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TO: Charles R. Vickers, Manager
COMPANY/FIRM: Land Preservation Office, Delaware State Parks
FACSIMILE NO.: 1-302-739-3817
CONFIRMATION NO.: 1-302-739-9235

FROM: Richard L. Abbott, Esquire

RE: *Natural Area & Resource Area Maps*

COMMENTS:

Please see attached.

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Division of Parks & Recreation
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ABBOTT LAW FIRM LLC

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May 4, 2006

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VIA FACSIMILE & U.S. MAIL

Mr. Charles R. Vickers
Manager, Land Preservation Office
Delaware State Parks
Department of Natural Resources & Environmental Control
89 Kings Highway
Dover, DE 19901

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Division of Parks & Recreation
Director's Office

Re: *Natural Area and Resource Area Maps*

Dear Ron:

Please accept this letter as public comment from the two clients that I met with you on behalf of yesterday at your office regarding the above-referenced matter.

At the outset, let me note that Matt Chesser of your office previously indicated to me that I had until Friday, May 5, 2006 to comment on both sets of maps in order for it to be considered before any administrative body would make a final recommendation to Secretary Hughes with respect to the maps. During our meeting yesterday with you, Eileen Butler, Matt Chesser, Bob Zimmerman, and Rob Line (for part of the meeting), it was revealed that one of the Councils had already made their recommendation to Secretary Hughes. I have therefore been precluded from submitting comment at a meaningful time on one of the map sets. I also remind you of the position that I took yesterday that the process that has been undertaken in preparing maps for consideration by the two Councils has been fatally flawed based on numerous legal and practical grounds, and that as a result DNREC should commence the process anew.

The procedural deficiencies in the map preparation and land designation process undertaken by DNREC are as follows:

1. No direct public notice has been provided to the property owners whose lands will be directly and substantially devalued as a result of the designation of part or all of their parcels by these maps.

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2. DNREC did not prepare and make available a listing (including at least street address, tax parcel number, and title owner) of properties were designated on the two sets of maps.

3. DNREC did not make available for inspection to the parcel level either set of maps until Thursday, April 27, 2006. The only earlier disclosure to the parcel level was at hearings in Dover and Georgetown, Delaware, which were only a few days prior to the public hearing on May 1, 2006, and one of the Council meetings conducted on May 2, 2006; leaving property owners with grossly inadequate time to prepare any rebuttal through the use of expert witnesses, studies, analyses, and similar information.

4. DNREC has not prepared any narrative reports which indicate how any of the parcels that it proposes to designate on either of the two sets of maps satisfied the applicable statutory and/or regulatory criteria required in order for designation to be approved; meaning that: 1) DNREC has no justification to designate any lands for either set of maps; and 2) property owners were denied the chance to directly rebut DNREC's bases for designation.

5. The documents that DNREC did generally rely upon as background information for purposes of deciding to include parcels on the two sets of maps was not made available to me until Wednesday afternoon, May 3, 2006; and I have not yet had sufficient time to review that information to determine whether there are specific elements which militate against designation of any of my clients' properties (despite my request for production on April 25, 2006 for one or two days later).

With respect to the property owned by Lisa Arbeiter located at 810 Salem Church Road, I provide you with the following comments as to why none or very little of that property should be designated on either set of maps:

1. The reasons cited in paragraphs 1 through 5 above.
2. The failure of DNREC to timely produce any documents that were prepared Rob Line (as mentioned in our meeting of May 3rd) with respect to the alleged bases for designating the property in the past or in this current process.
3. Other than the area located in direct proximity to the Belltown Run Stream which forms the northwesterly boundary of the parcel, none of the lands have any characteristics which satisfy the 1981 Natural Area Regulations with respect to: 1) unusualness; or 2) representativeness.

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4. Ms. Arbeiter is currently in the process of undertaking a tree harvest and removal project which will remove almost all of the woods previously located on the parcel (pursuant to the Department of Agricultural Forest Management Program authorized under Title 3 of the Delaware Code).

5. The southeastern and northeastern boundaries of Ms. Arbeiter's property directly abut the high density mobile home and townhouse communities of Glasgow Trailer Park and Village of Tahoe.

6. The parcel is zoned ST (Suburban Transition) under the New Castle County Unified Development Code, reflecting the fact that the planners of New Castle County are of the opinion that this property is appropriately developed with high intensity and high density uses.

7. As a matter of law, New Castle County's decision to designate this property for high intensity and high density development and use is incorporated by law into the current New Castle County Comprehensive Development Plan; constituting an express indication by New Castle County that this property is extremely inappropriate for any type of preservation or similar low intensity uses.

8. The natural area and resource area provisions of the Delaware Code (7 Del. C. Chs. 73 and 75) expressly indicate that areas designated on these maps are more than just any parcel of land that still has trees on it and is not developed; there must be a thorough, extensive, detailed analysis, and a final determination that a parcel has characteristics which make it exceptional and unique in nature before it can be designated (and this parcel has none of that other than adjacent to the stream corridor).

9. The lands proposed for designation located to the northeast of the Arbeiter tract generally follow stream corridors and simply provide for an adequate buffer area surrounding the stream bed. They but do not go beyond the limited amount of space necessary in order to buffer those streams; meaning that the intent and purpose of the laws can be easily accomplished pursuant to the preservation of a 200' wide buffer area along the Belltown Run Stream without intruding any further onto the Arbeiter lands.

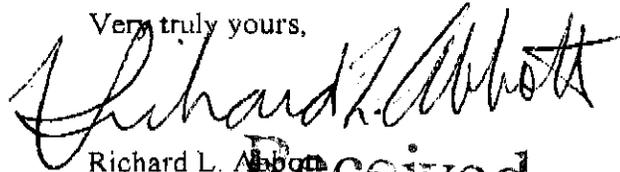
10. No Delaware natural heritage element occurrences are recorded as existing on the parcel.

11. DNREC has not properly considered this property in the context of what other resources are available in the entirety of the State of Delaware, and has instead gone on somewhat of a "shopping spree" by tacking on any possible property that DNREC can think of (even though that is not the intent or purpose of the laws under which these maps are to be prepared).

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In conclusion, I believe that there are numerous procedural deficiencies and other practical and legal reasons which militate against the designation of much, if any, of the Arbeiter tract as a Natural Area or a Resource Area on the official maps. I also believe that DNREC should re-commence the process of preparing these maps so that adequate notice and an opportunity to be heard will be accorded to affected property owners as is required of DNREC under the Delaware and United States Constitutions, and the applicable chapters of Title 7 of the Delaware Code. I look forward to hearing your response with respect to these points, and the hopeful indication that the Arbeiter tract will be eliminated from the process, and that DNREC will begin the map preparation process anew.

Very truly yours,



Richard L. Abbott

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File No. 153.01

cc: Ms. Lisa Arbeiter

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