



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

SHANTÉ HASTINGS
SECRETARY

TO: Pam Steinebach, Director, Maintenance and Operations
Michael Hauske, District Engineer, North District
Brian Schilling, District Engineer, Canal District
Matt Lichtenstein, District Engineer, Central District
Alastair Probert, District Engineer, South District
Stephanie Johnson, Director, Planning
Eric Cimo, Utility Engineer

FROM: Shanté Hastings, Secretary *SMA*

DATE: July 10, 2025

RE: Propane Service within Subdivisions

The Department of Transportation (“Department”) has received numerous inquiries regarding the installation of residential propane distribution networks within subdivisions. Propane is not a utility regulated by the Public Service Commission (“PSC”). *See, 26 Del. C. §102*, definition of Public Utility. Questions have been raised by developers, propane companies and others about how, if at all, propane companies may provide propane distribution systems within a subdivision from a single (or series) of propane storage tanks (a “tank farm”) dedicated for that subdivision and all of the homes within that proposed subdivision.

The purpose of this Memorandum is to provide uniform guidance to all DelDOT Maintenance and Operations (“M&O”) Districts, Development Coordination, Planning and other impacted Divisions and groups to ensure that if a request is made to install propane lines and a tank farm in a proposed subdivision, the same consistent standards for reviewing and approving or denying any requested application are used across the entire Department.

Propane lines which run longitudinally are not permitted to be installed within Department Right of Way (“ROW”) or Permanent Easement (“PE”). That is because Propane is not a regulated utility under the purview of the PSC and is therefore not entitled to a master franchise under the Utility Manual, *2 Del. Admin C. §2401*, subsection 5.1.2. That position has been consistent historically and remains unchanged.

The Utility Manual does allow for Use and Occupancy Agreements to be issued for certain non-regulated/non-franchised companies/products, which includes propane:

5.3 Use and Occupancy Agreements

5.3.1 Purpose. A Use and Occupancy Agreement (shown in Appendix A, located at <https://deldot.gov/Business/drc/manuals/utilities-manual-2022/appendix-d.pdf>) is used for privately or individually owned facilities that are located on or across state-maintained rights-of-way. For example, if a landowner owns property on both sides of a state roadway and needs to convey irrigation lines, water lines, natural gas lines, propane lines etc., between properties, the landowner and DelDOT must execute a Use and Occupancy Agreement. The Use and Occupancy Agreement provides DelDOT with information about the facilities and sets forth their conditions. The owner shall obtain a Utility Construction Permit for any facility construction, maintenance, or repair.

5.3.2 Conditions. Only crossings are allowed. Longitudinal lines are not permitted.

The above provisions come from the 2022 Utility Manual. The 2025 Utility Manual changed the location of those provisions to Sections 4.1.2.1 and 4.1.2.2 respectively, but the language, and prohibitions and permissions, in each section remains unchanged.

The Department has consistently advised developers and propane companies that they may not install propane lines longitudinally within ROW and that any roads which have propane lines installed longitudinally within ROW will not be accepted into state maintenance.

Questions have been raised however about propane line crossings and how, if at all those crossings should be evaluated and if they may be permitted. Additionally, different procedures have been used at times by different Districts to review and approve or deny requests for propane lines to be permitted. The following guidance and procedures apply for all subdivisions which include the construction of a propane distribution system which has more than a single residence being served from a propane tank or a number of homes being served from a single tank farm ('community propane systems'):

Propane companies and developers seeking to install community propane systems are required to submit the following:

- 1) Plans that show that all of the proposed longitudinal transmission lines are outside of any proposed ROW for transportation infrastructure as well as any PE's granted the Department;
- 2) Plans that show every proposed horizontal crossing of ROW or PE, with an identifier for that crossing that can be easily referenced in a Use and Occupancy Agreement. The developer and/or propane company shall create a set of plans which minimizes the overall number of crossings to the extent possible. Plans submitted to DelDOT for approval as part of a Use and Occupancy permit application, if approved, will be annotated: ***The developer, propane company and their design consultants/engineers take full responsibility for the design of the***

propane distribution system and confirmation of the information outlined in the plans;

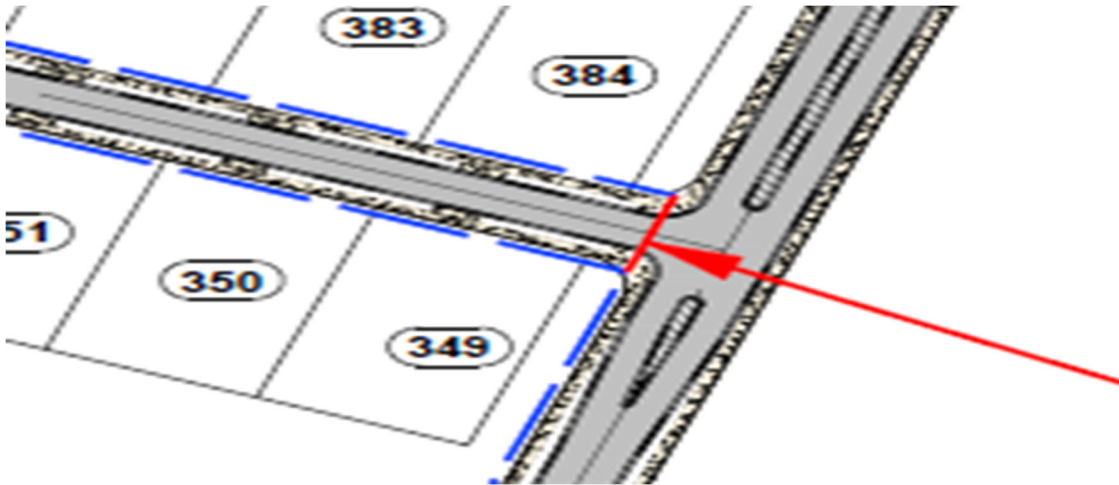
- 3) Copies of all recorded easements which show that the developer, its successor and/or the propane company has the right to access all locations where propane lines are to be installed, which shall include the right to access individual lots after they are sold to homeowners, to service all facilities installed as part of the community propane service system; and
- 4) A completed application for a Use and Occupancy permit for each proposed crossing which crosses perpendicular to proposed ROW and/or any PE. A single application may be used for all proposed crossings, but each crossing must be identified by location and annotated on the set of plans submitted for approval.

Department staff will then review the application and all attached materials using the following guidance to approve, deny or seek revisions of the proposed plans:

- 1) When reviewing any developer or propane company provided easements, the easements may NOT overlap any PE granted to the Department or any proposed ROW. Easements which will provide for installation of longitudinal propane lines must be separate from any PE or ROW.
- 2) The easement must be acceptable to DelDOT, in that it clearly and unequivocally establishes a present and future right to access not only common areas but individual numbered lots which will be sold to separate buyers. Questions about whether the Easement is acceptable should be submitted to DelDOT legal for review, along with copies of all easements, plans, applications etc., being provided as part of the materials to be reviewed. It is the developer and/or propane company's obligation to provide affirmative evidence that an appropriate easement exists to allow not only installation but future access for maintenance and repairs.
- 3) All proposed horizontal crossings of ROW or PE must be encased within an approved protective pipe and meet all other regulatory requirements for utility crossings, such as depth, backfilling, protection, slope, etc.
- 4) All termination points of crossings, meaning where they tie into the longitudinal lines and where any valves fittings or the like are installed, must be outside of ROW and/or PE.

The following are examples of possible ROW or PE crossing types that are permissible under a Use and Occupancy Agreement:

Situation 1: Crossing from dedicated open space to dedicated open space, which is retained by either the developer or to be created Homeowners Association ("HOA"):

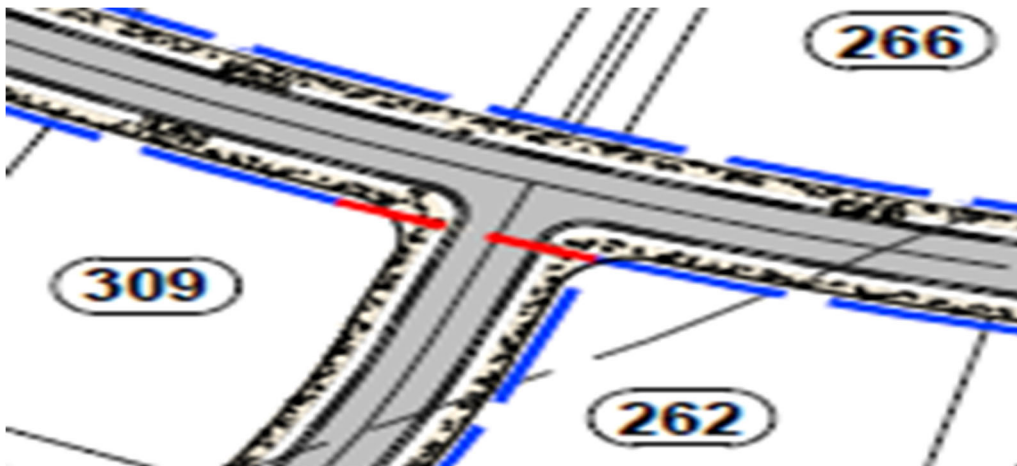


Situation 2: crossing from open space retained by the developer or to be created HOA to a numbered lot which will be sold to a buyer:



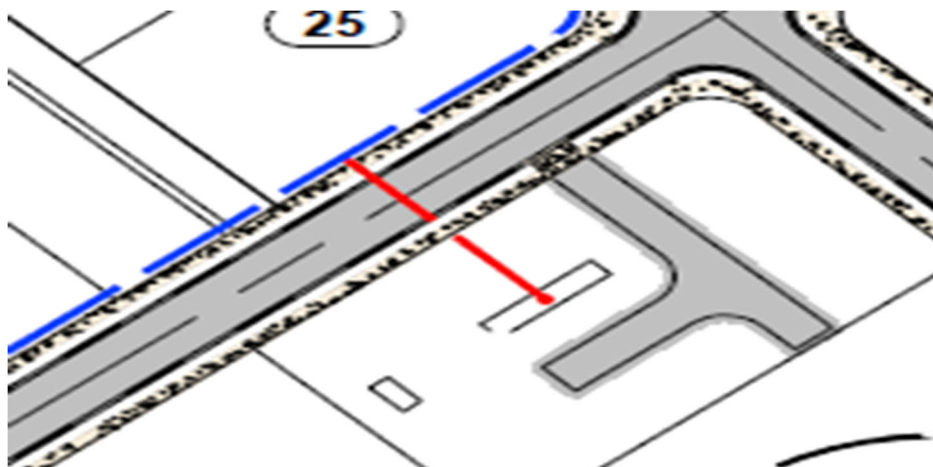
Special attention should be paid to ensure that the easement which the developer or propane company has contemplates a right to access to individual numbered lots post sale where the crossing permitted by the Use and Occupancy agreement terminates.

Situation 3: numbered lot to numbered lot, where the developer is planning on selling both lots to individual buyers as part of the development:



Special attention should be paid to ensure that the easement which the developer or propane company has contemplates a right to access to individual numbered lots post sale where the crossing permitted by the Use and Occupancy agreement terminates.

Situation 4: Service from the Tank farm:



Special attention should be paid to ensure that the entity which will control and own the tank farm has a right of access within the relevant easement documents.

In each of the four (4) above examples, a use and occupancy agreement may be approved where the termination is outside ROW or PE and the appropriate easement is obtained and presented by the developer and/or propane company showing a perpetual right to access for not only the installation of the proposed propane lines but all future maintenance, repair and replacement.

Attached is the Loganberry Use and Occupancy Agreement which provides an example of how all proposed crossings should be identified in a single Use and Occupancy Agreement. Only crossing listed within the Use and Occupancy Agreement are permitted. Any crossings which are

not the subject of a Use and Occupancy Agreement shall cause the road segment to not be eligible for acceptance into state maintenance.

An example of a situation where a Use and Occupancy Agreement would not be appropriate is:

Impermissible Example 1: Where the crossing terminates within a proposed Best Management Practice (“BMP”) that services stormwater for part or all of the subdivision:



In that instance, the developer should determine an alternate location for the crossing or an alternate pathway for delivery of propane to the lot (in this example, lot 258).

The Department desires to both be flexible while at the same time ensure that all approved installations are safe and follow both the statutory and regulatory framework applicable to all entities. If additional questions arise going forward, they should be routed through Development Coordination for clarification on a path forward.

This guidance should be applied to all projects which are pending review and/or approval, including but not limited to Country Club Estates, Governors Glen and Carter Farm, as well as all future projects submitted to the Department for review.


Shanté A. Hastings
Secretary of Transportation

cc: Lanie Clymer, Deputy Secretary
George T. Lees III, Deputy Attorney General

