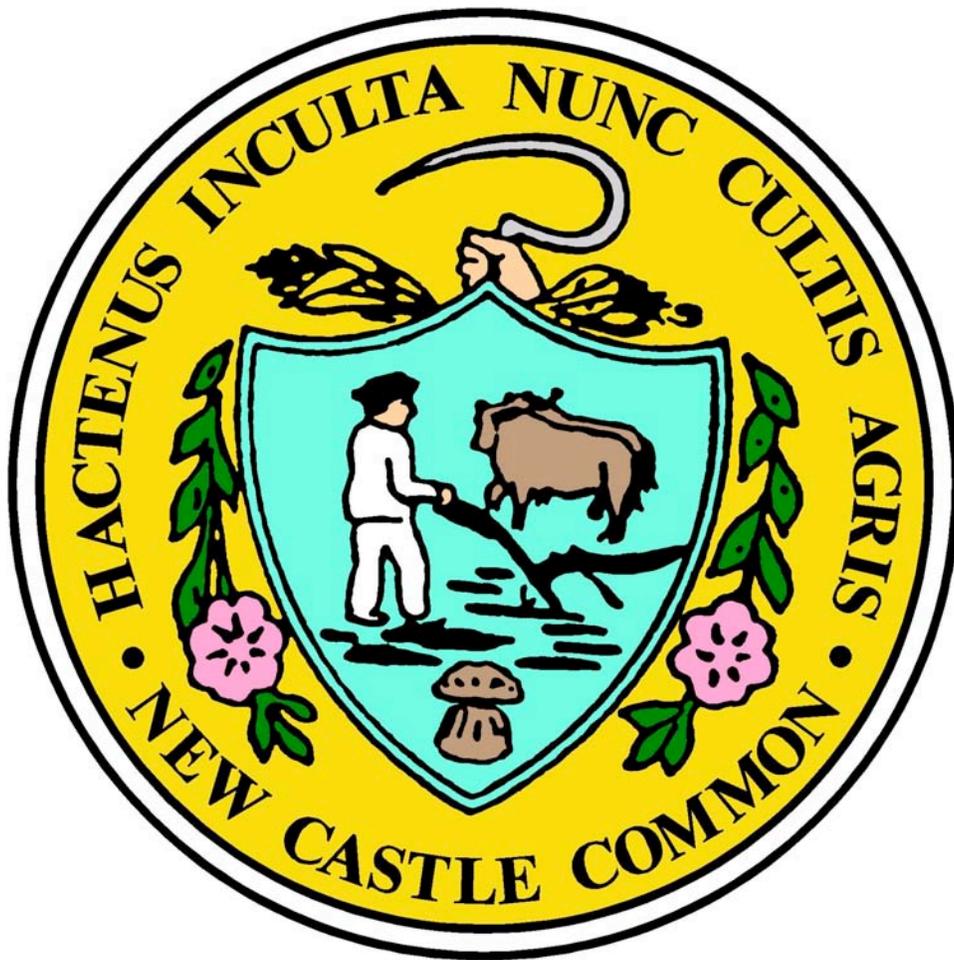


# REQUEST FOR PROPOSAL

## Penn Farm

*New Castle, Delaware*



**Trustees of the New Castle Common**

2010 AD

# INSTRUCTIONS FOR PROPOSERS

## I. Introduction

The Trustees of the New Castle Common, “Trustees” is seeking Proposals through this Request for Proposal (RFP) for the leasing, for agricultural purposes, of a parcel of land and improvements known as the combination of lands of the original Farms no.6 and no.11, called “Penn Farm”, being Tax Parcel Number 2100900002 of the New Castle County, Delaware Tax Maps and is located in the City of New Castle, Delaware. The property address is 807 Frenchtown Road, New Castle, Delaware 19720. There are three historic structures on the Farm property that were built circa 1800-1856: a farmhouse, granary and a dairy barn. A contemporary roadside retail stand also exists. The Penn Farm has approximately 4,230 feet of frontage on Frenchtown Road (Rt. 273) as the south border. The north border is School Lane or “Rabbit Road” as New Castle residents called it historically.

The 112-Acre Penn Farm is the last surviving farm of the historic 1,068-acre New Castle Common. In 1701, William Penn, the Proprietary and Governor of Pennsylvania and annexed Counties (now Delaware’s three Counties), granted the Common “to lye in Common for the accommodation of the Inhabitants of the Town of New Castle for their onley use and behoof forever”. The Penn Farm property is now held in Trust and managed by the Trustees of the New Castle Common, a private Delaware non-profit Land Trust, first chartered in 1764. In 1792, the Board of Trustees divided the Common into eleven tenant farms for lease and since then, the Penn Farm has been rented to various tenants. The Penn Farm was accepted as part of the National Register of Historic Places on September 11, 1997. The Trustees has recently made significant investments in the restoration of the fields, farmhouse, and barns. An aerial of the property and 1976 survey of the Penn Farm are attached as Exhibit A and Exhibit B, respectively. A soils map developed by the USDA, Natural Resources Conservation Services and soils description are attached as Exhibit C and Exhibit D, respectively.

The use of the Penn Farm, pursuant to any award hereunder, shall be limited to the following specific uses provided for under Section 230-15 of the Zoning Code of the City of New Castle and outlined below as “Agricultural – Horticultural” District - AH:

A. The purpose of this district is to provide for agricultural and horticultural activities, as well as to protect agricultural lands, as one of the city's valuable resources, from the depreciating effect of the unwarranted intrusion of contrary uses. This district will also protect established agricultural operations and activities. No area initially shall be zoned as an Agricultural - Horticultural District unless the proposed area consists of a contiguous area of at least 100 acres primarily used for agricultural or horticultural purposes.

B. The following uses are permitted as a matter of right:

(1) Agricultural and horticultural uses of land defined more specifically as follows:

(a) Agricultural use land.

Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

(b) Horticultural use.

[1] Land shall be deemed to be in horticultural use when devoted to the production for sale of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

[2] Notwithstanding these definitions, commercial poultry raising, commercial slaughtering and processing of large animals (i.e. horses, cows, pigs, sheep or goats), commercial dog kennels and commercial mushroom farming shall not be permitted or conducted on the premises.

(2) A one-family dwelling for each owner or tenant family per 100 acres of land.

(3) Accessory structures as are appropriate to and supportive of the agricultural or horticultural uses, including, but not limited to, barns, cribs, stables, sheds, shops, bins, tanks and silos, provided that any building or enclosure for the keeping of animals or poultry shall be located at least 50 feet from any lot lines and 100 feet from any dwelling not on the premises.

(4) One highway or other roadside-retail stand as an accessory use and structure for each owner or tenant for the retail selling of farm produce grown in the district and as augmented by similar produce or other products that are customarily associated with such agricultural roadside-retail stands. No more than one such stand shall be permitted for each 100 acres of land.

(5) Signs, subject to the provisions of § 230-37 of this chapter.

(6) Public utility rights-of-way and structures in accordance with § 230-38 of this chapter.

Two municipal water wells are located on the property, which serve the Penn Farm and some of the surrounding community. These wells are the primary water supply for the City of New Castle, and as such there are two Wellhead Protection Areas that apply to uses of the farm. The City of New Castle Source Water and Well Head Protection Code as detailed in Sections 230-40.3-4-5-6-7-8 of the City Zoning Code are attached as Exhibit E.

## II. Conditions for Proposers

Every Proposal prepared in response to this RFP shall be prepared at the sole cost and expense of the Proposer and shall be prepared by the Proposer with the express understanding that any and all claims to reimbursement for the cost and expense of its preparation are waived. Four copies of the Proposal shall be submitted to the Trustees for its review in response to this RFP. Proposals must be submitted in their entirety to the Trustees at the address below on or prior to Monday, August 2, 2010, 2:00 p.m. Eastern Standard Time:

**Delaware Agricultural Lands Preservation/Trustees  
Proposal for the Penn Farm  
2320 S. DuPont Highway, Dover, DE 19901  
Attn: Mr. Michael H. McGrath**

Site visits may be arranged by contacting Trustee, Chris Castagno at 302-545-8479 or Chris.Castagno@gmail.com.

The Trustees reserves and holds the following rights and options with respect to each and every Proposal submitted in response to this RFP, and any such right and/or option to be exercised is at the discretion of the Trustees:

- A. To reject any and all Proposals and for any reason whatsoever.
- B. To supplement, amend, or otherwise modify this RFP and to cancel this RFP with or without the substitution of another request for Proposal.
- C. To issue additional and subsequent solicitations for statements of qualifications, and to conduct further investigations with respect to the qualifications of each person submitting a Proposal.

If any potential Proposer is in doubt as to the meaning of any part of this RFP, they may submit to Michael McGrath, (contact shown above) a written request for an interpretation thereof. The Proposer submitting the request will be responsible for its prompt and actual delivery. Any interpretation of the request will be made only by an addendum duly issued. A copy of such addendum shall be mailed or delivered to each person receiving the RFP. The Trustees will not be responsible for any other explanations or interpretations of such request that anyone presumes to make on behalf of the Trustees.

The criteria for evaluating the Proposal submitted in response to this RFP and any selection of a Proposer shall be based on:

- A. Responsiveness and completeness of the Proposal with respect to this RFP;
- B. Proposed use of the Penn Farm and the extent to which said proposed use will further the objectives and goals of the Trustees;
- C. The proposed rental rates for all or part of the following:
  - Farm land
  - Granary & Dairy Barn
  - Farm Residence
  - Retail building
  -
- D. Qualifications of the Proposer;
- E. Experience of the Proposer.

The most successful Proposer will make a proposal that defines a direct to consumer, “grower-direct” business model and will possess some or all of the following skills:

- Be technically competent in the business of developing, managing and marketing a mixed-product yield from a small farm (112 Acre) environment.
- Be experienced in merchandising agricultural products and related services through wholesale and retail channels using his or her own means or with partnership arrangements.
- Be committed to promoting the farm and its activities to the community through education and other involvement, including community farming models or sharecropping.
- Be licensed or plan to be licensed through the State of Delaware and City of New Castle.

### III. Proposal Submittal Requirements and Criteria

The Proposal shall include at a minimum, the following information submitted in this order:

#### A. Proposer Information

1. Provide Proposer's name, address, telephone number, email address and contact person.

#### B. Proposed Terms of the Agricultural Lease

The Proposal Form provided shall be properly marked and submitted in ink or by copier. The Proposer must clearly define the proposed rental rates, the basis upon which the rental will be paid for the agricultural lease, uses of the Residence and the Retail Building, and the proposed term thereof, which shall be for a minimum of five (5) years and renewal terms of five (5) years with a proposal of terms, performance measurements and metrics that Proposer would agree to. The Proposer shall also clearly define the proposed use of the Penn Farm and any structures that the Proposer intends to place on the premises and submit a business plan for the operation of said property.

#### C. Qualifications

The Proposer shall provide a brief description of the Proposer's qualifications and experience with respect to the proposed agricultural use and business development and management.

#### D. Delivery of Proposal

The Proposer shall be solely responsible for delivering the Proposal to the Trustees at the location specified and by the Proposal submission deadline. No officer, employee or agent of the Trustees is authorized to accept receipt of a Proposal on behalf of the Trustees at any other time or place than shown above as Delaware Agricultural Lands Preservation/Trustees. Trustees shall have no responsibility for receipt of mailed Proposals delivered otherwise than to the location aforesaid. Faxed Proposals are not acceptable.

### IV. Award of Proposal

The Trustees expressly reserves the right to reject any or all Proposals for any reason or that in its judgment, does not meet the requirements of the RFP, and to waive any informalities or irregularities in the Proposal received. Proposals containing omissions and discrepancies between words and numbers for amounts or irregularities of any kind may be rejected.

The Trustees may select for negotiation the Proposal that it considers in its sole discretion, meets the best interest of the Trustees. The Trustees reserves the right to conduct negotiations separately or concurrently with one or more competing Proposals.

V. Form of Lease

The form of the Agricultural Lease for the Penn Farm will be negotiated and will include and/or address, among other things, the following provisions:

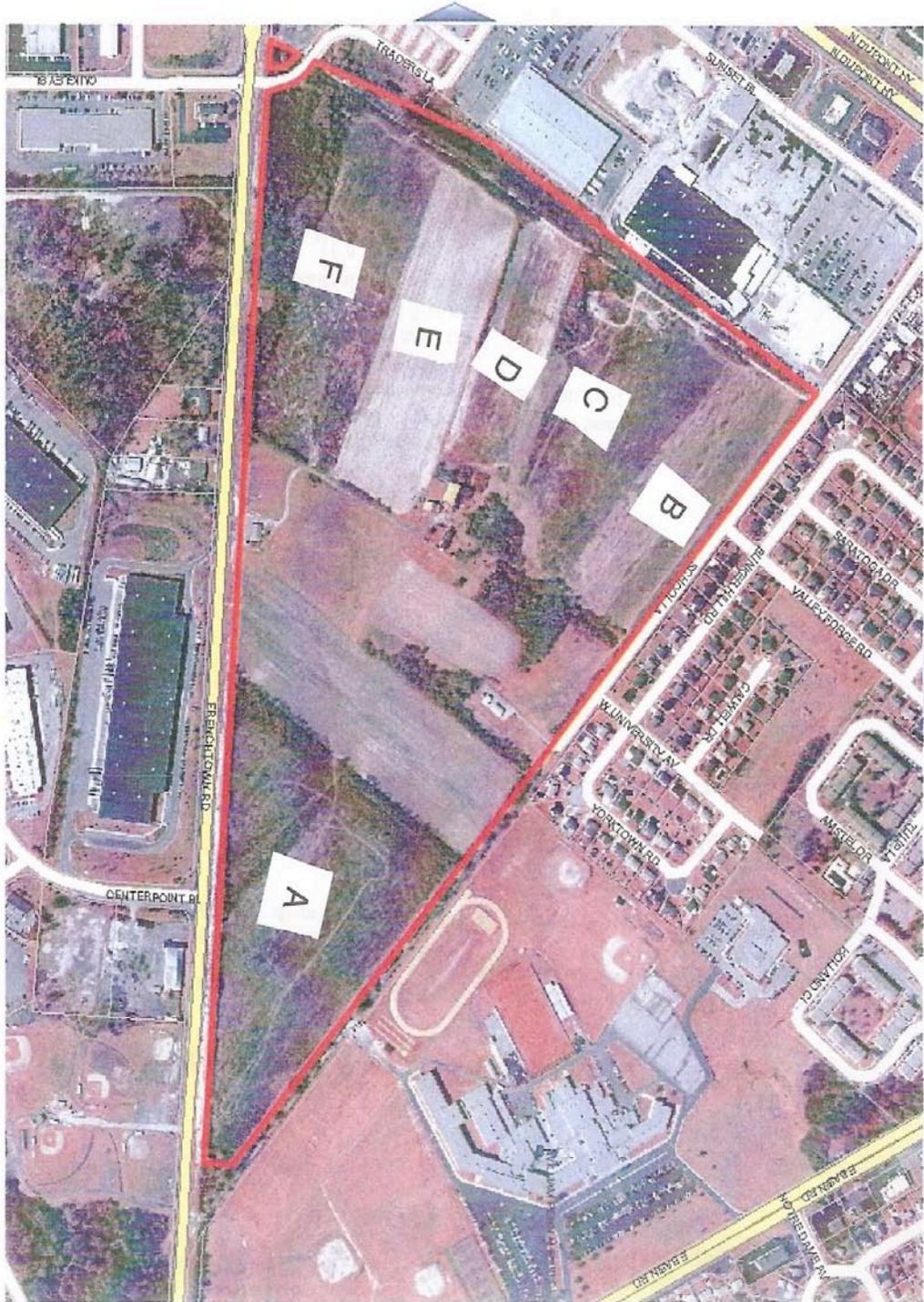
- (a) A security deposit payable at the time of lease signing, which will be refunded upon satisfactory completion of all terms of the lease.
- (b) A late payment penalty of five (5) percent of the rent will be due and payable for any rental payment not made on or before the due date;
- (c) All utilities associated with the proposed use of the premises will be the responsibility of the tenant. All property taxes and property insurance will be the responsibility of the tenant and payable to the Trustees. The Trustees will invoice the tenant annually, or quarterly or upon receipt from the taxing authorities and insurance company. New Castle County and City of New Castle property taxes were \$2,031.67 combined for the 2009 tax year.
- (d) No structures or other improvements shall be erected on the premises without the prior written consent of the Trustees. Any permitted structures or improvements on the premises and must be removed by the tenant at the end of the term of the lease, at the tenant's sole cost and expense, or these structures or improvements shall become the property of the Trustees;
- (e) Any debris on the premises must be removed by the tenant at the end of the term of the lease, at the tenant's sole cost and expense;
- (f) Tenant must comply with all applicable federal, state, and local laws, ordinances, and regulations (including but not limited to zoning and environmental laws) relating to the improvements and the use of the premises;
- (g) The lease will contain language that the tenant will indemnify and hold harmless the Trustees for any claims and costs (including reasonable attorneys' fees) arising out of the tenant's use of the premises;
- (h) Tenant must at all times during the term of the lease maintain, at tenant's cost and with companies acceptable to the Trustees, commercial general liability and property damage

insurance with combined single liability limits of not less than \$2,000,000 aggregate and \$1,000,000.00 per occurrence, covering tenant's activities and operations on the premises, and shall name the Trustees as additional insured. Tenant must also carry an umbrella policy of \$1,000,000 and workman's compensation for any employee working on the property.

- (i) Tenant shall not permit any mechanic's lien or similar lien to stand against any portion of the premises;
- (j) The Trustees shall be afforded reasonable access to the premises during the term of the lease for purposes of inspection;
- (k) Tenant will not be allowed to assign or sublet all or a portion of the lease without the prior written consent of the Trustees;
- (l) Signs erected on the premises shall conform to all applicable regulations and shall be submitted to the Trustees in advance for approval;
- (m) No hazardous materials, excepting materials properly labeled as for agricultural use, shall be used on the premises;
- (n) All agricultural uses of the premises shall be consistent with generally accepted agricultural practices. A Conservation Plan shall be submitted as required by the USDA, Natural Resources Conservation Service, New Castle Conservation District. An example is shown as Exhibit C. Provisions shall be made for the maintenance and preservation of the lands not farmed, as mutually agreed to with the Trustees and the USDA, NRCS.
- (o) Historic barns are located on the premises. Any use of the barns by the tenant shall be at the tenant's risk and the tenant shall be responsible for performing any necessary repairs to both the exterior and interior of the barns to correct any unsafe condition that might exist. If the barns are not used as a part of Tenant's proposed use, Tenant shall take adequate measures to prevent any public access to the barn unless the Trustees designate another use or user for the structures.
- (p) A historic residence is located on the premises. Any use of the residence by the tenant shall be at the tenant's risk, and tenant shall be responsible for performing any necessary repairs to both the exterior and interior of the residence to correct any unsafe condition that might exist. If the residence is not used as a part of the tenant's proposed use, tenant shall take adequate measures to prevent any public access to the residence unless the Trustees designate another use or user for the structures.

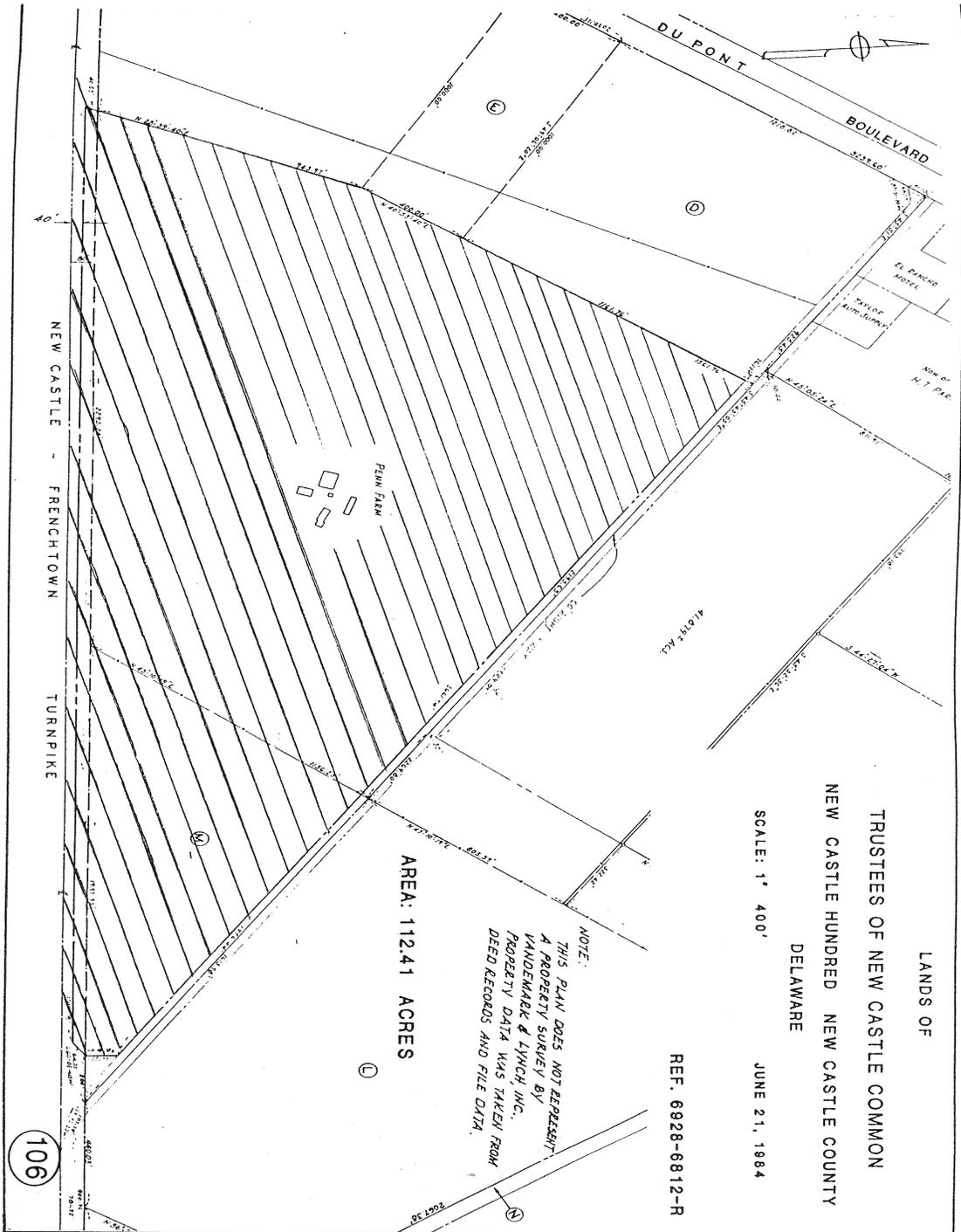
# EXHIBIT A

<http://dmz-arcims02.nccde.org/NCCPportal/map.htm>



1/8/2006

# EXHIBIT B



CJC 4/01/10

# EXHIBIT C

## Conservation Plan Map

Date: 3/29/2010

Customer(s): TRUSTEES OF NEW CASTLE COMMON  
 District: NEW CASTLE CONSERVATION DISTRICT

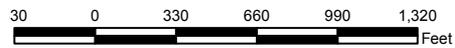
Field Office: NEWARK SERVICE CENTER  
 Agency: USDA, Natural Res. Cons. Service  
 Assisted By: Marianne M Hardesty  
 State and County: DE, NEW CASTLE

Legal Description: T-990



### Legend

- Grassed Waterway Planned
- Wells
- Quigley\_Joseph\_J-----NR044-Consplan
- Soils Map
- Roads



# EXHIBIT D

## Map Unit Description

New Castle County, Delaware

[Minor map unit components are excluded from this report]

Map unit: MTB - Mattapex silt loam, 2 to 5 percent slopes

Component: Mattapex (80%)

*The Mattapex component makes up 80 percent of the map unit. Slopes are 2 to 5 percent. This component is on flats, uplands. The parent material consists of silty eolian deposits over fluviomarine sediments. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is moderately well drained. Water movement in the most restrictive layer is moderately low. Available water to a depth of 60 inches is moderate. Shrink-swell potential is low. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 24 inches during February. Organic matter content in the surface horizon is about 2 percent. Nonirrigated land capability classification is 2e. Irrigated land capability classification is 2e. This soil does not meet hydric criteria.*

Map unit: MuB - Mattapex-Urban land complex, 0 to 5 percent slopes

Component: Mattapex (50%)

*The Mattapex component makes up 50 percent of the map unit. Slopes are 0 to 5 percent. This component is on uplands, flats. The parent material consists of silty eolian deposits over fluviomarine sediments. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is moderately well drained. Water movement in the most restrictive layer is moderately low. Available water to a depth of 60 inches is moderate. Shrink-swell potential is low. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 24 inches during February. Organic matter content in the surface horizon is about 2 percent. Nonirrigated land capability classification is 2e. Irrigated land capability classification is 2e. This soil does not meet hydric criteria.*

Component: Urban land (40%)

*Generated brief soil descriptions are created for major soil components. The Urban land is a miscellaneous area.*

Map unit: ReB - Reybold silt loam, 2 to 5 percent slopes

Component: Reybold (75%)

*The Reybold component makes up 75 percent of the map unit. Slopes are 2 to 5 percent. This component is on interfluves. The parent material consists of high silt loamy eolian deposits over fluviomarine deposits. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is well drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches is moderate. Shrink-swell potential is low. This soil is not flooded. It is not ponded. There is no zone of water saturation within a depth of 72 inches. Organic matter content in the surface horizon is about 1 percent. Nonirrigated land capability classification is 2e. This soil does not meet hydric criteria.*

Map unit: Up - Urban land

Component: Urban land (90%)

*Generated brief soil descriptions are created for major soil components. The Urban land is a miscellaneous area.*

Map unit: UzF - Udorthents, 10 to 30 percent slopes

Component: Udorthents, loamy (85%)

*The Udorthents, loamy component makes up 85 percent of the map unit. Slopes are 10 to 30 percent. This component is on hillslopes, uplands. The parent material consists of fluviomarine sediments. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is well drained. Water movement in the most restrictive layer is high. Available water to a depth of 60 inches is moderate. Shrink-swell potential is low. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 45 inches during January. Organic matter content in the surface horizon is about 2 percent. Nonirrigated land capability classification is 7e. This soil does not meet hydric criteria.*

## EXHIBIT E

### CITY OF NEW CASTLE ZONING CODE 230-40

#### § 230-40.3 Source water protection areas.

A. Source water protection areas (CWRPAs) encompass Class A and Class C Water Resource Protection areas. All such areas are as depicted on the three-map series, specifically Sheet 1, "Water Resource Protection Areas for...New Castle County, Delaware," prepared by the Water Resources Agency for New Castle County, dated 1993, or as amended. These maps are available in GIS overlays from the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Source Water Assessment and Protection Program.

B. These areas shall be managed as required by the following sections to protect public drinking water resources from activities and substances that may harm water quality and subtract from overall water quantity.

#### § 230-40.4 Prohibited and restricted uses.

A. Land use restrictions and uses in source water protections areas. Activities shall be subject to the land use restrictions contained within this article that will protect the quality and quantity of groundwater supplies.

	Land Use	Well Head Protection Area	
		Class A	Class C
	Aboveground storage tanks	No	<sup>1</sup>
	Automobile body/repair shop	No	No
	Chemical processing/storage facility	No	No
	Dry cleaner	No	No
	Dry wells/sumps <sup>2</sup>	No	No
	Electrical/electronic manufacturing facility	No	No
	Equipment maintenance/fueling areas	No	No
	Fleet/trucking/bus terminal	No	No
	Gas station	No	No
	Hazardous Waste	No	No
	Injection wells <sup>3</sup>	No	No
	Irrigated nursery/greenhouse stock	No	Yes
	Junk/scrap/salvage yard	No	No
	Machine shop	No	No
	Manure storage	No	No
	Metal plating/finishing/fabricating facility	No	No
	Mines/gravel pit	No	No
	On-site wastewater treatment and disposal systems	No	No
	Underground storage tanks	No	No
	Vessel storage	No	No
	Wood preserving/treating facility	No	No
NOTES:			
Conditional:			
<sup>1</sup> See narrative section.			
<sup>2</sup> Dry wells/sumps, except for single-family residences directing gutter downspouts to a drywell.			
<sup>3</sup> Injection wells other than those used in the remediation of groundwater contamination that inject oxygen-releasing compounds.			

## **§ 230-40.5 Wellhead protection areas.**

A. The DNREC Source Water Assessment and Protection Program delineates wellhead protection areas (WHPAs) to ensure the integrity of public drinking water. Deep wells drilled into confined aquifers and low-volume wells in unconfined aquifers have, at minimum, a three-hundred-foot radius wellhead protection area. The wellhead protection area surrounding public supply wells in unconfined aquifers that pump more than 50,000 gallons per day are delineated using a mathematical model. This type of well draws large quantities of water and can have much larger wellhead protection areas. Classifications have been created to manage land use within the wellhead protection area. They are defined as:

(1) Class A water resource protection area is the surface area extending in a three-hundred-foot radius around the wellhead. The protection area around the well may be reduced to a one-hundred-fifty-foot radius, provided a hydrogeological report, prepared by a Delaware Registered Geologist and submitted to the satisfaction of the Delaware Geological Survey and the DNREC, is prepared. The report must certify that the minimum sixty-day time of travel from a point to the public water supply well is maintained; and the well draws from a confined aquifer.

(2) Class C water resource protection area is the remaining surface area of the wellhead protection area outside the Class A Water Resource Protection area. Land use restrictions within the CWRP area are required to ensure adequate protection of the public drinking water supply.

B. AWRP area requirements.

(1) Parcels of land within the AWRP and wellhead protection area will be preserved in a natural condition with the exception of impervious surface limited to building and access associated with the well and distribution and treatment facilities and their maintenance.

(2) Aboveground storage tanks for materials used in the treatment facility operation are permitted.

(3) Underground storage tanks are prohibited.

(4) Storm water runoff will be diverted away from the wellhead.

(5) Storm water infiltration practices designed to handle runoff are prohibited.

C. CWRP area requirements.

(1) Impervious cover. Impervious cover shall not exceed 20% per parcel within the CWRP area.

(2) Storm water.

(a) Storm water shall be treated by an approved storm water quality management practice in accordance with current requirements of the Delaware Sediment and Storm water Regulations dated October 11, 2006 or as later revised.

(b) For all new construction, all structures shall be required to discharge roof drains into recharge systems. Recharge systems shall be in accordance with Section 10.0 of the Delaware Sediment and Storm water Regulations dated October 11, 2006 or as later revised.

(3) Underground storage tanks.

(a) Underground storage tanks with a capacity greater than 110 gallons containing petroleum, and residential and agricultural USTs with a capacity greater than 1,100 gallons containing

heating fuel or motor fuel shall not be permitted within a one-thousand-five-hundred-foot radius of a delineated wellhead protection area.

(b) Underground storage tanks with a capacity greater than 110 gallons containing a hazardous substance as defined in CERCLA § 101(14) shall not be permitted in a designated wellhead area.

*Editor's Note: See 42 U.S.C. § 9601*

(4) Aboveground storage tanks. Aboveground storage tanks (ASTs) may not be permitted in delineated wellhead areas. Requests for siting of ASTs shall be subject to review by the Municipal Services Commission, who shall provide a recommendation for action by the City Council.

(5) Wastewater treatment and disposal systems. On-site wastewater treatment and disposal systems shall not be permitted.

### **§ 230-40.6 Boundary determination for CWRPA.**

A. All subdivision and land development plans depicting development or land disturbance submitted for City review shall be evaluated for the existence of source water protection areas. Source water protection areas encompass Class A and Class C Water Resource Protection areas. All such areas are as depicted on the three-map series, specifically Sheet 1, "Water Resource Protection Areas for...New Castle County, Delaware," prepared by the Water Resources Agency for New Castle County, dated 1993, or as amended. These maps are available in GIS overlays from the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Source Water Assessment and Protection Program. If a CWRPA exists within a proposed development site, the boundaries of these areas shall be delineated on the plan by the applicant's State of Delaware professional engineer or professional geologist.

B. DNREC SWAPP may, when based on sound science and information, revise and update the overlay maps of wellhead protection areas.

C. When there appears to be a conflict between the mapped boundary and actual site conditions, the applicant may engage the services of professional geologist to prepare a report intended to determine more accurately the precise boundary of the source water protection area. The report shall include:

(1) A detailed topographic layout of the subdivision and/or area to be developed and prepared by a state-registered professional land surveyor or professional geologist;

(2) Evidence derived from a site-specific investigation that may include aquifer testing, test borings, test pits, observation wells, groundwater elevations, and topography surveys as appropriate for the type of source water protection area that clearly demonstrate that the area in question does not meet the definition of a source water protection area as defined;

(3) Notwithstanding any other section of this chapter, if an owner initiates a precise boundary delineation pursuant to this section, any and all time review limitations shall be stayed pending the submission of the complete report contemplated by this section. Following submission of the report and all supporting documents, the Department shall have 90 days to finally approve or disapprove the exploratory sketch plan submission or such further time as deemed necessary by the Department, but not to exceed an additional 90 days.

### **§ 230-40.7 Redevelopment.**

#### A. Impervious cover restrictions.

(1) Site modifications that require site plan approval must create a fifteen-percent reduction in the amount of impervious cover on the site when compared to pre-redevelopment conditions.

(2) If the fifteen-percent reduction would require a site to go below the twenty-percent maximum impervious cover provisions of source water protection areas, then the maximum impervious surface cover for the site is 20%.

#### B. Storm water.

(1) Sites that do not meet the twenty-percent impervious cover threshold must employ rooftop infiltration practices. Storm water shall be treated by an approved storm water quality management practice in accordance with current requirements of the Delaware Sediment and Storm water Regulations dated October 11, 2006 or as later revised.

#### C. Vacant property.

(1) Section 230-40.7, Redevelopment, Subsection A, Impervious cover restrictions, does not apply to vacant property. These properties must comply with the source water protection area regulations.

### **§ 230-40.8 Nonconforming uses**

A. Nonconforming uses may continue in wellhead protection areas, in the form in which they existed at the time of the adoption of this article, unless they pose a direct hazard to the City's water supply, as determined by the Municipal Services Commission Water Department upon advice from the Delaware Division of Public Health, or are causing some foreign substances (oil, salts, chemicals, or other substances) to be introduced into the City's water supply, as determined by the water department upon advice from DNREC's Division of Air and Waste Management and/or Division of Water Resources. In the latter case, the building department shall issue a mandatory cease and desist to stop the offending activity within the area. Nonconforming existing underground or aboveground storage of oil, petroleum, and petroleum products shall require secondary containment pursuant to the State of Delaware regulations governing underground storage tanks or for aboveground storage of petroleum products secondary containment facilities capable of capturing the material stored on the site, for existing facilities that are proposed either to be upgraded or replaced.

B. Any well in existence prior to the adoption of this article (nonconforming use) may be replaced or modified, and the replacement or modified well(s) is exempt from the conditions of this article.