Firearms Regulations

Delaware Department of Agriculture

Department of Natural Resources and Environmental Control

DNREC Lukens Drive Offices, New Castle [2/15/18]

DNREC Auditorium, Kings Highway, Dover [2/20/18]

Sussex Central High School, Georgetown [2/22/18]

Public Hearing: March 12, 2018

DNREC R&R Building Auditorium, Dover

Delaware Constitution of 1897
Amended 1987

“A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.”

Second Amendment
United States Constitution

"A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed."

Bridgeville R&P Club v. DNREC

Declaratory judgment action, alleging that State Park and Forest firearms regulations in place for over fifty years violated the Delaware Constitution.

Plaintiffs claimed infringement of their right to carry firearms for self defense purposes on State land.

Lawsuit questioned who could carry firearms and where firearms could be carried.

Plaintiffs' Claims in Lawsuit:

- Law enforcement (active/retired) right to carry firearms
- Concealed carry permit holders right to carry firearms
- Storage of firearms in vehicles in parking lots
- Carrying firearms while riding bicycles on trails
- Carrying sidearms while hunting within State Forest

December 7, 2017 Court's Holding (Decision):

In a 3-2 decision, the Superior Court was reversed, and the DNREC and DDA firearms regulations were found to violate the State Constitution.

The Court held that DNREC and DDA cannot prevent active duty and qualified retired law enforcement officers from carrying firearms within Parks and Forests.

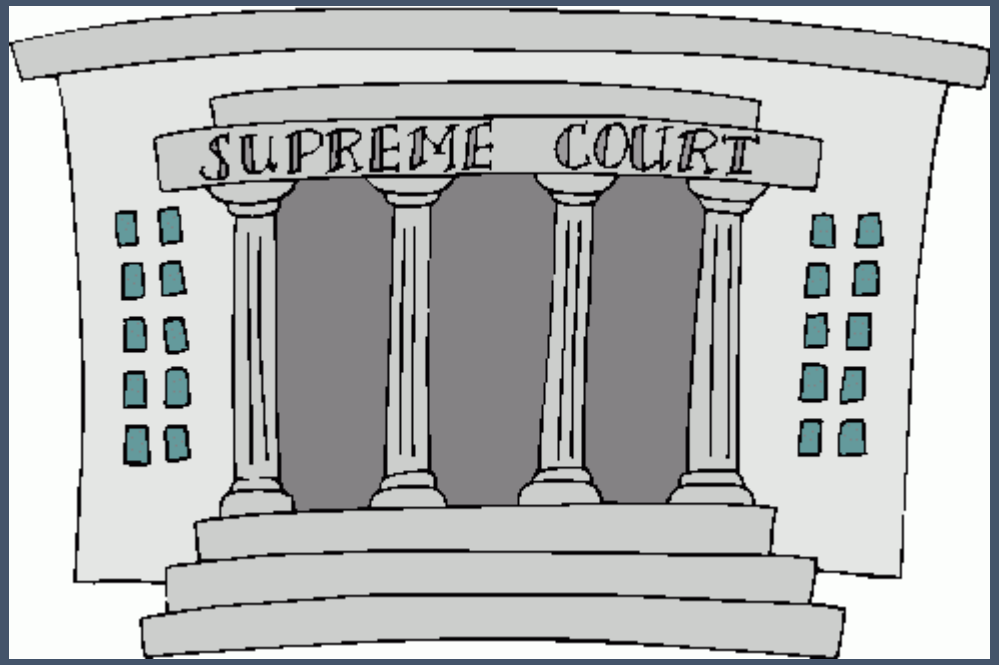
Further, the Court ruled that the agencies cannot prevent holders of valid concealed carry permits from carrying firearms within Parks and Forests.

[In Delaware, concealed carry permits are governed by 11 *Del.C.* §1441, which requires an application, criminal record search, limited training, and a $65 fee annually.]

The Court found that comprehensive prohibitions on firearms applicable to all visitors anywhere within State Parks and Forests were too broad.

Under the Delaware Constitution, restrictions on firearms are not permitted outside of limited and defined “sensitive” zones within Parks and Forests, according to the Court.

The Court's Opinion explains that gun-free zones must be subject to monitoring, and have checkpoints for entry and display of credentials, supervised by law enforcement.



The issue in the case was not whether the State could regulate firearms, but whether what the majority opinion termed a “near-total ban” on firearms could be justified.

The problem as the majority saw it was that “only a very limited class of visitors [hunters]” could “exercise a narrow sliver” of their Constitutional rights within 23,000 acres of parks and 18,000 acres of Forests.

The Court recognized that “the right to carry a firearm for self-defense is not absolute and may be restricted”.

The majority cited with approval the prohibition of firearms in “sensitive” places, so long as such restrictions were “narrow and few in number”.

The Opinion references the prohibition of firearms in visitors' centers and ranger offices in National Parks, as examples of such reasonable – and Constitutional – restrictions.

The Court gave examples of such permissible “place” restrictions as schools, recreation centers, athletic fields, sports stadiums, and government buildings.

According to the majority, “there certainly could be some ‘sensitive’ areas in State Parks and State Forests where the carrying of firearms may be restricted…”.

“We do not disagree that certain areas, such as places where classes of schoolchildren gather, many be deemed “sensitive”.

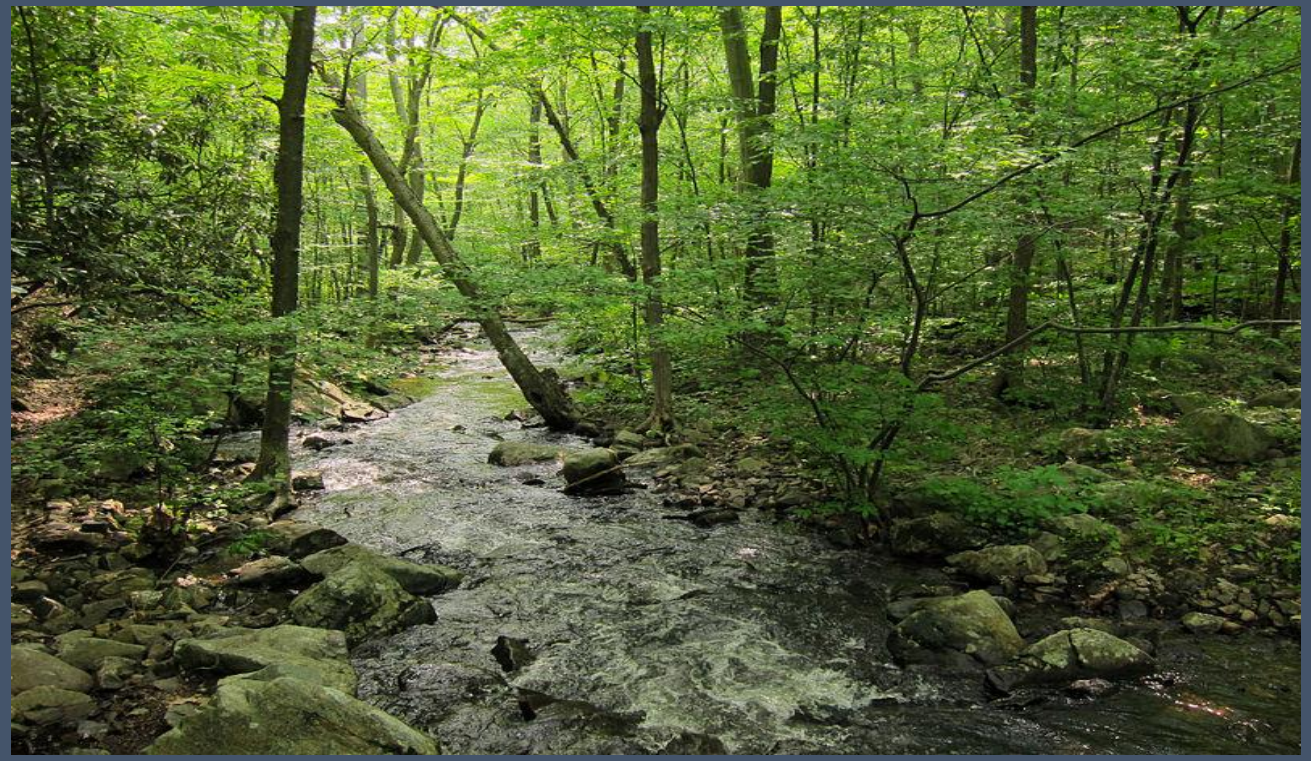
Interim Regulations

- §10119 of the Administrative Procedures Act
- Emergency = Imminent peril to public safety
- Published 12/26/17 (effective date of Court mandate)
- Effective immediately
- Limited duration of 120 + 60 = 180 days
- Agency must receive, consider, and respond to comments seeking reconsideration or revision of interim regulations.
- Will be superseded by revised regulations.

Proposed Regulations

- Published February 1, 2018 in *Register of Regulations*.
- Will supersede interim regulations when effective.
- Subject to APA notice, hearing, comment provisions.
- Workshops on 2/15, 2/20, and 2/22.
- Public hearing on March 12, 2018 in Dover at DNREC.
- Public comment period through March
- Formal promulgation deadline April 25, 2018 (can be extended to June 24, 2018).

The proposed regulations allow two large classes of visitors to carry firearms anywhere in State Parks or Forests or nature preserves: [1] thousands of active-duty and qualified retired law enforcement officers; and [2] over ten thousand concealed carry permit holders.



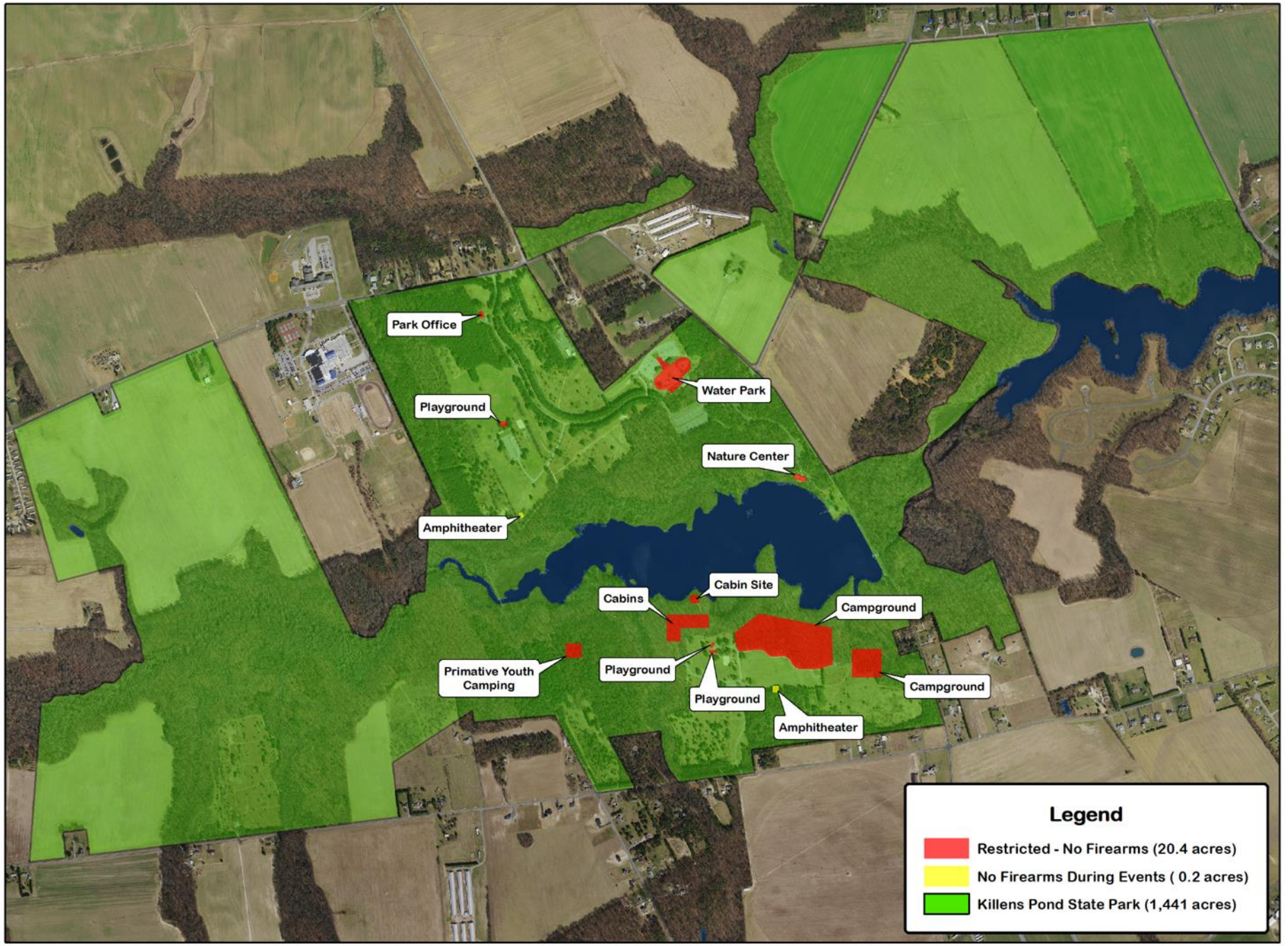
Anyone else who is not prohibited by law (under the Criminal Code provisions cited by the Court) may openly carry firearms anywhere but a "narrow sliver" of the Parks and Forests (and, to assure consistency, on Fish & Wildlife lands), identified by appropriate signage as limited "designated areas" where firearms are off limits (except for concealed carry permit holders and active duty or qualified retired law enforcement officers).

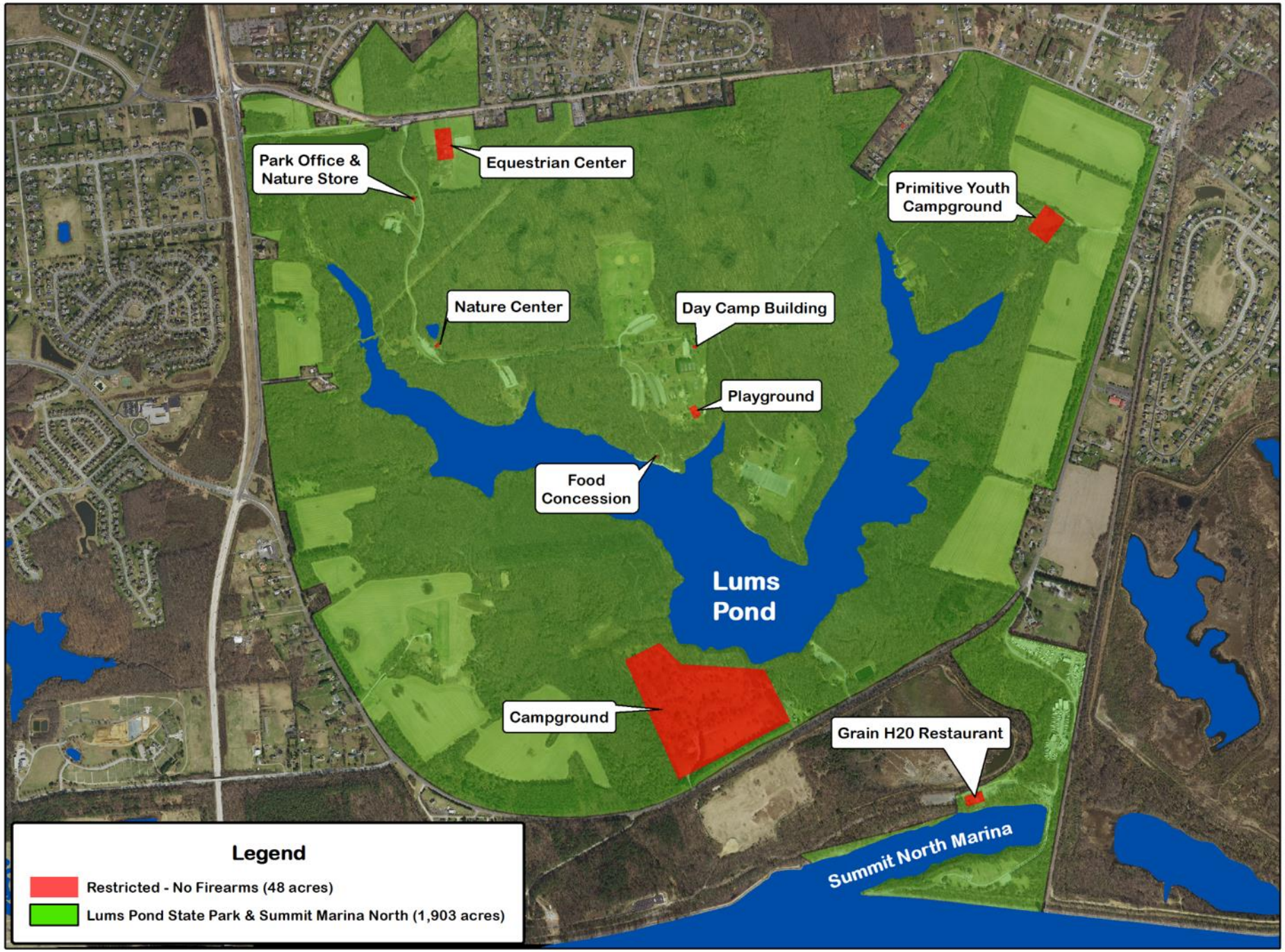
The interim and proposed regulations limit firearms restrictions to such sensitive places, narrowly-defined and few in number, where families and children are likely to be present, such as the educational facilities and dormitories at Cape Henlopen, or the recreational facilities at Lum's Pond, the waterpark at Killen's Pond, and the bathhouses and guarded beaches at Delaware Seashore State Park.

Likewise, the nature centers, lodges, and offices maintained within State Forests are a very limited “footprint” equivalent to the National Parks restrictions approved by the Court.

The regulations respond to the Court's concern for "controlled entry points" to gun-free areas, where visitors could be screened by security, and emphasized the need for "supervision by law enforcement personnel" in facilities that are "easily accessible to law enforcement and other emergency responders".

Delaware Bay
Youth Camp I
Youth Camp III
Bait & Tackle Shop
Bath House
Ranger Offices
Playground
Nature Center
Youth Camp II
Park Office
Campground
Swimming Beach
Amphitheater
Biden Center
Primitive Camping
Gordons Pond
Atlantic Ocean
Food Concession
Legend
Restricted - No Firearms (26.7 acres)
No Firearms During Events or at Guarded Beaches (30.4 acreas)
Cape Henlopen State Park (5,298 acres)


Park Office
Water Park
Playground
Nature Center
Amphitheater
Cabin Site
Cabins
Campground
Primative Youth Camping
Playground
Playground
Campground
Amphitheater
Legend
Restricted - No Firearms (20.4 acres)
No Firearms During Events (0.2 acres)
Killens Pond State Park (1,441 acres)


Park Office & Nature Store
Equestrian Center
Primitive Youth Campground
Nature Center
Day Camp Building
Playground
Food Concession
Lums Pond
Campground
Grain H20 Restaurant
Summit North Marina
Legend
Restricted - No Firearms (48 acres)
Lums Pond State Park & Summit Marina North (1,903 acres)

Cape Henlopen State Park:
Restricted = 57 acres (includes seasonal and temporary)
Unrestricted = 5,241 acres [98.9% of total acres]

Killens Pond State Park:
Restricted = 20.6 acres (includes temporary events)
Unrestricted = 1,420.4 acres [98.6% of total acres]

Lum's Pond State Park:
Restricted = 48 acres
Unrestricted = 1,855 acres [97.5% of total acres]

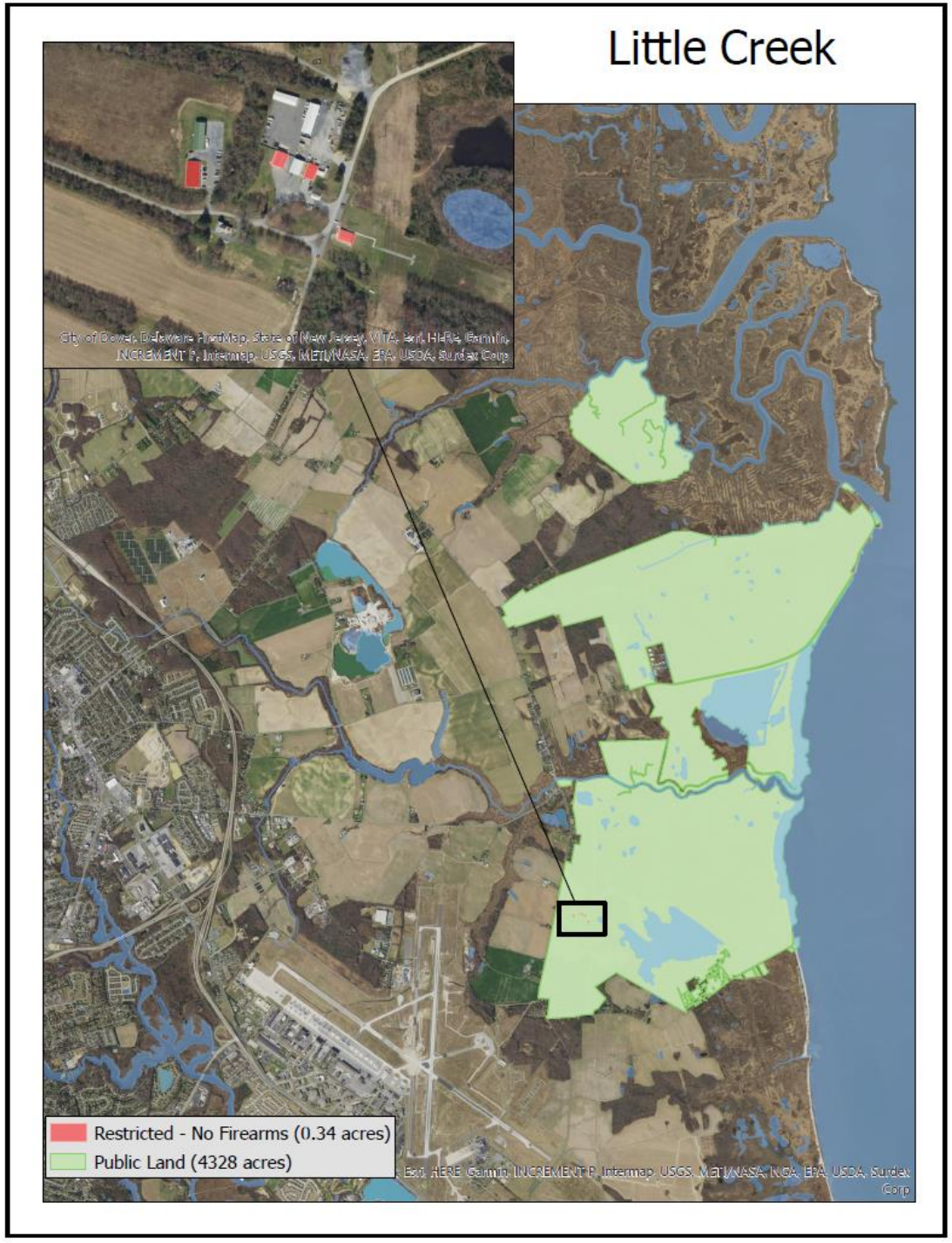
Restricted area
= 0.37 acres

Total land area
= 430 acres

Restricted
= .08 acres

Total area
= 2,401 acres

Restricted
= 0.34 acres



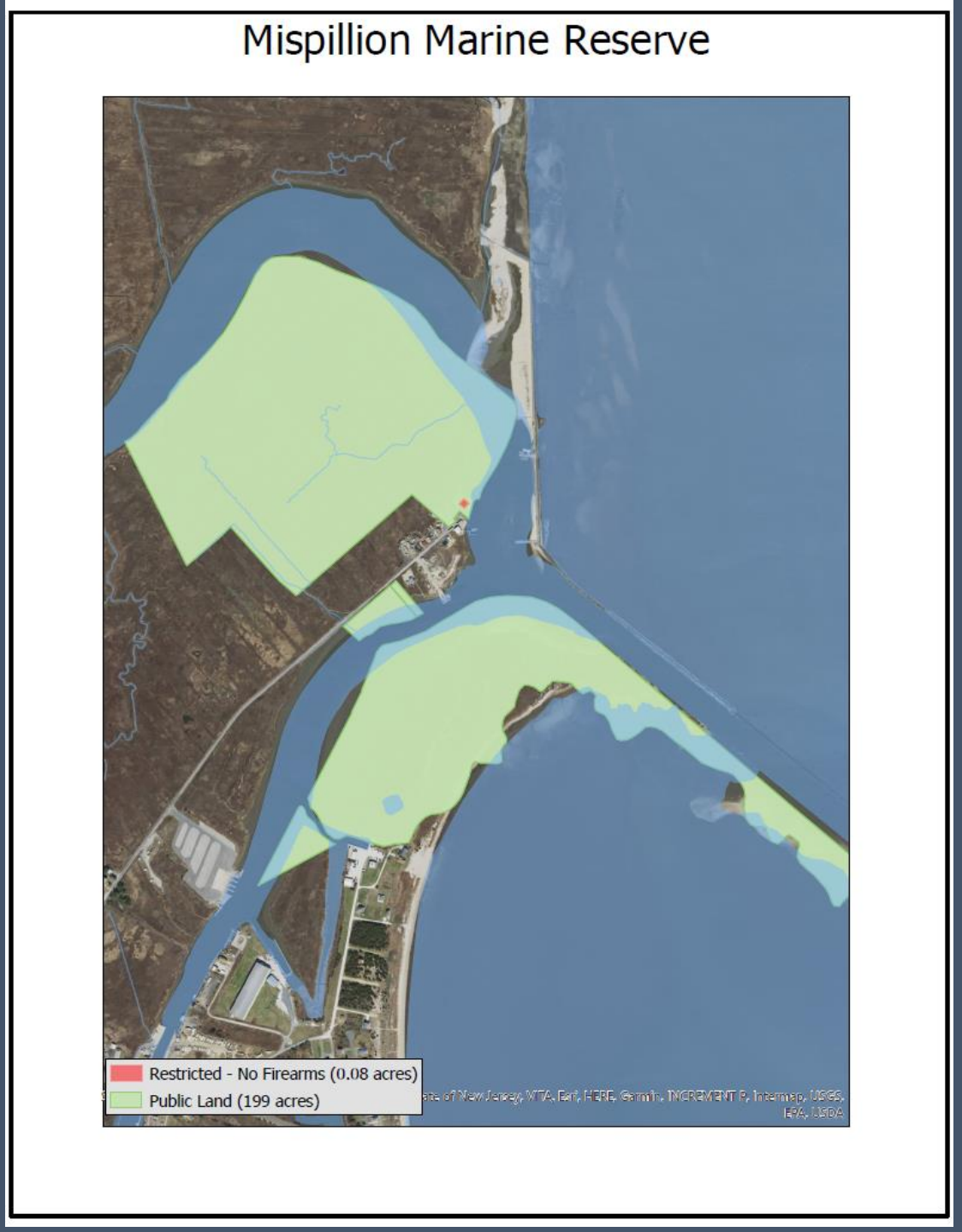
Total area
= 4,328 acres

Restricted
= .06 acres

McGinnis Pond

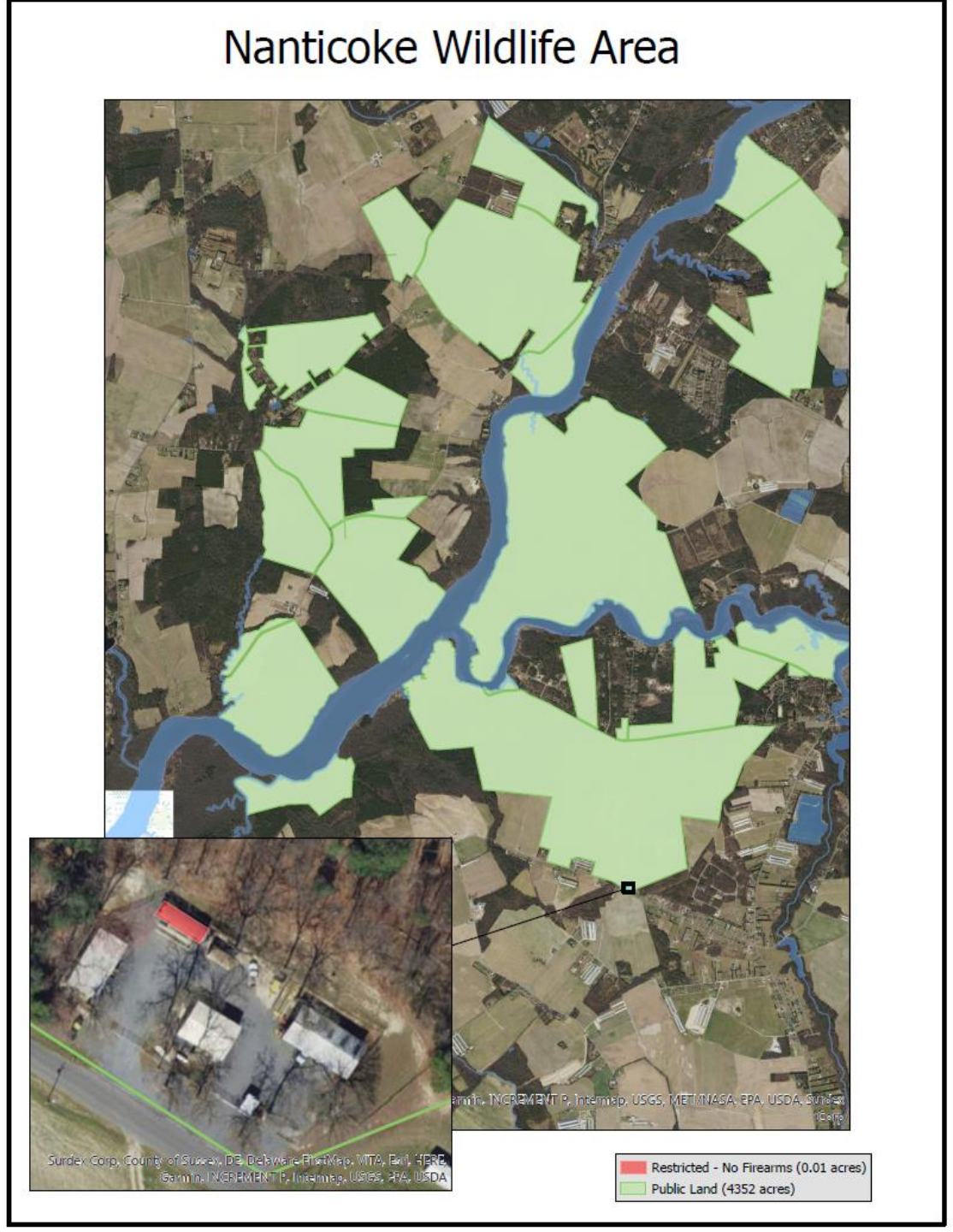
Total area
=142 acres

Restricted
= .08 acres



Total area
= 199 acres

Restricted
= .01 acres

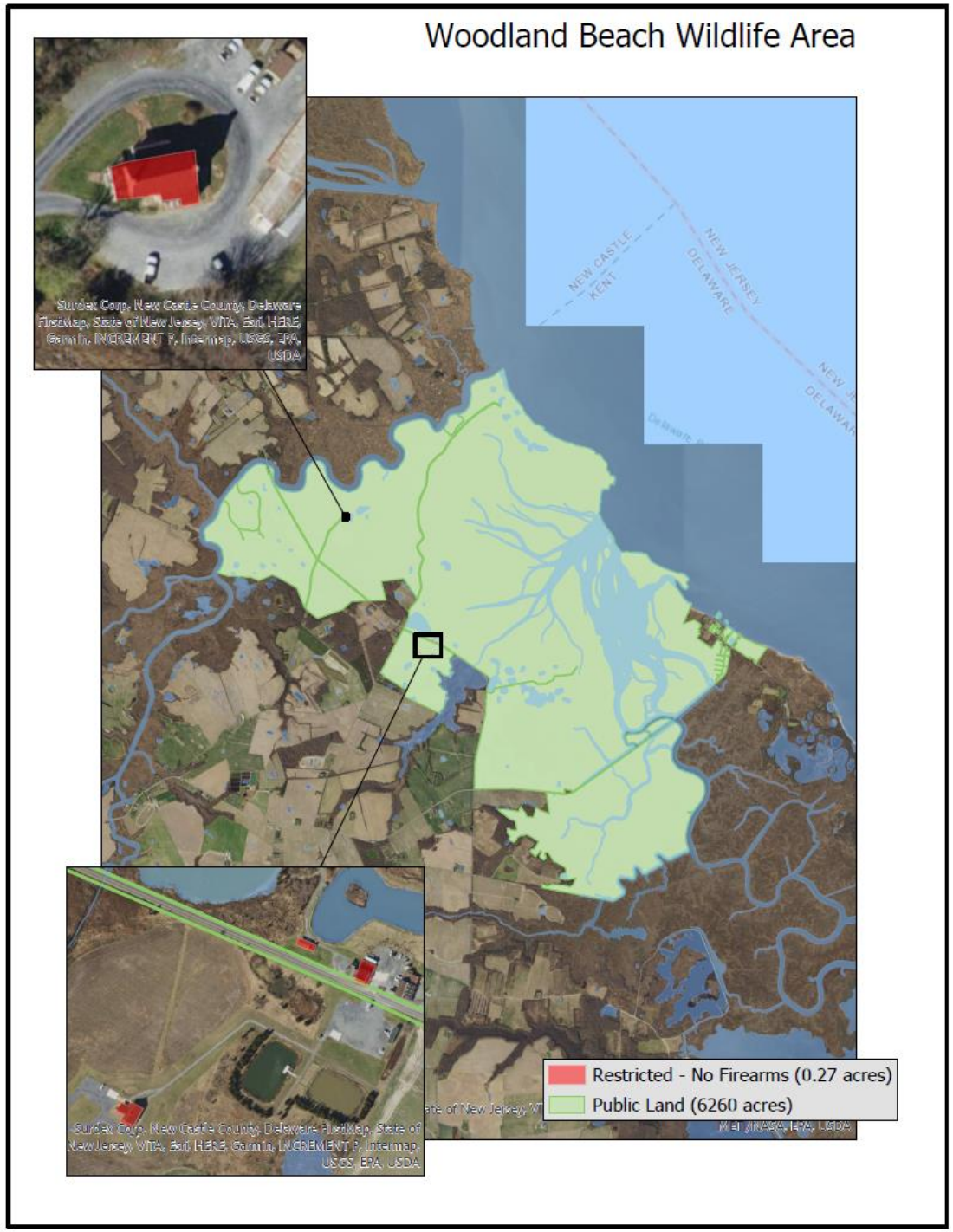


Total area
= 4,352 acres

Restricted
= .01 acres

Total area
= 4,442 acres

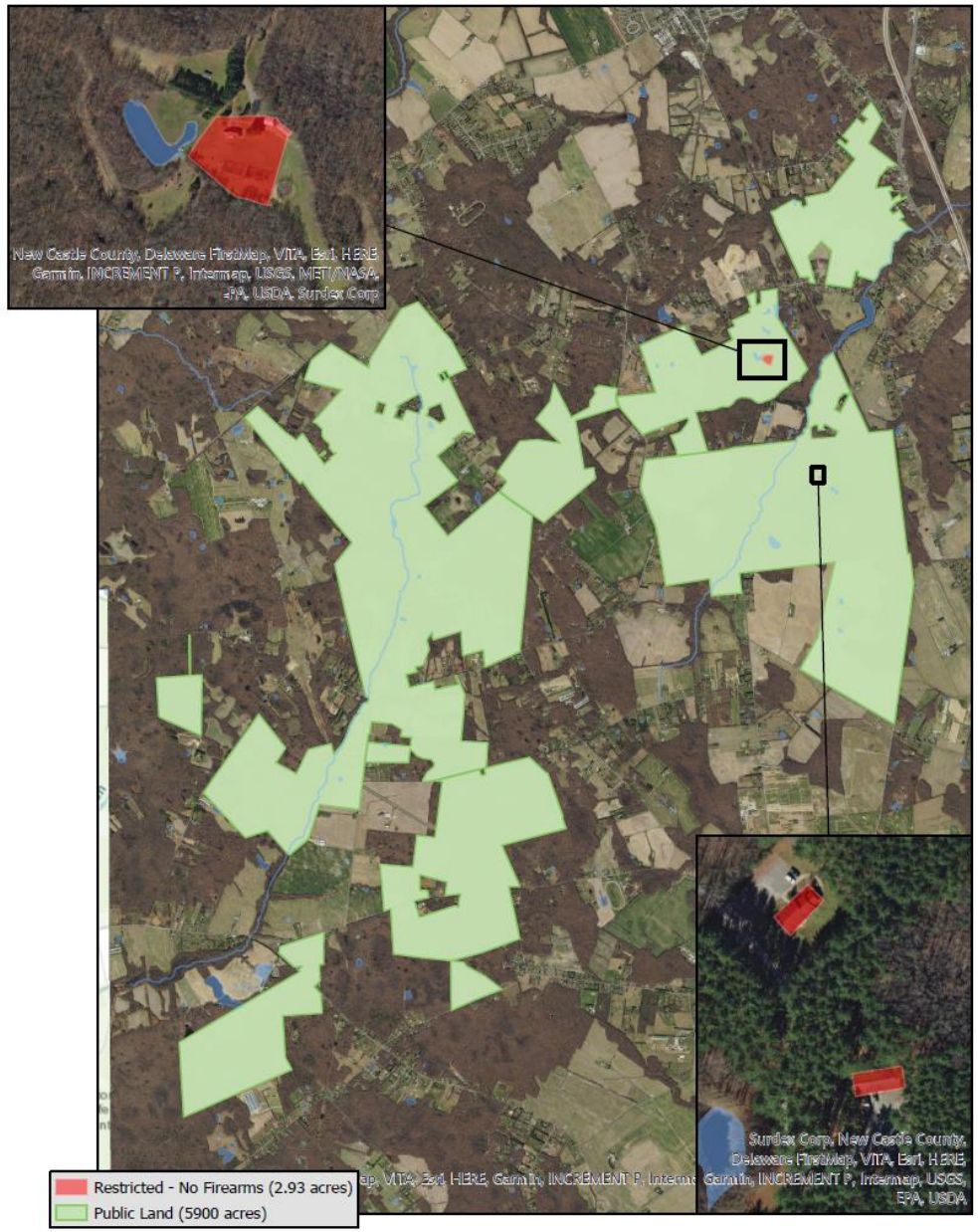
Restricted
= .27 acres



Total area =
6,260 acres

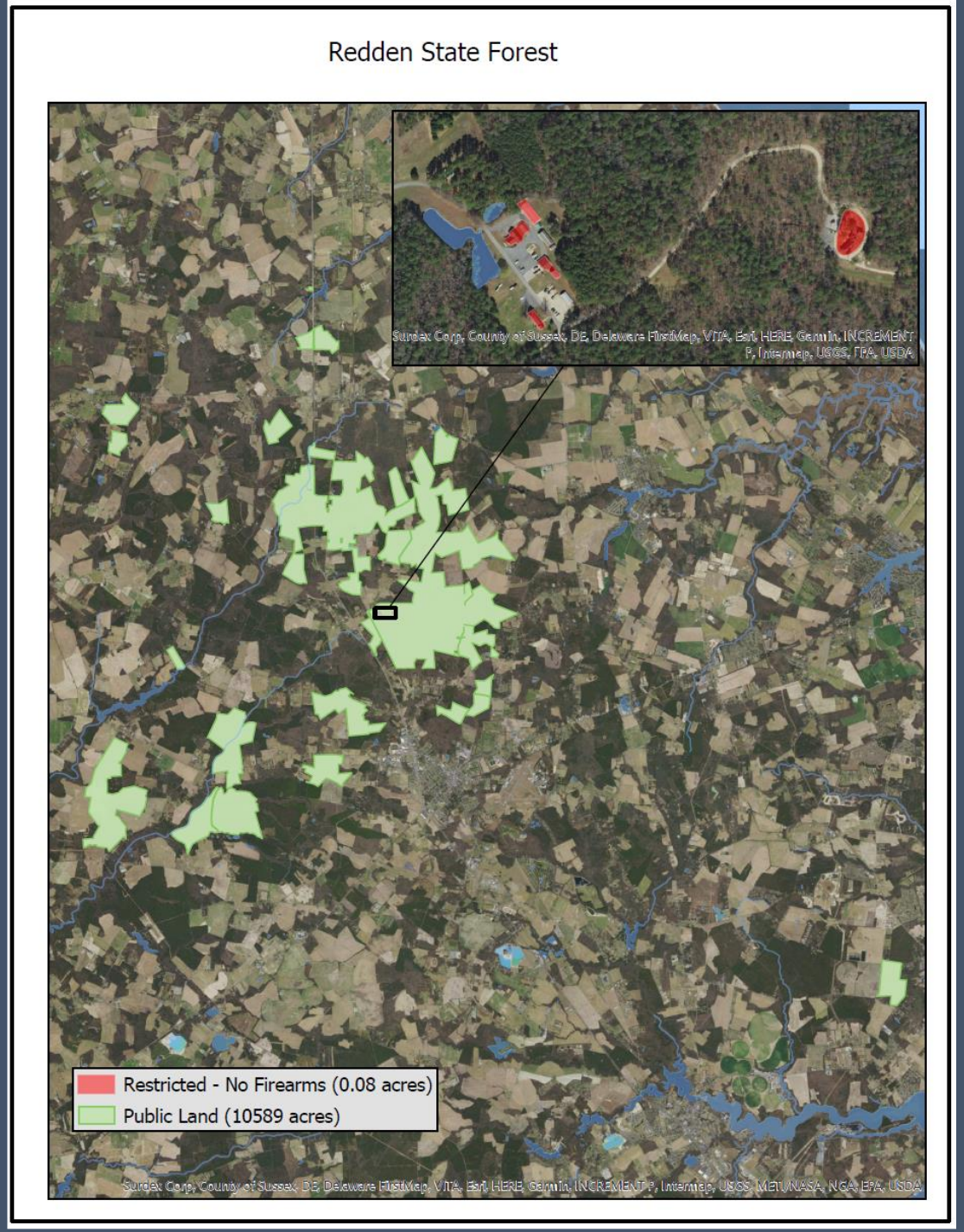
Restricted
= 2.93 acres

Blackbird State Forest



Total area
= 5,900 acres

Restricted
= .08 acres



Total area
= 10,589 acres

Restricted
= 1.46 acres

Taber State Forest

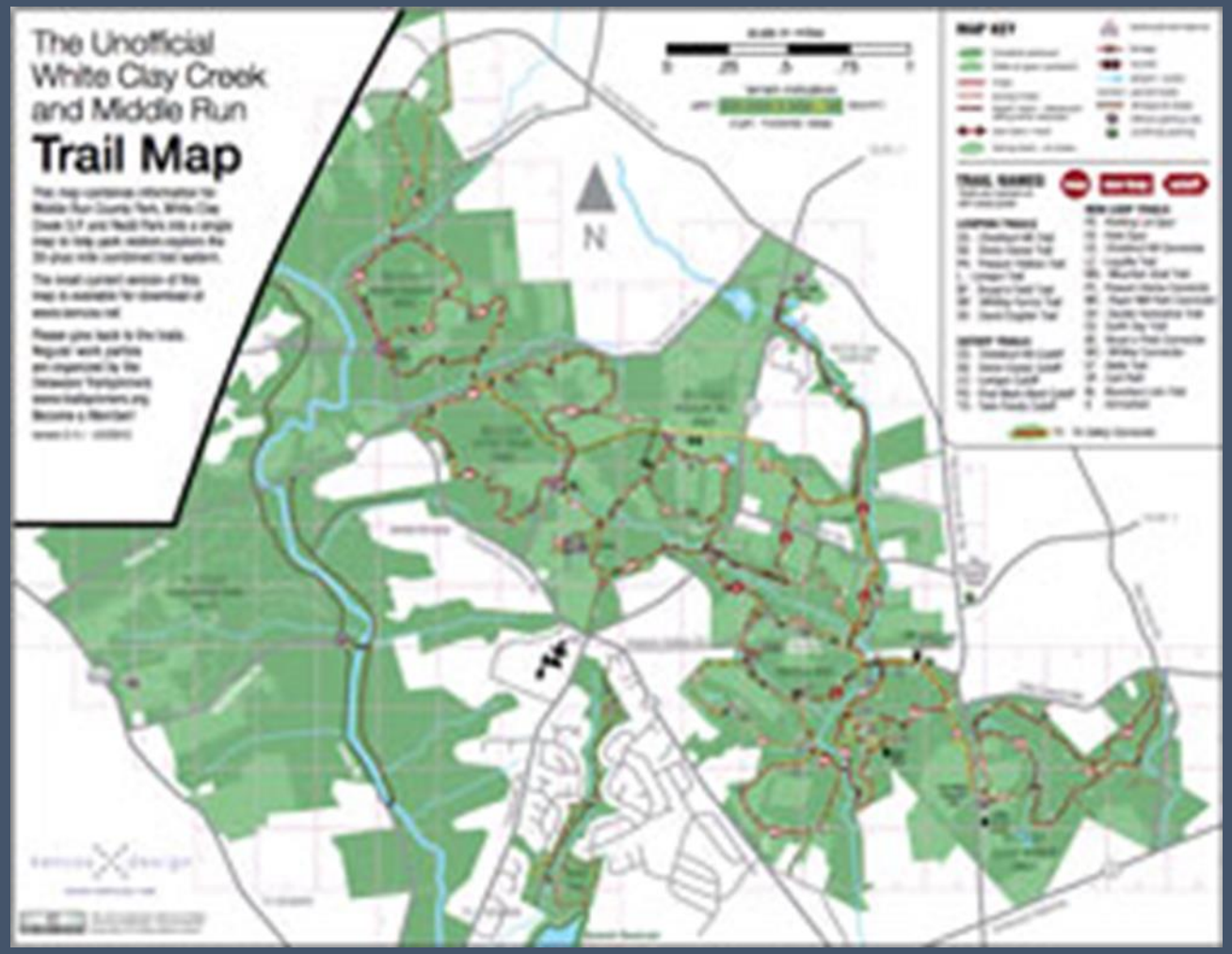
Total area
= 1,271 acres

The limited facilities identified in the interim and proposed regulations as designated sensitive facilities will be defined by signed boundaries and include buildings where entry can readily be monitored and controlled by law enforcement officers, and visitors can be screened for firearms.

In contrast to the vast open areas of Parks and Forests, these designated areas are readily accessible to law enforcement and first responders.

They are also easily avoided by visitors carrying firearms who lack a concealed carry permit or law enforcement credentials. For example, a visitor with firearms seeking to enter a visitor center can safely lock the guns in his or her vehicle in the parking lot, without violating the reduced restrictions in the proposed regulations.

The proposed regulations are a direct result of the lawsuit and the Supreme Court's decision in the *Bridgeville* case. The scope of restrictions on firearms has been dramatically reduced, and only certain visitors in designated safe areas must leave their firearms behind.



This means that visitors may now freely carry firearms on the vast majority of acreage within State Parks and Forests and natural preserves, on trails and rivers and ponds and unguarded beaches and in parking lots.

In fact, the interim and proposed regulations would allow each of the plaintiffs in the *Bridgeville* case to carry firearms: as law enforcement officers, as concealed carry permit holders, on trails while on their bicycles, while hunting, and in their vehicles in parking lots on State property.

Questions?

Delaware Department of Agriculture:

Department of Natural Resources and Environmental Control:

Comments?

Online at www.dnrec.delaware.gov.

Email to lisa.vest@state.de.us.

Snailmail to:

Dept. of Natural Resources and Environmental Control
Richardson & Robbins Building
89 Kings Highway
Dover, DE 19901

402 State Forest Regulations

8.0 Hunting Rules and Regulations

(Break in Continuity Within Section)

8.8 Target shooting is prohibited. Firearms are allowed for legal hunting only and are otherwise prohibited within designated safe areas on State Forest lands, except as set forth below.

8.8.1 Designated areas shall include State Forest Offices, education centers, and lodges, and shall be identified by appropriate signage.

8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas, provided that proper and current credentials shall be produced upon request.

8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Department.

8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.

8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.

8.8.6 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

3900 Wildlife

8.0 General Rules and Regulations Governing Lands and Waters Administered by the Division

8.3 Hunting and Firearms.

8.3.4 Firearms on Division Areas.

8.3.4.1 It shall be unlawful for any person to possess a firearm on lands or waters within areas designated in 8.3.4.6 below administered by the Division from March 1 through August 31, except as authorized by the Director in writing, or as set forth below.

(Break in Continuity Within Section)

8.3.4.6 Areas subject to the provisions of 8.3.4.1 above shall include Division offices, visitor centers, nature centers, educational facilities, facilities or locations used for authorized special events or festivals, and maintenance shops, and shall be identified by appropriate signage.

8.3.4.7 The Director may grant written approval on a daily basis for the possession of firearms within areas designated in 8.3.4.6 above, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within areas designated in 8.3.4.6 above.

8.3.4.8 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including areas designated in 8.3.4.6 above, provided that proper and current credentials shall be produced upon request.

8.3.4.9 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including areas designated in 8.3.4.6 above, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Director.

8.3.4.10 Firearms may be carried within areas administered by the Division, outside of areas designated in 8.3.4.6 above, by any person not prohibited by 11 Del.C. §1448.

8.3.4.11 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.

8.3.4.12 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

9201 Regulations Governing State Parks

21.0 Hunting, Fishing and Wildlife Management - Environmental D Violation

21.1 It shall be unlawful to display, possess or discharge firearms of any description, air rifles, B.B. guns, sling shots, or archery equipment upon lands or waters within designated areas administered by the Division, except with prior written approval of the Director, or as set forth below.

21.1.1 Designated areas shall include park offices, visitor centers, nature centers, bathhouses, restaurants and snack bars, stadiums and facilities while used for sporting events, concerts, and festivals, museums, zoos, stables, educational facilities, dormitories, playgrounds, camping areas, swimming pools, guarded beaches, and water parks, and shall be identified by appropriate signage.

21.1.2 The Director may grant written approval on a daily basis for the possession of firearms within designated areas, upon written application showing good cause related to self-defense or the defense of family, and due regard for the safety of others within the designated areas.

21.1.3 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Division, including designated areas, provided that proper and current credentials shall be produced upon request.

21.1.4 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Division, including designated areas, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Director.

21.1.5 Firearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.

21.1.6 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Division, in order to protect public safety and preserve the peace.

21.1.7 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.