

III. ACQUISITIONS

Acquisition is the act of purchasing (in FEE Simple or by easement) property for the purpose of building infrastructure for transportation purposes. The acquisition is based on the amount of land needed to build the infrastructure project, including all facilities needed to support the maintenance and operation of the infrastructure project.

Infrastructure can be roads, pathways, sidewalks, bus shelters, or parking areas to support public transit. Facilities to support infrastructure include toll equipment, traffic signal and communication equipment, ITMS, lighting, utilities, drainage, stormwater facilities, maintenance facilities, etc. that are required in support of the Project’s Engineering Need.

This chapter is meant to provide guidance to the Practitioner in determining what type of acquisition is appropriate. If there are any non-typical situations, the Practitioner is directed to contact DeIDOT Team Support for clarification. Presentation of acquisitions on the Right-of-Way plans is covered in Chapter IV, Plan Preparation.

The general decision-making process for acquisition is shown in the flowchart in Figure 3-1. This is a simplified version of how the type of acquisition is determined. All projects are different, and projects can have unusual circumstances that may not fit these criteria. Team Support will assist the Practitioner if there are any questions about which type of acquisition is appropriate.

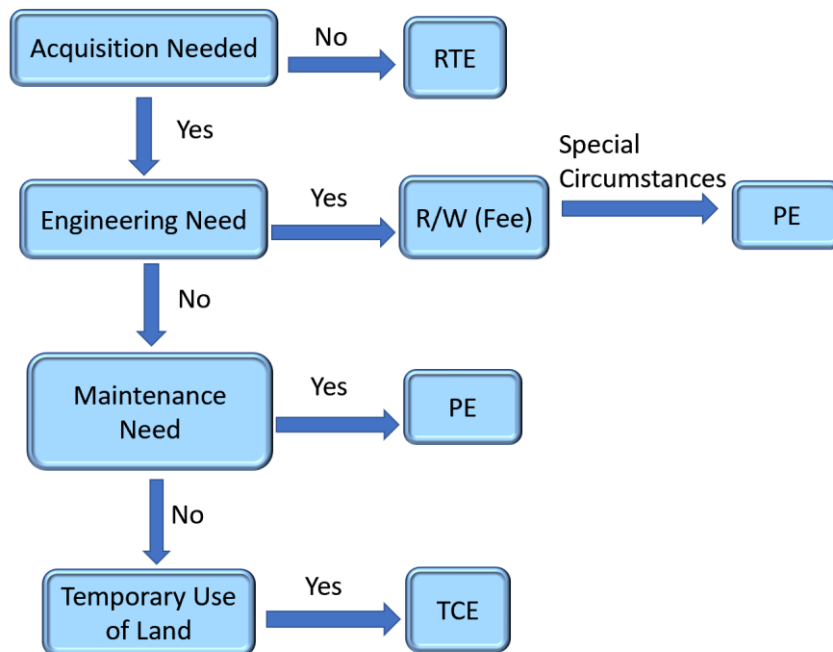


Figure 3-1 Acquisition Decision Flowchart

A. Limit of Construction (LOC)

The first step in determining the type of acquisition is to know the area in which work will be required as part of the construction. Limits of Construction (LOC) are the boundaries that define the area within which the Contractor must confine the work. The Practitioner must establish the LOC such that the contractor will not trespass into areas that have historic, cultural, or environmental restrictions, or HAZMAT concerns. The Practitioner must coordinate with the Environmental Stewardship Section to determine any limits around sensitive areas that should not have construction disturbance.

The LOC is established first to determine what type of acquisition is necessary. The acquisition is typically placed on the plans at least one foot or more outside of the LOC. See Figure 3-2 for an example of establishment of the LOC within the acquisition area.



Figure 3-2 Limit of Construction within a Permanent Easement

B. Proposed Right-of-Way (R/W)

Proposed Right-of-Way in FEE Simple (R/W) is land or property that is acquired for or devoted to transportation purposes and represents the Engineering Need for the project. The Proposed R/W should include all lands needed for features such as roadway, utilities, sidewalk, traffic equipment, ITMS, lighting, drainage, stormwater facilities, guardrail, landscaping, etc. Clear zone should be part of the R/W only if it is required due to design standards. Access to all features of

the improvements should also be considered as part of the R/W to allow safe access for construction and maintenance of the facilities.

Features and facilities used to support the maintenance and operation of the roadway, whether for maintenance and operations, environmental mitigation sites, or some other purpose, should be within Operational Right-of-Way. The Delaware General Assembly includes language every session in what is referred to as the “Bond Bill”. The language pertains to Maintenance and Operations facilities and gives special authority to exempt DelDOT from local zoning ordinances:

Building structures and facilities constructed, or to be constructed, within the Department of Transportation's operating right of way that facilitate maintaining the highway system and are used to assist in the operational and maintenance activities for all roads, shall not be subject to zoning, subdivision or building code ordinances or regulations by any political subdivision of the State. Types of structures may include equipment sheds, crew quarters, equipment maintenance, equipment washing, material storage sheds (i.e., salt, sand, and other bulk materials), fuel centers and other maintenance structures required to maintain the highway system such as security (cameras and fences) including necessary maintenance and replacement items such as upgrades to existing facilities. The Department shall not construct any such facility without first conducting a public workshop to describe such plans and gather public input into the effect of such plans. (SB 40, January 26, 2023)

The Practitioner should consider any existing agreements or deed restrictions that apply to project parcels when establishing the proposed R/W corridor. A thorough search for all information should be done prior to establishing the proposed R/W line. Agreement language or deed restrictions can affect the placement of the proposed Right-of-Way line. For more information on Agreements, see Chapter VIII of this manual.

If the Practitioner expects that there may be total acquisitions of parcels or if a parcel will be bisected, then consideration should be given to the future sale of excess lands. The Land Services Section, which is part of the Right-of-Way Section, will assist the Practitioner in identifying the proposed Right-of-Way to maximize the excess lands available for sale.

Establishing the proposed R/W is based on the Engineering Need for the facilities to be built. When establishing the proposed Right-of-Way for a project, care must be taken to limit the acquisition as much as is practical. The new construction should strive to find the best-fit that will allow for the needs of the project design components, in conjunction with the least impact to residences, businesses, and the environment. For example, in Figure 3-3, the roundabout was shifted away from the residences and the existing Right-of-Way was used as much as possible. Although one structure was impacted, the impacts to all other residences was lessened.

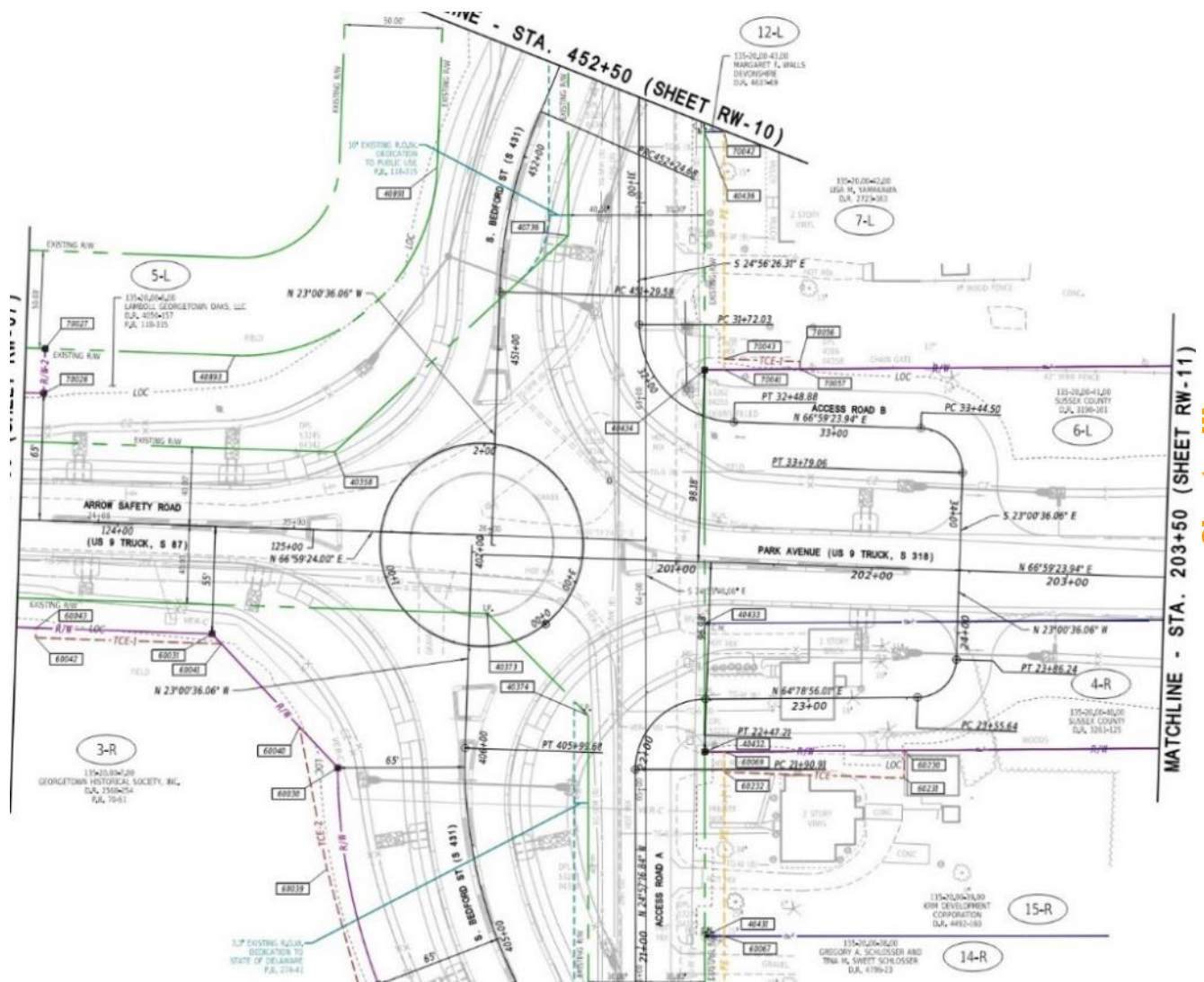


Figure 3-3 Establishing Proposed Right-of-Way

C. Denial of Access (DA)

Denial of Access prohibits a portion of the property that abuts the roadway from having direct access to the roadway. DeIDOT is authorized to regulate access on state maintained roadways under [\[17 Del. C. §146\] Access to State Maintained Highways](#). The Federal Highway Administration has jurisdiction over Denial of Access to the Interstate system and controlled access roads built with Federal funds. During the preparation of the existing Right-of-Way Mosaic, any existing Denials of Access must be identified on the plans. Denials of Access may be part of the Right-of-Way line (R/W-DA) or separate lines (DA).

Denial of Access is found on interstate facilities such as I-95, and limited access facilities such as SR 1 and US 301. Full control of access along the mainline and ramps, along with control of access

on the crossroad(s) at interchanges, is critical to providing a high level of service in terms of safety and mobility. On other roadways, there may be a Denial of Access, such as near an intersection, to preserve capacity. A thorough review of existing Construction and Right-of-Way plans and the acquisition documents should be conducted to properly identify the presence of any existing DA's within the project limits. The information in the plans versus the acquisition documents must be checked to ensure they agree. Any discrepancies should be reviewed with Team Support.

Highways that are in the Corridor Capacity Preservation Program are an example of a highway that is subject to the access management protocols developed for the Corridor. The controlled access facility, including ramps and crossroads, will have a Denial of Access line. Access to abutting properties will be provided by the local road system that exists or is reconfigured to form a frontage road system. The Corridor Capacity Preservation Program is discussed more fully in Chapter VIII, Agreements.

If the Practitioner determines that a new Denial of Access must be placed on an existing R/W of a state-maintained roadway that normally has access, the Practitioner must work collaboratively with the Traffic Engineering Section and Development Coordination Section to determine the placement of the Denial of Access from a traffic safety perspective. The Practitioner must also consult with Team Support and Team Support will recommend the placement of the Denial of Access.

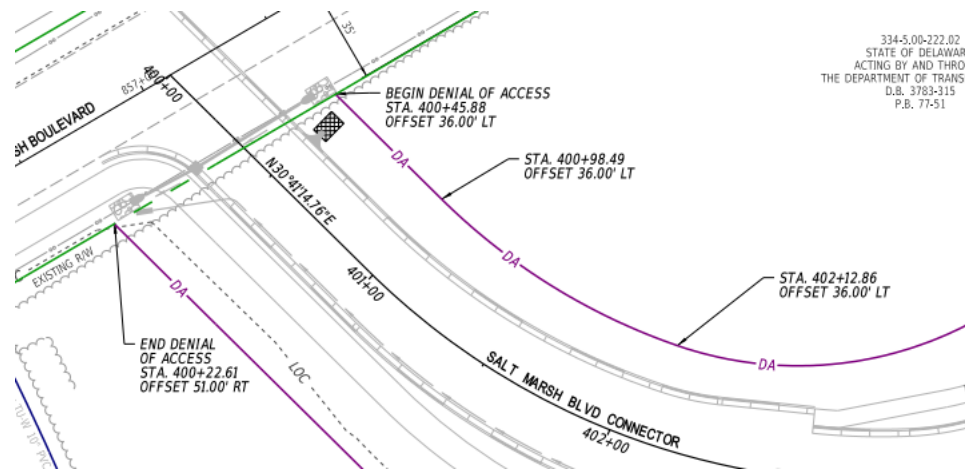
When only the need for access rights (and no additional right-of-way) are identified, DelDOT will not purchase or condemn unless the Right-of-Way Section finds a material impairment of direct access on and off the property that affects the market value. Absent that finding, access will be controlled via authorization under 17 Del C. §146 and the property line will continue to be shown as Existing Right of Way or existing Right of Way by Permanent Easement. If there is an effect on market value, the property line is shown as a DA on the plans.

The Right-of-Way Section will record the Denial of Access as part of a deed for the property.

1. Proposed

The Practitioner should determine if the roadway warrants a Denial of Access because of its functional classification as a limited access highway, or if traffic conditions warrant limiting access to any locations along a normally full access highway.

Figure 3-4 illustrates the placement of a Denial of Access line. The beginning of a DA and the end of a DA must be identified with station and offset. Any intermediate points needed to describe the location of the DA line must be identified.



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Figure 3-4 Denial of Access on a Limited Access Highway

The Right-of-Way and Denial of Access may occupy the same line and can be denoted as R/W-DA. The R/W line may diverge from the DA if there is additional land being used as operational Right-of-Way. In Figure 3-5, the DA line describes the Engineering Need and the R/W-1 line describes the operational right-of-way.

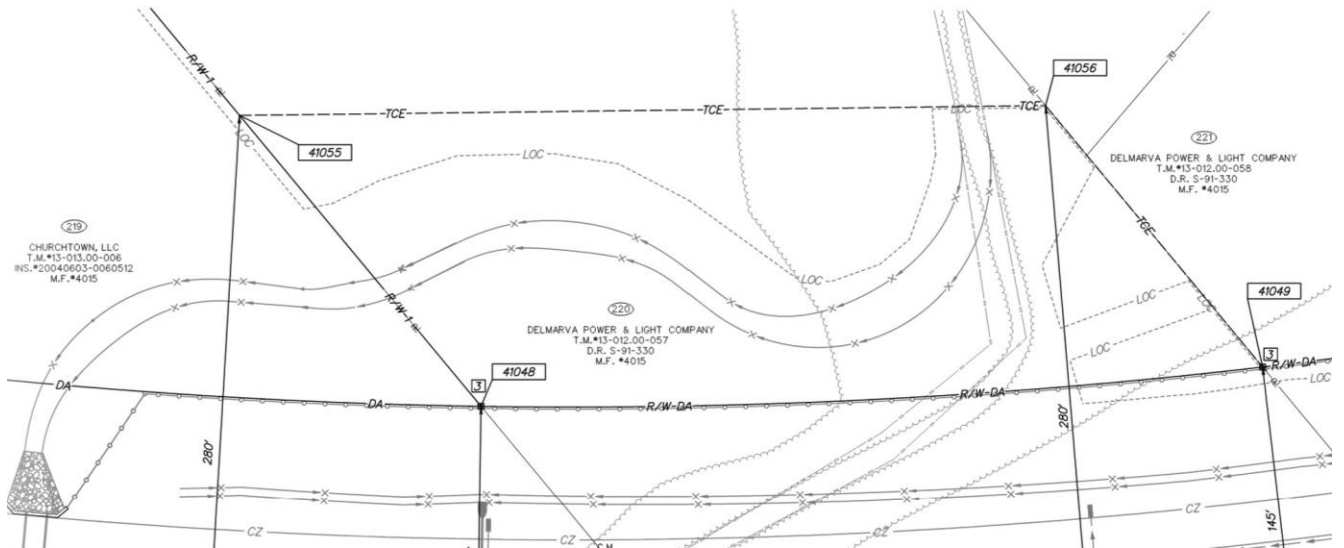


Figure 3-5 Diverging Denial of Access and Right-of-Way lines

A separate DA line may also be used when a limited access highway is adjacent to another road that is otherwise fully accessible. In this instance, the operational Right-of-Way extends to the 'far side' of the fully accessible road and a separate DA line would be located between the fully accessible road and the limited access highway. Figure 3-6 illustrates a frontage road adjacent to SR 1. A DA line is drawn on both sides of SR 1 and a R/W line is shown on the "far side" of the frontage road.

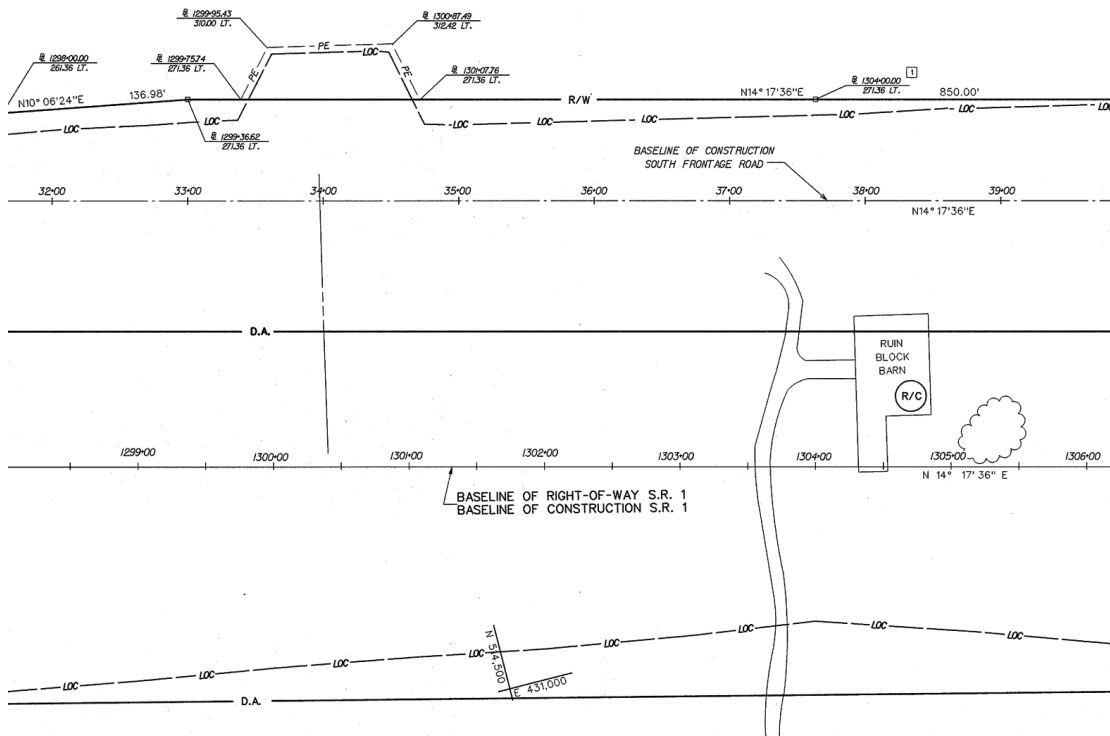


Figure 3-6 Frontage Road and Limited Access Facility

When a limited access highway bridges over or under another road, the Denial of access does not extend across that road as shown in Figure 3-7. The DA ends at the existing R/W of the road under the proposed bridge. Other variations on the application of R/W-DA and separate DA lines may arise on a project and they should be reviewed with Team Support.

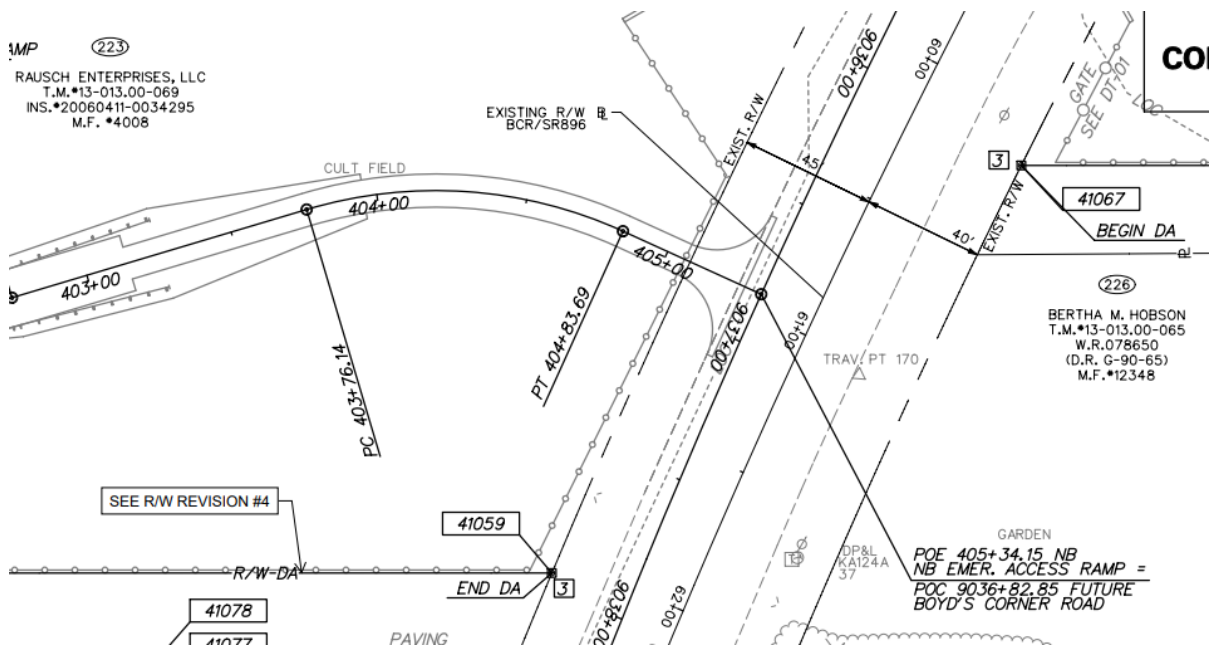


Figure 3-7 Denial of Access on Crossroads and Ramps



2. **Breaking Existing DA**

There are times when DelDOT may be asked to revise the limits of an existing Denial of Access. This can be by a property owner request or because of changes to the roadway.

On the Interstate System, DelDOT must request approval from the FHWA to decide whether new or revised points of access are acceptable. The FHWA's decision to approve a request is dependent on the proposal satisfying and documenting the following:

- “The operational and safety analysis has concluded that the proposed change in access does not have a significant adverse impact on the safety and operation of the Interstate facility or on the local street network based on both the current and the planned future traffic projections.”
- “The proposed access connects to a public road only and will provide for all traffic movements.”

For more information, the *Policy on Access to the Interstate System* can be found by searching the FHWA website. DelDOT has also adopted Policy Implement R-05, *Access Control Policy*, found on the DelDOT intranet. The DelDOT policy is to be used to revise any existing Denial of Access on access controlled non-interstate highways. If a DA is to be revised, then the revision is to be noted in the Remarks field in the Metes and Bounds table for the affected parcels in the Right-of-Way plans.

D. Permanent Easement (PE)

A Permanent Easement provides DelDOT certain rights to the land, as described in the PE agreement, while the property owner retains the underlying FEE simple ownership of the land. Templates for Permanent Easements and the rights that DelDOT obtains from a PE can be found on the DRC.

Note, if there is an existing PE on a parcel within the area needed for the project and it is desired to utilize that PE, the Practitioner should research archived plans and recorded deed information carefully to determine what type(s) of rights DelDOT has within the PE. For example, the recorded document for the PE could limit the use of the area specifically to drainage. If the area is needed for other uses, such as utilities, sidewalk, etc., then the PE agreement must be amended in a new recorded document to expand DelDOT's rights to include all required uses. Figure 3-8 shows a new PE that overlapped an existing drainage easement. The new PE agreement will include expanded DelDOT rights to include all required uses.

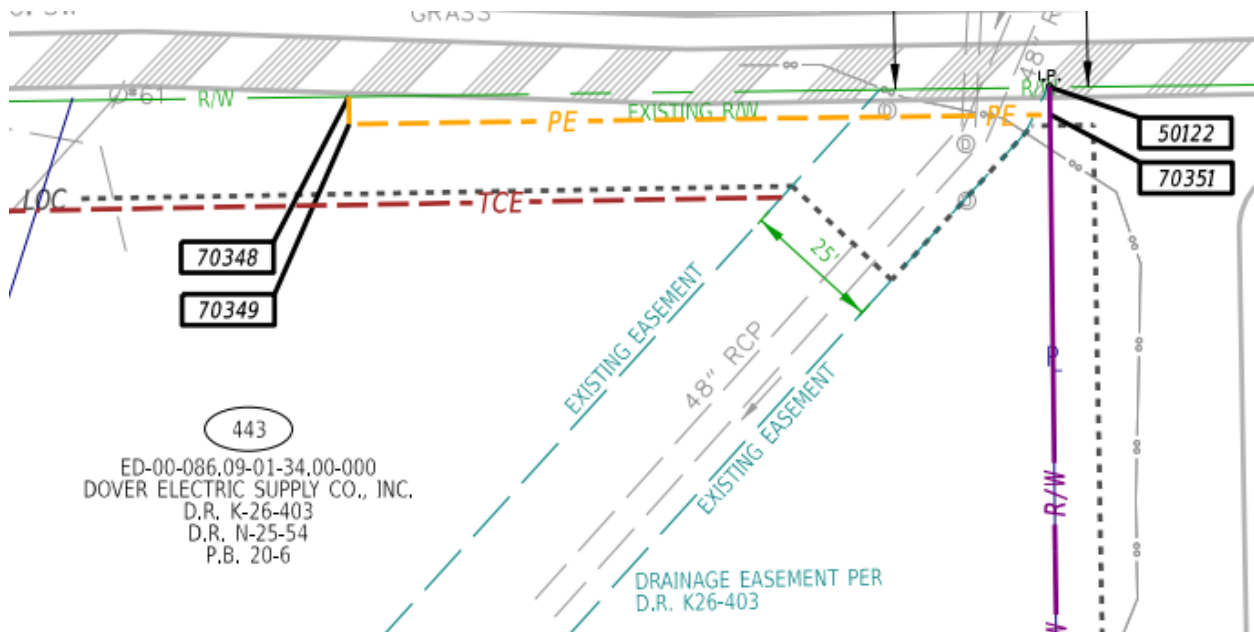


Figure 3-8 Permanent Easement

If the grading for a roadway will require a cut or fill slope that is steeper than 3:1 and that slope is outside of the typical proposed Right-of-Way, normally a PE is preferred for the slope. This allows the private property owner to retain ownership but allows DeIDOT to maintain the slope if needed. Team Support should be contacted by the Practitioner to review the application of PE for slopes outside of the typical proposed Right-of-Way.

Facilities located along the roadside may require placement of a fixture and/or require future maintenance, which can be accommodated by a PE. An example of this could be for a drainage easement, guy wire for a utility pole, an access road to a utility, or to provide access for equipment to make future bridge repairs, inspections, or maintenance. Figure 3-8 is an example of a PE used to preserve access to a drainage system. Note that an acquired PE can be used for any of the rights described in the PE agreement and that, in this example, the use of the PE would not be restricted to only the drainage.

For presentation of a PE on the plans, or numbering of multiple PE's on a parcel, the Practitioner should follow guidance on the DeIDOT CADD Wiki and Example Plans.

In some circumstances, an Aerial PE may be used for above ground utilities or for canopies of structures. An Aerial PE is rarely used but would be used in a situation where it is beneficial to accommodate commercial parking or other site improvements. The word AERIAL is shown in front of PE in the linestyle. If space is limited, the word AERIAL can be labeled adjacent to the PE text. See Figure 3-9 for an example showing both ways to note AERIAL with the PE line. The Practitioner should take note that underground facilities such as wells, storage facilities or privately owned underground services should not be located within an Aerial PE. Maintenance activities on the aerial facilities may affect the underground facilities. The Aerial PE provides the

rights to construct, maintain, repair, and replace overhead facilities. Concurrence with the Utility Section, Team Support and Right-of-Way needs to be obtained prior to use of an Aerial PE.

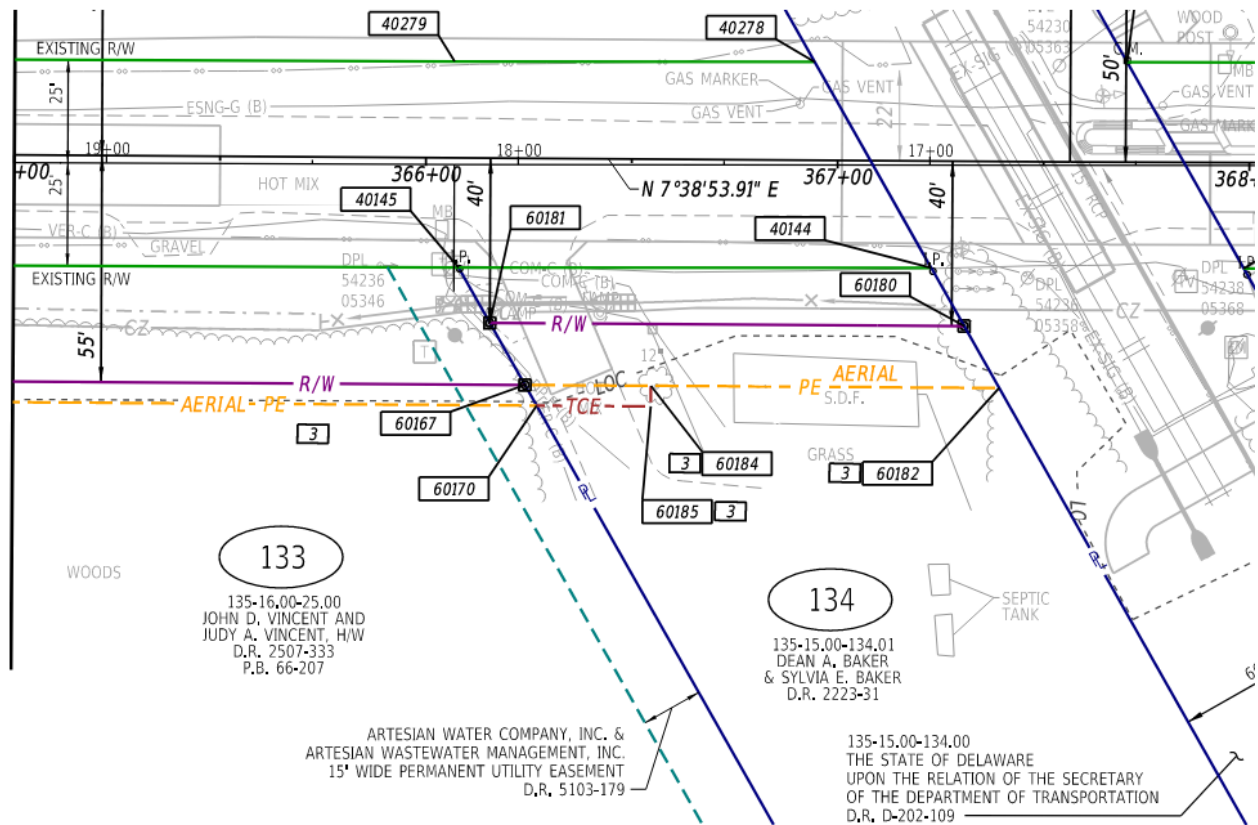


Figure 3- 9 Example of AERIAL PE text on R/W Plans.

If an Aerial PE is located on a parcel with other standard PE's, the Aerial PE is included in the numbering sequence described above. A note in the Remarks box of the Data Table must be included to identify which PE acquisition area is an Aerial PE.

1. R/W vs PE

Typically, a R/W acquisition is used rather than a Permanent Easement (PE) acquisition for permanent features. However, there are times when a PE acquisition is preferred. Typically, a Permanent Easement is used rather than a R/W acquisition in situations where DelDOT or a utility company need to install and maintain a facility. The standard PE agreement provides the rights to install and maintain any transportation related improvement within the PE and includes restrictions on what the owner of the underlying R/W may do within the PE. Figure 3-10 illustrates a sidewalk constructed within a PE.

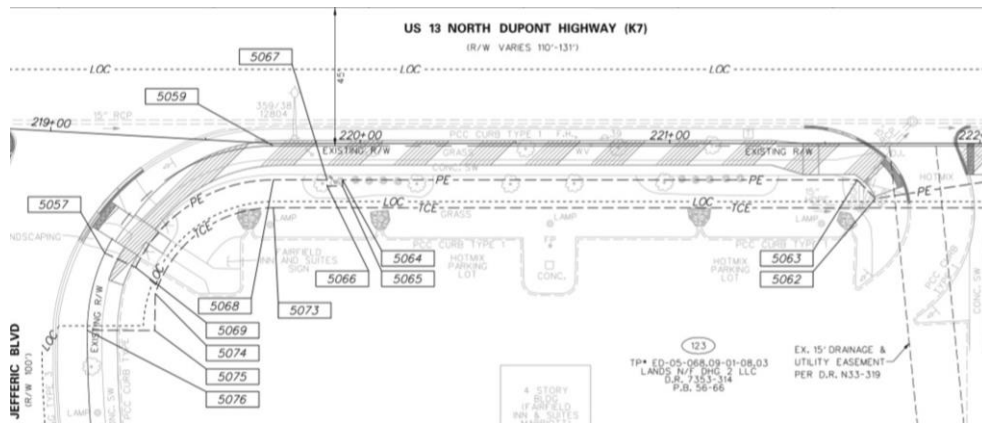


Figure 3-10 A permanent feature constructed within a Permanent Easement

a. Recommendations

The use of a PE rather than a R/W is reviewed by Team Support on a case-by-case basis. Team Support will review and recommend which acquisition is appropriate.

b. Identify Potential Issues

A PE can be used in place of a R/W acquisition if the property owner would like to retain ownership rights. For example, a PE can be used around a stormwater management facility, utility, sidewalk, or environmental mitigation site. Note that joint use of stormwater management facilities between DeIDOT and other private or public entities requires a separate Stormwater Management Joint Use Agreement. In working with the property owner, the Practitioner should determine what the wishes of the property owner are in relation to a R/W vs PE. Sometimes, a property owner would rather keep FEE Simple ownership because of zoning regulations for development of the parcel. The use of a PE can obtain the required rights for DeIDOT while minimizing impacts to the parcel, since set-back distances are typically defined from a R/W line by local land use agencies and the owner can use the land for any purposes that aren't in conflict with the terms of the PE agreement. It should be noted that the payment to the property owner is normally larger if a R/W is used rather than a PE, although this should be verified with the Appraisal Section.

c. Negotiations

It is recommended that the Practitioner verify the property owner's wishes early in the project, but there are times when the property owner does not verify this information until after an offer is made by the Acquisitions, Relocations and Settlements Section. The property owner may wish

to have a PE rather than a R/W. In this case, the Practitioner will have to revise Right-of-Way plans based on the outcome of negotiations. The Practitioner must act quickly to make the revisions as the Acquisitions, Relocations and Settlements Section needs this information to make the corrected offer.

E. Temporary Construction Easement (TCE)

A Temporary Construction Easement (TCE) is an agreement granting temporary use of an area on a private property for access, grading, etc. The TCE provides the working room for the contractor to complete the work. The agreement is effective for the duration cited in the TCE agreement. The Practitioner will communicate to the Team Support Section, the Appraisal Section, and the Acquisitions, Relocations and Settlements Section the proposed timetable of the contract. This can be done through the Parcel Impact Form. A TCE ends when the time period is complete. The duration must include all work that is to be performed within the TCE, including any advance utility relocations, and performing work on punch-list items after substantial completion of the work.

The TCE is typically activated when Notice to Proceed has been given to the contractor. The need for access to the TCE prior to the start of construction must be communicated by the Practitioner to the Right-of-Way Section prior to offers being made. If there are any delays during construction that extend the contract beyond the original TCE duration, the new completion date will need to be communicated by the Practitioner to the Acquisitions, Relocations and Settlements Section along with the parcels that will be affected.

Each TCE for a parcel should be calculated separately and noted in the Data Tables of the Right-of-Way plans. A TCE is shown in Figure 3-11.

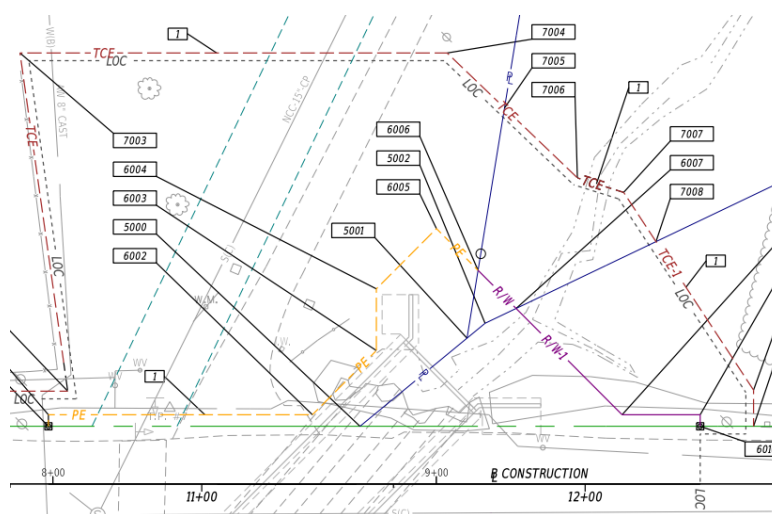


Figure 3-11 Temporary Construction Easement

F. Right to Enter (RTE)

A Right to Enter (RTE) is used to enter onto private property to maintain, repair, or reconstruct to current standards an existing publicly financed transportation asset. The use of an RTE is made on a case-by-case basis considering the scope of the project with concurrence from the DelDOT Chief of Right-of-Way.

The right to enter is based on the Delaware Code which states that DelDOT may make repairs and reconstruction of public facilities on private property [\[17 Del. C. §132 \(c\)\(13\)\]](#). The Delaware Code also allows for repairs on drainage facilities [\[17 Del. C. §504\(a\)\]](#) and maintenance of ditches, drains, streams and creeks within their channels [\[17 Del. C. §504\(b\)\]](#). Additionally, the Code identifies that if a roadway has been maintained at the public expense for 20 years it is deemed publicly owned. [\[17 Del. C. §509\]](#)

The Code excerpts above grant DelDOT a codified right to enter private property for “surveys, repairs, reconstruction and operation of publicly financed improvements”. The various components of a roadway, such as pipes, gutters, water control structures, ditches, drains, culverts, sewers, sidewalks, curb ramps, and traffic control equipment that have been “maintained at the public charge for 20 years or more” are deemed part of the public road or highway and therefore, are “publicly financed improvements”.

This authority allows DelDOT to make in-kind replacements of public-use facilities to bring the facility up to current standards. Some alteration of slopes, vertical and horizontal dimensions is also allowable, such as to update a facility to current standards, provided the work does not increase the footprint of permanent infrastructure specifically upon the private property, relocate the facility further onto private property, or otherwise increase the burden on the private property.

The authority described above allows DelDOT to assert police powers and is not asserting eminent domain powers. Police powers are not considered acquisition activities and therefore just compensation is not owed nor is just compensation to be considered an option.

This authority does not apply to new facilities. Where new facilities are constructed, DelDOT must use eminent domain powers to acquire necessary property rights to construct the new facilities.

Except for routine maintenance, when DelDOT intends to exercise its above authority to enter private property to perform repair or reconstruction work on publicly financed improvements, plans and/or detailed drawings shall be prepared clearly depicting the limits of the area DelDOT will enter.

The Practitioner will add an RTE to the Construction and Right-of-Way plans in the areas where the LOC will extend outside of the existing R/W. A standard project note shall be added to the corresponding Construction and Right-of-Way Plan sheets. The note is for both internal DelDOT review purposes and for the contractor's reference. Note 1 should only be shown on the plan sheets if there is an RTE. If there is no RTE, do not show the note. For illustration purposes, see Figure 3-12 below. Any features on the parcel within the RTE line that should not be disturbed during the work shall be clearly marked on the plans with a DND identifier.

NOTE:
 1. WHERE A RIGHT TO ENTER (RTE) LINE IS DESIGNATED ON THE PLANS, IT INDICATES A LOCATION WHERE THE DEPARTMENT ALREADY HAS THE RIGHT UNDER DELAWARE CODE TO ENTER ONTO PRIVATE PROPERTY TO MAINTAIN, REPAIR OR RECONSTRUCT FACILITIES USED BY THE PUBLIC AND MAINTAINED AT PUBLIC EXPENSE.

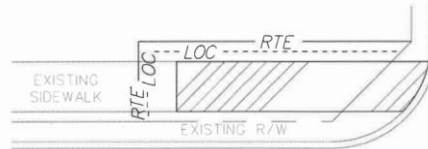


Figure 3-12, RTE and Project Note

There are some circumstances where a TCE, instead of the statutory RTE, would be appropriate. This decision is based on several factors, including the duration of impact, the benefits to the private property owner, and the effects upon the private property's value. Private/commercial driveways and entrances are generally not eligible for RTE use and must use a TCE, unless the entrance was publicly funded or maintained by the state for 20 years. The final decision as to whether land rights, in the form of a TCE, must be acquired will fall to DelDOT's Chief of Right-of-Way.

During the design phase of a project, notification shall be sent as a courtesy by the Practitioner to the property owner, and tenant if applicable, indicating DelDOT's intention to exercise its codified right to enter. A templated letter can be found on the DRC. The intent of the letter is to alert the property owner to the authority of DelDOT. The Practitioner should obtain concurrence from the DelDOT Project Manager prior to sending this letter.

If the property owner challenges DelDOT's proposed entry onto their property, the Practitioner must decide as to whether the work can be excluded from the project and/or determine reasonable alternatives under the specific circumstances. The Practitioner must use engineering judgement and applicable standards when determining whether the work can be excluded. If the Practitioner chooses not to pursue the original proposed work, a letter to the property owner must be sent that indicates that DelDOT still maintains the right to enter authority, but that DelDOT will not pursue the original proposed work. A templated letter that explains that DelDOT will not be using the RTE can be found on the DRC. If it is deemed necessary to reconstruct the existing facility, then the Practitioner should contact the DelDOT Legal Section to discuss the appropriate path forward to exercise the State's police powers.

If it is determined during construction activities that additional land rights are required, the Chief of Right-of-Way shall be contacted as to appropriate procedures.

G. Parcel Impact Forms

The Parcel Impact Form contains information that assists the Right-of-Way Section in the review of Right-of-Way plans, appraisal, and acquisition processes. The Parcel Impact Form is filled out by the Practitioner, for all projects that require acquisitions. The Practitioner is to identify why the impact is necessary and what type of acquisition is needed, i.e., R/W, PE, TCE, and/or Area Occupied by existing R/W. A description of any impacted item(s) on the parcel should be described along with the impact. This could include landscaping, access/circulation, buildings, wells/septic/irrigation, parking, utility services, etc. Impacts during construction and for the final improvement conditions should both be described when applicable. If site improvements are not to be disturbed, any DND is to be noted on the Parcel Impact Form. Prior property owner meetings that the Practitioner may have had should also be noted and described. The timing of the need for any TCE should be noted on the form. The information is intended to give the Right-of-Way Section a complete understanding of why the property is to be acquired, what is being acquired (e.g., R/W, PE, TCE, etc.), impacts to the parcel, and what understandings the property owner may have. The form is located on the DelDOT DRC under Right-of-Way.

H. State Owned Parcels

Lands owned by the State of Delaware should note the Department responsible for the parcel on the Right-of-Way plans and R/W Data Tables. This could be the Department of Natural Resources and Environmental Control (DNREC) and any of its Divisions, DelDOT, or another Department as shown in Figure 3-13. If a TCE is needed, DelDOT does not purchase a TCE from a State-owned parcel. All R/W and PE are purchased from State agencies unless a prior agreement states otherwise.

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Figure 3-13 State-Owned Lands

I. Advanced Acquisitions

The Advanced Acquisition Program allows DelDOT to acquire an interest in real property prior to approval of Final Right-of-Way plans for a particular transportation project and in accordance



with [Title 2 Delaware Administrative Code, §2406](#). The Advanced Acquisition Committee will determine if the acquisition is consistent with the State's overall goals for land use planning.

The Practitioner may be required to produce a display that illustrates the future project and the impact on the property being acquired. The display should show the best-known alignment and future Right-of-Way needs that are known at the time.

Team Support may be required to have complete boundary surveys prepared for the Advanced Acquisition Committee.

Any lands that are acquired prior to the start of the project through Advanced Acquisition will be shown on the plans in accordance with the documents executed for the Advanced Acquisition approval on the plans.

J. Extinguishing Existing Easements

Existing private easements that are within the proposed R/W area must be extinguished. These easements include, but are not limited to, utility easements and tax ditch easements. The Practitioner will note the easement in the Data Tables on the Right-of-Way plans. The note should include the deed of record or plot book and the square footage of the area of the easement that is within proposed R/W or PE and must be extinguished. This is important to note so that the Acquisitions, Relocations and Settlements Section can compensate for the loss of the easement and extinguish the area from the deed of record. An example of the entry of information into the Data Sheet is shown in Figure 3-14.

DELDOT EASEMENT (PB 234-51) 254.6282 SQFT. TO BE EXTINGUISHED
TU EASEMENT (D 03411 217) 681.8901 SQFT. TO BE EXTINGUISHED
TU EASEMENT (D 3394 052) 3032.9685 SQFT. TO BE EXTINGUISHED
DEC EASEMENT (D 2108 340) 28886.2002 SQFT. TO BE EXTINGUISHED
DEC EASEMENT (D 2028 205) 2552.6336 SQFT. TO BE EXTINGUISHED

Figure 3-14 Extinguishment of Easements