

OPEN SPACE COUNCIL

July 8, 2020

9:00 a.m.

WebEx Meeting¹

ATTENDANCE

Council Members:

John R. Schroeder, Chairperson
Rep. Gerald Brady
Sen. Bruce Ennis
Paul Boswell, Esq
Lorraine Fleming
Dean Holden
David Humes

Advisory To:

Shawn Garvin, DNREC, Secretary – present

Staff:

Lisa Borin-Ogden, DNREC, Deputy Secretary
Ray Bivens, DNREC, Parks & Recreation Director
Matthew Ritter, DNREC, Parks & Recreation
Elena Stewart, DNREC, Parks & Recreation
Robert Ehemann, DNREC, Parks & Recreation
Austin Short, DDA Delaware Forest Service
Michael Valenti, DDA, Delaware Forest Service
Kyle Hoyd, DDA, Delaware Forest Service
Patrick Emory, DNREC, Community Services Director
David Saveikis, DNREC, Fish and Wildlife Director
Kerri Yandrich, DNREC, Fish and Wildlife
Tim Byan, DNREC, Parks & Recreation
Leslie Reese, DNREC, Office of the Secretary
Patricia Cannon, DOS, Division of Small Business
Tim Slavin, DOS, Division of Historic and Cultural Affairs Director
Colleen Gause, DNREC, Office of the Secretary
Sarah Zweigenbaum, DNREC, Parks & Recreation

Visitors:

Dee Durham, New Castle County Councilwoman
Ron Vickers, Sussex County Land Trust Board member and Chesapeake Conservancy staff
Emily Knearl, Delaware Nature Society
Andrew Dinsmore, Senator Chris Coons' office

¹ Due to COVID-19 this quarterly meeting was held virtually. The public was invited to join with a link shared on the Public Meeting Calendar

I. Call to Order/Introductions/Announcements

John Schroeder, Chairperson, called the July 8, 2020 Open Space Council (OSC) meeting to order. He shared with the OSC and members of the public that Elena Stewart has obtained a legal opinion in regards to the format of the last meeting. That legal opinion was that the format of the last meeting was acceptable due to the extenuating circumstances, however, that going forward it would be necessary for the meeting be opened back up to the public after Executive Session in order to vote. Ms. Stewart shared that the WebEx format does allow for that to happen.

II. Minutes of March Meeting

Mr. Schroeder asked the OSC members to review the minutes and asked if anyone had any proposed changes. The motion was made to approve the minutes as written and was unanimously approved.

III. Financial Report

Elena Stewart presented the financial report:

| Open Space Program - Approved Projects | | | |
|---|-----------------------------|--------------------|-----------------------|
| Date Committed | Current Projects | Amount | Agency |
| 4/6/2018 | Mispyllion Harbor | \$300,000 | F&W |
| 6/5/2019 | Borcherdt (Phase 2) | \$1,930,000 | Parks |
| | Selby | \$775,000 | F&W |
| | Aycoth | \$285,000 | Parks |
| 9/4/2019 | Handloff/ Weinberg Trusts | \$0 | Parks |
| | SPI Pharma | \$0 | Parks |
| | 29 North State Street | \$275,000 | HCA |
| 12/4/2019 | Shat | \$230,000 | F&W |
| 3/18/2020 | Katz | \$210,000 | DFS |
| | Mispyllion | \$300,000 | F&W |
| | Kersey CE | \$250,000 | F&W |
| | | \$4,555,000 | |
| | Available Funds | | \$5,943,340 |
| | Current Commitments | | \$4,555,000 |
| | Current Balance | | \$1,388,340 |
| | To Be Added 12/15/20 | | \$5,000,000.00 |
| | Future Balance | | \$6,388,339.98 |

IV. Old Business

A. Completed projects

1. Geffon Property, Parks
 Killens Pond State Park
 51.74 acres

- \$363,000 with a \$15,000 endowment
- 2. Schilling Property, F&W
Augustine Wildlife Area
56.4 acres
\$450,000
- 3. Cafini Adele Property, F&W
Eagle's Nest Wildlife Area
16 acres
\$200,000

V. New Business

- A. Council Open Discussion
None
- B. Public Comments

Ron Vickers made a presentation on the Absher Farms property on the Nanticoke River. Mr. Vickers is representing the Chesapeake Conservancy and the Sussex County Land Trust and presenting the project to the OSC showing the support of both organizations. The list of partners and financial contributions that Ron has brought together can be viewed on the last slide in his presentation. The presentation is attached to these minutes along with a management plan for the property and a letter from the Chesapeake Conservancy in support of the project, which was shared with OSC members prior to the meeting.

Mr. Schroeder shared with the OSC that he would be recusing himself from voting on the project due to his position on the board of the Sussex County Land Trust.

Secretary Garvin expressed concern with removing trailers from the property in order to potentially bring RV's to the site if camping was allowed in the future. Sec. Garvin does not want the DNREC being involved in removing people from their homes. Mr. Vickers explained that Mr. Absher had purchased the property with the intention of developing the site and had always planned to remove all occupants from the property. Currently all trailers have been removed with the exception of two, which would be removed prior to the SCLT taking ownership of the property. Mr. Vickers emphasized the primary focus of the project was habitat preservation and restoration with the secondary focus being public access to the Nanticoke River. Additionally, he believes there is a potential for ecotourism on site that would give the local economy a boost.

Sec. Garvin also expressed concern with the potential for DNREC to be liable for improvements to be done on site or to take care of improvements once they are done. Mr. Vickers stated that SCLT would be repairing the docks and that they would not be coming back to DNREC to fund infrastructure improvements, only for recommendations.

Kerri Yandrich asked for clarification on the property interest that F&W would have on the property since she was of the understanding that they would only be a co-holder of a conservation easement (CE) with REPI², however, the partnership slide in the presentation suggests DNREC would be contributing to the fee simple purchase of the property. Mr. Vickers clarified that F&W's property

² The Department of Defense (DoD)'s REPI Program is a key tool for combating encroachment that can limit or restrict military training, testing, and operations. For more information - <https://www.repi.mil/>

interest would be limited to the holding of a CE and that SCLT would own, manage and take on all responsibilities of the site. He suggested the possibility of Envirotech, Inc. managing the site as they do other properties that SCLT owns.

Lorraine Fleming questioned whether there was a potential to acquire the property to the south of the Absher property in order to make the property continuous with the other tracts of the Nanticoke Wildlife Area. Mr. Vickers stated that there was potential to acquire the approximately 140 acres to the south.

VI. Executive Session

A. Discussion of Site Acquisitions

VII. Open Session

A. Council Project Recommendations

Mr. Schroeder asked for motions for the projects presented in Executive Session.

1. Absher Property, F&W

Paul Boswell made a motion to participate in a partnership with the SCLT, REPI and the Chesapeake Conservancy to contribute \$200,000 towards the acquisition a conservation easement on the Absher Property which would be co-held with the REPI Program subject to the terms of the conservation easement being worked out by DNREC and keeping with the objectives of the Land Protection Act. Ms. Fleming seconded the motion. Mr. Schroeder recused himself. The motion carried.

Next Meeting Date/Adjournment

The meetings for the Open Space Council for 2020 are as follows:

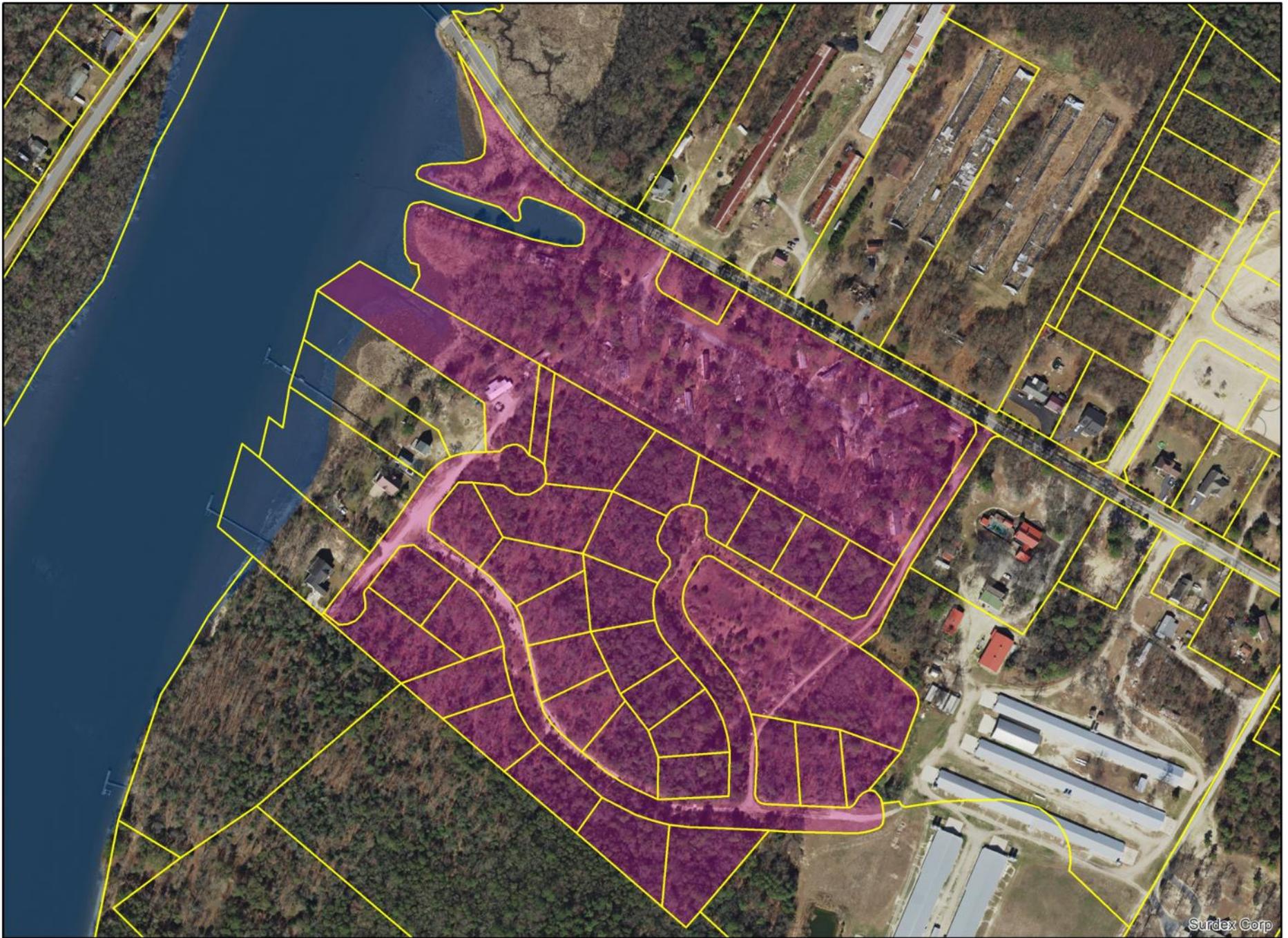
- September 2, 2020
- December 2, 2020

John asked for a motion to dismiss and the OSC unanimously approved the motion.

ABSHER FARMS, LLC

WOODLAND FERRY





ABSHER FARMS, LLC

- Conserves ~40 acres of wooded habitat and open space, contributing to Nanticoke River Corridor protection and scenic views
- Provides recreation opportunities through small watercraft launch, trails, fishing and potential hunting and camping
- Protects over 1,900 feet of meandering shoreline/over 600 feet of straight linear frontage with tidal, freshwater emergent wetlands vegetation
- Allows for public access to the Captain John Smith National Heritage Trail
- Part of the Middle Chesapeake Sentinel Landscape
- Buffers Woodland Ferry, one of oldest continuous-use ferries in U.S., since the 1740s; contributes to black history interpretation of Patty Cannon actions
- Sussex County Land Trust will own and manage site for public use
- Protection Partners: Chesapeake Conservancy, Mt. Cuba Center, Sussex County Council, Sussex County Land Trust, U.S. Navy REPI Program

ABSHER FARMS, LLC

- Fee Simple Value = \$1,250,000

- Partner Contributions for Acquisition:
 - Chesapeake Conservancy/Mt. Cuba \$400,000
 - Sussex County Council \$200,000
 - Navy REPI Program (**pending minimum**) \$450,000
 - Open Space Program (**request**) \$200,000

- Other Funds for Site Clean-up, Security and Water Access
 - Sussex County Council \$100,000
 - Chesapeake Conservancy \$ 75,000
 - Sussex County Land Trust \$ 25,000

- **Request** Open Space Council recommend that DNREC co-hold a conservation easement with the Navy – necessary to receive funds from the Navy



BOARD OF DIRECTORS

Maite Arce
Hispanic Access Foundation

June 30, 2020

Mark Belton
Former Maryland Secretary of Natural Resources

The Honorable Shawn M. Garvin
Secretary, Department of Natural Resources &
Environmental Control
State of Delaware
89 Kings Highway
Dover, DE 19901

The Honorable John R. Schroeder
Chair, Open Space Council
47 Edgewater Drive
Lewes, Delaware 19958

Thad Bench
Benchworks

Michael Brubaker
Principled Strategies, LLC

Marc Bunting | Secretary
Alpine Food Service Solutions

Leslie Delagran, | Treasurer
World Wildlife Fund

Joel E. Dunn | President & CEO
Chesapeake Conservancy

Verna Harrison
Verna Harrison Associates, LLC

Randall W. Larrimore | Chair
Olin, Campbell, Nixon, Ret.

John G. Neely
Neely • German Financial

Mamie A. Parker
US Fish & Wildlife Service, Ret.

John Reynolds
American Society of Landscape Architects

G. Anne Richardson, Chief
Rappahannock Tribe

Jeffrey Sabot, CPA
Cherry Bekaert

Richard Scobey
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Nancy B. Walters, PhD
Higher Education Administrator/Biologist, Ret.

Molly Ward | Vice Chair
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The Conservation Fund

Charles A. Stek
Environmental Stewardship Strategies

Dear Secretary Garvin and Mr. Schroeder:

On behalf of Sussex County Land Trust and Chesapeake Conservancy, we write to request your support for a conservation opportunity on the Nanticoke River that will protect important natural and historic resources, provide open space for the public, and support local economies of Western Sussex County through tourism and outdoor recreation.

Absher Farms comprises 40 acres located on the Nanticoke River, adjacent to the Woodland Ferry southwest of Seaford and in close proximity to State Fish and Wildlife lands. The Sussex County Land Trust, in cooperation with the Chesapeake Conservancy, the Mt. Cuba Center, the Sussex County Council, the U.S. Navy, and the Department of Natural Resources and Environmental Control, is working to preserve this land for public access to the Nanticoke River and other recreational opportunities. Active negotiations have been in the works for over a year and now we are very close to closing the deal. Your support would enable us to bring this outstanding conservation opportunity across the finish line.

This project involves remarkable open space and natural resource values that evoke the historic viewshed that Captain John Smith saw when he ventured up the Nanticoke River in the early 1600s. Adjacent to the Woodland Ferry, conserving this property would also preserve the setting for one of the oldest, if not the oldest, ferries in continuous operation in the United States, which was established in the 1740s. About 70,000 people use the Woodland Ferry each year, and protecting Absher Farms for public use would provide an additional tourism opportunity around this historic asset. We believe that the local economic benefits of this project are especially important for rural communities in Delaware that have been particularly hard-hit by the COVID-19 pandemic. In addition to its long history, the ferry is of historical importance as one of the locations where the notorious slave runner Patty Cannon shipped out kidnapped refugee slaves and free blacks.



At the March 18, 2020 Open Space Council meeting, conducted as a call-in teleconference, the Chesapeake Conservancy, in cooperation with the Sussex County Land Trust, presented this project in Public Session. The presentation gave the details of the property and the funding sources to date. A request for \$200,000 from Delaware's Open Space Program towards the purchase price of \$1,250,000 was made. This amount represents 16% of the purchase price. With these funds, the public would gain access to the site and DNREC would hold a conservation easement that would ensure habitat protection and public recreation. In addition, the conservation easement would require a 100-foot vegetated buffer to all wetlands and the implementation of a forest stewardship plan. As a result of discussion in the Executive Session of the meeting, it was reported in the minutes that a motion was passed unanimously by the Open Space Council to support the Absher Farms, LLC project. However, funding was not recommended at this time due to uncertainty of State funds and the Council's desire for more details on additional funding from other sources.

The next meeting of the Open Space Council is July 8th, 2020. We will present this project again with the requested details on project funding sources for the Council's review. We would greatly appreciate your support for this important project and for the requested Open Space Program funding that will allow us to bring this project across the finish line.

We also request that DNREC agree to sign and co-hold a conservation easement on the property with the U.S. Navy. A request for \$536,000 of funding was presented to the Navy. In order to receive these Navy funds, a signatory partner needs to be part of the project, and DNREC is the ideal partner. DNREC's involvement with the project would leverage the Navy's contribution. The Navy is very interested in protecting this site because it would contribute to minimizing development under a major flight training route out of the Patuxent Naval Air Station in Maryland. To date, DNREC has successfully collaborated with the Navy on four similar projects in Delaware.

The Sussex County Land Trust would own and manage the site. The approximately 40-acre property contains two distinct parts. The first is a 28-acre mixed pine/hardwood forest with an approved, but unimproved platted subdivision. The second is a 12-acre former mobile home park containing large canopy trees with a few remaining structures that will be removed by the current owner. The property fronts on the Nanticoke River with direct water access. Aerial photographs are attached. This site contains the following attributes:

- Preservation provides open space for public use
- Opportunities for local and regional recreation through small watercraft launch, hiking trails, fishing, potential camping, and potential hunting
- Part of the Middle Chesapeake Sentinel Landscape under Federal designation
- Assists in safer flight training missions for the Patuxent Naval Air Station
- Allows for public access to the Captain John Smith National Heritage Trail along the Nanticoke River

- Contributes to the Nanticoke River Corridor protection efforts and maintenance of a scenic vista
- Preserves an historic site in black history and one of the oldest ferries in the nation
- Protects over 1,900 feet of meandering shoreline/over 600 feet of straight linear frontage along the river with a significant, healthy stand of tidal, freshwater emergent wetlands vegetation
- Maintains wooded habitat and allows for expansion of native forest habitat
- Contributes to carbon sequestration
- Excellent groundwater recharge area
- Opportunity to maintain and interpret local history

Given the many valuable benefits that this property would provide Delaware and its citizens, and given this important opportunity for Western Sussex County to boost local tourism, we would be immensely grateful for your support for this important conservation project. Thank you.

Sincerely,

SUSSEX COUNTY LAND TRUST

THE CHESAPEAKE CONSERVANCY

By:



Casey H. Kenton
Board President

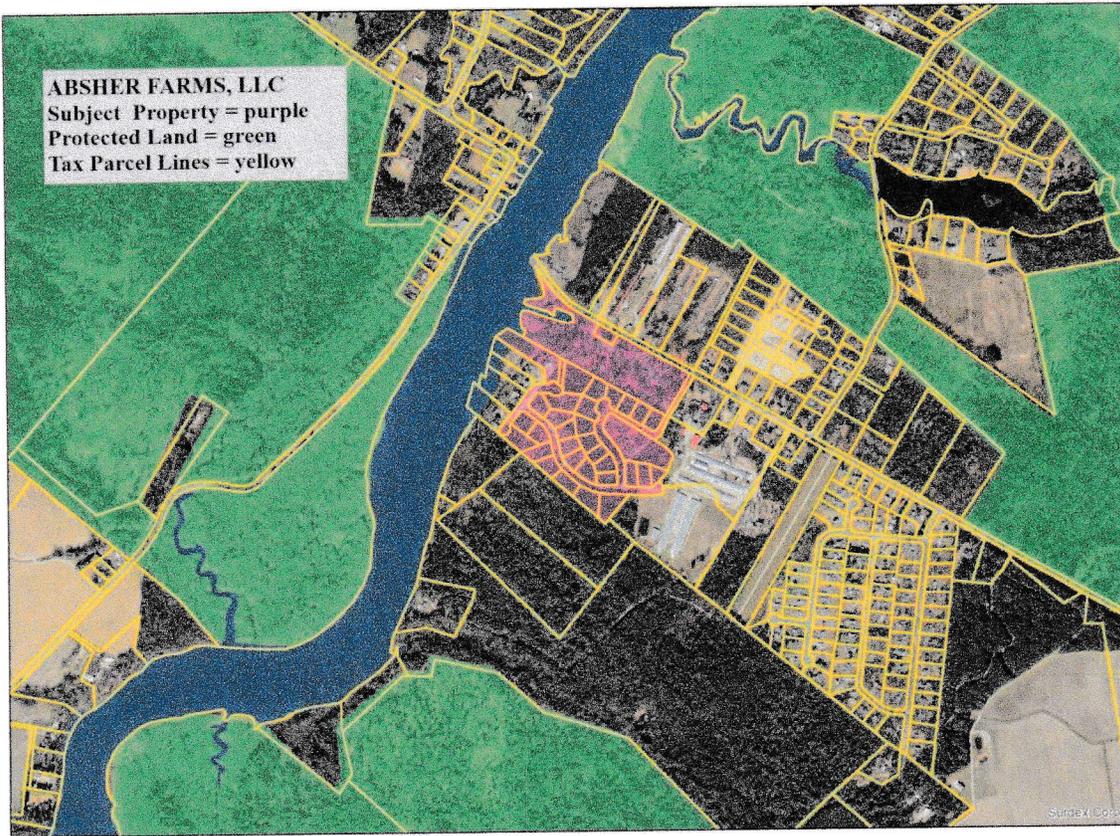
By:

DocuSigned by:
Joel E. Dunn
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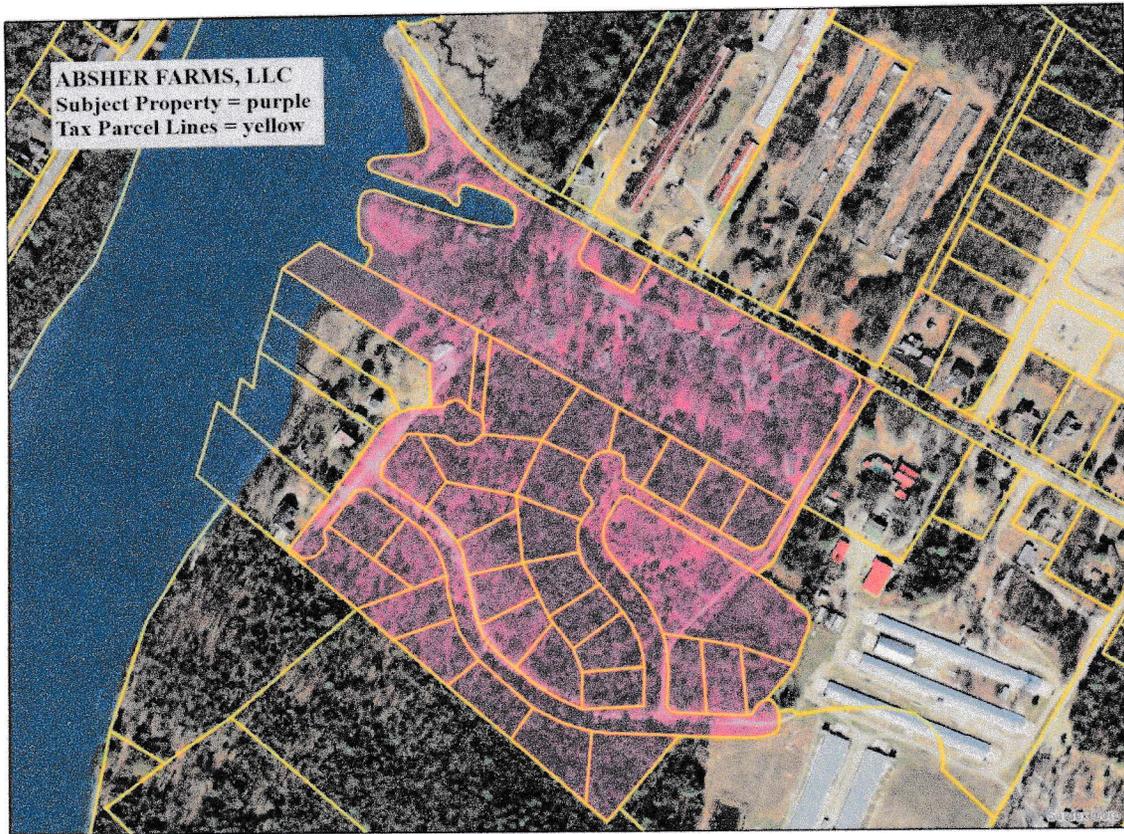
Joel E. Dunn
President & CEO

CC: Randall W. Larrimore, Chair of the Board, Chesapeake Conservancy

ABSHER FARMS, LLC – Area View



ABSHER FARMS, LLC – Close View



ABSHER FARMS, LLC MANAGEMENT ISSUES

The Sussex County Land Trust is in the process of acquiring an approximately 40-acre property located about five miles southwest of Seaford on the east side of the Nanticoke River. The property is currently owned by Absher Farms, LLC.

The site consists of two distinct parts. The first part is a former mobile home park referred to as Layton's Riviera (about 12 acres). It contains a mixed hardwood canopy of about 35 – 40-year old trees with no understory. It provides scenic views to the Nanticoke River and has an old boat basin. The second part is an approved/unimproved subdivision referred to as South Woodland (about 28 acres). This area is a 40 – 50-year old mixed hardwood/pine forest with one higher elevation lot on the river.

The property provides open space for public use and affords local and regional recreational opportunities through small watercraft launch, hiking trails, fishing, potential camping, and potential hunting. With public access come management responsibilities and liability concerns. Additionally, there are specific restrictions and required actions in a conservation easement that will be placed on the property.

The Sussex County Land Trust will be working with Enviro Tech on a contractual basis to monitor and manage certain aspects of the property. Enviro Tech currently monitors multiple properties for SCLT.

Short Term Management (**Potential Issues – Not All Inclusive**)

As soon as SCLT assumes responsibility for the property there will be immediate issues related to site security, neighbor access and public use.

1. Property Security

- a. Control access to/from specific parts of property with gates/fencing
- b. Gates on Woodland Ferry Road and a gate near inholdings
- c. Fence along common boundary with inholdings and any perimeter gaps
- d. Protect/secure well house
- e. Protect/secure usable on-site septic systems
- f. Control of user trash and dumping

2. Public Access

- a. Create a safe and secure location for public use
- b. Establish access protocol with neighbor inholdings
- c. Restrict access to docks/piers until repaired to avoid liability issues

3. Signs

- a. Property identification
- b. SCLT sign with Sussex County logo
- c. Access/no access, parking and directional signs on land and waterside

Long Term Management (**Potential Issues – Subject to Change – Not All Inclusive**)

SCLT should consider how much and what type of public use can be supported by this site. Additionally, what partners should be involved to make this happen. Also, long term management needs to address wetlands and woodlands requirements in the conservation easement.

1. Water Access Design

- a. Decide on type of watercraft (canoe, kayak, small motor boat, wave runner)
- b. Apply ADA standards
- c. Type of dock/mooring
- d. Lagoon stabilization/dredging
- e. Any land launching

2. Permitted Structures

- a. Decide if and where a restroom would be located
- b. Decide if and where a pavilion would be located
- c. Decide if and where a playground would be located
- d. Decide if and where camping would be located

3. Consult with Division of Fish & Wildlife

- a. Decide if archery hunting is appropriate in wooded area
- b. Determine access for shoreline fishing
- c. Provide advice on rehabilitation of boating access

4. Conservation Easement Requirements

- a. Establish and maintain 100-foot vegetative buffer strip along all wetlands
- b. Implement a Forest Stewardship Plan on the wooded portion of the property