

OPEN SPACE COUNCIL

June 4, 2014, 9:00 a.m.

Legislative Hall

Senate Hearing Room, Second Floor

Dover, Delaware

ATTENDANCE

Council Members:

Mr. John R. Schroeder, Chairperson

Paul Boswell

Bruce C. Ennis, State Senator

Mrs. Lorraine Fleming

D. Wayne Holden

Mr. David Humes

C. Porter Schutt, III

Ex-Officio:

Raymond Bivens, State Liaison Officer, LWCF, DNREC

Timothy Slavin, Director, Historical & Cultural Affairs, for Jeffrey Bullock, Secretary, DOS

Advisory To:

Collin P. O'Mara, Cabinet Secretary, DNREC

Staff:

David Small, Deputy Secretary, DNREC

Patrick Emory, Director, Community Services, DNREC

Richard Phifer, Fish & Wildlife, DNREC

Henry Poole, Delaware Forest Service, DDA

Austin Short, Deputy Secretary, DDA

Michael Valenti, Delaware Forest Service, DDA

Ron Vickers, Parks & Recreation, DNREC

Matthew Chesser, Parks & Recreation, DNREC

Rose Ryödi, Parks & Recreation, DNREC

Visitors:

David Carter, Audubon Society

Jerry Grant, Joint Sunset Committee

Kate Hackett, Delaware Wild Lands

Marlene Mervine, Nanticoke River Watershed Conservancy

I. Call to Order/Introductions/Announcements

Mr. Schroeder, Chairperson, called the Open Space Council meeting to order at 9:05 a.m. He welcomed Council members, staff, and visitors, and asked for announcements.

Mr. Vickers announced that Mrs. Lorraine Fleming received a lifetime achievement award from the Water Resources Association of the Delaware River Basin. Council congratulated her.

Mr. Schroeder congratulated Mr. David Small for his nomination by Governor Markell as DNREC's next Cabinet Secretary, pending Mr. Collin O'Mara's departure in July. Council congratulated him.

II. Approval of Meeting Minutes

Mr. Schroeder asked for a motion to approve the March 5, 2014 minutes. Motion was made to approve minutes with a correction. Motion carried.

III. Financial Report

Mr. Vickers presented the Financial Report:

• Realty Transfer Tax (FY2013 & FY2014):	\$11,444,498.55
• Previously Approved Projects (11):	(\$ 8,107,139.00)
• Anticipated Reimbursements:	\$ 1,833,600.00
• Balance Available through December 15, 2014:	\$ 5,170,959.55
• Realty Transfer Tax (FY2015 proposed – available 12/15/14)	<u>\$ 2,000,000.00</u>
Total	\$ 7,170,959.55

IV. Old Business

A. Completed Projects since March 5, 2014

- Little Creek Wildlife Area – Dickerson property
- Little Creek Wildlife Area – Bundek property
- McGinnis Pond Area – Bergold property
- Blackbird State Forest – Atkinson property

Since 1991, the Open Space Program completed **369 projects**, protecting **55,532.3697 acres**, using **\$255,018,163.01** of Open Space Program funds plus **\$74,526,590.29** of other funds for a total of **\$329,544,753.30**.

V. New Business

A. Conversion of Use

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.

- **Epworth Church**

Mr. Vickers said Council discussed conversion of use issues about Epworth Church property on Holland Glade Road, north of Rehoboth Beach, at the March meeting. At this time, staff is continuing to work out some minor details and anticipates bringing back this subject to the September 17 meeting.

Mr. Schroeder said the Speaker of the House Rep. Schwartzkopf is interested in the conversion of use subject with the Epworth Church. There have been discussions on swapping properties, one being the Rehoboth Little League field. The Department is continuing to work on some issues. Mr. Small should inform him or Mr. Vickers when the Speaker talks to him.

B. Agency Presentations

There were no agency presentations at this time.

C. Council Open Discussion

There was no open discussion at this time.

D. Public Presentations

- **Special Natural Resources Areas Protection Initiative**

Dave Carter, Conservation Chair of the Delaware Chapter of the Audubon Society, said after the March 2014 Open Space Council meeting he went back and reviewed the purpose of this committee, the legislation that authorized it, and the rules it is to follow. He was concerned about the SRAs (State Resource Areas) and how they are used by the counties. SRAs are the lynchpin that holds together the state's land protection program and guides the Open Space Council. This proposed Special Natural Resources Area Initiative is sidestepping the SRA process, which is a very open and public process. It is critical how these SRA maps are prepared and the interaction with the counties and their planning and zoning departments. The SRAs were last updated in 2006 and not updated since then. DNREC is in non-compliance with the Land Protection Act. If DNREC was in compliance and there were SRAs that included the Thousand Acre Marsh area, but not including other land in the general area, then the MOA's and Special Initiative would be invalid. The public would know where DNREC could target and it would be an open and transparent process, with a straight up and down vote based on the appraisal values.

Mr. Carter continued that there might be a legal review of the implications of the money spent by this Council while DNREC is out of compliance with the law. There are no approved SRAs. He said what the Council is doing is sidestepping the law and expending money through a new Initiative that is well-intended, but perhaps not well guided, that does not have public input and a transparent process. This is deeply concerning. He hoped the committee would recommend to DNREC to revisit, update, and move through the public process to get the SRA maps up-to-date and to guide those decisions of large public expenditures in an open and transparent process. He said he is with Audubon and

noted that it loves advocacy. However, it does not like the controversy around this proposed Initiative. It is not good for this program, it is not good for future funding, and it raises public doubt. The way to avoid this is to follow the law. He believes that the law is skirted a little too much in Delaware. The bipartisan members of the General Assembly thought deep and hard when working with conservation groups about how the Land Protection Act was written and the importance of SRAs and maps. He believes it is a disservice not to revisit this issue. He was perfectly comfortable if DNREC has a valid appraisal and pays full appraisal for a fee simple acquisition of land. But these other deals are outside of the realm of what DNREC should do. DNREC is like a rudderless ship without legally required SRAs. The Thousand Acre Marsh area was originally proposed as Suburban Reserve, not for subdivisions. He believes clear guidance is necessary to avoid misuse and excessive expenditures of public funds because land is too expensive. DNREC should follow the law and update the SRAs in compliance with the law.

[Mr. Carter submitted a handout related to his SRA comments. It is attached to the minutes.]

Mr. Small thanked Mr. Carter and acknowledged that he raises some good concerns, especially on the history of the SRAs. DNREC did go through a process and adopted SRAs which were challenged and ruled null and void, thus leaving a void. DNREC is due to come before this Council with an update on a process that has been underway for a while and to re-examine criteria that DNREC would utilize to identify these special areas, i.e. lands of significance for open space, for recreational, and for habitat reasons. We are working with some partners to refine these criteria.

Mr. Small continued that as to the Special Initiative that Mr. Carter discussed at the last meeting, the Council approved a concept. It did not approve any specific project or proposal. He thought there is still an opportunity to try to leverage dollars as best we can, in an efficient way, in order to get good results. Everyone knows there was an offer made to a landowner in the Port Penn area. It is documented in a newspaper article by Mr. Montgomery. As far as we can tell, that offer was rejected. It was a fee simple offer for the acquisition of the property. We had purchased part of that property previously. This was the remainder. The Department is in a holding pattern on those two properties until something else changes.

Mr. Small said he appreciated Mr. Carter's comments on the transparency issue.

Mr. Schroeder asked Mr. Small to give Council a plan on how they will address the SRA issue. Mr. Small agreed.

Mr. Vickers agreed that the 2006 SRA maps were rejected by the lawsuit. The lawsuit did not invalidate the 1991 SRA maps. DNREC recognizes it needs to bring forward a new process based on science relative to the landscape now.

Mr. Schroeder reiterated that what was agreed to at the last meeting was the 'Concept' as noted in the minutes. The Council has participated with groups since 1991 regardless of the lack of a document requiring and authorizing the Council to do this.

Ms. Fleming said the Land Protection Act also allows the Council to collaborate.

VI. Discussion of Site Acquisition Contracts - Executive Session

The Council adjourned to Executive Session at 09:27 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 10:29 a.m.

VII. Secretary O'Mara's Farewell Comments

I want to say 'Thank you' to each of you for all your time and efforts on this Council in the last few years. We have made some pretty good strides – a new ranking system, all of the work by Mr. Vickers' team to really try to have more analytical rigor behind the way we make decisions to optimize every dollar.

This Council has made incredible progress during some very tough budget years. Not having the full \$10 million year after year was a strain, but we have figured out ways to leverage more private money and more foundation money to get some good projects done.

I hope the members feel that the time spent on this Council is worthwhile. We had some challenging projects, but I think that the more we can foster our partnerships, the more we can leverage this work. We do need a transition in the next few years towards trying to figure out ways to have more landscape-scale conservation, particularly as it relates to some of the federal programs. There is a new NRCS program, for example, that is a \$400 million nationwide program. This represents a huge opportunity for us to have a chunk of that money come here and put some real good projects on the ground. We do not have to own everything. We can have easements. We can focus on inholdings and connector lands, habitat corridors and recreational corridors. We have taken good steps in that direction.

I am very grateful for the time we have put in and I feel the best is yet to come. We have turned the corner in some good ways. We can be proud of the impact we have had with the limited dollars over the past few years, such as new parks and new areas for habitat protection. Thank you!

Mr. Schroder thanked Secretary O'Mara for his leadership over the years, especially what he has accomplished. Good luck and all the best, he said.

Secretary O'Mara confirmed that Mr. Small would be succeeding him.

VIII. Project Recommendations

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

Division of Parks & Recreation

- **Smith:** 58.3 acres of forestland, wetlands and fallow fields along the Fork Branch, near Dover, Kent County; part of the Fork Branch Natural Area; protects Silver Lake watershed; protects habitats of conservation concern; protects great blue heron rookery; to be managed as part of Fork Branch Nature Preserve. Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee simple the Smith property for \$275,000 and to request from the seller funds for reforestation.

- **Hockman:** 4.6 acres of island marshland inholding at Delaware Seashore State Park, Sussex County; potential public hunting; potential interpretation of old hunting shack in conjunction with the Indian River Lifesaving Station. Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee simple the Hockman property for \$14,000 with an overage allowance of 10% of the appraised value.

Delaware Forest Service

- **Sapp:** 10.3 acres of forestland inholding at Redden State Forest, Sussex County; contributes to large forest block protection; allows for better overall management of area. Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee simple the Sapp property for \$55,000.

Division of Fish & Wildlife

- **Bennett:** 141 acres of marshland, farmland and historic residence on Thousand Acre Marsh, north of Port Penn, New Castle County; addition to Augustine Wildlife Area; part of property is in Thousand Acre Marsh Natural Area; submitting application for U.S. Fish and Wildlife Service National Coastal Wetlands Grant for \$671,000. Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee simple the Bennett property for \$959,000, with potential grant funding towards the purchase price.

General Discussion about Port Penn Area Projects and Open Space Successes

Mr. Holden said in the course of the discussion about the Port Penn Area properties he heard many misstatements and misunderstanding out in the general community. Much of this incorrect information was coming from the Farm Bureau. Much of it centered on more acres protected and more dollars spent in Kent and Sussex counties as opposed to New Castle County. He believes that is untrue. The Open Space Program has spent more money in New Castle County. The acres protected may be less because of the price per acre.

Mr. Holden continued that he would like to see a letter sent to the director of the Farm Bureau that states the honest to goodness facts. There is nothing to be ashamed about in those facts. They show clearly that the Open Space Council has supported the Farm Bureau, other parks and preservation programs, and all state programs that fund preservation efforts in New Castle County. It is deceptive, incorrect and inaccurate to offer up to the public anything different from that. He does not think other entities should be allowed to get away with that kind of back door talk, trying to sway the opinion of others. He thinks the Open Space Council has the responsibility to see that those numbers are published and perhaps they should be done by the Agriculture Preservation Program also. He viewed it as a put down of all the positive things that open space and agricultural preservation have accomplished. He state the process has been fair and open and to claim otherwise was absurd.

Mr. Schroeder said he did not disagree with Mr. Holden. He said one thing he learned, and he is sure that Senator Ennis agrees, is that you do not win a battle in the press. That just keeps the whole issue going and people can put out anything they want. He does not have a problem if the Council wants to put out its story of its successes since 1991.

Secretary O'Mara said there was discussion at a Wetlands Advisory Committee meeting where a Farm Bureau member argued that the farmland preservation program was stealing from farmers

by not giving the farmers the fully appraised value for the easements. Additionally, it was mentioned to abolish both farmland preservation and open space programs.

Mr. Holden asked Secretary O'Mara if this issue warrants a response.

Secretary O'Mara said there were several allegations and it seemed like things were not going the Farm Bureau's way, so they retaliated. I think there should be some level of response, but we should also not elevate the situation.

Mr. Holden said he would like to get the News Journal to publish an update to the taxpayers and citizens of Delaware. Perhaps the Secretary, as his last act, could do an op-ed piece.

Mr. Humes said we should regularly put an article in the newspaper, backed by statistics, of what the Open Space Council is accomplishing.

Secretary O'Mara said DNREC has been trying to inform the public, especially when purchasing bigger properties like the Morris Farm. Traditionally this Council has not had much positive coverage, unless when there is something someone does not like. There is a lot more to tell.

Mr. Schroeder said Secretary O'Mara and Secretary Kee should publish an Article on the Open Space Council's accomplishments.

Mr. Schroeder recognized Ms. Hackett from Delaware Wild Lands.

Ms. Hackett said that the attention given to the Port Penn properties inspired the non-profit conservation community to come together and discuss how to be more strategic and proactive on properties that provide a public benefit. There is a story to tell about the successes and this message needs to go to the philanthropic community in enlisting its support. The amount of land protected is absolutely incredible. Attention is given to some of the bigger projects, but we do need to take this to the next level and articulate the success we have had together as a group. I wanted to mention that it is possible to get this positive message of collaboration out there. The non-profit community is attempting to work collaboratively, so that we can better leverage private funding. This is partly laying the groundwork to come to you in the future on projects. The Open Space Program and this Council, in particular, are absolutely critical in being partners in this transparent process. Federal North American Wetlands Conservation Act funding has been tremendously helpful in Delaware. I have been involved in five of the million dollar grants coming to Delaware and that has made it possible to protect 7,800 acres. This is possible because we have the non-profits and Open Space Program working together. I want to thank all of the Open Space Council members and trust that we can continue to work together on opportunities and do a better job in presenting our successes.

Mr. Schroeder thanked Ms. Hackett for her comments.

IX. Next Meeting/Adjournment

The next Open Space Council meeting is Wednesday, September 17, 2014 at 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 10:45 a.m.

Delaware Audubon Society
Talking Points for Open Space Council Mtg. – June 4, 2014

Since 1990, Delaware's Land Protection Act has guided the state's investment in providing lands for public recreation and for the conservation of natural resources. The passage of this law was the result of the hard work of a large coalition of recreational and conservation interest groups who worked hand and hand with members of the General Assembly to find ways to protect land for public use.

This law created the State's Open Space Council and established State Resource Areas throughout Delaware. The OSC is comprised of 9 members who are tasked with advising the Secretary of DNREC on all matters relating to the administration, implementation and financing of the protection of designated SRAs.

State Resource Area maps are the linchpin that holds together the State's land protection program and guides the work of the OSC. How these SRA maps are prepared and how they interact with county planning and zoning authority are detailed in the Land Protection Act. SRAs are intended to help inform the counties' land use decisions and these maps are included in each county's comprehensive land use. DNREC is required to update SRA maps every five years. These maps are based upon specific standards and criteria (see Land Protection Act Section 7507); they evaluate the importance of lands in the context of their natural, historic and open space values; and they develop a priority ranking system for the acquisition of lands and waters or rights therein.

These SRA maps are intended to both guide the work of the State's OSC and serve as a basis for counties to help guide develop and adopt zoning ordinances to protect these areas. The process outlined in the Land Protection Act for this to occur is very collaborative and public. Further it requires a very open dialog between both DNREC and County Planning and Zoning Departments. **Unfortunately DNREC is out of compliance with the Land Protection Act and has not updated its SRA maps since 2006.**

Instead of tending to its knitting and fully implementing the requirements of Delaware's LPA DNREC has ignored its responsibility for an open and public conversation on land conservation, and opted to create on its own a new statewide *Special Natural Resource Areas Initiative* that currently has no basis in law or regulation. Under this initiative lands are being targeted for purchase via privately negotiated MOAs based upon questionable "criteria" that has not been peer reviewed or publicly vetted. By doing this Secretary O'Mara is seriously damaging the integrity of the OSC and ignoring his legal obligations under Delaware's Land Protection Act.

Ultimately, these SRA maps will inform each county's land use decisions. This is because each county is required to include SRA maps in their comprehensive land use plans, which set the parameters around which development can occur. And, SRA maps guide state acquisition of open space from willing sellers.

State Resource Area Maps - Background

Under the Delaware Land Protection Act the General Assembly authorized a program for state and local governments to help protect substantial quantities lands and open spaces. The Act authorized the mapping of State Resource Areas (SRA) in order to protect significant natural, cultural and geological resources.

SRAs were initially mapped in 1990 and updated in 2006 by reviewing information on natural, cultural and geological resources that meet the definition of open space in the Act. Copies of the updated SRA maps were provided to each county's planning department in October of 2006.

The Delaware Open Space Council, comprised of 9 members, advises the DNREC Secretary on all matters relating to the administration, implementation and financing of the protection of designated SRAs.

This includes site selection, methods of protection, and interagency and intergovernmental coordination among public and private land preservation agencies. Among its duties, the OSC:

- Reviews and recommends to the Department for adoption, after a public hearing, criteria for delineation, and dedication of open space
- Reviews and recommends to the Department for adoption, after public hearing, state resource area maps
- Reviews and recommends to the Department for approval lands for permanent protection according to the adopted state resource area maps
- Promotes and assists, in conjunction with state agencies, the development and establishment of creative and innovative methods to secure the permanent protection of open space
- Analyzes, in conjunction with the Department of Finance, the state and local tax codes and formulates incentives to encourage landowners and developers to donate or retain ownership of their lands in an undeveloped state