

OPEN SPACE COUNCIL
March 2, 2016
9:00 a.m.
Legislative Hall
Senate Hearing Room, Second Floor
Dover, Delaware

ATTENDANCE

Council Members:

Mr. John R. Schroeder, Chairperson
Senator Bruce Ennis
Mr. D. Wayne Holden
C. Porter Schutt III
Mrs. Lorraine M. Fleming
Mrs. Dorothy P. Leventry

Ex-Officio:

Raymond E. Bivens, State Liaison Officer, LWCF, DNREC

Advisory To:

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

Staff:

William Kassab, Esq., DOJ
Timothy Slavin, Director, HCA
Patricia Cannon, Director, DEDO
Matthew Chesser, Parks & Recreation, DNREC
Ron Vickers, Parks & Recreation, DNREC
Elena Stewart, Parks & Recreation, DNREC
Richard Phifer, Fish & Wildlife, DNREC
Michael Valenti, State Forestry Administrator, DDA
Kyle Hoyd, Delaware Forest Service, DDA

Visitors:

George Phillips
Marlene Mervine, Nanticoke River Watershed Conservancy
Steve Cooper, Nanticoke River Watershed Conservancy
Molly Murray, News Journal
Matt Sarver, Delmarva Ornithological Society

I. Call to Order/Introductions/Announcements

Mr. Schroeder, Chairperson, called the March 2, 2016 Open Space Council meeting to order at 9:05 a.m. He welcomed Council members, staff, and visitors.

II. Minutes of December 2, 2015 Meeting

Mr. Schroeder asked for a motion to approve the September 16, 2015 minutes. Motion was made, seconded and unanimously approved, with one correction. On page 6, line 2 “choice” was changed to “chose”.

III. Financial Report

Mr. Vickers presented the Financial Report:

• Realty Transfer Tax (FY13, 14, & 15):	\$ 8,809,276.66
• Previously Approved Projects (6):	(\$11,382,000.00)
• Anticipated Reimbursements (8):	\$ 5,836,720.00
• Balance Available through December 15, 2016:	\$ 3,263,996.66
• Governor’s Recommended FY17 Budget	\$ 3,000,000.00

Open Space Inventory July 1990 – February 2016

404 projects	57,668.1388 acres
Open Space Funds	\$263,580,440.52
Other Funds	\$ 97,589,360.18
Total Funds	\$361,169,800.70

IV. Old Business

A. Projects Completed Since December 2, 2015

- Blackiston Wildlife Area – Aigner: purchased 64.736 acres with \$225,000 of Open Space funds
- DNERRS Blackbird Reserve – McKinley/Merritt: purchased 67.4 acres with \$345,000 of Open Space funds
- James Branch Preserve – Wootten: purchased 1.657 acres with \$132,620 of Open Space funds
- DNERRS Blackbird Reserve – Unruh: purchased 32 acres with \$305,000 of Open Space funds; anticipate reimbursement of \$200,000 of federal funds
- Auburn Heights Preserve – Amer Trust: purchased development rights on 16.32 acres with first payment of \$1,000,000 of Open Space funds and anticipate second payment of \$700,000 from private funds; State will receive 9 acres of the 16.32 acres in fee
- Nanticoke Wildlife Area – Calloway Farms: purchased 48.03 acres with \$206,529 of Open Space funds; received reimbursement of \$80,000 in private funds; anticipate reimbursement of \$75,250 from federal funds
- Woodland Beach Wildlife Area – Callegary: purchased 53.2419 acres with \$350,000 of Open Space funds

B. Joint Sunset Committee

Mr. Schroeder stated that there was a lot of interaction with the Joint Sunset Committee regarding recommendations and the proposed changes to the Land Protection Act. Mr. Schroeder acknowledged Senator Ennis for his support.

Mr. Vickers presented a brief summary of actions since the last Open Space Council meeting. On January 13, 2016 the Joint Sunset Committee (JSC) reviewed the Open Space Council's actions in response to its June 2015 recommendations. The JSC appreciated the Council's work in addressing the recommendations and voted to release the Open Space Council from Sunset review pending two issues – 1) making the Open Space Inventory database available online and 2) continuing to work with the Governor's office to increase the diversity of the Council membership. A release letter from the JSC was provided to Council members. Staff is working on the first issue and hopes to have it finished by the April 14 JSC meeting. Discussions are ongoing with the Governor's office regarding the second issue. Also at this meeting the draft changes to the Land Protection Act that were prepared by Council were discussed. In general the JSC seemed supportive. However, they wanted more time to review it and it needed to go into a legislative bill format.

Mr. Vickers continued with a summary of the February 3, 2016 JSC meeting. At this meeting the JSC did discuss the draft changes to the Land Protection Act. Representative Brady, as co-chair of the JSC, presided over the discussion and noted that members voting to release the bill would become sponsors. One question was asked of Secretary Small regarding the removal of the requirement for State Resource Area maps to go to the counties. The JSC voted unanimously to move the legislation forward.

C. Land Protection Act Revisions – House Bill 262

Mr. Schroeder noted that the draft revisions to the Land Protection Act are now House Bill 262. It will go before the House Sunset Committee on March 9. If it is approved, then it would go to the full House, followed by the Senate Sunset Committee and the full Senate. He said the intent is to get the bill passed by March 24, before the General Assembly goes out on spring break. This would allow the process to move forward with public workshops and a public hearing as per the settlement agreement for the Audubon lawsuit.

V. New Business

A. Agency Presentation – State Resource Area Maps

Mr. Vickers started the discussion on State Resource Area (SRA) maps by referring the Council to a handout that referenced SRAs in the draft changes to the Land Protection Act. It noted definitions, purposes of the Land Protection Act, SRA criteria, and the SRA map process. The Council developed the criteria that are to be used to create the SRA maps. The SRA process discussed is based on House Bill 262.

Mr. Vickers continued by stating the SRA maps that will be presented today are draft. The public workshops in each county, a public hearing and final input from the Council will inform the final maps.

Mr. Schroeder said the Department is responsible for running the public workshops and public hearing. The workshops will be April 5, 6, and 7 and the hearing will be April 13 with locations to be announced. A special Open Space Council meeting was scheduled for April 27. He would like to move this to May 4. This would need to be agreed to by Delaware Audubon since the settlement agreement calls for a meeting on or about April 27. Assuming this can be worked out the next Council meeting would be May 4 and the main purpose of the meeting would be to discuss SRA maps.

Mr. Vickers said he would let the Council know as soon as locations are confirmed for the workshops and hearing.

Mr. Holden suggested that Council members attend the workshops and hearing in order to have a presence.

Mr. Schroeder agreed. He said that the law is clear that the Council would run the workshops and hearing on the criteria and that the Department is responsible for running the workshops and hearing on the SRA maps. However, he would also strongly encourage Council members to attend.

Mr. Vickers reminded the Council that the Chancery Court ruled against the 2006 SRA maps because it determined that the Council served as a public body and should have developed the criteria for the Department to use in developing the maps. The Court ruled that the Department developed both the criteria and the maps and therefore, the 2006 SRA maps were declared invalid.

Mr. Vickers continued the discussion on the SRA maps by noting that the Department uses a geographic information system (GIS) in the process. The GIS contains different data layers from various programs within and outside of the Department. These layers are obtained through satellite imagery and some ground-truthing. These layers are mapped together to give a better understanding of the landscape on the aerial imagery. He did caution that these layers are only as good as the data that are used to create the layer.

Mr. Vickers said the Department, state agency partners and conservation partners first put together a layer of protected lands in the state. This included conservation lands owned in fee by federal, state, and county governments and owned in fee by conservation organizations. The second component of the protected lands layer was lands that are protected by means of a conservation or preservation easement. This includes land with easements held by government agencies and private conservation organizations. It also included agricultural preservation easements. These protected lands are in black on the draft SRA maps (attached). It was assumed that protection actions were complete on these lands and that the Open Space Program efforts would be focused on other lands. This layer of protected lands also helps identify gaps of potential lands worthy of protection.

Mr. Vickers said that the unprotected lands which would comprise the actual State Resource Areas are made up of three major areas. The first is the Delaware Ecological Network (DEN). The concept of the DEN was presented to the Council at a previous meeting. It is an ecological model developed by The Conservation Fund and used in several states. It takes Delaware-specific data composed of GIS layers about many natural features and combines this with scientific-based habitat and species needs. The result was a model depicting core forests, core wetlands and core aquatic sites. The DEN ranks all of these lands from low to high. A decision was made to only use the higher ranked lands. This eliminated a lot of scattered and disconnected DEN lands. The DEN component is within the yellow on the SRA maps.

Mr. Vickers continued with the second component of the draft SRA maps. This involved asking the four state agencies that qualify for funding under the Open Space Program to look at lands that are inholdings to or adjacent to lands that the agency manages and determine what should be considered for protection. This relates to the recently approved criteria regarding these types of lands. It also addresses the recreation needs. Adjacent or inholding lands, if appropriate, could be used for trail connections or additional active recreation sites. The inholding/adjacent component is within the yellow on the SRA maps.

Mr. Vickers said the third component was cultural resource sites. If the land contains an historic viewshed or an archaeological site, many times it may already be included within the DEN component or the inholding/adjacent component. Other cultural resource sites are represented by red dots on the SRA maps. These are National Register of Historic Places locations.

Mrs. Stewart emphasized that the DEN was a model produced by an outside third party to give some neutrality to the process. And that the yellow and red dot mapped lands make up the SRA maps. However, it does not mean that the Open Space Program wants to buy all of these lands. It is a representation of what lands are important from an ecological, recreational or cultural standpoint.

Mr. Vickers went through the SRA maps on a county by county basis and explained many of the SRA lands and why they were on the map. He also said that this was the first draft and that the maps would be reviewed more closely before the public workshops since much of the modeling was based on 2012 aerial photography. There may be land developed since then that would need to be removed from the SRA maps.

Mr. Schutt said it would be good to know how much has already been protected to tell the story of the good things the program and conservation partners have already accomplished.

Mrs. Stewart reminded all that a lot of the DEN was under the black or protected lands layer. So much of it is already protected.

In response to Mrs. Fleming's question about the names of the SRAs, Mr. Vickers said the new approach is to name the areas after the appropriate management unit, such as Lums Pond State Park or Taber State Forest.

Mr. Vickers asked for comments from the Council. He said at the public workshops there will be stand-up boards with the maps and there will be a brief power point presentation on how the maps were created.

Mr. Holden suggested keeping the workshop presentation brief and using a series of overlays and pictures to get across the message.

Mrs. Fleming agreed and said that the agricultural preservation easements should have their own color or layer. She also said having the numbers of acres for each layer would be helpful.

Mr. Vickers said the presentation would be brief and would include layers. He hoped that most of the time would be spent talking with landowners around the stand-up maps and hearing their concerns.

Mrs. Cannon asked about what lands in the Wilmington area were yellow and what about other state agency lands such as DelDOT.

Mr. Vickers explained the yellow areas were the lower Christina River marshes and forested areas along Brandywine Creek. DelDOT marshland and lands with scenic easements were included in the protected layer.

Mr. Schutt asked what was the biggest change from the last time the SRA maps were presented.

Mr. Vickers said the acreage of the 2006 SRA maps is similar to the acres in these draft maps. We have a better methodology with the DEN and more information. We also have acquired land since 2006, so more land is protected. However, some of the acquisitions such as the Midlands Wildlife Area were not even contemplated years ago and only came about because of the opportunity to work with some of the pulpwood companies. By acquiring these areas we then have to look at inholdings and connections for these pieces.

Mr. Schutt said so our methodology is better and more objective, we've protected land, but overall the acres are about the same and the maps are not parcel based. So these are good changes.

Mr. Vickers noted that for the 2006 maps tidal wetlands statewide were shown as protected because of state law. Non-tidal wetlands in New Castle and Kent counties were shown as protected because of county ordinances or regulations. The only wetlands shown as protected in this draft version of the SRA maps are those that are owned in fee or restricted by easement. If the wetland acres in this draft were shown as protected by applying the 2006 standards, then the yellow SRA acres would be much lower.

Mr. Bivens said it sounds like the Council is ok with the methodology. Now the Department has more work to do on making the presentation brief and understandable. He said it may be helpful to zoom in on several protected areas so people can see how the yellow SRA lands fit.

Mrs. Stewart said we will have computers at the workshops so we can look more closely at individual properties and how it all fits together.

Senator Ennis asked about the Thousand Acre Marsh area.

Mr. Vickers said what is on the map is open water, marshland, fringing forest and some farm fields. He said this needs to be reviewed some more in terms of the farm fields.

Mr. Schutt said the big picture should be emphasized in a brief presentation, with a few examples and then break out to look at individual properties.

Secretary Small said that one of the questions that came up at the Joint Sunset Committee meeting was how much protected land is enough. He said the SRA maps help answer that question. The maps are the blueprint for our future work. These maps are really about inholdings, connections and buffering protected lands. He also agreed with the suggestions regarding the presentation. He hoped that beyond speaking to the good work that the agencies and conservation partners have accomplished, we could engage landowners and let them know they have options for their land. We may be able to inform them of the specialness of their land.

Mr. Schutt agreed that the information provided and the discussion of options for protection are key. We want to work with and for the landowner to achieve our conservation goals. It is an opportunity to educate the landowner and present them with options.

Mr. Schroeder said that property next to protected land increases in value. He said when he was first involved with trying to get the trail connection between Lewes and Rehoboth he was told by the head of the national group Rails-to-Trails that there will be a lot resistance at first, then people will feel less threatened and eventually will love it and advertise their property as contiguous to a trail. So if someone's property is near protected land and it's in an SRA, then they would know that there may be a buyer through the Open Space Program.

Mr. Chesser said there is documentation showing properties within a quarter mile of the Radnor trail in Pennsylvania are on average worth about \$67,000 more than properties not close to the trail. This information is out there and should be used.

Mr. Vickers said that at this point there is about 26% of the state protected, represented by the black layer on the maps. Some people would say this enough. Others may say that we need to set an acreage goal. Others may say we should only look at what is doable over the next ten years since these maps are to be reviewed in that timeframe.

Mrs. Fleming said that an issue that came up many times in the SRA criteria workshops was that even though it was emphasized this is a voluntary program that landowners felt that if they were on the map, then their property would be restricted.

Mr. Schroeder said that is the perception that is out there and needs to be addressed.

Mr. Schutt asked that materials created for the workshops be shared ahead of time with the Council for its input.

Mr. Schroeder thanked the staff.

Note: These draft maps can be found by following the links below:

- New Castle County
<http://www.dnrec.delaware.gov/OpenSpaces/Documents/SRA%20Maps%203.2.16/SRA2016-NCC%20Overview.pdf>
- Kent County
<http://www.dnrec.delaware.gov/OpenSpaces/Documents/SRA%20Maps%203.2.16/SRA2016-Kent%20Overview.pdf>
- Sussex County
<http://www.dnrec.delaware.gov/OpenSpaces/Documents/SRA%20Maps%203.2.16/SRA2016-Sussex%20Overview.pdf>

B. Council Open Discussion

Mr. Schroeder asked if the Council had any further items for discussion.

Senator Ennis made comments regarding an issue from the previous meeting regarding working with Mr. Whitehead who has property adjacent to Blackbird State Forest. He supported the idea of some type of land exchange involving some of Mr. Whitehead's land containing forest and stream for some of the Blackbird State Forest's farmland. He was very surprised at the potential cost of this exchange. His understanding is that it could cost as much as \$12,000 - \$14,000.

Mr. Valenti said he was working on the boundary adjustment. The fees were almost prohibitive for Mr. Whitehead to share the cost with the State. He said that he and Mr. Vickers were going to meet with New Castle County staff on this issue.

Senator Ennis said he would like to be kept informed on this and hoped the costs could be lowered. If needed, he would be willing to help on this.

Mr. Chesser said this issue comes up on many conservation projects. There are times when we may want to purchase just part of a property. But the time and cost to go through a subdivision process for an open space project is almost prohibitive. It would be good if we could get some type of exemption for these projects. It would allow us to be more efficient with our time and funding.

There was no additional discussion.

C. Public Comments

Mr. Schroeder asked for any comments from the public.

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

The Council adjourned to Executive Session at 10:30 a.m.

VI. Executive Session

A. Discussion of Site Acquisitions

VII. Open Session

The Council returned to Open Session at 11:25 a.m.

A. Council Project Recommendations

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

Division of Parks and Recreation

Great Marsh Properties, Sussex County: Council unanimously expressed strong support for this project and encouraged staff to continue negotiations.

Division of Fish and Wildlife

Wilson Heirs, Nanticoke Wildlife Area, Sussex County: purchase of approximately 72 acres of forest and Atlantic white cedar swamp adjacent to other protected lands; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the Wilson Heirs property for \$280,000 with the potential for reimbursement of other funds.

Darby, Nanticoke Wildlife Area, Sussex County: purchase of 5 acres of forest adjacent to other protected lands; Council moved, seconded and unanimously agreed to recommend to the Secretary to purchase in fee the Darby property for \$31,000.

Delaware Forest Service

Hesseltine, Blackbird State Forest, New Castle County: purchase of approximately 326 acres of forest and farmland adjacent to other protected lands; Council moved, seconded and unanimously agreed to recommend to the Secretary to work towards purchasing in fee the Hesseltine property by reserving \$500,000 of current funds towards a to-be-determined purchase price; such funds enabling staff to work with outside funders.

VIII. Next Meeting Date/Adjournment

The next meeting of the Open Space Council is tentatively scheduled for May 4, 2016 in Legislative Hall, Second Floor, Senate Hearing Room, Dover, DE 19901, starting at 9:00 a.m.

Mr. Schroeder thanked everyone and asked for a motion to adjourn. The meeting adjourned at 11:30 a.m. just as the fire alarm went off in Legislative Hall.