

OPEN SPACE COUNCIL  
March 4, 2015  
9:00 a.m.  
Legislative Hall  
Senate Hearing Room, Second Floor  
Dover, Delaware

**ATTENDANCE**

Council Members:

Mr. John R. Schroeder, Chairperson  
Senator Bruce Ennis  
Representative Gerald Brady  
Mr. Wayne Holden  
Mr. David Humes

Ex-Officio:

Raymond Bivens, State Liaison Officer, LWCF, DNREC

Advisory To):

David Small, Cabinet Secretary, DNREC, State of Delaware (present)

Staff:

Kara Coats, Deputy Secretary, DNREC  
Ron Vickers, Parks & Recreation, DNREC  
Elena Stewart, Parks & Recreation, DNREC  
Richard Phifer, Fish & Wildlife, DNREC  
Timothy Slavin, Director, Historical & Cultural Affairs, DOS  
Kyle Hoyd, Delaware Forest Service, DDA  
Jeff Stone, DEDO  
Verity Watson, Division of Research, Legislative Council

Visitors:

David Carter, Audubon Society  
Joe Caville  
Bernadette Curtis  
David Eichelberger  
Steven Horst  
Ken Mahan  
Molly Murray, News Journal  
Ted Nowakowski  
Evans Shearon  
John Still  
James Wigand  
Carl Williams

**I. Call to Order/Introductions/Announcements**

Mr. Schroeder, Chairperson, called the March 4, 2015 Open Space Council meeting to order at 9:05 a.m. He welcomed Council members, staff, and visitors. Council members introduced themselves.

**II. Approval of Meeting Minutes**

Mr. Schroeder held on the previous meeting minutes until a quorum was present. Later in the meeting Representative Brady joined the meeting thereby making a quorum. At that time Mr. Schroeder asked for a motion to approve the December 3, 2014 minutes. Motion was made to approve minutes as written. Motion carried.

**III. Financial Report**

Mr. Vickers presented the Financial Report:

• Realty Transfer Tax (FY14 & FY15):	\$11,249,446.25
• Previously Approved Projects (14):	(\$ 8,687,000.00)
• Anticipated Reimbursements (3 projects):	\$ 1,832,500.00
• Balance Available through December 15, 2015:	<b>\$ 4,394,946.25</b>
• Governor's Proposed Budget FY16	\$ 3,150,000.00

**IV. Old Business**

**A. Completed Projects since December 3, 2014**

- Kent Stand Alone – Pryor: 0.214 acres purchased on 12/8/14 for \$110,000 of Division of Watershed Stewardship funds; Open Space funds for closing; at Kitts Hummock, adjacent to Ted Harvey Wildlife Area
- James Branch – Rogers/Moyer: conservation easement on 51.201 acres purchased on 12/23/14 for \$190,000
- Nanticoke River – Deep Creek 1, LLC: 13.677 acres purchased with \$123,000 of Open Space funds and \$41,000 of Chesapeake Conservancy funds

Mr. Vickers reported that since the beginning of the Open Space Program in 1990 it completed **378 projects**, protecting **56,186.7902 acres**, using **\$257,423,202.01** of Open Space Program funds plus **\$75,712,690.29** of other funds for a total of **\$333,135,892.30**.

**B. Agency Presentation – State Resource Areas Update**

Mr. Vickers discussed the process related to updating the State Resource Areas maps. He noted that at the last meeting discussions with each county was reviewed. One of the things that the Open Space Council and the counties wanted to see was how much of the landscape was already protected by county regulations or ordinances.

Mr. Vickers presented a map and statistics for each county showing:

- agriculture easement – land protected in private ownership with development rights purchased through the Department of Agriculture's Agricultural Preservation Program

Open Space Council Meeting  
March 4, 2015

- protected by county code – ordinances vary by county as to what types of lands are protected
- public conservation land – federal, state, and county owned conservation/recreation lands
- private conservation land – owned by non-governmental organizations
- statistics on acreages for each category and overall percentage of county that is protected; overlap in categories was accounted for so there was no double counting

The county maps with statistics are attached.

Mr. Vickers continued with the State Resource Areas discussion. At the last Open Space Council meeting the Council directed the Interagency Working Group (IWG) to work on standards and criteria for State Resource Areas. The IWG, as per the Land Protection Act, is to work with the Council and provide technical advice. The IWG met on February 25, 2015 with representatives from DNREC, Delaware Forest Service, Historical and Cultural Affairs, Transportation, and Kent County Planning.

A power point presentation (attached) summarized the IWG meeting. The first part of the meeting was directed at reviewing the Land Protection Act and the relevant parts related to the State Resource Area process. It then moved into recognizing there are many different reports and efforts aimed at defining and protecting various resources. Then most of the discussion was centered on how do the land managing agencies select properties to protect. Each agency talked about what items it considers. There was some consistency in that most of the agencies consider in-holdings, adjacent lands and special or specific resource sites.

Mr. Vickers said the next step for the IWG was to get more specific direction and input from the Council and expand on specifics for criteria and standards using science, public needs and management concerns. Programmatic maps will be reviewed for overlaps and trends.

Mr. Schroeder noted this is a very serious and important topic and would like more direct involvement from the Council. He asked Mr. Holden if he and Mrs. Fleming would agree to serve as a subcommittee for the Council to work directly with the IWG.

Mr. Holden agreed.

Mr. Schroeder said he would contact Mrs. Fleming and said the process should continue to move forward in a timely manner.

Senator Ennis asked about the State Planning Office and if it should be involved in this process.

Mr. Vickers said the Land Protection Act specifically states that each county's planning and recreation departments are members of the group. Also when the law was passed in 1990, the

State Planning Office was not operating in its current capacity. He will contact the office to keep them up to date on the SRA discussion.

**V. New Business**

**A. Conversion of Use – Epworth Church**

This agenda item is for addressing any change in use or change in ownership of land purchased through the Open Space Program. The Land Protection Act (7 Del. Code, Chapter 75) details the purposes for acquiring land through this Program. The Act also states that one of the duties of the Open Space Council is to advise and consult regarding any change from permanently protected status of open space lands acquired or protected through the Program.

Mr. Schroeder said there is a conversion of use issue involving Epworth Church.

Mr. Vickers presented a power point presentation (attached) and spoke to the history of the church and state involvement in this area. In the early 2000s Epworth Church approached Delaware State Parks about exchanging land along Holland Glade Road, north of Rehoboth Beach. The church owned 14.54 acres that was used by the Rehoboth Little League. Epworth Church wanted to move out of its location in Rehoboth because of size and parking constraints. It also wanted to be closer to Route 1. Delaware State Parks saw this as an opportunity to acquire an in-holding and control part of a recreation complex. Discussions ensued and with support from local legislators legislation passed allowing a trade of land to go forward. All acreages were based on land values established by appraisals.

In November of 2005 the State deeded 8.19 acres to Epworth Church. This was a small field on the edge of the park. This is the current location of Epworth Church. The church deeded 8.78 acres to the State. This was over half of the Little League complex. The remaining 5.76 acres of Epworth Church land (which contained the rest of the Little League Complex) was restricted with a conservation easement limiting it to open space, recreation and cemetery use. It also allowed for one single-family residence with associated outbuildings. The new church was completed in 2008.

In late 2013 Epworth Church and Parks discussed the remainder of the church property at the Little League complex. The church needed to establish a new cemetery because of capacity issues at its current cemetery in Rehoboth Beach. Parks was interested in the remainder of the Little League complex. The land across from the church behind Tanger outlets was considered as possible trade land.

Mr. Vickers reminded Council this subject was brought before them at the March 2014 meeting for preliminary information purposes only. The Department was in the process of doing its due diligence and had not completed its review of the proposed trade land. There are two public wells in the land across from the church. Research involving cemeteries and public wells led the Department to not consider this land as an exchange area due to the soils, water withdrawal amounts and the fact the site was a wellhead protection and an excellent groundwater recharge area. The determination to not use this area was made in June 2014.

The Department and the church then looked at other potential sites in relation to any wells in the area. The idea is to maintain separation distances from drinking wells and consider the underlying aquifer and gradients. The farm field at the end of Holland Glade Road is now under consideration. It is still preliminary and needs further study. Again land values and final acreages would be based on appraisals. Any land going to the church would have the same conservation easement restrictions placed on it. Depending on the values, the one allowed residence would go away in exchange for a 1.21 acre sliver of land west of the church. This was held out as a potential road connector which is no longer feasible.

Council members asked questions about the adjacent farm complex and forestland adjacent to the church.

Mr. Bivens noted that Parks looked at the existing Little League complex and how to arrange the current fields and provide cemetery use in that area. It was very difficult because of the number of fields and the infrastructure that was in place.

Mr. Vickers again stated this is preliminary. Appraisals are still needed, site configuration needs to be designed, discussions with the adjacent Glade community are upcoming, the Council needs to review and recommend, minor subdivision approvals are required, and legislation is also required.

Secretary Small said this is on-going at this point. This was an update for the Council. No action is requested from the Council at this time.

B. Council Open Discussion

Mr. Schroeder asked for any comments from the Council.

Mr. Holden wanted clarification regarding the final acreage and appraisals.

Mr. Vickers said there may be a per acre value difference in the land at the Little League complex versus the land at the end of Holland Glade Road. When the first land trade took place in 2005 there was a difference in value. The result then was the State received more acreage than the church. In addition the conservation easement was placed on the church's remaining land. Boundary surveys would also be done.

Mr. Bivens noted that the type of land may have different values, as well as the distance from Route 1.

Mr. Stone asked about timing on this.

Mr. Vickers replied that it took several months to determine the first proposed location was not favorable. At this time we need to do more research on the proposed site at the end of Holland Glade Road.

Secretary Small said the Department was asked to attend a meeting of the Glade homeowners for their input. Depending on that input, additional research and the need to come back to the Council it is difficult to say what the timing would be. Also legislation is required, depending if this goes forward. So this may carry over into the next session.

Representative Brady asked about other approvals or processes that may be required.

Mr. Vickers said it would need to go through the minor subdivision process. Also a conditional use for a cemetery would be required. In Sussex County a private cemetery has a minimum size of ten acres. A church-related cemetery is a minimum size of five acres.

Secretary Small stated that none of these actions would take place until legislation is approved.

C. Public Comments

Mr. Schroeder asked for public comment. Noting that there were several members of the Glade community present, he asked if there was one individual speaking on behalf of the community.

Mr. John Still and Mr. Jim Wigand provided the Council with notebooks outlining the Glade community's position on the proposed land exchange. (attached)

Mr. Still thanked the Council for the opportunity to speak and said they would go through the handouts.

Mr. Wigand clarified that they are Glade homeowners, but are not representing the Glade homeowners association.

Mr. Still read the executive summary.

Mr. Wigand proceeded to go over the Issues Paper in the handouts, focusing on transparency, environmental impacts, public policy, business decisions, impacts to neighboring communities, and alternatives.

Mr. Still emphasized the need to involve stakeholders as early as possible. He also spoke to the option of working with the Cape Henlopen School District to move the Little League complex and the potential problem of supporting it with state funds. He did believe that an alternative to the proposed land exchange could be worked out. He also thanked Secretary Small for reaching out to the Glade homeowners.

Mr. Schroeder reminded the Council that there was no specific action to vote on today. This was still in the information gathering phase and that it would probably be back before the Council at the next meeting. He asked for other public comments.

Mr. Carter, representing Delaware Audubon, empathized with the Glade homeowners over the transparency issue. He spoke to issues with DNREC regarding FOIA requests and transparency, not just open space related, but other permit issues as well. He believes it is tarnishing the image of the Open Space Council. He also noted that the Chair wants the process to be open. He is submitting for the record the 2014 testimony of Delaware Audubon before the Joint Finance Committee Hearing on DNREC's 2015 budget. It contained a request to post open space information on-line. (attached)

Mr. Schroeder asked for any other public comments.

Mr. Williams, a resident of the Glade, expressed concern about any potential contaminants and the well located in the Glade community.

Ms. Curtis, a resident of the Glade, expressed concern about the fact that the Glade community was not consulted. She also asked the Council to look at the initial justification for why the land was purchased through the open space program and to adequately review the environmental issues. She also noted that the conversion of open space property is something the Council is not used to dealing with because the land is intended for preservation, not development. She thought this was open space being carved up for political trading cards.

Mr. Still said they have a petition signed by about 50% of the neighborhood that is against the land trade.

Mr. Schroeder noted there was no other discussion and entertained a motion to go into executive session.

**VI. Executive Session - Discussion of Site Acquisition Contracts**

The Council adjourned to Executive Session at 11:00 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 11:45 a.m.

**VII. Project Recommendations**

Based on discussion in Executive Session, the Council recommended the following:

Division of Parks & Recreation

- Tunnell Properties, LP-Middle Island – Delaware Seashore State Park, Sussex County; donation of 4.8 acres of marshland/sand area for beneficial reuse project of dredge material from Massey’s Ditch; will provide nesting habitat; Council moved, seconded, and unanimously agreed to recommend to the Secretary to accept this property as a donation and to pay up to \$5,000 for closing costs.
- Callahan – Delaware Seashore State Park, Assawoman Canal, Sussex County; donation of 0.10 acres of open lot for community access to new trail; Council moved, seconded, and unanimously agreed to recommend to the Secretary to accept this property as a donation and to pay up to \$5,000 for closing costs.

Division of Fish & Wildlife

- Tofts – Norman G. Wilder Wildlife Area, Kent County; purchase of 13.2 acres of forest land adjacent to existing wildlife area; Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee simple the Tofts property for \$50,000.

Delaware Forest Service

- Webb – Redden State Forest, Sussex County; purchase of 91.82 acres of forest, stream corridor and small field adjacent to existing state forest; appraised at \$6,500.00 per acre; survey pending; Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee simple the Webb property at the appraised per acre value, subject to final survey.

**VIII. Next Meeting/Adjournment**

The next meeting of the Open Space Council is June 3, 2015 at the Legislative Hall, Second Floor, Senate Hearing Room, Dover, DE 19901, starting at 9:00 a.m.

Mr. Schroeder asked for a motion to adjourn. The meeting adjourned at 12:00 p.m.



ATTACHMENTS TO

MARCH 4, 2015

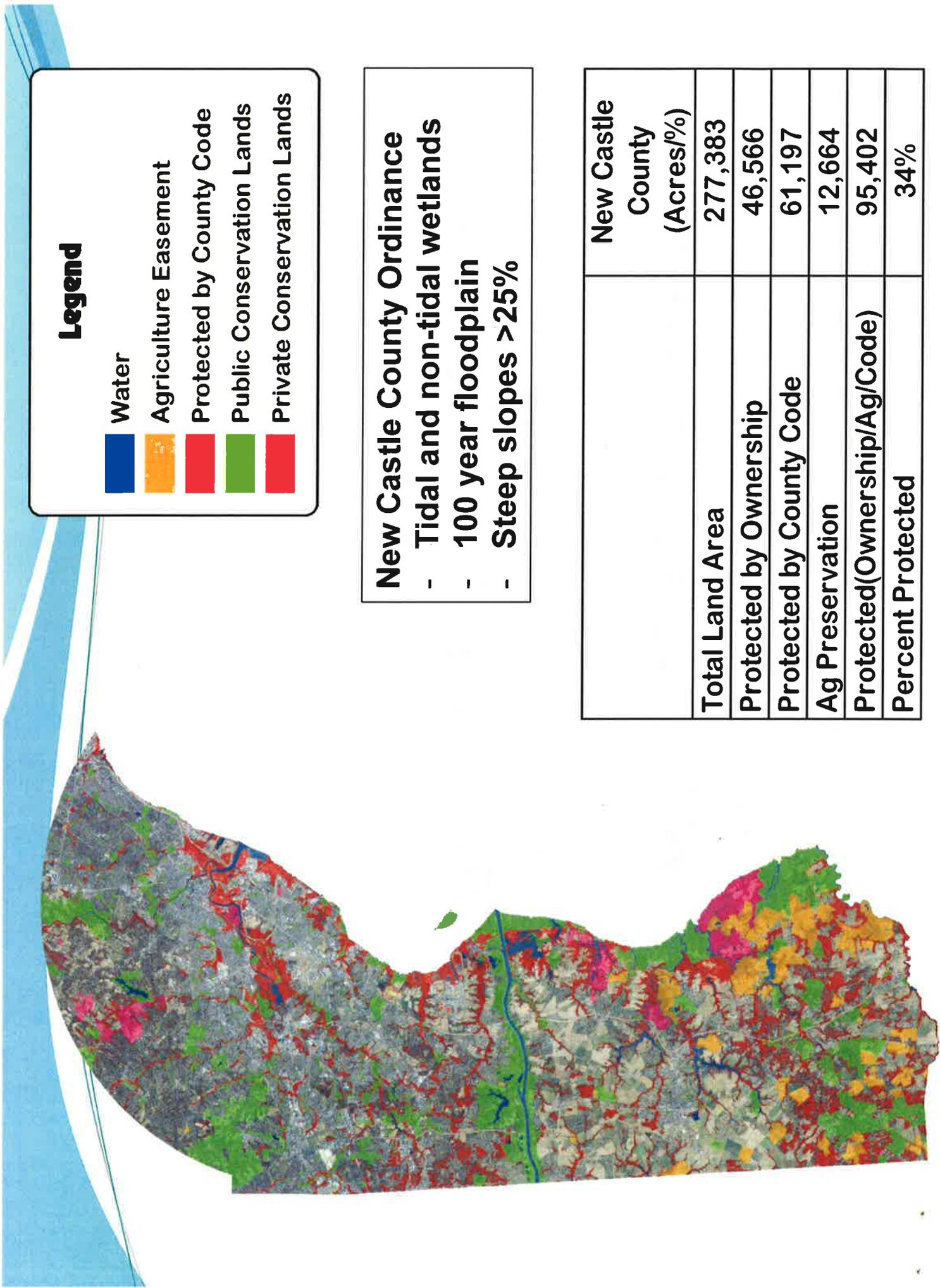
OPEN SPACE

COUNCIL MEETING



# *Agency Presentation*

## *State Resource Areas Update*



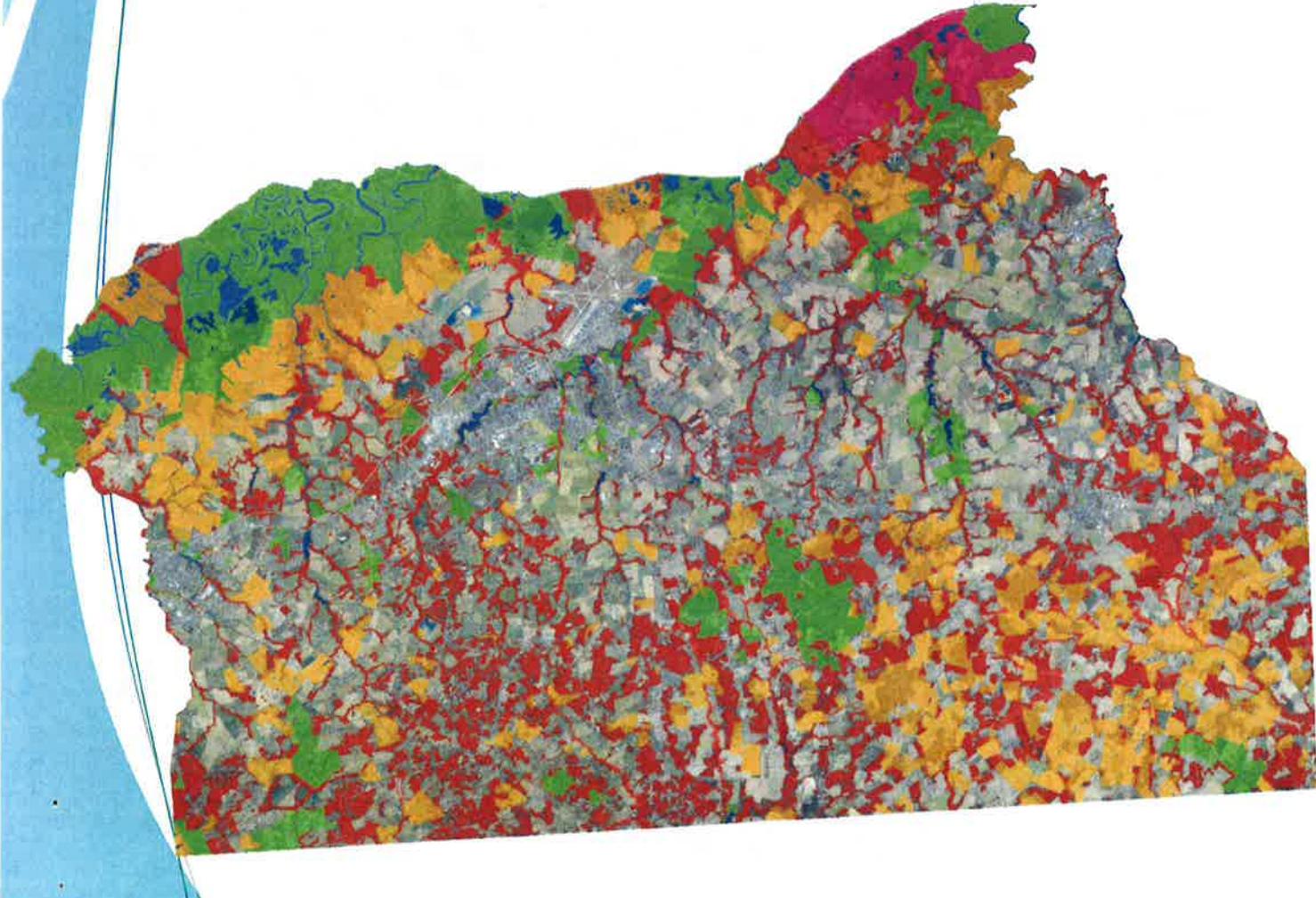
**Legend**

- Water
- Agriculture Easement
- Protected by County Code
- Public Conservation Lands
- Private Conservation Lands

**New Castle County Ordinance**

- Tidal and non-tidal wetlands
- 100 year floodplain
- Steep slopes >25%

	<b>New Castle County (Acres/%)</b>
<b>Total Land Area</b>	<b>277,383</b>
<b>Protected by Ownership</b>	<b>46,566</b>
<b>Protected by County Code</b>	<b>61,197</b>
<b>Ag Preservation</b>	<b>12,664</b>
<b>Protected(Ownership/Ag/Code)</b>	<b>95,402</b>
<b>Percent Protected</b>	<b>34%</b>



### Legend

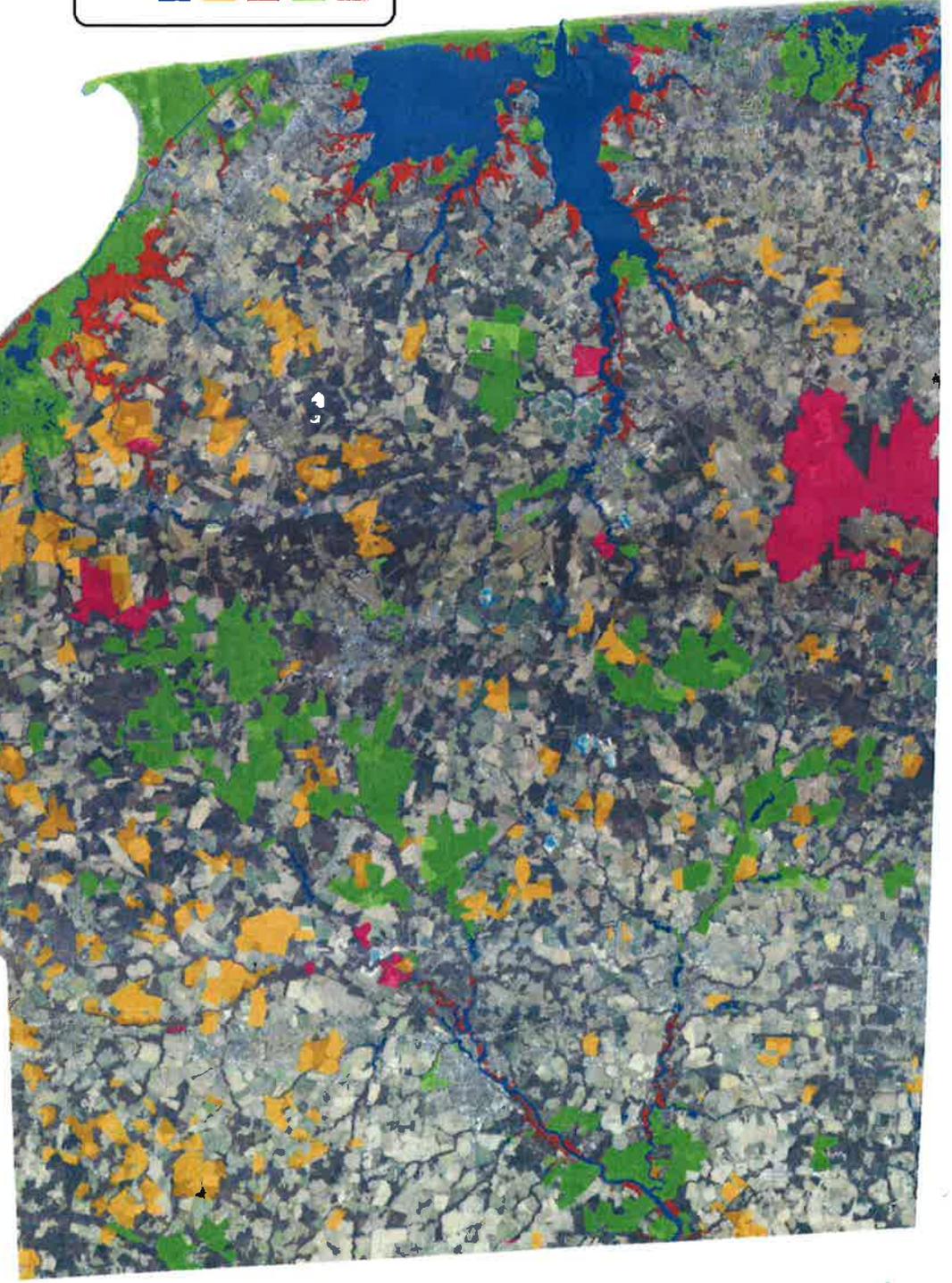
- Water
- Agriculture Easement
- Protected by County Code
- Public Conservation Lands
- Private Conservation Lands

### Kent County Ordinance

- Tidal and non-tidal wetlands
- 100 year floodplain
- Steep slopes >15%

	Kent County (Acres/%)
Total Land Area	382,276
Protected by Ownership	55,728
Protected by County Code	135,411
Ag Preservation	61,388
Protected(Ownership/Ag/Code)	187,936
Percent Protected	49%

Sussex County (Acres)	626,136
Total Land Area	626,136
Protected by Ownership	73,349
Protected by County Code	26,050
Ag Preservation	41,828
Protected(Ownership/Ag/Code)	126,829
Percent Protected	20%



**Legend**

- Water
- Agriculture Easement
- Protected by County Code
- Public Conservation Lands
- Private Conservation Lands

**Sussex County Ordinance**

- Tidal wetlands



**Open Space Council  
For March 4, 2015 Meeting  
Interagency Working Group  
State Resource Areas Discussion**

- Natural Resources & Environmental Control: Parks & Recreation, Fish & Wildlife, Coastal Programs, Watershed Stewardship, Water
- Agriculture: Delaware Forest Service
- State: Historical & Cultural Affairs
- Transportation: Planning
- Kent County Planning

# Land Protection Act

- Protect and conserve
  - All forms of natural and cultural resources
  - Biological diversity of plants and animals and their habitat
- Protect existing or planned parks, forests, wildlife areas, nature preserves, or other recreation, conservation or cultural sites by controlling the use of contiguous or nearby lands
- Preserve sites of special natural, cultural or geological interest
- Connect existing open spaces into a cohesive system of greenways and resource areas
- Provide for public outdoor recreation
- Allow for water resource conservation





## **State Resource Areas**

- "State resource area" means those open space lands duly identified by the Council and adopted by the Department for protection.



# Open Space definition

- "Open space" means any open lands characterized by (i) great natural scenic beauty, or (ii) whose existing openness, natural condition or present state of use, if retained, would maintain important recreational areas and wildlife habitat, and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources, including environmentally sensitive areas. For the purposes of this chapter, "open space" shall include significant cultural, historical or archaeological sites as determined by state plans and policies adopted by the Bureau of Historic and Cultural Affairs.



## **SRA Process**

### **Open Space Council**

- Review and recommend to the Department for adoption, after a public hearing, criteria for delineation, and dedication of open space
- Review and recommend to the Department for adoption, after public hearing, state resource area maps
- In conjunction with the Interagency Working Group develop and forward to the Department for adoption standards and criteria consistent with the purposes of the law for evaluating the lands and waters of the state for inclusion as state resource areas



## **SRA Process - continued**

### **Open Space Council**

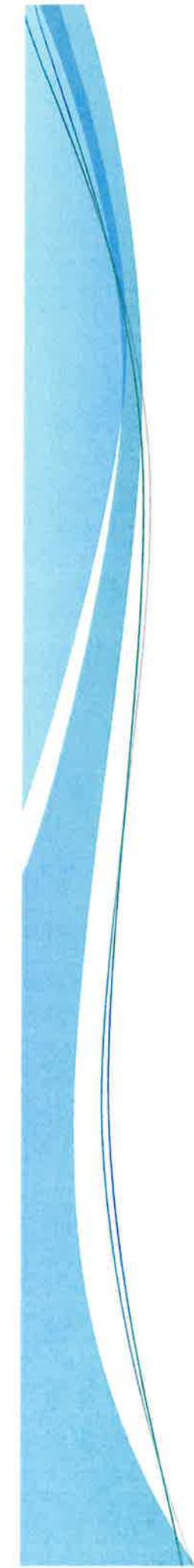
- **Council, in conjunction with IWG, develop and forward to Department for adoption a system for determining the existence and location of state resource areas, their degree of endangerment, an evaluation of their importance and information related to their natural, historic or open space values**



## **SRA Process - continued**

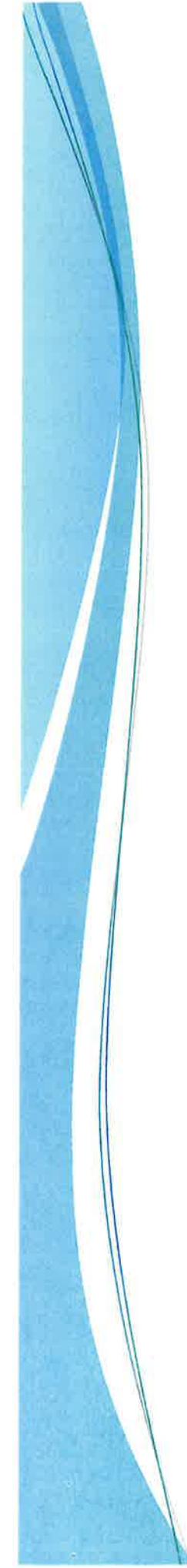
### **Department**

- Designate and adopt state resource areas for inclusion in the open space program
- State resource areas shall be shown on maps of sufficient scale to identify individual properties for planning and zoning purposes
- Update the SRA maps at least every 5 years, in consultation with county governments
- Send SRA maps to each County for inclusion in comprehensive land use plans
- Each County shall adopt and incorporate overlay zoning ordinances and environmental standards for SRA parcels

- 
- **Criterion** – a standard, rule or test by which something can be judged; measure of value
  - **Standard** – the type, model or example commonly or generally accepted or adhered to

For example:

• **Criterion** – Atlantic white cedar wetland (Cat. I wetland)  
• **Standard** – viable, high quality site



## Many Efforts/Reports

- Delaware Ecological Network
- Category I Wetlands
- Forest Legacy
- National Register Sites
- Delaware Bayshore Initiative
- Large Landscape Conservation
- TNC Portfolio
- Sea Level Rise Maps
- Natural Areas Registry
- Transportation Corridor Preservation
- SCORP
- State Strategies Areas
- Scenic Byways Program
- Wellhead Protection
- Groundwater Recharge
- Aglands Preservation
- Prime Fisheries Habitat
- DNERRS
- DE Wildlife Action Plan



## How do land managing agencies select properties to protect?

- Inholding, expansion, connector, buffer
- Natural or cultural “stand alone” sites
- Focus areas, target maps
- Management issues
- Viewsheds
- Large block of habitat
- Quality of life?
- Special opportunities!!?



# Division of Parks and Recreation

- Priority for inholdings and adjacent properties to existing State Parks and Preserves
- Recreational opportunities based on needs assessment contained in the Statewide Comprehensive Outdoor Recreation Plan (SCORP)
- Greenway/corridor connections for natural resource migration and/or recreational use
- State Natural Areas (outstanding habitats, geological and archaeological sites, and rare species sites)
- Federal conservation easement criteria
- Consider capacity for management with existing staff and budget



## Division of Fish and Wildlife

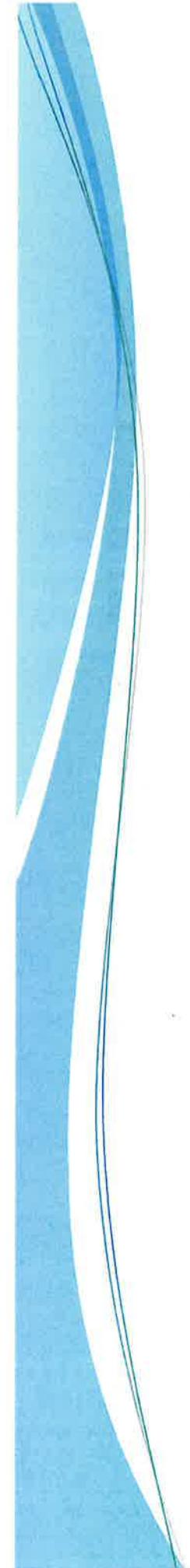
- Priority for inholdings and adjacent properties to existing Wildlife Areas
- Protect Key Wildlife Habitats as defined in the Delaware Wildlife Action Plan
- Meet habitat objectives of regional conservation plans
- Provide corridor connections between Wildlife Areas
- Evaluate recreational access
- Consider coastal sites based on sea level rise and habitat resiliency
- Consider capacity for management with existing staff and budget



# Delaware Forest Service

## Forest Legacy Program

- Protect environmentally important forest lands threatened by conversion to non-forest use
- Reduce forest fragmentation
- Provide environmental benefits through restoration and protection of riparian zones, native species and remnant forest types
- Provide recreational opportunities
- Provide watershed and water supply protection
- Provide employment opportunities/economic stability through maintenance of traditional forest uses



## Delaware Forest Service - continued

- Maintain important scenic resources
- Provide linkage between public properties, protected properties and greenways
- Provide protection of rare, threatened and/or endangered species of plants and animals
- Promote forest stewardship
- Provide educational opportunities
- Legacy Areas: White Clay Creek, Blackbird/Blackiston, Redden/Ellendale, Cypress Swamp



## Historical & Cultural Affairs

- Provides protective buffer, setting protection, or enhancement of existing HCA property
- Completes or assists in completing historic context of an existing HCA property
- Associated with statewide or nationally significant person or event
- Contains excellent education and interpretive values
- Other: site-specific condition, management issues



## Delaware National Estuarine Research Reserve

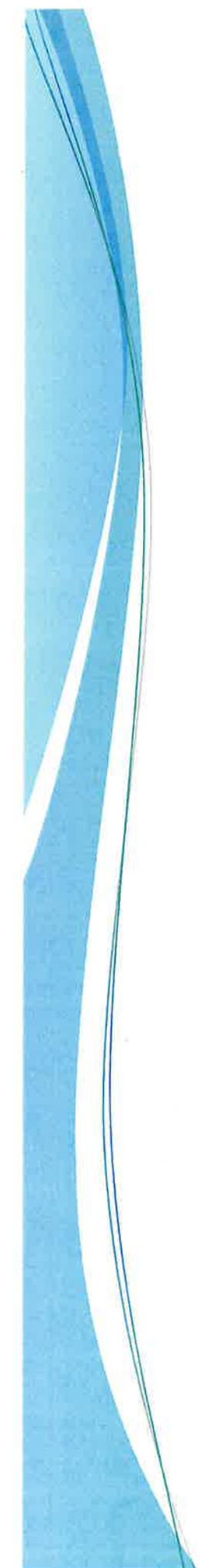
- Reserve Components: Blackbird Creek, St. Jones River
- Core – vital to proper functioning of estuarine ecosystem to maintain natural processes and allow for research
- Buffer – adjacent to and maintain integrity of core area
- Priority sites in core and buffer areas
- Protect sites that accommodate sea level rise and coastal resiliency
- Priority for sites that can be effectively managed and will maintain significant ecological values



## Division of Water

### Water Supply Section

- **Excellent Ground-Water Recharge Potential Area:** based on soils, where best able to transmit water vertically to the water table; mapped by Delaware Geological Survey
- **Wellhead Protection Area:** surface and subsurface area surrounding a public water system well or wellfield through which contaminants are likely to reach such well or wellfield
- **Source Water Assessment Area:** area which contributes water to a public water supply system



# Department of Transportation

- Corridor Capacity Preservation – acquire lands adjacent to major highways to limit access points; funding reduced; some lands align with resource protection
- Federal Scenic Easements – acquire lands with scenic viewsheds along state roadways; previous projects combined with Open Space funds
- Scenic Byways – route adjacent to or travels through area with intrinsic scenic, historic, natural, cultural, recreational, or archaeological qualities; involves corridor management plan



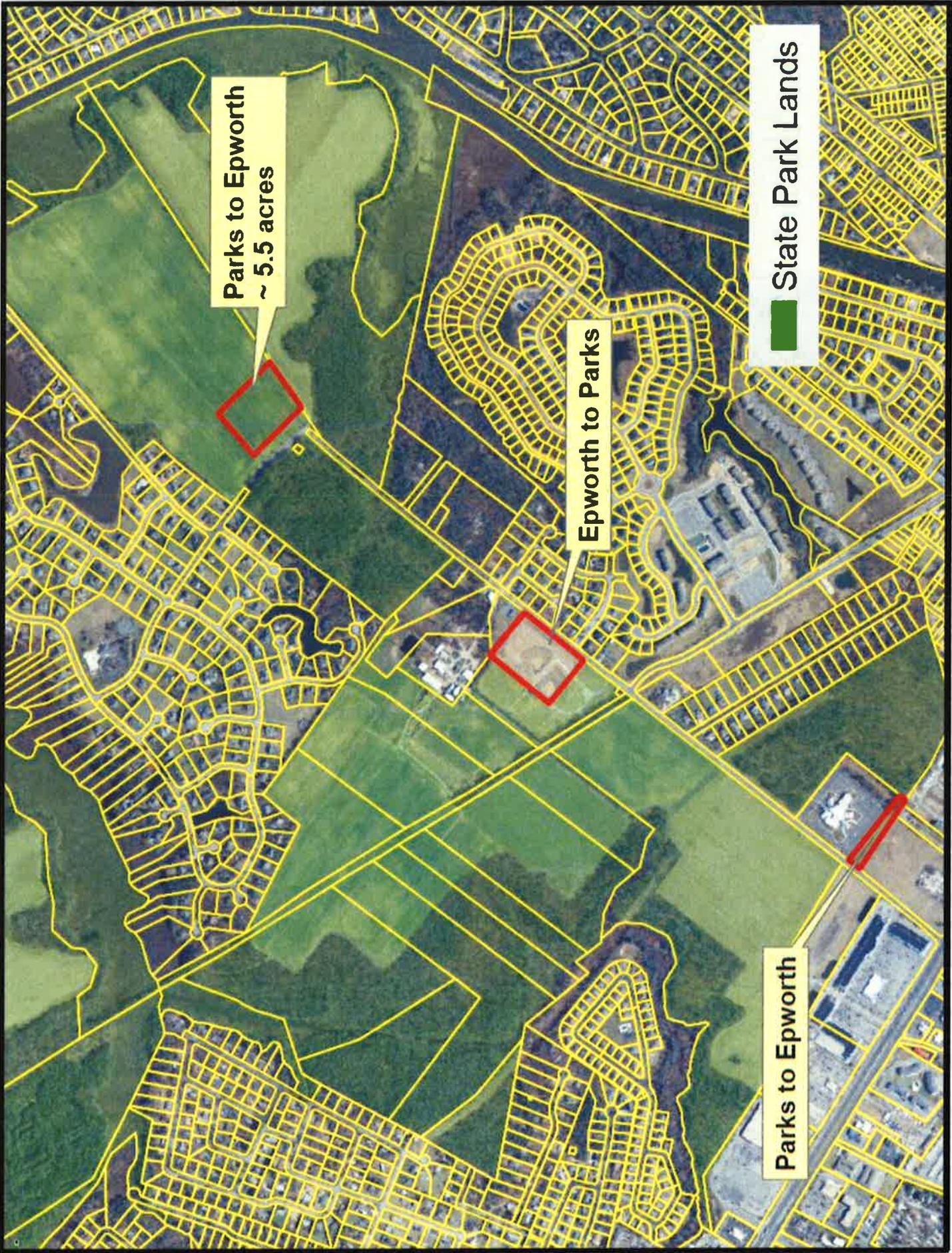
# Interagency Working Group

## Next Meeting

- Direction/input from Open Space Council
- Expand on specifics for criteria and standards
  - More details on types of sites based on science, public needs and management concerns
  - Provide programmatic maps

***New Business***

***Conversion of Use  
Epworth Church***



Parks to Epworth  
~ 5.5 acres

Epworth to Parks

State Park Lands

Parks to Epworth





~1.21 acres

# **Epworth Church Cemetery**

## ***Land Exchange Proposal***

### ***Preliminary***

#### **Epworth Church**

- Owns 5.76 acres at Rehoboth Little League Complex
- Property is subject to conservation easement – only allowable uses are for open space, recreation and cemetery use
- Allowance for one church-related single family residence and associated outbuildings for the residence and cemetery

#### **Division of Parks and Recreation**

- Owns remainder of Little League Complex
- Owns other lands adjacent to and across from Epworth Church
- Owns land at the end of Holland Glade Road
- Land across from Epworth Church contains two City of Rehoboth public wells

# **Epworth Church Cemetery**

## ***Land Exchange Proposal***

### ***Preliminary***

#### **Proposal**

- Epworth Church exchanges 5.76 acres at Little League Complex for similar acreage at end of Holland Glade Road, subject to same CE restrictions
- Epworth Church would extinguish the right to the one church-related single family residence in exchange for 1.21 acres adjacent to Epworth Church; restricted to open space and church-related use
- Final acreage based on appraisals
- Division controls all of Little League Complex allowing for more public recreational use

#### **Process**

- Site configuration
- Discussion with The Glade residential community
- Open Space Council review
- Minor subdivision/approvals/permits
- Legislation required to release ownership of state land



# Epworth and DNREC Land Swap Proposal

March 4, 2015

John C. Still III

Jim Wigand

<b>1</b>	Opening Stmt. & Exec. Summary
<b>2</b>	Bullet Points and Key Issues
<b>3</b>	Issues Position Paper
<b>4</b>	Cape Gazette News Articles
<b>5</b>	Delaware Land Protection Act
<b>6</b>	Map with All 3 DNREC Proposals
<b>7</b>	Geological Map and Elevation
<b>8</b>	Exploring Alternatives
<b>9</b>	Pictures and Misc. Info.
<b>10</b>	Notes

## Executive Summary

Date: 04 March, 2015

To: John Schroeder, Chairperson Open Space Council and Board members:  
State Senator, Bruce Ennis, State Rep. Gerald Brady, Paul Boswell, Esq., Mrs. Lorraine Fleming,  
Mr. D. Wayne Holden, Mr. David Humes, Mrs. Dorothy Leventry, C. Porter Schutt, III

Fr: John C. Still III and Jim Wigand - Landowners: The Glade, Rehoboth Beach, DE 19971

Re: Epworth Church and DNREC - 2<sup>nd</sup> Land Swap

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Good morning Chairman Schroeder and Council Members, thank you for the opportunity to attend and present information which should be helpful in your consideration of a 2<sup>nd</sup> land swap proposal between Epworth Church (developer) and DNREC. Today, as landowners in The Glade subdivision, we come before you representing a growing body of Glade landowners who have concerns, objections, questions, and we offer some 'preliminary' conclusions and viable alternatives.

The reason our conclusions are 'preliminary' is that public notice of information from DNREC and the developer was concealed from us nor was it transparent. Only a select few were consulted from 2012 to Feb. 2015. As such we recommend this body consider new rules or regulations which require DNREC provide: timely, effective, and adequate full disclosure to the body public so they can be better informed regarding new or ongoing projects, especially regarding open space projects purchased with taxpayer funds intended to be protected from development (i.e. Townsend and Harley Joseph tracts).

We first learned of this 2<sup>nd</sup> preferential developer land swap arrangement in early Feb. 2015. Based on what we now know, DNREC and the developer were consulting with one another – since 2012. Without our knowledge nor involvement, they considered at least 2 other land swap possibilities. DNREC also presented this proposal to your council at your March 4, 2014 meeting. You deferred action. We thus believe DNREC was planning to have this deal ready for your reconsideration in December 2014 but we later learned DNREC was not yet ready to proceed at that time.

For the record, we must share that our trust in our government agency (DNREC) and the developer has been damaged due to the lack of sunshine and transparency. What is also unfortunate is that due to this lack of candor and transparency, combined with misinformation, the Rehoboth Little League could be displaced if their lease with the developer is non-renewed. This is most unfortunate and we believe the developer may be using the Little League, unwittingly, to create a false sense of urgency. This misunderstanding and lack of transparency is most unfortunate. We assure you and all concerned, we are working to enable the Little league to remain on Holland Glade road if at all possible.

With your insistence to DNREC and the developer, what is necessary is that all the stakeholders come to the table in the spirit of compromise. With the help of many concerned citizens from The Glade, we have expended countless hours compiling pertinent and important information and exhibits- all in less than 30 days. Our goal has been to research and find alternative(s) that benefit all concerned, not just the select few. Our major concern are and will be: valuable open space, bought and paid for with taxpayer monies, intended to be protected from development, remains conserved, protected, and NOT developed. It is clear from the public records, and the Landowners Protection Act (1990), that these lands near the elbow in Holland Glade Road have important environmental and ecological benefits.

For many years Mr. Chairman, I have, like many businesspersons and residents of the Glade, have personally donated countless monies, sponsored athletic teams, and contributed time and efforts to assist Little Leagues in our respective neighborhoods. Had there been more transparency and less misinformation all this angst you and we are now hearing about could have been avoided.

For the record, we appreciate all that your council has accomplished in 25 years. Your March 4, 2014 minutes indicate that since 1991, you have invested taxpayer monies of over \$ 328 million, secured for future generations over 55,380 acres of open space and farmlands on 365 projects. We urge you to require DNREC to engage in more out of the box thinking, instead of pursuing development in or about heretofore protected lands. I also note: At this same March meeting, under new business, Mr. Vickers presented to Council a proposed transfer of land proposal...the very one which was concealed from nearby landowners like us. Fortunately because land appraisals were not completed and other information that you needed was not provided, you deferred action. We wonder, when were they planning on consulting the other stakeholders, if ever?

Accordingly, now that we have a better understanding of the latest land swap proposal, its history and intentions and what also is very important to the residents of The Glade and taxpayers in general, It is in that spirit that we recently asked all the stakeholders to meet with us to seek better understanding and a compromise . That meeting is tentatively set for Friday, March 13<sup>th</sup> at 1:30. In the meantime, given that your council only meets quarterly and the next meeting is in June (the last month of normally busy legislative session) we felt it was necessary for you to have our opinions, our research, and preliminary conclusions in case you reconsider this proposal in the rush of June.

Jim and I will now very briefly summarize each exhibit and what it references AND we will offer some alternatives for DNREC, the developer, and affected legislators to consider. We are asking everyone, including the Little league, to think outside the box because we too have our priorities as expressed to us by our neighbors. Than we would be happy to take any questions you or your Board may have.

Cc: file, SCOSC \_ Sussex County Open Space Coalition  
Attachments

## **KEY ISSUES REGARDING THE PROPOSED LAND SWAP**

- **Lack of Transparency with Public information by both DNREC and Developer**
- **Protection of Open Space Land Purchases and DE Landowner Protection Act**
- **Environmental and Ecological Impacts: Impacts on Neighboring Communities**
- **Comparisons of Site Specific Geological Attributes of parcels on Holland Glade**
- **Economics of Land Swap and Their measurement standards and criteria**
- **Comparison of Alternatives**

**\*Note: Because of the lack of transparency and concealment of information, neither the Glade landowners nor their neighbors have had sufficient time and resources to fully comprehend and compare this 2<sup>nd</sup> preferential land swap between DNREC and the Developer. Thus we are providing preliminary conclusions and preliminary alternatives, which we believe deserve further study, evaluation, and comparative analysis.**

**Issues Paper  
For  
Open Space Council  
On the  
Proposed Transfer of Open Space Land  
to  
Epworth United Methodist Church,  
Rehoboth Beach, DE**

The proposed conveyance of publicly owned open space land to Epworth United Methodist Church (the Developer) for cemetery development raises significant public policy, business decision, and neighboring community issues. Under the proposal the State of Delaware (the State) would exchange a total of 7.0 acres of State owned open space land to the Developer for a fee simple interest in 5.8 acres of land subject to an existing Department of Natural Resources and Environmental Conservation (DNREC) easement.<sup>1</sup>

The following discussion highlights several key issues in three broad categories and is only intended to raise a subset of the many issues and considerations associated with the proposal.

***Background***

In the early 1990's the Developer leased property to the Rehoboth Little League (Tenant or Little League) on a tract the Developer owned on Holland Glade Road near Rehoboth Beach.<sup>2</sup> For over twenty years, the Tenant has continued to lease the property. The Developer has indicated that its existing cemetery, located several miles away, is nearing capacity and "because of the increasing growth of the Rehoboth area, additional burial facilities are necessary."<sup>3</sup>

Near and adjacent to the property the Tenant leases, the State purchased multiple tracts of property – virtually all farmland, woodlands, and wetlands – along Holland Glade Road (aka DE Rt 201) in 1998, 1999 and 2000 to be preserved as open space and as a buffer to Cape Henlopen State Park from urban development.<sup>4</sup> Under the

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<sup>1</sup> The existing conservation easement permits the construction of one single family house, the right of which to construct would no longer be allowed.

<sup>2</sup> Epworth United Methodist Church Cemetery Committee, *Epworth UMC New Cemetery Project*, February 8, 2015

<sup>3</sup> Ibid.

<sup>4</sup> See Short, Michael, "Cape State Park, Prime Hook Refuge both to grow larger," *Cape Gazette*, Oct. 6 – Oct. 12, 2000, <http://cpg.stparchive.com/Archive/CPG/CPG10062000p013.php> (accessed February 11,

Delaware Land Protection Act "Open Space" is defined as "open lands characterized by (i) great natural scenic beauty, or (ii) whose existing openness, natural condition or present state of use, if retained, would maintain important recreational areas and wildlife habitat, and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources, including environmentally sensitive areas." The intent of Open Space land purchases is for the acquired property to remain in conservation or outdoor recreation use for the public in perpetuity.<sup>5</sup>

About 2002<sup>6</sup> the Developer approached the State to propose an exchange of property it held along Holland Glade Road (and adjacent to land the State already acquired for Open Space) for property the State owned along Holland Glade Road closer to Coastal Highway (aka DE Route 1) for the purpose of building a new church.<sup>7</sup> After a period of negotiations, in 2005 the State and Developer exchanged 8.2 acres of Open Space land close to Coastal Highway for 8.8 acres the Developer owned about ½ mile further east on Holland Glade Road adjacent to the future Junction Breakwater Trail and for a conservation easement on a 5.8 acre parcel which is leased to the Tenant (the Field Parcel). The terms of the conservation easement, which is held by DNREC, restrict use of the Field Parcel to open space, outdoor recreation, and/or a cemetery. The Developer reserved the right to construct one single-family residence on the Field Parcel.<sup>8</sup> The developer built a new church on the 8.2 acre parcel closer to Coastal Highway in 2008.

The *Cape Gazette* ran a story in its May 5, 2014 edition reporting that the Developer approached the State about an exchange of property. According to the media report, the Developer proposed swapping ownership of the 5.8 acre Field Parcel "for open space across from the church on Holland Glade Road, currently owned by the state" to "build a new cemetery near the new church." This article appeared several months after DNREC staff informed the Open Space Council of this proposal at its March 5, 2014 meeting.

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2015) and Short, Michael, "State adds 642 acres to Cape Park buffer lands," *Cape Gazette*, May 7 – May 13, 1999, <http://cpg.stparchive.com/Archive/CPG/CPG05071999p001.php> (accessed February 11, 2015)

<sup>5</sup> See the Delaware Land and Water Conservation Trust Fund, 30 *Del. C.* §5423(c)(2) <http://codes.lp.findlaw.com/decode/30/54/11/5423>

<sup>6</sup> DNREC and Epworth sources differ regarding when discussions for a land swap first started, ranging from as early as 2001 until as late as 2004

<sup>7</sup> See Short, Michael, "Cape State Park, Prime Hook Refuge both to grow larger," *Cape Gazette*, Oct. 6 – Oct. 12, 2000, <http://cpg.stparchive.com/Archive/CPG/CPG10062000p013.php> (accessed February 11, 2015)

<sup>8</sup> See Open Space Council, *Minutes* March 5, 2014, <http://egov.delaware.gov/pmc/Minutes/Download/23261> (accessed February 4, 2015)

The proposal as described in the *Cape Gazette* story is generally consistent with the proposal's description recorded in the Open Space Council's minutes of its March 5, 2014 meeting. However, the media story did not disclose two important elements of the proposal: 1) that the Field Parcel, although not owned by the State, is already subject to a conservation easement limiting its use, and 2) that the Developer is also seeking to acquire a 1.21 acre piece of land adjacent to the property where the church sits.<sup>9</sup>

Residents of communities near or that border several of the Open Space tracts purchased between 1998 and 2000 became aware of a change in the proposal in January 2015 when the Developer posted plans for a new cemetery in its church. Rather than having the proposed cemetery located "across from the church," the current proposal is to locate the graveyard a mile away (and ½ mile further from the new church than the Field Parcel) on a tract of land formerly known at the JG Townsend – Harley Joseph tract (Townsend Tract).<sup>10</sup> See Attachment A, a parcel map highlighting the subject properties.

### ***Public Policy Issues***

The transaction raises key public policy questions about the Open Space program, its integrity, and public versus private interests. Among those:

1. Where is the transparency and "sunshine" associated with the proposed property exchange and conversion of use of public Open Space land?

Although Open Space Council meetings are public, the May 5, 2014 *Cape Gazette* article effectively had been the only notice to the general public of the proposed exchange of land between the State and the Developer. Notices about the proposed Open Space land conveyance and conversion of use have not been posted either on the potentially affected parcels or published in newspapers. No forms of official communication or correspondence have been provided to local communities.

2. What are the policies and procedures used to evaluate property exchanges involving State owned Open Space? Have any policies and procedures associated with the conveyance or conversion of use of Open Space been noticed for public comment and input?

In addition to a lack of transparency associated with the specific proposal, there appears to be little, if any, transparency associated with the policies and procedures

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<sup>9</sup> Ibid and Epworth United Methodist Church Cemetery Committee, *Epworth UMC New Cemetery Project*, February 8, 2015

<sup>10</sup> The State purchased the 110 acre Townsend Tract in September 2000 for \$4.125 million. For a listing of Open Space land purchases, see Department of Natural Resources and Environmental Control, *2013-2018 Statewide Comprehensive Outdoor Recreation Plan, Appendix F*, 2013, <http://www.dnrec.delaware.gov/parks/Information/Documents/2013%20Scorp/Appendix%20F-%20Open%20Space%20Program%20Acquisition%20Inventory.pdf> (accessed February 5, 2014)

associated with the exchange and conversion of use of any State owned Open Space interests. For example, what are the selection and identification criteria for identifying Open Space land for conveyance? Are adjoining parcel owners provided an opportunity for comment and participation in the process? What about local municipalities?

Conversely, for any property to be received in an exchange should the State follow its adopted procedures for Open Space procurement and rank the target property in accordance with the criteria established to prioritize prospective Open Space program land acquisitions? If not, does an exchange circumvent the Open Space acquisition process, resulting in using State resources to acquire properties less important to the public's interest?

3. What is the public benefit arising from the proposed transaction and how is the public interest served?

As noted earlier, the Field Parcel is currently subject to a conservation easement arising from the 2005 DNREC/Developer property exchange that restricts its use to open space, outdoor recreation and/or use as a cemetery. The only potential benefit that would accrue to the general public from the State acquiring fee simple ownership of the 5.8 acre Field Parcel would be to preclude the parcel from development as a cemetery and the construction of one single family house, unless DNREC expends funds to improve the Field Parcel for multipurpose athletic fields or to general use.<sup>11</sup> The cost of that acquisition is for the State to convey 7 acres of (mostly) leased farmland that the State purchased for the purpose of preserving as Open Space.<sup>12</sup>

### ***Business Decision Issues***

Another set of issues involve the business terms of the transaction, including evaluation of risks, the value of the consideration, the confidence of value estimates, and the terms and conditions placed on use of property conveyed. Among those:

4. Has sufficient due diligence been conducted on the effects of cemetery development at the proposed location? What are the environmental risks?

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<sup>11</sup> Under DNREC's ranking of recreational uses/purposes that score credit for evaluating the desirability of Open Space acquisitions, special purpose athletic fields, such as non-standard sized baseball/softball fields, receive no credit. See Department of Natural Resources and Environmental Control, *2013- 2018 Statewide Comprehensive Outdoor Recreation Plan, Appendix E*, 2013, <http://www.dnrec.delaware.gov/parks/Information/Documents/2013%20Scorp/Appendix%20E-%20Open%20Space%20Program%20Acquisition%20Ranking%20Criteria.pdf> (accessed February 5, 2014)

<sup>12</sup> The exchange would also result in the loss of over \$10,000 of lease payments to the State over 10 years. In 2014 DNREC entered into ten-year leases for the Open Space farms along Holland Glade Road at \$165 - \$190 per acre, per annum, with a 5% escalation in rent for years 6 – 10.

Given the conservation and preservation objectives associated with Open Space acquisitions, the prospective use of the conveyed Open Space property as a cemetery may thwart or be in conflict with the objectives of the Land Preservation Act. This issue has already arisen with respect to the development of a cemetery at sites close to Coastal Highway due to concerns about the contamination of the aquifer that supplies the town of Rehoboth Beach its water supply.<sup>13</sup> The recently proposed site is not on high ground (as low as 13 ft in elevation) and drains into nearby wetlands, raising the issue of whether the potential impact to environmentally sensitive areas has been thoroughly studied even if municipal water supplies are unaffected.<sup>14</sup> Governments are becoming increasingly aware of the environmental impact of cemeteries arising from the leaching of formaldehyde, lead, other chemicals and pathogens into the soil and groundwater from the decomposition of burial materials.<sup>15</sup>

5. What are the valuation assumptions, guidelines and instructions? How robust are the approaches and data supporting the value conclusions?

An exchange of real property between two parties is essentially two purchase and sale transactions with the consideration being real estate rather than cash. One party purchases the interests in real property of the counterparty, and then sells its interests in other real property to the counterparty. In the proposed exchange, DNREC will be (or has) ordering appraisals to value the interests in real estate exchanged to determine the cash equivalence. The valuation assumptions, guidelines, and instructions for the proposed transaction present policy issues that will influence the estimate.

For example, the 1.2 acre strip of Open Space property proposed to be conveyed near Coastal Highway adjoins a 10.3 acre commercially zoned (C-1 and CR-1) undeveloped parcel at the corner of Coastal Highway and Holland Glade Road (see Attachment A).<sup>16</sup> Assuming that DNREC would convey the 1.2 acre piece with the same conservation easement restrictions that it placed on the Field Parcel, the value of the 1.2 acre piece remains high to the owner of the commercial property since a land assemblage would allow that owner to use the 1.2 acre piece with the conservation easement to satisfy open space, recreational facilities or parking requirements for the entire 11.5 acre development. If the corner property were developed similarly to another nearby, the acquisition of the 1.2 acre piece would allow the corner property owner to build as many as 14 additional residential units on the 10.3 acre property. How would the above scenario be factored in the appraisal for the 1.2 acre slice?

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<sup>13</sup> Interview of The Glade POA Board of Directors with Epworth representatives, February 7, 2015

<sup>14</sup> U.S. Geological Survey, Rehoboth Beach Quadrangle, 7.5 Minute Series (Topographic), 1984

<sup>15</sup> For a more comprehensive description of the environmental issues associated with cemeteries, see the United Kingdom's environmental agency's publication *Assessing the Groundwater Pollution Potential of Cemetery Developments* at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/290462/scho0404bgla-e-e.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/290462/scho0404bgla-e-e.pdf)

<sup>16</sup> Sussex County, Delaware, *Zoning Map*, May 20, 2013

Another example concerns the valuation of the Field Parcel. Due to the lack of transparency, the public does not know the terms of the Tenant's lease. Is the lease month-to-month, or does the leasehold interest run for another 20 years? How much is the annual rent? Are there options for the Tenant associated with the lease? All of these provisions could affect the value estimate of the property. As a prospective buyer of the property, DNREC should obtain, if it has not already done so, a copy of the lease and ensure it is factored in the valuation process.

### ***Issues Impacting Neighboring Communities***

A third category of issues concern the impact of the proposed transaction on neighboring communities. Among those:

6. How are the intangible aspects of the loss of Open Space factored?

Fifteen lot owners in The Glade as well as Glade common areas abut the parcel that would be subdivided for the proposed cemetery. Several of those lot owners purchased their properties with the understanding that the land was to remain Open Space in perpetuity. Some have views that would overlook the proposed graveyard. All of The Glade's residents would drive by the proposed cemetery, which would be near The Glade's entrance, as they enter or leave the community. Rather than seeing fields and flocks of geese, residents will be seeing tombstones. Cemeteries are permanent. How are these intangible factors weighed in the decision process?

7. How are other considerations taken into account?

Although cemeteries generate very little traffic, any increase in traffic along the eastern-most half-mile of Holland Glade Road would increase the likelihood of pedestrian accidents, however marginal. This segment of Holland Glade Road is narrow and has no shoulders or sidewalks. Pedestrians must share the roadway with automobiles – there is no other option.

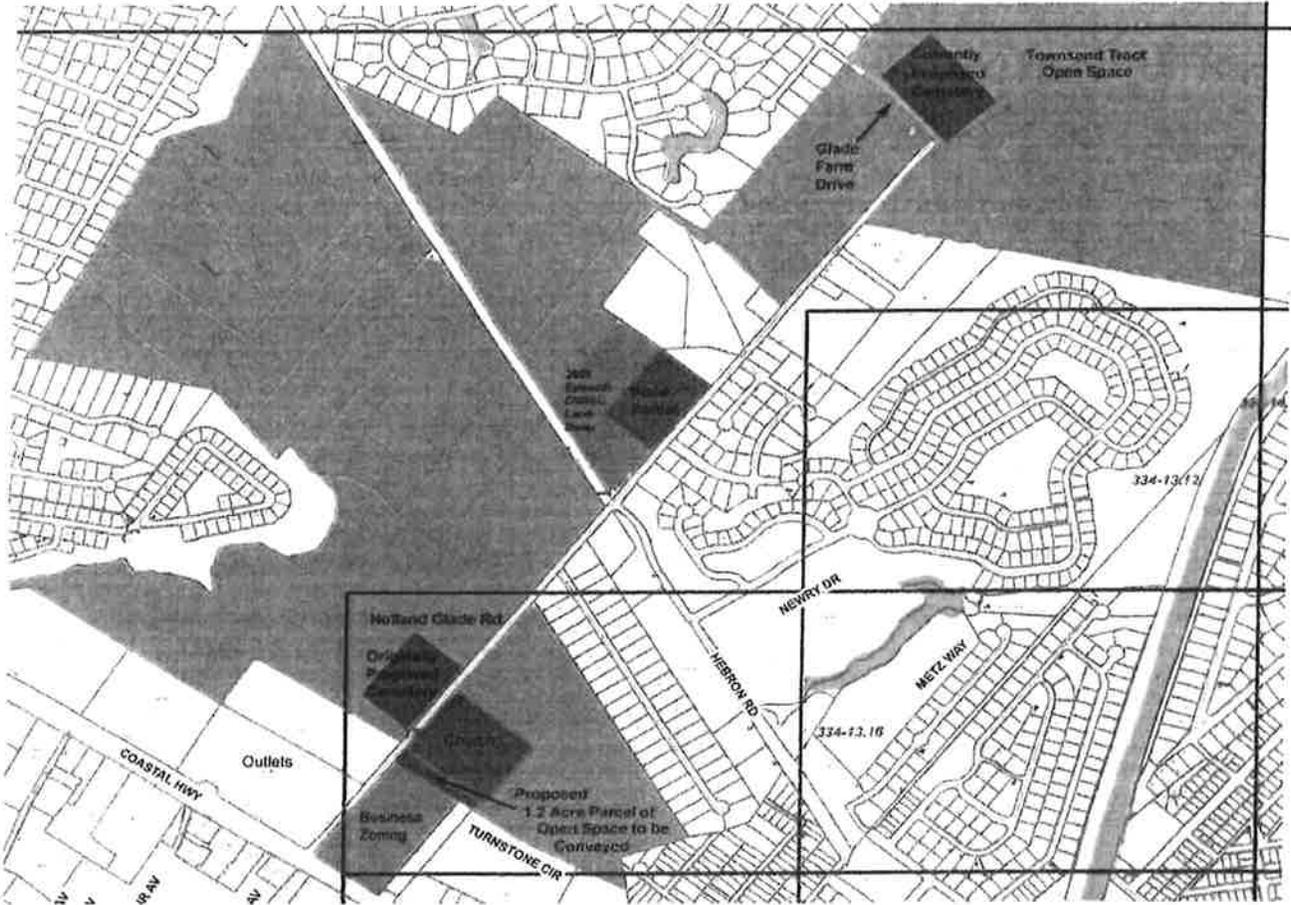
### ***Consideration of Alternatives***

Due to the lack of transparency of the proposed transaction, questions arise regarding consideration of alternatives to the proposal. Specifically, have the State and the Developer considered, among other alternatives:

1. Allowing, if needed, the Developer and Tenant to negotiate a continued lease of the property, as private parties – without the prospect of State intervention. This approach would ensure fairness to others and is the process that other landlords and tenants undertake in the normal course. It also avoids the permanent loss of the public's Open Space.

2. Facilitating the sharing of ball fields between the Cape Henlopen School District and the Little League at Beacon Middle School or the proposed new elementary school across from Beacon. Over the long run, the sharing of fields will reduce the maintenance costs for both the school district and the Little League. (The sharing of ball fields between school districts and Little League teams occurs elsewhere in Delaware and throughout the country). The cost of new lighting and other improvements could be split between the parties. This alternative also provides better parking for player's families and access than the current location. Due to more efficient utilization of the fields, over the long term this would appear to be in the interests of both the school district and Little League.
3. Purchasing the Field Tract from the Developer through appropriated funds under the Open Space Program and/or through Delaware Land and Conservation Land Trust programs. Although the property may need to be improved for broader use (i.e., general athletic fields), this alternative would add to the inventory of Open Space, allow for the Tenant to continue to play at this site, and provide the Developer with the fair value of its property. The Developer, in turn, could use the proceeds, if it so elects, to purchase land for a new cemetery under the same terms and conditions available to others.
4. Given that the existing cemetery is 2.8 acres and has been in existence for decades, and the Field Parcel is 5.8 acres, with some reconfiguration, Epworth could develop a cemetery equal in size to its existing cemetery and leave 3 acres available for continued lease to the Little League, rather than forcing the Little League to relocate.

# Attachment A



# Epworth seeks land for new cemetery

By Ryan Mervin  
ryan@capegazette.com

Discussions are ongoing among state legislators, Rehoboth Little League and Epworth United Methodist Church on a land swap deal that would provide a site for a new church cemetery.

The growing church, which moved from Baltimore Avenue in Rehoboth Beach to its Holland Glade Road location in March 2008, wants to build a new cemetery near the new church.

According to Rep. Pete Schwartzkopf, D-Rehoboth Beach, and Sen. Eric Lopez, R-Lewes, Epworth owns the land where the Little League fields are now located. Under the deal, the church would swap that land for open space across from the Church on Holland Glade Road, currently owned by the state.

Lopez said Epworth's cemetery on Henlopen Avenue in Rehoboth Beach, will soon reach capacity. Schwartzkopf said the deal would

enable Epworth to build a new cemetery across the street from the new church while preserving the Little League fields.

The Little League fields would come under the administration of the Department of Natural Resources and Environmental Control, which Schwartzkopf said would use the land to make improvements to the access ways to the baseball fields.

"We didn't want to see the Little League have to go," Lopez said. "Both sides are happy."

Because the land the state is giving up is zoned open space, the deal would require an act of the General Assembly to re-designate it, Lopez said. Both Lopez and Schwartzkopf said they expect the legislation formalizing the swap to be introduced and approved before the General Assembly breaks Monday, June 30. Epworth's head pastor, the Rev. Vicki Stames, declined to discuss the negotiations because she said she did not want to jeopardize them.

# State readies purchase of Rust farm for Cape State Park

By Michael Short

Delaware has bought the first of what could be several parcels along Cape Henlopen State Park.

Mark Chura, of the Department of Natural Resources and Environmental Control's (DNREC)'s Planning, Preservation and Development Section, has confirmed that the state will purchase a 191-acre tract known as the Fraser-Warren-Rust tract.

Delaware has been in various stages of negotiations with approximately a dozen major

property owners representing as much as 2,000 to 2,500 acres of land adjoining Cape Henlopen State Park.

Delaware is pushing to acquire the land through purchase, deed or other ways (condemnation is not permitted) in an effort to enlarge the boundaries of the state park.

Such lands could be a buffer zone for the park and could be used for additional recreational uses or perhaps the long-considered bicycle path. Some of the lands being considered for pur-

chase include the former railroad line, which has been considered for a possible rail-to-trail bicycle route. The lands being considered are located approximately between Grove Park, Route 1 and Route 9.

They include land owned by Hazell Smith and by Townsends.

Acquisition of possible land is listed as an agenda item for the August 26 meeting of the Cape Henlopen State Park Steering Committee, which is developing a

Continued on page 15

## Bunting adds his opposition to Cape Henlopen Park bike path

By Michael Short

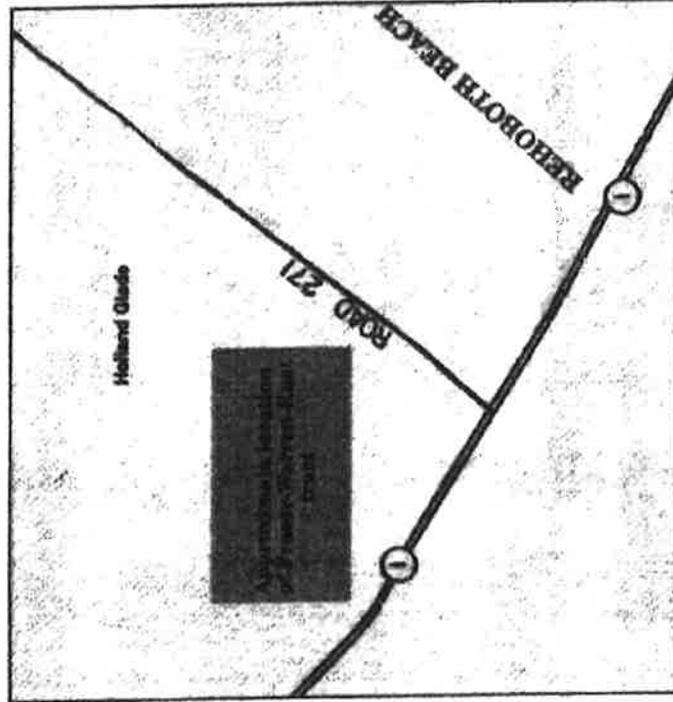
Sen. George Bunting, D-Bethany Beach, has weighed in and said he has serious reservations about a bicycle path in Cape Henlopen State Park.

Bunting has supported such a route in the past and has worked closely with Rep. John Schreeder, D-Lewes, a supporter of a bike route in the area.

But Bunting pulled back this week, saying that he worries about

Continued on page 12

18 - CAPE GAZETTE, Friday, July 31 - August 6, 1998



This map shows the approximate location of the Fraser-Warren-Rust tract of land, which the state has a contract to buy. The land is the first of several properties being considered for purchase by Delaware in order to expand the boundaries of Cape Henlopen State Park.

## Purchase

Continued from page 1  
long-term master plan for the park.

Chura said negotiations with Smith are preliminary, but said her approximately 318 acres of land located on Gills Neck Road may "be the crown jewel of the corridor."

Ron Vickers of DNREC's Division of Parks and Recreation, said he could not give a purchase price for the Fraser-Warren-Rust tract because it has not gone to settlement yet.

But both he and Chura confirmed that there is a contract to purchase the land and Chura said there is state money available to purchase lands in the area.

The land is owned by 18 heirs and has been farmed for more than a century. It is 191 acres of land and Vickers said it runs roughly from the Glade Road to Holland Glade, including the Holland Glade Bridge. The land includes wetlands, forests, fields and part of the former rail bed.

Vickers said the state will probably continue to lease the land as farmland and simply keep the area open and undeveloped. It is near the Rehoboth Beach Little League complex, which puts it roughly in the middle area of the land being considered for purchase.

Appraisals are being done on several other parcels in the area. Chura said those negotiations are going well and are in various stages. "We're encouraged," he added.

## Briefly

### Nature preserve added To Cape State Park

Cape Henlopen State Park grew recently as a result of the addition of a 7.2 acre tract of land lining both sides of Beaverdam Branch, a tributary of Holland Glade. The land, primarily pristine tidal marsh protecting the headwaters of Holland Glade, was purchased by Delaware from the Herberger family of York, PA. The property is located adjacent to the lands which were recently added to Cape Henlopen through an agreement between the federal government and two private landowners. It also adjoins the Lewes-Rehoboth railroad line. The area becomes the 15th State Nature Preserve, permanently protecting more than 1,700 acres of significant and unique conservation lands. These lands are protected through the Natural Areas Program, administered by the Division of Parks and Recreation and supported by contributions from the State income tax form: the Nongame, Endangered Species, Natural Areas Preservation Fund.

through Feb. 18.

County administrator said Tuesday, March 22, said that all public assistance will be limited to 75 percent of the total eligible costs in the designated areas. He added that Glenn Gillespie, director of Emergency Preparedness for Sussex County, will meet with officials from the Federal Emergency Management Agency today (March 25) at 1:30 p.m. in Dover to discuss reporting requirements and to designate those who will be eligible for reimbursement.

### County Council OKs revamping land use plans

Sussex County Council on Tuesday, March 22, approved the hiring of Whitman, Requardt and Associates who will combine the Coastal Sussex Land Use Plan and the Western Sussex Land Use Plan into one document.

The completed document must be presented to council by an Oct. 28 deadline. The county agreed to pay the firm a maximum of \$75,000 for its work.

The work will include revising some county ordinances, especially where density requirements may be different between the county and municipalities.

# VIEWPOINTS

## Editorial

### Bond bill initiatives bode well for state

Much to its credit, Delaware's Legislature approved significant moneys in its current bond bill for the purchase of naturally significant open spaces and development rights from the owners of agricultural land considered prime for development.

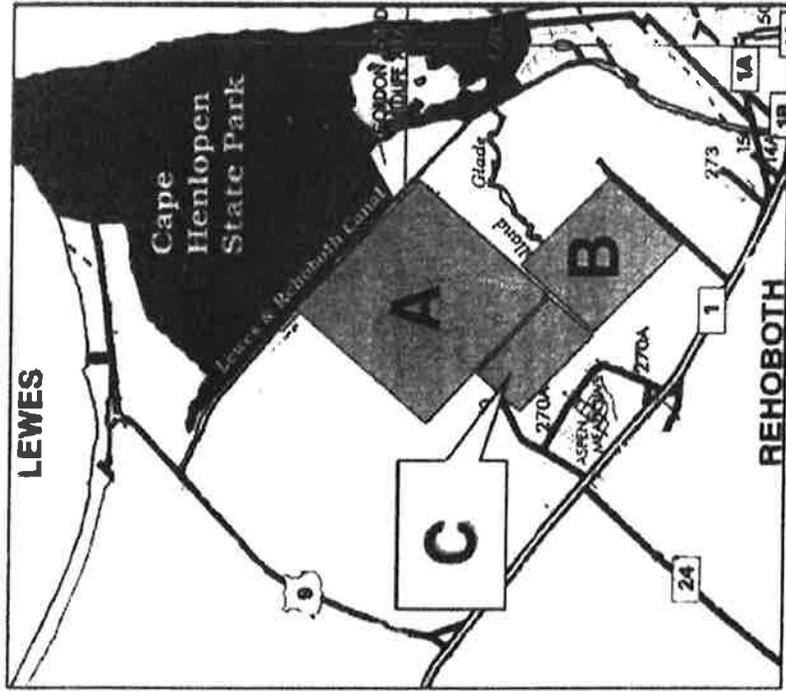
Such initiative bodes well for the future of the state. One of the most important initiatives ever undertaken by the state - arguably its most important - was the protection, through state ownership, of more than 20 miles of the state's oceanfront land, between Cape Henlopen and Fenwick Island. By placing that land under state ownership and management, the state's healthy tourism economy - so long as we keep our beaches clean and wide - is assured for well into the future.

The purchase of more lands for open space and development rights will enhance our state's attractiveness as a tourist destination, especially for naturally oriented, outdoor recreation. The purchase of development rights will ensure that we have good farmland for production of food as well as keeping our countryside uncluttered and clean.

Ironically, however, Delaware's farsighted open space and development rights initiatives, while preserving space directly, will also serve to accelerate the pace of development in our state. More purchased open space raises property values because it improves quality of life for those living and looking to locate here and because it results in less land available for development. Those interested in development understand such dynamics and will hasten to purchase land for development before prices rocket even higher in the face of shrinking supply.

In addition, the pending completion of the limited access Route 1 further upstate will significantly trim the drive time from the more heavily populated megalopolis above the Chesapeake and Delaware Canal to the more sparsely populated areas of downstate Delaware. Taken together, these factors will increase development pressures significantly.

Development is inevitable. It's likely that none of us will see the end of development on the Delmarva Peninsula in our lifetimes. However, current conditions make it increasingly important that our zoning laws and review processes make sense and are applied and adhered to diligently so that the downside of rapid development, such as congestion and inadequate infrastructure, can be avoided as much as possible.



—Jan Ellingworth illustration

This shows the approximate location of the three properties adjoining Cape Henlopen State Park which have been purchased by Delaware. Together, they run from approximately Wolfe Glade to Route 271. They comprise 887,418 acres of property and cost roughly \$8,455,400. Property A was purchased from the J.G. Townsend Company on Monday, May 3. It is called the Dodd Farm and consists of approximately 642 acres of land. Property B is the Fraser-Warren Rust property consisting of 191 acres of land and Property C is the Truitt Farm consisting of about 57.12 acres of land.

# Cape Park master plan goes to public

By Michael Short

The draft Cape Henlopen State Park Master Plan has gone to the public in the first of three public hearings designed to find out what the public thinks.

The first such meeting at the Virden Center on May 5 drew a crowd of about 35 people, a number of which have served on the steering committee developing the draft plan.

There were only a handful of comments and no real fireworks. Lewes resident Dick Gott worried that plans to change parking in two of the park's most scenic segments, at the Cape Point parking area and at Herring Point, would make it more difficult for residents who have difficulty walking to enjoy the scenery.

There were also questions about the carrying capacity of the park and about the number of campers which the campground can hold. But for the most part, the audience simply listened.

Before that meeting, the steering committee waded through several recommended changes in the master plan. On the issue of carrying capacity, committee members voted to adopt language saying that the number of parking spaces will act as a limit on park visitation.

The park now receives 1.5 mil-

lion visitors annually, but that number is growing rapidly and will increase the number of parking spaces. Pat Cooper, state park superintendent, said that means the number of visitors to the park will be limited to roughly 11,000 to limit the number of daily visi-

Continued on page 20

## Key elements of master plan

There are several key provisions to the Cape Henlopen State Park Master Plan which is now being taken to the public in a series of three public meetings.

Here are some of the key provisions:

- Revamping the park entrance and redoing roads, burying utilities and generally revamping the park's often ancient utilities.
- Stabilizing Herring Point, which is being threatened by erosion.
- Developing a bathroom and changing the parking lot in the Gordon's Pond area. This area is underutilized and has virtually no services, hence the decision to add services.
- Development of a new nature center at the location of what is now the officer's club.

• Changing the campground. No new camping spaces will be added, but there will be more planting, less pavement and a small camp store.

• More emphasis on the military history of the park through interpretation and displays to educate the public. This could even involve returning one of the long gone Fort Miles guns and it will likely include rehabilitation of one of the housing units at the Fort Mead Recreation Center. There will also be additional interpretation to tell visitors about the former quarantine station located near the present fishing pier.

- Development of a visitor center near the current park entrance.
- A shuttle bus system for visitors.
- Moving some of the parking at Cape Point further away from the point in order to provide a more scenic experience for visitors to the area.

# Park

Continued from page 4  
per day.

That's the same limit the park now has. It's an approximate number, but it's the point at which the park closes and Cooper and his park rangers decide "no mas".

In addition, the committee voted to ask the city of Lewes to lower the speed limit on approximately seven-tenths of a mile of Cape Henlopen Drive as it approached the park.

Committee member and Lewes City Councilman Jud Bennett said the request will be considered at Lewes' next council meeting.

The steering committee also voted to abandon the idea of an alternative motor vehicle entrance.

The property, through pine woods located to the west of the existing entrance, will only be used for a multi-purpose path and not for motor vehicles. The committee also set priorities for the park improvements. The first priority is a new park entrance and infrastructure improvements like roads and utilities. Gordon's Pond and Her-ring Point are joined together as the number two priority. They are followed by the nature center, campground and the visitor center. If you did not get a chance to comment, here are the final two public hearing locations. There are hearings Tuesday, May 11, at 6:30 p.m. at the DNREC offices, 89 Kings Highway in Dover and Wednesday, May 12, at 6:30 p.m. in the Etta Wilson Elementary School, 14 Forge Road, Newark.

# Cape State Park, Prime Hook Refuge both to grow larger

By Michael Short

Delaware moved a whisker faster than developers to protect 110 acres of land bordering Cape Henlopen State Park.

The land, called the J.G. Townsend-Hartley-Joseph Tract, was purchased by the state for \$4.125 million and is the latest of nine state purchases intended to provide a buffer for Cape Henlopen State Park.

Mark Chura, head of the Delaware State Parks Planning, Preservation and Development section, said that owners said "we want you to have it, but if you don't, then it's gone."

The Delaware State Parks Division if a portion of the Department of Natural Resources and Environmental Control (DNREC) and in the last two years, DNREC has put on a major push to acquire land to protect the state park's bor-

ders.

Those efforts made the state a big-time real estate player and netted 1,396 acres on the park's western boundary between Route 1 and the Lewes-Rehoboth Canal.

While the state was dipping into its pocket to preserve more land, it appears that the federal government may be doing the same thing to expand the boundaries of the Prime Hook U.S. Wildlife Refuge.

Although it still needs Senate approval, the House of Representatives has unanimously approved the FY01 Interior Appropriations Conference Report, which includes \$1,300,000 to purchase 350 acres adjacent to the Prime Hook Refuge.

The House vote was a whopping 348 to 69. The land to be added are the 250 acre Jefferson Property and the 100 acre Milliman property, both of which are

adjacent to the refuge.

Among the advantages of protecting the new land is that it contains mature woods which could be habitat for an endangered species which has been reintroduced to the refuge—the Deltamarva Fox Squirrel.

Delaware Congressman Michael Castle wrote in a Sept. 19 letter to the House and Senate Appropriations Subcommittee chairs: "In recent years, development pressures from increased traffic and growing beach communities have created the need to buffer the wildlife refuge. Both the Jefferson Property and the Millman Property serve this important purpose."

The Cape Henlopen land purchase is only the latest purchase made by the state.

It is located off what is commonly referred to as the Glade Road with 30 acres on the west

side of the road. The remainder is between the road and the Lewes-Rehoboth Canal.

The following is a list of other state purchases in the corridor, totaling \$20,365,811 and protecting 1,396 acres:

- October 1998 - The Frazier Rust Warren Tract of 187.9 acres bought for \$3,056,600

- April 1999 - The Truitt Tract of 57 acres bought for approximately \$795,000

- May 1999 - The J.G. Townsend-Dodd Tract of 642 acres bought for approximately \$4,606,700

- July 1999 - The Thompson Outlets-Dodd Tract of 81 acres

- bought for approximately \$2,032,000

- November 1999 - Anderson Farm of approximately 95.5 acres bought for approximately \$2,165,000

- December 1999 - David Blake Thompson parcel of approximately 12.7 acres bought for approximately \$20,000.

- March 2000 - Wolfe Farm of approximately 167 acres bought for approximately \$2,533,000

- July 2000 - An addendum to the Thompson Outlets-Dodd purchase added an additional approximately 41.4 acres.

- September 28, 2000 - J.G. Townsend-Hartley Joseph lands.

# TITLE 7

## Conservation

### Natural Resources

#### CHAPTER 75. DELAWARE LAND PROTECTION ACT

##### § 7501 Short title.

This chapter shall be known and may be cited as the "Delaware Land Protection Act."

67 Del. Laws, c. 352, § 1.;

##### § 7502 Declaration of policy.

The General Assembly finds that:

- (1) The provision of lands for public recreation and conservation of natural resources promotes biological diversity, public health, prosperity and general welfare and is a proper responsibility of government.
- (2) Lands now provided for such purposes will not be adequate to meet the needs of an expanding population in years to come.
- (3) The expansion of population, while increasing the need for such lands, will continually diminish the supply and tend to increase the cost of public acquisition of lands available and appropriate for such purposes.
- (4) Rapid growth and spread of urban development is encroaching upon, or eliminating, many open areas and spaces of varied size and character. These areas and spaces, if preserved and maintained in their present open state, constitute important physical, biological, social, aesthetic or economic assets.
- (5) The State must act now to protect and to help local governments to protect substantial quantities of such lands as are now available and appropriate so that they may be preserved and developed for the purposes enumerated herein.
- (6) It is the public policy of the State and its political subdivisions that the 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 advanced and should be continued.

67 Del. Laws, c. 352, § 1.;

**§ 7503 Purpose.**

(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:

- (1) To protect and conserve all forms of natural and cultural resources;
- (2) To protect and conserve the biological diversity of plants and animals and their habitat;
- (3) To protect existing or planned parks, forests, wildlife areas, nature preserves or other recreation, conservation or cultural sites by controlling the use of contiguous or nearby lands;
- (4) To preserve sites of special natural, cultural or geological interest;
- (5) To connect existing open spaces into a cohesive system of greenways and resource areas;
- (6) To provide for public outdoor recreation; and
- (7) To allow for water resource conservation.

(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.

67 Del. Laws, c. 352, § 1.;

**§ 7504 Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section except where the context clearly shows a different meaning:

- (1) "Conservation Trust Fund" means the Delaware Land and Water Conservation Trust Fund established and maintained pursuant to Chapter 47 of this title, as it may be amended or superseded [repealed].
- (2) "Council" means the Delaware Open Space Council established pursuant to this chapter.
- (3) "Department" means the Department of Natural Resources and Environmental Control.
- (4) "Interest in real property" means any right in real property, improvements thereto, or water including but not limited to a fee simple, easement, remainder, future interest, lease, license or covenant of any sort, option or contractual interest or right concerning the use of or power to transfer property.

(5) "Land" or "lands" means real property, including improvements thereon; rights of way; water and riparian rights; easements, privileges and all other rights or interests of any kind or description in, relating to or connected with real property.

(6) "Open space" means any open lands characterized by (i) great natural scenic beauty, or (ii) whose existing openness, natural condition or present state of use, if retained, would maintain important recreational areas and wildlife habitat, and enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources, including environmentally sensitive areas. For the purposes of this chapter, "open space" shall include significant cultural, historical or archaeological sites as determined by state plans and policies adopted by the Bureau of Historic and Cultural Affairs.

(7) "Overlay zone" means a local zoning district and its associated use, design and environmental performance standards that is superimposed on the underlying zone for the purpose of providing additional protection.

(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.

(10) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(11) "State agency" means, and shall apply exclusively to, the following units of state government which manage natural and cultural resources:

- a. Department of Natural Resources and Environmental Control (Division of Parks and Recreation and Fish and Wildlife);
- b. Department of State (Division of Historical and Cultural Affairs); and
- c. The Department of Agriculture (Division of Resource Management).

(12) "State resource area" means those open space lands duly identified by the Council and adopted by the Department for protection.

67 Del. Laws, c. 352, § 1; 72 Del. Laws, c. 489, § 94.;

### **§ 7505 Delaware Open Space Council.**

(a) There is created a Delaware Open Space Council to advise the Secretary on all matters relating to the administration, implementation and financing of this protection program; site selection; methods of protection; and interagency and intergovernmental coordination among public and private land preservation agencies.

(b) The Council shall have 9 members. The Council shall consist of:

- (1) One member of the Senate appointed by the President Pro Tempore to serve at the

pleasure of the President Pro Tempore;

(2) One member of the House of Representatives appointed by the Speaker of the House to serve at the pleasure of the Speaker of the House;

(3) Seven members appointed by the Governor, at least 4 of whom shall be persons who have been active or have shown an interest in preserving open space. Of the 7 members appointed by the Governor, 3 shall be persons who reside in New Castle County, 2 shall be persons who reside in Kent County, and 2 shall be persons who reside in Sussex County. Initially, 2 members shall be appointed for 2 years; 2 members for 3 years; and 3 members for 4 years. Thereafter members shall serve 4-year terms, provided that at the end of a member's term such member shall continue to serve until a successor is duly appointed;

(4) No more than 5 Council members shall be of 1 political party; provided however, that failing or declining to announce one's political affiliation shall not make such person ineligible for appointment;

(5) The Secretaries of Agriculture and State, the Director of the Delaware Economic Development Office, and the State Liaison Officer for the federal Land and Water Conservation Fund or their duly authorized designees shall be ex officio members of the Council without voting powers.

(c) The Governor shall appoint the chairperson of the Council.

(d) The Department of Natural Resources and Environmental Control shall furnish clerical, technical, legal and other services required by the Council in the performance of its official duties.

(e) Members of the Council shall receive no compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. The Council shall hold at least 1 regular meeting in each quarter of each calendar year and shall keep a record of its proceedings. All proceedings of the Council shall be conducted in accordance with Chapter 100 of Title 29.

(f) For purposes of conducting business of the Council, 5 voting members shall constitute a quorum. A majority vote of the members present at a meeting at which a quorum is present shall be required on any action or matter before the Council.

(g) The Council may adopt procedural rules and regulations to carry out the provisions of this chapter.

67 Del. Laws, c. 352, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 394, §§ 1-6.;

### **§ 7506 Powers and duties of the Council.**

The Council shall:

(1) Review and recommend to the Department for adoption, after a public hearing, criteria for delineation, and dedication of open space;

- (2) Review and recommend to the Department for adoption, after public hearing, state resource area maps;
- (3) Review and recommend to the Department for approval lands for permanent protection according to the adopted state resource area maps;
- (4) Review and recommend to the Department for adoption, a ranking system to establish land acquisition or permanent protection priorities;
- (5) Advise and consult with the Secretary of the Department of Natural Resources and Environmental Control and with other state land preservation agencies and staff on preservation matters;
- (6) Advise and consult regarding any change from permanently protected status of open space lands acquired or otherwise protected;
- (7) Use the "Greenspaces for Delaware's Future" report prepared by the Department in 1990 as a starting point for carrying out the duties, and purposes of this chapter;
- (8) Promote and assist, in conjunction with state agencies, in the development and establishment of creative and innovative methods to secure the permanent protection of open space including but not limited to:
  - a. Local and regional land trusts;
  - b. Conservation and preservation easements on a statewide basis;
  - c. Purchase of less than fee simple property rights;
  - d. Program or programs to create financial incentives for private sector contributions to establish operations and maintenance funds at state resource areas;
- (9) Analyze, in conjunction with the Department of Finance, the state and local tax codes and formulate incentives to encourage landowners and developers to donate or retain ownership of their lands in an undeveloped state;
- (10) Coordinate with an interagency working group to be appointed by the Secretary that shall provide technical advice on all matters relevant to this chapter. At a minimum the working group shall consist of state agency technical staff from the Department of Agriculture, the Delaware Economic Development Office, and the Divisions of Historical and Cultural Affairs, Fish and Wildlife, and Parks and Recreation. Nonstate agency membership shall be comprised of representatives from each county government, which may include up to 1 member each from the Planning Department, Parks and Recreation, and or Executive Office, as determined by the County Executive or Levy Court President. The Secretary shall select a chairperson from among the members. The group will work to maximize the use of funds, and use of protection methods other than fee simple acquisition to permanently protect statewide priority projects through utilization of open space criteria and the ranking system adopted by the Department;

(11) Work with the Department, private nonprofit conservation groups and interested private sector interests to preserve and protect open space for the benefit of the citizens of the State;

(12) Recommend to the Department for adoption, after public hearing, any rules and regulations as may be necessary to carry out any provisions of this chapter.

67 Del. Laws, c. 352, § 1; 69 Del. Laws, c. 458, § 1; 77 Del. Laws, c. 236, § 1.;

#### **§ 7507 State resource areas.**

(a) In furtherance of the purposes of this chapter, the Council shall, in conjunction with the interagency working group, develop and forward to the Department for adoption:

(1) Standards and criteria consistent with the purposes of this chapter for evaluating the lands and waters of the state for inclusion as state resource areas in the open space program;

(2) A system for determining the existence and location of state resource areas; their degree of endangerment; an evaluation of their importance; and information related to their natural, historic or open space values;

(3) A priority ranking system for the acquisition of said lands and waters or rights therein.

(b) The Department shall carry out the following actions in furtherance of this chapter:

(1) Designate and adopt state resource areas for inclusion in the open space program. State resource areas shall be shown on maps of sufficient scale to identify individual properties for planning and zoning purposes.

(2) Update the state resource area maps, in consultation with county governments, at least every 5 years.

(c) Upon adoption of the state resource area maps the Department shall send copies to the affected county for inclusion in the conservation element of their respective comprehensive plans, and send copies to affected municipalities for inclusion in their respective comprehensive plans. Updated state resource area maps shall also be submitted to said agencies no later than 1 year prior to mandatory comprehensive plan updates as required in the Delaware Code.

(d) It is the intent of the General Assembly that the Council shall, in conjunction with the Department, analyze the feasibility and advisability of establishing a right of first refusal to purchase any property located within a state resource area. The Council shall propose and recommend to the General Assembly legislation to accomplish the foregoing, after holding public hearings with respect to such proposal.

67 Del. Laws, c. 352, § 1.;

#### **§ 7508 Land use requirements.**

(a) In order to maintain the protection of the unique ecological functions of state resource areas in a manner consistent with the purposes of this chapter, each county government shall adopt and incorporate overlay zoning ordinances, guidelines and specific technically based environmental performance standards, design criteria and mitigation requirements, where appropriate, that shall apply to significant ecological functions and identified historic and archeological sites on these lands. The guidelines shall designate the boundaries to which they apply and provide a procedure for the appeal of such boundary designations. The zones created hereunder shall overlie and not replace the existing zoning or preclude or prejudice any change thereto. The standards specified in the guidelines shall include, but not be limited to:

- (1) The establishment of frontage, building height, setback and site design requirements that shall apply in state resource areas and which may apply to lands immediately adjacent thereto, which will result in residential, commercial and industrial or other uses which minimize the loss of open space and associated values of state resource area lands.
- (2) The establishment of technically based specific environmental performance standards and design criteria that shall apply in and may apply adjacent to state resource areas in order to protect the values of said lands.

(b) The powers granted counties under Title 9 as they pertain to the protection of any natural feature or resource governed by this title, shall be exercised through the adoption of ordinances and land use requirements duly enacted or approved by the county government of each county. Such natural resource protection requirements shall restrict land use activity by means of enactment and enforcement of specific technically based environmental performance standards, design criteria and mitigation requirements consistent with state law and regulations. Minimum lot sizes, density limitations, and prescribed percentages of impervious surface and use limitations and prohibitions shall not constitute performance standards as required herein, however, such limitations and restrictions shall be adopted where appropriate, to establish an alternative means of complying with the purpose and requirements of the overlay zones. It shall be the option of the owner of land to satisfy either (1) the county environmental performance standards, design criteria and mitigation requirement, or (2) the overlay zoning ordinances where such options are made available. The guidelines, performance standards, design criteria of this subsection shall not apply to lands producing agricultural commodities as defined in Chapter 7 of Title 3 or lands under state agency ownership.

(c) In order to encourage landowners and developers to promote the objectives of this chapter, each county government shall evaluate density bonuses, credits or other incentives and allowances to land owners and developers for lands or resource protection rights thereto, to encourage the permanent protection of open space and/or any natural resource as governed by this title and elect such measures as they deem appropriate. The counties shall evaluate and consider enactment of measures to allow such bonuses, allowances, incentives and credits to have the ability to be sold, transferred or applied, as a matter of

right, to other lands to the maximum density permitted by the applicable zoning classification, so long as such action is consistent with the comprehensive plan of the county.

(d) Counties shall adopt zoning ordinances that enact these guidelines and standards within 18 months after receipt of state resource area maps from the Department. If a county government does not comply with this 18-month enactment requirement, said county shall be ineligible for any funds negotiated for but unexpended under subsection (e) of this section and return to the State an amount equal to Funds expended under an agreement negotiated under subsection (e) of this section.

(e) The Secretary shall negotiate an agreement and grant a one time amount of up to \$100,000 to each county to assist with compliance of the requirements in this section.

67 Del. Laws, c. 352, § 1.;

### **§ 7509 Program administration.**

(a) The Department shall administer the conservation program described in this chapter. The Department shall develop, periodically review and maintain a comprehensive statewide outdoor recreation and conservation plan, for consideration and approval by the Council, which shall establish criteria and priorities for the application of funds available for the purposes of this chapter. The Department's existing statewide comprehensive outdoor recreation plan shall be the initial plan for the purposes of this subsection.

(b) The Department, in conjunction with other public and private land management organizations, shall undertake a special program to acquire or otherwise permanently protect lands within established state resource areas and other lands identified as having state significance according to the procedures of this chapter.

(c) Rules and regulations adopted, and contracts entered into, with respect to the Delaware Land and Water Conservation Trust Fund as originally established under [former] § 4733 of this title [repealed] shall remain in effect with respect to the Conservation Trust Fund until amended, revoked or otherwise modified pursuant to this subsection.

(d) Direct costs associated with the administration of the conservation program described in this chapter shall be paid from the Land and Water Conservation Trust Fund.

(e) Five years after July 13, 1990, and every 5 years thereafter through the life of the program, the Secretary and the Council shall report to the Governor and the General Assembly on the status and accomplishments of the program with recommendations regarding continuation of land preservation activities. In addition to the requirements outlined above, the Secretary and the Council shall file annual reports with the General Assembly detailing accomplishments and activities of the program, including its impact on the tax base of the counties.

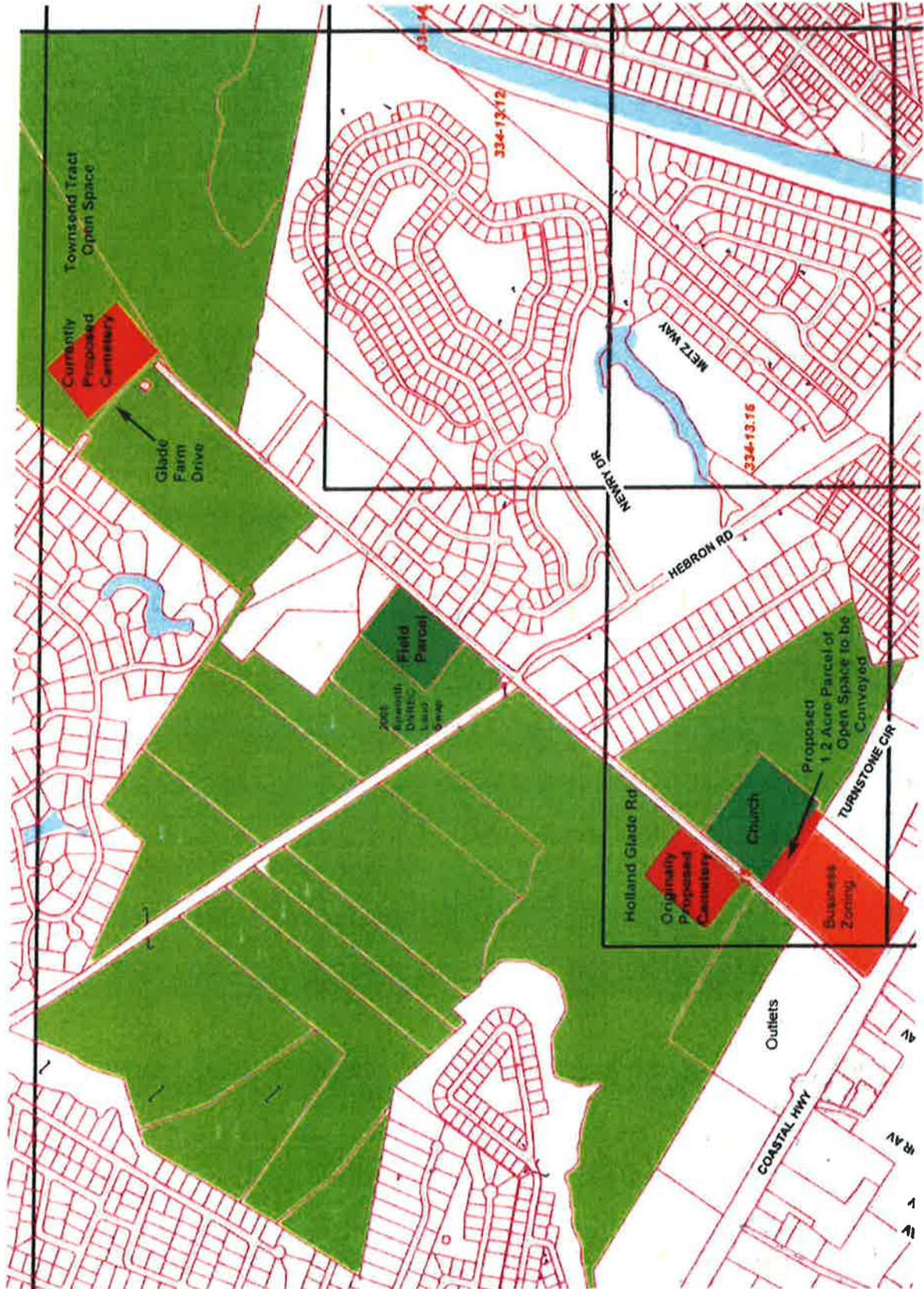
67 Del. Laws, c. 352, § 1.;

### **§ 7510 Zoning and use.**

Notwithstanding any provision of this chapter to the contrary, no open space or other area acquired primarily for recreational use shall be rezoned, neither shall there be a change in the use of any such lands requiring a variance or subdivision approval, except upon 45 days prior notice to all elected members of the General Assembly in whose district such lands, or any part thereof, lie.

72 Del. Laws, c. 156, § 2.;

# Attachment A



## Delaware Geologic Survey Map - Review Summary

In lieu of further (expert) study, the maps below appear to suggest the following:

- The area directly northeast of Glade Farm Drive within and near The Glades community contains the same surface geology, namely the Lynch Heights (Qlh) unit, as the area along Holland Glade Rd near the Epworth ball fields and church. Both areas are dominated by sandy soils to depths at or near sea level.
- The similarity in the ground and soil types indicate that the groundwater within the glade directly adjacent to Glade Farm Drive would transport contaminants in a similar manner to that in the higher elevations along Holland Glade Road.
- The ground abutting Glade Farm Drive is significantly closer to environmentally sensitive marshlands than southwestward stretches along Holland Glade Road.
- The ground abutting Glade Farm Drive essentially lies on an isolated peninsula surrounded on three sides by marshlands and swamplands.
- As shown by the contours, the surface areas along the upper stretches of Holland Glade Road, and specifically around the Epworth ball fields and church, are situated on relatively high ground with elevations ranging between 22 and 29 feet and averaging about 23 feet (elevations via Google Earth). The surface along the northeast edge of Glade Farm Drive is significantly lower, with elevations ranging between 12 and 18 feet and average about 15 feet (elevations via Google Earth). On average, the surface adjacent to Glade Farm Drive is approximately 8 feet lower than the surface along the upper stretches of Holland Glade Road.
- The elevation 6 feet below the surface for much of the ground adjacent to Glade Farm Drive falls within the 6 to 8-foot range for minor and moderate flood stages of surrounding sea waters.





## LYNCH HEIGHTS FORMATION

Clean, white to pale-yellow, well-sorted, fine to coarse sand with scattered very coarse to pebble laminae and silty clay laminae overlying light-gray to greenish-gray, compact silty clay with rare laminae of *Mulinia* shells and shell fragments. The unit thickens from west to east ranging from 10 ft thick to over 60 ft in Rehoboth. The silty clay beds grade laterally to well-sorted sands with clay laminae. The deposits were deposited in a lagoon (silty clay with shell) with tidal flats (sand with clay laminae) that was prograded by spit deposits (well-sorted fine to coarse sand). The lagoonal and tidal flat deposits are considered to have been deposited during a high stand of sea level at approximately 400,000 yrs B.P. (Ramsey, 2010a). The overlying spit deposits may be related to the same event or may be related to a later high stand of sea level at 320,000 yrs B.P. (Ramsey, 2010a). Late Pleistocene.

Where shown with pattern in the western half of the Fairmount Quadrangle, the Lynch Heights Formation consists of a thin (< 10 ft and in most areas < 3 ft thick) layer of heterogeneous deposits ranging from reddish-brown, pale-yellow, and light-gray, silty, clayey, very coarse to fine sand, to pale-yellow to light-gray gravelly sand to sandy gravel. These deposits are considered to be the result of reworking and redeposition of the underlying Beaverdam Formation sediments. These deposits grade laterally into the Lynch Heights Formation (described above). Deposited in shallow water along the margins of a tidal system during a high stand of sea level at approximately 400,000 yrs B.P. that has been strongly overprinted by later cold climate and soil-forming processes. It is likely that in many places in the area mapped that this unit is absent and the Beaverdam Formation forms the surficial deposit. They are differentiated from the Beaverdam Formation in that they lack the characteristic white silt matrix and generally have a layer of coarse sand to gravel overlying typical Beaverdam sands. Late Pleistocene.

### *Description of Lynch Heights Formation*

*Present in the fields adjacent to Holland Glade Road and Glade Farm Drive*

## SPIT DEPOSITS

Interbedded fine to coarse sand, gravelly sand, silty sand, and sandy silt. Scattered shelly beds are also present. The unit represents the spit complex of Cape Henlopen that has prograded into the mouth of Delaware Bay and overlies marine deposits. Thickness ranges from 0 to 80 ft. Holocene.



Qspt

## SWAMP DEPOSITS

Consist of 1 to 3 ft of gray to brown, silty and clayey, gravelly sand at the base overlain by organic-rich fine to coarse sand. In some of the larger stream valleys, the unit has several ft of organic silt at the top. Up to 15 ft thick in the larger stream valleys and less than 5 ft thick in the smaller tributaries. Holocene.



Qsw

## MARSH DEPOSITS

Light-gray to brown, organic-rich, clayey silt. Peat beds consisting of finely comminuted organic fragments (primarily of marsh grass) are common near the base of the unit and scattered elsewhere. Marsh deposits are generally less than 10 ft thick along the western shore of Rehoboth Bay (Schwimmer, 1999) and eastern shore along the Atlantic Barrier and up to 20 ft thick along buried stream channels beneath Rehoboth Bay (Chrzaszowski, 1986). Holocene.



Qm

### *Description of Wetlands Symbols*

*Spit (Qspt) Swamp (Qsw) and Marsh (Qm) Deposits*





Weather  
Forecast  
Radar

4PS Documentation  
User Guide  
User Brochure

What is AHP?  
Facts  
Our Partners

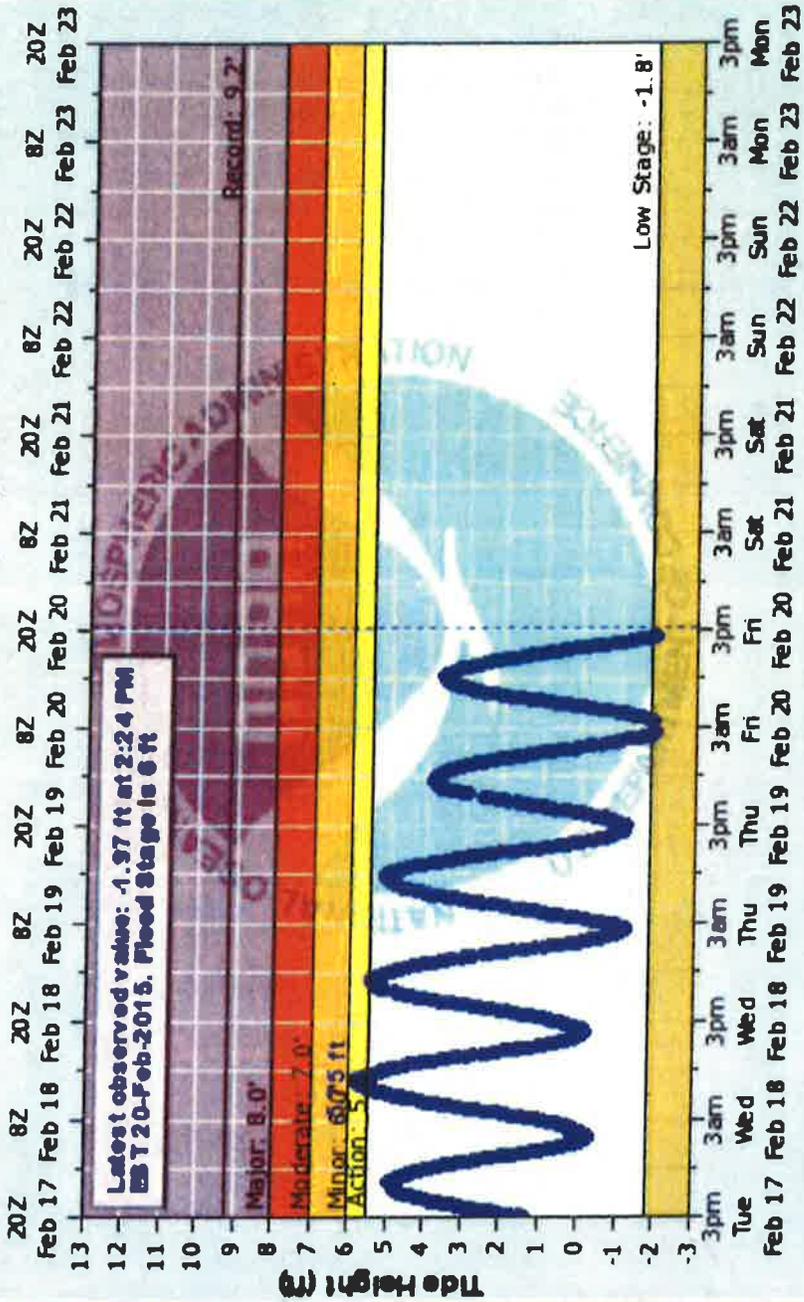
Feedback/Questions  
Provide  
Feedback  
Ask Questions



Auto Refresh is OFF

## DELAWARE BAY AT LEWES

Universal Time (UTC)



Site Time (EST)  
---- Graph Created (2:18PM Feb 20, 2015) --- Observed

LWSD1(plotting HMRG) "Gage 0" Datum: 0' Observations courtesy of NOAA National Ocean Service

Flood Stages for Delaware Bay at Lewes (via National Weather Service)

# An Exploration of Alternative Sites for the EUMC Cemetery

Full Disclosure to all Stakeholders Required  
For Discussion Purposes Only



© 2015 Google  
Full Disclosure of All Taxpayers Required  
For Disclosure Purposes Only

# Existing Cemetery

- Less than 3 acres
- 6+ decades to fill
- Less than 1/2 acre per decade

**There is Time!**

Full Disclosure to all Stakeholders Required  
For Discussion Purposes Only

# Examples of Cemetery Development Progression

Full Disclosure to all Stakeholders Required  
For Discussion Purposes Only

**Full and active disclosure to  
all stakeholders is imperative**

Full Disclosure to all Stakeholders Required  
For Discussion Purposes Only



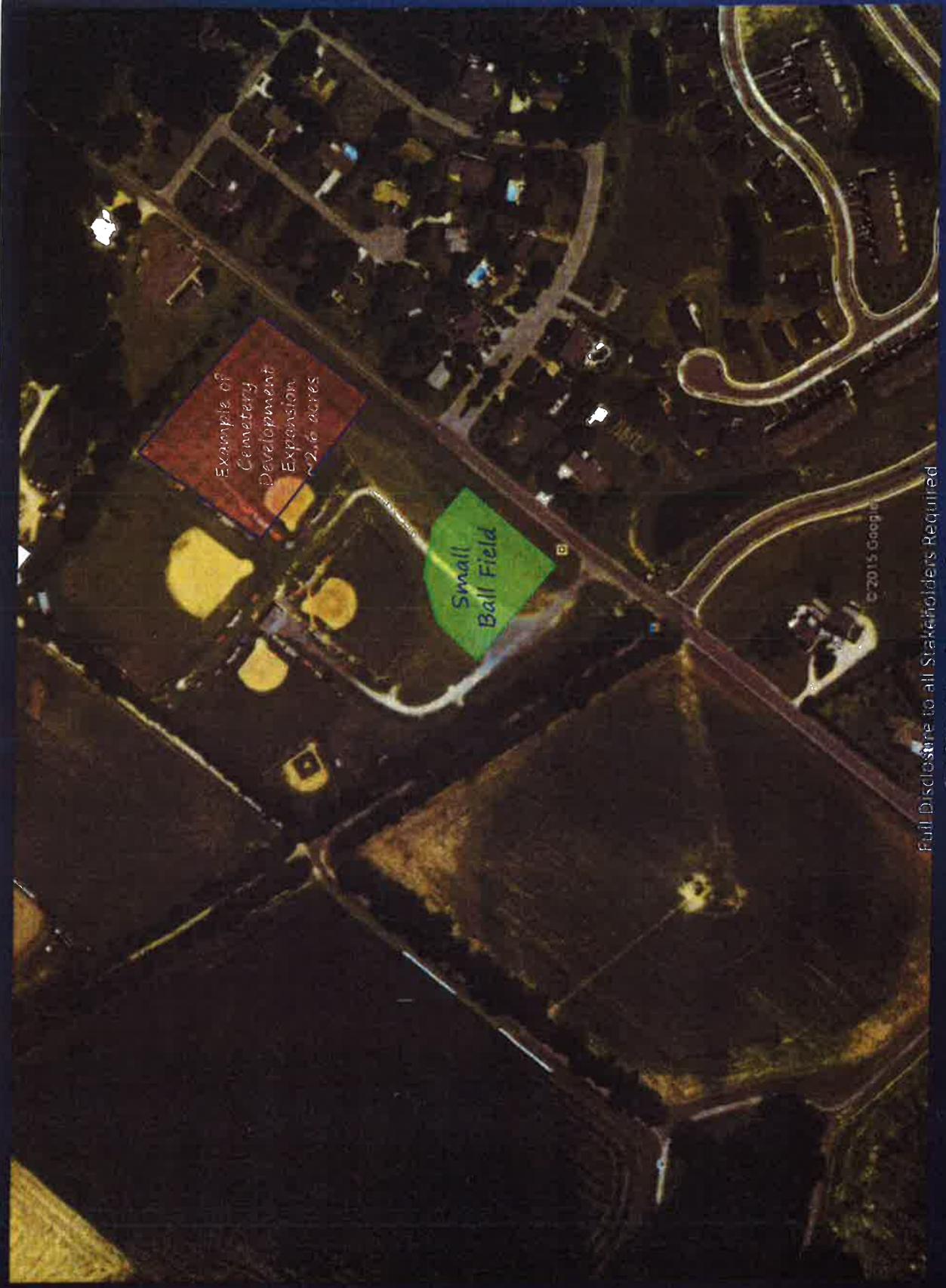
Example of  
Initial  
Cemetery  
Development  
(~1.7 acres)

©2015 Google

Full Disclosure to all Stakeholders Required  
For Discussion Purposes Only



Full Disclosure to all Stakeholders Required  
For Discussion Purposes Only



Example of  
Cemetery  
Development  
Expansion  
~2.6 acres

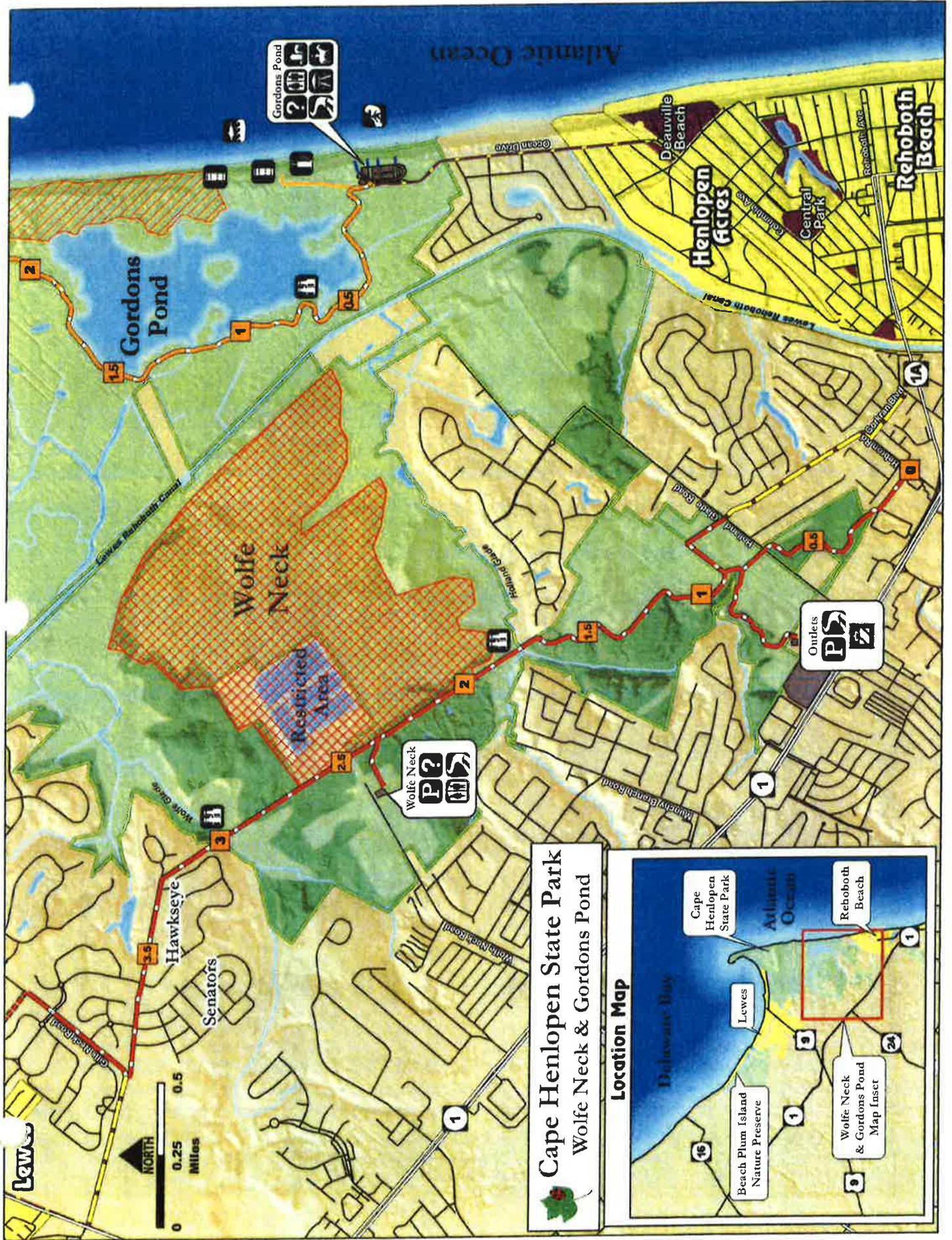
Small  
Ball Field

© 2015 Google

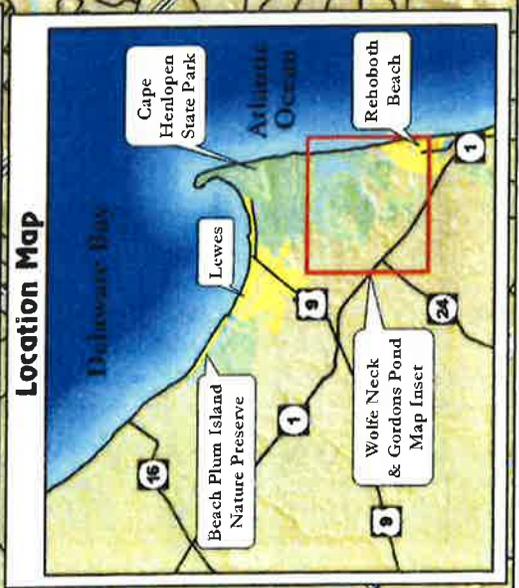
Full Disclosure to all Stakeholders Required  
For Discussion Purposes Only

**Any proposal must include full  
and active disclosure to all  
stakeholders!**

Full Disclosure to all Stakeholders Required  
For Discussion Purposes Only



**Cape Henlopen State Park**  
 Wolfe Neck & Gordons Pond



Gordons Pond

- Restroom
- Parking
- Handicap Accessible
- Water
- Drinking Water
- Fire
- First Aid
- Information
- Map
- Phone
- Trash
- Wheelchair

Wolfe Neck

- Restroom
- Parking
- Handicap Accessible
- Water
- Drinking Water
- Fire
- First Aid
- Information
- Map
- Phone
- Trash
- Wheelchair

Outlets

- Restroom
- Parking
- Handicap Accessible
- Water
- Drinking Water
- Fire
- First Aid
- Information
- Map
- Phone
- Trash
- Wheelchair



# Cape Henlopen State Park

## Legend

- |  |                                      |  |                            |  |                   |
|--|--------------------------------------|--|----------------------------|--|-------------------|
|  | Open Park Land                       |  | Parking                    |  | Trail Head        |
|  | Forested Park Land                   |  | Information                |  | Scenic Overlook   |
|  | Water                                |  | Restrooms                  |  | Observation Tower |
|  | Restricted Area                      |  | Food Concession (Seasonal) |  | Horseback Riding* |
|  | Seasonal Closure (March 1 to Sept 1) |  | Picnic Pavilion            |  |                   |
|  | Municipal Parks                      |  | Outlets                    |  |                   |
|  | Parking Area                         |  | Surfing                    |  |                   |
|  | Municipalities                       |  | Surf Fishing               |  |                   |
|  | Mile Marker                          |  |                            |  |                   |

\*Select beaches are open for horseback riding from November 1st to April 30th. Please contact the park office for the latest regulations.

Updated: June 2014



## Contact Information

Park Office: (302) 645-8983  
 15099 Cape Henlopen Dr  
 Lewes, DE 19958  
 Campground Office: (302) 645-2103 Nature Center: (302) 645-6852  
 Campground Reservations: 1-877-98-PARKS  
[www.destateparks.com](http://www.destateparks.com)



Department of Natural Resources  
 and Environmental Control  
 Division of Parks and Recreation



## Trails and Permitted Uses

- |  |  |  |                           |
|--|--|--|---------------------------|
|  | Junction & Breakwater (3.9 miles)        |  | Pedestrian Beach Crossing |
|  | Junction & Breakwater (Future Alignment) |  | Beach Vehicle Crossing*   |
|  | Gordons Pond Trail (3.2 miles)           |  |                           |
|  | Multi-Use Trail                          |  |                           |
|  | Bike Lane/Share the Road                 |  |                           |

\*The Gordons Pond Beach Vehicle crossing is also designated for equestrian beach access.

Updated June 2014

## Trail Descriptions

### Junction & Breakwater Trail

Trail Width	Surface Type	Trail Grade	Accessible
Avg 9 Feet Min 6 Feet	Crushed Stone	Avg 1% Max 11%	♿ - Yes

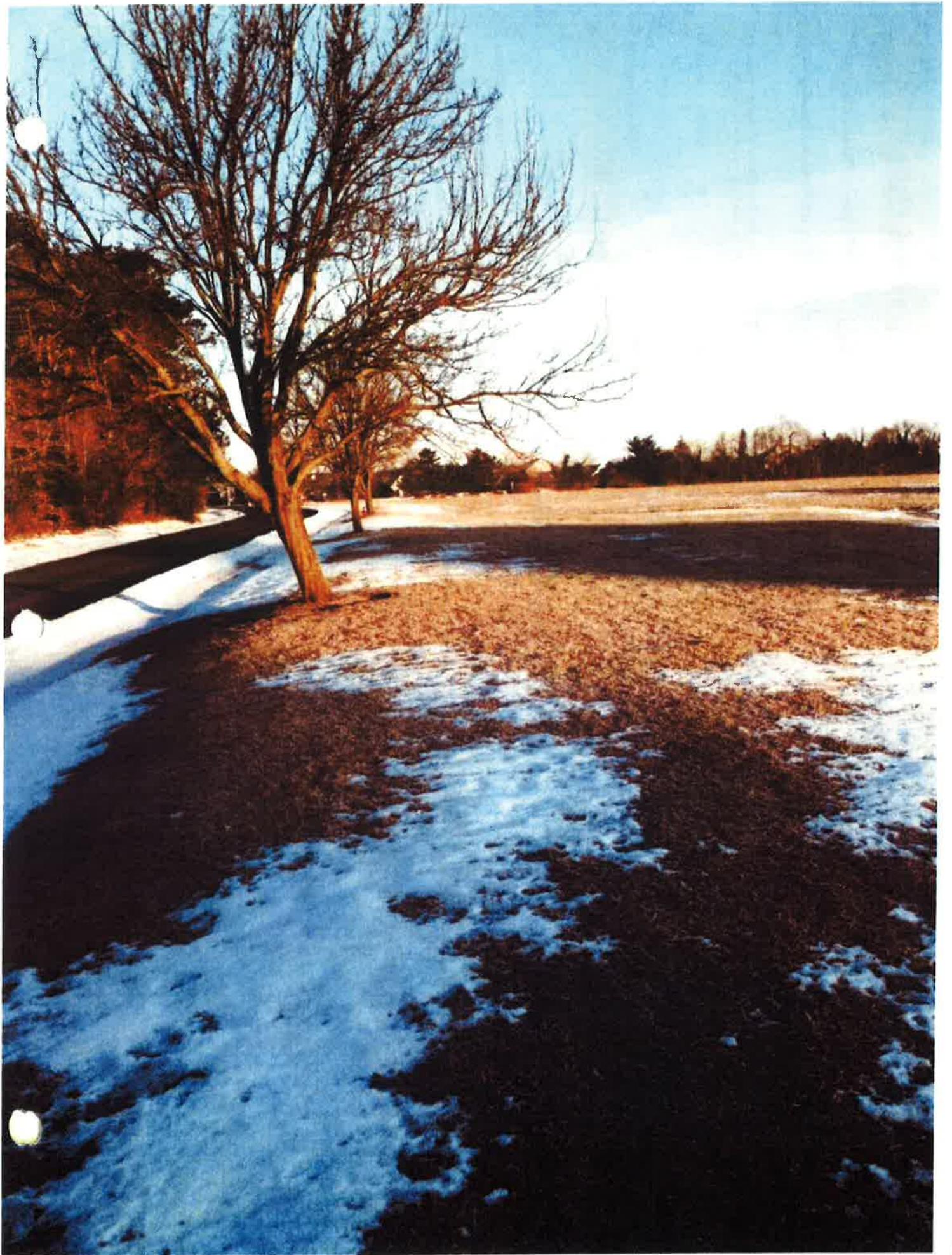
This popular trail follows a four mile section of the former Penn Central railroad connecting Lewes and Rehoboth Beach. The easy contour and crushed stone surface is suitable for hikers, bikers, and strollers. The trail is accessible from the designated trailheads at the Wolfe Neck Parking Area and behind the Outlets. Trail users will pass through mature hardwood and conifer forests, marshes and open fields. Scenic vistas at the Wolfe Glade and Holland Glade crossings provide spectacular views of the coastal marshes, and interpretive signs provide visitors with information about plant and animal life along the trail.

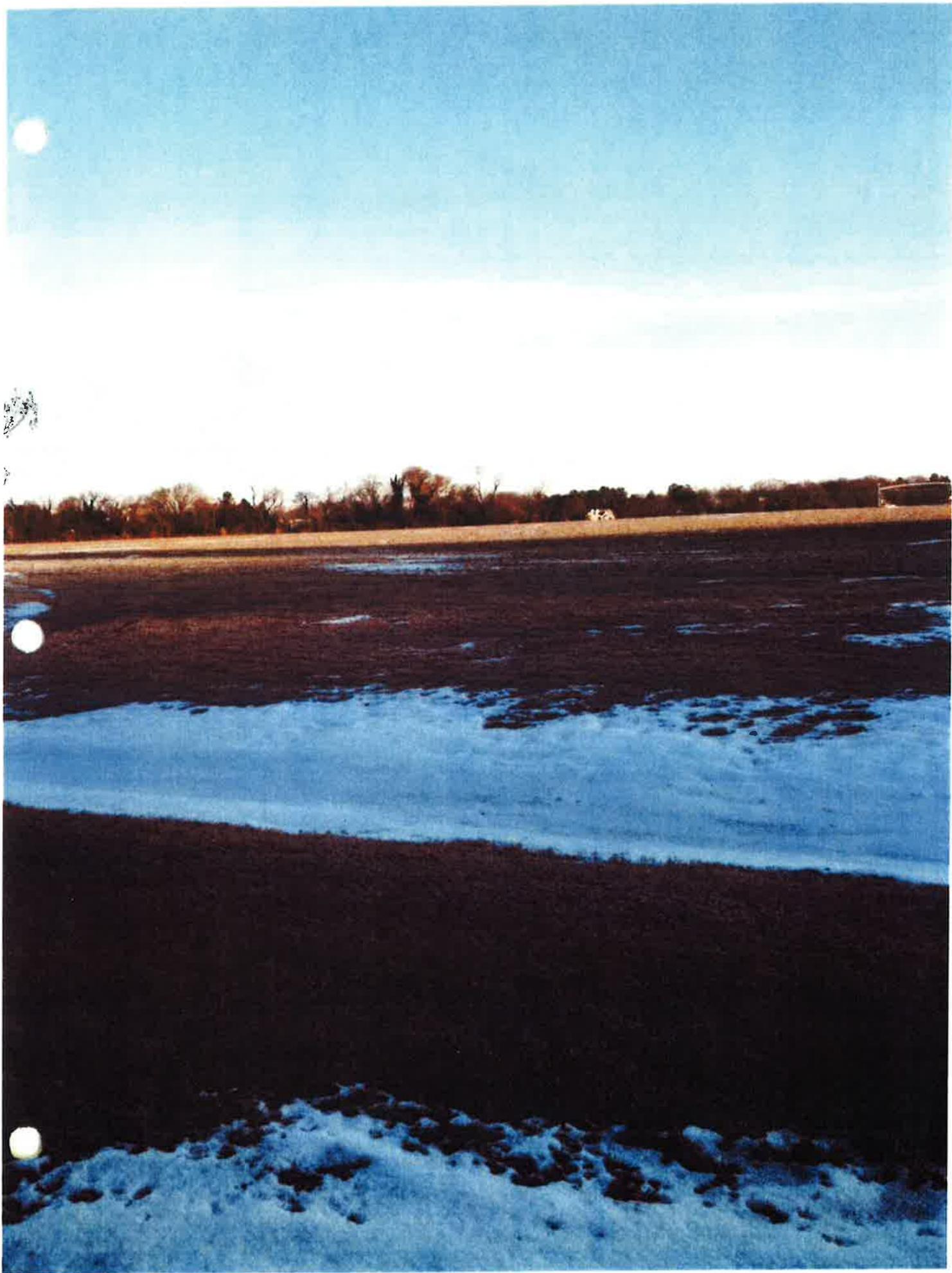
Please Note: Trail access in Lewes is from Kings Highway opposite the Cape Henlopen High School or from Gills Neck Road west of the entrance to the Hawks Eye community. Rehoboth Beach access is from Hebron Road just off Route 1. No parking is available at these access points.

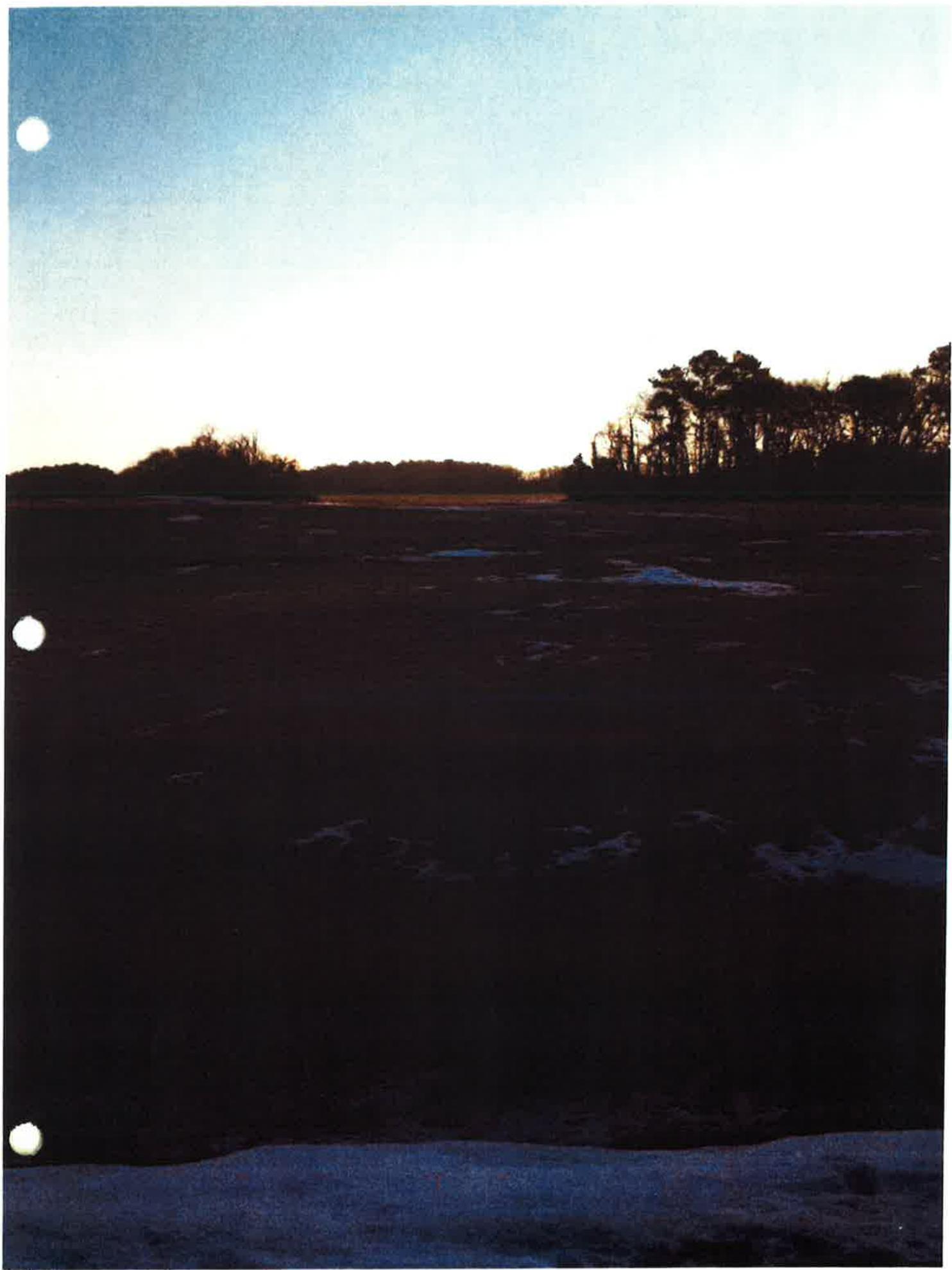
### Gordons Pond Trail

Trail Width	Surface Type	Trail Grade	Accessible
Avg 9 Feet Min 8 Feet	Crushed Stone Elevated Bridge	Avg 1% Max 11%	♿ - Yes

Beginning at the Gordons Pond parking area, visitors will follow a crushed stone trail suitable for hiking and biking along the water's edge for 0.75 miles before arriving at the Gordons Pond Scenic overlook. The overlook, popular among bird watchers, provides a great view of Gordons Pond. From the overlook, the trail continues north to the Herring Point Parking Area. Visitors will traverse an elevated bridge where they will experience an upland pine forest and stunning scenic views of the marsh and Atlantic Ocean.

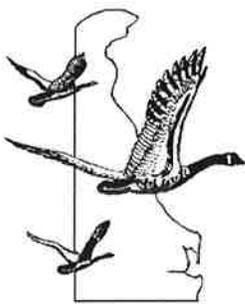












## DELAWARE AUDUBON SOCIETY

Chapter of National Audubon  
Plaza 273  
56 W. Main Street, Suite 212A  
Christiana, DE 19702  
[www.delawareaudubon.org](http://www.delawareaudubon.org)  
302-292-3970

### **DNREC Budget Hearing**

**February 12, 2014**

**David Carter, Conservation Chair**

**Comments presented on behalf of the Delaware Audubon Board of Directors**

The Delaware Audubon Society would like to thank you for the opportunity to provide our comments and suggestions on the DNREC 2015 Budget. Incorporated in 1977, the Delaware Audubon Society is a statewide chapter of the National Audubon Society with over 2,100 members. Delaware Audubon is dedicated to developing a better appreciation of our natural environment and working for species and habitat conservation. We advocate for environmental issues; and sponsor programs, field trips and school education. Our focus is on protection of the Delaware Bay and the Coastal Zone.

We strongly support modest increases in DNREC's budget, but ask that priority and focused attention be given to adequately funding the core mandated programs over new initiatives. While we understand that new programs catch the interest of the public, we believe that many of the core regulatory responsibilities and basic program needs that have led to environmental improvements for decades are not being adequately supported. This problem is likely already causing the reversal of past successes and will increasingly allow environmental degradation if not corrected.

### **Highest Priority should be given to adequately fund existing & proven programs.**

We are deeply concerned about several key mandated programs that have not been adequately implemented by DNREC. We are concerned that some of these key programs are being allowed to wither due to excessive focus on new initiatives - - - something shiny, something new - - - rather than "old" and proven to be effective. In part, this is *due to the limited and outdated permit fees charged that are insufficient to provide the needed staff and resources for their implementation*. In challenging budget times, DNREC's budget should focus on what is proven to work over unproven initiatives.

For example, I have provided you with the September 2013 data compiled by the U.S. EPA on State administered Clean Water Act NPDES Permits. Delaware is ranked 45<sup>th</sup> in the nation for compliance with only 56% of their permits up to date and being properly managed (See Attached EPA Summary Data). This means that nearly half (44%) of the permits are outdated or out of compliance. How can the public have confidence in DNREC to protect

their health and safety when data documents that DNREC is not adequately administering the existing permit programs that exist to protect our health and safety?

### **Adequate Program Implementation Resources**

We would like it clearly noted that there has been no fee increase for regulatory permit programs since 1991, significantly limiting the resources necessary to effectively and efficiently implement nearly all DNREC regulatory programs. Resources severely limit their ability to effectively balance the consideration of environmental degradation permits with other social and economic needs.

You get what you pay for. The applicants and citizens who complain about permit delays should recognize this problem and support needed fee increases that are conditioned on thoughtful performance measures.

Adequate fees or other resources for policy implication must be provided to ensure effective implementation, rather than crippling the programs and blaming the laws or regulations. Considerable blame for this problem rests on the failure of the Delaware General Assembly to allocate the necessary user fees for policy implementation.

We are aware of at least one opportunity you will see this session. We ask that when you received the updated fee recommendations for Air Quality Title V permits, you ensure it includes funding for expanded real time monitoring in communities. This has been requested in Delaware City, is clearly needed to set a baseline for communities near the proposed University of Delaware Power Plant, and could provide needed information in South Wilmington where underserved community members experience air quality problems such as the odor from the Peninsula Composting facility.

The enabling regulations for Title V of the Clean Air Act clearly allow monitoring cost to be included in their fee structure. According to the Code of Federal Regulations, Title 40, Section 70.9 Fee Determination & Certification, subsection b. v:

*(b) Fee schedule adequacy. (1) The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:*

*(v) Emissions and ambient monitoring;*

Based on this, we request that any approve for the Title V fee changes this year approved by the General Assembly include adequate fees for expanded real time monitoring for local communities in the vicinity of major Title V permitted facilities.

In addition to improved efficiency of the permit process, we would like the fees to be used to provide staffing for the following improvements of statutory programs and responsibilities in DNREC and other issues that program staff identifies as critically needed:

- Delaware Coastal Zone Act: Fully Implement the CZA Environmental Indicators (See Attached Letter to Secretary O'Mara dated October 26, 2012).
- NPDES Permits – 44% of permits are not up to date or in compliance with law as of September 2013.
- Chronic Violators Regulation: Update and strengthen to actually make it meaningful instead of symbolic.
- Regulations Governing Beach Protection and the Use of Beaches: Update and improve the Beach Setback Line established in 1979 and require a scaled increase in cost-share requirements for communities that benefit from beach nourishment. Also, restore the previously removed Inland Bays Setback line provisions.
- Delaware Endangered Species Act: Expand beyond the prohibition and sale and importation of endangered species.

### **Open Space Funding**

Delaware Audubon strongly supports the restoration of open space funds that have again been cut from the budget by Governor Markell. We are deeply concerned by the Governor's continued lack of commitment to land conservation so vital to the protection of Delaware's Bayshore region and rural heritage. We are extremely grateful for the commitment of the General Assembly to restore funds each year of this Administration, and ask that you do this again in light of the Governors misguided budget cuts.

However, we believe there is a need for additional transparency and accountability in the DNREC land protection program. This could be accomplished by either inclusion of requirements in the epilogue language or through amendments to Delaware Code, TITLE 7, Public Lands, Parks and Memorials.

We request that you require DNREC to provide all records on-line to avoid undue special-interest use of public land as a safeguard against protected area downgrading. This data should include an updated list of all properties, property or tract names, dates of purchase, description of uses and use restrictions, texts of any dead covenants, and listings of the type and date of any changes in allowable use, name, or other disposition of the publicly owned resource, and a reference for any management plan for the property.

Increasingly we have seen efforts to consider use of public open space for wastewater treatment, stormwater treatment, and other activities that if not carefully monitored may lead

to degradation. This effort would provide public transparency and accountability for the disposition and protection of publically owned conservation land.

If this transparency cannot be provided by DNREC in time for this budget year, we request that you allocate the larger balance of potential open space funding to Agricultural Lands Preservation programs in the state.

### **Delaware Water Quality Improvement Capital Projects**

While we recognize the need for infrastructure improvements for Clean Water and reduction of drainage problems, we urge caution and recommend a vigorous review of all projects recommended in a fully open and transparent manner. We are deeply discouraged by the Governor's push for infrastructure projects as a priority over first meeting the programmatic needs of core DNREC programs. A balance of regulation, incentives, and public investment is essential to success and is the most fiscally responsible approach.

For example, is a major part of the problem of water quality directly related to the failure to effectively implement Delaware's NPDES program and other regulatory programs? How much of the cost for this infrastructure should be paid by average Delawareans versus private sector entities that disproportionately benefit?

We are concerned that this proposal will have a combination of readily justified projects and unwarranted pork projects driven by a stealth public sector jobs relief program. We must clearly delineate the difference, and prioritize and fund only those with maximum public benefit and justification.

We should then balance this water quality capital improvement proposal with increased private sector accountability for infrastructure through improved permit compliance, not so excessively rely on publicly funded investment. For example, an update of the NPDES permit for the Delaware City Refinery would require significant infrastructure improvements to the outdated, 60 year old water intake system. This improvement would reduce the unjust killing of the estimated 30 to 45 million aquatic organisms. It would also address the continued avoidance of this problem, especially in light of the high corporate compensation, shareholder payouts, and documented profiteering from avoidance of this regulatory requirement that are included in PBF Energy's Securities and Exchange Commission filings. (See attached excerpts and data from PBF financial reports). It has the potential to eliminate the needless killing of tens of millions of fish, while also reducing or eliminating contaminant releases and flaring problems caused by congestion problems (intake screen blockage by impinged fish, water freezing at intake, debris) with the outdated water intake system. More importantly, by protecting Delaware's waterways, we would stimulate an estimated 75 to 120 million dollars in private investment that will result in good paying blue collar jobs. We can protect the environment and improve the economy in Delaware, if DNREC follows and uses more reasonable discretion in implementing the law.

**Delaware Audubon Society**  
**DNREC Budget Hearing – February 12, 2014**  
**Page 5 of 5**

Also of note should be that the NPDES permit has not been updated since 1997, which was only done in response to the legal challenges by Delaware Audubon Society and the National Resource Defense Council leading to EPA intervention in Delaware's floundering permit program. (See attached News Journal Article from September 10, 1997). Documenting these failures, and not seeing the recommended improvement of these programs front and center in the DNREC Budget request raises questions of whether the Administrations "Clean Water for Delaware's Future Initiative" is at least partly an expensive political cover up of these program failures, paid for with taxes and fees on hard working Delawareans. Shouldn't a part of any proposal to clean up our waterways and create jobs also require equitable responsibility be taken by large polluters as well as the public? Why not use the existing law to require private investment to upgrade an antiquated cooling system killing millions of fish per year?

While Delaware Audubon believes the permit decision for the water intake is a required responsibility of DNREC, we recently received a decision by Judge Street that it is a discretionary decision of Secretary O'Mara and Governor Markell. (See attached Order Dismissing Writ of Mandamus, January 2, 2014). It is unfortunate that such a lapse in leadership is leading to a missed opportunity to increased blue collar jobs while equitably requiring the protection of public trust resources. It is even more concerning that the proposed budget plans to stimulate jobs through significant increases in public taxes and new fees, rather than a responsible and more balanced approach to require a significant private expenditure as part of the mix that will improve our environment. We ask that you insist on a more balanced approach for funding of infrastructure projects by both privately regulated industries and public funded infrastructure programs. The next annual report of PBF energy will be released February 13, 2014. We at Delaware Audubon will closely review it and provide you with the fiscal data related to their profit margins and ability to fund the needed water intake upgrades so that you can urge the Governor to protect the Delaware River, while putting many of our union workers on the job to build the new cooling system in the coming years.

We realize that there are many good things in this budget and that we have focused on some of the more serious short falls. However, without such pointed criticism, it is unlikely that DNREC will become the exemplary organization Delawareans want and deserve. We hope you will seriously consider and address the issues outlined above to use the budget process to elevate DNREC to the level of the high quality agency within our reach.

Thank you for your consideration of our issues and concerns.

CC: Delaware Audubon Society Board of Directors

Attachments



**From:** Andrew Manus <[amanus@verizon.net](mailto:amanus@verizon.net)>

**Date:** March 3, 2015 3:49:30 PM EST

**To:** "Small David (DNREC)" <[David.Small@state.de.us](mailto:David.Small@state.de.us)>

**Cc:** <[redmillpond@yahoo.com](mailto:redmillpond@yahoo.com)>, <[lorrainelmf@comcast.net](mailto:lorrainelmf@comcast.net)>, <[phb363@earthlink.net](mailto:phb363@earthlink.net)>, <[wayneholden77@comcast.net](mailto:wayneholden77@comcast.net)>, <[pschutt@brownadvisory.com](mailto:pschutt@brownadvisory.com)>, <[david.humes@mssb.com](mailto:david.humes@mssb.com)>, <[dleventry@mtcubacenter.org](mailto:dleventry@mtcubacenter.org)>, <[bruce.ennis@state.de.us](mailto:bruce.ennis@state.de.us)>, <[gerald.brady@state.de.us](mailto:gerald.brady@state.de.us)>, <[Holly.Wagner@state.de.us](mailto:Holly.Wagner@state.de.us)>, <[jeff.spiegelman@state.de.us](mailto:jeff.spiegelman@state.de.us)>, <[Ernesto.Lopez@state.de.us](mailto:Ernesto.Lopez@state.de.us)>, <[David.Sokola@state.de.us](mailto:David.Sokola@state.de.us)>, <[Nicole.Poore@state.de.us](mailto:Nicole.Poore@state.de.us)>, <[Bryan.Townsend@state.de.us](mailto:Bryan.Townsend@state.de.us)>, <[Brian.Pettyjohn@state.de.us](mailto:Brian.Pettyjohn@state.de.us)>, <[Timothy.Dukes@state.de.us](mailto:Timothy.Dukes@state.de.us)>, <[andria.bennett@state.de.us](mailto:andria.bennett@state.de.us)>, <[StephanieT.Bolden@state.de.us](mailto:StephanieT.Bolden@state.de.us)>

**Subject:** Open Space Inventory

Dear David:

I write to express my dismay and disappointment in your decision that requires me to file a Freedom of Information Act request (FOIA) to obtain the answer to the question asked of Ron Vickers on February 13, 2015. As you may recollect, the question asked of Ron was a simple and straight-forward one. He had previously sent me a PDF copy of the **Open Space Inventory by County** that represents the compilation of properties protected over the past 25 years and I followed up with the question:

**Any chance you would resend the Open Space Inventory document in the original format – an Excel document?**

As you may be aware having this information in a PDF file does not allow for easy analysis of those data contained within it. Therefore my question of Ron above should be easily answered by DNREC without me having to waste my time filing a FOIA request to find out if such a format exists and whether or not I can have a copy; then having a DNREC paralegal log the request; and then having it assigned to a Deputy Attorney General for an answer. Notwithstanding the commentary of your staff to the contrary, this requirement imposed on me borders on ridiculous bureaucratic behavior.

As you should be aware, I am **NOT** a party to any litigation against the Department related to the Open Space Program. Further, I am **NOT** a member of any of the organizations involved in such litigation. I am however a citizen who has a keen interest in good government and conservation. I support the need for transparency in government. I support and have championed land protection and conservation efforts by government. After 25 years of funding that the Open Space Program has enjoyed and given the digital age that we live in it is not an unreasonable expectation of DNREC to make available to the public a more comprehensive Open Space Inventory that can be easily accessed and queried. Hopefully, you will reconsider my question and get me an answer without me having to file a FOIA request.

In the interim and a more productive use of my time, let me observe the following. Having a readily available and publicly accessible digital copy of the **Open Space Inventory by County** data base that can be queried is fundamental to the integrity of the Open Space Program. Given that the Open Space Council and the program is undergoing a performance review by the 2015 Joint Sunset Committee, I am

by copy of this email to members and Ms. Holly Vaughn Wagner asking that they recommend the need for DNREC to make available a publicly accessible open space inventory that is searchable and available to interested individuals and other public interests.

Unfortunately, due to a conflict I am unable to attend Wednesday's Open Space Council meeting. If I were present, I would note during the public comment period that there are a number of pluses in having such an inventory available to interested publics. First and foremost a data base in this format allows for a more thoughtful public review of the accomplishments of and challenges facing the Open Space Program. Open access of this data base avoids having those data misrepresented. The categories included in such a data base should be of sufficient detail to allow for more than simply the tabulation of dollars spent and acres protected. For example if a property was protected through the purchase of a conservation easement with Open Space funds, it would be helpful to see that noted in the inventory data base. This information would allow interested publics that wanted to know more about how the property might be used the opportunity to obtain a copy of the recorded easement. One should be able to query a comprehensive open space inventory of this type to see if the conservation easement is routinely monitored, to what standards it is monitored and at what frequency the monitoring occurs, etc... Further once the data base is available in a more user friendly format, Open Space Council members and other interested publics will be able to spatially analyze data to visualize how Open Space funds are spent in the current State Resource Areas and the priority watersheds of the State. From a fiscal management and accountability standpoint the data base should provide users with the ability to compare funding for all Open Space projects over the past 25 years of the program; year against year; authorized v. appropriated; and perform some trend analysis etc...

Clearly, the PDF **Open Space Inventory by County** that was provided to me is not comprehensive enough to address the above concerns or provide the user with ability to do further analysis. Having a data base like this is not because of lack of staff and funding, these resources are currently available within the Department. What is lacking is making it a priority, assigning it to motivated staff, specifying deliverables and a timeline and making staff accountable. By copy of this email to the Open Space Council members, I am further sharing my thoughts with these conservation-minded folks in hopes of opening up a more public and constructive dialogue on this topic in general and specifically on the need for DNREC to answer simple questions asked of them.

I remain yours in conservation, and request that this communication be included as an attachment to the March minutes of the Open Space Council.

Sincerely,

Andrew T. Manus  
4640 Underwoods Corner Road  
Clayton, Delaware 19938  
Cell: 302.943.8716  
[amanus@verizon.net](mailto:amanus@verizon.net)