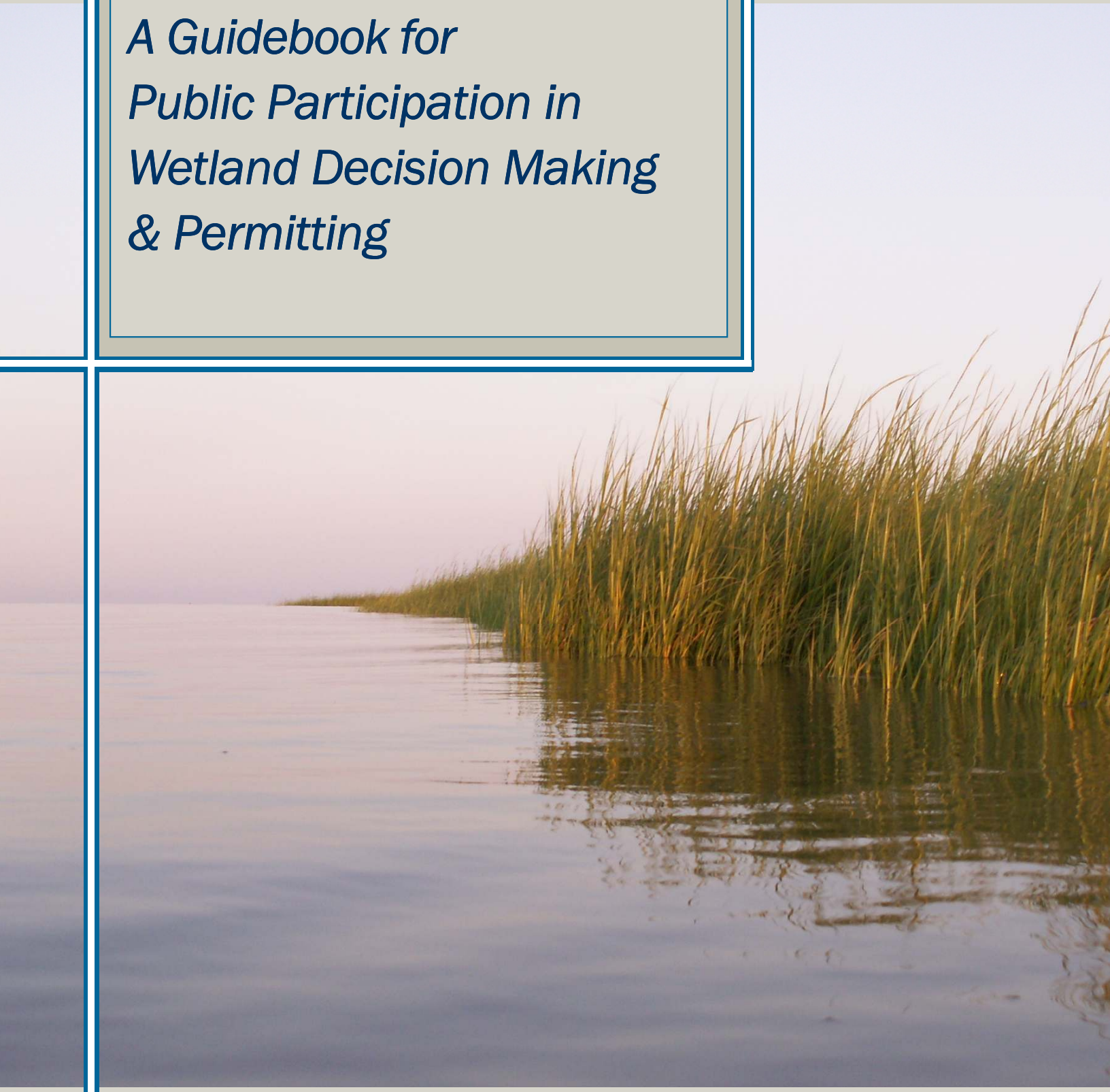
A Guidebook for Public Participation in Wetland Decision Making & Permitting



A helpful guide for understanding the ins and outs of land use decision making and the wetland regulatory processes.

Delaware Wetlands

Purify • Provide • Protect

WETLANDS

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Tidal wetland by Anthony Jackson.

Image to the Right:

Delaware Department of Natural Resources & Environmental Control's Wetland Monitoring & Assessment Program

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You can make a difference in the lives of future generations!

Citizens and conservation groups can work together to urge public officials in our towns, counties, and state to effectively protect wetlands, including the current most vulnerable habitat— forested freshwater wetlands.

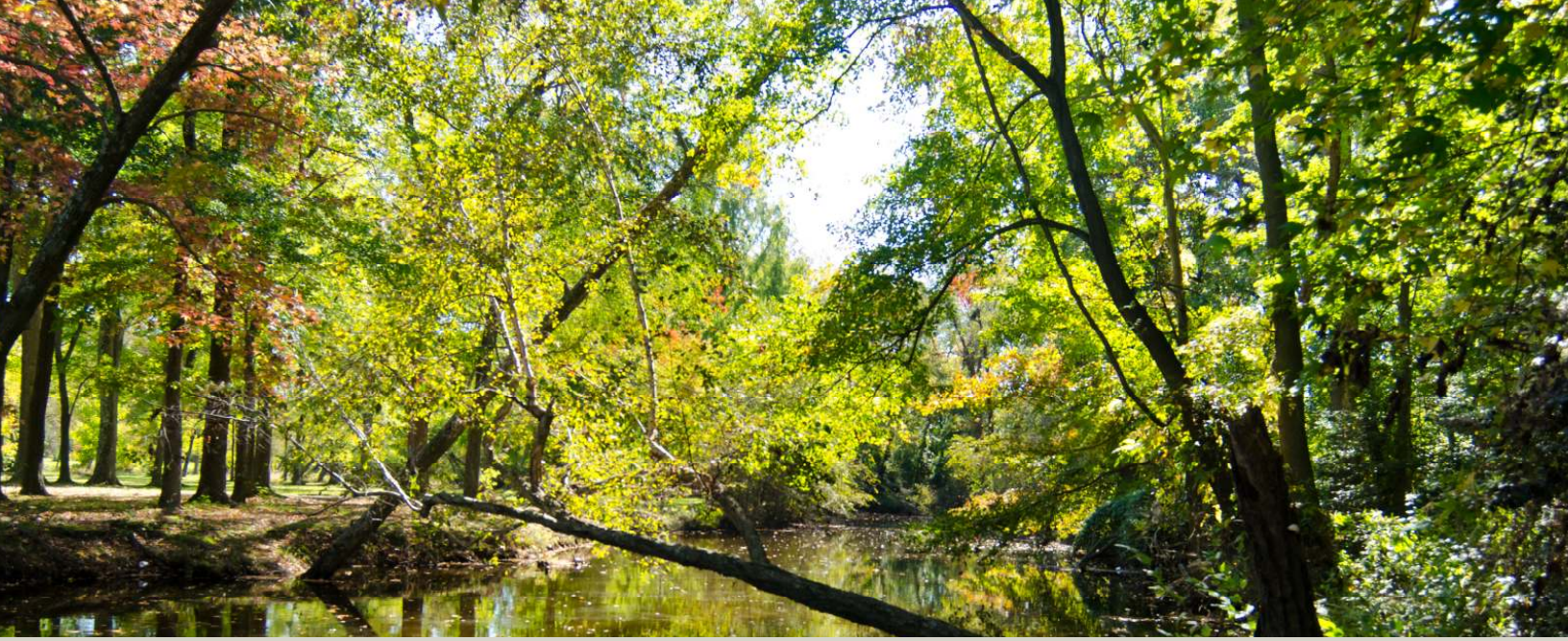
This guidebook is intended to share with you federal, state and county decision making regulatory processes that can affect wetlands and how you can work to protect Delaware's wetlands by becoming involved in land use decisions.

We thank you for picking-up this guide and joining us in the effort to protect our wetland resources in order to share their splendor with future generations and to allow wetland habitats to continue providing valuable services on our landscape.

Everyone has a role to play in preserving and protecting wetlands and everyone can make a difference!

Wetland Monitoring & Assessment Program

Wetland Monitoring & Assessment Program
Division of Watershed Stewardship
Delaware Department of Natural Resources & Environmental Control



PURIFY, PROVIDE & PROTECT

Wetlands Benefit Us All

Wetlands are part of the foundation of our nation's water supply and are vital to the health of our communities. Wetlands feed into rivers, lakes and streams, reduce flooding, recharge groundwater supplies, remove pollution, clean our drinking waters and provide fish and wildlife habitat. Wetland types vary widely because of differences in soils, location, climate and presence of fresh or salt water.

Delaware is a state in which 25% of all of its land area is made up of wetlands with freshwater wetlands making up the largest category. No matter where you are in Delaware, you are no more than one mile away from a wetland.

Most of Delaware's wetlands are owned by private landowners, and are great natural resources that can provide lasting benefits. They are a middle ground where land and water meet and wildlife of all sorts come to play, eat, breed and rest.

In some ways their worth is inestimable, and in others we are only now beginning to put a dollar value on the services they provide. It has been estimated that coastal wetlands alone have saved more than $625 million[1] in avoided flood damages from Hurricane Sandy across the northeastern USA.

What we do know is that—when removed from the landscape—the benefits wetlands supply are sorely missed and can cost significant amounts of time and money to replace or recover.

[1]Narayan, S., Beck, M.W., Wilson, P., Thomas, C., Guerrero, A., Shepard, C., Reguero, B.G., Franco, G., Ingram, C.J., Trespalacios, D. 2016. Coastal Wetlands and Flood Damage Reduction: Using Risk Industry-based Models to Assess Natural Defenses in the Northeastern USA. Lloyd's Tercentenary Research Foundation, London.

[2]Tiner, R.W., M.A. Biddle, A.D. Jacobs, A.B. Rogerson and K.G. McKuckin. 2011. Delaware Wetlands: Status and Changes from 1992 to 2007. Cooperative National Wetlands Inventory Publication. U.S. Fish and Wildlife Service, Northeast Region, Hadley, MA and the Delaware Dept. of Natural Resources and Environmental Control, Dover, DE 35 pp.

Current Status[2]

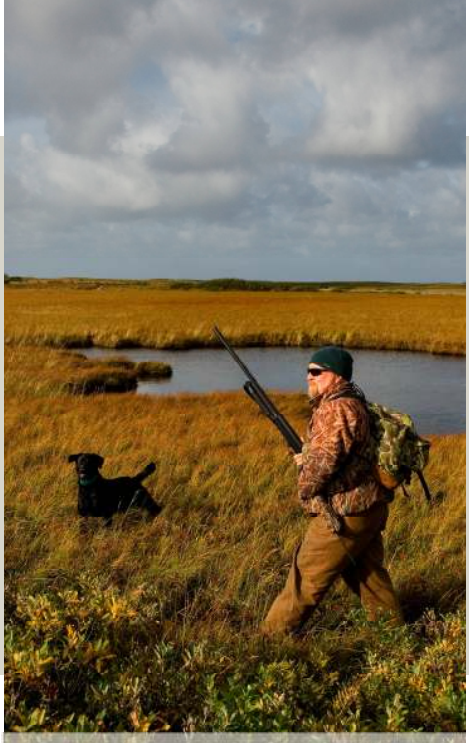
From 1992 to 2007 the State of Delaware lost nearly 3,364 acres of wetlands primarily due to conversion of the land to agriculture, development or open water. An increase in pond creation was also seen during this time frame, and while beneficial, these ponds do not provide nearly the same level of benefits that natural wetlands provide.

Despite improved public-private sector collaboration, increased research and successful restoration efforts, Delaware's wetlands still face a myriad of challenges including weakened wetland jurisdiction, and increased pressure from development and infrastructure needs. In addition to directly affecting wetlands, these disturbances often produce indirect impacts including increased flooding and poor water quality.

Wood duck. *Douglas A. Norton*

WHAT IS WETLAND REGULATION?

Youth fishing at the edge of a wetland.



Duck hunting in a marsh. USFWS

What Wetlands Are Regulated

A regulation is a law, rule or order established by an authority that governs a specific topic, in this case wetlands. These laws and regulations help determine jurisdiction, permitting processes, mitigation requirements and enforcement policies across the nation's wetlands. In Delaware, wetlands are regulated at the state and federal levels, and there are many different types of wetlands. Generally, they can be grouped into two categories, tidal and nontidal.

Tidal wetlands occur along the edges of the coast where oceans, bays, rivers and streams meet the land. They can range from freshwater to saltwater and have water pushed in and out daily by tidal cycles. These wetlands are commonly referred to as marshes or swamps.

These wetlands may be regulated at the federal and state levels. "State-regulated" wetlands protected by law are defined as "those lands lying at or below two feet above local mean high water which support or are capable of supporting" certain plant species that are listed in the law and regulations. In short, if you would like to install a dock, stabilize your shoreline or other alterations in waters of the State of Delaware, you may need to gain permit(s).

While tidal wetlands are well protected by State of Delaware regulations, many nontidal and isolated forested wetlands are threatened because of gaps in existing regulations.

Nontidal wetlands are freshwater wetlands found around inland areas and do not have tidal influxes of water. They are fed by rain, snow or groundwater, and can be covered with water or have flooded soils close to the ground's surface during the winter and spring months, and be dry during the summer or fall months.

Approximately two-thirds of Delaware's freshwater wetlands are forested. They come in all different shapes, sizes and types, and have names such as swamps, bogs and fens.

In Delaware, only nontidal wetlands of 400 or more contiguous acres are regulated by the state. But, you may still need a permit when filling or building on smaller acreage wetlands:

- Federal permit from the US Army Corps of Engineers
- State permit from DNREC Surface Water Discharges Section when dealing with stormwater or wastewater

The Clean Water Act provides the majority of federal regulatory protection for wetlands, but recent challenges question the extent of waters covered. *Essentially, the further upstream and the further disconnected the wetland is from a navigable waterway the less it is protected by regulations.*

Why Regulate Wetlands

Wetlands provide valuable benefits to each and every one of us, and because of this a national goal of "no net loss in wetlands" was established. To help keep this goal in action, certain regulations were put in place.

Regulating wetland activities helps protect all of us by taking steps to ensure that we all have access to clean drinking waters, navigable water channels for boating, ample habitat for native species of waterfowl, fish and plants, and shoreline protection from storms.

Do I Own Wetlands?

To find out if you have wetlands mapped on your property, please visit de.gov/wetlandtoolbox. If a jurisdictional or formal account of wetlands is needed, a wetland delineation consultant will need to be hired. A list can be found on the website above. The state's Wetlands and Subaqueous Lands Section can also help determine if there are state regulated tidal wetlands on your property and establish the location of state jurisdiction.

Duck blind in the Ted Harvey Wildlife Area. Most duck blinds are considered an exempt activity in state-regulated wetlands as described in the Duck Blind Policy. For more information about duck blinds contact the Wetlands and Subaqueous Lands Section. *Photo: Michael Polo*

WHEN ARE PERMITS NEEDED?

If a wetland is regulated at the federal and state level, a permit is required to do work or impact that wetland. In Delaware, up to 30,000 acres of freshwater wetlands are not protected by regulations.

Activities that happen in the wetland (**direct impacts**), and actions that happen next to a wetland (**indirect impacts**) both have an affect on the services that a wetland provides. These impacts are only controlled if the wetland is regulated.

If you plan to work or deposit fill in an area that may be a wetland please contact the U.S. Army Corps of Engineers to see if a permit is required at the federal level.

Wetlands may be regulated at the state level by DNREC's Wetlands and Subaqueous Lands Section (WSLS) if they are tidal wetlands or are freshwater wetlands of 400 acres or more. Please contact the WSLS if you plan to conduct any activity in or adjacent to wetlands that meets this definition.

Under both state and federal laws and regulations, any discharge of pollutants from a point source to state surface waters is unlawful unless approved by a permit. Contact DNREC's Surface Water Discharges Section for more information.

Examples of impacts to wetlands that may need a permit:

- Filling of wetlands
- Digging, construction or ditching in wetlands
- Disturbing the ground, i.e. removal of vegetation or tree stumps
- Stormwater input to wetlands
- Removal of buffer vegetation around wetlands
- Construction of roads, dams, or impoundments in wetlands
- Interference with natural drainage or diverting water away from wetlands
- Site access through a wetland

MITIGATION

What is Mitigation?

Consistent with the national goal of "no net loss of wetlands," permits often require compensatory mitigation. The hope is that we can all work together to avoid wetland impacts, but when impacts are legally permitted there are required steps (or projects) to compensate for the wetland losses or alterations. This process is called compensatory mitigation.

Compensatory mitigation or wetland mitigation is a wetland enhancement, restoration creation and/or preservation project that serves to offset unavoidable wetland impacts.

There are three ways that compensatory mitigation can be accomplished: mitigation banks, in-lieu fee mitigation, and permittee-responsible mitigation.[3]

[3]United States Environmental Protection Agency. *Wetlands Compensatory Mitigation.* EPA-843-F-08-002 . 2pp

Mitigation Permitting Process

The Clean Water Act Section 404 outlines compensatory mitigation requirements. The basic premise of the program is that no discharge of dredged or fill material (i.e. fill of wetlands) may be permitted if:

1. A practicable alternative exists that is less damaging to the aquatic environment or
2. The nation's waters would be significantly degraded.

In other words when you apply for a permit, you must show that you have, to the extent practicable: taken steps to avoid wetland impacts, minimized potential impacts on wetlands, and provided compensation for any remaining unavoidable impacts.

The key message for anyone scrutinizing a permit is to keep in mind that the applicant is required to prove they avoided and minimized impacts.

WHO MAKES THE DECISIONS?

Dock built in a saltmarsh.

Federal Level

Issues Permits

U.S. Army Corps of Engineers[1,3,4]

Philadelphia District

- Ensures proposed activities do not violate the State Water Quality Standards
- Regulates proposed development, dams, levees, infrastructure development and mining near "navigable waters" and their "adjacent" wetlands
- Regulates the construction of any structure in or over any "navigable waters" of the United States including the excavation/ dredging or deposition of material or any obstruction or alteration

Potential home site location in a wetland.

State Level

Issues Permits

Delaware Department of Natural Resources & Environmental Control (DNREC)

Wetlands & Subaqueous Lands Section[1,4,6,7]

- Ensures proposed activities do not violate the State Water Quality Standards, and addresses the discharge of pollutants into the surface waters of the state, including tidal and nontidal wetlands
- Regulates proposed activities taking place in state-regulated wetlands (tidal wetlands and nontidal wetlands greater than 400 contiguous acres)
- Regulates proposed activities that dredge, fill or place structures in, on, over or under public and privately owned underwater lands (subaqueous)

Housing development next to a tidal marsh.

Issues Permits

Delaware Department of Natural Resources & Environmental Control (DNREC)

Surface Water Discharges Section[2]

- Under both state and federal laws and regulations, any discharge of pollutants from a point source to a state's surface waters is unlawful unless sanctioned by a permit by the National Pollutant Discharge Elimination System (NPDES) program in Delaware

Reviews Permits

Delaware Department of Natural Resources & Environmental Control (DNREC)

Delaware Coastal Programs[5]

- The entire State of Delaware has been designated as the Coastal Zone Management Area. Projects conducted directly by a federal agency, projects authorized by a federal permit, and some projects implemented with federal funds must be consistent with Delaware's Coastal Zone Management policies

Storm water draining in to a wetland.

Please see the end of this document for a list of contacts for these organizations.

Regulations:

[1]Clean Water Act, Section 401 / [2]Clean Water Act, Section 402 / [3]Clean Water Act, Section 404
[4]Section 10 of the Rivers and Harbors Act of 1899 / [5]Coastal Zone Management Act /
[6]The Wetlands Act 1973 / [7]The Subaqueous Lands Act 1986

PERMITTING PROCESSES

FEDERAL: U.S. Army Corp of Engineers

Individual or Standard Permit Process

Applicant reviews activities requiring a permit under Section 401 & 404 of the Clean Water Act, & Section 10 of the Rivers and Harbors Act of 1899

Applicant/agent assumes federal jurisdiction

Initial meetings, pre-application meeting for projects with potential impacts

Completed application received, acknowledged, and processed (Applicant MUST prove that impacts could not be avoided and could not be minimized)

Public Notice issued (by the Corps) within 5 days of receiving all permit information

Normal 15-30 day comment period. Application review includes team includes: Corps, general public, special interest groups, local, state and federal agencies

Application denied (Coastal Zone Management or 401 water quality certificate denied by State)

Public Hearings may be held

Evaluation factors: economics, aesthetics, environmental concerns, fish and wildlife values, flood damage prevention, welfare of the general public, historic values, recreation, land use, water supply, water quality, navigation, energy needs, safety and food production

Application approved, applicant signs and returns with fee, **permit issued**

Application denied

STATE: Delaware Department of Natural Resources and Environmental Control

Wetlands and Subaqueous Lands Section (WSLS)

Initial contact, pre-application meeting for projects

WSLS completes a **Jurisdictional Determination**

Application not required

Application required, submit permit application and fee

Scientist reviews application and visits project site

Public Notice submitted to newspaper

Public Hearings may be requested and held

Final review by project scientists, which include public comments and addresses WSLS concern which may require minimization of the project. (60-90 days)

DNREC Secretary makes a decision based on the findings of the public hearing

Application approved or denied

Boxes highlighted in red are stages in the process where you have the option to provide input.

OUTLETS FOR PARTICIPATING

Delawareans can participate in land use decisions, and your voice is valuable in protecting our natural resources. Additionally, contacting your decision makers such as legislators and county or town councilmembers is also essential. Your representatives rely on your input to shape better public policy.

You Can Respond To...

Public Notices

Public written comments can be submitted during a public hearing or when a public notice is made available online or in a newspaper. A public hearing can be requested during the public notice period if there are concerns for a proposed project.

Public Hearings

A public hearing is an opportunity for you to present your views and show you care about your community with decision makers. This meeting is a place where perspectives can be exchanged to develop plans that benefit everyone.

Statements and testimony may be presented orally or in written form at the hearing. Individuals interested in presenting statements are often requested to register in advance with the hearing officer. Often the deadline for inclusion of written comments in the hearing record is the conclusions of the hearing.

Biologists working in the marsh.

County Comprehensive Plans

Many important land use decisions are made at the county level, including updating the County Comprehensive Plan. All counties have a comprehensive plan that is updated every five years and submitted to the state for certification.

These plans are used by local governments to establish land use policies and identify growth areas. They also address various other community concerns, such as affordable housing availability, environmental conservation, agricultural preservation, open space protection, historic preservation, economic development and transportation mobility.

You are a very important part in developing these plans by providing input on areas that are most important to you. Call your local office to find when your counties' plan is up for review or find them on social media to stay informed. Please see end of document for contact information.

Current County Comprehensive Plans:

New Castle: nccde.org/350/Comprehensive-Plan

Kent: co.kent.de.us/planning-dept/planning/comprehensive-plan.aspx

Sussex: sussexcountyde.gov/comprehensive-plan

Municipal Land Use Plans

State law requires Delaware municipal governments to develop and regularly update land use plans. Smaller cities and towns (those with a population under 2,000) are required to develop a municipal development strategy. Larger cities and towns are required to develop more detailed comprehensive land use plans.

Current City & Town Land Use Plans:

These plans can be viewed on the respective municipalities' websites. For a complete list of Delaware's incorporated municipalities, visit: delaware.gov/topics/municipalities.

Circles on photo mark filled wetlands. *Chris Bason*

TIPS FOR PARTICIPATING

Find Your Legislator at legis.delaware.gov

Tips for Submitting Comments

- **Do your homework.** Review copies of the regulations to be amended, land use plans that are being developed, or construction plans or permit requests that are under review.
- **Identify yourself** with full name, address and how you identify yourself in the community.
- **Direct your inquiry** regarding a public hearing to the contact person named in the public notice.
- **Be clear.** Clearly identify the permit, regulation, land use plan, project, bill or construction plan that you are providing your comments for.
- **Keep your message brief and to-the-point.** Provide key supporting data or facts to demonstrate your familiarity with the issue and that your comments are based on factual information. Limit the length of your message to one page.

Tips for Calling Your Legislator

Be prepared. Before calling find out and have on hand:

- Your name, address and election district
- Name and number of the regulation, land use plan, construction plan or permit request you are commenting on
- The desired action you would like your legislator to take
- 2-3 reasons to support this action

Water input directly impacting the land.

Support Your Statement with PLUS Comments

The Preliminary Land Use Service (PLUS) process involves reviews by all applicable state agencies at the start of the land development process, adding guidance and knowledge to the process without taking over the authority of local governments to make land use decisions.

Land use change proposals are submitted to state agencies through the Office of State Planning Coordination and are the subject at monthly PLUS meetings, hosted by the Office, at which applicants meet with state agency resource experts to discuss their plans and identify possible problems and solutions.

You can use the findings from these meetings to support your viewpoint in submitting comments to your decision makers. More information can be found at stateplanning.delaware.gov/plus/.

Support Your Statement with Wetland Health Reports by Watershed

DNREC's Wetland Monitoring & Assessment Program generates wetland health reports that can be used to support your comments. These reports can be found at de.gov/watershedhealth, and are based on data gathered about wetlands in a specific watershed in Delaware. They provide detailed information about the common stressors to wetlands, the reasons for those stressors, and suggestions for improving the health of wetlands.

A detailed scientific report and a user friendly report card which provides grades for each wetland type are available online and organized by watershed. Assessment of all of Delaware's watersheds will be finished in 2020. To find your watershed address, visit delawarewatersheds.org.

WHO TO CALL ABOUT A SUSPECTED VIOLATION

How do I report a suspected wetlands violation? Say someone is filling in wetlands or dumping in a stream?

If you notice any activity that appears inappropriate and wish to report it, please be prepared to provide as much of the following information as you can before calling:

- **Where is the property located?** (Provide the county and nearest town or city, road names and/or numbers, landmarks, and the tax parcel number, if known).
- **What kind of activity is taking place? (**i.e. Filling? Digging? Construction?)
- **What is the date and time** when you first observed the activity?
- **Who is doing the work?** Is it the property owner? A contractor? If so, can you disclose the name of the company?
- **Is the activity taking place in vegetated wetlands? Or is it in a tidal waterbody, stream, ditch, pond or lake?** If in a waterbody, do you know the name of the waterbody or the nearest waterbody to the site?
- **Have you contacted any other government agencies?** (county, city, state or federal)

Contacts

Delaware Department of Natural Resources & Environmental Control

All calls are considered confidential.

Complaint Hotline: 800-662-8802

Wetlands & Subaqueous Lands Section: 302-739-9943

U.S. Army Corps of Engineers

Philadelphia District

Regulator-of-the-Day: 215-656-6728

Trash dumped next to a wetland.

GOING THE EXTRA MILE...

Get Hands-On With Wetland Restorations[4,5]

In the realm of wetlands, streams, and other habitats, restoration is the act of assisting or intervening in the recovery of an ecosystem that has been degraded, damaged or destroyed to bring back some measure of its natural condition. In a state like Delaware, where centuries of abuse and misuse have left much of our remaining wetlands impaired, the opportunities for restoration are numerous.

Freshwater wetland restoration site. A portion of the project was purposefully shaped like a frog.

As with any undertaking relating to giving something back, the rewards of doing so are almost always greater than the effort put forth. And there are various levels of involvement depending on your situation and circumstances.

One can start out small, with simple “let-it-be” approaches such as cutting back on mowing the margins of wetlands and waterways to allow natural vegetation to reclaim its vital buffering role.

Or one can go a step further and get involved in removal of invasive plants and replanting native ones to enhance habitat benefits for wildlife.

Or, for most of the techniques, a landowner should enlist the technical expertise of an appropriate agency in taking on more ambitious restoration projects. For more information about restoration, please visit de.gov/wetlandrestoration.

[4]Delaware Department of Natural Resources and Environmental Control. 2009. *Wetland Restoration in Delaware: A Landowner’s Guide, Part 1: Restoration Stories*. Dover, Delaware. 40-05-01/09/05/01. 18pp

[5]Delaware Department of Natural Resources and Environmental Control. 2009. *Wetland Restoration in Delaware: A Landowner’s Guide, Part 2: Resources for Restoration*. Dover, Delaware. 40-05-01/09/05/02. 24pp

CONTACTS

Delaware Department of Natural Resources & Environmental Control (DNREC)

Find out about state public meetings, permit requests, and other DNREC news.

Meetings & Events: publicmeetings.delaware.gov/

Public Notices: de.gov/publicnotices

Email List Subscriptions: de.gov/dnreclists

Facebook: facebook.com/DNREC

Twitter: twitter.com/YourDNREC

Delaware Coastal Programs

Questions: 302-739-9283

de.gov/coastalprograms

Surface Water Discharges Section

Questions: 302-739-9946

de.gov/surfacewaterdischarges

Wetlands & Subaqueous Lands Section

Scientist-of-the-Day: 302-739-9943

de.gov/wetlandsandsubaqueouslands

Wetland Monitoring & Assessment Program

Questions: 302-739—9939

de.gov/delawarewetlands

Delaware General Assembly

Find a bill, your legislator, and view the calendar.

Questions: 302-739-9194

legis.delaware.gov/

Delaware Office of Management & Budget

Office of State Planning Coordination

Find out about upcoming PLUS meetings, current activities and archives.

Questions: 302-739-3090

stateplanning.delaware.gov

Kent County Department of Planning Services

Find more information about County Comprehensive Plans.

Questions: 302-744-2471

co.kent.de.us/planning-dept/planning.aspx

Facebook: facebook.com/KCLCPlanning/

Twitter: twitter.com/KCPlanning

New Castle County Department of Land Use

Find more information about County Comprehensive Plans.

General Questions & Complaints: 302-395-5555

Planning & Permitting Questions: 302-395-5587

Nccde.org/174/Land-Use

Sussex County Planning & Zoning

Find more information about County Comprehensive Plans.

Questions: 302-855-7878

sussexcountyde.gov/planning-zoning

Facebook: facebook.com/SussexCountyDE

Twitter: twitter.com/sussexde_govt

Thank You Delaware Bay

Find more information on how to make your voice heard.

tydb.org/be-heard

U.S. Army Corps of Engineers

Philadelphia District

Contact the Philadelphia or Dover office for more information about federal permits and requirements.

Regulator-of-the-Day: 215-656-6728

Dover Field Office: 302-736-9763

Public Notices: nap.usace.army.mil/Missions/Regulatory/Public-Notices/

Facebook: facebook.com/PhillyDistrict

Red Knot. *USFWS—Gregory Breese*

Delaware Wetlands

Purify Provide Protect

Photos (from top to bottom): gentleman fishing at Lums Pond, water control structure, freshwater wetland restoration project, development and canals on a tidal creek, longtail salamander by Matthew Jennette, and the Wetland Monitoring & Assessment program monitoring a tidal wetland