

9000 Division of Parks and Recreation

9202 Regulations Governing Natural Areas and Nature Preserves

1.0 Purpose of the Regulations

- 1.1 The purpose of the Regulations contained herein is to further the implementation of Delaware's Natural Areas Preservation System set forth in 7 Del.C. Ch 73.
- 1.2 The Natural Areas Preservation System law and Natural Areas Program is a voluntary State land protection program which shall not usurp any land use authority at the State/County/Municipal level. The Program is intended solely for the purpose of identifying Natural Areas and promoting voluntary protection of said Areas.

2.0 General Definitions

As used in these Regulations, the following terms shall have the meanings set forth here:

**"Articles of Dedication"** means the writing by which any estate, interest or right in an area is formally dedicated as a Nature Preserve as permitted by 7 Del.C. §7306. Articles of Dedication are legally recorded documents that permanently preserve the property.

**"Conservation Values"** means natural, geological, or archaeological features specific to each Nature Preserve which are protected and preserved through Articles of Dedication.

**"Council"** means the Natural Areas Advisory Council – a Governor-appointed advisory body as established by 7 Del.C. §7305 to advise the Secretary of the Department on the preservation of Natural Areas and on the administration of Nature Preserves.

**"Dedication"** means the transfer to the Department, for and on behalf of the State, of an estate, interest or right in an area in any manner permitted by 7 Del.C. §7306.

**"Delisting"** means a process whereby the landowner or the ONP a person or entity can submit a delisting form provided by the ONP to request a specific site for removal from the State Registry of Natural Areas.

**"Department"** means the Department of Natural Resources and Environmental Control.

**"Guidelines for Natural Area Selection"** defines criteria and standards necessary in selecting a State-registered Natural Area based on vegetation community, species rarity, and geological and/or archaeological features. These Guidelines are periodically reviewed by the NAAC and ONP and are available for review from the ONP.

**"Management Practices"** means activities that may or may not take place within a Nature Preserve consistent with the uses and purposes for which the land is dedicated.

**"Nature Preserve"** means a Natural Area, any estate, interest or right in which has been formally dedicated under 7 Del.C. §7306. Dedicating Natural Areas as a Nature Preserve is a voluntary process entered into by the landowner or, in the case of public lands, by voluntary act of the agency having jurisdiction over said lands.

**"Nature Preserve Management Guidelines"** means a list of Management Practices considered when crafting Articles of Dedication for a Nature Preserve as permitted by 7 Del.C. §7306. The Management Guidelines are periodically reviewed by the NAAC and ONP and are available for review from the ONP.

**"Natural Area"** means an area of land or water, or of both land and water, whether in public or private ownership, which either retains or has reestablished its natural character (although it need not be undisturbed), or has unusual flora or fauna, or has biotic, geological, scenic or archaeological features or scientific or educational value.

**"Nomination"** means a process whereby a person or entity can submit a nomination form provided by the ONP to request a specific site for consideration as a State-registered Natural Area.

**"ONP"** means the Office of Nature Preserves, located within the Department and authorized to implement the Natural Areas Preservation System law.

**"Registration"** means the act of accepting a site onto the State Registry of Natural Areas.

**"Secretary"** means the Secretary of the Department of Natural Resources and Environmental Control.

**"State Registry of Natural Areas"** means a list identifying all State-registered Natural Areas accompanied by a map on file at the ONP.

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## TITLE 7 NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DELAWARE ADMINISTRATIVE CODE

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#### 3.0 Natural Areas.

- 3.1 Any site located in the State may be nominated as a Natural Area by a person or entity.
- 3.2 Any person or entity may request a site be delisted from the Registry.
- 3.3 Request for nomination or delisting of a site as a State-registered Natural Area shall be made to the ONP on a nomination/delisting form provided by the Department. The form requires, at a minimum, the following information:
  - Name, address and phone number of the property owner;
  - The location of the site;
  - A description of the site characteristics;
  - A description of the significance, or lack thereof, of the site;
  - The person or entity proposing the nomination/delisting.
- 3.4 All nomination/delisting requests require site visits to consider the ecological, geological, and/or archaeological significance of a nominated site or a site proposed for delisting.
- 3.5 It is the responsibility of the ONP to notify the landowner if an application for nomination or delisting of a site for the State Registry of Natural Areas is submitted to the Department. The ONP will notify the landowner as to when the Council and the Secretary of the Department will consider the nomination/delisting request so as to provide the landowner opportunity to participate in the nomination/delisting process.
- 3.6 The ONP shall consider the ecological, geological, and archeological significance of a nominated site or a site proposed for delisting according to Guidelines for Natural Area Selection developed by the Department and in consultation with a Technical Committee comprised of, but not limited to, resource professionals from the following, or their successor:
  - 3.6.1 Division of Fish & Wildlife's Natural Heritage and Endangered Species Program;
  - 3.6.2 Department of State's Division of Historical and Cultural Affairs;
  - 3.6.3 Delaware Geological Survey.
- 3.7 The Technical Committee shall be convened by the ONP. The composition of the Committee may change as various sites are considered for registration on or removal from the State Registry of Natural Areas.
- 3.8 Within one hundred and twenty (120) days after receipt of any nomination or delisting form and any other information that may be required by the ONP, the Technical Committee will provide its analysis of the attributes of the site to the ONP. The ONP shall then advise the Council whether a site is appropriate for inclusion on or delisting from the State Registry of Natural Areas.
- 3.9 The Council and the ONP shall provide their respective recommendations to the Secretary as to whether the site should be included on or delisted from the Registry.
- 3.10 After the Secretary determines that a site may be placed on or removed from the State Registry of Natural Areas, he/she will sign the Nomination form or Delisting form.
- 3.11 For purposes of implementing the Natural Areas Preservation System law, the existing State Registry of Natural Areas, and the associated map approved by the Secretary of the Department dated September 26, 2006 is in full effect and considered to be the State Registry of Natural Areas at the time of adoption of these regulations.
- 3.12 Only sites on the State Registry of Natural Areas shall be considered for Nature Preserve dedication.

#### 4.0 Nature Preserves

- 4.1 Using Nature Preserve Management Guidelines, the ONP, in cooperation with the landowner, shall determine the Management Practices that allow for the long term preservation of a Nature Preserve.
- 4.2 The ONP shall submit the Management Practices identified in the Articles of Dedication for a specific Nature Preserve to the Council for review.
- 4.3 If a Natural Area is dedicated as a Nature Preserve through Articles of Dedication, approved Management Practices developed pursuant to 7 **Del.C.** §7306(d) shall be identified therein.
- 4.4 If a need arises to have a Management Practice for a specific Nature Preserve amended, the ONP may recommend in writing to the Council that the Articles of Dedication for that Nature Preserve be amended. Said recommendations shall state the reasons why the amendment is needed, the status of the Nature Preserve before such amendment, the purpose of the amendment, and the expected effect of the amendment on the Nature Preserve. The Council and ONP shall provide their respective recommendations to the Secretary. The Secretary will accept, reject, or modify the amendment.

- 4.5 Enforcement of the Articles of Dedication shall be the responsibility of the Department.
- 4.5.1 In the event that a violation of the Articles of Dedication comes to the attention of the Department, the Department shall give written notice to the landowner of such violation and demand corrective action sufficient to cure the violation and restore the Nature Preserve.
- 4.5.2 If the violation is not cured within thirty (30) calendar days of the receipt of written notice from the Department, or where the required corrective action cannot be completed within thirty (30) calendar days and the landowner fails to commence such cure within said thirty (30) calendar day period and fails to continue diligently to cure the violation until finally cured, then the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of the legal agreement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages for the loss of Conservation Values, and to require the restoration of the Nature Preserve to its prior condition.
- 4.5.3 Such enforcement timelines are in effect from the date of the approval of these regulations. Where this provision is inconsistent with the provisions of existing Articles of Dedication signed prior to the effective date of these regulations, enforcement provisions of those Articles of Dedication shall control.
- 4.6 The Articles of Dedication shall be signed by the landowner and the Secretary and shall be recorded at the appropriate county Office of the Recorder of Deeds.

**5.0 Severability**

If any section, subsection, sentence, phrase or word of these regulations shall be declared unconstitutional under the Constitution of the State of Delaware or of the United States or otherwise invalidated by a State or Federal Court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings there under shall not be affected.

**15 DE Reg. 94 (07/01/11)**