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# Discussion Categories

*Linking Issues, Options, and Approaches for RAC Deliberations*

CZCPA RAC Meeting #6  
November 7, 2018

# DISCUSSION CATEGORIES

	Introduction	Options	Preliminary Recommendations	Review
Description	Initial presentation of topic to the RAC	Presentation of options for RAC consideration	RAC consensus, to the extent possible, on preliminary recommendations	RAC preliminary recommendations sent to DNREC Secretary as FYI; ready for public review
Purpose	Educate the RAC about the topic, issues, and ideas to prepare for deliberations	Learn about and discuss the options per sub-issues within the topic and consider how the options might be packaged together	Deliberate upon, prioritize, and to the extent possible, reach consensus on an overall approach to the topic, or at the least preferred or prioritized options	Put consensus-based decision in writing; forward to DNREC for review at Public Workshops; RAC will have a chance to react to public comments and revise recommendations

# CURRENT STATUS

	Introduction	Options	Preliminary Recommendations	Review
Topic	<ul style="list-style-type: none"><li>• Environmental Impact</li><li>• Offsets</li><li>• Risk Evaluation &amp; Financial Assurance</li></ul>	<ul style="list-style-type: none"><li>• Economic Effect</li></ul>	<ul style="list-style-type: none"><li>• Sea Level Rise &amp; Coastal Storm Impact Planning</li></ul>	<ul style="list-style-type: none"><li>• Bulk Product Transfer</li></ul>

# FLOODING AND SEA LEVEL RISE

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Draft Recommendations for Sea Level Rise and Coastal Storm Impact Planning



# Recommendation SLCS1: Anticipated Useful Facility Life

The required plan for sea level rise and coastal storms over the “anticipated useful life of the facility and infrastructure” should have a planning horizon of no less than 60 years. The plan can include a longer planning horizon depending on the particular facility.

# Recommendation SLCS2: Geographic Scope of Plan

The plan should detail risk, likely impacts, and mitigation measures for the following geographic areas:

- A. The site's shoreline and near-shore areas
- B. Docks, piers, and offshore pipelines
- C. All remediation areas on-site
  - Includes completed remediation areas and those in progress
- D. All structures on-site
- E. Ingress/egress routes

The plan should also include a discussion of any potential negative impacts to adjacent parcels resulting from development and flood mitigation activities.

# Recommendation SLCS3:

## Risks to be Considered in Plan

The plan should address the following hazards over the anticipated useful facility life:

### A. Flooding

- 1% chance flood (100-year floodplain as defined by FEMA)
- 0.2% chance flood (500-year floodplain as defined by FEMA)
- High sea level rise scenario (as defined by the DE SLR Technical Committee)
- Combined effect of sea level rise and 1% chance flood

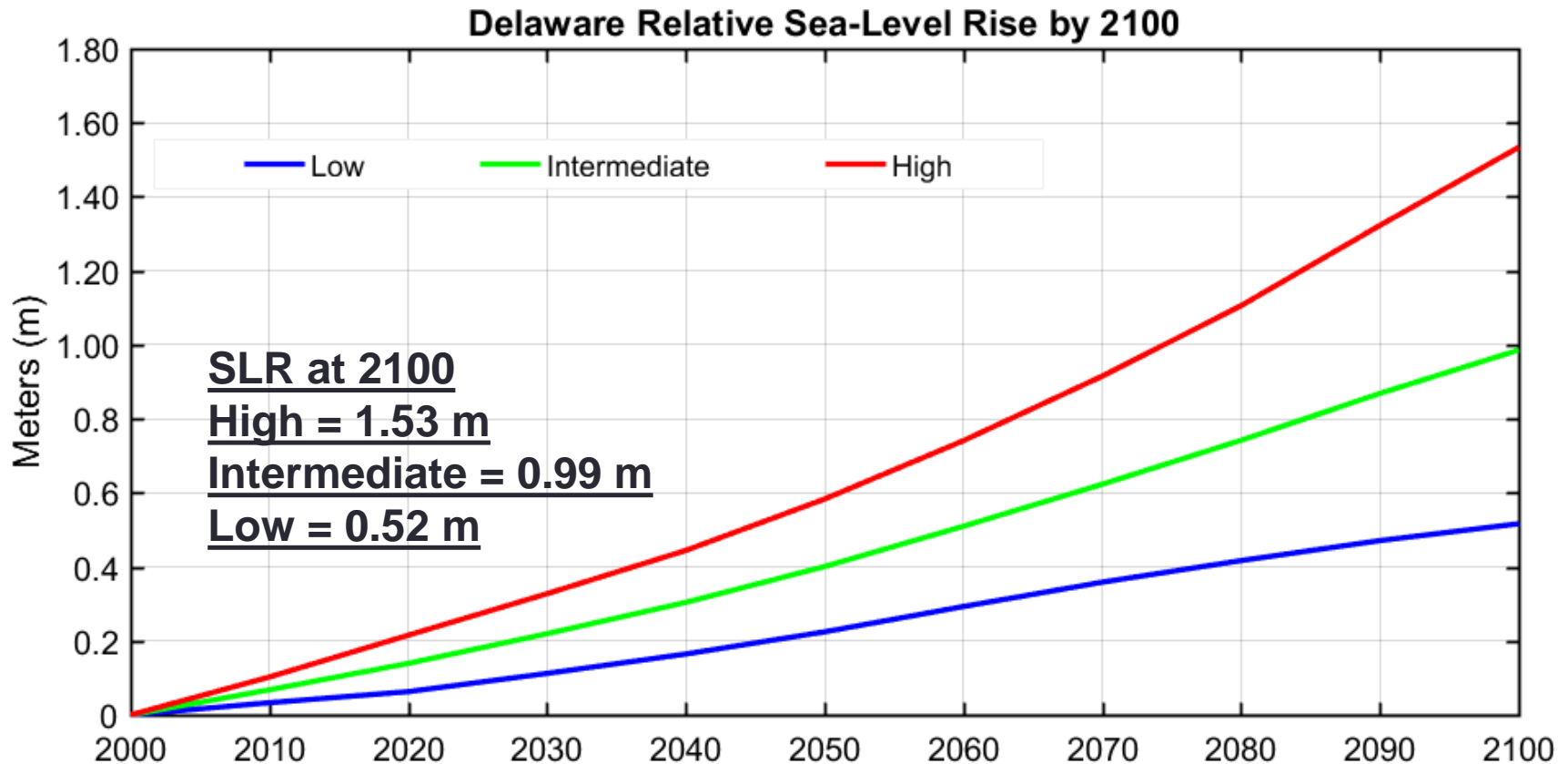
### B. Shoreline Erosion

### C. Wind speeds up to 95 mph, sustained (Category 1 hurricane)

# Questions in progress

- How does air quality permitting incorporate storm events and how are facilities monitored during storm events?
- How do facility emergency management plans incorporate storm preparation and what is the role of the Local Emergency Planning Committees?
- How to incorporate changes to 3<sup>rd</sup> party guidance and criteria (new SLR scenarios, FEMA construction guidance, etc.)

# DE Sea level rise future scenarios



Based upon “business as usual” greenhouse gas emissions future

## Coastal Zone Claymont- Existing FEMA Floodplain



## Coastal Zone Claymont- Future Flood Risk



## Coastal Zone DuPont Edgemoor- Sea Level Rise Inundation





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# Reporting Economic Effect in Coastal Zone Conversion Permits: *Revised Options for RAC Consideration*

**PREPARED FOR**  
Regulatory Advisory Committee

November 7, 2018

**PREPARED BY**  
Leslie Genova  
Industrial Economics, Inc.

# Goals for Today's Presentation

1. Brief review of charge for Economic Effect WG
2. Review of streamlined issues and options
  - Identify options that are most technically feasible
3. Make a few decisions

## Quick Review: Section 7014

(c)(1). The ...economic effect of the existing or previous use. If the application is for a subsequent conversion permit, the Secretary of the Department of DNREC has the discretion to direct the applicant to provide information on the ... economic effect of any of the previous uses at the site.

← **Baseline**

(c)(2). The ...economic effect of the alternative or additional heavy industry use or bulk product transfer activity.

← **Effect of  
Proposed  
Action**

(c)(3). The net ...economic improvement...inherent in the alternative or additional heavy industry use or bulk product transfer activity as compared to the most recent heavy industry use engaged in at that site.

← **Change**

# Quick Review: Economic Effect Work Group Goals

To provide the RAC with options that:

1. Meet statutory requirements
2. Provide data that can be meaningfully assessed
3. Does not overly burden permit applicants

**WG Conclusion:** Economic information provided on a conversion permit application can be useful in allowing an applicant to “tell the story” about why their project is valuable to Delaware.

# Review of Underlying Issues Raised by Economic Effect WG

- The WG does not want to discourage applicants from considering Delaware as a location for business
- The WG is concerned that excessive requirements will keep businesses away
- The WG feels that providing information about past (i.e., non-current) uses on a heavy industry use site is not particularly useful for measuring economic impacts

# Initial Scope Issues Addressed by Economic Effect WG

The WG originally developed options for the following five Initial Scope Issues:

1. Determining the meaning of “existing or previous use”
2. Assumptions for estimating the “economic effect” of the “existing or previous use”
3. Assumptions for estimating the “economic effect” of the proposed action
4. How to estimate “economic effect”
5. How to estimate “net economic improvement” between the “most recent heavy industry use” and the proposed action

**WG Conclusion:** There is overlap among these Issues. The WG has streamlined the options it is presenting to the RAC.

# Refinements to Issues Since Last RAC Meeting

- The WG felt it was most straightforward to assume that “existing or previous use” means the same thing as “most recent heavy industry use”
- The WG also felt it was most straightforward to assume that “economic effect” and “net economic improvement” should use the same economic metrics
- Based on these assumptions, the WG streamlined its options by:
  - Combining most of the options originally under Issues #1, 2, 3, and 5
  - Separating out an issue for “geographic scope” (part of Issue #2)
  - Keeping “economic metrics” as its own issue (Issue #3)
  - Adding an issue related to the verification of reported economic metrics

**Important Note:** The full suite of options for the original five Issues is still made available to the RAC in the Draft Options paper.

# Summary Issues Addressed by Economic Effect WG

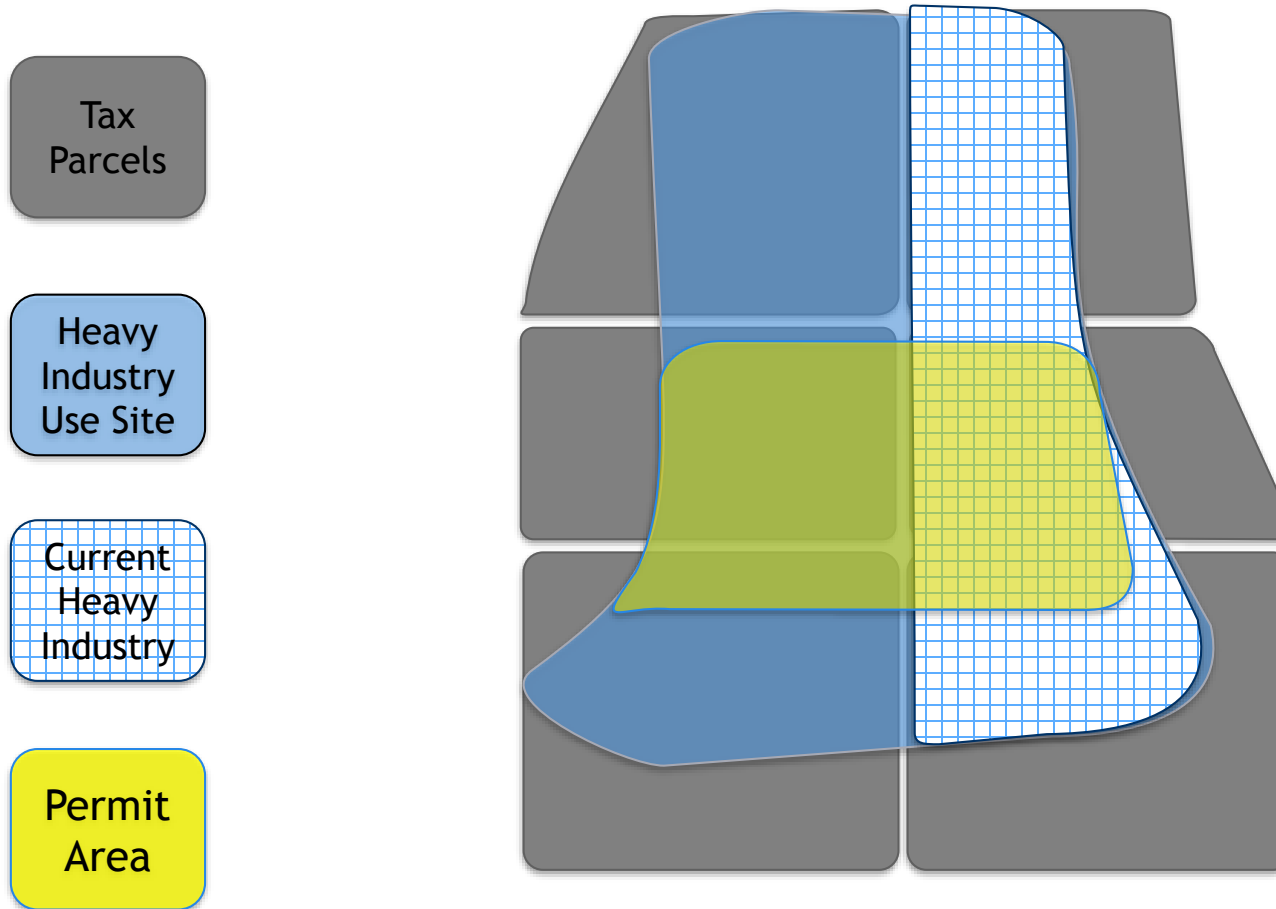
The WG streamlined the options it is presenting to the RAC to focus on four key issues:

1. How to report information on the “existing or previous use” for “economic effect” purposes (and the “most recent heavy industry use” for “net economic improvement” purposes)
2. Defining the geographic scope for economic effect reporting
3. Defining the economic metrics used to report both “economic effect” and “net economic improvement”
4. Verifying the reported economic metrics

# 1. Reporting economic information for “existing or previous use” and “most recent heavy industry use”

Option	Active Sites	Inactive Sites
1	Existing use	None
2	Existing use	Current property taxes
3	Existing use	Report effect for one historic year (e.g., most recent year of operations)
4	Existing use	Report average annual historic effect
5	Existing use	Report range of historical effect
6	Existing use	Current property taxes and previous uses (State develops Economic Baseline Report)
7	Existing use and previous uses (State develops Economic Baseline Report)	Current property taxes and previous uses (State develops Economic Baseline Report)

## 2. Defining the geographic scope for economic effect reporting



Assignment:

Report  
Economic Effect

## 2. Defining the geographic scope for economic effect reporting

Option	Geographic Boundary
1	Heavy industry use site
2	Permit area
3	Tax parcel(s)

### 3. Economic metrics used to report “economic effect” and “net economic improvement”

“Economic effect” is defined under § 7004(b)(2) as including:

- Number of jobs created; and
- Income that will be generated by the wages and salaries of these jobs in relation to the amount of land required; and
- Tax revenues potentially accruing to state and local government.

The WG suggests that collecting some additional information would allow for better verification of reported metrics and a better understanding of the economic effect of the project.

### 3. Economic metrics used to report “economic effect” and “net economic improvement”

Category	Specific project information requested
Project Cost	Remediation, demolition, construction, operations, capital costs, total investment
Tax Revenue*	Property taxes, gross receipts tax, personal income tax, corporate income tax, and other taxes; applicants could be asked to take into account tax incentives/credits received/anticipated and income tax write-offs in the tax numbers they provide
Employment*	Jobs, wages, and occupation distribution for all jobs expected to be created for both site preparation/construction and facility operations
State and Community-Level Effect	Identification of local hiring preferences, local purchasing preferences, and investments in community benefit agreements, workforce development programs, and/or educational programs
Other Costs to the State	Tax incentives and credits, required infrastructure investment

\*Required: Jobs, income, tax revenues

## 4. Verifying the reported economic metrics

- The WG discussed options for verifying applicant-reported economic information.

Option	
1	Back of the envelope calculations
2	Applicant-provided case studies
3	Ad-hoc review of materials by various state agencies
4	Expert economist reviewer (contractor)
5	Standing panel of experts (State employees)

## Summary Issues Addressed by Economic Effect WG

1. How to report information on the “existing or previous use” for “economic effect” purposes (and the “most recent heavy industry use” for “net economic improvement” purposes)

Questions to RAC: Do you agree with the assumption that these are the same? Any option you can't live with? Preferred option(s)?

2. Defining the geographic scope for economic effect reporting

Questions to RAC: Any option you can't live with? Preferred option(s)?

3. Defining the economic metrics used to report both “economic effect” and “net economic improvement”

Question to RAC: Are all the proposed metrics appropriate for measuring economic effect and net economic improvement?

4. Verifying the reported economic metrics

Question to RAC: Any option you can't live with? Preferred option(s)?

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Thank You!



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# Environmental Impact Work Group:

## Existing vs Previous Use

November 7, 2018

# Existing vs Previous Use

## Statutory Reference:

§ 7014(c): An application for a conversion permit made under subsection (a) or (b) [which states that an owner, operator or prospective purchaser may submit an application for a permit] must include...the following items to be considered in assessing a conversion permit application:

“(1) The environmental impact and economic effect of the existing or previous use.”

- The statute states that the applicant must include impacts of the existing *OR* previous use.
- Applicant chooses whether to describe existing or previous use.
- The statute says that required items are “... *to be considered in assessing a conversion permit application.*”

# “Existing or Previous Use” Options

## Options

1. Applicant decides whether to describe the existing or previous use in their application (“Applicant Choice”).
2. DNREC produces baseline of environmental (and economic) conditions and applicant described any changes from baseline in the interim (“Baseline-DNREC burden”).
3. Write regs that say the Secretary will only consider an application if applicant describes both the previous and existing use (“Baseline-Applicant Burden”).
4. Write regs saying that Secretary will only consider the application if the existing use is described under certain circumstances and previous use is described under others (“Active vs Inactive”).

## “Existing or Previous Use”

4. The Secretary will consider an application that follows one of the following frameworks:

Option	Active Sites	Inactive Sites
a.	Existing use	Existing use/Current status
b.	Existing use	Previous use

## “Existing or Previous Use” Options-Pros and Cons

Option		
1	Applicant Choice	Applicant chooses whether to present previous or existing use.

Pros	Cons
<ul style="list-style-type: none"><li>• Flexible for applicants.</li></ul>	<ul style="list-style-type: none"><li>• May provide incomplete picture/leave part of the story untold.</li></ul>

## “Existing or Previous Use” Options-Pros ad Cons

Option		
2.	Baseline-DNREC Burden	DNREC publishes report of current conditions, summarizing site history, including previous and existing, then applicant updates as needed in application.

Pros	Cons
<ul style="list-style-type: none"><li>• Complete story.</li><li>• DNREC may have ready access to some data.</li><li>• Easier for applicant, status of site up to date.</li></ul>	<ul style="list-style-type: none"><li>• Burdensome on agency.</li><li>• DNREC may not have access to some private data.</li><li>• May not allow for complete picture.</li></ul>

## “Existing or Previous Use” Options - Pros and Cons

Option		
3.	Baseline- Applicant- Burden	Applicant researches environmental impacts of previous and existing use and presents all in application.

Pros	Cons
<ul style="list-style-type: none"><li>• May provide complete story.</li><li>• Easier for applicant to bring the status of site up to date.</li><li>• Applicant may have more access to some private data.</li></ul>	<ul style="list-style-type: none"><li>• Burdensome on applicant.</li></ul>

## “Existing or Previous Use” Options - Pros and Cons

Option	Active Sites	
4. (a)	“Active vs Inactive”	Existing use is described at both active and inactive sites.

Pros	Cons
<ul style="list-style-type: none"><li>Consistency</li></ul>	<ul style="list-style-type: none"><li>May miss relevant data from previous use.</li></ul>

## “Existing or Previous Use” Options - Pros and Cons

Option		
4. (b)	“Active vs Inactive”	Existing use is described at active sites and previous use is described at inactive sites.

Pros	Cons
<ul style="list-style-type: none"><li>Allows for comparison of apples to apples for operational aspects of sites.</li></ul>	<ul style="list-style-type: none"><li>May be difficult to find data for previous use.</li></ul>

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## Initial Environmental Impacts and Offsets Issues for RAC Consideration **Deliberative Draft**

November 7, 2018

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# CZCPA/CZA Statutory Language - Environmental Impact

“...probable air and water pollution likely to be generated by the proposed use under normal working conditions as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on the quality and quantity of surface, ground and subsurface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.”

[7 Del. C. § 7004(b)]

# Current CZA Practice - Environmental Impact (1)

- For many potential sources of harm, “environmental impact” = amount of contaminant released over a specified unit of time (see example excerpt from CZA permit application below).

## **Air Quality**

- 6.1 Describe project emissions (new, as well as any increase or decrease over current emissions) by type and amount under maximum operating conditions:

## **Water Quality**

- 6.5 Describe wastewater discharge (new, as well as any increase or decrease over current discharge levels) due to project operations:
- c. Describe the amount of stormwater run-off increase over current levels that will result from the proposed project.

## Current CZA Practice - Environmental Impact (2)

- For some potential sources of harm, the CZA permit application seeks information on “effects” (i.e., measurable adverse change to some receptor). See example excerpts below.

6.29 Will the proposed project result in the loss of any undisturbed natural habitat or public use of tidal waters?

YES

NO

If yes, how many acres?

6.31 Will this proposed project have any effect on these threatened or endangered species (as defined by the DNREC and/or the Federal Endangered Species Act).

YES

NO

If yes, explain:

6.35 Describe any noticeable effects of the proposed project site including: heat, glare, noise, vibration, radiation, electromagnetic interference, odors, and other effects.

# Environmental Impact Definition Options for RAC Consideration

- **Option 1:** Provide CZCPA applicants with the discretion to use “releases” as a proxy for “impacts” as relevant.
  - Pros: Easy to determine, simple to track and document, relatively straightforward to quantify, consistent with current CZA program.
  - Cons: All releases do not necessarily result in environmental harm. To the extent offsets are required for releases that don’t actually result in adverse effects, applicants may choose to not go forward.
- **Option 2:** Require CZCPA applicants to estimate the adverse effects of releases on receptors.
  - Pros: May provide more realistic appraisal of environmental “impacts.”
  - Cons: May not provide a realistic appraisal of impact, depending on availability of data and practicality of obtaining them. Increased complexity and cost/ administrative burden for agency and applicants.

# CZCPA Statutory Language - Offsets

“An offset proposal that meets the requirements established by and includes the contents specified in regulations promulgated under this chapter and more than offsets the facility’s negative environmental impacts on an annual basis. Such proposal shall favor offsets that directly benefit Delaware.”

[7 Del. C. § 7014(c)(6)]

- Offsets were not in the original CZA, and arose in the 1990s negotiated rulemaking.
- Offsets are in the CZCPA amendments to the statute (see above).
- Conversion Permit offsets are likely to be across media and at a higher level of complexity than the current program.

# Offset Issues Introduced for RAC Consideration Today

1. How to operationalize “more than offset”?
2. How to operationalize “directly benefit Delaware”?
3. How to operationalize “annual basis”?
4. How tight should the “nexus” be between environmental impact and associated offset?

# “More than Offset” Options for RAC Consideration (1)

- **Option 1:** Allowing the Applicant to make the case that its offset proposal more than offsets anticipated environmental impacts, however it chooses.
  - Pros: Maximizes process flexibility for applicant.
  - Cons: Lack of a “standardized” approach might increase administrative effort and complexity. Regulatory uncertainty for applicant.
- **Option 2:** Base offsets on permit limits, which reflect maximum allowable emissions.
  - Pros: Administrative simplicity. Actual facility emissions typically are well below permit limits. If applicant exceeds permit limits, existing laws and regulations address the issue through penalties, corrective action and/or other mechanisms.
  - Cons: Because permits do not necessarily address all environmental impacts (e.g., noise, aesthetics, some natural resource impacts, etc.), this approach may only be feasible for a subset of impacts identified in a CZCPA permit application.

## “More than Offset” Options for RAC Consideration (2)

- **Option 3:** Require offsets to exceed impacts by a standard percentage.
  - Pros: Administrative simplicity and certainty for the applicant.
  - Cons: Applying a single, standard factor to ensure that offsets exceed environmental impacts might be overly rigid, insufficiently reflective of case-specific situations. Developing a defensible basis for use of one or more standard “factors” can be difficult, and might require significant administrative effort by the agency.
- **Option 4:** Allow and prioritize a combination of some or all of the previous options.
  - Pros: Provides an opportunity to tailor regulations in a way that maximizes “pros” and minimizes “cons.” Ensures inclusivity of all environmental impacts, whether permitted or not.
  - Cons: Combining options potentially increases administrative complexity and effort for the agency and applicant, and can increase regulatory uncertainty for applicant.

# “Directly Benefit Delaware” Options for RAC Consideration

- **Option 1:** Limit where offset projects can take place (e.g., within DE, within DE coastal areas, within the same county as the impact occurs, etc.).
  - Pros: Administrative simplicity. Could be used to prohibit offset project locations considered to be “too distant” from impacted areas. Provides a means to potentially address environmental justice impacts and concerns.
  - Cons: To the extent offset project locations are limited to specified portions of Delaware, preferred offset project types might not be available, or might be substantially more costly or otherwise less preferable than potential projects in other locations.
- **Option 2:** Providing the applicant with offset project location flexibility, subject to sufficient demonstration that project benefits will accrue to Delaware.
  - Pros: Offset project locational flexibility potentially provides opportunities for more cost-effective projects that can meet the statutory requirement.
  - Cons: Uncertain benefits to local populations and natural resources. Greater cost/administrative burden to applicant and agency to confirm project benefits to Delaware.

# “Annual Basis” Offset Options for RAC Consideration (1)

- **Option 1:** Applicant estimates impacts and offset benefits over time, offsets must be sufficient to address anticipated cumulative impacts over the life of the project.
  - Pros: Has precedent in other regulatory contexts, facilitates resolution of offset requirements during the permit application process. Might be particularly well suited to address non-recurring, discrete impacts.
  - Cons: Future forecasts of environmental impacts and offset benefits over long time periods (e.g., decades) can be subject to large uncertainties. Does not provide a mechanism for measuring actual offset benefits or assessing the potential need for offset adjustments in the future.
- **Option 2:** Require verification/monitoring of actual impacts and offset benefits over time.
  - Pros: More likely to ensure a match between impacts and offsets over time.
  - Cons: Verification/monitoring requirements add expense and complexity. Monitoring frequency, duration, verification and related issues would need to be addressed. Benefits unclear unless mechanism for adjusting offsets over time incorporated.

# “Annual Basis” Offset Options for RAC Consideration (2)

- **Option 3: Base offsets on permit limits.**
  - Pros: Administrative simplicity. Relies on monitoring required by and compliance mechanisms associated with other permit(s).
  - Cons: Because permits do not necessarily address all environmental impacts (e.g., noise, aesthetics, some natural resource impacts, etc.), this approach may only be feasible for a subset of impacts identified in a CZCPA permit application. Depending on offset projects selected, some additional monitoring may be required to confirm actual offset benefits. Permit limits may not specifically reflect annual time periods.
- **Option 4: Allow and prioritize a combination of some or all of the previous options.**
  - Pros: Provides an opportunity to tailor regulations in a way that maximizes “pros” and minimizes “cons.”
  - Cons: Combining options potentially increases administrative complexity and effort for the agency and applicant, and can increase regulatory uncertainty for applicant.

# “Impact - Offset Nexus” Options for RAC Consideration (1)

- **Option 1:** Offsets address the same substance emitted (for “release-based” impacts) or type of impact (for “receptor-based” effects).
  - Pros: Administratively simple. Offsets clearly and directly address environmental impacts.
  - Cons: Required offset projects may not be feasible, cost-effective, provide the greatest overall environmental benefit, and/or reflective of stakeholder priorities (particularly local stakeholders).
- **Option 2:** Allow applicants flexibility to propose (and justify) offset projects that address other substances with a similar toxicity profile (for “release-based impacts”) or that address a different harm to the same receptors (for “receptor-based effects”).
  - Pros: Flexibility can increase the likelihood of identifying offset projects that are cost-effective and/or more reflective of stakeholder priorities (particularly local stakeholders).
  - Cons: Administrative complexity/cost for applicant and agency. Amount of nexus “flexibility” to allow can be difficult to determine and controversial.

## “Impact - Offset Nexus” Options for RAC Consideration (2)

- **Option 3: (“Fee in Lieu”).** Applicants provide estimates of the cost required to directly offset the impact identified in the CZCPA permit application, but instead of undertaking that project make a monetary contribution to a third party or fund used to finance offset projects that reflect local stakeholder priorities with some nexus to CZCPA-related environmental impacts.
  - Pros: Simplification of CZCPA process for Applicant. Maximizes the ability to fund offset projects that reflect stakeholder environmental priorities (particularly local stakeholders) and to potentially combine smaller individual projects into a single, larger project
  - Cons: Process, expertise and effort needed by agency to provide verification of applicant project cost estimates. It can be difficult to establish sufficient nexus between environmental impact and the project(s) eventually funded by the applicant’s monetary contribution. Administrative complexity of providing monetary contributions to a third party or fund and potential tracking/auditing needs.

# Environmental Impact and Offsets Work Groups Status

- The Environmental Impacts and Offsets Work Groups have provided their initial input for RAC consideration, and at the current time do not have additional work group meetings planned.
- If the RAC identifies additional specific questions, tasks or other input needed to inform its deliberations, DNREC will assess how best to meet any such needs.



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## Risk Evaluation and Financial Assurance Deliberative Draft

November 7, 2018

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# Basics of Financial Assurance

- In the CZCPA context, the design of an effective financial assurance program requires balance. The program should:
  - Encourage **sound operational behavior** by site owners/operators.
  - Ensure that regulators have **timely access to funds** to undertake actions related to a facility's environmental impacts, in the event the owner/operator is unable or unwilling to do so.
  - **Account for existing financial assurance** relevant to CZCPA sites that address environmental impacts and site closure/post-closure activities.
  - Target “gaps” in financial assurance coverage in a manner that is cost-effective and cognizant of the CZCPA goal to **facilitate site redevelopment**.

# List of Currently Available RE-FA Initial Scope Issue Papers

- #1: Available FA Instruments
- #2: Reporting Existing Financial Assurance
- #3: Potential Approach for Different CZCPA-relevant Categories of Actions/Incidents
- #4: Concept Plan
- #5: TBD, if/as necessary
- #6: Agency Access to Third-Party Verification or Other Financial Assurance Expertise

# Design Consideration for FA Regulatory Programs

- Consistent with its charge, the RE/FA Work Group focused on key regulatory design issues, including:
  - Identifying gaps in existing FA coverage with respect to CZCPA-covered activities (see Initial Scope Issue #2 and #3). **What should be assured?**
  - Identifying a suite of allowable FA instruments (see Initial Scope Issue #1 & #3). **How should it be assured?**
  - Establishing a process by which activity-specific FA amounts are identified (see Initial Scope Issue #3). **In what amounts should it be assured?**
- Inform regulatory design of CZCPA-required Concept Plan/Final Plan
  - Minimize environmental damage, and stabilize and secure the site, in the event of an environmental contamination incident or upon termination, abandonment, or liquidation of activities at a heavy industry site (see Initial Scope Issue #4).
- Suggest options to address gaps in Agency FA expertise (see Initial Scope Issue #6).

# RE-FA Initial Scope Issue - What Should Be Assured? Covered Activities

- Categories of Risk Events Required by CZCPA Statute:
  - a) Actions to address existing site contamination.
  - b) Actions to minimize environmental damage, and stabilize and secure, the site “upon termination, abandonment or liquidation” of site activities.
  - c) Actions to address future incidents resulting in environmental contamination.
- Other Categories of Risk Events Discussed by RE/FA Work Group:
  - d) Actions associated with third-party liability - Bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations at the site.
  - e) Site/infrastructure improvements to address sea level rise/coastal storms.

RAC Input: Views on the list of covered activities, particularly d) and e)?

# RE-FA Initial Scope Issue – CZCPA Covered Activities/Risks

## d) Third-Party Liability

- FA for third-party liability is not specifically identified in CZCPA statutory language. What is the RAC's view on incorporating third-party liability and compensation FA into CZCPA regulations?
- Other existing state/federal requirements require FA to address the potential for third-party liability associated with some site activities.
- Options for RAC consideration include:
  1. Not requiring CZCPA-specific FA for third-party liability;
  2. Requiring FA comparable to that required under other DE statutes/regulations for sudden accidental occurrences; or
  3. Requiring FA based on other, to be determined, individual/aggregate annual coverage limits for covered impacts.

# RE-FA Initial Scope Issue – CZCPA Covered Activities/Risks

## e) Site improvements to address sea level rise and coastal storms.

- CZCPA requires a plan to mitigate potential impacts of sea-level rise and coastal storms over the anticipated useful life of the facility.
- CZCPA does not specifically require FA for related activities.
- Options for RAC consideration include:
  1. Not requiring CZCPA-specific FA for this risk event category;
  2. Requiring FA to maintain any site enhancements made to minimize potential impacts from sea level rise/coastal storms;
  3. Providing some type of FA ‘credit’ against other conversion permit FA requirements to encourage site improvements; or
  4. Considering other state or local regulatory options (e.g., integrating related needs into zoning processes).

# RE-FA Initial Scope Issue - How Should It Be Assured?

## Available FA Instruments

- Third-Party FA Instruments:
  - a) Trust Fund
  - b) Letter of Credit
  - c) Insurance Policy
  - d) Surety Bond (Performance or Payment)
- Self-Assuring FA Instruments:
  - d) Self-Insurance (Corporate Financial Test)
  - e) Corporate Guarantee
  - f) Captive Insurance

RAC Input: Views on potentially allowing all types of FA instruments vs. limiting allowable instruments in some way?

# RE-FA Initial Scope Issue - Aligning Covered Activities to Available FA Instruments (see Issue Paper #3)

## WHAT SHOULD BE ASSURED?

- a) Actions to address existing site contamination.
- b) Actions to minimize environmental damage, and stabilize and secure, the site “upon termination, abandonment or liquidation” of site activities.
- c) Actions to address future incidents resulting in environmental contamination.
- d) Actions associated with third-party liability.
- e) Site/infrastructure improvements to address sea level rise/coastal storms.

## HOW SHOULD IT BE ASSURED?

- 1) Trust Fund
- 2) Letter of Credit
- 3) Insurance Policy
- 4) Surety Bond (Performance or Payment)
- 5) Self-Insurance (Corporate Financial Test)
- 6) Corporate Guarantee
- 7) Captive Insurance

# Work Group Insights for RAC Consideration

1. CZCPA applications should identify covered activities, and associated FA (see Initial Scope Issue #3).
2. The regulator should conduct application-specific evaluations of the sufficiency of existing FA, coordinating with other state and federal personnel familiar with the site as applicable (See Initial Scope Issue #2).
3. The need for and amount of conversion permit FA should be determined on an application-specific basis, reflecting the degree to which existing FA at the site meets existing site needs. As appropriate, the face value of required FA should be downward adjusted to reflect existing FA (see Initial Scope Issue #1 & #3).
4. A “concept plan” of action(s) must be submitted with the conversion permit application along with a proposal for associated FA (see Initial Scope Issue #4 – intended for discussion next meeting).

## Work Group Insights for RAC Consideration (continued)

5. CZCPA is silent with regard to FA for third-party liability. Should the RAC decide such coverage is warranted, there are existing DE FA programs that can inform coverage amounts. Often such assurance is provided on a single/aggregate occurrence basis, and as a rider to existing insurance policies (see Initial Scope Issue #3).
6. CZCPA requires a plan to mitigate potential impacts of sea-level rise and coastal storms over the anticipated useful life of the facility. Depending on the requirements that emerge, it may be appropriate to consider FA in connection with the applied-for use (see Initial Scope Issue #3).
7. Third party verification of financial assurance submissions may be a cost effective way of ensuring DE receives FA in the amounts and timing necessary to address current and/or future risk events (see Initial Scope Issue #6 - intended for discussion next meeting).

# RE/FA Work Group Status

- The Risk Evaluation – Financial Assurance Work Group has provided the RAC with its initial input (issue papers) for RAC consideration, and at the current time does not have additional work group meetings planned.
- If the RAC identifies additional specific questions, tasks or other input needed to inform its deliberations, DNREC will assess how best to meet any such needs.



# IEC

INDUSTRIAL ECONOMICS, INCORPORATED

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# Community Engagement and Public Workshops

*Updates and Concept Plan*

Ian Yue  
Delaware DNREC

CZCPA RAC Meeting #6  
November 7, 2018

## Recap: *RAC Community Engagement Goals*

- To **help communities** near the 14 sites **become aware** of the development of the Conversion Permit program;
- To **engage communities** by **learning of their interests and concerns** regarding potential development at these sites; and
- To **gather input from these communities** to **inform both the RAC and DNREC** in the regulatory development process



# Community Meetings

# Directly-Impacted Fenceline Communities

DNREC has been actively meeting with community leaders and members in the **five areas** with fenceline communities (from north to south):

1. **Claymont**
2. **Edgemoor**
3. **South Wilmington / New Castle**
4. **Delaware City**
5. **Little Creek / Dover**

	Claymont	Edgemoor	South Wilmington / New Castle	Delaware City	Little Creek / Dover
Neighborhood Planning Council District Leadership (Sept. 5)		X	X		
Edgemoor Coalition (Sept. 17)		X			
Little Creek Town Council (Oct. 1)					X
Delaware City (Oct. 11)				X	
Neighborhood Planning Council District 3 (Oct. 16)		X	X		
Route 9 All Civic Associations (Oct. 24)			X		
Neighborhood Planning Council District 1 (Nov. 20)		X			
Claymont / Claymont Renaissance Development Corporation (Dec.)	X				
Neighborhood Planning Council District 4 (TBD)			X		
Other groups we're missing?					

# Initial Feedback from Fenceline Communities

- **Environmental Impacts:** Air quality, soil/water quality, noise and vibration, unknown adverse exposure to pollutants, traffic/congestion
- **Cumulative Impacts**
  - Impacts not starting from zero, seen as additive if not multiplicative
  - Sense that the same communities increasingly burdened by impacts
- **Community Benefits**
  - Jobs seen as a mutual benefit to the developer and a community
  - Desire developers to work with communities to demonstrate the non-job benefits they bring (e.g., community benefit agreements)



# Public Workshops

# Overview

- The focus of **community meetings** is to informally meet with and gauge interests and concerns from fence-line communities. Help community become aware of ways to provide input. Feedback from meetings may inform content or approach to Public Workshops.
- **Public Workshops** are aimed at informing and gathering feedback from the larger public. Process more structured and feedback-driven than community meetings.

# Goals of Public Workshops

- Engage members of the public who have otherwise been unable to engage during daytime meetings. → *Evening timeframe*
- Inform people about the overall regulatory development process and the role of regulations. → *Overview presentation*
- Interact with people on the issues informing RAC deliberations and, as relevant, preliminary RAC recommendations.  
→ *Information stations with focused feedback forms at each station*



Information stations on issues the RAC is deliberating on and, as relevant, RAC recommendations



Topic-specific feedback forms for public input



Presentation on CZCPA regulatory development process and role of regulations



# Questions for the RAC

- How many Public Workshop sessions? Locations?  
*DNREC has staff capacity to run 1-2 Public Workshop sessions.*
- Topics to discuss at informational stations?  
*Four Work Group topics? Sea level rise? Other?*
- What feedback from the public would most help you as the RAC?  
*This could inform the questions we ask on the feedback forms.*
- How can DNREC best actively engage you at Public Workshops?  
*RAC Member presence is crucial to meet and hear from the public.*

# Next RAC Meetings (Tentative Details)

- **Tues, Dec 11, 9:00am – 4:00pm**  
Location: Bellevue Community Center (Wilmington)
- **Tues, Jan 22, 9:00am – 4:00pm**  
Location: TBD
- **Wed, Feb 13, 9:00am – 4:00pm**  
Location: DNREC Lukens Drive Office (New Castle)
- **Tues, Mar 12, 9:00am – 4:00pm**  
Location: TBD
- **Tues, Mar 26, 9:00am – 4:00pm** (*only if needed*)  
Location: DNREC Lukens Drive Office (New Castle)
- **Tues, Apr 9, 9:00am – 4:00pm**  
Location: Buena Vista Conference Center (New Castle)