

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF PARKS AND RECREATION

Statutory Authority: 7 Delaware Code, Chapter 47 (7 Del.C., Ch. 47)  
7 DE Admin. Code 9202

### PROPOSED

#### REGISTER NOTICE SAN # 2010-18

#### 9202 Regulations Governing Natural Areas and Nature Preserves

**1. TITLE OF THE REGULATIONS:**

Regulations Governing Natural Areas and Nature Preserves

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

To clarify processes associated with nominating and delisting Natural Areas and dedicating Nature Preserves. The current regulations are confusing and erroneous in some sections, and focus on Nature Preserve management plans. A total rewrite of the regulations provide a better focus on identifying Natural Areas and dedicating Nature Preserves. There is no cost associated with the proposed regulation.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

The Natural Areas Preservation System Act of 1978 (7 Del.C. Ch. 73)

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

None

**6. NOTICE OF PUBLIC COMMENT:**

Oral or written comments may be presented at a public hearing to be held on Wednesday, December 1, 2010 beginning at 5:00 PM in the DNREC Richard and Robbins Auditorium, 89 Kings Highway, Dover, DE. Interested parties may submit comments in writing to: Eileen M. Butler, DNREC Parks and Recreation, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Eileen M. Butler (302) 739-9235 [Eileen.Butler@state.de.us](mailto:Eileen.Butler@state.de.us) October 15, 2010

**~~REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL,  
DIVISION OF PARKS AND RECREATION GOVERNING NATUARL AREAS AND NATURE PRESERVES~~**

~~In accordance with Title 7, Chapter 47, subsection 4702 (c) of the Delaware Code, the Department of Natural Resources and Environmental Control will effect at midnight July 1, 1981 the following regulations:~~

~~1.00 Purpose of the Regulations and the Registration and Dedication Process.~~

~~1.10 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., Chapter 73.~~

~~2.00 Identification and Registration of Natural Areas.~~

~~2.10 The Office of Nature Preserves shall make periodic surveys of sites located in the State to identify Natural Areas. The Office of Nature Preserves may also receive information leading to identification of Natural Areas from any party.~~

~~2.20 Identification of Natural Areas by the Office of Nature Preserves shall be based on at least the following criteria:~~

- ~~(1) Unusualness; and~~
- ~~(2) representativeness.~~

~~2.30 Any site located in the State may be nominated to become identified as a Natural Area by any person.~~

~~2.40 Nomination of a site to become a registered Natural Area shall be made to the Office of Nature Preserves on forms provided by the Department. Persons making nominations shall also provide the Office of Nature Preserves with the following information:~~

- ~~(1) Name, address and phone number of the property owner;~~
- ~~(2) the location of the site;~~
- ~~(3) a description of the site characteristics;~~
- ~~(4) a description of the site and use;~~
- ~~(5) a description of the significance of the site; and~~
- ~~(6) the landowner's signature.~~

~~2.50 A site that has been nominated to become a registered Natural Area shall receive priority consideration by the Office of Nature Preserves whenever one or more of the following circumstances exists: (1) the site is threatened by commercial, industrial, residential or governmental development, or (2) the site contains thereon or therein any endangered, scarce or unusual animal or plant species, or unusual geological or archeological features.~~

~~2.60 The Office of Nature Preserves shall advise the Department whether a nominated site shall be placed on the Registry of Natural Areas within one hundred and twenty (120) days after receipt of any nomination form and any other information that may be required by the Office of Nature Preserves.~~

~~2.70 After the Office of Nature Preserves determines that a site may be placed on the Registry of Natural Areas the signatures of the following persons shall be in place on the application form: 1) Chairman, Natural Areas Advisory Council, 2) Chief, Office of Nature Preserves, and 3) Secretary, Department of Natural Resources and Environmental Control.~~

~~2.80 Only sites registered in the Registry of Natural Areas shall be considered to become Nature Preserves.~~

### **3.00 Dedication of Nature Preserves**

~~3.10 A Natural Area registered in the Registry of Natural Areas shall be dedicated to the State as a Nature Preserve pursuant to the provisions of 7 Del. C. Chapter 73 and the Regulations.~~

~~3.20 If a Natural Area is dedicated as a Nature Preserve by way of granting either a conservation easement or placing restrictions in a deed, the Articles of Dedication for said Nature Preserve shall include specific management practices developed pursuant to 7 Del. C. §7306(d) and the Regulations.~~

~~3.30 The Articles of Dedication for said Nature Preserve shall provide for the State's right of access onto said Nature Preserve. The State's right of access shall include, but not be limited to the right to inspect any part of a Nature Preserve to verify whether it is being preserved and maintained according to the management practices set forth in the Articles of Dedication for said Nature Preserve.~~

### **4.00 Natural Areas Management Review Committee**

~~4.10 There is established a Natural Areas Management Review Committee for the purposes of:~~

- ~~(1) Developing and recommending management practices for the long term preservation of Natural Areas as Nature Preserves; and/or~~
- ~~(2) developing and recommending management practices for specific Nature Preserves, which shall be defined and compatible with both the restoration and protection of the primary values contained on or within a specific Nature Preserve.~~

~~4.20 The Committee shall be comprised of at least nine (9) representatives from the following state resource management agencies:~~

- ~~(1) The Department's Division of Parks and Recreation;~~
- ~~(2) The Fisheries, Wildlife and Mosquito Control Sections of the Department's Division of Fish and Wildlife;~~
- ~~(3) The Department of Agriculture's Division of Forestry;~~
- ~~(4) The Department of State's Division of Historical and Cultural Affairs;~~
- ~~(5) The Beach Preservation Section of the Department's Division of Soil and Water Conservation;~~
- ~~(6) The Wetlands Section of the Department's Division of Environmental Control;~~

(7) The Technical and Community Recreation Services Section of the Department's Division of Parks and Recreation; and in addition to the foregoing state agencies;

(8) Any other state agency or academic group as necessary.

4.30 The Office of Nature Preserves shall give each member of the committee written notice of the time and place of any meeting of the Committee.

4.40 The development of management practices for Nature Preserves by members of the Committee shall be based on the expertise of each representative on the Committee, and the provisions of 7 Del. C. Chapter 73 and the Regulations.

4.50 Each application to have a site declared a Nature Preserve that is received by the Office of Natural Areas shall be submitted to the Committee for review and recommendations within thirty (30) days after receipt of said application by the Office of Natural Areas.

4.60 The Natural Areas Management Review Committee shall develop and issue its recommendations for management practices to the Office of Nature Preserves within ninety (90) days after the Committee has held its first meeting to consider any Nature Preserve application.

4.70 The Committee in developing management practices that will protect the primary values that make a site worthy of Nature Preserve status shall consider each natural area on a case by case basis. The management practices recommended by the Committee shall be specific guidelines which the owner of operating agency of the Nature Preserve can follow for maintaining the site as a Nature Preserve.

4.80 The Committee and the Office of Nature Preserves shall consider the following guidelines when developing management practices for the long term preservation of a Nature Preserve:

(1) Physical alteration of any Nature Preserve should be discouraged. However, physical alteration of any Nature Preserve may be approved if the function of the Nature Preserve and its resources are maintained in a condition that is similar to the conditions that existed before any physical alteration is completed.

(2) Any physical alteration to the natural resources of any Nature Preserve that is recommended by the Committee, or provided for in the Articles of Dedication, may include, in full or in part, any of the following restrictions that further the purpose of 7 Del. C. Chapter 73, and the Regulations.

A. No construction or placing of buildings, roads, signs, billboards, or other advertising, utilities or other structures on, above or under the ground.

B. No dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials.

C. No removal or destruction of trees, shrubs, or other vegetation except as may be necessary for the control of disease, pest or insect infestation or the like.

D. No excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to substantially or adversely affect or alter the surface or topography of the area except for archaeological investigations authorized by the Division of Historical and Cultural Affairs and legitimate mosquito control activities as authorized by 16 Del. C. Chapter 19.

E. No surface use except for compatible agriculture, forestry, or outdoor recreational purposes permitting the land or water area to remain predominantly in its natural condition as defined in the articles of dedication.

F. No activities adversely affecting drainage, flood control, water conservation, erosion control or soil conservation as defined in the articles of dedication.

G. No activities adversely affecting the fish and wildlife habitat as defined in the articles of dedication.

H. No other acts or uses adversely affecting the preservation of water or land areas or the improvements of appurtenances thereto.

(3) Where the dedication of a Natural Area as a Nature Preserve involves cultural resources the following restrictions may apply:

A. No alteration in exterior or interior features of the structure.

B. No changes in appearance or condition of the site.

C. No uses not historically appropriate.

D. No other acts or uses detrimental to appropriate preservation of the structure or site.

(4) Introductions of exotic plant and animal species will not be permitted where the presence of such species threatens the essential character of a Nature Preserve.

(5) The re introduction of extirpated species on natural areas shall be undertaken only after careful consideration and evaluation of the environmental and socio-economic effects by experienced ecologists and

resource managers.

(6) In the rare instance where the natural balance of a biological area is seriously upset by predators or pests, control measures shall be employed (compatible with the maintenance of the natural features).

(7) There shall be no collecting of plants and animals where such collecting threatens indigenous species in a Nature Preserve. Otherwise, collecting of plants, animals, fossils, minerals, or artifacts should be permitted for scientific and natural study purposes only, subject to existing regulations.

(8) Recreational activities may include but not be limited to: hiking, photography, nature study and canoeing. Hunting, fishing, and trapping are permissible when consistent with regulations designed to conserve the species while maintaining the character of the Nature Preserve.

(9) Educational uses shall be passive in nature. Observational and nature study activities should use existing trails. In nature study, going beyond provided trail is often necessary to carry out this activity. In this case off trail use will occur only when extreme care is taken with respect to the function of Nature Preserves.

(10) Non-destructive research and scientific activities shall be passive in nature and shall be compatible with the function of the Nature Preserve. Scientific uses such as baseline studies are permissible and will be considered, case by case, but will not violate the conditions regarding physical alterations which are stated herein.

(11) Where public access becomes problematic in the protection of a Nature Preserve the managers/owners thereof will institute immediate control procedures which effectively protect the Nature Preserve and allow for its rejuvenation. Options in this regard are:

A. The Nature Preserve may remain open to public use, but access may be restricted through a permitting control, e.g., a limited number of permits would be issued for a given time period, thereby holding the maximum number of entrants to a constant level.

B. The Nature Preserve may be temporarily closed to public use. The duration of closure must be sufficient to allow for rejuvenation of the area.

C. Permanently close the Nature Preserve. This option, though not feasible on public land, may be a responsible alternative to private owners.

D. Another option may be a combination of 1 and 2 above over an extended period of time.

4.90 The Office of Nature Preserves shall review and then submit the management practice recommendations of the Committee to the Natural Areas Advisory Council for review and approval at the Council's first meeting following the Committee's promulgation of recommendations.

4.91 Management practices approved by the Office of Nature Preserves and the Council shall become part of the Articles of Dedication used in establishing a Natural Area as a Nature Preserve.

4.92 If a need arises to have a management practice for a specific Nature Preserve changed, the Committee and Office of Nature Preserves may recommend in writing to the Council that the Articles of Dedication for the Nature Preserve in issue be amended. Said recommendations shall state the reasons why the amendment is needed, and include 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 shall either accept, reject or modify the Committee's recommendation.

4.93 All deviations from, or violation of any management practice set out in the Articles of Dedication for any Nature Preserve shall be reported to the Office of Nature Preserves.

#### 5.00 Restoration of Natural Areas on the Registry and Nature Preserves.

5.10 If any privately owned registered Natural Area or Nature Preserve is either damaged or destroyed, the owner thereof shall notify the Office of Nature Preserves of the cause and extent of the damage or destruction within twenty four (24) hours after the damage or destruction has been caused.

5.20 The Department may assist in the restoration of any registered Natural Area or a Nature Preserve that is damaged or destroyed by an Act of God, including but not limited to, fire, rain, wind, snow, ice, hail or lightning.

5.30 If the Department does not assist in the restoration of a damaged or destroyed registered Natural Area or Nature Preserve, or, if it is determined by the Department that restoration thereof is not feasible, the damaged or destroyed Natural Area or Nature Preserve shall be removed from the Registry of Natural Areas, or the Nature Preserve System.

#### 6.00 Coordination of Management Services for Registered Natural Areas and Nature Preserves.

6.10 The Department shall encourage Departments of the State, and the divisions thereof, to provide extension and technical services to parties establishing and maintaining registered Natural Areas and Nature Preserves.

~~6.20 The Office of Nature Preserves shall be responsible for assuring that management services of the State are extended to persons involved with registered Natural Areas and Nature Preserves. This responsibility shall include making referrals to appropriate Departments of the State whenever the Office of Nature Preserves is unable to provide the services requested.~~

~~7.00 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 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.~~

~~8.00 EFFECTIVE DATE: These Rules and Regulations are to take full force and effect at midnight, July 1, 1981.~~

~~9.00 ADOPTION: I, John E. Wilson III, Secretary of the Department of Natural Resources and Environmental Control, hereby adopt and establish for the Division of Parks and Recreation, the foregoing Rules and Regulations of the Department pursuant to Title 7, Delaware Code, Chapter 47, Sub-Section 4702 (c).~~

## **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 can request a specific site for removal from the State Registry of Natural Areas. Using a form obtained from the ONP.

"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 to carry out 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 had 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 as a State-registered Natural Area by the Secretary.

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

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

### **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 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.
- 3.3 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.
- 3.4 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:
  - 3.4.1 Division of Fish & Wildlife's Natural Heritage and Endangered Species Program;
  - 3.4.2 Department of State's Division of Historical and Cultural Affairs;
  - 3.4.3 Delaware Geological Survey.
- 3.5 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.
- 3.6 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 nominated site is appropriate for inclusion on or delisting from the State Registry of Natural Areas.
- 3.7 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.
- 3.8 After the Secretary determines that a site may be placed on or removed from the State Registry of Natural Areas, he/she will sign a Registration form or Delisting form.

- 3.9 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.
- 3.10 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 for the long term preservation of a Nature Preserve, such as physical alteration, introduction of exotic plant/animal species, passive recreational activities, and public access.
- 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.