create a checklist and/or guidance to share as a resource on the Program's webpage for tax ditch officers and contractors to ensure all items are addressed and permit coverages are obtained for improved efficiency in scheduling desired maintenance activities. The DNREC Sediment and Stormwater Program's Bluecard and Certified Construction Reviewer (CCR) Courses are training opportunities for contractors to learn more about how to follow the details on a typical tax ditch maintenance plan. The dates of these trainings are posted on the DNREC Sediment and Stormwater webpage; <https://dnrec.alpha.delaware.gov/watershed-stewardship/sediment-stormwater/training/>.

This presentation (Appendix C) was also recorded and will be shared and utilized as a training resource for new hires to the DNREC Drainage Program, partner agencies, and those who are new or interested in becoming tax ditch officers.

Changing Land Use

Two Tax Ditch Modernization Workgroup sessions; Tax Ditch Right-of-Way Issues and Tax Ditch & External Agency Approvals were held virtually to discuss challenges of tax ditches in relation to changing land use. Delaware is experiencing a high rate of development from simple pole barn additions to properties of 2,000+ home development projects. These changes are creating additional pressures on tax ditch systems from access issues to increased volume or concentrated water discharges. As tax ditches do not have a formal regulatory operation, confusion remains as to who has the authority to enforce right-of-way obstructions or damages to the tax ditch and whose responsibility it should be to notify of potential tax ditch impacts.

Session 3: Tax Ditch Right-of-Way Issues

Workgroup Finding 5.0: Increase education and outreach to promote tax ditches and the reasons for the associated right-of-ways to the public. Have handouts readily available for agencies involved with tax ditches.

Workgroup Finding 5.1: Develop guidance for regulatory/approval agencies regarding how to consider tax ditch impacts on requests submitted to their office.

Session 3 Tax Ditch Right-of-Way Issues was held virtually on July 14, 2021 and 53 attendees participated from the DNREC Drainage Program, county Conservation Districts, Municipalities, Delegated Agencies, and tax ditch organizations. The material covered in session 3 provided an overview of tax ditch right-of-ways (ROW), their designated uses, and typical obstructions or damages erected within them (Appendix D). Additionally, the current process for tax ditch officers to resolve tax ditch obstructions and damages was shared. The discussion of this workgroup session focused on potential solutions to existing tax ditch right-of-way obstructions and damage issues and explored avenues to avoid these issues from occurring in the first place.

To facilitate the discussion, a pre-session survey was sent to participants ahead of session 3. The survey asked the workgroup members, “Does your agency/organization provide approvals or permits in general development impacts (buildings, fences, utilities, drainage, large developments, etc.?) and “If yes, does your agency/organization take tax ditches into consideration before providing an approval/permit?”. The results to these pre-session survey questions are shown in Figures 6 and 7 respectively. Approximately 65% of workgroup respondents said they do provide some form of approval process (Figure 6), and of those respondents, 60% stated that they considered tax ditch impacts in their reviews with the rest saying “no” or “unsure” (Figure 7).

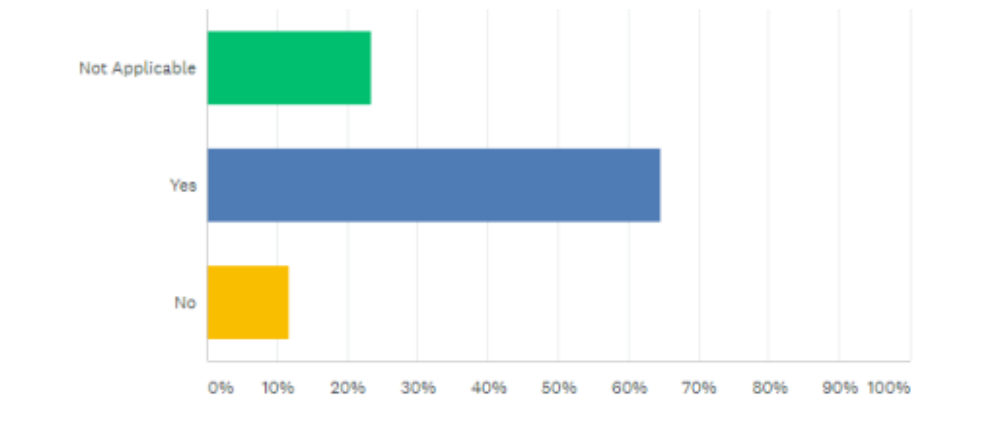


Figure 6. Results from the pre-session survey regarding the question "Does your agency/organization provide approvals or permits in general development impacts?"

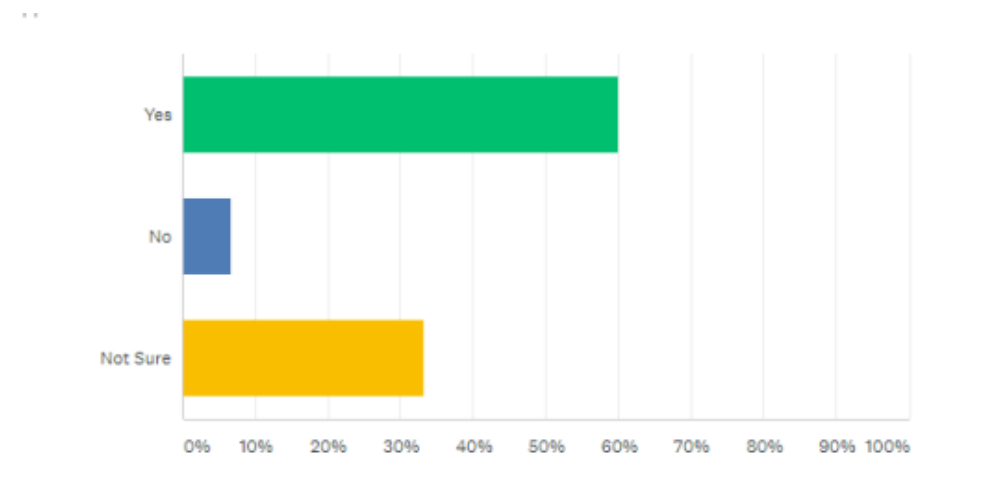


Figure 7. Results from the pre-session survey regarding the follow-up question to Figure 6, "If yes, does your agency/organization take tax ditches into consideration before providing an approval/permit?"

Most of the workgroup members who participated indicated that the agency/organization they represent does issue permits for structures or features that could be an obstruction to a tax ditch channel or right-of-way. In addition, while the majority of respondents indicated their agency considers tax ditches when issuing their approvals, 40% of respondents indicated that they did not or were unsure if they did.

To set the stage during the virtual meeting, background information was provided and solicited from the audience. Workgroup attendees were encouraged to provide their viewpoint and experiences with right-of-ways and obstructions including the type of obstructions they were familiar with (Figure 8). Other types of features that may cause right-of-way issues that were mentioned in the workgroup included hay bales, overhead lines, down trees, beaver dams, and utilities.

What are your most common examples of right-of-way obstructions?



Figure 8. Image of the responses from participants to the question "What are your most common examples of right-of-way obstructions?" The larger the word, the more times it was mentioned.

Workgroup members were broken out into seven smaller groups to analyze seven different examples of tax ditch right-of-way obstruction scenarios (Figure 9). These break-out groups assisted in creating the conversation surrounding right-of-way issues, preventative measures regarding obstructions, and options officers could pursue to resolve the obstruction. A common theme suggested in each of the break-out group sessions regardless of obstruction was to increase education and outreach regarding tax ditch right-of-ways and coordination with approval agencies for the features noted as obstructions.

Scenario A

Site Conditions:
Tax Ditch Right of Way is 127.5' from centerline (CL) along both banks of the channel.

- Question 1: Is there an issue?
- Question 2: How could this have been prevented?
- Question 3: What should the officers do?

Figure 9. Screenshot of session 3 presentation slide, providing an example of the scenarios presented.

Through this workgroup session, stakeholders who may impact tax ditch right-of-ways based on their requests and/or approvals were identified (Table 1). Increasing outreach, communication, and coordination efforts between the DNREC Tax Ditch Program acting on behalf of tax ditch organizations and the entities noted in the Table 1 can help to reduce negative impacts to the tax ditch systems. Ideas to achieve this goal included DNREC Tax Ditch Program to provide trainings catered to the specific agency or development of documents to assist identified agency staff in reviewing submissions for tax ditch impacts, clearly stating that if there is a question regarding potential tax ditch impacts to contact

the DNREC Tax Ditch Program, and ensuring mapping utilities used by agencies have the tax ditch data “on” by default to assist in review purposes.

Table 1 Key stakeholders for DNREC Tax Ditch Program to increase tax ditch education, outreach, and coordination of approval efforts.

Regulatory Stakeholders	General Stakeholders
Counties	Utility Companies - Power, Cable, Phone, Water, Gas
Municipalities	Well Drillers
DelDOT	Septic Designers & Installers
DNREC Septics	Land Surveyors
DNREC Wells	Public & Tax Ditch Landowners
	Home & Building/Shed/Deck/Pool Builders
	Fencing and Landscaping Companies
	Realtors and Real Estate Attorneys

The process for tax ditch organizations to address tax ditch right-of-way obstructions and damages was reviewed (Appendix E). This process is lengthy and difficult as the only current path involves addressing the issue after it has been created, not prior to. To begin to think about how to prevent right-of-way obstructions, workgroup members were asked to “Think back to your permitting process. Are there additional opportunities to address ROW issues before they start?” The results indicated that external agencies were open to ideas to address tax ditch right-of-way obstruction concerns in their own approval process to help prevent these issues from arising in the first place (Figure 10).

While most of the agencies represented indicated that they could better incorporate tax ditch considerations into their permit or approval process, 40% of the respondents indicated that they were unsure that adjustments to their process could be made (Figure 10). The DNREC Drainage Program will work to provide guidance for reviewing tax ditch impacts and clarify expectations for permit and/or regulatory entities identified in Table 1.

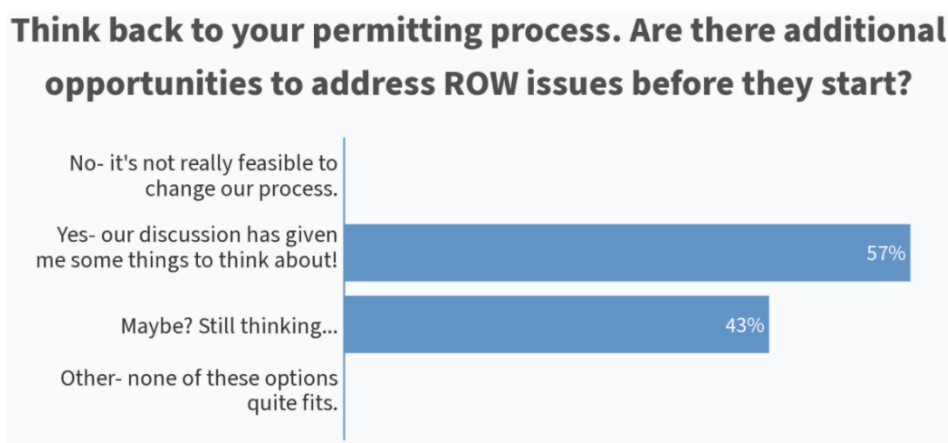


Figure 10. Responses during workgroup session 4 to the question posed: "Think back to your permitting process. Are there additional opportunities to address ROW issues before they start?"

Session 4: Tax Ditch & External Agency Approvals

Workgroup Finding 6.0: *Determine method to improve awareness of Court Order Changes (COCs) processed on properties as property ownership changes.*

Workgroup Finding 6.1: *Distribute printed copies of the “Tax Ditch Guidelines for Land Development Plans” to the agencies requested to participate in the workgroup as a resource for their staff.*

Workgroup Finding 6.2: *Tax Ditches to be considered or made an element of the State/County/Municipal Comprehensive Planning and Review process.*

Workgroup Finding 6.3: *Preliminary comments issued by DNREC Tax Ditch Program to note existing tax ditch conditions as well as feasibility of request based on previously processed changes.*

Workgroup Finding 6.4: *Review of plan/request submissions for tax ditch impacts should occur at preliminary and final stages of project planning and permitting/approval processes.*

Workgroup Finding 6.5: *Tax ditch channels and rights-of-way should not only appear on Property Deeds but also when applicable added as exhibits or attachments to Homeowners Association and/or Condominium documents.*

Workgroup Finding 6.6: *DNREC Tax Ditch Program review the process for filing COCs and determine path forward to incorporate entire process of filing and recording COCs as a Program task.*

Workgroup Finding 6.7: *Target outreach efforts regarding tax ditches to the Delaware Building and Planning Commissions as well as surveying community.*

Workgroup Finding 6.8: *Planning and Zoning to advocate for tax ditch channels and right-of-ways across parcels to be areas of community and/or open space to minimize risk of tax ditch damages and obstructions.*

Workgroup Finding 6.9: *Design statewide signage to assist in raising awareness about the presence of tax ditches across the state.*

Land Development Plan Review & Court Order Changes

Session 4 Tax Ditch & External Agency Approvals was held virtually on July 28, 2021 and 42 attendees participated from the DNREC Drainage Program, county Conservation Districts, Municipalities, Delegated Agencies, and tax ditch organizations. The material covered in Session 4 provided an overview of the review and approval processes of which the DNREC Tax Ditch Program is currently involved to determine tax ditch impacts. The review process conducted and considerations made by the DNREC Tax Ditch Program regarding tax ditch impacts were shared. The discussion through this workgroup session focused on avenues to improve external agency processes and/or increase coordination for effective implementation of Tax Ditch Law (Appendix F).

Taking into consideration the list of possible right-of-way obstructions identified in Figure 8, the list of stakeholders in Table 1 was reviewed to confirm it was an inclusive list of audiences to target with increased coordination efforts. The workgroup members offered no additional stakeholders and/or features to add to this list.

The DNREC Tax Ditch Program currently performs plan reviews based on existing collaboration efforts amongst agencies such as the Sussex Conservation District, DeIDOT, and landowners' submissions. The Program's procedure was shared and highlighted as a resource for other partner agencies who may review submitted requests for impact tax ditches (Appendix G). In addition, the DNREC Tax Ditch Program shared the "Tax Ditch Guidelines for Land Development Plans" document which has been made available on the Program's webpage, de.gov/taxditch. This document was created to set expectations on what items must be shown on all building or development plans for potential tax ditch impacts to be determined. Following these guidelines has helped expedite the Program's ability to process review requests in a timelier manner and limits the number of comment letters sent back and forth between the submitter and Program.

To promote efficiency in project planning and approvals, the workgroup members were asked "where do tax ditch considerations best fit into the plan review process when an individual is seeking an agency's approval?" The resulting discussion denoted that tax ditch impacts and considerations should be made both at the preliminary and final approval stages of a project. It was highlighted that tax ditch items being considered at the preliminary stage could help to determine feasibility of proposal and prevent processing delays.

Based on similar agency representation, the workgroup participants were split into groups to review their agency's plan or project review process and discuss improvements based on the information shared. The representatives also highlighted the resources or support needed to achieve these improvements. After discussions the workgroup members reconvened and discussed the following items as improvements to help incorporate tax ditch considerations into plan review and approval processes.

- Tax ditch channels and rights-of-way should not only be on property deeds but when applicable added as exhibits or attachments to homeowners association (HOA) and/or condominium documentation. This action has been added as a requirement in processed Court Order Changes for land development projects.

- Further Consideration Required: Determine when HOA and/or condominium documents are filed because processing of plan reviews for tax ditch impacts may need to be adjusted to incorporate recommendation.
- Buyers should receive information regarding tax ditch information at settlement based on a title search conducted. However, title searches may not be occurring and/or individuals may not understand what is being shared.
 - Further Consideration Required: Development of a different method to share tax ditch information to buyers, such as a Real Estate Disclosure Form, to be brainstormed.
- Target outreach efforts regarding tax ditches to the Delaware Building and Planning Commissions as well as surveying community.
- Planning and Zoning to advocate for tax ditch channels and right-of-ways across parcels to be areas of community and/or open space to minimize risk of tax ditch damages and obstructions.

The DNREC Tax Ditch Program's focus during plan reviews is to ensure the integrity of tax ditch channels is preserved and the system can be maintained by the tax ditch organizations in the future. The result of the Program's review includes comment letters requesting changes to the development plans to satisfy tax ditch needs and/or a "Letter of No Objection" when all commented items have been addressed. A comment made by the Program may be that a Court Order Change (COC) is needed to move forward with a proposed development. This occurs when a proposed project is considered feasible but a formal, legal change to the tax ditch channel, right-of-way(s), and/or watershed boundary must be documented and recorded. An overview of the COC procedure and process was shared to provide workgroup attendees an idea of processing time and considerations accounted for during the creation of the COCs. The land development review procedure and associated request forms were shared are available on Program's webpage; de.gov/taxditch.

A workgroup participant asked how landowners know if a COC was executed on their property, in particular, if they were not the property owner at the time of the change. The workflow for processing COCs involves the DNREC Tax Ditch Program filing the signed document at the respective county Prothonotary Office. Then the landowner finishes filing the COC in the county Recorder of Deeds office. However, there is nothing currently in practice to ensure or require the landowner to fully file the COC. If a COC was not fully filed, this could pose a problem and at least a challenge for individuals to know of COCs affecting a property they own. The DNREC Tax Ditch Program can be consulted to inform the landowner whether or not a COC has been processed. This is a consideration that should be evaluated for improvement. The DNREC Tax Ditch Program plans to determine if the Program can assist in filing the documentation for the landowner to completion as an improvement.

The Meaning of Tax Ditch Modernization

Since session 4 was the final session where all workgroup members were asked to participate, the attendees discussed what tax ditch modernization means to them. This information was used to prioritize improvements and further discussions with the remainder of the workgroup sessions. The following thoughts were shared:

- Tax Ditch Funding
 - Tax ditch organizations were created to self-fund. However, the tax rate is hard to increase and those organizations that have not been managed well have a difficult time

getting back on track. Determination of funding mechanism(s) to get tax ditches in better working order need to be addressed.

- Address tax ditch assessment inequities.
- Funds provided by the state to supplement tax ditch maintenance be distributed equitably across the 3 counties.
- Forming New Tax Ditches
 - Tax ditches may be the solution to drainage issues however, the current process for forming a tax ditch in today's environment is not a quick or easy process. A suggestion was made to revisit the Tax Ditch Law or find more funding to invest in the construction of new drainage infrastructure.
- Tax Ditch Design and Maintenance
 - Higher set of design standards to account for the needs of the landscape today as well as anticipated challenges in the future. Consider what the area will look like 20-30 years from now.
 - Upgrade tax ditches on willing landowner properties.
 - The landscape of tax ditch right-of-ways has changed over time due to development and/or lack of consistent or routine maintenance. A plan is needed for how to maintain these systems moving forward.
 - Encourage/allow buffers along tax ditch right-of-ways.
- Tax Ditch Officers
 - Recruit and retain officers for managing the tax ditch systems.
 - Appreciation events and develop mentorship program to train individuals to replace tax ditch officers ready to retire.
- Tax Ditch Awareness
 - Provide a standardized sign or logo for signage in and along tax ditches to spread awareness.
- Tax Ditch Enforcement
 - Tax ditch right-of-way obstructions should be handled and enforced by DNREC not the tax ditch organizations.

Insufficient Funds

Two Tax Ditch Modernization Workgroup sessions; Financing Tax Ditches and 3921 Funds were held virtually to discuss challenges of tax ditches in relation to insufficient funds for maintenance. Many tax ditch organizations across the state are not collecting adequate funds to perform necessary maintenance activities. The lack of funds available to address routine needs is only compounded when un-planned issues arise that require significant funding and effort. Bank erosion and control of invasive species are two examples of high cost and/or high effort issues tax ditch organizations face. The urbanization of tax ditch watersheds and climate change are some of the drivers that further contribute to these issues.

Session 5: Financing Tax Ditches

Workgroup Finding 7.0: Investigate whether tax ditch warrant rates can be levied to meet the needs for maintenance.

Workgroup Finding 7.1: Obtain legal opinion on how reassessing tax ditch assessments could be pursued.

Workgroup Finding 7.2: DNREC Tax Ditch Program to schedule meeting with county Treasury Offices to discuss back tax issues significantly impacting tax ditch revenues.

Workgroup Finding 7.3: Develop and/or update warrant rate calculation tool based on current maintenance costs.

Workgroup Finding 7.4: Determine and/or update average cost of maintenance activities per measurable unit listed in Table 2 that is repeatable across tax ditch systems.

Workgroup Finding 7.5: Work with the tax ditch organizations identified in Table 3 to combine for more effective resource allocation.

On August 4, 2021, Session 5, Financing Tax Ditches was held with a total of 21 participants who attended virtually. This session provided an overview of how tax ditch organizations collect funds for maintenance and issues associated with back taxes. Additionally, tax ditch organizations with a small number of taxables, attributing to limited funds, was also highlighted. The current processes to combine and dissolve tax ditch organizations were shared to discuss these possibilities (Appendix H). This workgroup topic focused on the following items to consider whether tax ditch revenues can be raised to provide for the maintenance needs of today and if not suggest a path forward to resolve.

- Review of current tax ditch assessment assignment and associated tax ditch revenues to determine if monies collected are sufficient for tax ditch maintenance.
- Review of tax ditch warrants and the process of changing rates to determine if warrant rates can be increased to cover routine maintenance costs.
- Back tax issues and concerns.
- Review the process of combining tax ditch organizations.

The individuals who attended Session 5 included members from the DNREC Drainage Program, county Conservation Districts, county treasury offices, and tax ditch organization. Based on most of the participants having direct experience in managing or assisting in the management of tax ditches, the workgroup members were asked, “What is the most limiting resource for tax ditches to be effective?” While the majority of participants responded with money, contractors, officer involvement, and technical expertise were also acknowledged as a limited resource. These results will be used to ensure that the recommendations noted by the workgroup will help address or improve these factors (Figure 11).

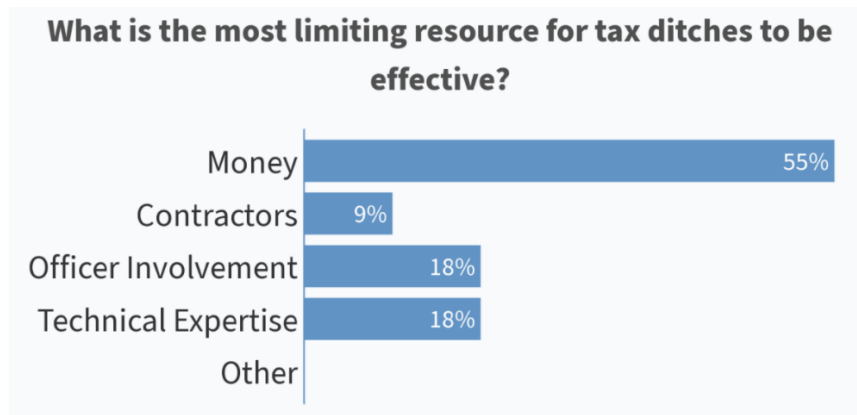


Figure 11. Results of polling question regarding the most limiting resource for tax ditch effectiveness

Since money was noted as the most limiting resource for tax ditches, the workgroup members were also asked, “Do individual tax ditches need more funds to be effective? If so, how much?” Workgroup participants noted that they either were not sure of an amount (25% of respondents) or that additional funding needs could be up to \$35,000 per Tax Ditch Organization. The needs of tax ditch organizations vary widely, and this should be acknowledged as one of the reasons respondents marked the “Not sure” category (Figure 12). This information will be used to for future investigations into whether tax ditch warrant rates can be levied to meet the needs for maintenance.

Do individual tax ditches need more funds to be effective? If so, how much?

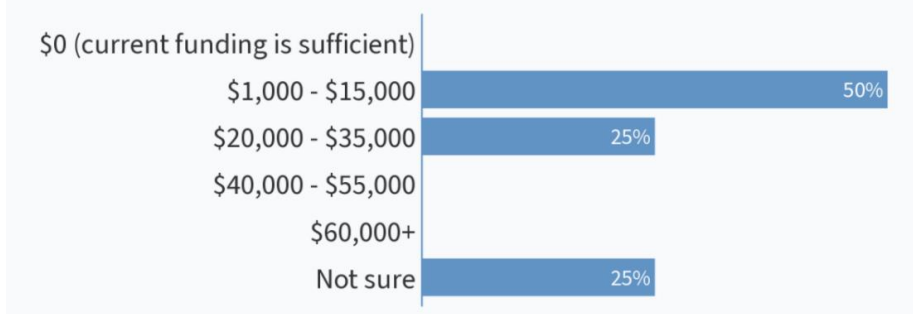


Figure 12. Results of polling question regarding how much more money do tax ditches need to be effective.

A thorough overview of how tax ditch assessments were assigned to properties located within a tax ditch watershed boundary was presented. There have been past concerns regarding the equity of tax ditch assessment assignment as land use and benefits change overtime. The protocol to assign assessments is determined at the formation of a tax ditch and for equity and fairness must be repeated in the same fashion as parcels split, combine, etc. Since the assessment based assigned and distributed across the parcels in the tax ditch watershed is based off the cost of construction when the tax ditch was formed (some dating back to the 1950's), considerations for reassigning tax ditch assessments has been suggested as an improvement for increasing funding. The workgroup was asked "What are your thoughts on re-evaluating assessment base allocations for tax ditch parcels?" The majority of participants thought this would be worth the time (Figure 13). Based on the results, a legal opinion on how this effort could be pursued is needed.

What are your thoughts on re-evaluating assessment base allocations for tax ditch parcels?

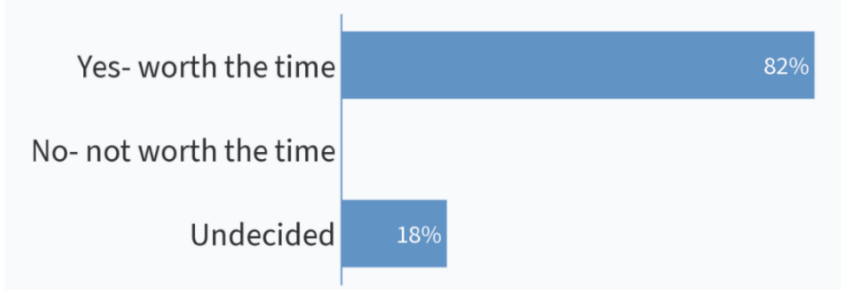


Figure 13. Results of the question "What are your thoughts on re-evaluating assessment base allocations for tax ditch parcels?"

Tax ditch officers have presented concerns over taxes that have not been paid and subsequent limitation of their available funds to perform scheduled maintenance activities. This was shared during the workgroup however, no discussion ensued. The question remains regarding how tax ditch organizations should handle back tax issues and whether county Treasury Departments can be of any assistance.

To determine whether tax ditch organizations can collect sufficient funds for maintenance, typical maintenance expenses must be known. A list of routine tax ditch expenses were shared and the workgroup members contributed additional items (Table 2). This list can be used to find average costs of these activities to calculate anticipated annual expenses for tax ditch systems.

Table 2 Routine tax ditch expenses

Administrative	Operations
Bonding	Mowing
Meeting Notices/Advertising	Dipout
Audit Materials	Repairs (Bank or Infrastructure)
Bank Fees	Beaver Trapping
Meeting Facility Rentals	Beaver Dam Removal
Permit Fees - eNOI	Pipes (New or Replacements)
	Storm Damages/Cleanup
	Herbicide Application/Treatment
	Right-of-Way Clearing/Grubbing

The workgroup members were also asked, “What resources are needed to assist tax ditch officers with financial planning for maintenance?” The following are their responses:

- Typical costs of maintenance activities per mile or foot of tax ditch by county
- Sharing and accepting of different methods of maintenance for resolving issues
- More technical assistance from field personnel
- Inventory of tax ditch conditions

These results support the comments made in previous sessions and further justify the tax ditch inventory effort that the DNREC Tax Ditch Program is working on as an integral starting point for effective maintenance planning. It also provides insight into how estimating costs should be correlated across tax ditches. For ease of use, the estimation calculation suggested should be on a per foot or mile basis.

The process for combining and dissolving tax ditches was shared. The process of each as prescribed in the Tax Ditch Law is not a simple task. Combining tax ditches is possible for those tax ditch organizations constructed/formed as part of the same Civil Action Number or those identified as benefiting each other in formation documents. The DNREC Tax Ditch Program plans to work with those tax ditch organizations who meet these criteria for improvement (Table 3).

Table 3 Tax ditch organizations that can currently be combined due to the formation of the ditch under the same Civil Action Number or were expressed as linked in the Commissioners Report in the formation documents.

SUSSEX COUNTY TAX DITCHES	DITCH NUMBERS	CIVIL ACTION NUMBERS
GUM BRANCH	D-57-65	98M-12-005
MEADOW BRANCH	D-56, 68,74	06M-11-134
PEPPER CREEK	D-127 -132	06M-11-082

TYNDALL BRANCH	D-88 & 89	06M-11-122
WILLIAMS CANAL	D-11-22	06M-11-131
DERRICKSON CANAL – DEEP HOLE & MILLVILLE	D-50, 41 & 47	06M-11-107 / 06M-11-101 / 06M-11-108

At the end of the session the workgroup participants were asked, “With the current outlined process, do you think tax ditches can collect sufficient funds to perform routine tax ditch maintenance operations?” While most participants noted that it is possible, the other half of the group said no, or they were not sure (Figure 14). This further supports the need to estimate maintenance costs and develop a calculation for recommending warrant rates that can be used by the tax ditch officers.

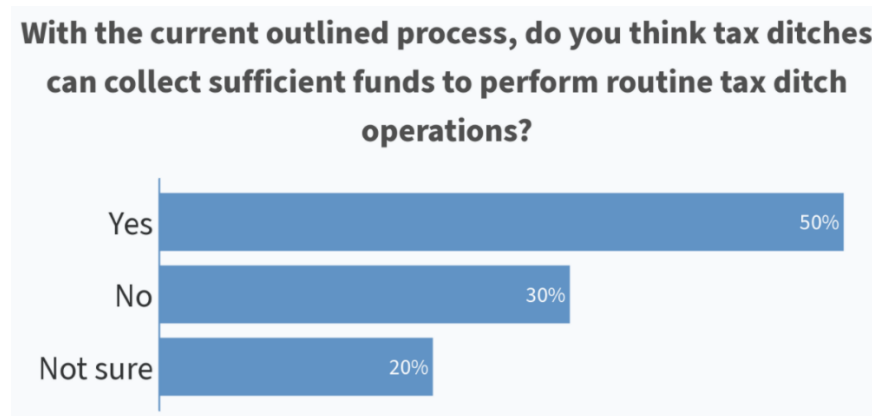


Figure 14. Responses from workgroup participants when asked "With the current outlined process, do you think tax ditches can collect sufficient funds to perform routine tax ditch operations?"

As funding was mentioned numerous times as a concern, the workgroup members were asked to share ideas on how to increase funding to tax ditches. Workgroup member ideas included:

- Educate legislators on the importance of tax ditches.
- Request additional funds from Legislature for tax ditch work.
 - Increase and equitably distribute existing and 3921 Funds.
 - Increase dedicated funds.
- County or state equipment and personnel used to perform mowing maintenance.

Session 6: 3921 Funds

Workgroup Finding 8.0: Create a workgroup consisting of county Conservation Districts, DNREC Drainage Program, and county officials to explore opening the §3921 law to increase funding to tax ditches to assist with maintenance activities.

Workgroup Finding 8.1: Take a more comprehensive look at expected tax ditch organization expenses to assist with tax ditch financial planning.

The topic of 3921 Funds was discussed over the course of two different sessions. The original session 6 was rescheduled to September 15, 2021 held at the Kent Conservation District Building practicing social distancing and masking protocols. The material related to 3921 Funds covered in session 7 provided a basic overview of 3921 Funds and associated Conservation District policies for eligibility across counties (Appendix I). Eligibility requirements for tax ditch organizations to obtain supplemental or 3921 funds from the county Conservation Districts vary. However, eligibility requirements that are typically enacted and also correspond to compliance with the Tax Ditch Law include; annual meeting held, audited financial report submitted, and bond secured for Secretary-Treasurer. In addition, maintenance practices eligible for supplemental or 3921 Funds also vary across the counties (Figure 15). Discussion ensued surrounding the issue that some practices are only eligible if the county Conservation District has enough funds to cover the practice. Determination of maintenance practices to cover is determined in part by the amount of funds allocated as well as the number of requests received from tax ditch organizations for financial assistance annually.

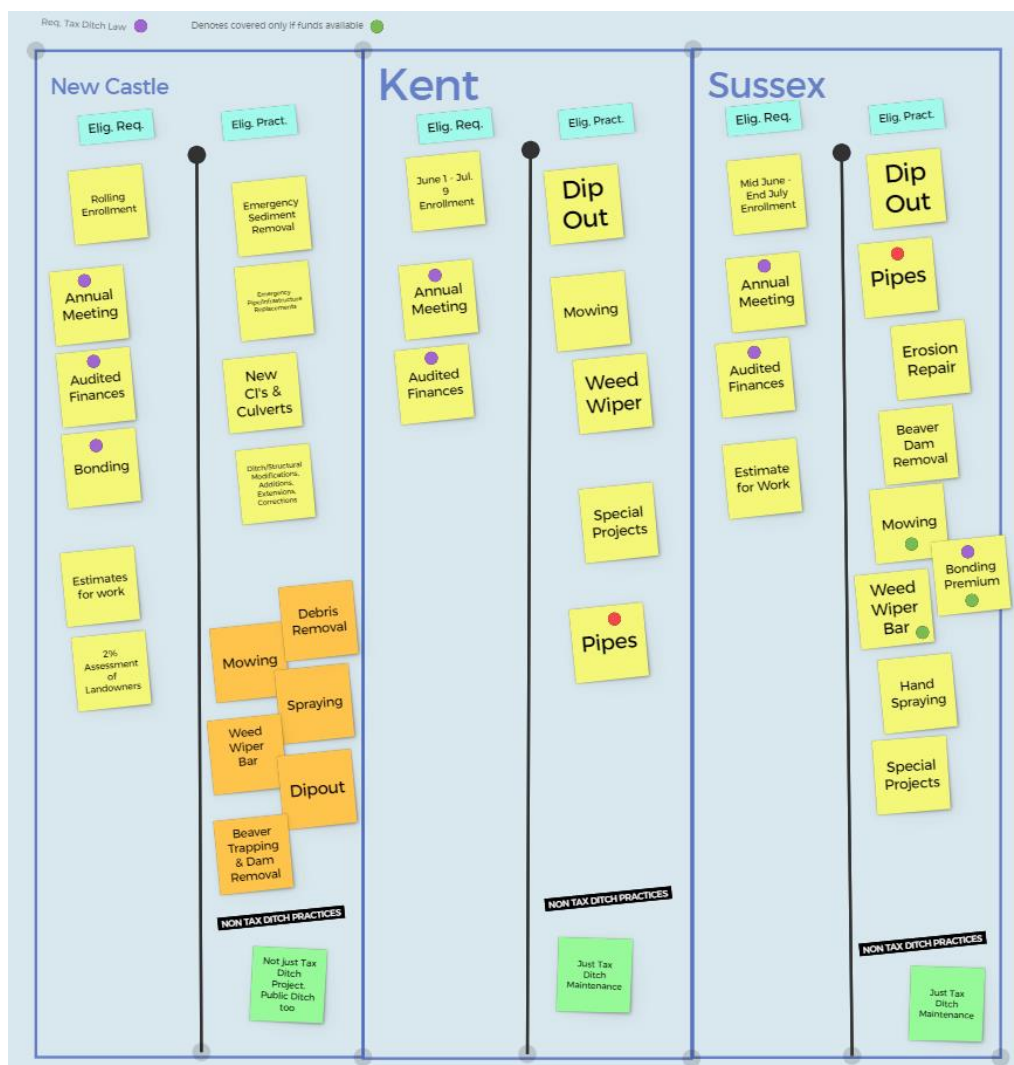


Figure 15. Screenshot of the IdeaFlip board used to capture eligible practices and associated requirements for 3921 Funds for each Conservation District during the virtual session 7 meeting.

The rescheduled session 6 was an open discussion between the DNREC Drainage Program and county Conservation District staff to determine if 3921 Funds are sufficient at bridging the gap in dollars needed for tax ditch maintenance and if not determine a path forward to resolve. Each county Conservation District indicated that the allocations assigned under the § 3921 Law do not meet today's need for funding tax ditch maintenance. In addition, it was noted that the allocations should be made on a per mile, per county basis. Currently § 3921 provides for \$75,000 to be provided by the state and matched by each county (Table 4). The request to explore opening the Law was made.

Table 4 Review of the §3921 allocations to counties overtime.

	July 1966	July 1970	July 1974	July 1976	Today
New Castle	≤ \$30,000	≤ \$30,000	-----	≤ \$30,000	≤ \$75,000
Kent	≤ \$10,000	≤ \$30,000	-----	≤ \$30,000	≤ \$75,000
Sussex	≤ \$22,500	≤ \$22,500	-----	≤ \$30,000	≤ \$75,000
Use of Appropriated Moneys	Kent & Sussex Tax Ditch specific. New Castle included more than Tax Ditches	Sussex = Tax Ditch specific. New Castle & Kent included more than Tax Ditches	Description made the same across all 3 counties, including more than Tax Ditches	Description for use remained same, no other changes	Includes more than Tax Ditches across 3 counties.

The need to identify current and projected maintenance funding needs was identified. During this meeting, Kent Conservation District staff provided a draft of estimated tax ditch maintenance expenses. This document was discussed and it was determined it would be used as a baseline to determine maintenance expenses by county.

Using estimated data for costs associated with dipout, mowing, weed wiper and hand clearing, the following yearly regular maintenance expenses were estimated by county. It should be noted that these costs in Table 5 do not account for any unexpected maintenance repairs, potential pipe replacements, hand spraying for invasive species management or administrative fees associated with running the tax ditch organization, and New Castle's total is underestimated as proper funding amounts could not be ascertained at the time of this review. The total estimated expenses for only dipout, mowing, weed wiper and hand clearing appear in Table 5.

Table 5 Estimated expenses for dipout, mowing, weed wiper and hand clearing for New Castle, and Sussex. *New Castle's estimates are an underrepresentation due to recent cost estimate data not available for mowing.

Total Annual Tax Ditch Maintenance Costs (Dipout, Mowing, Weed Wiper & Hand Clearing)

	New Castle	Kent	Sussex
Avg Cost/Mile (Initial)	\$ 7.23 *	\$ 903.23	\$ 1,027.73
Total	Estimated Expense	Estimated Expense	Estimated Expense
2022-2027 (Annual)	\$ 91,928.07 *	\$ 617,958.17	\$ 958,647.93
2022-2027 (5 Yr Total)	\$ 459,640.37 *	\$ 3,089,790.85	\$ 4,793,239.64

Further investigation is warranted to determine a total estimated cost that includes not only the items highlighted in Table 5, but those surrounding tax ditch administrative fees, hand spraying to control invasive plant species and average costs for repairs to tax ditches. Tables 6 – 10 show cost estimates per maintenance item for dipout (Table 6), mowing (Table 7), weed wiper (Table 8), hand clearing (Table 9), and hand spraying of invasive species (Table 10).

Table 6 Estimated expenses for 2022-2027 for dipout of tax ditches by county.

Tax Ditch Maintenance - Dipout - 20 Year Maintenance Plan

	New Castle	Kent	Sussex - No Spreading Spoil Urban/Residential	Sussex - Spreading Spoil/Agriculture/Wooded
Total Tax Ditch Miles	56	747	117	1,098
Miles/Year	3	37	6	55
Ft/Year	14,678	197,205	30,819	289,938
Avg Cost/Foot (Initial)	\$6.25	\$ 2.00	\$ 1.50	\$ 2.00
Dipout	Estimated Expense	Estimated Expense	Estimated Expense	Estimated Expense
2022-2027 (Annual)	\$ 88,070.40	\$ 394,410.72	\$ 46,229.04	\$ 579,876.00
2022-2027 (5 Yr Total)	\$ 440,352.00	\$ 1,972,053.60	\$ 231,145.20	\$ 2,899,380.00

Table 7 Estimated expenses for 2022-2027 for mowing of tax ditches for Kent and Sussex Counties. Data was not available for New Castle.

Tax Ditch Maintenance - Mowing (Ditch Mileage is Halved as Mowing Only Occurs Every Other Year)

	New Castle	Kent	Sussex
Total Tax Ditch Miles	56	747	1,215
Miles/Year	28	373	607
Avg Cost/Mile (Initial)		\$ 500.00	\$ 425.00
Mowing	Estimated Expense	Estimated Expense	Estimated Expense
2022-2027 (Annual)	\$ -	\$ 186,747.50	\$ 258,185.38
2022-2027 (5 Yr Total)	\$ -	\$ 933,737.50	\$ 1,290,926.88

Table 8 Estimated expenses for 2022-2027 for weed wiper practices in Kent and Sussex. New Castle does not currently use the weed wiper practice.

Tax Ditch Maintenance – Weed Wiper - 20 Year Maintenance Plan

	New Castle	Kent	Sussex
Total Tax Ditch Miles	56	747	1,215
Miles/Year	3	37	61
Avg Cost/Mile (Initial)		\$ 400.00	\$ 600.00
Weed Wiper	Estimated Expense	Estimated Expense	Estimated Expense
2022-2027 (Annual)	\$ -	\$ 14,939.80	\$ 36,449.70
2022-2027 (5 Yr Total)	\$ -	\$ 74,699.00	\$ 182,248.50

Table 9 Estimated expenses for 2022-2027 for hand clearing in Kent, Sussex, and New Castle.

Tax Ditch Maintenance – Hand Clearing- 20 Year Maintenance Plan

	New Castle	Kent	Sussex
Urban Tax Ditch Miles	12	67	117
Miles/Year	1	3	6
Avg Cost/Foot	1.23	1.23	1.23
Avg Cost/Mile (Initial)	\$ 6,494.40	\$ 6,494.40	\$ 6,494.40
Hand Clearing	Estimated Expense	Estimated Expense	Estimated Expense
2022-2027 (Annual)	\$ 3,857.67	\$ 21,860.15	\$ 37,907.81
2022-2027 (5 Yr Total)	\$ 19,288.37	\$ 109,300.75	\$189,539.06

Table 10 Expenses for an estimated 40 hours of hand spraying a year for invasive plant species. This information is not summed in Table 5.

Tax Ditch Maintenance - Hand Spraying- 20 Year Maintenance Plan

	Sussex – Phragmites & Cattails	Sussex - Parottfeather
Total Tax Ditch Miles	1,215	1,215
Hours/Year	40	40
Avg Cost/Hour (Initial)	\$ 98.50	\$ 173.00
Hand Spraying	Estimated Expense	Estimated Expense
2022-2027 (Annual)	\$ 3,940.00	\$ 6,920.00
2022-2027 (5 Yr Total)	\$ 19,700.00	\$ 34,600.00

Limited Resources

Workgroup Finding 9.0: Improve the recruitment and retention of tax ditch officers with improved education, outreach, and technical assistance initiatives through the implementation of an Officer Recruitment and Retention Strategy.

Workgroup Finding 9.1: Tax Ditch Organization funds cannot be expended without officers. Identify alternate funding sources for assisting tax ditches that do not have officers in emergency drainage situations.

Session 7, Limited Resources virtual meeting was held on September 8, 2021, and had 22 attendees from the DNREC, county Conservation Districts, and tax ditch organizations. Tax ditches are faced with limited resources in two main areas - volunteers to fill officer positions and adequate funding. Tax ditch organizations are managed largely by three volunteer officers; two managers, one is designated chairman, and a secretary-treasurer, with a few larger organizations having additional manager positions. Some tax ditches also pay their officers a small stipend. However, these volunteers struggle to meet the more sophisticated needs of the current era. The lack of annual inspections, maintenance planning, and record keeping regarding the condition of the tax ditch channels, banks, and associated rights-of-ways as a whole system may have resulted in maintenance decisions made and prioritized ineffectively. This workgroup topic focused on (Appendix I):

- Input for a tax ditch officer recruitment and retention strategy.
- Feedback on meeting notice requirements.
- Alternative solutions to ditch management because of no officers.
- Review of 3921 Fund expenditures and policies for use across counties. The outcomes of this topic are addressed in the Session 7: 3921 section.

Since 1951 Delaware's tax ditches have been managed by a workforce of volunteer landowners that have performed the thank-less tasks of establishing drainage systems, tracking finances, and employing ditch maintenance activities, all for the benefit of public health and safety. These positions have historically been passed down through family members or neighborly interactions. But with changes in expectations of ditch functions through time, which has happened to coincide with changes in the land use from rural to urban through time, questions remain around the need for improved management infrastructure and support.

Tax ditches were organized to be run by the people who are most impacted by the ditch system, the people who live, work, and play on the lands within the drainage area. No one knows the issues an area faces better than the people who reside and own the lands themselves. As such, tax ditch officers must own property within the tax ditch drainage area, are elected by the impacted landowners, called taxables, and are the only ones who can authorize work or expend funds in the name of the tax ditch. Assistance is provided to the officers by many partner agencies and include the DNREC Division of Watershed Stewardship and county Conservation Districts, but again, without the officer's direct input and participation, tax ditches cannot function appropriately.

Across Delaware's three counties, Kent, New Castle and Sussex, tax ditches have a common issue: retaining and recruiting new officers. This issue combined with the importance of the tax ditch officer positions highlights the imperative need for a cohesive plan that addresses the retention of existing officers and recruitment of new ones.

Strategies for improving the retention of existing managers and recruitment of new ones, suggested enhancements to resources and areas to be further explored for improvements were documented and shared to the workgroup for comments via Mapping the Way for Delaware's Tax Ditch Managers: An officer recruitment and retention strategy (Appendix K).

When attendees were asked if the tax ditch officers' responsibilities were clear, most responses were no or not sure (Figure 16). The Strategy document (Appendix K) outlines steps to improve understanding of tax ditches, provides for suggested improvements to DNREC Drainage Program operations to include:

- Ease of access to information through the provision of organized easily accessible tax ditch specific information.
- Modernizing the volunteer management software for improved tracking of officers needs and contacts.
- Establishing regular communication between officers and partner agencies about service offerings, deadlines, funding, and other tax ditch related information across multiple platforms including newsletters, establishing a volunteer coordinator role, offering officer round tables, trainings and exit interviews (Figure 17).
- Officer appreciation initiatives to recognize tax ditch officers for their service to their communities.
- Marketing strategies to both improve meeting notice requirements, general understanding of tax ditches and generate interest in officer position needs.
- On-boarding package improvements to provide the latest information about tax ditches and policies.

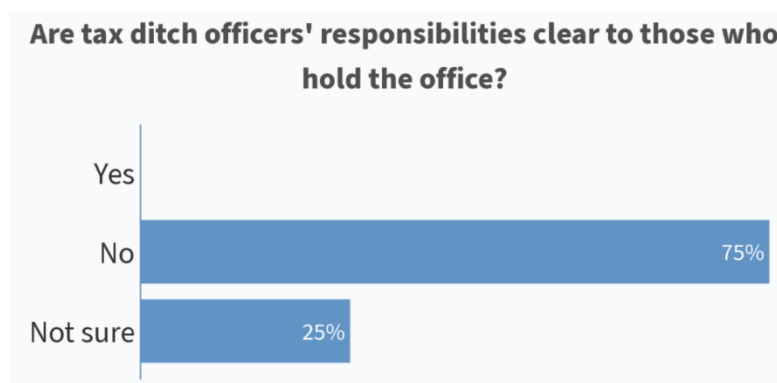


Figure 16. Workgroup participant responses when asked "Are tax ditch officers' responsibilities clear to those who hold the office?"

What method of communication works best with tax ditch officers?



Figure 17. Workgroup responses to the question "What method of communication works best with tax ditch officers?"

Workgroup participants were also asked "How often should officers work on tax ditch related issues?" The general consensus is that it depends, but in general being in a position of officer should require participation at a bi-monthly or quarterly timeframe (Figure 18). The DNREC Tax Ditch Program has seen how an officer's time spent on the tax ditch can vary widely especially when taking into considerations those areas that are experience development booms.

How often should officers work on tax ditch related issues?

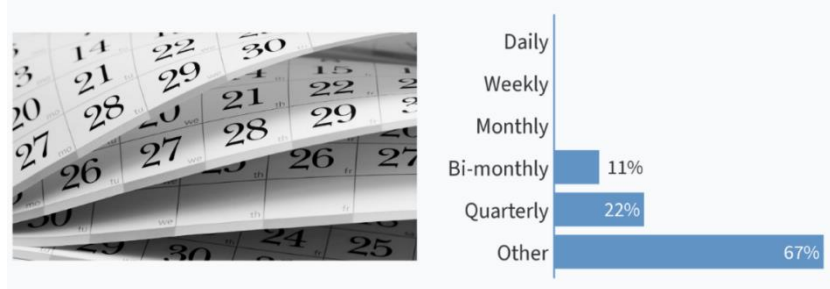


Figure 18. Responses to the question "How often should officers work on tax ditch related issues?"

One of the topics of discussion within the workgroup session related to tax ditches that were vacant of officers. It was clarified to workgroup members that if no tax ditch officers were present, then tax ditch funds could not be spent. This was not fully understood by the group. According to tax ditch law, any instrument of the tax ditch requires the signature of the Chairman and attested by the Secretary-Treasurer (§ 4166). Since the creation of the bank account is an instrument of the tax ditch to collect and spend funds, the officers are the only ones who can access these funds.

To alleviate some of the concerns surrounding emergency issues on tax ditches with no officers, the DNREC Drainage Program has created an emergency funds line item in the RC&D funding to assist in these situations. The ultimate goal is to fill the vacant seats as to not have this problem. The Strategy (Appendix K) outlines ideas to assist in this endeavor.

Wrap Up

On Wednesday, September 19, 2021 the final session of the workgroup was held to review the findings of the workgroup that are highlighted throughout this report. All workgroup participants were invited to virtually attend, and total of 36 participants attended. A copy of the presentation slides is available in Appendix J.

Appendix

Appendix A – Summarized List of Attendees

Appendix B – Tax Ditch Law 101 Presentation Slides

Appendix C – Tax Ditch Design 101 Presentation Slides

Appendix D – Tax Ditch Right-of-Way Issues Presentation Slides

Appendix E – Model to Address Tax Ditch ROW Obstructions

Appendix F – Land Development Review Presentation Slides

Appendix G – Land Development Review Process

Appendix H – Financials Presentation Slides

Appendix I – Limited Resource Presentation Slides

Appendix J – Wrap Up Presentation Slides

Appendix K - Officer Retention and Recruitment Strategy