Stephen J. Nichols
206 Marabou Drive
Newark, DE 19702
302.834.2426

Received

MAY 0 5 2006

Division of Parks & Recreation
Director's Office

May 5, 2006

Mr. Charles Vickers
Division of Parks and Recreation
DNREC
89 Kings Highway
Dover, DE 19901

RE: State Resource Area Maps Comments
New Castle Tax Parcel No. 1102600036

Dear Mr. Vickers:

This correspondence is submitted with the intent that it be considered as part of the hearing record for The Open Space Council's and/or DNREC's adoption of the proposed State Resource Areas and Natural Areas maps. It is submitted by Stephen J. Nichols.

Stephen J. Nichols is the equitable owner of the above referenced tax map parcel. We are currently in the process of pursuing New Castle County subdivision approval for the parcels. The interactive maps located at http://www.dnrec.delaware.gov/GI/GISRAMaps.htm indicate that the Open Space Council and/or DNREC propose to identify all, or a portion, of this property as a State Resource Area and/or a Natural Area. This designation may be new or may be a continuation of what was already in previous maps.

It is our understanding that the legal authority cited by the Open Space Council and/or DNREC for the adoption of amended maps is Title 7 Chapter 75, Delaware Land Protection Act. These comments are based in large part on exactly what authority is provided by that Act. Therefore, it is appropriate to review what the Act actually states.

Section 7502, entitled "Declaration of policy," states in part:

"The General Assembly finds that:

(6) It is the public policy of the State and its political subdivisions that preservation of open spaces shall be accomplished through the acquisition of interests or rights in real property, or donation of said lands, and that said acquisition constitutes a public purpose for which public funds have been expended or advances and should be continued."

Section 7503, entitled "Purpose" further states in part:

"(a) State agencies may acquire any interest in real property for the following purposes, to carry out and expand on the intent of the conservation program described in Volume 65, Chapter 212 of the Laws of Delaware:"

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"(b) State agencies may acquire property or rights in real property pursuant to this chapter by the use of direct acquisition for cash, by purchase money mortgage, by installment sale or by other methods or incentives as determined by the Secretary after consultation with the Secretary of Finance. State agencies shall not exercise the "right of eminent domain" to carry out the provisions of this chapter."

Section 7504, entitled "Definitions" further states in part:

"(8) "Permanent protection" means the acquisition by purchase, gift, grant, bequest, devise or otherwise the fee or any lesser interest, development right, easement, covenant or other contractual right in real property in perpetuity necessary to achieve the purposes of this chapter."

"(9) "Project" means the planning for, and the acquisition and development of property, undertaken to achieve the purposes of this chapter."

As equitable owners of the above cited tax parcel Stephen J. Nichols has no intention of selling, gifting, granting, bequesting or otherwise providing any State Agency any interest in the real property to achieve the purposes of Title 7 Chapter 75. That being the case, there is no legal basis provided by Title 7 Chapter 75 for either the Open Space Council and/or DNREC to identify any portion of this parcel in the amended maps as State Resource Area and/or Natural Area. Therefore, Stephen J. Nichols specifically request that all indications of State Resource Areas and/or Open Space areas be removed from the above cited parcel prior to the adoption of the amended maps.

Sincerely:

Stephen J. Nichols